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Common Liability Risks and How to Manage Them

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Common Liability Risks and How to Manage Them

1. **Common types of claims**
2. **What you can do to minimize risk**
3. **How you can assist us**

Flooding

The Framework

Claims in negligence or under *The Water Security*

Agency Act.



Flooding

The Framework

Common causes:

- Inadequate drainage facilities
- Failure to maintain existing drainage facilities
- Breaching a road during a flood event



Flooding

Minimize the risk

- Ensure adequate draining facilities in place
- Ensure that drainage facilities are unobstructed
- Consider impacts before breaching road or beaver dam



Trespass

The Framework

- Entry upon land of another, without lawful justification, constitutes a trespass
- Consent or statutory authority a defence



Trespass

To avoid claims:

- Get consent in writing
- Be aware of any unusual conditions
- Know where the property line is



Road Repair and Signing

Typical Claims:

- Failure to sign
- Failure to alert re temporary conditions
- Objects on road surface



Road Repair and Signing

Duty

- To keep roads in a “reasonable” state of repair
- “Municipal Road”
- What are the consequences of a breach of duty?



Road Repair and Signing

Standard of Care

- Must be “reasonable” having regard to the character of the road and the area of the municipality in which it is located
- Can be used without danger by those exercising ordinary care



Road Repair and Signing

Standard of Care

- Type or class of road
- Traffic volume
- Use to which the road is put
- Means at your disposal
- Weather



Road Repair and Signing

Standard of Care

Signs are required to warn of hazards that prudent drivers, using ordinary care, would be unlikely to appreciate.



WA-14



WA-2R(L)



WA-11



Road Repair and Signing

Standard of Care

Standards or guidelines are relevant, but not conclusive. Go to the question of whether you have met the required standard of care.



Road Repair and Signing

Standard of Care

A driver may contribute to his or her own risk of harm while, at the same time, other drivers, exercising ordinary care, would still have been put at unreasonable risk by the state of repair.



Road Repair and Signing

- No liability unless you either knew or should have known of the disrepair
- No liability if you took reasonable steps to prevent the disrepair from arising



Road Repair and Signing

What You Can Do to Avoid Claims

Be proactive in identifying and dealing with potential hazards on your roads!



Road Repair and Signing

What You Can Do to Avoid Claims

- **Failure to Sign Hazardous Conditions Such As “T” Intersections, Sharp Curves or Hidden Intersections**

If you are in doubt as to whether a sign is required, **consult** the Traffic Signing Manual.



Road Repair and Signing

What You Can Do to Avoid Claims

- **Failure to Alert Motorists to Temporary Conditions Such as Washouts or Soft Spots in Roads**

The key here is **inspections!**



Road Repair and Signing

What You Can Do to Avoid Claims

- **Claims Based on the Presence of Rocks or Other Obstructions on the Travelled Portion of the Road**

Important that your employees be made aware of the need to **check the road surface upon completion** of grading to ensure there are no problems.



Operation of Municipal Equipment



Operation of Municipal Equipment

To avoid claims:

- Risk of familiarity
- Remind operators **regularly** of the risks
- Identify risks and establish safe working practices



What You Can Do to Assist Us in Defending Claims

Beforehand:

Keep good records!



What You Can Do to Assist Us in Defending Claims

Beforehand:

Keep good records of road construction and/or maintenance activities:

- Grading
- Gravelling
- Inspections
- Complaints
- Signs
- Accidents
- Culverts



What You Can Do to Assist Us in Defending Claims

After an incident:

- ✓ Notify insurer ASAP
- ✓ Gather relevant information
- ✓ Preserve evidence
- ✓ No admissions



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