

Managing Risk In Your RM

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Road Repair and Signing

Typical Claims

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



Road Repair and Signing

The Legal Framework

- Duty
- Standard of Care
- Knowledge of Disrepair

What can you do to avoid claims?




Road Repair and Signing

Duty of Care

Section 343 of *The Municipalities Act*, (“*the MA*”) which provides that:

“[e]very council shall keep in a reasonable state of repair all municipal roads ... ”.



Road Repair and Signing

Duty of Care

This duty of care does not extend to:

- roads which have been permanently closed
- roads which have been temporarily closed
- a road allowance which has not been developed.



Road Repair and Signing

Duty of Care

The scope of your duty is further limited by clause 345(b) of the MA which provides that while the duty of repair extends to all of the lands set aside for a road (both the original road allowance and any right of way), your liability exposure is limited to “the travelled portion” of the road.



Road Repair and Signing

Duty of Care


Subsection 343(4) of the MA states that if a municipality fails to perform its duty in this regard, it is liable for any resulting damages. Thus, breach of the duty of care created by section 343 of the MA constitutes negligence if loss ensues.



Road Repair and Signing

Standard of Care


Defined as:

- 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
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Road Repair and Signing

Standard of Care

Generally speaking, liability is only imposed where the condition complained of:

- i) could be characterized as an “unusual hazard” or a “trap”;
 - or
 - ii) is said to pose an “unreasonable” risk of harm to motorists exercising ordinary care.
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Road Repair and Signing

Standard of Care

Factors considered:

- The type or class of road
- The traffic volume
- The use to which the road is put
- The means at your disposal
- Weather



Road Repair and Signing

Standard of Care

Signs

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



Road Repair and Signing

Standard of Care

Standards or Guidelines

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

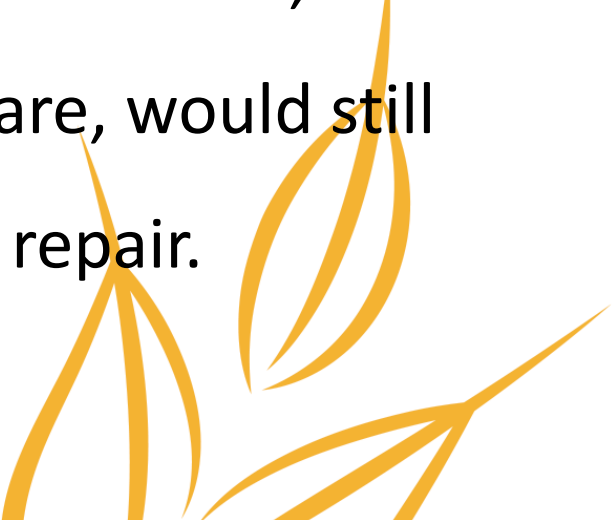


Road Repair and Signing

Standard of Care

Negligent Driver

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

Knowledge of Disrepair

- 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 Can You Do to Avoid Claims?

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



Road Repair and Signing

What Can You 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 with the RIRG Team at SARM or the Ministry of Highways.



Road Repair and Signing

What Can You 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 Can You 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.



Flooding

The Legal Framework

Claims in negligence or under *The Saskatchewan Watershed*

Authority Act, 2005



Flooding

The Legal Framework

Common causes:

- Inadequate drainage facilities
- Failure to maintain existing drainage facilities



Flooding

Minimize The Risk!

- Wherever carrying out the upgrading or reconstruction of any roads, seek expert advice on what drainage facilities are required.



Flooding

Minimize The Risk!

- In emergency situations, think carefully before doing anything that could be viewed as altering the natural drainage patterns.



Flooding

Minimize The Risk!

- Periodically inspect existing drainage facilities to ensure that they are unobstructed.



Trespass

To Avoid Such Claims:

- Get consent in writing
- Ask if there are any unusual conditions
- Locate property line



Operation of Municipal Equipment



Operation of Municipal Equipment

To Avoid Such Claims:

- Consider risk of familiarity
- Operators to be reminded of risks
- Identify the risks/establish safe working practices



What Can You Do To Assist Us In Defending Claims?

Beforehand:

- Keep Good Records!



What Can You Do To Assist Us In Defending Claims?

Beforehand:

With respect to road maintenance activities, keep records of:

- Grading
 - Graveling
 - Inspections
 - Complaints
 - Signs
 - Accidents
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What Can You Do To Assist Us In Defending Claims?

After An Incident:

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



Questions?



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