



Risk Management Considerations for Tobogganing as Municipal Liability

Municipalities play a significant role in the lives of Canadians by providing a myriad of essential services that residents rely on each and every day. These services range from clean water to sanitation; safe roads, sidewalks and trail systems; emergency services; recreational facilities; health department and building inspections; marinas; swimming pools; playgrounds and special, just to name a few. Residents expect that their municipality has taken reasonable precautions to ensure the safe delivery of these services.

Risk is inherent in the daily operating environment of any municipality. While it is impossible to eliminate risk, it is possible to manage it. The only way to manage all of these risks is by embracing the discipline of risk management.

1. Risk Management Defined

Risk management is a discipline that manages uncertainty. It provides a framework for understanding your legal and statutory environment; a strategic approach to identifying your risk exposures and determining the most appropriate means of minimizing the identified risk exposures. It's a discipline that can be applied on an enterprise-wide basis

or a department by department basis, for special projects or events. Furthermore, it doesn't need to be expensive, time-consuming, or complicated.

The Benefits of a Risk Management Program

- Protects municipal employees, ratepayers, visitors, and volunteers from harm.
- Protects the municipality's environment and its asset base from physical damage.
- Protects the municipality's reputation and public image, while reducing municipal legal liability.
- Reduces the cost of risk, which includes insurance premiums, insurance deductibles, adjusting expenses, and lost time of employees who attend discoveries, mediations, pre-trials and trials.
- Ensures regulatory compliance and improves operational efficiency.
- Demonstrates due diligence and guides the decision making process by helping to determine the best approach or alternative.
- Supports the decisions made when challenged by citizens.

Adopting and implementing an organized risk management program is essential for a municipality for the following reasons:

- People have an increased willingness to sue or file a claim. The costs of defending such claims grow year after year.
- Municipalities are being held to a high standard of care by the courts and governing agencies.
- Courts are often sympathetic to an injured plaintiff, and municipalities are being held vicariously liable for the negligence of their employees/volunteers.
- Municipalities are perceived to have ‘deep pockets’ with extensive assets and high insurance policy limits, and court awards are increasing.
- Users of municipal services have high expectations for the safety and quality of services being provided.
- It is a due diligence process that can help to meet the “reasonable standard of care” required by law.

2. Driving a Risk Management Culture

The Risk Management Process

1. Identify the risks within your various departments and the legal principles which outline your required statutory duty of care.
2. Assess the risks and determine which ones can be managed. If the risks are unmanageable the activity should be avoided.
3. Develop mitigation strategies.
4. Implement the chosen strategies.
5. Monitor the program and, the required, repeat the above steps.

A risk management program cannot exist without a team of individuals that focusses on its development and implementation. The driving force behind a successful program throughout their operation. When a leadership team understands their operational risks, and develops appropriate procedures for mitigating these risks and guides staff in implementing the appropriate actions, a risk management culture emerges. But this culture can only become embodied into the operational framework when fully supported by the management team. A management team that fully supports and encourages the process is the key.

Risk management consists of some key elements that must be integrated into the daily operations and culture of an operating department. These elements include: written and implemented policies and procedures; staff and volunteer training programs; incident management systems; risk review processes; management of third parties – vendors, contractors; and documentation of inspections, maintenance, etc. When risk management becomes part of the operational culture, management and staff instinctively look for risks and consider their impact when making operational decisions. Operational decisions based on risk assessments can reduce the risk of injury, protect the reputation and public image of the municipality and demonstrate a due diligence process in striving to meet the “reasonable standard of care” required by law.

Winter Activity Injuries (winter 2010-2011)

Hospitalizations in Canada due to	Tobogganing:	171
	Ice skating:	889
	Hockey:	1,114
	Snowmobiling:	1,126
	Skiing/snowboarding:	2,329

Source: Canadian Institute for Health Information

3. Applying the Principles of Risk Management to Tobogganing

Although tobogganing is a favourite Canadian winter pastime, it can also be a very dangerous activity. Every year people are injured sledding down hills in municipal parks, streets, and resort areas. Some of these injuries result in costly litigation. The incurred cost of litigation has led some Canadian municipalities to ban tobogganing on municipal property. The municipality has a duty, as an occupier, to keep the property in a safe condition to accommodate its intended purpose. In order to ensure safety on sledding hills, there are a number of steps that can be taken to reduce the risks and resulting liability through effective risk management.

Designated Hills

Not all municipal hills are conducive to tobogganing. Before the winter season begins, a municipality should survey its hills. Risk Inspectors can walk a municipality’s hills in order to help the city determine which are the safest for tobogganing. This is a service that insurance providers should provide at no cost. The safest hills are those with runoffs long enough for the sledder to come to a natural stop, that are free from

obstacles such as rocks, fences, and trees, and that do not end on roads, parking lots, sidewalks or frozen bodies of water.

Let the Public Know

Designated hills should be listed on municipal websites, Facebook pages, and Instagram and Twitter feeds. Local newspapers, radio stations, and schools should be engaged to communicate the message as well. The public needs to know where tobogganing is permitted for risk management to be effective. The message should convey that the municipality is taking these actions to protect public safety. Signs should be posted around the hill and in the surrounding parking lots indicating the following: The hill is NOT SUPERVISED; Hours of operation; Rules of conduct; Parental supervision recommended; Helmets strongly recommended; Consumption of alcohol prohibited; Locations of nearest telephone; Contact information for your municipality; and any other warnings or dangers.

Inspection and Maintenance Program

Once tobogganing hills are designated, municipalities will need to inspect them and maintain them throughout the season. Assign staff to regularly inspect the hills and instruct them to check the ground surface of the hill as well as break up any jumps that may have been built up and remove any debris. Create a protocol for opening and closing the hill. If possible, the hill should be closed at night and following an ice storm. Follow the procedures and train municipal staff. Every inspection and maintenance performed should be documented.

Supervision

Municipalities should consider providing supervision on busy days to ensure safe tobogganing. If resources are limited volunteers can be engaged. Spotters should be positioned at the top and bottom of the hill to reduce accidents. Spotters should look for hazards and warn patrons of dangerous behaviour. Spotters will require training in municipal protocols and incident reporting.

Educate the Public on Safe Tobogganing

We teach kids how to skate, swim, play football, hockey, play piano, etc. The one thing we don't teach kids how to do is toboggan safely. Educating the public as to the risks involved with tobogganing and methods of prevention

can help to lessen the number of accidents. Engage the public health unit to work with the local school board or their insurer to provide education at school assemblies or make an educational video for posting on municipal social media sites.

Monitor

Municipal governments need to stay on top of what's happening on their hills. Programs may need to be readjusted as required. Barriers may need to be installed where appropriate and necessary and safe areas should be marked outside of the primary sledding area. If conditions change and the hill becomes unsafe – close it. Continue to communicate with the public – use social media sites to get the message out when conditions change and hills have to be closed.

4. Risk Mitigation Not Elimination

It is impossible to eliminate every single risk. One of the biggest risks we face and the one that is difficult to control is user behaviour. There will always be those who ignore the rules; toboggan where they shouldn't and when they shouldn't. Because we can't eliminate all risks, injuries can still occur and these injuries can still result in legal actions. This is why the risk management process is so crucial. It is critical that a municipality be able to show through their documentation that they have exercised their due diligence and have done everything that is reasonable to keep their community safe.

All departments should be involved in a risk management program. It is critical that the departments involved consider the risks of injuries and accidents in delivery of the services they provide. Some municipalities have found it helpful to establish Risk Management Committees to bring together representatives from various departments to discuss mutual concerns.

Support of council in the implementation of a risk management program is recommended. This support could be obtained through a report presented to council which includes a Risk Management Policy Statement. This statement can give credibility to the program and if it is followed, all municipal employees should be engaged to become aware of and think about the various on-going issues. Everyone has a role to play in risk management.