

The Risks of Winter Activities

Changing leaves and a drop in temperature are both signs that winter is on its way – whether we like it or not. Even before the snow falls, many municipal residents start thinking about lacing up their skates, or getting the toboggan out of the garage for an afternoon on the hills. With the advent of these activities, the municipality's risk of liability increases when they are carried out on municipally owned property.

Every year we see claims against municipalities involving death or serious injury to participants taking part in winter recreational activities. We encourage municipalities to take an active risk management approach in this regard. Not only is there a need to minimize your exposure to liability, but more importantly, to avoid unnecessary death or injury to the public.

We have put together some suggestions that can help protect you and your residents. They are as follows:

- If there is an awareness of casual use of municipal premises for a specific recreational activity, it is appropriate to inspect the location for obvious hazards such as trees, light standards, roadways, creek beds, or anything else that may hinder the activity.
- Signage may be necessary to prohibit use in certain locations where serious hazards exist. Signs should also be posted to warn of potential dangers and hazards.
- Locations that are sanctioned or recognized by the municipality as active for winter recreational activities require considerably more study. The fact that the municipality recognizes or promotes a particular location results in absolute responsibility to safeguard the public. These locations would require removal of obvious hazards together with regular inspections and a good documentation program.
- Under many provincial Occupier's Liability Acts, the municipality may have a statutory obligation to ensure that anyone entering their property is reasonably safe while on the premises. Hence, a municipal decision to permit these activities on their premises should be accompanied by a commitment to manage the risk. Where there is no Occupier's legislation, there is still the Law of Negligence.

- There may be a need to install barriers where appropriate and necessary (i.e. around trees). If fencing is installed, however, the municipality has a further obligation to inspect and maintain it on a regular basis.
- Use of motorized vehicles should always be kept completely separate from other activities. For example, snowmobile use should be prohibited from areas where people will be tobogganing or snowboarding. If the municipality permits the use of their premises for any winter activities to another organization that is in control and responsible for the premises, we suggest that the following items be incorporated in their agreement:
 - The permit holder should abide by the same safety precautions and standards that the municipality would if they were to control the activity.
 - An agreement should be drawn up between the two parties setting out their respective duties and responsibilities.
 - The contract should contain a hold harmless and indemnification clause in favour of the municipality.
 - An insurance clause should be included which would require the permit holder to carry an acceptable limit of liability insurance and adding the municipality as an additional insured.
- A current Certificate of Insurance should be provided to the municipality providing proof that the necessary insurance is in place. Regardless of the type of activity, from skating on temporary outdoor ice rinks, to tobogganing and snowboarding on municipally-owned premises, these are some common risk management recommendations that we encourage you to put into practice to minimize your exposure to liability.