

## Winter Access Reducing Potential Liability

**W**inter and the outdoor recreation season of snowmobiling, cross country skiing and tobogganing have arrived. This could mean your properties or right-of-ways are being used for these activities, with or without your permission. Uninvited or trespassing guests always present a potential risk exposure. However, there are steps you can take to reduce these exposures.



Under the “Trespass to Property Act” the occupier of the property (you, the owner) has the exclusive right to decide who is allowed to remain on your property and you may exclude persons without cause or reason. **Signage, documentation and enforcement are some of your best defenses.** Signage provisions under the act require careful planning. If notice is given that a particular activity is prohibited, then that activity and entry for that activity are prohibited, but all other activities and access are not prohibited. For instance, if signs are posted stating, “No Snowmobiling Access,” ATVs would still be allowed. It is, therefore, important to keep signage very clear, simple and broad in meaning. For signs to be effective they must be clearly visible under normal conditions in daylight at every ordinary point of access. For example, if persons might normally enter your premises through a break in a fence to take a short cut across your right-of-way, notice must be given at that point of entry (or the fence must be repaired). Consideration should be given to having all signs or new policies reviewed by your legal counsel before implementation.

Here are some guidelines for clearly posting “No Trespassing” or “No Public Access” signs:

1. Place signs at **edge of property and near access sites**
2. Post signs where they will **easily be seen**
3. Signs should be **bright, clean, easy to read** (check signs regularly and replace as needed)
4. Put signs at **new access points** as they are developed
5. **Use numerous signs** - No Trespassing, Private Property, No Public Access, No Through Traffic - as each may be best suited for each site
6. Make sure to **comply with local laws** (consult your legal counsel for sign wordings)
7. Continue to **notify police** of trespassers and any damage
8. **Seek legal support** if trespassing becomes a serious problem

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Once signs have been posted, the ongoing process of documentation and enforcement begins. Consideration should be given to the regular documentation of each site visit, listing the date, time and evidence of non-utility access, vandalism, etc. Documentation can also serve as a defense, showing your due diligence, in the event of an incident. Records should document actions taken to reduce the exposure and subsequent follow-up review of the effectiveness. If a new, ordinary point of access is discovered, a sign must be posted or the access point removed.

**At this time of year you may receive requests from local snowmobile associations requesting access to your right-of-ways for their trails.** As part of an agreement, the local association of volunteers may plan to maintain these trails for permitted use. But what happens if damage or injury results? Can the association live up to the terms of the agreement? In the past, MEARIE has reviewed agreements and certificates between snowmobile clubs and LDCs. The club may have the standard \$15,000,000 per occurrence and aggregate OFSC Liability policy with a \$25,000 deductible. This means there is a limit of \$15,000,000 for each occurrence and \$15,000,000 aggregate, however the local club is responsible for the first \$25,000 of any claim – the local club is basically self insured for this deductible amount. A question to ask the club is: “Do they have the financial resources to cover the deductible?” If they are unable to pay, then basically there is no insurance for losses under \$25,000 and it may become necessary to seek legal advice related to potential recovery of physical damage to your property losses. Also, if they are not able to pay liability losses under the deductible, depending on the terms of the agreement, you may become obligated to pay the injured party. It is recommended you consider having your legal counsel review the agreements for indemnification, hold harmless terms and conditions. You might also consider requesting proof of the club’s financial ability to pay the deductible as part of your agreement.

**As of last winter, Hydro One was only honouring existing agreements; all new requests for snowmobile trails were not being considered.** What are your policies and procedures related to both existing and new requests?

Take this opportunity to review the agreements you currently have allowing others access to your facilities or property. Have your legal counsel review the agreements to ensure you are not accepting or agreeing to assume the liability, exposures or the risk of others. Know what activities are occurring such as tobogganing, skating or cross country skiing on your property or right-of-ways and take the necessary steps to reduce or eliminate your exposure.



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