



# Tay Valley Road Access Agreements Risk Management Considerations

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## Agenda

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2. Joint & Several Liability
3. Claims Scenarios
4. Property Owners Purchasing their own Insurance
5. Road Association Insurance
6. Deeming Roads Away
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## EXPOSURES

- The Highways Act defines a private road as a highway not maintained at public expense. This means the Local Authority is not responsible for fixing potholes, gritting or resurfacing the road.
- Within smaller municipalities in more remote areas of Ontario, many properties are accessed by private roads. Private roads are owned and maintained by one or more landowner and used to access private property. These roads are typically maintained by private owners of the land they occupy. Some private roads are maintained by a municipality and are open to the public
- Although the Owner by way of the agreement acknowledges that the Private Unassumed Road has not been brought up to municipal standards and has not been assumed by the Township and that the Township is not maintaining the road, it does not preclude a third party that has suffered injuries or damages to bring a claim against the Township. Although the Municipality transfers the liability for the private unassumed road to the property owner, they could still be named in a lawsuit and the Township could be held liable.

## Joint & Several Liability

- As the Private Unassumed Road is still under the Township's jurisdiction, there is concern with liability.
- Under the Negligence Act, the law states that where damages have been caused by two or more persons and where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering loss or damage.
- A plaintiff lawyer only has to prove 1% liability against the Township to recover 100% of the plaintiff damages.



## Joint & Several Liability - Continued

- Is the Township Currently covered for Private Unassumed Roads?
  - The Municipal Liability extends cover to claims arising from the Township's operations subject to the policy terms, conditions and exclusions including \$10,000 deductible which also applies to defense costs. As with all claims, the allegation will determine how the policy will respond.
- We have a pproached the Township's insurer to extend coverage to the Property Owners.
  - The insurer will consider the request; however we need to confirm who is responsible for maintaining the roads for the insurer to determine if they are prepared to extend liability to the Property Owners as a Named Insured.
  - As the Township would be most likely named in a claim, it is advisable that the Township maintain the roads to manage their risk.

## Claims Scenarios

- Cottage builder and/or contractors using heavy machinery end up in ditch due to lack of road maintenance.
- Amazon delivery driver slides into ditch causing bodily injury and/or property damage.
- School bus slides into ditch causing bodily injury and/or property damage.
- ATV or snowmobile hits obstacle (large rock or downed tree) and driver is injured.

Tay Valley could still be named in a lawsuit because an unknowing third party may assume the roads are Township's responsibility. Even if Tay Valley can get themselves removed from the action, there would still be legal fees.



## Property Owners purchasing their own insurance

- Township's Zoning By -Law provides that no building shall be erected on a lot if it does not have access on an improved road unless a Road Access Agreement has been executed.
- Road Access agreements require that the landowner secure \$5M Commercial General Liability in order to build.

### Challenges:

- Insurers are reluctant to quote because there could be several different policies covering each road.
- In a claims scenario, an accident could occur in front of multiple properties, making liability difficult to determine.
- We assume that only properties with buildings on site may have liability coverage.
- Are Vacant lots required to have insurance?
- Tay Valley could still be named in a lawsuit.

## Property Owners purchasing their own insurance

### Challenges (continued):

- Insurance can be expensive and difficult to secure (as expressed by previous property owners).
- Even if property owners can secure their own insurance, Tay Valley should request updated certificates annually to ensure they are added as additional insured.
- This places an additional administrative burden on the Township to follow up with Property Owners for certificates as well as ensure that the roads are being maintained by competent contractors.
- Is the Insurance policy renewed after obtaining the building permit?
- Although the Township is added as additional Insured, this provision will only extend cover to the Township if they are named in a claim as result of the Named Insured's (Property Owner's) negligence.
- If the Property Owners do not secure liability coverage and a claim occurs?
  - As with all claims, the circumstances and the allegation will determine liability and will be decided by the courts.
  - By way of contractually transferring liability for the road to the Property Owner, it could be argued that the Property Owner should be responsible to maintain the road.
    - In the event of a claim, the Property Owners may be assigned partial / contributory liability.
  - The same would apply for maintenance contractors (if applicable).



## Road Association Insurance

- When property owners collectively rely on an access road, they can form a Road Association.
- The property owners voluntarily take on the responsibility to organize road maintenance, communicate with road members and collect fees as necessary.
- Part of this includes securing liability insurance to protect them against claims alleging negligence arising out of the maintenance of the road.
- The Road Association should be required to maintain CGL coverage and provide the Township with an updated certificate of insurance on an annual basis including Additional Insured status for the Township.

## Road Association Insurance

### Challenges:

- This is a partial solution for neighborhoods which are organized and have a road association.
- This is a substantial burden to Property Owners where they may be the only families with dwellings on their property.
- It seems disproportionate that in order for them to build a structure on their property, they have to assume responsibility for maintaining the roads around them.
- Tay Valley can still be named in a lawsuit.
- Tay Valley must request updated certificates every year to ensure they are added as additional insured. This provision will only extend cover to the Township if they are named in a claim as result of the Owners negligence.
- Maintenance Contractors (snow removal, grading) may not have their own insurance. Often, a local property owner may have their own equipment and perform maintenance themselves.

## Deeming Roads Away

- Deeming the roads away, in turn creating private roads, not owned or maintained by the township.

### Challenges:

- Tay Valley could still be named in a lawsuit because an unknowing third party may assume the roads are town's responsibility. Even if Tay Valley can get themselves removed from the action, there will still be legal fees.
- If Tay Valley provides municipal services (ex. Garbage collection, school bussing, emergency services) and one of their vehicles or employees suffers bodily injury/property damage while on the private roads, it would be in Tay Valley's best interest to ensure the owners have sufficient resources (insurance) to pay a loss.

## Recommendation

- It is our understanding that the Township currently has Private Unassumed Roads.
- It is our recommendation that Tay Valley retain ownership and should assume responsibility for maintaining the roads.
- This would reduce potential liability as the Township would be maintaining the road to Minimum Maintenance Standards and keeping records in the event of a claim.
- Tay Valley could levy a tax to the Property Owners to fund the upgrading and maintenance of these roads.

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