



The Risks of Natural Unstructured Winter Play

By Tracy Eso, BFA, CIP, CRM, ACI, Risk Assessment & Solutions Manager, Intact Public Entities and Terry Piche, CRFP, CIT, Technical Director, Ontario Recreation Facilities Association

More than ever, the public is recreating outside enjoying skating, skiing and sledding. When they do so on public lands, the owner (corporation) is responsible for ensuring that the play areas are as safe as possible and free of potential hazards.

While there is no way to be certain that no accidents will happen, owners are well-advised to recognize the inherent risks involved in these types of outdoor unstructured play and to take appropriate action to prevent losses from happening or at the very least, mitigate the impacts should an accident occur.

The owner of the property, as the occupier, has responsibility for safe play to all individuals who enter their property, whether invited or not. Landowners must conduct reasonable inspections of all property to confirm that the property is safe, secure and without known hazards. The advice provided in this article also applies to private-property owners: the same risks associated with liability may also be applied to them.

Tobogganing/Sledding/Sliding

Riding on any speed-enhancing device down a snowy hill has many different names. We will use sledding to describe this quintessential Canadian winter activity. Popular sledding

areas can consist of small hillocks to larger slopes. Some municipalities utilize decommissioned waste management hills as winter parks. Each terrain offers a variety of levels of risk to the user and liability to the owner that can shift based on weather patterns. One day the slope may appear safe and the next, rocks or tree stumps appear without notice. There have been significant claims made against municipalities in the past for injuries sustained while sledding. What can a municipality do to ensure public safety? Where the hazards are too great, what can they do to stop unauthorized sledding to protect against liability claims?

There are several layers of operational considerations. Historical areas that have been traditional sledding areas are the simplest to identify and control. The first steps are to either accept and embrace the reality of the recreational area, or to focus on stopping the activity altogether. Consider reaching out to your insurance carriers' risk department to discuss the matter. They will assist you in identifying how potential liability can be reduced or to provide advice and guidance where the risk is significant. Ultimately you, the policyholder (the insured) will decide how to proceed. Your insurer will be able to assess the risk based on their experience and loss data to help you make a sound decision.

Key areas of a risk audit will include where the slope is located (whether or not it is municipal property). Parking

areas are often an overlooked component when assessing safe practices. The shoulder areas of an active roadway become inherently unsafe when congested with vehicles parking with excited young children eager to play. Evaluate where the slope faces and discourage use of slopes that in anyway direct users toward roadways, water, or natural hazards such as trees. The area must be kept free of obstructions and should always “bottom-out” onto an adequate open area with protective barriers such as hay bales or fencing. Jumps on sledding hills are areas of concern. The public is seldom prepared for the risks involved with jumping sleds, and they run the risk of head injury and collisions when they attempt to perform such tricks. Regular inspections should be carried out to watch for, and remedy, any banks or mounded snow that have been created on the hill to accelerate descent, or to “catch air.” If discovered, the hill should be graded and the hazard removed altogether to minimize the risk and make the hill as safe as possible. Do not permit the adding of water to form ice to create increased speed. Like most things, speed increases the severity of accidents. Further, consider that the area may be used for activities such as general exercise or walking dogs which creates an increased liability when slopes and ice mix. We recommend that if and when these hazards are detected and then fixed, that the worker be encouraged to photograph the “feature” or hazard pre-and post-remediation – using a cellphone which can date-stamp the photos can be helpful.

If the area is located adjacent to private property, research local noise by-laws and build these controls into operational policy. Building a relationship with homeowners is advisable as they may be prepared to assist in monitoring use to ensure safety, reduce vandalism and advise of any incidents that may occur.

Once the area has been evaluated for safety, it is essential that a scheduled program of inspection by qualified staff be implemented. Signage continues to be one of the most critical components of a risk reduction plan. Considerations for signage include:

- recommended personal protection equipment is strongly recommended
- use pictographs whenever possible to bridge any language gaps
- the sign should advise of acceptable behaviour when in the area
- adult supervision of children is encouraged
- sled jumping is prohibited

- direction to avoid the areas where descending users may collide with those ascending the hill
- advising of noise concerns for neighbours
- littering concerns
- provide emergency contact information so that users can report issues directly to appropriate staff.

Consider scheduling additional staff support on particularly busy holidays when the hills are known to be very busy to monitor and ensure expected safe practices.

If the sledding hill is on private property – such as a golf course, the golf club will be the “occupier” and will be ultimately responsible for claims should they arise. Arrangements could be made with the municipality to have them be the ad hoc occupier during the winter months, but if that is to be the case, it is recommended an agreement be made with the golf course owners to stipulate responsibilities and to ensure the municipality is not taking on risks for damage to the property due to sledding activities. If the golf course is leasing the land from the municipality, the agreement may already form part of the land lease.

Natural Ice Skating

Ice skating is part of the Canadian fabric. Communities offer a variety of venues to help fill the desire to ice skate. Deciding to skate is a personal choice. Anyone who has tied up a pair of skates knows that this sport requires some skill and offers a variety of natural risk of injury from falling. Wearing appropriate protection is essential and should be strongly recommended. The priority for the owner of the skating area must be to ensure that it is ready and safe for play. When the public skates on natural lakes or ponds, there is a risk of breaking through the ice with potentially catastrophic outcomes. Retention ponds or rivers with fluctuating levels or flow are inherently dangerous and should not be used for ice skating at any time. Much like the sledding hill, it is up to the “owner” to de-risk the activity as much as possible. Given the attraction to “free ice” it is unlikely that the public, especially children and youth, can be compelled to stay off a relatively safe pond or lake. If, however, the public skates on a body of water that belongs to the municipality, and an accident does occur, there is a strong likelihood that the municipality will be exposed to some liability. Consequently, it may be advisable to control the hazard as an alternative to banning it outright. That could include developing a program of inspection that includes testing of ice thickness, by qualified staff. Any natural waterway will require long periods of cold weather to create a safe thickness.

Communication is key, so we recommend that a system to warn the public of the risks and to stay off the ice until the status improves, be implemented and updated as new evidence comes to light. The communication should be on signage, on websites, newspapers, and radio; any and all sources available to illustrate you made the effort to communicate the hazard to the public.

Shifting weather can affect safety, if the ice was formed during a storm, it may have ridges from the wind which can be unsafe to skate on. Ruts and gouges can also be present on the ice due to prior use of the ice. A decision to maintain the ice must be made: some communities drill holes and use water pumps to apply fresh water to smooth the surface, while others use manual ice resurfacers which may be more appropriate due to the weight of a traditional ice-resurfacing machine.

Though hockey on open ice is certainly a privilege of life in Canada, it should not be encouraged in the same area as children learning to skate. The owner must make an evidence-based decision as to how to proceed. If it is not possible to make the skating area reasonably safe, then preventing the activity may be the only choice. When making that decision, however, remember that even if it is too costly to monitor, the public could continue to use the area. If the municipality knows there is public using a prohibited space, the municipality could continue to be exposed to liability if an accident occurs.

Some key points:

- Consider entering into partnership agreements with community associations to be able to host these activities as safely as possible – supply guidelines to outline expectations.
- If entering into an agreement with a golf course or private entity, consider indemnity language and a hold-harmless agreement – if the other entity is making profits from the activity in some way, other factors need to be considered.
- Think about ingress and egress for the public – but importantly, consider also emergency vehicles and staff – if there is a pond or a hill that is only accessible by foot, crews could have a difficult time reaching the area in an emergency.

- Try to engage neighbours to provide “extra eyes” – remembering that they can’t necessarily be relied on as well as actual staff, but the extra layer of monitoring can help especially in the off-hours.
- If you have a hazard (a pond or a hill) on municipal property, you are responsible as the occupier, to mitigate that hazard as much as possible. If the area is on private property, you may have a positive responsibility to ensure that the public is still as safe as practicable – so those activities should not be ignored.
- Skating on retention ponds or moving water is always dangerous and should be prohibited – these areas must have proper signage and be inspected and documented regularly to ensure the public are not accessing them.
- Implement a safety plan for the area which includes staffing, maintenance, community member involvement and proper signage. The planned work must be recorded using job-logs, checklists and dated activities to illustrate that the municipality and/or recreation staff did everything they could to keep the public safe.
- If an incident does occur, even if it is not deemed to be a serious one, a procedure should be in place to address it. Witness information should be obtained and recorded, and staff must act immediately to rectify any unsafe condition. They should complete an incident report and include photographs of the area immediately afterwards. Prior inspection reports should be pulled and attached to the incident to provide proof that best practice was adhered to at all times. Your risk management department should be involved. If you don’t have one, feel free to reach out to the Risk Management Department at Intact Public Entities and the Ontario Recreation Facilities Association.



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