

## Private Roads – Your Obligations

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Do you travel on a Private Road to get to your cottage? Do you know who is legally responsible for maintaining it? Should you hold liability insurance for the road? The following article has been produced by the HLCA following research with Federation of Ontario Cottage Associations (FOCA) and Cade Insurance. The information provided is for awareness only. If you access your lake property on a Private Road, please ensure any decisions made by you for the maintenance of the road or acquiring liability insurance is reviewed with professionals.

A Private Road is a deeded or un-deeded road that is used to access your property on a routine basis. The property travelled on can be privately owned or owned by the government or municipality. There are approximately 40 private roads on the lake that have a few properties on them to about 40 properties, as is the case in the new development on the east side.

The issue at hand is the maintenance of the Private Road, such as grading, adding material / culverts and snow plowing, etc. There is no single, specific law that clearly delegates the responsibility to maintain the Private Road onto its routine users. In fact, it is a few different factors at play that seem to imply this responsibility to the routine user of the Private Road. Two pieces of legislation that seem to apply are the Ontario Road Access Law and the Occupier Liability Act.

The Ontario Road Access Law serves to define ‘access roads’ (Private Roads) as roads located on land not owned by a municipality or maintained as a public highway that serves as the vehicle access route to one or more parcels of land. This Law prohibits anyone from closing or blocking an access road when that would prevent all road access to another parcel of land not owned by the person doing the blocking. While there are circumstances where it is possible, essentially this Law confirms that an owner over whose land an access road passes is barred by law from placing a barricade or otherwise closing access to the road if that would stop others from being able to access their property by vehicle.

The Occupier Liability Act suggests that a person who routinely uses a deeded or un-deeded road access (Private Road) to their property regardless of property ownership of the road access, has a legal requirement to ensure that private road is maintained to a reasonable level. This is very important when it comes to liability risk, if someone is injured on the Private Road all routine users of the Private Road, who should be maintaining the road, could be held responsible and therefore sued.

The definition of reasonable can be a challenge but local Fire and EMS municipal standards at Algonquin Highlands include the following criteria, such as;

- Have a clear width of not less than 3.6 meters (12') unless it can be established by the service provider that a lesser width is satisfactory.
- Have an overhead clearance of not less than 4.3 metres (14') unless it can be established by the service provider that a lesser clearance is satisfactory.
- Have a turnaround facility for any dead-end road portion of the private road that facilitates the turning around of the equipment of the emergency service provider.

- Be designed to support the expected loads imposed by firefighting and EMS apparatus and be surfaced with material designed to permit accessibility under all climate conditions.
- Bridges on private roads must be engineered to withstand the weight of the aforementioned apparatus.
- Private roads are to be maintained free of pot holes, snow, ice and foreign debris.
- Private roads that provide access to more than one property should not be obstructed by a fence or other mechanism that may impede through traffic.

In addition, in managing the liability risk you should ensure the company with the snow plow contract has their own liability insurance and provides proof of this insurance each year, through a Certificate of Insurance.

The history: Private roads were built for seasonal dwellings that truly were used Victoria Day to Labour Day. They did not need to be passable year-round thus the roads standards could be lower. Now the older three season buildings are being replaced by year-round structures on Private Roads and therefore creating a problem. Many Private Roads were not built for the access capability of ambulances, fire trucks, utility trucks and municipal snow plows. Both Dysart and Haliburton County are now reviewing the future construction standards of Private Roads as there is an expectation of property owners that the roads are plowed, and emergency equipment can access the property.

There are two ways to address the maintenance and liability risk of your private road.

First, you can create a formal Road Association that all members on the road are members that outlines the fees associated with road maintenance, snow removal if required and liability insurance. The new development on the east side, through a condominium association, has effectively that with all property owners required to pay an annual fee. We are aware of at least two other Road Associations, one with 4 properties as membership, that was set up to address the maintenance and liability issues of a private road. The cost of Road Association liability insurance is unique to each individual organization, and is based on the operations of the Association, whether the road is open year-round, the number of properties serviced by the road, and other factors. Each Association should review their work with an insurance professional to obtain a quote. Note there is legal precedence that suggests users of private roads must legally share the costs associated with maintaining the road. The legal concept of Unjust Enrichment has been discussed in context with Road Associations. In this premise, the courts seem to support the concept that if someone is using a road and enjoying the benefit of its presence (the Private Road), they should be contributing to its upkeep. There is some case law related to Road Associations and Unjust Enrichment (*Point Abino Assn. v. Lee*), though it is related to a Road Association enforcing the collection of dues of a property owner on the road who had refused to pay their share. It is assumed the same legal argument could be made to an unstructured arrangement of sharing costs associated to the upkeep of the private road.

If your local group of property owners are unable to form a Road Association, it is important that you speak with your personal insurance provider to take steps to protect yourself. You may wish to discuss if the liability insurance coverage provided by your home or cottage policy will respond to claims

brought against you, arising out of your involvement in the shared responsibility of maintaining the road used to access your property. The purchase of an Umbrella Liability insurance policy is also an important consideration, as a means of adding additional layers of liability protection to ‘drop down’ over underlying personal insurances. Noteworthy, after learning about this liability risk associated with the Private Road one of our Board members checked with their Toronto based cottage insurer and when asked about the liability coverage on the maintenance of the Private Road the insurance company responded that “the property owner, of the private road, has all the liability risk”. The Board member moved all their insurance coverage to Cade Insurance, FOCA endorsed cottage insurer, who reviewed the liability exposures related to the private road and made coverage recommendations accordingly. This example is just a factual example, other cottage centric insurance may offer the same coverage.

As mentioned at the beginning of the article, this was written for general education. Please ensure you understand your obligations in the use of your Private Road and the possible liability risk. Please reference an article on the FOCA website called “Private Roads – Who’s In Charge?” at <https://foca.on.ca/whos-in-charge/>

The material below has been made available by Cade Insurance re Road Associations.

## ✓ Why Road Association Insurance?

Without Association Liability insurance, the Road Association and its volunteers, if sued, will incur significant personal financial costs to fund their own defence. And, if it is determined that they are legally liable for the loss, they would also be personally responsible to pay the damages to the claimants.

Individual property owners along the road may be sued personally if a claim arises out of the maintenance of the road, regardless of their involvement. Personal home and cottage policies are not 'standardized' and so the necessary liability protection related to road maintenance may not be available to the property owner. If, however, the insurance is available under the home or cottage policy, and a claim is submitted, the personal policy premium could increase on future renewals. More importantly, the Insurer of the home/cottage could decide to non-renew once they have a better understanding of their exposure to road maintenance.

As it is impossible to know how each property owners' policy will respond, it is difficult to have confidence that every policy will provide adequate protection.

Road Association Liability Insurance plays a vital role in protecting the board members, volunteers and members of the Association. When a claim is presented, the Association insurance removes any uncertainty from the property owners as to whether their personal insurance has appropriate protection for their involvement in the road maintenance.

Cade Associates arranges insurance for hundreds of non-profit Road Associations and other organizations throughout the province. We are also proud to provide CottageFirst, a personal insurance solution for cottagers in Ontario.

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[Visit cottagefirst.com](http://cottagefirst.com) for more details.

## Frequently Asked Questions

### Does our Association need to be incorporated?

No – Our Road Association insurance program is available to Associations who have not taken the step of incorporation. Your group should have a 'guiding document' which outlines the purpose of the group and how membership is determined, but incorporation is not required.

### Will the Insurance cover winter maintenance?

Yes – Many Road Associations are involved in the upkeep of their roads year-round and the policy can be tailored to suit your specific requirements.

### Does the Insurer require specific signage?

No – While signage alone cannot absolve legal liability, it does show reasonable decision making by the group to attempt to avoid accidents, and assists in your defence. Signage should indicate that the road is private, or has restricted access, etc. as appropriate. No two roads are alike, so the Road Association is encouraged to review their circumstances and consider what hazard signage (i.e. sharp turns, blind corners, etc.), speed signage or other markers may be helpful.

### Are we required to hire insured contractors?

No – While it is strongly recommended that you hire insured contractors where possible to conduct road maintenance or snow removal operations, in some cases local options are limited and the Association insurance policy can be customized to suit your needs.

### Is the policy still available if the road crosses Crown Land?

Yes – Whether the road crosses over land that is fully private, municipally owned, or Crown Land, the policy responds to your road maintenance activities.

### Don't automobiles carry their own insurance for accidents?

Yes – If there is an auto accident on the road, the automobile insurance policies of the vehicles involved will respond first as primary insurance for any injury or damage to the property of others, and vehicle damage. However, an automobile policy will not provide protection to the Association or its members should the involved individuals bring legal action for alleged negligence in maintaining the road.



**When property owners collectively rely on an access road to enjoy their properties, it is common for the owners to come together and form a Road Association. Acting on a voluntary basis, these property owners take on the responsibility to organize road maintenance, communicate with road members and collect fees as necessary.**

**Road Association insurance is necessary to protect the individuals and volunteers involved in the road organization against claims brought against the group alleging negligence with respect to the maintenance of the road.**

### ✔ **What Is a Road Association?**

Some groups are a loose collection of neighbours, while others are fully incorporated non-profit organizations. The group is comprised of individual volunteers and those members/property owners who contribute to the road fund. Regardless of the group's structure, it is considered a Road Association within our insurance program. In order for the volunteers and members to avoid exposure to personal financial distress should a claim be brought against them as a result of their involvement in the maintenance of the road, the Association should obtain insurance.

### ✔ **How Does the Policy Respond?**

Upon receipt of such a claim, the Insurer will investigate the events leading to the alleged loss and provide the Association with a legal team to defend against the allegations. If the Association or volunteers are found to be legally liable, the Insurer will pay those compensatory damages awarded, subject to the policy limits. Policy limits up to \$10M are available within the program. The policy will respond to such claims which involve vehicles, pedestrians (i.e. slip and falls), uninsured recreational vehicles (i.e. snowmobiles, ATVs, etc) and others who may use the road, with or without the knowledge of the Association.

### ✔ **Commercial General Liability**

Relying heavily on your volunteers, the work of your Association is invaluable to your community. Our liability insurance is designed for organizations operating on a not-for-profit basis. The policy will respond when legal actions arise which allege that the actions of the organization or its volunteers led to bodily injury or damage to the property of others. It is understood by this policy that these actions are related to your volunteer's management of maintenance of the roadway.

### ✔ **Who Is Insured?**

Road Association insurance protects the Association itself and it's volunteers who act on behalf of, and at the direction of, the Association. Our policy includes coverage to 'Members in Good Standing' within the Association should they be named in a claim simply because of their active status as a Member.