

Good Roads

# Quarterly

Everything roads since 1894.

Issue 03 / October 2022

"Still, round the corner, there may  
wait, a new road or a secret gate."

-J. R. R. Tolkien





Everything roads  
since 1894

# Good Roads

## 2023 Conference

Sunday, April 16 - Wednesday, April 19, 2023  
Fairmont Royal York  
Toronto, ON

[www.GoodRoads.ca/conference](http://www.GoodRoads.ca/conference)

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## Monitoring roads and infrastructure more efficiently

Accurate features and measurements can be extracted from 3D scanned data, allowing for documentation of assets lacking thorough digital records



“It’s time to bring municipal asset inspection into the 21st century. Scalable data collection and analysis is feasible, affordable, and practical today.”

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For 128 years, the Ontario Good Roads Association – now simply “Good Roads” – has been dedicated to improving municipal roads and associated infrastructure in Ontario. Today, Good Roads has more than 450 municipal and First Nations members. We exist to connect our members to each other, to other levels of government, to academia and to relevant private sector interests. We provide our members with training, knowledge, political advocacy, and solutions to their most pressing problems.

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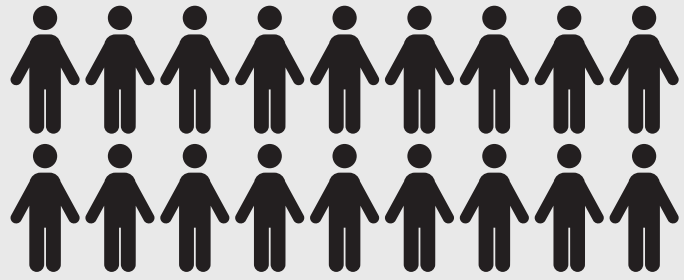
# When little liability incurs huge costs: Setting the thin white line of municipal liability

By: Essam Dabbour, Ph.D., P. Eng. and  
Jason Young, M.A.Sc., P. Eng.  
Advantage Forensics® Inc.

**At the early** morning hours of a warm day in June 2007, a female driver was driving her vehicle on a small road in Hamilton when she failed to stop at the stop sign and yield the right-of-way at the intersection with a main road. Her vehicle was "T-boned" at a high speed by another vehicle that was traveling on the main road. The female driver and four passengers (all of them were children) were all injured in the collision. The driver and the guardians of the four



Vehicle crashes expose how municipalities may be found liable as a result of relatively small deficiencies that seem simple and easy-to-fix.



injured children sued the other driver, who was impaired and was exceeding the speed limit. The plaintiffs also sued the City of Hamilton because the stop line on the small road was faded at the time, claiming that the lack of a stop line contributed to cause of the collision. The trial judge decided that the plaintiff was liable for 50 per cent of the collision, the defendant driver was liable for 25%, and the City of Hamilton was liable for the remaining 25%. The City of Hamilton appealed the court decision, but the appeal was dismissed.

This case is an example of how municipalities may be found liable as a result of relatively small deficiencies that seem simple and easy-to-fix. According to the data provided by the Ministry of Transportation Ontario (MTO), more than 51,500 people are injured or killed every year in traffic collisions in Ontario. Many of those collisions result in legal claims against road authorities. The claims typically allege that the collision was caused, in whole or in part, by improper design or maintenance of the road facilities. These claims expose road authorities across Ontario to liability totalling hundreds of millions of dollars per year (typically 1 to 10 million dollars per claim). Most importantly, the liability exposure of municipalities is severely exacerbated by the legal principle of "joint and several liability" that is applied in Canadian courts, commonly known as the "1% rule". Since the policy limits for municipalities far surpass those for drivers, municipalities usually face a disproportionate level of exposure for payment compared to their percent liability.

In the above example, the court has not decided yet on the damages to be paid by the liable parties, which could be several million dollars based on the young age of the injured parties and their injuries. According to the "1% rule", the municipality would be responsible for any damages that exceed the policy limits of the other drivers and cannot be otherwise collected. This means that if a municipality is hypothetically found to be 1% liable for a collision, and the damages exceed all other available policy limits, the municipality would be 'on the hook' for the balance of the damages, even if that equals 50% to 99% of the total.

In *Chiocchio v Ellis* (2016), the City of Hamilton and the defendant driver were both found 50% responsible for a two-vehicle intersection collision, but the City would have had to pay most of the \$7M damages and costs awarded due to the policy limits of the defendant driver. The Court of Appeals dismissed all liability in that case against the City due to the defendant driver actions.

In *New v Moose Jaw* (2004), the City of Moose Jaw was found 45% liable for a collision involving a child pedestrian,

# 51,500

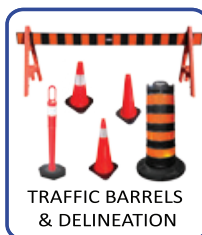
People injured or killed in traffic collisions every year in Ontario

while the defendant driver and the Chief of Police were found responsible for the remaining 55%. In that case, the City had to pay over \$13M of the \$16M damages and costs due to the policy limits of the other defendants.

Municipal liability usually results from omissions by staff when designing, maintaining, or inspecting roadway facilities. These omissions could be related to maintenance operators and field staff (such as the lack of proper record-keeping or applying improper amounts of salt on snowy and icy roads), or by managers (such as failing to develop proper level-of-service policies or road safety strategies). For example, most municipalities in Ontario implement the Vision Zero approach, which is a comprehensive strategy aimed at reducing traffic-related injuries and fatalities. However, several municipalities take only initial steps towards this goal by collecting collision data to identify locations that have unusual numbers of traffic collisions (i.e., network

screening). Only a few municipalities take further steps towards Vision Zero by conducting in-depth traffic safety reviews of the identified locations to determine the possible causes of collisions at those locations and implement proper countermeasures. Unfortunately, it is common that certain intersections or road sections are identified in a network screening study as being problematic without having a follow-up in-depth traffic safety review conducted.

To address this dilemma and reduce exposure to liability by municipalities, the authors, in conjunction with Good Roads, have developed a professional development course for municipal engineers, technicians, and decision-makers. The course will highlight practical methods that can be utilized to improve road safety and minimize municipal liability exposure related to collisions. The course, offered through the Good Roads professional training program, will help participants understand how to provide safe road facilities while avoiding exposure to costly lawsuits through proper design, inspection, maintenance, and documentation. The course includes numerous case studies so that participants can implement steps immediately to make road facilities safer and minimize their municipality's exposure to liability.



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