

Risk Management Considerations

Signs, Signs, Everywhere Signs



Pursuant to the *Occupiers' Liability Act*, municipalities "owe a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises." The Courts have demonstrated that one method of ensuring that persons are reasonably safe is to warn of unseen hazards. This can be done with the use of signs.

In order to produce an effective sign, you need to first determine the purpose of the sign. The primary purpose of a sign should not be to avoid liability; but to prevent an accident. If, through the use of a sign, you can demonstrate to the Court that you have taken reasonable steps to protect the users of your facility, then the sign will assist you in escaping liability.

Sign Elements and Maintenance

Warning signs should possess four textual components:

1. A signal word such as DANGER, WARNING or CAUTION to attract attention to the warning and give an idea of the potential level of hazard
2. A hazard statement that briefly describes the nature of the hazard
3. A description of the possible consequences associated with non-compliance
4. Instructions for how to avoid the hazard

Adding a pictogram that demonstrates the hazard, the method of avoiding the hazard and the consequences is also recommended.

Pictorial Signage

Studies have demonstrated that the public perceives a sign with excessive writing as informational and not as a sign warning of an impending danger. Pictorials on signs can be more effective than words when warning of hazards because pictures tend to draw attention.

As our culture becomes more ethnically diverse, it cannot be assumed that viewers of a sign understand English. Also children can't read at an adult level. So, pictorials should be used whenever possible either to complement the verbiage or on their own.

Including pictorial symbols in warnings makes them more noticeable and increases the likelihood that viewers will heed the warning. When designing pictorial signs, a balance must be struck between using too little detail with the result that the message is not properly conveyed and using too much detail making the sign illegible.¹

Studies have demonstrated that it is important that hazard warnings are memorable because the sign and the hazard may not be encountered at exactly the same time. Factors that were found to enhance recall of safety information were repetition, relevance of the warning, pictorials and the presence of injury statistics.

Since many environments are cluttered, visual warnings must stand out from the background (i.e., be salient or conspicuous) in order to be noticed. This is particularly true when people are not actively seeking hazard and warning information.² The use of highly visible colours such as red, orange and yellow can also be effective when communicating the level of hazard. Research has shown that pictures are useful when attempting to attract attention.

Excessive use of legal terminology only serves to complicate the message and it is not effective in avoiding legal liability. Simply posting a message on a sign, does not make it the law.

Warning signs on obvious hazards are unnecessary. You are only required to provide notice of danger of which you are aware that others may not recognize. There is no need to post warning signs such as: “Beware of Fast Current” at Niagara Falls – the hazard is not hidden, and is visible to everyone.

While you must warn against hidden hazards and notify users of dangerous conditions, when deciding on the amount of information to be included on a sign, you must be careful to avoid sensory overload on the reader. Perhaps the most important warnings could be posted at the entrance with other signs positioned closer to the actual hazards. Sign placement is very critical to the effectiveness of any warning. The Courts expect a user to see a sign and immediately encounter the hazard. A sign indicating “no swimming” is much more effective beside the water than 300 metres into the woods. A sign giving information about poison ivy would be very effective low to the ground where the plant is located. The same information would not be as effective at eye level away from the hazard. A decision about sign placement should also consider the various routes that can be taken to reach the hazard. On trails, there is often a main path or trail, which is a logical place for posting signs. However, if there are alternate trails that could also be used then they require signage as well.

Sign maintenance is a critical component of any sign program. Once the sign is in place, it must be routinely inspected for wear, graffiti and damage. Checklists that include photos of the specific verbiage the sign should contain, the location of the sign and any directional orientation for arrows will make this job much easier. Have a program in place for promptly dealing with missing signs. Having a supply of temporary signs might be appropriate, or creating barricades to block certain sections might be more effective depending on the nature of the hazard in question.

Recent Case Law

In recent case law, the issue of signage has often been considered:

It is not sufficient to simply post a sign; the location and visibility of the sign can be critical. In a 2008 case where the Defendant ski resort was found to be 20% liable for the Plaintiff’s injuries, the Judge found that the fact that the

caution sign on a hazard on the ski hill was snow covered basically negated the existence of the sign. Once a hazard has been identified and marked, it is necessary to continue to monitor the signage to ensure that it is effective in warning of the hazard.³

For a sign to be effective it should be as simple as possible and located where it is clearly visible, however, it cannot become a hazard in and of itself. In a case in 2009 where a cyclist on a recreational trail collided with a bollard containing warning signs that had been placed by the City, the Judge determined that the City acted with reckless disregard toward the cyclist in the placement of the sign and its lack of visibility. Although the bollard was originally painted yellow, it had not been maintained and was rusty at the time of the incident.⁴

A Judge also referred to the fact that a warning sign was an option available to correct a hazard and that the absence of a sign warning of a hazard had contributed to the Judge’s finding of liability on the Defendant. In *Dominelli v. Saanich (2005)* the Judge found that the “unusual danger could have been avoided, at nominal cost, by the placement of a caution sign.”

**Once the sign is in place,
it must be routinely
inspected for wear,
graffiti and damage.**

In his explanation for determining the liability of the Defendant in a 2005 case where the Plaintiff was injured when falling three feet from a retaining wall, the Judge stated; “No signs warning of the danger were posted. It was, in my view, reasonably foreseeable that someone cutting across the knoll at dusk would not appreciate the presence of the three foot drop from the retaining wall. The lack of any warning sign or protection to guard against someone falling off the wall brings home liability to the occupier in my judgment.”⁵

The customer of a car wash slipped and fell on unseen ice. The formation of ice in the location where the customer fell was a hazard known to the employees of the car wash. In the reasons for his decision, the Judge mentions several times that there was no sign or orange warning cones to warn people about the ice.⁶ Presumably, if there had been a sign, the Judge may have decided differently.

A bakery was found 25% liable for a customer’s injuries when she slipped and fell on a patio step at the back entrance to the bakery. The Judge found that the bakery had installed signs and paint markings to warn its customers, however, the warning was not effective due, in part, to the signs being faded.⁷ Although the decision was reversed on appeal, it was because the customer did not see the signs which could have easily led the Judge to the same decision on the basis that the signs were improperly placed.

Signs are not always sufficient on their own. Even though a hotel had placed warning signs that the floor may be slippery due to rain, they did not have a “system of regular systematic inspection of the area”. The Judge also found that the tiles used were unacceptably slippery when walked on with wet shoes.⁸ Signs cannot always exonerate the Defendant, especially when the Defendant actually created the hazard.

While signs are not always a complete defence in all situations, in the case of recreational trails they can serve to lower the duty of care owed by the occupier. When a trail is signed as a “recreational trail”, pursuant to the *Occupier’s Liability Act*, “the occupier owes a duty to the person to not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not act with reckless disregard of the presence of the person or his or her property”.

Signs that warn of hazards play an important part in reducing the occurrence of accidents or injuries. Proper signage will ensure people are aware of unseen hazards. By ensuring your premises are properly signed, you can help protect the public from the possible dangers that may be unnoticed. This will lead to fewer accidents and reduce the risks for everyone.

The primary importance of properly displaying signs is to prevent injury and ensure the public is well aware of unseen hazards. Without signs, occupiers are exposing themselves to liability when injuries occur.



Trespass to Property Act

The *Trespass to Property Act* can be used to give some guidance when preparing signage. Section 5 of the

Trespass to Property Act states that a notice under the Act may be given by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies.

Section 6(2) states that a sign naming an activity with an oblique line drawn through the name or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited.

Section 7 describes different colours that should be used on signs for different purposes. Red is to give notice that entry on the premises is prohibited. Yellow to give notice that entry is prohibited except for the purpose of certain activities and shall be deemed to be notice of the activities permitted. A marking shall be of such a size that a circle ten centimetres in diameter can be contained wholly within it. Markings shall be placed so that a marking is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies.

Signs can be a very effective tool for warning users of premises about hidden hazards and, thereby, limiting the liability of the occupier. However, if the sign is not designed well to clearly convey the message, poorly maintained or improperly placed, it will not be effective.

¹ M.S. Wogalter et al. / *Applied Ergonomics* 33 (2002) 219–230

² <http://www.safetyhumanfactors.org/wp-content/uploads/2011/12/262-Wogalter2005.pdf>

³ *Cejvan v. Blue Mountain Resorts Ltd.* (2008)

⁴ *Kennedy v. London (City)* (2009)

⁵ *Nicoll v. Strata Plan 1611* (2005)

⁶ *Foley v. Imperial Oil Ltd.* (2010)

⁷ *Simmons v. Yeager Properties, Inc.* (2013)

⁸ *Druet v. Sandman Hotels* (2011)

While the Frank Cowan Company does its best to provide useful general information and guidance on matters of interest to its clients, statutes, regulations and the common law continually change and evolve, vary from jurisdiction to jurisdiction, and are subject to differing interpretations and opinions. The information provided by the Frank Cowan Company is not intended to replace legal or other professional advice or services. The information provided by the Frank Cowan Company herein is provided “as is” and without any warranty, either express or implied, as to its fitness, quality, accuracy, applicability or timeliness. Before taking any action, consult an appropriate professional and satisfy yourself about the fitness, accuracy, applicability or timeliness of any information or opinions contained herein. The Frank Cowan Company assumes no liability whatsoever for any errors or omissions associated with the information provided herein and furthermore assumes no liability for any decision or action taken in reliance on the information contained in these materials or for any damages, losses, costs or expenses in a way connected to it.