



# Claim Case Studies & Legislation

## Failure to Maintain Gate Results in Injury at a Soccer Field

**A** young girl attended a municipal soccer field with her father. She hopped out of the family vehicle and attempted to help her father gain access to the field through a closed gate. The gate fell off its hinges and landed on her foot causing injury to one of her toes and partial amputation of another.

The girl commenced an action against the Municipality claiming that the Municipality was in breach of its statutory obligations under the Occupiers' Liability Act by failing to maintain the premises in a reasonable state of repair.

The soccer field and entranceways, including the gate, were owned by the Municipality and the Municipality was responsible for maintaining them. Because by failing to maintain the premises in a reasonable state of repair. The soccer field and entranceways, including the gate, were owned by the Municipality and the Municipality was responsible for maintaining them. Because the Municipality was responsible for and had control over the condition of the soccer field, it was considered to be the Occupier who owed a duty to take reasonable care to see that users of the premises were reasonably safe while on the premises. This

duty applies whether the danger is caused by the condition of the premises or by an activity occurring on the premises.

Investigation revealed that the hinge on the gate was in disrepair. The Municipality had not inspected the gate since it was installed more than a decade before the incident. No records were kept of any of the inspections of the soccer field and surrounding areas. In fact, the gate was not included in the areas that were required to be inspected and there were no maintenance records for the gate.

The Municipality had a rental agreement in place with the soccer association that stated that users were not permitted to drive onto the field past the gate. Despite the agreement, interviews with staff and others revealed that it was common practice for vehicles to drive through the gate. The Municipality was aware of the practice but they did not enforce the rule.

The supervisor indicated that he had closed and locked the gate earlier in the day. Interviews revealed that the gate was not locked at the time of the incident. The Municipality had given out many keys to the gate but no record was

kept concerning the number of keys or the names of the recipients. The Municipality did not make any attempts to retrieve the keys at the end of each season.

### **Analysis of the Claim**

The Municipality started off on the right track with a rental agreement. Having a rental agreement where users agree to follow certain policies and procedures can be an effective way to transfer risk, but if the rules are not enforced, the agreement is not effective in its purpose of limiting the liability of the Municipality.

Installing a gate to limit vehicular traffic was also a good idea but randomly handing out keys and failing to keep track of the recipients, negated any protection the Municipality might have had.

The facility was reportedly inspected once a month and staff attended daily during the time period when the incident occurred, however, no records were kept of daily attendance. Inspections of the park included the bleachers, the picnic shelter and the washrooms but not the gate. Staff is instructed to report deficiencies to their supervisor. No deficiencies had been reported.

### **Risk Management Tips for Avoiding Similar Incidents**

1. Create an inspection schedule to ensure no aspects of your facilities are neglected.
2. Conduct regular inspections of all municipal facilities. Writing up the inspection schedule is not sufficient.
3. Perform regular maintenance to prevent small problems from becoming large problems.
4. Develop a system for prioritizing repairs and follow it.
5. If a repair cannot be completed immediately, secure the area and post warnings to the public.
6. When incidents occur, ensure an incident report is completed and followed up.
7. Once policies and procedures are in place, they must be followed to be effective.
8. Train all staff to follow the policies and procedures.
9. Ensure documentation of all inspections, maintenance and repairs is completed and kept on file.