

# BEYOND THE BLUEPRINT

## HIDDEN RISKS AND OBLIGATIONS FOR LOCAL GOVERNMENTS IN TRANSPORT INFRASTRUCTURE

- 1 Obligation at common law and under the *Occupiers Liability Act* (OLA) to keep people “reasonably safe.”
- 2 In limited circumstances, the obligation under the OLA is reduced to “do not create a danger or act with reckless disregard.”
- 3 If the construction of infrastructure interferes with nearby properties or businesses, it may constitute an actionable nuisance.
- 4 If constructed infrastructure “injuriously affects” nearby properties, statutory compensation may be owed.
- 5 Obligation to accommodate specified classes or persons under the *Human Rights Code* in infrastructure design.
- 6 Failure to meet obligations can expose local governments to more than financial risk; consider reputational and precedential risk.

## CASE STUDIES



***Kovacs v. City of Maple Ridge (No. 2), 2023 BCHRT 158:*** Reconstruction of intersections relying on transportation design guidelines insufficient to satisfy duty to accommodate disabilities; resulted in payment of compensation and need to consult a mobility specialist in redesign.



***Jespersion’s Brake & Muffler Ltd. v. District of Chilliwack, 1994 CanLII 1662:*** Construction of overpass caused loss of direct access to service station. Despite statutory authority for construction, Chilliwack owed compensation for reduction to market value of business property under law of injurious affection.



***Repic v. Hamilton, 2011 ONCA 443:*** Teen on bicycle struck by a car in unmarked crossing. Construction and design of bike path and interchange, specifically absence of warning signs, found to be operational decisions that failed to meet standard of care.

## RISK MANAGEMENT

- ✓ Consider whether circumstances of any decisions made indicate the decisions are “core policy” or “operational.” Core policy decisions are typically immune from liability in negligence.
- ✓ Ensure recreational trails are “reasonably marked as such” to apply reduced standard of care under the OLA.
- ✓ Document, document, document! Good record-keeping is required to establish a core policy defence or that the standard of care has been met in operational aspects.
- ✓ Select the least intrusive method of construction and document the reasons alternative methods are not feasible.
- ✓ Identify, remove, and prevent barriers to accessibility in new construction; simply considering transportation principles does not satisfy obligations.

