

Road Hazards Claims Policy

Policy Statement

The public may make a claim against the Department of Transportation & Infrastructure Renewal (TIR) if they suffer general damages when travelling on provincial highways, which are alleged to have arisen out of TIR's construction or maintenance activities, or road conditions.

TIR will apply the best practices of the insurance industry in respect to investigation and claims settlement, and will apply the principle of negligence and the application of any regulatory relief as provided by the Public Highways Act.

Rationale

TIR has a responsibility to reasonably warn the public of known road hazards and to repair deficiencies which could compromise traffic safety and/or cause damage to vehicles. This responsibility is carried out within the limitations of budget allocations set out by the government, and in accordance with the policies of TIR.

TIR cannot always anticipate all road conditions or hazards which may occur; however, policies and procedures are in place for surface condition signing (e.g., warning signs), road patrols and work area signing, and for taking remedial action to correct deficiencies when discovered. If proper procedures have been followed in a reasonable and prudent manner, or if drivers fail to obey warning signs or drive in accordance with road conditions, TIR does not accept liability for damages and/or other related costs. If TIR has failed to follow its own policies and procedures, it may be liable for damages incurred as a result.

Policy Objectives

- Identify the four courses of action available to TIR staff to resolve claims upon completion of the claim review/investigation.
- Identify the defenses and exceptions that justify TIR in denying responsibility and payment.

Application

This policy applies to all Department staff involved in the construction, maintenance, and operation of all provincially owned highways.

Accountability

The Executive Director Maintenance & Operations, the Manager of Risk Management and Claims, and the District Directors are responsible, and accountable, for the administration of this policy.

Monitoring

The Executive Director Maintenance & Operations and the Executive Director Public Works will monitor this policy's implementation, performance, and effectiveness.

Directives

1 Review/Investigation

TIR will review/investigate all claims and take one of the following actions:

1.1 Deny the Claim

If satisfied that TIR's review/investigation was complete and carried out in accordance with this policy and associated procedure; and if TIR's own policies and maintenance standards were appropriately followed; and providing no evidence has come forward to contradict the findings of the investigation or establish that TIR failed to carry out its duties as per its own prescribed policies and procedures.

1.2 Refer the Claim to Department Contractor

In cases where the claim arises out of road hazard or condition on a section of highway under contract for construction or rehabilitation, or which arises from the operations of its contractor under contract to TIR.

1.3 Offer Compensatory Payment

Where there is sufficient evidence that TIR did not follow its own policies and procedures with respect to the monitoring, signing or repair of a road hazard or deficiency and this failure to follow its own policies and procedures contributed in part or in whole to the damages suffered by the claimant.

1.4 Appeal Process

The claimant has the right to appeal any decision(s) rendered by TIR. In order to make an appeal, the claimant must submit their appeal in writing within 30 days of a decision. Their submission should outline their reasons

for the appeal and include any evidence they may have that supports their appeal. As with all claims, the onus of proof and submission of all supporting documents rests solely with the claimant.

TIR will respond within 60 days of submission of an appeal with their final decision.

In certain cases, where a claimant has brought forward bona fide new evidence that contradicts or significantly brings into question TIR's original findings, the Department may engage the services of an Independent Insurance Adjuster to provide an independent review of the claim.

2 Defenses and Exceptions

The following is a list of common defenses and/or exceptions under which the Department would deny responsibility for damages or payment of claims. These defenses should be considered when assessing claims:

- Good repair - the road was in good repair and there was nothing about its condition which could explain the damage suffered by the motorist.
- Excessive claim - although in some cases TIR may be satisfied that the damage resulted from its failure to discharge its repair and maintenance duties, the compensation claimed is excessive and unreasonable given the nature and extent of damage.
- Due diligence - although the claimant may have suffered damage due to the disrepair of the highway, the disrepair did not result from TIR's failure to properly discharge its repair and maintenance duties.
- Contributory negligence - the vehicle was not operated in a careful and prudent manner. This finding may wholly or partially exonerate TIR even though the loss or damage resulted from the road's disrepair.
- The incident did not occur on a provincial highway.
- Under construction - TIR is not liable for damages where the provincial highway is under construction and official signs were erected warning of the existence of those conditions.

- Third Party liability - the damages are sustained as a direct result of a condition created, an action taken, or anything done by a person other than the Minister or any employees of TIR.
- Foreign objects - the damages are caused by the presence on the roadway of an object or thing through an Act of God, or that has fallen from another vehicle or been placed on the roadway by any person, or an animal, except in the case of fault or negligence on the part of an employee of TIR charged with maintenance.

Guidelines

None

References

Public Highways Act
TIR Manual 23, Chapter 2, Procedure #PR5073 Road Hazards
Claims/Investigations Process
TIR's Highway Maintenance Standards

Enquiries

Executive Director Maintenance & Operations
Executive Director Public Works

Appendices

None

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