

Risk Management Overview

A PRESENTATION FOR:



Dave Rikley, FCIP, FRM
Director, Risk Management Services

March 26, 2003

Canada's Insurance & Risk Specialists



Focused on Public Entities



Municipalities



Public Utilities



Healthcare

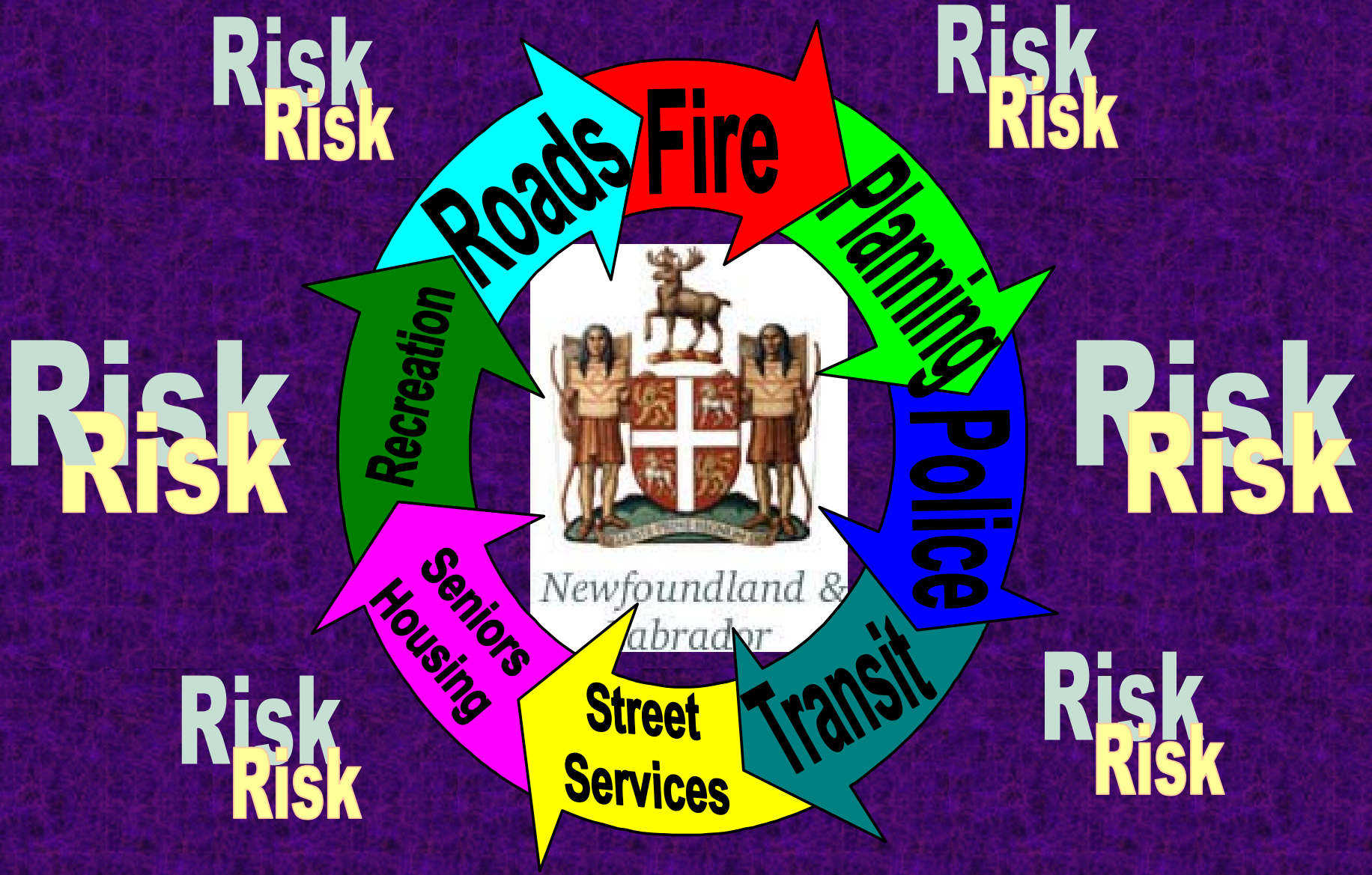


Education



Non Profit Organizations





Policy vs. Operational Decisions

- A **Policy Decision** is made by Council on whether or not to provide a service
- An **Operational Decision** is made at the staff level as a result of a policy decision made by council
- If the operational decision is negligently made, the municipality can be held liable.

Policy vs. Operational Decisions -- An Example

- Council **MAY** decide to expand the water system
 - whether or not to expand is a policy decision for which they cannot be held liable
- **IF** the expansion occurs, and someone is injured due to poor maintenance or upkeep
 - the municipality **can be held** liable for negligence due to faulty maintenance.

RISK MANAGEMENT

The process of making and carrying out decisions that will *minimize* the adverse effects of *accidental* losses upon an *organization*.

Risk Management

Imagine the worst possible tragedy and then
devise ways to prevent or reduce the impact of that
event ----- **BEFORE** it happens!



OPERATIONS

- Administration
- Planning
- Development
- Police
- Fire
- Transit
- Roads
- Water
- Libraries
- Seniors Homes
- Ambulance
- Sewage
- Parks Const.
- Recreation
- Pools
- Arenas
- Skateboard
- Trails
- Climbing
- Sidewalks
- Marina
- Landfill
- Wharfs
- Centres
- By-Laws
- Temporary Road Closings
- Detours
- Special Events
- Fireworks
- Rodeos
- Fairs

RESOURCES

- Employees

POTENTIAL CLAIMANTS



BENEFICIARIES

- Community



POTENTIAL CLAIMANTS

- Business



RISK MANAGEMENT

Goal:

Safeguard Assets / Reduce Liability

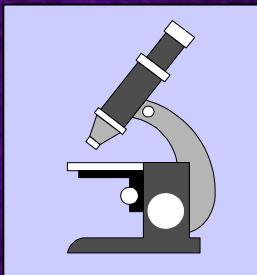
How:



Identify



Control



Analyze



Finance



Identify

RISK CATEGORIES

PROPERTY



INCOME



PERSONNEL



LIABILITY



PROPERTY



Fire Hall



Maintenance Depot



Town Hall



Water Treatment Plant



PROPERTY - Plant & Commodity



INCOME



Museum



Library



Shopping Complex



Arena

PERSONNEL

- Injury, Accident
- Death
- Disability
- Retirement
 - Employees
 - Councillors
 - Volunteers



LIABILITY



LIABILITY



Allurement





LIABILITY



FOCUS = LIABILITY

- The most serious on going concern for municipalities.
- Result from negligent acts - can be the most devastating
- Can be unpredictable in frequency and severity



LEGAL SYSTEM



Imposes Responsibility

Individuals



Governments

Corporations

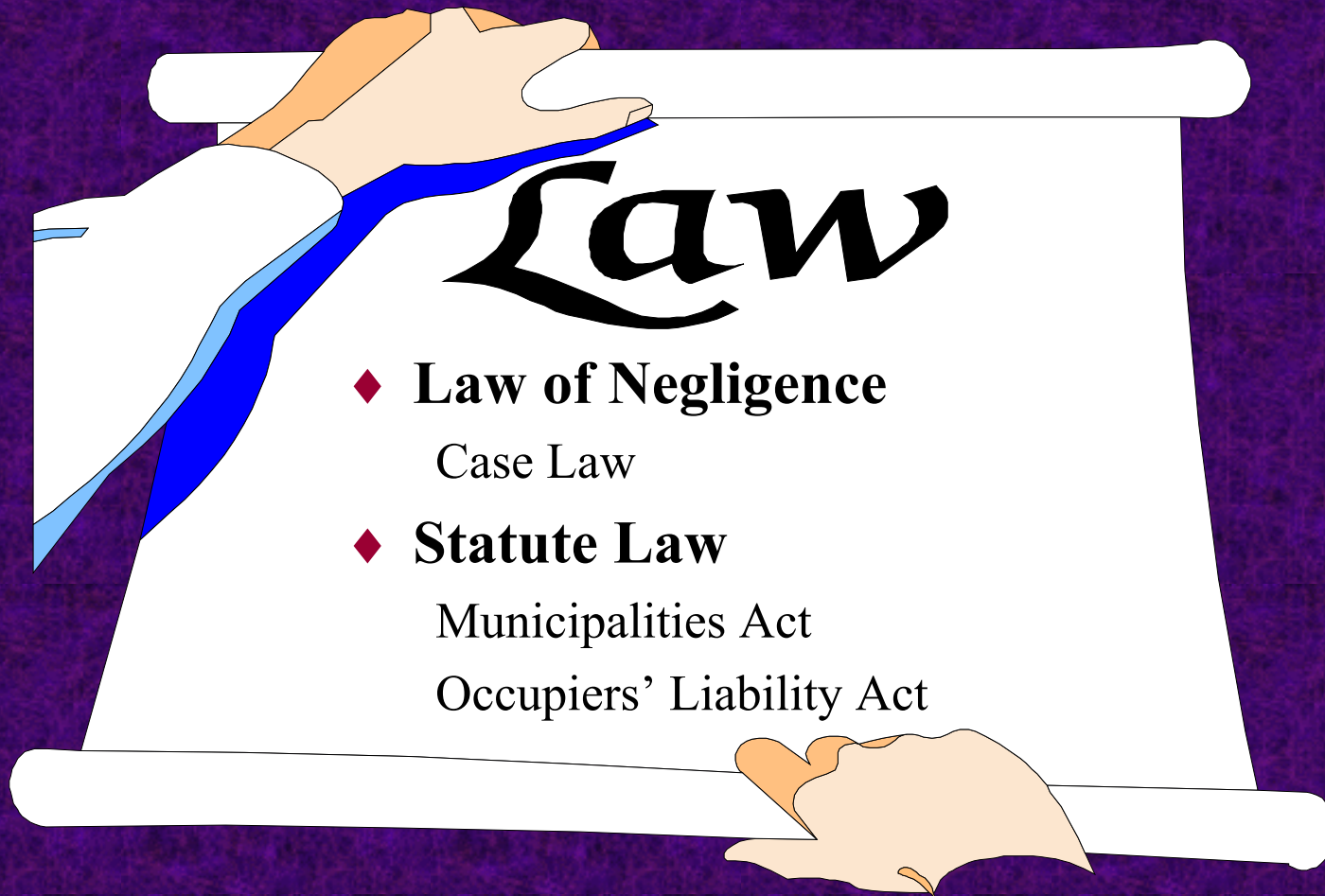


Courts determine responsibility



Courts award settlements

Laws and legal concepts must be considered.



- ◆ **Law of Negligence**

 - Case Law

- ◆ **Statute Law**

 - Municipalities Act

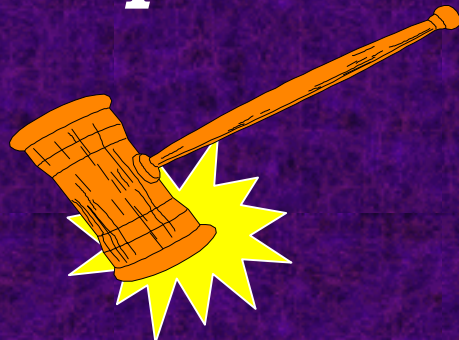
 - Occupiers' Liability Act

High Risk

Law of Negligence

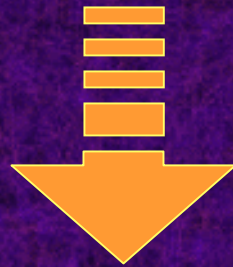
- ↳ Duty of Care
- ↳ Duty Breached
- ↳ Damages

- *Reasonable person test applies*



Low Risk

NEGLIGENCE DEFINED



Negligence is the failure to do that which a reasonably prudent person would do in a like situation,

OR

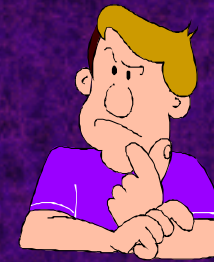
doing that which a reasonably prudent person would not do in a like situation.

REASONABLE PERSON



- The reasonable person is a mythical creature of the law, whose conduct is the standard by which the Courts measure the conduct of all other persons
- The reasonable person is **not extraordinary** or an unusual creature, he or she is **NOT SUPERHUMAN**.
- The reasonable person has **normal intelligence** who makes prudence a guide to his or her conduct.
- It is the standard adopted in the community by persons of ordinary intelligence and prudence.

FORESEEABILITY



**NEGLIGENCE
(TORT)**



**FORESEEABLE
DAMAGE**



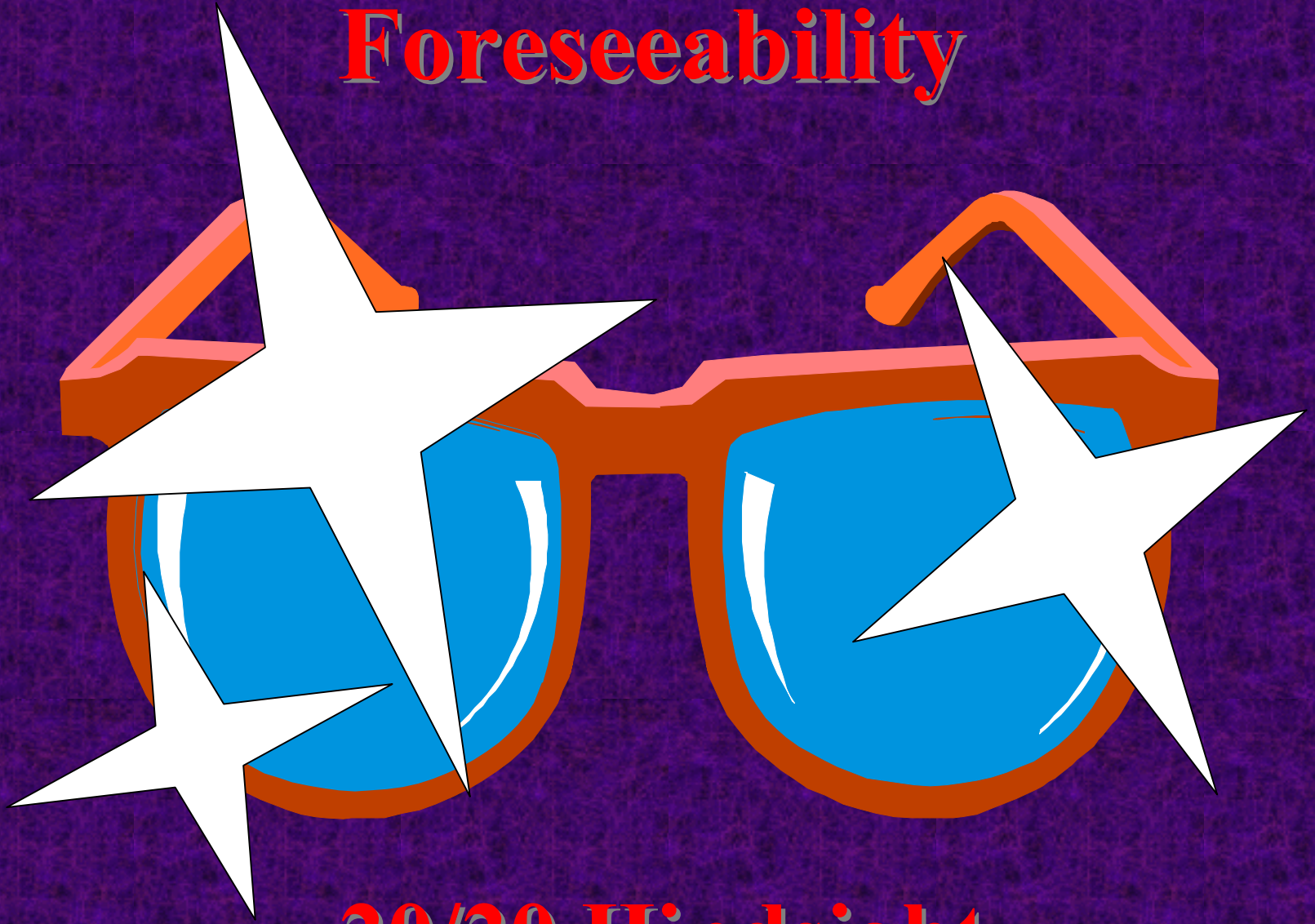
Reasonably
contemplated
or expected



LIABILITY

“Duty to your
Neighbour”
principle

Foreseeability

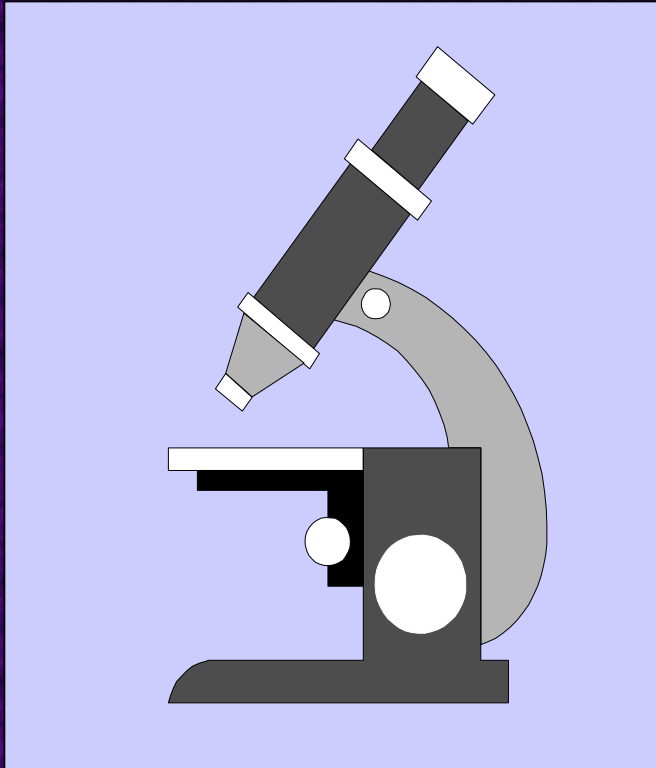


20/20 Hindsight

Duty of Care Owed to Users

- Operate the facility with reasonable care for the safety of the user
- Keep the facility in safe repair
- Inspect the facility for hidden hazards
- Remove the hazards
or warn of their presence

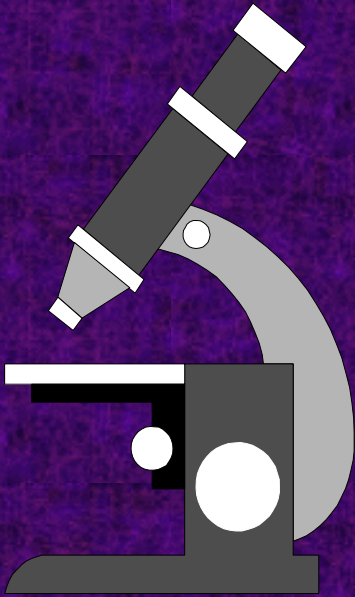




Analyze

RISK ANALYSIS

HOW ?



- Claims experience
- “What if ?” scenarios

WHAT IF ?

WHAT IF ?

WHAT IF ?

Liability of Works Dept.

- Inadequate design or capacity of system
- System constructed of defective material
- Poor or improper construction of system
- Failure to respond promptly to customer
- Failure to have a proper system of inspection and maintenance of system
- Improper training of employees

What if

SIDEWALKS

- **Have design deficiencies?**
- **Have poor maintenance?**

Potential Trip Hazard







What if

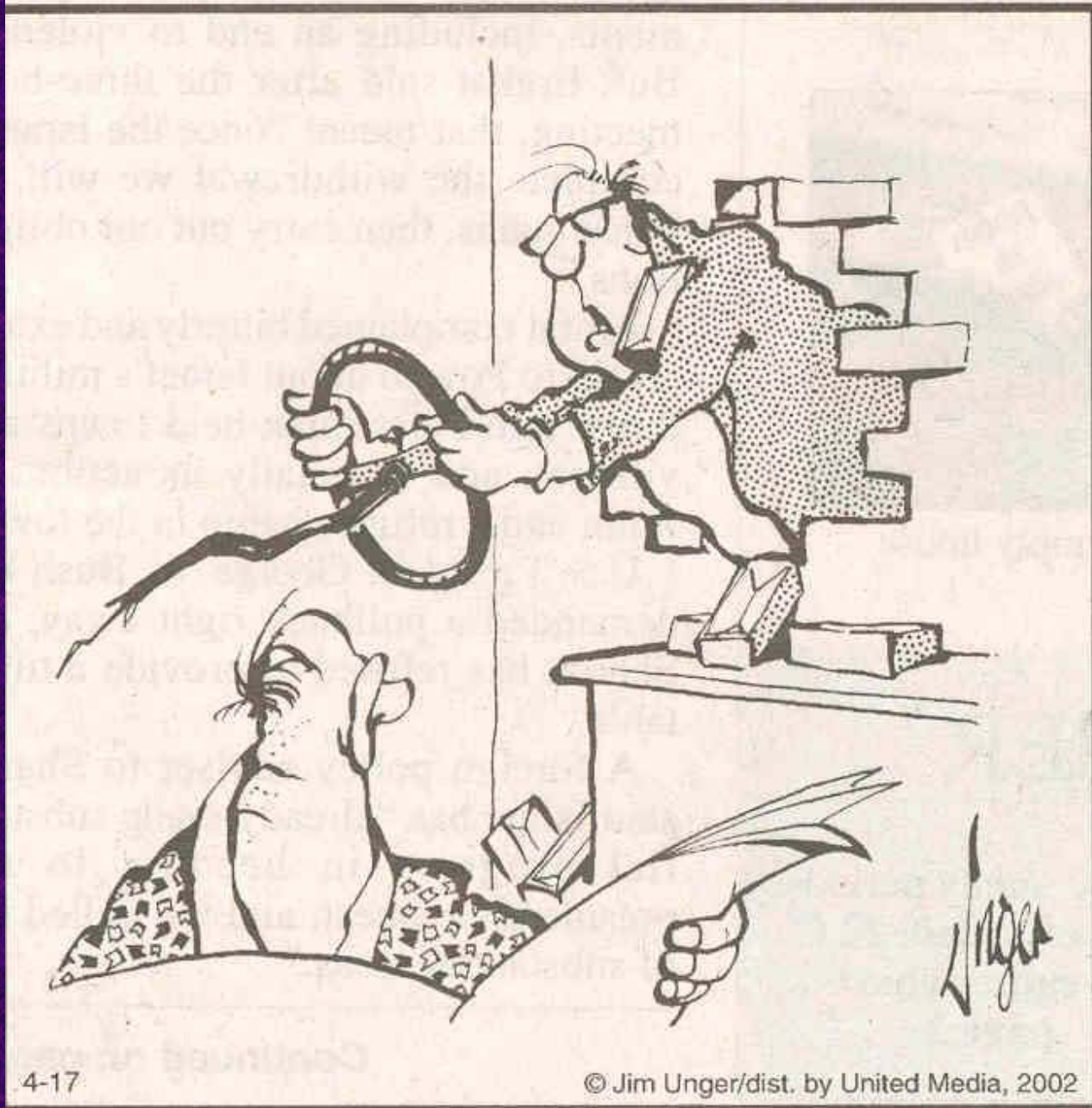


ROADS

- **Have inadequate signage?**
- **Have design deficiencies?**
- **Have poor maintenance?**

No Warning of Curve





4-17

© Jim Unger/dist. by United Media, 2002

“Your house is too close to the curb.”



Design Flaw?





Road Maintenance









Adequate Warning?





LANE
DROP
AHEAD

What If



SIGNS

- **Are not properly located?**
- **Are not inspected?**
- **Are not worded properly?**

Message is Easily Understood

A photograph of a wooden sign with black text, set against a background of a snowy field and a grey sky. The sign is supported by two wooden posts. The text on the sign is as follows:

SINCE 1978
1,280 ACCIDENTS ON THIS ROAD
30 DEATHS
SLOW DOWN AND LIVE

**SPORT FIELD
CLOSED
POOR CONDITIONS**

**K.M.O.
Parks & Recreation Services
By-Law No. 19**

SPEED
LIMIT
40

ONE WAY
←

ONE WAY
←

ONE WAY
→

ONE WAY
→

ONE WAY
←

ONE WAY
→

ONE WAY
←

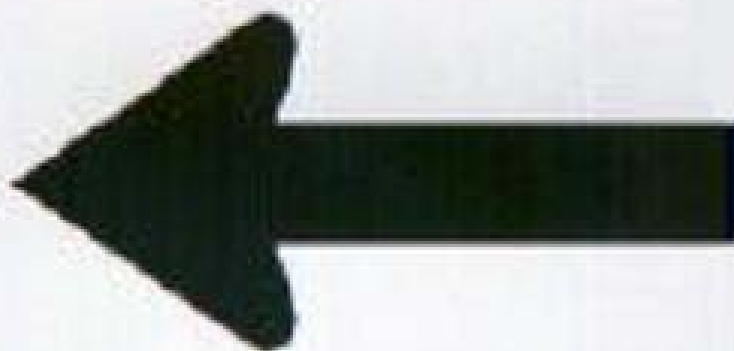
ONE WAY
←

Her...
work...
...tin

1100
1101
1102



KEEP



RIGHT



EXCEPT
POLICE





CAUTION
WATER ON ROAD
DURING
RAIN

ACTON ST



*Which way
Do you Go??*

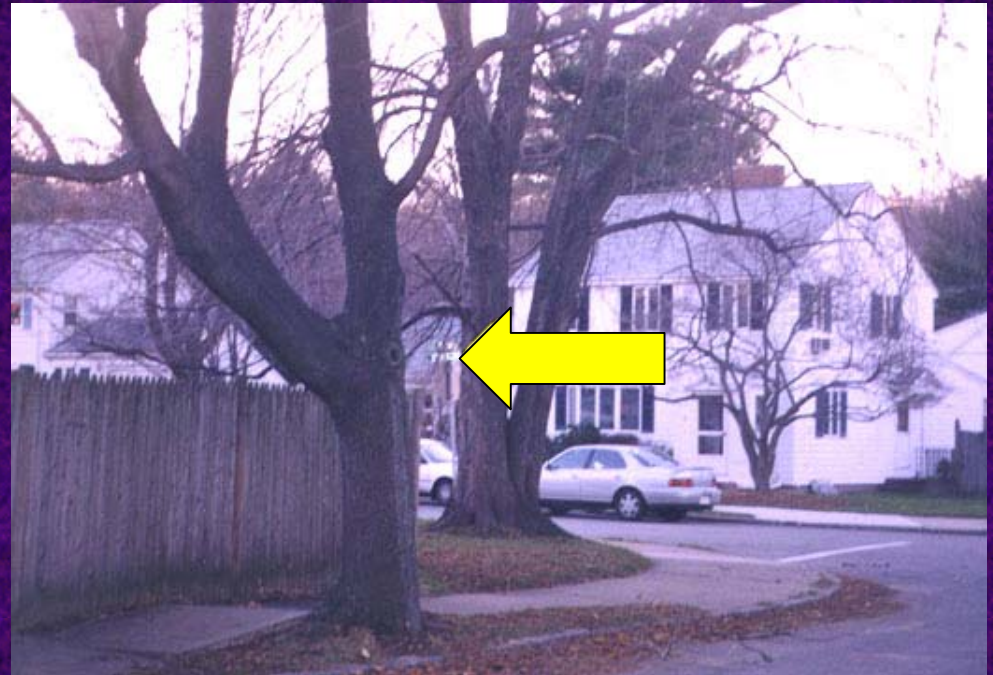
Never Under Estimate Vandalism



Faded, Temporary, Multi-Sign



Sign Hidden Behind Trees



Incorrect Sign



“Keep Right” into oncoming traffic

What If



Parks

- Have poorly maintained equipment?
- Do not post rules?
- Do not warn of hazards?





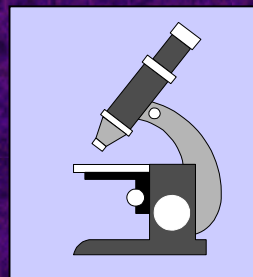




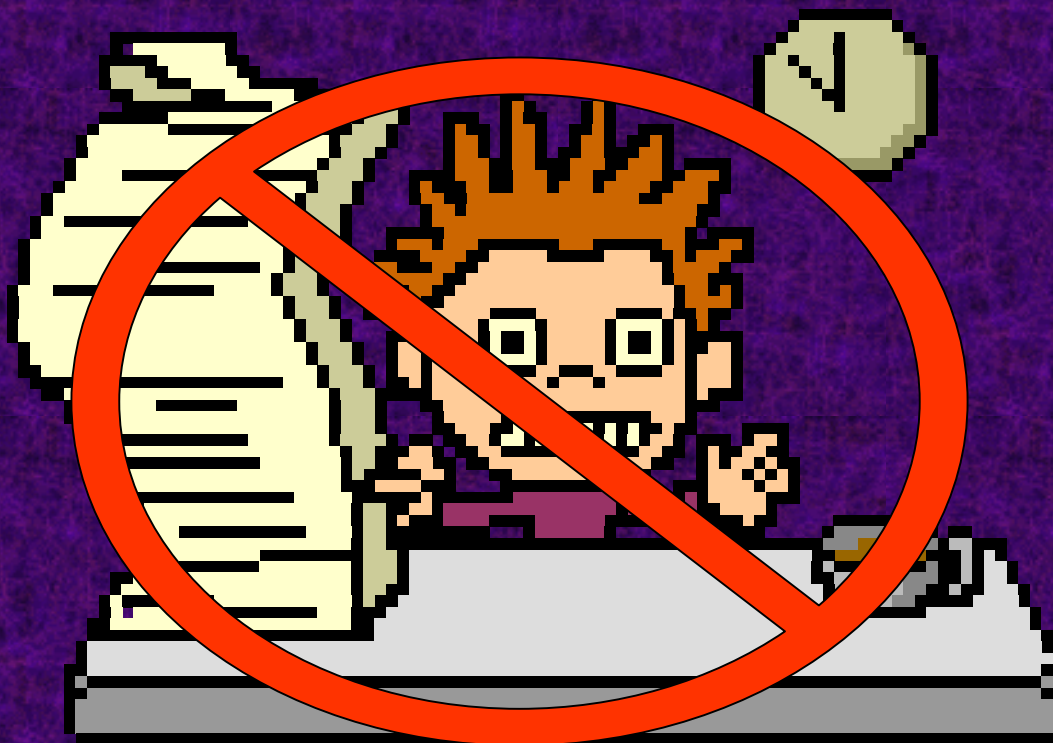




Identify



Analyze





Control

How to Minimize Loss ?

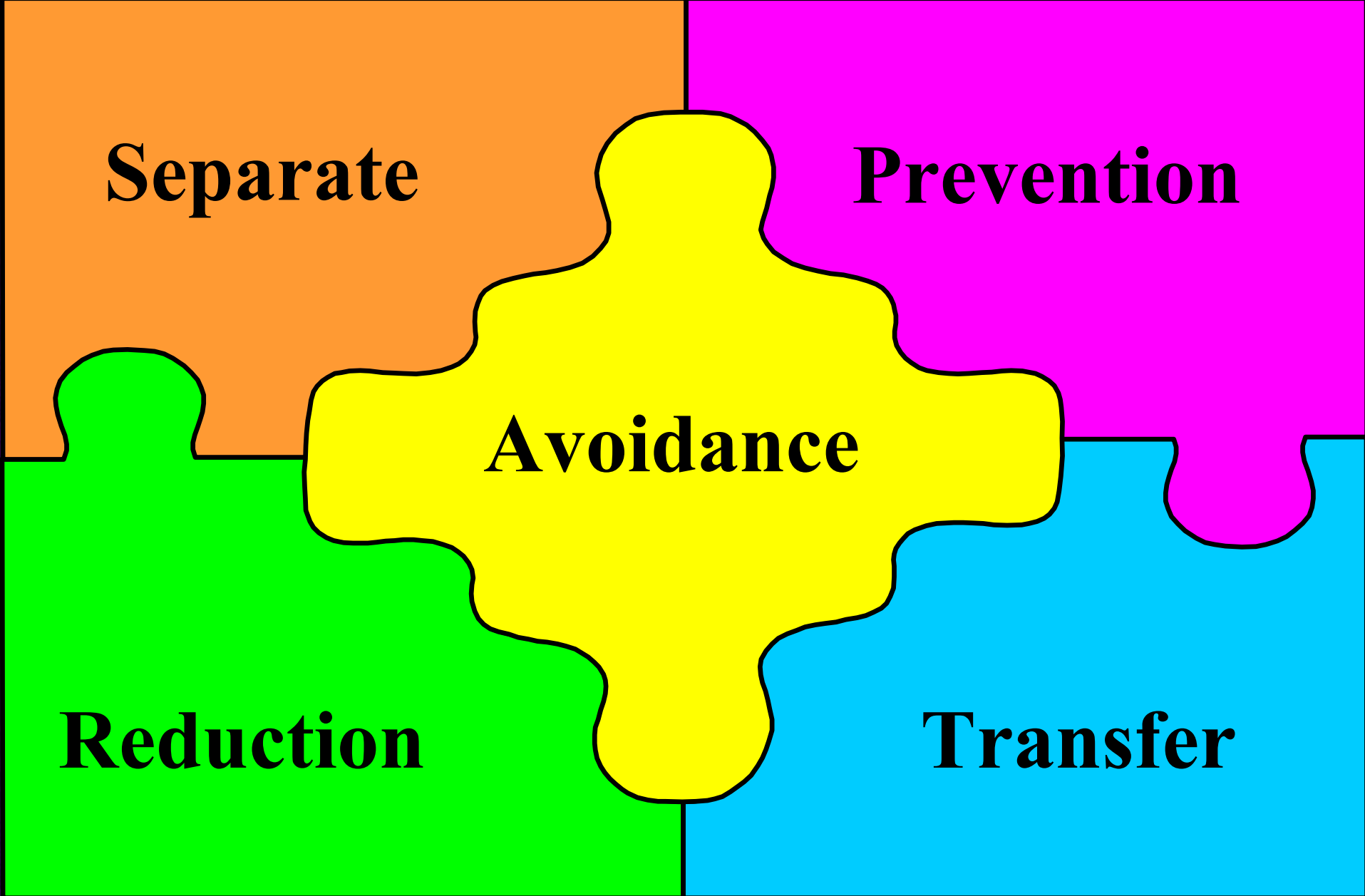
Separate

Prevention

Avoidance

Reduction

Transfer



**AVOID
DO NOT ALLOW !!**





Avoid - Just Say No!





INSPECT



SEPARATE

REMOVE



HENRY ESTATE
FRAMED PRINTS
XEROX
A BOX OF GREAT
LIFE-SPAN SOLUTIONS

Model	Price
Model	Price
Model	Price
Model	Price
Model	Price

Produced in Canada from News & Canada Limited, Toronto, Ontario
*Always Recycle in Your Community

DRESSES
OVER SKIRT
LACE TIPS

TOUCH

HAWLS
MUFF
TLOUSE

INSPECT





INSPECT



REMOVE



RECORD



CLARIFY



12 13 01

MAINTAIN



Move



Methods of Transferring Liability

-  **Hold Harmless Agreements**
-  **Indemnification Clauses**
-  **Waivers**
-  **Releases**
-  **Disclaimers**
-  **Signage**

Indemnity / Hold Harmless

The _____ shall indemnify
and save harmless _____ from any and all
claims, demands, causes of action, loss, costs or damages
that _____ may suffer, incur or be liable
for, resulting from the performance of the obligations
under this agreement.

Release / Waiver

I understand that parts of the _____ program may be physically/emotionally demanding. I affirm that my health is good, and that I am not under a physician's care for any undisclosed condition that bears upon my fitness to participate in _____.

I understand that the level of participation in the _____ program is at all times voluntary and up to the individual's choice.

I understand the inherent risk of injury or disability in the _____ program and each participant must assume the risk of injury that could result from any of the activities.

I hereby release _____ and it's staff members from all liability for any injury to me from my participation in _____.

Participant's signature

Date

above name printed

Parent or Guardian Signature
(if participant is under 18 years)

Staff signature



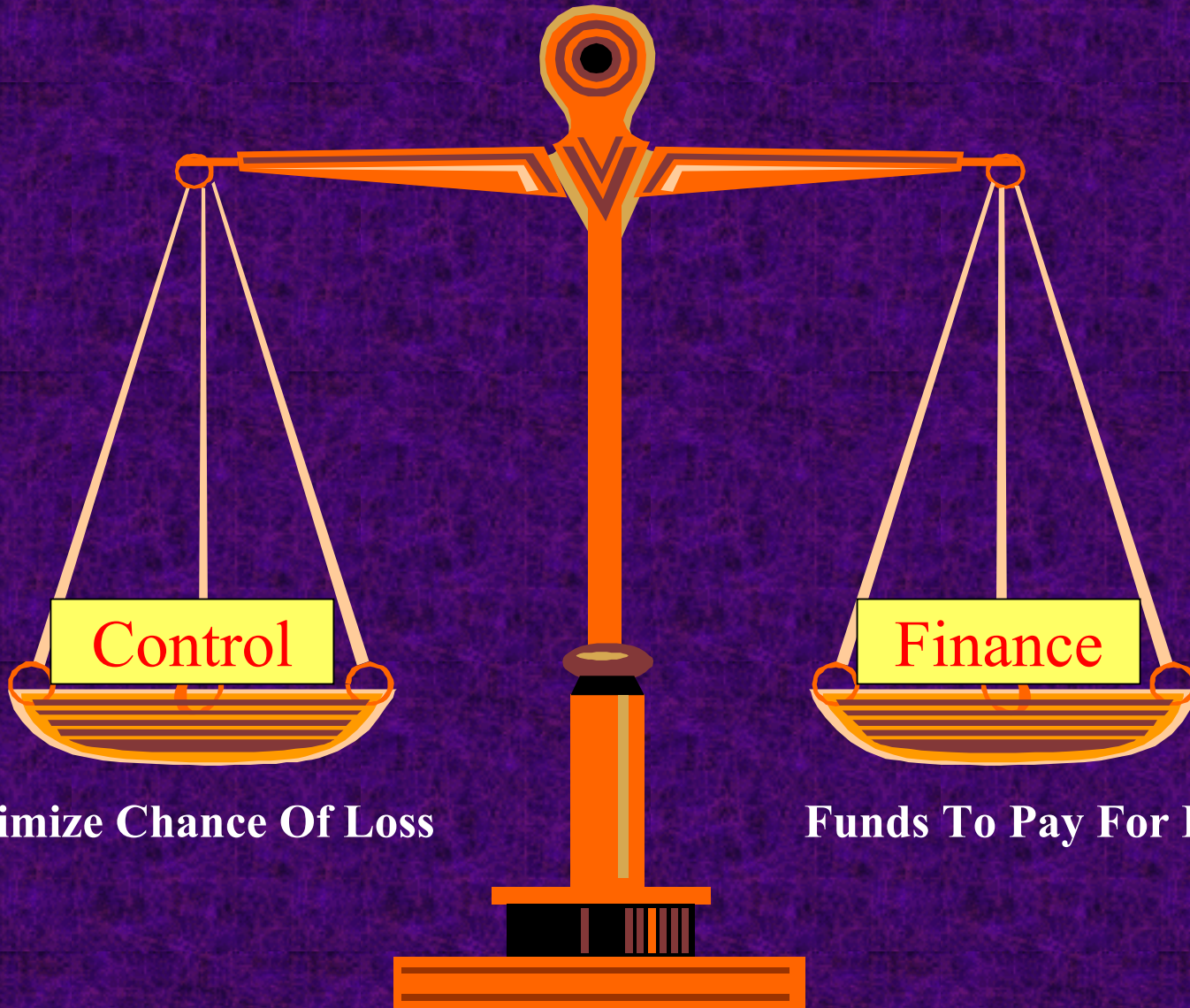
Finance

How to Pay For Loss ?

- \$ Insurance
- \$ Self Insurance
- \$ Deductible
- \$ Current Expense
- \$ Budgeted Reserve



RISK MANAGEMENT BALANCE



Minimize Chance Of Loss

Funds To Pay For Loss

**Accidents
are a Fact
of Life!**

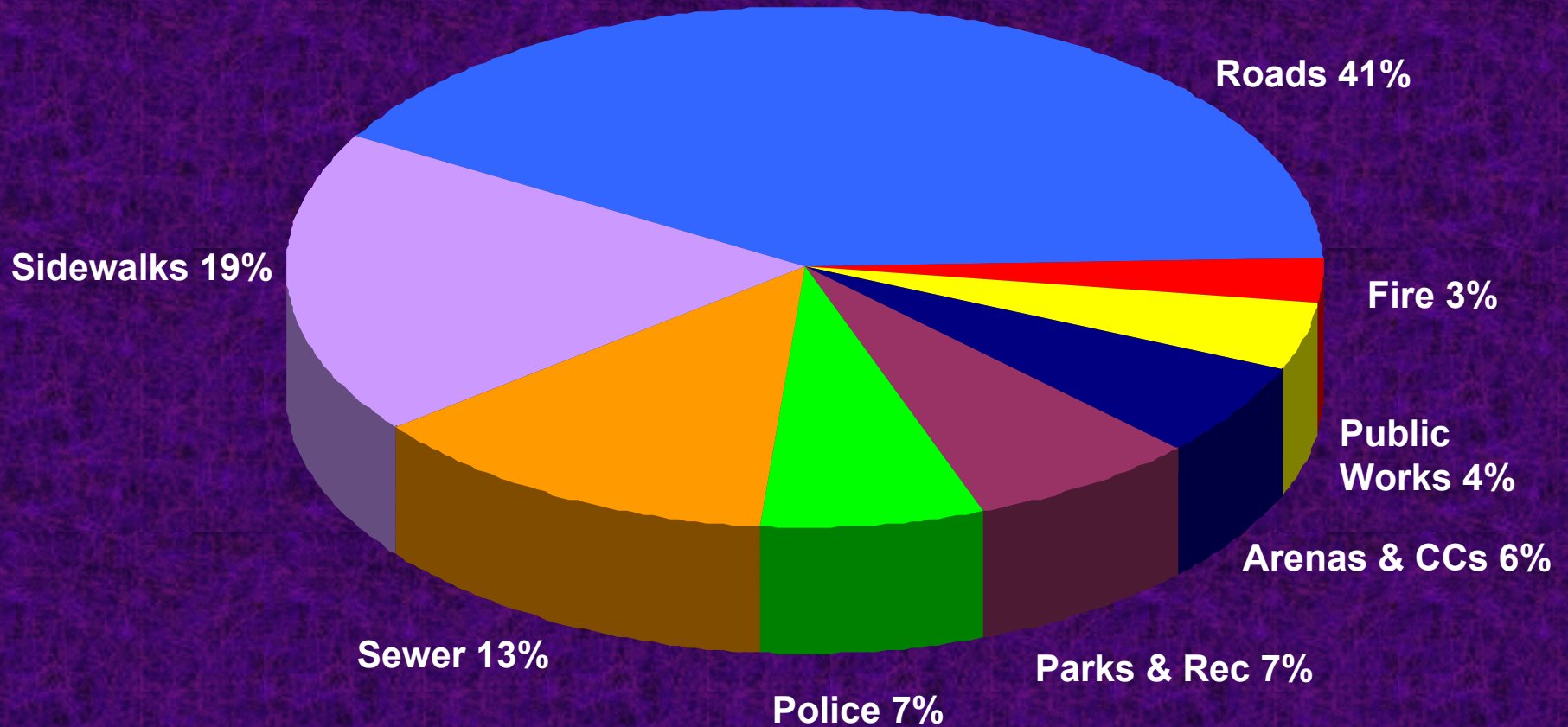
ADEATER



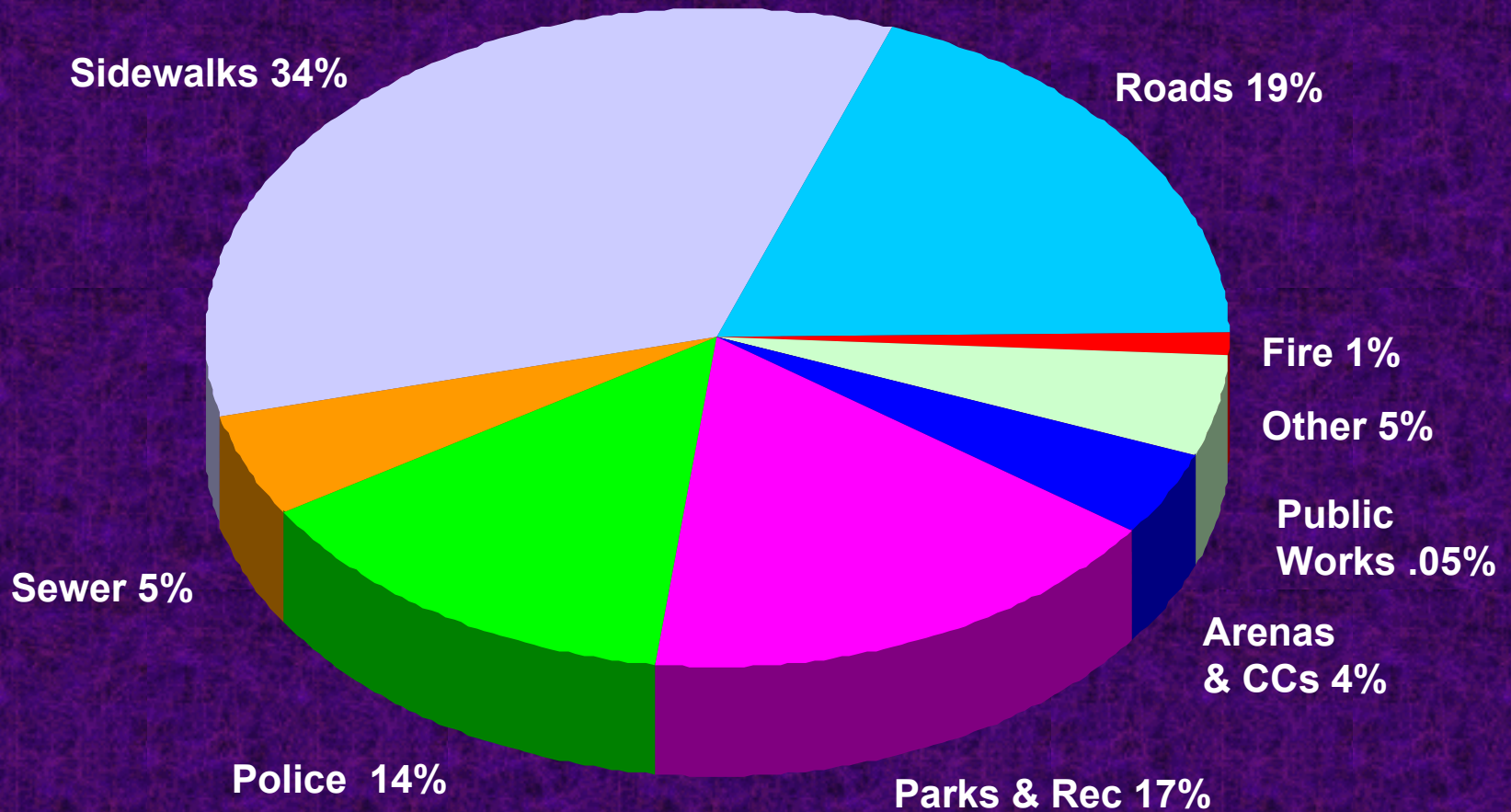
**Shed Some
Light On
Losses**



Municipal Liability Claims (Severity)



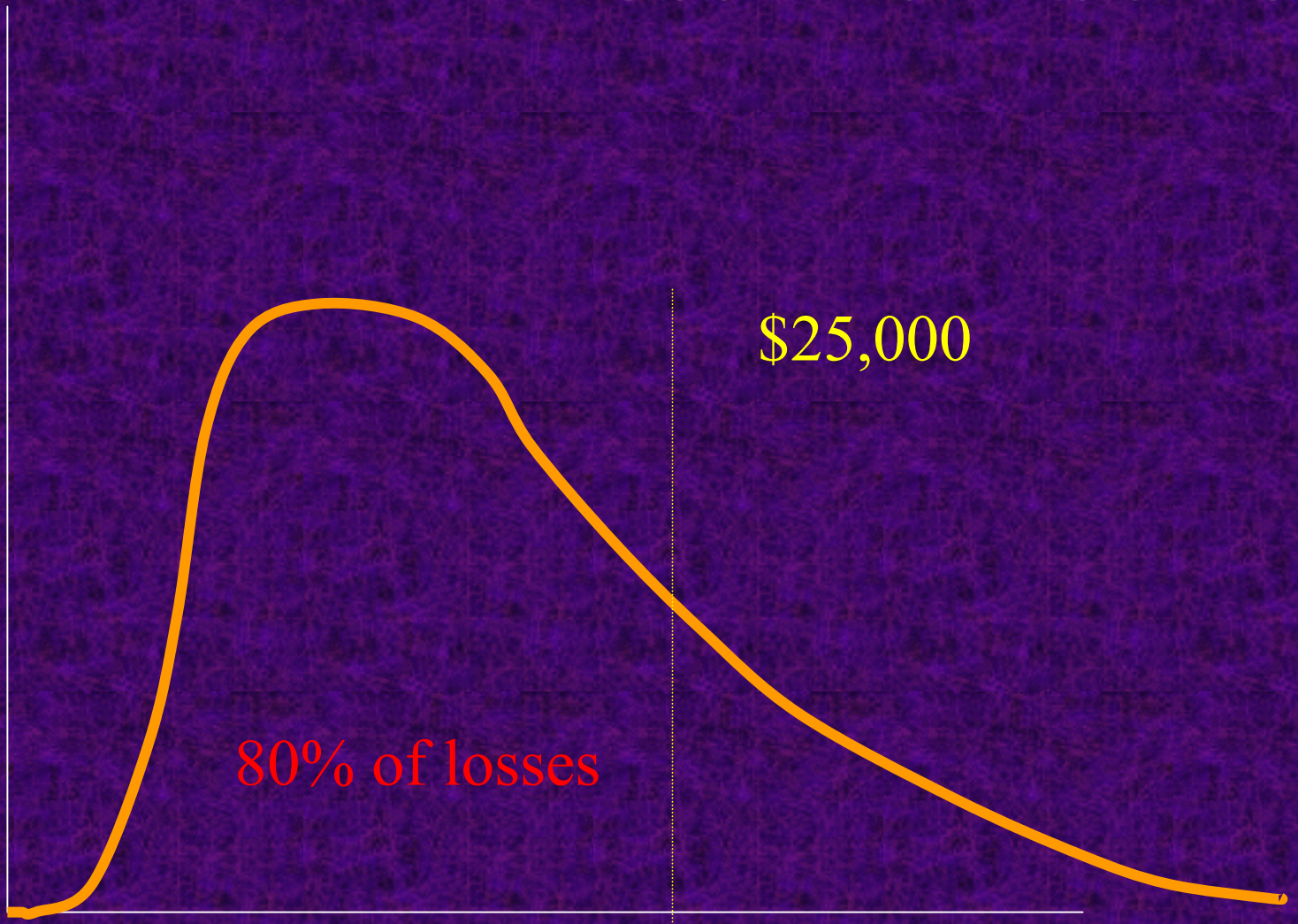
Municipality Liability Claims (Frequency)



Loss Distribution

Frequency

#



\$25,000

80% of losses

Severity \$

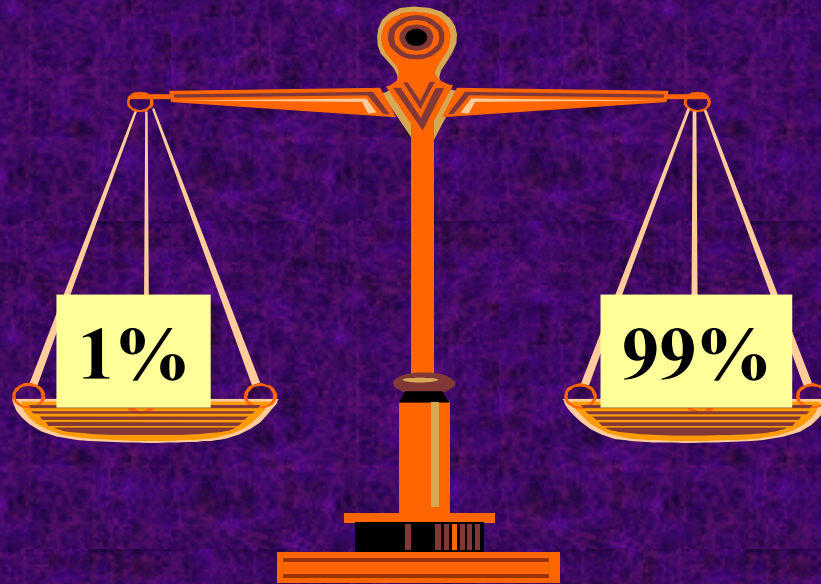
Why Sue ?

- **Deep Pockets**
- **Joint & Several Liability**
- **Changing Attitudes**
- **Litigious Society**



Joint & Several Liability

A Defendant who is held just **1%** liable for a Plaintiff's injuries or damages may also have to **pay the share of any other** defendant who cannot afford to pay



MANY STAGES OF A CLAIM

ROUTINE

	Mos.
NOTICE	
INVESTIGATION	3
DOCUMENTATION	6
SETTLEMENT	9
ANALYSIS	12
RISK CONTROL	24

COMPLEX

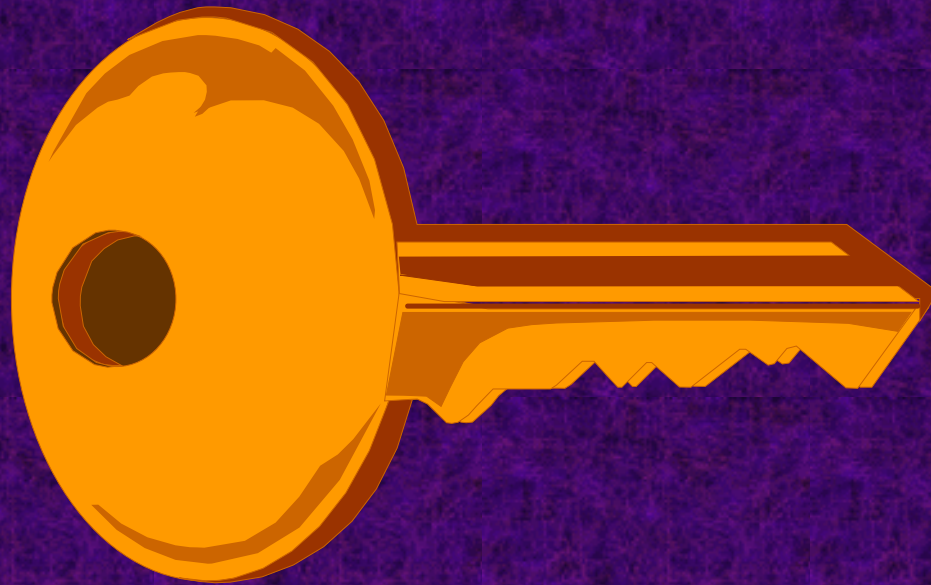
	Mos.
NOTICE	
INVESTIGATION	6
DOCUMENTATION	9
DENIAL	12
INQUEST	24
DISCOVERY	36
PRE-TRIAL	48
TRIAL	60
DECISION	66
APPEAL	72
TRIAL	84
DECISION	90
ANALYSIS	96
RISK CONTROL	108

At the Scene



- ◆ Offer assistance
- ◆ Do not admit fault
- ◆ Do not volunteer information except to Police, Insurance Investigators or Lawyers
- ◆ Refer all third party inquiries to Spokesperson or your insurance adjuster

**Documentation is the key
to a sound defence**



Documentation provides evidence:

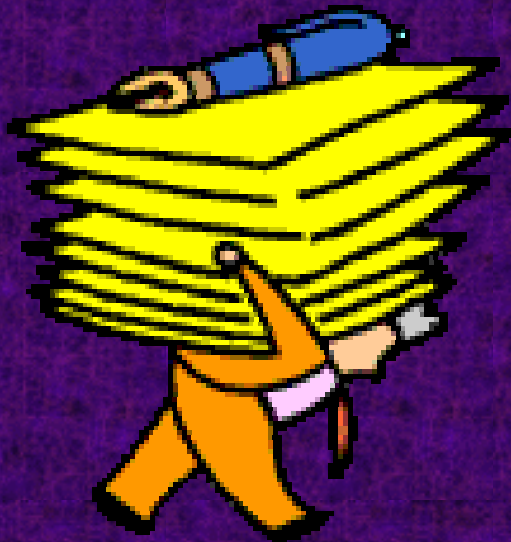
- ◆ That contracts, waivers or signs existed
- ◆ Of standardized policies and procedures to establish acceptable standards
- ◆ Of checklists recording regular equipment, road and site inspections
- ◆ Consistent and uniform approach



Document

Document

Document



Write it Down!!

CLAIMS
EXAMPLES

Roads

M.V.A. FATALITY - ICY BRIDGE



CLAIMS

- 26 year old male fatally injured when 3rd party vehicle crossed median due to black ice on bridge
 - Township records show bridge was checked 2 hours prior to incident & found to be ice free
- ➔ Claim amount \$1,325,000



PRINCIPAL

STOP

CLAIMS

- 2 claimants sustained serious injuries including brain damage and out-of-pocket expenses
 - alleged stop sign was obstructed by trees and this was the reason for the accident
- Claim amount \$4,750,000



CLAIMS

- Driver failed to stop at intersection and struck car on the through road
 - It was determined stop signed was not clearly visible as it was faded
 - Municipality held 20% responsible, but due to joint & several liability paid 80% (driver was underinsured)
- ➔ Township held responsible for \$4 million

SIDEWALKS



UNEVEN SIDEWALK







'02 6 10

SIDEWALK - NON REPAIR



CLAIMS

- 34 year old female (mother of 4) tripped & fell on city sidewalk due to trip ledge
 - suffered fractures on right hand -- required open reduction & internal fixation
 - complications required re-fracture & setting
 - sidewalk had not been inspected in 5 years
 - no official sidewalk inspection program in place
- ➔ Claim amount \$290,000

SIDEWALK
TRIP / FALL



SIDEWALK HAZARD CHECKLIST

LOCATION: _____

STREET ADDRESS / BLOCK: _____

PEDESTRIAN TRAFFIC EXPOSURE: HEAVY MODERATE LIGHT

DEFICIENCY OBSERVED	REPAIR REQUIRED
Surface Has Significant Holes/Protrusions	
Significant Separation and/or Depression	
Surface Finish Is Slippery	
Curb To Sidewalk and/or Sidewalk Joints Are Uneven	
Handrails Missing At Significant Changes In Elevation	
Changes In Elevation Lack Contrast	
Downspouts/Gutter Will Cause Icy Areas	
Significant Broken Glass/Garbage Accumulation	
Significant Ice/Snow Accumulation	
Intersecting Sidewalks Have Poor Peripheral Visibility	
Branches/Shrubbery Impair Safe Travel	
Warning Signs Not In Place/Barricades Missing	

OTHER:

INSPECTOR: _____ DATE: _____

ROAD & SIDEWALK INSPECTION CHECKLIST

INSURED: _____

LOCATION: _____

MUNICIPAL SIGN HAZARD INSPECTION CHECKLIST

Vehicular Traffic Exposure: (Circle)	Heavy	Moderate	Light
DEFICIENCY OBSERVED	REPAIR REQUIRED		
Sign is Missing/Stolen			
Sign Damaged Due to Accident			
Significant Vandalism Observed			
Sign Obstructed by Trees/Vegetation			
Sign Has Lost its Illumination			
Sign Does Not Meet M.O.T. Requirements	Size		
	Height		
	Configuration		
	Location		
Repairs Completed:	Date	Time	
Replacement Sign Installed:	Date	Time	
Summary Installation of sign appears to meet all existing standards:	Yes	No	
Recommendation:			

SIDEWALK HAZARD INSPECTION CHECKLIST

Pedestrian Traffic Exposure: (Circle)	Heavy	Moderate	Light
DEFICIENCY OBSERVED	REPAIR REQUIRED		
Surface has Significant Holes/Protrusions			
Significant Separation and/or Depression			
Surface Finish is Slippery			
Curb to Sidewalk and/or Sidewalk Joints are Uneven			
Handrails Missing at Significant Changes in Elevation			
Changes in Elevation Lack Contrast			
Downspouts/Gutter will cause Icy Areas			
Significant Broken Glass/Garbage Accumulation			
Significant Ice/Snow Accumulation			
Intersecting Sidewalks have Poor Peripheral Visibility			
Branches/Shrubbery Impair Safe Travel			
Warning Signs Not In Place/Barricades Missing			
Other			

STREETSCAPE HAZARD INSPECTION CHECKLIST

FURNITURE/FIXTURES			
DEFICIENCY OBSERVED	REPAIR REQUIRED		
Litter Containers			
Benches			
Utility Poles			
Planters			
Newspaper Boxes			
Bicycle Stands			
Other			
VEGETATION			
DEFICIENCY OBSERVED	REPAIR REQUIRED		
Visibility			
Hazard Branches			
Hazard Trunks			
Hazard Hedges			
Other			

INSPECTOR: _____

DATE: _____

RECREATION



4 VISITORS

HOME

TERRY LEE CLAR ANNUAL GARDEN FESTIVAL

CLAIMS

- 40 year old female was injured while practising figures during unsupervised adult public skating
 - Person skating backwards with flow of traffic collided with female skater
 - significant head injury resulted -- a permanent disability is expected
 - lack of supervision alleged to have contributed
- ➔ Claim amount \$510,000



CLAIMS

- A young male in a highly intoxicated condition climbed onto the rail of a dock of a city park and dove into 3 1/2 feet water
 - resulted in becoming quadriplegic
 - claim successfully defended at trial & appeal
 - Supreme court declined to hear
- Defence costs \$475,000

Future

... residents demand answers

Grief, sorrow and anger as Walkerton asks: Why?

id a tangle of regulations, liability may have broken the law

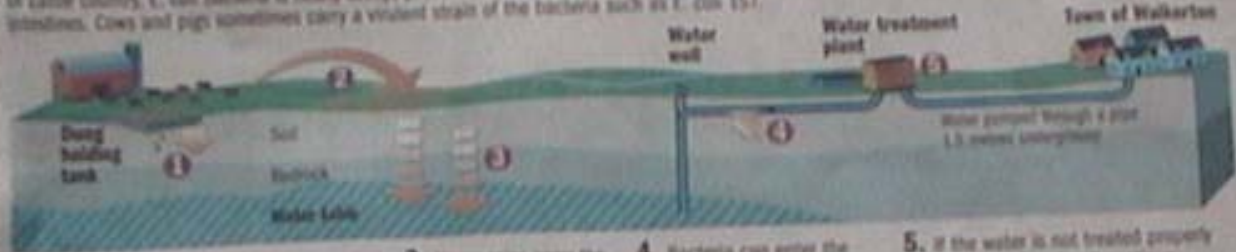
BY DAN GREGG AND THERESA BOVLA

resident Bob Fortuna. "These people, as said, they should be fired." Earlier Thursday, Dr. Murray McQuinn, the chief medical officer health, made the shocking allegation that the utilities commission for at least a week before reported dying that the water contaminated. ... could have been prevented.



How E. coli gets into the water

In latter county, E. coli bacteria is nearly always present in the soil. All mammals have E. coli in their intestines. Cows and pigs sometimes carry a virulent strain of the bacteria such as E. coli 157.



1. E. coli can get into the soil through a leak in the liquid dung holding tank.
2. Liquid or dried dung is also spread directly over the fields as fertilizer.
3. Heavy rains carry the bacteria down to the water table from which well water is drawn.
4. Bacteria can enter the water system through a crack in the pipe between the well and the treatment plant.
5. If the water is not treated properly with chlorine, E. coli will continue through the system and into the town water supply.

... Meanwhile, ... bury their loved ones ... 66, will be buried 11 a.m. today at Sacred Heart Church. At least 700 people have been affected and McQuinn has predicted that more will likely die since the symptoms — diarrhea, nausea and fever — can take up to a week to surface. About 50 cases were reported to the hospital in Walkerton on Thursday, some showing similar symptoms but carrying a new, less dangerous form of the bacteria. "It's different from E. coli 157."

NIGHTMARE IN WALKERTON

W...n lawyer launches lawsuit

Class-action motion on behalf town's people

... kerton lawyer. Tick would not say how Halpin has been affected by the outbreak.

A Walkerton lawyer... the company...

Downloads from Province

DOWNLOADING

DO YOU EVER
FEEL LIKE
YOU ARE

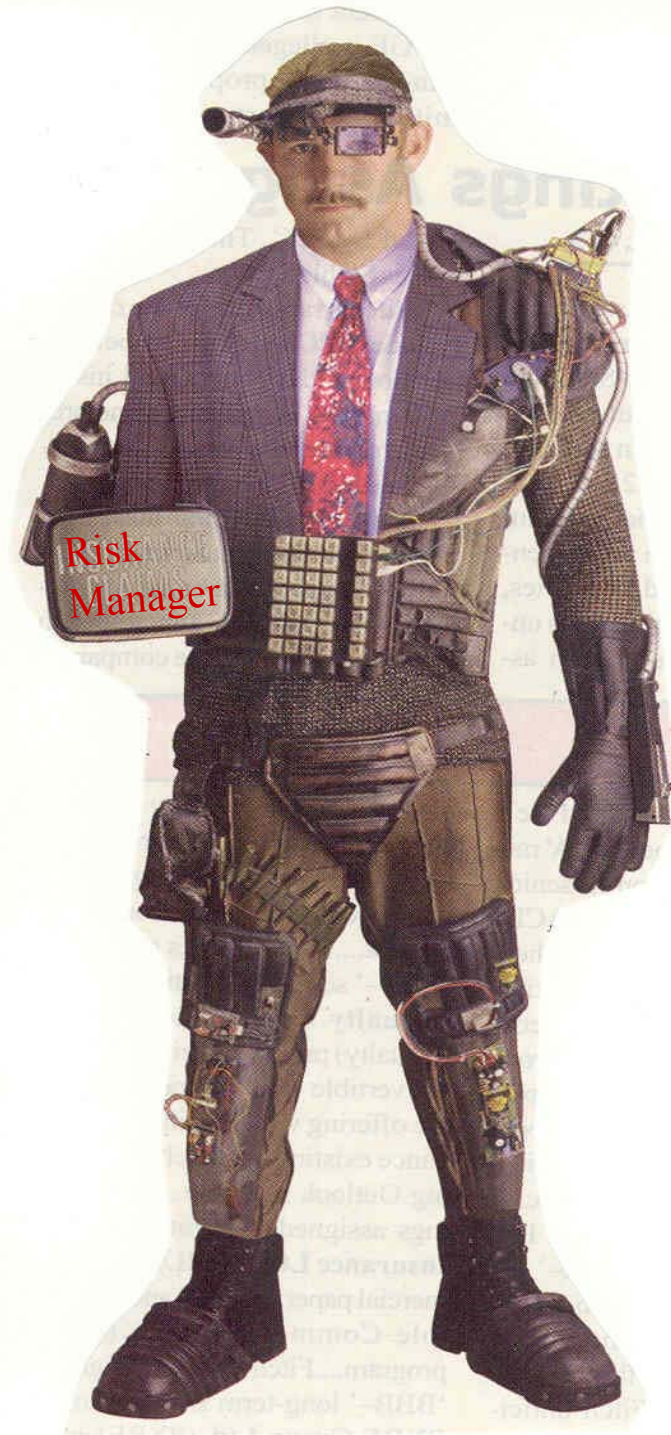
8

CLAIMS COSTS

MUNICIPAL LIABILITY RISK MANAGEMENT

The BIGGEST THING about Risk Management is that it is NOT AN EVENT.... it's a continuous process!

**So – Lets Get
Suited Up &
Ready To Go**



Thank You!

QUESTIONS &