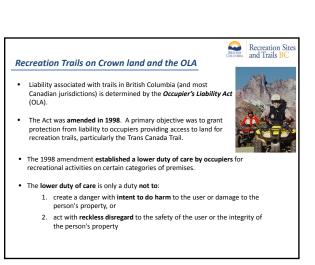




# Outline 1. Recreation Sites and Trails BC — Quick Overview 2. Trails in BC and the Occupiers Liability Act (OLA) 3. Risk Management and Mountain Bike Trails









Recreation Sites and Trails BC

# Who is an Occupier? (According to David W. Hay, Litigator)

- An occupier at law is the person who has immediate supervision and control over the premises
- . It is not necessary to own the land in order to be an occupier
- In common law and under the OLA an occupier is the person in possession or control of the premises



# Lower Duty is Owed to ...

Recreation Sites and Trails BC

- 1. Trespasser committing or intending to commit a crime
- 2. Recreational user on certain categories of premises (where no fee is charged)

# Category of premises -

- A. Primarily used for agricultural purposes
- B. Rural Premises:
  - i. Forest or wilderness
  - ii. Vacant or undeveloped land
  - iii. Private roads (reasonably marked)
- C. Recreation trails (reasonably marked)
- D. Utility rights-of-way and corridors (excluding structures)

Recreation Sites and Trails BC

# Case Law in BC and the OLA

# Skopnik v. BC Rail Ltd - Trial (2007)

- Skopnik injured riding ATV along trail in BC Rail Ltd. right-of- way when he hit a ditch at significant speed
- · OLA and 1998 amendments were considered at length
- Main focus of judge was if the category of premises was rural or a utility right-of-way (where lower duty applies)
  - · Judge determined lands were not rural or utility right-ofway therefore BC Rail was found liable (and owed standard duty of care to Skopnik)
    - Decision was over-turned by BC Court of Appeal where the area was determined as a utility right-of-way
      - > Because of the decision, BC Rail was not liable for a large and 'known' ditch on their lands (no intent to harm or reckless disregard)

# Conclusions as Discussed by D. Hay'

- 1. The law is not settled
- 2. Land use is critical to judicial analysis
- 3. Occupier's ability to manage the land will have a bearing on the outcome of these cases (management matters)
- 4. In the 12 years of amendments there have been only a handful of cases and no record of a successful result by a recreational user or trespasser



Recreation Sites

\*Hay, D. 2010. Presentation to-Regional District Parks Pre-Symposium Workshop Risk Management and Natural Area/Green Space Parks: Amendments to the Occupiers Liability Act

# How Can We Manage Risk and Liability?

Recreation Sites

- Policy Development (E.g. Mountain Bike Trail Policy which provides operators with guidelines)
- Apply 'standard duty' manage what is reasonable
- Trail standards and guidelines (Whistler Trail Standards and IMBA Guidelines)
- Signage
- Inspection and Evaluation program

- Trails do not need to be insured: governments, organizations, or individuals do
- Each party involved with a particular trail should be aware of and comfortable with their exposure and level of insurance (compensation)

  Province's Master Insurance Program

  - Local governments Municipal Insurance Association (MIA) Third Party General Liability Insurance Policies

  - Private landowners added to policies as 'additional insured'

# Recreation Sites and Trails BC - Reference Documents



- 2. Guidelines for Managing Trails with Large
- 3. Authorizing Public Recreation Trails on Crown Land – Policy Statement
- 4. Managing Back Country Winter Recreation on Crown Land in British Columbia
- 5. Guidelines and Best Practices for Planning Design, and Development of Summer Off-Road Vehicle Trails - draft



# **Mountain Bike Trail Policy**

Authorizing Recreational Mountain Bike Trails or Provincial Crown land

# **Existing Trail Systems**

- Maintenance and rehabilitation of existing trails will be approved provided user conflict, safety, and environmental issues can be successfully managed
- Construction of new trails that connect to existing networks will be approved if the proponent is willing to enter into a long term Agreement
- Technical Terrain Features (TTFs) will be approved if the proponent is willing to enter into a long-term Agreement



## New Trails or Trail Systems

- Must be consistent with any approved integrated land use plans
- The proponent must be a local government or have the support of a local government
- The proponent is willing to take on a long-term management role including an Agreement

Recreation Sites and Trails BC

# What Does All this Mean for You...?



- Tenure holders are not likely to be 'the' occupier on Crown land but could be 'an' occupier (or at least named by a plaintiff)
- 1998 amendments to the OLA were intended to provide a degree of protection to 'occupiers' and <u>encourage trail use</u> as well as recognize the <u>practical limitations</u> of exercising a high degree of management over vast wilderness lands
- The amendments, so far, appear to have met their intent, however do not preclude the need for a risk management program (due diligence)
  - A risk management program needs to include a number of aspects to reflect both the OLA and increase public safety
- Recreation Sites and Trails BC work with other agencies and the mountain bike community to manage risk and increase public safety
- Ultimately, insurance is still an important risk management involved



# **Key Messages**



- Risk CAN be managed; however, it is NOT immune from liability
- Your tenure may not mean that you are 'the' occupier the Crown may be; however, you could be named in a suit and you need to protect yourself (through insurance)



