



**STANLEY CUP FINALS 2011**




**Friday, June 10, 2011**  
**Game Time: 5:00 pm**  
**Rogers Arena**

**Recreation Sites and Trails BC**  
**Trail Liability and Risk Management**





Community Forest Association  
June 10, 2011



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 - Mandate

1. Develop, maintain and manage a network of **1,319 recreation sites** and **818 recreation trails** (11,00 km) to provide safe, quality, and diverse recreation opportunities for the public
2. In collaboration with our ministry and other agencies, assist in the management of dispersed public recreation on Crown land
3. Develop, maintain and market, British Columbia's 'Spirit of 2010 Trail' in collaboration with other provincial agencies and local governments







What are the Biggest Concerns in Trail Management?

**Liability** - why is this important to you?

- Provincial Trails Managers across the country describe liability issues as the most pressing issue facing trails
- There have been very few actions (successful or not), across Canada, related to wilderness/rural trail liability
- Cost of **defending a claim** is a primary concern of non-government groups and some local governments







Recreation Trails on Crown land and the OLA


- Liability associated with trails in British Columbia (and most Canadian jurisdictions) is determined by the **Occupier's Liability Act (OLA)**.
- The Act was **amended in 1998**. A primary objective was to grant protection from liability to occupiers providing access to land for recreation trails, particularly the Trans Canada Trail.
- The 1998 amendment **established a lower duty of care by occupiers** for recreational activities on certain categories of premises.
- The **lower duty of care** is only a duty **not to**:
  1. create a danger with **intent to do harm** to the user or damage to the person's property, or
  2. act with **reckless disregard** to the safety of the user or the integrity of the person's property






**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 ...**

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

Category of premises -

- Primarily used for agricultural purposes
- Rural Premises:
  - Forest or wilderness
  - Vacant or undeveloped land
  - Private roads (reasonably marked)
- Recreation trails (reasonably marked)
- Utility rights-of-way and corridors (excluding structures)







**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-of-way 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\***

- The law is not settled
- Land use is critical to judicial analysis
- Occupier's ability to manage the land will have a bearing on the outcome of these cases (management matters)
- 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

\*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?**


**Risk Management**

- 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




**Insurance**

- 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**

- Authorizing Recreational Mountain Bike Trails on Provincial Crown Land – draft operation guidelines
- Guidelines for Managing Trails with Large Volume of Tree Mortality
- Authorizing Public Recreation Trails on Crown Land – Policy Statement
- Managing Back Country Winter Recreation on Crown Land in British Columbia
- 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 on Provincial Crown land**


**Existing Trail Systems**

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




**New Trails or Trail Systems**


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



### 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 encourage trail use as well as recognize the practical limitations 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 tool for all involved






### Key Messages

- Liability and risk are concerns but should not be considered a barrier to managing trails
- 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)

*The terror awaiting the Bruins in the Stanley Cup final ...*

**CANUCKS**



*Just when they thought it was safe to go into Rogers Arena.*

