

Recreation Sites and Trails BC

Trail Liability and Risk Management



Community Forest Association
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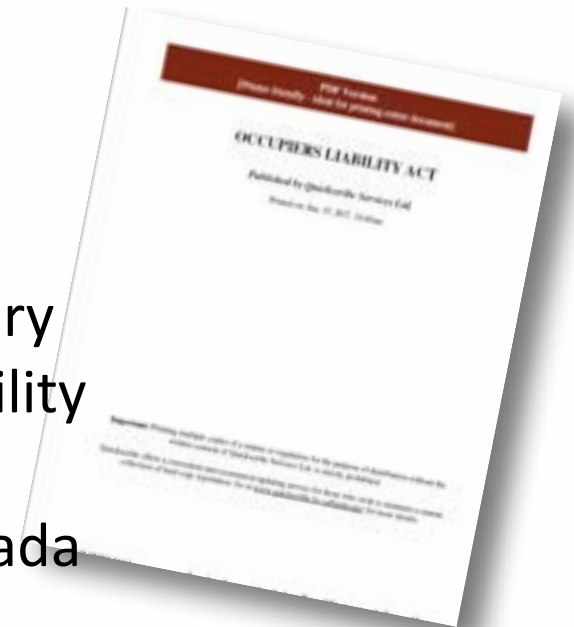
Recreation Sites and Trails BC

1. In partnership with communities and recreation organizations, **develop, manage and promote a network of designated recreation sites, trails and facilities.**
2. **Authorize construction of recreation facilities** and trails on Crown land.
3. In collaboration with other Natural Resource Sector business lines and agencies, **support public recreation use and promote recreation resources on Crown land** outside of formally established recreation sites and trails.



Recreation Trails on Crown land and the OLA

- Liability associated with trails in British Columbia (and many other provinces) is determined by the **Occupier's Liability Act**.
- The BC 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.



Liability

For someone to successfully sue for damages three criteria must exist:

1. They must be owed a DUTY
2. The duty must be BREACHED
3. They must have suffered DAMAGES resulting from this breach.

Who is an occupier?

- 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.
- At common law and under the Occupiers Liability Act an occupier is the person in possession or control of the premises.



Duty of Care

BC Occupiers Liability Act

The legal effect of the OLA, is to impose a duty on “occupiers” of “premises” to take reasonable care [Standard of Care] to ensure that any person who enters onto the premises will "be reasonably safe in using the premises."



Reduced duty of care

- The 1998 amendment to the OLA **established a lower duty of care** for persons where risks are 'willingly assumed'
- The **lower duty of care**, owed by the occupier, is only a duty **not to:**
 1. Create a danger with **intent to do harm** to the person or damage to the person's property, or
 2. Act with **reckless disregard** to the safety of the person or the integrity of the person's property.

Risks willingly assumed

- 1. Trespassers – committing/ intent to commit a criminal offense.**
- 2. Trespasser**
- 3. Recreational activity on specific premises and:**
 - i. No payment
 - ii. No accommodation
 - iii. On premises:
 1. Agriculture purposes
 2. Rural premises
 - used for forestry and range
 - vacant or undeveloped
 - forested or wilderness
 - private roads
 3. Recreation trails reasonably marked as recreation trails
 4. Utility rights of way and corridors excluding structures

Case Law in BC and the OLA

1. Hindley vs Waterfront Properties Corp. (2002)

- Cyclist injured (incomplete quadriplegic) riding into ditch on rural lands near Parksville.
- Judge concluded land is question was indeed rural, accordingly lower duty applied
- Case was not dismissed but likely died on the vine based on Judges decision about category of lands.

2. Henderson v. First Nations Band Councils 629 et al (2007)

- Plaintiff broke leg while walking on trail as part of First Nations village tour.
- Case was concerned about issue of payment by the plaintiff for the tour (does lower duty apply?)
- Outcome unknown but likely settled

BC Case Law Continued...

3. Skopnik v. BC Rail Ltd – Trial (2007)

- L. 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 trial judge was if the category of premises was rural or a utility-right of way (lower duty applies)
- Judge determined lands were not rural or utility right of way, BC Rail owed standard duty of care and found BC Rail liable.
- Decision was over turned by BC Court of Appeal that determined lands were utility right of way and the lower duty applied.
- BC Rail was not liable for a large and 'known' ditch on their lands (no intent or reckless disregard)

Conclusions as discussed

1. The law is by no means 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
4. In 19 years since amendments, only a handful of cases and no record of a successful result by a recreational user or trespasser*
5. No consideration of the definition of 'recreational trails reasonably marked as recreational trails'.

**Note Campbell v. Bruce (County), 2016 ONCA 371, the trial judge and appeals court applied a standard duty of care*

Insurance and coverage

- A potential suit by a plaintiff injured on a recreation trail could focus on interpretation of 'act with reckless disregard'
- Whether or not the defendant is found liable, the cost of defending against a claim can be considerable.
- This is why, despite the provisions of the OLA, any organization, group or individual deemed to be an occupier should take steps to reduce exposure.

Insurance and coverage

Insurance

- Trails do not need to be insured- governments, organizations, businesses or individuals do.
- Each entity involved with a particular trail should be aware of and comfortable with their exposure and level of insurance or indemnification.
- Check with a legal or risk management specialist.

Insurance and coverage

Risk Management

- Trail Standards
- Signage
- Inspection program

