



Risk Management Manual

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RISK MANAGEMENT

Why risk management?

Accidents can and do happen. People can be injured. Property can be damaged.

Accidents can have serious repercussions for a trail association, from a damaged reputation and bad publicity to an expensive lawsuit award.

Risk management:

- *reduces* risk by limiting the chance of mishap (e.g. enforced rules)
- *transfers* risk by making others responsible for injuries or loss (e.g. waivers, insurance)
- *retains* risk by being prepared for mishaps (e.g. training, documentation, emergency planning)
- *eliminates* risk by stopping activities that will cause injury (e.g. marking hazards, closing trails, canceling hikes in dangerous situations)

Effective risk management begins with the identification of threats to the continuing operations of the trail association. Second, it controls loss – preventing loss and reducing the severity should a loss occur.

Steps in Risk Management:

1. Acknowledge that risk exists.
2. Identify your risks.
3. Evaluate your risks.
4. Create a risk management plan.
5. Put the plan into action.
6. Monitor the performance and use of the plan.

A trail association's risk management strategy should include:

1. Trail built and maintained to a standard
2. Monitoring of trail conditions
3. Trail repairs made promptly
4. Hazards marked, trail re-routed or closed
5. Training of hike leaders, trail workers and other volunteers
6. Waivers of liability and acceptance of risk
7. Accident and incident reports
8. Land use agreements with owners
9. Insurance

"The best defence against negligence liability claims will be a sound program of risk management intended to minimize injury or damage." ²

"A risk management program will also assist in defending against claims that do arise by demonstrating that the trail manager has fulfilled the duty to take reasonable care for the safety of trail users." ²

VOLUNTEERS

- Volunteers participating in trail building or maintenance should sign an acknowledgement of risk form and waiver of liability.
- Written documentation should be prepared for the project: describe the work; when, where, who is involved; expectations, names and addresses of club volunteers responsible for the project.
- The leaders should keep a permanent record of the project documenting who, what, where, why, and when.
- Volunteer leaders should be qualified to lead.
- Volunteers should be properly trained for the task.
- Volunteers include trail building and maintenance crews, committee members, and those assisting with a club function (e.g. club open house) or public activity (e.g. staffing a club exhibit)
- An adult should not work alone with a child or adolescent.
- A man should not work alone with a woman.

HIKE LEADERS

- Have the right and responsibility to turn away anyone from a hike if they think that person is putting themselves and others at risk by participating.
- Have the right and responsibility to change the hike route due to dangers and hazards.
- Have the right and responsibility to cancel the hike due to unacceptable risks.
- Have the right to permit or refuse dogs on hikes. For the safety of hikers and property owners, dogs should remain leashed at all times.
- Should ensure participants understand the waiver of liability, emergency procedures (e.g. whistle code, two-way radios, cell phones, who has first aid training)
- Explain any hazards on the trail.
- Particularly in some areas, hike leaders should be knowledgeable of hunting seasons.

TRAIL BUILDING & MAINTENANCE STANDARDS

The Bruce Trail Association's *Guide for Trail Workers*, 3rd edition, 2001, has been adopted by some trail associations or forms the basis of trail maintenance guides published by others.

A trail standard should cover issues such as:

- Construction practices
- Use of power tools
- Signage and marking
- Maintenance schedule
- Persons responsible

- Training of volunteers (see Volunteers)
- Trail hazards
- Reporting system for work required
- Keep written records of the work done, where, when and by whom.

TRAIL WORKERS

- Trail building must be done with the landowners prior knowledge and approval including approval of the specific details of the physical construction planned
- Trail building and maintenance should be done only by those who have been trained and equipped for the tasks at hand
- Volunteers should be made aware of the hazards and risks involved (see Volunteers above)
- Power equipment (e.g. chainsaws, string trimmers, brush cutters) should only be operated by professionals or those whose experience with such machinery can be documented (e.g. experienced woodsman, groundskeeper, farmer). Power equipment should never be used by inexperienced operators.
- Safety equipment must be supplied and worn at all times when using powered equipment.
- When repairs are required to a trail, first ask yourself who has the primary responsibility to make the repair. For example, removal of a fallen tree may be the responsibility of a conservation authority, on whose land the trail exists, and which has the trained and experienced staff to remove the tree.
- Trail maintenance must be conducted within the restrictions and limitations specified in any land use agreement signed by the association and the landowner.

HAZARD WARNING SIGNS

- Should be placed where trail users could not be expected to see or anticipate a hazard.
- If the hazard is repairable, the trail association should take immediate steps to do so.
- However, a warning sign does not absolve the occupier of responsibility.
- It may be difficult for the trail association to prove that a trail user could have not seen the sign.
- The association must regularly inspect the trail for hazards.

INCIDENT/ACCIDENT REPORTS

- Carefully document every accident, injury or incident which could result in a claim.
- Record location, nature of the hazard and the injury, the circumstances, contributing factors, witnesses, medical attention if any and agency response.
- Reports should be kept for years (until statute of limitations satisfied).
- File reports with Association for future reference.
- Significant incidents should be reported to Hike Ontario. Don't wait for a lawsuit.
- Hike Ontario will forward reports to the insurer.
- If in doubt, write the report and submit it.

See sample in Appendix B.

LANDOWNERS

- Some landowners require a written agreement giving the trail association access and use of the owner's land.
- Even a handshake agreement should be followed up by a letter to the landowner confirming the verbal agreement. A paper trail will document the parties involved, date, time and place.
- Landowner may request to be listed as "additional insured" on the association's policy. This gives the landowner the right to defense coverage under the association's policy.
- For "additional insured" our insurer requires name, contact information and person for each landowner so listed.
- Landowners may require proof of insurance in order to complete an agreement giving you access to and use of their land. The insurer (through Hike Ontario) can supply a "certificate of insurance" listing the landowner as additional insured.
- Agreement with landowner may refer to the trail association as "an occupier" of the land, under the Occupiers' Liability Act.

OCCUPIERS' LIABILITY ACT

Subsection 4. (1) reads: "The duty of care provided for in subsection 3 (1) does not apply in respect of risks willingly assumed by the person who enters on the premises, but in that case the occupier owes a duty to the person to not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not act with reckless disregard of the presence of the person or his or her property."

Subsections 4. (3) and (4) go on to provide that persons entering on "recreational trails" for recreational purposes and without paying a fee, are deemed to have willingly assumed all risks and are subject only to the reduced duty set in subsection 4 (1).

However, lawsuits can still arise and the courts may be reluctant to find an injured plaintiff entirely responsible for his/her own injuries. Common practice is to apportion or divide responsibility between the injured plaintiff and the occupier.

The prudent trail association will do all it can to ensure a safe trail.

INSURANCE

- Transfers responsibility for financial loss away from the association to the insurance company
- Provides funds to cover the legal costs that result from injury litigation

COMMERCIAL GENERAL LIABILITY (CGL) INSURANCE

- The policy responds to defend a lawsuit brought by a third-party against the named association, its officers, the trip leader and/or other volunteer workers.
- Coverage protects against negligent acts resulting in third party bodily injury, property damage, or personal injuries such as slander and libel.
- Liability coverage typically involves negligence. Under the law, an individual may be “negligent” if a reasonable person would not have acted the same way. The allegedly injured party can then sue the person responsible for the injury as well as the association.
- CGL provides a defense, regardless of whether the claim is true, and pays any judgment or settlement up to the policy limit.
- May be required in order to enter into lease agreements.
- Non-motorized trail uses and activities, such as cross-country skiing, snow shoeing, cycling, canoeing, are covered.
- Excursions outside of Ontario area covered.
- The hike or other activity must be an association event, i.e. announced within the association or authorized by the association executive. Private activities or those not officially sanctioned by the association are not covered.
- Participants on a hike, whether members or not, would be defended by their personal liability insurance (e.g. homeowners insurance), not by the CGL.
- Volunteers involved in trail building or maintenance activities would be defended.
- Special events, such as open houses, membership meetings, fundraisers, are insured provided liquor is not served.
- If liquor is to be served you must first obtain a Special Occasion Permit from the LLBO and arrange for special event liability insurance from the insurer. The insurer can provide you with guidance.
- Tenants liability (covering leased or rented office) is included in CGL.
- Following an incident you should report to Hike Ontario any threat of litigation, as well as actual notice of suit.

DIRECTORS & OFFICERS INSURANCE

- Insures the directors, officers, committee members, the association/club and any chapters or local clubs
- Defends the wrongful actions, of those listed above, that result in financial harm to and legal action from third parties.
- It is important for the association to maintain complete and accurate records, such as minutes of meetings.
- When volunteers accept directors and officers positions they also accept the responsibility for the “duty of diligence”.
- “Duty of diligence” could be described as: act honestly and in good faith with a view to the best interests of the corporation, and exercise the care, diligence and skill that a “reasonably prudent” person would exercise in comparable circumstances.
- Directors and officers are legally responsible for the decisions and actions of their board and organization.
- D&Os can be sued personally whether or not they carry voting privileges or attend meetings.
- D&Os can be held jointly liable for acts committed by other directors, merely because they sit on the same board.
- “I didn’t vote in favour”, “I wasn’t at the meeting”, “I didn’t agree”, “I didn’t know” will not offer protection from the repercussions of alleged wrongful or negligent acts, misleading statements, financial mismanagement, breaches of duty, and so on.
- Liability is generally forever. You retain responsibility for acts during your term even after you leave the board.
- Protect yourself by learning about the organization, participating, knowing your responsibilities, following policies and procedures, asking questions, understanding the implications of board actions.
- Dissent with a board decision must be recorded, specifically mentioning your name in the minutes.
- Bylaws should contain a clause indemnifying the directors.
- May be required to meet government or foundation grant requirements.
- Not offered to unincorporated groups as a D&O policy will not function if there is no legal entity.
- For unincorporated groups each officer and member is personally liable.

WHEN AN INJURY OR PROPERTY DAMAGE OCCURS

- a) Avoid discussion of blame, compensation or "deal-making"
- b) Send for an ambulance and get help for the injured person
- c) Notify the police in the event of severe bodily injury, car accident, burglary or theft
- d) Notify Hike Ontario and the insurance company promptly
- e) Complete an incident report

IN THE EVENT OF A LAWSUIT

- a) Do not involve yourself in the handling of claims
- b) Pass all legal correspondence - without comment or answer - to the insurance company immediately
- c) Do not talk to the third party's lawyer
- d) Make notes of any phone calls from the third party
- e) Cooperate with the Hike Ontario insurance company adjuster. They are there to help you.

REFERENCES

1. Rick Barnard CA, CAIB. *Risk Management Manual for Canadian Environment and Nature Groups*. Federation of Ontario Naturalists, 2001.
2. *The Waterfront Trail: Liability and Risk Management Issues*. Waterfront Regeneration Trust, Draft 1995.
3. Pamela J. Rypkema, J.D., CPCU. *Nonprofits' Essential Handbook on Insurance*. Nonprofit Risk Management Center, 1996.
4. Hugh M. Kelly, Q.C. and Mark R. Frederick. *Duties and Responsibilities of Directors of Non-Profit Corporations*. Canadian Society of Association Executives, 1999.
5. Wendy Moore. "The Perils of Volunteerism: Is it a Risky Business?" Prolink Protector. Reprinted from FOCA News and Cottage Life, June 1997.
6. Occupiers' Liability Act, Revised Statutes of Ontario, 1990 Chapter O.2, September 1992.
7. LMS PROLINK Ltd. Website http://lms.ca/BusinessPrograms/FON_Program.htm