



**Key Elements  
of  
Risk Management  
for  
Ontario Hiking Clubs  
and Associations**

JANUARY 2013

# Table of Contents

<b>1.0 PURPOSE OF THIS DOCUMENT</b> .....	<b>- 2 -</b>
<b>2.0 NEED, BENEFITS AND PROCESS OF RISK MANAGEMENT</b> .....	<b>- 2 -</b>
2.1 THE NEED.....	- 2 -
2.2 THE LEGAL FOUNDATION OF TRAIL-BASED RISK MANAGEMENT.....	- 2 -
2.3 THE BENEFITS AND PROCESS OF RISK MANAGEMENT.....	- 3 -
2.3.1 <i>Risk Management:</i> .....	- 3 -
2.3.2 <i>Steps in Risk Management:</i> .....	- 4 -
<b>3.0 TEN KEY ELEMENTS OF EFFECTIVE RISK MANAGEMENT FOR TRAIL CLUBS AND ASSOCIATIONS</b> .....	<b>- 5 -</b>
3.1 TRAIL BUILDING AND MAINTENANCE STANDARDS.....	- 5 -
3.2 TRAIL SIGNAGE & MARKING .....	- 5 -
3.2.1 <i>Directional Signage</i> .....	- 5 -
3.2.2 <i>Information Signage</i> .....	- 6 -
3.2.3 <i>Hazard Warning Signs</i> .....	- 6 -
3.3 TRAIL AUDITING.....	- 7 -
3.4 TRAINING OF HIKE LEADERS, TRAIL WORKERS AND OTHER VOLUNTEERS.....	- 7 -
3.4.1 <i>Hike Leading</i> .....	- 8 -
3.4.2 <i>Trail Worker Training</i> .....	- 9 -
3.4.3 <i>Volunteer Training</i> .....	- 9 -
3.5 WAIVER OF LIABILITY & ASSUMPTION OF RISK .....	- 10 -
3.6 INCIDENT/ACCIDENT REPORTS .....	- 10 -
3.7 LANDOWNER AGREEMENTS.....	- 11 -
3.8 COLLABORATION WITH LANDOWNERS, PRIVATE AND PUBLIC .....	- 12 -
3.9 CLUB BUDGETING .....	- 12 -
3.10 INSURANCE .....	- 12 -
3.10.1 <i>COMMERCIAL GENERAL LIABILITY (CGL) INSURANCE</i> .....	- 13 -
3.10.2 <i>DIRECTORS &amp; OFFICERS (D &amp; O) INSURANCE</i> .....	- 14 -
3.10.3 <i>WARRANTIES FOR VALID INSURANCE</i> .....	- 11 -
<b>4.0 WHEN AN INJURY OR PROPERTY DAMAGE OCCURS</b> .....	<b>- 16 -</b>
<b>5.0 IN THE EVENT OF A LAWSUIT</b> .....	<b>- 16 -</b>
<b>6.0 CONCLUSION</b> .....	<b>- 17 -</b>
<b>APPENDIX A: WAIVER OF LIABILITY AND ASSUMPTION OF RISK</b> .....	<b>18</b>
<b>APPENDIX B: INCIDENT REPORTING FORM</b> .....	<b>19</b>
<b>APPENDIX C: HIKE ONTARIO RISK MANAGEMENT SUPPORT PROGRAM FOR CLUBS</b> .....	<b>20</b>
<b>TEN KEY RISK MANAGEMENT ELEMENTS BUILD A CLUB RISK MANAGEMENT PLAN</b> .....	<b>21</b>
<b>CREDITS</b> .....	<b>22</b>

## 1.0 PURPOSE OF THIS DOCUMENT

- This document is intended to assist trail clubs in creating or updating their Risk Management Plan. It describes the Key Elements of Risk Management by which hiking clubs can reduce risk for persons involved in trail activities both on the trail and during trail management, training and promotion sessions.
- This document is NOT intended to be a Risk Management Plan. Rather, it is the framework on which trail clubs can build their own risk management plans, reflecting their unique trail environments, local partners and their needs.
- This document builds upon the February 2004 Hike Ontario “Risk Management Manual” by highlighting the key elements of risk management for hiking clubs.

## 2.0 NEED, BENEFITS AND PROCESS OF RISK MANAGEMENT

### 2.1 THE NEED

- Accidents and misadventures can happen. Their avoidance is the object of risk management work. People can be injured. Property can be damaged. Injured persons can launch a lawsuit against Hike Ontario and/or its hiking clubs.
- Prudent trail clubs will do all they can to ensure a safe trail, and safe trail use programs.

### 2.2 THE LEGAL FOUNDATION OF TRAIL-BASED RISK MANAGEMENT

Two statutes in Ontario, The *Occupiers’ Liability Act*, and The *Trespass to Property Act*, establish the legal basis for the creation, maintenance and use of hiking trails together with this Hike Ontario risk management framework.

- i. Trail club officials should make themselves familiar with these Acts.
- ii. To obtain copies of these Acts contact the office of the Attorney General or go to [www.e-laws.gov.on.ca/](http://www.e-laws.gov.on.ca/)
- iii. The *Occupiers’ Liability Act* affords protection to landowners **by shifting limited liability for injury from the landowner to the occupier - trail user. See Section 4 (1).**
- iv. Section 3 (1) of this Act states: “An occupier (*meaning either the land owner or a person, such as a trail club, which has control over persons allowed to enter the land*) of premises (*land*) owes a duty to take such care in all circumstances to

- see that persons entering on the premises, and property taken on the premises by those persons are reasonably safe while on the premises.” (brackets added)
- v. Section 4 (1) states: “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.”
  - vi. Subsections 4 (3) and (4) go on to provide that persons entering on "recreational trails" for recreational purposes on a non-fee paying basis, are deemed to have willingly assumed all risks and are subject only to the reduced duty set in subsection 4 (1).
  - vii. The Trespass to Property Act provides useful insight into signage on property to permit or restrict access and activities. The act is administered by the Attorney General of Ontario and may be found at <http://www.e-laws.gov.on.ca/>

## **2.3 THE BENEFITS AND PROCESS OF RISK MANAGEMENT**

### **2.3.1 Risk Management:**

- i. *manages* risk by being prepared for mishaps (e.g. training, trail audits, surveillance mechanisms, work documentation, emergency planning, etc.)
- ii. *reduces* risk by limiting the chance of mishap (e.g. enforced rules)
- iii. *shares* risk by making others responsible for the financial compensations, if any, for injuries or loss (e.g. waivers, insurance)
- iv. *eliminates* risk by identifying and controlling situations and activities that will cause injury (e.g. marking hazards, closing trails, canceling hikes in dangerous situations)
- v. *controls* risk by preventing in the first instance or by reducing its severity should an incident occur.
- vi. Effective risk management begins with the identification of threats to the continuing operations of the trail association. There are 2 general elements in the control of unintended events leading to property damage, discomfort, injury and/or death on footpaths and on shared-use trails:
  - a. those to be considered and implemented in the planning, construction and maintenance of trail.

- b. those associated with the use of the trail by the trail clubs<sup>1</sup>, their members, their guests and/or the general public.
  
- vii. The best defense against liability claims will be a sound plan of risk management to minimize the potential of injury or damage. An operating risk management plan also will demonstrate that the trail club has fulfilled its duty (due diligence) to take reasonable care for the safety of trail users.
  
- viii. However, despite trail clubs attempts at best practices and due diligence, lawsuits can still arise and courts may be reluctant to find an injured plaintiff entirely responsible for his/her own injuries.

### **2.3.2 Steps in Risk Management:**

- i. Acknowledge that risk exists.
- ii. Identify the risks.
- iii. Evaluate the risks.
- iv. Create a risk management plan.
- v. Put the plan into action.
- vi. Monitor the performance and use of the plan annually.
- vii. This manual will **not** attempt to prescribe how to prepare trail club risk management plans. Rather it outlines the key elements to be included in trail club risk management plans.

These **10 key elements** are identified as:

1. Trail building and maintenance standards
2. Trail Signage
3. Trail Auditing
4. Training of hike leaders, trail workers and other volunteers
5. Waivers of liability and assumption of risk
6. Accident and incident reports
7. Landowner agreements
8. Collaboration with landowners, private and public
9. Club Budgeting
10. Insurance

---

<sup>1</sup> “Trail club(s) is a generic term used in this document to refer to all Hike Ontario club and association members

## **3.0 TEN KEY ELEMENTS OF EFFECTIVE RISK MANAGEMENT FOR TRAIL CLUBS AND ASSOCIATIONS**

### **3.1 TRAIL BUILDING AND MAINTENANCE STANDARDS**

The Bruce Trail Conservancy's (BTC) *Guide for Trail Workers*, 3<sup>rd</sup> edition, 2001, has been adopted by many trail clubs and forms the basis of trail maintenance guides published by others. Hike Ontario encourages all trail clubs to adopt and follow trail development and maintenance practices set out in this Guide in so far as is practicable for each club. Copies are available from the BTC and the Guide can be viewed on the Hike Ontario website [www.hikeontario.com](http://www.hikeontario.com)

A **trail standard** should cover issues such as:

- a. Construction practices
- b. Use of power tools
- c. Signage and marking
- d. Maintenance schedule
- e. Persons responsible
- f. Training of volunteers (see Volunteers)
- g. Trail hazards
- h. Reporting system for work required
- i. Keeping written records readily available of where, when and by whom the work was done.

### **3.2 TRAIL SIGNAGE & MARKING**

#### **3.2.1 Directional Signage**

- i. From a risk management point of view, clear directional signage enables hikers to follow the Trail User's code with respect to the 'stay on trail' issue.
- ii. Several Hike Ontario Clubs use the 6-inch, white-painted, vertical slash to mark main trail routes.
- iii. White Slashes are now the most widely recognized form of directional main trail guide in Canada and the United States.
- iv. Blue slashes are often used for side trails in conjunction with main trails.

### 3.2.2 Information Signage

- i. The prime purpose of informational signage is to make clear the purpose or the status of the trail, noting whether it is a highway-in-the-woods or a natural footpath only, and that to access the trail beyond the sign is to agree *de facto* to an unsigned contract to trail use and its hazards.
- ii. It is essential for the purpose of the sign to be very clear to the readers. It should identify whether the portrayed uses of the trail are restricted or whether they are permitted.
- iii. It is understood that a few Hike Ontario trail clubs allow motorized use of their trails as well as non-pedestrian use such as cycling.
- iv. Further, it is important to note that, if a landowner has provided access, but a posted sign identifies only a single prohibited activity, the inference is that all other activities are permitted. A posted sign that permits only one activity prohibits other activities.
- v. Informational signage also alerts hikers where trail access points and parking can be found.
- vi. Information signage has several other functions such as conveying clear guidelines for trail use and behavior such as the Trail User's Code.
- vii. Signs should clearly state by words and/or graphics permitted and non-permitted uses and behaviors.
- viii. Reference to the Bruce Trail Conservancy's *Guide for Trail Workers*, is recommended. This Guide can be viewed at the Hike Ontario website: [www.hikeontario.com](http://www.hikeontario.com)
- ix. As well, the Trespass to Property Act provides useful insight into signage on property to permit or restrict access and activities. The act is administered by the Attorney General of Ontario and may be found at [www.e-laws.gov.on.ca/](http://www.e-laws.gov.on.ca/)

### 3.2.3 Hazard Warning Signs

- i. If a trail club is aware of an unusual danger on the trail there is an obligation to remove the hazard or warn of its presence.
- ii. If the hazard is truly dangerous, the trail section should be closed by signage.
- iii. Warning signs should be placed at the hazard point so they are visible under normal conditions from the approach of each direction of access.
- iv. If the hazard is repairable, the trail club shall take steps to do so at its earliest opportunity while keeping the section involved 'closed' to use until repairs have been made.

- v. A warning sign does not absolve the trail club of responsibility.

### 3.3 TRAIL AUDITING

- i. Trail clubs should regularly inspect or audit the trail for hazards and correct signage and document these inspections.
- ii. The importance of documented inspections and/or audits is an essential part of Risk Management. Trail clubs may audit annually or more frequently.
- iii. The documented results of these audits need **a defined “paper trail”** to trail captains and volunteer workers in a timely fashion, particularly where hazards have been recorded.
- iv. A sample trail audit form called “TRAIL STATUS REPORT FORM” may be viewed in the Bruce Trail Conservancy’s “Guide for Trail Workers”, page 108, at Hike Ontario website: [www.hikeontario.com](http://www.hikeontario.com)
- v. Formal trail auditing shall be done by an individual or a group agreed by all parties involved in receiving a completed audit as being both a competent judge of the subject, and of independent mind.
- vi. Trail condition reports or “audits” should be completed and acted upon by trail clubs in an appropriate sequence of priority.
- vii. Trail workers need to be informed with the completed audit form of all matters needing attention.
- viii. Hike leaders need to be informed, preferably with the completed audit form, in a timely manner of any new hazards found during audit.
- ix. Without a written record the audit may be found to have never taken place under law.
- x. Having a regularly recorded trail audit documenting who, what, where, why, when and how provides an essential tool for a trail club to commence remedial action on previously identified hazards in a timely manner.
- xi. Documentation of audits and trail remediation is also important to have and retain forever for liability protection purposes.

### 3.4 TRAINING OF HIKE LEADERS, TRAIL WORKERS AND OTHER VOLUNTEERS

Trail building, maintenance and hike leading should only be done, and supervised by those who have been trained and equipped for the conduct of these programs.



### 3.4.1 Hike Leading

- Hike Ontario offers a selection of 7 hour CERTIFICATION COURSES which start by introducing participants to Safe Hiking standards and progress to that of a trained hike leader, including instruction in risk management for Day Hikes where the hike is no more than 2 km from road access, then onto Wilderness Day and Wilderness Trip hike leaders.<sup>1</sup>
- To be eligible to take the Certified Hike Leader course and, thereby become a Certified Hike Leader, students must have their Safe Hiker Certification or have demonstrated a level of hiking competence and experience including having completed a minimum of five day hikes and present a letter of reference and/or recommendation from a recognized authority. (i.e. a certified Hike Leader, a teacher, a hiking club, etc.) See details at Hike Ontario website [www.hikeontario.com](http://www.hikeontario.com).<sup>2</sup>
- HIKE LEADERS LEADING PUBLIC HIKE ONTARIO INSURED CLUB HIKES MUST BE TRAINED AS CERTIFIED HIKE LEADERS.

#### 3.4.1.1 Hike Leader's Rights and Responsibilities :

- i. Prior to commencing any sponsored hike, Hike Leaders should ensure a comprehensive discussion occurs with the participants, including a question and answer session, and explain that they are signing a waiver which has legal implications. This is to ensure that hike participants understand that the hike leader is a volunteer and exempted from liability and that participants must understand there are risks involved in hiking and accept responsibility for these risks. The Hike Leader should explain to the participants the hike duration, the degree of hike difficulty, emergency procedures (e.g. whistle code, two-way radios, cell phones, and ask who has first aid training).
- ii. turn away anyone from a hike if they think that person is putting themselves and others at risk by participating.
- iii. change the hike route due to dangers and hazards.
- iv. cancel the hike due to unacceptable risks.

---

1 It is the intention of Hike Ontario to make The Hike Ontario Hike Leader Certification course manual available on the web site to certified hike leaders through a password protected area

2 Prerequisites for those persons training new hike leaders (Hike Leader Instructor certification) are a completed Hike Leader Certification Course indicating that the course has been taken within the last five years and Standard First Aid. They must then co-teach a course with a registered instructor who is not on probation and be evaluated by the course students. If the evaluations are satisfactory, then the candidate is registered as an instructor on probation for the next three courses that she/he teaches. Upon satisfactory evaluations for these course, the instructor is then awarded full instructor status

- v. permit or refuse dogs on hikes. For the safety of hikers and property owners, dogs should remain leashed at all times.
- vi. explain hazards on the trail.
- vii. should be knowledgeable of hunting seasons and take appropriate measures if necessary. Liaison with local Ministry of Natural Resources officials is important in this consideration.
- viii. should be prepared to reassess hike plans based on threatening weather.
- ix. need to be alert for participants who may have certain disabilities and ensure that those participants have adequate support.

### **3.4.2 Trail Worker Training**

- i. Volunteers should be made aware of the hazards and risks involved in trail work. All volunteer trail workers are advised to read the Bruce Trail Conservancy's "*Guide For Trail Workers*" carefully. This Guide is viewable at Hike Ontario's website [www.hikeontario.com](http://www.hikeontario.com)
- ii. TRAIL WORKERS FOR HIKE ONTARIO INSURED CLUBS MUST SIGN A WAIVER FORM (SEE SECTION 3.5)
- iii. Trail building should be done with the landowner's prior knowledge and approval including approval of the specific details of the physical construction planned.
- iv. Power equipment (e.g. chainsaws, string trimmers, brush cutters) shall only be used by certified operators or those who are experienced with such machinery. Power equipment shall be used only by experienced operators.<sup>1</sup>
- v. Safety equipment should be supplied and worn at all times when using powered equipment.
- vi. Trail maintenance should be conducted within the restrictions and limitations specified in any land use agreement.

### **3.4.3 Volunteer Training**

- i. 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)

---

<sup>1</sup> The current certification course for chain saw operators in Ontario is called "Certified Professional Chainsaw Operator". It is offered by the Ontario Forestry Safe Workplace Association. It consists of 4 modules of training: CHAINSAW SHARPENING & MAINTENANCE, SAFE CHAINSAW HANDLING, FELLING & LIMBING, FIELD PRACTICE TECHNIQUES. See list of courses and schedules here [http://www.ofswa.on.ca/training/training\\_course\\_descriptions\\_logging.asp](http://www.ofswa.on.ca/training/training_course_descriptions_logging.asp)

- ii. Volunteers participating in trail building or maintenance should sign a “Waiver of Liability and Assumption of Risk Form. (see below)
- iii. Volunteers shall be at least 16 years of age.

### **3.5 WAIVER OF LIABILITY & ASSUMPTION OF RISK**

- i. The “waiver and assumption of risk” form places the stated risk on the participant.<sup>1</sup>
- ii. This form should be verbally explained by the volunteer supervisor and/or hike leader in the case of hikes before signing to ensure knowledge of conditions they will encounter and what rights they may be waiving by signing the waiver form.
- iii. The form must be read and signed by all participants in a hike or volunteer activity.
- iv. Signers must be 18 years of age or older to sign in order to be legally valid. For anyone under the age of 18, a parent or legal guardian should be required to sign on their behalf.
- v. The signed form may discourage aggrieved parties from suing, however it will not necessarily prevent lawsuits or court awards to a plaintiff
- vi. The form provides a list of participants who could serve as witnesses.
- vii. The Form should be retained forever as lawsuits can be served many years after an injury took place in the case of children or the disabled.

### **3.6 INCIDENT/ACCIDENT REPORTS**

- i. Carefully document every accident, injury or incident.<sup>2</sup> This report should be completed at the time of the event or as soon as possible.
- ii. Record location, nature of the hazard and the injury, the circumstances, any property damage, contributing factors, witnesses, medical attention if any and agency response.
- iii. Attending trail representatives (including volunteers, leaders etc) should never admit liability or fault at anytime.

---

1 See Appendix A for sample wording of a “Waiver of Liability and Assumption of Risk Form.

2 See Appendix B for sample incident form

- iv. Reports should be kept indefinitely as they will be used by the insurer in the event that an injured party or owner of damaged property sues.
- v. File reports with trail club for future reference.
- vi. Significant incidents should be reported to both the insurer and Hike Ontario. Don't wait for a lawsuit. <sup>1</sup>
- vii. Hike Ontario will immediately forward reports to its current insurer.
- viii. If in doubt, write the report and submit it to both the insurer and Hike Ontario.

### **3.7 LANDOWNER AGREEMENTS**

- i. Some landowners require a written agreement giving the trail club access and use of the owner's land. Written agreements are preferable to settle access questions.
- ii. A written agreement with the landowner may refer to the trail club as “an occupier” of the land, under The Occupiers’ Liability Act.
- iii. The landowner may request to be listed as an “additional insured” under either the Hike Ontario general liability insurance policy (or equivalent policy which a club may have). This gives the landowner the right to defense coverage under the trail club’s policy.
- iv. Landowners may require proof of a trail club’s insurance in order to complete an agreement. A copy of your insurance certificate may be supplied to the landowner. It will be provided as necessary by Hike Ontario in its role as contractor of insurer.
- v. Even a handshake agreement should be followed by a letter to the landowner confirming the verbal agreement. A paper trail will document the parties involved, date, time, place and nature of the agreement.
- vi. Approval of all “additional insured” arrangements for landowners shall be given by Hike Ontario (the insured of record in Hike Ontario’s general liability insurance policy) or by any club with a separate policy of its own.
- vii. To complete an “additional insured” request the Hike Ontario insurer requires the name, address and telephone number of a person for each landowner so listed.

---

<sup>1</sup> Note that the “insurer” for most member Hike Ontario trail clubs is contracted by Hike Ontario, but other member trail clubs contract their own, separate insurers. In either case, Hike Ontario should be notified of incidents.

- viii. The insurer (through Hike Ontario or trail club) can supply a "certificate of insurance" listing the landowner as additional insured.
- ix. Special trail club events may require extra trail club liaising efforts with landowner.

### **3.8 COLLABORATION WITH LANDOWNERS, PRIVATE AND PUBLIC**

- i. Regular liaising with all trail landowners, private and public, is part of due diligence.
- ii. Regular contacts and familiarity with elected municipal officials and staff and their official plans may also reveal pending developments which could affect trails. This also is part of due diligence.
- iii. Other collaborative measures which may benefit trail clubs can include having trails clearly marked in municipal official plans and park plans with the permitted uses specified e.g. "pedestrian only" or "mixed use".
- iv. Special trail club events may require extra trail club liaising efforts and/or agreements with landowner.

### **3.9 CLUB BUDGETING**

Adequate budgetary provision for:

- 1) building and replacing unsafe trail infrastructure and signage,
- 2) trail auditing
- 3) hike leader training, and
- 4) insurance coverage

are essential elements in any trail club risk management plan.

### **3.10 INSURANCE**

- i. Transfers responsibility for financial loss from Hike Ontario and its member trail clubs to the insurer.
- ii. Provides funds to cover the legal costs and damages awards that may result from injury litigation.

- iii. Hike Ontario and its insurance underwriter requests a status report from each club each year to review their activities. If a club is doing things other than hiking, the underwriter will want to review those. If the underwriter should ever feel that an activity is more risky, then he/she can either charge more for it (e.g. more for clubs that have shared use with cyclists and snowmobile clubs) or decline to insure it.<sup>1</sup>

### **3.10.1 COMMERCIAL GENERAL LIABILITY (CGL) INSURANCE**

- i. A CGL (typo) insurance policy responds to defend a lawsuit brought by a third-party against the named association, its members, its officers, employees and/or volunteers.
- ii. Coverage generally protects against negligent acts resulting in third party bodily injury, property damage, or personal injuries such as slander and libel.
- iii. 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.
- iv. CGL provides a defense, regardless of whether the claim is true, and pays any judgment or settlement up to the policy limit.
- v. CGL may be required in order to enter into lease agreements.
- vi. Only non-motorized trail uses and activities are covered under the policy available through Hike Ontario. Walking, hiking and snowshoeing are included in the basic coverage. Other activities, such as cycling or non-motorized watercraft operation may require additional coverage. Check with Hike Ontario.
- vii. Excursions within Canada and the continental United States are covered under the policy available through Hike Ontario.
- viii. A hike or other activity should be an association event, i.e. announced within the association or authorized by the association. Private activities or those not officially sanctioned by the association are not covered.
- ix. Special events, such as open houses, membership meetings, fundraisers, et cetera, where the public is invited, food is served or a facility rented may require additional coverage. Please check with the insurer.
- x. 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.

---

<sup>1</sup> The current Hike Ontario Insurance Broker is Pearson Dunn Insurance Inc. represented by Rosemarie Dunn at phone toll free 1-800-461-5087 or direct ph 905-575-6809 ext. 133 and Nancy Au ext 177

- xi. Tenant Legal Liability (TLL) is covered under the policy through Hike Ontario for ~~smaller limits and not~~ the full General Liability limits. Hike Ontario TLL ~~limits are \$100,000 and~~ covers damage for rented space, premises etc.

### **3.10.2 DIRECTORS & OFFICERS (D & O) INSURANCE**

- i. A D&O insurance policy insures the directors, officers, committee members, the association/club and any chapters or local clubs.
- ii. Directors and Officers liability insurance covers against risks that are not included under your organization's commercial general liability policy, such as: claims arising out of board decisions or omissions; and actions or activities performed directly under the auspices of the board of directors. Policies are usually issued on a claims-made basis.<sup>1</sup>
- iii. A D & O policy does not pay for any bodily injury or property damage as this is covered by the CGL.
- iv. Defends the wrongful actions, of those listed above, that result in financial harm to and legal action from third parties.
- v. It is important for the association to maintain complete and accurate records, such as minutes of meetings for 3 years..
- vi. When volunteers accept directors and officers positions they also accept the responsibility for the "duty of diligence".
- vii. "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.
- viii. Directors and officers are legally responsible for the decisions and actions of their board and organization.
- ix. D&Os can be sued personally whether or not they carry voting privileges or attend meetings.
- x. D&Os can be held jointly liable for acts committed by other directors, merely because they sit on the same board.
- xi. "I didn't vote in favor", "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.

---

<sup>1</sup> See New Brunswick Community Non-Profit Organizations website Reference at <http://www.gnb.ca/0012/CNPO-OCSB/insurance-e.asp#2>

- xii. You retain responsibility for acts during your term even after you leave the board. D & O insurance covers this situation.
- xiii. Protect yourself by learning about the organization, participating, knowing your responsibilities, following policies and procedures, asking questions, understanding the implications of board actions.
- xiv. Dissent with a board decision should be recorded, specifically mentioning dissenter's name in the minutes.
- xv. Bylaws should contain a clause indemnifying the directors.
- xvi. D&O insurance is frequently required to meet government or foundation grant requirements.
- xvii. Coverage may be purchased for chapters, branches or clubs of the association if they are independently incorporated. If not incorporated, they must operate under the same by-laws as the association in order to be insurable.
- xviii. Unincorporated organizations, operating independently, can provide no liability protection for their officers and volunteers.
- xix. Directors and Officers who have access to other D and O insurance (e.g. through their workplace) may want to consider taking advantage of that coverage as well, which will need to be approved by the other carrier.

### **3.10.3 WARRANTIES**

Insurance Policy warranties may be in place that can affect the way you run activities. Make sure you check with your insurer. The Hike Ontario insurance program contains the following warranties:

1. Radios and/or cell phones shall be carried for contacting emergency services, if required
2. All volunteers working on trail building and / or maintenance must sign a waiver.
3. All volunteers working on trail building and / or maintenance must be supervised by qualified team leader.
4. All power equipment must be used by experienced personnel wearing proper safety equipment – i.e. eye/ hearing protection, gloves, etc.  
Note that following these procedures are required for your insurance to be valid.
5. All club or trail association hikes will be published in newsletters or on the website. To be covered an unadvertised hike must be communicated to and acknowledged by Hike Ontario in writing. (E-mails are acceptable).



## **4.0 WHEN AN INJURY OR PROPERTY DAMAGE OCCURS**

1. Send for an ambulance and get help for the injured person.
2. Avoid discussion of blame, compensation or "deal-making."
3. Notify the police in the event of severe bodily injury, car accident, burglary or theft.
4. Notify Hike Ontario and the insurance company promptly.
5. Complete an incident report.<sup>1</sup>

## **5.0 IN THE EVENT OF A LAWSUIT**

Trail club administrators must take the following precautions in the event of a lawsuit:

- i. Do not involve yourself in the handling of claims.
- ii. Pass all legal correspondence - without comment or answer - to the insurer immediately. This may include a formal statement of claim or letter from a lawyer indicating they have been retained by the injured party.
- iii. Do not talk to any lawyer.
- iv. Make notes of any phone calls from a third party.
- v. Keep all records in a safe and retrievable place.
- vi. Cooperate with the Hike Ontario insurance company adjuster (or your own club's insurance adjuster). They are there to help you.

---

<sup>1</sup> See incident report sample in Appendix B.

## 6.0 CONCLUSION

- This document is designed to encourage trail club administrations to apply these risk management elements in the context of their own trail club and to create their own Risk Management Plan.
- Each trail club administration **must** take ownership of its risks, appropriately create a written Risk Management Plan suitable for their trail conditions and ensure implementation of the Plan on an ongoing basis.
- Appendix C outlines a support program for Clubs. This program is intended to unite Hike Ontario and its clubs in a coordinated effort to create and implement individual Club Risk Management Plans which are suited to the unique characteristics and capabilities of each club.

## APPENDIX A: WAIVER OF LIABILITY AND ASSUMPTION OF RISK

### Organization: ABC Trail

**NB- Note that the sample wording below is generic for all clubs and may not suit particular conditions of the actual trail it is used on. Also note that the form is intended to cover all activities of a trail club including trail maintenance work and hikes. Barry W. Kwasniewski in Charity Law Bulletin No. 178, November 25, 2009, explains recent court decisions and summarizes the lessons to be learned in preparing effective waivers as part of the risk management plan for charities and not-for-profits. <http://www.carters.ca/pub/bulletin/charity/2009/chylb178.htm>**

### Association

I acknowledge that this activity of the ABC Trail Association, in which I am participating, involves risks which are beyond the control of the Association. Notwithstanding the acknowledgement of such risks, I hereby release the ABC Trail Association, Hike Ontario and any related or associated entities, and their respective contractors, employees, volunteers, agents, assigns and executors from all claims for damage however so arising as a result of my participation in this or any other activity organized by the Association. I agree to pay the cost of any emergency evacuation of my person or belongings that may be necessary. I affirm that I am aware of the nature of the activity, its distance, duration and degree of difficulty and that I am properly equipped and physically able to participate. I have no medical or other condition which might preclude my participation. I agree to follow the directions of the leader.

Leader: \_\_\_\_\_

Location: \_\_\_\_\_

Date: \_\_\_\_\_

	First and Last Name (just one name per line please)	Signature	Phone Number	Emergency Contact Person	Phone Number
1			( )		( )
2			( )		( )
3			( )		( )
4			( )		( )
5			( )		( )
6			( )		( )
7			( )		( )
8			( )		( )
9			( )		( )
10			( )		( )
11			( )		( )
12			( )		( )
13			( )		( )
14			( )		( )
15			( )		( )

Please mail as soon as possible to the Hike Coordinator.

## APPENDIX B: INCIDENT REPORTING FORM

**Organization: ABC Trail**

Hike Leader Name, Phone #: _____	Incident Date: _____  Time: _____
Event/Location: _____  Weather: _____  Conditions of trail at time of incident: _____	
Describe the incident (injury, lost hiker, etc.): _____  Name and contact information of injured party: _____ Age: _____ Trail Association or Club member _____  Police/Fire/Paramedic information including name, badge number and phone number: _____ Witnesses Info: _____  Describe any property damage: _____	
Describe any injuries: _____          	
Describe any actions taken: _____ First aid administered _____  Was the subject transported to hospital, clinic or doctor? _____  Details of the person completing this Incident Report: Name: _____ Phone # _____ E-mail _____ Time since Incident _____	

**APPENDIX C: HIKE ONTARIO RISK MANAGEMENT SUPPORT PROGRAM FOR CLUBS**

**Approved by Hike Ontario Board May 28, 2011**

**PURPOSE OF THIS PROGRAM**

This program is intended to unite Hike Ontario and its clubs in a coordinated effort to create and implement individual Club Risk Management Plans which are suited to the unique characteristics and capabilities of each club.

**ROLE OF HIKE ONTARIO**

Hike Ontario, through the Chair of its Planning and Development Committee, will:

- : make available to clubs the document “*The Key Elements of Risk Management for Ontario Hiking Clubs and Associations*” dated September, 2011.
- : update this document as necessary in cooperation with the clubs.
- : sponsor and facilitate Risk Management seminars for clubs, respond to requests from clubs for Risk Management information and answer invitations to present to individual clubs on creation and updating their Risk Management Plans.
- : administer the renewal of liability insurance for participating HO member clubs.

**ROLE OF INDIVIDUAL CLUBS**

Individual clubs will:

- : use the document “*The Key Elements of Risk Management for Ontario Hiking Clubs and Associations*” as a guide and framework for each club to begin to formulate their own Risk Management Plan.
- : identify someone within their executive who would be responsible for ensuring that his or her trail association have an up to date and approved Risk Management Plan based upon the framework set out by Hike Ontario's “*The Key Elements of Risk Management for Ontario Hiking Clubs and Associations*” document.
- : Refer to the above identified person as the Risk Management Director.
- : Ensure, in cooperation with the Club Risk Management Director, that Trail Condition Audits occur on a regular basis during the operational season of that club’s trail or trail section.
- : Ensure, in cooperation with the Club Risk Management Director, that the results of Trail Condition audits are communicated to trail work parties in a timely manner.
- : Ensure, in cooperation with the Club Risk Management Director , that close communication is maintained with the club’s insurance provider.

(in most cases the insurance provider will be Hike Ontario and its insurance broker)

BRENDAN ZAMOJC and BILL WILSON

January 2013 proposed by Rose Dunn and Nancy Au; transcribed by Tom Friesen, Jan 15, 2013

## TEN KEY RISK MANAGEMENT ELEMENTS BUILD A CLUB RISK MANAGEMENT PLAN



## **CREDITS**

This document is a Hike Ontario publication compiled and written by members Richard Boehnke, Don Richards and Bill Wilson. It was based on HO member Harold Seller's "Risk Management Manual" of 2004. This document was reviewed with few amendments by Warren Pitton, Hike Ontario Insurer representative during 2010.

This document was reviewed by the Hike Ontario Board Meeting in Erin on September 25, 2010. Numerous useful comments were incorporated. On January 29, 2011, the Board accepted this document.

On June 9, 2011, this document was reviewed on a pro bono basis by Catherine Coulter of the Ottawa law firm of Fraser, Milner, Casgrain. She remarked that this document was "a very well written document" and made several minor suggestions which were incorporated into this September 2011 edition.