



**Bruce Trail
CONSERVANCY**



Indemnification Overview

October 2017

Background

Two provincial regulations were created during the 1980s to encourage rural landowners to open up their lands to public trails. Up until that time the law governing occupiers' liability was complex and discouraged rural landowners from allowing people to use their land. The new regulations clarified responsibilities and provided more assurance to landowners that their interests would be protected. The two regulations are described below but can also be found at <http://www.e-laws.gov.on.ca>

The Trespass to Property Act: This regulation provides protection from trespassers should the occupiers (landowners or tenants) wish to prevent others from entering their property or to control the use of their land. The Act was amended in June 2017 to increase fines from \$2,000 to \$10,000 and to remove the limit on the amount that landowners can recover as part of the prosecution for damages caused by trespassers.

The Occupiers' Liability Act: This regulation defines the liability of all occupiers of land and protects them from being sued for damages by people who come onto their property. Where there is no fee for access, the Act considers the person using the property to be there at his/her own risk. The only caveat is that the landowner cannot knowingly place a hazard that might cause harm to this individual –otherwise there is a risk of liability for the landowner.

The Occupiers' Liability Act was amended in June 2017 to clarify the "duty of care" so that it's clear landowners do not face additional liabilities when allowing trails across their land. It clarified that paying for parking or for a membership to an organization such as the BTC does not constitute paying to enter a premises, and therefore can't be used against the landowner or organization providing the access.

There is precedent that landowners will be protected using provincial regulations. Case Law. *Schneider v. St. Clair Region Conservation Authority* (2009), 97 O.R. (3d) 81 (C.A.)

The standard measurement of the basic "duty of care" is what a reasonable person would do under the circumstances. For example, while it may be reasonable for a farmer to not erect fences around his land, it would be unreasonable for a construction company not to erect a fence around an excavation site in a city or town.

The basic "duty of care" does not apply to all situations. Exemptions include;

- People who enter for criminal purposes are considered to have assumed all risks. However, this does not give an occupier the right to set traps or create hazards;
- Entrants to rural property who do not have permission to enter (trespassers) are responsible for their own safety;

- Non-paying entrants to rural property are responsible for their own safety when using rural property for permitted recreational purposes;
- People who know the risks and choose to accept responsibility for their injury when they enter the premises. For example, the spectators at a hockey game know they risk being hit by a puck flying into the stands and they accept this risk when they purchase a ticket.
- If you do allow non-paying entrants onto your farm, you should point out the location of any potential hazards, farm ponds, manure lagoons, livestock, as well as areas where access is not permitted.

Sometimes, knowledge of the *Occupiers' Liability Act* and the *Trespass to Property Act* is not enough to reassure a landowner that they are protected. In 2004, the BTC Board approved a Landowner Indemnification Policy that allows the BTC to add a landowner as an Additional Insured to their policy. In October 2017, the process for indemnifying landowners was improved. Instead of adding individual landowners to the BTC policy as requested, the BTC adopted a general Additional Insured endorsement that acknowledges all landowners with Trail. A certificate confirming this endorsement can be issued to any landowner at any time upon request.

BTC insurance covers indemnification for landowners up to \$5 million per occurrence, up to \$10 million per year for bodily injury including personal injury and death.

Coverage is for incidents that occur "on the trail", which is a very broad statement. For instance, where the Trail is sandwiched between the wooded area and the edge of the Escarpment it could reasonably be argued that the entirety of the path to the edge of the Escarpment is "on the Trail", so the coverage is quite broad. Having said that, every case is unique. Therefore, the best response to a landowner who is enquiring about coverage is to tell them that the BTC has their interest noted under the policy as Additional Insured and they should bring any incidents involving the Trail to the BTC's immediate attention so we can engage the BTC's insurer Adjusters and Legal Counsel on their behalf. You should also tell them to notify their respective insurer at the same time so as to not prejudice their position should they be required to respond to a claim. It's important to convey that the BTC's insurer will defend the BTC and the landowner against suits in regard to the use of the trail. However, it must be acknowledged that the BTC insurance cannot automatically cover landowners in every single incident as all landowners, whether they support the Trail or not, have some responsibility in ensuring they do not contribute to any hazard leading to a loss.

For more information, please contact:

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