



Ontario Trails - Viewpoints and Information on the Ontario Trails Act 2015

Trailhead Ontario
by Patrick Connor CAE
June 7, 2015



Ontario Trails Council

A provincial charitable organization

Started in 1975 by MNR to resolve user conflict on Crown Land

Evolved since 2001 with support of Ontario Trillium Foundation, Ministry of Natural Resources, Ministry of Tourism, Ministry of Health Promotion, Health Promotion and Sport, and now Ministry of Tourism Culture and Sport

Undertake a variety of projects related to the desires of membership, the public and the goals and objectives of the Ontario Trails Strategy



Tools of Management

12 member Board of Directors

All volunteers from communities around Ontario

Board provides overall governance, the Executive filters issues and day to day operations

There are committees, such as the Trillium Trail Network, Conference Planning, Finance and other Special Project Committees, such as Education and Skill Development

Recent Consultations

We wish to thank the MTCS and ADM Harlow, ADM Malcolmson and staff for having a strategy review.

OTC attended all sessions as did many of our members and numerous stakeholders

We believe that given the scope of work that trails represent and the value of trails as enablers of affordable leisure, personal health, employment, economic development, environmental conservation, urban greening and capital investment deserved this review.

Part of that consultation process created a demand for government action

OTC Requests - 2003-2014

- 1) Ensure greater user accountability
- 2) Improve safety and security of lands
- 3) Improve safety and security of trails, trail organizations
- 4) More protection under law for trail groups
- 5) TORT Reform – decrease litigation
- 6) Increase liability protection
- 7) Remove joint and several liability
- 8) Presentation of risk – reduction
- 9) Crown land and land practices
- 10) Acknowledgement of NGO, non-profit role
- 11) Safety and security for events
- 12) Ability to add capacity to trails system

May 12, 2015

At Queens Park for
announcement in House of ‘The
Ontario Trails Act’



Purpose of the Act

- To increase awareness about and encourage the use of trails
- To enhance trails and the trail experience
- To protect trails for today's generation and future generations
- To recognize the contribution that trails make to the quality of life in Ontario

Areas of Change

5 Acts are amended

- Occupiers Liability Act
- Trespass Act
- Crown Lands Act
- Snowmobile Act
- Off Road Vehicle Act

Bonus Categories:

- Trails Week
- Movement towards a world class system of trails
- Trail classification system
- Trails of distinction recognitions
- Maintains the Ontario Trail Strategy

Occupiers Liability Act

The OLA sets out two important facts in law, the negligence test and the requirements of due diligence for operation of recreational trail in Ontario, however the language is difficult to understand and people suffer with its interpretation.

The OLA offers trail groups protection from liability if they can demonstrate that they have been diligent in maintaining trail, and that through such diligence they have not been unduly negligent in the condition of the trail.

The OLA currently also provides language about provision of food, charged admission, provide accommodation, or a fee for use. The provision or application of any of these removes protection under the law.

Occupiers Liability Act

Under the New Ontario Trails Act, the standard and test for negligence is to be strengthened.

Under the New Ontario Trails Act, reinforces existing language “a person who enters on certain premises is deemed to have willingly assumed all risks and in which a modified duty of care applies....no accommodation....and no fee for entry or activity of the person, other than the benefit or payment received from a government or government agency or a non-profit recreation club or association. And adds

1) A fee charged for the purpose incidental to the entry or activity, such as for parking

Occupiers Liability Act

2) The receipt by a non-profit recreation club or association of a benefit or payment from or under the authority of a government or government agency.

The amendment now includes “portage routes” as an area of applicability under the Occupiers Liability Act.

Assessment – reduction in risk exposure, added lands protected, NGO’s and non-profits greater protection, events protected, clarity of applicability, clarity of standard, fees of a certain type can be charged with no loss of legal protection

1) And 2) are applied to the ORVA and the SMA

Trespass to Property Act

Trespass remains a serious issue for property owners adjacent to trails.

“The OTC does not condone trespass, encourages users to stay on trail and use approved equipment or allowed use on trails so marked, it does not condone or endorse the building of unauthorized, unapproved or other illegal trails regardless of type or location.”

The New Ontario Trails Act establishes a new fine schedule -
Including longer enforcement periods.

Trespass to Property Act

Fine levies are raised from not more than \$2,000 to not more than \$10,000
Schedule 6

Fines for damages assessed are changed from “but no judgement shall be for an amount in excess of 1,000” at the end of Section 12 (1) – to removed.
Section 70.4 (a) (b)

5) Upon conviction the court may, increase the fine by an amount equal to the gain accrued by the crime,
Prescribe additional fines Section 70.3 5 (a) (b) (c)

Crown Lands Act

Corporations can also be found guilty.

Fines of

First - \$15,000 plus \$1,000 a day while in contravention

Second - \$25,000 plus \$1,000 a day while in contravention

70.3 (4) If a corporation commits an offence under this act or the regulations, an officer, director, employee, or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to the offence, and upon conviction is liable to the penalty for the offence provided in this Act...

Crown Lands Act

Additional Provisions and additions:

Trespass and Crown Lands Acts

Assessment - increased fines act as a deterrent to trespass

Time to educate community about new reality, new fine schedule

Secures trail property, helps secure trails

Offers greater security to adjacent landowners

Increases role and importance of user education by knowledgeable trail organizations.

Enhances motivation to stay on trail

Trespass and Crown Lands Acts

Assessment - increased fines act as a deterrent to trespass

Time to educate community about new reality, new fine schedule

Secures trail property, helps secure trails

Offers greater security to adjacent landowners

Increases role and importance of user education by knowledgeable trail organizations. Makes demands of trail corporations to ensure member compliance

Enhances motivation to stay on trail

Easements

The owner of land(s) may grant easements -

For the preservation, enhancement or management of the use of, or access to, all or a portion of the land for purpose relating to trails or to activities relating to trails,

For the creation, maintenance or management of trails for public use, or

For the purposes as may be prescribed by the regulations made under this Act.

Easements must be registered

Easements

Easements may be assigned (transferred)

Assignments must be registered

Owners and eligible bodies may enforce their rights upon one another

Assessment – process of land ownership, applicability and transfer remain procedural and dispute or restitution on issues of use and access remain both negotiable but problematic

Additional Items

The Minister may declare an Ontario Trails Week, the week beginning the Monday immediately before the first Saturday in June in each year is proclaimed as Trails Week. Other weeks may also be so declared. Section 4.1 and 4.2

The Minister may recognize a trail as a trail of distinction. Section 5

The Minister may establish a trail classification system. Section 6

The Minister may establish best practices to further the purposes of the Act. Section 7

Section 6 and 7 are voluntary compliance.

OTC Requests - 2003-2014 - and the Ontario Trails Act

- 1) Ensure greater user accountability - ✓
- 2) Improve safety and security of lands - ✓
- 3) Improve safety and security of trails, trail organizations - ✓
- 4) More protection under law for trail groups - ✓
- 5) TORT Reform – decrease litigation - ✓
- 6) Increase liability protection - ✓
- 7) Remove joint and several liability - ✓
- 8) Presentation of risk – reduction - ✓
- 9) Crown land and land practices - ✓
- 10) Acknowledgement of NGO, non-profit role - ✓
- 11) Safety and security for events - ✓
- 12) Ability to add capacity to trails system - ✓