

**Economic Issues Affecting Ontario's Trails Networks**



**A Brief to the Standing Committee on Pre-Budget Consultation  
By The Ontario Trails Council January 2007.**

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## **I) Purposes of this Brief**

The Ontario Trails Council (OTC) recognizes that there are complex legislative, policy and trails sector business pressures affecting the economic viability of not-for-profit recreational trails in Ontario. We also acknowledge that the Ontario Government acknowledges these concerns as they are accurately reflected in the Ontario Trails Strategy.

The Ontario Trails Council recognizes its role as sector advocate and its responsibility to make clear to government those critical issues immediately affecting trails economic stability and sector funding needs. This paper discusses issues related to funding, trail business success, voluntary sector issues, liability and insurance cost crisis, legislative and regulatory changes that must occur to maintain the viability of the recreational trails sector.

With over 5 million users annually, representing a \$2 to \$5 billion annual economy, the OTC has been monitoring trails, trails practices and trails issues since 1988. Currently there is over 64,000km of multi-use trails, with 10,000's more as part of the urban park infrastructure, trails in Ontario.

Since 2003 the OTC has approached the Pre-budget Finance Committee in order to inform the Committee that many trail organizations have been, and continue to be at risk of closure due to severe financial pressures. We are also here to day to express our appreciation, for the development of the Ontario Trails Strategy, and the ongoing implementation of the Strategies goals and objectives through the facilitation efforts of the Lead Ministry for Trails, the Ministry of Health Promotion.

Through the Ontario Trails Coordinating Committee we are working with government and sector partners to define and develop management strategies, applicable policy, process and legislative issues that can work to relieve the pressures voluntary sector organizations, municipal trail managers, provincial parks and others face in delivering a world class trail experience here in Ontario.

Our solutions do not necessarily require new dollars or significant manpower to enact. For some policy decision areas we need the relationship we have with government partners redefined or strengthened and in some legislative areas we require Ministerial leadership to assist our bureaucratic allies in enacting solutions.

This brief represents an exciting opportunity to work with the government in correcting our current recreational trails challenges with new solutions, through strong community support, private sector partners and the people of Ontario.

The help of the Ministry of Finance Pre-budget Consultation is appreciated by the trails industry, as your recommendations can continue the growth of a vital tourism sector. As opposed to committee or government in-action, which could see the potential closure of vital trails stakeholders.

## **1) Trails History**

### **1.1 Historical Economic Value**

In his Canadian Economic history, renowned economic historian Harold Innes describes the value of trails to the opening of the Ontario frontier. Without these hardy explorers and the related benefits provided by water and overland routes, Innes argues Canadian economic development would have been vastly different.<sup>i</sup>

Fundamentally the trade that took place via these routes established every economic urban center in Ontario from 1550 until the advent of railways. The sophisticated skills learned through “blazing” trails led to many scientific innovations in geography, cartography, surveying, navigation and communication.

### **1.2 Trails as Business**

Trails were developed for moving materials to market for processing or sale. Examples include the St. Lawrence Seaway, the Welland Canal; the Trent Severn Waterway etc. These are more modern and highly sophisticated trade/trail routes trails developed to ease the transfer of goods to market. The Rideau and Welland Canals were developed in the public interest as military defence systems.

These water systems led to road development. The Old Kingston Road is one example Of a trail turned into major thoroughfare. The establishment of Fort Frontenac (later Toronto) and other Ontario cities occurred in a similar manner, a market developed through water to trail to road linkage.

In the 19th and 20th centuries many of these routes were transformed in part to tourist/freight routes. The more successful incorporated a combination of rail, land and water in the movement of persons or goods for either agricultural, logging or tourism purposes. The Lennox and Paddington Road, with the Marina water and rail route is a classic example of innovative multi-type trail integration into a complete trail system.

In sum, trails have had a leading role in the economic growth, public benefit, and economic prosperity of Ontario.

In the last 50 years trails have evolved into a tourism and recreational niche. Although in some parts of Ontario they retain a primary goods acquisition, transfer function. Tourist trails are sophisticated economic zones; complete with human, technological, scientific and socio-economic value and needs.

In the early 21<sup>st</sup> century trails perform a role both for business and as business. Based On our historical and current relevance, we are requesting relatively minor support from the government, comparative to our inputs to the economy and our equity value such that we can continue to contribute positively to Ontario's economy.

In November 2004 the Trans Canada Trail Foundation released its definitive – Economic Impact Study on Recreational Trails. Trans Canada Trail Ontario engaged PricewaterhouseCoopers LLP to undertake a study to examine the potential regional and province-wide economic impacts of the entire Ontario portion of the Trans Canada Trail.

Results of the economic impact analysis indicate that Ontario and its 12 Travel Regions are shown to derive significant and real economic impacts from a completed trail. The outcome of the economic impact study indicates that all users' recurrent non-durable good and durable good expenditures, as well as trail maintenance expenditures on an annual basis will result in the following impacts:

- Over 42,000 Ontarians can attribute their jobs to the Trans Canada Trail in Ontario's recurrent expenditures;
- A total of about \$2.4 billion will be generated annually in value added income in the Province of Ontario. Of that, a total of \$152.8 million will be sustained by non-local user expenditures (representing "new money" into the economy).
- Total recurrent tax collections will add to about \$1.04 billion annually for all levels of government, of which nearly \$140.7 million per year will remain with local governments in Ontario.

Construction of the currently undeveloped portions of the TCT-ON will generate an additional \$247.5 million in new income to the province, which supports 3,688 person years of total provincial employment and combined tax impacts for all three levels of government in the amount of \$92 million.

One of the major challenges facing both the Trans Canada Trail in Ontario, and trails development organizations in general at present is a lack of funds to complete the currently undeveloped sections of trail. It is interesting to note that the cost of constructing the currently undeveloped sections of trail could be recovered in just four years worth of total tax revenue from all three levels of government from the non-local users' non-durable expenditures alone.

Based on these figures, the OTC feels that it is severely underestimates the true economic impact of the 60,000km of other, similar, but non-Trans Canada trail in Ontario by its very conservative estimate of 2-5 billion economic impact.

This paper confirms the need for funded study to determine the true economic impact of all trails in Ontario. Once we know the relative value of this infrastructure appropriate development and maintenance allocations could be made for the sector infrastructure as a stand alone item.

## **2) The Ontario Trails Council**

### **2.1 Who We Represent**

The Ontario Trails Council is a coalition of over 80 trail management and trail user organizations, and we have another 30 individuals as members. The OTC has members in all of the 12 Tourism Regions of Ontario. The OTC also has individual members representing consulting, professional development, health units, conservation authorities, parks, outdoor educational institutions and individual friends of trails.

**Trails User Organizations** - These are professional non-for-profit organizations or clubs managing or promoting the interests of specific trails and/or trail user groups. These include:

- Hike Ontario represents 24 member associations @ 13,000 members of a population use base of 800,000 hikers and walkers.
- Ontario Federation of Snowmobile Clubs representing over 265 clubs @ 225,000 Members.
- International Mountain Bike Association – representing the 100,000 plus mountain bikers in Ontario.
- Ontario Equestrian Federation – 14,000 competitive riders from 25,000 associates representing 1 million recreational and competitive riders
- Ontario Federation of All-Terrain Vehicle Clubs - 24 clubs 1,200 members representing 300,000 ATV users.
- Ontario Federation of Dog Sled Sports - 2,000 members
- Ontario Recreational Canoe Association – 1,000 professional instructors and river guides
- Cycling Alliance of Ontario – representing the 7,500 kilometer Ontario Bicycling Route, and over 3 million bicycle owners in Ontario
- Ontario Federation of Trail Riders – 1,000 members
- ATVOntario – representing tourism trails in 6 regions of Ontario
- Ontario Federation of 4X4 Drivers – representing the 1,000 supporters of off-road activity

**Trail Management Organizations** - Public Community Associations - this category is made up of 29 individual trail management groups such as North Simcoe Rail Trail, Haliburton Highlands Trails and Tours Networks, Park to Park Trails, Bruce-Grey Trail Network, etc. This group represents the management of publicly accessible municipal trails. Possible population use base: +10 million.

**Trail Providers** - These are the private landowners agreeing to share their land, or as in Northern Ontario, crown lands leased for trail use.

**Public Park and/or Recreational Operations** - These include members in each of the sectors of Conservation Authorities, Provincial Parks, and Health Units. Each is directly accountable to an Ontario Government Ministry for the trail operations they undertake. User rate of Provincial Parks: 80 million visits in 2000.

### **2.2 What We Do**

The Ontario Trails Council provides services and information to the trail community. We provide strategic planning related to management issues facing trail user groups, public

management bodies, educational institutions, government and the private sector. The OTC is a forum where differing stakeholder organizations, government departments, researchers, advocate groups, trail managers can discuss trails issues and their higher-order concepts.

The OTC works in partnership with government programs on leading edge trail issues, such as Northern Trail development with FedNor, Northern Ontario Heritage Fund Corporation, a division of Northern Development and Mines. We also work closely with the Ministry of Housing and Municipal Affairs through the OSTAR-RED program, using trails to promote rural economic development.

The OTC provides direct public services via its web site, where the public can access trail information, trail maps, trail organizations, best practices, seasonal rates etc. We have worked with the Outdoor Life Network, Toronto-Dominion Bank - Friends of the Environment, Molson's etc. to produce materials promoting trails awareness.

The OTC has developed its capacity to represent the interests of its membership. Accordingly, the OTC is currently engaged in a sound Board Governance model, strengthening ties to the 447 municipalities with trails, by creating Regional Management Councils, and improving trail management practices by putting on regional workshops through this mechanism with local community based trail management organizations.

The OTC works nationally, having held the first National Trails Conference in 2000. We work with the Trans-Canada Trail Organization, aiding them as they work on a National trails system. We were also one of 3 organizations working internationally on trails issues, creating a standing Bi-National trails group in Niagara Region, as a sitting member of the Canadian Trails Federation, and as a participant through the Ontario Tourism Marketing Partnership Corporation in the development of strategies to improve off-shore tourism on trails in Ontario.

As a leading edge trails innovator the OTC is enhancing its relationship with several public education institutions. We have supported research papers from Sir Sanford Fleming College, Trent University, and used private consultants in the NGO Governance and Insurance sectors to report on specific issues.

The OTC also has its own trail registration program linking Ontario trails together. This project is the Trillium Trails Network. The pilot project is examining user fee and trail accreditation under the guidance of OTC.

### **3) Trails Organizations**

#### **3.1 Types of Trail User Groups**

There are three types of trails: Single use private, single use public, shared-use public. Correspondingly, there are three distinct business models currently utilized in trail management. These are totally private, private not for profit and public/community trails. A brief description of these types follows:

**Private Trails** - these include such trails organizations as The Association of Riding Establishments of Ontario, whose members are private as are their trails. In this type of business model the trail is owned operated and by a private business, resort, club, parks authority or other organization that takes full responsibility for the management and operation of the trails, and derives any profit or loss directly through their operation.

**Private not-for-profit** - These trails are managed by local not-for profit organizations. These organizations may or may not belong to larger umbrella organizations. These include such Ontario trails as those of the Ontario Federation of Snowmobile clubs. These trails are owned, managed, groomed and maintained by the member clubs of the OFSC.

**Public or Community Trails** - these include such trails as the Caledon Railways system. The local municipality via its Parks department manages this system.

#### **3.2 Other Trails Organizations**

**Trail Advocacy Groups:** These include such organizations as Ontario Trails Council, Oakridge Moraine Association; some Provincial Parks have Friends of the Park Associations, which may pursue advocacy issues.

**Public Land Owners:** Most municipalities, regions, towns, cities, townships and counties own land that uses trail.

**Conservation Authorities:** Through their role as watershed managers are owners of land in the public domain that may have a trail.

**Provincial Parks:** Almost all provincial parks have recreational trails. As part of the park infrastructure, the provincial government – Parks Branch, manages them.

**Health Units:** Very few Health Units build and manage their own trails, however they all have active living programs and are often strong advocates for community trails use.



## **4) Economic Benefits of Trails**

### **4.1 Business Case**

In Northern Ontario trails provide seasonal employment amounting to 650 million<sup>ii</sup> per annum. In Southern Ontario where day trips and trail access is easier many more user days and multi-season use amounts to an estimated \$450 million<sup>iii</sup> per annum of economic activity.

In urban areas the economic benefits of trails continue to be immeasurable. The number of persons utilizing the Toronto Island Ferry, the Humber River bike park system, Harbourfront, Waterfront Burlington Development etc. and related park access along the Grand, Credit, Don, Atonable and other rivers, these parks account for millions in business activity, taxes, construction et al. During one 12-hour period over 12,500 persons alone entered Centre Island Park system.<sup>iv</sup>

However, from an infrastructure development standpoint, current safe practices for the development of recreational trail for non-motorized trail in an urban environment amount to roughly \$100,000 per kilometer<sup>v</sup> of trail. In a relative sense this is not an exorbitant amount when one compares the costs for a kilometer of single lane road re-surfacing at \$150,000 per lane in an urban environment, to \$540,000 per kilometer of new single lane road.<sup>vi</sup>

The current business model for trails takes on a variety of significant forms. These continue to be best described in the *Go-for-Green* publication "**Social and Economic Benefits of Trails**", which states, that trails are "providing multi-use, cross-generational recreational activity that benefit both adjacent landowners and the local business community."<sup>vii</sup>

The focus of the Non-Governmental Organization (NGO) trail economy is predominantly local in nature. These localities are usually only county or township wide. Many rely on small municipalities for support. Revenues are derived locally to sustain local segments of trails

However of great importance is the recognition that the lead Ministry of Trails in Ontario, where the Ministry of Health Promotion reflects the relative cost and value of trails in the Provincial Trails Strategy to be – "1.8 billion in health savings through a 10% increase in trail activity", and that "trails have a significant economic value to the economies and health of all Ontarians."<sup>viii</sup>

This local economic reality is reinforced by an August 1999 OTC report studying user fees. The OTC was examining options to diversify community-based trails operating funds. The OTC User Pay Study Group noted that "funding program(s) must strive to accommodate the differences among trails, trail operators and trails users...while respecting local independence to determine their own way, where it is not possible to reach consensus."<sup>ix</sup>

### **4.2 Aggregate Representations**

It is difficult to estimate the economic impact of the total trail sector. No totally comprehensive definitive study exists that examines for a fixed time period the hard, soft and spin-off related economic impacts of the complete trail operations, trails industry, public, NGO and private sectors.

In addition, there are only limited studies available detailing the impact of trail economic corridors or zones. In the absence of a definitive aggregate verified study, the OTC is extrapolating its conclusions from a number of sources to make reasonable comparisons and determinations.

The best comparator to determine economic activity is a per kilometer rate. This can be applied to both revenue and expense per kilometer. This can be derived from studies of specific use trails. For example the Bruce Trail studies are often cited for hiking and economic zone activity rates. This will allow a comparison by trail type across all hiking kilometres of trail.

The other is to examine studies showing over all related economic activity to an area of trail. These have been undertaken by the OFSC at the district and club levels. These rates will be used for motorized economic comparisons.

It is important then to accurately determine the total number of trails by type. Province wide there are an estimated 46,000km snowmobile trails, 4,000km ATV trails, 4,000km Shared use, incorporating equestrian, trail bike, dog sleds, snowmobile etc., 4,000km dedicated hiking trails for an overall land trail system of some 55,000-60,000km of trail.

While there is overlap in shared use models, OTC makes the argument that this overlaps only provides additional economic activity, by type, and therefore should be recognized as such. Therefore we are adding the value by type use to the aggregate trail use sum.

Using this method our examination of the numbers related to various hiking, cycling, urban pedestrian use and snowmobile studies, province wide would show the following relevant economic activity:

User group	Km	Economic Expenditure Trail Use	Related Variable Day/Night Expenses	Total <sup>x</sup>
Snowmobiles/ATV's	50,000	\$682 million	\$518 million	\$1.2 billion
Hikers	8,000	\$70 million	\$240 million	\$310 million
Urban Pedestrian	4,000	\$400 million	\$40 million	\$440 million
Cyclists - Shared Use	2,000	\$20 million	\$26 million	\$46 million
X-Country Skiers <sup>1</sup>	2,000	\$134.5 million	\$1.5 million	4136 million
Dog Sledders	34,000	\$161,000	\$322,250	\$483,250
Equestrians	71,000	\$3 billion	\$649,000	\$3.7 billion

The chart details the significant economic impact of trails. Trails are conservatively a \$5.8 billion dollar economy. If one offered a conservative \$500 million for other trails uses and ancillary manufacturing sector activity trails represents nearly \$6.3 billion to the economy.

### **4.3 Trails Industries**

There are several trails related industrial sectors. There are private sector industrial producers of recreational equipment that supply clothing, vehicles, tack, after-market enhancements, and related durable goods producers.

There are the service provision industries of the hospitality and travel industry. There are hotel and motel operators, tour guides, restaurants, gas stations, goods suppliers to the trail industry and the trail traveler.

There are trail management and trail services organizations that ensure that trails are maintained to a particular standard, are groomed, blazed, bridged, emptied, and cleared. These organizations also ensure those insurance obligations; safety guidelines and land use and land easement agreements are signed with landowners ensuring the trails exist. At the municipal level these organizational responsibilities include the management of particular parks and recreational trail systems.

Most research into the hard economic benefits of trails has been produced at the municipal and destination levels of trails services delivery. Much of the research is related to spin-off economic benefit and a recent Superior East Community Development Corporation (SECDC) study indicated that it used a "related industry" study method that canvassed businesses along the trail route to report out on what they had observed the related activity change from one season to the next to be. Economic indicators used in the SECDC study are for specific purposes, for a particular geographic area, and for a single user group.

Respondent businesses in the SECDC area were asked if they had seen an increase in trails related accommodation, gas sales, food and liquor sales changes, retail activity, more vehicular traffic, repeat customers and observed trails traveling. 100 businesses in the area were surveyed with 50% indicating a positive change. In addition these businesses indicated that they felt the next 5 years would also see additional growth.<sup>xi</sup>

**'Go for Green'** economic indicators summarize hard data for the Bruce Trail as follows:

- Bruce Trail Direct expenditures: \$4.4 million per annum, 1100 jobs created, 750 km of trail
- Related durable goods purchases, same year, \$20 million
- Spin-off support from purchases of durable goods: \$47 million, supporting another 900 jobs.<sup>xii</sup>

While there is a lot of economic activity there is not necessarily economic stability. That is because the economic benefits accrue to communities and a multiple number of businesses and persons, as opposed to particular organizations. For example a local trail organization participates in a 2 billion-dollar industry but its user support base may only be 8 persons. Increasingly these small local clubs or other non-profit groups with shallow financial pockets are unable to support the costs of operations, and/or the perceived risks these operations could represent.

The rest of this document will detail the legislative, policy and process recommendations that need to take place to develop and maintain these local economies, as it is the desire of the OTC to see strong trails communities throughout Ontario.

## **5) Why Trails are at Risk**

### **5.1 Unstable Funding**

Revenue sources for local clubs or trail users are limited. Traditionally volunteers, unpaid labour, and or persons on social assistance support the trail. The money generated to support these persons to and from trail sites is derived from fundraising activity such as barn dances, bingo's, bake sales etc. Revenues tend to rely on smaller township or municipal economies. If the trail is in a poorer township then its options for economic support tend to be problematic.

Larger organizations such as the OFSC derive some operational revenue from permit sales. However the OFSC is the unique relative to the other members of the trails community. Interestingly, while the OFSC generates \$1.2 billion in economic activity, has a diverse source of revenues, it is one of the organizations hardest hit by escalating costs.

As the foremost snowmobiling organization in the world, the OFSC operates two-thirds of Ontario's recreational trails. Its current trail count is 41,290 km. These trails are conservatively valued at \$365 million if they had to be replaced today, measured in terms of dollars invested since inception. The OFSC provincial fleet of heavy industrial groomers numbers 329 (replacement cost: Approx. \$50 million). That's big money and a lot of snowmobile trails!

According to a recent survey, over 95% of OFSC permit holders rated their OFSC trail riding from enjoyable to extremely enjoyable last winter. So they'll be pleased to know that the fee for the Full Season permit required to ride them did not increase this year, remaining at \$230 (\$180 if purchased by December 1st). Thanks to these riders, OFSC trails generated almost \$900 million in economic activity last season, primarily in rural and small town Ontario.

In a fashion similar to the permit system of the OFSC, the OTC has discussed and is currently revisiting through Ministry of Health Promotion funding the Trillium Trails Network; implementing a user fee system for trails as a revenue-generating source. However in the 1999 OTC User Pay Study Group Report, which examined user pay as a method of trail stabilization, the group concluded that, "user pay alone is not likely sufficient to sustain trails because the costs of maintaining trails may exceed the ability or willingness or both of users alone to fund them."<sup>xiii</sup>

In the report the author outlines 24 different funding sources. 17 fund capital efforts to create and develop trails. The other 7 share a dual creation and sustaining role.<sup>xiv</sup> The limited number of sustaining fund organizations only worsens NGO vulnerability. This point was reiterated in the Halliburton Highlands Stewardship Council unpublished report commissioned in part by the OTC. Ian Attridge author wrote, "...sustaining trails will usually mean sustaining trail organizations."<sup>xv</sup>

It is this hybrid supporting responsibility that in turn makes foundations, outfitter groups; non-related trail organizations, local community groups and non-local corporate sponsorship sustainable weary. It also means that the least fund rich organizations are bearing a disproportionate burden of the operating costs.

Can NGO organizations afford to operate trails? Not long term with their current proportion of funding responsibility. Most organization do not have the size and

sophistication of the OFSC, an organization which finds itself in the current position of requesting a permit fee increase in order to keep up with costs – despite increased user safety, improved trail conduct, safer trails and fewer court cases – operating costs continue to rise.

Unfortunately with funding responsibility there is not a corresponding capability to influence cost and operating conditions, nor the ability to absorb sudden negative cost burdens. The difficulty is made worse when one considers the legislative, policy and other processes that NGO's face in trying to "operate a recreational trail." **Currently the Ministry of Citizenship through its funding to the Ministry of Health Promotion is studying tort reform and volunteer liability issues; however we may need funds from Finance to implement recommendations.**

By their very structure as not-for-profit charitable organizations the No's are not allowed to retain earnings, nor are they able to create the surpluses necessary to weather unforeseen, unstable economic circumstance.

If a new groomer is needed, it must be purchased through fund raising. If the trail needs a bridge the group must source the community for funds. This is inefficient and in the case of large capital items impractical. The benefits of providing community leadership and community resorting to community projects are lost in economic downturns. They are increasingly lost when pressing maintenance costs outstrip adequate revenue generation.

The OTC recognizes the importance of this principle of self-reliance that has fostered and maintained the recreational trails community for 50 years. Unfortunately complex circumstances has driven costs to the point where our traditional self-reliance and community supports are not enough to sustain our operations.

## **5.2 Escalating Insurance Costs**

Much has been written about the insurance cost crisis that faces Ontario trails operations. In short, poor economic markets, September 11, and costly litigation of cases has caused escalating insurance costs. Our increasingly litigious society and the increasing prevalence of lawsuits in the recreational sector have caused potential claims to amount to real costs for insurance.

The members of the OTC report that their actual claims for serious actual injury are low compared to use rates - .0001%. Doug Wyseman in his October 2002 Insurance report commissioned by reports that some organizations such as OFSC have seen its trail insurance liability increase ten fold in two years. (From \$300,000 to \$3,000,000) According to Wyseman, "insurance costs are also expected to increase another 30% over the next year as well."<sup>xvi</sup>

This OTC acknowledges this type of insurance increase is not uncommon in the motorized trails sector, where the premiums for ATV clubs, Trail Bikes have seen at least a tripling in premium in the last year. This trend continues and has now spread to the non-motorized trail sector as well.

Many ~~traditional~~ hiking and cycling trails, such as the Bruce and Oak Ridges Moraine trails intersect roads on their 2,000 kilometre length. Despite the fact that the trails are non-motorized, this intersection of roads has caused the insurance industry to re-classify these

trails as motorized. This resulted in a 3,000% increase in insurance from 2004 to 2005. Voluntary community trail organizations providing non-motorized trails saw their rates escalate from \$1,500 to \$30,000 per annum.

If insurance and liability costs are not controlled Ontario stands to lose not only the UNESCO recognized Bruce Trail, but the significant trails within and without the protected GTA Greenbelt, as well as other trails of this non-motorized capacity, or nearly 22,000 kilometre of non-OFSC trail.

This typical insurance scenario for the non-for profit trail organization is putting the trail industry at risk. This is not an idle statement. For thirty years snowmobiles and ATV's have been utilized to create and maintain trails. These means related economic benefits, to Northern Ontario for example, are at risk if these NGO organizations cannot fund their insurance.

No insurance, no board of directors. No board of directors, any club or NGO. No NGO, No trail development and maintenance mean any open trails. No open trails, no economic benefit (2.5 billion – 5 billion+). Is this an extreme scenario? No. However since first reported in 2003 to the Pre-Budget Committee the scenario has become more extreme.

Municipal and public trail operators are also facing the same economic funding and liability concerns the No's face. The ability of all trail management organizations to transfer or self manage their liability issues is very difficult. The ability to offset costs by raising the deductible or reducing insurance costs by improving trails safety practices is not offsetting the total cash flow required to manage the insurance bill.

Another equally disturbing scenario possibly reducing trails operations is restricted access to existing trail lands. Trails exist on lands not necessarily owned by the managing group. Such is the case with publicly managed trails in public park systems.

However NGO's (OFSC, OFATV, and HO) operate trails in large part through leasing agreements with landlords. If landlords allow a trail through their property due to good will, belief that it enhances their property value<sup>xvii</sup> or because they are also a trail user, they are becoming less likely to open a trail when they are increasingly wary that they are liable for accidents on their property.

### **5.3 Policy and Process Impediments**

The OTC recognizes that there are a number of policies and process problems that are impediments to the long-term economic sustainability of trails. Of major impact is that there are at least 9 different Provincial Ministries and 3 Federal Ministries governing in part the affairs of trail organizations. These include:

- **Provincial:** Ministries of Health Promotion, Agriculture, Transportation, Tourism and Recreation, Municipal Affairs and Housing, Northern Development and Mines, Industry and Opportunity and Finance.
- **Federal:** Oceans and Fisheries, Heritage and Culture, Agriculture

In response to the complex legal and ministerial relationships it faces, the OTC Participated fully in the Ontario trails Strategy development sessions 2004-05. Through 9 consultation sessions the OTC requested access to and leadership with an inter-

Ministerial working group on trails strategy implementation, looking to define policy and enact problem solving processes for trails. Two fundamental mission statements evolved from the meetings<sup>xviii</sup>:

- Trails as they exist are the fruit of volunteer commitment, passion, and monumental labors of love. In recent decades, financial investment by all levels of government (Municipal, Provincial, and Federal) has magnified this enormous volunteerism. Today in Ontario...we have trails diversity and unique infrastructure singular in the world. Trails are the fabric of our history, the weavings of our cultures, blending of our paths, commerce and wealth.
- **Ontario Trails Strategy allows for a chance to capture these beliefs:** This entire inventory is uncoordinated; undocumented untended and lies fallow. We are at a time when the riches trails embody must be recognized, identified, treasured for the values they represent to us all, in their material, aesthetic, emotional, physical and spiritual aspects.

The workshop studied and identified particular problems facing the trail community. These include, but are not limited to:

- **There is no provincial organizational structure managing trail management issues.- OTCC needs working groups**
- Existing structures are fragmented or divisive, operating in isolation. We do not effectively share examples of trail organizations with the OTC, OFSC and OFAH, whose policies and programs could be a model for other NGO's to emulate.
- Lack of local funding, or provincial funding via a provincial user fee

The problem with a lack of clear policy direction is that non-for-profit organizations in the trail sector are spending an inordinate amount of time, resources and energy trying to create business relationships with too many government departments.

The economic situation is that multiplicity in government just compounds waste in a trails sector that cannot afford it.

#### **5.4 Legislation and Regulation**

There are at least 18 pieces of legislation administering those persons, actions, agencies, operations and governments involved in recreational trails. These include but are not limited to:

<b>Legislation</b>	<b>Effect</b>
<b>Occupiers Liability Act</b>	Details duty of care of occupier, i.e. ensure those on or using your property are reasonably safe
<b>Trespass to Property Act</b>	Details the level of responsibility person entering property has – assumes some risks through entry
<b>Motorized Snow Vehicles Act</b>	Reduced landlord duty when person enters property on snow-mobile or is towed by a snow mobile
<b>Off-Road Vehicles Act</b>	Reduced duty of care when vehicle entering property is an off-road vehicle

<b>Negligence Act</b>	Leaders of trail outings, or owners of trails, are expected to exercise skill and judgment in providing the service, assessing participant skills and experience, choosing sustainable trails, warning of known hazards, acting to prevent foreseeable accidents, if not, negligence may be prescribed.
<b>Highway Traffic Act</b>	Regulates highway standards, some trail routes affected by this standard
<b>Municipal Act</b>	Section 308 allows the Municipality to pass by-laws regarding use of Sidewalks and highways. Holds Municipality liable for repairs
<b>Tenant Protection Act</b>	Paths, walkways and driveways must be “maintained to provide a safe surface for normal use
<b>Income Tax Act</b>	Determines tax rates for charities
<b>Charitable Corporations Act</b>	Details tax obligations of charitable and not-for-profit organizations
<b>Canada Transportation Act</b>	Regulates standards related to use of trail, other vehicular use Standards.
<b>Ontario Heritage Act</b>	Preserve and protect areas deemed to be of historical, cultural value,
<b>Crown Forest Sustainability Act</b>	Regulates the maintenance and protection of Crown lands and forests, Which may impact or utilize a trail to enact?
<b>Mining Act</b>	Regulates use of roads leading into and used in mining, may
<b>Provincial Parks Act</b>	Regulates operation of public parks, which may have a trail
<b>Public Lands Act</b>	Regulates use of public lands, which may be used for trail purposes.
<b>St. Lawrence Parks Commission Act</b>	Regulates creation and implementation of laws designed to protect Scenic areas along the St. Lawrence river.

Non-profit organizations have great difficulty operating in a sector that involves so many Pieces of legislation governing, the design, implementation and on-going operation of a recreational trail.

It is difficult to ascertain the risks one undertakes in becoming a board member. What is the level of responsibility that rests with which party in the event of an accident or other lawsuit? What obligations do us, or I, have in operating or managing a trail? To which piece of legislation am I liable?

The time and effort to train and develop trail users, promote safety and trail security, mend fences, build right of ways, negotiate land use agreements, fundraise, report to accountability organizations – this level of responsibility can make it very overwhelming to the volunteer board member, making it difficult to recruit and then retain these persons. Without board members trails will close.



## **6) Solutions**

### **6.1 Stabilize Funding- More grant formats announced – Trails 4 Life, Community in Action Fund, Infrastructure development (COMRIF) and Celebrate Ontario**

It would be helpful if the Pre-Budget Consultation Committee carried forward to the Minister of Finance the imperative necessity to stabilize organizations at risk in the not-for-profit sector. By enacting other financial and funding opportunity to the non-profit sector the Minister of Finance would aid the trails NGO's as well. This could be achieved by:

- Enhancing dollars granted to provincial granting organizations, which could mean additional dollars to Trillium Foundation for re-distribution.
- Increase the deductible proportion of donated income dollars from 17% to 25% for trail organizations, this would increase donations sector wide.
- Continue to create an economic environment in the province that sees a strong economy so those trail users have the capability to access equipment and travel to trail destinations. Offer incentives to trails industry marketers to enhance the profile of trails and trails related activities.
- Fund Processes that would study Amendments to the Negligence Act such that volunteer organizations are subject to lower duties of care.<sup>xix</sup>
- Provide economic incentives to the Eco-industry and green industries so those municipalities can work with leading edge companies to better plan and implement trails in urban environments.
- Utilize Ministry of Health dollars to educate the public to the health benefits of an active lifestyle that includes trails.
- Fund the Ministry of Tourism such that it co-ordinates and develops a coordinated network of trails, such as the OTC TTN, so that it is easy to access and use by all Ontarians.
- Fund and promote accessible funding from the MTO such that it examines the creation of trail routes in conjunction with other structural or road developments.
- Fund the Creation of a Standing Committee of the Ministry of Finance dedicated to examining and solving the problems of the not-for-profit sector.

### **6.2 Control Insurance Costs- Study currently before Ministry of Health Promotion for Funding**

This problem would be addressed immediately by instituting a financial rebate mechanism similar to the one offered to customers of Ontario Power Corporation. In the event that a not-for-profit or trails agency has suffered a three times or greater insurance cost increase in a period of 18-24 months the government would provide a yearly cost recovery of 75% of the total cost of the new premium.

This would allow for the not-for-profit organization to continue working within its existing structures to enact economies for insurance, while reducing the crisis environment that currently exists.

The rebate would allow for immediate sector stabilization ensuring that recreational activities and recreational trail earning continue to accrue, while allowing the sector to engage in best practices and other options to reduce costs or create funding sources for insurance.

This would also allow the motorized trails community the opportunity to educate the other sectors on positions and practices it may need to enact in order to prepare for the future. Enacting such a process would also prepare structures and mechanisms within government in the event that the insurance crisis spills into the non-motorized and municipal communities.

### **6.3 Policy Adjustment and Process Enactment**

There are a number of significant policies and process changes that could be made that would have profound operational impact on the trails industry. They can be achieved through promotion and enactment of specific strategic planning financial supports. These changes would include the policy and process recommendations needed to enact the changes recommended in the Funding Stability, Insurance Control and Legislation sections already discussed.

Generally these policy and process changes would fundamentally secure safer trails operations and greater trails efficiencies due to:

- Enhanced coordinated communication amongst trails stakeholders.
- Better early recognition of issues facing trails operators.
- Allow for better planning, maintenance and supervision of trails.
- Utilization of best practices across the trails industry.

The OTC and its government partners have accomplished most of the groundwork. These specific policy and process changes would include the recommendations of the Ontario Trails Strategy development sessions 2004-05 included 12 significant policy decisions on trails challenges all of which would be added by:<sup>xx</sup>

➤ **Establish a Trails Task Force – Created the Ontario Trails Coordinating Committee:** The provincial government must establish a task force to determine a management authority, a policy framework, revenue sourcing and an accountability/responsibility structure for the capitalization, maintenance and operational processes involved in trails development and utility.

**Proposed Action:** Fund the enactment of a strategic planning committee with appropriate resourcing such that it can operate a trails task force.

➤ **Streamline Relationships:** A ‘one stop shop’ idea in-which the provincial government assist in the creation of an organization for trails development, maintenance and operations legitimacy where resources can be found to research and resolve problems, issues and barriers to efficient and effective trail networking.

**Proposed Action:** Financially support the Ontario Trails Council to move forward with the government as its ‘One stop shop’ party. The OTC would specify that the ministerial group deal with one umbrella organization partner from the trails sector – OTC. This would help the government capture its goals of recommendation 6 of the Workshop: The provincial government recognize and use the resources of the wide spectrum of trails NGO’s for a variety of planning, environmental scanning, trail management and development issues.

➤ **Develop a Trails Institute:** Or a so named Institute of Ontario Trails is established as soon as is practicable.

**Proposed Action:** Funding a strategic planning process that includes, as its mandate the development of a trail institute would begin this process.

We are reporting these to the Pre-budget Finance Committee because if enacted they would allow OTC members and government departments achieve some soft economic gains, which, while not alleviating the economic crisis of some OTC members, would work toward a stronger trails industry as a whole.

## **6.4 Legislation Changes**

These are proposed legislated changes designed specifically to reduce the liability facing landowners, trail managers and operators thereby reducing costs related to risk of litigation.

The OTC has reviewed his recommendations and with his permission is re-printing them here for the sub-committee. The OTC has added its own inferences of potential economic benefits to these changes as a sectional summary statement.

**6.4.1) The Occupiers Liability Act** - is amended to clarify certain terms thereby clarifying its intent for judges and litigants. It should:

- Clearly define recreational activity and recreational trail to mean both being on a trail and accessing a trail from nearby lands, related recreational uses such as canoeing or access points, and mixed uses of trails for both recreation and transportation
  - Clearly define fee, benefit and payment to ensure that a landowners, occupier's or trail organization's receipt of payment for trail maintenance, administration, membership, insurance premiums, voluntary donations and the like for non-profit purposes cause the occupier to be subject to general duty of care.
  - Specify that trail user voluntarily assume all risks when using a trail, regardless of whether or not the person is on the trail
  - Specify that no claims for damages may be made by a recreational trail user in respect of property damage or bodily injury resulting from a defect in construction, improvement, signage or maintenance of a trail which meets prescribed or established sector standards (except under current limitations where user fees are charged or living accommodation is provided).
  - Delete the reference to reckless disregard, since it is difficult to determine and complicates negligence law with a criminal concept.
  - Expand the duty of care to include public parks predominately used for open space purposes, and physical recreation facilities with improvements that require regular maintenance for safe use.
  - Expand the higher duty of care to include keeping visitors safe from the presence of non-recreational physical structures or improvements made in areas for visitors.
- ✓ **Economic Benefit to Trails Organizations** – these changes in clearer duty of responsibility will enable trail managers to correctly assess the potential liability they face. The likelihood of closure is diminished due to lawsuit or other actions.

**6.4.2) The Trespass to Property Act** - should be amended to emphasize the seriousness of trespassing as an offence and its impacts on the willingness of private landowners to provide public access. Amendments should include:

- Raising minimum fines and damage claims to \$10,000
  - Add authority for the judge who convicts a person under the act to prohibit entry of that person to a specific or class of properties or geographical area, the violation of which would result in contempt of court and other penalties
  - Provide that access to private lands adjacent to trails is presumed to be prohibited unless otherwise granted
  - Provide that occupiers of lands, which are the subject of trespassing charges, would be permitted to provide the court with a statement as to the impact of the trespassing on the occupier and his or her use of the property.
  - Add additional enforcement measures to address the difficulties of identifying and apprehending trespassers.
- ✓ **Economic Benefit to Trails Organizations:** ensures a more level playing field when issues of responsibility for acts committed on trail lands are questioned, therefore the likelihood of trail closure is diminished due to diminished sole liability in event of an accident.

**6.4.3) A New Act – The Ontario Trails Act** - A new Ontario Trails Act and complementary amendments should be developed to incorporate elements from other jurisdictions. The Trails Act and amendments should include:

- Designation of trails on public lands, waterways, and on private lands with consent
  - Posting of trail signs
  - Land securement for trails e.g. purchase, donation, and permanent access agreements
  - Protection of scenic and natural features along trail corridors,
  - Research and education programs
  - Responsibilities and agreements for government leadership, administration and maintenance of trails.
  - Regulation and enforcement of trail uses with consideration for traditional use
  - Prohibitions against alcohol consumption, creating disturbances or destroying property on or near a trail, with related funding of enforcement and policing mechanisms, outside of the non-profit sector
  - Regulation of trail management standards,
  - Broad operational enforcement powers.
  - Tort reform coverage implemented via work of MCI, MHP and AG
- ✓ **Economic Benefit to Trails Organisations:** ensures clearer lines of accountability and steering for trails related issues. Ensures that the insurance industry is aware of the standards of governance and professional steering of the trails industry. This should reduce the level of risk on trails.

**6.4.4) The Ontario Heritage Act** - should be amended to permit not-for-profit charities and other identified organisations to acquire trail access, scenic and conservation agreements over private lands and registers them on title with the landowners consent. Further amendments should streamline and strengthen easement procedures.

- ✓ **Economic Benefit to Trails Organizations:** ensures a long-term sustainability of access to the important trail requirement, land. It also ensures that this accessibility is not a burdensome cash flow problem as the likelihood of future low-cost supply is ensured. It also works to benefit landowners looking to provide land to parks or trails.

**6.4.5) The Provincial Parks Act and the Class Environmental Assessment for Provincial Parks** – should be amended by Ontario Parks to designate a new class of Park a “Corridor Class” or “Trails Zone”, that would speak to the unique management of trail, forest and water adjacent to trail right of ways.

- ✓ **Economic Benefit to Trails Organizations:** ensures that there is recognition that Trail Economic Zones are valued and declared. Works to ensure that there is a class of park devoted to trails issues within the Provincial Parks system. This will ensure resources of all types; technological, human, financial are supplied to maintain this important park sub-system.

**ADJUSTED 6.4.6) The Municipal Act, 2007** – should be amended to permit municipalities to authorize the use of unopened road allowances for recreational trails and natural amenities without the necessity to meet road standards.

- ✓ **Economic Benefit to Trails Organizations:** reduces duty of care on a trail operator.

**ADJUSTED 6.4.7) The Line Fences Act** – should be amended to clarify the provisions in Section 20 along the lines of the Line Fence Referee decisions to enable the setting of reasonable fencing standards by municipalities. I.e. Fencing requirements could be eased where the likelihood of disruption to landowner's property and the risk to trails users from modified standard fencing are reduced.

- ✓ **Economic Benefit to Trails Organizations:** ensures a reduction in trail maintenance costs without compromising safety. Eliminates the inefficiencies inherent in a blanket policy provision.

**6.4.8) Public Lands Act and the Crown Forest Sustainability Act** - these acts should elaborate and consolidate provisions for trails. This would require that appropriate planning; safety, environmental, management and public consultation processes are in place during the trail development process.

- ✓ **Economic Benefit to Trails Organizations:** ensures that there are planning standards in effect that draw upon known professional expertise in the implementation of any trail system. This will ensure that known standards are enacted that reduces liability and insurance costs.

**6.4.9) Income Tax Acts** – should be amended to permit landowners that donate a trail easement or a long-term trail access agreement to receive a charitable tax credit for the agreements appraised value.

- ✓ **Economic Benefit to Trails Organizations:** encourages the donation of lands, but also acknowledges the act of donation in that if the property were sold it would garner a probable market rate. Landowners should receive fair market value for the donation. This donation would also aid in the equity position of the charity issuing the receipt.

**6.4.10) Assessment Act, Provincial Land Tax Act, Municipal Act** – should be adapted or developed to provide tax relief for landowners, including landowners who permit trails or commit to long term trail, scenic, conservation or other easements on their properties.

- ✓ **Economic Benefit to Trails Organizations:** encourages the donation of lands. The Acts should also develop additional equity provisions that allow trail management organizations to benefit from the body of land they are using in trust. This would allow non-profit organizations to benefit from other positive aspects of other legislation, i.e. Environmental Policy, Health Benefits etc; these could accrue to the trail organization to offset operating costs.

## **Endnotes**

- i <sup>Canadian</sup> **Economic History**, Harold Innes, McClellan and Stewart, 1978, Chapter 2.
- ii Northern Ontario Economy ± **OTC/OFSC estimate**, December 2002.
- iii Southern Ontario Economy - **OTC estimate** with input Hike Ontario, OFSC, OEF, December 2002.
- iv **Go for Green ± The Economic Benefits of Trails ± Trail Monitor 1** page 2
- v **Niagara Trails Costing**, Niagara Region Cycle Trek ± George Nicholson Administrator, 2005.
- vi **Transportation for Liveable Communities - TLC - City must stop spinning its wheels ± Hamilton Spectator**  
One kilometer of multi-use bike path, like those found currently in Red Hill Valley, the Chedoke and the Hamilton to Brantford Rail Trails costs as little as \$30,000 per kilometer, whereas road re-surfacing rings in at \$150,000 per kilometer per lane (five times as much), and construction of one kilometer of road costs \$540,000 per lane (18 times the cost). (Hamilton Roads Department). Randy Kay, Author.
- vii **Go for Green ± The Social and Economic Benefits of Trails ± Trail Monitor 2** page 3
- viii **Ontario Trails Strategy** page 23
- ix **User Funding Criteria and Proposed Strategy for Sustainable Trails in Ontario. Report to the Board of Directors of the Ontario Trails Council. Sustainable Funding Committee** August 1999, Pg. 5
- x Chart number formulae ± established based upon verbal estimates reported to the OTC and information from Hike Ontario based upon; **"Economic and User Survey of the Bruce Trail"** Trent U, 1997.
- xi **A Business Case Study for Trail Development in the Algoma & Area District, Phase 1 and 2 Report**, December 2002, Chapter 8, pgs 92 and 93
- xii **Go for Green ± The Economic Benefits of Trails ± Trail Monitor 1** page 3
- xiii **Ontario Trails Council User Fee Working Group** August 1999, Pg. 5
- xiv **Ontario Trails Council User Fee Working Group** August 1999, Pg. 5
- xv **User Funding Criteria and Proposed Strategy for Sustainable Trails in Ontario. Report to the Board of Directors of the Ontario Trails Council. Sustainable Funding Committee** , page 20
- xvi **Ontario Trails Council Insurance Review** ± Understanding and dealing with the challenges of insuring trails in Ontario. Doug Wyseman Consultant/Author, November 27, 2002, page 2
- xvii **Go for Green ± The Economic Benefits of Trails ± Trail Monitor 1** page 5
- xviii **Trails the Path of Life. The Final Report of the Trails North Workshop**, March 27-28, 2001 symposium document, page and the **Consolidated Provincial Trails Policy report**, May 2000, pages 6 and 7.
- xix **Trail Liability and Other Reforms in Ontario: A Discussion Paper**. Ian Attridge for the Haliburton Stewardship Council, October 2002, draft paper only, pages 33,34.
- xx **Trails the Path of Life. The Final Report of the Trails North Workshop**, March 27-28, 2001 symposium document, and the **Consolidated Provincial Trails Policy report**, May 2000 pages 8, 9, 11.

## **APPENDIX 1**

### **Summary of Recommended Legislative Changes**

- 1)** Streamline legislative and regulatory trails governance by creating an Ontario Trails Act.
- 2)** Study and implement aspects of the New Brunswick, PEI, Alberta, Nova Scotia trails Acts. In these acts revenue support and legislative change work together to maintain the trails sectors.
- 3)** Amend legal processes such that contingency lawsuits are no longer allowed.
- 4)** Create a Trails Task Force, out of the Ontario Trails Strategy to examine the best aspects of other jurisdictional trails acts and incorporate them into the New Ontario Trails Act.
- 5)** Reduce the operational liability that trails operators and landowners face through the Ontario Trails Act or amendments to the Negligence, Occupier Liability, Trespass to Property, Line Fences Acts.
- 6)** Enshrine in regulation and process the requirement of a strategic planning process for trails that involves government and the OTC.

## **APPENDIX 2: Benefit of Investing in Trails**

**1) Off set Insurance Crisis Costs:** For a three year period the government lead Ministry for trails offsets escalating insurance costs such that the costs are borne:

YEAR	GOVERNMENT	Cost	NGOs	Cost
1	75%	3.75 M	25%	1.25M
2	50%	2.5M	50%	2.5M
3	25%	1.25M	75%	3.75M
4	0	0	100%	5M
<b>Total</b>		7.5M		7.5M

Under this plan the government would subsidize trails operations through the current crisis, such that these organizations have the ability to build in revenue adjustments or other cost cutting strategies that allows them to manage the crisis. Total Investment:

### **2) Cost of not investing**

Trail Organization	Snowmobiles ATVs	Hikers	Urban Pedestrian	Cyclists
<b>Value with subsidy to economy</b>	1.2 billion	310 million	440 million	46 million
<b>Value to economy without subsidy</b>	0	250 million	400 million	42 million
<b>Net Loss By type</b>	1.2 billion	60 million	40 million	4 million
<b>Total</b>				<b>1.34 billion</b>

### **3) Benefit of Investing in Trails Processes:**

Clearly through years of study, from many Ministries including the MNR, Tourism and Recreation et al, via earlier governmental direct responsibility (1973-79) the OTC has been an integral component of what makes trails work in Ontario. At a time when the industry itself and the NGO sector supporting the 2.5 billion trails economy, the OTC and its members are requesting the government fund, arms length sustaining annual funding @120,000 to our organization. For \$120,000 per year the government and Ontario will receive:

- i)** Improved strategic planning will reduce trails liability such that effective standards are working to effectively reduce our liability and these standards are recognized across the sector by the trails organizations and the insurance industry.
- ii)** Direct management with the Lead Ministry reduces systemic inefficiencies of many different Ministries involved in the trails business.
- iii)** Improved strategic planning would allow for adequate planning such that issues like the voluntary sector insurance crisis could have been foreseen and managed more effectively.
- iv)** Improved strategic planning will allow organizations and government to develop a 5 and 10 year plan so that there is an effective idea of where trails will be, such that the significant economic impacts of this 2.5 billion dollar industry are maintained.
- v)** Improved and supported strategic planning processes will allow Ontario to develop effective rural economic development around trail economic corridors.



