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# Risk Management



*Prepared by the*  
Risk Management Committee  
Nova Scotia Trails Federation



*Safer by Design*



## What is Risk Management

**Risk management ensures that an organization identifies and understands the risks to which it is exposed.**

**Risk management also guarantees that the organization creates and implements an effective plan to prevent losses or reduce the impact if a loss occurs.**

# A Good Risk Management Plan

Answers these three questions:

- **What can go wrong?**
- **What will we do, both to prevent the harm from occurring and in response to the harm or loss?**
- **If something happens, how will we pay for it?**



# Role of Insurance in Risk Management

- Insurance is a valuable risk-financing tool.
- Few organizations have the reserves or funds necessary to take on the risk themselves and pay the total costs following a loss.
- Purchasing insurance, however, is not risk management.
- A thorough and thoughtful risk management plan is the commitment to prevent harm.



# Why Manage Your Risk

- People are now more likely to sue. Taking the steps to reduce injuries could help in defending against a claim.
- Courts are often sympathetic to injured claimants and give them the benefit of the doubt.
- Organizations and individuals are held to very high standards of care.
- People are more aware of the level of service to expect, and the recourse they can take if they have been wronged.
- Organizations are being held liable for the actions of their employees/volunteers.
- Organizations are perceived as having a lot of assets and/or high insurance policy limits.



# Risk Management Policy



**NS Trails has developed a risk management policy to assist you in managing risk on your trail and within your organization**



# NS Trails Risk Management Policy

- Developed to help our member groups with guidelines for risk management
- We recommend members review the policy and associated documents and follow them
- Without a standard of our own we run the risk of a standard being imposed upon us in court

# Follow Guidelines

- **follow the guidelines and construction standards for the construction of multi-use trails on the abandoned rail corridor as set out by the Nova Scotia Department of Lands and Forestry (DLF)**
- **follow the guidelines set out by Nova Scotia Environment and exercise sound environmental practices when developing and managing trail.**
- **follow the guidelines established in the trail construction manual, *Developing Recreational Trails in Nova Scotia*, as posted on the NS Trails website [www.novascotiatrails.com](http://www.novascotiatrails.com) when planning, constructing, signing, maintaining and managing trail in Nova Scotia**





# Safety

- **volunteers who work on trails should be informed of their risks, understand the risks they will assume and endeavor to mitigate those risks through safe work practices. When in doubt about the scope, safety or appropriate safety protocols associated with a task they should seek professional advice or guidance.**
- **employees and contractors working on trails are to adhere to safe practices as dictated by the landowner and as stipulated under the Nova Scotia Occupational Health and Safety Act.**



# Permits and Insurance



- **prior to carrying out any work on your trail all relevant permits must be in place.**
- **prior to engaging a contractor ensure the contractor has provided your group with proof of General Liability Insurance, Motor Vehicle Liability Insurance and a letter of good standing with Workers Compensation.**

# Reporting Requirements

- **notify NS Trails if your trail group ceases management of a trail**

**GENERAL INCIDENT OR LOSS REPORT**

Please call Rick Journeau at (902) 487-0951 to report incidents as soon as you learn one has occurred. This form must also be completed with facts relating to the incident and sent immediately by email to [valleytrailscoordinator@gmail.com](mailto:valleytrailscoordinator@gmail.com) (Backup contact: Beth Patillo, (902) 679-7715, [bethpatillo1@gmail.com](mailto:bethpatillo1@gmail.com))

Name of Claimant / Driver:	Phone (W):	Vehicle Type:	Plate #:	
Master License #:	Phone (W):	Make/Model:		
Date of Birth:	Address:	OHV Registration:		
Reported by:	Role:	Date Reported:		
Trail Group Name:	Region:	Witness Name:	Witness Phone:	
Town / City:	Witness Address:	City	Prov.	Postal Code
<b>INCIDENT INFORMATION</b> Check the appropriate box. Fill out the incident information and, where applicable, the corresponding section below.				
<input type="checkbox"/> Loss or damage to property	<input type="checkbox"/> Bodily injury to others	<input type="checkbox"/> Property damage to others	<input type="checkbox"/> General Incident	
Location of Incident:	GPS Coordinates:	Nearest Road or Community:	County:	
Date of Incident:	Date of Incident:	Were the police or DNR contacted?	Reported to Police / DNR:	File No.:
<input type="checkbox"/> Police	<input type="checkbox"/> DNR	<input type="checkbox"/> NO		
Enforcement Officer's Name & Badge Number:	Detachment or region:	Telephone:		
<b>DESCRIPTION OF INCIDENT / PROPERTY DAMAGE</b> This section must be completed. Provide a general outline here. Describe more fully in a separate memo, if information is readily available.				
Name of Owner of Damaged Property:	Nature of Damage:			
Address	Town / City	Province	Postal Code	Phone:
Insurance Company:	Policy No.:			
Name of Injured Person:	BODILY INJURY TO OTHERS			
Address	Town / City	Province	Postal Code	Home: Work:
Note: Simply collect the information above to the extent possible. Do not interview the claimant. The insurance adjuster will conduct all investigations. Do not delay submitting this form due to incomplete information.				

- **report known incidents that may have resulted in injury or property damage on trails to NS Trails immediately according to the NS Trails incident reporting procedures.**
- **complete the member information form circulated annually by NS Trails and notify the NS Trails office of any subsequent changes to the Executive and group contact information.**

# Occupier's Liability

- Occupier's Liability arises when a hazardous aspect of the property (natural or man-made) causes damage or an injury.
- The scope of Occupier's Liability has grown in Common Law to include cases where injury or harm is caused by hazardous activities done on the property and the actions of third parties.
- By definition, the occupier of a property is the person, or organization, who is in control of and responsible for the condition of that property through inspection, maintenance and repair.
- It is not necessarily the owner, nor is it limited to one person. In general, occupiers are responsible for the condition of the property, activities occurring on the property, and actions of third parties on their property.



# Occupier's Liability

## If The Visitor is a:

- Trespasser on the trail without expressed or implied permission
- Licensee on the property with permission of, but no benefit to the occupier
- Invitee on the property with permission and of benefit to the occupier
- Contractual Entrant having paid to be on the property

## The Occupier Must:

- **Not act in reckless disregard for the safety of the visitor or intentionally cause the visitor harm**
- **Take reasonable measures to protect the visitor from hidden or unusual dangers the occupier knows about**
- **Take reasonable measures to protect the visitor from hidden or unusual dangers the occupier knows about**
- **Take every reasonable measures to protect the visitor from any foreseeable danger**



# Standard of Care on Trails

**Trail developers/managers owe a duty to all users to ensure they are reasonably safe while on the premises.**

**Reasonableness is determined by:**

- 1. Common sense**
- 2. Published standards**
- 3. Unpublished standards**
- 4. Case law**

**These duties apply to:**

- condition of the premises**
- activities on the premises**
- conduct of third parties on premises**



# Children and Negligence

**Children are owed a higher standard of care.**

- **This is known as the prudent parent test, which requires examining issues about children's safety in a way that would reflect the behavior of an average prudent parent.**



# Prudent Parent Test

Consider the following perspectives to test the standard of care required for children:

- **What activities, conditions and exposure would an average parent/guardian deem acceptable for their child?**
- **Is the well being of young participants/users respected to the degree that an average parent/guardian would follow?**

Provided the child is informed of or able to understand the risks, the scope and responsibility inherent in the activity, he/she may be treated as an adult therefore the prudent parent test would not apply.



# Volunteer Protection Act



- Only protects an individual volunteer
- Does not protect your group or organization
- Does not cover defence costs
- Has never been challenged



## Identifying Risks

- Identify the risks to users that are inherent to the trail or trail experience. Consult experts such as experienced trails developers, parks and recreation developers, environmental planners, other trail groups, and trail user groups.
- Assess such components as:
- uneven tread – low headway
- intrusions to corridor – shared use
- cliffs – rivers
- wilderness

- Establish and implement mechanisms to limit the negative effects of these risks:
- Build trail to standards that ensure safety of users
- Establish user guidelines
- Patrol regularly to assess and manage trail and record findings
- Post and maintain ample well-placed cautionary and way-finding signage



## Mitigating Risks

# Crisis Management Plan

Develop and implement a crisis management plan that considers:

- Insurance coverage
- Rescue/evacuation tactics, resources and plans
- A reporting mechanism for documentation
- Consult experts such as: fire chief, EMS, search and rescue teams, wilderness first aid providers (e.g. Red Cross, ski patrol), outdoor leadership program instructors and longstanding organized trail operators.



# Mitigating Your Risk

- Purchase insurance to transfer risk (Plan for financing insurance)
- Examine your risks and put policies in place to mitigate risks
- Follow the policies and document the actions you take to correct potential issues or hazards



# Assess Your Risk

- How likely to happen
- How severe if it happens
- How severe to my group

		RISK ASSESSMENT MATRIX			
		Catastrophic (1)	Critical (2)	Marginal (3)	Negligible (4)
PROBABILITY	SEVERITY				
	Frequent (A)	High	High	Serious	Medium
Probable (B)	High	High	Serious	Medium	
Occasional (C)	High	Serious	Medium	Low	
Remote (D)	Serious	Medium	Medium	Low	
Improbable (E)	Medium	Medium	Medium	Low	
Eliminated (F)	Eliminated				



# Inspections

If timely action is not possible, effort should be made to provide adequate warning for trail users that an issue exists or post the trail closed to public use until further notice (whichever is appropriate in the circumstances). Any trail closures are to be reported to the NS Trails office and the landowner.

Perform trail inspections a minimum of twice a year, and after each significant weather event, noting deficiencies and acting upon those noted.



# Assessing Risk on My Trail

**Did I create a risk while trying to mitigate another?**



**Have I catalogued my signage?**



# Assessing Risk on My Trail

**Have I ensured and recorded specification compliance?**



**Does my signage meet a recognized standard?**



# Assessing Risk on My Trail

**Does my trail present challenges for the specified users?**



**Am I thinking about how my users are using my trail?**



# Assessing Risk on My Trail

**Do I think through solutions to vandalism and security?**



**Am I in over my head and what do I do next?**



# Assessing Risk on My Trail

**Do I connect with my users while I am on the trail?**



**Do I address and note surfacing and maintenance issues before they become huge?**



# Assessing Risk on My Trail

**Do I communicate to users what they might expect on my trail?**



**Does my trail look and work the same year around?**



# Assessing Risk on My Trail

**Am I checking my trail at the right time of year to ensure issues are addressed?**



**Are others doing things that might increase my liability exposure?**



# Assessing Risk on My Trail

**Do I consider that my trail users are from somewhere else?**



**Do I inspect my trail the way people use my trail?**



- **General Liability Insurance**
- **Directors and Officers Insurance**
- **Property Insurance**
- **Accident Insurance**

## Types of Insurance



# General Liability Insurance



- **GENERAL LIABILITY INSURANCE - (Joint Policy with SANS - Snowmobilers Association of Nova Scotia)**
- Provides a defence should a claim of injury or property damage be made against NS Trails and our named insureds
- Groups are not to contact the insurance broker or company directly but instead work through NS Trails

- Trail insurance is not just for when you open a trail
- You have liability risks as soon as you are seen as managing land
- Before you begin signing landowner or lease agreements you should apply for trail insurance. The base fee is \$300 plus \$10 per kilometre of trail you manage.
- An application for General Liability Insurance Trail Insurance is available on the members-only password-protected section of our website

## General Liability Insurance



# Organizational Insurance

- **Community-base trail group members (without land agreements or trail) pay \$100 for insurance that covers the declared activities of their organization. Should you be asked for proof of insurance when you are organizing an activity (like fundraising at a mall) you may request an insurance certificate from NS Trails.**
- **It is important not to assume an activity you undertake is covered by this policy.**
- **Each named insured should provide a list of their declared activities to NS Trails and if you add new activities to your organization you should check with us to ensure they are covered.**

# GL Policy Exclusions

- **It is important to review your certificate of GL insurance each year and ensure you understand the exclusions in the policy**
- **No named insured will sell or dispense alcoholic beverages**
- **excludes any loss, cost of expense arising directly or indirectly out of the organization, sponsorship, and/or administration of any motorsport of speed competition.**
- **excludes any and all liabilities related to specific activities involved directly in the conduct of off highway vehicle instructor training courses**
- **exclude any and all liabilities related to the existence, use, ownership or operation by the insured or by others of any off-highway vehicle closed course or similar facility**



# Named vs. Additional

## Additional Insured

- only receives defence costs
- paid separately under the policy and are not part of the 5 million dollar aggregate we have.
- It has nothing to do with the settlement of a loss.
- allows for a single investigation and defence costs.

## Named Insured

- has all the rights under the policy
- Community Groups are named insureds under our group GL policy



# Adding Additional Insureds



- Landowners who have signed agreements allowing trail on their property can be added as an additional insured to our group GL policy
- Review and send an email to our office to request additions. Need name of landowner and address
- Along with copy of landowner agreement

# General Liability Insurance Does Not Include



- **Protection against advertising liability**
- **Defamation**
- **Errors and Omissions**
- **Property insurance**
- **Vehicle insurance**
- **Directors and Officers Insurance**



# Legal Assist

- A service through our Group GL Insurance Policy

- **1.800.786.0656**

## What does it cost?

- There is no cost, it is automatically included in our GL policy. You have free access to a lawyer, saving you time and money!

## What we do?

- Legal Assist works for you, providing you with legal advice and practical solutions for business matters that affect you. No question is too small as Legal Assist can respond to calls about employment issues and contracts to leasing procedures and succession planning.

# What to do if an Incident Occurs on Your trail



- Report the incident to NS Trails immediately (incident report form)
- Leave it to the insurance professionals to investigate the incident and build a file for your defence should a claim be filed
- Do not comment, apologize, interview, negotiate, investigate or interfere in the investigation in any way.
- Doing so will VOID your insurance

- **It is OK to fix a problem that becomes apparent due to an incident.**
- **Worse to know a hazard exists and not correct it**
- **Never hesitate to fix an issue regardless of the possibility of being seen as guilty**
- **don't forget to document the correction and date**

## Fixing a Problem After an Incident Occurs





# Directors and Officers Insurance

- Protects your Board of Directors and organization against claims of wrongdoing
- Without it your Directors and organization will have to pay to defend a claim and pay for any resulting settlement.
- NS Trails no longer manages the paperwork or payment of these policies
- Members deal directly with:
- Mike King Intercity Insurance Services 15221 Yonge Street, 2nd Floor Aurora, Ontario L4G 1L8
- Toll Free Phone:
- 1-888-394-3330
- Email:
- [mking@intercityinsurance.com](mailto:mking@intercityinsurance.com)



# Accident Insurance

- Our Group Accident Insurance Policy provides participating member groups with coverage for 20 unnamed volunteers if they were to become injured while performing duties as volunteer of a trail organization.
- Volunteers 70 and over must be identified to be covered under the policy. Your group must submit the names and birth dates of those 70 or over that your group wishes to cover under the policy. These should be submitted to the Executive Director of NS Trails.
- Named volunteers 70 or over, form part of the unnamed volunteers under the policy.

# Property Insurance



- It is important to know that General Liability Insurance does not cover damage to your group's property such as any buildings or equipment you may have
- If you have property you want to protect you would need to purchase a property insurance policy



# Claims Made Versus Per Occurrence Policies

## Per occurrence

- Always go back to the policy as long as the occurrence occurred when the policy was in place

## Claims made

- Claims must be made within the effective dates of the policy
- No going back after policy ends
- You can purchase an extension of the reporting period if winding up an organization

# Use RFP's NOT Tenders



- Use Request for Proposals, not tenders when hiring contractors
- A tender is a contract and must be awarded
- RFP – no obligation – it allows you to evaluate proposals.

# When Hiring an Independent Contractor



- **Do not sign contracts or agreements that have a “save and hold harmless” clause**
- **Create a clear definition of engagement as an independent contractor in any contracts**
- **Ask for proof of insurance before you hire a contractor**
- **CGL, vehicle and workers compensation**
- **Ask to be added as an additional insured.**