LAW REFORM COMMISSION OF SASKATCHEWAN

REPORT ON LANDOWNERS' LIABILITY FOR INJURIES TO RECREATIONAL VISITORS

NOVEMBER, 2006

1. Introduction

Saskatchewan is a land of open spaces. Recreational activities that take advantage of our woods, waters and fields have always been popular pastimes. Traditional activities such as hunting and fishing have been joined by a wide range of other activities, including hiking, cross-country skiing, mountain biking, snowmobile and all terrain vehicle excursions, wildlife viewing and birding. Hunting and fishing continue to be popular, and other outdoor recreational activities are attracting more participants every year. As our urban population increases, the demand for outdoor recreational activities outside our cities also increases. Tourists are attracted by Saskatchewan's unspoiled natural environment.

Outdoor recreational activities have considerable economic value. Environment Canada reports that $387.8 million was spent by Saskatchewan residents on "nature-related activities" in 1996. $33.7 million was spent on hunting and $95.4 million on fishing, but other activities now equal them in economic importance. $39.3 million was spent on wildlife viewing and $263.7 million on other "outdoor activities in natural areas", including skiing, boating and snowmobiling.[1] Recreation brings people to rural communities throughout the province. Outfitting to serve hunters and fishers from out-of-province creates business opportunities. More than 600 outfitters operate in the province.[2] Some outfitters are now expanding their operation beyond hunting and fishing to offer "adventure tourism." Ecotourism is a growing industry. The provincial Northern Tourism Task Team has identified Aboriginal tourism ventures and adventure tourism as "emerging trends that offer greater opportunities in northern Saskatchewan"[3], and the Saskatchewan Ecotourism Society has members throughout the province.

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[1]Environment Canada, *Economic Benefits of Nature-Related Activities for Residents of Saskatchewan in 1996*. An estimated 7,790 jobs are sustained by nature-related activities.

[2]607 outfitters licenses were in force in Saskatchewan in 2001 (*Saskatchewan Environment and Resource Management on Enhancing Outfitting Opportunities in Northern Saskatchewan*, Submitted by Northern Outfitting Review Committee, October 2001). In 2000, non-resident deer hunters alone supplied 4,199 clients to Saskatchewan outfitters.

[3]Northern Tourism Task Team, *Northern Tourism Industry Assessment : Final Report, 1999*.

Although Saskatchewan has a well-developed system of provincial and regional parks and recreation areas, a significant part of outdoor recreational activities occurs on private land and undeveloped Crown land. South of the boreal forest, most hunting and wild-life viewing occurs on farmland and farm woodlots. Snowmobile, all terrain vehicle, and mountain bike trails are often on private property. Outfitters and adventure tourism guides take their clients onto Crown lands in the commercial forest zone. The Trans-Canada Trail makes use of easements and abandoned railway rights of way across private lands. Hikers, birders, snowmobilers, skiers and boaters frequently enter private lands, with or without formal permission.

Unless the landowner is in the business of providing a recreation site, use of private land for recreation may create problems and conflicts between landowners and users. Recreation on undeveloped Crown land, such as timber allotments, may lead to problems. Landowners have two principal concerns. First, users may cause damage or interfere with the owner's use of the land. Second, if a visitor is injured on the land, the landowner may be liable for damages. This Report is concerned with the second issue, what is known in law as occupiers' liability.

2. Liability of land owners to recreational visitors: The need for reform

Access to private and Crown land for recreation requires the cooperation and acceptance of landowners. In September 2005 the Commission issued a consultation paper, *Landowners' Liability to Recreational Visitors,* and invited comment. During the consultation, the Commission was told that land owner concern about liability issues is increasing. The cost of liability insurance was identified as a major issue. The Saskatchewan Trails Association reports that concern about liability discourages landowners from permitting trails across their property, with the result that extension of the Trans-Canada Trail has stalled in some parts of the province. Insurance costs for the Association itself is also a significant problem. Potential liability to visitors, who come with or without permission, is troubling for owners and lessees of range and other agricultural land.

The Saskatchewan Wildlife Federation has long been concerned with access issues. Wildlife organizations across North America report that liability issues contribute to growing reluctance to allow access to private lands. There is a fear that this trend will jeopardize traditional outdoor recreational activities.

Land owners' organizations have also expressed concern. Resolutions adopted by the Saskatchewan Association of Rural Municipalities have targeted conflicts created by entry of

trespassers on rural lands, including liability issues. Some recreation organizations find themselves on both sides of the concern. Nature Saskatchewan, for example, is both an organizer of field trips for birders and, as the owner of several nature reserves open to the public, it is a landowner concerned about its potential liability.

Without exception, recreation organizations and land owners' groups who commented on the Commission's consultation paper favoured legislation that would restrict liability to recreational visitors in a wide range of circumstances.

Liability and access have also become issues elsewhere in Canada. Consultations conducted by the British Columbia Law Reform Commission found that:

> Participants in a wide range of outdoor activities were concerned about a "chilling effect," exerted by the *Occupiers Liability Act* on private landowners and holders of Crown land use tenures, that discourages them from granting access for recreational activities.[4]

The Alberta Law Reform Institute was asked to review occupiers' liability by the Department of Justice because:

> A number of groups...have indicated that they are having difficulty obtaining access to land for the purposes of non-commercial recreational use. They think that a change in the *Occupiers' Liability Act* would be one means of addressing this difficulty.[5]

Alberta has recently adopted legislation reducing liability to recreational visitors.[6] Ontario was the first province to restrict liability to recreational visitors. [7] The province acted in response to

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[4]British Columbia Law Reform Commission, *Consultation Paper on Recreational Injuries: Liability and Waivers in Commercial Leisure Activities*, 1993. See also Outdoor Recreation Council of B.C., *Recommendations for Law Reform to Enhance Public Access to Outdoor Recreation*, October 1990.

[5]Alberta Law Reform Institute, *Occupiers' Liability: Recreational Use of Land*, Final Report no. 81, 2000.

[6] *Occupiers' Liability (Recreational Users) Amendment Act, 2003*, S.A. 2003, c. 45.

[7]*Occupiers' Liability Act*, R.S.O. 1990, c. O.2., s. 4

vocal concern expressed by recreation organizations and rural municipalities. Legislation has also been adopted in Manitoba,[8] Nova Scotia,[9] and Prince Edward Island[10]. In British Columbia, the Law Reform Commission has recommended restricting liability to recreational visitors.[11] Most American states have also enacted legislation.[12]

In Saskatchewan, at present, liability to recreational visitors is reduced in three exceptional cases. Under *The Wildlife Act, 1998*, a landowner will be liable to a hunter (whether on the land with permission or not) only for wilful or reckless endangerment:

> 42 An occupier of land owes no duty of care to a person who is hunting on the land, except the duty not to:
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> (a) create a danger with the deliberate intent of doing harm or damage to the person; and
>
> (b) do a wilful act with reckless disregard of the presence of the person.[13]

Under *The Snowmobile Act*[14] and *The All Terrain Vehicles Act*[15] similar rules apply to snowmobiling and use of all terrain vehicles on private and Crown land. The general rules of occupiers' liability law apply to all other recreational activities on private and Crown land in the province.

These narrow exceptions contrast with the broader approach taken in most of the legislation in

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[8]*Occupiers' Liability (Amendment) Act*, S.M. 2005, c. 4, s. 2.

[9]*Occupiers' Liability Act*, S.N.S. 1996, c. 27

[10]*Occupiers' Liability Act,* R.S. P.E.I. O-2, s.4

[11]British Columbia Law Reform Commission, *Consultation Paper on Recreational Injuries: Liability and Waivers in Commercial Leisure Activities*, 1993.

[12]According to Charles Montagne, *Preserving Abandoned Railroad Rights-of-Way for Public Use: A Legal Manual*, (1989) Washington, D.C. , 46 states have adopted laws encouraging recreational access to private lands.

[13]R.S.S. 1978, c. W-13.12, s. 42

[14]R.S.S. 1978, c. S-32., s. 34. See below.

[15]S.S. 1988-89, c.A-18.02, s.19.

other provinces that restricts liability to recreational visitors. The Alberta *Occupiers' Liability Act* largely exempts rural lands from liability to recreational users when no payment is made to the owner by the user. The Ontario, Nova Scotia, and Prince Edward Island legislation is nearly as broad, differing from Alberta only in detail. Among the provinces that have addressed recreational use, only Manitoba has significantly limited the scope of its legislation which applies only to recreational trails.

The Commission recommends adoption of a broad restriction of the liability of land owners to recreational visitors similar to the Alberta model. In the Commission's opinion, the legislative challenge is to identify the appropriate scope of the legislation. To what lands should it apply? What types of visitors should be included? What exceptions are necessary? These issues will be discussed in the next chapter.

3. Limiting land owner liability: Proposals

i. Policy and principles

Under the current law, a landowner may be liable for injury to anyone who enters the land, with or without permission or invitation. The exact scope of a landowner's duty is difficult to define[16] but can be onerous. For example, in *Waldick* v. *Malcolm*, one of the most recent decisions of the Supreme Court of Canada on occupiers' liability, a property owner was found liable for injuries suffered by a visitor who slipped on the ice in a farm yard after an ice storm.[17] A landowner's duty to prevent injury to trespassers is not as high but if the landowner knows of dangerous conditions and knows that there is a real possibility that uninvited entrants may come onto the land, liability for injuries may follow. In *Venoit v. Kerr-Addison Mines*, the case which established this standard in Canada, the defendant was held liable when a snowmobile collided with a bar across a private road that the snowmobiler could not see clearly.[18]

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[16]Occupiers' liability law is explained in more detail in Appendix 2.

[17][1991] 2 S.C.R. 456. Although this case was decided under the Ontario *Occupiers' Liability Act* rather than on the common law rules applicable in Saskatchewan, the court's treatment of the issues suggests that the decision would have been the same under the common law.

[18][1975] 2 S.C.R. 311. In Saskatchewan, *The Snowmobile Act* would now apply, eliminating liability in this case.

Decisions such as these create legitimate concern about the liability of landowners. They suggest that liability is a real possibility in situations that are hard to prevent. A landowner who allows a cross-country skier or bird watcher onto his or her land risks a law suit for an injury that may seem to have more to do with the visitor's desire for out-door recreation in a natural setting than anything done by the landowner. The primary goal of legislation restricting occupiers' liability to recreational visitors should be to relieve rural landowners of this potential liability and to encourage them to continue to allow recreational activities on their land. The "key goal" of the Ontario legislation has been described as an effort "to encourage public access to land for recreational purposes [and] to foster trail use by recreational organizations and to reduce friction between trail users and occupiers".[19]

It is important to be clear about what the legislation is not intended to do. It is not intended to reduce the liability of operators of commercial recreation facilities such as ski lifts, golf courses, and resorts. It is not intended to protect land owners or others from liability for negligent operation of machinery or vehicles. It is not intended to reduce the responsibility of governments to maintain roads and other public facilities. It is not intended to affect liability to non-recreational visitors such as workers coming onto the premises. In all these cases, the public expects due diligence to avoid dangerous situations and ensure safety. When a recreational visitor enters agricultural land, wilderness, or undeveloped premises, most members of the public have different expectations. The risk of injury from the hazards of such places is assumed by the visitor. The law should clearly reflect this expectation. This principle is incorporated in the recreational use legislation that has been adopted elsewhere in Canada. The Ontario *Occupiers' Liability Act*, for example, states that a recreational visitor on the lands specified by the *Act* "shall be deemed to have willingly assumed all risks".

The legislation adopted in all provinces that have restricted liability to recreational visitors provides that an owner of land to which the legislation applies owes a duty to visitors only to "not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not act with reckless disregard of the presence of the person on his or her property".[20]

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[19]David McRobert, "Legal Liability Issues for Trail and Greenway Managers: An Overview of Canadian Laws", *Canadian Rails to Greenways Network National Conference*, August 1993.

[20]*Occupiers' Liability Act*, R.S.O. 1990, s. 4(3).

The legislation controls the scope of the restriction on liability by imposing three requirements:

(1) The ordinary rules of occupiers' liability law are supplanted only in respect to recreational users; (2) The types of land to which the restriction of liability applies are clearly defined; and (3) The restriction of liability does not apply if an admission fee is charged.

The role of these requirements is demonstrated in a recent Ontario case *Dally v. City of London.* In this case, a walker fell on a gravel recreation trail within the city of London. The court found that the City would have been partly responsible for the injury under the old law because loose gravel at the trail edge was a hazard. Under the amended *Occupiers' Liability Act*, the walker was deemed to have assumed the risk and the City was not liable. The court made it clear that it could reach this conclusion only because "recreational trails clearly marked as such" are expressly referred to in the legislation. If the injury had occurred on a city side walk, the City would have been held to a higher standard. In addition, the court had to be satisfied that the injured party was using the trail for recreational purposes. Had the walk way been used like a side walk, simply to get around the City, branding it as a recreational trail would not have been enough to limit liability.

ii. Types of land subject to the legislation

Although many organizations and individuals who commented on the Commission's consultation paper expressed the opinion that liability should be restricted in regard to recreational use on all lands and premises, the Commission has concluded that it is not practical to do so. It is necessary to carefully identify the situations in which the proposed restriction of liability will operate. This can most effectively be achieved by listing the types of land on which liability to recreational visitors is reduced.

The Alberta legislation applies to:

(a) rural premises that are
    (i) used for agricultural purposes including land under cultivation,
    (ii) vacant or undeveloped premises, and
    (iii) forested or wilderness premises;
(b) golf courses when not open for playing;

(c) utility rights-of-way excluding structures located on them;
(d) recreational trails reasonably marked as such.

It is appropriate to exclude most rural land. A primary goal of the legislation is to protect landowners in rural areas from liability when recreational users come onto their lands. Some limitation on the scope of rural lands covered by the legislation is necessary however. The legislation should not apply to commercial recreation facilities or the developed part of resort premises, for example. Range lands, for example, but not swimming pools, should be covered by the restriction of liability.

The Alberta list of "rural premises" is reasonably comprehensive. Legislation in other provinces differs in detail. The Ontario, Prince Edward Island and Nova Scotia legislation refer to land "used for agricultural purposes, including land under cultivation, orchards, pastures, woodlots and farm ponds". While this extended description of agricultural lands may not be necessary it may contribute to clarity.

Items (b) through (d) in the Alberta list extend the limitation of liability to lands which may not be located in rural areas. Perhaps the most significant category is "recreational trails reasonably marked as such". Most trails in rural areas would likely be caught by the legislation even if trails were not specifically enumerated. A trail through a pasture is part of rural premises "used for agricultural purposes" and a wilderness trail is part of "forested or wilderness premises". However, the Trans-Canada Trail network passes through urban areas and recreational trails, such as the Meewasin Trail, have been constructed in cities and towns. This makes it necessary to expressly include trails.

Encouragement for the development of recreational trails is an important part of the policy of the legislation. It is appropriate to apply the legislation to recreational trails within towns and cities. However, it is also necessary to clearly distinguish recreational trails from urban side walks and roads. Thus, within urban areas, the limitation applies only to recreational trails "reasonably marked as such".

The legislation adopted in other provinces does not extend to urban parks and open spaces other than designated trails. This policy has been questioned.[21] But urban parks are not wild lands. In

[21]British Columbia Law Reform Commission, *Consultation Paper on Recreational Injuries: Liability and Waivers in Commercial Leisure Activities*, 1993.

the Commission's opinion, the exception to the general rules of occupiers' liability should be narrow in urban areas. The public expects that diligence will be exercised to keep city parks safe. The restriction of liability should not extend beyond designated recreation trails clearly marked as such.

Although the distinction made here between the status of rural and urban trails is reasonably clear on a close reading of the legislation, it would be desirable to avoid misunderstanding by expressly distinguishing urban and rural trails. This could be achieved by replacing the reference to "recreational trails reasonably marked as such" with "recreational trails, including recreational trails in towns, cities, and villages reasonably marked as such".

Golf courses are often used by cross-country skiers and other off-season recreationists. Since they do not fall within any of the other listed categories, it is appropriate to include "golf courses when not open for playing". However, golf courses are not the only recreational facilities entered by off-season visitors. The Nova Scotia legislation stipulates "recreation facilities when closed for the season". This is an appropriate extension.

Utility rights-of-way are often used by hikers, cross-country skiers, and other recreationists, particularly to travel through forested land. The Nova Scotia legislation includes some additional categories of lands that are frequently used for recreation. It lists:

> (1) highway reservations under the *Public Highways Act*,
> (2) private roads situated on lands referred to in this subsection, and
> (3) private roads to which this section does not otherwise apply that are"reasonably marked by notice as private, where persons are physically restricted from access by a gate or other structure".

It is appropriate to include private roads and road reservations on rural premises. Both are part of "rural premises" and private roads on agricultural land are "used for agricultural purposes". However, it may be useful to include both for clarity. Other private roads and reservations are more problematic. For example, a private road on a golf course that can be accessed by members of the golf club, or a road in a cottage subdivision used by residents, are more analogous to public roads than to private farm lanes.

Nova Scotia also lists "mines as defined in either the *Metalliferous Mines and Quarries Regulation Act* or the *Coal Mines Regulation Act*, where the harm or damage suffered is not, in

whole or in part, the result of non-compliance with a law relating to the security of such mine and the safety of persons and property". Mines and quarries are intrinsically dangerous places. The public expects a high level of diligence on the part of mine operators. For that reason, the Commission is of the opinion that this extension is inappropriate. Note, however, that undeveloped parts of a mining property will be subject to the legislation without express inclusion.

Recommendation 1

Occupiers' liability to recreational visitors should be restricted on the following lands and premises:

1. rural lands and premises that are:
    (a) used for agricultural purposes, including land under cultivation, orchards, pastures, woodlots, and farm ponds;
    (b) vacant or undeveloped premises;
    (c) forested or wilderness premises;
    (d) highway and road reservations;
    (e) private roads on or associated with the lands and premises listed in this clause.
2. recreation facilities when closed for the season;
3. golf courses when used for recreational purposes other than golf;
4. utility rights-of-way excluding structures located on them;
5. recreational trails, including recreational trails in towns, cities, and villages reasonably marked as such.

(ii) Payment for recreational use

Under the legislation adopted in all provinces which have restricted liability to recreational visitors, a landowner receives the benefit of the legislation only if "no fee is paid for the entry or activity" of a recreational user. This is generally consistent with the goals of the legislation and clearly distinguishes a landowner from a recreation operator. To clarify the policy behind this rule, the legislation expressly excludes payments to landowners from government. If funding is available to assist in establishing trails or otherwise encourage landowners to open their lands to the public, the protection of the legislation is not lost.
Whether all direct payments from recreational users to landowners should oust the restriction on

liability is open to question. In Saskatchewan, some farmers wish to charge modest fees to hunters. Such fees may be regarded as little more than cost recovery for minor damage or for lost farm income if bush and unbroken land is retained to attract wildlife. In addition, the limited liability of landowners to hunters under *The Wildlife Act* is not lost if the hunter is charged a fee. At present, it is unlikely farmers will charge fees for other recreational use. Thus, this problem could be addressed, at least for the present, by leaving *The Wildlife Act* restriction on liability to hunters in place. Alternatively, fees charged for entry onto undeveloped or agricultural lands might be exempted. It would then be a question of fact whether the land in question is agricultural land used incidentally for recreation or is primarily a commercial recreation facility. The Commission favours the second option.

Provincial Parks, Regional Parks, and Provincial Recreation Areas also present a problem. Most parks charge admission fees. To the extent that they provide developed recreation opportunities, such as camp grounds, marinas, golf courses, swimming pools or supervised swimming areas, and other amenities, they resemble commercial resorts and recreation facilities. Blanket restriction of liability would be inappropriate. However, most parks also include undeveloped wild lands. In the Commission's opinion the legislation should apply, whether an admission fee is charged or not, to park land that otherwise falls into categories of lands to which the legislation applies. Thus, liability would be restricted, for example, on park recreational trails and in park woodlands.

Legislation in other provinces does not make its protection available to a land owner who provides the injured party "with living accommodation on the premises". In this case, while the injured party may use the land for recreation, the relationship with the land owner is essentially that of landlord and tenant. This is a reasonable limitation on the scope of the legislation.

Recommendation 2

1. A landowner should be permitted to charge a modest fee to hunters and other recreational users for entry onto agricultural or undeveloped lands listed in Recommendation 1 without affecting liability.

2. A fee charged for admission to a Provincial Park, Provincial Recreation Area, or Regional Park should not affect liability to recreational users of trails and agricultural or undeveloped lands listed in Recommendation1 that are within a park or recreation area.

3. The limitation of liability in Recommendation 1 does not apply if a fee is charged for entry onto any developed lands or premises listed in Recommendation 1.

4. The limitation of liability in Recommendation 1 does not apply if the landowner is providing the injured person with living accommodation on the premises.

5 . A benefit or payment received from a government or government agency or non-profit recreation club or association should not affect liability to recreational users of lands listed in Recommendation1.

(iii) Standard of care required of landowners

The legislation adopted in all provinces that have restricted liability to recreational visitors provides that an owner or occupier of land to which the legislation applies owes a duty to visitors only to "not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not act with reckless disregard of the presence of the person or his or her property".[22]

This is identical in substance to the restriction on liability to hunters under *The Wildlife Act* which provides that:

> An occupier of land owes no duty of care to a person who is hunting on the land, except the duty not to:
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> (a) create a danger with the deliberate intent of doing harm or damage to the person; and
>
> (b) do a wilful act with reckless disregard of the presence of the person.[23]

This was essentially the duty owed at common law to trespassers prior to the Supreme Court decision in *Venoit v. Kerr-Addison Mines.*[24] It has been adopted in some provinces as the statutory standard of care in respect to trespassers generally.[25] All landowner and recreation

[22]*Occupiers' Liability Act,* R.S.O. 1990, s. 4(3).

[23]R.S.S. 1978, c. W-13.12, s. 42.

[24][1975] 2 S.C.R. 311.

[25] E.g., *Occupiers' Liability Act,* R.S.A. 2000, c. O-4 , s. 12.

organizations who commented on the Commission's consultation paper expressed the opinion that this is an appropriate standard to apply to recreational users whether they come onto the land as invited guests or trespassers.

The Commission recommends adopting the substance of the limitation on liability contained in legislation in other provinces but prefers the positive statement of the principle in *The Wildlife Act.*

Recommendation 3

An occupier of land mentioned in Recommendation 1 owes no duty of care to a recreational visitor, except the duty not to:

(a) create a danger with the deliberate intent of doing harm or damage to the person; or

(b) do a wilful act with reckless disregard of the presence of the person.

(iv) Relationship to other legislation

Under Saskatchewan law at present, occupiers' liability to hunters and recreational users of snow mobiles and all terrain vehicles is limited. The proposed legislation would extend this restriction of liability to all recreational visitors on the lands it stipulates. It would thus makes the restrictions on liability contained in *The Wildlife Act,*[26] *The Snowmobile Act,*[27] and *The All Terrain Vehicles Act*[28] largely redundant.

Each of these Acts contains some additional rules relating to entry on land. *The Wildlife Act* governs the posting of lands with "no trespassing" and "no hunting signs".[29] *The Snowmobile Act* provides for and regulates designated snowmobile trails.[30] While landowners are largely

[26]R.S.S. 1978, c. W-13.12, s. 42.

[27]R.S.S. 1978, c. S-32., s. 34. See below.

[28]S.S. 1988-89, c.A-18.02, s.19.

[29]S. 41.

[30]S. 20.1.

protected from liability under *The Snowmobile Act*, designated trail managers are made responsible for "general supervision, construction, maintenance, administration, control and operation of the designated trails".[31] They are required to carry liability insurance and may be liable for negligent trail maintenance. None of these matters has to do with the liability of landowners. Nor would they be affected by the proposed legislation.

It would be desirable to govern landowners' liability to all recreationists in a single statute. The remaining provisions of *The Wildlife Act*, *The Snowmobile Act*, and *The All Terrain Vehicles Act* would continue to apply.

Recommendation 4

The provisions of *The Wildlife Act*, *The Snowmobile Act*, and *The All Terrain Vehicles Act* restricting landowners' liability should be repealed.

[31]S. 20.4.

Appendix 1: Occupiers liability to recreational users: The current law in Saskatchewan

Occupiers' liability is governed in Saskatchewan by common law principles. It is a complex, often confusing branch of negligence law that has been developed by the courts over the last two centuries. In its *Proposals for an Occupiers' Liability Act*, the Commission observed that:

> The law of occupiers' liability, with its emphasis on formal categories and labels has led to capricious results, unrealistic distinctions and a general contortion of articulated rules which govern the area.[32]

It is often difficult to determine what the law requires of landowners to protect themselves from liability. The law has been reformed in several provinces and other common law jurisdictions[33] but whether the occupiers' liability statutes that have been adopted have eliminated the "capricious results" characteristic of the common law is open to question.

The common law recognizes a hierarchy of duties differing between classes of entrants onto land.[34] A landowner owes the highest duty to "invitees". This rather mis-named class is essentially persons who enter the landowner's premises for business purposes. The clearest example is a customer in a shop. A lower duty is owed to "licensees," persons who are invited or permitted onto the property for other reasons. A social guest is a licensee. The least duty is owed to trespassers who enter the property without express or implied permission.[35] Unfortunately, classification of entrants into these categories is not always straightforward.

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[32]Law Reform Commission of Saskatchewan, *Proposals for an Occupiers' Liability Act*, 1980.

[33]See below.

[34]This brief summary of relevant occupiers liability law is substantially based, except as otherwise noted, on John Fleming, *The Law of Torts* (6th ed.), Melbourne, 1983.

[35]An additional category is recognized by some authorities — entry under a contractual right. If the contract between the landowner and entrant specifies duties and liabilities, the contract governs. The courts have been willing to imply contractual terms governing these matters when they are not explicitly stated, but when they have done so, the liabilities imposed are generally similar to those to invitees. This category is not particularly relevant for purposes of this paper but it should be noted that commercial recreation facilities and adventure tour guides often require contractual waivers limiting liability. See the discussion in British Columbia Law Reform Commission, *Consultation Paper on Recreational Injuries: Liability and Waivers in Commercial Leisure Activities*, 1993.

(i) Duty to licensees

Most entrants onto land for recreational purposes who have obtained permission from the landowner are licensees. A hunter or bird watcher who asks permission to enter a farmer's land is a licensee. If a landowner permits a club or other organization to run a hiking or biking trail across his or her property, individuals who use the trail will be licensees. In general terms, a landowner has a responsibility to give warning to a licensee of any known hazards on the land.[36] This rule is mitigated to some extent: The law expects all entrants to take "reasonable care on his part for his own safety." Thus, liability is unlikely if the hazard is immediately obvious and avoidable even if no specific warning is given.[37] The essential elements to establish liability are the landowner's knowledge that a hazard exists and the requirement that the licensee receive warning of the danger. Unfortunately, both elements have been rendered imprecise by case law.

Fleming, *The Law of Torts*, writes that "the term [knowledge] bristles with ambiguities ...[that] for many purposes practically eliminate the distinction between dangers of which actual knowledge is imputed ... and those which [the landowner]... ought to know". In principle, a landowner is not required to inspect his or her land in search of hazards in order to protect licensees. But, in practice, vigilance seems to be necessary. Thus, for example, operators of a playground were held liable for injuries to a child from broken glass in a wading pool because the operators were aware that such a problem might arise even though they were unaware that glass was actually present in the pool.[38]

In another reported decision liability was imposed for injury from a falling tree because the manager of the public forest where the incident occurred was aware of the general hazard of falling trees, but unaware that the particular tree which fell on a motor vehicle was damaged and in danger of falling.[39]

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[36] *Mitchell v. CNR* [1975] S.C.R. 592. Prior to this decision, the case law confined the duty to warn of "concealed dangers". The Supreme Court of Canada dropped the "concealed" requirement but since there is a duty on the entrant to take precautions the change may not be substantial.

[37] *Indermaur v. Dames,* (1866) L.R. 1 C.P. 274. In practice, some contributory negligence on the part of the entrant will likely be found if the hazard is not completely hidden.

[38] *Ellis v. Fulham B.C.* [1938] 1 K.B. 212.

[39] *Vale v. Widdon,* (1950) 50 S.R. (N.S.W.) 90.

In most cases a landowner discharges the duty to licensees by warning them of hazards. Removal of the hazard or steps to prevent injury, such as fencing off the dangerous area, are not required. However, there are exceptions to this rule. It has been held that when an entrant is injured by activities carried on by the occupier, liability does not depend on the classification of the entrant. In such cases the occupier owes a duty to take care to avoid accidents. If, for example, an entrant is injured by forest harvesting equipment or farm machinery, a warning that the danger exists may not be sufficient to avoid liability.[40] It has also been held that landowners must take positive steps to prevent injuries to children who come onto the property even as trespassers.[41]

As noted above, licensees are expected to take reasonable precautions to protect their own safety. Persons engaged in recreational activities should be aware of the hazards they may encounter in the activity in which they are engaged. Failure to take precautions will be assessed as contributory negligence and reduce the landowner's liability. This principle has often been applied in cases of recreational injury.[42] In addition, if a hazard is known to the licensee and the licensee elects to remain at risk, he or she may be held to have voluntarily assumed the risk. This may relieve the landowner of liability. This principle is particularly important in the context of recreational activities. The British Columbia Law Reform Commission observed that:[43]

> Since deliberate risk-taking is a characteristic of virtually all sports-related recreation to varying degrees, the law has long recognized the concept of "inherent risk" in dealing with questions of duty of care and liability arising from recreational accidents. A participant in a sporting activity is taken to assume the risks that are inherent in the activity, and no liability arises from them. The best-known expression of the concept is found in a decision of a famous American

[40]See *Glasgow Corp. v. Muir* [1943] A.C. 448.

[41]In *Panntt v. McGuiness* [1972] 2 Q.B. 599, for example, it was held that the occupier should have stood watch over a bonfire that was attracting children despite repeated warnings- off.

[42]See for example *Simms* v. *Whistler Mountain Ski Corp.*, [1990] B.C.D. Civ. 3124-01 (C.A.); *Wilson* v. *Garibaldi Lifts Ltd.*, (1977) 79 D.L.R. (3d) 495 (S.C.).

[43]British Columbia Law Reform Commission, *Consultation Paper on Recreational Injuries: Liability and Waivers in Commercial Leisure Activities*, 1993.

judge in a case arising from an accident on an amusement park attraction:[44]

> One who takes part in such a sport accepts the dangers that inhere in it so far as they are obvious and necessary, just as a fencer accepts the risk of a thrust by his antagonist or a spectator at a ball game the chance of contact with the ball.

The Supreme Court of Canada had described inherent risk in similar terms a few years earlier. It held that a participant in a sport is deemed to accept the risks that are "incidental to and inseparable from" the sport.[45]

However, a 1991 decision of the Supreme Court of Canada has placed the scope of voluntary assumption of risk in doubt. In *Waldick* v. *Malcolm*, a visitor fell in an icy parking area in front of a farm house. The accident occurred shortly after an ice storm. The owner of the property had not sanded the icy area but the visitor knew of the icy conditions. The case was decided under the Ontario *Occupiers' Liability Act* which makes "willing acceptance" of risk by a visitor a defence. But the court held that this defence is not available unless there was an agreement between the visitor and landowner in respect to the risk. It is insufficient for the entrant merely to have appreciated the existence of the risk.[46] This decision has caused concern in the insurance industry which believes that it "has significantly expanded the scope of liability facing property owners and occupiers" and is an invitation to frivolous personal injury claims against property owners.[47]

(ii) Duty to invitees

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[44]*Murphy* v. *Steeplechase Amusement Co.*, (1929) 166 N.E. 173, 174 *per* Cardozo, J. (N.Y. Ct. App.).

[45]*Dixon* v. *City of Edmonton*, [1924] S.C.R. 640.

[46][1991] 2 S.C.R. 456. The British Columbia Law Reform Commission, *Consultation Paper on Recreational Injuries: Liability and Waivers in Commercial Leisure Activities*, 1993, argues that a distinction should be made between assumption of risk and the inherent risk in recreational activities. The Commission doubts that *Waldick* affects the latter. But in any event, until this issue has been decided, the decision at the very least adds to uncertainty about the scope of occupiers' liability in regard to recreational injuries.

[47]**"**Occupiers Beware!", Cowan News, Feb**.** 1992. (Frank Cowan Co. Ltd.).

The duty owed by a landowner to an invitee has been stated by the courts in these terms:

> We consider it settled law that [the invitee], using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger, which he knows or ought to know [exists on the property].[48]

Since the knowledge requirement in regard to licensees has been expanded in practice, the distinction between licensees and invitees has been blurred. As Fleming, *The Law of Torts*, notes:

> The principal distinction . . . in modern law between the duty of a licensor and an invitor is that the former need only warn of . . . dangers or traps known to him, while the latter must also maintain a reasonable system of inspection and safeguards against latent dangers so discovered.

As the discussion of obligations to licensees has shown, the distinction is blurred in practice. However, it is clear that merely warning an invitee of hazards will usually not be enough. It may be necessary to fence off the dangerous area or otherwise ensure that the visitor will not be injured by it. In some cases, removal of the hazard may be the only option.

Meeting the standard required in respect to invitees may be difficult for rural landowners. If the landowner accepts payment for use of the land the visitor is an invitee. A visitor to a park who pays an admission fee is an invitee. In some other cases the status of a visitor is uncertain. It has been suggested that the test is whether the visitor confers some material benefit on the landowner, even if it is indirect. Thus, for example, it has been held that parents attending a school exhibition are invitees because the school benefitted from parental support for its activities.[49] It is at least possible that a trail organization that advertises access to its trails and is supported by public money would be held to receive a benefit from visitors who use the trails.

(iii) Duty to trespassers

[48] *Indermaur v. Dames*, (1866) L.R. 1 C.P. 274.

[49] *Griffiths v. St. Clements School* [1938] 3 All E.R. 537.

Landowners owe the least responsibility to trespassers. In the older case law occupiers' liability to trespassers was confined to cases in which the landowner deliberately or recklessly endangered uninvited entrants known to be on the land. However, since the 1970s, courts in the common law world have recognized a broader responsibility to trespassers which is often referred to as a duty of "common humanity". The core principle is that a landowner who knows of a danger and who knows that people are apt to be injured by it should not stand aside and let serious injury occur, even to an unwanted entrant onto the land. In *Venoit v. Kerr-Addison Mines,* the case which introduced the common humanity standard in Canada, the defendant was held liable when a snowmobile collided with a bar across a private road that the snowmobiler could not see clearly, causing catastrophic injury.[50] The court observed that the landowner knew snowmobilers were using the road, that the bar was a hazard amounting to a hidden danger, and that the problem could have been easily corrected. However, the scope of the duty is difficult to define. It increases the uncertainty in the law and may create a standard that is difficult for landowners to meet in some cases.

While landowners are still not under a general obligation to fence their land to deter trespassers or patrol their property boundaries to exclude them, it has been held that the duty arises whenever there is "a substantial chance" that uninvited entrants may come onto the land. This requires that the landowner carefully consider the circumstances. If, for example, there are children in the area, they may be expected to be drawn by any interesting or even dangerous feature on the property.[51] If a hiking trail passes through the land visitors can be expected to wander from the marked path. Warnings to trespassers encountered on the property and posted warnings of danger may be sufficient in many cases but may not be enough in all cases, particularly if the cost of remedying the problem is not onerous. Thus, in *Venoit*, the court concluded that the landowner should have removed the hazard.[52] It was largely concern over the impact the *Venoit* decision might have in rural Saskatchewan that led to amendment of the

[50][1975] 2 S.C.R. 311.

[51]*Panntt v. McGuiness* [1972] 2 Q.B. 599.

[52]See also the leading English case, *Herrington v. British Railways* [1972] A.C. 877, in which a railway was liable for failure to replace a dilapidated fence it knew children were crossing to get on a busy urban rail line. Fleming observes that "what common humanity demands . . . must be adapted to his [the landowner's] financial and other resources. An impecunious occupier . . . may be excused where large organizations, like railways, public utilities, or public authorities, have to perform".

The Snowmobile Act to limit occupier's liability to snowmobilers.

Another problem is the definition of "trespasser". A trespasser is any person who enters the property of another without permission. However, permission may be implied from the circumstances creating uncertainty in individual cases. The courts have held that permission can be inferred from acquiescence in persistent intrusions on the land. Thus, a landowner may find it necessary to take active steps to prevent trespassing, such as warning off entrants and posting the land.[53] Fleming observes that "the most time-honoured way of improving the lot of a deserving plaintiff is to raise his status to licensee by inferring an assent to his presence".

In Saskatchewan, the question of who is a trespasser is influenced by local custom. In rural areas, neighbours have long crossed neighbours' land as a matter of course and hunting on private land, even without express permission, has long been tolerated. It is for this reason that hunters are advised that, even though it is always good ethics to seek permission, "hunters may not be required to have landowner consent before hunting on land that has not been posted"[54]. In *Regina v. Thomas,* a decision of the Saskatchewan Provincial Court, Judge Seniuk stated that:

> I feel it is quite possible that by past practice, custom or whatever, the situation has developed whereby farmers have implied consent to hunters in this province unless the land is posted or notice is otherwise given.[55]

There is little reason to suspect that this custom is confined to hunting. Since *The Wildlife Act* reduces potential liability to hunters below what would otherwise apply to trespassers, it is the application of the custom to other recreational activities that would have the most significant effect on occupiers' liability.

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[53]*Gough v. N.C.B.* [1954] 1 Q.B. 191.

[54]Art Jones, "Treat Private Land With Respect," *Environment Newsline,* September 2, 2004

[55]*Regina v. Thomas* [1978] 4 C.N.L.B. (No.4) 21, citing comments in *R. v. Prince and Myron* (1962), 40 W.W.R. 234 (Man. C.A.). *The Wildlife Act*, s. 41(6) states that where a landowner has not posted the land " that fact alone: (a) is not to be deemed to imply consent by him or her to entry on the land; or (b) does not imply a right of access to his or her land for the purpose of hunting." However, this does no more than restate the general law, and does not prevent implied consent from being found in the circumstances of individual cases. *Regina v. Thomas* held that native hunters have no greater or lesser right to enter private lands, whether posted or not, than others unless it can be established that the lands were traditional hunting grounds. See D.E. Sanders, "Indian Hunting and Fishing Rights" (1973-74) 38 *Sask. L. Rev.* 45.

(iv) Hunters and recreational vehicles

As noted above, three exemptions to the common law rules described above have been adopted in Saskatchewan. All relate to specific classes of recreational activity. Under *The Wildlife Act, 1998*, a landowner will be liable to a hunter (whether on the land with permission or not) only for wilful or reckless endangerment:

> 42 An occupier of land owes no duty of care to a person who is hunting on the land, except the duty not to:
>
> (a) create a danger with the deliberate intent of doing harm or damage to the person; and
>
> (b) do a wilful act with reckless disregard of the presence of the person.[56]

Under *The Snowmobile Act*, a similar rule generally applies to snowmobiling on private or Crown land:

> 34(1) Subject to subsection (2), no action or proceeding lies or shall be commenced against an owner or occupier of land, the Crown in right of Saskatchewan, any minister of the Crown in right of Saskatchewan or any employee, officer or agent of any of them for any injury, loss or damage suffered as a result of, arising out of or stemming from any person using, driving, riding on or being towed by a snowmobile except against an owner or occupier of land, the Crown in right of Saskatchewan, a minister of the Crown in right of Saskatchewan or an employee, officer or agent of any of them in circumstances where that owner or that occupier, the Crown in right of Saskatchewan, the minister of the Crown in right of Saskatchewan or that employee, officer or agent, as the case may be:
>
> (a) creates or has created a danger with the deliberate intent of doing harm or damage to the person or the person's property;
>
> (b) does or has done a wilful act with reckless disregard of the presence of the person or the person's property; or
>
> (c) is negligent while using, driving, riding on or being towed by a

[56]S.S. 1998, c. W-13.12, s. 42.

snowmobile or in failing to properly oversee an employee, officer or agent who is using, driving, riding on or being towed by a snowmobile.

The rule is modified, however, in cases in which the entrant is on the land in pursuit of a "common material or business interest" with the landowner:

> (2) With respect to an area of land that is not designated as a designated trail, where a person uses, drives, rides on or is towed by a snowmobile on the land of another person with the express or implied permission of the occupier of the land for a purpose in which the person and the occupier have a common material or business interest, the occupier of the land owes a duty to use reasonable care to prevent harm or damage from unusual danger that the occupier knows or ought to know exists on the land.[57]

The All Terrain Vehicles Act provides that:

> 6 No person shall operate an all terrain vehicle on any:
>
> (a) private land not owned or occupied by him or a member of his immediate family; or
>
> (b) Crown land used or occupied otherwise than by the Crown;
>
> without the permission of the owner or occupant of the land.

It limits occupiers' liability in much the same way as the other Acts:

> 19(1) Subject to subsection (2), the occupier of land owes no duty of care toward a person who is the operator of, a passenger in or on or in or on any conveyance being towed by an all terrain vehicle on the land except the duty not to create a danger, with the deliberate intent of doing harm or damage to the person, and the duty not to do a willful act with reckless disregard of the presence of the person.
>
> (2) Where a person is the operator of, a passenger in or on or in or on a conveyance being towed by an all terrain vehicle on the land of another with the express permission of the occupier of the land for a purpose in which the person and the occupier have a common material or business interest, the occupier of the land owes a duty of care toward the

[57]R.S.S. 1978, c. S-52., s. 34.

person to use reasonable care to prevent harm or damage to the person from unusual danger which the occupier knows or ought to know exists on the land.[58]

The general principles of occupiers' liability law apply to all other recreational activities on private and Crown land in the province.

The Snowmobile Act and *The All Terrain Vehicles Act* adopt the common law rule in regard to trespassers in place before *Venoit* by limiting liability to trespassers to deliberate or reckless harm caused by landowners, and extends the rule to include licensees as well. The duty owned to invitees is essentially unchanged. [59] *The Wildlife Act* provision also incorporates the pre-*Venoit* standard applied to trespassers but extends it to all hunters entering private or Crown land.

In its *Proposals for an Occupiers' Liability Act* in 1980, the Saskatchewan Law Reform Commission justified *The Wildlife Act* and *The Snowmobile Act* limitations on landowners' liability as "specific recognition of the particular difficulty that farm owners in Saskatchewan may have because of the large tracts of land that are involved".[60] The purposes these provisions were intended to achieve are clear. However, the formulas used to carry out these purposes may not be entirely satisfactory. Note that *The Wildlife Act* applies to any hunter on any land. No distinction is made between cases in which a landowner merely permits a hunter to enter the land and commercial arrangements. Even a hunt farm, which offers hunting opportunities on enclosed land for a fee, owes only a minimal duty to clients under the *Act.*[61]

Although *The Snowmobile Act* imposes more onerous duties on landowners in respect to invitees, the practical effect is not straightforward. *The Snowmobile Act* authorizes snowmobile clubs and others to establish "designated trails" on private and Crown land with permission of the owner. Trail mangers are required to maintain designated trails, and must carry prescribed liability insurance. Fees for trail use may be set by trail managers, but these fees do not go

[58]S.S. 1988-89, c.A-18.02.

[59]The "reasonable care" formula used in subsection 34(2) is the standard adopted in the *Occupiers' Liability Acts* enacted in several provinces (see below). While not identical to the common law standard, it is likely to produce similar results in regard to invitees.

[60]Law Reform Commission of Saskatchewan, *Proposals for an Occupiers' Liability Act*, 1980.

[61]See the definitions of "hunting," "wildlife," and "wildlife farm" in *The Wildlife Act,* s.2.

directly to the landowner. Thus, the trail user is not ordinarily an invitee of the landowners.

Subsection 31(2) will, however, operate to impose the duties owed to an invitee on landowners in several circumstances. If the landowner establishes a trail other than a "designated trail" within the meaning of the Act and charges fees for use, clients will be invitees. The landowner will thus be responsible for maintenance and inspection of the trail. While this may be reasonable, note that a landowner who merely allows a snowmobiler to cross the property will also be held to the higher standard if he or she charges the visitor a fee. This contrasts with the treatment of hunting under *The Wildlife Act.* The higher standard will also apply if the snowmobiler is on the property for any business purpose. For example, a snowmobiler who enters to purchase firewood or even to make enquires about a purchase will be protected by the higher standard.

Appendix 2: Selected legislation from other provinces

1. Alberta *Occupiers' Liability (Recreational Users) Amendment Act*, S.A. 2003, c. 45.

1 The *Occupiers' Liability Act* is amended by this Act.

2 The following is added after section 6:

Recreational users

6.1(1) The liability of an occupier to a person who uses the premises described in subsection (2) or a portion of them for a recreational purpose shall be determined as if the person was a trespasser unless the occupier

(a) receives payment for the entry or activity of the person, other than a benefit or payment received from a government or government agency or non-profit recreation club or association, or

(b) is providing the person with living accommodation on the premises.

(2) Subsection (1) applies to the following:

(a) rural premises that are

(i) used for agricultural purposes including land under cultivation;

(ii) vacant or undeveloped premises; and

(iii) forested or wilderness premises;

(b) golf courses when not open for playing;

(c) utility rights-of-way excluding structures located on them;

(d) recreational trails reasonably marked as such.

[Section 12(2) of the *Occupiers' Liability Act* provides that " An occupier is liable to a trespasser for damages for death of or injury to the trespasser that results from the occupier's wilful or reckless conduct".]

2. Ontario *Occupiers' Liability Act* , R.S.O. 1990, c. O.2., s. 4

4. (1) The duty of care provided for in subsection 3 (1) does not apply in respect of risks willingly assumed by the person who enters on the premises, but in that case the occupier owes a duty to the person to not create a danger with the deliberate intent of doing harm or damage to the person or his or her property and to not act with reckless disregard of the presence of the person or his or her property. . . .

Trespass and permitted recreational activity
(3) A person who enters premises described in subsection (4) shall be deemed to have willingly assumed all risks and is subject to the duty of care set out in subsection (1) . . .

(c) where the entry is for the purpose of a recreational activity and,

(i) no fee is paid for the entry or activity of the person, other than a benefit or payment received from a government or government agency or a non-profit recreation club or association, and

(ii) the person is not being provided with living accommodation by the occupier.

Premises referred to in subs. (3)
(4) The premises referred to in subsection (3) are,

(a) a rural premises that is,

(i) used for agricultural purposes, including land under cultivation, orchards, pastures, woodlots and farm ponds,

(ii) vacant or undeveloped premises,

(iii) forested or wilderness premises;

(b) golf courses when not open for playing;

(c) utility rights-of-way and corridors, excluding structures located thereon;

(d) unopened road allowances;

(e) private roads reasonably marked by notice as such; and

(f) recreational trails reasonably marked by notice as such.

3. Manitoba *Occupiers' Liability (Amendment) Act,* S.M. 2005, c. 4, s. 2.

2. "recreational trail" means land that

(a) is available for multi-purpose recreational use by the public free of charge, and

(b) is marked reasonably clearly as a recreational trail by the Manitoba Recreational Trails Association Inc. or another non-profit organization designated in the regulations . . .

3(4) Notwithstanding subsection (1), an occupier of premises owes no duty of care towards a person who is driving or riding on an off-road vehicle or is being towed by an off-road vehicle or is riding on or in a conveyance being towed by an off-road vehicle on the premises without the express or implied consent of the occupier, except the duty

(a) not to create a danger with deliberate intent of doing harm or damage to the person or the person's property; and

(b) not to act with reckless disregard of the presence of the person or the person's property.

Duty of care respecting recreational trails
3(4.1) Notwithstanding subsection (1), an occupier of a recreational trail owes no duty of care toward a person who is on the recreational trail except the duties described in clauses 3(4)(a) and (b).

Appendix 3: Summary of Recommendations

Recommendation 1

Occupiers' liability to recreational visitors should be restricted on the following lands and premises:

1. rural lands and premises that are:
    (a) used for agricultural purposes including land under cultivation, orchards, pastures, woodlots, and farm ponds;
    (b) vacant or undeveloped premises;
    (c) forested or wilderness premises;
    (d) highway and road reservations;
    (e) private roads on or associated with the lands and premises listed in this clause;
2. recreation facilities when closed for the season;
3. utility rights-of-way excluding structures located on them;
4. recreational trails, including recreational trails in towns, cities, and villages reasonably marked as such.

Recommendation 2

1. A landowner should be permitted to charge a modest fee to hunters and other recreational users for entry onto agricultural or undeveloped lands listed in Recommendation 1 without affecting his or her liability.

2. A fee charged for admission to a Provincial Park, Provincial Recreation Area, or Regional Park should not affect liability to recreational users of trails and agricultural or undeveloped lands listed in Recommendation1 that are within a park or recreation area.

3. The limitation of liability in Recommendation 1 does not apply if a fee for entry is charged for entry onto any developed lands or premises listed in Recommendation 1.

4. The limitation of liability in Recommendation 1 does not apply if the landowner is providing the injured person with living accommodation on the premises.

5. A benefit or payment received from a government or government agency or non-profit recreation club or association should not affect liability to recreational users of lands listed in Recommendation 1.

Recommendation 3

An occupier of land mentioned in Recommendation 1 owes no duty of care to a recreational visitor, except the duty not to:

(a) create a danger with the deliberate intent of doing harm or damage to the person; or

(b) do a wilful act with reckless disregard of the presence of the person

Recommendation 4

The provisions of *The Wildlife Act*, *The Snowmobile Act*, and *The All Terrain Vehicles Act* restricting landowners' liability should be repealed.