

# DISCUSSION PAPER ON THE REVIEW OF LEGISLATION AFFECTING TRAILS

## INTRODUCTION

Across Ontario, there are numerous trails which connect people to their neighbourhoods and environment, and which connect communities with each other. There is widespread interest and engagement with trails and a growing interest in ensuring that provincial and local directions for trails can continue to generate diverse benefits for Ontarians, including the promotion of healthy, active living.

In October 2005, Ontario's lead Ministry for trails, the Ministry of Health Promotion, launched the *Ontario Trails Strategy* (OTS)<sup>1</sup>, along with \$3.5 million over five years for implementation. The OTS was developed by a wide spectrum of interests including many government Ministries and stakeholders through 23 external consultation sessions. The OTS outlined five strategic directions for trails:

- Improving collaboration among stakeholders;
- Enhancing the sustainability of Ontario's trails;
- Enhancing the trail experience;
- Educating Ontarians about trails; and
- Fostering better health and a strong economy through trails.

One of the issues identified during the extensive consultation process on the OTS was the need to examine legislation that affected all types of trails and could better support them. The Ministry of Health Promotion has followed up on this item by commissioning the Kawartha Heritage Conservancy in Peterborough to undertake a review of such legislation. The Conservancy has a mandate that includes sustainable trails and its staff has previously conducted extensive research and presentations on trail-related legislation.

This Discussion Paper represents an early stage in the trail legislation review. Some research has been conducted but the Ministry and Conservancy recognize that there is much knowledge found in the trails community, with landowners and in related sectors. Thus, we are seeking your ideas and suggestions as to how best to improve the legal and policy framework for trails in Ontario.

Consultation events will be held in late May and early June across Ontario in order to hear directly from people with an interest in trails. Once these results have been compiled, the Conservancy will complete its research and submit a

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<sup>1</sup> See the Ontario Trails Strategy online at:  
<http://www.mhp.gov.on.ca/english/sportandrec/trailsstrategy/default.asp>

report with options to the Ministry of Health Promotion, which will then determine how it and the Provincial Government will respond.

There are many changes and processes that could affect Ontario trails at this time. Thus, this trails legislation review will operate alongside, and be informed by, a number of related initiatives. The Ministry of Transportation is reviewing safety issues in response to Coroner Inquests on all-terrain vehicles and snowmobiles while the consulting team of Clute and Associates is examining conflicts related to off-road vehicle use. The Ministry of Citizenship and Immigration recognizes the importance of a healthy and vibrant voluntary sector including the trails community (a driving force behind the development and use of many of Ontario's trails) and has been working on a number of issues of importance to strengthen the capacity of the sector. Bill 130 was also passed by the Legislature in the fall of 2006 and, among other things, amends the *Line Fences Act*. All of these and more may influence the trails legislation review.

The scope of this trails legislation review is quite broad. Its focus is on trails-related legislation (statutes and regulations) in Ontario but will also consider policy, education and other responses to address identified challenges in legislation. Where provincial directions interact with federal responsibilities, the review may identify items that may need to be discussed with federal departments and agencies. Some changes to be considered may be minor wording changes, while some may involve some larger steps and further discussion. Please see Appendix 1 for a glossary of terms and Appendix 2 for a list of some of the legislation affecting trails.

To help reflect and organize what we have identified so far in the process, this Discussion Paper is focused on seven key themes:

- Conserving nature and culture along trails;
- Liability issues;
- Motorized vehicles;
- Land planning and acquisition;
- Trail development and operations;
- Financial and tourism issues; and
- General issues.

But don't let this limit your imagination or your particular experience! Feel free to make comments or suggestions on a few or all of the key themes or questions here, on issues which may interact with several of them or which lie outside these topics. In general, we would like to learn what the issues are and what solutions are most important and feasible for you. Please respond with your thoughts to the trails legislation review contacts listed at the end of the Discussion Paper.

## REVIEW THEMES

As noted above, the scope of this review is broad. To provide some structure to discussions, this Paper poses some questions and options under each of the seven key themes. These questions and options reflect comments shared by provincial Ministries and organizations through the Ontario Trails Strategy consultations and other forums. We welcome other issues, options and suggestions for laws, policies or other responses that you may wish to make.

**Note that the 41 questions in this Paper are provided to provoke thought and input. They do not imply that any particular option will be adopted nor that it may be supported by the government. Please feel free to focus and comment on items of interest to you.**

### Conserving Nature and Culture Along Trails

One of the more widely expressed concerns during the OTS consultations was the need and opportunity to protect natural and cultural features along trails. Erosion, forest fragmentation, noise, pollution and removal of such features along trails (by diverse uses, from bikers and hikers to horses and all terrain vehicles) can create negative impacts on trail users, neighbours, wildlife and local heritage. Signage and other ways to celebrate such natural and cultural features can enhance the experience and sustainability of trails.

#### *Questions and Options*

1. Is it worthwhile to conserve natural and cultural features along trails?  
Why?
2. Would the expanded use of trail user codes and other education efforts be sufficient to conserve such features?
3. Should a standard provincial manual and checklist be developed that identifies the steps needed to plan and develop a trail, including steps for identifying and conserving natural and cultural features along a trail?
4. Should legislation regulate some activities on different types of trails in order to protect their natural and cultural heritage features? How could this best work?
5. Where are there problems with enforcement of appropriate uses on trails and what additional enforcement powers might be needed?
6. Should environmental assessments consider trails and protect the natural and cultural features along them?

## Liability Issues

Liability and insurance concerns are often found near the top of the list for trail operators and users. Trespass issues are also a concern for some landowners. Trespassing, uncertainty about exposures to liability and increased insurance costs can reduce the availability of trails and make management and use unaffordable. Trail users, managers and their landowner partners are becoming savvier about risk management but other steps might also be needed. Still, the law does not impose liability in the absence of fault. Any proposal to relieve someone of liability raises the question of fairness to the victim of that person's fault. If one proposes that certain activities, people or groups be given immunity from liability because their roles are important, then those affected by their actions will have no remedy for the physical or property harm they have suffered. When considering solutions for trails issues, we also need to consider how changes to practices and laws of wide application might affect other interests.

### *Questions and Options*

7. Is education of landowners, trail managers and users about managing liability and insurance issues sufficient to reduce concerns about these issues?
8. Is there a need to change the liability laws? If so, which ones and how?
9. Would reducing liability exposures and uncertainties in law actually help trail managers, users and landowners and reduce insurance premiums?
10. Should volunteers, children or others have special liability protection or insurance rates? In what circumstances and why?
11. The OTS recommends setting standards, potentially for design, accessibility, development and maintenance of one or more types of trail. Should laws exempt from liability any person who essentially complies with any such provincial standards, as is the case for roads? Is it fair that an injured trail user in this case would be solely responsible for their injuries?
12. Are there terms or concepts in the *Occupier's Liability Act* or other liability legislation that create uncertainties or practical difficulties for trail managers, landowners or users? If so, how should this be addressed?
13. What measures would help insurance companies track trail-related incidents, reduce their costs or create lower trail insurance premiums?

14. How could trespass issues be reduced on and near trails? Should the *Trespass to Property Act* have increased penalties and damage awards or other means to reduce unauthorized uses?

## **Motorized Vehicles**

Ontario has many types of motorized vehicles that may be used on trails. The *Motorized Snow Vehicles Act* regulates snowmobiles and the *Off-Road Vehicles Act* regulates all-terrain vehicles, off-road motorcycles, dune buggies and amphibious vehicles (e.g. Argos) but not some other types of vehicles. Some reforms have been discussed in the reviews by the Ministry of Transportation and Clute and Associates, yet there may be others as well.

### *Questions and Options*

15. Should the term “off-road vehicles” be expanded beyond its current scope, or extended to some but not other situations? If so, how broad and in what situations?
16. What safety, agricultural or other measures should or should not apply to the current or an expanded scope of “off-road vehicles” and “motorized snow vehicles”? Should these measures be different among different types of vehicles, uses, locations or other situations? If so, why and how should they be different?
17. Should the conversion or use of off-road vehicles on public roads be controlled? If so, in what situations and with what types of controls?
18. Should off-road vehicles require annual licensing and/or trail permit fees? Why? If so, how should this best function?
19. What are the best ways to reduce erosion, noise and pollution from vehicles used on trails? Given federal responsibilities for some vehicle standards, should there be discussions with the federal government on better ways to address these issues?

## **Land Planning and Acquisition**

The OTS consultations identified a number of issues related to securing the long-term route for a trail and the need to ensure there is land available for diverse types of users. This necessarily relates to land use planning and the acquisition or other means of securing appropriate lands for trails, all within the context of provincial and local needs and directions. The use of trail easements can establish permanent rights-of-way, where a landowner agrees to it.

### *Questions and Options*

20. What issues arise in the diverse use of Crown lands for trails and trail access? Is the “free use” policy for Crown lands working for trail use? How could any such issues be improved?
21. Should provincial or regional strategic plans for recreational use of roads and trails on Crown land be developed, recognizing a variety of uses, geography and land designations? Who should develop these?
22. Should there be a plan for and designations of off-road vehicle use locations? Who should do it? Should different uses be combined or kept separate? How would this best be done?
23. Currently there is one agency that is legally qualified to hold long-term trail easements over private lands. Does this adequately meet the need? If not, please explain why not and offer solutions.
24. Should there be specific legislation or policies for linear rights-of-way (e.g. abandoned railways, hydro corridors etc.) and their use for trail corridors? If so, what is needed? Do the changes to the *Line Fences Act* made in 2006 by Bill 130 adequately address fencing issues?
25. Should there be an authority to designate and recognize trails, including considerations of tourism promotion, branding and accessibility?
26. Should the *Highway Traffic Act* and its policies be updated to address the safe use of trails within and parallel to highway corridors? If so, what are the issues and what is needed?

### **Trail Development and Operations**

Once broader land use planning and acquisition has occurred, there are still many aspects of trail development and operations that need to be considered. This topic includes the framework governing trails and how this might work better to foster good trails and constructive relationships among trail partners, owners and neighbours.

### *Questions and Options*

27. Should the provincial government have a specific mandate relating to non-automobile modes of transportation, and should various uses of trails be included in those modes?

28. Should there be a specific mandate and means to develop more compatible use of bicycles on roads and trails? If so, who should do this? If so, what laws or policies should be developed?
29. Should a regulation be developed that sets out the standards of design, accessibility, development and maintenance for one or more types of trail? If so, for what types of trail and how detailed or general should they be?
30. How could legislation, better programs and designs in urban areas encourage walking, bicycling, and other non-automobile modes of transportation? What roles should various interests play?
31. When roads or trails are closed, whether generally or for a particular section, use or time, how should unauthorized use be penalized? Should this be different on public versus private lands and, if so, why?
32. Should non-traditional trails, such as for water-based trails or certain public roads distinctive in use or scenery, be recognized and developed? By whom? Should a trails policy and modified standards apply to them in some way? If so, for what types and how?
33. What are the legal or policy barriers to more effective and efficient operation of trails?
34. If you want to make a trail more accessible for persons with disabilities, what are the legal or policy barriers or solutions to doing so?

### **Financial and Tourism Issues**

An important aspect of planning for trails is finding ways to ensure their long-term financial and infrastructure viability and to best promote and capture their tourism and related benefits. The Province has a variety of taxation, fee, incentive and spending powers, used in some contexts to promote provincially beneficial activities.

#### *Questions and Options*

35. Should a permit and fee be required to use certain types of trails? If so, for what types of trails and users, and how should this system work?
36. Should special revenues from any trail-related licenses, permits or other sources go into a special purpose fund and then be used specifically for trails? If yes, what types of revenues should be included and for what range of purposes should it be used? Who should administer any such fund?

37. Should there be a property tax reduction for landowners with a plan or agreement to host a trail on their properties? Does this create a hardship for other taxpayers who will need to make up the difference to sustain municipal revenues?
38. Currently, a property or easement for long-term trail or conservation purposes when purchased incurs land transfer tax and can incur probate fees if it is a part of a person's estate and transferred through a will. Land transfer tax and probate fees are levied as small percentages of the property's value. Should there be a reduction or exemption from such tax and fee for trails and conservation purposes?
39. Are there funding models you think would work for trails in Ontario? How would they work? A certain portion of a U.S. federal transportation program is allocated to trail uses. How could Ontario provide a secure source of funding to support non-automobile modes of transportation, including trail-related infrastructure and uses?
40. How can changes to law or policy help trails become more economically viable, sustain infrastructure and better promote tourism? What types of grants might help?

## **General Issues**

Some places, such as in Nova Scotia, New Brunswick and a number of U.S. states, have a single focused statute dealing with trails, a "Trails Act". Others, like Ontario at present, have a wide variety of statutes that have some impact on trails and that could be amended as required through a trails policy and resulting legislation. The choice of legislative approach will affect the timing, scope, coordination level, profile and communications of any package of changes that might be proposed and approved.

## *Questions and Options*

41. Is a new "Trails Act" needed to outline key provincial responsibilities for trails and make a number of legal changes? If so, what should it contain? Should some approved legal changes happen through amendments to a variety of Acts as opportunities arise over time?

## TRAILS LEGISLATION REVIEW CONTACTS

We invite your written responses to these questions and comments and suggestions on any other issues or solutions related to trails legislation and policy. Please send your **comments by June 15, 2007** to:

Carol Oitment, Policy Advisor, Sport & Recreation Branch  
Ministry of Health Promotion  
393 University Ave, 18th Fl  
Toronto, Ontario M7A 2S1  
Tel: 416-314-7205  
Fax: 416-314-6301  
carol.oitment@ontario.ca

## APPENDIX 1: GLOSSARY OF TERMS

An explanation of some of the terms used in the text of this Discussion Paper is provided below.

**Erosion**: The loss of land due to human or natural processes.

**Forest Fragmentation**: Forest fragmentation occurs when large, continuous forests are divided into smaller blocks, either by roads, clearing for agriculture, urbanization or other activities.

**Linear Right-of-Way**: A path or route that may lawfully be used and tends to be long and narrow. For example, a trail legally established over someone else's land or a hydroelectricity corridor.

## **APPENDIX 2: LIST OF SOME TRAILS-RELATED LEGISLATION**

The following is a list of some of the trails-related legislation in Ontario. They are grouped under the provincial Ministry that has responsibility for each Act.

Ministry of the Attorney General:

*Occupiers' Liability Act, Negligence Act, Trespass to Property Act*

Ministry of Community and Social Services:

*Accessibility for Ontarians with Disabilities Act; Ontarians with Disabilities Act*

Ministry of Culture:

*Ontario Heritage Act*

Ministry of Environment:

*Environmental Protection Act, Environmental Assessment Act/Class EAs*

Ministry of Finance:

*Assessment Act, Land Transfer Tax Act, Income Tax Act*

Ministry of Health Promotion, and Ministry of Tourism:

*Tourism and Recreation Act*

Ministry of Municipal Affairs and Housing:

*Planning Act/Provincial Policy Statement, Line Fences Act, Municipal Act, Greenbelt Act/Plan, Oak Ridges Moraine Conservation Act /Plan*

Ministry of Natural Resources:

*Public Lands Act, Crown Forest Sustainability Act/Plans, Conservation Land Act, Conservation Authorities Act, Provincial Parks Act/Plans, Provincial Parks and Conservation Reserves Act*

Ministry of Public Infrastructure Renewal:

*Places to Grow Act/Growth Plans*

Ministry of Transportation:

*Off-Road Vehicles Act, Motorized Snow Vehicles Act, Highway Traffic Act, Public Transportation and Highway Improvement Act*