

Managing the Risks of Bike Parks

On May 17, 2016, The Court of Appeal for Ontario upheld a trial decision of the Ontario Superior Court of Justice that Bruce County was 100% liable for the injuries sustained by the plaintiff at the County's Mountain Bike Park in August 2008. The plaintiff, Stephen Campbell, a 43 year old male, critically injured himself when he fell over a wooden teeter-totter feature at the Park.

Bruce County was found to have breached its duty under the *Occupiers' Liability Act* in the following four ways:

1. Failure to post warning signs: There were no signs present that instructed riders at the Park to try easy trails or features first, nor were there any signs that provided guidance as to how to use the features present. The black diamond rating system employed by the Park, which was based on the standard signage system employed by the International Mountain Bike Association, was insufficient as it did not warn of the risks associated with the features.
2. Negligent promotion of the Park: The promotional material used by Bruce County did not provide sufficient warnings as to the skill level required to safely use the features at the Park, and instead promoted the Park as a family facility, which gave first time users a false sense of security.
3. Failure to monitor risks and injuries at the Park: Ambulance reports obtained during litigation showed that there had been several prior injuries at the Park, including one incident that bore significant similarities to the plaintiff's incident. Given the nature of the features in the Park, there should have been an incident management system to allow Bruce County to better determine which features posed a danger.
4. Failure to provide an adequate progression of qualifiers: The positioning of the features in the Park, particularly the placement of a smaller teeter-totter directly before the teeter-totter the plaintiff fell off of, encouraged the use of a feature that was substantially more difficult and dangerous.

Municipalities that build and operate bike parks must actively manage the associated risks. Special attention needs to be given to both the design and maintenance of the facilities as well as the tools and training provided to community-based volunteers.

We have prepared this guidance document to help you identify and actively manage the associated risks. This guidance document was prepared by Intact Public Entities and Shillingtons LLP.

Step 1 – Budget

A lack of adequate funding is often the cause of unacceptable levels of risk. The budget process must extend beyond the funds required to build the park. It must also include the funds to provide on-going regular inspection and maintenance. Remember, if you build it, you have to maintain it.

Step 2 – Find a Strong Partner

It's strongly recommended that you consult with and involve your local cycling association. They can be a strong partner for you as they can provide their expertise in cycling; ability to fund-raise and provide volunteers to help you move the park forward. They will be strong proponents and the future users of the park.

Step 3 – Park Design & Public Consultation

You'll need to choose an appropriate location for the park. From a risk management standpoint, choose a location that is in open view, not a location that is set back into a wooded area or off the beaten path. Keep it close to the roadway and parking areas. Remember if injuries occur, EMS/Fire/Police must be able to quickly access the park. Don't have your emergency responders searching wooded areas looking for the injured party.

Next, you will need to hire a professional bike park builder to provide an initial review of your site location to determine the type of facility that your site can accommodate. Soil composition and drainage patterns are unique to each site and these factors determine the type of facility that can be built.

*The Court of Appeal's reasons are reported as *Campbell v Bruce (County)*, 2016 ONCA 371, and can be found online on CanLII at: <http://canlii.ca/t/grpz1>. An application for leave to appeal to the Supreme Court of Canada was dismissed on February 16, 2017.

Once you receive this report, you can move forward with public and user consultations. Any residents in the area should be notified very early in the process so they can express their concerns. You need to know their issues early in the process so you can address them appropriately.

The purpose for the user consultations is to get their input into the type of facility they will want to use and therefore support. If you build the park free of challenges, the user group will not use the facility; they will use social media to spread the word that the park isn't worth riding or they will take it upon themselves to redesign to a more challenging level. Creating open lines of communication between the user group and your municipality can help to enforce park rules, deter any vandalism and discourage a redesign.

Step 4 – Types of Features and Facilities

When designing and building a park, there are several types of features that may be included, each of which carries its own unique risk management issues:

Pump Track

This type of track consists of banked turns and a continuous loop of hills and berms that are ridden by pumping the bike rather than pedalling. There are two main options with a pump track:

- **Paved Surface:** Involves higher initial construction costs offset by lower maintenance cost. Paved tracks are less susceptible to being altered or modified by users, but this also means that any teardown or rebuilding will also be expensive.
- **Dirt Surface:** Normally involves the compaction of soil, meaning a lower initial construction cost. However, maintenance tends to be more extensive, and more often required as the surface will break down more easily than a paved surface. Also, access to a water source is a requirement. Finally, dirt surfaces are more susceptible to alteration by users.

Skills Park

Skills parks include artificial structures that are designed to test biking skills, often called technical trail features or TTFs. Skills parks are often associated with skills progression, and TTFs are often built to accommodate progressively higher skill levels.

If building a skills park, you will need to determine the type of features that will be incorporated into the park design. Will the features be articulating such as (teeter-totters) or

fixed objects (ladders, balance beams)? What will be your elevation heights? Building materials are also an issue with respect to maintenance. Some features can be built out of stone, wood, or packed earth, but these different materials involve a progressively higher ongoing maintenance cost.

From a risk management and liability perspective, we strongly discourage articulating features as they can be unpredictable to the rider using them, especially novice riders. Riders need the correct speed to reach the fulcrum pivot point and then be prepared for the descent, all while maintaining balance. More complex articulating features may also pose the risk of a rider not fully comprehending how they may operate when ridden over. Articulating features are one of the leading causes of litigation.

Jump Lines

These are jumps and ramps constructed of wood or dirt. The safest type is a table top design which provides a safe landing surface if the jump can't be completed. It allows for a margin of error.

Multi-Purpose Park

Parks can, and very often do, incorporate some or all of the above features. Parks will often have separate areas solely dedicated to TTFs (often designated "skills areas" or "trials areas"), or will have features, tracks or jump lines staggered throughout a system of trails, allowing users to have access to multiple experiences.

Step 5 – The Construction Phase

We recommend hiring a professional builder. Enter into a formal contract with the builder and include in your contractual terms that the builder must work with a landscape architect who is a member of the Ontario Association of Landscape Architects (OALA). Require that the landscape architect give final sign off on the design before the park is built and conducts a field review after the park is built to ensure that the built park matches the approved drawings. Do not open the park to the public until you receive final sign-off from the landscape architect.

Never use someone else's bike park plans as the soil can be different and the degree of erosion can vary.

Keep the original design drawings. You may have to refer to them at a later date. Without the original design drawings, you will never be able to determine if your park has been redesigned.

Step 6 – The Contract

The contract should:

- Clearly define the responsibilities of all the parties involved.
- Include a Hold Harmless & Indemnification Clause in your favour.
- Insurance Requirements including CGL from the builder and Professional E&O from the Landscape Architect.
- You must be added as an additional insured to all of the CGL policies.
- Don't let the work begin until you receive the Certificate of Insurance.

Step 7 – Signage

Signs are a crucial part of managing the risks. Consider the following:

- At the main entrance point(s) there should be signs that state the rules of the park, safety warnings, and a description of the difficulty rating system employed for features and trails.
- A difficulty rating system should be established via signage which is regularly and consistently employed throughout the park.
- Signs should inform riders they should walk over features, jumps or unique sections of trails that they are contemplating riding in order to familiarize themselves with the area.
- Signs should advise riders to be conscious of the existence of different skill levels for different features of the park, and the need to consider skills progression. Riders should not be encouraged to try more difficult features first, but should practice on easier features first.
- Use your signage to alert users of hidden hazards (sharp turns; steep descents).
- Pictorial signs are the universal language understood by different age groups.
- Make sure your signs don't blend into the natural environment – no green or brown signs.
- Incorporate your signs into your regular inspection and maintenance schedule.

Step 8 – Inspection & Maintenance

You must decide who will provide the inspection and

maintenance services. Will it be your staff or will you contract with the park designer or builder?

Choosing Your Staff

- Do they know what to look for?
- Do they know how to repair the surfaces including the features?
- If not, who will provide the training?

Contracting with the Designer/Builder

- There must be rules written into the contract that strongly disallow them from redesigning the park during maintenance. These changes may prove to be hazardous for the user group that is now familiar with the original design.
- Another danger of a redesign during maintenance is your carefully worded signage no longer applies to the area or park. Your difficulty rating system may now be different.

Develop your inspection and maintenance policies, procedures, schedules and documentation. Your documents must be used by all parties. Conformance to your policies, procedures and schedule is mandatory.

Step 9 – Monitoring Injuries

Privacy is an issue with respect to specific details. Can EMS provide you with general information on a monthly basis? General information would include: number of calls to the park; types of injuries sustained; area of the park where accidents are occurring. For example a report could look like this:

Over the last month we had 10 incidents – 90% were broken bones; 10% lacerations/bruises/sprains. Of these incidents, 5 involved children under the age of 10. Of these 10 incidents, 7 occurred at the same feature _____.

Step 10 – Before the Park Opens

It's prudent to take your emergency responders on a tour of the park. Let them gain familiarity with its layout. Give them a copy of the design. Encourage them to use the design map as their reporting tool. They can indicate the area of the incident location on the map. This will allow you to know if the incidents are occurring in a particular area. If yes, then you need to determine if the area has a design fault and modifications need to take place.

Step 11 – Training Your User Group

It's prudent to offer your user group instruction on how to use the various features. This training can be provided by your local cycling association.

Step 12 – Promoting the Park

Include in any brochures/pamphlets:

- General warnings about the risks associated with biking. Parks should not be marketed as a low consequence activity, but instead as a challenging activity that carries some level of risk.
- Pictures of features.
- Difficulty level of each feature.
- Encourage parents to stay and watch their kids ride.

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