

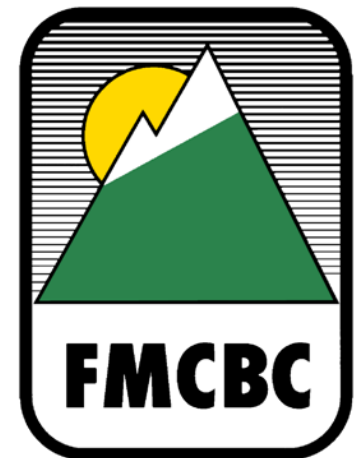
FMCBC Insurance and the new Universal Waiver

Presented by Jodi Appleton

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FMCBC 2013 AGM

Kamloops, BC



Overview

- Commercial General Liability schedule for 2013-2014
- General info on current CGL policy
- List of activities
- List of clubs participating in CGL policy
- FMCBC's new Universal Waiver
 - Waiver features
 - Waivers and minors
 - Best practices for waiver delivery
 - Storage of waivers
- Incident reporting
- Resources and Court Cases
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COMMERCIAL GENERAL LIABILITY

COVERAGE SCHEDULE

Coverage	Commercial General Liability Insurance (As More Fully Defined Within Wordings)		
	Limits of Indemnity	CAD	
	Each Occurrence Limit:	5,000,000	
	Personal and Advertising Injury Limit	5,000,000	Any one person or Organisation
	Medical Expense Limit	50,000	Any one person
	General Aggregate Limit	5,000,000	
	Tenants' Legal Liability Limit	2,000,000	Any one premises
	Products/Completed Operations Aggregate Limit	5,000,000	
	Extension Limits		
	Non-Owned Automobile	5,000,000	Any one loss (exclusive of interests and costs)
	Legal Liability for Damage to Hired Automobiles	50,000	separately in respect of subsection 1
	Forest Fire Fighting Expenses	2,000,000	Aggregate
Deductible		CAD (unless otherwise stated)	
	Each Occurrence:	1,000	
	Each Occurrence in respect of United States of America Jurisdiction Extension	10,000	(USD)
	Personal and Advertising Injury:	1,000	Any one person or organisation
	Medical Expense:	1,000	Any one person
	Tenants' Legal Liability:	1,000	Any one premises
	Extensions: (as above unless stated below)		
	Non-Owned Automobile	1,000	each occurrence
	Legal Liability for Damage to Hired Automobiles:	1,000	each occurrence separately in respect of subsection 1
	Forest Fire Fighting Expenses:	10,000	each claim or loss, including defense costs
Form of business:	Organization, including a corporation (but not including a partnership, limited liability partnership, joint venture or limited liability company)		
Business description:	Sports Association		
Premises owned rented or occupied:	All locations in Canada owned, rented or occupied by the Federation of Mountain Clubs of BC & its affiliated clubs		

Limits of Indemnity

- Each Occurrence Limit: \$5,000,000
- Medical Expense Limit: \$50,000
- General Aggregate Limit: \$5,000,000
- Tenant's Legal Liability Limit: \$2,000,000
- Non-Owned Automobile: \$5,000,000
- Legal Liability for Damage to Hired Automobiles: \$50,000
- Forest Fire Fighting Expense: \$2,000,000

Deductible

- Each Occurrence: \$1,000
- Each Occurrence in USA Jurisdiction: \$10,000 USD
- Medical Expense: \$1,000
- Tenants' Legal Liability: \$1,000
- Non-Owned Automobile: \$1,000
- Legal Liability for Damage to Hired Automobiles: \$1,000
- Forest Fire Fighting Expense: \$10,000

CGL Policy General Info

- Our CGL insurance coverage is in place to protect:
 - The club, its trip organizers, volunteers, and those authorized to carry out functions for or on behalf of the club (i.e., instructors) from being sued by a trip participant (member or guest) and third parties.
- Our policy **does not** protect individual members/participants unless they are carrying out functions for or on behalf of their club.

CGL Policy General Info

- Our CGL policy's main objective is to cover club sanctioned trips and social events
 - Trips and socials must be advertised on your website or in your newsletter to be included
- US Trip coverage is included in our 2013-2014 policy
- Guests are covered under our 2013-2014 policy.
 - Guests must sign a waiver and can participate on up to three trips annually without purchasing a club membership.
- Accident Death & Dismemberment and Medical Benefits are not included in the 2013-2014 policy. Only in 2011-2012 was this coverage included under our CGL policy.

List of included activities

- Hiking - on and off trail (see Note 1)
- Snowshoeing - on and off trail (see Note 1)
- Water Sports (non-motorized) – Kayaking, canoeing (no grade two or greater), boats (under 9 meters)
 - Policy provides for Watercraft less than 8 meters in length and has an in/outboard motor of not more than 15 h.p.
- Climbing - indoor, wall, rock, ice, alpine, sport and mountain
- Backpacking - overnight and multi-day; on and off trail (see Note 1)
- Bicycling (non-motorized) – day and multi-day; woodland trail, gravel and paved road tours
- Mountain Biking for limited purpose of access – unpaved forestry, paved roads or park roads
- Backcountry skiing, backcountry snowboarding and touring (see Note 2)
- Cross country skiing
- Mountaineering – glacier travel, rock, snow, ice and mixed, roped and unroped (see Note 2)
- Trail building, clearing and maintenance on Federal and Provincial Parks, Crown Lands and Private Lands
- Building, maintaining and operating backcountry huts for member and non-member use
- Club organized instructional programs or skill refresher programs (see Note 3)

continued

List of included activities continued

- Publishing of Trail or climbing route guidebooks
- Club socials and meetings
- Ownership of 3 hectares of land granting access to climbing at the Smoke Bluffs
- Ownership of 'Hiking Huts', 3 not located in Provincial Park, 2 located in Provincial Park, ranging in size from approx 12 feet x 24 feet and 20 feet x 30 feet.
- Minors are included under the policy provided they are members of the club, a waiver was signed by their guardian and the total membership composition remains under 10% minors per the application on file.
- Mountain biking on marked trails
- Horseback riding on marked trails
 - Note 1: These activities occur in a wide range of environments, including but not limited to, wilderness, mountains, urban and rural areas, coast, within and outside of parks, within and outside controlled recreation areas.
 - Note 2: These activities typically occur in mountainous and wilderness terrain, often remote, and outside of controlled recreation areas. Chairlifts, helicopter and fixed wing aircraft are sometimes used for the limited purpose of access but in all other respects the activity is self-propelled.
 - Note 3: Instructors can range from volunteer members, guides or certified or professional instructors
 - Note 4: All activities may consist of multi-day trips

List of Clubs Participating in CGL for 2013-2014

- Alberni Valley Outdoor Club
- BC Mountaineering Club
- Bulkley Backcountry Ski Society
- Caledonia Ramblers
- Chilliwack Outdoor Club
- Comox District Mountaineering Club
- Fraser Headwaters Alliance
- Friends of Garibaldi Park
- Friends of Strathcona Park
- Hike BC
- Island Mountain Ramblers
- Kamloops Hiking Club
- Kootenay Mountaineering Club
- Mt. Remo Backcountry Society
- North Shore Hikers
- North Vancouver Outdoors Club
- Quadra Island Outdoor Club
- South Okanagan Trail Alliance
- SFU Outdoors Club
- Vancouver Island Trails Information Society
- Vancouver Island Spine Trail Association
- Varsity Outdoor Club Okanagan
- Varsity Outdoor Club - UBC-Van
- Victoria Outdoor Club Meetup

Waivers

- Why use waivers?
 - If used properly, a waiver may protect your club, your leaders and your volunteers in the case of a lawsuit.
 - Waivers show that your club is practicing good risk management and is acting responsibly.
 - Waivers are a requirement of our insurance: club members and trip participants must sign a waiver.

Why use FMCBC's Universal Waiver

- Our Universal Waivers incorporate the advice, guidance and precedents received from Robert Kennedy, QC and his assistant, Carol Metzner. Robert Kennedy practices defence litigation, focusing on sports, recreation and adventure tourism cases.
- Our Insurance Committee has worked hard to develop these new waivers with the activities and interests of our clubs specifically considered.
- Our Insurer wants all clubs under the FMCBC CGL insurance to use the same waiver.

FMCBC Universal Waiver

Name of FMCBC Member Club _____



RELEASE OF LIABILITY, WAIVER OF CLAIMS, ASSUMPTION OF RISKS AND INDEMNITY AGREEMENT

BY SIGNING THIS DOCUMENT YOU WILL WAIVE OR GIVE UP CERTAIN LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE OR TO CLAIM COMPENSATION FOLLOWING AN ACCIDENT

PLEASE READ CAREFULLY!

SIGNATURE OF PARTICIPANT/MEMBER _____

To: _____ (the "Club"), Federation of Mountain Clubs of BC, and their respective directors, officers, employees, members, volunteers, agents, independent contractors and subcontractors, representatives, successors, assigns and all persons acting under their authority (all of whom are hereinafter collectively referred to as "the Releasees")

DEFINITION

In this Agreement the term "Outdoor Activities" shall include but is not limited to: mountaineering (glacier travel); rock, snow, ice and mixed; roped and un-roped), climbing (indoor, rock, ice, alpine, sport and mountain); backpacking, hiking, trail running, trekking; backcountry skiing, touring, telemark skiing, snowboarding and snowshoeing; alpine skiing, Nordic or cross-country skiing; cycling, mountain biking; trail building, clearing and maintenance; building, maintaining and operating backcountry huts; and, all activities, services and use of facilities either provided by or arranged by the Releasees including orientation, instructional and skill development programs and all travel by or movement around helicopters, other aircraft or other vehicles.

ASSUMPTION OF RISKS

I am aware that participation in Outdoor Activities involves many risks, dangers and hazards. The terrain used for Outdoor Activities is uncontrolled, unmarked, not inspected, and involves many risks, dangers and hazards. Avalanches occur frequently in the terrain used for Outdoor Activities and may be caused by natural forces or by persons travelling through the terrain. I am aware that the Releasees may fail to predict whether the terrain is safe, and whether avalanche hazards or other dangers or risks may occur. Risks, dangers and hazards may include but are not limited to: rockfall, icefall, avalanches of snow, ice and rock triggered by natural forces, by persons travelling through the terrain or other causes; extreme variation in terrain, including hidden or exposed rocks, boulders, ice, logs, stumps, roots, forest deadfall, treewells, trees and other objects; falling trees; forest fires; concealed or exposed crevasses, icebridges or bergschrunds; cornices and cornice falls; cliffs; variable and difficult snow or ice conditions, including unstable snow packs or ice; ungraded, unmarked and uncontrolled terrain; exposed or concealed holes or depressions on or below the surface or ground cover; still and moving water; lakes, streams, creeks and rivers, including crossings; cold water immersion; entrapment by trees, logs, rocks or equipment; drowning; limited visibility; variable, severe or rapidly changing weather with little or no warning including storms, high winds and lightning; hypothermia; hyperthermia; frostbite; loss of balance or control and falls, particularly on steep, slippery or difficult terrain; difficulty or inability to control one's speed and direction; errors of judgment; lack of preparation; inadequate, inappropriate, improperly prepared or adjusted equipment; equipment failure, malfunction or loss; loss or damage to personal property; failure to act safely or within one's ability or within a designated area; impact or collision with vehicles, other persons or objects; encounters with domestic or wild animals; becoming lost, going off route or becoming separated from one's party; remote locations with unreliable, delayed or no communication and inability to get rescue or medical assistance quickly or easily; dangerous driving conditions and travel over poor roads; negligence of other persons; and, NEGLIGENCE ON THE PART OF THE RELEASEES, INCLUDING THE FAILURE BY THE RELEASEES TO SAFEGUARD OR PROTECT ME FROM THE RISKS, DANGERS AND HAZARDS OF OUTDOOR ACTIVITIES.

I AM AWARE OF THE RISKS, DANGERS AND HAZARDS ASSOCIATED WITH OUTDOOR ACTIVITIES AND I FREELY ACCEPT AND FULLY ASSUME ALL SUCH RISKS, DANGERS AND HAZARDS AND THE POSSIBILITY OF PERSONAL INJURY, DEATH, PROPERTY DAMAGE AND LOSS RESULTING THEREFROM.

NON-SCHEDULED OR EMERGENCY EVACUATION, RESCUE OR FIRST AID

I acknowledge and agree that all expenses associated with non-scheduled or emergency evacuation, rescue or first aid will be my responsibility and will not be covered by the Releasees.



DISCLOSURE OF RESPONSIBILITIES

All activities and programs offered by the Releasees which involve Outdoor Activities are entirely self-guided. The directors, officers, employees, members, volunteers, organizers, agents, representatives, coordinators and all persons acting under the authority of the Releasees are neither professional guides nor trained first aid attendants. All are volunteers and may have no formal training in the skills and knowledge required for the Outdoor Activities. The Releasees are not in any way responsible for travel to or from locations, including transport by public or private motor vehicles. Releasees are not in any way responsible or liable for driver negligence, conduct or safety, or for insurance of vehicles, even if the vehicle belongs to or is driven by the Releasees. Participants are responsible for their own medical insurance, accident and disability insurance and third party liability insurance.

RELEASE OF LIABILITY, WAIVER OF CLAIMS AND INDEMNITY AGREEMENT

In consideration of the Releasees allowing me to join the Club, to use Club cabins, and/or to participate in activities, programs or meetings organized or authorized by or on behalf of the Releasees including, but not limited to Club trips, camps, expeditions, courses or programs involving Outdoor Activities, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I hereby agree as follows:

1. TO WAIVE ANY AND ALL CLAIMS that I have or may have in the future against the Releasees and TO RELEASE THE RELEASEES from any and all liability for any loss, damage, expense, or injury including death that I may suffer, or that my next of kin may suffer, resulting from or in connection with my membership in the Club, my use of Club cabins or my participation in any activities, programs or meetings organized or authorized by or on behalf of the Releasees, including, but not limited to Club trips, camps, expeditions, courses or programs involving Outdoor Activities DUE TO ANY CAUSE WHATSOEVER, INCLUDING NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE, INCLUDING ANY DUTY OF CARE UNDER THE OCCUPIERS' LIABILITY ACT, R.S.B.C. 1996, c. 337, OR ANY APPLICABLE OCCUPIERS LIABILITY LEGISLATION, ON THE PART OF THE RELEASEES, AND FURTHER INCLUDING THE FAILURE ON THE PART OF THE RELEASEES TO SAFEGUARD OR PROTECT ME FROM THE RISKS, DANGERS AND HAZARDS OF OUTDOOR ACTIVITIES REFERRED TO ABOVE.

2. TO HOLD HARMLESS AND INDEMNIFY the Releasees from any and all liability for any property damage or personal injury to any third party, resulting from any aspect of my membership in the Club, my use of Club cabins or my participation in activities, programs, or meetings organized or authorized by or on behalf of the Releasees, including but not limited to Club trips, camps, expeditions, courses or programs involving Outdoor Activities.

3. This Agreement shall be effective and binding upon my heirs, next of kin, executors, administrators, assigns and representatives, in the event of my death or incapacity;

4. This Agreement and any rights, duties and obligations as between the parties to this Agreement shall be governed by and interpreted solely in accordance with the laws of the Province of British Columbia and no other jurisdictions; and

5. Any litigation involving the parties to this Agreement shall be brought solely within the Province of British Columbia and shall then be the exclusive jurisdiction of the Courts of the Province of British Columbia.

Unless the executive of the Club directs otherwise, this Agreement shall apply to all subsequent membership renewals, use of Club cabins or participation in activities, programs or meetings organized or authorized by or on behalf of the Releasees including but not limited to Club trips, camps, expeditions, courses or programs involving Outdoor Activities.

In entering into this Agreement, I am not relying upon any oral or written representations or statements made by the Releasees with respect to the safety of Outdoor Activities, Club cabins and activities, programs, or meetings organized or authorized by or on behalf of the Releasees, other than what is set forth in this Agreement.

I CONFIRM THAT I HAVE READ AND UNDERSTOOD THIS AGREEMENT PRIOR TO SIGNING IT, AND I AM AWARE THAT BY SIGNING THIS AGREEMENT I AM WAIVING CERTAIN LEGAL RIGHTS WHICH I OR MY HEIRS, NEXT OF KIN, EXECUTORS, ADMINISTRATORS, ASSIGNS AND REPRESENTATIVES MAY HAVE AGAINST THE RELEASEES.

Date: _____ Participant's Signature _____ Witness' Signature _____
Participant's Printed Name _____ Witness' Printed name _____

Universal Waiver Features: Visuals

- The waivers are meant to be printed or displayed online in colour so the highly visible yellow areas draw the reader's attention.
- The waivers fit 8 ½ x 11 letter sized paper.
- Ideally waivers are printed double-sided to minimize the two pages becoming separated.
- When printing double-sided heavier weight paper should be used if possible.

Universal Waiver Features: Activity Options

- Four different versions of the Universal Waiver:
 - Basic
 - Basic plus water activities
 - Basic plus equestrian activities
 - Basic plus equestrian and water activities
- Your club should choose the waiver that covers all club activities and does not include activities outside the club's usual scope.

Universal Waiver Features: Customizable

- Drop Down Menu for club selection
 - The digital version includes a drop down list of clubs who are currently participating in the CGL coverage
 - Once the club name is selected the waiver can be printed with club's information included
 - If using digitally the club name can be saved and will remain as the default option
- Technical note – Mozilla Firefox browsers have some compatibility issues with the drop down menu

Universal Waiver Features: Signatures

- Three Signatures are required for each waiver
 - Member/participant signs in two places:
 - Top of first page to acknowledge that he/she has given up the right to sue or claim compensation; and,
 - Bottom of second page to confirm he/she has read and understands the waiver and has waived his/her rights.
 - Witness signature
- Waiver can be printed and then signed by hand, or signed online using a digital signature

Waivers and Minors

- Minors are covered under our insurance as long as they are members of a club and a parent/guardian and the minor have signed a waiver. This an insurance requirement.
- Although an insurance requirement, a waiver signed by a minor and/or his/her guardian is unenforceable. A waiver signed by a minor and/or his/her guardian serves to draw their attention to the possibility of injury and makes them aware of and assume the inherent risks of the activity.
- The FMCBC is developing an Assumption of Risk Form for minors and their guardians in place of the waiver.

Waivers and Minors

- Clubs and trip leaders need to decide whether to allow minors on trips. Clubs which permit minors on trips should alert and advise trip leaders that if a minor signs up for a trip, the trip leader can decide whether the minor will be allowed on the trip and on what terms.
- Membership forms need to include birthdates to determine whether a new member is a minor.

Best Practices for delivering waivers

- Because we have no ability to ensure that a member/participant has read a waiver or completely read a waiver or even if we did, they can still deny that they read it, the **key is to ensure that the member/participant was given ample opportunity** to read the waiver.
- If they choose not to read it, its there problem.
- By having them sign the waiver they confirm they have read and understood it.

Best Practices for delivering waivers

- Waivers should not be trivialized. It is an important legal document that can protect your club, your volunteers and your leaders in the event of a lawsuit.
- The legal effect of a waiver should not be down played (i.e., “Don’t worry, nothing will happen”, “This is just to keep our lawyer/insurer happy”, “Waivers aren’t legal; they don’t mean anything”). Waivers are legal and have been successfully enforced in BC.
- Explain to your trip leaders the importance of the waiver and that it’s purpose is to protect them and the club.
- Clubs should provide advance notice that a waiver is required to participate on club trips.

Best Practices for delivering waivers

- The waiver should be a separate, stand alone document. It should not be combined with other documents, i.e., trip sign in list, membership registration form, health form, etc.
- The waiver should not be interpreted or explained. It is self-explanatory.
- Post the waiver prominently on the club website. This gives members/participants ample time to read and become familiar with the waiver.
- Give members/participants ample time to read the waiver. Don't wait until you reach the trailhead to sign waivers.

Best Practices for delivering waivers

- Members/trip participants must not be allowed to cross out or delete areas of the waiver.
- Members/participants should never be rushed to sign the waiver. The waiver should be signed when opting out of the trip is still an option.
- If a member/participant refuses to sign a waiver or crosses out portions of the waiver, the trip leader should not allow that person on the trip.
- The waiver should be signed in front of a witness. A waiver should not be witnessed if the member/participant is intoxicated when signing the waiver.

Best Practices for delivering waivers

- Electronics Transaction Act does not require a witness for waivers filled out on line.
- We recommend having members sign a waiver annually rather than per trip. If signing per trip a participant should be able to review the waiver well in advance of the trip.

Storage of Waivers

- 1. Under the new *Limitation Act*, in most circumstances, the claimant must sue within **2 years** of the discovery of a claim.
- 2. A claim is discovered when
 - the claimant knows that injury, loss or damage has occurred
 - the injury, loss or damage was caused by or contributed to by an act or omission of a person (individual or corporation)
 - a court proceeding would be an appropriate way to address the harm

Storage of Waivers

- 3. There is an ultimate limitation period of **15 years**. There are some exceptions to the ultimate limitation period, but generally those exceptions don't apply to the type of cases that member clubs would generally deal with (previously the ultimate limitation period was 30 years).
- 4. The ultimate limitation period starts to run from when the act or omission occurred, regardless of when the claim was discovered or when the damage actually occurred.

Storage of Waivers

- 5. The limitation periods can be extended through late discovery or by acknowledgment or confirmation of liability by the wrong doer. If a wrong doer acknowledges or confirms liability in a signed, written document to the person with a claim (or the person's agent), both the 2 year and ultimate limitation period are reset.
- 6. The limitation period is postponed for minors (under the age of 19), persons under disability, fraud, or wilful concealment of facts.

Storage of Waivers

- Based on these changes, waivers should be stored for a **minimum of 16 years** (the 15 year ultimate limitation period, plus 1 year to serve the Notice of Civil Claim if an action is started).
- Ideally signed waivers should be stored indefinitely, even if stored electronically, because “historical” waivers demonstrating the person's familiarity with waivers.

Incident Reporting

- If an incident does occur
 - Make safety the first concern for the injured person and others who are present
 - Record the details of the incident as soon as possible on the [FMCBC Incident Reporting Form](#)
 - Record the name and contact information of all trip participants. Even if trip participants did not witness the accident, they may still have valuable information.
 - Ask other volunteers or trip participants to write down their own accounts of the incident and surrounding circumstances.
 - Submit all forms, names and witness reports to the FMCBC as soon as possible and keep a copy for club records.

Resources and Court Case examples

“Volunteers & the Law” available from the People’s Law School

<http://www.publiclegaled.bc.ca/publications/english2>

The *Arndt* case reviews many earlier waiver cases and arguments for and against waivers [Arndt v The Ruskin Slo Pitch Association 2011 BCSC 1530](#)

The *Loychuk* case is a recent case, where a waiver similar to FMCBC’s Universal Waiver was upheld both in the BC Supreme Court and BC Court of Appeal: [Loychuk v Cougar Mtn 2011 BCSC 193](#) & [Loychuck v Cougar Mtn 2012 BCCA 122](#)

The *Wong* case involves a minor, where the court concluded that the guardian cannot waive the rights of a minor [Wong v Lok’s Martial Arts Centre Inc. 2009 BCSC 1385](#)

References

- Rehnby, Nadene, and Maureen Clark. *Volunteers & the Law: [a Guide for Volunteers, Organizations and Boards]*. Vancouver: Law Foundation of British Columbia, 2000. Print.
- Cloutier, Ross. "Legal Liability in Adventure." Risk Management and Legal Liability in Outdoor Recreation. BCIT Burnaby Campus, Burnaby. 16 Mar. 2012. Lecture.