APPENDIX 3 – A DISCUSSION OF LIABILITY AND DANGEROUS TREE ASSESSMENT

A DISCUSSION OF LIABILITY AND DANGEROUS TREE ASSESSMENT

"Duty of care" is the legal responsibility of the landowner or someone acting on their behalf (i.e., forest manager, park manager) to reasonably ensure the safety of persons working on or using that property. The duty of care is often established by various Acts or policies such as the *Occupiers Liability Act*. The Duty of Care invokes a certain standard of conduct called the "standard of care." Standard of care is defined as the best available guidelines and practices used to fulfill a particular "duty of care." Standard of care is recognized according to established procedures at an accepted level of standards. The Wildlife/Danger Tree Assessment process and associated course (WDTAC) is recognized in B.C. as the current "standard of care" relative to the determination of tree danger and hazards.

Relative to persons who might be assessing trees for work activities or other situations, as long as these are qualified persons (i.e., they have successfully completed standardized training in dangerous tree assessment or have demonstrated knowledge and experience of the work activity and hazards involved) who have applied the accepted standard of care for dangerous tree assessment (i.e., the WDTAC process), and have done so with due diligence (i.e., they were not negligent in following the accepted procedures or techniques), then they should not be held liable if a subsequent accident were to happen relative to a previously assessed tree. The assessment by said person would be viewed as consistent with "what a reasonable and prudent person (i.e., trained with similar qualifications) would have concluded under similar circumstances." Therefore, there would be no case for liability since **liability has to be proven, usually by showing that some sort of negligence was involved**. Generally, *liability hinges on whether or not there was a duty of care to be exercised, and if so, whether or not it was negligently implemented* (i.e., the accepted standard of care was not adhered to). In other words, was the person **"duly diligent" in performing the work required?**

"Due diligence" is the process of performing a task to the best of one's knowledge, ability and, as far as reasonably possible, according to the prescribed procedures.

When determining whether "due diligence" was taken, the following will be considered:

- Who was involved? A combination of the following determine one's capability for completing the particular task:
  - ~ knowledge
  - ~ training
  - ~ experience
  - ~ skills
- What was done?
  - ~ was the work done as well as others would do it? Done according to accepted procedures?
  - ~ what is required by regulation for the work done?