

**VERTICAL CHALLENGES:
BUILDING SUSTAINABLE ROCK CLIMBING IN BANFF NATIONAL PARK**

By

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ABSTRACT

Rock climbing is experiencing an unprecedented boom in global popularity, and visitation to Banff National Park by all forms of park users, including climbers, appears to increase year over year with no end in sight. This research examines how the activity of recreational climbing is currently managed in Banff and explores the intersection of environmental management objectives, regulatory enforcement mechanisms, and key climbing stakeholder goals and objectives. This thesis asks the question of whether or not climbing governance in Banff is effectively structured to achieve Parks Canada mandates and ecological protections. This thesis argues that there are barriers generated by the existing framework given the absence of a management plan. To advance environmental management goals, any climbing management approach that is developed for Banff needs to enable climbing sport participants and developers to proactively engage with land managers without fear of retribution and liability. I articulate and analyze the entirety of the legal framework which governs Banff National Park, including the ways in which climbing activities could be captured by the contravention and enforcement mechanisms contained within the legislation. I examined all publicly available reported court decisions and parliamentary transcripts. I also interviewed select key climbing development stakeholders in Banff to place climbing governance within a socio-legal context. I conclude that while change is not required to the mechanics of existing National Parks legislation or regulatory framework to enable climbing management, the development of new management planning tools are necessary to address identified climbing stakeholder challenges and build the future of ecologically sustainable climbing in Banff.

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ABBREVIATIONS AND ACRONYMS USED IN THIS RESEARCH

The Act – Canada National Parks Act

Banff – Banff National Park

CanLII – Canadian Legal Information Institute

CBPR – Community-based participatory research

CEP – Contravention, enforcement, and prosecution

CNPA – Canada National Parks Act

DLR – Doctrinal Legal Research

General Regulations – National Parks General Regulations

The Mandate – The Parks Canada Mandate

The Minister – The cabinet minister responsible for Parks Canada and its governing legislation, currently Hon. Julie Dubrusin, the Minister of Environment and Climate Change

NIEHS – National Institute of Environmental Health Sciences

SLR – Socio-legal reform research

CHAPTER 1

Introduction

Banff National Park (Banff) is Canada's oldest and most visited national park. Each year, millions of tourists come from around the world to visit the "Crown Jewel" of Canada's national park system. An increasing number of those visitors are climbers who come to challenge themselves on the thousands of established bolted climbing routes in Banff. Climbing is experiencing a global surge in participation and popularity, contributing an estimated \$12 billion dollars to the United States economy in 2019 (American Alpine Club, 2019) and has become a mainstream activity at an international level since its debut as a showcase sport at the 2020 Olympic Games in Tokyo, Japan. It became a full-time permanent sport at the 2024 Olympic Games in Paris, France. Highly viewed documentaries have followed some of the athletes and types of climbing, including the 2018 documentary *Free Solo*, which chronicled Alex Honnolds' ropeless ascent of Yosemite National Parks "El Capitan," and the Tommy Caldwell and Kevin Jorgenson-centred 2017 film "The Dawn Wall". Climbing now, more than ever, is in the international media spotlight.

Simultaneously, Canada's National Parks and Historic Sites are experiencing an all-time high in popularity. Even with COVID-19 related pandemic restrictions causing a dip in visitation, Banff has seen more than three million visitors on average every year for the last 15 years. The 2023/2024 season was the busiest year on record, with approximately 4.28 million tourists visiting Banff (Parks Canada, 2024).

Recreational climbing in all its forms, including traditional mountaineering and the more modern bolt-protected sport climbing style, has a well-established history in Banff. Parks Canada's official website even advertises and promotes climbing as one of the world-class outdoor recreation opportunities available throughout Banff and the other Rocky Mountain National Parks. However, there is no official management plan or policy on how climbing activities are regulated and governed within the parks. This creates uncertainty and ambiguity regarding the application of legal frameworks to climbing activity and the development and maintenance of climbing areas within the boundaries of Banff.

The mandate of Parks Canada is to protect and present nationally significant examples of Canada's natural and cultural heritage, and to foster public understanding, appreciation and enjoyment while ensuring the ecological and commemorative integrity of these places for present and future generations (Parks Canada, 2024). From a legal perspective, the primary tool Parks Canada uses to protect these places is the application of governing legislation and management planning and its enforcing its various restrictions on anyone entering a National Park. Specifically, the existing legislation creates a contravention, enforcement and prosecution regime (CEP) (*Canada National Parks Act*, S.C. 2000, c. 32, ss. 19.1 and 31.2). This authorizes Parks Canada, through its Park Warden service, in collaboration with Federal Prosecutors, to investigate, charge, and prosecute individuals determined to have violated what is permitted within the boundaries of a national park.

As the numbers of both visitors and recreational climbers in Banff increase, there is a gap in understanding of whether or not the contravention, enforcement, and prosecution model is an effective way to regulate climbing activity while achieving Parks Canada's mandate-aligned objectives. A new comprehensive management plan (the Management Plan) for Banff was published in 2022, serving as the vision and guiding strategy document for the next decade. Although the 2022 Management Plan commits, at a high concept level, to supporting environmentally low-impact recreation within the vast majority of the park, it contains no specific references to climbing. Research reveals that this is not unique to Banff, and existing legislation and management planning are silent regarding climbing activity for all national parks in Canada. While climbing is not explicitly prohibited or restricted under Banff's legal framework, legal authorities could interpret governing legislation and its associated regulations to include climbing-related impacts, such as developing, bolting, and maintaining routes. Without a specific exception or permission under a management plan, most climbing-related activities could be classified as illegal under the *Canada National Parks Act* (S.C. 2002, c. 32). The lack of clarity surrounding the extent to which climbing is permitted or restricted renders the enforcement of the governing regulations vulnerable to sporadic, uninformed and inconsistent application by park conservation authorities and the courts.

As there are no formal best practices guide or climbing management plan for Banff, the adherence to ecologically sustainable climbing development practices by sport participants is also vulnerable, sporadic, uninformed and inconsistent in application. Climbing spaces in Banff are almost exclusively developed and managed clandestinely by an extremely small subset of climbers who intentionally avoid contact, advance consultation, or formal involvement from land managers or Parks Canada out of fear that attracting attention will lead to shutdowns, liability or prosecution.

As tourist numbers grow in Banff, fragile alpine environments are increasingly exposed to the problems that accompany higher volumes of human traffic. As climber numbers grow, increasing pressures between climbers and non-climbers as potentially competing user groups on the same natural resource become an increasing source of possible conflict between park visitor groups. Solutions are needed to address issues such as trail erosion, impacts on vegetation, human waste, garbage disposal, parking overflow, fire hazards, and human-wildlife conflict (North & Harasymchuk, 2012; Ballantyne, Gudes & Pickering, 2014). Climate change presents additional challenges, as an increasing number of adventure recreationalists venture farther and stay longer in alpine environments during warmer and drier summers (Pröbstl-Haider, 2015; Scott, Jones & Konopek, 2007). There are also growing public safety concerns, as climbing bolts can fail with time due to exposure to the elements (Sjong & Eiselstein, 2008), leading to the risk of injury or death for climbers (Schad, 2000).

The key objective of this study is to investigate the interaction between climbing area developers and sport participants with governing legislation and regulatory frameworks. This research also explores possible solutions to better manage climbing in Banff in ways that align with both the Parks Canada Mandate and the needs and goals of climbers. This research is specifically aimed at identifying the intersections of the contravention, enforcement, and prosecution regime with the intention of achieving ecologically sustainable recreational climbing in Banff. Although there has been research conducted on many of the component elements of climbing impacts, significant gaps remain in existing legislation and policy. Environmental scientists have examined the ecological impacts of climbing activity on ecosystems (McMillan & Larson, 2002),

researchers have studied climber experiences and identities (Robinson, 2004), and tourism scholars have evaluated the economic impacts of the practice (Shaw & Jakus, 1996). However, there is limited research regarding the intersection between environmental, social and legal considerations surrounding climbing. While Banff has established management and development plans for activities such as alpine skiing, there is no body of research examining potential challenges that current governing legal frameworks may present to developing similar management and planning solutions for ecologically sustainable climbing activity in Banff.

This research also examines strategies used within the climbing area development community to increase participation and compliance with ecologically sustainable development and management practices (Schuster, Thompson, & Hammitt, 2001). The remote nature of climbing spaces within Banff necessitates a partnership effort between land managers and sport participants for successful stewardship (Meffe, Nielsen, Knight, & Schenborn, 2002). This research asserts that development of new management planning tools are necessary under the existing legislative and regulatory framework of Banff to advance ecologically sustainable climbing activity and development. The current approach of CEP without a specific management plan, combined with the unique factors of climbing as an activity, creates a regime that does not effectively address Parks Canada Mandate-aligned objectives for ensuring ecologically sustainable climbing development and activity. Additionally, these regulations do not address the needs and goals of the climbing community. This is an untenable combination that would benefit from new management approaches that more effectively address the increasing number of climbers and pressure on protected spaces where climbing activity occurs. The current challenges brought by increased visitation and the popularity of climbing highlight the need to develop a climbing management plan specific to the unique concerns of Banff. The development of collaborative management planning tools that allow for collaborative partnerships and communication between climbing participants and land managers and creates pathways to avoid liability for climbing stakeholders, are necessary to enable ecologically sustainable climbing development and ensure the integrity of Banff is preserved for future generations.

Contextualizing Ecological Integrity

As this research aims to analyze whether and to what extent existing legal frameworks help or hinder the protection of ecological integrity with regard to climbing and its development in Banff, it is necessary to define “ecological integrity” in the context of national parks. The *Canada National Parks Act* (S.C. 2002, c. 32) (the “*CNPA*”), defines “ecological integrity” as “a condition that is determined to be characteristic of its natural region and likely to persist, including abiotic components and the composition and abundance of native species and biological communities, rates of change and supporting processes” (*CNPA* at s.2(1)). Federal environmental authorities consider an ecosystem to have ecological integrity when its components, including native species, biological communities, natural landscapes, and ecological functions, meet that definition (Environment and Climate Change Canada, 2023). In a national park, Environment and Climate Change Canada undertakes regular ecological integrity monitoring by evaluating ecosystem components against threshold values. Scores of good, fair or poor are assigned for each value measured, and averaged to get the overall ecosystem score. They also assign a trend of improving, stable, or declining to describe the ecosystem’s status over a five-year period. The description of these assessments is as follows:

“An ecosystem that is rated as good and stable is secure and likely to persist, and no major management actions like ecosystem restoration are required. Fair or declining ecological integrity indicates that the ecosystem is vulnerable and management actions may be required. Poor ecological integrity indicates that the ecosystem is impaired, and significant management actions may be required. Improving ecological integrity results may indicate that restoration actions are working.” (Environment and Climate Change Canada, 2023)

Federal environmental authorities group these assessments within one of eight specified categories of ecosystem, depending on what is present in a specific national park. These ecosystems categories are: coastal and marine, forests, freshwater, glaciers, grasslands, shrublands, tundra, and wetlands (Environment and Climate Change Canada, 2023). Management actions to improve ecological integrity are identified based on the

ecosystem category and the specific behaviours or trends that are negatively impacting each area. Federal environmental authorities describe use this approach because:

“Each ecosystem responds differently to stressors and to management actions. It may take many years to make measurable improvements to ecological integrity and to demonstrate the ecological benefits of management actions.” (Environment and Climate Change Canada, 2023)

It is relevant for this research to note that cliffs and cliff sides, where climbing development and sport activity takes place, are not a specific category of monitored ecosystem.

Defining Climbing Activity and Climbing Terms

Similar to most forms of sport, climbing encompasses several sub-disciplines, each with its unique aspects, self-imposed rules, and equipment involved. Climbing also involves highly specific and technical terms that are unique to the sport and its various sub-disciplines. Climbing activity has been the subject of numerous attempts at categorization and definition throughout the climbing literature. In an effort to be consistent with modern climbing management and access-based research terminology, this research follows the American Access Fund guide to Climbing Management’s definitions for the various forms of climbing activity and common climbing terminology (Attarian and Keith, 2008). Definitions of forms of climbing activity and climbing terms can be found in Appendix I.

Literature Review

Increases in Visitation to Banff and the Impact on Local Economies

Banff visitation has grown 31 percent since the 2013/2014 season. Banff saw 4.28 million visits in the 2023/2024 season, which was the busiest year on record. Banff is the most visited national park in Canada, accounting for 26 percent of all visits to Canada’s national parks in 2024 (Visitor Use Management Plan for the Lake Louise Area, 2024). As Banff’s popularity increases, so too does the economic impact of visitation to Banff. In 2016, the Town of Banff, the Town of Canmore and the Municipality of Jasper

collaborated on a study to estimate the monetary value of tourism to the three communities. The purpose of the study was to provide critical information regarding the proportional contribution of tourism to each community's economy, and an understanding of tax revenues raised relative to benefits received locally. This study found that for the 2015/2016 year, 3,984,332 visitors to Banff provided \$888,502,123.00 in tourism expenditures (Banff, Jasper Canmore Tourism Economic Study 2016, Grant Thornton; Parks Canada Attendance 2011-2016, Parks Canada). There was no research available which considers the impact of climbing tourism on the economies associated with Banff.

The Growing Popularity of Climbing

There has been an increase in the participation of outdoor based adventure recreation activities as a whole throughout the 21st century, and the global magnitude of visits to protected natural areas and spaces has been on the rise as populations increase and simultaneously become more mobile (Balmford et. al, 2015). Climbing has especially grown in recent times from a deluge of modern exposure and participation, and its growth has wildly exceeded that which was projected by outdoor recreation researchers, shattering predicted numbers of sport participants (The Outdoor Foundation Participation Report, 2018). Although research has not been conducted on the number of estimated climbers in Canada, older data from the 1994-95 National Survey on Recreation and The Environment estimated that the United States had approximately 300,000 to 400,000 rock climbers (Cordell et al., 1999). The same survey projected that this number would increase by 50% to approximately 500,000-600,000 by the year 2050. Data from research conducted in 2018 by the Outdoor Foundation placed the number of climbers in the United States between 5 and 9 million, vastly exceeding predictions (The Outdoor Foundation Participation Report, 2018). Globally, the International Federation of Sport Climbers ("IFSC") commissioned a study in 2018 to estimate the number of climbers worldwide. The study included both indoor and outdoor climbers, but excluded hikers and adventure park climbers. After weighing the average percentage of climbers per country with the total world population—and after excluding populations in extreme

poverty—the IFSC estimated there are 44.5 million climbers worldwide. (Climbing Business Journal, 2020).

In 2019, the American Alpine Club (AAC) released its inaugural “State of Climbing Report”. In a first-of-kind report, the AAC detailed the following key demographic findings for the United States:

- In 2014, it was estimated that there were 7.7 million participants in climbing in the United States, up 6% over the previous year;
- 65% of all climbers are between the ages of 18 - 35 years old;
- As of 2018, 4.4% of all Americans climb indoors;
- Indoor climbers, or those who climb in gyms, make up 52% of the climbing population;
- Climbing as a whole contributed \$12,450,000,000 to the U.S. economy in 2017 (State of Climbing Report 2019, AAC 2019).

Banff as a Climbing Destination

Banff contains thousands of climbing routes. These routes vary from short sport climbing routes in developed sport climbing crags to long traditionally protected climbs in remote alpine environments rivalling any world class climb. Banff is a climbing tourism destination, and climbers from all over Canada and the world spend extended periods of time on climbing holidays in the area throughout the warmer months of the year. The Towns of Banff and Canmore, the second of which is located just outside the park boundary, have well-established climbing communities in addition to climbing-specific shops, equipment stores, general tourist accommodations, and all other necessary amenities for extended stays in the region by climbing tourists. Banff is located approximately 120 kilometers from Calgary and along the TransCanada Highway, making it optimally situated to become the busiest national park in Canada.

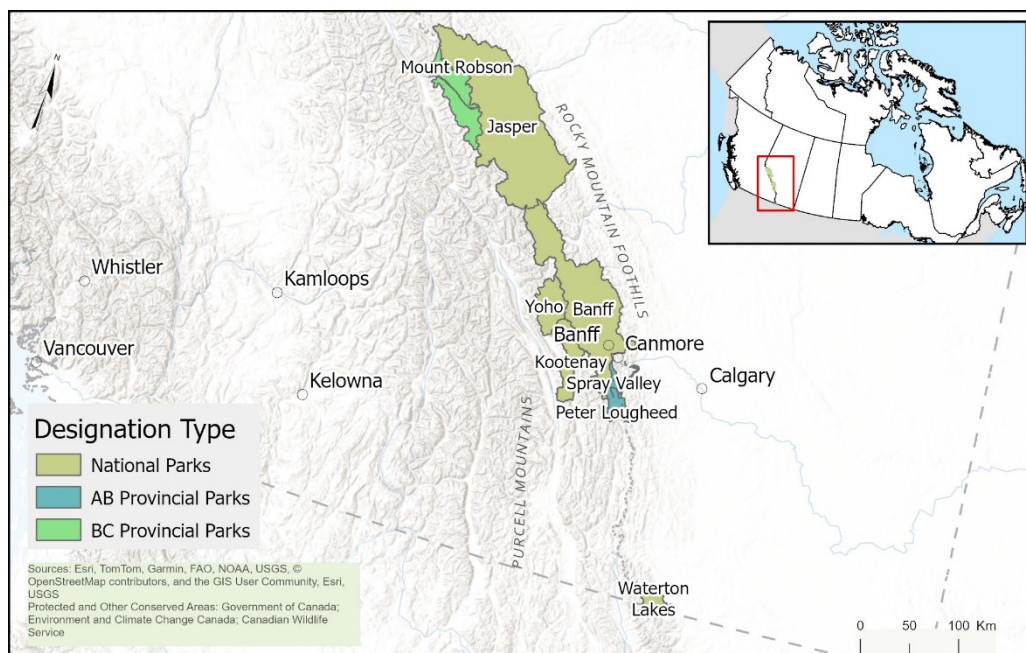


Figure 1 – Location of Banff relative to other major cities and nearby parks. Credit: Catalina Valle.

Sport participants climb year-round in Banff on a variety of rock, ice and alpine objectives, but the vast majority of climbers attend to climb developed bolt protected sport routes (Perry, 2012). As a mountainous environment, Banff is prone to highly variable weather, and some climbing areas can have their viable seasons extended or shortened depending on elevation and aspect. High elevation north-facing climbing areas typically experience the shortest available climbing seasons. Climbing at high elevation locations, such as the alpine climbing located in and around the community of Lake Louise, typically has a season from June to September. Climbing at lower elevation locations, such as the vast majority of sport climbing routes located in and around the Town of Banff has a longer season of April to October or November, depending on the weather. The high season for climbing is July and August, coinciding with most tourists' holiday schedules and optimal weather windows for sport participation (Perry, 2012).

There is extensive documentation regarding the location, number, and type of climbs in Banff. There are guidebooks as well as free online resources which detail not only climbing location, but also difficulty, approach details and directions, environmental concerns or specific features that sport participants should be aware of in the area.

Modern online climbing logbooks also now allow climbers to record their ascents and compare their climbing statistics against other online climber logs. Climbing guidebooks for the region are readily available in outdoor equipment and book stores throughout Banff. The two most complete guidebooks for climbing in Banff are: *Banff Rock: A guidebook to Rock Climbing in Banff in Canada* by C. Perry published in 2012 and *Sport Climbing in the Canadian Rockies – 7th Edition* by J. Martin and J. Jones, published in 2016. The online databases reviewed for this research in the Banff area were the Mountain Project (www.mountainproject.com) and the Crag (thecrag.com).

Climbing Routes in Banff

The type and adhesion quality of rock are significant to climbing participants. There are two primary forms of rock which climbers gravitate towards in Banff: limestone and quartzite (Belyea, 1960). The majority of the Rocky Mountain range, including most of Banff, consists of limestone, which is a rock highly variable in quality for climbing, ranging from extremely solid and consistent to very loose and friable (Belyea, 1960). Limestone is popular because it offers its steep and complex climbing, but it can be loose, dangerous, and result in significant rockfall and require extensive dislodging of loose rock to make a route safe. On limestone, climbers use face holds rather than cracks and corners because of its often broken and fractured rock patterns (Kaligi, 2024).

The second variety of rock climbers gravitate towards in Banff is quartzite, located predominantly in the sport climbing areas in and around Lake Louise (Belyea, 1960). Quartzite is a dense, sedimentary rock which is characterized by vertical and horizontal cracks, and corner climbing (Kaligi, 2024). It is popular for traditional climbing as well as sport climbing due to the readiness of traditional gear placement opportunities and the security of placement to the climber (Kaligi, 2024).

There are over a thousand established climbing routes throughout Banff (Perry, C. 2012 ; Martin, J. & Jones J, 2016), which primarily consist of sport climbing. Traditional climbing, bouldering, ice climbing and alpine climbing make up a significantly smaller proportion of the routes. The online database the Crag allows for mapping of climbing

areas as well as snapshots of types of climbing and number of routes available in an area. This database shows the areas within approximately 25km of the Town of Banff, and within 25km of Lake Louise as the two most popular regions for climbing routes in Banff. These account for more than 90% of documented climbs in the park (The Crag, n.d.).

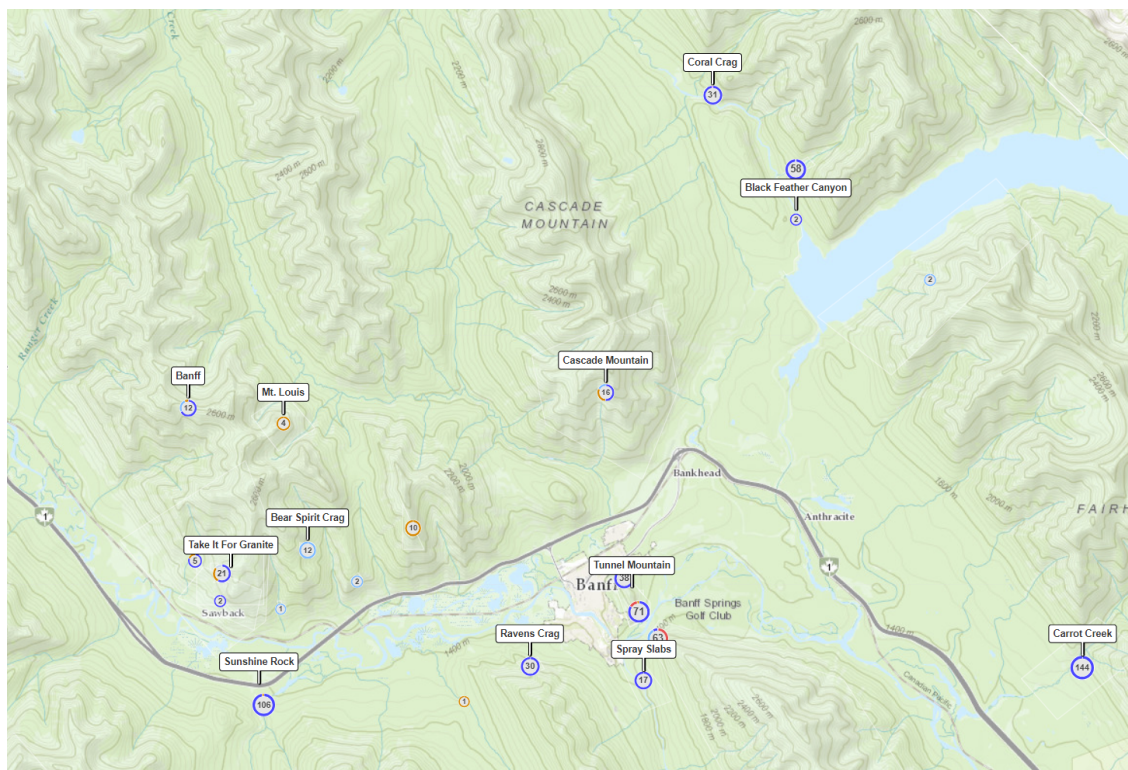


Figure 2 – Map showing the names and locations of developed climbing areas within approximately 25 km of the Town of Banff, Alberta. Source: <https://www.thecrag.com/en/climbing/canada/alberta/banff>.

In the Town of Banff area alone, there are over 722 established climbing routes at over 25 separate developed climbing areas depicted (see Figure 1). There are estimated to be more than 5,000 permanent climbing bolts throughout the above area. The routes in this region are categorized as follows: 77% Sport Climbing, 8% traditional climbing, 7% bouldering and 6% ice climbing (thecrag.com).

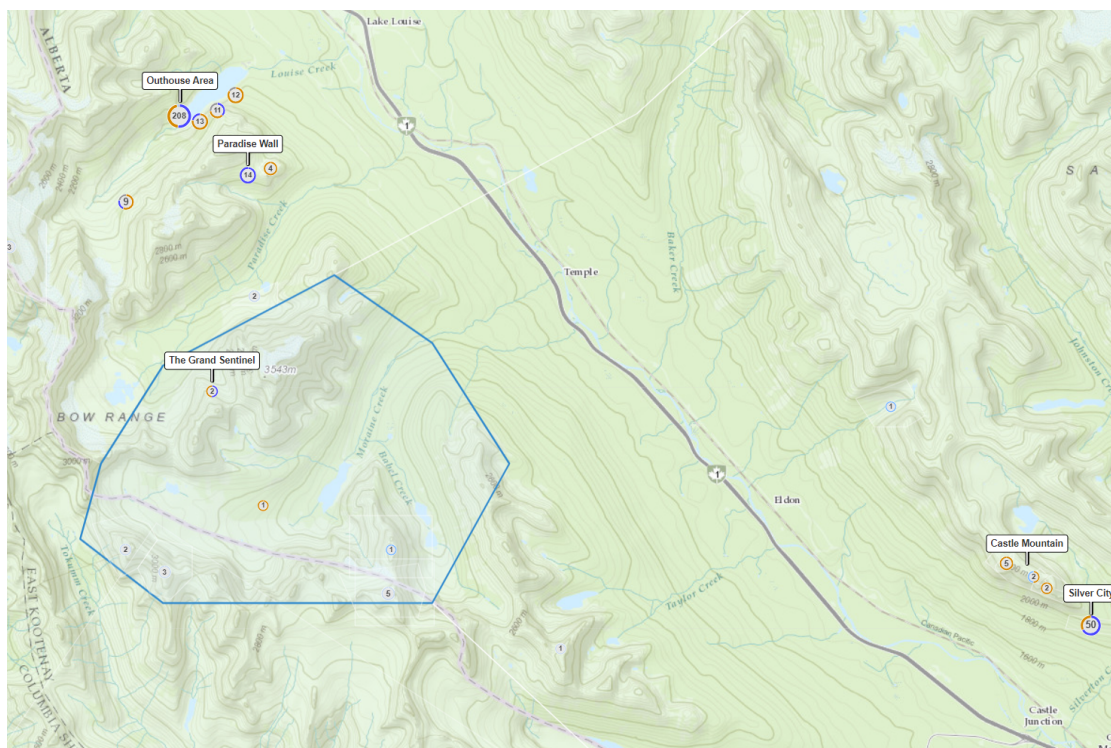


Figure 3 - Map showing the names and locations of developed climbing areas within approximately 25 km of the Town of Lake Louise, Alberta. Source: <https://www.thecrag.com/en/climbing/canada/alberta/banff>.

In the Lake Louise area, there are over 326 established climbing routes at over 23 separate developed climbing areas (see Figure 2). There are estimated to be in excess of 1,000 climbing bolts throughout the above area. The routes near Lake Louise are categorized as follows: 46% Sport Climbing, 45% traditional climbing, with the remainder being an uncategorized mixture of ice climbing, rock climbing, alpine climbing and bouldering (thecrag.com).

The Social and Ecological Impacts of Climbing

Impacts from climbing and tourism have been examined from a number of different perspectives. Research demonstrates that climbing and adventure tourism can provide benefits to a region (Shaw & Jakus, 1996). However, research also suggests that increased occurrence of a given adventure tourism or wildland recreation activity can directly result in negative or undesirable changes in environmental or social conditions (Hammit & Cole, 2015). The impacts a recreational activity have on an area can be

understood by examining three main factors: (1) the amount and distribution of use on an area; (2) the type and behavior of visitors; and (3) the condition of the ecosystem and how it changes in response to visitor presence (Hendee, Stankey & Lucas, 1978). Using this context to understand impacts is appropriate for recreation-oriented environmental management research, since these activities have the potential to compromise the conservation of a natural environment and degrade the level of natural integrity of a region, as well as the calibre of visitor experiences.

The Access Fund, the largest climbing advocacy group in the United States, created an omnibus management and planning guiding handbook which provides an overview and categorization of three main categories of climbing impacts: ecological, cultural, and social. (Attarian et. al, 2008). In the context of Banff, ecological impact would be considered as anything compromising, damaging or otherwise altering the ecological integrity as defined in Section 2(1) of the *Canada National Parks Act*. With proper visitor communication strategies, climbers can be receptive to management and conservation objectives (Borrie & Harding, 2002). As a sport participant group, climbers also tend to have a high appreciation for the integrity of natural spaces and engage in conservation or “leave no trace” practices with the intention of preserving the ecological integrity of the environment (Clark, 2017). However, problems can arise when restrictions aimed at conservation or ecological preservation come into direct conflict with climber objectives, such as when a specific cliff or trail is closed for maintenance or restoration, thereby preventing sport participants from achieving their desired recreation goals. In cases where climbers’ goals are in direct conflict with conservation or preservation objectives, it is anticipated that some climbers will disregard local ethics or management plans and proceed with their recreational pursuits (Barnett, 1991).

Trails

Like many other outdoor recreation activities, climbing relies heavily on trail networks to connect sport participants from their point of departure to the recreation location, usually a bolted or traditionally protectable cliff of optimal steepness and rock quality which can provide climbers with the desired sport experience (Carr, 2006).

Although some climbing trails may overlap with official trail infrastructure, a “climber made” and climbing area specific developed trail typically follows the path of least resistance and the most direct line to reach or depart from a climbing destination. (Attarian and Keith, 2008; DeBenedetti, 1990). The goal of reaching the climbing destination by avoiding obstacles and minimizing effort is paramount. In some cases, multiple trails may be developed by climbers attempting to reach the same or nearby destinations due to poor trail definition or lack of knowledge or trail information (Attarian and Keith, 2008). As a climbing area is established it often results in the development of three zones of trail creation through climber usage that accompany the climbing area: 1) the most direct or efficient approach route from the point of departure to the base of the climbing route(s); 2) the safest and simplest route from the top of the climbing objective or area back to the main approach route trail; and, 3) a network of smaller interconnecting trails which connect specific routes, boulders or other features within a larger climbing area destination or zone (Attarian and Keith, 2008, DeBenedetti, 1990).

Issues such as trail location, soil compaction, trail widening, incision, soil loss and degradation are all functions of site durability, rather than simply the amount of use a trail receives (Leung and Marion, 1996). A fortified and properly developed trail, which is designed to absorb significant foot traffic and resist erosion and degradation, can have a lower impact on the ecological integrity of a region than a less-used improvised trail that was not made with durability in mind. Climber made trails tend to be primitive, have minimal improvements and are often sited on steep slopes with loose soil and scree (Attarian and Keith, 2008). Such trails tend to be built clandestinely through sport participant use.

Climbing trails can occur at a variety of elevations, including in areas highly prone to erosion. Climber trails that on rock or gravel slopes, talus fields, or other similarly robust materials are less prone to soil erosion (Leung and Marion, 1996). Certain types of climbing, such as beginner and intermediate level sport climbing, are far more popular in terms of the quantity of sport participants compared with more difficult or niche forms of climbing such as dangerous and overhanging aid climbing. As a result,

the trail usage for more popular and easier climbing areas might experience substantially higher impacts, even if they are newly developed (Carr, 2007).

Although ecological impacts can accumulate from ongoing usage and an increase in trail popularity, it is the initial phase of trail development which most affects the surrounding environment (Attarian and Keith, 2008). Trail development can potentially damage fragile surrounding alpine environments, as the paths are not typically selected for durability or longevity. Higher elevation trail development, such as trails developed by climbers to access alpine climbing environments, may cause a greater ecological impact as soil quality is more limited and the growing season is shorter for resilient vegetation to both establish and recover from trail usage (Hammitt and Cole, 1998).

For particularly scenic or popular climbing areas where climbing activity is visible to the non-climbing tourist population, there can also be similar ecological impacts from other tourists stopping and gathering to observe climbing at areas not designed for high volumes of traffic. For example, in Yosemite National Park in California, one researcher found that conditions of the meadow area which was primary viewing point for tourists to spectate climbers on the nearby “El Capitan” rock massif was becoming increasingly degraded from a lack of designated trails for this observation activity (Ortiz, 2006).

Vegetation, Rock and Cliff Ecosystems

Climbing as an outdoor recreation activity can have both direct and indirect effects on cliffside and cliff adjacent ecosystems depending on the type of use, frequency, and the season in which use occurs (Hammitt, Cole & Monz, 2007). In addition to the impacts associated with trail development, impacts also occur to cliff faces and rock structures as a wide array of destructive activities can occur when developing a cliff side into an appropriate venue for recreation climbing. Most damage to a cliff or rock-based vegetation structure occurs during the initial development of a new climbing site (Attarian and Keith, 2008). Cliff-based ecology is a relatively new area of study in the field of environmental science, as historically it has been primarily viewed as a subject of geological rather than biological interest (Larson 1989). Whether this is because cliff-

based ecology was considered unworthy of study or a result of its difficult and inaccessible environment to all but skilled and well-equipped climbing scientists is unclear. What research has been done suggests that climbing activity does have the potential to impact cliff-based vegetation in both a short- and long-term scale (Farris 1998).

Vegetation at the base of the cliff is most often destroyed through trampling or mechanical removal. Landing areas are constructed using rocks and local soil, and mosses, lichens, ferns, small trees, and any other vegetation which might compromise a climber's experience on a specific climbing route is typically removed (2017 Smoke Bluffs Park Management Plan). Vegetation and soil must also be removed from the proposed climbing route and key climbing holds, a process that often uses mechanical tools, such as wire brushes and prybars. In areas such as Squamish, B.C., there is substantial moisture content, and mosses regrow relatively quickly on underused climbing areas. This indicates that cliff vegetation is robust in certain areas and can rebound following disturbance and development. However, there is no research on cliff vegetation in Banff. Some kinds of vegetation might be more vulnerable than others to the effects of climbing activity, and some species of vegetation and coverage may differ between cliff faces where climbers recreate or unclimbed cliff faces (Rusterholtz, Muller and Bauer, 2004). Vegetation may be affected in greater or lesser ways by climbing activity depending on where the vegetation is located on the cliff face and the intensity of climbing activity (Nuzzo 1996).

Scientific research has examined many facets of climbing activity on cliffside ecosystems, including calcicolous lichen communities (Baur, Froberg & Muller, 2007), cliff plant and bird communities (Camp & Knight, 1998), cliff vegetation structures (Clark & Hessel, 2015; Kuntz & Larson, 2006; McMillan & Larson, 2002), cliff biodiversity (Holzschuh, 2016), pre-settlement eastern white cedar populations (Kelly & Larson, 1997), land snail communities (McMillan, Nekola & Larson, 2003) and, importantly for the Banff context where limestone cliffs are extremely prevalent, the impact of climbing activity on limestone cliff vegetation and plant communities (Muller, Rusterholz & Baur, 2004). This existing research contends that in all cases studied,

climbing area development and activity have the possibility to deteriorate the ecological integrity of cliff ecosystems.

Impacts on Wildlife

Climbers and wildlife share not just approach and trail environments, but also uniquely they share cliff environments, although often with competing purposes. Wildlife relies on cliff habitats for feeding, breeding, and nesting, while climbers engage in recreational practices which can be disruptive or destructive to the goals of cliffside wildlife (Knight & Gutzwiller, 1995). This is particularly of concern when dealing with birds that rely on cliff-based environments for nesting, foraging, mating, or other activities. Although the interaction between climbing activity and cliffside bird populations is a developing area of research, what data is available from recorded observations of climbed and unclimbed cliffs that are home to otherwise similar bird species and populations indicates a difference in bird behavior between those two cliff environments (Camp and Knight, 1998). The impacts of climbing development and climbing activity on bird, bat, and insect behaviour and populations are a much-needed field of study which could benefit from greater scientific understanding. One study conducted on avian populations in rock climbing sites in Boulder, Colorado suggested that negative ecological impacts of rockclimbing on avian diversity and cliff use may be mitigated by informed land management approaches (Covy et al, 2019).

Away from the cliffs and on the trails and approaches, climbing activity can cause wildlife to avoid parts of their normal range (Gander & Ingold, 1997). Climber disturbance has specifically been observed in species such as grizzly bears. Studies have shown the bears spend less time foraging, more time moving, and behave more aggressively when climbers are present (White, Kendall and Picton, 1999). Wildlife migratory patterns and movement corridors are of particular importance in the Banff context as the park contains multiple critical migratory wildlife travel corridors (Banff Management Plan, Parks Canada 2022).

Human Created Impact and Waste

With growing numbers of recreationalists, there is an increase in the challenges of managing the byproducts of climbers staying for extended periods of time in areas beyond the reach of sanitation and septic services. In Banff, especially in high alpine environments where water sources may be scarce, the disposal of human waste and fecal matter becomes a significant logistical challenge. This is critical not only to reduce environmental degradation, but also to protect human health as improper disposal of human waste can transmit illness and disease (Cilimburg, Monz and Kehoe, 2000). Several “Leave No Trace”-specific studies have documented that individuals are more likely to perform behaviours that are perceived as easy and effective at protecting natural resources (Lawhon et al., 2013). Although issues for climbers are similar to those of other backcountry users, including hikers and cyclists, the difference in mobility means that unique concerns present themselves for climbers. Hikers and cyclists might be more inclined to refrain from disposing of human waste outside designated backcountry outhouses and facilities, as they are more likely to be moving towards an area with waste-management infrastructure. Climbers, on the other hand, hike to a climbing area and typically remain at that single location as the recreational activity for the day. Educating climbers on proper disposal of waste and garbage in Banff is challenging in the current landscape due to a lack of communication between land managers and sport participants. Additional factors include the remote and difficult-to-access nature of climbing areas, and a scarcity of funding resources for waste disposal facilities in climbing areas. Research into why people litter and the impacts that litter has on the recreation experience has helped broaden understandings of these behaviours (Attarian and Keith, 2008; Noe, Hamit and Bixler, 1997). With proper management and the growth of the sport, there may be an increase in compliance as the impact from unmanaged human or waste disposal begins to detract from the climbing experience.

Research on bouldering climber behaviour in Rocky Mountain National Park on reducing and minimizing impact in accordance with established “Leave No Trace” principles indicate that on a global level, boulderers were highly supportive of impact-reducing behaviours (Schwartz et al, 2019). This suggests that the expansion of

messaging and outreach specific to climbing and bouldering, in conjunction with the continued educational strategies, could influence attitudes in a manner that better aligns with wilderness management objectives. However, while climbers reported positive perceptions of Leave No Trace and felt it is an important means of minimizing recreation-related impacts, attitudes towards such behaviours when it impacted bouldering and detracted from bouldering objectives (such as the movement of rocks to develop safer landing zones) were less favorable (Schwartz, F., Taff, B. D., Pettebone, D., & Lawhon, B., 2016).

Climate Change Related Impacts

Outdoor recreation and tourism-based experiences are increasingly subject to added pressure from environmental challenges stemming from climate change (Mason & Neumann, 2024). Wildfires and seasonal weather extremes are changing where and how tourists spend time in natural landscapes. Tourism planning and land use management must account for the future environmental realities of climate change in order to develop effective and relevant strategies for land use planning and governing a changing environment and landscape (Kajan & Saarinen, 2013). Mountainous regions like Western Canada's Rocky Mountains, are particularly susceptible to climate change in their alpine environments (Kotlarski et al, 2022). Older research models predicted that visitation to these mountainous regions could continue to increase by as much as 36% by 2050 as seasonal change effects the extent to which "high season" for tourist travel remains in effect and cold weather limitations on tourist numbers and accessibility are reduced (Scott, Jones & Konopek, 2007). Data shows that this prediction is already outpaced by existing visitor trend increases in Banff. In 2001 there were approximately 3,106,470 visitors to Banff National Park (Parks Canada, 2018), and in 2024 there were approximately 4,288,000 visitors (Parks Canada, 2024), an increase of 38% visitation.

Conversely, seasonal shifts and changes in weather patterns may result in weather events that limit tourism as a result increased prevalence of wildfire, droughts and storms (Kajan & Saarinen, 2013). The most prominent of these, wildfire and its associated smoke, is established to decrease both the reported quality of visitor experience as well as

visit duration (Hystada & Keller, 2006). This means that in the future, climbing in Banff's alpine environments may theoretically be accessible for more months of the years, but will be increasingly vulnerable to natural disasters and weather events. This will in turn augment pressure on ecological resources and climbing environments during the months where climbing activity is unimpeded by climate change activity.

Socio-Cultural Impacts of Climbing

The Banff area and the Bow Valley corridor are areas of traditional significance for several Indigenous communities that lived, migrated through, hunted, fished, and gathered in the valley (Snow, 2005). Parks Canada recognizes and acknowledges in Banff the Bears paw, Chiniki and Goodstoney First Nations, the Siksika, Kainai and Piikani First Nations, the Tsuut'ina First Nation and the Rocky View Métis District of the Otipemisiwak Métis Government (Parks Canada, 2024). In addition to the exclusion of their cultural histories from significant representation in the park, Indigenous communities have also been excluded in many ways in from both governance and management of these lands, as well as conservation decisions (Binnenma & Niemi, 2006; Mason, 2014). As Banff is the birthplace of Canada's National Park system, there are also many cultural and historical resources in the valley that could be negatively impacted by recreation development if not properly managed. Sacred sites and special food or medicinal plant gathering locations are of significant concern (Mason, 2014).

Intrapersonal and Park User Conflicts

With the increasing number of climbers, conflicts and questions arise when climbing destinations overlap with multi-use areas. Even within climbing communities, there are rifts as to the identified priorities of climbing management objectives. Understanding who is represented within the climbing population and the motivations of climbers is critical to developing effective management solutions for the impacts of those climbers (Caber & Albayrak 2016). As with many recreation activities, there are subcultures within climbing. Academic research on the segmentation of climbers and the

reasons for this factionalism helps guide management solutions by revealing sport participant motives, conflicts and setting preferences (Rapelje, 2004). For some climbers, the desired adventure sport experience prioritizes engagement with nature and exploration over the physical and personal challenge of the sport (Ewert & Hollenhorst, 1994). As a result, the climbing experience is substantially degraded if the environment is damaged by sport participant activity. These groups of climbers seem to represent the “mainstream” of the climber population, which lends hope to the idea that if robust and thorough management solutions are developed to support ecologically sustainable climbing activity, then climbers are, as a whole, likely to comply with those rules. Climbing can, in fact, be a tool to foster and promote environmental sustainability in a recreation area in these cases (North & Harasymchuk, 2012).

However, for other populations of climbers, participation in adventure recreation is more an outlet to challenge or deviate from social norms than an activity to commune with nature (Galloway, 2006). Climbing for this subset of climbers is a counterculture practice where the danger and risk of the activity serve as tools to combat dominant value systems in an ever-safer and more regulated (Hardy, 2003). Some climbers have revolted against practices that seem to degrade or sanitize the climbing experience by introducing modernized safety measures and equipment, such as stainless-steel bolts for sport climbers, which might broaden accessibility or reduce the danger of engaging in the activity (Bogardus, 2012). Other climbers view this reluctance to embrace modern bolting as irresponsible and negligent, and believe that only proactive management regarding climbing development can keep climbers safe while protecting the environment (Schuster et. al, 2001). The need for such conversations to occur between the climbing community and land managers is vital, as unmanaged climbing equipment can erode and degrade in the elements, leading to the failure of equipment and the possible death of sport participants (Sjong & Eiselstein, 2008).

Extensive research has been conducted on conflict management between overlapping user populations in recreational spaces. Conflict among outdoor recreation user groups can occur when one group interferes with or is perceived to interfere with another group’s presence or behaviour. Conflict is generated when one group

compromises, alters or otherwise detracts from the desired recreation outcome of a competing user group (Jacob & Schreyer, 1980). Research has shown that conflict between competing recreational user groups, or competing interests such as recreation user groups and land managers, can be reduced through the identification of user requirements, continuous user education through signage and outreach, and proper design and construction of both single and multi-purpose trails (Neumann & Mason, 2019).

Legal Enforcement and Prosecution of National Park Offences

The overarching governing statute for all National Parks in Canada, including Banff, is the *Canada National Parks Act* (S.C. 2000, c. 32). This statute has 31 associated regulations which are in force under the umbrella of the enabling statute. These regulations address a host of activities including camping, fishing, garbage disposal, signage, domestic animals, and aircraft access. Neither the enabling statute nor any of its associated regulations contain any mention of climbing activity. The governing legislation contemplates the development of activity and region-specific management plans, which are intended to address the needs of individual parks. There is no climbing specific management plan for Banff or any other national park in Canada. However, there are outdoor recreation regions and protected spaces in Canada which have successfully developed and implemented substantial documented management plans which contemplate and enable climbing development. Two examples are the 2017 Smoke Bluffs Management Plan for the Squamish climbing area in Squamish, B.C. and the 2016 Skaha Bluffs Park Management Plan for the Skaha Bluffs Climbing area located near Penticton, B.C. Neither location concerns any land which is located within the boundaries of a federally managed National Park, although both of the above management plans concern lands which are in part contained within the boundaries of provincially managed park lands.

From a legal consequence perspective, the behaviour of park visitors is regulated through the existence of a CEP model. Specifically, when a contravention is detected by park authorities, a corresponding enforcement action is taken (the decision to lay a charge or not). If after an investigation, a charge is laid, then the conduct of that charge and its

prosecution becomes the responsibility of the Public Prosecution Service of Canada (Department of Justice Canada, 2017).

There is a dearth of research that explores the relationship between legal enforcement and prosecution actions and their effectiveness in deterring contraventions or achieving environmental management objectives in a Canadian national park context. There have been federal inquiries which have broken down the number of offence charges laid in Canada's national parks during specified periods of time, which offences are most common, and what the associated average fine amounts were (House of Commons, 2016). There have also been federal evaluations exploring the scope of utilization and implementation of contravention and ticketing regimes to federal law enforcement in a national parks' context (Department of Justice Canada, 2017) as well as audits and evaluations of the Law Enforcement Program as a whole within the National Park system (Parks Canada, 2023). However, even within those audits and reports, there is no annual report linking regional law enforcement priorities with overall program outcomes and objectives (Parks Canada, 2023). In other words, there is no research or report that specifically examines the Law Enforcement program, its overall effectiveness, and the benefits it provides to Parks Canada and its mandate. Parks Canada has never conducted a formal analysis of the effectiveness of the penalty regime under the governing legal framework of the *Canada National Parks Act* (House of Commons, 2016).

Reported Cases and Court Decisions Concerning Parks and Climbing

When a criminal or statutory infraction is litigated through the Canadian Court system, it sometimes results in a published written case decision that becomes available for public review through legal research databases. In Canada, the primary free and publicly available legal research database is the Canadian Legal Information Institute, or CanLII. This research database provides access to court judgments from all Canadian courts, including the Supreme Court of Canada, federal courts, and the courts in all Canada's provinces and territories. CanLII also contains decisions from many federal and provincial administrative tribunals (CanLII.org, 2024). As of September 30th, 2024, there

are 13 reported court decisions on CanLII concerning regulatory infractions under the *Canada National Parks Act* (S.C. 2002, c. 32) or its associated regulations. These 13 reported court decisions concern only eight different defendants. None of the reported decisions concern any aspect of climbing or climbing-related activities.

Thesis Statement and Critical Questions

The following key questions have been addressed in this study:

1. What is the current legal framework that applies to climbing in Banff?
2. Is the current legal framework an effective model to advance the Parks Canada mandate of protecting ecological integrity with regard to climbing management in Banff?
3. Who are the key stakeholders in the development of climbing in Banff, and what are their goals and interests?
4. Is the current legal framework an effective model to advance key climbing stakeholder goals and interests with regard to climbing in Banff?
5. What are the gaps in the current legal framework that applies to climbing management, and how could the goals and interests of climber stakeholders and the Parks Canada mandate be more effectively achieved through the development of a specific climbing management plan?

Methodological Approaches and Methods

This research is interdisciplinary in nature, as it seeks to analyze, synthesize and harmonize the links between disciplines into a coordinated and coherent whole (Choi & Pak, 2006). This research employed several methodological approaches. First, to gather data and gain insight into the climbing stakeholder aspect of this research project, I applied a community-based participatory research (CBPR) methodology and conducted semi-structured interviews. Second, to approach the legal inquiry of this research project, I used Doctrinal Legal Research (DLR) to determine the law as it applies to climbing in

Banff National Park. Thirdly, I used a socio-legal reform research (SLR) analysis approach to consider the law revealed from the DLR in the context of its intended application.

Community-Based Participatory Research

A CBPR approach was used to gain insight into the goals, perspectives, concerns and insights of key climbing development stakeholders. This is a collaborative partnership approach that involves researchers and participants in numerous aspects of the research process (Daley et al., 2010; Israel, Eng, Schulz & Parker, 2005). The approach utilized in this study focused on working with stakeholders to define research questions that mattered to them and then addressing those critical questions that speak to the specific unique issues which apply in the Banff context. As this type of research focuses on the specific values and practices of participants, it is conducive to the development of policy that truly considers respondent stakeholder needs and perspectives. This is consequential to bridge the gap between academic research and local knowledge (Wallerstein & Duran, 2010; Jagosh et al., 2015)

In 2011, the National Institute of Environmental Health Sciences (NIEHS) endorsed a number of key principles essential to CPBR methodologies and critical to this study: 1) promote active collaboration and participation in research; 2) ensure projects are at least partly community driven; 3) foster a research process that is culturally appropriate; and, 4) disseminate the results in useful terms. According to CPBR approaches, it is crucial to work with groups directly affected by the study. It is essential that participants are active collaborators on the project and that there is also a measure of participation and ownership throughout the study.

The approach for this research involved conducting 20 semi-structured interviews with key stakeholders in the Banff and the broader climbing development and industry environment. See Appendix II for the interview guide, and Appendix III for the list of interview participants. In this study, key stakeholders were initially identified using snowball sampling techniques, beginning with known contacts within the Banff climbing development and law enforcement landscape. Following snowball sampling methods,

those initial participants then provided names and introductions to additional participants (Parker et al, 2019). As the subject matter of the research concerned participants discussing an activity which could be the subject of potential regulatory liability or action by land managers that was not in the advancement of interview participants goals and interests, preliminary research stages involved relationship and trust building through informal discussion and consultation to help identify common issues and concerns within the climbing development community that operates within Banff. At the preliminary stage, potential interview subjects were encouraged to share their feedback, which allowed them to further inform the study and to align the project as closely as possible with community needs. This approach also helped to support cultural sensitivity and give the potential interviewees the ability to adjust questions they felt were pertinent to climbing issues and ensure that the appropriate concepts and subjects were being covered. Part of this collaboration throughout the research process was to understand how best to share the findings after the project is completed. As there is no management plan regarding climbing in a national park in Canada, this research was exploratory in nature and relied heavily on stakeholder and community input during the preliminary research stage to understand the goals and needs of the subject community.

Drawing on my personal history as an active climber in the Banff environment, as well as my professional history as a lawyer and former Federal Prosecutor tasked with the prosecution of regulatory offences in Banff, I conducted two separate informal question-and-answer events about climbing-related legal liability from a prosecution perspective. I networked using personal contacts within the industry to invite prolific local route developers, guides, and climbing access society leaders and board members. These informal question and answer events allowed me to listen to the general concerns, goals, interests and fears of leaders and prominent figures within the climbing development community, which then formed the basis for the development of semi-structured interview questions. It was at this point that it became clear that themes about concerns of protection of climbing access, growing climbing population numbers, the vagueness of enforcement action, the potential illegality of climbing development, and the environmental impact of climbing activity were identified as core themes to be addressed in the development of the semi-structured interview guide.

While a CBPR approach is often used in understanding health equity challenges (Wallerstein & Duran, 2010; Frerichs et al., 2016), the guiding principles of the framework were beneficial to this study to engage with and incorporate community theories surrounding climbing management into the study. The CBPR approach helped ensure that the lived experiences, knowledge and perspectives of the identified community stakeholders were best positioned to be leveraged into positive community action. This is a critical step in the process of developing land management policies and best practices that incorporate historical actions, knowledge and competing interests on the land base (Wallerstein & Duran, 2010; Jagosh et al., 2015).

Following the preliminary relationship building process with identified key climbing stakeholders and the development of the semi-structured interview guide, I then engaged with snowball sampling interviews with 20 separate individuals who were either prolific route developers, climbing access advocates, guides in the Banff region, gym owners, or pre-eminent figures in the Banff-Bow Valley climbing community. Open-ended semi-structured interview questions were used to ensure that interviewees maintained some direction over the interview, to ensure relevant topics of importance to them could be canvassed. The interviews were recorded, transcribed verbatim, and then coded for analysis of common themes amongst interview responses. The interview guide was reviewed by the Thompson Rivers University Research Ethics for Human Subjects Board, protocol no. 101875, prior to interviews being conducted, and is attached as Appendix “C”. Analysis of the interview data was achieved by creating a separate document to organize coded interview data based on common themes that emerged throughout the interviews.

Doctrinal Legal Research

DLR is concerned with the formulation of legal “doctrines” through the analysis of legal rules to generate systemic formulations of the law and to understand how the law will apply in specific factual contexts (Chynoweth, 2008). In common law jurisdictions such as Western Canada, where law is derived from both from statutes and precedent caselaw, DLR employs methods of review and analysis of applicable legislation and prior

court rulings to attempt to marshal their principles and application into coherent patterns. These patterns can then be applied to new factual situations in a logical and consistent manner with the goal of answering the question of “What is the law?” with respect to a specific situation (Chynoweth, 2008). DLR is a process involving gathering and analyzing existing legal primary sources at a given point in time, rather than a methodology informing data collection (Chynoweth, 2008). A colloquial description of DLR is “black-letter law”, as the methods of research concern the study of the law as it is within the black letters written on the texts of the primary sources of law. DLR is the single most dominant form of legal research approach employed by both legal academics and legal practitioners (Chynoweth, 2008), with the distinction between the two often being one of scale of review and depth of analysis rather than a difference of methodology.

Strengths of the DLR approach for this research are that it is well suited to specifically answer the first critical question of this project: What is the current legal framework that applies to climbing Banff? DLR explores legal rules that are normative in character and are not subject to or affected by the results of empirical research. DLR makes no attempt to explain, predict or understand human behaviour or its reaction to law or its institutions. Instead, DLR compiles, analyzes and outputs, if knowable, an answer to a specific legal query (Ali et al, 2017).

Weaknesses of the DLR approach are evident in its inability to answer any of the four remaining critical questions of this project. DLR does not consider greater social factors and does not provide any consideration for socio-economic or political aspects of a specific legal process. It assesses and analyzes the law devoid of the context in which the law itself operates, and contains no assessment or analysis of how the law works within a given community and what the impacts of that law might be on a given community. DLR can offer no insight into the effectiveness of a given law or legal doctrine on achieving an underlying socio-economic or political outcome, or whether the law and its application has the ability to improve (Ali et al, 2017).

Socio-legal Research

An SLR research approach is a methodology which analyzes the law directly by linking it to the context or social situation in which the law applies. It is by its very nature an interdisciplinary research field that explores law as a social phenomenon through the lens of legal institutions, processes and actors (Salter et al, 2007). Socio-legal research methods are grounded on the principle that law does not operate within a vacuum, and in order to understand what the law is about a given question or topic, it is necessary to explore the implications of a law in society at a broader level (Salter et al, 2007). It is important to note that, as a method, socio-legal research will often employ DLR analysis to assist in the determination of what law is before turning to how it applies to a given situation.

The socio-legal research portion of this project was informed by the synthesizing the results of the data from stakeholder interviews conducted against the applicable legal framework, which governs the behaviours being discussed. It also operates through archival research of parliamentary records, legal research databases, and Parks Canada archives and Justice Canada archives to find any studies done on the effectiveness of the Parks Canada contravention, enforcement or prosecution regime in achieving desired Parks Canada outcomes.

Researcher Positionality

I have over 18 years of experience as a climber in almost all disciplines of climbing including rock, ice, alpine and bouldering. I have climbed extensively throughout Western Canada and the Pacific Northwest, with most of my climbing experience occurring in the Rocky Mountains and the Banff / Bow Valley Corridor. I developed a strong personal interest in mountain-based recreation during my law school studies at the University of Calgary. This passion led me to relocate to the Canmore / Banff area so that I could pursue climbing on a more involved basis while advancing a legal career for a number of years. From 2012 to 2016, I worked as an agent for the Federal Public Prosecution Service of Canada, conducting all manner of federal prosecutions for the Banff / Canmore region, including a number of prosecutions for

contraventions under the *Canada National Parks Act*. I have experience working with environmental nonprofits and in private civil litigation as a legal researcher and legal counsel. Since 2020, I have primarily worked in the realm of prosecutions, working as Government counsel on all manner of criminal, regulatory, and quasi-criminal litigation matters.

During my time at the University of Calgary, I, along with another law student, founded the University of Calgary Outdoor Adventurers, a student-led outdoor recreation organization which quickly grew to be one of the largest student groups on campus. In recent years, I have worked with the executive of the Southern Alberta Bouldering Association to launch a registered non-profit climbing advocacy and stakeholder organization for the Southern Alberta region, Crowsnest Pass Corridor and the Frank Slide Historic Site. I also had a brief tenure on the board of the Climbers Access Society of Alberta. Prior to engaging in this research, I was also a volunteer with the Rocky Mountain Section of the Alpine Club of Canada as a climbing and backcountry skiing trip leader and clinic instructor. It is through my involvement in these various organizations over the last 18 years that I developed the known contacts and relationship building which became the inception of this research project, and which were relied heavily upon during the preliminary phases of the research in order to identify and gain introduction to key climbing stakeholders.

This combination of professional legal experience in the Banff prosecutions environment and extensive personal climbing background has made me uniquely equipped to engage directly with the key stakeholders as a knowledgeable researcher and communicate to the research participants the shared values and meaningful community-based solutions to the challenges that are most evident and concerning to climbers. This previous experience gives me the grounding to interpret and analyze the stakeholder interviews from a strong background of lived experience in the region and activities that are the subject matter of the research.

It is important to acknowledge my potential biases and agendas as a researcher. It is clear from my history outlined above that I am an advocate of climber development, access, and ecologically sustainable best practices. I also need to acknowledge the

reflection that I undertook during this research on climbing in protected spaces and its relationship to ongoing work regarding reconciliation with Indigenous communities who have been the occupants and stewards of these lands since time immemorial. It is important to recognize the biases held by myself as a climbing advocate with regards to recreational climbing and its history. This project especially made me reflect on the relationship between climbing and settler/colonial narratives of European practices of expansion and entitlement to recreate within Indigenous spaces. That said, the findings in this research are solely grounded either upon the responses or perspectives of interview participants or the analysis derived from legal research. Any personal input or sharing of personal perspectives with interview participants was not coded for common themes and was not considered in the data analysis stage.

Thesis Overview

This thesis is divided into four individual chapters. Chapter one provided a background and introduction to the critical research questions, a summary of existing literature surrounding some of the potential impacts of climbing, as well as insights into the mandate of Parks Canada, the changing landscape of climbing as a sport and the increasing number of visitors to Banff. This chapter also identified the non-existence of a climbing management plan for Banff, the gap in research exploring the relationship between the CEP regime that exists in Banff and the effectiveness of such a regime in advancing the Parks Canada mandate of ecological preservation and protection. An overview of the interdisciplinary methods and methodological approach utilized in the data collection, research and analysis were also provided.

Chapter two contains an analysis of the legal framework which applies to climbing in Banff. It explores in detail the various sections of the governing legislation and associated regulations and how these potentially capture from a legal perspective, in whole or in part, the component elements of climbing activity within Banff. This chapter also contains a caselaw review and summary of every single reported prosecuted infraction case under the *Canada National Parks Act* and its regulations. This section concludes with a brief foray into socio-legal analysis by applying law in context and

drawing from the Parliament and Federal Government archives for applicable assessment reports to gauge the effectiveness and real-world outcomes of the application of the National Park CEP regime in achieving Parks Canada mandate aligned objectives.

Chapter three explores stakeholder interview data and analysis to derive common themes, understand the goals and motivations in climbing area development to gain insight into the perceived pressures, fears and hopes of climbing development stakeholders. I also assess climbing development stakeholders' perceptions of their role with regards to climbing management direction in the Banff context and how their relationship functions (if at all) with land managers and law enforcement agencies tasked with contravention enforcement and prosecution.

Chapter four concludes with an analysis and application of the interview data from climbing stakeholders from Chapter three against the legal framework identified in Chapter two. Chapter Four specifically examines the insights drawn from key climbing stakeholders and how it demonstrates the presence of barriers and gaps in management planning under the existing legal framework. Chapter Four also contains a discussion of the significant gaps in research that exist with respect to climbing management in Banff and the effectiveness of law enforcement activities in achieving Parks Canada mandate aligned outcomes and objectives.

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CHAPTER 2

The Legal Frameworks Applicable to Climbing in Banff

Although Banff is situated entirely within the province of Alberta, as a national park it is subject to federal legislation, and its governance is dictated by federal law rather than provincial legislation. All national parks in Canada are governed by the *Canada National Parks Act*, SC 2000, c 32 (the “CNPA” or the “Act”) and the currently 30 associated regulations. While the CNPA is the current iteration of federal parks legislation, receiving royal assent in 2000, it was built on the shoulders of predecessor legislation such as the 1930 *National Parks Act* (SC 20-21 George V, Chap. 33 [1930]), the 1911 *Dominion Forest Reserves and Parks Act* (SC 1911, c. 10), and Canada’s first national parks legislation the 1887 *Rocky Mountains Park Act* (50 & 51 Victoria, c. 32). When examining the governance of climbing activity within the boundaries of a national park, it is important to note that the CNPA and its associated regulations are a departure from previous legislation as they establish maintenance and restoration of ecological integrity, through the protection of natural resources and natural processes, as the first priority when considering all aspects of the management of parks (CNPA, s. 8(2)).

Analysis of the CNPA and its associated regulations and bulletins reveals that while “climbing” as a specified activity is not wholly prohibited or illegal within the boundaries of Banff, the several mechanisms of the CNPA currently prohibit or restrict aspects of climbing activity or locations of climbing activity in many national parks, including Banff. The CNPA and its regulations also contain numerous mechanisms and interrelated provisions that, when interpreted together, form a legal framework that captures some aspects of climbing activity and its known impacts. One example is bolting, given the known potential to impact ecological integrity, as reviewed in Chapter One of this research. As there is no permissive management plan or specific permissive directive by the Superintendent of Banff for climbing activity, any impacts from climbing-related activity that contravene the regulations could be subject to enforcement.

This chapter first explores the hierarchies of power established under the CNPA and how the Offence regime is structured under the Act. This chapter then moves through the Act and its associated regulations, highlighting how the legal mechanisms can be

exercised to restrict or prohibit current and future climbing activity or the areas in which climbing activity is allowed to occur. I then detail how the mechanics of the Act and its associated regulations likely already capture the known impacts of climbing activity, thus creating current and existing liability for climbers in Banff. I examine sentencing principles for possible climbing-related offences, and what factors within the Act might apply to any sentencing of a climbing-related offence. Lastly, I briefly review reported caselaw for infractions and contraventions under the CNPA, and assess whether the Offence and penalty regime contained within the CNPA aligns with Parks Canada's mandate.

The chapter concludes by discussing how even if there are impacts of climbing activity that contravene regulations, the resource intensive nature of the CEP model and Parks Canada's land management priorities make it unlikely that the impacts of climbing in Banff will be the subject of widespread prosecution. This chapter concludes that the legal framework governing climbing activity in Banff is an expansive and robust set of legislation and associated regulations. Any lack of advancing the Parks Canada Mandate of protecting and preserving ecological integrity is not due to any gap or deficiency in the law that places any activity, including climbing, outside the realm of being governed by the act. Instead, gaps or deficiencies in the governance of climbing would appear to flow from the lack of implementation by Parks Canada of the management and consultation tools and process that exist within the current legislation.

The Formation of Banff and the Impacts on Indigenous Peoples

Banff is a UNESCO World Heritage site located within the Rocky Mountains. It straddles the Alberta and British Columbia border and encompasses over 6,641 square kilometers. Banff contains the headwaters of the Bow, Red Deer and North Saskatchewan rivers, and is habitat for 56 species of mammals, 300 species of birds and more than 800 species of plants. Banff is Canada's busiest national park, with the most developed visitor infrastructure. Within its boundaries, Banff has over 1,500 kilometers of official trails, 320 kilometers of roads, 2,400 front country campground sites, three ski resorts, a golf

course, and the Towns of Banff and Lake Louise, which are home to a combined 9,000 residents (Parks Canada, 2022).

Well before European expansion reached the boundaries of what is now Banff, Indigenous peoples from a variety of nations considered the waters, forests, mountains and glaciers that make up the Banff landscape as their territories since time immemorial. These traditional users of the lands located within the boundaries of Banff include: the Stoney Nakoda (the Bearspaw, Wesley, Chiniki); members of Blackfoot (the Siksika, Kainai, Piikani), the Ktunaxa, the Secwépemc, the Tsuut'ina, and the Cree (Mason 2014). Parks Canada also now recognizes the presence of the Métis in the region (Parks Canada). The arrival of early tourism economies to Banff brought new economic activities to the region (Mason, 2015). Especially at the beginning of the 20th century, Indigenous peoples were involved as guides and suppliers for tourists (Snow, 2005). With the establishment of the national park and the introduction of governing legislation to the area, Indigenous subsistence practices, such as hunting, fishing and gathering, within the park boundaries were redefined as illegal and prohibited (Binnema & Niemi, 2006; Mason 2020). This practice, along with many other restrictions and prohibitions that targeted Indigenous peoples, including those which restricted their ability to leave reserves under the pass system, effectively prevented Indigenous peoples from exercising their subsistence practices within Banff. This also limited their ability to trade, harvest, travel, hunt, harvest medicines, or any other activity which they had been engaged in prior to European expansion (Snow, 2005).

Banff overlaps the territories of Treaty 6, 7, and 8 Nations, and lands within the park are the subject of ongoing land claims and title claims litigation by various nations. Although the scope of Banff's history with Indigenous peoples and the status and future of Banff land management with respect to Indigenous peoples reclaiming of traditional territories is far beyond the scope of this research project, it is important to understand at the outset that Banff, and indeed the entirety of the national park system, is fundamentally grounded on a legal framework which restricts the mobility of Indigenous peoples and the activities in which they are allowed to engage while within the boundaries of the National Park (Vandermale et al., 2024).

Research Methods

As explained in Chapter one of this project, this research is interdisciplinary in nature, employing both DLR and SLR methods and methodology. The following methods were used to gather primary legal sources for the Doctrinal portion of this research. To gather the applicable legislation, I accessed the Justice Laws Website, operated by Justice Canada, which is a federal government database containing all available current and historical versions of federal statutes. I was able to rely on my personal history and experience as a former federal prosecutor tasked specifically with, amongst other things, litigating contraventions within Banff to know and understand which statutes and regulations are applicable to the region in question. This identified the following legislation as being relevant to my research: the *Canada National Parks Act* (S.C. 2000, c. 32), last amended in November 2022, and its 30 associated regulations, most importantly the *National Parks General Regulations* (SOR/78-213), last amended in November, 2018.

To identify any legal restraints or restrictions on climbing or climbing activity in Banff and National Parks, I also examined all official bulletins and notices affecting activity participation in a national park. Active notices and bulletins are available through the Parks Canada website. I reviewed both active and historical bulletins for all parks to assess if climbing has ever been the subject of any restrictions in a national park under the mechanics of the CNPA or its associated regulations. Examples of current and past restrictions and prohibitions of climbing and climbing activity were discovered and analyzed in this chapter.

To review applicable precedent caselaw for the Doctrinal portion of this research, I utilized the freely available opensource caselaw database CanLII. CanLII contains a sub-search function which allows users to search for all cases citing either a specific statute or regulation, or a subsection within that statute or regulation. The search can be further narrowed using conventional Boolean search operators, as well as selecting by category of “Criminal or Statutory Infractions”. Search string terms combining the words “climb*” (which would capture all suffixes for “climb”, including “s”, “ing”, “er” and “ed”) and the statute *Canada National Parks Act* (S.C. 2000, c. 32) yielded zero search

results. This strongly suggests that there are no reported or published cases that are publicly available specifically involving the litigation of climbing activity in a national park. I expanded the search parameters to all reported caselaw decisions involving any form of criminal or statutory infraction engaging the CNPA or its associated regulations. As of 1 September 2024, there were 52 cases citing the CNPA logged in CanLII. Of these 52 cases, five cases are demarcated as “criminal or statutory infraction” (indicating a prosecution of some form of contravention), with the remaining cases either being civil cases or applications for judicial review.

I repeated the caselaw search process for each of the 30 associated regulations under the CNPA to determine if there were any additional criminal or statutory infraction cases to ensure there were no cases missing from the final dataset. This yielded a further seven reported cases which are either criminal or statutory infraction cases involving contravention of one or more of the 30 associated CNPA regulations. All case citations and their associated reported decisions were logged and saved for review and analysis. With the completion of the applications of these methods, the CNPA and its associated regulations were analyzed section by section to determine how, if at all, climbing and its known impacts are currently captured, or have the potential to be captured, under the mechanics of the Act and its associated regulations. The caselaw was analyzed to determine if there are any legal maxims, principles or precedents that can be distilled into “doctrines” that would assist in understanding the law concerning the governance of climbing-related infractions in a national park.

The next step was using socio-legal methods to examine the law in context to gain insight into its effectiveness and its ability to achieve desired outcomes. To achieve this, I conducted a semi-structured interview with a known contact of the researcher: a current Federal Prosecutor who has extensive experience with prosecutions of national parks offences within Banff. I also used archival research of secondary sources that assist with legal interpretation. The secondary source I used was the Hansard (transcript) for the Federal Parliament. I used the Library of Parliament’s online database to search for any reference to the CNPA and its contravention and enforcement. I also searched Our Commons, the official Parliament searchable online database of all records of all

proceedings of Parliament, for the Debates, Journals and Parliamentary Committee Evidence (CITE ourcommons.ca). The search string of “climb*” and “National Park”, as well as “climb*” and “Banff” were both explored using Boolean search operators. This revealed zero results for commentary by Parliament. This gives strong research confidence that this specific topic has never been addressed in Parliament. The search string of “fines” and “National Park” was explored using Boolean search operators, and this revealed 13 results. Only two results were determined to be relevant to this research as concerning national parks, and the remainder results populated by the application of the Boolean search parameters were determined as not relevant to the inquiry as they contained no references to any subject matter covered by this research. Of the two search results that did actually concern national parks, only one was relevant to the inquiry at hand as having to do with the penalty and contravention mechanics of the CNPA. The single result of relevance was Question 191 asked by the Hon. Mr. Wayne Stetski of the Kootenay-Columbia constituency and vice chair of the of the Parliamentary Environment Committee. Question 191 was contained on Hansard # 76, dated May 3rd, 2016 from the 42nd Parliament, 1st Session. The question was tabled in Parliament for response September 19th, 2016. All searches on Our Commons covered a range of dates from during the date range of January 29th, 2001 (the earliest date in the database) to September 30th, 2024.

I then searched the Parliamentary Archives available on Our Commons for any responses to Question 191. This lead to the Parliamentary Archives Sessional Paper # 855-421-191 (the “Sessional Paper”), an 8-page response paper from the office of the then Minister of Environment Hon. Catherine McKenna. The Sessional Paper was saved for analysis and application to the research question. No other Parliamentary records were found of utility to this research.

Analysis of the CNPA

Parks Canada Mandate and Governance

As the federal parks’ agency, Parks Canada has exclusive authority for all land management planning and decision-making within the boundaries of Banff. This includes

not only the development of land management planning documents and monitoring of park resources, but also the enforcement of governing legislation and regulations. It is important to note that although national parks, including Banff, are some of the most popular tourist destinations in Canada, Parks Canada does not have a specific mandate to promote tourism and develop the tourism economy (Parks Canada, 2022). Rather, it is recognized that managing tourism and visitation to Banff is a necessary component of the land management role, and as such, the legislation, regulations and management planning documents empower Parks Canada to address tourism and its impacts on ecological integrity (Parks Canada, 2022).

The most important governing policy statement informing Parks Canada decision-making is its mandate (the Mandate). The Mandate states as follows:

“On behalf of the people of Canada, we protect and present nationally significant examples of Canada's natural and cultural heritage, and foster public understanding, appreciation and enjoyment in ways that ensure the ecological and commemorative integrity of these places for present and future generations.”

The Mandate is a policy statement not a statute, and as such is not a law. However, as will be discussed later in this chapter, the principles of the Mandate are codified into law within the CNPA in Section 8(2), and these principles inform all management decision making by responsible legislative and parks authorities under the CNPA.

After the Governor in Council,¹ who has the power to make regulations and establish parks, the top of the CNPA hierarchy is the minister responsible for the Parks Canada Agency (“the Minister”) (CNPA s. 2). The Minister is entirely responsible for all aspects of administration, management and control of parks (CNPA s. 8(1)). The current Minister is the Hon. Julie Dabrusin, Minister of Environment and Climate Change. The Minister, and by extension their designate agency of Parks Canada, has broad powers under the Act. They can enter into agreements with federal and provincial agencies, engage in the development of management plans for specific park lands and park uses, and engage in almost all actions deemed necessary to accomplish the Parks Canada mandate.

¹ The Governor General of Canada, acting on the advice of the federal Cabinet.

The Minister is, however, constrained in all decision making by Section 8(2) of the Act, which reads:

Maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes, shall be the first priority of the Minister when considering all aspects of the management of parks.

(CNPA, s. 8(2)).

The language of this section echoes the Parks Canada mandate. Functionally, Section 8(2) codifies the Parks Canada Mandate into its governing legislation by requiring the Minister to prioritize the mandate when making decisions and is to guide all decision making of the Minister. This is relevant to climbing management in Banff as all agents of the Minister, including Parks Canada, are also required to prioritize the maintenance or restoration of ecological integrity, through the protection of natural resources and natural processes. The Mandate is also reflected in Section 4(1) of the Act, which reads as follows:

The national parks of Canada are hereby dedicated to the people of Canada for their benefit, education and enjoyment, subject to this Act and the regulations, and the parks shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.

Thus Sections 8(2) and 4(1) work in tandem to inform the decisions of the Minister, and the purpose for which Parks are to be maintained and made use of.

The Minister is an elected position with responsibility for the political side of park governance, but the apex of park management at the practical level is the Superintendent of a given national park. The Superintendent role is not a politically elected position, but rather a member of the federal public service. Section 16(3) of the CNPA gives Superintendents (and their designates) broad authority, authorized by regulations, to:

- (a) to vary any requirement of the regulations for purposes of public safety or the conservation of natural resources in the park;
- (b) to issue, amend, suspend and revoke permits, licences and other authorizations in relation to any matter that is the subject of regulations and to set their terms and conditions; and

(c) to order the taking of any action to counter any threat to public health or to remedy the consequences of any breach of the regulations in the park.

(CNPA at s. 16(3))

Of note is that Section 16(3) of the Act, works in tandem with the offence provision of the Act which makes it an offence to contravene one of the regulations under Section 16. Together, these two sections work grant the superintendent, or their designate, almost immediate and unconstrained enforcement powers to restrict, or entirely prohibit, activities which the superintendent determines could compromise either public safety or conservation of natural resources. Also, as will be explored later in this chapter, the associated *National Parks General Regulations* (SOR/78-213) (*General Regulations*) contains an extremely broad set of powers for the Superintendent which provide for the authority to manage almost every aspect of any activity, including restriction and complete prohibition.

The CNPA establishes its own law enforcement personnel regime by designating Park Wardens and Enforcement Officers (CNPA at ss. 18 & 19). Both are considered peace officers within the meaning of the *Criminal Code* and wield a variety of enforcement powers. Banff is serviced by Park Wardens, who engage in all aspects of contravention, investigation, and enforcement. Should a Parks Canada investigation overlap with a criminal investigation, nothing in the CNPA prohibits Park Wardens from working with other federal law enforcement agencies, such as the Royal Canadian Mounted Police. As discussed in more detail later in this chapter, Section 24(2) of the CNPA creates offences and penalties for contravening the CNPA or its associated regulations. Investigating, enforcing and charging those contraventions is part of the responsibilities of the Park Wardens.

Where Climbing Stands Under CNPA Regulations

It is important for this research to distinguish between activities with and without specified regulations within Banff. A specified regulation activity is an activity which is specifically identified, either under the CNPA or one of its associated regulations, as having specific additional constraints, requirements, permissions, or boundaries of

permitted involvement. This could be an activity which is the subject of its own regulation or an activity which is specifically referenced in either the CNPA or the *General Regulation* as having specified restraints, restrictions or prohibitions.

Examples of the former include camping, rules surrounding possession of domestic animals, fire permissions, and garbage disposal, which are regulated by the *National Parks of Canada Camping Regulations* (SOR/80-127), the *National Parks of Canada Domestic Animals Regulations* (SOR/98-177), the *National Parks of Canada Fire Protection Regulations* (SOR/80-946), and the *National Parks of Canada Garbage Regulations* (SOR/80-217) respectively. Examples of activities which do not have their own specific regulations but are subject to additional provisions within either the CNPA or the *General Regulations*, include resource harvesting or hunting, which both have extensive restrictions and conditions in the CNPA itself, but do not have specific titled regulations addressing those activities exclusively.

Analysis of the CNPA and its associated regulations reveals that there is not a single reference to climbing or climbing activity found anywhere within the governing legal framework. This means that there is not currently a specific regime that applies to climbers or climbing activity beyond the legislative regime that applies to all park users. As for any activity, the Governor in Council could enact an activity specific regulation for climbing under the CNPA at any time. Currently, there is no official or draft regulation specific to climbing in national parks. Reviewing available Parliamentary archives and Hansard also reveals that no such regulation has ever been proposed or debated within the House of Commons or even requested by any member of Parliament for consideration. Climbing is also absent from the 2022 Parks Canada Management Plan for Banff, despite forward looking vision statements concerning developing recreation-based planning objectives.

There are very few references to climbing and climbing activity in any of the reviewed official Parks Canada literature. However, a search of the Parks Canada archives located the document “A Climbers Descent Guide to Mount Sir Donald”, a climbing guide for one of the more popular mountaineering objectives located in Glacier National Park, one of the other Rocky Mountain National Parks (Parks Canada, 2024).

This guide, available on the Parks Canada website, is the only public facing messaging in regards to bolting and fixing hardware that could be discovered in Parks Canada's archives. It states as follows:

“Mountain climbing is recognized as an acceptable and encouraged activity within the National Parks. It is accepted practice that fixed hardware such as bolts and pitons (“fixed” meaning that hardware has been left by previous climbing parties) are used for protection and anchors when other options are not available. These anchors are often of varying quality and strength depending upon their age, the materials used and the method and location of placement. Parks Canada maintains that these items do not represent park facilities and leaves the onus on visitors to make the final decision before putting them to use.”

This statement contains language that suggests that at least in some areas in some national parks, Parks Canada recognizes and accepts that bolting is an essential safety requirement for climbing, and that climbing is not only acknowledged but condoned as one of the activities that is acceptable for recreationalists to participate in while in a national park. That said, this public facing messaging reflects a disowning of any climbing related infrastructure and clearly places the liability and onus on climbing sport participants to make all safety decisions regarding usage of existing climbing bolt infrastructure themselves.

Although the above statement contains language that is akin to that found in more generally applicable policy statements published by Parks Canada, it does not appear to be intended to be a general formal policy statement given the obscure location wherein this messaging is located and the context in which it was published. It would be unlikely therefore that this would be considered by the land manager as an official policy statement which reflects the formal policy position of Parks Canada with respect to climbing activities located within all national parks.

It is also important to note that this public facing messaging is made in the context of mountain climbing rather than sport climbing. The two activities may or may not co-occur, as there are multiple national parks without mountains that still have developed sport climbing areas, including Islands and Cape Breton National Parks. A narrow interpretation of this statement would be that it applies solely to mountain climbing and is not intended to be a policy statement regarding all forms climbing activity. As there were

no cases discovered during the research process of any climber being prosecuted for installing a bolt in a national park, it is unknown whether this statement would constitute a defence to possible prosecution.

Although there are no climbing specific regulations under the CNPA, that does not mean that there are not sources of possible significant regulatory restriction or prohibition which could flow from the already existing regulations. Specifically, existing and past examples of climbing activity could be subject to temporary or ongoing restrictions and or prohibitions under Sections 6, 7, and 7.1 of the *General Regulations*.

Section 6(1) of the *General Regulations* states:

The superintendent may require any person to register at the office of the superintendent or at such other place as may be specified by the superintendent prior to and on completing, in a Park, any activity that, in the opinion of the superintendent, may present a hazard to the person. (CNPA, s 6(1))

The condition precedent to the superintendent requiring such registration compliance is that the activity is hazardous to the participant in the opinion of the superintendent. As climbing is an outdoor adventure sport with inherent risk of injury or death, it could easily fall under the category of activity that “may present a hazard to the person”, and as such could conceivably be subject to registration under the above provision. Given the potential for risk while climbing, it is unlikely that a climber could successfully appeal if the park superintendent decided to require registration. However, the legislation does not require registration prior to engaging in an activity which is deemed to present a possible hazard to a person. Rather, the legislation is structured such that the superintendent has the discretion to choose whether to implement Section 6 if they come to the conclusion that the activity presents a hazard.

“Hazardous” is not a defined term in the CNPA or any of its associated regulations. Reviewing all published caselaw decisions concerning contravention prosecutions under the CNPA revealed that there is no case precedent wherein a court provides a definition specific to a park’s context of a “hazardous” activity. There is also no published framework nor legal test for the park superintendent to follow when assessing whether an activity is “hazardous” within the meaning of the legislation. What

is or is not considered a hazardous activity requiring registration is subject to the viewpoints of individual superintendents or their designates. Should a superintendent determine that climbing is a hazardous activity that requires registration, sport participants would need to register with designated parks authorities prior to engaging in the climbing activity, and immediately after completing or returning from climbing (*General Regulations* at ss. 6(3)(a) and 6(3)(b)). Failure to comply with registration requirements would be a prosecutable offence under Section 24 of the Act.

Section 7 of the *General Regulations* is the second existing provision that could be used to restrict climbing activity. This section contains the broadest powers of the superintendent regarding the restriction or prohibition of certain activities, set out in Section 7(1) as follows:

The superintendent may, where it is necessary for the proper management of the Park to do so, designate certain activities, uses or entry and travel in areas in a Park as restricted or prohibited. (CNPA, s 7(1))

As discussed earlier in this chapter, the Mandate is integrated into the CNPA through Section 8(2), which identifies ecological integrity as the first priority in park management. However, this is not a restrictive consideration for the land manager. An activity determined to compromise the ecological integrity of the park would be more likely to be restricted or prohibited under Section 7(1) of the *General Regulations*, but that does not preclude other activities from being subject to that provision. The language of the act allows the superintendent to restrict any activities necessary to ensure “proper management”, even if they do not affect the ecological integrity of the park.

“Proper management” is another term that is undefined by the legislation. It also has not been interpreted in any of the caselaw analyzed in this research. As with Section 6 of the *General Regulations*, it is internally consistent with the legislation to assume that “proper management” decisions must align with the priority established in s.8(2) of the CNPA by advancing the maintenance or restoration of ecological integrity. Section 7 does not restrict the scope of limitations that a superintendent can establish with respect to activity or area. The only requirement is that the superintendent must comply with specified notice provisions concerning such restrictions or prohibitions. Sections 7(4) and

7(5) of the *General Regulations* make the default that an activity or area designated under Section 7(1) is prohibited or restricted. The only way to legally engage in such an activity or travel in such an area requires applying for and receiving a permit from the superintendent. Permit holders would still be subject to whatever terms or conditions the superintendent decrees on that permit.

There are many examples of other activities that are subject to those restrictions in Banff. A small sampling of current examples include (Parks Canada, 2025):

- The takeoff or landing of either non-motorized paragliders or hang-gliders is subject to ongoing prohibition anywhere in Banff;
- The use of Unmanned Air Vehicles (drones) is prohibited anywhere in the national park;
- The use of cannabis products outside of personal campsites is subject to ongoing prohibition; and
- The use of personal watercraft (Sea Doos, Wave Runners, Jet boards, etc.) is prohibited, with certain exceptions for specific kinds of personal watercraft for specified lakes.

Climbing has also been the subject of Section 7(1) restrictions and prohibitions in Banff and in other national parks. The Parks Canada archives provide several examples of past and current restrictions on climbing. For example, between May and September of 2024, climbing and related activities were prohibited within specified canyon habitats in Banff to protect the endangered black swift species. The full text is reproduced below in Figure 3. For examples of climbing restrictions in other national parks, see Appendix Number IV.

Restricted Activity: No climbing and rappelling in four designated canyon areas

BANFF NATIONAL PARK

Issued: May 08, 2024

Ends: September 30, 2024

Effective date

May 15 until September 30, 2024

What:

Pursuant to Section 7(1) of the *National Parks General Regulations*, the following activities are restricted or prohibited by order of the Superintendent:

All climbing, canyoneering or rappelling activities in waterfalls or on rock faces within the identified canyon areas are prohibited to protect black swifts, an endangered bird species listed under Canada's *Species at Risk Act*.

Where:

All waterfalls or rock faces within the identified areas in the canyons, including the canyon sidewalls.

All coordinates are projected in NAD1983 UTM zone 11N.

Maligne Canyon

Upstream from 11 U 432440m E 5863510m N (50m downstream of 4th bridge) to 11 U 432867m E 5863833m N (20m downstream from the tea house).

Two Valley Canyon (also known as BS Canyon)

Upstream from 11 U 437126m E 5861861m N (under the Maligne Road Bridge) to 11 U 437291m E 5862404m N (the upstream mouth of the canyon).

Pleckaitis Canyon

Upstream from 11 U 442356m E 5860856m N (where the canyon narrows upstream of the bolted climbing routes) to 442588m E 5861045m N (top of the tallest waterfall).

Athabasca Falls Canyon

Upstream from 11 U 440112m E 5835369m N (at the downstream viewpoint) to 11 U 440249m E 5835313m N (top of the waterfall).

Why:

To minimize disturbance to black swifts, to protect their habitat and to reduce erosion, trampling and disturbance of sensitive vegetation and soils.

Penalty:

Violators may be charged under the *National Parks Act*: maximum penalty \$25 000.

Figure 4 - Restricted Activity Notice for climbing within designated canyon areas in Banff National Park between 8 May, 2024 and 30 September, 2024. Source: <https://parks.canada.ca/voyage-travel/securite-safety/bulletins/fdd743e3-a8e1-4d7f-9df7-557e8e11bf81>.

The above bulletins demonstrate that climbing has previously (and currently) been the subject of restriction and prohibition in national parks. They also provide an indication that a mechanism used by Parks Canada for imposing climbing restrictions and prohibitions is Section 7(1) of the *General Regulations*.

An example of a permit application for climbing in a national park is Kluane National Park and Reserve. All persons spending time within the park's Icefield Ranges must have a mountaineering permit. Additionally, an aircraft access permit, issued as part of the mountaineering permit, must be obtained for every landing within the Icefields. Insurance is required for all expeditions in the Icefield Ranges. Climbing parties must apply in advance of their trip, and all climbers are required to register. Climbers must complete an extensive application, detailing their objectives, party experience, climbing resume and major mountain climbing experience in addition to signing a waiver. Climbers must also register and sign out at the beginning and conclusion of the trip. For a copy of the Kluane Mountaineering Permits., see Appendix V.

The third section of the *General Regulations* that contains mechanics that can be used to restrict or prohibit climbing activity is Section 7.1. This Section allows the superintendent to allow activities only for permit holders. It differs from Section 7 permits because there is no application process. As with Section 7, there is effectively no limit to the scope of the superintendent's ability to impose restrictions or conditions on such an authorization. The only restraint is that such a designation of an activity must be for the "proper management" of the park, with no specification or definition of what proper management entails. All visitors to Banff are already subject to a restriction under Section 7.1: travelling within the park boundaries. Travel is a "designated activity," and all visitors stopping in Banff need to have a park entry pass or be subject to liability under the CNPA.

As shown above, there are already examples where climbing in national parks is governed by Sections 7 and 7.1 of the CNPA, and there is nothing preventing a park superintendent from further restricting or prohibiting climbing activity if necessary for the "proper management" of the park. If climbing were designated under these provisions, climbers would either need to apply in advance or purchase a pass before

being legally allowed to climb within Banff. As seen from the above bulletins, climbing activity could be restricted in specific regions, or across the entire park.

Public Consultation and Management Plans Under the CNPA

Analysis of the CNPA and all associated regulations reveals that there is no restriction on the timelines in which the superintendent or their designate can put in place designations and restrictions under Sections 6, 7 & 7.1 of the *General Regulations*. Although there are requirements about where and how notice of restrictions must be posted, it is clear that the superintendent could implement these restrictions more or less immediately. Park superintendents are not required to engage in any consultation, public forum, review process or stakeholder engagement process before implementing restrictions under Sections 6, 7, & 7.1 of the *General Regulations*. The implications for climbing activity are significant: if the superintendent so chooses, climbing activity can be to restrictions or prohibitions effective immediately and without any element of consultation or advance engagement with climbers. It is also of note that there are no CNPA-specific appeal or review mechanisms for the superintendent's decisions under Sections 6, 7 & 7.1. If climbing were to become a designated activity and climbers wished to challenge or dispute either that decision or the restrictions, they would need to resort to the general remedies available in the court system for anyone challenging legislation or government decisions.

One of the most important governance features of the CNPA is the requirement for the Minister to develop management plans for each national park (CNPA at s. 11(1)). These management plans must be reviewed and amended every 10 years (CNPA at s. 11(2)). The next review of the Banff management plan is scheduled for 2032. Scheduled reviews represent key time windows when park priorities and resource allocation directions are determined for the subsequent decade. Although the mechanics of the process are not specified, the CNPA requires opportunities for public consultation on not just management plans, but all land use planning, policies, and regulations. This is set out in Section 12 of the Act, which reads as follows:

The Minister shall, where applicable, provide opportunities for public participation at the national, regional and local levels, including participation by aboriginal organizations, bodies established under land claims agreements and representatives of park communities, in the development of parks policy and regulations, the establishment of parks, the formulation of management plans, land use planning and development in relation to park communities and any other matters that the Minister considers relevant.

Section 12 of the Act suggests that public consultation is necessary through the use of the word “*shall*” but tempers that requirement with the qualifiers “where applicable” and “that the Minister considers relevant”. It is clear from the imposition of restricted activity and regional bulletins issued under Sections 6, 7, and 7.1 that restrictions can be issued without any form of public consultation. This reveals a tension that exists within the Act, and provides a potential platform for affected climbing communities to launch an application for Judicial Review of a decision to ban or restrict if that decision was made without community or public consultation. However, the consultation requirement appears within the management plan section of the CNPA and applies to decisions made by the Minister. There is no equivalent provision in Sections 6, 7, and 7.1, where decisions are made by a superintendent and not the Minister. This implies that the legislation intends to put such superintendent decisions outside the scope of public consultation requirements.

Existing Sources of Liability for Climbing Activity and Impacts Under the CNPA

The beginning of this chapter examined the myriad ways in which climbing activity could be subjected to restrictions and prohibitions. However, there are also several ways in which the known impacts from climbing activities are already sources of liability for climbers. As identified during the literature review in Chapter One of this research, there are numerous potential ecological impacts arising from climbing activity and climbing area development. These include, but are not limited to, clandestine trail establishment, soil loss and degradation, erosion, impacts to vegetation in rock and cliff ecosystems, and disturbing cliff-based wildlife such as birds or other nesting animals.

Beginning with climbing activity's impacts to non-wildlife, these are primarily captured under Section 10 of the *General Regulations*, which reads "No person shall remove, deface, damage or destroy any flora or natural objects in a Park except in accordance with a permit issued under subsection 11(1) or 12(1)." "Flora" is defined term in Section 2 as "any plant matter, living or dead, and includes fungi and moulds." "Natural object" is also defined in the same section as "any natural material, soil, sand, gravel, rock, mineral, fossil or other object of natural phenomenon not included within the terms flora and fauna that is located within a Park." This means that Section 10 of the *General Regulations* captures any and all conceivable climbing related ecological impacts, especially the two most significant ecological impacts involved in the development of climbing routes: the removal of cliff-based vegetation to clean holds and climbing routes, and the installation of permanent drilled expansion bolts for climber protection. If a climber were prosecuted under the CNPA for climbing activity or climbing area development, this is the section of the legislation which would likely be engaged. There is no definition narrowing what "remove, deface, damage or destroy" entails, meaning it would likely be interpreted to include any common English understanding and meaning of those words.

Climbing activity also has the potential to impact cliff-based and non-cliff-based wildlife. Liability for these impacts derives primarily from the *National Parks Wildlife Regulations* (SOR/81-401) (the "*Wildlife Regulations*"). The relevant provision is Section 4, which reads:

- 4 (1) Except as otherwise provided in these Regulations, no person shall
- (a) hunt, disturb, hold in captivity or destroy any wildlife within, or remove any wildlife from, a park;
 - ...
 - (e) disturb or destroy a nest, lair, den or beaver house or dam in a park;

The definition of "wildlife" is "all wild mammals, amphibians, reptiles, birds, fish, insects and other invertebrates and any part thereof, and includes their eggs and young" (*Wildlife Regulations* at s.2). Thus, effectively any impact on wildlife, cliff-based or not,

caused by climbing activity is captured by CNPA regulations, and is generating existing liability for climbers in Banff.

Analysis of the Act and its associated regulations identifies one other section note which may generate liability for climbers in a national park. Section 32(1) of the *General Regulations* reads:

No person shall, in a Park,

(a) cause any excessive noise;

(b) conduct or behave in a manner that unreasonably disturbs other persons in the Park or unreasonably interferes with their enjoyment of the Park; or

(c) carry out any action that unreasonably interferes with fauna or the natural beauty of the Park.

As identified in the Literature Review portion in Chapter One, one of the possible impacts of climbing activity is conflict with other park users. Section 32 of the *General Regulations* generate potential liability for climbers if the act of climbing unreasonably interferes with other users or the beauty of the park. Specific examples where this might arise are the Banff Townsite and Lake Louise areas, which have a high concentration of bolted sport climbs that overlap with high-use tourism areas frequented by non-climbers.

Consequences of Regulatory Contravention by Park Users: Offences Under the CNPA

With an exhaustive review and analysis of the CNPA and its associated regulations now complete, and all major sources of regulation and sources of possible liability identified, I now turn to the consequences of contravening any of the above provisions for climbers in Banff. The CNPA creates a specific offence and penalty regime for contravening any sections of the Act or its regulations. The offence section of the CNPA that is most relevant to this research is Section 24(2) of the Act. This Section asserts that anyone who contravenes any of the above-discussed provisions is guilty of an offence and liable for:

(a) on conviction on indictment,

(i) in the case of an individual,

- (A) for a first offence, to a fine of not more than \$100,000, and
- (B) for a second or subsequent offence, to a fine of not more than \$200,000,
- (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not more than \$500,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$1,000,000, and
 - (iii) in the case of a corporation that the court has determined under Section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not more than \$250,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$500,000; or
- (b) on summary conviction,
 - (i) in the case of an individual,
 - (A) for a first offence, to a fine of not more than \$25,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$50,000,
 - (ii) in the case of a person, other than an individual or a corporation referred to in subparagraph (iii),
 - (A) for a first offence, to a fine of not more than \$250,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$500,000, and
 - (iii) in the case of a corporation that the court has determined under Section 27.1 to be a small revenue corporation,
 - (A) for a first offence, to a fine of not more than \$50,000, and
 - (B) for a second or subsequent offence, to a fine of not more than \$100,000.

The offence provision of the CNPA does not, in and of itself, designate any specific prohibited conduct or activity. Rather, it outlines a regime that establishes varying degrees of severity and liability for offences outlined elsewhere in the Act. Section 24(2) opens the option for the Crown to choose to proceed by either a summary or an indictable prosecution. Put simply: summary offences are those which are considered less serious and carry with them associated maximum penalties that are correspondingly lower than the more serious indictable offences. Thus, depending on the scope or scale of the alleged contravention, the Crown has the option to choose a less or more serious form of prosecution with equivalent penalties.

It is of note that even an individual who is a first-time offender charged with a summary offence could still be liable to a maximum fine of \$25,000.00. If the contravention were found to be done by a corporate entity, such as a professional guiding operation or adventure tourism operation which delivers climbing products and services to clients within Banff, rather than an individual acting in a personal capacity, the penalty liability is significantly elevated, and even a small guiding operation with revenue less than \$5,000,000.00 (the threshold for a small revenue corporation under Section 27.1 of the CNPA) could be facing a maximum liability of \$50,000.00 for a first time offence.

Aggravating factors unique to the sentencing of CNPA offences are outlined in Section 27(2) of the Act, which stipulates that fines should increase for each aggravating factor associated with the offence. Specific aggravating factors that are likely to be present in climbing activity related contraventions include:

- (a) the offence caused damage or risk of damage to park resources;
 - (b) the offence caused damage or risk of damage to any unique, rare, particularly important or vulnerable park resources;
 - (c) the damage caused by the offence is extensive, persistent or irreparable;
 - (d) the offender committed the offence intentionally or recklessly;
 - ...
 - (g) the offender committed the offence despite having been warned by the superintendent, a park warden or an enforcement officer of the circumstances that subsequently became the subject of the offence;
- (CNPA at s. 27.7(2)).

Section 27.7(2)(g) is especially likely to be present if the climbing activity related contravention occurred in a place or time designated under a bulletin issued pursuant to Sections 6, 7, or 7.1 of the *General Regulations*.

Caselow Review: Reported Cases involving CNPA Offences

This research identified twelve decisions involving CNPA offences available on CanLII. Accounting for appeals, there were eight separate matters addressed in the

decisions, six for individual accused and two were corporate accused. While none of these cases involved climbing, they do give an idea of how courts address offences in national parks. Of particular interest to this research are the cases where the offence took place in Banff: *R v 763966* (2017 ABPC 219), and the *R v The Lake Louise Ski Area* series of decisions (2017 ABPC 262, 2018 ABPC 280, & 2020 ABQB 422). Both involved corporate accused. In *R v 763966*, the numbered company operated a gas station within the town of Lake Louise, which was charged with improperly handling a gasoline spill. *R v The Lake Louise Ski Area* concerned a series of violations under not only the CNPA, but also the federal *Species at Risk Act* after employees of the ski hill cut down trees, including over endangered Whitebark pines, without proper authorization and permits from Parks Canada. Both corporate accused were convicted, and *Lake Louise Ski Area* in particular represents one of the highest fines for offences involving national parks and species at risk in Canadian caselaw. For summaries of these cases and the rest of the dataset, see Appendix VI.

Analyzing the reported case decisions revealed several discernable legal doctrines and principles applicable to sentencing for CNPA offences. The first of these is that CNPA offences are strict liability offences. Strict Liability offences, as explained in *R v 763966 Alberta Ltd.*, 2017 ABPC 219 are offences where the Crown need only prove the act of the contravention and the identity of the perpetrator. Unlike criminal law, the Crown does not need to prove any criminal intent. Once the Crown satisfies the Court that there is proof of the act, that the act is a contravention under the legislation, and about identity of the of the perpetrator, the burden shifts to the accused to demonstrate that they committed the act in accordance with either officially induced error or otherwise exercised all other due diligence or did so out of necessity. If none of those factors are established by the accused, then the accused will be convicted. This is a substantially lower threshold to achieve a conviction than is found in criminal law.

The second principle is that environmental sentencing principles apply to CNPA offences. Environmental offence sentencing prioritizes general deterrence and considers as an aggravating factor the entire scope of the harm of the environmental offence to the governed ecosystem as a whole and do not look at the offence in disconnected isolation.

Although not a CNPA related litigation, the case of *R. v. Terroco Industries Limited*, 2005 ABCA 141 is cited with approval by the courts in both *R. v. Moody*, 2016 ABPC 306 and at the superior court level of *R. v. The Lake Louise Ski Area Ltd*, 2020 ABQB 422. Analysis of this case shows that it has been cited approximately 119 times in various regions and various levels of court. It is approved by the superior court in *R. v. The Lake Louise Ski Area Ltd*, 2020 ABQB 422 as a leading authority on the sentencing of environmental offences and applies this case in an environmental context.

The third principle is that courts ruling on CNPA offences take an expansive, rather than restrictive, interpretation of contravention behaviour. In the caselaw reviewed, and especially in *R. v. Pittman*, 2013 CanLII 60979 (NL PC), the court resorts to a wide array of sources to seek definition of terms such as “remove” and embraces an expansive interpretation to capture offending behaviour. For climbing activity, this lends significant strength to the conclusion that climbing activity impacts, such as bolting and route cleaning, would be captured as prohibited activities under Section 10 of the *General Regulations*.

The final principle that occurs throughout the caselaw analysis is that courts are informed by the Parks Canada mandate when interpreting of the Act and its regulations. To distill if a specific activity falls within the scope of prohibited conduct, the Court can and will resort to informing its interpretation based on the codified mandate of Parks Canada. In *R. v. Pittman*, 2013 CanLII 60979 (NL PC) the court comments specifically at paragraph 15 that:

Section 4(1) of the *Canada National Parks Act* indicates that the national parks of Canada are “dedicated to the people of Canada for their benefit, education and enjoyment...and the parks shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.” Thus, any interpretation of the *Canada National Parks Act* or its regulations must be conducted in a manner which promotes the maintenance and preservation of Canada’s National Parks. This convinces me that the word “remove” as used in Section 10 of the National Parks General Regulations does not require the removal of flora or natural objects to an area outside the boundaries of the Park.

This further lends confidence to the conclusion that Parks legislation and the offences therein are likely to be interpreted expansively by presiding courts.

Special Note: The Contraventions Act and its Non-Application in Banff

The Contraventions Act (S.C. 1992, c. 47) (the “*Contraventions Act*”) allows the federal government to designate federal statutory offences as contraventions, which may be enforced by means of tickets, instead of prosecuting these offences under the summary conviction process established in the Criminal Code. Adding a ticketing option to enforce designated federal offences assumes that the complex and burdensome summary conviction process may be at odds with the nature of these offences. (Department of Justice, 2017). Using the summary conviction process requires several steps and involves several stakeholders. Among other things, it requires enforcement officers to gather detailed information to be shared with Crown prosecutors to determine whether charges will be laid. When charges proceed, enforcement officers must file the required information at the courthouse, to be reviewed and signed by a provincial judge or a justice of the peace (Department of Justice, 2017). Enforcement officers prepare paperwork such as summons or warrants to be signed by the judge or the justice of the peace ordering the charged individuals to appear in court. If the charged individuals opt for a trial, enforcement officers must provide the required information and assistance to the Crown, which may necessitate several meetings, in addition to being available to serve as witness in court (Department of Justice, 2017). Having this as the default process for all federal statutory offences was seen as inefficient, which led to the establishment of the contraventions’ regime (Department of Justice, 2017). However, the Province of Alberta does not recognize the *Contraventions Act* and as such it is not in force and effect in Banff. Therefore, all contraventions in Banff that result in a charge also have a corresponding court appearance and engage the entire court process (Department of Justice, 2017).

Law in Context: The Effectiveness of the Current Legal Framework

I now turn to a socio-legal analysis of how the law operates in context and examine indicators of whether this regime is an effective measure for governing climbing activity in an increasingly busy park setting. Archival research of Parliamentary records

for the past 24 years found only one formal Federal Government response concerning the effectiveness of the above framework. This response was to Question 191, initially asked by the Hon. Wayne Stetski, member for Kootenay-Columbia. The inquiry and response is contained within Sessional Paper 8555-421-191 (the “Sessional Paper”) attached as Appendix VII to this thesis. The period of inquiry concerned 2006 to 2016. The Sessional Paper, published by Parks Canada, revealed that:

- Between 2006 and 2016 there were 1070 charges laid under the CNPA in Banff;
- Of those 1070 charges in Banff, it resulted in 757 actual fines, with an average fine amount of \$277.89 CAD;
- Banff was the busiest national park in terms of both charges and fines, more than twice as busy as the next leading entry, Pacific Rim National Park Reserve of Canada, which had 534 charges and 488 fines; and
- Offences under Section 7 of the *General Regulations* were the third most charged contravention offence. (Sessional Paper 8555-421-191)

The Sessional Paper also stated that the primary deterrence measures for offences in national parks are the penalties listed in the CNPA and related legislation, as enforced by park wardens. The paper explains the official stance of Parks Canada as “*When feasible, measures are undertaken to resolve incidents through communication/education by front line staff before having to resort to more formal law enforcement steps.*” It is also noted that there has never been an official government analysis of the effectiveness of those penalties.

Without a study of the effectiveness of the penalty regime, it is left to researchers to draw inferences by analyzing the number of known fines imposed during a given period in comparison to the known attendance by visitors in Banff during that same period. This can be done by cross-referencing Parliamentary report data concerning the number of fines issued in Banff from 2006 to 2016 with the Parks Canada archived dataset, which

shows visitor attendance numbers for the same period. Doing so for the period of in question reveals:

- The total number of recorded visitors to Banff from 2006 to 2016 was 33,349,824.
- The number of fines issued in Banff from 2006 to 2016 was 757; and
- The estimated percentage of Banff visitors fined from 2006 to 2016 was 0.00002% ($757/33,349,824$).

Considering that out of the more than 33.3 million visitors to Banff during that 10-year period, only 757 of those visitors received fines, what did the prosecution process look like for the small percentage who did receive fines? This research engaged with a Federal Prosecutor who conducted some of those prosecutions in question and who participated in this research on condition of anonymity. To ensure anonymity, this prosecutor is identified as Prosecutor J. Doe.

The first topic that addressed by the interview concerned the mechanics of how parks offences come before the court. Wardens identify a contravention and the alleged perpetrator and then issue the necessary legal paperwork compelling a court appearance. The file begins its life in the legal system in provincial court, on a date that could be several months after the infraction. Prosecutor J. Doe explains the process as follows:

“The wardens that work for Parks Canada, there are officers, they'll either be out patrolling and encounter an infraction, they'll receive a civilian complaint or complaint from a Parks Canada employee, like a campground employee, and they'll go out and deal with the situation. Let's use the example of a messy campsite with food out. So they'll attend the campsite, go confront the individuals responsible, they'll charge them, ... And then they'll issue them a document that says you have to appear in court on this day. And then they'll go back to the warden's office, and they'll swear with called an information, which is just a document that allows the court process to be initiated and then formally charges a the person with the offense. So for whatever date, they pick, let's say it's two months down the road, Mr. X will have to show up in provincial court and have to deal with the charges. So a parks event. It's not just like a traffic ticket. It's a mandatory court appearance” (Prosecutor J. Doe, 2022)

They also described that charged offences do not typically originate from locations deep in the backcountry, but rather from locations close to the road and where high volumes of tourists tend to be. Prosecutor J. Doe states:

“Practically speaking, it's where enforcement is possible. It's where it's possible for Parks Canada employees or other civilians to view an offense and call it in... There's no wardens that can get out there to catch the person and force it [regarding backcountry offences], even if there is a complaint. So, yes, in short, high concentrated areas, that's where most of our offenses, that's where there's the capability to actually enforce a charge” (Prosecutor J. Doe, 2022).

Prosecutor J. Doe has seen very few repeat offenders and estimates that approximately 95% of people charged with parks violations are first-time offenders (Prosecutor J. Doe, 2020). They predict that there is likely to be an increase in the number of offences corresponding with a rise in tourism. However, the number of wardens is identified as a bottleneck for the laying of charges:

“The parks are getting busier. Of course they are. With more people comes ... I mean, really, the more people on the road, the more people that will speed. The more people that are camping in the parks or hiking in the parks, the more infractions there's going to be because the infractions just attract a certain percentage of people who don't know or won't follow the rules. So surely, more wardens would lead to more charges” (Prosecutor J. Doe, 2022).

The prosecutor identified that enforcement resources for Wardens are a major restriction in getting contraventions before the courts, despite the increase in visitors, stating:

“I don't know if there's necessarily been an increase in file load. I think that's just a product of the wardens not having time to enforce so many of these things, they're not just out there to write tickets and charge people they're out there setting up trails and dealing with closures and safety issues.”

When discussing the allocation of Warden resources and sources of contravention files, they gave the example of Johnston Canyon, a well-known hiking destination highly publicized on social media:

“I would say at least half of our files the past two years have been relating to the Johnston Canyon off trail closure for an area called secret cave. And [the Wardens] have definitely concentrated their efforts quite a bit on that issue, and so [that is] a lot of our files.”

Despite coverage from newspapers, blogs, or other media sources, and even with relatively high fines on conviction, Prosecutor J. Doe has not experienced an identifiable reduction in the number of contraventions making their way to the courts. They highlight this issue as:

“Google Johnston Canyon or secret cave right now. I mean, you're not just going to get the hiking blog, you're going to get the Canmore newspaper articles about more hikers fined \$1250 each, and depressingly has not had the desired effect. The fines have been remarkably stiff. And, I'm sure some people have been deterred, but the number of files hasn't really slowed. Depressingly. The blogs and Instagram posts don't seem to appreciate and don't seem to care that there is a closure, and that people are getting caught having to suffer large fines, never mind the fact that they should probably care about the fact that it is closed and you're harming this environment that is meant to be protected....”

In contrast to visitors in more easily accessible parts of the park, climbers and avid backcountry recreationalists were not identified as a “problem” population from the perspective of law enforcement in Banff. As Prosecutor J. Doe explained:

“That's not a common link I've seen between rock climbers and other violations. My experience has been, if we have a rock climber file, it's because they're stranded and they needed to be rescued... which [can] become an offense in the sense that maybe they were in an enclosed area, they had to cross through a closed area, or there are some other minor infraction....Generally, no, I haven't seen rock climbers as a problem community for our files at all.”

They continue on this issue:

“The people who spend more time in the park seem to be more aware of the rules and seem to be more respectful. And that's why we don't get the rock climber files, we don't get the avid backcountry campers, that's not usually the problematic file, it's the people who haven't gone backcountry camping before so they don't get a permit. So they don't know they need a fire permit to make a fire in addition to camping...The people who spend more time there seem to be more respectful, seem to be less... they show up as offenders less often.”

It is clear from what Prosecutor J. Doe recounted that climbers are not the current focus of contravention enforcement in national parks. However, as with the regulations, that could be subject to change with little to no notice.

Although there is a robust legal framework which allows for the governance of effectively any activity within Banff, the realities of high visitor numbers and limited law enforcement resources result in limited ability to enforce legal restrictions.

Consequently, this lends confidence to the conclusion that the CEP model is not an effective route to attempt to achieve long term ecological preservation and protection in climbing activity in Banff. Management planning solutions, which allow for community participation and do not require law enforcement engagement, are severely lacking. As the Sessional Paper explains, the Park Wardens and the Penalty regime are the primary mechanisms for deterring park offences. As Prosecutor J. Doe explained, Warden resources are extremely limited and are often focused on high-profile and high-traffic locations. Climbers, like other backcountry users, are perceived by law enforcement as generally unproblematic and not the source of contravention files. Without a major shift in Parks Canada priorities or a high-profile incident, it is reasonable to conclude that climbing is unlikely to move to the forefront of enforcement attention and resource allocation.

Conclusion

This chapter explored the entire legal framework that applies to climbing activity within Banff, to provide insight into applicable caselaw and examining that framework in context to assess its effectiveness at regulating the ecological integrity of climbing management in Banff. The analysis contained within this chapter indicates that it does not appear a substantive change is necessary to the laws governing Banff National Park in order to effect changes to management approaches of climbing or any other activity within the park. The legal framework of applicable statutes and associated regulations enables almost any conceivable adjustment or change that would be required to manage climbing using existing legal tools and instruments. Any deficiencies or criticisms regarding the management of climbing would not be appropriately attributable to gaps or

deficiencies in governing legislation placing aspects of climbing activity or governance beyond the scope of what is capable of being managed through the existing legal regime.

The analysis contained within this chapter also leads to the conclusion that while there may not be gaps or deficiencies in the legislation with regards to what is theoretically capable of being governed within the boundaries of Banff National Park, the actual implementation of management planning tools or plans for climbing in Banff is nonexistent. This would appear to be likely as a result of a combination of climbers relatively low numbers compared to other park users, the lack of any generated reported caselaw concerning climber activity, the resource intensive nature of the contravention, enforcement and prosecution model of compliance management and the seemingly complete non-interaction between climbers and law enforcement.

As is evident by comparing the legal framework identified within this chapter and known ecological impacts of climbing activity as highlighted in Chapter One: climbing activity has ecological impacts which could be in contravention of existing regulations. As limited as the actual application of the penalty regime and its scope appears to be, as will be discussed in the next chapter, it nonetheless serves as a barrier to the development of a positive working and collaborative relationship between climbers and land managers due to the possibility that enforcement and prosecution remain a potential outcome. A management plan which enables and empowers climbing stakeholders to engage with land managers may help address these challenges.

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CHAPTER 3

Listening to the Community: Understanding the Position of Key Climbing Stakeholders in Banff

Banff is one of the world's premier climbing destinations. Whether it is rock, ice, alpine, mountaineering, bouldering, or scrambling, climbers of all kinds flock to Banff in ever-increasing numbers. 2024 was Banff's busiest year, with over 4.2 million visitors logged as entering the park (Parks Canada, 2024). Simultaneously, climbing enjoyed a year of unprecedented growth and popularity, moving on the international stage as a permanent Olympic Sport at the 2024 Paris Games. With visitor attendance in Banff on the rise, and climbing entering the public consciousness as a mainstream sport, this research presents a timely assessment of the perspectives of key climbing stakeholders within the park. To date, climbers in Banff have enjoyed nearly unlimited access to climbing areas (Perry, 2012). Recreational activities in national parks are evaluated in terms of how they align with park values and policies. Climbing has been considered an activity that is consistent with the philosophy and values of the Parks mandate, summarized in a Parks document as "Mountain climbing is recognized as an acceptable and encouraged activity within the National Parks." (A Climbers Guide to Mount Sir Donald).

As explored above in Chapter Two, this position is in tension with a legal framework that could capture many of the corollary impacts of climbing as illegal activity, especially those flowing from route and crag development. The removal of vegetation and loose rock, as well as the installation of bolts, contravene Parks Canada regulations and are technically illegal. This means that every individual who has developed climbing areas has technically contravened the regulations. To date, these actions have been tolerated by park enforcement authorities, who have been lenient with charging contraventions. However, the general perception is that this forbearance depends on these actions being carried out carefully, discreetly, and without complaints from other park users (Perry, 2012). There are also concerns within the climbing community that policies or park management plans could shift to increase restrictions and

prohibitions on climbing (Perry, 2012.) This chapter specifically addresses the following critical questions as outlined in Chapter One:

3. Who are some of the key stakeholders in the development of climbing in Banff and what are their concerns, goals and interests? and
4. Is the current legal framework an effective model to advance key climbing stakeholder concerns, goals and interests with regards to climbing in Banff?

Using community based participatory research methodology, discussed in Chapter One, I conducted 20 semi structured interviews with climbing stakeholders. This Chapter explores the perspectives of these key stakeholders and their views on the relationship between climbing activity and land management in Banff. I begin by introducing who the key stakeholders in the development of climbing in Banff are and how they were identified. I then move on to a thematic exploration of the insights, goals, fears, pressures and hopes those stakeholders expressed in the interviews. Finally, I discuss whether those considerations of key climbing stakeholders are able to effectively be addressed by the legal framework that exists in Banff.

Identifying Climbing Development Stakeholders in Banff

Although climbing has millions of sport participants around the globe, the development, advocacy, and management of climbing areas within Banff has, for the most part, been conducted by a small number of individuals, many of whom were interviewed for this research project. I relied on known personal and professional contacts for my interview. These were individuals who were willing to speak with me due to a shared history as climbers and an existing relationship of trust and understanding of common goals and passion for maintaining climbing access and developing ecologically sustainable climbing. I used the Snowball Sampling technique to recruit additional participants based off of the recommendations of my initial contacts, who introductions to other well-known individuals within the climbing community in Banff. I recruited 20 participants for the interview research portion of this thesis. Some

participants requested to remain anonymous due to concerns of impacts to professional employment, or for fear of liability or sanction. Wherever requested, those individuals have been anonymized and provided with pseudonyms. The final list of the twenty interview participants is included in Appendix III.

Collectively the individuals identified and interviewed represent a significant volume (but not all) of the climbing development that has occurred in Banff, the primary advocacy and access groups that lobby for climbing access and development in Alberta or in Banff, the commercial climbing gym enterprises which operate in central and southern Alberta, and commercial guiding enterprises that operate within Banff. I was also fortunate enough to be connected to William Snow, who provided invaluable insights into some of the perspectives and history of the Stoney Nakoda Peoples' lived experiences with Banff land managers, and the park removing First Nations peoples from their ancestral and traditional lands and activities.

I attempted, through both professional and personal channels, to engage with Parks Canada representatives for this research. Unfortunately, while many parks staff, wardens and environmental field staff were willing to discuss in an unrecorded, off-the-record capacity and share their views, none were willing to participate in this research as representatives of Parks Canada's position on climbing in Banff. As such, their views were not included in the data gathering or analysis of this project. It is assumed that this reluctance is due concerns of personal or professional liability or career ramifications, or due to a difficulty in obtaining permission or authorization from their respective agency to speak on behalf of that agency in its official capacity. I was unable to identify an official "climbing" point of contact for Banff.

Recurring Themes from Interviews with Climbing Stakeholders

This analysis revealed anticipated consistent themes amongst interviewed stakeholders: 1) a desire to engage in environmental stewardship; 2) uncertainty concerning the impact and increased pressures on climbing areas due to increases in sport popularity and the number of sport participants; 3) and, fears of attempting to develop a relationship with Parks Canada land managers due to concerns of either personal

individual legal reprisal as well as broader climbing management reprisal constraints should Parks Canada become more fixated on climbing activity development. Additional, but unanticipated common themes across interviewed stakeholders included: 4) the fear of an inciting event, such as a major and high-profile fatality, which would spur land managers to cast greater scrutiny on climbing activity and incur a climbing “shut down” of some variety; 5) the increased pressures on existing climbing areas from social media and climate change; 6) climbing stakeholders view themselves as significantly better positioned than Parks Canada land managers to engage in stewardship of climbing areas due to specific knowledge, skills, and connection to climbing spaces. Overall awareness of the potentially legally prohibited nature of climbing development within a national park was high amongst interviewed stakeholders, but specific knowledge of any of the legal mechanics, including the likely consequences of specific prosecution or a process by which approval or permission might be sought from land managers for climbing development activity was non-existent. Due to the positionality of the interviewed stakeholders, the interview data is drawn from stakeholders who either would have been directly involved in, or aware of, almost every major climbing development in Banff for the last 20 years.

What are some of the Concerns, Goals, and Interests of Interviewed Climbing Stakeholders?

A common theme of climbing stakeholders interviewed is that climbing as an activity has a strong history and solid roots within the landscape of Banff. This viewpoint was shared across several interview participants. It was often expressed in conjunction with another observed theme: climbing activities do not rank very highly in the landscape of concern for either parks law enforcement or parks land managers when compared with the pressures from an ever increasingly busy National Park. As explained by Eric Hoogstraten:

“I think pressures on a national park has really pushed priorities that we feel are important to the backburner and climbing I don't think is that big of a concern to the warden's service in particular. I mean, they do have to keep an eye on it, of course, it's always sensational, and there's a rescue or something to that effect. But I think when you

have a national park system that was built with mountaineering in mind, and climbing in mind, and acknowledgement thereof

...

We have a strong history of acceptance of that activity and endorsement of that activity. And I think it's still there. I think they're starting to have awareness of the pressures in the parks, on all levels.”

(Hoogstraten, 2022)

Stakeholders identified that their general self-perception is that climbers are seen as competent and considerate environmental stewards by land managers and law enforcement in their experience. This means they are less likely to draw the attention of land managers and law enforcement. As explained by Al Black:

“The analogy I use is we’re like the ents from the Hobbit. The shepherds of the forest. We’ve been around forever. We don’t move very fast, and we don’t do much, we don’t change much. Our activity has been going on, and will continue to go on. We kind of just have that history and stewardship and that carries a fair bit of weight too.”

(Black, 2022)

Participants involved with climbing advocacy and development groups shared a belief that while climbing occupies a deeply important role in the lives of climbers, the number of climbers are too low for land managers to particularly care about. Steve Fedyna offers this insight:

“So I think that for Banff Park, I don't think climbing is very important. To our local community, and it's my personal community, it's extremely important.”

(Fedyna, 2022)

William Snow, speaking of his knowledge and experience especially with regards to the Stoney Nakoda First Nation, explained how traditional cultural practices of local First Nations interact with climbing. He stated that:

“Within traditional knowledge, we also have recreation, but we don't have it in the same way that it's understood in Western science. We did have recreation, we did have games, sport racing, different ways that we would do recreation, but it was all very different from how you would see something like a sport like mountain climbing

...

For example, vision quests is a way that we are going to the mountain peaks. And that was part of our ceremony. So, the Stoney people would go to these different mountain peaks, because they wanted to know their role in understanding what they were here to do in life. So they would go up there as part of that ceremony”

(Snow, 2022)

Increasing Numbers of Climbers and Park Users are Creating Pressures and Concerns for Stakeholders

Esteemed climbing historian and mountaineer Chic Scott described the situation created by increasing numbers of climbers and other visitors in Banff as follows:

“It's the park that when people think of national parks, they think of Banff. They just think of Mount Rundle and Cascade Mountain and Banff Avenue. And that's fine. So we're going to get overuse here. But we also get money for it. People pay their fees. And that supports Kluane and these hundreds of other parks, I guess other wilderness parks. And so Banff is the one that suffers from over use to save all these others.”

(Scott, 2022)

Although climbing might have its roots as a “counterculture” activity (Hardy, 2003), the general perception amongst climbing stakeholders interviewed is that in a Banff context climbing is significantly more busy and more mainstream today than it ever has been in the past. There is no anticipation that this trend will reverse. As succinctly put by Steve Fedyna, “part of is that rock climbing used to be this fringe extreme sport. Well, now, in this town, everybody climbs.”

Climbing has fully entered the mainstream, and the explosion of popularity of climbing gyms is seen as the herald to a potentially similar boost in outdoor sport participation.

Tai, who operates an indoor climbing gym, remarked that:

“One in eight people in Calgary has signed a waiver form...We could have up to 1600 people in our gyms in one day. ..It is more linear than anything else. But yeah. We don't see it slowing down. Or it has no signs of slowing down.

(Tai, 2022)

The development of indoor facilities, which are purpose built to absorb large numbers of sport participants, are seen by gym owners as a way to dissipate some of the impact on

outdoor spaces that would otherwise experience the full brunt of the boom in popularity of the sport. Prete summarized this viewpoint as:

“If all these people were climbing outdoors, it would totally change the experience. So I think that gyms in that regard are very important in terms of keeping the sport healthy. And in a lot of ways protecting the outdoor areas. It's a weird reality and I could be totally off. Maybe we'll just develop more and better crags. But if everyone was out at the crags that we have access to every weekend, then it would be hammering the places like best practices aside, we'd have a huge impact.”

(Prete, 2022)

Whatever history climbing had as a counterculture fringe sport available only to those on the edges of society has disappeared. With that, the demographics of who “climbers” are has also changed to be more mainstream. Hoogstraten, who remembered when the climbing community was much smaller, described the shift as:

“Climbing has become very mainstream. And most people who engage in sport or crag climbing or even traditional climbing, adventure climbing, as I guess people call them, I mean, they're pretty mainstream people”

(Hoogstraten, 2022)

Both Climbing Stakeholders and Government Land Managers are Perceived to not be aware of the scope or scale of the change that is occurring. Sandro explains his experience in founding and working with government land managers establishing the Western Alberta Bouldering Association as:

“I really think it's going to blow up. And what I think the biggest challenge is, is that maybe not municipally, but provincially and federally, I just think the government has no idea how many people are climbers, they're just not aware of the size of our population or what our needs are, and I think in a lot of ways, a fairness to the government, they're just completely overwhelmed with the number of people accessing parks.”

(Sandro, 2022)

One proposed theory for why the increased number of climbers in Banff has not been noticed by Parks Canada land managers or at least has not been the subject of greater scrutiny and involvement, is that Parks attendance increase is so vast that climbers are simply lost amongst the numbers.

“Because it just coincided with a real increase in terms of use, and that masks the really increasing climbers that have been coming to the Bow Valley in the past five to 10 years. Consider biggest management challenges in Banff. It's numbers, and we're such a small component of that. One of the things is that climbers are, ... we're really kind of small potatoes.”

(Black, 2022)

Another explanation is that climbers, like other self-powered backcountry recreationalists, are simply not viewed by Government Land Managers as typically problem populations. The stakeholders interviewed tended to agree with the perception that climbers are not part of the problem with regards to wildlife interactions. Examples from two interview participants discussing this topic are:

“Climbing has become mainstream. And I think if we're going to be responsible stewards and land stewards, and people generally think I mean, if you go to government agencies, tend to think of people who are involved in non-motorized, outdoor recreational activities, as generally pretty responsible.”

(Hoogstraten, 2022)

“Are there key concerns between climbers and wildlife in the area? I don't think we're the problem. And we're not seen as the problem. “

(Black, 2022)

It is not only climbers who are experiencing additional pressures caused by the uptick in park visitors. As explained by William Snow, the increase in the number of parks users has made it more difficult for Indigenous Nations to engage in traditional practices, and there is currently no management plan solution addressing this tension. He explains:

“More places are populated now. So it's very difficult to do those kinds of ceremonies now with the amount of people up in those places. I believe they wouldn't be done if there were fewer people up there. But that might be a function of management plan is to say to allow more time and space for that.

We don't currently have that idea or that type of issue before Banff right now. But the park planning process is very limited or has been very limited in the park management planning meetings that I've been to in the last number of years. “

(Snow, 2022)

Climbing Communities and “Peer to Peer” Management

Several stakeholders, especially those who have occupied long term positions on Climbing access society, described a self-management scheme for climbing development and activity which has largely governed climbing management in Banff to date.

“the legal statuses were not clear. And then, it appeared in a guidebook. And that was the sort of climbing management to the parks people they would be just having coffee, or run into each other, because guides are friends, guides are putting up routes too. So it's sort of a community management plan.”

(Black, 2022)

The “peer to peer” aspect of climbing management extends to land managers where land managers are perceived to be climbers or supportive of climber interests. However, there appears to be little or no perceived relationship on a peer to peer basis where land managers are not perceived to be supportive of climber interests or climbers themselves. One developer describes the difference of his experiences between climbing development in Banff versus Jasper National Park:

“In Jasper, in the National Park, Jasper has a long-standing history of route developments. In the past, the wardens were engaged in route development so it's very climbing friendly ...

[regarding possible sanction] I would ask around. We were always concerned about that. But that was the answer was always like, you don't have to worry about that. I would ask at the climbing shop and other developers, and they'd be like, we don't have to worry about that. The wardens are on board with the development up here. So we would develop entirely new crags....

...I always got the impression that in Banff, the land managers were like park managers who weren't climbers. In Jasper, it was managed by wardens in a very historical way because Jasper being ... the history of the two parks is in some ways very similar but a bit different. Is that wilderness and horse wrangling and hiking and fighting bears was much more prevalent in Jasper. In Banff, it was right from the beginning it was like how do we manage this park for tourism? But it was created to save the Cave and Basin. And that was because hot springs were a giant tourist draw. So literally, Banff was created to manage the influx of urban visitors.”

(Hoover, 2022)

Stakeholders Fear the Impact of Increased Climber Numbers

Although climbing stakeholders interviewed generally perceived that they were not a high priority for Parks Canada land managers, and that their relative ecological impact was low compared to other populations of park users, there was an articulated fear that climbing resources are finite and that the increase in climbing participants was going to degrade or negatively affect the climbing experience in Banff. A particular fear was expressed concerning the number of new climbers who are developing their skills in gyms and the inability of available climbing resources in Banff to absorb those numbers.

“[B]ecause of the influx of climbers in the climbing gyms and people are already complaining about crags been overcrowded outdoors, the situation is only going to get worse. And it'll get worse a lot faster than I think we can react to. And in my estimation, it's compounding already.

...the population of people that climb outdoors, it's not just going to be the weekend anymore. It will be during the week probably because of crowds. The biggest issue outdoors is going to be crowds.”

(Tai, 2022)

“I think right now, people aren't realizing the finite ... they're beginning to realize that there's kind of a finite resource here, at least in the highly trafficked areas, and I think recent numbers of tourists and stuff are kind of making people aware that oh, hey, there's lots of people coming into our sport and we don't have a whole lot of ... we don't have necessarily a ton of roadside rock that we can develop, or even stuff that's a two to three hour hike away.”

(ACMG Guide Jack Smith, 2022)

There was also concern that individual routes, even developed ones, are a finite commodity capable of supporting only so many climbers before they are degraded or destroyed. Banff sport climbing is predominantly on limestone, which is highly vulnerable to polishing from climbing usage, thereby rendering it slippery and unsuitable for further enjoyable climbing. As Fedyna explained, climbing on limestone means that:

“And the routes that are high quality that everybody wants to be on. And part of the additional issue here is that our rock as you know, polishes.... You are destroying that because that rock only gets to be touched 10,000 times before it's wrecked.”

(Fedyna, 2022)

Some stakeholders expressed a concern that the climbing areas, and indeed Banff, were at capacity in terms of what existing climbing infrastructure is capable of absorbing until better or clearer management regarding climbing is able to be put into place by land managers:

“Until we get better management, more consistent management around trails, and stuff like that, the infrastructure parts. I don't think we should be directing more people to Banff in general...

...Climbing management part of any park management plan, the notion that, yeah, we need to get our heads around just the sheer numbers of this as a recreation slash commercial activity. And then the second part is just the second part of the 20 year plan. So first part is how do we build the infrastructure just get the foundation in? And then long term plan is how do we manage this moving forward so that it's sustainable growth management, and sustainable growth and manageable impact?

(Black, 2022)

For stakeholders who have been extensively involved in climbing area development, the perception is that despite the vast of Banff, the climbing areas which were easy to develop, contained high-quality climbing routes, and were a desirable area to climb, have already been almost completely developed. They also explain that the actual number of individuals involved in the creation and development of climbing areas is very small relative to the overall number of climbers.

“A small number of individuals responsible for route development or bouldering development, but they also create the momentum in the community to then that spurs secondary development,

often there'll be a wave of development phase that eats up the most easily accessible or readily available climbing resource.

...

So there's a wave of development on this low hanging fruit. And then there's this what I always call like this ... what do I call it? The less obvious climbing. That ironically often produces some of the more interesting climbing, then there's this secondary wave of development that actually then tends to solidify the areas like a de facto destination, that first wave creates these small areas, then the sheer number of climbs or bouldering problems is created by this secondary wave. That secondary wave is often ... sometimes in the first wave, too, by a relatively small number of individuals.”

(Hoover, 2022)

Fedyna added to Hoover's description of easily accessible, high value climbing areas as "low hanging fruit", believing that the fruit has already been consumed:

[Referring to easily developed, accessible climbing areas] The low hanging fruit is gone. The low hanging fruit is long gone.

(Fedyna, 2022)

One prolific climbing area developer in the Bow Valley estimates that as few as ten people are responsible for most of the development occurring in Banff (Tos, 2022).

Historian and leading climbing figure Chic Scott provides a more optimistic outlook, indicating that although crowding and increased numbers certainly do create challenges, Banff remains mostly untouched, and it is largely the areas that are very close to the road and easily accessible that are experiencing such challenges. Scott explains:

"I think the boom in back country usage and mountain usage is almost 95% positive... We're suffering from overcrowding, but just in pockets. It's not an overarching theme to Parks or even to Banff. I mean, everybody ... I can go have a lovely, quiet walk any day of the summer here in Banff. Often there's hardly anybody in the Spray River Trail, or walk around Tunnel Mountain. People just ... there's just about half a dozen places, like Lake Louise, Moraine Lake, Johnson's Canyon. Just these places that somehow they're just overwhelmed that it's a horrible experience."

(Scott, 2022)

Part of a potential solution to the over-usage challenges that Banff is experiencing is to redirect users away from highly popular areas into more difficult-to-access, remote areas, but there is a corresponding trade-off concern about degrading the character of the experience of the remote area by doing so. Chic Scott explains:

"People think that Banff Park is trashed. Well, right. I mean, 99% of the people who use Banff Park just follow those roads. And the rest of Banff Park, all I have to do is go up to Mountain Parkway, and walk down 40 Mile Creek. Yeah, and follow 40 Mile Creek and over Mystic Pass, and I can walk all the way up to Jasper, following those trails. And I'll bet even in the height of the summer, I would just see a handful of people out there.

...

We've got to redirect people and somehow get them to enjoy some of the more remote areas. I don't know how you'd do that. I guess you just make it a little bit easier. But at the same time, of course, that spoils experience a bit by making it easy. "

(Scott, 2022)

Potential for Conflicts Between Climbers and Non-Climbers

Because many climbing areas start from the same locations as other park visitor experiences, such as hiking, boating, or viewing areas, the increase of park users is leading to a scarcity of shared resources. Of particular note by the interview participants was access to parking spaces near climbing areas experiences. The concerns regarding parking resources are identified repeatedly throughout most climbing stakeholders interviewed:

“[T]here's more of a conflict between guiding companies and specific users, for example, other climbing users, other skiing users, because of the either finite or perceived finite areas that they can climb in, especially for things like hut usage on Wapta or using a particular crag when somebody's got a project, or conflicts between like a guided group and a group of friends who want to go to a particular area. With respect to general public, I think it's more of a abstract conflict and that there's a whole pot of users and there's a whole lot of people in our parks now and it's more the logistical challenge of managing around that, like parking lots.” (ACMG Guide Jack Smith, 2022)

“[I]t's starting to feel overwhelming like that the [climbing] community is not prepared for the numbers. And the parks, there's pluses and minuses, most people go to Lake Louise to climb. Parking is an issue. You don't go to Lake Louise unless you want to get up at four o'clock in the morning. The Sentinel. Parking lot shuts down at eight o'clock. Those sorts of things. So, I mean, there's more climbers, parks are getting less and less accessible because of the parking.” (Tos, 2022)

“A lot of the challenges are going to come from just loving it to death in terms of the increase of users on routes, and that making access more challenging because parking lots will get full, trails will be reduced a lot. So I think that's a big part of our challenges moving forward is making routes and the access match the level of the user base.” (Greant, 2022)

Some participants recognized the selfishness of wanting parking and park resources to be able access their desired sport experience in the park, sometimes at the expense of other tourists or even other climbers.

“Climbers are concerned about congestion. All climbers are concerned about standing in line. All climbers are concerned about route polish. Climbers tend to be ... it's a very narcissistic sport”

(Fedyna, 2022)

It is also highlighted that the increase in visitors and the pressure that shared resources are facing is not perceived necessarily as the result of an increase in climbers, but rather the increase of the general tourist population who occupy the same shared resource spaces as climbers

“The problem is simply that too many people are coming to Johnson, they're not coming to the mountains. There's not too many people coming to the mountains. There's not too many people skiing and climbing. And in fact, we need more people out there to see some of these others. Somehow we have to redirect them.”

(Scott, 2022)

Participants also recognized that although there is a sharing of common resources between climbers and other park users in Banff, there is an additional layer of resources that climbing users require in order to engage in their sport sustainably. Because climbers spend longer in one location, they use resources differently than other visitor groups, especially with regards to human waste management. Al Black explains:

“Because there's so many competing resources at the front entry, everything from staging areas to trails to access, all of that. So, for example, you have to park, you ride a shuttle to get to climbing at Lake Louise. ...And here is one of the important differences with our sport in terms of planning and recreation is when we go to one place and we stay there. And so that means that we sit at the crag and ... we need actually waste management that mountain bikers or hikers would never need.”

(Black, 2022)

The need for waste management, especially with regards to human waste, is a specifically identified pressure that climbing areas in Banff are likely to experience with the corresponding increase in climber usage. It was raised in more than one interview:

“we've overwhelmed the capacity of environment, there's enough users that most areas, I think, can't handle that anymore. So there should be installation of pit toilets”

(Hoover, 2022)

“[some of] the problems are perceived as bigger than they actually are. Interestingly enough. Garbage is not a real big issue but people talk about it a lot with leave no trace. But very few people talk about packing up their shit, and that's a real issue.” (Black, 2022)

With the “easy fruit” of existing climbing areas already built up, there is also a shared perception amongst climbing stakeholders that a lot of climbing management and support for climbing into the future in Banff concerns maintenance of existing climbing routes rather than developing new ones. The other area where management impacts are being experienced is the interaction between climbers and the spaces in which they are climbing and other nonclimbing users in the same region. Regarding the importance of maintenance and managing impact, Walson Tai shared this experience:

“that's why we donate so much money to [named local climbing organization], but to correct myself: It's really just to replace the existing anchors, and that's what our objective was. But I don't think that's the only thing. I think it's actually land management. It's trail building, it's parking. It's proper facilities like washrooms.”

(Tai, 2022)

Conrad Janzen highlighted the concern that Sport Climbing has been an established sport in the Banff area for a significant period of time. Existing climbing infrastructure and its replacement must be properly managed, including developing potentially more resilient or ecologically sustainable infrastructure. Examples include better built trails and more climate specific bolting techniques and hardware that last longer in local forms of rock. Janzen explains his thoughts:

“I think a lot of the access and going back to the environmental impacts of climbing whether people reorganizing the base of a cliff, or rock scaling, all that kind of stuff, I think that and also parking issues and numbers of people on a route, things like that, are going to be the primary things that people have to figure out. And that could be parks, or recreationalists, or whatever the case is. But I think long term, we're hitting the point where sport climbing in particular has been around in the Bow Valley now for, say, about 40 years give or take. And so a lot of the infrastructure for the climbing itself was starting to age out. And so there's opportunities to replace it potentially with stuff that's going to last longer. People are climbing different places than they used to, to some degree. And so there's going to be this ever evolving need for parks policies.”

(Janzen, 2022)

The Pressures of Climate Change

Climbing stakeholders expressed significant concern and awareness about the impacts of climate change on the ability to engage in climbing activity. Some stakeholders recognize that with the melting of glaciers and changing weather patterns bringing longer, drier summers, the availability of climbing routes and the length of the climbing season are shifting:

“climbing season is getting a bit longer. Rock climbing season is getting a bit longer. Ice climbing season is kind of shifting around.” (Black, 2022)

The increased risk of aggressive wildfire seasons is recognized as having a specific impact on the climbing guiding industry in Banff, and is a subject of discussion amongst guiding stakeholders in the area:

“there's a lot of discussion on climate change, both on micro and macro scales, and how that's affecting glaciers. Like, talking with some of the other guides...it's really changing in the way that where in the location to the time of year, we can offer certain [trips]. The big thing that's been talked about recently is the fire seasons. Last year was kind of an anomaly in that regard, but the past couple of years before that. There's fires all over the place, that really restricts the sort of stuff we can do. ... I think there's a acknowledgement among most people in the guiding industry, that climate change is a thing. It is affecting us....what we need to do to prepare for it. But what are we going to do to prepare for it? Because yes, skiing season and locations are changing. Summer, glacier mountaineering, that's changing, we've got fires all over the place.” (ACMG Guide Jack Smith, 2022)

Climate change in a Banff context also holds unique pressures for some Indigenous Stakeholders, bringing the concerns of a changing environment and potentially increased access to recreationalists may impact on the ability to engage in traditional practices in sacred places:

“Number one would be headwaters, glaciers. We're seeing decreases the availability of water in all of the mountain basins. That's Bow River Basin, South Saskatchewan Basin, North Saskatchewan Basin. All of those levels are going down and concurred with that is more and more people being having access to the headwaters.

... We see the glaciers receding. We see activities in and around headwaters, canoeing, boating, swimming, going on out there. That was ever rarely done before. So, those are not waters for recreational use. We wouldn't go up there to go do canoe races. We would

go there for prayers, to understand some part of the world that we couldn't understand, not to go hike up there because it looks aesthetically beautiful.”

(Snow, 2022)

Climate change may also exacerbate existing ecological problems, such as erosion at the bases of climbing areas, or create new environmental concerns such as exposing loose rock or dislodging previously secured rock.

“[climate change] may change the amount of wildlife that goes through there too. You will get through big rain storms and stuff like that, you will get erosion from bases of cliffs. And that facilitates the need for platforms” (Black, 2022)

“[climate change] may also open up the ability for some longer routes in the mountains of glaciation. Often that rock underneath is pretty wobbly, right?” (Hoogstraten, 2022)

Stakeholder Perceptions of the Current Legal Framework Governing Climbing in Banff

Climbing stakeholders interviewed universally expressed an awareness that the development of climbing routes, and specifically the activity of bolting, was illegal in some capacity under existing Parks rules and regulations. As Jon Jones succinctly put it

“And what can Parks do? Ban bolting? It’s already all illegal. Every single bolt in the National Park was put there against the rules, so much more illegal can they make it? And how is that going to change anything?”

(Jones, 2022)

It was identified that the longstanding history of bolting in Banff, the culture of climbing development which includes a highly publicized nature of climbing as an activity in Banff, and the fact that Parks staff themselves seem to engage in the practice in a highly visible way all establish that the legal prohibitions that exist currently are effectively without consequence. Interview participants felt that additional restrictions or prohibitions on climbing would be ineffective:

“they can start like banning bolting or like threatening to ban bolting, but it wouldn't stop. Sorry, it's already banned. I mean, it's like people put up routes all the time. People who work for parks will go and put up routes in the park and then promote them all over the

online and social media with no fear of reprisal. I know it's illegal but like it's not the culture” (Price, 2022)

It was also identified that there is an awareness of the lack of enforcement resources that would likely be allocated to climbing related activities given the relatively low concern that climbers are perceived to occupy in the priority list of Parks Canada land managers:

“I think that if anybody tries to implement any kind of top-down solution, that there's likely going to be entirely flagrant disregarded... If somebody tries to implement a top-down solution, there's no appetite for traffic enforcement in national parks. Why is there going to be appetite for route development enforcement?” (ACMG Guide Jack Smith, 2022)

The prospect of having climbing infrastructure managed by Parks Canada in a more traditional way with established crews and approvals for development, rather than clandestinely managed by climbing developers and stakeholders, was also perceived as unlikely to be successful due to a lack of resources and its contrast with the history of climbing development in the park. As two stakeholders described:

“And from a practical perspective, the government can't there's no way the government has the resources to invest in such a narrow niche activity. Right? Because there's so many activities that they have to worry about”

(Route Developer Jim Smith, 2022)

“say there was a moratorium on bolting or route development in the parks, and from there on, it was going to be the trail crew equivalent of climbing in Parks Canada, we'd establish any routes in the national park, at least at this point in life that would seem like a bit of an oddity and probably not that successful”

(Janzen, 2022)

The history of climbing as a “counterculture” activity is also identified as a factor that means that any official restraints on climbing development activity is unlikely to result in a widespread result. Even if development of climbing areas were enforced to a greater extent or the prohibitions more consistently applied, it would likely only reinforce existing divisions and make climbing developer behaviour more clandestine to avoid detection and enforcement. Hoover explains:

“Then it becomes an us versus them. And that's always how it's been right? As soon as you ask the question, and they say no, does development stop? It slows down. But the people who are still developing it, it becomes like a, let's go during the weekday, they

know we're not going to be here we'll clean this thing at night. It becomes this adversarial thing ...

....

And that's one thing that I wish climbing managers understood is that they're not just protecting the environment, they're dealing with a community of people to whom it's like a life defining passion, not just a passion. It's a life defining passion.”

(Hoover, 2022)

A strong theme amongst climbing stakeholders interviewed, especially those involved in active route building and development of climbing areas, is that the existing legal framework is a barrier to establishing a relationship with land managers. Because bolting and developing routes in the Park is illegal, formal engagement overtures by climbers to land managers could bring greater and unwanted attention from Parks Canada.

“As soon as you ask an official question, the answer becomes official. Right? So it's very hard to involve [Parks Canada]... like if you went to the Warden in Jasper and say, can I bolt a new route in [named climbing area in National Park]? If they say no, then the answer is no. So if you never ask the question...”

(Hoover, 2022)

Because the legal framework prohibits any destruction of a natural object, and bolting is largely understood to contravene this framework, there was also the perception that any formal engagement with Parks Canada would largely be an exercise in futility as their legislation and policies would necessitate a massive and overly complicated bureaucratic response which would likely result in a rejection regardless of the request. The legal framework thus dissuades and disincentivizes climbing stakeholders from ever engaging land managers in advance. As one participant explained:

“I won't go in and ask them the questions. Because I know that part of their job description means that they would have to basically go to Ottawa and follow up with it, or break a rule by not doing that. So I don't want to put them in jeopardy by asking them a question which I know what their answer would be, what they'd like their answer to be, versus what the bureaucracy answer would be.”

(Route Developer Jim Smith, 2022)

The concern of establishing a precedent for a region due to an uninformed or overly conservative Land Manager response who is unaware of climbing history in Banff and the needs of the climbing community also weighs significantly for climbing stakeholders.

“If the answer is no, even if it's just some ad hoc answer off the cuff from some [random] official, then that that answer is recorded in history for that entire region. So a small answer has huge ramifications.”

(Hoover, 2022)

Even well-meaning inquiries grounded in concerns about ecologically sustainable practices are viewed by some climbing stakeholders as not worth the scrutiny it could bring from land managers who are uninformed about climbing activity:

“I have an overall concern about asking the wrong person the right question. And I'm afraid to trigger the response that creates an issue for an existing crag or creates an overreaction to the activity.”

(Route Developer Jim Smith, 2022)

Another concern identified is that even if Parks Canada were to develop a more involved approach to climbing management, because of the mechanics of federal bureaucracy, the response would likely be unsuitable to the reality and needs of the specific climbing area. The example of a full, multi-year study of the environmental impact of a single bolt prior to receiving approval or rejection was raised. As Greant summarizes:

“the hard part of trying to get parks to take a stronger role inside of management is like, well, any time you introduce a lot of bureaucracy into it, things get done to a standard that may not be what's actually required on the ground, either it's too much or too little.”

(Greant, 2022)

The limits of bureaucracy were a theme in the interviews, with participants perceiving Parks Canada as either uninformed or unknowledgeable about climbing and climbing practices. This corresponded with an impression that any engagement would be either unhelpful or highly likely to draw the attention of someone with little interest in supporting climbing interests. This results in a general approach of what many climbing stakeholders described as the “don’t ask, don’t tell” status quo:

“It's really the same as the Banff National Park one but again, just like don't ask, don't tell. There's less fear ... from a shutdown standpoint, but again, there's not really much expectation that you'll get knowledgeable and informed assistance if you reach out for bolting questions.”

(Greant, 2022)

It was also identified as a concern that even if climbing stakeholders wanted to engage Parks Canada more formally, there is a lack of recognized process or procedure for doing so:

“Banff National Park – I don’t know who you’d even talk to. Like, how do you walk into Banff National Park and say, Hey, I want to put up a bolted route, who do I talk to? ... I’m not sure of what are kinds of things I’d have to do... it depends on who you ask.”
(Route Developer Mark Smith, 2022)

The existing legal framework is again cited as the primary reason for this status quo, as absent a climbing management plan, it effectively requires any land manager in Parks Canada to say “no” to any climbing development related request or inquiry. It also creates potential liability for the climber with little incentive and may result in an individual who is attempting to engage in good environmental practices being subject to sanction despite their good intentions in engaging land managers.

“Oddly enough, though, the people you'd be prosecuting, that are climbers are ones who are doing stewardship.”
(Black, 2022)

“there's certainly been some fear and concern over liability. Some route developers have taken the steps of not including your name on routes and asking to not be published. So there's some fear of repercussions. A lot of it was just I think with the more experienced developers there is the knowledge that Parks is in a position that can't actually give approval. And so, again, don't ask, don't tell.”
(Greant, 2022)

As identified above, the climbing stakeholders interviewed did not express significant concerns about current or historical attention or restrictions from land managers.

However, a repeated theme was the concern that a major inciting event, such as a high-profile fatality in a popular area or major environmental infraction, could force climbing to the attention of Parks Canada in a negative light, and move climbing management higher up in the land managers priority.

“I would never say it's going to be in the background forever. Right? One event certainly can make significant change especially in the immediacy of social media these days, right? One event can really change the tide and direction of things

...

if you have a scenario, and this would be a worst case scenario, if somebody was at Lake Louise and they're building a route at upper Lake Louise, like if they're building a route at the 50 meter level, where the bigger overhangs are somebody levers off of rock and squishes the tourists, that would be a game changing event, because that would force parks ... because they would get sued, guaranteed, that would then force them into a legislative stand and that would significantly probably impact climbing.”

(Hoogstraten, 2022)

Stakeholders referred to Lake Louise as one likely site of such an incident, citing its high volume of visitor traffic, high number of climbers and high profile as an international tourist destination. An incident at such a location might force land managers into a attempt at more restrictive management action even if they have no desire to occupy such a policing role:

“if there was an incident at Lake Louise, for example, I think that would drive the government to force them into a corner to actually put in some sort of legislation and or regulation and or policy, to kind of have some sort of management structure. ... I think national parks, especially the wardens are very cognizant of the pitfalls of that for the government. I think they want to stay away from it. But I think, eventually, especially in the enhanced awareness, social media environment that we live in, that it could come to the fore, possibly before we anticipate it to be”

(Janzen, 2022)

Analysis and Conclusion

It is clear that climbing stakeholders believe climbing will remain a popular and growing activity within Banff National Park boundaries and that unforeseen challenges may arise outside of what have historically been present for climbers and land managers. Interviewed stakeholders were consistent in their view that climbing will continue its trajectory of growth and that this growth will bring along with it new challenges that will coincide with increasing external pressures such as increasing park user numbers and climate change.

A review and analysis of gathered themes from interviewed stakeholders demonstrates that many key climbing stakeholders have ecological management objectives that align in many ways with key park mandates, such as preservation of the

natural environment, engaging in sustainable development practices, and reducing intra-activity park user conflict. That said, climbing stakeholders feel there exists a lack of clear mechanisms by which climbing stakeholders are able to approach or engage land managers in any kind of consistent, clearly defined manner which will not expose the climber to liability or prosecution. Whatever opportunities might exist for land managers to engage with climbing stakeholders in a collaborative and proactive manner is currently not able to be leveraged as a result of the barrier, both perceived and real, created by the lack of clarity surrounding any consultation mechanism.

While climbers may not necessarily have a nuanced understanding of the exact specifics of how and where aspects of climbing activity and route development could be captured by the legislative framework and prohibited, there is a widespread and general awareness regarding the illegality of aspects of climbing behaviour and development amongst key climbing stakeholders.

The conclusion drawn from the analysis of interviewed participant responses however is that an attempt by land managers to restrict climbing behaviour through the imposition of global restrictions or additional prohibitive laws could be relatively counter productive. Such an effort could be futile as further restrictions or attempts at widespread prosecution to control climbing impact would achieve little given the origins of climbing as a counter-culture sport. The fact that all development has already occurred in the context of the activity being de-facto illegal under the current framework, and the physical location of climbing activity being remote, difficult to access, and not regularly observed by land managers or law enforcement officials as well as the resource intensive nature of prosecution, make it difficult to manage.

Further restrictions on climbing could serve to further alienate the climbing population and important climbing stakeholders from land managers and solidify the non-communication status quo that currently exists. It is known from the responses gathered from interview participants that a major reason why climbing stakeholders do not proactively engage or seek to establish communication relationships with land managers is a fear of potential liability and prosecution. There is also a significant concern that because there is no clear planning or consultation mechanism by which climbers can be

engaged by land managers or vice-versa, any climber pro-actively engaging with land managers with ecological queries or concerns risks encountering uninformed decision makers who know little about the nuances and mechanics of climbing. Such a decision maker may make decisions with far reaching implications for the sport and its participants based on little information or understanding.

It is also reasonable to conclude that whatever environmental management objectives are being currently achieved with regards to climbing activity and ecological impact mitigation are not primarily as a result of the implementation of existing tools under the current legal framework. This conclusion flows as a result of the complete non-communication that exists between climbing stakeholders and land managers, combined with the existence of zero climbing activity specific contravention prosecutions or reported caselaw as discussed in Chapter Two. Rather, any successes are more likely as a result of the personal environmental consciousness of sport participants and attempts to self-implement ecologically sustainable practices by climbing activity participants and climbing route and area developers. These ecologically mindful, low visibility behaviours by sport participants are done in the interests of maintaining a status quo of non-involvement by land managers and non-enforcement by Parks Canada law enforcement officials.

While the existing status quo of non-communication, non-enforcement appears to have generated a tenable equilibrium for both climbers and land managers, it may not be suited to address the articulated concerns of a growing sport and compounding future challenges. External factors such as climate change or park visitor numbers are placing new pressures on climbing spaces. Circumstances that might be mitigated or reduced through a positive proactive or collaborative relationship between climbing stakeholders and land managers are unable to be addressed due to the legal barriers and threat of prosecution that exist under the existing status quo.

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CHAPTER 4

The Future of Climbing Activity Governance in Banff

The Banff Management Plan from 2022 recognizes that while Banff's high visitation is a source of pride for Parks Canada and all Canadians, the increase in visitor numbers is one of the parks greatest challenges (Parks Canada, 2022). Park visitation has increased 30 percent over the last decade and there is little reason to believe that Banff will do anything other than become increasingly popular (Parks Canada, 2022). As explored in Chapter One of this research, the number of climbers also seems poised to explode as the sport continues growing in terms of both popularity and global participation. As challenges are posed by these greater numbers, is the governing legal framework up to the task? This chapter addresses the fifth and final critical question of this research:

“Are there any gaps in the current legal framework that applies to climbing management where the goals and interests of climber stakeholders and the Parks Canada mandate could be more effectively achieved through the development of a specific climbing management plan than the *status quo* approach of contravention, enforcement, prosecution?”

Ultimately, this research demonstrates that a change to the existing legal framework is not expressly necessary to enable climbing governance and environmental stewardship objectives. The existing legislation and regulatory framework contain the necessary mechanics and legal tools to achieve conceivable desired outcomes of land managers and sport participants. There were no gaps identified in the existing legal tools and mechanics of the CNPA which render any aspect of climbing activity ungovernable or beyond the scope of Parks Canada's authority. However, there are significant gaps in the policy and management planning framework for Banff. When combined with the existing CEP mechanisms, this generates a status quo wherein climbing stakeholders are unable to effectively engage with land managers in a positive and proactive way to address ecological challenges that flow from climbing activity and climbing development. This chapter also explores gaps in existing research that would be valuable for both land managers and climbing stakeholders to address to generate a greater

understanding of how to meet the challenges and how to work towards evidence-based, outcome-oriented management solutions.

The Sufficiency of the Existing Legal Framework to Address Environmental Impacts

This research defines a gap in the legal framework as something that exists if there was an aspect of either climbing activity or climbing development that is beyond the scope of what can be governed using existing legal mechanics. A gap would exist if a specific problem or challenge were identified that is unable to be addressed by the law as it stands, and as such a solution to the challenge would necessitate a change either in part or in whole to the law as it currently exists. Analyzing the existing legal framework of Banff, the CNPA and its associated regulations, against the concerns and goals identified by interviewing climbing stakeholders reveals that there are no specific gaps in the legislation that would best be addressed through the creation of new laws or regulations.

The legal framework identified in Chapter Two contains the necessary mechanics to implement governance regarding all identified climbing related impacts identified in Chapter One, as well as create management planning tools for all climbing stakeholder fears, goals and interests identified in Chapter 3. It is therefore reasonable to conclude that there are no specific gaps in the existing legal framework. From a legal perspective, there are no tools or measures that are beyond the reach of land managers or of Parks Canada that concerns the governance of recreation activity within the boundaries of Banff.

There is not a single climbing related impact that has been identified within the scope of this research that would not be able to be legally addressed under the CNPA mechanics if political will, funding, resources and research were devoted towards it. There is no section of CNPA or its associated regulations identified in this research which presents a mechanical or legal barrier to potential governance of any aspect of climbing activity. All gaps or lack of governance of climbing impact are grounded in a lack of policy or management planning, both of which are mechanically empowered through the underlying legislation.

The Potential Benefits to Climber Interests through the Development of Climbing Regulations

Although this thesis concludes that mechanical changes to governing legislation is not expressly necessary in order to bring any aspects of climbing activity or development within the scope of what is capable of being governed by land managers, there may be significant benefits for climbing stakeholders to the creation of climbing specific legislation. Moreover, regulations under the CNPA to codify and legitimize climbing activity as a lawful and valued practice within boundaries of Banff National Park, could be useful. The designation and regulation of an activity within a national park can serve as a powerful legal protection for the activity and its infrastructure even when aspects of the practice or its infrastructure might contravene aspects of the CNPA or its associated regulations. Three of the most prominent examples of this include, but are not limited to:

- 1) The operation of three major commercial ski resorts (Sunshine Village Ski Resort, Lake Louise Ski Resort, Norquay Ski Resort) owned by private, for-profit companies within the boundaries of Banff National Park;
- 2) The operation of a private resort and venue at Lake Louise, which includes the management and operation of the Fairmont Chateau Lake Louise hotel;
- 3) The operation of Columbia Icefield Discovery tours operated by Brewster Tours Inc. within the boundaries of Jasper National Park, who engage in road development through glacial moraines and bulldozing portions of the Athabasca glacier to allow for access and egress by private tour buses.

All of the above examples involve behaviors and activities that, absent the authorizing and permissive regulations, would constitute significant contraventions of numerous facets of the CNPA. The applicable regulations and management plans that permit and enable the above activities also serve to insulate the activities from sporadic or random enforcement based on the whims or perspectives of a given Park Superintendent. If climbing activity were to be the subject of a specific permissive regulation or other legal mechanism, it would also gain codified legal standing which can serve to

legitimize an activity within park boundaries. Such protections may be perceived as being very valuable to climbing access advocates and sport participants. This is particularly the case in areas where climbing activity might come into conflict with other competing park user groups. The protections and legitimization of recreational activities in parks and protected spaces afforded by governing regulations is an area that would benefit from future research.

Working Towards the Inclusion of Indigenous Knowledge

A climbing management framework in Banff which prioritizes collaborative relationship building offers an opportunity to learn, listen, co-develop and collaborate to be inclusive of Indigenous knowledge and Indigenous peoples. Recreational climbing within the Banff context is historically grounded in and connected to the settler/colonial expansion of Banff as a federally regulated space. This had the effect of excluding Indigenous peoples and priorities from their ancestral lands. A management planning framework that empowers climbing stakeholders to proactively engage with the land manager could also contain mechanisms and pathways to incorporate Indigenous knowledge or co-develop or collaborate on the development and stewardship of climbing areas in partnership with Indigenous communities.

A number of scholarly works offer new insights that have relevance for the sport of climbing in the Canadian Rocky Mountains. Some of which are directly linked to the expansion of climbing and outdoor recreation discourse to be more inclusive of marginalized knowledge and communities. Wigglesworth (2023) explored aspects of naming practices in climbing and mountaineering as tools of either oppression or resistance in anti-racism and anti-colonialism. The racialized experiences of outdoor rockclimbing participants have also been examined recently (Ali, 2023). Importantly, the relationship between outdoor recreation, the ideals of wilderness spaces and settler colonial power is a critical area of research (Laurendeau, 2020). Reflecting on sport and physical activity as a part of anti-colonial autoethnography is also significant (Laurendeau, 2023).

Co-development and collaboration between climbing stakeholders and land managers to foster the inclusion of Indigenous knowledge would recognize that cultural sustainability should be considered in tandem with environmental stewardship. These objectives are a necessary part of ecological sustainability rather than a competing interest. Examples of this could include:

- Listening to and consultation with Indigenous communities and knowledge keepers to identify gaps in scholarship. Research on how to development culturally and ecologically sustainable climbing practices within Indigenous spaces;
- Engagement and consultation regarding the (re)naming conventions and practices for mountain spaces and climbing routes;
- The inclusion of Indigenous knowledge within land management planning to enable the proactive identification of specific sites of Indigenous cultural and spiritual significance within areas where climbing development or stewardship activity encroaches or overlaps;
- The development of culturally sensitive climbing management or sport participation practices within overlapping use spaces. This becomes especially necessary as national parks work to reduce the barriers to Indigenous cultural practices such as harvesting within park boundaries.

Identified Areas of Future Research, Critical Questions on Climber Usage, Population Numbers and Demographics in Banff

One of the challenges that arose during this research is the lack of information on climbing population numbers in Banff. This research revealed that there is no region-specific climbing population survey or research that has ever been conducted in Banff either for contemporary or historical climbing populations. Through market trend analysis such as the increase in the number of climbing gyms, the increase in climbing gym and equipment sales, there is ample existing anecdotal and circumstantial evidentiary support for the proposition that climbing populations are increasing worldwide. There is also available data from Parks Canada Archives that demonstrates

visitor statistics in terms of the ever-increasing number of annual visitors to Banff. However, there is no data available concerning how many of those visitors to Banff are participating in climbing.

Currently researchers lack the most basic data regarding numbers of park users and attendees who visit Banff to engage with the activity of climbing. Effective management solutions would also benefit from a more nuanced and detailed understanding of the climbing population and its demographics and preferences. Such data would assist land managers and climbing area developers to make informed decisions about resource allocation and project development to best manage potentially negative environmental outcomes from increased climbing populations. A few examples of research questions that would contribute helpful data that is currently unavailable to researchers due to lack of study:

1. What climbing areas within Banff experience the most user visitation?;
2. How many climbers visit Banff each year and when do they visit?;
3. What is the current state of climbing infrastructure (e.g. bolt age, anchor integrity, access trail maintenance, proximity of pit toilets, parking resources available, etc.) in Banff by climbing area?;
4. Are any specific climbing areas and climbing resources experiencing any usage shift with climate change affecting seasonable availability?;
5. What are the demographics of climbers visiting Banff?;
6. What are the points of origin and duration of stay for climbers in Banff?;
- and,
7. What infrastructure usage overlap exists between climbing sport participants and other recreationalists in Banff?

Additional research beyond the Banff context would be very useful for climbing management researchers. This could entail a comprehensive literature review of existing climbing management plans from climbing destination areas around the world such as the United States, Spain, Greece, Argentina and France. These are all well-known international climbing destinations with large populations and heavy tourist visitation.

Many of these nations already have climbing management plans. A literature review could reveal what aspects of those plans are successful, as well as explore what aspects of those plans are proving to be challenging or building further barriers to the development of relationships between land managers and climbing participants.

Conclusion

The existing legal framework governing Banff National Park is not deficient from a legal mechanics perspective with respect to climbing management. Whatever criticisms may exist regarding the state of climbing management in Banff National Park are not appropriately resolved by resorting to passing new laws, creating additional regulations, or imposing additional legal sanctions or penalty regimes. All identified aspects of climbing impacts and all identified climbing stakeholder concerns are able to be mechanically addressed using either existing legislation or the management and planning tools that can be created under the existing legislation. However, management planning tools that have been generated to date using the existing legal framework are deficient to address both identified ecological impacts of climbing activity as well as articulated climbing stakeholder goals and interests. New management planning tools need to be developed if land managers wish to create opportunities for collaborative relationship building with climbing. The existing contravention, enforcement and prosecution regime has been identified as creating a significant barrier, both real and perceived, by climbing stakeholders to engage in pro-active and collaborative relationship building with land managers.

From an ecological and environmental sustainability perspective, the goals and interests of climbing stakeholders may be substantially aligned to many key Parks Canada mandate objectives. However, there is little benefit and significant risk perceived by climbing stakeholders associated with seeking to engage formally with land managers directly as a result of the existing legal framework and the punitive regime contained therein.

The primary tool through which land managers seek to achieve compliance with regulations and deter ecologically impactful contraventions is the enforcement and

prosecution mechanisms contained within the CNPA. The existing status quo of non-communication and non-enforcement despite the technical illegality of many aspects of climbing area development appears to have created a form of equilibrium for land managers and climbing stakeholders. Land managers remain able to prosecute and engage in contravention enforcement at will and climbing stakeholders have avoided drawing scrutiny or ire from land managers by engaging in low visibility and low contravention behaviours. This equilibrium of the status quo however is ill-suited to address any new or significant challenges that arise from increasing park use and aging climbing infrastructure. Although climbers are growing in number, sport participants still represent a relatively insignificant percentage of overall park users. Given the remote areas that climbing activity takes place in, as well as the specialized equipment, knowledge, skills and fitness required to reach developed climbing areas and routes, it is unlikely that climbing activity on a large scale would ever become a priority for land manager enforcement resource allocations. A major inciting event, such as a high-profile fatality or significant ecological impact that is related to climber activity may move climbing management higher in the priority list of land managers, but to date no such incident has occurred and no such initiatives have been undertaken by land managers.

A number of specific future scenarios have been identified in this research that highlight the need for the development of management tools that empower climbing stakeholders to collaborate and engage with land managers without fear of reprisal or prosecution. Given the highly resource intensive nature of the existing contravention enforcement and prosecution model and the seeming low number of climbers compared to park users as a whole, development of new management tools which enable low resource requirement pathways for communication and relationship building with climbing stakeholders may be desirable for land managers when compared to the high level of resources necessary any time the contravention, enforcement and prosecution apparatus is engaged. If land managers determine in the future that it would be desirable to establish a more formal relationship with climbing stakeholders then new management planning tools will need to be developed using the existing CNPA mechanisms to create pathways for climbing stakeholders to engage with land managers without fear of liability or prosecution.

The most pressing example that arises from the status quo are the very real legal liabilities climbers are currently exposing themselves to when engaging in route development and maintenance and that liabilities create a disincentive to such stewardship activities. Continued safety and ecological sustainability of climbing in Banff necessitates the consistent and ongoing replacement and wide scale maintenance of aging bolts and installed climbing hardware that forms the majority of developed climbing infrastructure within the park. This work needs to be done in an environmentally responsible manner with minimal damage to surrounding cliff ecosystems. Stainless steel bolts and climbing safety hardware that are drilled and installed into rock faces have definite lifespans and their safety and integrity degrade through time, exposure to elements, and use. Select areas with particularly high use, such as Lake Louise, also contain the largest overlap between climbing and nonclimbing park users on the same trail network and cliff environments. The maintenance and replacement of degraded bolts is critical to the ability for climbers to safely participate in climbing within the park, and the way such work is done is crucial to maintain the integrity of cliff ecosystems. However, as there is no formal approval process or allowance for maintenance or replacement, there is no ability for any kind of legal or formal engagement or collaboration between climbers and land managers. Good Samaritan climbers who undertake to upkeep, maintain, and replace existing climbing safety infrastructure do so entirely at their own peril as they are potentially subject to contravention enforcement action or prosecution at the hands of the land manager. It is well within the realm of conceivable that such a Good Samaritan climber undertaking a replacement or repair that is critical for safety, but in doing so dislodges a rock that falls and injures a passing hiker or damages a natural resource or ecologically significant cliff feature. There are no protections whatsoever that are afforded to the Good Samaritan climber, and only liabilities, under the current regime. Parks Canada has to date completely disavowed any formal responsibility or involvement with any form of climbing development or maintenance. But given that thousands of climbing bolts have been installed within Banff National Park, all of which will inevitably need maintenance, repair and replacements, there is a need for climbing stakeholders to be incentivized (or at the very least not potentially severely penalized) to be able to engage with this

necessary upkeep. Under the current legal framework, it would not be advisable from a legal liability perspective for any climber to ever engage in any form of stewardship or development activity in Banff National Park, no matter how pressing the safety need or desirable the stewardship activity might be for ecological integrity.

With no formal planning or land management mechanisms for climbers to communicate and engage with Parks Canada and have some process developed through which climbers could receive land manager approval and some form of indemnity measures, any form of upkeep or improvement bears significant liability risk for climbers. If climbing management planning occurs in Banff, Parks Canada should address the tension that exists between their current reliance on private citizens to maintain and upkeep the thousands of bolts that comprise the climbing infrastructure within the park while simultaneously providing no assurances, indemnities, or guarantees.

Another conclusion which can be drawn from analyzing the data gathered is that it could be effective to achieve Parks Canada mandate and climbing stakeholder objectives to focus management planning tool development on a high use, cliff by cliff, basis given the unique needs and pressures of each specific cliff environment. Interviewed stakeholders repeatedly identified Lake Louise as an example of overlapping and competing resource conflicts including parking, washrooms, and the likely site of a high-profile occurrence which might compel Parks Canada to respond to a climbing related contravention or incident. Developing additional management planning tools unique to the specific needs of sites such as Lake Louise could also allow for the collection of climbing site usage data and ecological impact data regarding climber visitation numbers and cliff use patterns. This appropriate planning and development can occur to mitigate and prevent negative ecological impacts in areas of increased use. Climbing sport participants and key climbing stakeholder organizations are potentially best situated to gather the data necessary to provide insights into ongoing ecological impacts within cliff environments and their approach or staging areas. Under the current legal framework, these potential information sources are entirely disincentivized. In

reality it is incentivized to continue engaging in climbing development clandestinely and secretly.

The development of ecologically sustainable climbing management practices within Banff National Park which balance the needs of land managers, park users, and the goals and interests of climbing stakeholders is not possible in the current legal landscape given the barriers and liabilities created by the legislative framework combined with the lack of management planning tools. To achieve sustainable climbing practices in the future, any management plan should include pathways for climbing stakeholders to directly engage with land managers in collaborative and proactive ways without exposing themselves to significant legal liability.

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APPENDIX I: DEFINITIONS OF CLIMBING ACTIVITIES AND TERMINOLOGY

This Appendix draws its defined types of climbing as consistent with those defined in *A Guide to Climbing Issues and the Production of a Climbing Management Plan*. (Attarian and Keith, Access Fund 2008)

TYPES OF CLIMBING

Aid Climbing: Aid climbing is the direct use of climbing equipment (pitons, wired nuts, “camming” devices) for upward progress. The challenge of aid climbing is to ascend very smooth faces with minimal tools. This type of climbing is particularly associated with “big-wall” areas such as Yosemite and Zion national parks, where traditional climbing techniques (both aid and free) are utilized to ascend long routes on sheer rock walls. These ascents may take many days, entail hauling personal and climbing equipment, and can require overnight bivouacs on the climb. “Clean” aid climbing entails the use of hand-placed protection only, instead of using pitons or other types of protection that require being drilled or hammered into the rock.

Alpine Climbing: see Mountaineering

Bouldering: Bouldering is the term given to ropeless climbing that concentrates on short, sequential moves on rock usually no more than 15 feet off the ground. Typically, falls are very short (a few feet) and inconsequential. Each climb-able sequence of moves is called a “boulder problem.” Boulder problems vary in difficulty, and are usually given difficulty grades from V1, V2 . . . and on up to V15 and above. Boulderers typically will try difficult moves many times before succeeding on a given boulder problem. Since it takes place near the ground, bouldering can be a very social form of climbing, and requires relatively little equipment other than rock shoes. Use of a bouldering “crash pad” is common. These are placed below climbs to soften falls.

Free Climbing: Climbing using no assistance other than ones own strength, climbing shoes and chalk to ascend vertically. Rope and technical equipment as well as a belay are used in case of a fall to prevent injury and/or death. Distinct from Free Soloing. See also: Traditional climbing

Guided Climbing: This term is given when an experienced climber (the guide, who sometimes has special training qualifications) takes on a supervisory role and the responsibility for the safety of less experienced individuals, to guide them up a rockclimbing or mountaineering route. Guided climbing may occur in a one-to-one ratio, or a guide may instruct a group, usually of no more than six individuals. Guide services are usually provided on a commercial basis with a client exchanging a fee to be guided up a route or instructed in a technique of his or her choice

Ice Climbing: Ice climbing takes place on frozen water ice or very hard snow, using ice axes and crampons. For protection, climbers screw metal tubes into the ice. This activity can occur in a variety of environments, from relatively small frozen waterfalls with easy access, to mountaineering situations with long approaches and involving multiple pitches of climbing. More recently, the development of ice parks has presented a different type of climbing opportunity. In this situation ice formations are artificially constructed from dripping water hoses positioned on cliff edges at sites with winter temperatures below freezing. An internationally known site is Ouray Ice Park, CO, developed in 1995 by the County of Ouray and the local climbing group, Ouray Ice Climbers Coalition.

Indoor climbing: Indoor climbing takes place on walls covered in artificially molded hand- and footholds, typically in venues known as climbing gyms. Commercial climbing gyms were first developed in the 1980s, and have become so popular that they can now be found in most major towns and cities in North America. Climbers are attracted to indoor gyms because they offer a convenient place to practice and train, and they can be used at night and in bad weather. Gyms have contributed to an enormous increase in the average standard of climbing ability in recent years, and often serve as the entry point for

individuals wanting to take up rock climbing. Climbs in gyms are bolt protected, so the knowledge developed in gyms allows a relatively easy transition outdoors to sport-climbing venues. Gym climbing has become a legitimate activity in itself, and some gym climbers rarely climb outdoors.

Mountaineering: Mountaineering can be defined as traditional climbing skills (see **Traditional climbing**)

applied in an alpine or mountain setting. Typically, such climbs entail long approaches, take a day or more to complete, and can include an overnight bivouac. The term “**Alpine**” usually implies that the climber is equipped and experienced to deal with snow and ice conditions and objective hazards such as rock falls and shifts in weather conditions in a remote setting.

Soloing: Some climbers occasionally tackle a route alone—either without a rope or self-belayed with a rope and protection. Neither type of solo climbing is common. Roped soloing is much like ordinary roped climbing with a partner in terms of protection, though the system of rope management is more cumbersome. In unroped soloing (often called “free soloing”), however a fall will almost certainly result in death. Nevertheless, such climbing is simple and unencumbered, and many climbers regard it as a reasonable way to climb on routes that are well within a climber’s ability. Free soloing is not the same as “free climbing” (see **Traditional climbing**), although the two are frequently confused.

Sport Climbing: Climbs that are protected exclusively with fixed protection, usually bolts, are called sport climbs. Sport climbs are typically short—generally a single rope-length (50 to 60 meters) or less. They rarely continue to summits, but end at fixed anchors where the sustained difficulty of the climb diminishes, the character of the rock changes, or simply at the half-rope point to allow the climber to descend by being lowered. Sport climbing is relatively easy to learn, and requires less equipment than traditional climbing. Due to the fixed bolted protection and limited height, it provides a safer climbing environment than that found in a traditional climbing venue. These

qualities have made sport climbing very popular. Another important and attractive factor is that sport climbing has also allowed climbers to push their ability to very high standards of difficulty with little fear from repeated falls. It is common for sport climbers to preview and practice routes repeatedly, with an emphasis on technical difficulty.

Traditional Climbing: Traditional climbing (sometimes also referred to as “free climbing”), is how the sport of rock climbing has been practiced since its inception, and has strong historic associations. It is the foundation for the development of the different types of climbing activity that we see today. The term applies to a style of climbing where protection is placed by the ascending climber and removed by the seconding partner. Value is placed on unpracticed ascents. Traditional climbers progress up the rock face using natural hand and footholds, with the rope and technical climbing equipment used only for safety in case of a fall. Typically, traditional climbs are protected by climbing equipment that is removable and does not impact the rock surface. Traditional climbing can be practiced on small cliffs or in remote mountaineering or alpine locations. It generally involves multi-pitch climbs with the summits as common objectives, and is still what most climbers do most of the time. Many traditional climbs may have an occasional fixed piton or bolt, and they often have fixed anchors for rappels or belays. On a traditional route, however, climbers are always prepared to arrange most of their own protection, which distinguishes this type of climbing from sport climbing.

Aid route: A route where the method of ascent involves some piece of equipment—the rope, a piton, a nut, or sling—is hung on or pulled on to aid the climber’s ascent.

Anchor: Any piece of protection used to secure climbers to a cliff face for belaying or rappelling. Most are removable. “Fixed anchors” are left in place permanently for all climbers to use.

Belay or belaying: The method by which one climber secures the rope to safeguard another climber in the event of a fall. Typically one climber (the belayer) remains on the ground and belays the other climber (the leader) while he or she ascends the rock and places protection. Once the leader reaches the top, or an intermediate ledge, that person then belays the other climber up. The rope, which serves as a safety line while climbing, is usually fed through a device controlled by the belayer. These friction-creating “belay devices” attach to climbers’ harnesses and allow small climbers, even children, to stop the falls of much larger climbers so long as the lighter climber is adequately anchored to the ground or rock.

Bivouac or Bivy: A night spent at the base of a climb or on the route itself. Big-wall climbers sometimes carry a collapsible hanging cot, called a “portaledge,” which can be suspended from the cliff. Portaledges are designed to withstand minor storms and are hauled up routes that can take many days to complete.

Bolt: Bolts are small anchoring devices (usually 3/8” diameter by about 3” length) used to protect climbers where there are no cracks for other types of protection. They are placed by drilling a hole, using either a handturned or battery-powered drill, and then driving in the device, which is designed to hold through mechanical expansion, forced compression, or (rarely) an epoxy adhesive. The placement of bolts allows climbers to attempt extremely difficult and previously unprotected rock faces, and to place fixed anchors for descent via rappel. The term “fixed” means they are permanently placed in the rock, although deterioration will occur over time, depending on the bolt specification and local weathering processes.

Camming devices: Mechanical, spring-loaded devices used for protection from falling. They are designed to expand once placed in a crack and are removed by manually retracting the spring. They should leave no trace of use on the rock. “Friends” and “Camalots” are examples of brand-name camming devices.

Carabiners: These are snap-links, generally of aluminum alloy, used to connect a climber's rope to intermediate protection and anchors.

Chains: Short lengths of metal chain are sometimes used instead of slings at a rappel or belay station. Chains are attached permanently to anchor bolts and climbers thread their ropes through them while rappelling.

Chalk: This is the common name for magnesium carbonate powder, which climbers carry in a pouch (chalk bag) at the waist. It dries the hands and is used in rock climbing in the same way it is used in gymnastics to improve grip.

Climb (or "Route"): As a noun, this is any independent line of ascent on a rock face. A climb may follow a crack system or other natural features, or it may strike out across a "blank" face. A climb is considered to be created when it is first ascended, and is usually given a name by the first ascensionist. The climb is typically recorded and described in a guidebook so that other climbers can identify and climb the route.

Climbing shoes: Snug-fitting shoes with high-friction rubber soles and carefully designed edges that allow climbers to stand on tiny footholds.

Fixed anchors: see **Anchors** and **Bolt**

Gear: Equipment used for anchor protection (see **Anchors** and **Hardware**).

Harness: Nylon straps and sewn fittings, buckled around the waist and thighs, providing a safe, comfortable way to tie into the rope for climbing, rappelling, and belaying.

Hardware: Climbing equipment placed in cracks or on faces to protect climbers from falling, including wired nuts, camming devices, hexes (hexcentric-shaped metal wedges), pitons and bolts.

Multi-pitch: A climb of two or more roped pitches (see Pitch) in length.

Natural gear: Removable, non-hammered protection equipment. In addition to sharing the broad definition of “gear,” natural gear placement can also include slings around trees, horns of rock, or rock chockstones in cracks.

Pitch: The distance a lead climber ascends before he or she stops to belay the second climber’s ascent. The distance of a pitch is limited by the length of rope and the location of ledges and belay stations. Typically a 60-meter rope length constitutes one pitch. Some climbs are single-pitch, others have many pitches.

Piton: These anchors are small metal spikes, generally two to four inches long, that are placed by hammering them into existing cracks in the rock. Once the only form of climbing safety protection, pitons have been supplanted by easily removable protection such as metal stoppers or cams. Today, pitons are used only when no other form of protection is available, and are typically left in place for other climbers to use.

Protection: Any form of anchor removable or fixed used between belays to protect a climber.

Rack: The assortment of protective hardware (see Gear) carried on a climb.

Rappel: The method by which a climber descends a rope, usually by using a mechanical friction device. The descent is made on either a doubled rope, or two ropes tied together, looped through a fixed anchor. After the rappel is finished, the rope is retrieved by pulling on one end.

Rating (Grade): A numerical value assigned to indicate the difficulty of the climbing on a particular route. The rating is typically estimated by the first ascensionists, then revised by subsequent parties if necessary. The most commonly used rating index for free climbing ranges from 5.0 to a current maximum of 5.15. (The “5” is a constant in most of the difficulty ratings used in rock climbing, and indicates that the type of climbing is

technical free climbing rather than easier scrambling class 3 or class 4 climbing).

Virtually any able-bodied person can climb 5.0 with little practice, but only extremely fit climbers can climb 5.12 or above. Aid climbs are typically rated A1 through A5, and bouldering problems rated from V0 to V15 and above.

Scrambler: a person who is not using climbing equipment for protection on a cliff, but who may be hiking and climbing in low grade technical climbing terrain.

Slings: Knotted or sewn loops of nylon webbing that have many climbing uses. Slings are occasionally left behind when a climber descends from the top of a route by rappelling. At high-use sites, metal chains may be used instead of slings because they are easier to use once in place, last longer, and are less conspicuous.

Top rope: Technique of practice climbing where the rope is anchored above the climber.

APPENDIX II – INTERVIEW GUIDE

Industry Stakeholder Interview Guide:

Note: This is an interview guide only, deviation from the questions is likely based on the interviewees position, background and insight.

Position/Background:

- What position do you hold at your organization?
- How long have you been in this position?
- Are you a climber?
 - If so, please describe your experience with climbing? How regularly? What kinds of climbing?

Management:

- How do you feel about the state of climbing management in Banff?
- Who do you think should be responsible for managing climbing in Banff?
- Do you feel there are adequate resources available for managing climbing in Banff?
- How would you describe the relationship between the climbing organizations and government agencies (e.g. Parks Canada / Banff Warden Service) in your area?
- What do you think is being done well/not well by Banff National Park management regarding climbing?
- Is there anything missing / what do think could be done better regarding climbing management in Banff?
- Do you believe we are developing and managing use of our backcountry environments at a sustainable rate?
- What do you consider are the current biggest management challenges regarding climbing in Banff?

- i. What about 5 years / 20 years from now?
- In your experience, what are the most effective ways of communicating with climbers regarding management goals? Do you believe climbers are receptive to this message?

Climbing Area Development

- Who currently develops climbing areas in Banff?
- What do you think the process is for developing a new climbing area in Banff?
- Are you aware of how many climbing areas there are in Banff and their locations?
 - Do you think there are enough climbing areas in Banff?
- What criteria do you feel is necessary to make a good climbing area in Banff?
- Who should be involved in the site selection process when a new climbing area is being developed?
- How involved are Banff officials in the development process for climbing areas?
- What facilities do you think climbing areas in Banff should be equipped with?
- Who should bear the cost of developing new climbing areas in Banff?
- Should Banff management proactively seek out and develop new climbing areas?
- Who should be responsible for maintenance and upkeep of climbing areas in Banff?
- Who should be responsible for managing the environmental impact of a climbing area?
- What do you perceive to be the environmental impacts associated with the development of a climbing area?

- How do you think those environmental impacts could be managed/lessened/avoided?
- When/where should a climbing area not be allowed to be developed in Banff?
- What do you think is the ideal process for a climbing area to be developed?

Safety

- What do you think are the key elements that make a climbing route / area safe or unsafe in Banff?
- What safety measures do you think should be in place for route developers / climbing area builders in Banff?
- Who should bear the responsibility of fixing unsafe climbing routes / areas in Banff?
- What sorts of notifications, warnings, signage do you think should be in place for climbing areas in Banff?

Wildlife + Environment Management Issues

- What are the key concerns regarding climber impact on the environment in Banff?
- Do you think climbing should be managed to reduce environmental impact in Banff?
- What are the key concerns regarding conflict between climbers and wildlife in your area?
- What types of wildlife / area closures have you experienced in Banff related to climbing? (species, duration, mitigation)
- How do you think climbers can act to reduce their impact on the environment?

- How do you think managers can act to reduce climbers impact on the environment?

Climber Management

- Do you think there should be any special sanctions / penalties outside of what already exists in Banff for climbers who contravene a proposed management plan?
- Should there be a formalized “code of conduct” for climbers in Banff? If so, what would be the key tenants you think should be included?

Sources of Conflict:

- Are you aware of any conflict between climbers and non climbers in Banff? If yes, please describe it.
 - i. What, if any, methods have been implemented to solve issues of conflict between these groups?
- What do you believe are the motivations and objectives of climbers seeking a climbing experience in Banff?
- Do you foresee any conflicts arising between climbers and non climbers arising in Banff in the future? How do you think these might be managed / reduced / prevented?

Climate Change

- Do you think climbing will be affected by climate change? If so, how?
- To what extent is climate change affecting the access, timing and availability of climbing tourism in your area?

- i. Is climate change having implications on the maintenance of climbing areas? If yes, how are you overcoming these challenges?
- ii. Are climate extremes (flooding, drought, wildfire etc.) having an impact on visitation to climbing areas in Banff?

Technology

- Is technology influencing climbing/climbing management in Banff?
- Would you say advancements in technology are having a positive or negative effect on climbing / Banff National Park in your experience?
- Do you think technology could be used positively for climbing management? If so, how?
- Do you think things like Instagram and Facebook impact environmental management goals in Banff? Do they have a positive or negative impact?

Rescues

- Who should be responsible for rescue of injured / stranded climbers?
- Who should pay for rescues of climbers?
- Do rescues have any impact on the environment? Should rescues be conducted or managed in such a way to mitigate or reduce environmental impact?

Climbing Specific Questions:

- Do you believe that climbing should be more / less promoted to occur in Banff?
 - i. If yes, would you say this is a common belief among your management team/community?
- What are the biggest concerns amongst climbers in your area?
- What are the motivations and objectives of climbers in your area?

APPENDIX III – LIST OF INTERVIEW PARTICIPANTS

Date	Name	Description/Organization	Interview
2020-01-20	Jon Jones	One of the most prolific sport climbing bolters in Western Canada and the co-author of “Sport Climbs in the Canadian Rockies”. Founding member and past President of The Association of Bow Valley Area Rockclimbers	Telephone
2019-12-12	Dave Dornian	Prolific climber and route developer in the Bow Valley and Banff Corridor for the last 30+ years	Telephone
2019-12-09	Greg Tos	Prolific climber and route developer in the Bow Valley and Banff Corridor for the last 30+ years	In Person
2019-12-06	Chic Scott	Well-known leading figure in Banff climbing and ski mountaineering history, prolific author and historian for the Banff Area	In Person
2019-12-05	Al Black	Longtime Chair of The Climbers Access Society of Alberta	In Person
2019-12-09	Steve Fedyna	Longtime member of the board and current president of The Association of Bow Valley Area Rock Climbers	In Person
2020-02-05	Conrad Janzen	Longtime Banff Climber and Parks Canada Visitor Safety Specialist for Banff. Interviewed solely in his personal capacity, and none of his views in any way are reflective of any official position or stance of Parks Canada	Telephone
2019-12-12	William Snow	Member of the Stoney Nakoda Nation and Wesley First Nation. Acting Director for Consultation at the Stoney Tribal Administration	In Person
2020-03-11	Eric Hoogstraten	Longtime climber, prolific route developer and climbing advocacy and access developer in Western Canada and one of the founding members of the Climbing Access Society of Alberta	Telephone
2020-03-02	Ian Greant	Alberta based climbing area route developer and past president of The Association of Bow Valley Area Rockclimbers	Telephone
2020-01-30	Federal Prosecutor J. Doe (pseudonym)	Federal Prosecutor who has conducted many Banff prosecutions	In Person
2019-12-06	John Price	Bow Valley Based Adventure Photographer and Film Maker, director of the climbing film “Yamnuska: The Ragged Edge”	In Person
2020-01-23	ACMG Guide John Smith (pseudonym)	well established Bow Valley and Banff based Association of Canadian Mountain Guides accredited guide responsible for some of the most well travelled routes in Banff	Telephone
2020-02-12	ACMG Guide Jack Smith (pseudonym)	Bow Valley and Banff based Association of Canadian Mountain Guides accredited working with a commercial guiding enterprise in the area	Telephone

Date	Name	Description/Organization	Interview
2020-03-02	Route Developer Mark Smith (pseudonym)	Prolific Alberta climbing area developer responsible for a number of routes in parks and protected spaces	In Person
2019-12-13	Walson Tai	Owner and Operator of the Calgary Climbing Centre franchise of climbing gyms located in Calgary Alberta, and the Owner and Founder of Flashed Climbing company	In Person
2019-12-16	Randy Prete	Owner and Operator of Coulee Climbing, Lethbridge's Largest Climbing Gym	In Person
2019-12-11	Trent Hoover	President and Founder of the Southern Alberta Bouldering Association and longtime route developer in Jasper National Park	In Person
2021-02-18	Route Developer Jim Smith (pseudonym)	Prolific Alberta climbing area developer responsible for a number of routes in parks and protected spaces	Telephone
2021-02-17	Alessandro Roome-Sandrin ("Sandro")	Co-founder of the Western Alberta Bouldering Association climbing advocacy association, and board member of the Climbers Access Society of Alberta	Telephone

Table 1 List of Interview Participants

APPENDIX IV – RESTRICTED ACTIVITY NOTICES FOR ROCK CLIMBING IN NATIONAL PARKS

Restricted activity order: Rock & ice climbing restrictions THOUSAND ISLANDS NATIONAL PARK Issued: November 01, 2021 Rock & ice climbing restrictions What: Pursuant to Section 7(1) of the National Parks General Regulations, the following activities are designated as restricted by order of the Superintendent: No person shall engage in rock climbing or ice climbing in Thousand Islands National Park, except as authorized by a permit issued by the Superintendent. Definitions: Rock or ice climbing includes ascending or descending rock walls, cliff faces, scree slopes, or icefalls by any means, including with the use of ropes or specialized equipment or techniques for that purpose. Where: All managed lands and waters within Thousand Islands National Park of Canada. Why: To reduce impacts on the ecological integrity of the park and for the protection of cultural resources. Note: Violators may be charged under the Canada National Parks Act and Ontario Trespass to Property Act. Start date: 2021-11-01 End date: Until further notice Source: https://parks.canada.ca/voyage-travel/securite-safety/bulletins/f382ec97-8a33-4ed6-9ca6-ad2c5b6decfc
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Table 2 Restricted activity order: Rock & ice climbing restrictions

RESTRICTED ACTIVITY - Climbing, rappelling, and scrambling along the Nels Nelsen access road –
November 10th, 2023

WHAT: Pursuant to subsection 7(1) of the National Parks General Regulations, climbing, rappelling, and scrambling is hereby designated as a prohibited activity along the Nels Nelsen access road within Mount Revelstoke National Park.

WHERE: On rock slopes above the Nels Nelsen access road, between the Meadows in the Sky Parkway and the Nels Nelsen historic area within Mount Revelstoke National Park.

See attached map.

WHY: Due to slope instability and proximity to the road, climbing, rappelling, and scrambling is deemed unsafe at this location. Rockfall from climbing activities can impact vehicles on the road.

PENALTY: Violators may be charged under the Canada National Parks Act. Maximum penalty \$25 000.

Source: <https://parks.canada.ca/pn-np/bc/revelstoke/bulletins/79ae8f57-54e7-4d93-b403-dff70a9c938e>

Table 3 RESTRICTED ACTIVITY - Climbing, rappelling, and scrambling along the Nels Nelsen access road – November 10th, 2023

Restricted Activity Notice Rock or Ice Climbing

Cape Breton Highlands National Park

Effective Dates: April 1, 2024 – March 31, 2025

Pursuant to section 7(1) of the *National Parks General Regulations*, the Superintendent designates rock or ice climbing as restricted activities within Cape Breton Highlands National Park. Rock or ice climbing includes ascending or descending rock walls, cliff faces, scree slopes, or icefalls by any means, including with the use of ropes or specialized equipment or techniques for that purpose.

No person shall engage in rock climbing or ice climbing in Cape Breton Highlands National Park, except as authorized by a permit issued by the Superintendent.

This restriction is in effect at all times.

Rock or ice climbing in Cape Breton Highlands National Park other than in accordance with a valid permit is an offence under the *Canada National Parks Act* and may result in prosecution.

Source: <https://parks.canada.ca/pn-np/ns/cbreton/securite-safety/avis-notice/escalade-climbing>

Table 4 Restricted Activity Notice Rock or Ice Climbing Cape Breton Highlands National Park Effective Dates: April 1, 2024 – March 31, 2025

APPENDIX V – KLUANE MOUNTAINEERING PERMITS APPLICATION

Kluane National Park and Reserve of Canada Application to Participate in an Icefields Mountaineering Expedition

Instructions:

1. All fields in this application must be filled out.
2. Any missing information or blanks will result in significant delays to processing your application.
3. You must complete, sign, scan and return this application to:
pc.kluanemountaineering-alpinismekluane.pc@canada.ca
4. Required Attachments: in addition to this application, you must also forward an image or copy of your planned route(s) map if an accurate written description is not included in this form.

Note: Proof of valid extraction insurance for each member of your group will be required prior to a permit being issued.

Expedition Leader

Surname: Given Name(s):
 Age: Email Address:
 Mailing Address:

 Phone Number (1): Phone Number (2):
 Insurance Provider: Policy Number:
 Please provide a list of major mountaineering expeditions, including year and route:

 Emergency Contact:
 Phone Number (1): Phone Number (2):

Expedition Description and Details

Is this trip guided? Yes ☐ No ☐
 If guided, name of the guiding company:
 Mountain/Destination/Route:
 Trip Start (D/M/Y): Trip End (D/M/Y):
 Total number of participants in this expedition:
 Will you be using an aircraft to enter the Icefields? Yes ☐ No ☐
 If yes, which company:
 Will you be using an aircraft to leave the Icefields? Yes ☐ No ☐
 If yes, which company:

Group Member Information	
Note: please fill this information out for each group member; make duplicates of this page as necessary.	
Surname:	Given Name(s):
Age:	Email Address:
Mailing Address:	
Phone Number (1):	Phone Number (2):
Insurance Provider:	Policy Number:
Please provide a list of major mountaineering expeditions, including year and route:	
Emergency Contact:	
Phone Number (1):	Phone Number (2):
Surname:	Given Name(s):
Age:	Email Address:
Mailing Address:	
Phone Number (1):	Phone Number (2):
Insurance Provider:	Policy Number:
Please provide a list of major mountaineering expeditions, including year and route:	
Emergency Contact:	
Phone Number (1):	Phone Number (2):

Conditions and Risks	
Please read the following carefully and sign: As a mountaineer in Kluane National Park and Reserve, you will be carrying loads of 20 to 40 kilograms (40 to 90 pounds) at altitudes of 2000 to 5700 meters (6,500 to 19,500 feet). Conditions can be extremely variable: from intense snow glare with temperatures as high as 30° C (90° F) to storms with winds of over 160 km/h (100 mph), zero visibility and temperatures below -40° C (-40° F). Expeditions usually last from two to six weeks. Prolonged confinement within cramped tents or snow caves often occurs due to bad weather. Emergency evacuation, in cases of serious injury or illness, is also subject to weather conditions and may be delayed. The following list of dangers and risks is not exhaustive but may include: headaches, muscle cramps, coughing, Cheyne-Stokes breathing, digestive disturbances, dehydration, poor sleep and/or intense fatigue. Serious cold injuries (particularly to the feet and hands), hypothermia, snow blindness, pulmonary edema, cerebral edema and/or direct injuries due to falls. Between 1973 and 2015, there have been approximately 4000 climbers and skiers in the Icefields Ranges of Kluane National Park Reserve. Of these, 15 people have died as a result of either falls or avalanches. Many people have suffered severe enough altitude sickness that they have had to end their expedition early or required emergency evacuation. Many climbers have also suffered frostbite severe enough to require evacuation. Other injuries have included fractures, dislocations, lacerations, medical emergencies and burns. In 2010 alone, 3 people fell into crevasses while travelling on the King Trench route of Mount Logan. As the Expedition Leader, it is your responsibility to ensure that all members of your expedition are knowledgeable in crevasse rescue, wilderness first-aid, glacier travel, winter mountaineering and navigation. Your expedition must be fully capable of self-rescue.	
Assumption of Risk	
As the Expedition Leader, I have read the above and understand that mountaineering is an inherently hazardous activity with the potential for serious injury or death. I am entirely responsible to ensure the expedition conducts its activities safely. I understand Parks Canada is not responsible for our safety. I acknowledge and accept that I may be responsible for any and all costs and expenses incurred in the event of search and rescue services. I also understand that rescue services may be significantly delayed due to the season, weather, or complexity of the rescue operation. I acknowledge each group member requires valid insurance that covers the cost of organized rescue / extraction from the Icefield Ranges for the activities outlined in the permit application at a minimum of CAN\$100,000. I acknowledge that any group member requiring extraction will be directly billed for search and rescue costs incurred; team members may then recover these expenses from their insurance provider.	
Signature Printed Name	Date (D/M/Y)

APPENDIX VI – CASELAW SUMMARIES

R v 763966 Alberta Ltd., 2017 ABPC 219

Case Summary: The numbered company in question operates a gas station located at Lake Louise in Banff. There was a chemical spill flowing from a gasoline overflow and the gas station staff cleaned it up using a spill kit but then disposed the gasoline-soaked spill kit materials improperly in a public dumpster despite being advised to the contrary by other bystanders. The accused were charged with contravention of Section 4(1) of the *National Parks Garbage Regulations*, SOR/80-217 and prosecuted under Section 24(2) of the CNPA. The court found that Parks Canada offences are strict liability offences, and as such the prosecution is not required to prove negligence or intention, simply that the act occurred and it is up to the accused to rebut that by proving all due care had been taken. The Court convicted but did not report on the sentence imposed.

R. v. Brown, 2016 ABPC 110

Case Summary: After longboarding down a steep hill in Jasper National Park, the Accused was charged by a park warden with stunting on a highway in Jasper National Park under the Alberta Provincial Legislation *Traffic Safety Act*, R.S.A.2000, c. T-6. The Court commented that because Longboarding was not a specified prohibited activity within the National Park, there was no offence or contravention that applied to him flowing from the CNPA, and because the longboarding conduct in question did not meet the threshold in law to be considered “stunting”, he was also not guilty under the provincial legislation that he was charged with contravening. The Court acquitted fully.

R. v. Decker, 2013 CanLII 58688 (NL PC) & R. v. Decker, 2013 CanLII 57758 (NL PC)

Case Summaries: These two cases are the trial and sentencing decisions involving Mr. Decker being convicted of four offences in Gros Morne National Park. Mr. Decker operated an all-terrain vehicle and a pickup truck within the boundaries of the park while not on a road and without a permit he removed driftwood from the Park. He was charged four times under section 24(2) for contravention of sections 3(1) and 41(2) of the *National Parks Highway Traffic Regulations*, CRC 1126 and section 10 of the *National Parks General Regulations*, SOR 78-213. Although Mr. Decker possessed a letter of authorization from the superintendent to operate an all terrain vehicle in the park, the authorization was limited to the purpose of retrieving fishing gear, not for retrieving or harvesting driftwood. Because he was operating outside the parameters of his authorization, that also made his driving off road a contravention. The Court affirmed that all offences were strict liability offences, and convicted on all counts. The offender was sentenced to 9 months of probation with a variety of restorative and protective conditions.

R. v. Moody, 2016 ABPC 306

Case Summary: The accused entered into a closed area in Jasper National Park, went under closure tape, passed two closure signs for the purpose of alpine snowboarding and snow kiting. The accused acknowledged he knew the area was closed at the time he entered it but did so anyways due to the distance and effort expended to reach the location for the purpose of snowboarding. The area was closed due to a caribou recovery strategy that was in place for the region at the time. The accused pled guilty and took full responsibility. The Crown sought a \$7,500.00 fine, the defence sought a \$1,500.00 fine as that was the fine amount imposed on similar individuals entering the same closed area. The Crown led evidence on sentencing highlighting the importance of caribou recovery strategy and why the area was closed. The Court found a number of aggravating factors under section 27.2 of the CNPA but did not conclude that there was sufficient evidence of any long-term effect on sustainability of the caribou in the area or any created possible long-term damage to Jasper National Park. The Court recognized deterrence as an important sentencing principle in environmental offences, and imposed a \$1,500.00 fine.

R. v. Pendrak, 2000 ABQB 862

Case Summary: Mr. Pendrak landed his airplane at the aerodrome located in Jasper National Park. The airstrip in question was open and available for many years to the public, but became a prohibited landing site by virtue of not being included in the new schedule of permitted aircraft landing locations from the amended regulations in 1997. The Accused landed his aircraft in June of 1998, and was greeted by a warden at the airstrip who served him a summons, charging him with contravening section 2(1) of the *National Parks Aircraft Access Regulations*, SOR/97-150. The accused was acquitted at trial, and the acquitted upheld at appeal, based on asserting a due diligence defence. The Court agreed that although the offence in question was a strict liability offence, Parks Canada had made it confusing for pilots as to what was and wasn't open for landing, and the pilot in question was found to have taken sufficient steps to meet his due diligence requirements. The pilot was acquitted fully.

R. v. Pittman, 2013 CanLII 60979 (NL PC)

Case Summary: The accused was convicted for two contraventions of Section 10 of the *General Regulations* for cutting wood without a permit in Gros Morne National Park. The Accused was located with a chainsaw and cut wood by a park warden in an area within the boundaries of the national park after following fresh snowmobile tracks. He had cut wood with the chainsaw, and was charged with damaging and removing flora under the meaning of Act. The Court agreed that these were strict liability offences, meaning that the Crown only had to prove the accused had committed the act and then the accused must prove he acted with due diligence in order to avoid conviction. The Court found that "remove" did not mean to "remove" from the boundaries of the national park, simply it mean to change location position station or residence of. The Accused

asserted that the boundaries of the national park were unclear and not well marked, and that people in the area cut wood at that location frequently and as such he also was cutting wood. The Court did not accept that explanation to make out due diligence, and convicted of both counts. The sentence was not reported.

R. v. Sutherland, 2017 BCPC 337 & R. v. Sutherland, 2016 BCPC 45

Case Summaries: These cases represent the ruling and conviction decisions of the court hearing the contravention offence allegations against Mr. Sutherland for camping without a permit in Pacific Rim National Park, thereby contravening section 3(1) of the *National Parks of Canada Camping Regulations* SOR80/127. This case is of note because the accused advanced a *Charter of Rights and Freedoms* based defence with respect to the merits of the Parks offence, specifically stating that the requirement to have a camping permit infringed on his right to security of the person under Section 7 of the *Charter*, and that because he was of limited means, he could not afford the 27\$ camping permit while on a surfing trip to the area. He argued he should be allowed under the *Charter* to camp in the national park without paying due to his inability to pay under Section 15 of the *Charter*. The accused provided no authorities or analogous caselaw for the second proposition. After extensive litigation, pretrial conferences, and multiple court interim rulings, the accused was ultimately convicted and all relief applications dismissed. No sentence reported.

R. v. The Lake Louise Ski Area Ltd., 2017 ABPC 262,

R. v. The Lake Louise Ski Area Ltd., 2018 ABPC 280 &

R. v. The Lake Louise Ski Area Ltd, 2020 ABQB 422

Case Summaries: This trio of cases represents years of litigation and the rulings on various pretrial applications, interim rulings, and *Charter* relief applications, as well as the sentencing decision and appeal of the sentencing decision for infractions committed by the corporate entity The Lake Louise Ski Area Ltd. (The Ski Area). In August and September of 2013, The Ski Area damaged/destroyed 169 tree species, including 58 endangered Whitebark pine and damaged 29 other trees on the property. The Ski Area cleared the trees for Ski Area operations purposes. The Ski Area pled guilty to an offence under Section 32(1) of the *Species at Risk Act*, SC 2002 c29 (SARA) for killing Whitebark Pines, an endangered listed wildlife species, thereby committing an offence under Section 97(1) of the SARA, and one count under Section 24(2) of the *Canada National Parks Act*, SC 2000 c32 (CNPA) for destroying flora in a national park without a permit, thereby committing an offence pursuant to Section 24(2) of the CNPA. The Ski area was sentenced at a contested sentencing to fines consisting of a \$1.6 million penalty under the SARA, a \$500,000 fine under the CNPA and a \$40,600 remediation order. The remediation order, imposed pursuant to a joint submission by the Ski Area and the Crown, directs the Ski Area to implement a plan to replace the Whitebark Pines,

including the cost of growing seedlings to be planted at the ski hill. The Ski Hill appealed this sentencing arguing demonstrably unfit sentences and errors in law, seeking a global sentence of \$350,000.00. The appellate decision concluded that this was not, as the Ski Area alleged, a case of an otherwise good environmental citizen making an isolated mistake, but a case where, despite a long history of operations, a recent information session about the endangered species in question and full awareness of permitting requirements and prohibitions, a mid-sized corporation operating in a national park failed to train and inform employees, leading to the destruction of a number of individuals of an endangered species whose extinction would have impact throughout the sub-alpine ecosystem. The court assessed that deterrence for environmental offences was an important factor in sentencing. The appellate court upheld the sentence imposed by the sentencing judge. The Court also highlighted the dearth of analogous precedent caselaw.

APPENDIX VII - Sessional Paper 8555-421-191

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ORDER/ADDRESS OF THE HOUSE OF COMMONS
ORDRE/ADRESSE DE LA CHAMBRE DES COMMUNES

NO.-N° Q-191	BY / DE Mr. Stetski (Kootenay—Columbia)	DATE May 3, 2016/Le 3 mai 2016
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RETURN BY THE LEADER OF THE GOVERNMENT IN THE HOUSE OF COMMONS
DÉPÔT DU LEADER DU GOUVERNEMENT À LA CHAMBRE DES COMMUNES

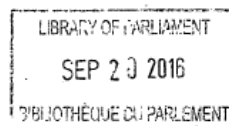
Mr. Lamoureux

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENT SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

SEP 19 2016

(TABLED FORTHWITH / DÉPOSÉ AUSSITÔT)



SEPTEMBER 19, 2016

SESSIONAL PAPER
DOCUMENT PARLEMENTAIRE
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HOUSE OF COMMONS
CHAMBRE DES COMMUNES



INQUIRY OF MINISTRY DEMANDE DE RENSEIGNEMENT AU GOUVERNEMENT

PREPARE IN ENGLISH AND FRENCH MARKING "ORIGINAL TEXT" OR "TRANSLATION"
PRÉPARER EN ANGLAIS ET EN FRANÇAIS EN INDICANT "TEXTE ORIGINAL" OU "TRADUCTION"

QUESTION NO./N° DE LA QUESTION Q-191	BY / DE Mr. Stetski (Kootenay-Columbia)	DATE May 3, 2016
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Reply by the Minister of Environment and Climate Change
Réponse de la ministre de l'Environnement et du Changement climatique

The Honourable Catherine McKenna

PRINT NAME OF SIGNATORY
INSCRIRE LE NOM DU SIGNATAIRE

SIGNATURE
MINISTER OR PARLIAMENTARY SECRETARY
MINISTRE OU SECRÉTAIRE PARLEMENTAIRE

QUESTION

With respect to fines charged under the Canada National Parks Act: (a) how many people have been fined in the last ten years, broken down by park; (b) what was the average fine amount over the last ten years, broken down by park; (c) what were the ten most common offences under the Canada National Parks Act that resulted in fines being charged; (d) what measures does the government have in place to deter people from committing each of the offences identified in (c); (e) what analysis has the government undertaken of the effectiveness of penalties for offences charged under the Canada National Parks Act, and what were the results of this analysis; and (f) how often does the government review its policies and procedures regarding fines and penalties for offences charged under the Canada National Parks Act?

REPLY / RÉPONSE

ORIGINAL TEXT
TEXTE ORIGINAL

☒

TRANSLATION
TRADUCTION

☐

PARKS CANADA

Response to (a) and (b)

Park/Site	Number of Charges	Number of Fines	Average Fine (\$)
Auyuittuq National Park of Canada	3	3	500.00
Banff National Park of Canada	1070	757	277.89
Cape Breton Highlands National Park of Canada	157	137	226.42
Chilkoot Trail National Historic Site of Canada	4	3	230.00
Dalvay-by-the-Sea National Historic Site of Canada	1	1	95.00
Elk Island National Park of Canada	16	9	223.56
Fathom Five National Marine Park of Canada	3	3	105.00
Forillon National Park of Canada	83	60	86.80
Fort Chambly National Historic Site of Canada	1	0	
Fortress of Louisbourg National Historic Site of Canada	1	1	578.00

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Park/Site	Number of Charges	Number of Fines	Average Fine (\$)
Fundy National Park of Canada	66	62	131.75
Georgian Bay Islands National Park of Canada	137	119	78.66
Glacier National Park of Canada	200	157	91.57
Grasslands National Park of Canada	5	3	83.33
Gros Morne National Park of Canada	221	83	582.53
Gulf Islands National Park Reserve of Canada	95	91	95.05
Gwaii Haanas National Park Reserve, National Marine Conservation Area Reserve, and Haida Heritage Site	5	5	35.00
Jasper National Park of Canada	277	188	374.01
Kejimikujik National Park of Canada	79	69	221.78
Kluane National Park and Reserve of Canada	17	3	216.67
Kootenay National Park of Canada	102	89	101.26
Kouchibouguac National Park of Canada	64	58	101.90
La Mauricie National Park of Canada	112	50	103.38
L'Anse aux Meadows National Historic Site of Canada	6	2	1000.00
Mingan Archipelago National Park Reserve of Canada	2	0	
Mount Revelstoke National Park of Canada	23	19	71.79
Pacific Rim National Park Reserve of Canada	534	488	70.50
Point Pelee National Park of Canada	14	14	124.29
Port au Choix National Historic Site of Canada	9	5	920.00
Prince Albert National Park of Canada	67	43	210.12
Prince Edward Island National Park of Canada	49	44	149.77
Riding Mountain National Park of Canada	178	153	191.05
Terra Nova National Park of Canada	9	0	
Thousand Islands National Park of Canada	177	161	56.61
Tongat Mountains National Park of Canada	10	0	
Waterton Lakes National Park of Canada	61	23	283.70
Wood Buffalo National Park of Canada	4	0	
Yoho National Park of Canada	59	48	79.33

Response to (c)

Regulation	Offence
Camping Regulations	e.g. camping without permit; violation of camping permit conditions
Highway Traffic Regulations	e.g. operating a vehicle off a highway in a park without a permit; parking in a designated area without permit; failure to obey instructions on traffic sign or device, speeding
General Regulations (s. 7)	Conduct an activity or enter and travel in prohibited area without a permit
Fire Protection Regulations	e.g. starting or maintaining a fire; leaving a fire unattended
Fishing Regulations	e.g. fishing other than in accordance with a permit; fishing without a permit

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General Regulations (s. 32)	Causing excessive noise; unreasonable behavior
Domestic Animal Regulations	e.g. failure to keep domestic animal under physical control
Wildlife Regulations	e.g. feeding wildlife; carrying a firearm outside a vehicle; possession of wildlife killed or procured within a park
Garbage Regulations	e.g. failure to place garbage in proper containers; conveying garbage in improper vehicle; accumulating garbage on owner's premises
General Regulations (s. 36)	Entering closed public recreational facilities; travelling in restricted area without permit

Response to (d)

The primary deterrence measures are the penalties listed in the *Canada National Parks Act* and related legislation and the enforcement of the law by park wardens. In support of these primary measures, in 2008, Parks Canada implemented Prevention Guidelines to provide staff with guidance to prevent offences and improve compliance. The emphasis of the guidelines is aimed at preventing possible incidents through targeted messaging, environmental design and other dissuasive measures. When feasible, measures are undertaken to resolve incidents through communication/education by front line staff before having to resort to more formal law enforcement steps. In the Parks Canada Quality Visitor Experience training program, all Parks Canada staff are made aware of the Guidelines and are given the tools to appropriately address a situation. The role of staff includes observing, reporting and assessing the situation and engaging the park user with the aim of resolving the issue while maintaining or even improving the visitor's positive experience.

Response to (e)

Parks Canada has not conducted a formal analysis of the effectiveness of penalties.

Response to (f)

Parks Canada does not review its policies and procedures in this area on a fixed schedule. In 2010, the Government completed a comprehensive review and revision of the fines and penalties for offences against nine environmental acts, one of which was the *Canada National Parks Act*. The product of this work was the *Environmental Enforcement Act*. The *Environmental Enforcement Act* enhanced the fine regime under each act, adding tailored ranges of fines for different categories of offenders and introducing minimum fines and increased maximum fines for serious offences. In 2000, the Government completed a comprehensive review and revision of the fines and penalties for offences under the *Canada National Parks Act*. In addition, many of the offences under the *Canada National Parks Act* and its regulations have been designated as contraventions under the *Contraventions Act*. The *Contraventions Regulations* are regularly reviewed and revised. These revisions often include increases to prescribed fines. The *Contravention Regulations* were revised 16 times since 2006.