

Review of Trespass Related Legislation

Saskatchewan's great prairies and parklands represent both a public and a private resource. Reasonable public access to these areas constitutes the foundation for extensive cultural and recreational opportunities. At the same time, over 90% of Saskatchewan prairie land in the southern area of the province is used for agricultural purposes.

These public and private interests are not irreconcilable; however, they do require balancing to maintain an appropriate relationship between those seeking access to private land and the rural private landowners. This balance is jeopardized by the reported abuses that landowners see by those accessing their property. A further complication is the need for increasing crop biosecurity from invasive species and diseases spread by random access.

At the common law, trespass has always been a civil wrong. Legislation has been passed in Saskatchewan to modify the common law to provide guidelines regarding trespasses as well as offences and enforcement provisions where trespass occurs.

The Trespass to Property Act creates an offence of trespass. Under the Act, it is an offence to, without lawful authority:

- enter onto posted or enclosed lands or other premises without the consent of the owner or other occupier;
 - enter onto lands or other premises, even if not posted or enclosed, after being requested not to do so by the owner or other occupier;
 - engage in prohibited activities on the premises without the consent of the owner or other occupier;
 - fail to leave lands or other premises after being requested to do so by the owner or other occupier;
 - fail to discontinue an activity after being requested to do so by the owner or other occupier;
 - after leaving a premises or discontinuing an activity pursuant to the request of an owner or other occupier, re-enter the premises or resume the activity.
- An individual in contravention of the Act will be liable on summary conviction to a fine of up to \$2,000 - in most cases, the individual would make a voluntary payment of the amount set out on the ticket rather than going to court.
 - The owner or occupier can:
 - ask the individual to leave the land or premises or discontinue an activity on the land or premises; or,
 - give written notice to the individual not to enter the land or premises or engage in

an activity on the land or premises

- A peace officer can issue a summary offence ticket and, if the individual does not leave the land or premises or discontinue the prohibited activity, can arrest the individual.

The Trespass to Property Act was not meant to replace trespass provisions dealing with specific circumstances such as snowmobiling and operation of all-terrain vehicles, and such provisions continue to apply. Currently, where there is a conflict between the provisions of *The Trespass to Property Act* and specific trespass provisions in other legislation, the latter will prevail.

- *The Wildlife Act, 1998* prohibits hunting on posted land. The Act further provides that the lack of posting does not indicate consent to access for hunting. It also provides that where consent to hunt is provided, the owner/occupier owes no general duty of care to a person hunting on the land;
- *The All Terrain Vehicles Act* prohibits the operation of ATVs on private or Crown land without the prior permission of the owner or occupier, regardless of posting;
- *The Snowmobile Act* provides that, without the consent of the land owner or occupier, snowmobiles cannot be operated on posted private rural land or on private land within a city, town, village or hamlet (the use of designated trails created under *The Snowmobile Act* will not be impacted by any proposed changes to trespass related legislation); and
- *The Provincial Lands Regulations* provides that someone occupying provincial lands without authority from the province is a trespasser.

Having different access and posting rules for different activities as noted above may well be contributing to confusion as to the rules for access.

In addition, rural crime and other reported abuses by a minority of those accessing rural property under these Acts has significantly undermined land owner support for public access.

Land owners may also face fire risk and the increasing need for bio-security against crop diseases that can inadvertently be spread by even the most conscientious visitors. For example, Clubroot is a soil borne disease that can significantly affect yield in crops like canola with few options for control. The disease can be spread by soil being transported by agricultural or industrial field equipment, vehicles, tires, animals, and shoes.

Invasive species such as downy brome or leafy spurge can reduce of the productivity of grasslands and crop land and can be spread by vehicles, clothing, shoes, pets, etc.

Modern production of hogs and poultry involves raising large numbers of animals in confined facilities. As a result of these conditions, a disease outbreak can lead to significant losses. To prevent such outbreaks, operators of these facilities have strict biosecurity controls to ensure their facilities remain disease free. People or vehicles trespassing on land where these facilities are located could increase the risk of bringing in diseases.

It has been suggested that the culture in rural Saskatchewan has become one of “access unless expressly denied” rather than “access if expressly permitted”. In other western provinces, a different approach is taken to allowing access to private land. Using Alberta as an example, the following rules are set out with respect to access:

- 1) The Alberta *Petty Trespass Act* requires specific approval to enter land under cultivation:

Prohibition

“2(1) Every person who

(a) without the permission of the owner or occupier of land enters on land when entry is prohibited under section 2.1,

or

(b) does not leave land immediately after he or she is directed to do so by the owner or occupier of the land or a person authorized by the owner or occupier

is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1), whether or not any damage is caused by the contravention, is liable

(a) for a first offence, to a fine not exceeding \$2000, and

(b) for a 2nd or subsequent offence in relation to the same land, to a fine not exceeding \$5000.

(3) It is a defence to a charge under subsection (2) for the accused to establish that the accused had a right or authority conferred by law to be on the land.

(4) There is a presumption that access for lawful purposes to the door of a building on land by a pathway apparently provided for the purpose of access is not a trespass.

2.1(1) Entry on land may be prohibited by notice to that effect, and entry is prohibited without any notice on land

(a) that is a lawn, garden or land that is under cultivation,

- (b) that is surrounded by a fence, a natural boundary or a combination of a fence and a natural boundary, or
- (c) that is enclosed in a manner that indicates the owner's or occupier's intention to keep persons off the land or to keep animals on the land."

2) Alberta's *Wildlife Act* prohibits hunting on "occupied land" without consent:

"[O]ccupied land" means

- (a) privately owned land under cultivation or enclosed by a fence of any kind and not exceeding one section in area on which the owner or occupant actually resides, and
- (b) any other privately owned land that is within one mile of the section referred to in clause (a) and that is owned or leased by the same owner or occupant.

Please see the [attached jurisdictional review chart](#) to note the differing rules for access as well as the fines that an individual may be subject to for committing a trespass pursuant to petty trespass legislation in Canadian jurisdictions.

Advance Permission

Given the disparities in approaches within Saskatchewan legislation and the approaches taken in other provincial jurisdictions, the Government of Saskatchewan is seeking public input on the need to revise and consolidate the approach taken with respect to trespass in the various Saskatchewan Acts. This would see all of the above-noted legislation moving to requiring express consent prior to access.

In particular, we are asking:

Q. Should all access by members of the public to rural property require the express advance permission of the rural land owner regardless of the activity?

Type of Rural Property

As noted above, what constitutes rural property for trespass purposes is also not uniform between provincial jurisdictions. For example, Alberta's *Petty Trespass Act* states:

2.1(1) Entry on land may be prohibited by notice to that effect,

and entry is prohibited without any notice on land

(a) that is a lawn, garden or land that is under cultivation,

(b) that is surrounded by a fence, a natural boundary or a combination of a fence and a natural boundary, or

(c) that is enclosed in a manner that indicates the owner's or occupier's intention to keep persons off the land or to keep animals on the land.

Q. Should there be a distinction between cultivated land, fenced property and open pasture land or should all land being used for agricultural purposes be treated the same?

Method of Permission

At the same time as we are considering a process that would require permission for access, it is appropriate to ask how such permission would best be sought.

For example, should an individual seeking access be required to first seek permission by attending at any on site inhabited residence by the most direct route from a main access point? Such an approach would seek to avoid having individuals cross the property prior to seeking permission and then indicating that they were simply looking for the homestead. Similarly, provisions regarding posting of email addresses or enhanced access to landowners through municipal offices may require consideration to avoid defeating legitimate efforts to seek consent and therefore to conduct legitimate activities.

Q. How should permission be sought and granted?

Impact of Change

We are also seeking the comments of Saskatchewan citizens on how a change to require permission prior to access would impact recreational and other legitimate activities for members of the public with respect to rural land. For snowmobilers, atv-ers, hunters and other recreationalists, would this change represent an impediment to their activities that cannot be adequately managed? Keeping in mind that there is no legal entitlement to access to private property, does making consent an express prerequisite prior to access represent an unreasonable impediment?

Q. Would making consent an express prerequisite in all circumstances represent an unreasonable impediment to recreational activities?

Enforcement

As part of this initiative, a review of the penalties and enforcement options regarding trespass is also being conducted to determine whether adequate and immediate enforcement options are available to serve as a deterrent to those who fail to comply with the applicable legislation.

Hunting and Fishing Rights

It should be noted that First Nations hunting and fishing rights are Constitutional rights that are set out in the Treaties and are protected by the Natural Resources Transfer Agreement of 1930. Whether First Nations people have a right of access to any particular lands will continue to be governed by the Treaties, the Natural Resources Transfer Agreement, and the court decisions that have interpreted those rights.

Government's view is that the current *Trespass to Property Act* does not affect Treaty hunting and fishing rights as it neither creates a right of access to privately owned land nor takes those rights away. This will in no way change with any of the possible amendments discussed in this paper.

The Government of Saskatchewan is also of the view that Metis Aboriginal hunting and fishing rights are not affected by any amendments that may be proposed to *The Trespass of Property Act*. Whether Metis people have access to any particular lands for the purpose of hunting and fishing will continue to be governed by the court decisions that have interpreted those rights.

Have Your Say

We would invite any comments or recommendations by members of the public with respect to these questions and this issue in general **by October 1, 2018**.

Please note: your comments are being gathered for the purpose of informing public debate on this issue and may be disclosed to third parties in support of this purpose.

Contact

Written submissions, comments, and questions can be forwarded to:

Ministry of Justice
Legislative Services Branch
Attn: Review of Trespass Related Legislation
800 - 1874 Scarth Street
Regina, SK S4P 4B3

Or by email to: LSBQuestionnaire@gov.sk.ca

Penalties and Express Permission Requirements in Canadian Trespass Legislation

Jurisdiction	Legislation	Fine	Express permission required
British Columbia	<i>Trespass Act</i>	\$100 ticket	No
Alberta	<i>Petty Trespass Act</i>	\$250 ticket	Yes for a lawn, garden or land that is under cultivation
	<i>Trespass to Premises Act</i> – only applies to buildings	\$2000 for first offence, \$5000 for subsequent offence	No
Saskatchewan	<i>The Trespass to Property Act</i>	\$2000 at trial, \$200 by ticket	No
Manitoba	<i>The Petty Trespasses Act</i>	\$113 ticket	No
Ontario	<i>Trespass to Property Act</i>	\$10,000	Yes for a garden, field or other land that is under cultivation
Quebec	<i>Agricultural Abuses Act</i>	\$100	Yes for land or beach land
New Brunswick	<i>Trespass Act</i>	\$10,200	Yes for trespass by motor vehicle on land that is being cultivated for the production of food for humans or livestock
Nova Scotia	<i>Protection of Property Act</i>	\$500	Yes for a lawn, garden, orchard, vineyard, golf course or acreage managed for agricultural crops
Prince Edward Island	<i>Trespass to Property Act</i>	\$2000	Yes for a lawn, garden, orchard, vineyard, golf course or acreage managed for agricultural crops
Newfoundland and Labrador	<i>Petty Trespass Act</i>		Applies only to industrial, commercial, business or educational premises
Yukon	None		
Northwest Territories	None		
Nunavut	None		