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A GUIDE TO THE LAW IN ALBERTA REGARDING



TRESPASS

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GENERAL

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WHAT IS TRESPASS?

Trespass is a direct interference with another person's land. Trespass is an action that can be pursued civilly or criminally. A civil trespass is when one person, usually the owner of land or a home, sues a person who has entered their property without permission. The homeowner can sue the trespasser for money regardless of whether or not anything specific was damaged. The damage is considered to have occurred when a person's property is intruded upon without their consent. **A trespass to land occurs when a person enters premises without the permission of the owner/occupier or does not leave immediately after being directed to do so by the owner/occupier.**

This pamphlet in particular is regarding the more common criminal actions for trespass. There are three types of legislation that govern in this area:

- a. *Criminal Code of Canada* (federal act)
- b. *Trespass to Premises Act* (provincial act)
- c. *Petty Trespass Act* (provincial act)

TRESPASS AS AN OFFENSE

1. *Petty Trespass Act*

This act does not apply to Crown (government-owned) land unless there is a disposition granted under the *Public Lands Act*. It also does not apply to land that is Crown land that is the subject of a lease from the Crown. This provincial act applies to every person who without the permission of the owner or occupier of the land or does not leave the land immediately after he or she is directed to do so by the owner is guilty of an offense. It is a defense to trespass if it can be proven that there was a legal right or authority to be on the land. There is also 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.

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Entry on land can be prohibited with notice on land that is:

- a. lawn, garden, or cultivated
- b. surrounded by a fence, natural boundary, or combination thereof
- c. enclosed in such a manner as to indicate the owner or occupier's intention to keep persons off the land or to keep animals on the land

Notice may be given in one of the following forms:

- a. orally
- b. writing
- c. posters or signboards that are visibly displayed (at all places where normal access is obtained to the land as well as on all fence corners, or in the absence of a fence, on each corner of land)

People are not allowed to damage a poster or signboard that prohibits trespass that has been posted by an owner or occupier of the land, and if this is done then a person is guilty of an offence and liable to a maximum fine of \$2000. All of the above applies if the offense is committed by the means of a motor vehicle as well.

Any person found committing a trespass can be apprehended without warrant by a peace officer or by an owner, occupier, or agent of the owner or occupier. They may be then taken before the nearest judge or justice of the peace.

2. *Trespass to Premises Act*

This provincial act has broader purposes than the *Petty Trespass Act* and refers to the following:

- a. "premises" which is any building or structure or part thereof
- b. any land used in connection with a building or structure
- c. including parking areas and storage areas
- d. any land that does not apply under the *Petty Trespass Act*

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Essentially it outlaws trespassing on premises in which a person has had notice not to trespass. Notice can be given in the same ways as the *Petty Trespass Act* such as oral or written warnings by the owner or an authorized representative. Additionally, signs should be visibly displayed at each of the entrances normally used by persons to enter the premises and in the case of premises. **A trespasser is guilty of an offence whether or not damage was caused.** The maximum fine for a first offence is \$2000, and any subsequent offences are liable for a maximum fine of \$5000. All of the above also applies if the offense is committed by the means of a motor vehicle as well. They can be apprehended without a warrant by a peace officer or the owner or an authorized representative of the owner in respect of which the trespass is committed. Nothing in the act extends to a case where the trespasser acted under a fair and reasonable supposition that the trespasser had a right to do the act complained of.

This offense is a strict liability offense, which means that the Crown only needs to prove that the prohibited act did occur, **despite you not remembering or seeing the notice.**

3. *Criminal Code of Canada*

The *Criminal Code of Canada* (CCC) is federal law. There are several offenses that relate to trespassing that fall under the Criminal Code. Some of the provisions allow for reasonable amounts of force to be used when removing a trespasser from private property. More importantly, **trespassing at night is a Criminal Code offence.** This means that somebody who loiters or prowls at night on the property of another person may face Criminal charges and if convicted will have a criminal record.

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COMMON QUESTIONS REGARDING TRESPASS

1. I received a ticket for trespass. What does this mean?

Most trespass tickets in Alberta are issued under the *Trespass to Premises Act*. This carries a fine sentence not exceeding \$2000 for the first offence, and \$5000 for the second offence. There is no victim surcharge for this offence under the *Victims of Crime Regulations*.

2. What are my rights if I am detained or arrested?

You do not have to make a statement to security guards, store personnel or the police. However, if you are escorted off the property and are told not to return, you have received notice and cannot return.

3. Do trespass laws apply to public places?

Section 1 of the *Petty Trespass Act* states that the act does not apply to government land such as public park. However, public parks are governed by municipal bylaws. If a person is breaking a bylaw (such as sleeping in the park, being in the park after hours, drinking in the park) then the police have the right to give you notice to leave the park or escort you out. If you are using the public place for a detrimental purpose, you can receive a trespassing ticket.

4. What is notice? What if I didn't know that there was notice given?

Notice can be:

- a. Oral or written notice
- b. Signs visibly displayed on entrances to the premises
- c. Signs visibly displayed on the corners of the land (or fence) of the premises

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If you did not know that notice was given in terms of signs, it is still considered notice not to trespass. Also, if an owner or an authorized representative of the owner gives you written or oral warning, then afterwards it would be considered trespassing.

5. What if I thought I had a right to be on the property?

Under the *Petty Trespass Act* it is a defence if the accused thought that they had a right or authority conferred by law to be on the land. It is also a presumption that access for lawful purposes to the door of a building on land by a pathway apparently provided for that purpose is not a trespass.

Under the *Trespass to Premises Act* nothing in the act extends to a case where the trespasser acted under a fair and reasonable supposition that the trespasser had a right to do the act that somebody complained about.

6. What are defences to trespassing?

If you are given notice, *it is not a defense that you do not remember being given notice*. The only defenses are the following:

- a. The trespasses acted under a fair and reasonable supposition that the trespasser had a right to do the act complained of (under the *Trespass to Premises Act*, s. 8)
- b. There was no proper notice (notice must be given in accordance with the *Act*)
- c. Due diligence was taken to find notice (all reasonable measures were taken to ensure that you were not trespassing)

7. Can I be arrested for trespass?

Yes. Under the *Trespass to Premises Act*, a trespasser may be apprehended without a warrant by any peace officer or the owner (or agent) of the premises. When a person who is not a peace

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officer apprehends a trespasser, that person must turn the trespasser over to a peace officer as soon as possible. The person who is detaining a trespasser must do so reasonable and cannot abuse the trespasser, but they are allowed to prevent them from escaping.

The person who catches a trespasser is also allowed to reasonable search the trespasser while they are being detained. The reason that a trespasser is being searched must be related to the reason that the trespasser is being detained or for safety reasons.

8. What are my rights if I am detained or arrested?

A person does not need to make any statements to security guards, police, or land owners (or agents). If a trespasser is escorted off the property and are told not to return you still have received notice and cannot return.

9. What can I do if somebody is trespassing on my property?

According to the *Criminal Code of Canada*, everyone who is in peaceable possession of a dwelling house or real property is justified in using only as much force as is necessary to prevent a person from trespassing or to remove a trespasser. Under s. 41(1) resistance on the part of the trespasser is considered assault without justification or provocation on the owner or agent of the owner.

10. If I am sleeping on the sidewalk, is it trespassing?

Sleeping outdoors is not permitted in Edmonton. Specifically, you can be ticketed anytime you set up a tent or any structure that could obstruct the flow of traffic on sidewalks or public places.

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It is an offence to make 'unauthorized use' of parkland, which is defined as exercising dominion or control over an area by placing any structure on parkland. You are prohibited from setting up any type of abode on parkland, and are not permitted on parkland between the hours of 11:00 p.m. and 5:00 a.m., or when a park is closed.

The safest choice is to stay in a shelter. However, if for any reason you are turned away from a shelter, and are given a ticket for sleeping outdoors, please seek legal help.

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REFERRAL NUMBERS

Dial-a-law 1-800-332-1091

Student Legal Services [780] 492-2226
www.slsedmonton.com

Alberta Law Line 1-866-845-3425

Lawyer Referral Service 1-800-661-1095
www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm