
Trespass and Occupiers' Liability

Anyone entering private property without legal authority or the permission of the occupier may be found guilty of an offence under the [Trespass to Property Act](#). The burden of proof that permission was given is on the accused.

The *Trespass to Property Act*, and its companion, the [Occupiers' Liability Act](#), were enacted in 1980 to protect the rights of occupiers, while allowing them to control activities on their property. "Occupier" means anyone in legal possession of land; legal owner or tenant. Places subject to the Act include land, water and buildings, including portable structures.

Occupiers can use signs to show which activities they allow. When choosing signs, be sure that the sign reflects your true wishes. Signs prohibiting one activity only refer to that activity; not to any other unnamed activities. For example, a "No Fishing" sign only prohibits fishing; not hiking or hunting. To prohibit all activities use a "**No Trespassing**" sign. The use of signs does not affect your right to give individuals permission to use your land.

Signs used to prohibit or restrict entry to property must conform to the Act. They can show your wishes through symbols or words. All signs must be clearly visible in daylight and placed at every normal point of access to the property.

While signs may be used to show when entry is prohibited, entry to some rural property are prohibited even without the use of signs. Under section 3(1) of the *Trespass to Property Act*, entry is prohibited **without** signs to;

- a "garden, field or other land **under cultivation**, including a lawn, orchard or vineyard" (fields are "under cultivation" whether seeded or not; snow covered fields are "under cultivation" if seeded),
- land enclosed in any way that shows the occupier's intention to keep people off or animals on the premises,
- any property where trees have been planted but have not grown to an average height of 6½' (2 metres), or
- woodlots on land used primarily for agricultural purposes.

If you come across trespassers, politely request that they leave. The Act gives occupiers, in addition to the police, the power to arrest trespassers. However, if the trespasser is an armed hunter, or has refused to leave, call the police. If the trespasser damages your property, the courts can award you up to \$1,000 compensation for damages caused by the trespasser. To recover damages over \$1,000 you must file a lawsuit against the trespasser in court.

Some people have the legal authority to enter private property through their job without the threat of prosecution. Examples of people who have the authority to enter private property include

engineers, contractors, drainage superintendents and land surveyors working under the Drainage Act, utility meter readers, public health inspectors and conservation authority staff. If in doubt, ask the person for their identification and authority to enter your property.

The companion to the *Trespass to Property Act* is the *Occupiers' Liability Act*. It defines the rights of occupiers and their responsibilities toward people who enter their land.

Before 1980, the law governing occupiers' liability was complex and discouraged people from allowing recreational use of their land. The *Occupiers' Liability Act* established a basic "duty of care" that an occupier owes to the users of his/her property. It also sets out when this basic "duty of care" does not apply.

The standard measurement of the basic "duty of care" is what a reasonable person would do under the circumstances. For example, while it may be reasonable for a farmer to not erect fences around his land, it would be unreasonable for a construction company not to erect a fence around an excavation site in a city or town.

The basic "duty of care" does not apply to all situations. Exemptions include;

- people who enter for criminal purposes are considered to have assumed all risks; however, this does not give you the right to set traps or create hazards,
- entrants to rural property who do not have permission to enter (trespassers) are responsible for their own safety,
- non-paying entrants to rural property are responsible for their own safety when using rural property for permitted recreational purposes, or
- people who know the risks and choose to accept responsibility for their injury when they enter the premises; for example the spectators at a hockey game know they risk being hit by a puck flying into the stands and they accept this risk when they purchase a ticket.

If you do allow non-paying entrants onto your farm, you should point out the location of any potential hazards, farm ponds, manure lagoons, livestock, as well as areas where access is not permitted.

For further information on either the *Trespass to Property Act* or the *Occupiers' Liability Act*, contact your local OFA Member Service Representative or OFA's Guelph office.

Updated August 2024