



Trespass problems? Tips on how to deal with Trespassing

Trespassing on private property is an ongoing concern for Ontario farmers. The following resource provides helpful tips and considerations that farmers and rural landowners can use in dealing with the issue of trespassing.

Anyone who enters private property without the occupier's permission, or under legal authority, is trespassing. If they fail to leave when told to do so, they can be found guilty of an offence under the [Trespass to Property Act](#). 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.

Both the *Trespass to Property Act* and the [Occupiers' Liability Act](#) use the term "occupier" to refer to those in legal possession of property. The term covers **both** the legal owner as well as their tenant. This is particularly important for farmers, whose farm business activities may include lands the farmer owns, as well as lands rented from someone else.

***Trespass to Property Act* – Do I need to post my land?**

In the case of farm land, the simple answer is "No". In the case of farm land, you are not required to post it. Section 3 (1) of the *Trespass to Property Act* reads as follows;

Prohibition of entry

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

(a) that is a garden, field or other land that is under cultivation, including a lawn, orchard, vineyard and premises on which trees have been planted and have not attained an average height of more than two metres and woodlots on land used primarily for agricultural purposes; or

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

Under this section, "entry is prohibited **without notice**" on a range of properties described in subsections (a) and (b). You are not required to post cultivated fields, orchards, vineyards, etc. A snow-covered field, whether seeded or not, is considered to be "under cultivation". Fenced lands also do not need to be posted.

That being said, many in the general public and even some police officers are unaware that you do not need to post your land to indicate that its "off limits" to the public.

Furthermore, the language in the *Trespass to Property Act* on using signs can be confusing. Obviously, you need to use signs that clearly communicate your intentions. If you post a “No Hunting” sign, it means that you’re only closing your farm to hunters, and you’re perfectly OK with fishermen, ATVers and snowmobilers using your farm. If you want to keep everyone off, use “**No Trespassing**” signs. Even if you post “No Trespassing” signs, you can still give permission to friends, neighbours, etc. to hunt, fish or ride on your farm. Lastly, when you post signs, they should be at every normal point of access to the farm; laneways and field entrances. Posting signs all along your property lines is even better; ideally when you’re standing between two signs, you should be able to see both.

OFA developed ‘No Trespassing’ signs for members to post on their farm property. Contact your local [Member Service Representative \(MSR\)](#) to request a ‘No Trespassing’ sign.

Occupiers’ Liability Act – What are my responsibilities as a landowner to people who enter my property?

Occupiers’ Liability Act sets out differing “duties of care”. The lowest duty of care is people who enter private property without the occupier’s permission. These would be trespassers, whether they enter on foot, or by ATV or snowmobile. Your obligation or duty of care towards those who enter private property without permission is to not create traps or hazards on your farm. Stringing a wire or cable across a trail would be one example of creating a hazard. Failing to properly plug an abandoned well would also be an example of creating a hazard.

You owe a higher duty of care to those you invite onto your property. If you charge a fee to those who you invite onto your property, your duty of care is higher.

Under the *Occupiers’ Liability Act*, trespassers are “deemed to have willingly assumed all risks” when they trespass.

Even if you fulfill your duty of care under the *Occupiers’ Liability Act*, you still may be sued by a trespasser. Being sued and being successfully sued are two different things. Fulfill, to the best of your ability, the duty of care you owe to everyone who enters your property.

Trespass by hunters, ATV riders, etc. – How should I deal with them? Who should I call?

Various provincial statutes place responsibilities on people who enter private property.

The [Off-Road Vehicles Act](#), which governs the operation of ATVs and utility vehicles, imposes an absolute duty to stop on everyone driving an off-road vehicle, when directed to stop by a peace officer or the “owner or occupier of land”. Driver’s of off-road vehicles are also required to identify themselves, name and address, to the person who stopped them, **including** the owner or occupier of the land. Similar requirements to stop and identify one’s self are also found in the [Motorized Snow Vehicles Act](#).

The [Fish and Wildlife Conservation Act](#) sets out the responsibilities of hunters and fishermen on private property. They are obligated to obey signs posted under the *Trespass to Property Act*. Among the specific trespass-related provisions in the *Fish and Wildlife Conservation Act* are;

- entering property in violation of the *Trespass to Property Act* for the purpose of hunting or fishing,
- entering property in violation of the *Trespass to Property Act* in possession of a firearm or fishing rod,
- engaging in hunting or fishing in violation of the *Trespass to Property Act*, and
- failing to leave when directed to do so.

The *Fish and Wildlife Conservation Act* also requires hunting parties of 12 or more to have “the express permission of the occupier” if anyone in the party has a firearm or “hunting device”. In the case of land with a standing or growing crop, the Act specifically prohibits a hunter or fisherman, or a dog, to enter without the express permission of the occupier.

In the instance where the trespasser is a hunter or fisherman, you can either contact a conservation officer (MNR enforcement) or any peace officer (police officer or First Nation’s constable). As noted, the owner or occupier of land can also direct trespassers to leave. However, in the case of an armed hunter, it is wiser to contact the police or MNR enforcement.

Off-road vehicle and snowmobile riders are required to leave your property when you direct them to do so.

While the *Trespass to Property Act* does give the occupier the authority to arrest, exercising that authority does come with significant responsibilities. When exercising one’s authority to arrest, be extremely careful about using physical force to arrest and detain someone. Furthermore, in the case of the *Trespass to Property Act*, once you’ve arrested someone, you have **no** authority to release them. You must hold them for the police. And you should contact the police immediately.

People often tell us that they don’t report trespass incidents because the police won’t respond. While this may be true, your call concerning trespassing is of lower priority than a traffic accident, etc. you nevertheless should always call the police. At the very least, you’ve created a record of the incident. Over time, staffing levels are influenced by call volumes.

Trespass Penalties?

The “penalty” provisions in the *Trespass to Property Act* provide for both fines for convictions and for damage awards. Recent changes to the Act increased the maximum fine from \$2,000 to \$10,000. Unfortunately, OFA’s request to increase the minimum fine to \$500 was ignored. To the best of our knowledge, no one has ever received a maximum fine, even when it was \$2,000.

At the time a trespass case is in court, the property owner can request payment for damages caused by the trespasser. Recent changes to the Act removed the limit on damage awards. There is now no limit on the amount one can claim for damages, but you’ll need to demonstrate to the court that the amount reflects the damages caused.

For more information, read OFA’s [Trespass and Occupiers’ Liability](#) fact sheet.

Revised: August 1, 2024

