

The Trespass to Property Act

Several Saskatchewan statutes deal with the issue of trespass in specific circumstances. Section 41 of *The Wildlife Act, 1998* prohibits hunting without the consent of the landowner or occupier. Section 6 of *The All Terrain Vehicles Act* prohibits the operation of ATVs on private or Crown land without the consent of the owner or occupier. Section 25 of *The Snowmobile Act* provides that snowmobiles cannot be operated on private land within a city, town, village, or hamlet, or on rural private land without the consent of the owner or occupier. In addition, section 177 of the *Criminal Code* sets out a summary conviction offence regarding trespassing near dwelling houses at night.

Consent can be provided in writing, orally, electronic mail or through signage posted by the occupier indicating that access is allowed. The person accessing the property is required to prove they had reasonable grounds to believe they had consent to access the property.

The Trespass to Property Act is petty trespassing legislation of general application. It is 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. The Act seeks to balance the reasonable expectations of property owners or occupiers and those who want access to privately owned property for legitimate reasons. It does not apply to Crown resource lands or park lands that are used for public recreation purposes. However, leased Crown agricultural lands are dealt with in the same manner as privately owned property. The Act does not take away from Indigenous hunting rights as access to land will continue to be governed by Treaties, *The Natural Resources Transfer Agreement*, and the court decisions that have interpreted those rights.

The fact alone that entry in or on a premises is not prohibited by the Act or by notice given in accordance with the Act, is not implied consent by the occupier to entry on the premises.

The Act makes it an offence, without lawful authority, to:

- enter onto lands or other premises without the consent of the owner or other occupier;
- enter onto lands or other premises, after being requested not to do so by the owner or other occupier;
- engage in prohibited activities on the lands or other premises without the consent of the owner or other occupier;
- fail to leave lands or other premises, or to discontinue an activity, after being requested to do so by the owner or other occupier; and
- after leaving lands or other premises or discontinuing an activity pursuant to the request of an owner or other occupier, return to the lands or other premises or resume the activities.

Individuals contravening the Act are liable on summary conviction to a fine of up to \$5000.

It will be a defence to a charge under the Act for a person to prove that they reasonably believed that they had title to or an interest in the premises in question. It is also a defence that the person had the consent of an occupier of the premises or was acting under lawful authority, or that they had an honest and reasonable belief that they were acting with consent or under lawful authority.

An occupier owes no duty of care to a person entering onto the premises of the occupier in contravention of this Act except the duty not to:

- create a danger with the deliberate intent of doing harm or damage to the person; and
- do a willful act with reckless disregard of the presence of the person.

Nothing in this Act limits or affects any rights or remedies of an occupier at common law.