

Fencing on Private/Crown Land Boundaries

by Mary MacGregor

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Everywhere I go, people talk about the difficulties they are having with private property owners, whose land abuts Crown range land.

There were several instances last year of landowners killing or injuring livestock when driving them off unfenced private property next to a range tenure.

There are two issues involved in the discussion of animals at large. They are, whose responsibility is it to fence when the private landowner wants to keep cattle off his property?— and what are the remedies for harassment of livestock?

Fencing

The first rule about animals at large is the Livestock Act (B.C.), section 7, which says that:

1. Subject to subsection (2), animals at large in the following circumstances may be captured by a keeper, peace officer, person authorized by the director, the livestock owner or the owner of land on which the livestock is at large:
 1. livestock on enclosed land or in a pound district;
 2. stallions and bulls apparently over one year old on land other than land in a livestock district;
 3. swine on land other than land of the owner of the swine;
 4. game on land other than land of the owner of the game;
2. Animals are not subject to capture under subsection (1) where
 1. the animal is on the land of its owner
 2. the animal's owner has the consent of the owner of the land on which the animal is at large, or
 3. the animal's owner is permitted by or under this Act or the Range Act (B.C.) to have the animal at large.
3. Notwithstanding subsections (1) and (2), a person who is authorized to capture animals at large under subsection (1) is authorized to capture any livestock found at large on
 1. a highway listed in B.C. Reg. 26/58 in Schedule 1 of section 19.07 or Schedule 2 of section 19.08, or
 2. a prescribed highway or portion of a highway."

So where animals are lawfully at large under a range tenure, they are not subject to capture.

The second rule about animals at large is the Livestock Act, section 10, which says:

1. Subject to subsection (3), the owner of livestock is liable for damage caused by the livestock while the livestock is at large contrary to this Act or the regulations or any other enactment, and for the purpose of this subsection, livestock shall be deemed at large notwithstanding that it is tethered.
2. Subsection (1) does not apply where an owner establishes that his livestock was at large as a result of an act or omission of a person over whom he had no control or that he took reasonable care to ensure that his livestock was not capable of escaping and being at large contrary to this Act, the regulations or any other enactment.
3. A proceeding shall not be brought for trespass where livestock strays into unenclosed land that is located outside a pound district.

“Enclosed land” is defined for the purposes of the Livestock Act (not the Trespass Act (B.C.)) as “land that is surrounded by a natural or man made barrier sufficient to exclude or contain livestock.”

The Pound District Regulation to the Livestock Act sets up pound districts in various areas of the province. Inside a pound district you must fence your cattle in. Outside a pound district, that is not the case.

The effect of section 10(3) is that a landowner who chooses not to fence, cannot sue the livestock owner for any damage the livestock cause. That sort of claim fits into the legal category of “trespass” and so is forbidden.

However the Livestock Act does not come right out and say that the landowner must fence unwanted cattle out. It only says that he cannot seize cattle at large under a range tenure, and if he chooses not to fence his land he cannot recover compensation for any damage they do. It would be more convenient to be able to show an angry landowner a clear statutory statement that says that the landowner has to fence livestock out.

Since cattle are straying from Crown land, does the government have any responsibility to fence?

Under the Trespass Act, adjacent owners of deeded land are supposed to contribute 50% each to the construction of a “legal fence” between them. (We reprinted the “legal fence” regulation in an article entitled “Trespass I”.)

The Trespass Act provision about shared fence cost specifically does not apply to the provincial government. So there is no requirement on the Crown to contribute to boundary fencing between itself and a private landowner.

Harassment of Livestock

The following provisions of the Criminal Code apply to injury of livestock:

Section 444 provides for a penalty of up to five years imprisonment for “injuring or endangering” cattle. Section 445 provides for a penalty of up to six months imprisonment and a fine of \$2000 for injuring or endangering other animals. Finally, section 446 provides the same penalty for causing or permitting to be caused “unnecessary pain, suffering or injury to an animal.”

As well, the livestock owner has an action against the person who damaged or killed the livestock. This would normally be done in Provincial Court, Small Claims Division, and would result in compensation for the lost value of the animal and the cost of fixing it.

The difficulty with both of these proceedings is gathering the necessary evidence. The wrongdoer has to be identified. He or she may not give an accurate account of events. In that case, there has to be either an eyewitness who will give an accurate and believable account, or circumstantial evidence like tire marks, footprints, blood, ballistics information, or marks on a vehicle, that persuade a judge that the accused (in a criminal proceeding) or defendant (in a civil proceeding) did the act which led to the damage.

Unless the case can be easily proven, the RCMP will be reluctant to go to great lengths investigating it. Harassment of livestock will not be seen as having the same importance, or warranting the same intensity of investigation, as a kidnapping or murder. Without either an eyewitness or RCMP investigation of the circumstantial evidence, the livestock owner will have trouble proving his case in a lawsuit to recover damages.

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