

TRESPASS TO PRIVATE LAND

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This is the first of four articles about access to deeded land. In this article, we will look at the Trespass Act (B.C.). In the next article we will review the different procedure and remedies available through common-law "tort" (wrong) of trespass. In subsequent articles we will look at roads and trails, and the many and varied ways that public access to private land can be obtained.

Trespass Act

The Trespass Act (B.C.) says that a person found inside enclosed land without the consent of the owner, lessee or occupier is a trespasser. So is someone who remains if asked to leave, or who re-enters after having been asked to leave and having done so.

If someone is found on enclosed land, there is a presumption that he or she is there without the owner's permission. In other words, it is up to the trespasser to show that he or she has the permission of the owner, tenant, or occupier to be on the land.

Enclosed Land.

Enclosed land is defined as:

1. surrounded by a lawful fence defined under the Trespass Act;
2. surrounded by a lawful fence and a natural boundary or by a natural boundary alone; or
3. posted with signs prohibiting trespass according to the Act.

Note that unfenced land is included in the definition of "enclosed land" IF it is posted.

Lawful Fence.

A lawful fence is defined in the regulations, which are quoted in the next paragraph. However, a prosecution under the Trespass Act is not defeated only because the fence is not of a uniform height, or the spaces between the "bars, boards or rails" exceed 150 mm (about 6 inches).

The regulations describe a lawful fence as a fence substantially constructed from the ground to a height of at least 4 feet 6 inches, and consisting

1. of earth, stone, brick, concrete or iron
2. of logs, rails, boards or bars of wood or iron laid horizontally one above the other not more than 9 inches apart up to a height of 32 inches from the ground, and not more than 11 inches apart above that height, the bottom of the lowest log, rail, board or bar being at any point not more than 14 inches from the ground,
3. of upright posts, boards, palings, or pickets not more than 4 inches apart,

4. of woven standard gauge wire fencing secured to posts not more than 20 feet apart, with the lowest wire not more than 14 inches above the ground, the bottom and top wires to be not less than No. 9 $\frac{3}{4}$ gauge and the intervening wires not less than No. 12 $\frac{1}{2}$ gauge
5. of barbed wire not less than No. 12 $\frac{1}{2}$ gauge secured to posts not more than 24 feet apart, the lowest wire being not more than 14 inches from the ground, the wires being not more than 9 inches apart up to a height of 32 inches from the ground, and not more than 11 inches apart above that height, and being interlaced with cross wiring or fastened to wooden droppers or poles placed at regular intervals of not more than 6 feet,
6. of barbed wire not less than No. 12 $\frac{1}{2}$ gauge secured to posts not more than 16 $\frac{1}{2}$ feet apart, the lowest wire being not more than 14 inches above the ground, the wires being not more than 9 inches apart up to a height of 32 inches from the ground, and not more than 11 inches apart above that height, except that
 1. in the North and South Peace River Electoral Districts a legal fence of barbed wire shall consist of not less than 3 strands of barbed wire not less than No. 12 $\frac{1}{2}$ gauge secured to posts not more than 16 $\frac{1}{2}$ feet apart, the lowest wire being not more than 18 inches from the ground, the wires being not more than 16 inches apart up to a height of 34 inches from the ground, and not more than 14 inches apart above that height, and being fastened to wooden droppers or poles placed midway between posts, and
 2. in that portion of the Province bounded on the south by 53 degrees latitude, on the north by 56 degrees latitude, on the east by the summit of the Rocky Mountains, and on the west by the Pacific Ocean, a legal fence of barbed wire shall consist of 4 strands of barbed wire not less than No. 12 $\frac{1}{2}$ gauge secured to posts not more than 16 $\frac{1}{2}$ feet apart the lowest wire being not more than 16 inches from the ground, the wires being not more than 12 inches apart up to a height of 52 inches from the ground, or
7. a combination of the materials specified in any two or more of the paragraphs (a) to (f).

As well, a hedge at least 4 foot 6 inches high, and any river bank or other natural boundary (if it will keep cattle out of any land), and any unfordable water body, are deemed to be a lawful fence, including any suitably constructed gates and cattle guards.

NOTE that there is a different definition for a lawful fence between the boundary of private land and a railway company's land, and for protecting a stack of hay or grain.

The Trespass Act also contains the old Line Fences Act (B.C.) provision that makes adjacent property owners responsible for construction and repair of the fence between them. They are to share the reasonable costs of so doing.

Sign Posting Required.

Because of the difficulty of complying with the "lawful fence" regulation, to fit under the Act (and incidentally give yourself some Occupiers Liability Act (B.C.) protection), you must post a sign prohibiting trespass at each "ordinary access" to the enclosed land. You must post the sign so that it is clearly visible from the access where the sign is located, and the writing on it must be clearly legible in daylight. These requirements assume normal weather conditions. "Ordinary access" is not defined, and could mean footpaths as well as roads, if both exist. The Act goes on to say that substantial (rather than exact) compliance with the above provision is sufficient to prove that the land is enclosed land.

Note that a “No Hunting” sign is not adequate to prevent trespassing. The sign must say “Trespass prohibited” or “No Trespassing”, or similar content so that it is clear that trespass is prohibited. There is no requirement in the Act that the owner, tenant or occupier include his or her name or other information.

Offenses.

The trespasser commits an offence, and can be prosecuted under the Trespass Act. A person found on enclosed land must give his true name and address to the owner, tenant or occupier of the land, and if he does not do so, also commits an offence.

The investigation and prosecution of the offence is carried out by police and Crown counsel, like any other prosecution. A peace officer, including a conservation officer under the Wildlife Act (B.C.), can arrest a trespasser without warrant if he has reasonable and probable grounds to believe the person is on enclosed land without permission.

If the trespasser causes damage, he can be ordered to “make good all the damage”. If such an order is made, one cannot also sue for damages.

Of course the land owner’s challenge is to persuade the authorities that trespass is a serious matter and warrants their time and attention.

Penalty.

The penalty, if prosecuted for trespass, is under the Summary Conviction Act (B.C.), and is up to six months imprisonment or a fine of up to \$2,000.

Exemption for Land Surveyors.

There is a special exemption for land surveyors and their assistants when actually engaged in their duties. If you refuse to permit a land surveyor or assistant to enter your property, even if cultivated, you commit an offence and if convicted, are liable for imprisonment for up to two months, or a fine of not more than \$50. The surveyor must make good any damage he does.

Summary.

The Trespass Act provides that a person can be prosecuted for trespass, if the police, conservation officer, and Crown counsel are willing. If the police and Crown counsel are not willing to lay charges, then one can lay a private information and prosecute the charge with one’s own lawyer.

In the next article, we will compare the procedures and remedies under the Trespass Act, with the procedures and remedies available if the landowner sues the trespasser for the tort of trespass.