



Community Legal Information Association of Prince Edward Island, Inc.

Know Trespassing

Most of us have seen signs in places that say “No Trespassing”. Or we may have wondered if we could walk across a field, cross-country ski over someone’s land, or drive through private property to get to a beach. Many of us are unsure about the laws in this area. This pamphlet will give some information about the trespassing laws in Prince Edward Island. You may need to check with your lawyer or the police for more information about your specific situation.

What is trespassing?

Trespassing is entering another’s land or entering lands protected by the provincial *Trespass to Property Act* without permission or without a reason recognized by law.

Trespassing law originated in feudal England when people relied almost entirely on the produce of the land to survive. If people lost their lands, they lost their whole means of support. Trespass law developed so that people would not resort to violence to protect their lands and themselves.

Today, trespassing law can be found in provincial legislation, as well as the Criminal Code of Canada and the common law. This pamphlet will focus mainly on the PEI provincial laws about trespassing.

What is the PEI law that covers trespassing?

The PEI *Trespass to Property Act* was passed in 1984. It protects occupiers of premises. Occupiers are owners, tenants, or people who have control of the premises. Premises are lands, buildings, trailers, and other moveable structures.

What does this *Act* say is against the law?

You could be found guilty of trespassing and fined up to \$500 if you do any of the following activities without permission or legal justification:

- Remain on land or in buildings after being asked to leave
- Enter a lawn, garden, orchard, commercial berry growing area, golf course, cropland, tree plantation area, or Christmas tree management area – these all have special protection under the *Act*
- Enter a fenced or enclosed area
- Enter an area posted by a no trespassing sign
- Ignore a notice prohibiting an activity such as hunting, fishing, snowmobiling, mountain biking, and others
- Dump materials on another person’s land

- Remove a sign or notice put up by an occupier
- Disturb an occupier by unreasonable operation of a motor vehicle or by disorderly behavior - this could occur on or near an occupier's property

Police can arrest you and hold you in custody if they believe it is necessary to stop the behavior or prevent it from reoccurring or if they need to identify you. Vehicles used in the offence can be seized for up to 48 hours if police believe it is necessary to seize the vehicle to prevent re-offending. The person who claims the vehicle pays for towing and storage charges. If the operator of the vehicle was not the owner, the owner of the vehicle has 48 hours to provide police with the name and address of the operator, or the owner can be charged with the offence.

The occupier who has been trespassed against has the right to sue the trespasser in a civil action to recover damages.

If someone is convicted of an offence under this *Act* and the offence occurred in a public place, the court can forbid the person from returning to that place for up to six months.

What rights or defenses does the trespasser have, if any?

If you have a lawful and valid reason for being on the property, you cannot be convicted of trespassing. The reasons that are considered valid are outlined in the *Act* and include:

- You reasonably believed that you had a legal reason for being there.
- You had permission of the occupier or someone authorized by the occupier.
- You couldn't see or understand a sign forbidding entry or prohibiting a particular activity

Some situations, like emergencies, may also provide a legal excuse to trespass.

Is it possible to enjoy outdoor activities without fear of trespassing?

It will not be considered trespassing under the *Trespass to Property Act* if you carry out some sports and recreational activities on forest land. Forest land is defined in the *Act* as a wooded area, a forest stand, a tract covered by underbrush, barren ground, a marsh or a bog. You may hunt, fish, picnic, camp, hike, ski, or engage in other recreational activities including studying plants and animals on forest lands unless a sign prohibits entry or prohibits any of these activities. If there is a sign or notice posted, you must obey the sign or notice.

If you wish to carry out these activities on land other than forest land, you must have the permission of the occupier. Other kinds of lands include the following:

- an area that is apparently a tree plantation or a Christmas tree management area
- a special forestry study area
- the immediate area where any activity is apparently being carried out on woodlands for the purpose of harvesting a forest product
- a commercial berry growing area

If you own forestland and you do not want activities carried on there, you must post signs on your property indicating this.

How do I post notices on my property?

You may give written or verbal notice of restrictions on your property. If you wish to give written notice, you can put up signs that say what you wish to restrict – for example, “No Trespassing”, “No Hunting”, “No Salespeople”, “No Snowmobiles”. The sign must be visible in daylight from the usual approaches to the property and the meaning of the sign or notice must be clear. You may post only part of your property or all of your property.

Verbal notice can be given when someone enters your property. You can ask the person to leave and you must give him or her reasonable time to leave. If the person does not leave, you can call the police.

Does the *Act* restrict vehicle use on someone’s property?

Operators of recreational or motor vehicles such as cars, ATV’s, snowmobiles, motorboats, and vessels must abide by the same trespassing guidelines as anyone not in a vehicle (see question # 3). An operator does not have to seek permission to drive on lands not found in the list in question #3.

However, if you use a vehicle to trespass on other lands or to disturb an occupier, the police can charge you. It is against the law to disturb an occupier by disorderly behavior or unreasonable recreational use of your vehicle on or near the occupier’s property. The police can seize your vehicle for up to 48 hours to prevent the continuation or repetition of the disturbance.

How can I get a trespasser to leave my property?

If you have land that is specially protected under the *Act* (see question #3 for a list of these) or if you have signs posted on your land, you can call the police or RCMP immediately if someone trespasses on your property.

If no sign is posted, ask the trespassers why they are there – if the reason doesn’t satisfy you, you can then ask them to leave. If they refuse to leave after you have asked them to do so, you can call the police or the RCMP.

Can a trespasser be ordered to pay for damage to my property?

Under the *Act*, the court can order the trespasser to pay money to you for damages. This is called restitution. You must apply for this for it to be ordered. To make an application, contact the Crown Attorney or your own lawyer before the trespasser appears in court. The maximum amount the court can order is \$2000. This is in addition to any fine ordered by the judge for the offence of trespassing.

If your damages are higher than \$2000, or if you choose not to apply for the restitution, contact a lawyer who will help you look at other options.

If my neighbour’s children wander into my yard, are they trespassing?

The *Trespass to Property Act* says that no child under the age of twelve may be prosecuted for trespassing. Children often wander from their own yards, and usually the situation can be dealt with by asking them to leave or by calling their parents.

Does the *Act* cover stores or shopping centers?

There is a special provision in the *Act* covering shopping centers that have four or more stores. A storeowner or police must first tell you to leave and warn you that you may be arrested if you don't leave. You can be arrested if you do not leave or you return after being warned. If you are found guilty of a trespassing offence, you can be barred from that location for up to six months.

Am I responsible for the safety of people who are on my property?

This area is covered by a different *Act*, the *Occupiers' Liability Act*, which says that you must take reasonable care to see that persons and their possessions legally entering your property are safe while there. This applies whether the danger may be created by the condition of the property or by the activity being carried on there.

Can I go on someone else's land to get to a beach?

If the land is posted with a sign or notice or if the land is of the kind specially protected under the *Act* (see question #3 for a list of these), you cannot go on it to get to a beach. If it is forest land and not posted, you can walk or drive over it to get to a beach without asking permission.

What other laws deal with trespassing?

The Criminal Code of Canada says it is a criminal act to trespass at night. If you loiter or prowl on someone else's property at night, you can be charged with a criminal offence.

Other sections of the Criminal Code deal with the use of force to stop or remove a trespasser. A trespasser must be asked to leave and given a reasonable opportunity to do so peacefully before any force can be used. After that, you may use only as much force as necessary to remove the trespasser. You run the risk of being charged with assault or being sued in civil court for assault if you use too much force in removing someone from your property.

Trespassing is also covered by our Common Law, which is law that has developed over time rather than being passed by governments. In Common Law, you can sue a trespasser to receive compensation (money) for damages. You can also ask for an injunction, or court order, stating that the trespass is not to happen again.

Summary

Here is a list of do's & don'ts about trespassing:

Don'ts

- Don't enter without permission: a lawn, a garden, an orchard, a golf course, a fenced area, a commercial berry growing area, cropland, a Christmas tree management area, or a tree plantation area.
- Don't dump or deposit materials of any kind on someone else's property.
- Don't remove a sign or notice that has been posted.
- Don't remain on someone's property if you have been asked to leave.
- Don't disturb an occupier by unreasonable recreational use of a motor vehicle on or near the occupier's property.
- Don't disturb an occupier by disorderly behavior.

- Don't enter or carry out an activity where a sign or notice is posted saying you cannot.

Do's

- Do respect the right of others to enjoy their property.
- Do check if you are not sure whether or not you are trespassing on private property.
- Do obey signs posted on property.
- Do enjoy your own property and explore this beautiful Island, keeping in mind the laws about trespassing.

This pamphlet contains general information about the law. It is not a complete statement of the law in this area and is not a substitute for legal advice. To receive legal advice, you need to speak to a lawyer.

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For more information, you may telephone CLIA at 892-0853 or 1-800-240-9798, visit our website at www.cliapei.ca or email us at clia@cliapei.ca .

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