

Natural Legacies:

Your Educational Guide to Conservation in BC



Land Trust's Liability Towards Trespassers

Landowners and occupiers in British Columbia, particularly those in rural or remote areas of the province, may find that they have issues with trespassers. While the majority of people know that they are trespassing if they step onto someone's suburban lawn, many do not feel the same when they use unoccupied land for their own purposes and without permission.

This may become an issue for land trusts in particular, if they are trying to control access to lands or restrict certain activities on the land for conservation purposes or as accident prevention. Preventing accidents is related to the further issue of liability: a trespasser may be injured or die while on the land without the knowledge or permission of the landowner or occupier. It is important to know what steps should be taken to limit the degree to which the courts might find the landowner or occupier responsible for harm to trespassers.

What Constitutes Trespass in British Columbia

Trespass to land, in its simplest form, is the act of being on another's property without that person's permission. There are two ways the law can deal with trespass: either under the traditional common law tort of trespass, or in British Columbia, as a provincial offence under a statute named the *Trespass Act*.¹

LAND TRUST'S LIABILITY TOWARDS TRESPASSERS



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Common Law Trespass

Trespass at common law is considered to be actionable *per se*, meaning that there is no requirement for any actual damage to have happened to the property.² Consent is a full defense to trespass; therefore anyone on the land with the occupier's permission is not a trespasser. However, someone who mistakenly believes they have permission is still considered to be trespassing.³

Statutory Form of Trespass

The *Trespass Act* lays out the statutory form of trespass in British Columbia, and specifies what constitutes the provincial offence of trespass in the province. The accompanying *Trespass Regulation*⁴ lays out specific details regarding what constitutes a lawful fence under the Act.

The Occupiers Liability Act

In British Columbia, occupiers' liability is controlled through the *Occupiers Liability Act*.⁵ The *Occupiers Liability Act* regulates the duty owed by the occupier to all other people on their land, including both invited guests and trespassers.

Other Information

A land trust that is the owner in fee simple of land could bring an action in trespass under the common law, could recover damages under the *Trespass Act*, and could also be liable for any injuries sustained by those on the land as an occupier under the *Occupiers Liability Act*.

The common law definition of trespassing differs from the offence of trespassing under the *Trespass Act*. Trespassing under the common law does not require that the person knew they were trespassing. The occupier can bring a civil action directly in trespass; however, if there was no actual physical damage to the property, the court will only award nominal damages. Under the *Trespass Act*, there are specific notice requirements requiring signage; fences and/or natural boundaries; or oral or written notice to the trespasser. However, once notice is given, peace officers can enforce the *Trespass Act* and the province can charge a trespasser with an offence. The occupier may also make a request to the court to recover expenses relating to any damage caused by the trespasser.

There are two different duties of care owed under the *Occupiers Liability Act* in British Columbia, which covers injuries sustained by someone on another person's property: the regular duty to take reasonable care that the person is safe while using the premises, and the limited duty not to intentionally create danger or act with reckless disregard for the person's safety. If the land is considered rural property as per the *Occupiers Liability Act*, the land trust as owner would only owe a limited duty towards trespassers. The definition of "rural" under the *Occupiers Liability Act* appears to apply to a large portion of land trust properties, although it is unclear at present whether forested or undeveloped properties within municipality boundaries would be considered rural. The lower duty of care towards trespassers on rural property applies to any who are on the land without permission; there is no requirement for notice through the use of signs or fences.

¹ *Trespass Act*, RSBC 1996, c 46

² *Banner v Jack Decoteau Excavating (1997)*, 51 BCLR (3d) 62 (SC) at para 27, <http://www.canlii.org/en/bc/bcsc/doc/1997/1997canlii567.html>

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⁴ *Trespass Regulation*, BC Reg 85/1962, http://www.bclaws.ca/civix/document/id/complete/statreg85_62

⁵ *Occupiers Liability Act*, RSBC 1996, c 337, http://www.bclaws.ca/civix/document/id/complete/statreg/96337_01