

Trespassing on Farmlands- What You Need to Know

WHAT IS TRESPASS?

There are two types of trespass: Criminal or Quasi-Criminal and Civil. In Nova Scotia, criminal or quasi-criminal trespass falls under the Protection of Property Act (Chapter 363 of the Revised Statutes, 1989). Under this act, it is an offence to enter private property consisting of lawns, gardens, orchards, vineyards, golf courses, farmlands, tree plantation, Christmas tree management areas, railway lines, fenced-in properties, or any property where a sign has been posted prohibiting access, without permission. No damage needs to occur to commit trespass. But, if the property owner suffers damage because of trespass they may be able to seek an order for damages or sue the trespasser privately (civil trespass).

Permission

Permission to enter a property does not need to be given in advance. People can enter a private property during daylight hours with implied consent. For example, if there is a path up to the front door to a residence and there are no signs or warnings to stay off the property. Implied permission also extends to positions, like a delivery driver.

Trespass can also occur when a person remains on an individual's land after permission has been withdrawn.

Disorderly Behaviour

It is also an offence under the Act to disturb a property owner with “disorderly behaviour.” This offence does not even require that the offender be physically on the owner's property; it applies even if they are only “near” the property while behaving in a disorderly way.

Signage



Although entering property without permission is trespass, it is recommended that 'No Trespassing' or 'Restricted Access' signage be posted. In addition, 'No Hunting' can be posted as well during hunting season. Posted signage around fields or driveways removes implied consent as you are clear in your directive.

Exceptions

Trespass on forest land (wooded area, forest stand, tract of land covered in underbrush, barren ground, marsh or bog) is not subject to prosecution. Recreational activities include: hunting (as defined in the Wildlife Act), fishing, picnicking, camping, hiking, skiing, or the study of flora or fauna. Crossing a field to enter forest land is trespass if permission is not obtained.



Examples of Trespass- Understanding Situations

EXAMPLE 1: SNOWMOBILING NEIGHBOUR

You have a neighbour who enjoys riding ATV's and snowmobiling, and you gave them permission to snowmobile on your 20 acres of fields. You met with them to discuss what fields they were limited to and showed them the entry and exit points on the fields. Your neighbour goes snowmobiling with a friend on an ATV and they enter fields that you did not want them going on. You had newly seeded fall rye in this field and it has sustained damage.

What can you do?

Your neighbour and their friend have both committed trespass because they entered property that they did not have permission to be on. It is up to you on how to handle the situation and if you revoke all permission to be on your fields. If you do not want them to have access you need to tell them (in writing is best) that they are no longer permitted to be on your fields. Because there is damage to crops, you have the right to seek compensation. This requires legal action which you are responsible for initiating and would be handled in civil courts.

EXAMPLE 2: LOST SALES PERSON

You come out of the barn to find a salesperson coming out of your garage. You go over to ask them what they are looking for and why they are on your property. They explain that they are selling something that is relevant to your farm business. After talking for a few minutes they get in their vehicle and leave.

What can you do?

While the salesperson did not have your permission to be in your garage, this situation is a little different. In this case there are no damages and they were there for an intended purpose, to speak with you. This can be considered implied consent as your driveway is free for vehicles to come and go and they were looking to offer you something for your business. If you do not wish to buy anything from them you can tell them you are not interested and they shouldn't visit again. You can consider posting your cell number for visitors to call when they arrive. And, you may want to post signage on buildings that people should not enter. Implied consent no longer applies as you asked them not to return.

