

TRESPASS ACT

CHAPTER 3

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REVISION SCHEDULE – AMENDMENT TO OTHER ACT

Definitions

1 In this Act:

“**authorized person**” means a person authorized by an occupier of premises to exercise a power or perform a duty of the occupier under this Act;

“**enclosed land**” includes land that is

- (a) surrounded by a lawful fence,
- (b) surrounded by a natural boundary,
- (c) surrounded by a lawful fence and a natural boundary, or
- (d) posted, in accordance with section 4 (1) [*methods of posting or giving notice*], with signs prohibiting trespass;

“**lawful fence**” means a lawful fence as defined by regulation;

“**occupier**”, in relation to premises, means the following:

- (a) in the case of premises that are
 - (i) land, including enclosed land, foreshore and land covered by water,
or
 - (ii) property described in paragraph (b) (i) of the definition of
“premises”,

a person entitled to maintain an action for trespass in respect of those premises;

Section 2

- (b) in the case of premises that are property described in paragraph (b) (ii) or (iii) of the definition of “premises”, a person lawfully entitled to possession of those premises;
- (c) in the case of premises that are water, a person described in paragraph (a) of this definition in relation to the land under the water;
- (d) in any case, a person who has
 - (i) responsibility for and control over the condition of the premises or the activities carried out on or in the premises, or
 - (ii) control over persons allowed to enter the premises;

“**owner**”, in relation to land, means a person registered in the land title office as the owner of the estate in fee simple of the land;

“**premises**” means

- (a) land, including
 - (i) enclosed land, and
 - (ii) foreshore and land covered by water, and
- (b) anything on the land, including
 - (i) a building or other permanent structure,
 - (ii) a ship or vessel, train, railway car or vehicle, except while in operation,
 - (iii) a trailer or a portable structure designed or used as a residence, for shelter or to house a business, and
 - (iv) water;

“**vehicle**” has the same meaning as in the *Motor Vehicle Act*.

Trespass prohibited

- 2 (1) Subject to section 3, a person who does any of the following commits an offence:
- (a) enters premises that are enclosed land;
 - (b) enters premises after the person has had notice from an occupier of the premises or an authorized person that the entry is prohibited;
 - (c) engages in activity on or in premises after the person has had notice from an occupier of the premises or an authorized person that the activity is prohibited.
- (2) A person found on or in premises that are enclosed land is presumed to be on or in the premises without the consent of an occupier of the premises or an authorized person.

- (3) Subject to section 3, a person who has been directed, either orally or in writing, by an occupier of premises or an authorized person to
- (a) leave the premises, or
 - (b) stop engaging in an activity on or in the premises
- commits an offence if the person
- (c) does not leave the premises or stop the activity, as applicable, as soon as practicable after receiving the direction, or
 - (d) re-enters the premises or resumes the activity on or in the premises, as applicable.

Defences to trespass charge

- 3** A person may not be convicted of an offence under section 2 in relation to premises if the person's action or inaction, as applicable to the offence, was with
- (a) the consent of an occupier of the premises or an authorized person,
 - (b) other lawful authority, or
 - (c) colour of right.

Methods of posting or giving notice

- 4** (1) For the purposes of paragraph (d) of the definition of "enclosed land" in section 1, signs must be posted so that, in daylight and under normal weather conditions, from the approach to each ordinary point of access to the enclosed land,
- (a) a sign is clearly visible,
 - (b) if the sign contains writing, the writing is clearly legible, and
 - (c) if the sign uses graphic representation, the graphic representation is clearly visible.
- (2) For the purposes of section 2 (1) (b) or (c) [*notice from occupier or authorized person*], notice may be given
- (a) orally or in writing, or
 - (b) by means of a sign posted at or near an ordinary point of access to the premises so that, in daylight and under normal weather conditions, from the approach to the ordinary point of access, the sign satisfies the requirements of subsection (1) of this section.
- (3) A sign, posted in accordance with subsection (2) (b), that
- (a) names an activity and has an oblique line drawn through the name, or
 - (b) shows a graphic representation of an activity and has an oblique line drawn through the graphic representation
- is sufficient for the purpose of giving notice that the activity is prohibited.

Section 5

- (4) In a prosecution for an offence under section 2 (1), proof that a sign that complies with subsection (1) or (2) (b) of this section, as applicable, was posted at the ordinary point of access used by the defendant to enter the premises is sufficient for the purpose of establishing, as applicable, that
- (a) the premises are enclosed land, or
 - (b) notice was given for the purpose of section 2 (1) (b) or (c).
- (5) Notice given under this section may relate to all or a part of premises and different notices may be given or posted in relation to different parts of premises.

Offence to remove, alter or deface posted signs

- 5** (1) A person, other than an occupier or authorized person, must not remove, alter or deface signs posted for the purpose of section 4 (1) or (2) (b).
- (2) A person who contravenes subsection (1) commits an offence.

Trespasser must give name and address

- 6** (1) On the demand of an occupier of premises, or of an authorized person, who has reasonable grounds to believe that a person is on or in the premises, or was on or in the premises, in contravention of section 2 (1) or (3) [*trespass prohibited*], the person must provide the person's correct name and address to the occupier or authorized person.
- (2) A person who contravenes subsection (1) commits an offence.
- (3) A person who contravenes subsection (1) and remains on or in the premises commits an offence.

Arrest without warrant

- 7** (1) In this section, "**peace officer**" means
- (a) a peace officer, as described in paragraph (c) of the definition of "peace officer" in section 29 of the *Interpretation Act*, or
 - (b) a conservation officer, as defined in section 1 (1) of the *Environmental Management Act*.
- (2) A peace officer may arrest without warrant a person found on or in premises if the peace officer believes on reasonable and probable grounds that the person is committing an offence under section 2 [*trespass prohibited*] in relation to the premises.
- (3) If a peace officer believes on reasonable and probable grounds that a person has committed an offence under section 2 and has recently departed from the premises, the peace officer may arrest the person without warrant if
- (a) the person refuses to give the person's name and address to the peace officer on demand, or

- (b) the peace officer believes on reasonable and probable grounds that the name or address given by the person to the peace officer is false.

Court may order compensation

- 8 (1) The Provincial Court, on application by an occupier of premises or another person injured, may order a person convicted of an offence under section 2 [*trespass prohibited*] or 5 (2) [*offence to remove, alter or deface posted signs*] in relation to those premises to pay restitution for the damage or loss sustained by the occupier or other person as a result of the commission of the offence.
- (2) If an order is made under subsection (1) against a defendant, no action for damage for trespass lies against the defendant for the damage or loss sustained by the occupier or other person as a result of the commission of the offence.

Prosecution not defeated by variation in lawful fence

- 9 The prosecution of a person for an offence under section 2 (1) (a) [*entry onto enclosed land*] is not defeated only because
 - (a) the lawful fence is not of a uniform height, or
 - (b) the spaces between the bars, boards or rails of the lawful fence, or any of them, are larger than 150 mm.

Owners in rural area responsible for lawful fence

- 10 (1) Unless otherwise agreed, the owners of adjoining land in a rural area must make, keep up and repair the lawful fence and any natural boundary between their respective land.
- (2) Each of the owners is liable to the other for 1/2 of any cost reasonably incurred for the purposes of subsection (1).
- (3) This section is not binding on the government.
- (4) This section does not apply on treaty lands.

Section 5 of the *Offence Act* does not apply

- 11 Section 5 [*general offence to contravene legislation*] of the *Offence Act* does not apply to this Act or the regulations.

Power to make regulations

- 12 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 [*powers to make regulations*] of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may, by regulation, do one or more of the following:
 - (a) define a lawful fence for the purposes of this Act in the area described in the regulation;

- (b) define a lawful fence for the purpose of dividing the right of way, grounds or property of a railway company to which the *Railway Act* applies from other land, whether belonging to the railway company or not;
- (c) define a lawful fence for the purpose of protecting any stack of hay or grain.

REVISION SCHEDULE – AMENDMENT TO OTHER ACT

Miscellaneous Statutes Amendment Act (No. 3), 2010

- 1 Section 31 of the Miscellaneous Statutes Amendment Act (No. 3), 2010, S.B.C. 2010, c. 21, is amended by striking out “Section 3 (4)” and substituting “Section 10 (4)” and by striking out “Trespass Act, R.S.B.C. 1996, c. 462,” and substituting “Trespass Act”.*