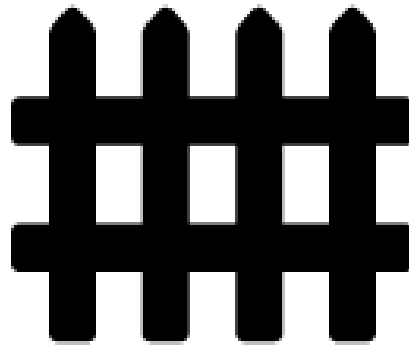




Type of law:
CRIMINAL LAW

A 2018 Alberta Guide to the Law

Trespass



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GENERAL

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What is Trespassing?

Trespassing is commonly understood as someone physically intruding, without permission or authorization, on another person's property. If a person was permitted to be on another's property but were then asked to leave and refused to leave, they would be considered as trespassers the moment they lost the permission to be on another's property.

Possible Consequences of Trespassing

1. A trespasser could be sued.
2. A trespasser could be charged with an offence under the:

Trespass to Premises Act

If a trespassing charge was made under this Act, it must be shown that the alleged trespasser was informed of their lack of permission to be on the property.

Under both of these Acts, the trespasser could be fined up to \$2000 for a first offence under that Act and up to \$5000 for subsequent offences.

Petty Trespass Act

Notice is generally required before a person can be said to have trespassed; however, this Act does waive the requirement of notice for certain types of property. These types of property are lawns, gardens, land used for cultivation, areas that are separated by a fence and/or natural boundary (eg. river), and other enclosed areas that can be reasonably seen as restricting access. Therefore, a trespassing charge made under this Act requires that the alleged trespasser had notice or that they were on the specified types of property.

What is Notice?

When a person is "given notice", they are being informed of something. In the case of trespassing, they are being informed that they are not allowed to be on the property.

Notice can be given:

- Orally;
- In writing; or
- By posters or signboards visibly displayed:
 - o At all places where normal access is obtained to the land, and
 - o At all fence corners or, if there is no fence, at each corner of the land

Criminal Code of Canada

There are several offences that may include an element of trespassing, but trespassing, on its own, is not an offence under the Criminal Code except for trespassing at night. Trespassing at night occurs when an individual is on someone's property near their home without permission. Night is defined as the period of time between 9:00PM and 6:00AM.

Trespassing at Night is considered a summary charge, which generally means that the Crown will seek a fine instead of imprisonment if the trespasser is convicted.

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SPECIAL NOTE: *There are several types of trespassing; however, this pamphlet focuses on how "trespass" is commonly used and understood as being **in relation to property**.*

What is Trespass and When Does It Occur?

Trespassing is commonly understood as someone physically intruding, without permission or authorization, on another person's property. If a person was permitted to be on another's property but were then asked to leave and refused to leave, they would be considered as trespassers the moment they lost the permission to be on another's property.

What Are Potential Consequences If Someone Is Caught Trespassing?

If an individual is caught trespassing, they could be charged criminally, fined, and/or be sued for money by the owner/occupier of the property even if no actual damage occurred and no criminal charges were laid. If there was damage, the owner/occupier could ask that the trespasser pay a certain amount specifically for covering the loss due to the damage. If the owner/occupier is suing the trespasser, they do not necessarily have to prove that the trespasser had intended to trespass.

Note, even if criminal charges were laid but the individual was later found not guilty, they could potentially still be sued. This is because two separate court systems are involved. Suing someone happens in the civil court system while criminal charges are dealt with in the criminal court system. This distinction is important because the purpose of each system and their possible outcomes are very different.

In the case of trespassing, the **civil** route has the purpose of essentially compensating the owner/occupier for the "wrongful act" against them and the owner/occupier could potentially receive financial compensation for the act as well as any damages to the property. The alleged trespasser would then be liable to pay.

With the **criminal** route, a trespassing charge is between the Crown and the accused. A conviction will not directly benefit the owner/occupier on whose property the accused had allegedly trespassed on but the accused will, absent a serious related criminal record, likely receive a fine and have the conviction recorded on their criminal record, although they may be able to register in an Alternative Measures Program.

What Are The Laws Regarding Trespassing?

There are several laws regarding trespassing. If an individual is found to have broken one of these laws, they are considered to have committed an offence and could potentially be arrested, charged, fined, and/or imprisoned. An arrest can be made by a peace officer, the owner/occupier of the property, or an agent of the owner/occupier.

Petty Trespass Act (Provincial Law)

The *Petty Trespass Act* is a provincial statute and is generally inapplicable to Crown lands unless there are certain dispositions (i.e. special conditions and restrictions) that limit public access to the Crown land. Crown lands are lands that are owned by the provincial or federal government.

The *Petty Trespass Act* generally applies to everyone for all other lands and dictates that every person is trespassing when they do not have the permission of the owner/occupier of the land to enter, or continue to be on, the premises. They are guilty of trespassing even if no damage was incurred on the land.

Notice Requirements

Notice under the *Petty Trespass Act* refers to informing people when they are not permitted to be on someone's property.

Under the *Petty Trespass Act*, notice is not required when the land:

- Is a lawn, garden, or land that is under cultivation,
- That is surrounded by a fence, a natural boundary, or a combination of both, or
- That is enclosed in a manner that indicates the owner/occupier's intention to keep people off the land or to keep animals on the land.

Notice is required in all other cases and can be given:

- Orally;
- In writing; or
- By posters or signboards visibly displayed
 - At all places where normal access is obtained to the land, and
 - At all fence corners or, if there is no fence, at each corner of the land.
 - **Note:** It is illegal to tear down, remove, damage, deface, or cover any of these signs

Any person found committing a trespass can be arrested without warrant by a peace officer or by an owner/occupier, or agent of the owner/occupier. They may be then taken into police custody before being brought to the nearest judge or justice of the peace.

If a motor vehicle is found to be trespassing, the driver will be liable for the trespassing offence and,

generally, the passengers are not.

Exceptions to Trespass under the Petty Trespass Act

Under the *Petty Trespass Act*, if the person who is allegedly trespassing can prove that they had a right or authority by law to be on the land, then they are not going to be found liable for trespassing. For example, if firefighters had to go on your property to handle an emergency and did not leave even when you asked them to leave, they are not going to be found guilty of an offence as they do have the authority to respond to certain emergencies and force their entry if necessary.

Additionally, it is presumed that a person is not trespassing if they were using a pathway that is specifically used to access the door of a building for a lawful purpose. This means that you are not automatically trespassing the minute you begin using the pathway to the door. However, if you get to the door and are told to stay off the premises, you must leave and you cannot use the pathway for any purpose other than to leave.

Trespass to Premises Act (Provincial Law)

The *Trespass to Premises Act* is another provincial statute regarding trespassing. It differs from the *Petty Trespass Act* because it can apply to Crown land and requires notice to be given before a person can be found liable to having committed a trespass.



Notice is required and can be given:

- Orally;
- In writing; or
- By posters or signboards visibly displayed
 - At all places where normal access is obtained to the land, and
 - At all fence corners or, if there is no fence, at each corner of the land

If a motor vehicle is found to be trespassing, the driver will be liable for the trespassing offence and, generally, the passengers are not.

Any person found committing a trespass can be arrested without warrant by a peace officer or by an owner/occupier, occupier, or agent of the owner/occupier or occupier. They may be then taken into police custody before being brought to the nearest judge or justice of the peace.

Exception to Trespass under the Trespass To Premises Act

Nothing in the Act extends to a case where the trespasser acted under a fair and reasonable belief that he or she had a right to do the act complained of.

Criminal Code of Canada (Federal Law)

The *Criminal Code of Canada* is a federal statute. There are several offences that may include an element of trespassing, but trespassing on its own is not an offence under the Criminal Code except for **trespassing at night**. You are trespassing at night if you “loiter” or “prowl” someone's property near their home without their permission, or you possess some other “lawful excuse”. **Night** is defined as the period of time between 9:00PM and 6:00AM.

Common Questions Regarding Trespass

I received a ticket for trespass. What does this mean?

Most trespass tickets in Alberta are issued under the *Trespass to Premises Act* or the *Petty Trespass Act*. Under each of these Acts, a first offence results in a fine not exceeding \$2000 while subsequent offences can result in a fine of up to \$5000.

Do trespass laws apply to public places?

The *Petty Trespass Act* does not generally apply to Crown lands, which can be open to the public; however, the other laws can apply to public places. That being said, public places may be subject to bylaws that restrict when the public is permitted to access the public place. Additionally, if you are using a public place for something other than its purpose, you could be found trespassing. For example, if you camp at Sir Winston Churchill Square in Edmonton, you could be charged with trespassing as the public space is not intended for camping.

What does "notice" mean? What if I didn't know that there was notice given?

"**Notice**" refers to how people are informed of whether or not they are not allowed on property.

Notice can be given:

- Orally;
- In writing; or
- By posters or signboards visibly displayed
 - At all places where normal access is obtained to the land, and
 - At all fence corners or, if there is no fence, at each corner of the land
 - **Note:** It is illegal to tear down, remove, damage, deface, or cover any of these signs

If the person providing notice followed all the sign requirements, then they will be considered to have provided sufficient notice even if you were not informed specifically.

What if I thought I had a right to be on the property?

You can still be sued for trespass even if you did not intend to trespass.

To be charged with an offence under the *Petty Trespass Act* or the *Trespass to Premises Act*, it would have to be proved that you were informed that you were not allowed on the property or that the owner/occupier had used appropriate signs to meet the requirements of sufficient notice.

Are there any defenses to trespassing?

Under the *Petty Trespass Act*, if the person who is allegedly trespassing can prove that they had a right or authority by law to be on the land, then they will not be found liable for trespassing. Additionally, it is presumed that a person is not trespassing if they were using a pathway that is specifically used to access the door of a building for a lawful purpose.

Under the *Trespass to Premises Act*, nothing in the Act extends to a case where the trespasser acted under a fair and reasonable belief that he or she had a right to do the act complained of.

Additionally, if you were not given notice and there were no signs, then you cannot be found guilty of trespassing. Note that if you were given notice, it is not a defense to say you forgot.

Can I be arrested for trespass?

Yes. A trespasser can be arrested by a peace officer, an owner, an occupier, or an agent for the owner/occupier of the property. If someone other than a peace officer arrests a trespasser, they must bring them to a peace officer as soon as possible. The person who catches a trespasser is also allowed to reasonable search the trespasser while they are being detained. The reason that a trespasser is being searched must be related to the reason that the trespasser is being detained or for safety reasons.

What can I do if somebody is trespassing on my property?

According to section 35 of the *Criminal Code of Canada*, everyone who is in peaceable possession of property is justified in defense of their property **if their actions are reasonable in the circumstances**. This law is relatively new and complicated, so detailed legal advice should be sought by property owners who wish to understand their rights fully in this regard.



If I am sleeping on the sidewalk, is it trespassing?

You can be ticketed anytime you set up a tent or any structure that could obstruct the flow of traffic on sidewalks or public places.



It is an offence to make 'unauthorized use' of parkland, which is defined as exercising dominion or control over an area by placing any structure on parkland. You are prohibited from setting up any type of abode on parkland, and are not permitted on parkland between the hours of 11p.m. and 5a.m., or when a park is closed.

What happens if the City of Edmonton discovers me sleeping on parkland?

Step 1: A call is made to 311 reporting the campsite (happens the same day as the discovery)

Step 2: Park Rangers are notified to visit the campsite (within 24 hours of the 311 call)

If the campsite is inactive, Parks Operations will clean up the camp within 3-5 days and the issue will be considered resolved.

If the campsite is active, the City of Edmonton will proceed to Step 3.

Step 3: A Boyle Street Community Services Street Outreach Worker will visit the site within 2 days

Step 4: The Outreach Worker will address issues where possible

Step 5: The campsite occupants will be given notice to vacate the campsite within 24 hours

Steps 6 & 7: The campsite is added to the clean-up schedule and cleaned up within 3-5 days

WHO CAN I CALL FOR MORE HELP OR INFORMATION?

Legal Resources for a *Criminal Charge of Trespassing*

Provincial Court Clerks – Criminal	Edmonton: 780-427-7868
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Assists with and provides information for Provincial Court Criminal matters regarding judicial procedures, court appearances, trial dates, adjournments, outstanding warrants, summonses, subpoenas, witness fees, and payment of fines. It is not their role to provide you with legal advice.

The criminal division does not handle traffic matters.

Student Legal Services – Criminal Law Project #203, 9924 106 Street NW Edmonton, AB T5K 1C7	Ph: 780-492-8244 Admin: 780-425-3356 Fax: 780-420-0065
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Assists adults who have been charged with an offence but are unable to afford a lawyer or qualify for Legal Aid Alberta. A law student will volunteer their time to provide free legal assistance where they can act as an agent for you while acting under the supervision of advising lawyers.

Legal Aid Society of Alberta Revillon Building Suite 600 – 10320 102 Avenue Edmonton, AB T5J 4A1	Toll Free Ph: 1-866-845-3425
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Functions to assist low-income Albertans with certain types of legal matters. Assistance is provided through information, referrals, advice, and/or representation, depending on what your matter is and which eligibility guidelines you meet.

Elizabeth Fry Society of Edmonton 10523 100 Avenue NW Edmonton, AB T5J 0A8	Ph: 1-866-421-1175
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Will assist low-income Albertans with certain types of legal matters. Assistance is provided through information, referrals, advice, and/or representation, depending on what your matter is and which eligibility guidelines you meet.

Fine Options Program 14605 134 Avenue NW Edmonton, AB T5L 4S9	Ph: 780-422-0730
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This program is run by the City of Edmonton for adult offenders to work off fines instead of making payments or spending time incarcerated. Participants complete community work service for a specified number of hours, depending on how much of their fine they wish to pay off through this program. You must use your court papers and time to pay notice to register for the program.

Legal Resources for a *Civil Action* Regarding Trespassing

Provincial Court Clerks – Civil	Edmonton: 780-422-2508
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Assists in and provides information for Provincial Court Civil matters regarding judicial procedures, court appearances, trial dates, adjournments, outstanding warrants, summonses, subpoenas, witness fees, and payment of fines. It is not their role to provide you with legal advice.

Student Legal Services – Civil Law Project 11036 88 Ave NW Edmonton, AB T6G 0Z2	Ph: 780-492-8244 Admin: 780-492-2226 Fax: 780-492-7574
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Caseworkers who are law students can provide basic legal information on various topics in civil law, such as landlord-tenant matters, employment, and certain small claims. They can also provide information on various resources if you require more in-depth assistance. The caseworkers are also able to act as an agent in certain civil law matters, such as with Residential Tenancy disputes, wrongful dismissal, and WCB hearings. These caseworkers are able to provide free assistance and will work on your matter under the guidance of an advising lawyer. Keep in mind that the services available are subject to eligibility criteria, except for legal information and referrals.

Edmonton Community Legal Centre (ECLC) Telus House, South Tower Second floor, 10020 100 Street Edmonton, AB T5J 0N3	Ph: 780-702-1725 www.eclc.ca
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Provides legal services for low-income Albertans in certain areas of family and civil law. These services include free legal information, referral, and legal education. ECLC may also be able to provide legal advice if you fall within their eligibility criteria. Much of their legal information can be found on their website, as well as the time, dates, and locations of their public legal education programs. Additionally, ECLC has a fee waiver program if your income and document fall within their guidelines.

Edmonton Resolution Support Services 8th Floor - John E Brownlee Building 10365 97 Street NW Edmonton, AB T5J 3W7	Ph: 780-415-0404
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Edmonton Resolution Support Services provides various services to assist individuals dealing with a family or civil matter. They have numerous free services, such as Family Court Counsellors, Family Mediation, Child Protection and Intervention Mediation, Civil Mediation, and assistance on Court Forms and Orders.