



## Voyageur Trail Association - November 2021

### Landowner Protection

Disclaimer: This document is intended as a convenient source of information about key sections of the respective Acts (Provincial) and the Criminal Code (Federal). It is for your information and assistance only. **It is not a legal document.** If you need details or exact language, please refer to the specific Acts and Code themselves and their regulations.

This document should not be used as or considered legal advice. **If you're unsure about anything in this document please consult a lawyer, a local VTA Club President or email us at [info@voyageurtrail.ca](mailto:info@voyageurtrail.ca)**

There are many private landowners who generously allow recreational trails to be used on their property. It may not be generally known that there are protections in place for those landowners.

There are now three laws that exist in Ontario to protect the property rights of landowners (or their tenants) known as occupiers and at the same time encourage them to make their land available for a variety of recreational activities. These are the **Occupiers Liability Act, the Trespass to Property Act and the Ontario Trails Act.**

**The Occupiers' Liability Act** defines the liability of all the occupiers of land. It protects occupiers of most rural land from being sued for damages by most people who come onto their land. **The Trespass to Property Act** provides protection from trespass to land, should the occupiers wish to prevent others from entering or to control the use of their land. Together these acts outline the rights and responsibilities of both occupiers and visitors and are designed to encourage continued cooperation between them. The purpose of the **Ontario Trails Act** is to; 1. To increase awareness about and encourage the use of trails. 2. To enhance trails and the trail experience. 3. To protect trails for today's generation and future generations. 4. To recognize the contribution that trails make to quality of life in Ontario.

The laws in effect today establish a **Basic Duty of Care**. It requires that occupiers do what is **reasonable** in the circumstances to see those persons using their premises are not harmed, either by the condition of the property or by activities on the premises.

The **Basic Duty of Care** doesn't apply to the following types of entrants. These are people who willingly assume their own risks or who are deemed by law to assume their own risks. The third type are non-paying but permitted recreational entrants on most rural land;

- a) Any non-paying entrants are responsible for their own safety when they enter rural premises for permitted recreational purposes. Rural premises include cultivated fields, orchards, pastures, woodlots and forested or wilderness premises.

- b) Non-paying entrants are also responsible for their own safety when they enter road allowances, reasonably marked private roads and recreational trails.
- c) The law reflects the self-reliance of most people who enjoy sports and recreation in our countryside. You accept and respect the environment as you find it.

**The Trespass to Property Act** is designed to give occupiers clear control over the entry and use of their premises. The act also facilitates recreational use of private land by providing a simple marking system to indicate where and how the property may be used. The intent of the act is to encourage shared recreational opportunities while discouraging trespassing.

Anyone who enters the premises or engages in a prohibited activity without express permission, is guilty of an offence as is anyone who fails to leave the premises immediately after being told to do so.

The law states that entry to certain premises is prohibited, even though no notice is given. Such property includes:

- Gardens, fields or other land under cultivation;
- Winter crops, orchards, vineyards or lawns;
- Premises where trees of less than two meters (six feet) have been planted;
- Woodlots on primarily agricultural land;
- Land enclosed in such a way as to keep people out or animals in.

Where entry is prohibited by Notice or Signs...

The occupier of property may prohibit entry to premises, either orally or by written notice, which may be in the form of a letter. It is then an offence for an uninvited person to enter.

An occupier of premises can use written signs or graphic illustrations of activities allowed or prohibited. A diagonal line drawn through the word or illustration gives notice that entry or a specific activity is prohibited.

It is an offence to enter any property where signs have been posted showing that entry is prohibited. Such signs include "No Trespassing", "No Entry", "Entry Prohibited", or "Keep Out".

There are several places on the VTA where a "No Trespassing" indicator is found on one tree and a VTA blaze on the next tree. The VTA has received permission from the landowner as long as hikers are abiding by the VTA "**Trail Users Code**".

When a sign indicates that one or more activities is permitted, that sign is also legal notice that any other activities are prohibited. If a sign indicates that only horseback riding is permitted, all other activities are prohibited and anyone engaged in those activities on the land could be prosecuted. A sign that prohibits just one activity, such as fishing, will not permit prosecution of anyone engaged in other activities such as riding, skiing or hiking. All signs posted should be clearly visible in daylight under normal conditions. They should also be visible from every ordinary point of access to the premises.

Notice by coloured markings....

Notice can also be given by posting with red or yellow markers. RED markings mean that entry is prohibited. YELLOW markings mean that only certain activities are acceptable. It is then the responsibility of the person who wishes to enter to find out what is permitted.

Also note that it is a criminal offence to enter private property at night near housing or home whether or not there is a no trespassing sign. Section 177 of the criminal code

Landowners can easily look these up at the following links.

<http://www.ontario.ca/laws>

[Occupiers' Liability Act, R.S.O. 1990, c. O.2](#)

[Trespass to Property Act, R.S.O. 1990, c. T.21](#)

[Ontario Trails Act, 2016, S.O. 2016, c. 8, Sched. 1](#)

The Voyageur Trail Association (VTA) supports and protects landowners through our policies and procedures:

The VTA has “**Conditions of Use**”. These are listed on the VTA web site and occasionally reiterated in communication with members. All VTA Trails are non-mechanized trails. Sanctioned uses are hiking, snowshoeing and backcountry skiing. If a landowner finds someone hunting or mountain biking on the VT, then those users are trespassing and may be treated as such.

The VTA has a **Risk Management Plan** which documents the many and varied methods by which the VTA manages risk, including but not limited to:

- 1) Trail maintenance - The VTA maintains records of trail maintenance activities and trail condition audits. Trail conditions are communicated via the VTA website and emails to club members.
- 2) Signage - The VTA uses a system of signs and blazes as wayfinding aids, trail condition warnings, land ownership status, etc.
- 3) Trail Difficulty Rating System – The VTA has adopted the Parks Canada Trail Classification System. Most of the VTA trails are rated as “difficult” reflecting the wilderness or semi-remote nature of the trail.

The VTA holds **insurance** through our association with Hike Ontario (HO). The HO insurance covers property owners for the following;

A blanket endorsement for ALL landowners will be in effect for the term of the insurance. This means that all landowners on whose land member organizations have a trail are protected under the Commercial General Liability Insurance = Coverage at \$5 million and will come to the landowner's defense should the landowner get sued for a hiking trail related claim (i.e. they won't have to call on their own insurance). This coverage obviously only applies to any "trail related" accidents or property damage such as Hiking, Member Training Events, Sanctioned Non-Hiking Activities and Trail Maintenance.

Effective May 1, 2019 all landowners, sponsors, government departments and municipalities are added as additional insureds but only with respect to liability caused by the negligent operations of the named insured as stated in the declarations of the insurance policy.

**Landowner communications:** If a landowner wishes, they may be granted “member” status to the VTA and will receive all VTA member communications (newsletters, trail condition notices, event notices, etc.).