

The Wrong Approach to Controlling Trespass

Last Mountain Times

Published on 18 March 2019

Dear Sir:

I am writing to express my concerns about the new changes to the Trespass Act. Rural crime has become a legitimate issue for all those involved. The government is touting its new Trespass To Property Act as a solution to rural crime saying that by using Alberta's approach the problem will be solved. The major change is that now landowners don't have to post a no trespassing sign on their land as no one is legally allowed on any land without the landowner's permission. Sounds great that should fix rural crime. However, it's interesting that when I talk to old colleagues in Alberta they tell me that rural crime is a huge problem that only seems to get worse. The Alberta approach is apparently not working in Alberta.

As a retired former policy wonk in government I am old enough to remember why the trespass act was rewritten decades ago. It has also been reworked twice previously by the existing government. The original decades-old changes were made because of the outcry from landowners about trespassers injuring themselves on private land and then suing the land owner for injuries resulting from the "hazards" on their land. This may sound crazy to someone now, but under the British Common Law that underpins all our legislation the concept of an "attractive nuisance" trumps landowner rights. If you have a swimming pool in your back yard, with or without a NO TRESPASSING sign, you will not be exempt from liability if your neighbour's kid sneaks into your back yard pool at night and drowns. In such cases you have to physically fence them out of your attractive nuisance or you will be successfully sued.

The former Trespass Act enabled access "at your own risk" to private un-posted land while protecting the landowner from the very real liability of owning an "Attractive Nuisance. This removed the liability problems associated with trespass use. Frankly it was an elegant solution to a long nagging problem. Everyone seems to have forgotten this!

As an acreage owner at the edge of a large suburban town I am particularly affected by this new legislation. Progress has meant that where I once only had a couple of acreages and farmland bordering my property I now have a dozen new neighbours. Most mind their own business but some like to store their junk on my property, throw their lawn and garden refuse onto my property (even in plain sight), a couple have even built their fences well onto my property. One has even gone as far as to cut my trees down to gain access to my property from his back yard to drive his quad on my property. Will this new law stop that trespassing? I doubt it, and it will make me liable if they injure themselves on my property while doing it. If I complain to the RCMP will the perpetrators be charged? Not a chance! Most likely, I will still have to start a civil litigation at my expense to resolve the issues. It appears that absolutely no thought was given to what the legal ramifications on property owners really will be. It looks good though!

The Government should have given much more consideration to the cost of enforcement of such changes. The police are going to be swamped with trespass complaints. It appears that there is almost no enforcement of laws designed to control snowmobilers. Since 1988 the ATV Act has prohibited the use of ATV on any private land without permission, however, there is a complete dearth of enforcement of the 1988 law regarding ATVs. Prohibition of private land use has NOT worked here. If ATVs are the issue, the solution is obvious, put a license plate on every one of them that crosses a grid road so that they are not anonymously blasting around the country.

Saskatchewan is the only jurisdiction in continental Canada and the US that does not license ATVs. Why?

The Government should have considered the potential legal challenges to such legislation. The First Nations are already in line. The legal precedent in the Crown vs. Badger and subsequent decisions has basically exempted First Nations. They will challenge the verbiage of this new law and they will win. This new law will make legal licensed hunting far more difficult and wildlife depredation on crops will increase. A very real scenario is that licensed regulated wildlife harvest will be replaced by a completely unregulated year round First Nations harvest of wildlife. Moreover, the legal precedents has already been set in neighboring provinces where pasture lessees have lost the “privilege” of controlling access to Crown leases. This will also likely happen here as a direct backlash. This is particularly upsetting, as the partnership between ranchers and conservation groups for the conservation of the prairie landscape that I have a personal investment in will likely be destroyed.

The new Trespass Act will have no positive effect on rural crime. Criminals don't obey laws they break them! The government believes that not requiring a NO TRESASSING sign will stop criminals. Just how stupid does the Minister of Justice think we are? What the new law does under Section 8.C is give criminals legal authority to access my front door to ask permission for any reason. That's right even if you put a “no peddlers, no solicitors and no permission seekers” sign on your driveway anyone can legally drive up to your front door to ask to use your property. “Oh nobody's home!” Now what? **This new law will affect criminal behavior all right, it will encourage it!** The government's complete lack of understanding of the criminal mind is evident.

This Trespass Act parallels the Liberal Government's Gun Control Act, where a knee jerk, “We have to look like we're doing something, there is an election coming!” reaction was required. Chretien's solution was to infringe on the privileges of law-abiding citizens by putting further regulations on law-abiding people and missing criminal activities completely. The liberals failed to see that support for such a law would be “soft” and opposition to it would in fact be “hard.” We all know how the gun control issue worked out for the Liberals; 20 years in the electoral hinterland. The government would have been well advised to properly assess the support for such changes and the very real backlash against them. The NDP's responses to this particular issue will determine how many swing voters, knowledgeable landowners, snowmobilers, horse fanciers, ATV users, hunters, bird watchers and myriad of other users of the rural landscape vote in the next election.

Sincerely
Greg Riemer