

# External Directive

Liability of Recreational User on  
Staff Directive 2010-03

Lands Division  
Rangeland Management  
September 21, 2010

## Liability of Recreational Users on Agricultural Public Land

### Purpose

This document is intended to provide general information about the Recreational Access Regulation which pertains to Alberta public land administered under grazing lease or farm development lease. It is not intended to address specific situations. **The department recommends that agricultural leaseholders obtain their own legal advice regarding their legal risks and liability arising from regulated recreational access on agricultural leases.**

### Context

In 2003, the Alberta Government clarified the rules for recreational access on agricultural dispositions. Enacted under the *Public Lands Act*, Section 62.1, the Recreational Access Regulation encourages communication, cooperation, and respect among disposition holders and recreational users. Leaseholders' liability arising from regulated recreational access is limited by changes made to the *Occupier's Liability Act*, also in 2003.

### What is the agricultural leaseholder's liability for a recreational user?

As an agricultural leaseholder, your liability to recreational users is limited by law. Unless the leaseholder intentionally or recklessly injures a recreational user, the legal duty owed to a recreational user is the lowest duty owed by a legal occupier of land. Recreational users are responsible for their own personal safety, and enter the lease land at their own risk.

### Which legislation applies to liability?

In Alberta, liability for recreational users on

agricultural dispositions is governed by the *Occupier's Liability Act*. There are two levels of "duty of care" – that which a landowner owes to an invited "visitor", and that which the landowner owes to a "trespasser". Under the Act, when a recreational user accesses an agricultural disposition, they enter at their own risk because they have the same legal protections as a trespasser under the Act.

### Is the leaseholder responsible for defining all hazards, including natural hazards?

Respect for all users of public land would suggest that leaseholders should identify hazards on the land that are known to them. For example, the leaseholder may want to notify all users of any hidden or obscured dangers such as excavations, cutbanks, and unconventional fences that may be on the property.

### Does the leaseholder need any additional liability insurance?

It is sound practice that agricultural producers carry liability insurance for both private and public land. Leaseholders are encouraged to consult their insurance and legal advisors to address their specific situation.

### Background

Portions of the *Occupier's Liability Act*

### Liability of Occupier to Trespassers

#### Liability of Agricultural Disposition Holder

**11.1** The liability of a holder of an agricultural disposition issued

under the *Public Lands Act* in respect of a person who, under section 62.1 of the *Public Lands Act* and the applicable regulations, enters and uses the land that is subject to the agricultural disposition shall be determined as if the person entering the land were a trespasser.

2003 c11 s1

### Trespassers

**12(1)** Subject to subsection (2) and to Section 13, an occupier does not owe a duty of care to a trespasser on the occupier's premises.

**(2)** An occupier is liable to a trespasser for damages for death of or injury to the trespasser that results from the occupier's wilful or reckless conduct.

RSA 1980 cO-3 s12

### Child trespassers

**13(1)** When an occupier knows or has reason to know:

- (a) that a child trespasser is on the occupier's premises, and
- (b) that the condition of, or activities on, the premises create a danger of death or serious bodily harm to that child,

the occupier owes a duty to that child to take such care as in all the circumstances of the case is reasonable to see that the child will be reasonably safe from that danger.

**(2)** In determining whether the duty of care under subsection (1) has been discharged, consideration shall be given to

- (a) the age of the child,
- (b) the ability of the child to appreciate the danger, and
- (c) the burden on the occupier of eliminating the danger or protecting the child from the danger as compared to the risk of the danger to the child.

**(3)** For the purposes of subsection (1), the occupier has reason to know that a child trespasser is on the occupier's premises if the occupier has knowledge of facts from which a reasonable person would infer that a child is present or that the presence of a child is so probable that the occupier should conduct himself or herself on the assumption that a child is present.

RSA 1980 cO-3 s13

For more information on the *Occupier's Liability Act* or the *Recreational Access Regulation* please view the Queen's printer website at: [www.qp.alberta.ca](http://www.qp.alberta.ca)

### Authorities

*Public Lands Act*  
*Occupiers Liability Act*  
*Recreational Access Regulation*

### Contacts

Rangeland Management Branch  
Lands Division  
4<sup>th</sup> Floor Great West Life Building  
9920-108 Street  
Edmonton, Alberta T5K 2M4  
(780) 427-3595