



**January 28, 2005**

## **Trespass Amendment Act Update**

Now that the Trespass Amendment Act is enforceable you need to know what the likely responses are from police and what you can do to help.

### **Police Enforcement**

In the first instance, police are likely to try to educate and obtain compliance by convincing offenders that authority now exists for police to take enforcement action, including arrest in aggravating circumstances.

If a person refuses to leave or returns, police may issue a ticket and record the incident in PRIME-BC (Police Records Information Management Environment).

If the person refuses to leave or is found later committing an offence under the Act, police may issue a Provincial Appearance Notice requiring the person to appear in court.

In cases where the person refuses to leave or returns later to commit an offence under the Act, police may arrest and release later, by an officer in charge, with conditions.

Subsequent offences under the Act may result in the person being held in custody to appear in court.

### **What You Can Do**

Read and understand the Act available for viewing on the Safe Streets Coalition website ([www.safestreetscoalition.com](http://www.safestreetscoalition.com)).

Understand that police want this Act to work and want to avoid proceeding on cases where there is a likelihood that a bad court decision may result. So, they are looking for solid cases where the offender is deliberately non-compliant and refuses to respond to reason.

Before calling police, explain to the person that they are no longer welcome on the property and ask them to leave.

You can ask them to identify themselves and if they refuse you can call police. If they leave, unless the person is a repeat offender, cancel the police call.

If the person refuses to leave you have the option to call the police and wait.

There is no arrest provision explicitly contained on the Act for anyone other than police. Nevertheless, a person who is on your property and refuses to leave can be directed to leave and if they resist in any way they can be arrested under Section 41 of the Criminal Code for Assault by Trespass. You should be very cautious about doing this because it may expose your staff to violence, police would prefer you called first and you could be waiting for some time with the person before police arrive. For more information on this option you should consult your legal counsel, Security and Human Resources Department.

Be patient. Police will respond depending upon their call load, but they do have authority to act. Your building security may also be included in police programs where they are trained to write reports and can document the offences so that police can proceed by summons or arrest.

### **Oral and Written Prohibitions**

You can prohibit a person from returning to your property orally or in writing. It is recommended that you have a written notice to this effect. Many businesses use a letter now for prohibiting shoplifters from returning. This letter currently has no force or effect, but will under the amended act.

In most cases the boundaries are clear (e.g. not to enter the store), but some businesses may have to specify parking areas and plazas. In some instances businesses with multiple locations may want to include a list or simply make the prohibition apply to all of their premises where a unique store name exists.

In most instances you will have a person's name and trespassers are required under the act to provide it. In some instances you may not believe them or they refuse to provide a name (an offence under the Act). You should have sufficient detail or a picture to be able to recognize someone who returns. Remember, when you collect this information the BC Personal Information and Privacy Act requires you to protect personal information.

The prohibition letter can be simple or you can choose to provide a reason and set a time period and/or appeal process. You should consider that the prohibited person may produce the letter to the media and there may be circumstances where you want to provide more detailed reasons for the prohibition. The reasons cannot conflict with the Human Rights Act.

### **Signs**

The Trespass Act permits the posting of signs to prohibit certain types of activity on private property. The following principles apply:

The signs need to be visible and should be posted at all access points to property. The question will be, can a person reasonably say they did not see the sign before engaging in the activity. If they can, then you need more signs or you need to change the locations. A sign twenty feet up may be large, but it may not be in the normal cone of vision.

The description of the prohibited activity can be written out or it can use standard easily understood graphics, the most typical being a circle with a diagonal line through it with the graphic of the activity in the centre.

Be clear what you do not want on your property. For example, a "No Loitering" sign may also apply to people window shopping or engaging in activities that you want to attract. The "No Loitering" sign then becomes pointless and the prohibition appears arbitrary and based more on someone's appearance than anything else.

For more information, please contact Dave Jones, Director of Crime Prevention Services for the Downtown Vancouver Business Improvement Association, by phone at (604) 685-7811 or via e-mail at [dave@downtownvancouver.net](mailto:dave@downtownvancouver.net).