

STREET LAW SMARTS #5

PARKS, SQUATTING AND TRESPASSING

All property belongs to someone. Public property belongs to the city, to the province or to the federal government. The **owner or occupier of property** (e.g. manager, tenant, employee or other authorized person) can make rules not only about *who* can use their property, but also *what* can be done on that property.

PARKS

There are parks in Toronto that are owned by the city. They are ruled by the *Uniform Parks By-law*. This by-law makes it illegal to trespass into restricted areas of the park. While in the parks, certain conduct is prohibited and may result in a ticket. Examples include:

- swearing
- throwing things (e.g. beer bottles)
- creating a nuisance by frightening, annoying, disturbing others or loitering
- injuring trees
- setting up a tent without a permit
- dwelling, camping or lodging in a park without a permit
- doing anything violent, threatening or illegal
- setting off fireworks
- drinking alcohol

The by-law also makes it illegal to be in a Toronto park between the hours of midnight and 5:30a.m., unless you have a permit.

Alcohol in Parks

The *Liquor Licence Act (LLA)* makes it illegal for people younger than 19 to have or consume liquor. It is also illegal to consume liquor outside licensed premises (e.g. a bar), a home or a private place. Also, being intoxicated or having an open bottle of liquor in a public place (e.g., a park) is prohibited.

A police officer may seize anything he or she believes to be evidence of a LLA offence. This may include empty bottles and drinking glasses that have been used for drinking alcohol. The officer can also seize things used in committing the offence if it is necessary to prevent their further use. One example is alcohol that is being provided to underage persons. Also, proceeds from the offence may be seized. For example, any money you get from selling liquor without a licence.

Sleeping in Parks

Generally, people are allowed to be in public spaces. However, dwelling in a park without a permit is prohibited. Accidentally falling asleep or having a nap is probably not

dwelling in a park. If you get a ticket for sleeping in a park, you should fight the charge in court. See **Street Law Smarts #6: Tickets**.

Provincial Parks

Some parks are owned by the province (e.g., Algonquin Park). Provincial regulations for these parks make it illegal to beg or solicit, litter, create a disturbance, camp overnight without a permit, and trespass unlawfully by being in the park after closing hours.

Tickets

Any police officer, provincial offences officer, or municipal employee can order you to stop a prohibited activity or to leave the park. You must obey or you will lose your permission to stay in the park and you could also get a trespassing ticket.

However, police will often try to keep “undesirable” people out of public spaces. They may do this by ticketing people for trespassing even though they are rightfully in a public space. If this happens to you, you should **fight these charges in court**.

TRESPASSING

Since the City of Toronto is also a private property owner, it has the right to issue trespass orders under the *Trespass to Property Act (TPA)* to people who illegally occupy its property. This includes places such as parks, Nathan Phillips Square and Metro Hall. For parks, the City can also ask you to leave under various by-laws. The City can exercise its own discretion in prohibiting people from being on some of its property. Factors considered by city staff include whether:

- your presence is a danger
- you are violating another law
- your behaviour is disruptive and/or
- you are consuming alcohol

Trespassing can be committed in three ways:

- 1) entering onto another person's property where this is prohibited OR
- 2) doing activities that are prohibited on another person's property OR
- 3) not leaving after being told to do so by the occupier.

However, if you can show that **you believed that you had permission** to be on the property, then you will not be found guilty of trespassing. It is up to you to persuade the court that your belief was reasonable. For example, if you were asked by the city to bring your hazardous garbage to a specific park for disposal, it would be reasonable to think that you were allowed on that park property.

A police officer or someone who is legally occupying the property **can arrest you without a warrant** while you are still on the premises if they have reason to believe that

you are trespassing. Once you have left the property, a police officer can only arrest you without a warrant if he or she has reason to believe that you were trespassing and you refuse to give (or lied about) your name and address.

If you receive a **ticket** for trespassing under the *Trespass to Property Act*, the maximum fine is \$2000. However, the usual fine is \$70 for first offences. If you cannot afford to pay the fine, you can always oppose the fine in court and ask to have it reduced to something you can afford to pay. See **Street Law Smarts #6: Tickets**.

SQUATTING

If you squat or trespass in or near a dwelling house (e.g. a residence), then you might be charged under the *Criminal Code* with trespassing at night, breaking and entering, being unlawfully in a dwelling house and/or mischief. You may be charged with trespassing even if the building or residence has been empty for a long time.

Loitering or **prowling near a dwelling house at night** while on someone else's property is illegal and you may be criminally charged unless you can show you had a lawful excuse to be there. Usually, "near" a house means on the property or lingering outside a window.

Breaking and entering occurs when you enter a place through a permanent or temporary opening and you have the intent to commit an offence. Again, it is up to you to show a lawful excuse if charged. If you are found guilty of breaking and entering a dwelling house, the maximum punishment is life imprisonment. If the place involved is *not* a dwelling house, then the maximum punishment is either 10 years or 6 months imprisonment, depending on the circumstances.

If you illegally enter a dwelling house with the intent of committing an offence inside, then you are guilty of **being unlawfully in a dwelling house**. Again, it is up to you to show that you didn't intend to commit a crime OR that you had a lawful reason to be there. The maximum punishment is either 10 years OR 6 months imprisonment and/or maximum \$2000 fine, depending on the circumstances.

Finally, squatting may result in charges of **mischief** if you intentionally, and without lawful excuse, damage property, make property useless or dangerous, interfere with the lawful use of property, or interfere with anyone in his or her lawful use of property. Examples may include drawing graffiti on abandoned buildings, burning another person's property or using utilities without permission.

The maximum punishment for mischief will depend on the value of the property that the mischief related to. If the value of the property is more than \$5000, then the maximum punishment is 10 years imprisonment. If it is less than \$5000, the maximum is 2 years imprisonment.