

2017.02.10

Collection of Background info about Hunting

For your reference

- Wildlife Act – hunting excerpt
- Hunting by Treaty Indians in Alberta: Rights & Responsibilities - document
- Criminal Code of Canada: Careless use of firearms & Unauthorized possession - excerpts
- 2017.02.07 CBC Article: Hunter facing charge after 4 moose shot on rural Alberta property
- Legal review of “Occupier’s Liability Act” for Alberta Beef Producers

Wildlife Act

Hunting in a dangerous manner 27(1)

A person shall not hunt (a) in a manner that endangers other persons, or (b) without due regard for the safety of other persons. (2) Without limiting section 28, a person shall be regarded as having hunted in contravention of subsection (1)(a) or (b) if, while the person was hunting, (a) the person was in physical possession of a firearm, and (b) the conditions of light prevailing at that time were such that visibility was less than the shorter of (i) the potential range of fire of the firearm, or (ii) 1/2 mile,

unless the person proves that the hunting did not endanger any other person or that the person did not act without due regard for the safety of other persons, as the case may be. 1984 cW-9.1 s29

Hunting at night 28

A person shall not hunt wildlife, except by trapping, during the period commencing at 1/2 hour after sunset and ending at 1/2 hour before sunrise the following day. 1984 cW-9.1 s30; 1996 c33 s20

Protection of livestock and other property 29

A person shall not hunt in a manner that causes or is likely to cause danger to livestock or to diversified livestock animals or damage to property. RSA 2000 cW-10 s29; 2003 c26 s17; 2011c12 s32(9)

Prohibition against spoilage, etc., of skin and edible flesh 41(1)

A person who has killed or is in possession of a game bird or big game animal, other than a mountain lion or bear, shall not (a) abandon any of its flesh that is fit for human consumption, (b) destroy any such flesh, or (c) allow any such flesh to become unfit for human consumption. (2) A person who has killed or is in possession of the skin of a fur-bearing animal, bear or mountain lion shall not allow the skin to be wasted, destroyed, spoiled or abandoned. (3) This section does not apply to (a) wildlife killed under (i) a licence authorizing the collection of wildlife, or

Firearms on roads 51(1)

A person shall not discharge a firearm from, or cause a projectile from a firearm to pass along or across,

(a) a highway designated as a provincial highway under the Highways Development and Protection Act, or

(b) any other road that is paved, oiled, graded or regularly maintained in a municipal district or prescribed area.

(2) In subsection (1), "highway" or "road" includes, as well as the travelled portion of it, a width of land on either side of the travelled portion, including the inner 2 sides of a divided highway, that extends, (a) if there is a fence paralleling the travelled portion that separates the adjacent lands from the travelled portion, to the fence,

(b) if there is an identifiable ditch alongside the travelled portion and there is no fence separating the travelled portion from the adjacent lands, to the edge of the ditch that is further from the travelled portion, or

(c) if there is no such fence or ditch, to a distance of 20 feet from the edge of the travelled portion, and also includes the whole of the remaining area between the 2 travelled portions of a divided highway at any location where the distance between the 2 nearest points on the innermost edges of the 2 travelled portions is less than 200 yards.

(3) Subsection (l)(b) does not apply to a person hunting game birds with a shotgun under the authority of a licence authorizing the hunting of game birds.

(4) Subsection (1) does not apply with respect to a road that is on privately owned land and that is maintained for the private use of the owner or occupant or a road held under any active disposition under the Public Lands Act or under an order under the Surface Rights Act.

(5) Subsection (1) does not apply to a person engaged in a wildlife depredation control program authorized in writing by the Minister. RSA 2000 cW-10 s51;2004 cH-8.5 s77

Firearms around buildings 52(1)

No person shall

(a) discharge a weapon, or

(b) cause a projectile from a weapon to pass within 200 yards of any occupied building.

(2) Subsection (1) does not apply to

(a) the owner or occupant of, or the person having immediate possession or control of, the land on which the building is situated, or

(b) a person authorized to perform the activity by a person referred to in clause (a). 1984 cW-9.1 s52;1996 c33 s38

Discharge of firearm at night 53

Except at a lawfully established and operated shooting range, a person shall not discharge a firearm during the period referred to in section 28. 1996 c33 s39

Background

This information pertains to First Nations people defined as Indians under the Indian Act who have a constitutionally protected right to hunt game for food in Alberta.

It is a short summary only and does not cover all laws on hunting activities. For example, it does not include federal laws or hunting on federal lands such as national parks.

Our courts base their interpretation of Indian hunting rights in a specific situation on the facts presented to them. The courts' interpretations of Indian hunting rights can change over time, as can hunting laws. Therefore, this brochure does not give legal advice and does not bind the government in any way. It is a guide only. If in doubt about Indian hunting rights, contact local Alberta Fish and Wildlife staff or a lawyer.

Note: This document does not include hunting in Alberta by Metis, some of whom may have harvesting rights within the limits of the Supreme Court of Canada Powley decision.

Source of Indian hunting rights

A long series of court decisions has determined the hunting rights of people defined as Indians under the Indian Act. In Alberta, the decisions mean these rights must be consistent with treaty rights, the Alberta Natural Resources Transfer Agreement (also known as the Constitution Act, 1930 Schedule 2) and the Canadian Constitution. Paragraph 12 of the Alberta Natural Resources Transfer Agreement describes the right of Indians to hunt and fish as follows:

In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game in force in the Province from time to time shall apply to the Indians within the boundaries thereof, provided, however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access.

Access

Eligible Indians have a right to hunt for food on unoccupied Crown lands and other lands where they have a right of hunting access. Eligible Indians may hunt for food on privately owned lands if the landholder has given them permission. Laws pertaining to accessing leased public land must also be followed. The Alberta Guide to Hunting Regulations contains a summary of hunting access laws.

Eligible Indians may hunt for food on lands that are not being put to any other use that is visibly incompatible with hunting. This is a consideration that must be decided on a case-by-case basis. The safety of other persons, livestock and domestically raised animals will be of primary importance. The presence of fences, signs, fields, buildings, domesticated animals or indications of farming or industrial activities all suggest uses that are visibly incompatible with hunting. For example, unless permission to hunt has first been obtained, Indians may not hunt on:

- lands being actively used for mining, lumbering or other industrial purposes;
- fenced, posted or cultivated lands;
- lands containing buildings which may be used or occupied; or
- lands where livestock or domestically raised animals may be present.

Indians may not hunt in provincial parks, recreational areas, ecological reserves and other similar lands where no hunting is allowed. They also may not hunt in wildlife sanctuaries, including road corridor wildlife sanctuaries. Hunting or possessing an uncased firearm is not allowed within 365 meters (400 yards) of the centre line of a road that is designated as a road corridor wildlife sanctuary.

Sale of wildlife {trafficking} and gifting

The *Wildlife Act* and regulations set out Alberta's laws on the selling, buying, bartering, soliciting or trading in wildlife or wildlife parts or offering to do so. The law does not allow many activities, and controls others. It does not allow hunting for the purpose of trafficking in wildlife, including parts such as meat, trophy heads, antlers, horns or skins. However, it does allow the sale of skins from deer, elk, moose or pronghorn antelope that were lawfully hunted for food. Wildlife killed for food by Indians is for the sole use of the hunter and their family. The law does not allow gifting of this wildlife, including any meat or other part, to anyone that is not an Indian.

Registration of harvest

Registration requirements apply to all persons. For example, anyone who kills a grizzly bear, male bighorn sheep over the age of one year, mountain goat, cougar, or a bison under the Aboriginal Resident Wood Bison Licence must report the killing. The report must be made in person at a Fish and Wildlife district office. A grizzly bear kill must be reported within 4 business days, a bighorn sheep kill within 14 days, a mountain goat kill within 30 days, a cougar kill within 1 business day and a licensed bison kill within 5 business days. For more information and a complete list of animals subject to registration requirements, please review the *Alberta Guide to Hunting Regulations*.

The Chronic Wasting Disease (CWD) surveillance program in Alberta relies on the mandatory submission of heads of deer taken by hunters from target areas of concern within 30 days of the kill. Deer heads from those areas can be delivered for testing during business hours at an Alberta Fish and Wildlife district office. During the fall, additional drop-off locations are also provided. Contact your local Fish and Wildlife office for more information.

Export of game outside of Alberta

There are federal and provincial laws that restrict the export of game from Alberta. Certain types of wildlife and certain wildlife parts cannot be sent out of Alberta by any person, including an Indian - for example, bear paws and bear gall bladders. In some situations, an export permit may be required to export game animals or parts of them. Please contact your local Alberta Fish and Wildlife office for more information, if you want to take game that you have hunted for food to a location outside of Alberta.

Migratory birds

Eligible Indians may hunt migratory game birds for food without a licence or permit during all seasons where access is permitted. Normal bag limits do not apply to eligible Indians. However, any protected species for which there is not a regulated hunting season, for conservation reasons, may not be harvested by anyone. Other laws that apply to all hunters include environmental protection or safety laws, such as the requirements to use non-toxic shot and the non-use of rifles for hunting migratory game birds.

Trapping

The right of eligible Indians to hunt game for food does not include the commercial trapping of animals to sell the fur.

Seasons

Generally, eligible Indians may hunt for food in Alberta without licences at all times of the year on lands where they have a right of access for hunting. One exception relates to establishing a licensed bison season. Alberta and First Nations have cooperated in establishing a bison management strategy for the Hay-Zama bison herd in the far Northwest portion of the province. This management strategy requires eligible Indians harvesting bison in this area to obtain an Aboriginal Resident Wood Bison Licence. The number of licences issued is limited for conservation reasons; however, there is no charge for the licence. For more information, contact your local Alberta Fish and Wildlife district office.

Safety

Certain laws that deal with hunting safety apply to all hunters including Indians who hunt for food. The following are examples:

- shall not hunt in a dangerous manner
- shall not fire a weapon or firearm illegally (such as at night in a dangerous manner, or from a provincial highway or within 183 meters [200 yards] of an occupied building); or
- shall not fire a weapon from a vehicle or have a loaded firearm in a vehicle.

Local municipal bylaws may also outlaw the firing of weapons in some areas.

If in doubt about the applicability of any provisions, contact your local Alberta Fish and Wildlife office or a lawyer.

Wastage of meat

It is against the law for anyone to allow the edible flesh of any game animal or game bird that is suitable for human consumption to be wasted, destroyed, spoiled or abandoned. All edible meat from a harvested animal or bird must be removed and used for food.

Eligibility and showing proof of your rights

When hunting for food, Indians should carry identification such as a card issued by Indigenous and Northern Affairs Canada, which officially identifies them as a status Indian.

If you would like more information on any of these subjects, contact Alberta Fish and Wildlife office closest to where you plan to hunt, and speak with a Fish and Wildlife Officer.

CRIMINAL CODE OF CANADA

Careless use of firearm, etc.

- 86 (1) Every person commits an offence who, without lawful excuse, uses, carries, handles, ships, transports or stores a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any ammunition or prohibited ammunition in a careless manner or without reasonable precautions for the safety of other persons.
- **Contravention of storage regulations, etc.**

(2) Every person commits an offence who contravenes a regulation made under paragraph 11?(h) of the [Firearms Act](#) respecting the storage, handling, transportation, shipping, display, advertising and mail-order sales of firearms and restricted weapons.
- **Marginal note: Punishment**

(3) Every person who commits an offence under subsection (1) or (2)

 - (a) is guilty of an indictable offence and liable to imprisonment
 - (i) in the case of a first offence, for a term not exceeding two years, and
 - (ii) in the case of a second or subsequent offence, for a term not exceeding five years; or
 - (b) is guilty of an offence punishable on summary conviction.

Unauthorized possession of firearm

- 91 (1) Subject to subsection (4), every person commits an offence who possesses a prohibited firearm, a restricted firearm or a non-restricted firearm without being the holder of
 - (a) a licence under which the person may possess it; and
 - (b) in the case of a prohibited firearm or a restricted firearm, a registration certificate for it.
- **Marginal note: Unauthorized possession of prohibited weapon or restricted weapon**

(2) Subject to subsection (4), every person commits an offence who possesses a prohibited weapon, a restricted weapon, a prohibited device, other than a replica firearm, or any prohibited ammunition, without being the holder of a licence under which the person may possess it.
- **Marginal note: Punishment**

(3) Every person who commits an offence under subsection (1) or (2)

- (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
- (b) is guilty of an offence punishable on summary conviction.

• **Marginal note: Exceptions**

(4) Subsections (1) and (2) do not apply to

- (a) a person who possesses a prohibited firearm, a restricted firearm, a non-restricted firearm, a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition while the person is under the direct and immediate supervision of a person who may lawfully possess it, for the purpose of using it in a manner in which the supervising person may lawfully use it; or

Hunter facing charge after 4 moose shot on rural Alberta property

'It's only a matter of time before these folks come back and try to kill the remainder'

By Zoe Todd, [CBC News](#) Posted: Jan 26, 2017 6:00 AM MT Last Updated: Jan 26, 2017 6:00 AM MT

Residents in a rural community near Cold Lake, Alta., are on edge after four moose were shot and killed on private property without permission.

While one man faces a charge of unauthorized possession of a firearm in relation to the incident Monday, residents say they fear the killing spree may not be over.

"From where their shots were taken and where the moose were killed, that's a direct line to our house," said Eric Novak, who lives less than 500 metres from where the moose were killed in a hay field.

Novak said he was at his home, on a township road about 12 kilometres south of Cold Lake, when he heard five shots that sounded like rifle fire.

"I hopped in my pickup and wheeled over there," he said. "There were two vehicles at the scene, kind of pointed towards each other, and once they saw my headlights they both kind of took off.

"So I rolled up a little closer and I could see the four dead moose – a bull, a cow, and twin calves laying in the field."

Novak said one of the moose wasn't dead. The bull was struggling to stand.

"They had put a bad shot in him," he said. "I went back home and got a gun and put him down."

Novak called RCMP and the local Fish and Wildlife office while he waited with the carcasses. Then he noticed a moose cow standing in the trees nearby.

"She kept coming back," said Novak, a seasoned hunter. "It was a large cow and those were probably her calves. That's typical if you shoot a calf or a fawn, that the mother won't leave."

RCMP Staff Sgt. Jeremie Landry said Novak's call came in just after 4:30 p.m. Officers drove to the scene, where they found the four dead moose.

One of the men who shot the moose then returned, Landry said. RCMP seized his rifle and ammunition. Landry said charges are pending for unauthorized possession of a firearm.

"These four moose were shot on private property," Landry said. "Permission was not granted to be on that property by the homeowner, although the homeowner declined to proceed with charges relating to trespassing."

The homeowner, who asked not to be named, confirmed to CBC that a group of men asked to hunt on his property the day before the moose were shot.

He said he turned them away because there are too many family homes near his property and moose-hunting season is over.

The hunters were permitted to take the carcasses from the property for their own use.

Fish and Wildlife officers concluded their own investigation but also didn't lay charges.

"In order to proceed with charges related to hunting on occupied land without permission, officers need an official statement from the landowner saying that permission was not, in fact, granted," spokesperson Brendan Cox wrote in a statement to CBC News.

"In this case, it was the landowner's decision not to provide an official statement. There was no evidence of any other offences."

The hunters were allowed to shoot moose in the off-season because they are Indigenous.

"Indigenous people with Treaty status have a constitutionally protected right to hunt big game for food and are not subject to bag limits," the statement said. "The hunters in this case showed officers proof of their Treaty status."

But some people in the community said they're worried the hunters will come back if they don't face repercussions.

"I'm angry. Very angry, as well as scared for my safety," said Abbie Weenk, who lives next door to Novak.

Weenk often takes her two toddlers for walks through the field where the four moose were shot.

"There's another family of moose in this field, along with hundreds of deer, so now they could come back knowing full-well they'll get away with it," she said.

Novak, who also has two toddlers, estimated about five moose still live near the neighbourhood.

"It's only a matter of time before these folks come back and try to kill the remainder because they're there and they're tame," he said. "At what point do they stop? When they're all gone, or when something worse happens and one of my kids gets shot by a stray bullet?"

"Now, every time my kids cross that tree line, I'm going to be worried."

@ZoeHTodd

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March 23, 2016

VIA EMAIL: fredh@albertabeef.org

Alberta Beef Producers
#165, 6815-8 Street NE
Calgary, AB T2E 7H7

Attention: Mr. Fred Hays

Dear Sir:

Re: Occupiers' Liability Act

This opinion letter is provided pursuant to your inquiries regarding the potential liability of landowners under the *Occupiers' Liability Act*. Specifically, you requested an interpretation of the *Act* geared towards farmers and ranchers, and how rural landowners can best protect themselves from a potential lawsuit should a hunter or other recreational user have an accident or otherwise injure themselves while on the landowner's property.

For ease of review, I have referenced those sections of the *Act* that apply to the statements made in this letter, and attached a copy of the *Act* for your information.

The Occupiers' Liability Act

The *Occupiers' Liability Act* governs the responsibilities of landowners towards individuals who are either invited, or are trespassing, on their property. For the purposes of this letter, we are focusing specifically on individuals who may ask a farmer or rancher to go on their property for a recreational purpose, such as hunters, horseback riders, and so on. These people are defined in the *Act* as a "visitor", and generally include any individuals who are specifically given permission by a landowner to go on their land (s. 1(e)). The purpose of the *Occupiers' Liability Act* is to codify the general legal requirement that landowners take care of these "visitors", and ensure landowners are held liable for behavior that causes or contributes to those individuals being injured or otherwise coming to harm. If a "visitor" were injured, or their personal property damaged while they were on a landowners property, they could sue that landowner in accordance with the *Act* to receive compensation. For the purposes of this letter, I will continue to refer to "visitor", with the intent this is to encompass all of these potential recreational users of the landowner's property.

The *Act* applies to all kinds of rural lands which a farmer or rancher may own or have use of. This includes pasture, cultivated land, as well as forested or wilderness land (s. 6.1(2)). It also applies to lands which you have leased and have care and control over, such as land leased from a private individual or corporation (s. 1 (c)), leased road allowances (s. 4(1)), and agricultural land leased from the government of Alberta pursuant to the *Public Lands Act*, RSA 2000, c P-40 (s. 11.1).

The duty of the landowner to a visitor is outlined very specifically in the legislation, and is stated at Section 5:

5 An occupier of premises owes a duty to every visitor on the occupier's premises to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which the visitor is invited or permitted by the occupier to be there or is permitted by law to be there.

This is a codification of the law of negligence, which applies throughout many aspects of our lives. For example, as a driver you have a duty to the other people on the road to operate your vehicle safely. If you behave in such a way that causes or contributes to an accident, such as by speeding or playing with your phone, you could be held liable to the other drivers injured in the collision under negligence law. Section 5 of the *Act* works in a similar way, and states that a landowner could be held liable if they failed to take reasonable steps to ensure the safety of any hunter. Whether a landlord is liable depends on the individual circumstances of the situation, and legislation like the *Occupiers' Liability Act* is intentionally written in this way to allow Courts the flexibility to determine when certain behavior is or is not acceptable, given the particular facts involved. A comprehensive review of the law in negligence in this context would be extensive and outside of the scope of this opinion letter. However, on a basic level, the landowner is required to protect the visitor from any dangers that they either know, or ought to know, exist on their property.

As an example, a landowner has a bull that can become aggressive, and in the past has occasionally chased after the landowner and his son. While it is not a certainty that this bull would cause harm to the visitor, this landowner would definitely have a duty to pre-warn the hunter that they should stay well away, because there is a reasonable possibility that it could attack them. Depending on the past behaviour of the bull, they may even need to lock the animal up in a barn or corral for the time being, in order to satisfy the requirements under the *Act*.

Another example could involve a stack of haybales. If there is a reasonable chance the visitor will be around or climb on those bales, there is a duty on the landowner to ensure that the stack is safe and well secured, and will not collapse and crush the visitor. If that did happen, the landowner could potentially be liable.

There is, however, an exception to this general rule that applies to specifically to agricultural and forested/wilderness lands at Section 6.1 of the *Act*, which states:

6.1 (1) The liability of an occupier to a person who uses the premises described in subsection (2) or a portion of them for a recreational purpose shall be determined as if the person was a trespasser unless the occupier

- (a) receives payment for the entry or activity of the person, other than a benefit or payment received from a government or government agency or non-profit recreation club or association, or
- (b) is providing the person with living accommodation on the premises.

(2) Subsection (1) applies to the following:

- (a) rural premises that are
 - (i) used for agricultural purposes including land under cultivation,
 - (ii) vacant or undeveloped premises, and
 - (iii) forested or wilderness premises;
- (b) golf courses when not open for playing;
- (c) utility rights-of-way excluding structures located on them;
- (d) recreational trails reasonably marked as such.

This section qualifies the standard as it relates specifically to the owners of agricultural property. A landowner would only be held to the negligence standard described above if they were paid by or provided shelter to the hunter. Otherwise, the landlord only must adhere to the standard they would be held to if the hunter were not invited, but were in fact a "trespasser" on the land. The duties of a landowner to a trespasser are noted at section 12 of the *Act*.

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 willful or reckless conduct.

A landowner is therefore only responsible to a trespasser for any "reckless" or "willful" conduct that causes the trespasser an injury. "Willful" behavior is intentional, an act specifically designed to impact someone who happens to be on your land. Setting traps near gates or paths with the intent of injuring any trespassers would be an example.

Behaviour would be legally "reckless" when the landowner knows that there is an extreme danger that exists on their property, and carelessly allows it to remain, indifferent to the consequences to anyone who may be on the land. Leaving a rickety old bridge across a creek or

river that would collapse the moment anyone tried to use it, without a sign or warning notifying of the danger, would be an example of reckless behavior.

It is important to note that Section 49 of the *Wildlife Act* specifically prohibits anyone from charging a fee to hunters to access their land. This applies to both game and bird hunting, and there are severe penalties in place for charging a fee, including fines and potential imprisonment. Any landowner who abides by this term of the *Wildlife Act* can also be assured that the hunter will be treated as a trespasser under the *Occupiers' Liability Act*.

So long as no payment is received and shelter not provided, the *Act* clearly sets a standard of responsibility for rural landowners to a visitor that is much lower. Going back to our haystack example, if the *Act* treats the visitor as a "trespasser" there is no duty on the landowner to ensure that the bales are fully secure, and if the visitor chooses to climb on them, they do so at entirely their own risk. The potentially aggressive bull need not be penned up on the off chance the visitor encounters it and doesn't have the wherewithal to stay away. The visitor would be using the property "at their own risk", and unless the landowner intentionally injures the visitor or recklessly leaves their land in a state of extreme danger, they cannot be held liable for other injuries the visitor may sustain on their property.

The exception to this rule is in regards to any children who may be on the property. The *Act* states at section 13(1):

- 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.

A "child" under this section would generally be considered to be anyone under the age of 18.

This section serves to amend the liability of a landowner to a child "trespasser" and creates a higher standard in that regard. The landowner is not only responsible for reckless or willful behavior. The landlord must also review the overall circumstances of the activity the child visitor will be engaging in, how it relates to the condition of the premises, and whether they need to take further steps to ensure the safety of the child. This pushes the burden of care on the landlord back up towards the higher "negligence" standard.

Summary

To summarize, then, the *Occupiers' Liability Act* applies creates liability for a rural landowner who allows visitors on their land for recreation as follows:

1. The *Act* applies to all agricultural landowners, whether that property be personally owned, leased from the government, or leased from a private individual.
2. If the landowner does not charge the visitor for access to their property, the visitor is considered a "trespasser" under the *Act* and the landowner is only responsible for any acts that are either "willful" or "reckless" that cause injury to the visitor.
3. If the landowner does charge, then they are held to a higher "negligence" standard of responsibility towards the visitor, and must take all reasonable steps to ensure that their property is safe for the visitor to use.
4. Specifically relating to hunters, the landowner should never charge them to use their property, as they could face severe penalties under the *Wildlife Act*. So long as they are not charged a fee or provided shelter, a hunter will be also be considered "trespasser" under the *Occupiers' Liability Act*.
5. If there are children accompanying the hunter, the landlord would also be held to a higher "negligence" style standard in regards to that child.

Conclusion / Recommendations

We have extensively searched for case law that directly relates to hunters, trespassers and rural land, but have had little success, and it would seem that courts in Alberta have not yet interpreted the *Occupiers' Liability Act* in this context. Therefore, these recommendations are based on our reading of the *Act*, and take a very conservative approach to what we feel are the best methods to avoid liability.

As a general rule, visitors given permission to go on agricultural land are treated in the *Occupiers' Liability Act* as "trespassers", or "at your own risk" users. The "negligence" standard noted above applies to owners of agricultural land only if they take payment from a visitor in exchange for access to their lands, or provide them with shelter on the lands. Payment should never be taken from hunters according to the *Wildlife Act*, but a landowner may charge other recreational users, such as horseback riders or hikers. A lawsuit against the landowner based on negligence has a number of inherent risks, and the *Occupiers' Liability Act* gives the Court extensive leeway on how they determine these cases based on the specific situation.

Taking payment increases the requirements on the landowner to ensure their property is safe for the visitor using it. The best course of action is to avoid having the "negligence" standard apply altogether.

As such, if landowners are going to allow visitors on their land, we would suggest they not charge them money. We would also advise against accepting any gifts of a substantial nature from a hunter in lieu of cash. A small token of appreciation is likely acceptable, but anything more substantial than that could be construed as a form of payment, which could attract the higher "negligence" standard of liability.

Further, the question of what constitutes providing "shelter" on the lands is not something specifically defined in the *Act*. Likely this means some form of housing, but it could also be construed to include something as simple as a campsite. To be completely safe it would be advisable not to provide camping facilities or overnight shelter of any kind.

Even with the protections for agricultural landowners contained in the *Act*, there is still potential liability. It is advisable to have every visitor sign a waiver before they go on the property. A waiver provides the landowner with an additional defense and a stronger case should they ever be sued by a visitor who suffered an injury, and should be drafted by legal counsel to ensure the correct wording is used. We would be happy to assist you in that regard if you wish.

Given the higher standard in the *Act* regarding children, further judgment will need to be exercised by the landowner as to whether they allow the child to be on the property. The law does not give waivers signed by the parent or guardian of a child as much weight as if it were signed by a consenting adult on his own behalf. A child's waiver, even with the proper wording and correctly signed, may assist in the landowner's defense, but does not serve as a bar to negligence claims should that child become injured. If there is any chance to injury to the child or questions regarding the child's safety, the best route is for the landlord to refuse them access to the property.

From a practical perspective, the absolute best protection a landowner can have against this variety of lawsuit is a comprehensive third party liability insurance policy. Usually this could be attached to general insurance on the landowner's home and farm buildings. Even if the landowner conducted themselves in accordance with the *Act*, got a waiver and has a rock solid defense, the landowner could still get sued, and be out of pocket for legal fees in mounting a defense. Legal fees can never be fully recovered from an unsuccessful plaintiff, and there is considerable stress and personal time used defending any lawsuit. With third party liability insurance, the insurance company would take over the defense on the landowner's behalf, and pay the legal fees on any frivolous or unsuccessful claim. If the claim were to be successful, the insurance would be available to pay the damages to the injured visitor. Our firm's practice is to recommend to our clients they have a minimum of \$2,000,000.00 worth of third party liability insurance. This sum should cover almost any claim for accidental death or serious injury to a visitor on your property.

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We hope our review of the *Occupier's Liability Act* has addressed your concerns. If you have any further questions, or would like us to examine any of the above-noted issues at greater length, please do not hesitate to contact the writer.

Yours very truly,

BEAUMONT CHURCH LLP



Daniel A. Hawkwood

DAH/mp
Enclosure