



Subject Entry Onto Private Land		Policy PL 9.02.02	
Compiled by - Branch Lands & Waters	Section Land Management	Date Issued February 11, 1997	
Replaces Directive Title n/a	Number n/a	Dated n/a	Page 1 of 3

1.0 DEFINITIONS

In this policy directive,

“land use occupational authority” means an authority issued by MNR allowing the occupation of public lands including a lease, an easement, a license of occupation, and a land use permit;

“officer” means a public lands officer appointed under subsection 5 (1) of the PLA or an officer appointed under section 4 of the Forest Fires Prevention Act;

“private land” means land that is not Crown land and/or not under the control of the Minister of Natural Resources and includes public land subject to a land use occupational authority;

“reasonable time” generally means daylight hours and, other than exceptional circumstances, should never be considered earlier than 6:00 a.m. nor later than 9:00 p.m.;

“the PLA” means the Public Lands Act, Chapter P. 43, R.S.O. 1990.

2.0 INTRODUCTION

Subsection 5(2) of the PLA states that “subject to subsection (4), an officer appointed under subsection (1) and any person accompanying that officer and acting under the officer’s instructions may, at all reasonable times and upon producing proper identification, enter and inspect any private land for the purposes of this Act.”

Subsection 5 (4) states that “an officer or any person accompanying the officer and acting under the officer’s instructions shall not enter any room or place actually used as a dwelling without the consent of the occupier, except under the authority of a search warrant issued under section 158 of the Provincial Offences Act”

Section 8 of the Canadian Charter of Rights and Freedoms states that “everyone has the right to be secure against unreasonable search or seizure”.

In the Ontario Court of Justice decision of the case of *R. v. Lorna Rudolph* (Sault Ste. Marie, November 21, 1994), His Honour Judge G. Mahaffey decided, in response to an appeal by the Crown on a case involving the dredging of a shore land area, that an MNR officer’s entry on to private land to gather evidence was reasonable. The original case had been dismissed based on the decision of the Justice of the Peace that the MNR officer’s entry was unreasonable.

3.0 PROGRAM DIRECTION

3.1 Application

This policy applies provincially to all officers appointed under the Public Lands Act who are entering onto private land. Some officers will have separate powers to inspect private lands as a result of other appointments (e.g., conservation officers) which will differ from those listed in this policy.

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3.2 Guiding Principles

Staff may enter onto private land for the purposes of the Public Lands Act, as outlined in section 5 of the Act.

3.3 Goal

To ensure that all entries onto private land are limited in number and duration and that the occurrence respects the rights of the landowner.

3.4 Objectives and Strategies

A) To ensure that officers respect the rights of landowners (and occupiers) and do not violate their Charter rights.

Officers should restrict inspections and the time of inspections to only that which is necessary to carry out the purposes of the PLA.

If an officer must make a return visit to the site, subsequent to the first inspection, in order to gather evidence in the course of furthering charges, the officer may require a search warrant. The officer should consult with the District Enforcement Supervisor for advice in these cases.

See Procedure Directive PL 9.02.02

B) To ensure that officers only enter onto private land at a reasonable time.

Officers should restrict their intended inspections as much as possible to daylight hours. This is for safety reasons as well as being courteous to the occupier of the private land. Generally speaking, then, the time should be daylight hours and, other than exceptional circumstances, should never be earlier than 6:00 a.m. nor later than 9:00 p.m.

C) To avoid confrontational situations with occupiers of private property.

Officers will avoid confrontations with landowners by identifying themselves and by stating the purpose of their visit and their legal authority to conduct the inspections, as early in the visit as possible.

D) To ensure that there is no entry into any room or place actually used as a dwelling without first getting a search warrant.

Unless the consent of the occupier has been given to the officer to enter any dwelling they should not do so as this would likely be considered a trespass and a violation of the occupier's Charter rights. If the officer feels that the room or building is likely to be used as a dwelling (e.g., recreation camp, outpost camp, ice hut, etc.), then entry without consent should not be considered without a search warrant.

Advice regarding the obtaining of search warrants should be sought from a Conservation Officer or from the respective District Enforcement Supervisor.

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4.0 REFERENCES

4.1 Statutory References

- Public Lands Act, Chapter P. 43, R.S.O. 1990. – s. 5
- Provincial Offences Act, Chapter P. 33, R.S.O. 1990. – s. 158
- Canadian Charter of Rights and Freedoms – s. 8

4.2 Directive Cross References

- PL 9.02.02 (PRO) Entry Onto Private Land