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14:19 Monday, March 07, 2016

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Trails bill won't take your land, agriculture lawyer says

on: March 07, 2016
In: Featured News (http://farmersforum.com/category/news/front-page-news/), News (http://farmersforum.com/category/news/)

By Brandy Harrison

OTTAWA — Despite fears over new proposed legislation, landowners will still have the right to decide if snowmobilers or hikers can cut across their property on recreational trails, an Ottawa-based agriculture lawyer says.

Last month, an Ontario Landowners Association (OLA) commentary warned private property owners that they could lose their right to control their land if Bill 100 — Supporting Ontario's Trails Act — is passed. The OLA suggested the bill misleads landowners and if they allow access to a snowmobile or hiking group through an easement, they effectively hand over their rights to that group. The bill is in second reading at Queen's Park.

While the bill has problems, it doesn't force landowners into easement agreements, says Kurtis Andrews, who operates an agricultural legal firm in Ottawa that serves all of Ontario. Basically, just don't enter into an easement that mentions Bill 100 and you're safe.

"It in no way is anything but voluntary. If landowners have trails and don't want to subscribe to an easement, they don't have to. A trail can stay on their property without having a legally-binding easement imposed," he says, adding farmers can enter into a simple easement agreement without the new bill.

Under Bill 100, landowners can negotiate a time limit and restrictions, and when it comes to land, it has to be in writing — an easement can't be registered without a property owner's knowledge. But in rare cases in common law, an easement could be automatically established after 20 years.

But Andrews advises farmers to steer clear of agreeing to an easement filed at a land registry office that references Bill 100. "I see no value for landowners, period."

Easements under Bill 100 can be transferred or granted via regulations, which can be created at a minister's discretion and could lead to scenarios the landowner hasn't thought of. "It's a fill-in-the-blank. It's dangerous," Andrews says.

But the amendments to the Trespass to Property Act are one bright spot, he says.

While the Ontario Federation of Agriculture still wants minimum fines for trespassing and broader enforcement, public prosecution is no longer capped at \$1,000 and the civil penalty would be raised from \$2,000 to \$10,000, Andrews says.

"It provides greater protection to a person allowing people on his land."



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