



As the CROW Flies

Establishing Rights of Way on Private Land

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As the CROW Flies: Establishing Right of Way on Private Lands

Called *Betretungsrecht* in Germany, or *Allemannsretten* in Norway, the traditional right of public access across private and common land is currently undergoing modern statutory shifts across Canada and the world. In the UK, the Countryside and Rights of Way Bill (CROW) underwent a final stage of implementation in October of 2005, granting a 200,000 km network of rights of way for the purpose of quiet recreation. Legislation has not come easily – there have been major efforts over the last 100 years to increase opportunities for public access to the English countryside. “This new right of access is a major landmark in working towards this. By giving every member of the public more opportunities to get out and enjoy the countryside we can in time build a healthier, more environmentally aware society.” (*Pam Warhurst*, Countryside Agency Deputy Chair and Chair of the National Countryside Access Forum)

Closer to home, in Rossland, BC, an innovative, voluntary approach to public access has been taking place. In the last ten years, a network of over 300 kilometres of interconnected trails has been established across private land throughout the Rossland Range, through the efforts of the Trails for Rossland Society, in partnership with landowners. Many of these trails are not new – they are old wagon roads, rail grades, smuggler’s trails that date back to the late 1800’s, traditional footpaths and deer trails. The problem was that approximately 95% of these trails crossed private property by 1996. This made access and maintenance inconsistent, and important segments of the rich network, identified as ‘an important asset to the community's economic and mental health’, were being lost. The society entered into negotiations with individual landowners, corporate landowners and local governments to try and gain legal right of way to existing trails, and to build new ones. By 2000, 24 of 32 individual landowners, 3 of 5 corporate landowners, and 3 of 3 local governments had granted legal access.

In donating a trail, the landowner also donates the liability and maintenance associated with that trail; this is one of the main practical reasons landowners are happy to do so. Of course, there are many other considerations when deciding whether to donate a trail. The main issues and concerns for landowners anywhere are similar, whether they are being asked to voluntarily grant access, or, as in the UK, being legally required to do so. These issues include: privacy, liability, and respect for property, farm fields and livestock. The Countryside Agency’s response to these serious concerns has been to undertake a simple, and massive, education campaign on what they call ‘The Countryside Code.’ The Countryside Code is a set of common sense principles that have been followed in the countryside for generations, revised and re-launched to reflect the introduction of new open access rights. (See end of doc.)

One of the chief concerns for landowners is the issue of privacy. This issue has come up in high profile court cases in the UK in the wake of the new bill which allows anyone to come within 100 yards of a dwelling on designated land. But here, where access is voluntary, and walkers are required to stay on the trails, privacy is less likely to be an insurmountable obstacle. Landowners can choose the location of the trail they donate (or re-locate part of an existing trail to keep it away from their main dwelling). In instances where trails run close to dwellings or private areas, planting living barriers is one of the many low-impact solutions being used.

When concerns are properly addressed, through education, clear signage, and individual landowner prerogative, the benefits of public trail access seem to far outweigh concerns. These benefits extend to the landowner as well as the community and environs. Paul Bell of the Rambler's Association in the UK says that walkers tend to be a safeguarding presence on the land rather than a threat, and that "Legitimate ramblers will be a deterrent to people who have a criminal intent." Indeed, when John Major was prime minister, Cambridgeshire police even decided to keep a footpath near his home open because ramblers acted as the eyes and ears to anything peculiar. These sentiments are similar to ones expressed by Cortes landowners who are aware that walkers regularly cross their land. In the words of one resident, "They'll tell you if something is amiss on your land, keep an eye on things."

While there may not be easy answers to the complex issues of public rights of way, there are certainly precedents that can offer insight for making informed decisions. These examples date back for millennia. In 1320, during the reign of Edward II, the authority responsible for maintaining a track running from the tiny settlement of Stodmarsh to Canterbury in Kent tried to close it to save the cost of maintenance. In protest, the riders and pedestrians who used the path (mainly monks at a local monastery) took the case to court. The result was that the sheriff ordered his men to reopen the path since it was clearly "an ancient and allowed highway". The opportunity to donate trails for public access on Cortes is certainly less severe than this decree, or than the recent CROW bill in the UK, but also belongs to a long lineage of traditional right of public access across the land that we share.

Countryside Code - advice for the public

- Be safe - plan ahead and follow any signs
- Leave gates and property as you find them
- Protect plants and animals, and take your litter home
- Keep dogs under close control
- Consider other people

Countryside Code - advice for land managers

Know your rights, responsibilities and liabilities

- Where can people go on your land?
- What rules apply to people while they are on your land?
- What are your rights and responsibilities towards people on your land?

Make it easy for visitors to act responsibly

- How can you help people get access to your land responsibly and keep to the Countryside Code?
- What help and advice can you get?

Identify possible threats to visitors' safety

- Are there any risks to the safety of people on your land, and how can you deal with these risks?

Source: www.countrysideaccess.gov.uk