

The Road Access Act 1978

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BIRTH ANNOUNCEMENT

Mr. and Mrs. Roads are pleased to announce the birth of twin boys (ACCESS and COMMON) at the Legislative Hospital on the 24th day of November, 1978¹ and express a special thanks to the medical team of The Honourable T. L. Wells, Minister of Intergovernmental Affairs and to those members of the Legislative who assisted with the delivery.

The twins are welcomed into the world by their brothers and sisters namely: Original Road Allowance, Owned Roads, Dedicated Roads, and Roads by prescription.

FUTURE ROLE OF "ACCESS ROADS" AND "COMMON ROADS"

The birth certificates of the two new roads read as follows:

a. "Access Road" means a road located on land not owned by a municipality and not dedicated and accepted as, or otherwise deemed at law to be, a public highway, that serves as a motor vehicle access route to one or more parcels of land.

b. "Common Road" means an access road on which public money has been expended for its repair or maintenance.

The future role of the twins is firmly established. In summary it is this. No person shall construct or place a barrier or obstacle over an Access Road, or Common Road, the result of which is to prevent road access to one or more parcels of land or to boat docking facilities not owned by that person, unless

that person first makes an application to a judge (giving at least 90 days notice to the municipality and to the people affected) and the judge approves of such order closing the road.

Every person who knowingly prevents any person from using an Access Road or a Common Road by placing a barrier or obstacle on it, without an order from a judge, can be charged and if found guilty liable to a fine not exceeding \$2,000.00.

A PRACTICAL EXAMPLE

If ever there were twins that were welcomed into the world, it is ACCESS and COMMON. Let us look at a sample situation.

Since the year 1925, Jim and Martha Friendly owned lot 17. They were accommodating folks. They realized that cottagers had to trespass on their land to get around the rock cliff, but people had been doing that for years and years. As for the cottagers parking area at the south limit of the road where it ends at the lake, they also realized that cottagers needed a place to park their car. True, the cottagers seemed to be taking more area every year but the land was not of much use for anything else so no harm was done. There was some garbage strewn around at times but apart from minor incidents everybody used the area in harmony.

In 1978 both Jim and Martha Friendly — who were in their late 80's — died within a month or two of one another. In September the executors sold lot 17 to Mr. and Mrs. Troublesome. Just after the purchase, Mr. Troublesome ordered a survey and was appalled to find that the cottagers were trespassing on his property, not only to go around the rock obstruction, but also to park their cars

on his land while they boated over to their cottage.

"Trespass on our land will they? They do not pay a cent for it either. These cottagers are nothing but trouble and I know my rights. I'm going to block off the road!"

Early Saturday morning on Thanksgiving weekend, he did just that. When the first cottagers arrived on Saturday morning with great expectations of closing up the cottage for the winter, they encountered the blockade. As more cars arrived, tempers flared.

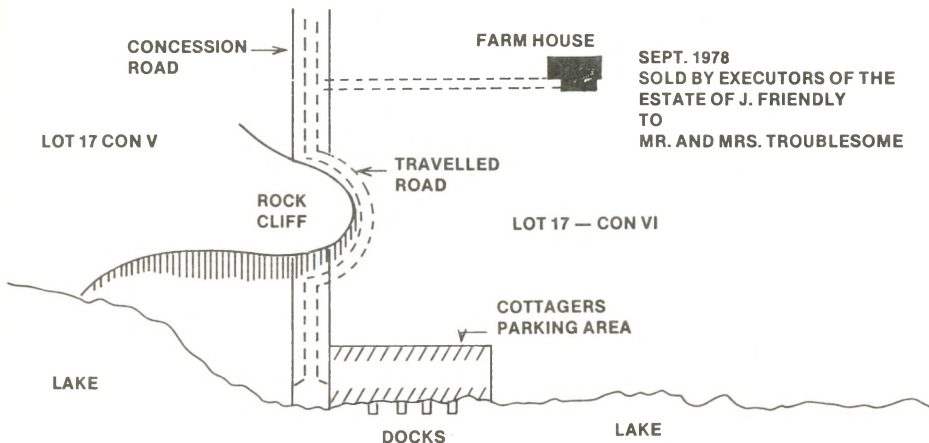
A call was put through to the Reeve of the Township and to the O.P.P. Soon Smokey the Bear arrived in his black and white holstein with the cherry on top. Out stepped Constable Roger Rookie who has been with the force for six months. Needless to say he got an earful. "We've been using this road for 20 years — he can't do this to us — we have our rights—!"

Constable Rookie then went into the farmhouse where he spoke to Jim Troublesome. There he got the other earful. "I know my rights, the law says that I own the land and I'm not asking for anymore than what I own. They've got no business on the property without my consent. It's not a matter of money, it's the principle of the thing. I pay your salary — so you can go and tell them not to touch that blockade — and if they do — I'll be out again with my shotgun."

Constable Rookie realizes that Civil War is about to break out and he is in the middle. Returning to the O.P.P. cruiser, he radios back to the office and asks if Corporal Experience could come out and give him a hand. Soon Corporal Experience arrives. He has been on the force for 12 years and can easily see what is going on. The moment the cruiser stops he too is surrounded by the angered cottage owners, he says nothing and heads straight for the farmhouse. He has a pretty good idea of how he is going to play his cards.

"All right Mr. Troublesome, what is going on?" (He knows full well what is going on but he first wants to size up his opposition.) Jim Troublesome lays it on the line in no uncertain terms. (Corporal Experience has heard these statements a thousand times before but he bides his time before making his move. He knows that he's got to let Mr. Troublesome get it off his chest.)

After a few minutes the Corporal then makes his move. He tells Mr. Troublesome that since this is the last holiday weekend before winter, most of the cottagers are closing up and won't be back till spring. Since he didn't give



notice to the cottagers that he proposed to close the road, it should be left open for the weekend. He goes on to tell Mr. Troublesome that if he wants to block the road starting next weekend he can and the police will take no objection. The alternative he explains is very simple. If you don't let the people through for this weekend, I will take you down to the station and lay the following charges against you: 1) illegal possession of firearms; 2) obstructing a police officer; 3) putting a blockage on township road allowance — and he mentioned that this was just a beginning.

As a kicker, he says, "I understand you told Constable Rookie that you pay his salary. Well this is to tell you that he wants a raise!"

Now you can see that Corporal Experience is moving in on the situation and taking the upper hand. Mr. Troublesome now has to do some thinking. He is still angry but he knows that the alternatives do not look too inviting. Reluctantly he agrees to remove the barrier.

Yes indeed Corporal Experience has had to apply pressure to get justice. When you get right down to it this is "grass roots law enforcement" and the O.P.P. does this exceptionally well. The everyday application of law is not the Barnaby Jones-Ironside type of problem you see on television. Its the day-to-day incidents like this that put it all together.

So as a result of the police visit look what has happened. Corporal Experience has bought time. He knows that next weekend there will be few cottagers about. Mr. Troublesome will probably resign himself to building a blockade in the spring. For the moment the time bomb has been defused. Cottagers in the meantime will go to their own lawyers about the case.

Mr. Troublesome knows that there won't be much traffic next weekend, but he also knows its better to give in now than to go down to the police station and end up facing the judge. Nevertheless he is determined that next spring the road will be blockaded for good.

ACCESS AND COMMON ROADS TO THE RESCUE

Early in 1979 Corporal Experience learns about The Road Access Act, 1978. To him its a second Christmas. So in March he plays his next hand. He writes to Mr. Troublesome sending him a copy of the new legislation reminding him that the road cannot be closed without a judge's order. If it is, then the police will have no alternative but to lay charges under the act. Now this puts the shoe on the other foot — the left foot of Jim Troublesome.

LEGAL PROCEDURES — ACCESS ROADS-COMMON ROADS

Jim Troublesome then goes to his lawyer and finds that he is now on the horns of a dilemma. If he blocks the road without a court order, he can be charged and be subject to heavy fines. This can be expensive. His alternative is to commence an action for an application to a judge to close the road, and this also is expensive.

When this episode started out he objected to the cottagers passing over his property because of "the principle of the thing." Now it becomes a matter of principal and interest.

His lawyer tells him that there is a rather complicated procedure to be followed. Before starting he will want a preliminary retainer of \$500.00. The work involved includes the following:

1. Jim Troublesome must compile a list of the owners of each parcel of land which would be affected by the road closing (and in court procedures you do not dare miss a name)

2. This will involve attending at the municipal offices and doing a search of the tax rolls to determine the whereabouts of some of the cottage owners (always a time consuming chore).

3. The lawyer will attend at the registry office and do a search of these properties to determine ownership. If there are a number of people involved then this can be an expensive undertaking.

4. Then the lawyer appears at the county court judge's office and arranges for an appointment date in the future. It will have to be more than 3 months hence because Mr. Troublesome must serve some notices.

5. The lawyer must then prepare formal notices which must be served 90 days in advance upon the owners of land and the clerk of the municipality, of Mr. Troublesome's intention to apply to a Judge. In the case of Common Road a notice must be published for 4 consecutive weeks in a local paper.

6. Also, the lawyer must prepare affidavits as to Mr. Troublesome's position and these affidavits are also served with the notices, on all the owners. The opposition lawyers may want to cross-examine Mr. Troublesome on his affidavits before the hearing date.

7. Finally, all the lawyers must appear before the Judge and argue their case for their clients.

In this type of proceedings, \$1,000.00 is not going to go very far and Jim Troublesome has to start thinking about his pocket book. With this new legisla-

tion, a great many people who stand up and shout about their legal rights are going to have second thoughts.

THE PARKING AREA — A DIFFERENT SITUATION

The Act specifically protects ROAD ACCESS, it does not speak about car parking areas. I am inclined to believe therefore that Jim Troublesome could block off the parking area at the shore as this area is not required for access purposes. It could be that in the future the courts will say that parking is part of access but at the moment it does not appear logical. Therefore I believe that the parking rights can be closed off without an order of the court.

CONCLUSION

Before the new Act came along, the cards were definitely stacked in favour of Jim Troublesome. He had every right to block the road on his property and it was up to the cottagers to commence an action in the court — and probably join in the municipality — with the hope of having the road declared as dedicated, owned, and assumed by the municipality. While all this legal manoeuvring was going on the summer was going by and Jim Troublesome would be in the driver's seat.

But under the new Act, the O.P.P. can look him straight in the eye and say "Where is your court order permitting you to block this road." If he has not got it — he has something else called trouble.

It certainly makes it easier for the police to carry out their duties and I am sure that they will welcome the new Act with open arms, because people like Jim Troublesome have always been a problem in the past.

THE OTHER SIDE OF THE COIN

As always, there is another side of the coin. If an owner is approached by friends or cottagers requesting that they be able to detour through his property in order to get to their cottage, what does he do? He had better think twice before saying yes. If he does agree and later wishes to terminate these rights, then he has the financial obligation of these court proceedings to get a court order to terminate the rights and privileges of these cottagers. What started out to be an act of a good samaritan — now turns into a financial burden.

The owner is well advised to have an easement agreement prepared between himself and the cottagers (at the cottagers expense) under which he could terminate their easement rights on 60 days notice. Such an agreement will remove the cottagers from the new Act. It is something to think about!