

(formatted for website)

CALVIN SANDBORNS OPINION in VANCOUVER SUN

Calvin Sandborn is the legal director of the University of Victoria Environmental Law Centre.

<https://vancouver.sun.com/opinion/calvin-sandborn-b-c-needs-a-right-to-roam-law>

Calvin Sandborn: B.C. needs a right to roam law

Opinion: Minnie Lake and Stoney Lake belong to residents of the Nicola Valley, to local fishers and to Indigenous people — just as much as they belong to the Walmart founder's son-in-law who owns the surrounding land.

Published Apr 05, 2021 • Last updated Apr 06, 2021 • 3 minute read

The B.C. Court of Appeal recently ruled that Douglas Lake Cattle Company can kick out local residents who have fished Minnie and Stoney Lakes for generations. This decision will frustrate all British Columbians who seek solace in wilderness.

Premier Horgan now needs to fix the crazy state of the law that the court confirmed: All British Columbians own Minnie and Stoney Lakes. All British Columbians own the fish in those lakes. But because one American plutocrat owns the surrounding land, British Columbians are fenced out of the *public* lakes and the *public* fish. This is not right.

Fortunately, the court explicitly stated that government can change this. The legislature is free to follow the example of many other jurisdictions — and pass a law to guarantee access to publicly-owned lakes. Indeed, the court cited our Environmental Law Centre report (EPAPOWL), which explains how various governments have legislated the right of public access — the “right to roam”.

For example, Nova Scotia law entitles anglers to cross private uncultivated lands to fish distant lakes and streams. England, Wales, and Scotland have legislated even broader public rights to cross undeveloped private lands to get to nature. Sweden's Constitution similarly guarantees an individual's right to access the natural environment.

The value of the Douglas Lake case is that it vividly demonstrates the need for law reform. Indeed, the lower court decision by Justice Joel Groves eloquently summed up the urgent need for reform. Noting that in 18 years on the bench **he had never before urged politicians to act on an issue before him**, Groves did just that:

“It makes no sense to me that the Crown would retain ownership of the lakes, only for there to be no access because someone owns ... all the lands surrounding the lake. ... The remedy I am urging on government is this. First off, look at the Trespass Act. Is that really what you intend in today's world? Secondly, if you own the lakes of the province, which you do, can you not regulate access? There really is no point to ownership otherwise. The ownership of lake beds is, no doubt in large part, intended to be collectively held for the benefit of all citizens of the province. As that is the case, consider doing what other jurisdictions have done and guarantee access to this precious public resource.”

Government must heed Groves, and legislate access to publicly owned lakes. Minnie Lake and Stoney Lake belong to residents of the Nicola Valley, to local anglers and to Indigenous

people — just as much as they belong to the Walmart founder's son-in-law.

Sadly, the Minnie Lake problem is not unique. Across the province, landowners are fencing locals out of nearby Crown lands and waters. **For example, the Fresh Water Fisheries Society has stopped stocking fish in innumerable treasured lakes on Vancouver Island because forest companies have locked fishers out of those lakes.**

Premier Horgan needs to act now and pass a Right to Roam Act. Bring together all interested parties — First Nations, Cattlemen's Association, the forest industry, and recreationalists — and work out a fair solution. Do what jurisdictions like Nova Scotia have done: Create a law that respects and protects private property — and respects the public's right to enjoy Crown lakes and wilderness. Create incentives for landowners who agree to identify key pathways across their lands to public wilderness.

For wild places are fundamental to the British Columbia lifestyle. As we play a rainbow trout, stand in awe of a diving osprey and behold the ambling bear, we find refuge from modern life. "The lake water lapping by the shore ... touches us in the deep heart's core." (William Butler Yeats). We return refreshed in mind, body and spirit.

We simply must not lose our access to traditional fishing lakes, hiking trails and paddling streams.

No shopping trip to Walmart can even remotely compare.