

# How Can Societies Create Common Access to Nature?

## The Roots and Development Process of the Bruce Trail, a Canadian Case Study

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### Abstract:

The relationship between nature and human beings is a fundamental theme of commons studies. Every economic activity takes place because of ecological support. However, the relation between human beings and nature has become invisible and indirect for us. Generally, it is supposed that the more invisible and indirect the relation, the less attention we pay to the natural environment. One reason of the variety of current environmental problems is in the division between human and nature. It is necessary for us to rebuild sound relationship between human and nature. In this sense, it is very important that society allow the common access to nature so that people can appreciate and enjoy the blessings of nature.

From ancient times, access to nature was open to the public or local communities in many countries. However, industrialization, urbanization, and urban sprawl have threatened the right of common access to nature. Some regions -- for example, Scandinavian countries -- have sustained this right throughout industrialization and globalization. On the other hand, in Japan, a district court denied the right of common access to the shore in 1978. Why do some regions succeed in maintaining the right of common access to nature, while some regions fail? How can we keep, reintroduce, create or transplant this right?

This paper explores these questions by clarifying the roots and development process of the Bruce Trail -- 885km of main trail and 400km of associated side trails from Niagara to Tobermory along the Niagara Escarpment -- which has been built and maintained by the volunteer-based organization, the Bruce Trail Conservancy. It is interesting how they have succeeded in creating such a long trail in a country that has a strong private land ownership tradition. My conclusion is that they have transplanted ideas from other countries while at the same time adjusting these ideas to the Canadian situation, as they have built a unique open-access trail system.

### Key words:

Common access, the Bruce Trail, Canada, Case study, Property right

### 1. Introduction

The relationship between nature and human beings is a fundamental theme of environmental studies. Essentially, every environmental problem is the problem of the relation between nature and human activity. Every economic activity takes place because of ecological support. Our economy depends on material and energy that the Earth

provides. We refer to these functions as the ‘source’ functions of nature in ecological economics (Victor 2008). After the production and consumption process, we dispose of wastes into the natural environment: on land, into water or into the air. Some of the wastes are diluted in air and water in concentrations so low that there are virtually no harmful effects. Some of the wastes decompose into the ground and become nutrients for other life forms in an ecological cycle. We refer to these functions as nature’s ‘sink’ functions.

In this sense, we rely on nature for both ‘source’ and ‘sink’ functions (Daly and Farley 2004). This fact has not changed since ancient times. It is noteworthy that the human impact on the natural environment has increased along with human population growth, modernization and globalization. At the same time, the relation between human beings and nature has become invisible and indirect for us. For example, each family or community formerly produced foods by themselves. However, now we rarely produce foods by ourselves and import it from all around the world. We usually do not know where, by whom, when, and how the foods were made.

Generally, it is supposed that the more invisible and indirect the relation, the less attention we pay to the natural environment. In a difficult situation that global environment is on the crisis, we can not conserve the earth without public awareness. It is because that one reason of the variety of current environmental problems is in the long distance between human and nature. In addition, public awareness is crucial to make the environmental policies work. It is necessary for us to rebuild sound relationship between human and nature. Access to nature is supposed to be the first step for us to restore the relationship. In this sense, it is very important that society allow the right of common access to nature so that people can appreciate and enjoy the blessings of nature (Sandell 2006; Wurzinger 2006).

From ancient times, access to nature has been open to public or local community in many countries. However, industrialization, urbanization, and urban sprawl have threatened the right of common access to nature by destroying nature or enclosure of the land. How can we keep this right? Some regions, for example, United Kingdom and Scandinavian countries, have sustained this right throughout industrialization and globalization.

On the other hand, in Takasago city in Japan, the district court denied the right of common access to the shore in 1978. At that time, petrochemical complex reclaimed five kilometers beautiful beach and occupied there. Local people and ecologists have fought against these industries to keep the right of common access to shore.

Besides, common access in North America is much more restricted than west Europe. According to the geographical comparative study by Millward (2000), North American countries such as United States and Canada have less footpaths and much land closed to the public than West Europe such as France, West Germany, Belgium, the Netherlands, and Luxembourg<sup>1</sup>. In a similar way, researcher of outdoor education based

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<sup>1</sup> Millward(1992) and Millward(2000) deal with countryside recreational access in Canada. These studies provide very useful information on common access in Canada including international comparative perspectives. However these studies are from geographical and topographical perspective. In other words, social and institutional perspective is not enough in earlier literature. That is the reason why I conduct this study.

on Norway and Canada pointed out that access to nature in North America is restricted (Vikander, 2007).

Why do some regions succeed in keeping the right of common access to nature and some regions fail? How can we keep, reintroduce, create or transplant this right? This paper explores these questions by clarifying the roots and development process of the Bruce Trail, 885km of main trail and 400km of associated side trails. It is very interesting case of public footpath which has tried to overcome North American restricted access to nature and succeeded to create the public access both on private lands and public lands. Thorough this discussion, I would like to show options other than both exclusive private and public owned nature. The options are common accesses to nature. In addition to that I would like to show the diverse type of common accesses.

## 2. What is the Bruce Trail

The Bruce trail is one of the oldest and the longest footpath in Canada. It follows the Niagara Escarpment which is a UNESCO World Biosphere Reserve<sup>2</sup>. The particular combination of geological and ecological features



<sup>2</sup> UNESCO World Biosphere Reserves are area of terrestrial and coastal ecosystems promoting solution to reconcile the conservation of biodiversity with its sustainable use. There are over 500 biosphere reserves in over 100 countries.

along the Niagara Escarpment results in a landscape unequalled in Canada. The Niagara Escarpment is home to a wide variety of plants and animals, some of which are rare or found nowhere else in the province. The Escarpment contains more than 300 bird species, 53 mammals, 36 reptiles and amphibians, 90 fish and 100 varieties of special interest flora. It is also a source of some of southern Ontario's prime rivers and streams. It is one of the province's principal outdoor recreation areas. Human impact on this environment is reflected in a variety of ways. The Escarpment area is the site of a large mineral aggregate extraction industry. Demand for permanent and seasonal residences in many areas is intense. Farming ranges from the cultivation of fruit and crop in the Niagara Peninsula to the raising of beef cattle in the Bruce County. Ontario's largest population center makes the Escarpment a popular tourist destination (Niagara Escarpment Commission, 2005).

Along the escarpment, the Bruce Trail is from Queenston to Tobermory. It spans more than 885km of main trail and 400km of side trails. As I write the detail later, it is built and maintained by an association. The Bruce Trail Conservancy is a charitable organization committed to establishing a conservation corridor containing a public footpath along the Niagara Escarpment. The Bruce Trail Conservancy consists of nine regional clubs and they are responsible for building and maintaining of the Bruce Trail. The members of each club organize hikes, social outings and seminars.

### 3. The history of the Bruce Trail

In 1960, Raymond Lowes, Philip Gosling, Robert MacLarren, and, Norman Pearson formed the Bruce Trail Committee. They were the founders of the Bruce Trail and knew each other through a nature association such as Hamilton Naturalist Club and Federation of Ontario Naturalists. According to Pearson (2004), social situation at that time is as follows. Because of urbanization and urban sprawl, space suitable to outdoor activity had been decreasing. However, needs for space for outdoor recreation had been increasing because of urbanization and increasing population (Pearson, 2004). In such a situation, they felt it was necessary to conserve the Niagara Escarpment and build a trail along it.

One of the four founders and first chairman of the Bruce Trail Committee and first president of the Bruce Trail Association, Dr. Pearson was immigrant from England. So he not only knew the tradition of public footpath in England but also enjoyed walking a footpath such as the Pennine Way. He has also visited Norway before he came to Canada, enjoying outdoor recreation by a Scandinavian tradition of public right of access to nature. After he came to Canada, he realized that there were no such a footpath like in England and Norway. That's the reason why he was interested in the building of the Bruce Trail.

In 1963, the name of the Bruce Trail Association was patented, and the work of the original Bruce Trail Committee came to an end with successful transformation (Pearson, 2004). How did they approach the landowners to build the trail? At that time, "The trail was 49% on private land; 23% on roads to avoid affecting productive farmland; and 28% on public land". Almost half of the trail was on the private land. So, there were many landowners on such a long trail. It is hardly imagine how they got permission from landowners. Surprisingly, they visited every single landowner. Use of the trail was by "kind permission" of landowners. On the other hand, BTA promised to not establish



public right-of-way through usage. They thought that users should not abuse the privilege given by “kind permission” of the landowner.

They really paid attention to keep good relation with landowners. Following descriptions exhibited the BTA’s consideration for landowners. “The Province had now set up the Niagara Escarpment Commission... It was felt to be unwise to be formally associated with the NEC so as not to imperil our excellent relationships with landowners (Pearson, 2004, p.91)”. “The Ontario newspapers were now speaking of the Bruce Trail as a potential national park, and the BTA was at pains to reassure landowners that this was not BTA policy (Pearson, 2004, p.99)”. “In the view of many misunderstandings with respect to the endeavours of National Parks Canada in the Bruce, and the Ontario Government’s effort with the NEC, the BTA Directors under President William Cannon adopted various policies (Pearson, 2004, p.100)” which included preventing the creation of legal “right-of-way” and courtesy sign.

Concerning prevent the creation of legal “right-of-way”, their policy was as follows. “The second major policy provided that the Trail would be closed one day each year to protect the rights of the landowners and the prevent the creation of a legal “right-of-way”. Each BTA Club, having the detailed knowledge of local conditions and circumstances, was to determine the particular application of this general policy in their area. It was strongly recommended that paid advertisements be placed in local newspapers giving details of the closure, and explaining the special “kind permission” relationship between the landowners and the BTA (Pearson, 2004, pp.100-101)”.

Concerning courtesy sign, their policy was as follows. “The third policy was to standardize all courtesy signs to read “The Bruce Trail: this is private land. It is only thorough the courtesy of the Owner that this Trail may be used. Please respect the privilege. Start no fires. Leave no rubbish. Protect trees and crops; No hunting permitted. Please do not leave the Trail (Pearson, 2004, p.101)”.

In 1967, The Bruce Trail officially opened to public. How were they able to complete building such a long trail so rapidly? Dr. Pearson wrote the reason as follows. “The sudden and rapid development was clearly due to the effective federal structure of the Bruce Trail Association. It allowed general policies, with variations to suit various local Club circumstances; and relative autonomy within those broad policies for the various Club to resolve their problems in their own individual ways, because in each area the terrain and the ecology were different and distinctive (Pearson, 2004, p.68)”.

The BTA had established THE ESCARPMENT PRESERVATION FUND in 1967. By September 1968, it had about \$33,000 in the bank and about \$21,000 had been paid out for land purchases to protect important and threatened areas. It was agreed that membership (BTA) fees should be \$10, with \$5 of that earmarked for the Escarpment Preservation Fund (Pearson, 2004, p.93)”. The tradition of this land acquisition has been kept since then. They spent 463,998 dollars for property acquisition in the year ended June 30, 2009.

In here, I would like to mention the financial aspect of current BTC. The table1 show the revenue of the Bruce Trail Conservancy in the year ended June 30, 2009. Almost 60% of revenue is from donation, and 19% from government<sup>3</sup> grants, 14% from

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<sup>3</sup> This includes Provincial and Municipal Governments.

membership due. Expenses for the year totaled 1,835,684 dollars. Overall, their 2009 revenues exceed expenses by 953,348 dollars.

Table 1. Revenue of the Bruce Trail Conservancy in the year ended June 30, 2009

	Land Conservati n Fund	Land Acquisiti n Fund	Life Mem bershi p Fund	Endowm en t Fund	Total
Donatbn - cash	368,388	1,253,555			1,621,943
Donatbn - property		67,400			67,400
Mem bership dues	379,341		11,532		390,873
Bruce Trail Enterprises net earnings	94,371				94,371
Grants	132,987	390,150			523,137
Sponsorships	62,226				62,226
Interest Incom e	5,663	5,045		14,705	25,413
Sundry incom e	3,669				3,669
<b>Total</b>	<b>1,046,645</b>	<b>1,716,150</b>	<b>11,532</b>	<b>14,705</b>	<b>2,789,032</b>

Source: Bruce Trail Magazine, Vol 47, No.1.

Now I back to the history of the Bruce Trail. The Province purchased substantial key properties on the Escarpment. “By May 1970, new legislation was introduced to begin an 8-year program of buying land on the Escarpment to province parkland and recreation opportunity... Conservation authorities were given 75% subsidy on Escarpment lands which they purchased (Pearson, 2004, p.116)”. This policy was helpful for the BTC’s Escarpment Preservation Funds.

The trail grew quickly. For example, on Feb.28,1970, the “Globe and Mail”which is one of the biggest newspaper reported “...There is heavy traffic on the Bruce Trail; popular section near Rattlesnake Point in the Halton County Conservation Area have at times on winter weekends seemed as crowded as Yonge Street, Toronto, on a shopping night (Pearson, 2004, p.113)”.

The members increased rapidly and reached 8,000 in 1978. According to the written interview with the executive director of the BTC, the number of members has been fairly consistent in the past 20 years, at around 8,500. However, there has been a lot of turnover of members (in other words, it’s not the same 8,500 each year – there is a core of about 6,500 and roughly 2,000 more members leaving each year, and 2,000 more joining as new members).

In 2007, they changed their name from the Bruce Trail Association to the Bruce Trail Conservancy. According to the executive director of the BTC, the reason of the name change was as follows. “Our organization has long been in the business of preserving land along the Niagara Escarpment. However, we were best known as a “hiking club”, and nothing more. Many many people who felt they knew a lot about the Bruce Trail were not aware of our conservation work. The name change to Bruce Trail Conservancy was to better reflect our work in conservation. We have not changed what

we do as an organization, but we have changed how others perceive us as an organization”.

The Bruce Trail Association’s original vision was to provide the public an opportunity to enjoy nature. Because such an opportunity, they believed, would lead to the will to protect this natural treasure. So they have maintained the trail and prepared a lot of material, such as trail guide and maps, blazes<sup>4</sup>, and signs. The trail user’s code is on the signs at the entrance of the trail.

#### The Trail user’s Code

- Hike only along marked routes. Do not take short cuts.
- Do not climb fences - use the stiles.
- Respect the privacy of people living along the Trail.
- Leave the Trail cleaner than you found it. Carry out all litter.
- No open fires are allowed on the Trail. Use a portable stove.
- Camp only at designated camp sites.
- Leave flowers and plants for others to enjoy.
- Do not damage live trees or strip off bark.
- Keep dogs on a leash and under control at all times.
- Do not disturb wildlife.
- Leave only your thanks and take nothing but photographs.

#### 4. The characteristic of the Bruce Trail

To describe the characteristic of the Bruce Trail, I would like to compare the social and institutional aspect with other countries: Norway and England. The reason why I chose Norway is that Norway has one of the strongest social structure regarding right of access to nature. In addition, the reason why I also chose England is that Canada has transplanted many social structures from England. Another reason is that Dr. Pearson, one of the founders of the Bruce Trail and first president of the Bruce Trail Association, admit that he was impressed both Norwegian and England public right of access system before he came to Canada<sup>5</sup>. Further he is an immigrant from England.

#### Purpose

I would like to start with the purpose of the keeping of common access to nature. The purpose of establishing the Bruce Trail is to promote environmentally responsible public access to the Niagara Escarpment and to establish a conservation corridor along the Niagara Escarpment.

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<sup>4</sup> Blaze is a white mark on a tree to tell a route.

<sup>5</sup> According to the interview with Mr. Pearson, he was impressed by the three countries public access systems before he began to build the Bruce Trail. That is Norwegian public right of access system, England public footpath system and American Appalachian trail system. For simplification, I focused on the Norwegian and England which have older tradition than America.

On the other hand in Norway, the purpose of keeping the right of common access is to have the opportunity to take part in outdoor recreation as a healthy and environmentally sound leisure activity that provides a sense of well-being and to maintain natural resources so that areas of value for outdoor recreation shall be safeguarded (Norwegian ministry of the environment, 2005).

In England, the purpose of the public access system is to provide an opportunity of outdoor recreation. In this point, Department for Environment, Food and Rural Affairs (Defra) in the U.K. mentioned as follows. “People have been campaigning for more open access to the countryside for well over 100 years. The Countryside and Rights of Way Act 2000 (CROW) has been introduced in direct response to this, to create new recreational opportunities for all” (Defra, website). In addition, they said that outdoor recreation has the potential to provide physical and mental health benefits to everyone, and access to the countryside and other ‘green space’ is one of the primary means of obtaining these benefits.

All of three cases have a lot in common. That is all of them stress the importance of public access to nature because it increase well-being. At the same time, they thought public access can give people an opportunity to understand the natural environment and make people environmental conscious and, in the end, contribute to nature conservation.

## History

In the case of the Bruce trail, as I already mentioned above, the Idea was born in 1960, and officially opened to public in 1967. This is the first public footpath in Canada. In this sense, the history of the public footpath in Canada is very young. They established the trail by building a good relation with land owners and get a kind permission. On the other hand, Norwegian right of public access is based on long tradition as customary law which was at least backdated to Medieval Era and Legislated as the Outdoor Recreation Act in 1957. In the same way, England also has a long tradition on public access. In case of England, public has been fighting against landowners to get a right of access to private land. The Countryside and Rights of Way Act 2000 was legislated after a long struggle.

## The basis of access

In the Bruce Trail, access to the other’s private land is based on the Kind permissions of the land owners. Actually, the Bruce Trail Magazine which is a quarterly magazine for the BTC member published by the BTC announce every time the route changes because of trail closing requested by the landowners. In this mean, public does not have any right regarding access to private land. That is land owner retained all his rights at all time. Furthermore, they intentionally have avoided the creation of the right of access through usage by closing the trail once a year.

On the contrary, any person is entitled to access to and passage through uncultivated land at all times of year in Norway. The right is specified in the Outdoor Recreation Act. Even the owner of land may not hinder access that is permitted by this Act. In this mean, public right of access is strong and protected by the law.

Similar to Norway, people can access rights of way which are made up of footpaths, bridleways (for pedestrians, horse riders and bicyclist), restricted byways (for



all types of traffic except mechanically propelled vehicles) and byways open to all traffic. In addition, the public has a right of access to certain types of land which include Country Parks, commons, and town and village green. Common land is protected from development by the Commons Act 2006. Registration as a town or village green conger on local people a strong protection against development. Register of new greens are done on the basis of 20 years' use of land as if it were a green.

This difference is very interesting for me. I had a written interview with the executive director of the BTC. The result of written interview was as follows. My question is; In the U.K. and Scandinavian countries, the right of access allows the public to access wild land areas to walk, to stay and, in particular in Scandinavia, to pick berries, mushrooms, and so on. Has the BTC considered seeking the “right of access” instead of “kind permission of landowner”?

Her answer is; Definitely not. The BTC crosses land by permission of the landowner, and makes no claim to the land. If there was any sense that we were attempting to get permanent right of access from the government without needing permission from the landowners, we would lose many hundreds of kilometers of Trail because of concerned landowners. That kind of legislation would never be passed in Canada, and any attempt to do so would only raise very negative publicity. We will continue to rely on handshake agreements, and in the meantime continue to purchase land wherever we can to secure our Trail.

#### The area people can access and what people can do there

In the case of the Bruce Trail, people can access only on the trail. It is prohibited to leave the trail on the private land. It is not permitted to extract something from the land. On the other hand, people in Norway can access on uncultivated land. In the uncultivated land, people can leave the trail and access anywhere in the private land. Furthermore, people can not only to walk, but also to stay and to pick berries, mushrooms, and so on. In the case of England, people can access on public right of way and certain types of land, such as parks, commons, and village and town green. In this sense, the accessibility in the Bruce trail is very restricted compared to Norway and England.

#### 5. Discussion: Why they can build the trail?

Through the discussion of section 4, we can understand the characteristic of the Bruce Trail. The Bruce Trail and advanced public access countries has something in common. We can see the similarity in the idea and purpose of the public access in these countries. Actually, Dr. Pearson said that the BTC got hints from these countries. However we should not think that the Bruce Trail is a copy of the institutions in these countries.

Dr. Pearson said that “I think we have to build on what we had created”. As he said, the BTC has been building their own systems. An institution cannot be simply transplanted into different cultural, historical, social and ecological context. In particular the difference in landownership was very important. According to Dr. Pearson, Canadian private landownership is very strong.

Regarding this, he talked as follows<sup>6</sup>. He came to Canada from England as a planner. At that time, there was not much planning. His job was to tell local council that they needed planning. However planning at that time was very hard because of strong private landownership. Without exception, all landowners said to him “We don’t need you. We have a crown deed. I can do anything I want in my land! Get off”.

In such situation, it was impossible for volunteer based organization to get right of public access to the private land. If they started with asking directly right of access, everybody will think it was a threat to the landownership. So the Bruce Trail founders choose their own way. Instead of fighting against landowners to seek the right of access, they clarified that they did not seek right of access and keep a good relation with landowners to get a kind permission of them.

This kind permission system has been working well in Canada. According to Dr. Pearson, kind permission of landowner system can made people responsible on trail. In the beginning, there were so irresponsible people who were not careful. They went out to private property, built bonfire and chopped tree down. They behaved badly. Reacting such a bad behavior, the BTC closed the trail immediately. People have to behave courtesy and to meet the needs of landowner. Otherwise, the landowners shut the public out. The Bruce Trail Conservancy’s case shows us that there is a variety of options between private landownership and public landownership.

By public access to Niagara Escarpment, they appealed to public opinion for conservation. Bruce Trail user became strong supporter of further escarpment protection (McKibbon, Louis and Shaw, 1987). Related to a groundswell of popular opinion, the government of Ontario approved the Niagara Escarpment Plan in June 1985. The plan was the first large-scale environmental land use plan in Canada.

The Bruce Trail was established by the volunteer based organization. They got a hint from some advanced cases in foreign countries. However they developed their own tradition reflecting their own situation in Canada. That is one of the reasons why they can build such a long trail.

## Acknowledgement

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<sup>6</sup> In my interview with him in London Ontario on 10th June 2010.

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