

# ANDERSON LLOYD

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Mr J K Guthrie

Dear Bruce

**Re: Section 58 Strips: Is Public Access Guaranteed?**

You asked me yesterday, 12 February, to report to you urgently on the extent to which Section 58 of the Land Act 1948 has as its purpose the protection and preservation of public rights of access over unoccupied crown land at the margins of lakes and rivers.

The question arises because of the claim now being made by Government that the changes proposed by the Conservation Amendment Bill (presently before the House) will improve the security of public access over riparian unoccupied crown land.

As we understand the present government's position it is that Section 58 merely reserves from alienation riparian land (which is simply unoccupied crown land) over which the public has access by grace of the Queen's Agent, the District Conservator of the Department of Conservation or the Commissioner of Lands in the Lands Department. You asked us to look for authority that will demonstrate that the public has a right of access over such unoccupied crown land rather than the less certain position which the Crown presently argues for.

We have undertaken an exhaustive search of all case law affecting Section 58 of the Land Act 1948. All cases dealing with former statutory provisions analogous to Section 58 have been looked at. We record that none of them are of assistance in answering the important question you pose.

We have also examined Hansard for the legislative history of the 1908, 1924 and 1948 bills (and all intermediate amending statutes) none of the parliamentary debate recorded in Hansard assists in answering your question.

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Although the direct evidence is scarce we have little doubt that the purpose of Section 58 Strips is the preservation of public access. The best direct evidence for that proposition is to be found in the proviso to Section 58(1). It states:

"provided that the Minister may approve the reduction of the width of the strip of land to not less than 3 metres if in his opinion the reduced width will be sufficient for reasonable access to the sea, lake, river or stream."

This proviso is clear evidence that the purpose of the Section 58 Strip reservation is the provision of reasonable access to water. The question is whose access? Since the Crown is the land owner selling or otherwise disposing of its land it is free to protect its rights of access by contract or by easement (right of way). The only satisfactory inference is that the reasonable access is being reserved for the public.

Queen Victoria's Instruction to Hobson, concerning the reservation from sale of riparian strips must be seen in its the historical context. In the United Kingdom there is no legislative nor prescriptive right of access for the public to rivers, lakes, streams and the seashore. All are capable of being owned in private hands with the result that public access to water is very limited. It is for this reason that private fishing rights and private beach frontages have developed in much of the northern hemisphere world.

It is unfortunate that our researches have not produced a more definitive argument for you to use in the debate over this important issue. Nonetheless we think the answer is clear.

Will you please let us know if we can assist further. We have sent copies of this letter to Mr Watson and Mr Johnston for their information.

Yours faithfully

ANDERSON LLOYD

Per: 

J.K. GUTHRIE

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