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# Property Law—Minnesota's Lake Shore Property Owners Without Road Access Find Themselves up a Creek Without a Paddle—In Re Daniel for the Establishment of a Cartway

Kirstin Kanski

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**PROPERTY LAW—MINNESOTA’S LAKESHORE  
PROPERTY OWNERS WITHOUT ROAD ACCESS FIND  
THEMSELVES UP A CREEK WITHOUT A PADDLE—*IN  
RE DANIEL FOR THE ESTABLISHMENT OF A CARTWAY***

Kirstin Kanski<sup>†</sup>

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I. INTRODUCTION: MINNESOTA, LAND OF 10,000 LAKES<sup>1</sup>

Lake access has always been a hotly debated issue in Minnesota.<sup>2</sup>

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<sup>†</sup> J.D. Candidate 2005, William Mitchell College of Law; B.S., Natural Resources Management, Spanish, and International Studies, with honors, North Dakota State University, 2001.

1. Minnesota technically has 11,842 lakes of at least ten acres in size. Minnesota Department of Natural Resources, *Lakes, Rivers, and Wetlands*, at <http://www.dnr.state.mn.us/faq/mnfacts/water.html> (providing statistics of Minnesota’s lakes) (last visited Dec. 6, 2003). Minnesota’s “10,000 lakes” motto first arose in promotional literature in its territorial days as a means of publicizing the state’s outstanding feature. WILLIAM E. LASS, *MINNESOTA: A HISTORY* 25 (2d ed. 1998) (1977).

In a recent decision, *In re Daniel for the Establishment of a Cartway*,<sup>3</sup> the Minnesota Supreme Court added fuel to the fire. Under a strict construction of Minnesota's cartway statute,<sup>4</sup> the *Daniel* court held that lake access suffices for purposes of cartway condemnation.<sup>5</sup> The *Daniel* court reached its decision by interpreting the statute in light of the legislative intent that existed in 1913.<sup>6</sup> Since in 1913 water travel was considered a viable means of transportation, the court held that cartway condemnation is not appropriate where property borders on navigable water.<sup>7</sup>

Minnesotans have always taken pride in the vast rivers and lakes intricately woven throughout the state.<sup>8</sup> This land-water mosaic has always been integral to state development.<sup>9</sup> Yet regardless of how vital Minnesota's lakes are considered to be, the law must keep apace with the dynamic and innovative society it serves. Today, the typical Minnesotan thinks in terms of driving to work, not rowing.<sup>10</sup> The *Daniel* decision thus renders Minnesota's cartway statute obsolete due to modern modes of transportation.

In examining the *Daniel* decision, this case note begins with the historical development of Minnesota's cartway legislation and an

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2. LASS, *supra* note 1, at 26-27. Public access to Minnesota lakes has always been a lively issue because the majority of lakeshores fell into private hands long before their recreational value was recognized. *Id.*

3. *In re Daniel for the Establishment of a Cartway*, 656 N.W.2d 543 (Minn. 2003) [hereinafter *Daniel II*].

4. MINN. STAT. § 164.08 (2002). Historically, a cartway was a rough roadway used for carts. *Horton v. Township of Helen*, 624 N.W.2d 591, 592 (Minn. Ct. App. 2001). Today, a cartway is merely a classification of a type of public road, unique in character because it principally benefits an individual instead of the general public. 39 AM. JUR. 2D *Cartways* § 6 (2002). This note will refer exclusively to cartways due to the language of Minnesota courts. However, it should be noted that an array of terms is used among states in reference to cartways (i.e. private roads, ways of necessity, statutory easements, rights-of-way, byroads, and access roads).

5. *Daniel II*, at 546.

6. *Id.* at 545. The court used the legislative intent in 1913 because that was the year the cartway statute was amended to include the key "access" language. *Id.*

7. *Id.*

8. JOHN R. TESTER, MINNESOTA'S NATURAL HERITAGE: AN ECOLOGICAL PERSPECTIVE 197-265 (Mary Keirstead ed., University of Minnesota Press 1995) (describing Minnesota's lake, river, and stream ecosystems).

9. THEODORE C. BLEGEN, MINNESOTA: A HISTORY OF THE STATE 6-7 (2d ed. 1975) (1963).

10. See *Cale v. Wanamaker*, 296 A.2d 329, 333 (N.J. Super. Ct. Ch. Div. 1972) (noting a liberal trend of thought since the 1920s in water access cases due to people "driving" and not "rowing" to work).

overview of the state power utilized in condemning cartways.<sup>11</sup> A brief comparison is then made between statutory cartways and the typical common law easement by necessity.<sup>12</sup> A description of the relevant facts and reasoning of the *Daniel* decision follows.<sup>13</sup> This note contends that the *Daniel* court correctly limited its decision to one of statutory interpretation.<sup>14</sup> The court properly interpreted the statute in consideration of the state transportation arena that existed in 1913.<sup>15</sup> The cartway statute and its interpretation are then compared to current water access trends in both statutory and common law.<sup>16</sup> This note concludes that Minnesota's cartway statute, as interpreted by the Minnesota Supreme Court, finds itself antiquated and in need of amendment due to the transportation needs of today's society.<sup>17</sup>

## II. HISTORICAL BACKGROUND

### A. *The Birth of Minnesota's Cartway Statute*

Concepts of cartways can be traced back to Minnesota's formative years.<sup>18</sup> Statutory authority to lay roads originated prior to statehood in order to promote access throughout the territory.<sup>19</sup> Originally, any person who owned land *without connection to a public road* could petition the county board to lay out a cartway in order to connect the property to a *convenient* public road.<sup>20</sup> The board was then required to lay the cartway in a location *most beneficial* to all who would use it.<sup>21</sup> This statutory language of the territorial legislature is laden with ideas of convenience and indicates an objective of expanding Minnesota's road system. This original language, however, apparently got lost in the

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11. *See infra* Part II.A-B.

12. *See infra* Part II.C.1-2.

13. *See infra* Part III.A-C.

14. *See infra* Part IV.A.1.

15. *See infra* Part IV.A.2.

16. *See infra* Part IV.B-D.

17. *See infra* Part V.

18. The Minnesota Territory was established by Congress on March 3, 1849. JULIUS A. SCHMAHL, Secretary of State, MINNESOTA LEGISLATIVE MANUAL 182 (1913). Although the state's first legislature convened December 2, 1857, Minnesota's act of admission was not passed until May 1858. *Id.* at 185.

19. *See* MINN. STAT. ch. 11, § 13 (1851) (current version at MINN. STAT. § 164.08 (2002)).

20. *Id.* (emphasis added).

21. *Id.* (emphasis added).

statehood shuffle.<sup>22</sup>

The territory's cartway statute is thought to have been superseded by a public roads act that was passed in 1857.<sup>23</sup> Subsequent to statehood, for years only an obscure, discretionary authorization to lay cartways could be found implicitly in a proviso that specified the difference in width requirements of public and private roads.<sup>24</sup> The proviso briefly stated that county boards had power to lay out cartways when petitioned for by town residents.<sup>25</sup> The only requirement necessary to initiate the board's discretionary authority was that the petitioner desired the road.<sup>26</sup>

Town and county boards were not again required to act on a petition until 1913.<sup>27</sup> In 1913, Minnesota's cartway statute finally began to resemble its original pre-statehood version.<sup>28</sup> Boards were once again required to lay down a cartway to any single landowner who had "*no*

22. See *Roemer v. Bd. of Supervisors*, 283 Minn. 288, 291, 167 N.W.2d 497, 499 (1969) (addressing the "obscure" origin and purpose of the cartway statute).

23. See MINN. STAT. ch. 13, § 13 (1851). The original cartway statute is found in Minnesota's revised statutes of 1851. Upon achieving statehood in 1858, effort was made to formulate a comprehensive compilation of all Minnesota statutes. This compilation of those statutes enacted between 1849 and 1851 proved cumbersome and confusing. Within the compilation, the cartway statute precedes "An Act relating to Public Roads," which makes no mention of laying a statute and which ends by stating that "[a]ll public county roads hereafter to be laided out, shall be laid out in accordance with the provisions of this act." See MINN. STAT. (1849-58). For this reason, editors of the statute compilation specify that although the original chapter was published, the subsequent act in large part supersedes it; however, due to lack of clarity the two must be read together. *Id.*

24. See 1873 Minn. Laws ch. 5, § 47 (codified as amended by MINN. STAT. ch. 21, § 47 (1873)) (specifying public roads were to be four and six rods wide, while cartways were to be only two rods in width). One rod equals 16.5 feet. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1967 (1993). See also *Marchand v. Town of Maple Grove*, 48 Minn. 271, 274, 51 N.W. 606, 607 (1892) (exploring the development of statutory roads in dicta).

25. 1873 Minn. Laws ch. 5, § 47. This language was refined, however, by an 1877 amendment that required a minimum of five petitioners to allow the board to exercise its discretionary authority. See 1877 Minn. Laws ch. 50 § 1. It was also in 1877 when the statute first clearly specified that "such cartway[s] . . . shall be deemed a public cartway for public use." *Id.*

26. MINN. STAT. ch. 21, § 47 (1873).

27. All statutes prior to the 1913 amendment were purely grants of discretionary authority. See, e.g. MINN. STAT. ch. 21, §47 (1873). The original 1851 statute, however, had required the laying of a cartway whenever there was lack of access to a public road. See MINN. STAT. ch. 11, § 13 (1851).

28. Authority to lay cartways finally comprised its own section, instead of being obscurely mentioned in passing under a section regarding the width of roads. Compare MINN. STAT. § 2542 (1913) with MINN. STAT. § 1832 (1894).

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*access thereto except over the lands of others.*<sup>29</sup> This exact “no access” language has survived and remains in effect today.<sup>30</sup> Since its 1913 rebirth, the cartway statute has undergone few critical changes.<sup>31</sup> Today, town and county boards are required<sup>32</sup> to establish a cartway to connect land to a public road whenever a landowner has “no access thereto except over the lands of others.”<sup>33</sup>

Minnesota is not alone. Currently, at least twenty-six other states have statutes of comparable character.<sup>34</sup> While some states have explicit

29. 1913 Minn. Laws ch. 235, § 55 (codified as amended by MINN. STAT. § 2542 (1913) (emphasis added)).

30. MINN. STAT. § 164.08 subd. 2(a) (2002).

Upon petition presented to the town board by the owner of a tract of land containing at least five acres, who has no access thereto except over the lands of others, or whose access thereto is less than two rods in width, the town board by resolution shall establish a cartway at least two rods wide connecting the petitioner's land with a public road.

MINN. STAT. § 164.08 subd. 2(a) (2002).

31. Historically, a landowner had to own at least five acres of land. MINN. STAT. § 2542 (1913). Today, however, an owner of land at least two but less than five acres can petition for mandatory establishment of a cartway providing the land was on record as a separate parcel as of January 1, 1998. MINN. STAT. § 164.08 subd. 2(a) (2002).

32. MINN. STAT. § 645.44 subd. 16 (2002) (stating “shall” is mandatory).

33. MINN. STAT. § 164.08 subd. 2(a) (2002). An alternative means to receive a mandatory cartway is to establish that access exists, but is less than two rods wide. *Id.*

34. Minnesota is unique, however, in distinctly authorizing both permissive and mandatory cartway establishment. *See* MINN. STAT. § 164.08 subd. 1-2 (2002). New York is the only other state recognizing each type of authority. *Compare* N.Y. REAL PROP. LAW § 335-a (McKinney 2002) *with* N.Y. HIGH. LAW § 300 (McKinney 2002). The remainder of states recognizing statutory cartways are fairly split. Some jurisdictions recognize purely mandatory authorizations. *See, e.g.,* ARK. CODE ANN. § 27-66-401 (Michie 2002); FLA. STAT. ch. 704.01(2) (2002); HAW. REV. STAT. § 7-1 (2002); IND. CODE § 32-32-3-1 (2002); MICH. COMP. LAWS § 247.211 (2002) (applying only to those isolated lands platted or subdivided for residential purposes); N.C. GEN. STAT. § 136-68 (2002); 36 PA. CONS. STAT. ANN. § 2731 (West 2002); S.D. CODIFIED LAWS § 31-22-1 (Michie 2002); TENN. CODE ANN. § 54-14-101 (2002); WYO. STAT. ANN. § 24-9-101 (Michie 2002) (amended by 2003 Wyo. Sess. Laws 9). Other jurisdictions recognize purely discretionary authority. *See, e.g.,* ALA. CODE § 23-1-130 (2002); ARIZ. REV. STAT. § 12-1202 (2002); GA. CODE ANN. § 44-9-40 (2002); KAN. STAT. ANN. § 68-117; KY. REV. STAT. ANN. § 416.350 (Banks-Baldwin 2002); ME. REV. STAT. ANN. tit. 23, § 3022 (West 2002); MISS. CODE ANN. § 65-7-201 (2002) (amended by 2003 Miss. Laws 535); MO. REV. STAT. § 228.342 (2002); MONT. CODE ANN. § 70-30-107 (2002); NEB. REV. STAT. § 39-1713 (2002); N.M. STAT. ANN. § 67-5-21 (Michie 2002); N.D. CENT. CODE § 24-07-06 (2002) (amended by 2003 N.D. Laws 223); OR. REV. STAT. § 376.155 (2002); WASH. REV. CODE § 8.24.010 (2002); WIS. STAT. § 80.13 (2002). Massachusetts has specifically prohibited statutory cartways upon registered land, which is part of a unique minority. MASS. GEN. LAWS ANN. ch. 185, § 53 (West 1991 & Supp. 2003). *But see* MINN. STAT. § 508.25 (2002) (excepting all rights in public highways from certificates of title).

cartway statutes, others authorize cartway condemnation simply by acknowledging that it is a valid exercise of the state's power of eminent domain.<sup>35</sup>

### B. *The Power to Condemn*

States have condemned<sup>36</sup> cartways by eminent domain since colonial times.<sup>37</sup> Eminent domain entitles the state to take private property, without the owner's consent, so long as the taking serves a public purpose.<sup>38</sup> The state's power is far from infinite, however, and it is curtailed in two aspects. There must exist a public use<sup>39</sup> and the owner of taken property must receive just compensation.<sup>40</sup> In Minnesota, cartways are distinguishable from the majority of takings jurisprudence because compensation is owed not from the government, but from the private individual petitioning the cartway.<sup>41</sup> On this basis, a well-founded concern may arise because it appears as though private

35. See, e.g., ALASKA STAT. § 09.55.240 (Michie 2002); COLO. REV. STAT. § 38-1-102 (2002); IDAHO CODE § 7-701 (Michie 2002); IOWA CODE § 6A.4 (2002); N.C. GEN. STAT. § 40A-3 (2002); OKLA. STAT. tit. 27, § 6 (2002); WYO. STAT. ANN. § 1-26-815 (Michie 2002) (amended by 2003 Wyo. Sess. Laws 161).

36. BLACK'S LAW DICTIONARY 287 (7th ed. 1999) (defining condemnation as "[t]he determination and declaration that certain property . . . is assigned to public use, subject to reasonable compensation; the exercise of eminent domain").

37. 2A JULIUS L. SACKMAN, NICHOLS ON EMINENT DOMAIN § 7.07[4][i] (rev. 3d ed. 2003). "A private road statute was enacted in Plymouth Colony in 1671." *Id.* at § 7.07[4][i] n.90.

38. BLACK'S LAW DICTIONARY 541 (7th ed. 1999) (defining eminent domain as "[t]he inherent power of a governmental entity to take privately owned property, esp[ecially] land, and convert it to public use, subject to reasonable compensation for the taking"). See also SACKMAN, *supra* note 37, at § 7.01[1].

39. Minnesota has long established that the state legislature cannot authorize the taking of private property for private use. See, e.g., *In re Schubert*, 102 Minn. 442, 444-45, 114 N.W. 244, 245 (1907) (declaring any statute authorizing condemnation of private property for a use not of a public nature to be void); *Sanborn v. Van Duyne*, 90 Minn. 215, 223, 96 N.W. 41, 42-43 (1903) (stating neither legislature nor constitution can authorize the taking of private property for a private use; such authorization would be unconstitutional and void). The doctrine of public use is equally well-established in federal courts. See *Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984).

40. MINN. CONST. art. I, § 13. Minnesota's Takings Clause mandates that "[p]rivate property shall not be taken, destroyed, or damaged for public use without just compensation therefor, first paid or secured." *Id.* Minnesota citizens are similarly protected under the Fifth Amendment to the United States Constitution, which is made applicable to states through the Fourteenth Amendment. U.S. CONST. amend. XIV.

41. See MINN. STAT. § 164.08 subd. 2(c) (2002). The petitioner of a cartway must compensate the landowner for all resulting damages. MINN. STAT. § 164.08 subd. 2(c) (2002).

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individuals are capable of utilizing state power to obtain a private road for personal benefit.<sup>42</sup>

The United States Supreme Court has not specifically addressed the constitutionality of cartway statutes.<sup>43</sup> The Minnesota Supreme Court, however, has specifically validated that the laying of a cartway is a public use for purposes of constitutional legitimacy.<sup>44</sup> The declared purpose of a cartway petition is to allow individuals ingress to and egress from their private property.<sup>45</sup> Minnesota courts fulfill the public use

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42. See Brian R. Harris, Note, *Private Road or Public Use? The Landlocked Property Dilemma: A Constitutional and Economic Analysis of Private Road Acts*, 80 U. DET. MERCY L. REV. 149, 159-60 (2002) (highlighting the argument that private road acts are unconstitutional). Several states have amended their cartway statutes to refer to the affected roads as “public” instead of “private,” perhaps to clarify any misconception of usage. See, e.g., IOWA CODE § 6A.4 (2002) (“public way”); ME. REV. STAT. ANN. tit. 23, § 3021 (West 2002) (“public easement”); N.D. CENT. CODE § 24-07-06 (1943) (as amended by 2003 N.D. Laws 223) (“public road”).

43. SACKMAN, *supra* note 37, at § 7.07[4][i]. *Marinclin v. Urling* is the only federal case that has addressed the constitutionality of private road acts. 262 F. Supp. 733 (D.C. Pa. 1967), *aff'd*, 384 F.2d 872 (3d Cir. 1967). The district court held that a Pennsylvania statute authorizing the taking of land by eminent domain to establish a private road did not violate the Fourteenth Amendment. *Id.* at 736. The United States Supreme Court, however, has established that strong deferential treatment is owed to any legislative decision regarding what constitutes a public use. See, e.g., *Berman v. Parker*, 348 U.S. 26, 32 (1954); *Midkiff*, 467 U.S. at 241 (stating that as long as there has existed a rational nexus between the exercise of eminent domain and a public purpose, the Court has never held a legislative determination unconstitutional).

44. *Mueller v. Supervisors of Courtland*, 117 Minn. 290, 295-96, 135 N.W. 996, 997-98 (1912). Although Minnesota has validated the constitutionality of the cartway, debate over the use of the state's power of eminent domain to establish a cartway is deeply rooted in cartway jurisprudence. Although some states align with Minnesota, recognizing cartways to be private in name only, several states have held such statutes to be unconstitutional for failing to serve a public use. See SACKMAN, *supra* note 37, at § 7.07[4][i]. Many states have solidified the issue by amending their state constitutions to declare the creation of private roads to be a valid public use. *Id.* These states include Alabama, Arizona, Colorado, Florida, Georgia, Illinois, Kansas, Michigan, Mississippi, Missouri, Montana, New York, Oklahoma, Oregon, Washington, and Wyoming. *Id.* Two recent decisions, however, verify that this vivid constitutional debate is far from over. See *Tolksdorf v. Griffith*, 626 N.W.2d 163, 167-69 (Mich. 2001) (deeming Michigan's private road act unconstitutional because it authorizes a taking that primarily benefits a private rather than a public purpose); *Township of West Orange v. 769 Assocs.*, 775 A.2d 657, 662-64 (N.J. Super Ct. App. Div. 2001), *rec'd*, 800 A.2d 86 (N.J. 2003) (finding condemnation of a road that will be used almost exclusively by residents is a private benefit to a private party and not the public).

45. *Mueller*, 117 Minn. at 294, 135 N.W. at 997. The *Mueller* court recognized that the cartway statute may appear to authorize a taking of property for private use. *Id.* at 295, 135 N.W. at 997. Although case law existed to validate such a view, the court found that the weight of existing authority supported the view that the only difference between a private and public road was “one of degree.” *Id.* The court supported its constitutional holding with case law of other jurisdictions, including Virginia, Oregon, Massachusetts,



requirement by recognizing that although the petitioner most directly benefits, the cartway is public in nature because anyone may lawfully use the road.<sup>46</sup> Under Minnesota jurisprudence, a cartway is characterized as public or private based on “the extent of the right to use it” not “the extent to which that right is exercised.”<sup>47</sup>

### C. *An Alternative to Cartway Condemnation*

The cartway is a legislative creation aimed to ensure public land access, use, and productivity.<sup>48</sup> Minnesota’s cartway statute allows private citizens to use the state’s power of eminent domain, thereby requiring petitioners to compensate adjacent landowners for all resultant property damage.<sup>49</sup> Minnesota’s common law affords landlocked landowners a more stringent, less costly alternative: an implied easement.<sup>50</sup> The doctrines of common law easements and statutory cartways utilize overlapping terminology and can create a confusing and non-uniform body of law surrounding landlocked property.<sup>51</sup> Cartway statutes are typically enacted to enhance and expand a landowner’s opportunity under the common law.<sup>52</sup> Although these are two distinct bodies of law,<sup>53</sup> an understanding of the common law forms an essential basis for analyzing cartway statutes.

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and California. *Id.* at 295, 135 N.W. at 998.

46. *Id.* at 295, 135 N.W. at 997-98.

47. *Id.* at 296, 135 N.W. at 998 (quoting Justice Hunt in *Butte, A. & P. Ry. Co. v. Mont. Union Ry. Co.*, 41 P. 232, 238 (Mont. 1895)).

48. SACKMAN, *supra* note 37, at § 7.07[4][i].

49. *Id.*

50. *See infra* Part II.C.2.

51. “Few things are as certain as death, taxes, and the legal entanglement that follows a sale of landlocked real estate.” *Bob Daniels & Sons v. Weaver*, 681 P.2d 1010, 1013 (Idaho Ct. App. 1984).

52. Minnesota’s cartway statute was “enacted to expand the narrow set of circumstances under which a party could, at common law, seek a way of necessity.” *Ullrich v. Newburg Township Bd.*, No. C1-02-565, 2002 WL 31553853, at \*4 (Minn. Ct. App. Nov. 19, 2002).

53. *See In re Daniel for the Establishment of a Cartway*, 644 N.W.2d 495, 498 (Minn. Ct. App. 2002), *rev’d*, 656 N.W.2d 543 (Minn. 2003) [hereinafter *Daniel I*] (recognizing in dicta that although they may be similar, the common law easement by necessity is not dispositive of statutory cartway issues).

### 1. *The Traditional Implied Easement*<sup>54</sup>

The easement is a common law creation, based on the theory that land conveyances inherently include all that is necessary for the beneficial use and enjoyment of the land.<sup>55</sup> Its doctrinal roots are traceable as far back as the thirteenth century.<sup>56</sup> The doctrine was founded upon two theoretical justifications: (1) a public policy favoring land utilization and (2) effecting the intent of private parties.<sup>57</sup> Society does not desire property rendered unproductive for lack of access.<sup>58</sup> Consequently, a presumption naturally arises out of conveyances that parties intend land to be accessible and available for full use.<sup>59</sup> An easement can typically be implied based on two distinct theories: a continued prior use<sup>60</sup> or necessity.<sup>61</sup> It is primarily the latter, however, that has always been submerged in controversy.

An implied easement of necessity traditionally requires four elements: (1) a unified title of both parcels of land prior to severance, (2) subsequent severance of title, (3) a necessity that existed at the time of the severance, and (4) that the necessity has continued to persist.<sup>62</sup> It is the degree of necessity that has rendered courts divided throughout the years.<sup>63</sup> While the majority of courts require only a showing of reasonable necessity, several jurisdictions require a showing of strict or absolute necessity.<sup>64</sup> Strict necessity means that whenever an alternative means of access exists, even though substantially more difficult or

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54. 25 AM. JUR. 2D *Easements and Licenses in Real Property* § 1 (2002) (defining an easement as a right or privilege of an owner of one parcel of land to use a second parcel of land belonging to another).

55. *Id.* at § 23.

56. RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 2.15, cmt. a (2000). A maxim from the time of Edward I (1239-1307) recognized that grants must include all that without which, the grant could not be or exist. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* Under this theory, necessity is based on the existence and extent of land use contemplated by the parties at the time of severance. HERBERT T. TIFFANY & BASIL JONES, *TIFFANY REAL PROPERTY*, § 794 (3d ed. 2002).

60. *See* RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 2.12 (2000).

61. *See id.* at § 2.15.

62. Hunter C. Carroll, *Property-Easements by Necessity: What Level of Necessity Is Required?*, 19 AM. J. TRIAL ADVOC. 475, 475 (1995).

63. *Id.* at 476.

64. *Id.* at 477-78 (giving examples of jurisdictions that follow doctrines of reasonable and strict necessity, respectively, as well as those that have enacted statutory easements of necessity).

expensive, an easement will be denied.<sup>65</sup> Both views find support in public policy.<sup>66</sup> While a requirement of reasonableness promotes land utilization, a requirement of strictness safeguards landowners from those who seek to unlawfully gain entrance and use of their property.<sup>67</sup> Regardless of the degree required, however, the mere inconvenience of existent access will rarely suffice.<sup>68</sup>

## 2. *Minnesota's Unique Creation*

Minnesota's common law easement has treaded in murky waters since it was first recognized in 1934 (years after the cartway statute had been established).<sup>69</sup> In *Romanchuk v. Plotkin*,<sup>70</sup> the Minnesota Supreme Court identified three essential characteristics in the creation of an implied easement where unity of ownership is severed: (1) separation of title, (2) a continued and apparent use intended to be permanent in nature, and (3) that the use is necessary to the beneficial enjoyment of the land.<sup>71</sup> Failing to clearly distinguish between easements by necessity and prior use by requiring elements of each,<sup>72</sup> Minnesota courts have created an implied easement that is susceptible to continual muddled analysis.<sup>73</sup>

Although this may at first appear to be an abnormally difficult standard to meet, the *Romanchuk* court went on to indicate flexibility by stating that not all three elements are necessary.<sup>74</sup> The presence or

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65. *See id.* at 477.

66. *See id.* at 476-77.

67. *See id.*

68. 25 AM. JUR. 2D *Easements and Licenses in Real Property* § 42 (2002).

69. *See supra* Part II.A.

70. 215 Minn. 156, 9 N.W.2d 421 (1943) (establishing Minnesota's recognition of easements by necessity).

71. *Id.* at 160-61, 9 N.W.2d at 424.

72. The Minnesota Court of Appeals has recognized its use of "easements by implication" and "easements by necessity" interchangeably. *Bode v. Bode*, 494 N.W.2d 301, 304 n.1 (Minn. Ct. App. 1992).

73. Although the *Bode* court attempted to distinguish easements by necessity, relying on Powell's *The Law of Real Property*, the court subsequently limited the distinction to parties to the severing transaction. *Id.* at 303-04 n.1 (citing 3 Richard R. Powell, *The Law of Real Property* § 407 (1992)); *Lake George Park, L.L.C. v. IBM Mid-Am. Employees Fed. Credit Union*, 576 N.W.2d 463, 466 n.1 (Minn. Ct. App. 1998). This limitation, however, did not clarify the doctrinal confusion existing in Minnesota's implied easement by necessity. Minnesota courts continue to engage in confusing analysis of both prior use and necessity. *See, e.g., id.* at 465 (applying the *Romanchuk* and *Olson* decisions). While prior use is merely an indicia of intent, necessity is required. *Id.*

74. *Romanchuk*, 215 Minn. at 164, 9 N.W.2d at 426.

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absence of a characteristic is not to be deemed conclusive.<sup>75</sup> The necessity requirement, however, must always be met.<sup>76</sup> In *Olson v. Mullen*, the Minnesota Supreme Court affirmed its creative and discretionary approach to implying easements and indicated a number of non-exhaustive factors to be taken into consideration.<sup>77</sup>

In *Romanchuk*, Minnesota aligned itself with the majority of jurisdictions that require the use to be only that which is “reasonably necessary or convenient to the beneficial enjoyment of the property.”<sup>78</sup> Although convenience alone is not sufficient, difficulty and expense are factors to be considered in identifying a use that is “reasonable.”<sup>79</sup> Minnesota case law has explicitly repudiated any idea of indispensable use or absolute necessity.<sup>80</sup>

### III. THE DANIEL DECISION

#### A. Facts

Donald Schoch (“Schoch”) owns lakeshore property on Lake Vermillion, Minnesota.<sup>81</sup> His property has been in the Schoch family for more than eighty-five years.<sup>82</sup> In 1995, Thomas Daniel (“Daniel”) purchased a parcel of lakefront property adjacent to Schoch’s family

75. *Id.* The court viewed any rules regarding implied easements as mere rules of construction, useful only to aid in ascertaining the intent of the parties and the scope of the conveyance. *Id.* at 164-65, 9 N.W.2d at 426. The supreme court therefore left open “the scope and effect of the characteristics mentioned in the process of construction.” *Id.* at 165, 9 N.W.2d at 426.

76. *Olson v. Mullen*, 244 Minn. 31, 40, 68 N.W.2d 640, 647 (1955). The necessity must also have existed at the time of the severance. *Id.* at 41, 68 N.W.2d at 647.

77. *See id.* at 40, 68 N.W.2d at 647. The court used the approach of the RESTATEMENT (FIRST) OF PROPERTY, § 476 (1944). *Id.*

78. *Romanchuk*, 215 Minn. at 163, 9 N.W.2d at 425-26 (recognizing an authority split on the requisite “necessity” and adopting the majority view of “reasonable”). For a historic look at the origins of the “necessity” debate, *see* *Tooth v. Bryce*, 25 A. 182 (N.J. Ch. 1892).

79. *Clark v. Galaxy Apartments*, 427 N.W.2d 723, 727 (Minn. Ct. App. 1988) (finding a lack of reasonable necessity where no “geographical constraints” existed and no evidence indicated that construction of a driveway would be either “difficult or expensive”).

80. *See Romanchuk*, 215 Minn. at 163-64, 9 N.W.2d at 426 (“necessary” does not equate with indispensable and is not an “absolute” necessity).

81. Appellant’s Brief at 2, *Schoch v. St. Louis County*, 656 N.W.2d 543 (Minn. 2002) (No. CX-01-1820).

82. *Id.* at 2-3.

property.<sup>83</sup> Daniel was aware at purchase that the property's only access was via Lake Vermillion and no road access existed.<sup>84</sup> Daniel apparently utilized Lake Vermillion to access his property without complaint for four years.<sup>85</sup> It was not until 1999, when a severe windstorm caused significant tree damage to Daniel's property, that Daniel explored potential possibilities to obtain road access.<sup>86</sup>

Schoch's property had suffered similar tree damage, and Schoch had constructed a road on his own property in order to access the downed trees and debris.<sup>87</sup> When Daniel contacted Schoch to discuss extending the road to Daniel's property to allow similar tree removal, Schoch refused.<sup>88</sup> Daniel then petitioned the St. Louis County Board of Commissioners to grant a cartway across Schoch's land.<sup>89</sup> The board granted Daniel the cartway, pursuant to Minnesota's cartway statute, finding he did not have access to his property except over the land of others.<sup>90</sup> The board ordered 3.90 acres of Schoch's property to be taken for purposes of the cartway and calculated Schoch's damages to be \$18,022.<sup>91</sup>

### B. Procedural History

Schoch appealed the board's decision to the district court.<sup>92</sup> The

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83. *Daniel II*, 656 N.W.2d at 544.

84. Appellant's Brief, *supra* note 81, at 3 (citing the Tr. of Summ. J. Proceedings at 11). The property's purchase price likely reflected limited access. *Id.* (citing the Tr. of Summ. J. at 5).

85. *See Daniel II*, 656 N.W.2d at 544.

86. *See id.*

87. *Id.*

88. *Id.*

89. *Id.* Daniel petitioned the board pursuant to the Minnesota cartway statute. *See* MINN. STAT. § 164.08, subd. 2(a) (2002).

90. *Daniel II*, 656 N.W.2d at 544. The Minnesota Department of Natural Resources (DNR), however, opposed the cartway on the basis that it would have crossed wetlands. Appellant's Brief, *supra* note 81, at 3-4. The Minnesota DNR offered Daniel the use of its winter logging roads in order to facilitate removal of the blow-down timber. *Id.* at 4. However, the Minnesota Supreme Court had already established that permissive access does not constitute access within the meaning of the cartway statute. *See Kroyer v. Bd. of Supervisors*, 202 Minn. 41, 43, 277 N.W. 234, 235 (1938) (holding that where access to a public road is only permissive in nature, access does not exist for cartway purposes due to a lack of a permanent, legal right of use).

91. Appellant's Brief, *supra* note 81, at app. 3 (board's Findings of Fact, Conclusions, and Order). Under Minnesota's cartway statute, damages would have been paid by Daniel. *See* MINN. STAT. § 164.08, subd. 2(c) (2002).

92. Appellant's Brief, *supra* note 81, at app. 5 (District Court's Order and Judgment).

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Minnesota district court granted summary judgment to St. Louis County, affirming the board's decision.<sup>93</sup> Unable to find any case law or statute indicative of legislative intent that lake access warrants denial of a cartway petition, the district court held that the board did not abuse its legislative discretion in granting the petition.<sup>94</sup>

The Minnesota Court of Appeals affirmed the district court's grant of summary judgment.<sup>95</sup> The parties did not dispute that Daniel could access his property over Lake Vermillion.<sup>96</sup> The only issue to be resolved was the interpretation of the word "access" as used in the cartway statute.<sup>97</sup> To interpret the ambiguous term "access," the appellate court considered the mischief to be remedied by the cartway statute, as well as its desired objective.<sup>98</sup> The court also considered the consequences of particular interpretations in order to avoid attaining an unreasonable result.<sup>99</sup> Recognizing that lake access may likely satisfy legislative intent in light of the mischief to be remedied and the statutory objective, the appellate court ruled out lake access as valid on the basis that not allowing road access would be unreasonable.<sup>100</sup> The court reasoned that lake access is inadequate due to the inherent seasonality of lakes and the inevitable "vicissitudes of the Minnesota climate."<sup>101</sup>

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93. *Id.* at app. 6.

94. *Id.* at app. 7-10 (District Court's Memorandum Opinion).

95. *Daniel I*, 644 N.W.2d 495. The appellate court noted that no controlling authority existed and that the ambiguous term "access" was to be construed pursuant to Minnesota Statutes section 645.16 (2000). *Id.* at 497.

96. *Id.*

97. *Id.* Application of a statute to undisputed facts is purely a question of law. *Id.* The court, therefore, disregarded Schoch's reliance on the *Roemer* decision. *Id.* at 498. The *Roemer* decision contemplated access where the owner already had a means of ingress and egress where an easement by necessity exists. *Roemer v. Bd. of Supervisors*, 283 Minn. 288, 291, 167 N.W.2d 497, 499 (1969). However, *Roemer* was held not to control due to the court's interpretation that water access did not constitute access, and thus a valid alternative did not exist for Daniel. *Daniel I*, 644 N.W.2d at 498.

98. *Daniel I*, 644 N.W.2d at 497.

99. *Id.*

100. *See id.*

101. *Id.* The seasonality of Minnesota's waterways, however, has long been incorporated into commercial usage. *See* WATER RES. COORDINATING COMM., MINN. STATE PLANNING AGENCY, MINN. WATER AND RELATED LAND RES., FIRST ASSESSMENT, (1970) [hereinafter WATER LAND RESOURCES] (analyzing the past and predicting the future of the commercial uses of Minnesota's waterway navigation). The court's reasoning is in line with other courts that have deemed that navigable water is not acceptable as access where it freezes and thus can not be navigated for several months of the year. *See, e.g., Rodal v. Crawford*, 261 N.W. 260, 263 (Mich. 1935) (stating in dicta that water access that is otherwise navigable but frozen for several months a year cannot constitute valid access).

Though not controlling, the appellate court relied heavily on the decision in *State ex rel. Rose v. Town of Greenwood* to support its interpretation of the cartway statute.<sup>102</sup> In *Rose*, the petitioner was entitled to a cartway where two of petitioner's three lots were not accessible via a public road due to a muddy lake.<sup>103</sup> It was impracticable to build a road to cross the lake and join the lots.<sup>104</sup> The court likened the *Rose* scenario to Daniel's debacle, in that the building of a road across the lake was impracticable, thus entitling Daniel to a cartway.<sup>105</sup> The Minnesota Supreme Court granted review.<sup>106</sup>

### C. The Minnesota Supreme Court's Analysis

The Minnesota Supreme Court affirmed the appellate court's assertion that the sole issue was the correct statutory interpretation of the term "access" as used in the cartway statute.<sup>107</sup> Statutory interpretation must be aimed at effecting the intent of the legislature.<sup>108</sup> In conclusory fashion, the court deemed any interpretation rendering water access as invalid would be improper in light of legislative intent.<sup>109</sup> The court reasoned that the "no access" language first appeared in the cartway statute in 1913, at which time travel over navigable waterways was not only common, but often the best mode of transportation.<sup>110</sup>

St. Louis County argued that only land access was contemplated by the legislature due to the statute being within a town road statute.<sup>111</sup>

102. *State ex rel. Rose v. Town of Greenwood*, 220 Minn. 508, 20 N.W.2d 345 (1945).

103. *Id.* at 513-14, 20 N.W.2d at 347-48.

104. *Id.* at 513-14, 20 N.W.2d at 348.

105. *Daniel I*, 644 N.W.2d at 498.

106. *Daniel II*, 656 N.W.2d at 545.

107. *Id.* Application of statutory language to undisputed facts is a conclusion of law, reviewable *de novo* on appeal. *Id.*

108. *Id.* In ascertaining legislative intent, a court may consider:

(1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained, (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of the statute.

MINN. STAT. § 645.16 (2002).

109. *Daniel II*, 656 N.W. 2d at 545.

110. *Id.* The court further recognized that numerous other properties on Lake Vermillion had been accessed solely by water for more than a century. *Id.* at 546.

111. *Id.*

However, the supreme court promptly refuted any such argument.<sup>112</sup> The location of the statute as part of a “roads” statute was deemed to be non-determinative of whether or not “access” was intended to include both land and water access.<sup>113</sup> The court then went on to find all Minnesota case law regarding cartways as inapposite on the interpretive issue.<sup>114</sup>

The appellate court’s reliance on the *Rose* decision was deemed erroneous.<sup>115</sup> The supreme court found the issue involved in *Rose* to be distinctly different. In *Rose*, the issue of whether property could be accessed by lake was never considered.<sup>116</sup> The *Rose* decision was limited to whether the nature of the lake on plaintiff’s property prevented land-based travel across the property to a section that did have access to a public road.<sup>117</sup> The board’s finding that Daniel had no access to his property was irreconcilable with the supreme court’s interpretation of the statute.<sup>118</sup> The court of appeals was thus reversed and the case remanded to the district court to enter judgment in favor of Schoch.<sup>119</sup> The *Daniel* decision requires that ingress and egress via navigable waters must be taken into consideration when determining cartway eligibility.<sup>120</sup>

#### IV. ANALYSIS OF THE *DANIEL* DECISION

The Minnesota Supreme Court rightfully limited the scope of its decision to ascertaining legislative intent.<sup>121</sup> Although its ascertainment of that intent was of a conclusory nature, it is supported by history.<sup>122</sup> It is interesting, however, that the *Daniel* decision introduces Minnesota to overtones of “strict” access requirements, clearly contradicting the

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112. *Id.*

113. *Id.* The county had premised its reasoning that lake access is inconsistent with the “overall intention of the statute.” *Id.* at 545. Therefore, the court could have more directly refuted the county’s argument on the basis that the “letter of the law shall not be disregarded under the pretext of pursuing the spirit.” MINN. STAT. § 645.16 (2002).

114. *Daniel II*, 656 N.W.2d at 546. *See also* Christopherson v. Fillmore Township, 583 N.W.2d 307, 309 (Minn. Ct. App. 1998) (finding no Minnesota authority that defined “access” for purposes of statutory construction).

115. *Daniel II*, 656 N.W.2d at 546.

116. *See Rose*, 220 Minn. 508, 20 N.W.2d 345.

117. *Daniel II*, 656 N.W.2d at 546.

118. *Id.*

119. *Id.* There was no need for further factual findings because it was never disputed that Daniel had access to his property using Lake Vermillion. *Id.*

120. *Id.* at 545.

121. *See infra* Part IV.A.1.

122. *See infra* Part IV.A.2.



common law doctrine of “reasonableness” that facilitates land access.<sup>123</sup>

*A. Correct Decision . . . Correct Interpretation*

*1. A Correct Decision*

Establishment of a statutory cartway by a town board is a quasi-legislative action<sup>124</sup> and is therefore subject only to narrow judicial review.<sup>125</sup> Accordingly, Minnesota courts afford great deference to board determinations of cartway petitions.<sup>126</sup> A town or county board’s decision may be reversed only if it is clearly against the evidence, based on an erroneous theory of law, or if the board acts arbitrarily, capriciously, or contrary to public interest.<sup>127</sup> The *Daniel* court’s reversal of the St. Louis County Board’s decision is justified on the basis that the board’s misinterpretation of “access” resulted in an application of an erroneous theory of law.<sup>128</sup>

Courts cannot disregard specific statutory language in order to attain a statute’s alleged overall “spirit.”<sup>129</sup> Therefore, the supreme court correctly limited its interpretation analysis to the precise “no access” language in dispute.<sup>130</sup> The court rightfully looked to the historical

123. See *supra* Part II.B.

124. *Horton v. Township of Helen*, 624 N.W.2d 591, 594-95 (Minn. Ct. App. 2001).

125. *Id.* at 595 (“When judicially reviewing a legislative determination, the scope of review must necessarily be narrow” (quoting *Sun Oil Co. v. Vill. of New Hope*, 300 Minn. 326, 333, 220 N.W.2d 256, 261 (1974))). See also *Berman v. Parker*, 348 U.S. 26, 32 (1954) (“The role of the judiciary in determining whether th[e] power [of eminent domain] is being exercised for a public purpose is an extremely narrow one.”). The level of review afforded legislative decisions is often referred to as “rational basis.” See *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 241 (1984) (stating that a taking has never violated the public use requirement where it was “rationally related to a conceivable public purpose”) (emphasis added).

126. Courts will even affirm when they would have reached a different conclusion themselves. *Horton*, 624 N.W.2d at 595.

127. *Id.* See also *Lafayette Land Co. v. Vill. of Tonka Bay*, 305 Minn. 461, 463, 234 N.W.2d 804, 805 (1975) (recognizing an established rule that decisions to open streets are vested solely in the legislative discretion of municipalities); *Lieser v. Town of St. Martin*, 255 Minn. 153, 158, 96 N.W.2d 1, 5 (1959) (recognizing town boards act in a legislative capacity when considering town road petitions); *Rask v. Town Bd. of Hendrum*, 173 Minn. 572, 574, 218 N.W. 115, 116 (1928) (indicating the question of whether a cartway should be established is “one of policy, legislative in its nature”) (citation omitted).

128. *Daniel II*, 656 N.W.2d at 546.

129. MINN. STAT. § 645.16 (2002) (stating that the “letter of the law shall not be disregarded under the pretext of pursuing the spirit”).

130. *Daniel II*, 656 N.W.2d at 545-46.

context underlying the statute's 1913 amendment to ascertain legislative intent.<sup>131</sup> Daniel's particularly unfortunate situation was appropriately not determinative on the court's decision; statutory interpretation is to prioritize public interest over the interest of private citizens.<sup>132</sup>

The court appropriately refrained from altering the cartway statute and limited itself to statutory interpretation.<sup>133</sup> Although lake access may appear inadequate and inconvenient in light of today's modern modes of transportation, the court's holding was the only proper disposition of the case. Statutory change must originate in the legislature itself.<sup>134</sup> In order to accommodate the transportation needs of today's society, the Minnesota legislature has the sole capacity to either amend the cartway statute or statutorily define "access" in order to allow cartways to be condemned where land is water accessible.<sup>135</sup>

## 2. *A Correct Interpretation*

The Minnesota Supreme Court had minimal documentation to assist in ascertaining the intent of Minnesota's 38th legislature (1913). What is documented is that the disputed "access" language was referred to the Committee on Roads and Bridges by the House of Representatives.<sup>136</sup> However, no committee reports are available today. Although multiple amendments to the bill were considered prior to passage, none was in reference to the disputed "access" language.<sup>137</sup> A brief glance at

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131. See MINN. STAT. § 645.16(b) (2002).

132. See MINN. STAT. § 645.17(5) (2002) (stating a presumption in favor of the public interest over private interest). However, promoting lake access cannot entirely be said to be against the interest of the Minnesota public. Legislative assessments have indicated a strong Minnesota public benefit that arises out of not only commercial navigation but also recreational uses of navigable waterways. WATER LAND RESOURCES, *supra* note 101, at 280. Developing water resources for navigation greatly contributes to Minnesota's economic development and social well-being. *Id.* For many Minnesotans the motorboat has become a necessity; motor-boating, waterskiing, and canoeing have all boomed during the last half-century. LASS, *supra* note 1, at 27.

133. "The people may change the law of the United States but the Court cannot do so. The Court can only interpret the law." United States v. Perko, 133 F. Supp. 564, 570 (D. Minn. 1955).

134. "If there is to be a change in the statute, it must come from the legislature, for the courts cannot supply that which the legislature purposely omits or inadvertently overlooks." Martinco v. Hastings, 265 Minn. 490, 497, 122 N.W.2d 631, 638 (1963) (citations omitted).

135. See *id.*

136. JOURNAL OF THE HOUSE OF THE 38TH LEGISLATURE OF MINNESOTA, 371 (1913).

137. See *id.* at 562-71 and JOURNAL OF THE SENATE OF THE 38TH LEGISLATURE OF MINNESOTA, 1063-66, 1111, 1135-42 (1913).

Minnesota history compensates the lack of legislative history and clearly supports the supreme court's interpretation of the elusive term "access."

Minnesota's lakes are a current source of pride for both rural and urban residents.<sup>138</sup> This pride is not a recent phenomenon; it is deeply entrenched throughout Minnesota's history.<sup>139</sup> The state's abundant water highways have decisively influenced Minnesota's diplomatic and legal architecture.<sup>140</sup> The Legislative Manual of 1913 boasted an existent pride in Minnesota's water resources that first resounded when the territory was named after the "Minisota" river.<sup>141</sup> The manual proudly declared that "few states are so well watered as Minnesota" and that Minnesota's lakes were more varied and numerous than any other state's.<sup>142</sup> Waterway pride, however, never foreclosed any opportunities for the state to keep up with the nation's transportation developments.

An analysis of the early development in transportation, both in Minnesota and on the national level, is necessary to comprehend the legislature's use of the word "access" in 1913. On the national level, the first American gasoline-powered automobile was designed in 1893.<sup>143</sup> By 1900 there were only approximately 8000 automobiles throughout the United States, primarily possessed by the rich.<sup>144</sup> The industry was revolutionized, however, in 1903 when Henry Ford established the Ford Motor Co. of Detroit, Michigan.<sup>145</sup> Five years later, Ford introduced the American public to the inexpensive Model T.<sup>146</sup> Yet it wasn't until 1913 that Ford's foresight and pragmatic approach resulted in the first automobile assembly line.<sup>147</sup> The efficiency of the assembly line,

138. TESTER, *supra* note 8, at 197. Minnesotans naturally speak of the state's thousands of lakes when asked about its characteristic geographic features. BLEGEN, *supra* note 9, at 12-13.

139. Minnesota's geographic factors have always been interwoven with its human story. BLEGEN, *supra* note 9, at 4.

140. *Id.* at 7. Transportation at statehood (in the 1850s) underwent a revolution; innovations included expanding the use of canals, steamboats, roads, and railroads. *Id.* at 180.

141. SCHMAHL, *supra* note 18, at 198.

142. *Id.* at 199. This statement holds true today. Minnesota measures 84,068 square miles, with water constituting 4,059 of those miles. BLEGEN, *supra* note 9, at 6. This is greater than any other state. *Id.*

143. DOUGLAS BRINKLEY, AMERICAN HERITAGE: HISTORY OF THE UNITED STATES 291 (Michael Sagalyn, ed., Penguin Putnam, Inc. 1998). Charles and Frank Duryea designed the vehicle in Springfield, Massachusetts. *Id.*

144. ALLEN WEINSTEIN & DAVID RUBEL, THE STORY OF AMERICA: FREEDOM AND CRISIS FROM SETTLEMENT TO SUPERPOWER 469 (DK Publishing, Inc. 2002).

145. *Id.*

146. BRINKLEY, *supra* note 143, at 387. In 1908, the Model T sold for \$845. *Id.*

147. WEINSTEIN & RUBEL, *supra* note 144, at 469.

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coupled with Ford's allowance of installment plans, fueled the industry's growth.<sup>148</sup> The subsequent explosion in automobile ownership influenced Americans both economically and socially.<sup>149</sup>

As splendid as its waterways were, Minnesotans were early to identify the paramount need for good roads.<sup>150</sup> Even as a territory, strong public policy recognized land access as a priority in territorial expansion.<sup>151</sup> The territorial legislature was thus quick to authorize and develop a needed network of roads, quickly trodden upon by buggies, carriages, and stagecoaches.<sup>152</sup> In Minnesota, 1913 was a year engulfed in transportation transitions.<sup>153</sup> Minnesotans were increasingly recognizing and appreciating the value of reliable land-based transportation.<sup>154</sup>

Minnesotans, however, were only first introduced to the automobile revolution in the late 1890s.<sup>155</sup> In 1898, Minnesota's constitution was amended to create a highway commission and state tax that were designed to aid road development.<sup>156</sup> Yet by 1902, only twelve cars could be found in the state.<sup>157</sup> Fascination with the industry prompted its rapid growth; by 1909, 7000 automobiles and 4000 motorcycles had been licensed in the state.<sup>158</sup> Such exponential growth was influential in

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148. *Id.* at 470. Within three years of the assembly line's introduction, Ford was able to lower the Model T's price to \$360 and increase sales from 10,607 to 730,041 vehicles per year. *Id.*

149. *Id.* By 1926, Ford was producing a Model T every ten seconds. BRINKLEY, *supra* note 143, at 387.

150. BLEGEN, *supra* note 9, at 192.

151. *Id.* Minnesotans began to question "[h]ow public lands could be sold 'if the immigrant[s] cannot reach them?'" *Id.*

152. *Id.* at 192-93.

153. The automobile industry was not the only source of transition. The lumber industry, dependent on the state's abundant navigable rivers, reached its high point in 1900, when Minnesota produced more than 2 billion board feet and was ranked third nationally for lumber production. LASS, *supra* note 1, at 180. However, Minnesota's lumber production declined gradually by 1914, it yielded only half of what it had in 1905. BLEGEN, *supra* note 9, at 329. Carl Wickman, an enterprising business pioneer, left his job in 1913 to buy the Hupmobile, a seven-passenger vehicle, to transport miners. STEPHEN GEORGE, ENTERPRISING MINNESOTANS: 150 YEARS OF BUSINESS PIONEERS 90 (University of Minnesota Press 2003). With gasoline selling for 4 cents a gallon, he charged 15 cents for a one-way trip and became the founder of Minnesota's bus industry. *Id.*

154. In 1913 Minnesota inaugurated "Good Roads Day" to be the third Tuesday of every June. BLEGEN, *supra* note 9, at 465.

155. *Id.* at 463.

156. *Id.* at 464. However, the commission was not set into motion until 1905. *Id.*

157. *Id.* at 463. The speed limit in 1902 was ten miles per hour. *Id.* at 463-64.

158. *Id.* at 464. Minnesota's transportation developments mirrored those of the

pressuring the state for the development of a sound road system.<sup>159</sup>

Regardless of its rapid growth, clearly in 1913 the phenomenon of vehicular transportation had not yet trumped the state's dependence on navigable waters.<sup>160</sup> Progress in the road-building industry dwindled through World War I.<sup>161</sup> Minnesota's licensing act was not passed until 1908;<sup>162</sup> the highway department was first authorized only in 1917.<sup>163</sup> From a historical point of view, the common usage of "access" in 1913 would clearly not have excluded water access.<sup>164</sup>

### B. Statutory Dissension

Discord abounds throughout the nation as states grant statutory cartways based on varying degrees of necessity. The majority of states have deemed cartways necessary whenever practicable or reasonable under the circumstances.<sup>165</sup> Access must be of a level that allows effective use of the land.<sup>166</sup> This flows from the idea that access need not be of an absolute or indispensable character to warrant recognition.<sup>167</sup> Instead, necessity is inherently interwoven with the

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nation. Four thousand cars, produced by a dozen companies, could be found throughout the United States in 1900. *Id.* at 463. Within ten years, production skyrocketed to 181,000 cars being produced by sixty-nine companies. *Id.*

159. *See id.* at 464 (stating cars contributed to the pressures in the state for good roads but interest in improving rough roads was present before the introduction of the automobile).

160. In the early 1900s the automobile was considered to be nothing more than a "curiosity," "a contrivance for the rich," and a "noisy phenomenon that nobody quite knew how to control." *Id.*

161. *Id.* at 465.

162. *Id.* at 464.

163. *Id.* at 465.

164. *See* MINN. STAT. § 645.08, subd. 1 (2002) (requiring words to be construed to their common and approved usage).

165. *See, e.g.,* ARIZ. REV. STAT. § 12-1202 (2002); ARK. CODE ANN. § 27-66-401 (Michie 2002); COLO. REV. STAT. § 38-1-102 (2002); FLA. STAT. ch. 704.01(2) (2002); GA. CODE ANN. § 44-9-40 (2002); HAW. REV. STAT. § 7-1 (2002); IDAHO CODE § 7-701 (Michie 2002); KAN. STAT. ANN. § 68-117 (2002); MISS. CODE ANN. § 65-7-201 (2002) *amended by* 2003 Miss. Laws 535; N.C. GEN. STAT. § 136-68 (2002); 36 PA. CONS. STAT. ANN. § 2731 (West 2002); WASH. REV. CODE § 8.24.010 (2002); WYO. STAT. ANN. § 24-9-101 (Michie 2002) *amended by* 2003 Wyo. Sess. Laws 9. To add to the confusion, Missouri specifies "strict necessity" in the statute, but has interpreted "strict" as meaning the absence of a "reasonable and practical" way. *See* MO. REV. STAT. § 228.342 (2002); *Anderson v. Mantel*, 49 S.W.3d 760, 763 (Mo. Ct. App. 2001) (interpreting § 228.342).

166. *Sorenson v. Czinger*, 852 P.2d 1124, 1127 (Wash. Ct. App. 1993) (citation omitted).

167. *See City of Tacoma v. Welcker*, 399 P.2d 330, 335 (Wash. 1965) (interpreting the necessity language of Washington's cartway statute).

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concept of public use and embraces the public's right to access.<sup>168</sup> This "reasonable" viewpoint facilitates the very purpose of cartway legislation by avoiding the rendering of land useless<sup>169</sup> and furthering the public policy behind land accessibility.<sup>170</sup> A landowner should be entitled to the full enjoyment of his property, especially if the enjoyment would make useful and valuable that which otherwise would be useless or valueless.<sup>171</sup>

However, whenever a cartway is laid under the pretext of a landowner's right of access, it is done in derogation of the adjoining landowner's rights.<sup>172</sup> Recognition of this injustice may explain why an extreme minority of courts have adopted a very narrow view on when cartways are truly "necessary."<sup>173</sup> It is within this category, however, that the *Daniel* decision mandates future interpretations of the cartway statute by Minnesota courts. The courts have previously afforded great deference to board determinations regarding cartway petitions.<sup>174</sup> This deference has been illustrated by Minnesota courts upholding board

168. *Id.*

169. *See* Owens v. Brownlie, 610 N.W.2d 860, 866 (Iowa 2000) (citing *In re Luloff*, 512 N.W.2d 267, 273 (Iowa 1994) (recognizing it is socially desirable to make landlocked property useable)).

170. Moore v. Ind. & Mich. Elec. Co., 95 N.E.2d 210, 212 (Ind. 1950).

171. *See* Miss. Power Co. v. Fairchild, 791 So. 2d 262, 266 (Miss. Ct. App. (2001) (citing Warwick v. Pearl River Valley Water Supply Dist., 246 So. 2d 525, 528 (Miss. 1971) (recognizing that without access a portion of land would be rendered of little use or value)).

172. This has resulted in several courts strictly construing cartway statutes in order prevent undue injustice to the adjoining landowners. *See, e.g.*, Brown v. Glass, 50 S.E.2d 912, 912-13 (N.C. 1948) (holding that the statutory requirements are strict conditions precedent to the laying of a statutory cartway); Olivo v. Rasmussen, 738 P.2d 333, 335 (Wash. Ct. App. 1987) (recognizing that decisions between land condemnation and landlocked property boils down to choosing the "lesser of the two evils").

173. Bowles v. Chapman, 175 S.W.2d 313, 314 (Tenn. 1943) (quoting 17 AM. JUR. Easements § 50) (requiring a showing of absolute necessity, and not mere inconvenience, in applying the common law doctrine of easement of necessity). Some statutes have alleviated the subjective nature of this inquiry by specifying in the statute prerequisites of specific land use to allow a cartway. *See, e.g.*, FLA. STAT. ch. 704.01(2) (2003) (right exists for land being used as a dwelling, agricultural, timber, or stock raising purpose); IDAHO CODE § 7-701 (Michie 2003) (eminent domain authorized to lay byroads leading from highway to a residence or farm); IND. CODE § 32-23-3-1 (2003) (applying only when land is isolated due to a stream straightening, ditch construction, or erection of a dam); ME. REV. STAT. ANN. tit. 23, § 3022 (West 2003) (requiring land must be cultivated in order to be entitled to a "public easement"); MICH. COMP. LAWS § 247.211 (2003) (establishing roads to residences or lake resort homes where lands have been platted and duly recorded); N.Y. REAL PROP. § 335(a) (McKinney 2002) (applying to lots on subdivision maps filed in the county clerk's office).

174. *See supra* Part IV.A.1.

decisions that require both aspects of “strict” access necessity<sup>175</sup> as well as board decisions requiring only access that is “reasonable or practical.”<sup>176</sup>

Daniel’s physical access to his property was never disputed.<sup>177</sup> At dispute was whether the existent lake access constituted a viable means of access under the cartway statute.<sup>178</sup> Under the circumstances, however, Daniel’s predicament rendered physical lake access inconvenient in light of his need to remove large amounts of fallen timber. Not allowing Daniel road access to his property entitles Daniel only to a physical means of access that is neither reasonable nor practicable. The supreme court’s decision has thus removed a degree of deference formerly afforded board determinations. Future board decisions will necessarily replace circumstantial consideration with a mandated view that water access is a viable and appropriate means of property access, thereby precluding a cartway.

### C. Prospective Amendment

The Minnesota legislature could resolve future land “access” disputes arising under the cartway statute by following the lead of several other states. First, several states’ cartway statutes have specifically resolved the *Daniel* issue by utilizing language that specifies a cartway is justified when property is completely surrounded by either

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175. The Minnesota Court of Appeals has previously affirmed town board decisions denying cartway petitions notwithstanding the unreasonableness of the access situation presented. *See Horton v. Township of Helen*, 624 N.W.2d 591, 595 (Minn. Ct. App. 2001) (deeming access via horse, snowmobile, and all-terrain vehicles sufficient); *In re the Petition of Wood for the Establishment of a Township Cartway*, No. CX-98-852, 1996 WL 70101, at \*3 (Minn. Ct. App. Feb. 13, 1996) (requiring a property owner to cross a stream with farm equipment or construct a bridge to access forty acres of property without road access). *Contra Harris v. Gray*, 188 S.W.2d 933, 935 (Tenn. Ct. App. 1945) (finding it was not reasonable or practicable to expect a property owner to cross a river with farming machinery in order to access property).

176. *Ullrich v. Newburg Township Bd.*, No. C1-02-565, 2003 WL 31553853, at \*2 (Minn. Ct. App. Nov. 19, 2002) (finding that where a river was deemed impassable due to its high banks and fast-flowing water, no reasonable access existed for purposes of laying a cartway). This stance is supported by other jurisdictions. Even though access to the property is not absolutely cut off, it fails to afford the landowner beneficial enjoyment of his property. *Miss. Power Co. v. Fairchild*, 791 So. 2d 262, 266 (holding that where bridge construction is cost prohibitive it renders access unreasonable and supporting its stance with Mississippi and Connecticut case law). *See also Alpaugh v. Moore*, 568 So. 2d 291, 295 (Miss. 1990) (recognizing the inherent unreasonableness in requiring property owners to build bridges in order to access their land).

177. *Daniel II*, 656 N.W.2d at 544.

178. *Id.* at 544-45.

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the property of another or water.<sup>179</sup> These statutes inherently deem water access, on its own, to be insufficient.<sup>180</sup>

A further amendment would be to remove any linguistic ambiguity by specifying whether the statute ensures access to property or access to a road. Although not addressed by the supreme court, the Minnesota Court of Appeals interpreted the statute by looking at the apparent mischief it was to remedy.<sup>181</sup> In so doing, it stated that the mischief was the situation where a landowner “has no way to reach a public road from his property.”<sup>182</sup> The statute, however, reads: “the owner of a tract of land . . . who has no access thereto except over the land of others.”<sup>183</sup> This linguistic ambiguity, whether the statute specifically regards access to a public road or access to property, only creates additional interpretive problems that could be easily clarified by more precise language.<sup>184</sup> Many cartway statutes have resolved any such ambiguity by specifying “access to a road” and not “access to property.”<sup>185</sup> Language guaranteeing road access, instead of property access, would also best mirror the original cartway statute of the Minnesota Territory.<sup>186</sup>

Daniel knowingly purchased lakeshore property with limited access.<sup>187</sup> Minnesota's cartway statute, however, does not condition the granting of cartways on whether the petitioner created the need for access.<sup>188</sup> Some states, however, could have resolved the *Daniel* issue solely on the basis that Daniel created his own predicament by

179. See, e.g., ARK. CODE ANN. § 27-66-401 (Michie 2002); KAN. STAT. ANN. § 68.117; NEB. REV. STAT. § 39-17-13 (2002); WIS. STAT. § 80.13 (2002); WYO. STAT. ANN. § 1-26-815 (Michie 2002) (amended by 2003 Wyo. Sess. Laws 161).

180. See *supra* note 179. However, the Arkansas statute reads slightly differently in that it allows access to navigable watercourses, where desired. See ARK. CODE ANN. § 27-66-401 (Michie 2002).

181. *Daniel I*, 644 N.W.2d at 497.

182. *Id.*

183. MINN. STAT. § 164.08, subd.2(a) (2002).

184. See *infra* Part IV.B.

185. See, e.g., FLA. STAT. ch. 704.01(2) (2002); KY. REV. STAT. ANN. § 416.350 (Banks-Baldwin 2002); MO. REV. STAT. § 228.342 (2002); N.D. CENT. CODE § 24-07-06 (2002) (amended by 2003 N.D. Laws 223); OR. REV. STAT. § 376.155 (2002); 36 PA. CONS. STAT. ANN. § 2731 (West 2002); S.D. CODIFIED LAWS § 31-22-1 (Michie 2002); TENN. CODE ANN. § 54-14-101 (2002); WIS. STAT. § 80.13 (2002); WYO. STAT. ANN. § 1-26-815 (Michie 2002) (amended by 2003 Wyo. Sess. Laws 161).

186. “Any person who shall be so located that his land has no connection with any public road, or cartway . . . may apply to the board . . . [for a cartway] to some convenient public road.” REVISED MINN. STAT. ch. 11, § 13 (1851).

187. Appellant's Brief, *supra* note 81, at 3 (citing the Tr. of Summ. J. Proceedings at 11).

188. See MINN. STAT. § 164.08 (2002).



purchasing property he knew to have lake-only access.<sup>189</sup> Statutes exist that specifically negate any cartway option where a landowner either purchases property with knowledge that no access exists or knowingly eliminates the access he has.<sup>190</sup> Other state courts have similarly interpreted cartway statutes to render them inapplicable where a landowner voluntarily creates his predicament.<sup>191</sup> Any argument that statutory cartway condemnation unjustly increases property values allowing subsequent sales yielding higher prices is negated by the statutory requirement that the petitioner pay for all resultant damages.<sup>192</sup>

Few courts have specifically addressed the situation of a landowner attempting to remove timber from his private property over a lake.<sup>193</sup> However, several courts have addressed the issue of lake access for purposes of statutory cartways.<sup>194</sup> Where property borders navigable waters, clearly access to the property exists in some form.<sup>195</sup> As in *Daniel*, the question then becomes whether the navigable waters afford reasonable access within the boundaries of the statutory grant of authority.<sup>196</sup>

Bodies of water have provided transportation means and prompted

189. Appellant's Brief, *supra* note 81, at 3 (citing the Tr. of Summ. J. Proceedings at 11).

190. See, e.g., KY. REV. STAT. ANN. § 416.350 (Banks-Baldwin 2002); OR. REV. STAT. § 376.155 (2002).

191. See *Cont'l Enters., Inc. v. Cain*, 387 N.E.2d 86, 92 (Ind. Ct. App. 1979) (stating that where subsequent owners purchase land without access there can be no taking as to the subsequent owner); *Graff v. Scanlan*, 673 A.2d 1028, 1033 (Pa. Commw. Ct. 1996) (finding that landowners are precluded from common law easements by necessity where they have voluntarily created their own predicament).

192. MINN. STAT. § 164.08 (2002). See also *Roemer v. Bd. of Supervisors*, 283 Minn. 288, 291-92, 167 N.W.2d 497, 500 (1969) (recognizing in dicta a fear that construing the statute to allow alternative road access could lead to potential abuse of spending public money on roads where one should privately negotiate the value and pay damages).

193. The majority of opinions that have dealt with timber removal and road access have been in the context of the logging industry, often denying road access where a navigable stream was available to float the logs. See, e.g., *Taylor v. W. Va. Pulp & Paper Co.*, 137 S.E.2d 833 (N.C. 1964); *State v. Superior Court*, 190 P. 234 (Wash. 1920).

194. See, e.g., *Redman v. Kidwell*, 180 So. 2d 682, 684 (Fla. Dist. Ct. App. 1965) (holding that where property was only accessible via navigable water, the landowner was entitled to a cartway due to water access being impracticable); *In re Hall v. Twin Caney Watershed Joint Dist. No. 34*, 604 P.2d 63, 65 (Kan. Ct. App. 1979) (recognizing that in order to preclude property access, the bordering water must be so extensive as to deprive any reasonable passage over it).

195. *Int'l Paper Realty Corp. v. Miller*, 341 S.E.2d 445, 446 (Ga. 1986) (establishing that where property is accessible only by navigable waters a prima facie case has been established that there is no reasonable access for purposes of statutory construction).

196. *Id.*

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land development for centuries.<sup>197</sup> However, the development of extensive land transportation systems has rendered means of ingress and egress by water less necessary and less desirable.<sup>198</sup> In this day and age, navigable bodies of water are seldom considered reasonable as a sole means of traveling.<sup>199</sup> Several states have taken this stance.<sup>200</sup> Some courts have gone so far as to specifically interpret a cartway statute as being outdated in light of modern travel by motor vehicle.<sup>201</sup>

*D. Navigable Water & Common Law "Necessity"*

Neither geography nor humankind is static; both operate as architects of change.<sup>202</sup> Minnesota's stagnant statutory constructions aside, implied easement jurisprudence has been gradually sculpted to keep pace with modern transportation.<sup>203</sup> As previously stated, the only potential source of change in the cartway statute is the Minnesota legislature.<sup>204</sup> However, an overview of common law trends may be indicative of future legislative reaction to the *Daniel* decision.

The Minnesota courts have not yet considered the reasonableness of water access for purposes of common law implied easements. Regardless, the *Daniel* decision is difficult to square with Minnesota's long-standing standard of "reasonableness."<sup>205</sup> Since its doctrinal inception, the cartway's common law counterpart has adopted the view

197. *Redman*, 180 So. 2d at 684.

198. *Id.*

199. *Int'l Paper*, 341 S.E.2d at 446 (reasoning that society is better off as a whole by deeming water access as unreasonable access).

200. *See, e.g., Redman*, 180 So. 2d at 684 (stating that although practicable a century ago, today access to land by boat is unreasonable); *Hancock v. Henderson*, 202 A.2d 599, 602 (Md. 1964) (acknowledging sound social policy reasons in allowing easements where land borders on navigable water); *Cale v. Wanamaker*, 296 A.2d 329, 333 (N.J. Super. Ct. Ch. Div. 1972) (noting a trend since the 1920s toward liberally granting easements despite water access); *Cookston v. Box*, 160 N.E.2d 327, 334 (Ohio Ct. App. 1959) (stating in dicta that water access does not facilitate transportation to allow the carrying on of the "ordinary and necessary activities of life from and to the land"); *see also* E. L. Kellett, Annotation, *Easements: Way by Necessity Where Property Is Accessible by Navigable Water*, 9 A.L.R.3d 600 § 3 (1966).

201. *See, e.g., Attaway v. Davis*, 707 S.W.2d 302, 303 (Ark. 1986) (recognizing that statutory language deeming access by water to be sufficient more than a century ago, in 1871, and that today access by boat would not be reasonable).

202. BLEGEN, *supra* note 9, at 13.

203. *See Morrell v. Rice*, 622 A.2d 1156, 1160 n.4 (Me. 1993) (acknowledging that the common law easement must be reexamined based on the "ascendancy of the automobile").

204. *See supra* Part IV.A.1.

205. *Romanchuk v. Plotkin*, 215 Minn. 156, 163, 9 N.W.2d 421, 425 (1943).

that an easement should be implied whenever “convenient to the beneficial enjoyment of the property.”<sup>206</sup> An absolute or indispensable need need not be shown.<sup>207</sup>

Although Minnesota courts have not addressed common law “necessity” regarding navigable water, several jurisdictions have.<sup>208</sup> Availability, convenience, popularity, and expense have been factors in the development of both transportation and the judicial decisions analyzing what constitutes reasonable land access.<sup>209</sup> Clearly modes of transportation such as helicopters and planes truly render the present-day concept of “no access” to require steep conditions.<sup>210</sup> However, courts have implied easements by necessity in furtherance of the public policy goal of full and productive land use.

A debate regarding the requisite degree of “necessity” continues to persist.<sup>211</sup> Difficulty in ascertaining a subjective degree of “necessity” is one of the very reasons many states have enacted cartway statutes.<sup>212</sup> A 1966 survey of cases identified that out of ten cases that deemed water access as sufficient, only two were decided after 1925.<sup>213</sup> Interestingly, out of the eight cases that deemed water access insufficient, only one was dated prior to 1927.<sup>214</sup> This trend in case law follows the historic boom of automotive transportation that occurred in the early twentieth century.<sup>215</sup>

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206. *Id.* See also *supra* Part II.C.2.

207. *Romanchuk*, 215 Minn. at 163, 9 N.W.2d at 426.

208. Kellett, *supra* note 200, at § 1(c).

209. *Id.*

210. See *id.*; see also *Chandler Flyers v. Stellar Dev. Corp.*, 592 P.2d 387, 388 (Ariz. Ct. App. 1979).

211. Carroll, *supra* note 62, at 476-77 (surveying the existing majority view (reasonable necessity), minority view (strict necessity), and statutory ways of necessity). A minority of jurisdictions have required a showing of “strict necessity” in order to prevent unlawful entrance onto the land of others. *Id.* In order to satisfy the “strict necessity” requirement, no alternative access may exist. *Id.*

212. *Id.* at 477. Some states, however, deem compliance with any available common law options a prerequisite to petitioning for a statutory remedy. See, e.g., ARK. CODE ANN. § 27-66-401 (Michie 2002); COLO. REV. STAT. § 38-1-102 (2002); IND. CODE § 32-23-3-1 (2002); OKLA. STAT. tit. 27, § 6 (2002). Florida, for example, has clarified any confusion between common law easements and statutory easements by codifying both. FLA. STAT. ch. 704.01(2) (2002).

213. Carroll, *supra* note 62, at 477.

214. *Id.* The inability of water access to meet the requirements of a property’s use has been recognized since the 1900s. See *Feoffees v. Proprietors of Jeffrey’s Neck Pasture*, 55 N.E. 462, 463 (Mass. 1899) (recognizing a split in jurisdictions regarding water access and necessity).

215. The modern trend that has occurred since the 1920s is specifically addressed in *Cale v. Wanamaker*, 296 A.2d 329, 333 (N.J. Super. Ct. Ch. Div. 1972). The *Cale* court

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This apparent transition in the case law is logical in light of the nation's contemporaneous development that occurred in the Roaring '20s. The United States shined throughout the 1920s, skyrocketing its gross national product and wealth; jobs, earnings, and consumption by American citizens simultaneously increased at a tremendous rate.<sup>216</sup> The automobile industry shared in America's success.<sup>217</sup> The automobile made the single most-important impact on the nation's economy during this decisive period, employed 7.1% of the nation's industrial workforce, and paid 8.7% of its wages.<sup>218</sup> Throughout the '20s, the automobile transformed America's culture and landscape, proving itself to be a revolution.<sup>219</sup>

Since 1966, the vast majority of cases addressing water access have similarly found water access to be unreasonable in light of current modes of transportation.<sup>220</sup> Even in those jurisdictions requiring the access need to be "absolute," exceptions have been found where water access is

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further stated no evidence existed to indicate access by boat over water would be reasonable or practicable. *Id.*

216. BRINKLEY, *supra* note 143, at 367. Throughout the decade, the nation's gross national product increased from \$74 billion to \$104 billion. *Id.* The nation's wealth soared from \$192 billion in 1914 to \$367 billion by 1929. *Id.* The significance of such exponential growth to Americans was, quite simply, more jobs. *Id.* American workers enjoyed a 26% increase in real earnings over the decade. *Id.* Such an increase necessarily resulted in comparable increases in consumption. *Id.* The number of homes with automobiles jumped from 25% to 60%. *Id.*

217. During the 1920s, automobile sales rose from 1.9 million to 4.5 million, accounting for \$3 billion in sales. BRINKLEY, *supra* note 143, at 384-85. In 1920, 200,000 cars were on the road; by 1929 there were 23 million. *Id.*

218. *Id.* at 385. In 1929 it was estimated that one in nine American workers was employed either by the automobile industry or one directly related to it. *Id.*

219. *Id.* Social ramifications of the automobile industry included the phenomenon of suburbia by encouraging movement away from city centers and continual connections between urban and rural America. *Id.* Physically, 10,000 miles of paved highway were being laid down by the United States government annually. *Id.*

220. *See, e.g.,* Chandler Flyer, Inc. v. Stellar Dev. Corp., 592 P.2d 387, 388 (Ariz. Ct. App. 1979) (stating that as a result of the predominance of the motor vehicle, easements of necessity can be imposed where there is access by navigable water); Morrell v. Rice, 622 A.2d 1156, 1159-60 (Me. 1993) (recognizing need to reexamine "necessity" in light of modern transportation); *Cale*, 296 A.2d at 333 (stating the trend since the 1920s is towards allowing easements despite water access due to people "driving" and not "rowing" to work); Parker v. Putney, 492 S.E.2d 159, 161-62 (Va. 1997) (recognizing the modern view that necessity can exist where land borders a waterway because the waterway is not suitable to meet the reasonable use requirements of the property). *Cf. McQuinn v. Tantalio* 339 N.Y.S.2d 541, 542 (N.Y. App. Div. 1973) (holding that when land is accessible by water the requirement of strict necessity is not met).

deemed unreasonable.<sup>221</sup> More and more, courts have recognized that travel for even short distances is most always by motor vehicle.<sup>222</sup> Today, motor vehicles are the predominant form of transportation.<sup>223</sup> There are therefore sound policy reasons for allowing cartways when water access is simply unsuitable to meet the requirements of the reasonable uses of property.<sup>224</sup>

#### V. CONCLUSION: TIME FOR A CHANGE

Today, Minnesota is not often thought of as it was in its original natural abundance.<sup>225</sup> The state's meandering rivers and abundant lakes have faded in importance in the wakes of the plethora of vehicles traversing the state.<sup>226</sup> From a historical perspective, the Minnesota Supreme Court correctly ascertained the archaic legislative intent behind today's cartway statute.<sup>227</sup> Its decision, however, renders the cartway statute incompatible with the development of transportation that has occurred throughout the twentieth century.<sup>228</sup> The *Daniel* decision indicates that the cartway statute is due for legislative amendment.<sup>229</sup>

221. See *Peasley v. State*, 461 N.Y.S.2d 707 (N.Y. Ct. Cl. 1983) (recognizing an exception to New York's general rule that water access precludes easements by necessity over land when the body of water has not been used as a highway for commerce and travel for many years).

222. See, e.g., *Attaway v. Davis*, 707 S.W.2d 302, 303 (Ark. 1986) (finding it unreasonable to require travel by boat when today even travel of short distances is most always by motor vehicle).

223. *Chandler Flyer*, 592 P.2d at 388.

224. *Hancock v. Henderson*, 202 A.2d 599, 602 (1964) (acknowledging sound social policy reasons in allowing easements where land borders on navigable water).

225. BLEGEN, *supra* note 9, at 13.

226. Minnesota's navigable rivers in fact penetrate every portion of the state. SCHMAHL, *supra* note 18, at 199. However, this has by no means hindered the continuous dependence on motorized vehicles. In Minnesota, vehicle miles traveled per person have risen every year in the past two decades. They increased 53% between 1980 and 2001. Minnesota Department of Administration, *Minnesota Milestones: Measures that Matter*, at <http://www.mnplan.state.mn.us/mm/indicator.html?Id=57> (last visited Dec. 6, 2003) (utilizing data from the Minnesota Department of Transportation to graph the increase in vehicle miles traveled by Minnesotans throughout the years).

227. See *supra* Part IV.A.2.

228. The law must take into account changing conditions when it is applied to present-day problems. See *Redman v. Kidwell*, 180 So. 2d 682, 684 (Fla. Dist. Ct. App. 1965). Access to property by boat may have been reasonable and practicable a century ago; today it is not. *Id.*

229. A month after the *Daniel* decision, legislation was introduced in both the Minnesota House of Representatives and the Senate to remedy the court's decision. See H.R. B. 1303, 2003 83rd Gen. Assem., Reg. Sess. (Minn. 2003) and S. B. 1137, 2003 83rd Gen. Assem., Reg. Sess. (Minn. 2003), available at <http://www.leg.state.mn.us/>

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Ramifications of the *Daniel* decision are likely to undulate throughout the state as water resources formulate a vital branch of not only the recreational industry, but Minnesotans' pride.<sup>230</sup> Had the court held any other way, it would have opened the floodgates to all lakeshore property owners to receive cartways across the adjoining land. Any such decision would necessarily ripple throughout Minnesota's massive acreage of lakefront property.<sup>231</sup> The court, therefore, correctly refrained from imposing any such burden on Minnesotan property owners. The legislature is the sole source of any statutory alteration that would have such resounding implications on Minnesota's "10,000 lakes."<sup>232</sup>

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leg/statutes.asp (last visited Dec. 6, 2003). Both the House and Senate bills proposed amending the cartway statute to read "who has no access thereto except over a navigable waterway or over the lands of others." *Id.* The Senate bill was introduced first, and was prompted by the Minnesota Department of Transportation in response to the ramifications of the *Daniel* decision. E-mail to author from John Pollard of the Senate Transportation Policy and Budget Division (July 24, 2003) (on file with author). The Senate bill currently resides in the Transportation Policy and Budget Division. *Id.* The House bill currently resides in the Transportation Policy Committee, where it has not been considered but is pending for hearing during the remainder of the legislative session. E-mail to author from Chuck Norenberg, Ways and Means Comm. Administrator, Minnesota House of Representatives (July 23, 2003) (on file with author).

230. TESTER, *supra* note 8, at 223. "Lakes are like sparkling jewels in their effect on humans and in their contribution to Minnesota's environment." *Id.* This explains why Minnesotans spend nearly 25% of their recreational hours fishing, swimming, or boating. *Id.*

231. Lake Vermillion is only one of Minnesota's 11,842 lakes, and alone has 2653 improved properties, of which 29% (760) have water access only. Appellant's Brief, *supra* note 81, at 11.

232. "A lake is the landscape's most beautiful and expressive feature; it is the earth's eye. Looking into which the beholder measures the depth of his own nature. The fluviate trees next the shore are the slender eyelashes which fringe it, and the wooded hills and cliffs around are its overhanging brows." HENRY DAVID THOREAU, WALDEN 186 (J. Lyndon Shanley, ed., Princeton, 1971).