

Private Ways Act

CHAPTER 358 OF THE REVISED STATUTES, 1989

as amended by

2011, c. 25; 2025, c. 8, s. 29



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**An Act Relating to
Necessary Private Ways**

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Short title

1 This Act may be cited as the *Private Ways Act*. R.S., c. 358, s. 1.

PART I

APPLICATION TO SUPREME COURT OF NOVA SCOTIA

Interpretation

- 2 In this Part,
- (a) “Court” means the Supreme Court of Nova Scotia;
 - (b) “Nova Scotia Land Surveyor” has the same meaning as in the *Land Surveyors Act*;
 - (c) “primary forest products” means any of the commercially valuable raw materials cut or harvested from a forest. 2025, c. 8, s. 29.

Application for right of way

- 3 (1) Where
- (a) an owner or leaseholder of real property
 - (i) intends to mine, quarry, farm on or harvest primary forest products from the real property, and
 - (ii) requires access across privately owned lands for that purpose exclusively; and
 - (b) the owner of the privately owned lands has refused to permit access,

the owner or leaseholder may make an application to the Court seeking an order for a right of way over the privately owned lands.

- (2) An application for an order under subsection (1) must be made in accordance with the *Civil Procedure Rules* and include
- (a) the intended purpose of the right of way;
 - (b) identification of the property over which the right of way is sought;
 - (c) the nature, width and approximate location of the right of way; and
 - (d) other evidence that demonstrates that the right of way is necessary for access for the intended purpose. 2025, c. 8, s. 29.

Restrictions on location of right of way

4 A right of way sought under this Part must not run through any existing gardens, orchards or structures of the owner of the land over which it is sought and must be located so as to not unreasonably disturb the quiet use and enjoyment of that owner. 2025, c. 8, s. 29.

Order by court

5 (1) On hearing an application under this Part, the Court shall issue an order directing that a right of way be issued to the applicant if satisfied that

- (a) the intended purpose of the right of way is one for which a right of way may be granted under this Part;
- (b) the right of way is necessary for the intended purpose;
- (c) the right of way complies with the requirements set out in Section 4; and
- (d) there is no reasonable alternative route of access.

(2) An order under subsection (1) must

- (a) define the boundaries of the right of way based on a plan of survey prepared by a Nova Scotia Land Surveyor;
- (b) specify the nature and extent of the right of way and whether the right of way is to continue in perpetuity or be for a fixed term of years; and
- (c) provide any other terms that the Court considers just and reasonable in the circumstances.

(3) The applicant is responsible for the cost of any survey required under subsection (2).

(4) The Court shall determine the amount of compensation the landowner is entitled to for the right of way based on a valuation prepared at the applicant's cost by an accredited appraiser who may be selected by the parties by mutual agreement or, where the parties fail to agree, by the Court. 2025, c. 8, s. 29.

Costs

6 Regardless of the result of the application, the applicant is responsible for the applicant's costs for the application and for the reasonable costs of the respondent in responding to the application, as determined by the Court. 2025, c. 8, s. 29.

Appeal

7 An appeal of a decision of the Court under this Part may be made to the Nova Scotia Court of Appeal. 2025, c. 8, s. 29.

Judicature Act and Civil Procedure Rules apply

8 The *Judicature Act* and the *Civil Procedure Rules* apply to applications, hearings, orders and appeals under this Part. 2025, c. 8, s. 29.

9 to 15 *repealed 2025, c. 8, s. 29.*

PART II

AUTHORITY OF MUNICIPAL COUNCIL

Interpretation

16 In this Part,

- (a) “commissioner” means the person appointed by the council under this Part;
- (b) “council” means the council for the municipality in which the road, alteration, landing or work is situated;
- (c) “land” includes any easement or right in land;
- (d) “owner” includes any person having an interest in land or in an easement or right in land;
- (e) “road” includes a bridge or approach to a bridge, except in the provision prescribing the width of a road;
- (f) “warden” means the warden for the municipality in which the road, alteration, landing or work is situated. R.S., c. 358, s. 16.

Petition for private way or road

17 (1) Any freeholder or freeholders of any municipality may present a petition to the council praying for the obtaining and laying out of a private way or road, either open or pent.

(2) Where the council is satisfied that the application should be granted, it shall order a precept to be issued to a competent person as a commissioner, directing him, within a convenient time, to

- (a) examine whether the proposed private way or road is the most practicable and reasonable means of access for the person or persons petitioning for the way or road to his or their lands or property or rights;
- (b) if satisfied with respect thereto, lay out the same in the manner most advantageous to the person or persons applying for the way or road and least detrimental to the owner or owners of the land through which the same shall pass; and
- (c) mark out the same on the land. R.S., c. 358, s. 17.

Further duties of commissioner

18 (1) If the commissioner considers that the proposed way or road is reasonable and practicable and requisite for the purposes of the person or persons applying therefor, he may lay out and mark the same and make plans thereof, in duplicate, and if he considers otherwise he shall so report to the council.

(2) Such way or road shall be not more than twenty-five feet in width. R.S., c. 358, s. 18.

Agreement for compensation

19 (1) The commissioner may make an agreement in writing as to the compensation therefor with the owners of the land, the use of which is required for the purposes of the proposed private way or road.

(2) Such agreement shall contain a description of such land, a reference to the plan and the amount agreed upon for compensation.

(3) The commissioner shall transmit to the municipal clerk, to be laid before the council with his precept, such agreement and a full report of his proceedings thereon. R.S., c. 358, s. 19.

Appointment of arbitrators

20 Where no agreement for compensation is made, arbitrators to appraise the same shall be appointed in the following manner:

(a) one arbitrator shall be appointed by the commissioner, another by the owner of the land and a third by the warden;

(b) the county court judge for the district in which the dispute arises may appoint an arbitrator to act on behalf of any owner, who is under disability, or absent from the Province, or who fails to appoint an arbitrator in his own behalf, after three days notice to him when he is within the municipality and fifteen days notice when he is not within the municipality but is within the Province;

(c) such notice may be given by the commissioner and may be served by delivering the same to the owner or, if he is not within the municipality, by mailing the same to his last known address, postage prepaid;

(d) no notice shall be necessary in the case of the disability of the owner or of his absence from the Province. R.S., c. 358, s. 20.

Joint appointment of arbitrator and failure to appoint

21 (1) Where the land of more than one owner is required, the owners with whom no agreement has been made, instead of each appointing an arbitrator, may join in the appointment of one arbitrator to act with the two arbitrators appointed as hereinbefore provided in appraising the amount of the compensation to be paid to each of the owners represented by such arbitrator.

(2) If any of the owners fails to join in making such appointment after seven days notice by the commissioner to do so, the county court judge for the district in which the dispute arises shall appoint an arbitrator to act on behalf of those who do not so join, and such appointment is as valid as if they had joined in making such appointment. R.S., c. 358, s. 21.

Oath

22 The three arbitrators, before entering upon their duties, shall take an oath before a justice of the peace that they will faithfully and impartially discharge the same. R.S., c. 358, s. 22.

Appraisal by arbitrators

23 (1) The arbitrators shall enter upon the land and appraise the compensation payable to the owner in respect thereto.

(2) The award of the majority of such arbitrators is valid and binding.

(3) The precept, with the report of the commissioner and the award, accompanied by a plan and containing or referring to a description of the land, shall be transmitted to the municipal clerk to be laid before the council. R.S., c. 358, s. 23.

Notice to interested person

24 After the report of the commissioner, with an agreement or award for compensation, is transmitted to the clerk, he shall, not less than thirty days previous to the next meeting of the council, serve a notice containing the substance of such report, agreement or award, upon each of the persons interested in the lands through which the way or road is proposed to be laid out, and service of such notice may be effected by mailing the same to the last known address of each of the persons, postage prepaid and registered. R.S., c. 358, s. 24.

Consideration of report

25 At the meeting of the council next after the receipt of the report, or at any subsequent meeting to which the consideration of the same is adjourned, the report, with the agreement or award for compensation, and any objections thereto shall be considered. R.S., c. 358, s. 25.

Decision of council

26 (1) The council may confirm or disallow the report and, if it is satisfied that the amount of the compensation is either insufficient or excessive, it may disallow and set aside the agreement or award and direct a new appraisal of the compensation to be made, unless an agreement is entered into in respect thereto, and may delay action on the precept until a new agreement or award is made and transmitted.

(2) The council may also either confirm or disallow the new agreement or award. R.S., c. 358, s. 26.

Filing of documents

27 If any agreement or award is confirmed, the municipal clerk shall file the same, and the papers in connection therewith, and shall enter the fact of such confirmation in a book to be kept by him for that purpose. R.S., c. 358, s. 27.

Calculation of compensation

28 The compensation to which an owner shall be entitled shall include the value of the use of the land so taken, if any, and the damages to the land of the owner directly caused by such private way or road. R.S., c. 358, s. 28.

Payment of compensation and expenses

29 The compensation ascertained by the agreement or by the appraisal of the arbitrators, and the expenses incurred in respect thereto, shall be paid by the council, and may be charged against and recovered from any polling district in which such private way or road is made, or in whole or in part from the applicant or applicants therefor, as the council may direct. R.S., c. 358, s. 29.

Council by-laws

29A (1) The council may make by-laws respecting the payment of compensation charged against the polling district in which a private way or road is made, or in whole or in part against the applicant or applicants therefor.

(2) A by-law passed pursuant to subsection (1) may provide

(a) that the charges may be chargeable according to a plan or method set out in the by-law;

(b) when the charges are payable;

(c) that the charges are first liens on the real property in the polling district or belonging to the applicant or applicants, and may be collected in the same manner as other taxes;

(d) that the charges be collectable in the same manner as taxes and, at the option of the Treasurer, be collectable at the same time, and by the same proceedings, as taxes;

(e) a means of determining when the lien becomes effective or when the charges become due and payable;

(f) that the amount payable may, at the option of the owner of the property, be paid in the number of annual instalments set out in the by-law and, upon default of payment of any instalment, the balance becomes due and payable; and

(g) that interest is payable annually on the entire amount outstanding and unpaid, regardless of whether the owner has elected to pay by instalments, at a rate and beginning on a date fixed by the by-law. 2011, c. 25, s. 1.

Entry on land

30 (1) No ascertainment or tender of the amount of compensation is necessary before entering upon land required for a private way or road.

(2) When the amount is ascertained, the municipal clerk shall, under his hand, give such owner notice in writing that such amount is subject to his order in the hands of the municipal treasurer.

(3) Such notice may be mailed to his last known address, postage prepaid, and, if he resides out of the Province and his address is not known, no notice or tender shall be necessary. R.S., c. 358, s. 30.

Registration of documents and effect

31 One of the plans and the agreement or, if there is no agreement, a copy of the award shall be registered in the registry of deeds for the registration district in

which the land lies, and such registration shall be held to vest the title as an easement to the land or rights of the person or persons applying for such private way or road. R.S., c. 358, s. 31.

Appeal

32 (1) Any person petitioning for a private way or road, and any person who is interested in the lands through or over which such way or road is to be laid out, may, within ten days after the decision of the council, appeal from the decision of the council to the county court in the county wherein it is proposed to lay out such way or road, by giving notice thereof to the warden or municipal clerk, in writing, stating the grounds of appeal.

(2) The municipal clerk shall thereupon transmit the proceedings to the clerk of such court.

(3) The appeal shall be heard at the next sittings of the court in the said county or, if it sits in more than one place in the county, then at the next sittings held at the place nearest by the usual route of travel to the proposed private way or road.

(4) After hearing the appellant, the other parties interested and the municipal council, and any witnesses produced, the court shall finally determine the questions raised, and either allow the appeal and quash, set aside or reverse the decision of the council, or confirm the same, either with or without costs, in the discretion of the court. R.S., c. 358, s. 32.

Gate on private way or road

33 (1) The council may direct gates to be placed on private ways or roads, and make regulations respecting the placing and keeping thereof.

(2) Every person guilty of a breach of such regulations shall, for every offence, be liable to a penalty of not less than one dollar and not more than eight dollars. R.S., c. 358, s. 33.

Remuneration of commissioner

34 The commissioner shall, for his services, receive such remuneration as the council allows. R.S., c. 358, s. 34.

Petition to shut up altered or abandoned way or road

35 (1) Where a private way or road or any part thereof has been altered or abandoned, any person interested therein or any of the owners of land adjoining the same may, by petition stating the facts and the names of all persons interested in the way or road and in the lands on either side thereof, apply to the council to shut up or otherwise dispose of the same.

(2) At least thirty days previous notice in writing of the application shall be given to the persons interested and posted up on two conspicuous places near the way or road and the petition shall be accompanied by an affidavit proving that such notice has been so given and posted.

(3) The council shall hear the person or persons making the application, the persons who have been notified and any witnesses produced on behalf of

any such persons and shall make an order either dismissing the application or granting the same in whole or in part. R.S., c. 358, s. 35.

PART III

GENERAL

Expropriation Act does not apply

36 For greater certainty,

(a) an order, award or decision made or any other action taken pursuant to this Act is not an expropriation for the purpose of the *Expropriation Act* or at common law or otherwise; and

(b) the *Expropriation Act* does not apply to this Act or to any order, award, decision or any other action made or taken pursuant to this Act. 2011, c. 25, s. 2.
