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**From:** Janet Larder [REDACTED]  
**Sent:** March 12, 2025 3:44 PM  
**To:** Office of the Legislative Counsel  
**Subject:** Bill #1- Act to Propose changes to the Private Ways Act

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Becky Druhan

Committee Chair

We write regarding Bill No. 1 which had its first reading on February 18, 2025. We are writing as we are affected by the proposed changes to the Private Ways Act beginning at paragraph 35 of Bill No. 1.

We own and operate M. Keddy Farm and Forest Limited, which owns certain land located in Aldersville, Lunenburg County. The lands are used by our company for forestry. There is an existing road that leads to the lands. However, only a portion of the lands we own have the benefit of a legal right-of-way needed to use the road. We have been unable to reach agreement with the owner of the road to extend the right-of-way to the other lands. Without that access, there is no alternate way to access all of our lands in order to carry out our forestry operations.

On April 17, 2023, we filed a petition with the Lt. Governor seeking to have a right-of-way established over the road in order to access the entirety of our forestry lands. That petition was heard by an independent commissioner in the fall of 2024, at our expense, and a report submitted to the Lt. Governor. If Bill No. 1 passes as currently drafted, the petition we filed will become null and void, with no way to recover the funds we have expended on it to date, including the cost of the commissioner.

Although we are not happy with that outcome, we are not here to argue against the bill. We agree that a Court is better to decide future disputes over private ways, instead of a commissioner appointed by the Lt. Governor. However, there are certain aspects of the Private Ways Act that we do not believe should be retained from the previous legislation. If the intent is to modernize that act, other outdated aspects of the act should be modernized at the same time.

We believe the legislation should not exempt "... any existing gardens, orchards or structures of the owner of the land over which it is sought ..." (Bill 1, Section 35, Proposed Clause 4) from a potential private right of way. There is no need to specify in advance what lands should be included or excluded from a possible right of way. The reference to "gardens and orchards" seems to be based on the antiquated notion that those lands are more valuable than any other uses of land. We do not agree.

To be clear, we are not suggesting that a right of way should run through someone's home. However, we believe a judge hearing an application under the Private Ways Act will be best able to decide whether a right

of way should be created and the path it should take. There is no need to specifically immunize gardens and orchards from a possible ruling.

Retaining this requirement may also lead to abuse. For example, a property owner facing an application for a private right of way may strategically plant shrubs or apple trees and claim a right of way runs through a "garden" or an "orchard" in order to prevent any private right of way from being created there. To avoid the issue, we believe Section 4 of the updated Act should remove this requirement and instead read:

4 A right of way sought under this Part must be located so as to not unreasonably disturb the quiet use and enjoyment of the owner of the land over which it is sought.

We also do not agree with the principle from the original legislation carried over in Section 6 of the proposed update to the Private Ways Act. As drafted, Section 6 indicates that all of the

reasonable costs of both sides following an application for a private right of way must be paid by the party seeking the private way. This is in addition to the compensation for the private way itself, if granted. This is a large financial burden.

The system retained in the proposed amended Private Ways Act does not provide any incentive for an owner of lands needed for access to resolve the issue out of court. Instead, it encourages the owner in the opposite direction, to fight the issue to a decision knowing that even they lose their reasonable court costs will be paid by the other side. This will only lead to further burden on our court system from unnecessary hearings of applications that should have been resolved out of court.

This system is unfair to a person seeking a private way. A forestry company should not be required to pay the cost of a land owner who stubbornly opposes a reasonable application. Instead, costs should be left to the court to decide. While in some cases it is appropriate for the party requesting a private way to pay the court costs, there are also cases where it may be appropriate for an unreasonable opposing side to pay. By leaving the issue to be determined, both sides have a risk and a real incentive to resolve out of court.

We believe that the following revision would more appropriately leave this issue to the Court, to better respond to the variety of applications that might come before it:

6 The costs of the application shall be determined by the Court, who is empowered to make a determination of costs that is just and appropriate in all of the circumstances, regardless of the result of the application.

We appreciate the committee's consideration of this matter.

Sincerely

Michael Keddy  
[REDACTED]

Sent from Outlook