

# BILL NO. 78

(as passed)



*2nd Session, 58th General Assembly  
Nova Scotia  
50 Elizabeth II, 2001*

Government Bill

## Conservation Easements Act

CHAPTER 28 OF THE ACTS OF 2001

The Honourable Ernest L. Fage  
Minister of Natural Resources

[First Reading](#): November 5, 2001 (LINK TO BILL AS INTRODUCED)

Second Reading: November 6, 2001

[Third Reading](#): November 15, 2001

Royal Assent: November 22, 2001



**An Act Respecting  
Conservation Easements**

Be it enacted by the Governor and Assembly as follows:

**1** This Act may be cited as the *Conservation Easements Act*.

**2 (1)** In this Act,

(a) "conservation easement" means a conservation easement within the meaning of Section 4;

(b) "easement holder" means an eligible body that is entitled, from time to time, to enforce the rights and privileges over land contained in a conservation easement;

(c) "eligible body" means a body that is, under Section 8, eligible to be an easement holder;

(d) "former Act" means Chapter 2 of the Acts of 1992, the *Conservation Easements Act*;

(e) "Minister" means the Minister of Natural Resources;

(f) "owner" means the owner of land over which a conservation easement is granted, and includes any heirs, executors, administrators, successors or assigns of the grantor of the conservation easement, any person who becomes the owner or occupier of the land after the conservation easement is created and, for greater certainty, Her Majesty in right of the Province, Her Majesty in right of Canada or a municipality.

**(2)** Where the lands to which a document relates are not registered pursuant to the *Land Registration Act*, any reference in this Act to a document being registered or filed in the appropriate registry shall, to the extent it applies to that document, be read as a reference to that document being registered pursuant to the *Registry Act* in the office of the registrar of deeds appointed pursuant to that Act for the registration district in which the lands to which the document relates are located.

**(3)** Where the lands to which a document relates are registered pursuant to the *Land Registration Act*, any reference in this Act to a document being registered or filed in the appropriate registry shall, to the extent it applies to that document, be read as a reference to that document being recorded in the register established, pursuant to that Act, for the parcel in which the land is located.

**3 (1)** This Act and the regulations bind Her Majesty in right of the Province and Her Majesty's corporations, boards, commissions, agents, administrators, servants and employees.

**(2)** This Act binds Her Majesty in right of Canada and Her Majesty's corporations, boards, commissions, agents, administrators, servants and employees.

**(3)** For greater certainty, the persons referred to in subsections (1) and (2) are subject to an order and other remedies pursuant to this Act and the regulations.

**(4)** This Act applies with respect to an easement or covenant entered into pursuant to the former Act and in effect immediately before the coming into force of this Act as if the easement or covenant were a conservation easement within the meaning of this Act.

**(5)** Nothing in this Act affects a right or a remedy with respect to an easement under any other Act or under the common law or equity if that right or remedy is not inconsistent with any right or remedy under this Act.

**4** A conservation easement is an agreement entered into between an owner and an eligible body that

(a) grants rights and privileges to the easement holder over the owner's land that relate to the purposes for which the conservation easement is granted;

(b) may impose obligations, either positive or negative, on the owner or the easement holder, or both, respecting the owner's land that relate to the purposes for which the conservation easement is granted; and

(c) is made for the purpose of protecting, restoring or enhancing land that

- (i) contains natural ecosystems or constitutes the habitat of rare, threatened or endangered plant or animal species,
- (ii) contains outstanding botanical, zoological, geological, morphological or palaeontological features,
- (iii) exhibits exceptional and diversified scenery,
- (iv) provides a haven for concentrations of birds and animals,
- (v) provides opportunities for scientific or educational programs in aspects of the natural environment,
- (vi) is representative of the ecosystems, landforms or landscapes of the Province, or
- (vii) meets any other purpose prescribed by the regulations.

**5 (1)** A conservation easement may exist for a stated period or in perpetuity.

**(2)** An easement holder may not, by possession, occupation or use of an owner's land, whether in accordance with the terms of the conservation easement or otherwise, obtain any possessory or prescriptive title in or to the land.

**6** Subject to this Act, a conservation easement, whether positive or negative in nature, runs with the land to which it relates for the period, if any, set out in the conservation easement even though the easement holder owns no other land that would be accommodated or benefited by the conservation easement.

**7** A conservation easement shall contain

- (a) the names and mailing addresses of the parties to the conservation easement;
- (b) a description of the land to which the easement relates, by metes and bounds, a plan of survey, the unique parcel identification number that is assigned to a parcel by Service Nova Scotia and Municipal Relations or any other means sufficient to identify the land;
- (c) a sketch of the land to which the conservation easement relates;
- (d) where the easement does not exist in perpetuity, the period for which the conservation easement is to exist;
- (e) the purpose for which the conservation easement is granted;
- (f) the practices permitted, restricted or prohibited on the land to which the easement relates and a description of those practices;
- (g) the conservation, restoration or enhancement practices that may be undertaken by the easement holder; and
- (h) any other information prescribed by the regulations.

**8** Any of the following bodies is eligible to hold a conservation easement:

- (a) Her Majesty in right of the Province or any agency of Her Majesty in right of the Province;
- (b) Her Majesty in right of Canada or any agency of Her Majesty in right of Canada;
- (c) a municipality or any agency of a municipality;
- (d) any organization that was, immediately before this Act comes into force, designated by the Governor in Council as a

conservation organization under the former Act;

(e) any other organization designated pursuant to the regulations.

**9** A conservation easement may be amended by written agreement between the owner and the easement holder.

**10** A conservation easement may, with the consent of the owner and subject to any terms in the conservation easement, be assigned by the easement holder in writing to any eligible body.

**11 (1)** The easement holder shall submit the conservation easement and any amendment or assignment thereof for registration in the appropriate registry.

**(2)** The registrar of the registry in which the conservation easement, amendment or assignment is registered or recorded shall, within thirty days after registration or recording, forward a copy of the conservation easement, amendment or assignment to the Minister.

**12** A conservation easement does not lapse by reason only of

(a) non-enforcement;

(b) the use of the land to which the easement relates for a purpose that is inconsistent with the purposes of the easement; or

(c) a change in the use of land that surrounds or is adjacent to the land to which the easement relates.

**13 (1)** A conservation easement may be terminated by a written agreement between the easement holder and the owner.

**(2)** Where a written agreement is made pursuant to subsection (1), the easement holder shall, within ninety days of the date of the agreement, file a copy of the agreement in the appropriate registry.

**(3)** The registrar of the registry in which a document referred to in subsection (2) is registered shall, within ninety days of registration, forward a copy of the document to the Minister.

**(4)** Where an easement holder ceases to exist, the owner shall notify the Minister in writing that the easement holder no longer exists and the Minister shall, within ninety days of receiving the notice, send a copy of the notice to all the eligible bodies.

**(5)** Any eligible body may, with the consent of the owner, elect to assume the obligations of the easement holder referred to in subsection (4) and accept the rights and privileges respecting the conservation easement by providing the Minister with a copy of the owner's consent and a written notice advising the Minister of the election within ninety days after the notice from the Minister has been sent to the eligible body pursuant to subsection (4).

**(6)** Where no eligible body elects to assume the obligations of the easement holder that ceases to exist, the Minister may elect to assume the obligations of the easement holder and accept the rights and privileges respecting the conservation easement by giving the owner a written notice advising of the election within one hundred and eighty days after the Minister has sent the notices to the eligible bodies pursuant to subsection (4).

**(7)** A written notice referred to in subsection (5) or (6) shall be registered in the appropriate registry.

**(8)** Where neither the Minister nor an eligible body elects to assume the obligations of the easement holder, the conservation easement is terminated and the Minister shall file a notice of termination in the appropriate registry and provide a copy of the notice to the owner.

**14** Where an easement holder ceases to be an eligible body, the easement holder is deemed to have ceased to exist for all purposes of Section 13.

**15 (1)** The obligations in a conservation easement, whether positive or negative, may be enforced by an action in the Supreme Court of Nova Scotia by the owner or the easement holder.

**(2)** In an action pursuant to subsection (1), the Supreme Court of Nova Scotia may

(a) grant any relief or remedy available at common law to any of the parties referred to in subsection (1);

(b) order the defendant to take any action the Court considers appropriate to restore or remedy any harm to the land to which the conservation easement relates;

(c) prohibit any activity on the land to which the conservation easement relates that the Court considers contrary to any of the purposes of the conservation easement.

**16 (1)** The Governor in Council may make regulations

(a) prescribing purposes for which a conservation easement may be granted;

(b) designating organizations for the purpose of clause 8(e);

(c) respecting the information that must be included in a conservation easement;

(d) defining any word or expression used in but not defined in this Act;

(e) respecting any matter or thing the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

**(2)** The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

**17 (1)** The former Act is repealed.

**(2)** Nothing in subsection (1) prevents the Governor in Council from revoking a designation of an organization as a designated conservation organization pursuant to the former Act.

**18** This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

