

To all **MLAs** of
Nova Scotia Legislature, Halifax, NS
March 11, 2021

I. INTRODUCTION

My submissions noted herein are primarily from the perspective of a long time private woodlot owner in this province. I have also been a member of Forest Nova Scotia for over 30 years. I submit that the Biodiversity legislation as currently drafted is fatally flawed and ill considered. It should **not** become law. Please permit me to provide some preliminary comments as follows:

- (1). **Climate change is real and it is here. That debate is over. It has become the single greatest threat to the survival of the human species. We are running out of time.**
- (2). **Without breathable air and drinkable water for humanity, everything else, literally, does not matter.**
- (3). Our United Nations (UN) and the scientific community are in general agreement that the path forward to resolving the climate change crisis is two-fold:
 - (a) Countries must transition to greener economies (which includes changes to human consumption) to greatly reduced carbon emissions;
 - (b) Grow more robust forests quickly to pull existing and future carbon from our fragile atmosphere.
- (4). The first UN branch will take time and will rely heavily on new technology (including the move toward cleaner energy). Changes in human consumption will also be key. Consumers must move toward more **eco-buying**. An excellent example of this is our Christmas tree industry. Nova Scotia does grow the best Christmas trees in the world and the production of that product is a substantial net benefit to reducing carbon emissions not to mention the many practical uses for a natural Christmas tree after the holiday season.
- (5). The second UN branch is critical for pulling existing carbon from our atmosphere. Those carbon emissions (greenhouse gases), left unchecked for decades are now coming back to haunt us. It is this second UN branch which will be the focus of much of my comment, particularly in the context of the latest draft of the proposed biodiversity legislation.

- (6). **Given “accelerated climate change” we can no longer accept a “passive forest” as a viable option. That was taken off of the table many years ago. We must create a much more robust forest, viewed through the lens of combating climate change. That forest must also “get out in front” of the effects of climate change instead of responding to the latest data which in most cases is already outdated at the time of dissemination.**
- (7). Our forests are a living entity. It is considered a renewable resource. How do we manage that resource for greater forestry punch to combat climate change, for greater biodiversity and for economic benefit? If done correctly, we can have all three.
- (8). **It is not enough to talk about a “green forest”. There are plenty of “green forests” in Nova Scotia that lack any meaningful forestry punch to combat climate change. They contain low quality, infected, dying trees. We must continue to create forests with better quality trees.**
- (9). In this regard, the continued participation of rural/small town Nova Scotia is critical. We must never return to the days of 1997 when (in a single year) almost 254 square miles of Nova Scotia was clear-cut. That was, and still is completely unacceptable. **Thankfully, through the hard work and dedication of private woodlot owners, by 2017, clearcutting on private woodlots was reduced by 70%.** Much of this work has been quiet and unseen. But nonetheless, it has been effective.
- (10). Clearcutting should only be used as a last resort treatment (stands that are infected/close to the end of their life cycle), should be as small as possible and configured to promote quick natural regeneration.
- (11). Many woodlots contain multiple, separate and distinct forests. For example, in my 500 acre woodlot, I have at least 5 separate forests, each one offering something different for greater biodiversity and combating climate change. I have attached 2 photographs. The first one shows a small portion of a large hardwood forest after all the low grade wood (pulpwood/biomass) was removed. The second photo is a 200 year old yellow birch (3 feet in diameter) which is part of this hardwood forest. **That yellow birch began pulling carbon from our atmosphere shortly after the War of 1812!** It is one of several similarly aged trees (which still has 50-100 years of life remaining) in my forests and now conditions are right for it and other trees to provide quality regeneration. Since I have pressed the “**reset button**” on this forest, it will require minimal maintenance on a go forward basis. And yes, it

has created greater biodiversity. This is precisely the type of forest needed to combat climate change.

- (12). Given the hard work and dedication of private woodlot owners over the last 25 years, our woodlots are in pretty decent shape, however, there is still plenty of work to do. But, I, for one, have had a **“belly full of private woodlot owners like me being demonized online and elsewhere as greedy people having an agenda to decimate our forests”**. Nothing could be farther from the truth. Among other things, my forest work has been characterized online and elsewhere as **“assaulting Mother Earth”**. I decided some time ago not to engage the abstract pontifications of these self-ordained environmentalists. I was better off saving my breath to cool my porridge. **Instead, I am appealing to your collective common sense, reasonableness and objectivity.**
- (13). Biodiversity is **not** a new concept. Private woodlot owners have been engaged for many years now in good biodiversity practices. For my part, I will always defend the perseverance and dedication of rural/small town Nova Scotians to grow a stronger forest for future generations. Their efforts ought not be sacrificed on some false narrative, ill-conceived alter of biodiversity, concocted, orchestrated and promoted by the current and previous Department of Lands and Forestry (DFL) senior leadership.
- (14). In my view, there are three key critical components for us to grow that robust forest with substantial forestry punch to combat climate change which will also create greater biodiversity:
 - (a) Secure and maintain the trust and confidence of rural/small town Nova Scotians. They have been doing much of the **“heavy lifting”** in improving our forests. They have the practical knowledge and infrastructure (truck drivers, heavy equipment operators, forestry contractors, mill workers etc.);
 - (b) Continue the aggressive government funding (started by Stephen McNeil in 2020 and for which he deserves considerable credit) for brush saw treatments, other forestry treatments and enhanced road construction assistance;
 - (c) Secure and maintain long-term, viable and sustainable markets for low grade forest products (pulpwood/biomass) and sawmill residuals
- (15). Recent scientific studies consistently show that global warming is also having a troublesome effect on our oceans including the slowdown of the Gulf Stream (the weakest it has been in the last 1000 years). It acts as a conveyor to draw warm

water from the equator and send it north to Western Europe. Scientists predict that a continuation in global warming will result in a further 40% weakening of the Gulf Stream System by 2100. Not Good! This is but another example of the urgency of growing much more robust forests quickly.

II. BIODIVERSITY LEGISLATION AS CURRENTLY DRAFTED

I am offering the same following comments regardless any party affiliation. This misguided, ill-conceived, draconian legislation, if passed, will tear at the very fabric of rural Nova Scotia for many years. This is plain and simple, wrong.

My Dad finished a well-respected career as a police officer at Canadian Forces Base Greenwood. We put down roots in rural Annapolis County in the 1960s. I am about as rural small town as they grow them in this Province. **And so too are you Stephen McNeil, Leo Glavine, Karen Casey, Gordon Wilson, Mark Furey and others in the Liberal Caucus. Is this what you want as your legacy? I am asking that, on this occasion, you set aside party loyalty and do what is right. Vote your conscience and do not support this version of the biodiversity legislation for the reasons I have articulated herein.**

Among other things, the current draft of the legislation (as well as the March 2019 draft) contains three major issues of contention. I have dealt with each separately.

(a) SCOPE

This proposed legislation was fatally flawed from the start. There was another way to do this but for some reason, senior leadership at DLF acquired a serious case of “tunnel vision resulting in them unable to see the forest for the trees”.

By virtue of s.3(b)(i)(j)(l) and (n), when read together, provides the Minister of Lands and Forestry with legislative authority and discretion to regulate any and all human activity within the territorial boundaries (both land and water) of the Province of Nova Scotia as it impacts any and all living things in this Province. There are no exceptions. This plain language interpretation of the scope of the legislation has been confirmed by DLF senior leadership.

Just stop and think about that for a moment. There are literally tens of thousands of everyday human activities that impact living things in this province. And the Minister of Lands and Forestry can regulate (I discuss that in detail later) how humans are to interact with every other living thing in the Province. It will be the Minister (and

presumably senior leadership at DLF) who will determine what human activities (many of which are acceptable today but may not be after passage of the legislation) will attract liability of up to \$1,000,000 for a first offence and any additional monetary liability by virtue of s.45(c) which, in of itself, could be tens of thousands of dollars.

This proposed legislation is highly intrusive, does not respect the privacy interests of Nova Scotians, and is an unprecedented attempt at government overreach and not how democratically elected governments are to conduct themselves. And this legislation falls well short of the “reasonableness” test.

Senior leadership at DLF has attempted to deflect this criticism by pointing to their work on “biodiversity management zone” (BMZ) concepts in the proposed legislation. There is nothing new here. The BMZ component of the proposed legislation is essentially a statutory codification of what private woodlot owners having already been doing for many years on a voluntary basis with good success. And, at most, BMZs account for 1% of the scope of the proposed legislation. What about the other 99%?

It is this kind of government overreach that has galvanized rural/small town Nova Scotians of all political persuasions under a single banner to protect their collective interests. Primary industries are a major component of the Nova Scotia economic engine. That has become all too clear during Covid-19. We are also the ones doing the heavy lifting re-modulating our forests to fight climate change.

(b) ENFORCEMENT/PUNISHMENT

My February 26, 2020 letter provided considerable analysis regarding the draconian approach that draft of the biodiversity legislation took in relation to the “Offences and Penalties” sections (s.38-51). It is noteworthy that the current draft reflects **no** material changes to those sections despite the many valid objections of private woodlot owners.

Senior leadership at DLF claimed that the consultation process was open, inclusive and transparent. It also gave a commitment to publish (on its website) the results of the various town hall style meetings held with the public during the summer of 2019. Those meetings were heavily attended by private woodlot owners who expressed the same concerns I have. Where is that DLF Report?

As well, DLF engaged the consulting services of Pam Cooley on or about February 2020. She spoke with a very small group of people, the list of which was provided to her by senior DLF leadership. It is my understanding that the several thousands of

taxpayer dollars paid to Pam Cooley included the preparation of a Report. If I am correct, when will Pam Cooley's Report be made available for public viewing?

I do want to provide some additional comment regarding the fine structure in the proposed legislation. The fine on first offence of up to \$1,000,000 against a company (\$500,000 for an individual) remains unchanged. Does senior leadership at DLF realize that many small businesses (farms, woodlot owners) in rural/small town Nova Scotia are now incorporated (in part upon the advice of their tax accountant and lawyer)?

Senior leadership at DLF has attempted to deflect criticism regarding these ludicrous fines by suggesting that the maximum fine under similar provincial legislation imposed by our courts is only \$8,000. Therefore, there is nothing to worry about. Really? First of all, it will be a judge who will decide the appropriate penalty. Secondly, if the maximum fine imposed in similar cases was only \$8,000, then make the maximum fine under the proposed biodiversity legislation \$10,000. That suggestion has not resonated with DLF senior leadership. It would rather provide a judge with the sentencing tool of a fine up to \$1,000,000 for a first offence. Why is that? Why does this government want farmers and forestry and many others subjected to that kind of potential liability? After all, these are the same people who have kept us fed during Covid-19 and have kept our economy going for the benefit of all Nova Scotians.

A few short bullets regarding s.38-51;

- (a) Government did not even have the decency and respect for rural Nova Scotians (particularly senior landowners) to include an incidental/inadvertent harm component to s.38;
- (b) Under s.44(1) the up to \$1,000,000 fine for first offence **per day** remains (up to \$500,000 for individuals);
- (c) Government has modified s.44 (4) to make it clear that it can bypass a company (perhaps because of limited assets to pay a fine) and prosecute individuals directly (officer, director, agent) for fines up to \$500,000 on first offence and/or up to 6 months in jail. The individual provides a much bigger target for government to recover fines imposed (i.e. seizure of someone's personal residence, vehicles, bank accounts etc. to satisfy the fine imposed);
- (d) Under s.46(1) an employer is responsible for the crimes of an employee **unless** the employer can satisfy a judge that the crime was committed **without** his/her knowledge or consent;

- (e) Under s.47, a person 19 years or older who **accompanies** another person who commits the crime is **deemed** to be a party to the offence **unless** that party satisfies a judge that he/she had no knowledge and did not consent to the crime.

- (f) And the government has considerably limited its liability to pay compensation under s.52 (2). In all likelihood there will be very few cases of compensation by virtue of the prohibitions, restrictions and limitations imposed upon private landowners by government under this legislation.

Not to mention the substantial civil remedies available to government to collect unpaid fines and other civil debt owed to the province.

And if farmers and private woodlot owners (or anyone else in Nova Scotia who owns real estate) think their real estate is beyond the grip of the government please note that any fine imposed can be converted into a judgement. Once registered for one year, the farmland or woodlot can be sold by virtue of the **Sale of Land Under Execution Act** R.S., c. 409. For those farmers or landowners who are not actual title holders but instead have a beneficial interest until the farm or land debt is paid may not be out of the woods. They should take a look at s.5 of the **Sale of Land Under Execution Act** in consultation with their lawyer.

Given the foregoing, do we really want the spectacle of DLF, with all its enforcement and compliance resources, descending (unannounced and with unfettered access to private property) upon a farmer in the Annapolis Valley or a Christmas Tree Grower in Lunenburg County, to impose the heavy hand of government (ridiculous fines, costly remedial measures determined by the Minister in his or her sole discretion etc.) under the legislative scheme of the current, proposed draft of the biodiversity legislation? I think not. This is not who we are. We are better than that.

I grew up in rural Nova Scotia. In my youth, I had the privilege of participating in the 4-H movement for 7 years. I got to personally know many of the farmers of today. I have also had the privilege to represent many farmers and private woodlot owners through my law practice in Middleton. These are good, decent, honest, hardworking folks. They do not deserve to be treated like this. They are not part of some criminal gang seeking to harm others through their conduct and words. Instead, they are your neighbours, friends and respected members of the community. Does this proposed legislation make sense? How does this help make us a more just society?

(c) REGULATIONS

For me, this is one of the most troublesome components of the proposed legislation. Section 38(1), (2) and (3) sets out offences for certain human activity which is determined to be in contravention of the regulations. This is the mechanism by which DLF will charge people and make them potentially subjected to the ridiculous monetary penalties.

Section 53(1) allows the Minister of DLF to make certain human activity an offence by regulation through the Governor in Council. Section 53(1) (a) to (u) essentially gives the Minister of DLF complete and absolute authority to regulate any and all human activity as it impacts any and all living things in this Province. Section 53(1) (d), (g), (h), (j) & (k) make that abundantly clear. These are essentially “basket” or “catch-all clauses”.

What is equally troubling here, is that senior leadership at DLF has been working on this legislation for 5 years now but **not** once has it provided a comprehensive list of the human activity that will be the subject matter of an offence under the legislation. **There have been many requests from stakeholders (particularly since March 2019 when the legislation stalled in the Legislature) but not once has some sort of list been provided. The standard response from senior leadership at DLF is that the regulations will be developed after the legislation has become law. I am sorry, but in this day and age of openness and transparency, that kind of answer is just not good enough. What is senior leadership at DLF hiding? Stakeholders, lawmakers and all citizens of Nova Scotia are entitled to know the type and nature of human behaviour that will attract liability before providing their blessing. This is not solely a forestry issue. It is an issue for all Nova Scotians.**

Where is the comprehensive list of human activity that will be caught by this legislation? DLF has had 5 years to prepare that list. It's time we saw the full extent of human behaviour government intends to regulate.

I am curious to see the addition of a consultation commitment in s.53 (2) and s.54 (2). This commitment is meaningless. Private landowners made many thoughtful representations to DLF during the summer town hall meetings in 2019. It is obvious that those legitimate concerns fell on deaf ears.

Rural Nova Scotians know plenty about protecting biodiversity. This legislation is **not** the path forward. It is another example of poorly conceived Liberal forestry policies not unlike those in 1997 which led to massive clearcutting in this Province. Mr. Premier, you were 14 years old at that time. I was 37. At that time, private woodlot owners like me recognized the insidious effects of climate change and committed to

growing better forests. **I am extraordinarily disappointed in you for placing legislation drafted in this manner before the legislature and we are left with no choice but to try to stop it. If it becomes law, it will create an unprecedented chill effect on rural/small town Nova Scotia.**

If this is the way this government is going to treat rural Nova Scotia, then maybe it's time for it to move along and someone else assist us in building a better Province. This draft of biodiversity legislation will result in our hard work remodelling our forests being lost to time. **Not Good. You see, the robust forests we are now growing, absorbs the annual carbon footprint of tens of thousands of others (and also provides much more breathable air). In this way the environmental component of our forestry work is just as important to someone living in HRM as it is to us.**

III. POTENTIAL CHARTER IMPLICATIONS OF LEGISLATION

In my February 26, 2020 letter to you, I provided considerable detail regarding potential **Canadian Charter of Rights and Freedoms** (Charter) breaches. Against that backdrop, I wish to provide additional comment as a long-term private woodlot owner but also as a retired federal prosecutor who, for 31 years, argued hundreds of **Charter** cases at the Provincial and Supreme Court levels.

In my view, the current draft of the biodiversity legislation gives rise to potential **Charter** breaches under sections 7, 8, 9, 10 and 12. And those potential breaches are not saved by the operation of Section 1 or Section 24(2).

For some time now our courts have been reluctant in according **Charter** protection and relief to property rights. However, the current draft of the biodiversity legislation presents an unique opportunity to re-visit that judicial reluctance. This legislation opens the door to provide compelling **Charter** arguments to a court of competent jurisdiction for infringements of mixed property rights and personal rights. Appellate courts routinely hear appeals of mixed law and fact. In my view, it would not be unreasonable, or exceeding jurisdiction, for a court of first instance to hear **Charter** applications of mixed personal rights and property rights.

Relevant to this discussion is a private woodlot owner's right to forestry, ability to make a moderate living and modest return on investment. Coupled with this, is that woodlot owner's personal right to quiet enjoyment, and as a private and personal sanctuary (for them and their family). They do have a substantial expectation of privacy. You see, for many private woodlot owners and farmers, it is more than economic benefit. It is deeply personal to them and therefore, many farms and woodlots are passed from one generation to the next. It is where families are raised. It is where values of trust, integrity,

respect for nature, honest hard work and service to others are taught and acquired. This mix or blend of property rights and personal rights brings the language of the proposed biodiversity legislation squarely within the scope of s.7 of the **Charter**. Monetary remedies are available for such **Charter** infringements as well as a judicial declaration that the legislation is an invalid exercise of provincial legislative authority.

In the result, there are many compelling, substantive arguments that the legislation is not Charter compliant and therefore cannot survive Charter scrutiny.

Sadly, rural/small town Nova Scotians may be left with no other recourse but to defend their personal/property rights and to seek judicial redress. This legislation does provide a treasure trove of litigation. Private woodlot owners, construction companies, farmers, fishers, land developers, mills/forestry workers and many others will not go quietly into the night. They have worked too hard to build a way of life. They will not let ill considered, over reaching, draconian legislation strip them of their moderate livelihood and family oriented values. **As I previously said, it is deeply personal to them. And this legislation falls well short of the “reasonableness threshold”. Moreover, this mix of personal and property rights is deeply rooted in our common law jurisprudence dating back to the year 1215 with the Magna Carta (“The Great Charter”) guaranteeing the rights of individuals. And no king or government can ever strip the people of their rights.**

IV. CONCLUSION

Whenever government decides to get serious about maximizing the enormous natural filtration capacity of our forests to combat accelerated climate change, I will gladly take a seat at that round table. No one can escape the grip of climate change. But that round table must include meaningful representation from agriculture, forestry, fishing, aquaculture, mining, First Nations, respected environmentalists, land development, energy, construction and others. Poisonous, false narrative rhetoric will not be welcomed. The people of Nova Scotia have always resolved major, mutual interest societal issues through consensus and cooperation rooted in an open and transparent process (not through polarization and alienation). The only question for me is which government will have the political courage to sit down and have that roundtable discussion? We are running out of time. We need a comprehensive rescue plan for humanity. If successful, it would be worthy of modeling for others in the world to follow.

Premier Rankin, you have repeatedly characterized yourself as a “bridge” to a younger generation. With the greatest of respect, my generation deserves considerable credit and deference in re-modeling our forests for greater economic benefit for all Nova Scotians but equally important for greater biodiversity and forestry punch to combat accelerated climate change. We have, for many years now (before you entered politics) worked diligently to address the insidious effects of climate change. Instead, your government seeks to hammer us with misguided, ill considered, draconian and highly intrusive legislation ostensibly in the name of biodiversity. This is the thanks we get. Not Good! Rural/small town Nova Scotians have very long memories. My generation of rural/small town Nova Scotians is not responsible for hundreds of years of overcutting in this province. But, it is my generation which for many years now has been deeply committed to a future generation (perhaps only a few decades from now in the absence of a serious course correction) from having to face the grim, inescapable reality of calling itself the last one.

Respectfully,

Stephen Isaac Cole