

BILL 4: COMMENTS TO THE LAW AMENDMENTS COMMITTEE

I am very concerned about Bill 4 that is currently before the House of Assembly.

My main concern is that the Bill contains almost no substantive provisions, except those on enforcement. Various sections allow the Minister of Lands and Forests to do certain things (quite wide-ranging things). Other sections allow the government or minister to do things by regulation or with the permission of the Governor-in-Council.

The entire bill can be summed up as a series of dreams and hopes (lots of whereas) that are not very specific, provisions delegating power, and provisions strengthening the enforcement of this and other statutes, all in very vague or open language.

Why would the House of Assembly pass legislation that basically gives power to make laws away from the legislature and almost whole-heartedly to a minister, department, or the Governor-in-Council (the governing party)? Our political leaders in the 19th century worked very hard to allow for a government of this province with democratic principles—values that allowed the people's representatives in the General Assembly to actually govern in a more democratic and open way (representative and responsible government principles).

I have to wonder out loud if this type of bill is even constitutional, in the sense that our constitution, as it currently exists, gives the House of Assembly the right to make laws, statutes, and ordinances for our good government in the province, not a minister or the Executive Council.

My hope is that the Legislature would stall this bill and ask the government to actually begin some of the important work on biodiversity. And, if the government were to need certain provisions to implement some of the work or directions that it feels it might need to go, then it could bring substantive provisions back to the Legislature. In this way, it could begin building a practical and understandable statute.

General Recommendation:

If the Committee intends to move this Bill forward, I would urge the Committee to insist on some provisions in the Bill that would require a review of any ministerial ordinances/actions or regulations by a committee of the legislature, as the nature of this bill unfolds. I would suggest a process much like the statutory instruments process of the federal parliament.

Specific Recommendations for change:

1. Definition of “private land” in Section 2(p) may not actually get at the real idea of private land. In law (at least based on the historical principles that our legal system currently operates under), the Crown holds or owns almost all the land in Nova Scotia. “Private owners” have a tenancy in the land. If you add in the historical reality that most of the land in Nova Scotia may not have ever been properly ceded or controled, this may add an additional complication with the definition.

My recommendation is that the Committee amend the definition to read,

(p) “private land” means lands that are not registered at a land registration office or land registry office in the name of or on behalf of Her Majesty in right of the Province or Canada.

2. Ensure that the definition of “camp” and “other structure” is included in a definition of “residence” and make sure that the Act is consistent about whether or not a warrant or telewarrant is required to enter a camp or temporary structure where someone is living. My recommendation is to always include camp in the requirement for a warrant.

For example, Section 32(2) does not necessarily require a warrant or telewarrant to enter a camp (as defined in the Bill), while Section 32(1) seems to allow for it.

I want to underscore that I greatly support the efforts of government in trying to protect biodiversity, species, and the environment.

Thanks for considering my comments.

Russell Prime



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