

An Act to Amend Chapter 114 of the Revised Statutes, 1989, the Crown Lands Act -- Bill 9

Submission to Law Amendments Committee

Respectfully submitted by Dale Smith, Halifax Regional Municipality, March 28, 2021

1. Introduction

Thank you for the opportunity to comment on Bill 9. A version of the contents that follow will be presented in person, via Zoom, as scheduled for 9:00 AM, Monday, March 29, 2021.

The updating of the purpose section to expand the description of the scope of this legislation is needed and welcomed. However, it is disappointing that the proposed amendments are limited to the purpose section only, and that additional amendments are not included in the body of the legislation to:

- (1) provide the land use planning tools necessary to enable and guide the implementation of the expanded statement of purpose; and
- (2) remove the forestry-related provisions, consistent with the amendments to the purpose section, and to transfer these, where appropriate, to updated forestry legislation (i.e. for 'ecological forestry').

The synopsis, immediately below, identifies recommended changes to Bill 9, as proposed and rationalized in the body of this submission.

Synopsis of Recommended Changes to the Purpose Section of Bill 9

2 The purpose of this Act is to

(a) provide the legislative and regulatory framework that will ensure Crown lands **are protected to maintain and enhance biodiversity and sustainably used** for purposes that include wilderness conservation, recreation, economic opportunity for forestry, tourism and other sectors, community development, and for the cultural, social and aesthetic enjoyment of Nova Scotians; and
(Supported, with minor recommended re-wording as highlighted in bold text)

~~(b) require that forestry leasing and licensing on Crown lands provide equitable stumpage rates, provide adequate investments in forest improvements and establish an overall preference for timber produced on privately owned land.~~

(Recommended to be removed, due to irrelevancy to the revised statement of purpose, along with removal of provisions in the body of the legislation regarding rules and regulations for on-the-ground forestry management and, where appropriate, the transfer of these provisions to updated forestry legislation (e.g. an ecological forestry act))

(b) enable fulfillment of the range of purposes set forth in Subsection (a), by establishing a land use planning process for Crown lands to guide the implementation of the triad model of public land management, through coordination of the respective responsibilities of the departments of Lands and Forestry and of Environment and Climate Change for protected areas, high production forest lands and the intermediate (Matrix) zone where conservation, forestry and other uses are to be integrated.
(Recommended to be added, in recognition of essential need for Crown land use planning capability to fulfil commitments to implement the Lahey report and the triad model for ecological forestry.

2. Proposed Amendment of the Purpose Section

The purpose section, as drafted, includes two clauses – the first, 2(a), follows from the intent of Recommendation 19 in the Lahey report, whereas the second, 2(b), is inconsistent with the identified rationale for amendment and is therefore out-of-place.

➤ Background and Context

On December 11, 2017, I made a presentation to Professor Bill Lahey, during the public/stakeholder input phase of the Independent Review of Forest Practices. Anticipating, firstly, that most presenters would be likely to address concerns about forestry issues and practices and recognizing, secondly, that most corresponding public contention and debate involved forestry activity on Crown land, the presentation to Professor Lahey focused specifically on the importance of the Province's Crown lands as a valued public asset that must be planned and managed with care and caution to support a wide variety of interests and uses deemed to be in the public interest. These were summarized, in general terms, as ranging from biodiversity protection and provision of ecosystem services to outdoor recreation, nature tourism and commercial resource use, including forestry.

The presentation emphasized that a crucial issue at hand is the elevated status that the current Crown land legislation (1989) gives to forestry, effectively as the default use of Crown land – essentially public lands are presumed to be available primarily for exploitation by the forestry industry. The wording of the purpose section (2) of the legislation, which is heavily biased toward industrial forestry, was highlighted to demonstrate this concern.

Included amongst some 9 recommendations advanced to Lahey were the following:

- 'Revise (and update) the Crown Land Act so that its purposes and contents reflect the collective stature of these lands as a highly-valued public asset – rather than, as currently is the case, a resource presumed primarily available for exploitation by the forestry industry'; and
- 'Establish a comprehensive and transparent management planning process to coordinate uses of Crown land recognized as being the public interest. Broadly speaking, these range from biodiversity protection and provision of ecosystem services to outdoor recreation, nature-based tourism and commercial resource activities, including forestry'.

Lahey's corresponding recommendation (No. 19, in his August 18, 2018 report) is to remove the statutory preference given to timber production in the statement of purpose, but without providing any reference or direction to related amendments needed in the balance of the legislation so as to give effect to the broadening of the statement of purpose. Presumably, Lahey understood that the revision of the purpose of legislation would require consequent changes in the body of the legislation; however, failure to be clear in this regard has led to confusion and unfortunate shortcomings in the current form and content of Bill 9.

The net result is the amendment now under consideration focuses narrowly on the purpose section -- even though Province's response to the Lahey report (December, 2019) and the Department of Lands and Forestry's 2019-20 business plan commit to the review of the overall legislation (not just its purpose section).

Surely, if the purpose of a piece of legislation is changed, then the body of the legislation must change accordingly in order to carry out the intent of the legislation as set out by the statement of purpose. In short, to change the purpose and not change the body is superficial and simply insufficient.

➤ **Section 2(a)**

This clause, although there are many variations in the way that the underlying intent could have been expressed, generally is a reasonable response to the case made for expanding the scope of the purpose statement – essentially, so that the statement of purpose extends beyond the overriding forestry bias in the existing legislation, while also remaining inclusive of forestry along with a full range of other relevant purposes and uses.

Accepting this statement as a reasonable starting point, it could be improved by adjusting the wording about Crown lands being ‘sustainably used, protected and managed’ so that it reads more coherently and consistently with the preference given by ecological forestry to ecosystems and biodiversity, as follows:

(a) provide the legislative and regulatory framework that will ensure Crown lands **are protected to maintain and enhance biodiversity and are sustainably used** for purposes that include wilderness conservation, recreation, economic opportunity for forestry, tourism and other sectors, community development, and for the cultural, social and aesthetic enjoyment of Nova Scotians;

(Supported, with minor recommended re-wording as highlighted in bold text)

➤ **Section 2(b)**

This clause has no place in the purpose section of the Crown Lands Act. Its inclusion would serve to maintain the elevated status enjoyed by forestry-related management considerations, which is at the heart of the issue that provided rationale for the proposed amendment. This provision, if deemed appropriate for inclusion in an amended Crown Lands Act, should be relocated to the body of the legislation, in association with sections addressing forestry activity (e.g, Section 32 of the existing legislation). This said, preferentially, content of this nature should be addressed in an updated version of the 1989 forestry legislation, as required to reflect the principles of ecological forestry.

There simply is no rationale for inserting specific provisions relating to forestry into an amended purpose clause of the Crown Lands Act, other than is done in a general way consistent with reference to other relevant purposes and uses, as is the case with the proposed Clause 2(a). If further detail is added relative to forestry, then why is parallel content not added relative to the other purposes and uses referenced in Section 2(a)?

3. Essential Amendments Not Included to Date

Comments that follow address the need for additional amendments that should be added to Bill 9, or to a future updating of the Crown Lands Act, to provide for land use planning in order to enable fulfilment of government’s commitment to the application of the triad model for ecological forestry on Nova Scotia’s public lands.

➤ Background and Context

The Lahey report proposes an ecological approach to forestry on Crown land, in order to give priority to the protection of ecosystems and biodiversity. According to this approach, which has been endorsed by the Province, ecological forestry would be delivered through a triad system of zoning – including protected areas, high production forest lands and an intermediate category, or zone (referred to by Lahey as the ‘Matrix leg’), where conservation, forestry and other uses would be integrated.

The triad concept therefore basically requires a land use planning approach for Nova Scotia’s Crown lands, which rationally must entail the delineation and mapping of the three broad triad zones and, presumably, evolve into a more finely tuned zonation relevant to the range of interests and uses referenced in the proposed amended purpose section (2(a)). By way of example only, these more detailed zoning categories could include corridors of ecological connectivity, significant and sensitive areas, areas important for recreation and tourism uses, and areas where forestry is permitted consistent with the principles and practices of ecological forestry.

Crown land use planning, or more accurately public land use planning, to implement the triad model of zoning is where matters become complicated and further legislative amendment is required. For most Nova Scotians, provincially-owned ‘public lands’ are likely to be considered as synonymous with Crown land and, this being the case, most would understand Nova Scotia’s Crown lands to include the somewhat scattered pattern of provincially-owned and generally undeveloped and unoccupied forests, barrens and wetlands that span the province.

Consistent with this understanding, and the historic reality, Crown lands are defined by the Crown Lands Act as lands under the administration and control of the Minister of Lands and Forestry (previously of Natural Resources (1991-2018) and, even earlier, of Lands and Forests (1926-1991)). However, this reality changed in 1998 with the passage of the Wilderness Areas Protection Act and the transfer of responsibility for wilderness areas and nature reserves (the latter as designated under the Special Places Protection Act, 1989) to the Department of Environment (recently re-named Environment and Climate Change). Protected areas therefore are no longer Crown land, as defined by the Crown Lands Act, but are nonetheless provincially-owned public lands that, despite being ‘amputated’, remain as one of the three legs of Lahey’s triad model.

The net effect is that one of the so-called legs of the triad model was ‘amputated’ in 1998 – and it should be clear to all that two-legged triads (or tripods) do not perform well. The issues at play, which need not be overstated, are well-demonstrated and widely-understood given the dramatic differences in the mandates and approaches of the two departments involved – Lands and Forestry and Environment and Climate Change. As a practical illustration of this problem, now well over two years since the Province endorsed the recommendations in the Lahey report, the advisory committee established to provide advice to the Minister of Lands and Forestry on the implementation excludes representation from the protected areas group within the Department of Environment and Climate Change. This is symptomatic of the fatal flaw that must be addressed, or the promise of ecological forestry will be ‘dead in the water’.

Clearly the commitment to the adoption of the triad model for public land (i.e. Crown land and provincial protected areas) management demands a coordinated and coherent land use planning approach. This must be enabled by legislative change and government restructuring to inspire and lead the essential paradigm shift from industrial forestry to ecological stewardship.

Unfortunately, the new administration's determination to demonstrate early progress on its commitment to moving forward with recently-elevated priorities, including the implementation of the government-adopted recommendations of the Lahey report, has resulted in optics prevailing over substance. The proposed amendments address the updating of the purpose section of the Crown lands legislation, which is needed, but fail to include provision for the tools required to enable the expanded scope of the purpose section to be implemented. This being the case, the amendments as proposed are superficial and, without complementary provisions specifically in reference to public land use planning in particular, will be inconsequential in their net effect.

➤ **Basis Amendments relating to Crown and Public Land Use Planning – Option 1**

Accepting that Government appears to have chosen haste and optics over prudence and substantive progress, the following basic approach is identified as one option, involving essential adjustments that are possible within the existing structure of government and division of responsibilities for Crown lands and protected areas respectively between Lands and Forestry and Environment and Climate Change.

Although there are many variations that could, and should, be identified and evaluated in detail as part of a comprehensive review of the Crown Lands Act and of related departmental roles and responsibilities, the following is advanced as a 'minimalist' approach, in light of the situation and circumstances as are understood to prevail.

- Amend the Crown Lands Act to enable effective implementation of the triad model.
- Define 'Crown land' as provincial public land, including existing Crown land administered by the Minister of Lands and Forestry and protected areas administered by the Minister of Environment and Climate Change.
- Add provisions that direct land use planning for Crown lands (in line with the preceding definition) as required to designate and delineate the protected, matrix and high production 'legs' (or zones), as called for by the triad model for Crown land planning and management.
- Assign responsibility to the ministers of Lands and Forestry and of Environment and Climate Change to jointly oversee Crown land use planning and allocation, consistent with the triad model.
- Establish a senior position (e.g. Commissioner of Crown Land Planning), along with supporting Crown land planning unit, to undertake Crown land use planning in close cooperation with staff of the respective departments (i.e. Lands and Forestry and Environment and Climate Change).
- Provide for effective stakeholder engagement and public consultation in Crown land use planning.
- Establish a Crown land use plan preparation, review and approval process, consistent with the triad model and with standards of openness, clarity, consistency and fairness.

Note: It is essential that Crown land use planning (consistent with above-proposed definition) be recognized as separate and apart from (although interrelated with) forestry management planning on Crown land. Forestry management planning on Crown land should be understood as occurring on certain areas of Crown land as determined, through a Crown land planning process, to be available for forestry use.

➤ Amend Purpose Section to require Crown Land Use Planning – Option 2

In lieu of adding detailed amendments, essentially ‘on the fly’ through the Law Amendments Committee process, an alternate approach could be to add provision for Crown land use planning by including a further clause to the he purpose section, as follows:

b) enable fulfillment of the range of purposes set forth in Subsection (a), by establishing a land use planning process for Crown lands to guide the implementation of the triad model of public land management, through coordination of the respective responsibilities of the departments of Lands and Forestry and of Environment and Climate Change for protected areas, high production forest lands and the intermediate (Matrix) zone where conservation, forestry and other uses are to be integrated. ***(Recommended to be added, in recognition of essential need for Crown land use planning capability to fulfil commitments to implement the Lahey report and the triad model for ecological forestry.***

This approach (Option 2) is recommended as being both pragmatic and prudent under prevailing circumstances.

4. A Concluding Comment

The amendment of the purpose section of the Crown Lands Act to recognize a wide array of relevant public interests and uses is long-overdue, and welcomed. However, unless provision is included for a comprehensive and coherent approach to land use planning for Nova Scotia’s public lands (i.e. Crown lands and provincial protected areas), changes to the purpose section will be superficial and inconsequential, and essential requirements to enable the implementation of the triad model of public land planning and management will go unaddressed.

Consistent with the intent of the proposed amendment of the purpose section, provisions relating to rules and regulations for forestry activity, where permitted to occur on Crown land, should be removed from the Crown Lands Act and, where appropriate, included in forestry-related legislation, as in an updated ecological forestry act.