

From: [REDACTED]
To: [Office of the Legislative Counsel](#)
Cc: [Minister, Env; Minister, Natural Resources and Renewables](#)
Subject: Submission to Law Amendments Committee re Bill 57 -- Dale Smith
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Attachments: [Law Amendments EGCCRA f.docx](#)

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Members of the Law Amendments Committee,

Attached, please find my submission in regard to Bill 57.

In the submission a number of amendments are recommended, specifically in reference to Section 10 which addresses goals regarding the protection of land, with consideration to: (1) providing greater clarity and consistency with the spirit and intent of the Lahey Report; (2) maintaining compatibility with the recently-amended Crown Lands Act; and (3) promoting a collaborative and coordinated land use planning approach for Nova Scotia's Crown lands and protected areas.

Given the target date of December 31, 2023 for completion of the proposed collaborative protected areas strategy and finalization of the triad zoning model for the identification of protected areas and the allocation of Crown lands, it is essential that forestry harvesting decisions over the interim period (i.e. until that target date is reached and/or said planning initiatives have been completed) be coordinated between the Departments of Environment and Climate Change and of Natural Resources and Renewables. **In the absence of effective coordination, as recommended, the only other credible approach is to place a moratorium on forestry harvesting on Crown land over the period when plans are being prepared.**

Thank you for your consideration.

Dale Smith
[REDACTED]

Bill 57 – Environmental Goals and Climate Change Reduction Act

Submission to Law Amendments Committee

Dale Smith, Halifax Regional Municipality – October 31, 2021

Introduction and Synopsis

Bill 57, the Environmental Goals and Climate Change Reduction Act (EGCCRA) is the most significant environmental legislation since its predecessor, the Environmental Goals and Sustainable Prosperity Act (EGSPA), was and passed and received Royal Assent in the Spring, 2007.

As with EGSPA, Bill 57 proposes a wide variety of goals to foster environmental sustainability and economic well-being in order to achieve sustainable prosperity as the long-term objective of Government.

This submission focusses directly and specifically on Section 10, which sets out Government's goals with respect to the protection of land, as highlighted immediately below.

10 The Government's goals with respect to the protection of land are

(a) to conserve at least 20% of the total land and water mass of the Province by 2030 as protected areas and other effective area-based conservation measures, including Indigenous Protected and Conserved Areas, in a manner consistent with national reporting criteria;

(b) to support the goal in clause (a) with a collaborative protected areas strategy to be released by December 31, 2023;

(c) to implement by 2023 an ecological forestry approach for Crown lands, consistent with the recommendations in "An Independent Review of Forest Practices in Nova Scotia" prepared by William Lahey in 2018, through the triad model of forest management that prioritizes the sustainability of ecosystems and biodiversity in the Province; and

(d) to identify by 2023 the percentage allocation of Crown land dedicated to each pillar of the triad model of forest management referred to in clause (c).

Based on the clause-by-clause review of Section 10 in the body of this submission, the following amendments to Clauses 10(c) and 10(d), and the addition of Clause 10(e), are recommended.

(A Track Changes version is shown in the concluding section of this submission)

(c) to implement by 2023 an ecological forestry approach for Crown lands, consistent with the recommendations in "An Independent Review of Forest Practices in Nova Scotia" that prioritizes the sustainability of ecosystems and biodiversity in the Province;

(d) to support the goal in clause (c) with a comprehensive land use planning approach for the allocation of Crown land dedicated to each pillar of the triad model of ecological forestry by December 31, 2023;

(e) to ensure coordination of protected area, Crown land use and forestry management planning by requiring, over the interim period ending December 31, 2023, forestry harvesting plans to be jointly approved by the responsible Ministers.

Clause 10(a) – The 20% Protection Goal

The goal of conserving at least 20% of Nova Scotia’s land and water mass by 2030 is laudable, especially in light of the high percentage (approximately 60%) of the province that is in private ownership.

It is encouraging that this goal references consistency “with national reporting criteria”, essentially as a control mechanism to limit any possible attempts to ‘water down’ criteria at the provincial level and thereby to enable spurious claims that certain areas or designations contribute to the 20% target when, in fact, they would not be fully protected. Similar forces of course are likely to be at play at the national level; however, with multiple jurisdictions and stakeholders involved, more checks and balances will exist to guard against any such tendencies.

Clause 10(b) – The Collaborative Protected Areas Strategy

A collaborative approach to the creation of a strategy to meet the 20% goal is essential, and therefore is highly supportable.

Because of the complexities, limitations and consequent challenges that stem from Nova Scotia’s ownership pattern (i.e. the extent of private ownership, as noted above), it is clear that a large proportion of additional protected lands as needed to meet the 20% goal (i.e. in the order of 330,000 hectares, if outstanding designations proposed in the 2013 Parks and Protected Areas Plan are taken into account) must come from existing Crown lands.

With the Department of Environment and Climate Change responsible for protected areas and the Department of Natural Resources and Renewables responsible for Crown lands (and corresponding forestry and other resource uses of these lands), effective collaboration will be essential. Unfortunately the pattern to date, respecting protected area planning and establishment, has been characterized by land use competition and contention between the two departments – with Environment proposing candidate areas for protection and Natural Resources typically opposing (or if not outright opposing, pushing back in various ways and to varying degrees).

Legislation requiring a collaborative approach therefore is a positive step toward addressing this issue. However, legislation is not always effective in overcoming intransigence based on deeply-rooted perspectives and patterns of behavior. Committee members need only reflect on Nova Scotia’s endangered species legislation and the recent court finding that the Province, through Natural Resources, is failing to comply with its own legislation.

The essential need is for a comprehensive land use planning approach. The ground work already has been prepared through the amendment of the Crown Lands Act in the Spring 2021 session of the legislature, when the purpose clause was amended to recognize the role of Crown land in serving a variety of objectives and uses – including, but also in addition to, forestry – as well as the role of Crown land use planning in supporting [or guiding] decisions regarding coordination of these various objectives and uses (as set out in clauses 2(a) and 2(c) of the amended Crown Lands Act that received Royal Assent on April 19, 2021 (see below)).

2 The purpose of this Act [i.e. the Crown Lands Act] is to

- (a) provide the legislative and regulatory framework that will ensure Crown lands are sustainably used, protected, and managed to maintain and enhance biodiversity and considers climate change and for purposes that include wilderness conservation, recreation, economic opportunity in forestry, tourism and other sectors, community development, and for cultural, social and aesthetic enjoyment of Nova Scotians.
- (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; *and*
(Clause 2(b) is not relevant to the EGCCRA submission, but is included for completeness of the reference)
- (c) support the range of purposes set forth in clauses (a) and (b) through land-use planning for Crown lands.

Because of the split of responsibilities between Environment (for protected areas) and Natural Resources (for Crown lands), organizational structure and processes need to be fine-tuned to ensure collaboration can occur efficiently and effectively. The importance of this aspect is demonstrated by shortcomings experienced to date in implementing the recommendations of the Lahey Report, particularly regarding the triad approach – although Environment is responsible for one of the three so-called legs of the triad, Environment is not represented on the Natural Resources Minister’s Advisor Committee on the implementation of Lahey, and the committee has focussed on the two legs of the triad that are of most interest to forestry.

Committee members (i.e. Law Amendments) therefore is urged to amend Section 10 to require a coordinated public land use planning process, for Crown lands and provincial protected areas, in order to enable and facilitate the collaboration (to be achieved through effective coordination) as required in Clause (b).

Section 10(c) Implementation of Ecological Forestry on Crown land

Implementation of the Lahey Report, is long overdue and therefore is highly supportable, particularly given recognition that the recommendations therein were accepted by Government almost three full years ago.

It is concerning that this commitment is limited to only those recommendations that apply to Crown land and, via the triad model, to other provincially-owned lands designated as protected areas. However, this concern perhaps reasonably can be rationalized as a strategic priority, especially in light of the debate last spring over the biodiversity legislation. Based on that experience, the case can be made that it makes good sense for the Province to “get its own house in order” before addressing private lands.

As emphasized in previous discussion relating to Clause 10(b), implementation of the triad model requires a comprehensive land use planning approach. Fundamentally, the triad model is a very simplistic approach to land use planning Crown lands, albeit rather narrowly conceived from a forestry perspective. Consistent with the Spring, 2021 amendments to the Crown Lands Act (and with Lahey’s

Recommendation 19), Crown lands should be managed in recognition of a variety of objectives and uses, and not zoned through a forestry lens, which, admittedly somewhat cynically put, amounts to assuming forestry to be the default use of Crown land, essentially as follows:

- protected areas (lands lost to forestry)
- matrix lands (lands where forestry activity is constrained due to other interests), and
- high production forestry lands (areas where industrial forestry activity predominates).

Clearly, Crown lands should be managed for the benefit of Nova Scotians and, this being the case, with recognition being given to a wide variety of interests and objectives, including forestry.

Committee members therefore are urged to amend Section 10 to require a coordinated public land use planning process, for Crown lands and provincial protected areas, in order to enable and facilitate the collaboration (to be achieved through effective coordination) as required in Clause 10(b) and the implementation of ecological forestry on Crown land as required by Clause 10(c).

Section 10(d) – The Triad Model of Ecological Forestry

The intent of this clause is confusing, and therefore difficult to support, or oppose, in the absence of greater clarity.

Firstly, terminology is an issue. The Lahey Report refers to the triad model of ecological forestry (not the “triad model of forest management” as currently used in Clauses 10(c) and (d)). The wording not only is inconsistent with the Lahey Report but also with the Crown Lands Act, which was amended in part to comply with Lahey’s recommendation (i.e. # 19) to remove the forestry bias from its statement of purpose.

Further, given the two-year timeframe indicated for the determination of the percentage of land to be allocated to each pillar (or zone) of the triad, the implication is that some unspecified type of planning process is intended to be undertaken to zone the Crown lands in keeping with the triad categories – which presumably would be the basis for determining or confirming the respective percentages of the triad categories (i.e. once the triad zones had been delineated).

Recognizing the Spring 2021 amendments to the Crown Lands Act, the needed planning process should not be forestry-driven, but rather a comprehensive land use planning process as per Section 2(c) of the amended Crown Lands legislation (refer to Page 3). If so, and given the variety of interests and objectives that are recognized in the Crown lands legislation, parallel objectives should be set for the various interests so recognized.

There clearly is lack of clarity regarding the appropriate process for planning Crown land and the implementation of the triad model, and a corresponding lack of understanding regarding land use planning principles and processes. What is clear, from the Lahey Report (Recommendation 19) and the resultant amendment of the Crown Lands Act), is that Crown lands should not continue to be planned and managed primarily through a forestry lens. Unfortunately, the wording of Clauses 10(c) and 10(d) (and of course the extremely slow progress on the implementation of the Lahey Report)

strongly suggests that the Natural Resources department remains entrenched in a forestry-dominated mindset.

Committee members therefore are urged to amend Section 10 to require a coordinated public land use planning process, for Crown lands and provincial protected areas, in order to enable and facilitate the collaboration (to be achieved through effective coordination) as required in Clause 10(b), implementation of ecological forestry on Crown land as required by Clause 10(c), and effective application of the triad zoning model for the allocation of Crown lands as referenced in Clause 10(d).

Conclusion

Based on the preceding discussion, it is recommended that the following amendments be considered to: (1) provide greater clarity and consistency with the spirit and intent of the Lahey Report; (2) maintain compatibility with the recently-amended Crown Lands Act; and (3) promote a collaborative land use planning approach for Nova Scotia's Crown lands and protected areas.

Given the target date of December 31, 2023 for completion of the proposed collaborative protected areas strategy and finalization of the triad zoning model for the allocation of Crown lands, it is essential that forestry harvesting decisions over the interim period (i.e. until that target date is reached and/or said planning initiatives have been completed) be coordinated between Environment and Climate Change and Natural Resources and Renewables. **In the absence of effective coordination, as recommended below, the only other credible approach is to place a moratorium on forestry harvesting on Crown land over the period when plans are being prepared.**

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(c) to implement by 2023 an ecological forestry approach for Crown lands, consistent with the recommendations in "An Independent Review of Forest Practices in Nova Scotia" ~~prepared by William Lahey in 2018, through the triad model of forest management~~ that prioritizes the sustainability of ecosystems and biodiversity in the Province; and

(d) to ~~support the goal in clause (c) with a comprehensive land use planning process for the~~ identify by 2023 the percentage allocation of Crown land dedicated to each pillar of the ~~—~~ triad model of ~~ecological forestry management referred to in clause (c) by December 31, 2023;~~ and

(e) to ensure coordination of protected area, Crown land use and forestry management planning by requiring, over the interim period ending December 31, 2023, forestry harvesting plans to be jointly approved by the responsible Ministers.