Submission to the Law Amendments Committee

Nova Scotia Legislature

Re: Bill 9

I wish to support Dale Smith's recommendations to the Committee concerning the proposed amendments to the Crown Lands Act. I also wish t make a few additional points.

1: Proposed amendment of the purpose clause.

I agree with the suggestion that a reference to biodiversity and sustainability should be included. Their inclusion would not only respond to significant features of the Lahey Report , it would reflect the emphasis that the Government has put on the protection and enhancement of biodiversity in Bill 4.

In addition, I would like to suggest that the purpose clause should recognize the traditional use of Crown lands by the Mi'kmaq. The Province has recognized the importance of the Mi'kmaq heritage in other legislation (e.g. the Sustainable Development Goals Act) and including it here would not only reinforce those statutory commitments, it would advance the goal of reconciliation that has been put forward by the present government and endorsed by both Opposition parties. I suggest that the clause be modified with the phrase presented here in bold caps:

(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 **THE TRADITIONAL USES OF CROWN LANDS BY THE MI'QMAK,** 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

2: Proposed subsection (b)

This clause may be seen as an attempt by the government to reassure woodlot owners and forestry companies that their interests are not going to be forgotten in the implementation of the Lahey report. It is quite possible, however, that it will eventually be seen as the 'poison pill' that undermined ecological forestry.

This is because the courts have been known to attach so much importance to sub-clauses such as this that they overshadow general provisions like those in subsection 'a'. In effect the courts could end up restoring the preferential status of forestry that Lahey found highly problematic . The fact that the government has not moved to amend the Forests Act, which has a purpose clause even more restrictive than the clause that sub-section 'a' is meant to replace, would reinforce an argument seeking to re-instate the preferential status of forestry. (For a description of the Forests Act see p. 32 of the attached review of Nova Scotia statutes relating to forest use and regulation.)

This drawback could be addressed by (1) dropping the proposed sub-clause entirely; (2) adopting the alternative suggested by Dale Smith. (Which does, after all, follow logically from the proposed clause ‘a), or (3) undertaking a complete overhaul of the statutes that govern the use and regulation of our forests.

Yours respectfully,

Paul Pross,
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Protecting and Utilizing Nova Scotia's Forests:
A Survey of Current Legislation: Issues of concern

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SUMMARY

The survey is grounded in *An Independent Review of Forest Practices in Nova Scotia* (August 2018) in which Professor William Lahey called on the Government to amend forest legislation…

> …to ensure that its purpose clause encompasses and gives equal weight to the full range of the values (and uses) relevant to the management of Crown land…
>
> *An Independent Review of Forest Practices in Nova Scotia* Conclusion 19

The survey identifies four problems with the legislative framework that currently regulates forest use in Nova Scotia. They are:

1 The regulatory regime is spread over too many statutes.

2 Key statutes regulating wood production are out of date.

3 The Crown Lands Act should provide an orderly procedure for allocating Crown lands to specific types of use. It should be used to determine where a triad policy should be applied, for example, but should not be used to manage biodiversity or to regulate the forest industry.

4 There is no coherent policy informing these statutes.

The paper argues that:

a. Lahey's recommendations, must be applied to the full range of statutes which govern forest use and provision for biodiversity.
b. We need to completely overhaul of that body of legislation, so that it addresses all aspects of our relationship with our forests and gives priority to environmental considerations.
c. Changing LAF's mandating legislation is integral to changing the culture of the department

Through such an overhaul those who favour exploitation and those who advocate stewardship could be forced to recognize common values and needs. In that way we might create a coherent approach to the use and protection of our forests.

> Changing the governing legislation to make it clear that Crown land should be managed for multiple objectives, including but not limited to forestry, will not by itself ensure that it is managed accordingly. But it will help to ensure that Crown land is managed for a wider array of values, and it will make it clear that managing Crown lands solely or primarily for forestry or without sufficient regard for other values, interests, and objectives is wrong.
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> *An Independent Review of Forest Practices in Nova Scotia* Conclusion 76

The structure of the paper

[1] The formal citation for each statute is provided at the head of each commentary, along with its URL.

Protecting and Utilizing Nova Scotia's Forests:

A Survey of Current Legislation: Issues of concern

Paul Pross[2]
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In its campaign for forest policy reform the Healthy Forest Coalition (HFC) and the Ecology Action Centre (EAC) have called for updating approaches to our use of the forest and for reforming forest silviculture and harvesting practices in ways that enhance biodiversity and mitigate climate change. This paper is intended to provide an overview and critique of the laws that support current policies. It is a discussion paper, not a proposal for a particular statute, but hopefully discussion of the points raised here will enable members of these organizations and, of course, the public to address whatever legislative proposals are brought forward by other interests and ultimately by the government. Ideally it will help all of these arrive at a consensus about what we most want in legislation and how best to express it**.**

The paper has two parts: Following this brief introduction it will present a critique of the statutes administered by Departments of the Environment (NSE) and of Lands and Forestry (LAF) that currently regulate forest production, environmental protection, biodiversity and some aspects of climate change.[3] The critique itemizes principal concerns with the current legislative regime and introduces a few observations that could lead to constructive change. It does not elaborate on these observations, as some can be found in the brief HFC presented to the Independent Review of Forest Practices.[4] The second part of the paper is an appendix which outlines the main features of the key statutes discussed and some other statutes that impinge tangentially on the two central issues discussed here.

First, though, we have to ask:

Why is forest management legislation important?

In her recent autobiography Beverley McLachlin, our former chief justice, addresses a similar question about our constitutional laws. For her 'law is a framework for productive human activity, a buttress for human creativity….. It … offers stability and a principled way to face the problems that surround us.' [5] The statutes that regulate our forest are less momentous than our constitutional laws, but just as our constitution articulates the value that we attach to 'peace, order and good government', so forest laws should provide for the stable application of the values we associate with our forests.

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[2] Paul Pross is Professor Emeritus, School of Public Administration, Dalhousie University. The helpful advice of Helga Guderley, Catherine Pross, Ray Plourde, Donna Crossland, Dale Smith and Jamie Simpson is gratefully acknowledged.

[3] We disregard the division of responsibilities between the departments in order to obtain a clear view of the statutes most germane to each very different aspect of forest management.

[4] The brief can be found on the HFC website at https://www.healthyforestcoalition.ca.

[5] Beverley McLachlin, *Truth be Told: My Journey Through Life and the Law* (Toronto: Simon and Schuster, 2019, p. 349).

In the past, as the use and public perception of the forest changed, so did the framework of laws that provided stability to the forest economy. Some of the laws examined here reflect the modern values which have brought about changes in our relationships with our forests, but others are still based on values that prevailed 60 years ago. In his *Review* Professor Lahey alludes to this in his discussion of the disconnect between DNR/LAF's espousal of 'ecosystem based management'(EBM) and its pre-treatment assessment process. It leads him to ask 'what values are actually being applied', and speculates that…

> … some of the impetus for a robust ecological ecological framework dissipated once the department moved away from the commitment to make clearcutting no more than 50 percent of harvesting within five years. Another possibility, not mutually exclusive, is that the move to EBM competes with DNR's wood supply to forestry companies and that the latter may be the more important factor in the IRM (Integrated Resource Management) process.[6]

Professor Lahey's comments on the development and application of forest policy repeatedly reflect this uncertainty. They raise the question that has led to this survey: How well does the regulatory framework for our forests reflect modern values?

A regulatory hodge podge

The most striking aspect of the laws currently regulating forest use in Nova Scotia is that there are so many of them. Of the nearly 40 statutes listed on the websites of LAF and NSE, 14relate directly to timber management and the protection of biodiversity. The overwhelming impression created by this collection is that, taken together, they embody no coherent or consistent approach to forest management, or stewardship, though there is an underlying thrust toward 'productivity'.

Not only do these laws add up to an incomplete, poorly coordinated approach to the regulation of forest use, some are seriously out of date. Others are inappropriate to Nova Scotia's terrain and indigenous patterns of forest growth.[7] All too often some statutes are in conflict with others, and where conflict occurs, it appears that officials prioritize the exploitive provisions of some statutes over those that were designed to protect special habitats and rare species. [8] Furthermore, despite this plethora of laws our regulatory framework ignores the urgent need to address important issues concerning biodiversity, the use of biomass and climate change. Confusion is also caused by the fact that some statutes are still on the books even though they have been repealed or are no longer enforced. Of the 31 statutes on the LAF website, 3 are either repealed or no longer listed in the Consolidated Statutes; of the 10 having to do with timber management or biodiversity, at least one, the Forest Enhancement Act, is both repetitive of the Forests Act and out of date.

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[6] *An Independent Review of Forest Practices in Nova Scotia* (Halifax: August, 2018), pp. 23, 24-25. Referred to in later notes as *Review*.

[7] As, for example, in the situation cited by Professor Lahey in Conclusion 23 (f).

[8] As, for example, in section 5 of the Endangered Species Act (S.N.S.1998, c.11).

The following discussion examines these problems, suggests why they have developed and calls for a reformed legislative regime. It begins with a brief account of the evolution of current legislation.

Forestry in Nova Scotia is largely regulated by two statutes. The Crown Lands Act (CLA) and the Forests Act (FA). Both were passed by the Legislature in the middle of the 20th century. A time when the province was at the nadir of its fortunes; when the vibrant years of lumbering, ship building and home-grown industry were long past and when even the brief affluence of the war years was fading. Anyone who witnessed the debates in the Legislature when Hawker Siddeley closed the Sidney steel mill will remember the desperation that seized the province in those days. It is a desperation that lingers still in rural Nova Scotia, as evidenced by the panic that followed the closure of the Bowater-Mersey mill in 2012 and the fears engendered recently by the situation at Northern Pulp. These collective memories are formidable barriers to realistic debate about the future of forest policy in this province.

It was a desperation that led Robert Stanfield and his government to make the rash commitments to Scott Paper that Joan Baxter has documented so effectively in *The Mill.*[9] Once lured to the province, the pulp and paper industry soon became a dominant player in the local forest policy community. Confident that rural constituencies would support high forest production, governments strove to satisfy industry demands. Successive provincial governments aided in suppressing wood prices,[10] set aside large tracts of forest land and passed laws such as the FA, the CLA, and the Forests Enhancement Act, all of which mandated increased wood production. Overharvesting was allowed, even encouraged; 'reforestation' and 'silviculture' favoured replacing the Acadian forest with softwoods, the Forests Enhancement Act set up a Commissioner of Forests whose short-lived job, apparently, was to encourage the pace of forest production, and Forest Utilization Licensing Agreements (FULAs) provided the mills with favorable treatment .

The pulp and paper boom lasted until the 1990s. Long before then, however, environmentalists had begun emphasizing the importance of respecting nature and, where necessary, imposing constraints on resource use and development. Initially considered, in this province, to be a fringe, urban movement, environmentalism gained ground steadily in public opinion, though not until relatively recently in rural areas. Its supporters in Halifax and the larger communities were appeased with measures, such as the Environment Act, that initially focused on urban industrial issues[11] and with legislation that was largely symbolic. Cautionary clauses were inserted in forest management laws, where they were smothered by the statutory preference given to forest production. 'Special places' and wilderness areas were created, conserving important sites and landscapes, but fostering an implicit idea that 'natural museums' would satisfy the public's desire to rescue something from the steadily encroaching working forest. As old

[9] *The Mill: Fifty Years of Pulp and Protest* (East Lawrencetown, N.S.: Pottersfield, 2017)
[10] Peter Clancy 'The Politics of Pulpwood Marketing in Nova Scotia, 1960-1985', in L. Anders Sandburg (ed.) *Trouble in the Woods: Forest Policy and Social Conflict Nova Scotia and New Brunswick* Halifax: Gorsebrook Research Institute, 1992) pp. 142-168, p. 167.

[11] The Environment Act does extend to protecting watercourses in woodlands, but does not provide that large clearcuts should be subject to environmental assessment. An omission that Professor Lahey sought to correct in the *Review*.

growth dwindled and clearcutting devastated habitats, special policies were put in place to protect vulnerable areas. Limited enforcement guaranteed that their effect would be trifling.

Nevertheless, even in the 1980s it was clear that industrial forestry and environmentalism would clash. By the millennium the public, in rural Nova Scotia as well as in Halifax, had become seriously concerned and increasingly angered by this double dealing. Across the country measures were being introduced that pushed back against rampant resource exploitation, including industrial forestry. In 1992 Canada signed the conventions agreed to at the Rio Earth Summit[12] and began setting aside important areas for protection. One of the conventions was the Convention on Biological Diversity which committed the federal government to protect endangered and threatened wildlife, and led, in 1996, to the Federal, provincial and territorial governments endorsing the Accord for the Protection of Species at Risk, agreeing to develop laws and programs that work together to protect species at risk and their habitat throughout the country. The Nova Scotia Endangered Species Act (ESA) was one of these laws. It differed from previous measures that dealt with rural environments in setting out clear directions and obligations regarding the identification and remediation of endangered species. This was followed in 2007 with the Environmental Goals and Sustainable Prosperity Act (EGSPA) which also set out specific goals and timelines for achieving them. At the same time the Conservative government initiated a major public consultation on the province's natural resource strategy. When the consultation reported, in 2010, it had become clear that the public, across the province, felt that, as far as natural resource policies were concerned, 'the status quo is not an option.'

Still, the degradation of the forests continued. The Department of Natural Resources gave only lukewarm support to the decision of Minister MacDonnell's to press forward with plans to implement the recommendations of the natural resource strategy consultation. Its response to an order to reduce clearcutting by 50% can best be described as obstructive. Its failure to adequately enforce the ESA led the Auditor General to order it to comply with the Act. By 2020 he reported that only one of the five recommendations he had made in 2016 had been properly addressed.[13] The2017 election saw public objections to clearcutting lead to the appointment of the Lahey enquiry. Although the government announced that it would accept the Lahey recommendations, and some implementation and a good deal of discussion has taken place, progress has been slow. It has led some to believe that LAF and industry lobbyists have persuaded government to stall implementation of the recommendations in order to allow forest interests to extract as much wood as possible before new legislation is introduced.

In this environment of intensifying antagonism between environmentalists, industrial foresters and LAF, several naturalist organizations decided to take DNR/LAF to court, charging that the government had systematically neglected to carry out the provisions of the Endangered Species Act, thereby endangering the survival of a representative group of animals and plants. The case of *Bancroft v. Nova Scotia* [14] -

[12] The conventions are the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD) and the United Nations Convention to Combat Desertification (UNCCD).

[13] Nova Scotia. Auditor General, *Report*, 2020, p.22.

[14] *Bancroft v. Nova Scotia (Lands and Forests),* 2020 NSSC 175

otherwise referred to as the SARs case – was heard in 2019. The Court, ruling in favour of the naturalists, found that LAF had ignored the provisions of the Act and consistently neglected to set up expert teams charged with planning remediation for endangered species and their habitats.[15]

The decision is important, not only because it ensures that now remediation steps will be taken, but also because it calls into question the impartiality and professionalism of the Department. In effect, it indicts the Department for failing to respect the rule of law. When the points made in the decision are considered in conjunction with the criticisms levelled by the provincial auditor general, we have to conclude that LAF wilfully ignored its obligations under the ESA. The following short chronology makes this clear:

2016 The report of the Provincial Auditor General carries out a critical review of LAF's administration of the ESA and makes five recommendations for change.

2018 The Lahey *Review* draws attention to the Auditor General's findings.

2019 SAR case begins. LAF, according to the Court decision, makes hurried attempts to address the complaint before the Court and the recommendations of the Auditor General.

May 12, 2020 The Auditor General delivers his 2019-20 *Report*. Finds that only one of five recommendations made in 2016 have been addressed and warns that 'there is a risk that by not completing these recommendations, endangered species are not properly monitored and conserved.'[16]

May 29, 2020 Justice Brothers hands down her decision in *Bancroft vs. Nova Scotia.*

These recent events should be considered with the Department's past record. Its interpretation of the Wildlife Act, which is discussed in the Appendix, is not unlike its interpretation of the ESA. Its response to the public consultation on the NRS was more in line with that of the Forests Products Association than with the views of the public, and its support for Minister MacDonell's call for a reduction in clearcutting was obstructive. It's response to the Lahey *Review* has been more helpful, but rather than initiate a plan for implementing his call for a triad system and for ecological forestry, by developing the underlying concepts, it has chosen to propose a program for the high productivity leg of the triad and to consult on the revision of forest management guides. These are out of place – why revise basic guides when the concept of ecological forestry has not yet been developed? Why set out the criteria for high production forestry land when the criteria for the other legs of the triad have not been agreed to?

Most significantly the Department has not addressed Lahey's call for legislative reform. As he has pointed out, the emphasis on productivity in the CLA confers 'statutory preference' on the provisions of

[15] *Bancroft v. Nova Scotia (Lands and Forests),* 2020 NSSC 175
[16] Auditor General, *op. cit.,* p. 22.

that Act.[17] There is no indication that this preference in this act should give it priority over other statutes. Yet there is evidence that these clauses are considered by officials to do so. In other words, it leads officials to prioritize legislative requirements and even to ignore the provisions of 'lesser' statutes. It legitimizes the Department's disregard for statutory provisions it considers less important and makes respectable its forestry-oriented administrative culture. As long as the present purpose clauses remain as the principal statements of the intent of the FA and CLA, the Department can delay attempts to address Professor Lahey's view that the 'culture' of the Department has to change if ecological forestry is to be take place in Nova Scotia.

This brief summary of recent legislative history and its consequences has attempted to explain how Nova Scotia's hodge podge of forest laws has come about. It might even generate some sympathy for the officials who must administer these contradictory and confusing laws, were it not for the fact that LAF hides a partiality for the tenets of industrial forestry and an undue respect for the political influence of forest interests behind this confusing and tangled thicket of legislation. That partiality engenders a skepticism on the part of the members of the public who care about the environment and the condition of our forests. It is a skepticism evident in Conclusion 45 of Professor Lahey's *Independent Review*:

> The Department of Natural Resources has been developing a model of ecological forestry for Crown lands, called ecosystem-based management. At the same time, it has been incrementally bringing its management of Crown lands under this system, primarily through its oversight of licensees. The amount of high-quality work that has been devoted to this project indicates that the department accepts that Crown lands should be managed in accordance with the ecological forestry paradigm. In principle at least, this represents a shift from the paradigm recommended by the Royal Commission of 1984, which defined the purpose of forestry on Crown land as largely to produce fibre for pulp mills through even-aged silviculture. On the other hand, various aspects of how this shift in paradigm is being developed and implemented raises questions about whether the shift is genuine or substantively consistent with principles of ecological forestry.[18]

His view that a change of culture - a **'**change of paradigm' - must be embraced 'from top to bottom within DNR as well as by those who are licensed to conduct forestry on Crown lands will be discussed further. First though, we must look at other problems in the battery of laws that regulate our forests.

Key statutes regulating wood production are out of date

The Crown Lands and Forests Acts are out of date, and are inappropriate to Nova Scotia's current, and future, forest conditions.

[17] See *Review,* p.33. Forests Act and the Forest Enhancement Act have similar 'purpose and objectives' clauses, so presumably are subject to the same interpretation.
[18] Nathan Ayer, "Summary of Forest Policy in Nova Scotia," in the Addendum.

There is widespread recognition that the legislative focus on increasing production is no longer feasible or desirable. The public wants better protection and promotion of biodiversity. The borealization of the indigenous Acadian forest -undertaken to support the pulp and paper industry – is recognized as inappropriate, and should be reversed. In affected parts of the province there is growing recognition that current policies do not adequately provide for the management of sensitive soil conditions. The widespread rejection of past policies that are still prominent in forest legislation, is accompanied by deep concern over climate change and a growing belief that a mature forest is the best carbon sink.[19] This concern focuses not only on the use of fossil fuels, but also on the inadequate regulation of the harvesting and use of biomass. Taken together, all of these concerns indicate that the public is convinced that the statutes that currently govern forest management are out of date.

Managing Crown lands solely or primarily for forestry or without sufficient regard for other values, interests, and objectives is wrong. [William Lahey , *An Independent Review of Forest Practices in Nova Scotia* Conclusion 76.]

Professor Lahey recommends that the Crown Lands Act be amended…

> … to ensure that its stated purposes encompass and give equal weight to the full range of values (and uses) relevant to the management of Crown land, thereby eliminating the preference the act's current statement of purpose gives to timber production objectives….[20]

He clearly implies that the Act – and by implication the Forests Act and the Forests Enhancement Act – are out of date. Furthermore, he points out that the measures he is recommending…

> … should include changes in the legislative and institutional context in which the management of forestry on Crown land occurs, to ensure that ecological forestry, including a strong ecoysystem-based prescription process, truly determines how forestry is governed by DNR and conducted by licensees.[21]

He goes on to call for:

1. Environmental assessments of forest management plans comparable to a Class II assessment.

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[19] James E. M. Watson, et. al., 'The exceptional value of intact forest ecosystems', *Nature Ecology and Evolution,* 2 (4) February 2018.
https://www.researchgate.net/publication/323399911_The_exceptional_value_of_intact_forest_ecosystems

[20] *Review* 'Reviewer's Conclusions', No. 74(b), p. 33. Perhaps if the Review's terms of reference had provided wider scope, he too would have argued for a complete overhaul of the relevant legislation.

[21] Conclusion No. 73.

2. Ensuring the Endangered Species Act be fully implemented on Crown land (Conclusion 74(a))
3. Adding the goal of implementing ecological forestry into the Environmental Goals and Sustainable Prosperity Act. [22]

These conclusions imply extensive revision of the forest management statutes. Revision of the purposes and objectives clauses in all three acts would affect the entire framework of this legislation, requiring extensive changes to the principles of forest management ,[23] forest management planning and the provisions for Forest Utilization Licensing Agreements (FULAs).[24] It would dictate much higher priority for wildlife management, the primary mandates of forest nurseries (e.g. specifying the provision of Acadian forest seedlings), forest research, relations with private woodland owners, and more.

> **Ecological well-being needs protection at the landscape level and not only for the ecologically important aspects of particular sites, such as habitat for species at risk. Indeed, the latter require not only protection from specific interference but also the proper functioning of the wider ecosystem in which they are situated. The same is true of protected areas – wilderness areas, parks, and other kinds of nature reserves: their ability to serve their conservation function depends on the integrity of the wider ecosystems in which they are located. [*An Independent Review of Forest Practices in Nova Scotia Conclusion* 24]**

Lahey himself elaborates on the effect that the introduction of Class II environmental assessments could have on the regulatory framework:

> A legislated forestry management process conducted as a Class II environmental assessment – or in a comparable process under an independent third party (or panel) – has the potential to accomplish a range of objectives:
>
> a. It will bring transparency to the management of Crown land for forestry production and provide the public with a meaningful opportunity to contribute to Crown land management at a strategic level of decision making.
> b. It will help to ensure that forestry is conducted on Crown lands in ways that are compatible with the full range of values applicable to the management of public lands, with the activities of other users of Crown lands, and with activities taking place on neighbouring lands.

[22] Conclusion 74(d) The recommendation was not followed.
[23] Set out in s. 7 of the Forests Act.
[24] See, respectively, the Forests Act, sections 7 and 8 and the Crown Lands Act, sections 24-37.

c. It will help to embed the principles and values of ecosystem-based forestry (or of ecological forestry) into the plans that will then inform operational planning and harvesting decisions.
d. It will bring a significant measure of institutional independence from DNR to the planning of forestry on Crown land.
e. It will create opportunities for stronger and continuing relationships between operators and their stakeholders and mechanisms for ongoing dialogue with those stakeholders through the process of a plan's ongoing implementation.
f. It will facilitate and enable customized application of the principles of ecosystem-based forestry to account for relevant regional differences.
g. If done properly, with openness and transparency and based on strong science, it will reduce the pressure for intense scrutiny by DNR or the public of individualized harvesting decisions.[25]

Similarly his critique of 'the current system under which DNR approves each and every harvest conducted on Crown land' draws attention not only to its 'problematic' nature but is in itself a searing indictment of the Department. It emphasizes the 'partnership' relationship between the Department and the licensees, a relationship that fosters a lack of accountability for licensees while inducing the politicization of the licensing and management process. The forest management acts require greater transparency. In Professor Lahey's view they also suggest that the Department should remove itself from involvement in the actual management of harvesting.[26] Not, however, before the Department has 'a comprehensive and rigorous monitoring, oversight, and accountability system in place'. [27]

In other respects, too, these statutes show their age. Through the Sustainable Forestry Program they have fostered the inappropriate borealization of the indigenous Acadian forest. They do not adequately provide for the management of sensitive soil conditions, provide inadequate regulation of biomass use and do not address climate change.

The Crown Lands Act

Although the Crown Lands Act deals in large measure with issues of land administration, it contains a number of sections that intrude into forest management. The chief of these management provisions are sections 24-37, which authorize the Forest Utilization Licensing Agreements (FULAs). Currently these agreements entrust responsibility for managing very large areas of the Province to three corporate entities. As a result….

[25] *Independent Review* Conclusion No. 78.
[26] Conclusion No. 80.
[27] Conclusions Nos. 79, 82. This raises a critical question: Is LAF equipped to rigorously monitor, perform competent oversight and maintain accountability systems? These tasks involve not simply the recruitment of competent personnel, but also the creation of budget space for their employment. Financial constraint has been a consistent problem for the Nova Scotia public service, and one that has dictated many shortcuts that have led to the problems discussed here.

> Forestry interests have largely controlled the use of Nova Scotia's Crown lands. In the worst-case scenarios, forestry-related decisions have been taken with little or no regard for other values and interests. In more enlightened instances, where efforts may have been made to take other objectives into account, forestry-related considerations nonetheless have prevailed as dominant and determinant. [28]

This should not be happening.

In the *Review* Professor Lahey explains that the 'rationale for the proposed amendments to the Crown Lands Act derives from the fact that this statute is the source of authority for DNR officials who manage Crown land and, specifically, for the licensing of forestry on Crown land.'[29]Since the Forests Act is used to authorize key regulations in forest management,[30] that Act should also be eligible. Concerns that their inclusion in the Crown Lands Act distorts the proper purpose of that Act also suggest that the Forest Act, or its replacement, make it a more desirable location for the suggested changes.

The proper role for the Crown Lands Act is to provide an orderly procedure for allocating Crown lands to specific classes of users.[31] It could be used to determine which lands should be assigned to the forest triad recommended by Professor Lahey, but it should not lay out the management obligations of the various licensees. That should be incorporated in the act, or acts, that are designed specifically to provide for forest use and management.

The FULA clauses should be removed from the Crown Lands Act and incorporated in a forests act that is based on an ecological philosophy similar to those espoused both by the Natural Resource Strategy consultation and the Independent Review . The fact that the FULA clauses are located in the Crown Lands Act contributes to the sense that the province lacks a coherent approach to our relationship with the forest.

There is no coherent policy informing these statutes

It is difficult to see how the thrust to increasing wood production that is mandated by the Crown Lands and Forests Acts can be reconciled with the equally strong measures intended to protect and promote biodiversity prescribed in statutes such as the Endangered Species and the Wilderness Areas Protection Acts. In practice, these statutes are set aside because officials of LAF believe that the emphasis on production in the forest management acts gives production a statutory preference over other clauses in

[28]Dale Smith 'Effective forestry reform must transcend Lahey's recommendations', *Chronicle Herald*, Jun 17, 2019.
[29] *Review*, p. 33.
[30] Usually under s. 40 of the Act.
[31] Cf. the Ontario Public Lands Act, R.S.O. 1990, c. P-43. (https://www/ontario.ca/laws/statute/90p43.) and the British Columbia Land Act, RSBC 1996 c. 245. (http://www.bclaws.ca/civix/document/id/complete/statreg/96245_01)

those statutes that favour protection and promotion of biodiversity. That belief is plausible in regard to the Crown Lands and Forests Acts, but only within the confines of those acts. It is less convincing when we consider its application to the range of statutes that deal with biodiversity, particularly when several of those statutes are administered by another department and strengthened with a 'prevailing' clause. That is, a clause such as section 5 of the Endangered Species Act which states that where there is a 'conflict or inconsistency between this Act and its regulations' and 'any other enactment or a municipal by-law' this act prevails.[32]

DNR/LAF has addressed the tension between exploitation and stewardship in several ways. First, it recognizes the force of some clauses in other acts that require departmental compliance. For example, Part X of the Environment Act names NSE as the lead agency for promoting sustainable management of water resources. In that case LAF incorporates water protection regulations in its own harvesting regulations under the Forests Act.[33] Second, it has adopted a number of policies that deal with specific issues relating to biodiversity. They are enumerated in the FULA agreement with Port Hawkesbury Paper. The company is required to comply with seventeen specified policies.[34] These policies have also affected annual timber management plans, as can be seen in a 2016 presentation on provincial timber objectives which incorporated assumptions derived from the constraints on wood production imposed by the various biodiversity policies, including wildlife special management policies, pine marten recovery, deer wintering, moose habitat and others. [35] Third, LAF engaged with broad government policies that set aside approximately 13% of the provincial land base as protected areas. Finally from time to time it has acceded to public demands for recognition of specific situations. As, for example, in the Spring of 2019 when the Minister ordered that cutting not take place in an area between Dalhousie and Corbett Lakes, Annapolis County, during nesting season. [36]

All of these soften the hard edges of the production mandate, but the mandate itself remains a preponderant influence on how departmental officials interpret the legislation which is intended to protect and promotes biodiversity. This was strikingly demonstrated in the case of the Liscombe sanctuary.

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[32] The others statutes are the Environment Act, s. 6, and the Wilderness Areas Protection Act, s.5 .

[33] The *Wildlife Habitat and Watercourse Protection Regulations* are made under s. 40 of the Forests Act and can be found at https://www.novascotia.ca/just/regulations/regs/fowhwp.htm.

[34] Schedule 'A' of the Forest Utilization Agreement of September 27, 2012 lists these as the Marten Recovery Plan, Endangered Canada Lynx Special Management Practices, Boreal Felt Lichen Special Managent Practices, Special Management Practice for Heron Colonies, Atlantic Coastal Plain Flora Recovery Plan, Boreal Felt Lichen Recovery Plan, Lynx Recovery Plan, Mainland Moose Recovery Plan, Wood Turtle Management Plan, Wood Turtle Special Management Practices, Endangered Mainland Moose Special Management Practices, Bald Eagle Special Management Practices, White-Tailed Deer Wintering Areas Special Management Practices, Code of Forest Practice, Old Forest Policy, Forest Ecosystem Classification for Nova Scotia (2010) and Forest/Wildlife Guidelines and Standards (1989)

[35] Slide Deck. 'NS DNR Provincial Timber Objectives' February 17, 2016.

[36] 'Harvest Halted - Rankin cites species at risk concerns, puts hold on Crown forest cut south of Bridgetown' *Cape Breton Post* June 14, 2019. https://www.capebretonpost.com/news/provincial/harvest-halted-rankin-cites-species-at-risk-concerns-puts-hold-on-crown-forest-cut-south-of-bridgetown-322624/ Accessed February 10, 2020.

The sanctuary was designated in 1928, shortly after the province adopted a sanctuaries policy in 1927. The policy is incorporated in the Wildlife Act. The policy is incorporated in the Wildlife Act. Under section 15, the Governor in Council may…

> …declare any Crown lands or, with the consent of the land-owner, privately owned land a wildlife sanctuary and make such regulations as may be necessary for the control thereof and the protection of wildlife and associated habitats therein.

Somehow an understanding arose that the act protects wildlife, but not habitat. A former minister of the Department is reported to have said as much: "It's a game sanctuary, not a tree sanctuary."[37] Harvesting took place in the sanctuary despite public objections. In 1996 DNR biologists began reviewing each wildlife area for its benefits and 'the need for any changes to the associated legislation.'[38] Liscombe, was one of those that would lose its sanctuary status. The biologists argued that 'the original reason for creating some sanctuaries… were no longer valid', regulations were outdated, some were wholly or partly within recently established wilderness areas, and private landowners were no longer willing to have their properties included in the sanctuaries.

The public, already upset over clearcutting, did not agree. Protests eventually persuaded the government to conduct a further review, which included public input. A report was published in February 2006 and the then Minister of Natural Resources, Richard Hurlburt, assured the public that sanctuary status would be retained. He had earlier indicated that he would consider 'a ban on logging', but no ban was announced. On the contrary, clearcutting was reported to be continuing 'at an accelerated rate.'[39]

LAF officials still believe that habitat is not protected under the Wildlife Act. On February 12, 2018, Aaron Beswick, of the *Chronicle Herald* published an article that quoted Randy Milton, Manager of 'ecosystems and habitats' saying that 'game sanctuary designation protects animals from hunting and trapping, but not their habitat… It's an old designation that still exists on the books.'[40] 'The books' in this case happen to be the Statutes of Nova Scotia, and section 15 of the Act still says that animals and their 'associated habitat' are protected.

The Liscombe case illustrates how the 'statutory preference' stated in the Crown Lands and Forests Acts colours the thinking of LAF officials, permitting the adoption of policies that have limited or no grounding in legislation and leading the department as a body to favour production-oriented statutes

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[37] Thanks to Tom Miller for this recollection.

[38] Report WDL 2006 – 1 February 2006. '2005 Public Review of Nova Scotia's Game Sanctuaries and Wildlife Management Areas', p. 1.

[39] Jurgen Tuewen, '"… and no birds sang": Nova Scotians must demand public lands be protected' *Chronicle Herald* March 2, 2006. Accessed at https//bay-of-islands.org/issues/060303-liscombe-sanctuary-herald… Feb. 6, 2020.

[40] 'Nova Scotia's game sanctuaries protect game, but not their habitat'.

over legislation administered either by itself or by other departments, that set out other priorities.[41] The centrality of wood production to the mandate, and thus the ethos, of LAF encourages the disregard and misinterpretation of statutes that provide for biodiversity. [42]

The result is an incoherent approach to our use of Nova Scotia's forests and the protection we give to biodiversity. It led Professor Lahey to recommend 'a shift in paradigm in the direction of what is called ecological forestry'. This he felt …

> … would be responsive to [a] broader understanding of the public interest, as well as to widespread public opinion, in relation to forests and forestry. It is a basis for public policy that is broader than the one that has been dominant since the Royal Commission of 1984. In my view, this broader interest should be fully embraced as the foundation for public policy on forestry and particularly on forest practices. Forestry should be expected to similarly embrace this broader articulation of the public interest and to figure out how to make it work, just as forestry was expected to embrace and operationalize the timber production paradigm of the Royal Commission.[43]

Lahey proposed making that shift by amending the principal acts currently regulating forest use: the Crown Lands Act and the Forest Acts. This discussion of the body of legislation used by LAF and NSE to regulate forest use and to provide for protection of biodiversity suggests that what is needed is a complete overhaul of that body of legislation. An overhaul that will force those who favour exploitation to come to terms with advocates of stewardship.

Providing for Biodiversity

> **I have concluded that protecting ecosystems and biodiversity should not be balanced against other objectives and values as if they were of equal weight or importance to those other objectives or values. Instead, protecting and enhancing ecosystems should be the objective (the outcome) of how we balance environmental, social, and economic objectives and values in practising forestry in Nova Scotia. A number of reasons are given for this conclusion, but the primary reason is that ecosystems and biodiversity are the foundation on which the other values, including the economic ones, ultimately depend. [*An Independent Review of Forest Practices in Nova Sotia*, Executive Summary, p. iii.]**

[41] In actual fact, much of the territory originally incorporated in the Liscombe sanctuary is now part of a wilderness area protected under the Wilderness Area Protection Act, and therefore no longer subject to harvesting. But that is not the point.

[42] Thanks to Bev Wigney and Bob Bancroft for help in tracking down the Liscombe story.

[43] *Review*, Section 3 'Independent Reviewer's Conclusions', 3.1 'General Conclusions: Ecological Forestry and the Triad', Conclusion 8.

While the statutes protecting biodiversity are expertly drafted and reasonably comprehensive, they do not, in fact, appear to influence the management of our forests. The Wildlife Act makes assertions about habitat protection, but seems to have had little effect on the massive destruction of habitat that has occurred in the last three or four decades as a result of clearcutting. As for the Endangered Species Act, we have already reviewed the severe criticism of its administration by criticism by the Auditor General and the Supreme Court.

Several of these statutes could ensure that biodiversity can co-exist with our use of forests, if they were conscientiously implemented. The Wildlife Act, the Sustainable Development Goals Act, the Endangered Species Act, and the Environment Act all contain provisions intended to 'ensure adequate habitat for established populations of wildlife.' (Wildlife Act, s. 2(b)) Others, such as the Special Places Protection Act, the Provincial Parks Act and the Conservation Easement Act set aside areas where habitat is largely or completely protected.

The Wildlife Act (RSNS, c. 504) [44]- is probably the oldest of these, having its origins in the fish and game acts that were immensely important in colonial and nineteenth century Nova Scotia. Its coverage does not extend to all creatures living in the wild, but only to those recognized through Order in Council.[45] Nor does it address biodiversity. Apart from sections 14 and 15, whose provision for the creation of wildlife areas and sanctuaries was largely ignored at Liscombe, the primary concern of its 113 sections is to create a safe and resource-rich environment for hunting. It is really a dressed up version of old fashioned Fish and Game acts.

The purpose of the Endangered Species Act (S.N.S.1998, c.11) is to protect, identify, and work toward the recovery of extirpated species. This extends to habitat protection (s.2(1)) and includes a commitment to 'a broader strategy to maintain biodiversity and to use biological resources in a sustainable manner'. (s. 2(1)(b). This must be one of the few Nova Scotia statutes to assert the precautionary principle, 'that a lack of full scientific certainty must not be used as a reason for postponing measures to avoid or minimize the threat of a species at risk in the Province.' (s. 2(1)(h) It addresses an issue of growing concern and provides well thought out procedures for dealing with threats to the continued existence of significant, but often rare species. First adopted in 1998, the act reflects increasing public concern for endangered species and demands for more 'meaningful public participation in relation to conservation of species at risk.'(s. 2(1)(e). The act also recognizes that 'the aboriginal peoples of the Province have an important role in conserving species at risk.'(s. 2(1)(f).

[44] Formally described as 'The Act to Provide for the Protection, Management and Conservation of Wildlife and Wildlife Habitat'.

[45] (s. 4(A) (1)). Eagles, ospreys, falcons, hawks, owls and others are named in this way.(s. 50)In addition there is a general prohibition against destroying, taking, possessing or selling bird or turtle eggs or disturbing them or their nests. (s. 51)

It is tragic – literally, in the case of endangered species – that this legislation has not been conscientiously implemented.[46]

When this statute is considered in light of the group of statutes that address land, forests and biodiversity issues in this province, it is hard to escape the conclusion that, while the Endangered Species Act was prepared and enacted with great care and excellent intentions, it was treated by government as a sop to a particular faction, the community of scientists and citizens concerned about species at risk. In Nova Scotia government after government deals with competing factions in much the same way. They listen to innumerable interest groups, many of which put forward conflicting claims for legislative action, and try to appease each in turn, sometimes with a statute. In this case local public opinion was buttressed by moves on the part of the federal government to provide greater protection for endangered species. Even so, it suffered the fate of many such statutes.[47] There is no real implementation, and apparently no attempt to create a broad framework that requires competing interests to reconcile their differences. We have to ask whether there was any really serious intention that the Endangered Species Act would 'prevail' over the implementation of statutes, such as the Forests Act, that reflected the concerns of more politically powerful interests.

> **I conclude, as others have, that the Nova Scotia Endangered Species Act must be fully and rigorously implemented in respect to forests on both Crown and private land – as it currently is not. [An Independent Review of Forest Practices in Nova Scotia ('Executive Summary, p. iii)]**

Conclusions:

This paper agrees with Professor Lahey that the Province's legislation governing the forest must give greater emphasis to stewardship. However, instead of making those changes through amendments to the Crown Lands Act, the government should remove the licensing and FULA-related forest provisions from the CLA and should develop legislation that consolidates all aspects of forest regulation and gives statutory priority to stewardship.

In the following paragraphs we will return first to the preceding examination of the relevant statutes, in order to draw out the points that lead to this conclusion and then will look at how current legislation contributes to the persistence of the culture of exploitation that was roundly criticized in the Independent Review.

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[46] Witness the June, 2016, *Report of the Auditor General*, chapter 3, previously cited.

[47] As Peter Clancy puts in reference to the failed campaign to secure bargaining rights for woodlot owners: they were 'too potent to be ignored, but insufficiently strong to carry the day', 'The Politics of Pulpwood Marketing in Nova Scotia, 1960-1985', in L. Anders Sandburg (ed.) *Trouble in the Woods: Forest Policy and Social Conflict Nova Scotia and New Brunswick* Halifax: Gorsebrook Research Institute, 1992) pp. 142-168, p. 167.

Lessons from the legislation:

The paper has proposed consolidation of forest management statutes. It agrees with Professor Lahey that the statutory preference accorded production must give way to a statutory preference for stewardship, which he expressed in terms of the concepts of ecological forestry and the application of a triad approach. The paper further suggests that this should include provisions that would more accurately reflect modern public opinion, the economic realities emerging from the decline of the pulp and paper industry, and our growing concerns related to global warming.

Professor Lahey directed his attention to DNR/LAF's management of our forests, and thus almost exclusively to the statutes that department administered. This paper has looked at the 14 statutes that have to do with the use and protection of our forests: 10 of them administered by LAF, 4 under the jurisdiction of NSE. Although government departments – including LAF and NSE – often do work together[48], at the operational level, it can be cumbersome and, where bureaucratic priorities clash, difficult. This suggests that in addition to a need for updating mandate legislation, there is a need for re-arranging the responsibilities of these two departments. That is an issue that will not be discussed here, but if government does consider a major legislative overhaul, it should form part of the attendant debate.

Changing the culture of forest administration

Professor Lahey emphasized the need for cultural change within DNR/LAF. He stressed the importance of building a culture of stewardship to replace the production-oriented culture that has dominated the department for over half a century.

> **I have observed a significant gap between what DNR says it is doing to manage forestry on Crown land and how it is actually managing forestry on Crown land. It says it is making a transition to ecosystem-based forestry,…. In reality, the forestry taking place on Crown lands continues in significant measure to be governed by the philosophy and methods of the 1984 Royal Commission… [An Independent Review of Forest Practices in Nova Scotia, Conclusion 145.]**

Nearly two years after Professor Lahey delivered his report, little has changed. There are weekly reports in the media that clearcutting continues at nearly the same rate as before, apparently with the blessing of the LAF. The advance notices of planned cutting reported in the Harvest Plan Map Viewer suggest that 'partial retention' has replaced outright clearcutting, which means that only 10% or 20% of the stand will be retained, whereas ecological forestry, using selection management techniques, would aim to retain canopy.

[48] Witness DNR/LAF's cooperation with NSE on water regulation.

Culture change in organizations does not happen overnight, but the pace of change in LAF is agonizingly slow. It raises the question: How can such change be achieved?

> **Measures are required to make sure that the necessary change of paradigm is embraced from top to bottom within DNR as well as by those who are licensed to conduct forestry on Crown lands. These measures should include changes in the legislative and institutional context in which the management of forestry on Crown land occurs, to ensure that ecological forestry, including a strong ecosystem-based prescription process, truly determines how forestry is governed by DNR and conducted by licensees. [*An Independent Review of Forest Practices in Nova Scotia* Conclusion 73.]**

Management literature is replete with theories and case studies on this subject. So is public opinion. Change often occurs when a number of quite different forces coalesce. These may be large social forces, such as the awareness of environmental issues that has developed since the publication of Rachel Carson's *Silent Spring*[49] or the effect of the major economic or technological changes that we have seen in the last three decades. Purposeful organizational change – i.e. change that is imposed on an organization – seeks to anticipate, or even catch up with, such changes and is not always successful. Among common approaches to purposeful organization change, organizational restructuring is popular and has been suggested frequently by critics of LAF. Another frequently used approach – also popular amongst critics of LAF - has been the practise of replacing key officials. Bureaucratic leaders can be replaced from the outside or from within, by individuals more attuned to change in the public philosophy.[50] This is believed by many to be the only realistic way to alter the culture of forest management that currently prevails. A change in government might be another necessary alternative, though experience with the NDP government shows that as long as the policy community associated with an agency adheres to an earlier view, a change in government is unlikely to result in a change in departmental culture.[51] In the case of LAF the policy community is still largely dominated by the industrial foresters.

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[49] *Silent Spring* was first published in book form in 1962, though it appeared earlier as a series of articles in *The New Yorker*.

[50] An approach suggested by the popularization in social science of Thomas Kuhn's seminal study *The Structure of Scientific Revolutions*. Chicago: University of Chicago Press, 1962.See https://en.wikipedia.org/wiki/Thomas_Kuhn.

[51] The first NDP Minister of Natural Resources, John MacDonell, was adamant in his support of the recommendations of the public consultation on natural resource strategy, but was removed when it became clear that the Forest Products Association of Nova Scotia (FPANS) strongly opposed him. FPANS had become a major force in Nova Scotia politics during the hey-day of the pulp and paper companies. It presided over what has been called 'a dense network of political affiliations and a privileged place in the economic strategy of the provincial state.' Clancy, '*op. cit.*, p. 142.

A case can be made for changing legislation in order to induce change in LAF. Anyone who has worked in and with public servants will agree that we should not underestimate the extent to which officials feel themselves constrained by the terms of the legislation they administer. This reflects a significant difference between the corporate world and government. In both complicated objectives have to be achieved by dividing up the work and imposing control through a chain of command. In all organizations the 'division of function' is spelled out in job descriptions to which employees must adhere. Adherence is enforced through the hierarchy and also through the social understandings that develop in the organization's workforce. In corporations there is more flexibility in enforcement than is possible in government. This is because government organizations are, in a sense, 'open at the top'. The Minister is the nominal head, but lacks the authority that belongs to a chief executive officer in a corporation. Ministers come and go, and in any case may be over-ruled by a premier or prime minister. This could create inconsistency and confusion, were it not for the fact that duties and responsibilities are spelled out quite precisely through legislation and the regulations that flow from them. Consequently individual public servants are highly alert to the constraints that are imposed on them by the legislation and the regulations in effect in their departments. Collectively this intense awareness permeates the public service, imparting to each agency a unique character, or culture, according to the mandate of the agency.

When we consider the need for cultural change in LAF we have to assume that because the statutory emphasis on exploiting the forest has continued in the forefront of LAF's mandating legislation, the organizational culture that developed under that legislation will continue to prevail. If changes were introduced into the mandating legislation along the lines proposed here, and by Professor Lahey, LAF's organizational culture could gradually begin to respond to his recommendations and to other incentives for change introduced by government or by senior management.

Legislative change would not be a complete answer to the call for cultural change in LAF, but it is a necessary one.

This survey began with a reminder that our forest laws articulate the values that we attach to the forests and the creatures that live there. The survey has contended that our present laws only partially reflect the values that in today's world we want to express in our relationship with the forests. Those values can be implemented through policy statements and through the operation of programs, but for them to truly permeate that relationship and its administration they have to be embedded in an integrated body of laws that articulate a coherent policy.

Appendix A

Statutes relating to forest management[52] and the protection of biodiversity

This Appendix presents information on the following statutes administered by the Department of Lands and Forestry and the Department of the Environment:[53]

- Conservation Easements Act
- Crown Lands Act
- Endangered Species Act
- The Environment Act
- Forest Enhancement Act
- Forests Act
- Off-highway Vehicles Act
- Parks Development Act
- Provincial Parks Act
- Special Places Protection Act
- Sustainable Goals and Prosperity Act[54]
- Trails Act
- Wilderness Areas Protection Act
- Wildlife Act

These descriptions focus on wood product harvesting and on biodiversity protection. They do not attempt a complete analysis of any statute. They are presented in alphabetical order according to the short title provided at the beginning of each statute.

The Conservation Easement Act (c. 28, S.N.S. 2001)
https://nslegislature.ca/sites/default/files/legc/statutes/conservation%20easements.pdf

Can be used by property owners to protect land from specified types of use. An agreement is drawn up between the owner and a designated organization (a government agency or a designated conservation association, such as the Nova Scotia Nature Trust) whereby the holder of the easement undertakes to

[52] The term 'forestry' has come to be associated almost exclusively with the growing and harvesting of timber. The word 'forests' has also been tainted with this association, especially when it is coupled with the term 'management'. Neither term is given these connotations in the *Oxford English Dictionary*. It defines a forest as 'a large area covered with trees *and undergrowth'* (emphasis added) and forestry as 'the science or practice of planting, managing, and caring for forests'. Here the term is used as the OED uses it and forest management is treated as 'the science or practice of planting, managing, and caring' for forest trees and undergrowth.
[53] 31 statutes are listed on the LAF website as being administered by the Department. Of these 3 are either repealed or no longer listed in the Consolidated Statutes. Of the remaining 28, 16 were eliminated because they had little or no relationship to our timber management or biodiversity concerns. Within the remaining 12, 2 were only tangentially related, leaving 10 statutes that required analysis. The Department of the Environment Lists 11 statutes in the 'Resources' section of its website. Four directly relate to the protection of biodiversity.
[54] Formerly the Environmental Goals and Sustainable Prosperity Act

enforce the conditions for use that are described in the easement. The easement may be in force for a particular period of time or in perpetuity. It outlives the owner of the land, the land's passage to another owner and even, in certain circumstances, the demise of the designated organization.

Comment: The Act reflects the public's conviction that government, acting alone, can not do enough to protect private lands from industrial, including forest, development. It is a valuable tool encouraging public stewardship, but it could play a larger part than it does at present. To play that role it, too, needs updating.

In Nova Scotia, one branch of the existing de facto triad is the protected areas and other legally protected forests, including privately conserved forests, in which timber harvesting is prohibited. [*An Independent Review of Forest Practices in Nova Scotia* (Conclusion 30)]

Two current public concerns could be addressed if the statute's scope were extended and if government were to put more money into assisting conservation organizations. Both of these concerns are rooted in the extensive clearcutting that Nova Scotia has experienced.

Clearcutting changes and often destroys habitat. It also inhibits the ability of animals, particularly large mammals, to move across country. Connectivity, as this is called, is an aspect of our biodiversity crisis that must be seriously addressed. Government programs, such as governments' commitments to protecting wilderness areas, do help. But, again, governments cannot do it all.

Clearcutting also contributes to global warming. Studies have shown that by retaining forest conopy intact, we can significantly mitigate global warming.[55] Ecological forestry, as recommended by Professor Lahey, could contribute to this. However, the implementation of Professor Lahey's recommendations requires political will, the cooperation of the forest industry and the willingness of private land owners to use their woodlands in this way. Supportive public policies could facilitate all three, and they could include changes to the Conservation Easement Acts that would encourage ecological forestry on private woodlots.

Although easements have been used fairly often since the passage of this act, property owners wishing to protect land to promote connectivity and to retain intact forest face practical barriers, notably the problem of finding a designated organization willing to assume responsibility for the land.

Currently it appears that there is no specific encouragement on the part of government for this type of public support, apart from the concessions made to provincial and national conservation organizations that agree to accept donations of land. The problem with this is that these organizations are reluctant to accept donations that do not meet rigorous criteria relating to the presence of rare flora or fauna or to special landscapes, or that cannot be supported with a substantial financial donation. The landowner

[55] **James E. M. Watson, et. al., 'The exceptional value of intact forest ecosystems', *Nature Ecology and Evolution,* 2 (4) February 2018.**
https://www.researchgate.net/publication/323399911_The_exceptional_value_of_intact_forest_ecosystems

aiming at 'permanently taking it out of timber production', but seeking to conserve land that boasts only a fine stand of trees, is out of luck.

Property tax relief is one response to that landowners' dilemma. Some relief from municipal taxation would doubtless encourage conservation-minded property owners to bring their lands under the Conservation Easements Act. Municipalities sometimes relieve or reduce tax obligations for designated conservation organizations, but landowners whose properties are not accepted by these organization must still pay municipal property taxes. According to the website of the Property Evaluation Service Corporation, the Assessment Act (RSNS, 1989, c. 23) recognizes only three types of property: residential, resources and business. Resource tax rates are generally less than residential rates, and apply to forest properties smaller than 50,000 acres..

> **The objective of provincial forestry policy in relation to private lands should be to achieve widespread participation in ecological forestry – and the associated forestry practices – by the owners of privately owned forests, recognizing that landowners can participate in any of the three branches of the triad, or in a combination of them, by**
>
> **a. adding some or all of their forested land to the land that is privately conserved in Nova Scotia under the Conservation Easements Act.**
>
> **b. managing their forested land in accordance with the stewardship principles – and associated forestry practices, such as partial harvesting – that would apply to lands that are part of the ecological matrix in which a balance between conservation and harvesting objectives is expected to prevail.**
>
> **c. managing their forested land in accordance with the forestry practices used to conduct high-production forestry, adhering to the limits and constraints on clearcutting that apply even in the high-production branch of the triad in an ecological forestry paradigm. [, An Independent Review of Forest Practices in Nova Scotia, Recommendation 27]**

Implementation of recommendation 27 could involve amendments to the Conservation Easement Act that would encourage municipalities to exempt lands under easement from property taxation. Provincial grants to municipalities in lieu of tax revenues might make such an amendment palatable to local governments. As well, though, the provincial government could create a trust fund or grant program that could be used to help conservation organizations to shoulder the financial burdens of maintaining donated properties.

C**rown Lands Act** (RSNS c.114) https://nslegislature.ca/sites/default/files/legc/statutes/crownlan.htm

s. 2 The purposes and objectives section states that the Act is intended primarily to 'provide for the most effective utilization of Crown lands'. Two of the four subsections provide for 'application of proven

forest management techniques' to enhance productivity (s. 2(a)) and for licensing and leasing arrangements of forest land.

s. 3: This is the interpretation section. It defines the term 'Crown lands' to mean "all or any part of land under the administration and control of the Minister. A number of the other 23 definitions in the section relate to industrial forest management (e.g. definitions of stumpage, license and licensee) but might also be found in any Crown lands act having more general objects and purposes.

A number of sections describe the powers of the Minister and set out administrative details that would apply generally to land management. S. 5(b)(iii) accords supervisory powers to the Minister regarding 'licensing and the renewal of timber resources'.

s. 7 (c) permits the exchange of Crown land for privately owned land.

s. 20 allows for the construction of forest access roads on Crown lands 'which have been reserved for such purposes' and, where lands have been reserved for access roads, but not used for that purpose, or 'provide a hindrance to the development of the area' allows for the transfer of that land from the public domain.

sections. 24-27 cover a number of points that have to do with both land management and forest management. For example, s. 24 empowers the Minister to designate special areas on Crown lands for forest management, in conformity with the Forests Act and the Forest Enhancement Act; for forest research; water and wildlife management. S. 25 provides for the integration of management for wildlife, water quality, ecological reserves and recreation in forest management. Sections 26 and 27 deal with forest access roads.

Sections 28-37 are largely related to forest management, and include provisions that provide the Minister's authority to enter into Forest Utilization License Agreements (FULAs).

The remaining sections of the Act deal with offences, enforcement, penalties and various other legal aspects of land management some of which would also be applicable in a Forests Protections and Utilization Act.

Comment:

Dale Smith has argued that Nova Scotia's Crown lands 'have suffered due to a lack of clarity in regard to the distinction between Crown land-use planning and forestry management planning on Crown lands. Forestry interests within and outside government essentially have tended to treat these processes as one and the same, with related concepts and terminology often being conflated or even used interchangeably.' (Dale Smith 'Effective forestry reform must transcend Lahey's recommendations', *Chronicle Herald,* **Jun 17, 2019)**

He is absolutely correct. Although the Crown Lands Act contains a number of clauses that deal with issues of land administration that would occur in any jurisdiction, it is in a great degree concerned with the management of forest use by timber interests. As a result:

> Forestry interests have largely controlled the use of Nova Scotia's Crown lands. In the worst-case scenarios, forestry-related decisions have been taken with little or no regard for other values and interests. In more enlightened instances, where efforts may have been made to take other objectives into account, forestry-related considerations nonetheless have prevailed as dominant and determinant. (Ibid)

A good example of this problem is represented by section 7(c) which permits the exchange of Crown land for privately owned land. One would expect such clauses to appear in any public lands act, but it has particular significance where forest land is concerned, as it has allowed the exchange of cutover lands for more valuable forested land. In the context of a revised (and separate) forest act we would probably want such a clause to limit the Minister's authority to continue that practice.

We need a lands act that not only creates 'a broadly-based land-use planning process (that guides) decisions regarding the stewardship and sustainable use of the province's Crown lands, ' (ibid) but also provides a systematic way for government and the public to consider all aspects of land use, private and public. Forest land use would be recognized in that framework, but not its management. Its management would be provided for through separate legislation, for both biodiversity protection and forest economic use, that would be subordinate to lands legislation.

This separate legislation would assume such clauses currently in the Crown Lands Act as section 5 (b) (iii), which is concerned with 'licensing and the renewal of timber resources', and clauses 24-37, which, because they include the authorization for FULAs, have come to be at the very centre of the Province's forest management regime.

Endangered Species Act (S.N.S.1998, c.11)
https://www.nslegislature.ca/sites/default/files/legc/statutes/endspec.htm

Provides for the creation of core habitat areas for the protection of endangered species.

The act asserts the government's commitment to protecting, identifying, and working toward the recovery of extirpated species. It states that it is the Province's goal to prevent 'any species in the Province from becoming extirpated or extinct as a consequence of human activities.' (s. 2(1)(a) This extends to habitat protection (s.2(1)) and includes a commitment to 'a broader strategy to maintain biodiversity and to use biological resources in a sustainable manner'. (s. 2(1)(b). It asserts the precautionary principle, 'that a lack of full scientific certainty must not be used as a reason for postponing measures to avoid or minimize the threat to a species at risk in the Province. (s. 2(1)(h)

Apart from these general assertions, the act provides concrete stipulations for addressing the dangers faced by threatened species. It recognizes that 'specific areas of habitat (are) essential for the long-term survival and recovery of endangered or threatened species' (s.3(b)) and sets up procedures for designating areas for them. (sections 16 and 18). It also defines management and recovery plans. Both involve a 'statement of needs and actions to be undertaken' to keep a vulnerable species from becoming at increased risk, (s. (3)(j) or for securing the recovery of endangered or threatened species. (s. 3(n)) The Act also defines the various stages – endangered, threatened, vulnerable, extirpated, or extinct - at which a species is considered to be at risk. (s.3)

The application of the act is strengthened in various ways. Provincially 'Her Majesty's corporations, agents, administrators, servants and employees and Government agencies' are bound by the Act, as are

the various agents of the federal government. (s.4) Where there is a conflict or inconsistency between this Act and its regulations and 'any other enactment or a municipal by-law' the Endangered Species Act prevails.(s.5)

A Species-at-risk Conservation Fund is established. It is derived from gifts to the Province of money or real property, from the disposal of such gifts and from fines. The fund is intended for scientific research, the implementation of recovery plans, public education and the acquisition of land that will provide core habitat for designated species. (s.8)

A working group is authorized. It consists of six members, a non-voting chair who is a member of the Department, and five 'recognized scientific experts in the status and population biology of plants, animals, other organisms and their habitats or in the conservation biology, ecology and geography of plants, animals and other organisms.' These members are appointed at the pleasure of the Minister and may be re-appointed. (s.9) They are responsible for recommending lists of species at risk (including species native to the Province that are listed nationally as species at risk), recommending inclusions and deletions and providing written rationale for these recommendations. They also advise on the implementation of management and recovery plans (s.9(e)) Their recommendations must be supported by 'scientific information and traditional knowledge as documented in peer reviewed status reports.'(s.10(2)) This information is available to the public, unless 'disclosure could reasonably be expected to result in damage to, or interfere with the conservation of an endangered, threatened or vulnerable species.' (s.21(2))

On the ground the act is administered by Conservation Officers who have the powers and protections, that they have under the Forests and Crown Lands Act.(s.7) The act prohibits killing, injuring, in any way interfering with species at risk or selling or buying them. (s. 13) Sizeable fines, and even imprisonment, are possible where individuals or corporations are convicted of these offences. (s. 22) The Minister may issue permits allowing some forms of interference, (s.14)

Section 15 lays out extensive provisions, including deadlines, for developing and implementing recovery plans for specific species. These include extending significant powers to the Minister. Thus section 16 allows him/her to enter into agreements with private land owners – or requiring private land owners – to establish, or even designate, core habitat areas where they are deemed to be essential to the recovery of particular species. Although these areas may not 'include the entire geographical range that can be occupied by the threatened or endangered species', they may do so when 'inclusion is considered essential for the survival of the species.'(s.16 (3)) Landowners must be compensated where a particular use has been prohibited and when the landowner and the Minister cannot agree on the level of compensation the matter can be adjudicated by the Utility and Review Board. (s. 16(9))

Comment:

This is a progressive piece of legislation. It addresses an issue of growing concern and provides what appear to be well thought out procedures for dealing with threats to the continued existence of significant, but often rare species. First adopted in 1998, the act reflects increasing public concern for endangered species and its demands for more 'meaningful public participation in relation to conservation of species at risk.'(s. 2(1)(e). The act also recognizes that 'the aboriginal peoples of the Province have an important role in conserving species at risk.'(s. 2(1)(f).

In several respects the Act reflects attitudes and considerations that are not well developed in other pieces of legislation that were ostensibly created to protect biodiversity. It must be one of the few Nova Scotia statutes to assert the precautionary principle, 'that a lack of full scientific certainty must not be used as a reason for postponing measures to avoid or minimize the threat of a species at risk in the Province.' (s. 2(1)(h) Similarly it is hard to find in other provincial statutes provisions for identifying habitat recovery plans. It is unfortunate, though, that the act does not extend to allowing qualified individuals to care for injured animals or birds.

Establishment of the Species-at-risk Conservation Fund is a nice gesture, but is a fund created by gifts to the Province of money or real property sufficient to carry out meaningful research into the circumstances of species decline or the conditions that might ensure their recovery? Surely such research should also be supported by regular operational contributions from the Province.

It is tragic – literally, in the case of endangered species – that this legislation has not been conscientiously implemented, despite several provisions designed to strengthen its application. Not even the requirement that the Endangered Species Act prevails where there is a conflict or inconsistency between this Act and 'any other enactment or a municipal by-law' appears to have been respected.

When this statute is considered in light of the group of statutes that address land, forests and biodiversity issues in this province, it is hard to escape the conclusion that, while the Endangered Species Act was prepared and enacted with great care and excellent intentions, it was treated by government as a sop to a particular faction, the community of scientists and citizens concerned about species as risk. We have to ask whether there was any really serious intention that the Endangered Species Act would 'prevail' over the implementation of statutes, such as the Forests Act, that reflected the concerns of more politically powerful interests.

In June 2016 the Auditor General reported on his office's audit of the Department's failure to properly implement the Endangered Species Act, finding that the department was not fully managing conservation and recovery of species at risk, nor carrying out planning and completing species recovery activities satisfactorily.[56] In his 2020 report he reviewed the Department's compliance with the recommendations made four years earlier. This time reporting that only 20% of the recommendations had been complied with.[57]

In January 2019 a group of naturalists took the government to court, alleging that the Minister had failed to comply with the Act's requirements for establishing recovery teams and recovery plans within the specified period of time for six representative species.[58] The NS Supreme Court found that the Department had indeed failed to observe the duties imposed by the Act. Naturalists across the Province were jubilant at winning 'one up for nature'. The decision meant that the Department would have to carry out these responsibility not only in relation to the six species cited by the naturalists, but 'to all species at risk in the province, towards which the Minister has the same duties'.[59]

[56] *Report of the Auditor General*, chapter 3.
[57] *Report of the Auditor General*, p. 22.
[58] *Bancroft v. Nova Scotia (Lands and Forests),* 2020 NSSC 175
[59] *Ibid.*, paras. 119 and 134.

The Environment Act (1994-5) c. 1.
(https://www.nslegislature.ca/sites/default/files/legc/statutes/environment.pdf)

The stated purpose of the Environment Act is 'to support and promote the protection, enhancement and prudent use of the environment.' (s.2) It recognizes that 'maintaining environmental protection (is) essential to the integrity of ecosystems, human health and the socio-economic well-being of society'. It embraces 'the principle of ecological value, ensuring the maintenance and restoration of essential ecological processes and the preservation and prevention of loss of biological diversity', and it promises that 'the precautionary principle will be used in decision-making so that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation.' (s. 2) Other pledges follow, including a 'responsive, effective, fair, timely and efficient administrative and regulatory system', and 'facilitating effective public participation in the formulation of decisions affecting the environment, including opportunities to participate in the review of legislation, regulations and policies and the provision of access to information affecting the environment.'(s.2) Section 6 provides that 'where there is a conflict between this Act and any other enactment, this Act prevails.'

Section 2 provides that the act will be enforced primarily through 'non-regulatory means such as co-operation, communication, education, incentives and partnerships.' (s. 2(j))

Part IV of the Act provides for environmental assessments. For the most part these cover industrial undertakings. A facility for 'manufacturing wood products that are pressure treated with chemical products' and 'a paper product manufacturing plant' will be subject to review. Harvesting processes are not reviewed. Undertakings to produce electricity are subject to review if they have daily fuel input ratings of between 4000-10,000GJ (for a Class I review) and more than 10 000 GJ (for a Class II review) derived from fuels other than fossil fuels – which would presumably include wood. (Schedule A,s. D(E) 2).

Part VII empowers the Minister to regulate the sale and use of pesticides (and herbicides). The Minister has very general powers to 'develop, co-ordinate and enforce policies, planning and programs respecting integrated pest management and alternatives to the use of pesticides.' (s. 81)

Part X deals with water resources. It designates the Department of the Environment as the lead agency of Government for promoting sustainable management of water resources. This would include taking 'such measures as are reasonable to provide access to safe, adequate and reliable water supplies for individual, municipal, industrial and agricultural uses' and promoting the health and integrity of aquatic ecosystems, including protecting habitats for animals and plants. (s.104(a)(c)(d)) While the NSE is the lead agency, and has supervisory responsibilities, (s. 105 (1))the actual regulations governing the protection of water courses during timber harvesting are made by the Governor in Council (s. 110) under section 40 of the Forests Act. (They are outlined below as part of the discussion of the Forests Act.)

Part XI establishes a cap and trade system.

Section 112 C provides that the Governor in Council shall establish a green-house gas emissions cap-and-trade program whereby emission allowances and credits may be created and granted for the purpose of contributing to achieving greenhouse gas (GHG) emission reduction targets committed to by the government. (s. 112B(1)) and mitigating the costs and impact of reducing GHG emissions.(2)One emission allowance or credit is equivalent to one metric ton of carbon dioxide equivalent.(s. 112 C (2))

The program is described and explained in a Department of Environment publications entitled *Nova Scotia's Cap and Trade Program Regulatory Framework* which is available on line at: https://climatechange.novascotia.ca/sites/default/files/Nova-Scotia-Cap-and-Trade-Regulatory-Framework.pdf Participation in the program is confined to designated emitters. The program is not connected to similar programs in other jurisdictions.

Part XVII designates the NSE as the lead agency for administering environmental industries. In that capacity the Department is the home of various committees advising on environmental issues, including the Round Table, which is appointed by the Minister to 'advise the Department on issues referred to it… related to environmental sustainability.' (s. 3(as) and 9). Section 9 authorizes the Minister to appoint committees to advise on 'the content and administration' of the Environment Act, policies programs and administrative decisions made by the Department under the Act and 'any other matter referred by the Minister'. A Round Table is to be appointed under this clause. Its membership is not specified in the Act, although the Minister is expected to have regard to the candidate's particular knowledge, experience and interest in issues relevant to the tasks that the … Round Table is being asked to perform.' (s. 9(4)) [60] The Round Table is also required under the Sustainable Goals Act (s. 10) to meet with the Premier to discuss progress on sustainable prosperity.

Comment:

Despite the language to be found in the objectives sections of the Environment Act, it contains little that ensures environmentally sensitive forest practices. Further, in section 2, we learn that the act will be enforced primarily through 'non-regulatory means such as co-operation, communication, education, incentives and partnerships.' (s. 2(j)) In other words, the NSE's ability to impose environmental protection and to insist that the Environment Act should prevail when there is conflict with other acts, such as the Forests Act is strictly limited.

As far as forestry and biodiversity are concerned the most important sections of the Act are those found in Part X which designates the Department of the Environment as the lead agency of Government for promoting sustainable management of water resources. While the NSE is the lead agency, and has supervisory responsibilities, (s. 105 (1))the actual regulations governing the protection of water courses during timber harvesting are made by the Governor in Council (s. 110) under section 40 of the Forests Act. (They are outlined below as part of the discussion of the Forests Act.)

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[60] In 2017 the Round Table consisted of Dayle Eshelby, municipal representative;, Scott Skinner, Executive Director, Clean Nova Scotia Foundation; Jeff Bishop, Executive Director, Forest Products Association of Nova Scotia; William (Bill) Simpkins, Atlantic representative, Canadian Petroleum Products Institute; Henry Vissers, Executive Director, Nova Scotia Federation of Agriculture; Robert Grant, Partner, Stewart McKelvey; Marty Janowitz, Senior Vice President, Sustainability, Stantec; Graham Gagnon, Centre for Water Resources Studies, Dalhousie University; Mark Butler, Director of Policy, Ecology Action Centre; Heather Johannsen, President, Atlantic Institute for Sustainability; Michel Raymond, Vice President, Canadian Manufacturers and Exporters, Nova Scotia division; John Crace, Principal, Practice Leader, Sustainability, Architecture 49 and Sheila Cole, Nova Scotia Environmental Network. (https://www.novascotia.ca/nse/dept/minister.roundtable.asp**).**

When it comes to protecting the environment from the ravages of clearcutting and the destruction of biodiversity through timber harvesting, the Environment Act is a paper tiger. Its language is impressive and, at 108 pages, the Act itself is voluminous, but anyone seeking redress for problems arising out of harvesting practices will find little solace in its 177 clauses. The omission occurs through the application of an ancient principle of law: What is not forbidden is permitted. In this case, the environmental impacts of harvesting practices elude assessment and possible regulation by the simple fact that they are not mentioned in the Environment Act. The hiatus only becomes obvious when one searches through the regulations authorized by the Act. Schedule A of the Regulations lists the 'Designated Class I and Class II undertakings'.[61] That is, the undertakings that will be subject to one of the two forms of environmental review. A facility for 'manufacturing wood products that are pressure treated with chemical products' and 'a paper product manufacturing plant' will very likely be subject to Class I review, along with rendering plants, gravel pits and oil refineries, but the processes that brought wood products to those plants will not . Undertakings to produce electricity are subject to review if they have daily fuel input ratings of between 4000-10,000GJ (for a Class I review) and more than 10 000 GJ (for a Class II review) derived from fuels other than fossil fuels – which would presumably include wood. (Schedule A,s. D(E) 2). Some other categories referred to in the Schedule raise interesting, but probably fruitless, possibilities. For example, it would be interesting to know whether 'an undertaking that disrupts a total of 2 ha or more of any wetland' were to require a class I review if associated with wood harvesting.

Part XI might be of value to woodland owners seeking to participate in cap and trade programs, but at present the provincial program does not permit participation in cap and trade programs operating outside the province.

The Forests Enhancement Act (R.S. c. 178)
https://nslegislature.ca/sites/default/files/legc/statutes/foresten.htm

Reaffirms the exploitive purpose of the Crown Lands and Forests acts, stating that it is intended to enhance forest development in order to achieve 'increased yields' and to encourage 'the development of private forest land as the primary source of forest products for industry in the Province.'(s. 2 (b)) although its stated purposes are absolutely identical to those set out in the Forests Act, another purpose was to provide for the appointment of a Commissioner of Forest Enhancement and to provide for the creation of 'special management zones' which shall be designated by the Commissioner out of 'areas of Crown land along any river, lake or stream, or any portion thereof' as 'special management zones'. These provisions are the only parts of the Act that differ substantially from the Forests Act, yet the regulations that describe the special management zones along rivers and streams are made under the authority of the Forests Act, rather than the Forests Enhancement Act. (See https://novascotia.ca/just/regulations/regs/fowhwp.htm). The Forests Enhancement Act does not describe the purposes of the special areas.[62] The Commissioner's position was recommended in the

[61] Section 3(az) "undertaking" means an enterprise, activity, project, structure, work or proposal that, in the opinion of the Minister, causes or may cause an adverse effect or an environmental effect, and may include, in the opinion of the Minister, a policy, plan or program or a modification, extension, abandonment, demolition or rehabilitation, as the case may be, of an undertaking.

[62] As noted, watercourse regulations made under the Forests Act do specify special zones along watercourses. The only other reference to special management zones I have been able to find occurs in the Trails Act (RSNS 1989 c.479) which allows for the setting up of 'special management zones' intended to 'enhance the physical

1984 Report of the Royal Commission on Forestry. Don Eldridge, then Deputy Minister of Lands and Forests was appointed Commissioner under Section 7 of the Forest Enhancement Act. According to Sandburg and Clancy the position required him 'to facilitate the implementation of forest management programs'; to report annually to the Governor in Council on the implementation of forest management programs; to coordinate the activities of the Forest Advisory Council with those of the government; and to perform functions assigned by the Minister or the cabinet. Sandburg and Clancy observe that the position essentially marginalized Eldridge. His reports were not made public and he left the position in 1990. He was not replaced and the Office of the Commissioner of Forest Enhancement 'was quietly closed.', given that the duty to implement forest management had already been laid out in the Forests Act, this nebulous duty appears to be superfluous. [63]

In all other respects the act merely repeats, usually word for word, provisions of the Forests Act.[64]

Forests Act (RSNS c. 179) https://www.nslegislature.ca/sites/default/files/legc/statutes/forests.htm

This act applies to forest management and utilization on both Crown and private lands. Like the Crown Lands Act its principal objective is to encourage the 'productive use' of forest lands, or, as s. 2 (a) puts it, to develop 'a healthier, more productive forest capable of yielding increased volumes of high quality products'.

The Act sets a goal of doubling forest production by 2025 (s. 2(g)) and calls for immediate and long term creation of 'more jobs'. (s.2(h)). It interprets forest management to mean 'the practical application of scientific, economic and social principles to the administration of forest land for specified objectives' (s. 3(j) The 'principles of forest management programs' are laid out in section 7, where its five subsections are related to matters such as 'scheduling harvesting', allocating stands, marketing, silviculture, forest protection ('from fire, insects, diseases and unwanted competing vegetation') and are primarily concerned with the need to make 'the best economic use possible of all primary forest products harvested.'(s.7(f))

The orientation to maximizing productivity is offset somewhat by section 8 which provides for a forest management planning process requiring consideration of 'a wide variety of factors, including, in addition to industry concerns such as rotation, 'eligibility and priority of harvesting', the 'full consideration of wildlife conservation requirements, potential ecological impacts and outdoor recreation opportunities and needs'. Furthermore, section 10 requires the Minister to 'ensure that wildlife, wildlife habitats and the long term diversity and stability of the forest ecosystems, water supply watersheds and other

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appearance of forests along a trail, to promote long-term diversity and stability of forest systems and to provide suitable habitat for wildlife.' (s. 9) (See below.)

[63] L. Anders Sandburg and Peter Clancy, *Against the Grain: Foresters and Politics in Nova Scotia* (Vancouver: UBC Press, 2000) p. 155. On pp. 159-162 Sandburg and Clancy reproduce excerpts from Eldridge's annual reports to the government. They have not otherwise been made public.

[64] The version of the act available on line indicates that a number of sections have been repealed. These may have explained the role of the Commissioner and given an idea of what the special management zones were intended to be used for. To learn what the repealed sections contained one would have to consult the annual collections of statutes and probably the legislative debates for the original enactment of the act and also for the repeals.

significant resources are managed.' Section 9, which deals with forest management techniques, indicates that such techniques might be designed to 'facilitate suitable natural regeneration'.(s. 9(a)).

An amendment in 1998 extended the authority of the Department over private lands by asserting that where the government had made 'regulations respecting mandatory standards for sustainable forest management practices to protect wildlife habitats, watercourses, wetlands and other significant resources, those regulations are binding on privately owned lands and lands owned by the Crown.' (s. 10A) Section 10B, however, softens this requirement by differentiating industrial forest operators from others and excluding from the requirement to provide information on forest harvesting operation those owners of forest land who harvest less than 450 cubic metres solid of forest product annually. The exclusion also applies to producers.

Other provisions of the act include the establishment of forest nurseries, (s. 11) the training of silvicultural workers, (s. 13) and the development of the forest products sector, (s. 15) and the establishment of a private lands directorate 'to assist private landowners in meeting their needs of better forest management techniques.' (s. 14) Section 11 introduces commitments for carrying out forest research to develop 'growth and yield predictive capability', to 'develop and refine ecological methods of land classification, reforestation and silviculture', the control of competing vegetation and to support the Christmas tree industry. The growing influence of the environmental movement is indicated by a clause supporting research 'on the forestry and wildlife interface and the environmental impacts of various forestry operations'. (s. 11(d)). Agreements with other levels of government (including local governments) are provided for in section 16.

During the 1970s the federal government provided funds intended to encourage forest management on private woodlots. The Forests Act facilitated this initiative by enabling the Minister to enter into agreements with individual owners and, more importantly, group ventures. These would 'provide incentive assistance and professional and technical advice' (s. 17(1)) and could include allowing group ventures to operate on Crown lands. (s. 17(2)).

The act consolidates these efforts to create a common management regime for both public and private lands by setting out a scheme for governing the post-harvest acquisition of forest products and a related scheme for sustaining the type of forest envisaged by the act.

The forest products buyers program requires individuals or companies that buy forest products to register and to submit a wood acquisition plan to the Department and such 'statistical information respecting primary forest products required by the regulations.' (s. 9 (b)) Wood acquisition plans have to be submitted on an annual basis and must be approved by the Department. They must set out 'the manner in which the acquisition may be made on a sustainable basis' and buyers must be prepared to provide the Department with 'any information necessary for the purpose of monitoring' their implementation. Failure to comply with these requirements may incur revocation of the buyer's registration and thus, presumably, the ability to participate in the industry.[65]

The buyers program provides the basis for calculating contributions that buyers must make to a Sustainable Forestry Fund. This fund is meant to support silviculture programs on private lands. (s. 3).

[65] Note Professor Lahey's comments, *Review*, p. 28.

Section 20 is the final section of the Forests Act. It sets up a Timber Loan Board which would be empowered to make loans for the purchase of forest lands by private individuals and corporations.

Comment:

The view of forest management articulated in the Forests Act is almost completely dominated by economic considerations. It goes further than the Crown Lands Act in championing the economic aspects of forest management. Although it interprets forest management to mean 'the practical application of scientific, economic and social principles to the administration of forest land for specified objectives' (s. 3(j) any suspicion that these may include concerns for biodiversity, wildlife management and considerations of preserving water and soil integrity is dispelled by section 7 which lays out the 'principles of forest management programs'. Its five subsections are related to matters such as 'scheduling harvesting', allocating stands, marketing, silviculture, forest protection ('from fire, insects, diseases and unwanted competing vegetation') and are primarily concerned with the need to make 'the best economic use possible of all primary forest products harvested.'(s.7(f))

In effect, the Forests Act lays out a blueprint for adapting the Nova Scotia forest and its forest economy to the needs of the pulp and paper industry. A significant feature is its attempt to foster a common management regime for both public and private lands. Part of this initiative was a joint federal-provincial Group Ventures program set up in the 1970s to encourage forest management on private woodlots. The Forests Act facilitated this initiative by enabling the Minister to enter into agreements with individual owners and groups. These would 'provide incentive assistance and professional and technical advice' (s. 17(1)) and could include allowing group ventures to operate on Crown lands. (s. 17(2)). According to Sandburg and Clancy's study, *Against the Grain*, even though some of these ventures did allow woodlot owners a good deal of autonomy, the technical advice and assistance that they received emphasized production of spruce and fir for the pulp and paper industry.

All in all, the provisions of the Forest Act create a regulatory package that facilitated the transformation of Nova Scotia's Acadian forest into something approaching the boreal forests that met the requirements of the pulp and paper industry.

We do see some evidence of conflict between this strong orientation to maximizing productivity and the concerns emerging within the public for biodiversity. The growing influence of the environmental movement is indicated by a clause supporting research 'on the forestry and wildlife interface and the environmental impacts of various forestry operations'. (s. 11(d)). Section 8 provides for a forest management planning process which must consider 'a wide variety of factors, including, in addition to industry concerns such as rotation, 'eligibility and priority of harvesting', the 'full consideration of wildlife conservation requirements, potential ecological impacts and outdoor recreation opportunities and needs'. Section 10 requires the Minister to 'ensure that wildlife, wildlife habitats and the long term diversity and stability of the forest ecosystems, water supply watersheds and other significant resources are managed,' though it does not say what the goal of management should be, or how it should be reconciled with the management principles and goals set out in the preceding sections. This ambivalence is reflected as well in section 9, which deals with forest management techniques, where it indicates that such techniques might be designed to 'facilitate suitable natural regeneration'.(s. 9(a)), but then goes on to say that these techniques should only be applied 'wherever practical' and while they may involve selection harvesting from time to time it is clear that ultimately a 'final harvest' is intended. (*Ibid*) In other words, ecology must be acknowledged, but the primary concern of forest management has to be productivity.

The move toward consideration for the ecology of the forest is more evident in the regulations issued under the Forest Act than in the act itself. The Wildlife Habitat and Watercourse Protection Regulations (https://www.novascotia.ca/just/regulations/regs/fowhwp.htm), for example, establish guidelines for respecting riparian zones, maintaining representative stands of trees in harvest areas, and ensuring that the installation of watercourse crossings meet the requirements of the Department of the Environment. HFC and EAChave argued that these regulations are too limited in their scope,[66] they are nevertheless an improvement on the harvesting regime envisaged in the forest legislation itself.

The Act's emphasis on productivity encouraged the borealization of the Acadian forest. Although the Act itself does not single out spruce and fir as favoured species, the Sustainable Forest Fund was used primarily to encourage regeneration and planting of those species.

Indian Lands Act (RSNS c. 219)
https://nslegislature.ca/sites/default/files/legc/statutes/indian.htm

Responds to decisions of the Judicial Committee of the Privy Council to the effect that even though some bands located in Nova Scotia had surrendered certain lands to the Government of Canada, that government had not had the authority to convey the lands to other parties. Apparently that authority was still held by the Government of Nova Scotia. This Act clarifies the status of lands by stating that Nova Scotia confirms all of these grants, except in the case of mineral rights and rights to lands under public highways. These are reserved to the Province. Under the act it is possible for Nova Scotia to purchase, within 30 days,(s. 6(1)) any Indian lands that may in future be surrendered to the federal government.

Except where the Province might in future purchase surrendered lands or avail itself of its mineral and highway rights, this legislation is incidental to forest management.

Off-highway Vehicles Act (RSNS c. 323, amended by2002, c. 5, s. 46; 2005, c. 56; 2010, c. 2, s. 136)
https://nslegislature.ca/sites/default/files/legc/statutes/off-highway%20vehicles.pdf

The popularity of ATVs grew substantially in the 1980s and 1990s. By 2000 a grass-roots movement developed opposing their unsafe and reckless use. After considerable public consultation the 1989 Act was amended to introduce a number of regulations regarding safety and respect for public and private property. Under it, operation of an off-highway vehicle is prohibited in sensitive areas defined by legislation, except where that legislation allows; on other sensitive areas, except by special license, or on private property without the owner's written permission. (s. 12). The act also provides against operating an off-highway vehicle 'without reasonable consideration for other persons, including passengers or property' or 'so as to annoy or worry a domestic or farm animal or wildlife.' (s. 16) There is no provision, however, against operating an ATV in such a way as to destroy forest habitat.

[66] See HFC 'A Call for a Healthy Forest on Crown Land: A brief submitted to the Independent Review of Forest Practices' December 5, 2017.

Provincial Parks Act (R.S.N.S. 367*)*
https://www.nslegislature.ca/sites/default/files/legc/statutes/provpark.htm

Parks are intended to:

> (a) provide opportunities for a wide variety of outdoor recreational opportunities ranging from relatively high intensity near-urban facilities to low intensity wildland experiences;
>
> (b) preserve unique, rare, representative or otherwise significant elements of the natural environment and historic resources of Nova Scotia;
>
> (c) provide opportunities for exploration, understanding and appreciation of Nova Scotia's natural and cultural heritage through interpretation, information and educational programs.(s. 2)

The Minister has authority to develop long-term plans, programs and policies deemed necessary to control and develop parks, park reserves, and even areas adjacent to parks. (s. 6, s. 37) Section 6 of the Act provides that the Governor in Council may set aside and reserve Crown land as park reserve for the purpose of protecting those lands that have the potential to be a provincial park, and may 'declare any provision of this Act or the regulations to be applicable to a park reserve as if it were a provincial park.' (s.6 (4))

Most of the Act is concerned with the administrative aspects of creating and maintaining provincial parks. By their nature parks established for recreation and education are not primarily concerned with protecting biodiversity. However, there are provisions, ostensibly administrative, that do impinge on concerns for biodiversity. For example, s. 12 (c) provides for interpretive facilities and programs that enhance, not only user-experience, but 'their appreciation of park resources', which presumably would include wildlife and plants. (s. 3(o)). The use of parks as 'outdoor educational resources' could also be useful in this respect.

Comment:

The Minister's authority to 'prohibit or regulate the cutting and removal of forest products' in parks, as well as his/her duty to 'take such measures as the Minister deems necessary to protect flora and fauna within a provincial park' can obviously affect biodiversity within parks, as can the preparation of management plans. (s. 13(l) (m) (n), s. 13A) Similarly the various prohibitions against hunting, fishing, trapping, destroying park property or trees and 'other natural resources' and the possibility that a person convicted of an offense under the Act might be required to 'restore the land to a condition as near as practicable as it was before the offence was committed and pay an amount equal to twice the market value of park property which was damaged or destroyed,' (s. 35) could all positively affect the protection and preservation of biodiversity within park boundaries.

Special Places Protection Act (RSNS, 1989, c. 438. amended 1990, c. 45; 1994-95, c. 17; 2004, c. 6, s. 31; 2005, c. 28; 2010, c. 39, ss. 14, 15)
https://nslegislature.ca/sites/default/files/legc/statutes/specplac.htm

Special places, as this act conceives them, are very limited in extent. They possess features that have importance as parts of the natural or human heritage of the Province. (s. 2(a)). Archeological sites, for example, or unique natural phenomena. They may be especially suitable for scientific research and educational purposes, or representative examples of natural ecosystems. Alternatively they may offer an opportunity to study the natural recovery of ecosystems from modification by humans; contain rare or endangered native plants or animals in their natural habitats, or provide educational or research field areas for the long-term study of natural changes and balancing forces in undisturbed ecosystems. (s. 2(b). As such they can be used to 'promote understanding and appreciation' of the province's physical and historic features. (s. 2(c))

The Minister responsible for the act must appoint a ten-member Advisory Committee on Protection of Special Places. It is chaired by a member of the minister's department and includes representatives of the Departments of Environment, Tourism, Culture and Heritage and the Department of Lands and Forestry, plus up to six other persons with expertise in the fields related to the act, some of whom would be able to represent aboriginal interests. (s. 5) The committee is entitled to make recommendations to the Minister apropos the administration, classification and acquisition of special places, and conduct research leading to the designation and the removal from designation of special places. In the course of doing so, they must notify officials of other departments of steps that may be taken in the course of designation (or its removal) that might affect their own responsibilities. (s. 6) They also are empowered to recommend regulations to the Minister with respect to management plans and other matters related to ecological sites. (s. 6(c)) The Minister may invite the committee to make recommendations in the course of preparing management plans for protected ecological places, but is under no obligation to implement them. (s. 14 (c))

Even though it exists to advise the Minister concerning designation, he or she is not obliged to consult with the committee when doing so. Section 14 simply gives the Minister the power to designate Crown lands or, with the consent of owners, private lands. In doing so he must have the approval of the Governor in Council (s. 14 (1)). The designation must be recorded in the Royal Gazette and registered with the appropriate land registry office (s. 14), at which point the designation comes into effect. Before registration the Minister must notify any private owners of affected properties that the designation is to take place. [67] Somewhat different procedures apply when termination of a designation is proposed. In a newspaper circulating in the Province the Committee must give notice of the proposed recommendation, allowing the public at least thirty days to submit written submissions. The committee itself shall not make a recommendation until a further thirty days has passed.[68] The approval of the Governor in Council is also required before the termination can come into effect. (s. 1 4A)[69]

Once a site is designated , the Province, is prohibited from granting, leasing or otherwise disposing of lands that comprise such a site. This includes the granting of rights such as mining, fishing, hunting, timber cutting or tapping into water supplies that may have been authorized under other statutes. (s.

[67] They appear to have no recourse to an appeal and there is no provision for public consultation prior to designation, or prior to removal of designation.
[68] Where the land is privately owned, the registered owner of the land must also be notified.(s. 14 A (2))
[69] Note that different procedures are used in the designation (termination) of ecological and heritage sites.

18) In general 'no person shall carry on any activity which may alter any part of the terrain or of the vegetation or carry on any acts which may disturb the fauna or the flora within the designated site', unless that person has obtained an ecological research permit. (s. 17) Applicants for permits must establish, in a form prescribed by the department, that they are competent to carry out the ecological research or other activities proposed. They must complete the work within a stated time and must submit a report on the work done. Conditions may be imposed in order to protect the designated ecological site.[70]

The Governor in Council, upon the recommendation of the Minister, may make regulations for the protection, preservation and use of special places on Crown lands and, with the consent of owners, on privately owned lands. These regulations may be used to establish management plans, classify ecological sites and generally control access to and the use of specific sites. They may also determine ' measures, including financial incentives, to encourage the identification, preservation and protection of special places.' (s. 18) Failure to comply with the conditions of permits or the regulations applicable to designated sites may lead to a fine of up to $10,000 for an individual and $100,000 for a corporation. (s. 22)

The Sustainable Development Goals Act. (SNS 2019, c. 26) As of January 16, 2020 assented to but not in force.
https://nslegislature.ca/sites/default/files/legc/PDFs/annual%20statutes/2019%20Fall/c026.pdf
The Sustainable Development Goals Act replaces the 2007 Environmental Goals and Sustainable Prosperity Act (SNS 2007, c. 7) which it repeals. (s. 15)

The new legislation is based on 5 main concepts: Netukulimk, sustainable development, inclusive economic growth, circular economy and interconnected and shared responsibility. In the Act these are defined in the following terms:

'Netukulimk', a Mi'kmaq term, uses the natural bounty provided by the Creator for the self-support and well-being of the individual and the community by achieving adequate standards of community nutrition and economic well-being without jeopardizing the integrity, diversity or productivity of the environment. The term 'sustainable development' is defined as it is in the Environment Act,(s. 3 (aw)) to mean development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs, while the term 'sustainable prosperity' means prosperity where economic growth, environmental stewardship and social responsibility are integrated and recognized as being inter-connected. Finally the concept of the 'circular economy' means an economy in which resources and products are kept in use for as long as possible, with the maximum value being extracted while they are in use and from which, at the end of their service life, other materials and products of value are recovered or regenerated. (s. 2)

Section 4 of the Act is based on the following principles:

[70] If the lands are privately held, such research or activities must also have the written consent of the landowner.

(a) the achievement of sustainable prosperity in the Province must include all of the following elements:(i) Netukulimk,(ii) sustainable development,(iii) a circular economy, and (iv) an inclusive economy;
(b) the achievement of sustainable prosperity is a shared responsibility among all levels of government, the private sector and all Nova Scotians;
(c) climate change is recognized as a global emergency requiring urgent action.

Through the application of these principles the province is expected to achieve the long-term objective of sustainable prosperity (s. 5 (1)), using programs that will raise awareness of the importance of sustainable prosperity and the elements that contribute to it; create the conditions necessary for sustainable prosperity, including regulation, programs and initiatives to encourage actions and innovation by local government, business, non-government organizations and Nova Scotians for the purpose of making progress in sustainable prosperity; and adopt, support and enable goals and initiatives that are aligned with the principles and focus areas in this Act and regulations. (s. 5 (2))

Those focus areas include 'leadership'; the transition to cleaner energy, more sustainable sources for electricity generation, improved energy efficiency and cleaner transportation; the mitigation and adaptation to climate change; the creation of conditions supporting a circular and inclusive economy and the conservation and sustainable use of natural assets and support for biodiversity.(s.6)

Concrete goals are set out in s. 7, which requires that by 2020 greenhouse gas emissions in the Province are will be at least 10% below the levels that were emitted in 1990; by 2030, at least 53% below the levels that were emitted in 2005; and by 2050, at net zero, by balancing greenhouse gas emissions with greenhouse gas removals and other offsetting measures.

To cope with climate change mitigation and adaptation the government must develop, prior to December 31, 2020, a "Climate Change Plan for Clean Growth" which will address:

(a) achieving the greenhouse gas emission targets set out in Section 7;
(b) adapting to the impacts of climate change and building a climate resilient Province;
(c) accelerating the integration of sustainable and innovative technologies and approaches; and
(d) clean inclusive growth. (s. 8)

A Sustainable Communities Challenge Fund is established to create competitive opportunities to encourage communities in their climate change mitigation and adaptation efforts. (s.9(1))

The Act provides for high level participation and oversight. The Premier is required to ensure that sustainable prosperity is included in the mandate of every Government department (s. 11) and to meet annually with the Round Table set up through section 9 of the Environment Act to discuss progress on sustainable prosperity.(s. 10) The Round Table will be used to advise on the development of the SPDA's goals and programs, and may advise on the annual report that must be prepared by the minister, responsible for the Act. The report, which is expected to canvass the work of all agencies, must be tabled by July 31 of each year, and shall report on 'the progress made toward the long-term objective of sustainable prosperity, including progress toward achievement of sustainable prosperity goals and initiatives and any changes made thereto, as established under this Act and the regulations.' (s. 12)

The Round Table is also required to carry out a public review of the Act and the regulations no later than five years after this Act comes into force, and at any other time, as needed.(s.13)

Finally, the act in giving the Governor in Council the usual authority to make the regulations needed to carry it out, adds that before the Act can come into effect, the Governor in Council must not only make regulations establishing goals to achieve sustainable prosperity consistent with the principles and focus areas set out in this Act, but must carry out public consultation regarding the formulation of these regulations. (s. 14) To date (January 2020) no regulations have been announced.[71]

Comment:

When the public was consulted on the draft new Act the Ecology Action Centre was highly critical:

> When EGSPA was introduced in 2007 it set specific targets and deadlines in the legislation which have led to measurable outcomes in areas such as GHG reductions and wilderness protection. Unfortunately, rather than build on our modest successes so far, the current government's proposed amendments to the Act would substantially weaken the legislation by removing the Environmental Goals themselves from the Act. EGSPA will simply become SPA – the Sustainable Prosperity Act. Goals could be dropped down to the level of Regulations under the Act. This will give government maximum flexibility to add, remove, change or ignore goals as they see fit. Environmental goals and targets will no longer enjoy the force of law. This was the key success factor in the original legislation. The Act will also be re-framed through an economic lens. "Prosperity" will be the new focus while environmental goals could be downgraded to the level of regulation which can be changed at any time.

Professor Lahey took a more optimistic view of the reconsideration of EGSPA, and saw it as an opportunity to argue for revisions that would reflect a move toward implementation of the triad approach:

> The Environmental Goals and Sustainable Prosperity Act (EGSPA) is currently being reviewed for updating and revision. The shift in paradigm toward a triad model of ecological forestry on private lands is of fundamental relevance and importance to the social, economic, and environmental philosophy of sustainable prosperity embedded in EGSPA. It therefore follows that EGSPA should specify a goal or goals relative to the implementation on private lands of the triad model of ecological forestry. Like many of the other goals in EGSPA, these should be aspirational and focused on outcomes rather than on all of the detailed steps that could or must be taken to achieve those outcomes. They should also reflect the particular complications and challenges that have to be addressed in implementing a triad model of ecological forestry on private land that is widely held across a regionally diverse province.[72]

Sadly the Round Table ignored this advice.

When the Sustainable Development Goals Act is compared with the original Environmental Goals and Sustainable Prosperity Act (SNS 2007, c. 7) the accuracy of the EAC criticisms is immediately apparent. Section 2 (a) which defined 'emission target' has disappeared and is replaced with 'circular economy', which is described as:

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[71] See https://www.novascotia.ca/nse/resources/legislation.asp. (Accessed January 28, 2020)

[72] *Review*, Conclusion 120.

> .. an economy in which resources and products are kept in use for as long as possible, with the maximum value being extracted while they are in use and from which, as the end of their service life, other materials and products of value are recovered or regenerated.

This surely is a good example of EAC's complaint that most of the goals are 'generally weak, vague and more notional than providing any specific goals or targets'. It would be interesting to see how the Auditor General, or a court, could decide whether or not the Minister had satisfied the requirement of section 6(d) which calls for the 'creation of the conditions supporting a circular economy.' [73] The other goals and objectives set out in the act are equally elusive.

By contrast, the original act emphasized the setting of targets and imposed hard deadlines. Twenty-one specific targets were enumerated (s. 4(2)), ranging from the reduction of emissions of specified GHGs, to establishing specific targets for land protection, to the creation of strategies and policies for sustainable resource use, waste management, government procurement and so on. Deadlines were attached to each of these goals. The new act sets out specific targets only for GHG emissions and the only deadline for a major policy called for creation of a strategic 'Climate Change Plan for Clean Growth' to be delivered prior to December 31, 2020. (SPDA, s. 8) EAC found the Act's silence on completing the province's commitment to set aside 13% of the land base for protection 'particularly distressing'. EAC calculated that '90 sites' were 'still waiting for protection in the Parks & Protected Areas Plan.'

Changes should include writing a goal (or goals) for the implementation of ecological forestry on Crown land into the Environmental Goals and Sustainable Prosperity Act, currently under review [William Lahey, *An Independent Review of Forest Practices in Nova Scotia* Conclusion 74 (d)] This recommendation has not been adopted.]

It is difficult to anticipate what impact the Round Table will have on the implementation of the SPDA. Given the track record of the Round Table as it has operated since the passage of the EGSPA, it is unlikely that it will conscientiously report on steps taken to achieve 'sustainable' prosperity, let alone promote goals that risk jeopardizing prosperity in order to ensure environment benefits. Given a Minister – and a Premier – dedicated to advancing protection of the environment, the new act, despite its shortcomings, could be used progressively and the Round Table could be a powerful voice supporting measures to mitigate climate change, reverse the current despoliation of biodiversity and generally improve our environment. On the other hand, the Round Table could continue to be a vehicle for advancing an economic development agenda and, through its annual meeting with the Premier, a means for in-house lobbying by business.

The Trails Act (R.S.N.S. c. 476) https://nslegislature.ca/sites/default/files/legc/statutes/trails.htm

Addresses not only the need to enhance recreational interactions with the forest, but also a growing sense within the public that we need to re-connect with nature. Like the Forests Enhancement Act it

[73] This is the only other reference to the 'circular economy' to be found in the act.

allows for the setting up of 'special management zones'; in this case explaining that they are intended to 'enhance the physical appearance of forests along a trail, to promote long-term diversity and stability of forest systems and to provide suitable habitat for wildlife.' (s. 9)

The Wilderness Areas Protection Act (SNS 1998 c. 27 as amended 2005, c. 56, s. 18 and 2009, c. 3. https://nslegislature.ca/sites/default/files/legc/statutes/wildarea.htm

Section 2 states that the purpose of the act is to provide for the permanent establishment, management, protection and use of wilderness areas. The purposes include maintaining and restoring the 'integrity of natural processes and biodiversity' (s. 2(a)), protecting 'representative examples of natural landscapes and ecosystems', unique, rare and vulnerable natural landscapes and ecosystems. Secondary objectives include providing 'reference points for determining the effects of human activity on the natural environment'(s. 2(e) and protecting and providing for scientific research, environmental education and wilderness recreation, which means 'non-motorized, outdoor recreational activities that have minimal environmental impact, including nature-based tourism,' (s.3) sport fishing and 'traditional patterns of hunting and trapping.' (sections 2 and 24) The promotion of public consultation and community involvement in the establishment and management of wilderness areas is also a secondary objective.

The act is administered by the Minister of Environment (sections. 3, 6 and 10) As is common with several of the statutes relating to biodiversity, the act asserts that 'where there is a conflict or inconsistency between this Act or the regulations and any other enactment, this Act and the regulations prevail. (s. 5)

The act appears to make no provision for protecting an area proposed for designation. The main preoccupation of clauses referring to areas being considered for designation, is for public consultation, the wording of these clauses hints at concern lest creation of wilderness areas will be viewed negatively by local communities. Thus section 15 requires that 'before the designation, a socio-economic analysis of the impact of designation of a wilderness area shall be prepared for every wilderness area designated on Crown land…. the analysis shall be completed and made available to the public before the designation.'

The only suggestion of pre-designation protection occurs in section 4(b) which requires the Minister to file, in the environmental registry[74] a copy of any notices of designation. Even this might cover only designations that have already been approved, but not yet fully authorized by inclusion in the lists of wilderness areas described in Schedules A and B of the act.[75] The act does permit the Minister, with the authority of an order-in-council, but only in order to achieve the purpose of the act, to designate a new wilderness area or to change the boundaries of a wilderness area, (s. 11(3)(a)). This, too, does not provide for any protection for areas being considered for designation.

Once an area is designated there are strong protections against de-designation. Section 11(5) requires that revocation of designation must be accomplished through an 'Act of the Legislature'. There are legislated requirements for public consultation, which include the filing of accurate descriptions of the land involved,(s. 12) a minimum of 60 days notice, an opportunity for public consultation, clear

[74] Established under the Environment Act.
[75] There are 30 wilderness areas described in Schedule A and one in Schedule B.

information on the format and time of the consultation, and adequate advance publicity. (s. 11(6)) On the other hand section 23 permits uses that could well affect the wilderness character of these areas: snowmobiles, motor boats and the use of motorized vehicles are all permitted, albeit only under certain conditions and with ministerial approval. As well, under section 25, activities and uses that had existed prior to designation are allowed to continue, though with conditions. Section 39 provides a list of potential additional regulatory features that may be impos ed by order-in-council. These vary from regulations governing the use of trails to the erection of buildings.

Offences under the act may incur significant fines – up to $500,000 for an individual, plus seizure of possessions.

The Wildlife Act (RSNS c. 504) https://nslegislature.ca/sites/default/files/legc/statutes/wildlife.pdf

The full title of the Act is: 'An Act to Provide for the Protection, Management and Conservation of Wildlife and Wildlife Habitat'.

The act is intended to:

> (a) develop and implement policies and programs for wildlife designed to maintain diversity of species at levels of abundance to meet management objectives;
> (b) integrate appropriate protective measures into policies for use on Crown lands and in guidelines for forest management and other programs on privately owned land to ensure adequate habitat for established populations of wildlife;
>
> > (ba) recognize that angling, hunting and trapping are valued and safe parts of the heritage of the Province and that the continuing opportunity to participate in those activities will be maintained in accordance with this Act and the regulations;
>
> (c) provide for the regulation of hunting and fishing and the possession and sale of wildlife; and
> (d) provide for the continuing renewal of the resource while managing for its optimum recreational and economic uses. (R.S., c. 504, s. 2; 2001)

Although the obvious bias of the act is to view wildlife as a resource necessary for the support of hunting and fishing, the statement of objectives does reveal a concern for preserving wildlife populations and habitat that goes beyond the simple maintenance of 'diverse' species in sufficient 'abundance to meet management objectives'. There is a tension here – clearly evident in s. ba - between traditional perceptions of wildlife as a source of food, clothing and recreation and more recent concerns to maintain animal populations as a necessary part of biodiversity. Section 'b', in fact, reflects the same tension between the forest industry's demands for capital intensive harvesting practices and progressive forestry that we noted in the Forests Act.

As in the statutes governing the forest industry, this tension does not develop into provisions that would pit the protection of wildlife against the extractive aspirations of the forestry acts. The apparent concern for habitat registered in the statement of objectives and in the title of the act, does not carry through into the rest of the act. The interpretation section, for example, does not explain what 'habitat' means, despite the fact that the section stretches through four pages in which terms such as 'game', 'fur-bearing animals', 'gallinaceous birds' , 'game bird' and 'hunting' are described. Furthermore, the act

does not cover all the creatures that would be considered by many to be integral to maintaining biodiversity. Their exclusion is achieved through section 4(A)(1) which states that:

> Where it is made to appear to the Governor in Council that an organism should be treated as wildlife, the Governor in Council may, by the regulations, declare the organism to be wildlife.

In other words, what is not designated to be 'wildlife' is not covered by the act.
There are, however, several sections in the act that could be used to protect certain habitats. Sections 14 and 15 provide for the creation of wildlife sanctuaries and management areas. Under section 15, the Governor in Council may…

> …declare any Crown lands or, with the consent of the land-owner, privately owned land a wildlife sanctuary and make such regulations as may be necessary for the control thereof and the protection of wildlife and associated habitats therein;

Similarly wildlife management areas may be created with 'such regulations as may be necessary for the control thereof and the management of wildlife and associated habitats therein.' Importantly these sections do not simply provide for the protection of wildlife, but also for the associated habitats. One cannot help but ask why, in the case of such game sanctuaries as Liscomb, destructive forestry practices were permitted.

The act does specifically protect some birds and animals. Section 50 states that…

> (1)Except with a permit issued by the Minister, no person shall take, hunt or kill or attempt to take, hunt or kill or possess any
>
> > (a)eagle;
> > (b) osprey;
> > (c) falcon;
> > (d) hawk;
> > (e) owl;
> > (f) repealed 1990, c. 50, s. 3.
> > (g) wildlife declared by regulation to be protected wildlife pursuant to this Act.
>
> (2) Except with a permit issued by the Minister, no person shall buy, barter, offer for sale or sell protected wildlife whether dead or alive or any part thereof. R.S., c. 504, s. 50; 1990, c. 50, s.

Again, section 51 states that

> Except with a permit issued by the Minister, no person shall
>
> > (a) destroy, take, possess, buy or sell any egg of a bird or turtle or disturb the nest of a bird or turtle; or
> > (b) use a snare, net or trap to take any bird. 1995-96, c.

As a check on violations of these provisions, the act also requires guides, taxidermists, and, of course, hunters to file information required by the regulations on 'the date on which … specimens were taken, the circumstances in which they were obtained and the full name and address of the owner'. (s. 60 'Duties of taxidermist')

The sections referred to are the only ones, out of 113, that relate at all to the protection of wildlife as that term would be understood by a wildlife biologist. All the other sections constitute the complex body of rules and regulations have evolved over hundreds of years to ensure the safety of hunters and the continued availability of game and fish. The 'wildlife' act is, in effect, a traditional fish and game act.

Other statutes:

These have either been repealed or are no longer listed on the consolidated statutes website. They are included here because they may provide useful background to current legislation or contain elements that might still have some legal significance.

Agreement acts:

These provide statutory authority for the agreements entered into between the Province and the corporations that established pulp and paper operations and major industrial undertakings. These have included:

- Bowaters Mersey Agreement Act
- Halifax Power and Pulp Company Limited Agreement Act
- Oxford Lease Purchase Act (1960)
- Stora Forest Industries Limited Agreement Act
- Scott Maritimes Limited Agreement (1965) Act

Today the significance of these statutes lies in the broad concessions successive governments made to the corporations involved.

The Scott Act, (RSNS, 1989, c. 415) (https://nslegislature.ca/sites/default/files/legc/statutes/scottmar.htm) for example, anticipated that the company would cut 1,500,000 cords during the first thirty years of its operation, (Section 2 (1)(a)) and while they were required to file management plans and annual harvesting plans, the actual management of the forests was left in their hands (*Ibid.*) This included not only complete freedom to cut any and all timber in the licenced area, but also to manage stocking and regeneration, (Section 2 (2)(k)) a provision that has been responsible for borealization of much of the Nova Scotia forest.

In 2014 then Minister of Natural Resources, Zach Churchill, introduced a bill repealing the first three of the agreement acts, explaining that they had been brought in during the 1960s and 'are no longer effective' . The fourth, the Scott Maritime Limited Agreement Act, was still in effect as Northern Pulp was operating under it, but it, too, would be repealed once the government and Northern Pulp had reached a new agreement. (https://novascotia.ca/news/release/?id=20140327005) According to the *Consolidated Statutes of Nova Scotia* it is still in effect, but the Stora Forest Industries Limited Agreement Act was repealed in 2012. (https://www.canlii.org/en/ns/laws/stat/nav/s/).

The repeal of most of the agreement statutes has been followed by the introduction of the Forest Utilization Agreements authorized under the Crown Lands Act.

About the author

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Was for nearly thirty years a member of the faculty at Dalhousie University, teaching public administration and Canadian studies, particularly natural resource administration, pressure group politics and Canadian policy processes.

He was responsible for the design and establishment of the Dalhousie Programmes in Public Administration. The founding Co-ordinator of Public Administration programmes and later Director of the School of Public Administration.

He is the author, co-author or editor of a number of books and various articles on Canadian policy processes, natural resource administration, pressure group politics, lobbying and government publishing. He is best known for his study of Canadian pressure groups, *Group Politics and Public Policy* (Oxford University Press. 1986 and 1992). From 1991 to 1997 he was co-editor of the Canadian Public Administration Series published by the Institute of Public Administration of Canada and McGill-Queen's University Press.

He has been active in numerous professional and community bodies. In 1991 he served as chair of the NS Advisory Committee on the Constitutional Amending Process. In 1995 Governor-General Romeo LeBlanc presented him with the Vanier Medal which the Institute of Public Administration of Canada awards for services to the field of public administration.

He retired from Dalhousie in 1995, and was appointed professor emeritus in 1999. He continues to carry out research in lobby regulation and in the interest group field. His more recent publications include 'The Lobbyists Registration Act, its Application and Effectiveness' published by the Commission of Inquiry into the Sponsorship Program and Advertising Activities. Restoring Accountability: Research Studies (Ottawa: 2006) vol. 2, pp. 163-231. In 2007 he completed 'Lobbying: Models for Regulation' A Study Prepared for the Organization for Economic Cooperation and Development. Paris, France and published as GOV/PGC/ETH (2007) 4. This paper proposed a series of principles to guide the development of lobby regulation. It influenced the 'Recommendation of the Council on Principles for Transparency and Integrity in Lobbying' which were later adopted by the Council of the OECD and significant parts of the paper were incorporated in the OECD's Lobbyists, Government and Public Trust - Vol. 1: Increasing Transparency Through Legislation (Paris: OECD, 2009) and also available at www.oecd.org/publishing/corrigenda.

He was introduced to forest policy issues as a graduate student at the University of Toronto. In 1964 he was employed by the Ontario Department of Lands and Forests to lead a small team charged with investigating the archival resources that might be available to support the writing of a history of the

department. The resources proved to be more than ample, and what started as a summer assignment developed into a three-year appointment as the lead researcher for the project. It was published as R. S. Lambert with Paul Pross, *Renewing Nature's Wealth: A Centennial History of the Public Managemen of Lands, Forests and Wildlife in Ontario* (Toronto: Copp Clark for the Ontario Department of Lands and Forests, 1967), 630pp.. The research also provided him with material for a Ph.D. thesis entitled *The Development of a Forest Policy: A Study of the Ontario Department of Lands and Forests*, which was successfully defended in 1967. Dean J.W.B. Sisam, of the Faculty of Forestry, being the external examiner. Several articles on Ontario forest history followed, along with a Canada Council Post-doctoral Fellowship held at the School of Forestry and the Department of Political Science, Yale University.

In addition to his ongoing research interests, since retiring he has engaged in practical political studies, becoming active at the local level in one of the Province's political parties and in conservation and environmental groups.