

Bill 23-2021 – Forests Statutes Amendment Act

A Preliminary Review by Yves Mayrand – October 27, 2021

On Wednesday, October 20, 2021, the government of British Columbia tabled Bill 23 for first reading in the Legislative Assembly of British Columbia. The government issued a press release under the title: “Revamped forest policy puts environment, people first”. Is that really the case? All people who are involved in advocating fundamental reform of the forestry framework in BC should be asking themselves that very question.

It is difficult and tedious to go through the 55 pages of legalese in this bill and to understand not only what it actually does, but also what it actually avoids doing. The comments below will hopefully be useful in finding one’s answer to the question, or at least help to have a more informed public discussion on this Bill.

Bill 23 proposes technical amendments to the *Forest Act*, R.S.B.C. 1996, c. 157 in its Part 1, and to the *Forest and Range Practices Act*, S.B.C. 2002, c. 69 in its Part 2 (FRPA). Most of the proposed amendments are to the FRPA in Part 2 of the Bill. The Bill does not contain proposals or amendments respecting any other acts or sections of acts in the current portfolio of the minister of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD) (Note: these unaffected acts include the *Land Act*, the *Land Title Act*, the *Ministry of Forests and Range Act*, the *Private Managed Forest Land Act*, the *Riparian Areas Protection Act*, the *Water Protection Act*, the *Wildfire Act*, the *Wildlife Act* and the *Zero Net Deforestation Act*). Bill 23 neither updates nor consolidates the current patchwork of BC forestry laws in the FLNRORD portfolio, nor bring about a clear, consistent and effective statutory forest policy statement in furtherance of the public interest.

The technical amendments proposed in Bill23 focus essentially on the following:

- 1) a layered executive and administrative system comprising: a) forest landscape plans (FLPs) established by way of orders of the chief forester with respect to forest landscape areas (FLAs) with a view to replacing forest stewardship plans (FSPs) over the next 8 to 10 years (Note: FLAs, their location, extent and characteristics will be determined by the chief forester on a case by case basis, FLPs will not apply to woodlot licences, FLPs will be for a term of 10 years, and they may be extended for one or more successive periods of 5 years also by order of the chief forester); b) forest operations plans (FOPs) by forest tenure agreement holders approved by the minister (Note: FOPs will be for a term of up to 5 years, may be extended for one or more successive periods of 1 year or less before or even after the plan expires); c) the filing of annual forest development schedules by holders of a FOP; d) site level plans (SLPs) by holders of a FOP for actual cutblocks or roads before timber harvesting in the cutblocks and road construction take place (Note: a SLP must be

- “consistent” with the FLP and the FOP that apply to the plan area, may apply to more than one forest operations area and is not subject to chief forester or ministerial approval); and e) the eventual conclusion of decision-making agreements with individual Indigenous governing bodies respecting the decision-making powers of the chief forester and/or the minister under a) or b) above within the plan area (Note: there is no obligation or timetable for the conclusion by the chief forester or the minister of such decision-making agreements with Indigenous governing bodies);
- 2) the use, maintenance and deactivation of forest resource roads, and government funding for road deactivation to be granted at the discretion of the minister;
 - 3) the eventual disclosure under *Freedom of Information and Protection of Privacy Act* (FIPPA) of information on administrative penalties, fines and sanctions for violations to the Acts, at the discretion of the minister;
 - 4) relief from obligations under the FRPA or an operational plan, or relief from a free growing stand obligation, or government funding for a free growing stand obligation;
 - 5) relief from obligations or government funding for catastrophic damage resulting from wildfire or a prescribed natural event, at the discretion of the minister; and
 - 6) a string of new executive government powers to make regulations on: a) the resolution of disputes relating to the preparation and establishment of FLPs; b) with respect to a forest service road or forest resource road, requirements for a person who uses a forest service road to provide notice to the minister or a prescribed person in relation to the person’s use of the forest service road, authorizing a person to close the road, restrict the use of the road, and/or remove property from the road, including but not limited to removing vehicles or animals, and/or requirements for the owner of property removed from a road to pay a person who removed the property the costs of the removal (Note: this set of new executive powers is quite obviously intended to legalize the forcible seizure and removal of private property by forest tenure agreement holders such as Teal in TFL 46, pipeline builders, their agents, contractors and subcontractors at the unregulated and arbitrary expense of the owners of such private property, preventing or impeding the free circulation of the public on these roads and the monitoring of controversial logging or other industrial activities on Crown land); c) forest practices generally; and d) relief and funding for road deactivation and areas of catastrophic damage.

With Bill 23, government continues to avoid dealing with the following fundamental issues:

- 1) meaningful process for prior and informed input by all BC citizens and communities before executive and administrative decisions are actually made (no public hearings, no right of revision or appeal, significant expanse of executive powers with no opportunity to comment on new regulations);
- 2) land use reform;
- 3) forest tenure reform;

- 4) FLNRORD reform;
- 5) removing the primacy of encouraging maximum productivity of the forest and range resources, the immediate and long-term economic benefits of these resources, and a vigorous, efficient and world competitive timber processing industry from section 4 of the *Ministry of Forests and Range Act*, R.S.B.C. 1996, c. 300;
- 6) actual protection of old growth from further logging and from BCTS timber sales affecting old growth areas;
- 7) clearcutting, monoculture and chemical spraying as the prevailing BC forestry practices, as opposed to ecoforestry-based practices;
- 8) protection of watersheds from flooding, drought, soil erosion and water pollution caused by these prevailing forestry practices;
- 9) protection of species at risk under BC law from loss of habitat caused by these prevailing forestry practices;
- 10) raw log exports;
- 11) allowable annual cut determinations and the sustainability of forest resources;
- 12) actual and meaningful implementation of the United Nations Declaration on the Rights of Indigenous Peoples pursuant to the *Declaration on the Rights of Indigenous Peoples Act* of BC, particularly with respect to free, informed and prior consent on industrial resource extraction on unceded traditional territories, and the phasing out of oppressive Forest Consultation and Revenue Sharing Agreements (FCRSAs); and
- 13) actual carbon balance sheet metrics and obligations for the forest sector in BC, the required contribution of the forest sector to climate change mitigation, decarbonization, zero net deforestation, afforestation and reforestation.

In conclusion, it is my personal view that Bill 23 is clearly not a revamped forest policy, and that it does not put the environment and the people of BC first. It is rather a highly bureaucratic and disingenuous scheme to significantly expand discretionary and even arbitrary forest-related decision making without challenge, revision or appeal, entrench the status quo for the industrial extraction of BC forest resources by industrial forest tenure agreement holders for the next decade and beyond, prolong the circumvention of the rights and interests of Aboriginal peoples on forest resources located on unceded traditional territories, and restrict the fundamental rights of all BC citizens to freely circulate on forest roads located within provincial Crown land and monitor the activities and practices of forest tenure agreement holders therein.