

BRENT LOKASH

Barrister & Solicitor

17th Floor, 808 Nelson Street
Vancouver, British Columbia, V6Z 2H2
(604) 891-0201
Fax: (604) 681-9579

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Burns Bog Conservation Society
202-11961 88th Avenue
Delta, B.C. V4C 3C9

Attention: Eliza Olsen

The Burns Bog Conservation Society ("BBCS") has asked for a survey of legislation that could be used to lobby the government to protect Burns Bog. This letter provides a summary of the statutory authority that gives various levels of government the mandate to protect wilderness areas, including the statutory authority to regulate wilderness areas and/or acquire or expropriate lands for wilderness protection.

Introduction

Introduction to Environmental Jurisdiction in Canada

The Canadian Constitution does not give exclusive jurisdiction over the environment to any one level of government. In fact, "the environment" is not mentioned anywhere in the Constitution. The federal and provincial governments share jurisdiction. The federal government is empowered to regulate the environment through several of its powers, including the criminal law power, the power over fisheries and oceans, and the general power to legislate for the peace, order and good government of Canada. The provincial government exercises jurisdiction over the environment through its powers over property and civil rights, and matters of a local and private nature, among others. Municipal governments are creatures of the provincial government and have no constitutional jurisdiction at all; in practice, however, provincial statutes delegate a great deal of authority to municipalities and regional districts to regulate local land use issues, including the protection of wilderness areas.

One important power the federal government has is the power to make treaties with other nations. Canada is a signatory to a number of international environmental treaties, some of which are binding. A treaty only becomes binding when it is implemented by the government through legislation. Often this involves negotiation with affected interest groups and/or the provinces and can take many years after a treaty is first signed. Until an international treaty is implemented through Canadian legislation, it has no legal force in Canada, though it may have moral and political force. If a state fails to fulfil a treaty requirement, it has breached international law. However, there is no enforcement procedure in international law to compel states to fulfil their treaty requirements.

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A Word About Expropriation

Outright expropriation of land (taking without the owner's consent but with reasonable compensation) is one way that governments can preserve wilderness areas, and certainly one BBCS should be familiar with in its lobbying efforts. Both the federal and provincial governments have the power to expropriate land: *Expropriation Act*, R.S.C. 1985, c. E-21 (federal), *Expropriation Act*, R.S.B.C. 1996, c.125 (provincial). However, the statutes work in different ways. The federal Act expressly confers upon the federal government a general power to expropriate any interest in land, if, in the opinion of the government, the land is required for a public work or other public purpose. The provincial Act, on the other hand, only enables the province to expropriate land where it is expressly authorized to do so in a separate enactment. For example, the province could expropriate land to develop a highway only if it was expressly authorized to do so in the *Highways Act*. The provincial *Expropriation Act* alone gives no such authority.

Many of the provincial Acts surveyed empower the province to "acquire" land for conservation purposes. "Acquire" obviously includes the right to purchase land from a willing vendor, but does it is arguable whether the term also include the right to expropriate. Where the language is not explicit, the onus would be on the expropriating authority to prove that it is empowered to expropriate land.

Both the federal and provincial Acts set out the procedures and compensation schemes for expropriation.

Survey of Legislation

International Treaties

Canada is a signatory to a number of international treaties which could be used to protect Burns Bog.

Convention Concerning the Protection of World Cultural and Natural Heritage (1972) ("the World Heritage Convention")

This treaty is designed to protect natural and cultural areas of value to all humankind. The treaty establishes the World Heritage Committee, which is empowered to select suitable sites from those nominated by the state in which they are located. Canada is a signatory to the treaty and has implemented it through the *National Parks Act*, R.S.C. 1985, N-14 and through provincial parks legislation, which sets out how these sites are to be protected and maintained. Canada boasts a number of world heritage sites, including Vieux Quebec (Old Quebec City) and an ancient Viking settlement in Newfoundland.

As a unique ecological area, Burns Bog may be eligible for inclusion as a World Heritage site. Since it is the Canadian government who has the authority to nominate sites within Canada, BBCS would have to first lobby the federal government to approach the World Heritage Committee.

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Convention on Wetlands of International Importance ("the Ramsar Convention"), 1971

This convention was created to protect internationally significant wetlands. It operates in a similar way to the World Heritage Convention. Countries that are parties to the Convention, such as Canada, are obligated to submit a list of wetlands within their territory to the List of Wetlands of International Importance. Once their wetlands are on the List, countries are obligated to promote the conservation of the wetland. The Convention is implemented in Canada through the *Canada Wildlife Act*, R.S.C. 1985, c. W-9. Burns Bog, according to the *Burns Bog Analysis*, commissioned by the provincial government in 1993, is a type of wetland. BBCS could lobby the federal government to include Burns Bog as a Ramsar site, with all the attendant protections.

Trilateral Agreement for the Conservation of Migratory Birds and their Habitats, 1988

This treaty between Canada, Mexico and the United States was created to complement an older treaty signed between the U.S. and Canada in 1916, the *Convention for the Protection of Migratory Birds in the U.S. and Canada*. These treaties have been implemented in Canada through the *Migratory Birds Convention Act*, 1994 S.C. 1994, c.22. It sets out prohibitions against the killing of certain birds and the destruction of their habitat. Section 12 of the Regulations to this Act authorizes the federal Cabinet to prescribe protection areas for migratory birds and nests. BBCS could lobby Cabinet to designate Burns Bog a protected area for migratory birds.

United Nations Convention on Biological Diversity, 1992

This convention obligates signatory countries to protect biodiversity within their borders. Although a signatory, Canada has failed to live up to many of the requirements of this Convention, most notably by failing to create a federal law which would protect endangered species and their habitats. Were such a law in place, it could potentially be used to protect some vulnerable species such as the Sandhill crane and its habitat in the Bog. The new federal Environment Minister, David Anderson, has promised to bring in endangered species legislation next year. Lobbying to his office may speed this process in time to use it to protect the Bog.

Kyoto Protocol to the United Nations Framework Convention on Climate Change ("Kyoto Protocol"), 1997

The UN Framework Convention on Climate Change, to which Canada is a signatory, was negotiated

THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE, to which Canada is a signatory, was negotiated in 1992. It seeks to set binding emission limits and reductions in greenhouse gases on signatories. The Kyoto Protocol sets out the most recent targets. Under the Protocol, Canada committed to reduce its levels of greenhouse gas emissions by 6% between the years 2008-2012. According to the *Burns Bog Analysis*, disturbance of Burns Bog will cause an increase in methane emissions. Whether the emissions would substantially increase Canada's overall levels would have to be explored with a qualified scientist. If the levels of methane would be substantial, BBCS could alert those members of the government responsible for implementing the Kyoto Protocol to enlist their support for the protection of the Bog.

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Federal Legislation

There are three major statutes which give the federal government the power to protect wild areas: the *Canada Wildlife Act*, the *National Parks Act*, and the *Migratory Birds Convention Act*. The *Migratory Birds Convention Act* was discussed above.

Canada Wildlife Act, R.S.C. 1985, c. W-9

This Act provides for a variety of measures by which the federal government can protect wilderness areas. Section 3 empowers the Minister of the Environment to establish policies, undertake research and create public education programs for the purpose of wildlife protection. Section 8 allows the Minister to cooperate with provincial governments for the purpose of wildlife protection. Section 9 empowers the federal Cabinet to acquire any land for the purpose of protecting wildlife, as long as they have the agreement of the province in which the land is situated. BBCS can urge the federal government to use any and all of these powers to protect the Bog.

National Parks Act, R.S.C. 1985, N-14.

This Act is the main federal statute under which the Canadian government can create, expand, and administer national parks. Section 6(4) of this Act authorizes the federal Cabinet to "acquire other than by expropriation" lands for the purpose of expanding or establishing a national park. This means that an area such as Burns Bog which is partly privately owned could not be expropriated under this Act, but could be purchased by the federal government from a willing vendor. Obviously, this would involve negotiations with the relevant private landowners. BBCS could urge the federal government to commence this process.

Provincial Legislation

The Province is empowered to protect the environment in a variety of ways: through funding, policies, programs, direct conservation of land and protection of wildlife. For the purposes of this

policies, programs, direct conservation of land and protection of wildlife. For the purposes of this survey, I have divided the relevant statutes into 1) Acts that provide for the direct protection of land and 2) Acts that empower the province to develop programs to protect the environment. The mechanisms set out in these Acts can be used separately or in concert with each other.

Acts Providing for the Direct Protection of Land

Generally

The following enactments empower the provincial government, through a variety of mechanisms, to acquire land for the protection of wilderness and wildlife.

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Park Act, R.S.B.C. 1996, c.344.

Section 5 of this Act gives the province the power to establish areas of Crown land as parks of various types. This only applies to land which is already owned by the government. Therefore, to protect Burns Bog as a park, BBCS would have to urge the government to either negotiate with private landowners to purchase the land, or expropriate the land under another statute.

Wildlife Act, R.S.B.C. 1996, c.448

This Act gives the Minister the authority to acquire and administer land for the protection of wildlife. Whether this includes the right to expropriate, is arguable as previously discussed. However, BBCS could urge the province to negotiate with private landowners to purchase Burns Bog to create "wildlife management areas" under section 4. A wildlife management area is land on which land use must be compatible with wildlife management. Under this Act the government can also designate "wildlife sanctuaries" or "critical wildlife areas" within wildlife management areas to protect endangered species or to preserve an area with high wildlife values.

Heritage Conservation Act, R.S.B.C. 1996, c.187

This Act allows the provincial government to protect areas which are of archeological or anthropological significance in British Columbia. Section 3 empowers the government to establish a heritage "register" of important sites. Section 4 empowers the government to enter into agreements with First Nations to protect areas of archeological significance to native peoples. Section 9 allows the provincial Cabinet to designate land a Provincial heritage site. Since Burns Bog may have some archeological significance to First Nations groups, BBCS could lobby the provincial Cabinet to designate Burns Bog a heritage site or enter into an agreement with local First Nations groups. BBCS may wish to consult with local bands and/or scholars to determine the extent of the anthropological significance of the area.

Agricultural Land Commission Act, R.S.B.C. 1996, c.10.

This Act is the means by which the provincial government reserves land for agricultural purposes. Once land is designated "agricultural" and becomes part of the Agricultural Land Reserve under section 11, development is restricted, although not completely prevented. BBCS may be able to convince the Agricultural Land Commission, with the approval of the provincial Cabinet, to acquire Burns Bog based on its potential utility for blueberry and cranberry crops. However, inclusion in the Agricultural Land Reserve would only protect the Bog from development that is incompatible with agriculture.

Ecological Reserve Act, R.S.B.C. 1996, c.103

The purpose of this Act is to create "ecological reserves" on Crown land for ecological and research purposes. A reserve is substantially like a park but with different permitted human activities. Like

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the *Park Act*, this Act only applies to land which is already owned by the government. Thus, BBCS would have to urge the government to either negotiate with private landowners to purchase the land, or expropriate the land under another statute.

Acts Providing for the Creation of Programs to Protect the Environment

Generally

The following enactments set out a variety of policy tools that the provincial government can use to protect the environment.

Ministry of the Environment Act, R.S.B.C. 1996, c.229

This Act creates the provincial Ministry of the Environment and sets out its powers and purposes. Not surprisingly, section 4 provides that one of the functions of the ministry is to conserve and protect wild areas. This statute is of limited lobbying use, although it may serve to remind the Minister that the conservation of wilderness is part of her responsibility.

Sustainable Environment Fund Act, R.S.B.C. 1996, c.445

This Act creates a fund whose object is to provide for programs to enhance the environment. BBCS could lobby the province to use part of the fund to expropriate and/or develop programs to enhance the protection of Burns Bog

Environmental Management Act

This Act empowers the provincial Minister of the Environment to develop policies and programs to protect the environment, including environmental management plans for wildlife conservation. Interestingly, section 8 authorizes the Minister and his or her agents to enter onto private land for the purposes of the Act, although the extent of such powers is unclear. Whether Burns Bog remains on private land or becomes public property, BBCS could urge the province to develop programs to ensure the sustainability of Burns Bog.

Environment and Land Use Act, R.S.B.C. 1996, c.117

Section 2 of this Act establishes an Environment and Land Use committee, whose purposes are to ensure land use is consistent with the natural environment and to make recommendations to the provincial Cabinet respecting any matter relating to the environment and land use. BBCS could lobby the Committee to protect Burns Bog through a variety of means, from outright acquisition to ensuring that land use is consistent with the Bog's wildlife values.

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Municipal Powers

The municipal level of government has no powers independent of the provincial government except what the provincial government has delegated to it by statute. In British Columbia, it is the *Municipal Act*, R.S.B.C. 1996, c.323 which sets out the powers of local government. There are many sections relating to the power to regulate land use and set aside protected areas.

Sections 302 - 309 of the Act describes a municipality's power to reserve land or dedicate land for a public purpose, including forest reserves. The municipality can dedicate land that it owns for a public purpose such as a park. BBCS could lobby Delta to create a park with the part of the Bog that it already owns, and encourage the municipality to enter into negotiations with private landowners to acquire the rest of the land.

Section 500 authorizes the municipality to establish a local improvement fund, which could be used to support environmental programs in a park.

Sections 610 - 614 authorizes the municipality to develop facilities and programs for the residents to better enjoy community land. Section 612 authorizes the provincial Cabinet to convey park space to a municipality for the enjoyment of the public.

Section 708 allows the municipality to pass a bylaw to protect trees in the municipality. This would likely be of limited use for lobbying as its purpose was probably to protect old trees during

likely be of limited suasion for lobbying as its purpose was precisely to prevent the development of land, not prevent the development altogether.

Regional Districts are creations of the *Municipal Act* and form a *de facto* separate level of government. Sections 796 - 799 set out the powers of regional districts. They include the explicit authority to expropriate land. Therefore, BBCS could lobby the Greater Vancouver Regional District to expropriate Burns Bog for conservation purposes.

Conclusion

Governments possess a wide variety of legal tools to protect wilderness areas. It is quite likely they are not aware of all of the statutory powers they have at their disposal. It is hoped that this survey will assist BBCS in convincing the relevant authorities to use the mandate they have been given to protect Burns Bog. For your reference, I have enclosed relevant sections of the legislation which is cited in this letter.

Yours Truly,


Brent Lokash

Encl.