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Presentation to the Ontario Standing Committee on General Government on Bill 13: *Supporting People and Businesses Act, 2021*

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November 18, 2021

Via email: comm-generalgov@ola.org

Logan Kanapathi, MPP, Chair
Standing Committee on General Government
99 Wellesley Street West, Room 145
Whitney Block
Toronto, ON M7A 1A2

Dear Mr. Kanapathi:

Re: Bill 13: *Supporting People and Businesses Act, 2021*

On behalf of the Canadian Environmental Law Association (CELA), I am providing CELA's written submissions on Bill 13: *Supporting People and Businesses Act, 2021* in relation to Schedule 6 (*Crown Forest Sustainability Act, 1994)*; Schedule 10 *(Environmental Assessment Act);* Schedule 13 (*Mining Act);* Schedule 22 *(Provincial Parks and Conservation Reserves Act, 2006)*; and Schedule 23 (*Public Lands Act*). The attached presentation is organized as follows:

I. Introduction
II. Summary Reviews of Selected Schedules in Bill 13
III. Detailed Reviews of Selected Schedules in Bill 13

Please contact CELA if you have any questions arising from these submissions.

Sincerely,

MANEKA KAUR
Student-at-Law
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Presentation to the Ontario Standing Committee on General Government on Bill 13:
Supporting People and Businesses Act, 2021

By
Canadian Environmental Law Association

November 18, 2021
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I. Introduction

I. Introduction

The Canadian Environmental Law Association ("CELA") is a non-profit, public interest organization established in 1970 for the purpose of using and improving existing laws to protect public health and the environment. For nearly 50 years, CELA has used legal tools, undertaken ground-breaking research, and conducted public interest advocacy to increase environmental protection and safeguard communities. CELA works towards protecting human health and the environment by actively engaging in policy analysis and seeking justice for those harmed by pollution or poor environmental decision-making. It is from this public interest perspective that we have reviewed Schedule 6 (*Crown Forest Sustainability Act, 1994)*; Schedule 10 (*Environmental Assessment Act);* Schedule 13 (*Mining Act);* Schedule 22 *(Provincial Parks and Conservation Reserves Act, 2006)*; and, Schedule 23 *(Public Lands Act)* of Bill 13: Supporting People and Businesses Act.

This presentation is a consolidation of reviews prepared by CELA staff lawyers regarding various schedules to Bill 13.

II. Summary Review of Selected Schedules in Bill 13

A. *Crown Forest Sustainability Act, 1994* (Schedule 6)

There is little information addressing key questions about the nature, scope, and purpose of Schedule 6. There is also a lack of information respecting the definition of personal use, the size of area a personal use harvester may harvest, the harvesting methods a personal use harvester may use, and the environmental, social, and other implications of the various exemptions that may be afforded a personal use harvester from the normal requirements of the *CFSA.* Accordingly, CELA is of the view that it is premature for the Legislative Assembly of Ontario to be considering enactment of Schedule 6 as part of Bill 13. CELA recommends that the government withdraw

Schedule 6 from Bill 13 and the Legislative Assembly of Ontario not consider Schedule 6 further until the government tables in the Assembly (1) the draft regulations; and (2) the guidance to be used in assisting the Minister in the issuing of authorizations under Schedule 6.

B. *Environmental Assessment Act* (Schedule 10)

Schedule contains two amendments to the *Environmental Assessment Act* that are characterized by the Ontario government as "minor" and related to the "EA Modernization" initiative. However, CELA recommends that Schedule 10 of Bill 13 should be withdrawn or discontinued so that the Ministry's attention can be re-focused on appropriate, effective, and equitable *EAA* reforms that are long overdue in Ontario.

C. *Mining Act* (Schedule 13)

In response to the proposed amendments to the *Mining Act*, CELA has two main concerns. First, details regarding specific recovery permit application requirements, conditions and terms of renewal have been deferred to regulations which are yet to be developed. As such, concerns as to whether the recovery permits would permit the import/export of mine wastes for reprocessing or whether new downstream effects could result, should mine wastes be transported and moved elsewhere for 'recovery,' remain live issues. Second, these amendments, taken in tandem with reforms to environmental assessment (EA) means that these projects, despite being the first of their kind in Ontario, would not undergo a provincial EA.

D. ***Public Lands Act* (Schedule 22) and *Provincial Parks and Conservation Reserves Act, 2006* (Schedule 23)**

CELA supports the amendments provided in schedule 22 providing for a new section 14.5 under the *Provincial Parks and Conservation Reserves Act, 2006* and schedule 23, providing for a new section 17.1 under the *Public Lands Act* respectively, which provide the statutory provisions to clarify this protection of provincial public lands from adverse possession. However, a major caveat should be noted that this analysis and CELA's support does not apply in any way to indigenous and treaty rights protected by Section 35 of the Constitution Act, 1982, or otherwise. Those rights do not arise because of the common law principles applicable to adverse possession; they arise independently of that principle

III. Detailed reviews of Selected Schedules in Bill 13

Comments on Bill 13, Supporting People and Businesses Act, 2021,
Schedule 6, Crown Forest Sustainability Act, 1994
[ERO Number 019-4351]

By
Joseph F. Castrilli, Counsel,
Canadian Environmental Law Association ("CELA")

Summary Position of CELA:

The government withdraw Schedule 6 from Bill 13 and the Legislative Assembly of Ontario not consider Schedule 6 further until the government tables in the Assembly: (1) the draft regulations; and (2) the guidance to be used in assisting the Minister in the issuing of authorizations under Schedule 6.

I. Overview of Schedule 6

Schedule 6 of Bill 13 amends the *Crown Forest Sustainability Act, 1994* ("*CFSA*") by adding a new Part III.2, which establishes, among other things, authorizations for personal use of forest resources in a Crown forest and prices and charges for engaging in such activity. In particular, section 41.16(1) of Schedule 6 allows a person to harvest forest resources in a Crown forest for personal use (hereinafter "personal use harvester"): (1) in accordance with an authorization issued by the Minister of Northern Development, Mines, Natural Resources and Forestry; or (2) in the circumstances prescribed by the regulations. Authorizations, or prescribed regulatory conditions, may also be made in relation to land that is the subject of a forest resource licence (s. 41.18). Section 41.19 of Schedule 6 exempts the personal use of forest resources in Crown forests from compliance with Part IV of the *CFSA* (i.e., from forest management plan, forest operations prescriptions, and work schedule requirements). Regulation-making authority under s. 69(1) of the *CFSA* is amended by Schedule 6 by adding subsection 16.11, which would allow the province to: (1) define the meaning of "personal use"; (2) limit the area in which harvesting of forest resources in Crown forests for personal use may occur by way of ministerial authorization or regulation; (3) set out the circumstances in which a person may harvest forest resources in a Crown forest for personal use without an authorization including any applicable conditions or restrictions; (4) prescribe the records to be kept by a personal use harvester; (5) prescribe the fees payable by a personal use harvester; and (6) govern the issuance, amendment, renewal, transfer, refusal, suspension or cancellation of any authorization issued under s. 41.16.

II. Implications of Schedule 6

There are several aspects of the Schedule 6 amendments to the *CFSA* that are unclear and/or potentially problematic with respect to the management of the Crown forests, including: (1) the meaning of "personal use"; (2) the size of the area that a personal use harvester may harvest; (3) the harvesting methods that may be used by a personal use harvester; (4) the exemptions granted to personal use harvesters; and (5) the lack of draft regulations at this stage that could be considered in conjunction with the Schedule 6 amendments.

A. Meaning of "Personal Use"

The definition of "personal use" is not contained in the Schedule 6 amendments. The definition is authorized to be developed as part of the regulation-making process. This makes commenting on proposed Part III.2 premature and certainly difficult in the circumstances as set out further below.

B. Size of Area Personal Use Harvester May Harvest

As noted above, the Schedule 6 amendments may limit the area in which harvesting of forest resources in Crown forests for personal use may occur by way of ministerial authorization or regulation. Again, however, in the absence of having at this time draft regulations and/or draft guidelines designed to provide guidance to the Minister in the exercise of this authority, it is impossible to identify and evaluate the nature and extent of personal use harvesting areas to be created and whether the concept is consistent with the overall purposes of s. 1 the *CFSA* of: (1) providing for the sustainability of the Crown forests; and (2) managing Crown forests to meet social, economic and environmental needs of present and future generations.

C. Methods of Harvesting Personal Use Harvester May Use

The Schedule 6 amendments are silent on the methods of harvesting a personal use harvester may use. Clear-cutting is the default approach to logging often approved under forest management plans in the Crown forests of Ontario but is very contentious because of resulting releases of mercury to bodies of water, contamination of fish with methyl mercury, and harm to health of particularly Indigenous people consuming the fish. Coupled with: (1) the lack of information on the size of an area that a personal use harvester may harvest; (2) the exemptions granted to personal use harvesters from forest prescriptions, noted above and discussed further below, Part III.2's silence on the issue of personal use harvesting methods may well be cause for concern at this stage without further information.

D. Exemptions Granted Personal Use Harvesters

As noted above, Schedule 6: (1) exempts the personal use of forest resources in Crown forests from compliance with Part IV of the *CFSA* (i.e., from

forest management plan, forest operations prescriptions, and work schedule requirements); and (2) authorizes the establishment of regulations that can set out the circumstances in which a person may harvest forest resources in a Crown forest for personal use without an authorization including any applicable conditions or restrictions. The lifting of such requirements from personal use harvesters underscores the need to have answers now to the questions posed above respecting: (1) definition of "personal use"; (2) the size of an area a personal use harvester may harvest; and (3) harvesting methods personal use harvesters may employ. In the absence of such information, which could be provided by having access now to the draft regulations contemplated for Schedule 6, it is premature for the Legislative Assembly of Ontario to be considering the Schedule 6 amendments.

E. Lack of Regulations at this Stage

Schedule 6 lacks substantive content on issues raised in these submissions and is little more than enabling authority for the government to develop regulations. Accordingly, it would be preferable for a draft of the regulations to be available at the same time as Schedule 6 is being considered by members of the public and the Legislative Assembly of Ontario, to determine whether adjustments should be made to the amendments themselves before enactment.

III. Conclusions and Recommendations

At this stage, there is little information addressing key questions about the nature, scope, and purpose of Schedule 6. There is also a lack of information respecting the definition of personal use, the size of area a personal use harvester may harvest, the harvesting methods a personal use harvester may use, and the environmental, social, and other implications of the various exemptions that may be afforded a personal use harvester from the normal requirements of the *CFSA*.

Accordingly, CELA is of the view that it is premature for the Legislative Assembly of Ontario to be considering enactment of Schedule 6 as part of Bill 13.

Therefore, CELA recommends that:

1. **The government withdraw Schedule 6 from Bill 13 and the Legislative Assembly of Ontario not consider Schedule 6 further until the government tables in the Assembly (1) the draft regulations; and (2) the guidance to be used in assisting the Minister in the issuing of authorizations under Schedule 6.**

Comments on Bill 13: *Supporting People and Businesses Act, 2021*
Schedule 10: Proposed Amendments to the *Environmental Assessment Act*
[ERO Number 019-4189]
By
Richard D. Lindgren, Counsel,
Canadian Environmental Law Association ("CELA")

Summary Position of CELA:

The government should withdraw Schedule 10 from Bill 13, and should re-focus its attention on making appropriate, effective, and equitable *EAA* reforms that are long overdue in Ontario.

These are CELA's comments in relation to the amendments to the *Environmental Assessment Act* (*EAA*) that are proposed in Schedule 10 of Bill 13 (*Supporting People and Businesses Act, 2021*).[1]

Background

Omnibus Bill 13 received Second Reading on October 28, 2021 and was referred to the Standing Committee on General Government, which has invited written submissions from the public on or before November 18, 2021.[2] Notice of the proposed *EAA* changes has also been posted on the Environmental Registry[3] for public review and comment until November 21, 2021.

Accordingly, CELA's comments on Schedule 10 are being provided concurrently to the Standing Committee and to the contact person listed in the above-noted Registry posting.

Overview of Proposed *EAA* Amendments

The explanatory note for Bill 13 summarizes the content of Schedule 10 as follows:

> The Schedule amends the *Environmental Assessment Act* to specify that both amendments to approved class environmental assessments, as well as amendments to approvals of class environmental assessments, may include amendments to change the classes of undertakings to which the class environmental assessment applies.

[1] See Bill 13, Supporting People and Businesses Act, 2021 - Legislative Assembly of Ontario (ola.org)
[2] See 2021-Nov-18 Notice of hearings Standing Committee on General Government | Legislative Assembly of Ontario (ola.org).
[3] See Clarifying the authority to change the classes of projects to which a class environmental assessment process applies | Environmental Registry of Ontario.

The legislative text of the two new subsections that Schedule 10 proposes to add to section 1 of the *EAA* have been framed as follows:

> (5) An amendment to an approved class environmental assessment made under section 15.1.4 or subsection 15.4 (1) may include a change to the definition of the class of undertakings to which the approved class environmental assessment applies, and, in particular, the amendment may include adding or removing a class.
>
> (6) Subsection (5) applies, with necessary modifications, to an amendment to an approval of a class environmental assessment made under section 15.1.4.

The above-noted Registry notice characterizes these new provisions as "minor" amendments that form part of Ontario's overall EA modernization initiative:

> This minor amendment to the *Environmental Assessment Act* will support our smooth transition to a modernized EA program by clarifying that the authority to amend a Class EA and a Class EA approval, includes changing the classes of projects that can follow a Class EA. In the event that the authority to move a project type from an individual/comprehensive EA to a Class EA process is used, that proposed change would be consulted on.

CELA Comments on the Proposed *EAA* Amendments

In response to the two proposed amendments to the *EAA*, CELA has four main comments.

First, as a matter of statutory interpretation, it is unclear to CELA why these new provisions are even being pursued at the present time, especially given Ontarians' need for higher-priority *EAA* reforms, as described below. The recently expanded authority under section 15.1.4 and 15.4(1) of the *EAA* to alter or vary approved Class EAs by regulation or Ministerial amendment (including adjusting project classes, lists, or schedules therein) already seems sufficiently broad to enable projects to be moved in or out of different classes or categories. For example, despite the fact that the two proposed *EAA* subsections have not been enacted to date, the Ministry has previously proposed to move certain transmission line projects from individual EA requirements to Class EA requirements.[4] This proposal suggests that the current wording of the amended *EAA* has not served as a legal barrier that prevents the Ministry from revising the types of projects that will – or will not – be subject to Class EA coverage.

Second, while the Ministry has previously consulted on the types of designated projects that may be subject to Comprehensive EAs under Part II.3 of the amended *EAA*, there has been no public

[4] See Updating environmental assessment requirements for transmission lines | Environmental Registry of Ontario.

consultation to date on the types of projects that will be subject to Streamlined EAs under Part II.4 of the amended *EAA*. This paucity of detail about the application of the forthcoming Streamlined EA regime makes it difficult to comment on the potential scope of the proposed *EAA* amendments since it is unknown whether the Ministry intends to reduce current Class EA coverage as part of the transition to the new regulation-based regime. This uncertainty is exacerbated by the lack of any prescriptive details or meaningful statutory criteria in the two proposed *EAA* subsections to help structure the exercise of the discretionary authority to change Class EAs.

Third, the two *EAA* amendments are clearly aimed at facilitating Ontario's vision for "modernizing" the *EAA*, as articulated in the Ministry's 2019 EA Discussion Paper.[5] However, for the reasons outlined in CELA's critical review of the Discussion Paper, we maintain that this provincial vision is fundamentally flawed and contrary to the public interest purpose of the *EAA*:

> [T]he overarching "vision" that emerges from the Discussion Paper simply appears be an EA program that features faster and less robust EA processes which will apply to significantly fewer projects than the current regime, and which will be plagued by ongoing barriers to meaningful public/Indigenous participation. In CELA's view, this is not an acceptable proposal for "modernizing" Ontario's EA program. In essence, the Discussion Paper is calling for a rollback of current EA requirements, rather than implementing progressive measures that strengthen and improve the EA program (page 11).[6]

For this reason alone, CELA does not support the two proposed *EAA* amendments that are being rationalized by the Ministry on the grounds that they are necessary for "EA modernization" purposes.

Fourth, and most importantly, the Ministry's current focus on making "minor" changes to the *EAA* means, in effect, that other significant EA reforms identified by key stakeholders, EA practitioners, and independent observers over the years have not been prioritized or implemented to date. For example, neither Schedule 10 of Bill 13, nor Schedule 6 of Bill 197 (*COVID-19 Economic Recovery Act, 2020*)), addressed or acted upon the need for the following *EAA* improvements:[7]

- updating and improving the purpose of the *EAA* to reflect a sustainability focus and to include environmental justice principles to guide decision-making;

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[5] See Modernizing Ontario's Environmental Assessment Program--Discussion Paper (prod-environmental-registry.s3.amazonaws.com).

[6] See Canadian Environmental Law Association (CELA) Modernizing Ontario's Environmental Assessment Program: Discussion Paper Environmental Registry No. 013-5101.

[7] See Canadian Environmental Law Association (CELA) Preliminary Analysis of Schedule 6 of Bill 197 – Proposed Amendments to the Environmental Assessment Act.

- upgrading statutory provisions to ensure meaningful opportunities for public participation in all types of *EAA* processes;
- enhancing consultation requirements for engaging Indigenous communities in a manner that aligns with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to free, prior and informed consent;
- reinstating "proponent pays" intervenor funding legislation to facilitate public participation and Indigenous engagement;
- entrenching a statutory climate change test to help *EAA* decision-makers to determine whether particular undertakings should be approved or rejected in light of their greenhouse gas emissions or carbon storage implications;
- curtailing the ability of the Minister to approve Terms of Reference that narrow or exclude the consideration of an undertaking's purpose, need, alternatives or other key factors in "Comprehensive" (individual) EAs;
- extending the application of the *EAA* to environmentally significant projects within the private sector (e.g., mines);
- requiring mandatory and robust assessment of cumulative effects;
- facilitating regional assessments for sensitive or vulnerable geographic areas;
- ensuring strategic assessments of governmental plans, policies and programs;
- referring "Comprehensive" (individual) EA applications, in whole or in part, to the Ontario Land Tribunal for a hearing and decision upon request from members of the public;
- reviewing and reducing the lengthy list of environmentally significant undertakings that have been exempted from the *EAA* by regulation, declaration orders, or legislative means;
- enhancing investigation, enforcement and penalty provisions under the *EAA*; and
- removing or restricting section 32 of the *Environmental Bill of Rights* (*EBR*), which currently exempts from the *EBR*'s public participation regime any licences, permits or approvals that implement undertakings that have been approved or exempted under the *EAA*.

Unfortunately, while the Ministry remains distracted by making questionable "minor" amendments to the *EAA* (such as Schedule 10 of Bill 13), CELA concludes that these high-priority reforms will not be pursued adequately or at all.

Accordingly, CELA recommends that Schedule 10 of Bill 13 should be withdrawn or discontinued so that the Ministry's attention can be re-focused on appropriate, effective, and equitable *EAA* reforms that are long overdue in Ontario.

November 18, 2021

Comments on Bill 13: Supporting People and Businesses Act,
Schedule 13: Proposed Amendments to the *Mining Act*

[ERO Numbers 019-4452 and 019-4453]

Prepared by:
Kerrie Blaise, Northern Services Counsel
Canadian Environmental Law Association

November 16, 2021

Overview of Proposed *Mining Act Amendments*

The government of Ontario has proposed amendments to the *Mining Act* which provide for the creation of a new "recovery permit." The activities within a recovery permit would fall outside the current definition of "mine production" and instead be classified as "advanced exploration". Amended definitions to both these terms are proposed in Schedule 12 of *Bill 13, An Act to Amend Various Acts* in response to the new, proposed recovery permit.[8]

The intention of these amendments is more clearly set out on the Environmental Registry, including the "Recovery of Minerals" proposal,[9] which states Ontario seeks to facilitate the recovery of minerals from mining waste. As the current *Mining Act* regime does not permit extraction or reprocessing of mine wastes without filing a closure plan, Ontario has proposed these amendments which instead rely upon the permit holder providing financial assurance for (1) the performance of any activity authorized by the permit and (2) measures taken to prevent, eliminate or ameliorate any adverse effects.[10]

In summary, the amendments create a new recovery permit which would:

- Require a person interested in recovering minerals from mine wastes to submit an application to the ministry that describes the proposed recovery activity, as well as the proposed remediation plan for the disturbance created by the activity such that the condition of the land with respect to one or both of public health or the environment is improved following the recovery or remediation;[11]
- Provide the Director with discretion to determine the form and amount of financial assurance required commensurate to the project;[12]

[8] Schedule 12, proposed sections 4(2) and 139.0.1
[9] ERO Notice 019-4453, https://ero.ontario.ca/notice/019-4453
[10] Schedule 12, proposed s 152.1(2)
[11] Schedule 12, proposed s 152.1(2) and (3)
[12] Schedule 12, proposed s 152.1(2)

- Require the Director to consider whether Aboriginal consultation has occurred in accordance with any prescribed requirements (before a recovery permit is issued);[13]
- Provide the Director with additional order-making authority such as stop-work, remedial or preventative measures orders at current operating, closed or abandoned mine sites.[14]

CELA's Comments on Proposed *Mining Act* Amendments

In response to the proposed amendments to the *Mining Act,* CELA has two main concerns.

First, details regarding specific recovery permit application requirements, conditions and terms of renewal have been deferred to regulations which are yet to be developed. As such, concerns as to whether the recovery permits would permit the import/export of mine wastes for reprocessing or whether new downstream effects could result, should mine wastes be transported and moved elsewhere for 'recovery,' remain live issues.

Second, these amendments, taken in tandem with reforms to environmental assessment (EA) means that these projects, despite being the first of their kind in Ontario, would not undergo a provincial EA.

[13] Schedule 12, proposed s 139.0.1(4)(b)
[14] Schedule 12, proposed s 152.6

Comments on Bill 13: Supporting People and Businesses Act, Public Lands Act, (Schedule 22) and the Provincial Parks and Conservation Reserves Act, 2006 (Schedule 23)

Prepared by:
Theresa McClenaghan
Executive Director and Counsel
Canadian Environmental Law Association

Schedules 22 and 23

Bill 13 includes amendments to the *Public Lands Act*, and to the *Provincial Parks and Conservation Reserves Act, 2006*, both to the effect that public lands can no longer be acquired by adverse possession.

Sched. 22 provides a new section amending the *Public Lands Act* as follows:

> 14.5 (1) Despite any other law, including the *Real Property Limitations Act* and any other Act or any common law rule, but subject to subsection (2), no person may acquire a right, title or interest in the following lands by or through the use, possession or occupation of the lands or by prescription, on or after the day the *Supporting People and Businesses Act, 2021* receives Royal Assent:
> 1. Public lands that are within a provincial park or conservation reserve.
> 2. Public lands acquired for the purposes of this Act or the Provincial Parks Act before its repeal, that are not in a provincial park or conservation reserve.

Sched. 23 provides a new section amending the *Provincial Parks and Conservation Reserves Act, 2006*, as follows:

> 17.1 (1) Despite any other law, including the *Real Property Limitations Act* and any other Act or any common law rule, but subject to subsection (3), no person may acquire a right, title or interest in public lands, including lands described in subsection (2), by or through the use, possession or occupation of the lands or by prescription on or after the day the Supporting People and Businesses Act, 2021 receives Royal Assent. Additional public lands
>
> (2) For greater certainty, "public lands" for the purposes of this section includes lands acquired by the Crown in right of Ontario at any time for the purposes of a past or current program of the Ministry.

In both cases, the proviso under the *Real Property Limitations Act* is as follows:

> (2) This section does not apply if the right to bring an action on behalf of Her Majesty against a person for the recovery of the lands was barred by the *Real Property Limitations Act* before the day the *Supporting People and Businesses Act, 2021* received Royal Assent.

The relevant section of the *Real Property Limitations Act* states that:

Limitation where the Crown interested

> **3.** (1) No entry, distress, or action shall be made or brought on behalf of Her Majesty against any person for the recovery of or respecting any land or rent, or of land or for or concerning any revenues, rents, issues or profits, but within sixty years next after the right to make such entry or distress or to bring such action has first accrued to Her Majesty. R.S.O. 1990, c. L.15, s. 3 (1).

Subsequent sections in Schedules 22 and 23 discuss matters dealing with implementation of these changes.

Taken together, these sections amend both the common law which is where the right of adverse possession arose over time, and the related property statute law which provides an ultimate 60-year limitation period for the Crown to take back property occupied by adverse possession. If a person has adversely occupied land such that they have acquired a legal "prescriptive" right to that land, and can claim its use or occupation to the exclusion of others, including the Crown, for more than 60 years prior to the effective date of the proposed Bill 13, the *Supporting People and Businesses Act, 2021* receives royal assent, then these new sections do not apply. In other words, in these cases of long prior adverse occupation, the acquired rights are not affected. However, in cases of shorter adverse occupation (less than sixty years prior to this new Bill), as well as new situations of adverse occupation arising in the future, people will no longer acquire any right of use, occupation or other attributes of ownership against the Crown for public lands. Public lands affected by these changes include lands previously designated Crown lands, school lands, and clergy lands, as well as provincial parks and conservation reserves.

In *Teis v. Ancaster (Town),* 35 O.R. (3d) 216 (1997) the Ontario Court of Appeal held that municipal land could be acquired by adverse possession. The Court of Appeal expressed discomfort that this legal principle could oust the right of ownership and use of land that would otherwise have been used by the Town for a park; but stated that no one had asserted that public lands could not be acquired by adverse possession. The Court stated that only Alberta (at that time) had legislation to the contrary, i.e. preventing municipal land from being acquired in such a manner.

The Court stated,

> "In Canada, Alberta is the only province with legislation protecting all municipally owned land against claims of adverse possession: Municipal Government Act, S.A. 1994, c. M-26.1, s. 609. In Ontario, streets, highways, and road allowances have been protected from adverse possession or encroachment claims. In Household Realty Corp. v. Hilltop Mobile Home Sales (1982), 1982 CanLII 2257 (ON CA), 37 O.R. (2d) 508 at p. 515, 136 D.L.R. (3d) 481 (C.A.), Thorson J.A. cited with approval the following passage from Rogers, Law of Canadian Municipal Corporations, 2nd ed. (1971), vol. 2 at p. 1096:
>
> The right of ownership in real property, such as a highway, a market or a public wharf, held by a municipality for the common benefit or use of its inhabitants and of the Queen's subjects in general, is of such a public character that it cannot, as a general rule, be lost by adverse possession over the prescriptive period. It is expressly declared by the statute that road allowances cannot be extinguished by adverse possession.
>
> Whether, short of statutory reform, the protection against adverse possession afforded to municipal streets and highways should be extended to municipal land used for public parks, I leave to a case where the parties squarely raise the issue."

While the proposed changes in Bill 13, are not applicable to municipal land, a similar discomfort could be anticipated in relation to acquisition of provincial public lands by adverse possession. Notably, although the common law test for the acquisition of lands by prescription resulting from adverse possession includes a requirement that the adverse occupation be "obvious," it would often be practically very difficult for the Crown to notice such instances of adverse possession given the large amounts of land in question, and given that they are often remote. There is a larger public policy interest in public lands remaining public unless there is an express intention to the contrary for a particular parcel of land which would be reflected in an explicit land transaction.

Accordingly, CELA supports the amendments provided in schedule 22 providing for a new section 14.5 under the *Provincial Parks and Conservation Reserves Act, 2006* and schedule 23, providing for a new section 17.1 under the *Public Lands Act* respectively, which provide the statutory provisions to clarify this protection of provincial public lands from adverse possession.

A major caveat should be noted that this analysis and CELA's support does not apply in any way to indigenous and treaty rights protected by Section 35 of the Constitution Act, 1982, or otherwise. Those rights do not arise because of the common law principles applicable to adverse possession; they arise independently of that principle.