

NOTES FOR HOUSE OF ASSEMBLY DEBATE

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ON THE FORESTRY BILL 2010

House of Assembly

Nassau

28<sup>th</sup> April 2010

CHECK AGAINST DELIVERY

In the 18 months or so that this administration has left, it proposes to enact 35 pieces of legislation. Obviously this is a government in a hurry.

We are being asked since 14<sup>th</sup> April 2010 to pass the second of those 35 promised pieces of legislation.

I recall reading the Speech from the Throne from 1968 following the landslide victory of the PLP in that year and in that year, the then government promised that it would enact legislation for land registration, similar to one of the promised pieces of legislation in the speech from the throne on 14<sup>th</sup> April.

Michael Manley, the late Prime Minister, of Jamaica said that one of the reasons his administration failed in some of its policies is because the rate of change simply caused the public administration to sag. They simply could not keep up.

So while the government is in a hurry, there are some practical realities and we say in this bill today as with this entire agenda: make haste slowly or face the consequences... make haste slowly or face the consequences.

This bill seeks to introduce a new regime for the protection of the national forests. There are some 1.6 million acres of dry crown land in the country. Much of that is forest. We know that the forests of this country have provided a living for the country and if managed in a sustainable way, they can provide a living for us well into the future and in fact help to save the plant from being suffocated by carbon dioxide.

But sustainable development is the key. There must be a balancing act between the needs for the population which is growing for work and for development and economic activity and the protection of the natural environment. The government and its agencies are the stewards of that effort.

There is must be in all public policy a balancing act between the rights of the individual (one individual against the next) and the community or public interest.

Indeed the whole regime of our constitution speaks to certain democratic norms throughout the fundamental rights provisions of the constitution. It begs the question what is reasonably justifiable in a democratic society. Do you give with one hand and then take with the other in the interests of the public? Governments must struggle with this every day of the week.

Most times it should come down on the side of the rights of the individual. The state has enormous powers to enter your home, to regulate how you build your home, to disturb and violate your privacy, to take your children away, to take you land. It is difficult when the state has decided to do any of these things to fight the state unless you are wealthy or you have powerful friends and allies. So when we seek to put in place a regime that threatens the rights of the individual we must make haste slowly.

The aims and objectives of this bill are laudable. It creates a Director of Forestry, who will replace the Director of Physical Planning as the main agent for the protection of trees. There is now to be a Department of the Government answerable to a Minister who will protect the trees. We hope that this regime actually works to protect the trees. The history is not a good one for the trees.


*[Commencement 26th May, 1997]*


1. This Order may be cited as the Conservation and Protection of the Physical Landscape of the Bahamas (Declaration of Protected Trees) Order, 1997.

Citation.

2. The trees specified in the Schedule are hereby declared to be protected trees-

Declaration of  
protected trees.

**SCHEDULE** (Paragraph 2)

**Common Name**

**Botanical Name**

Beefwood/Pigeon Berry/Narrow Leaved Blolly

*Guapira discolor*

Black Ebony/Bullwood

*Pera bumeliifolia*

Brasiletto

*Caesalpinia vesicaria*

Candlewood

*Gochnatia ilicifolia*

Caribbean Pine

*Pinus caribaea var. bahamensis*

Horseflesh

*Lysiloma sabiau var. bahamensis*

Lignum Vitae

*Guaiacum sanctum*

Mahogany (Madeira)

Since the passing of the Conservation and Protection of the Physical Landscape of The Bahamas Act in 1997 and its commencement on 27<sup>th</sup> May of 1997, it has been offence to cut down any of the trees listed in the order pursuant to section 20 of that act.

I wish the Minister could tell us how many permits were actually issued to cut down trees. I made the observation here before that the pine trees which are protected were cut down in mass; juts recently to make a road the horse flesh trees and the mahogany trees were cut down along the John F. Kennedy Drive; the public corporations are amongst the main offenders I suspect. Is there a record of the BEC or BTC actually seeking to get permits to cut down protected trees.

And when I looked at the list, I thought that there were some trees that ought to be protected that are not protected like the silver top palm and the wild tamarind tree.

The bill's regime provides that there are to be :

#### 1. Forest Reserves – Clause 6

The areas of Crown land set out in the Second Schedule and the maps located in the Fifth Schedule are declared “Forest Reserves”. This is really land for the sustained harvesting of trees.

No land, or interest in land, within the forest reserve may be sold etc. other than by an Act of Parliament.

## 2. Protected Forest – Clause 7

Areas of Crown land set out in the Third Schedule and the maps located in the Fifth Schedule.

Forms a part of the Forest Estate “but the status of such area is less permanent than that of Forest Reserves”. Land here can be transferred for other purposes like agriculture.

## 3. **Conservation Forest** – Clause 8 includes private lands

Areas of Crown land and private lands (subject to Annexation set out in the Fourth Schedule and the maps located in the Fifth Schedule).

There is again no issue with the regime as laid out, although we thought it was the recommendation of the Land Use Policy Administration Project that there ought to be a National Land Agency, a parastatal body, to manage the lands of the country and that Forestry ought to also reside in a parastatal as well. But the government here has chosen to have it continue to reside in the public service bureaucracy.

The nub of the issue for us is this provision in Clause 8 (2) No land or interest in any land, within a conservation forest may be sold, granted devised or otherwise transferred except by Order of the Minister subject to affirmative resolution.

So here is what we understand Clause 8 to mean. The government has decided that not only lands which it owns, but also privately owned lands are to be part of conservation forests. Once it becomes a part of a conservation forest it effectively takes the land out of the ownership or to be more correct out of the use of the land for the normal purposes that are associated with ownership. This is troubling and there has to be a full explanation for this. What does annexing private land for these purposes mean? How did the government for example come to choose

151,329 acres of private land in West Grand Bahama; 1,785 acres of private land in Kemp Creek, Eleuthera; 31,382 acres of private land in Barataria ( is this Barre Terre) in Exuma; 24,699 acres of private land in Long Island?

Does this bill describe with certainty and with particularity the parameters and boundaries of this land so that people will know whose land is affected and whose land is not?

Has there been public consultation on this matter?

I say this because the case of *Save Guana Cay Reef Association Limited vs Queen* in the Privy Council of 17<sup>th</sup> November 2009 it said the following:

The law of the Bahamas does not at present require (in the well-known words of Lord Hoffmann in *Berkeley v Secretary of State for the Environment* [2001] 2 AC 603, 615),

“The inclusive and democratic procedure . . . in which the public, however misguided or wrong-headed its views may be, is given an opportunity to express its opinion on the environmental issues.”

32. That is not to say that the residents of the Cay had no expectation of any sort of public consultation as to the multi-million dollar investment that was going to transform their island. All the courts below accepted that the public had a legitimate expectation of consultation arising out of official statements recognising the need to take account of the residents’ concerns and wishes. But taking their concerns and wishes into account does not of course mean that the plans for the development must necessarily be changed, if only because the residents’ views were by no means single-minded (Ganpatsingh JA mentioned in his judgment his perception that “the community is bitterly divided between those who do and those who do not oppose the development”).

33. If there is a legitimate expectation of consultation, it must be a proper consultation. Both sides referred in argument to the well-known observations of Lord Woolf MR in *R v North and East Devon Health Authority Ex p Coughlan* [2001] QB 213, 258:

“It is common ground that, whether or not consultation of interested parties and the public is a

legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken: *R v Brent London Borough Council Ex p Gunning* (1985) 84 LGR 168.”

Page

It seems to me that imported into our law through the common law processes and our policy court is a legitimate expectation these days that matters of import which will fundamentally change the way we do business requires some consultation and there must be real consultation although it does not mean that you have to do what the public says.

Further, I draw the attention of the House the following from Article 27 of the Constitution:

“ No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired except where certain conditions apply and then once those conditions are fulfilled there must be prompt and adequate compensation.

So to go back to the owners of this private land who cannot effectively develop the land for the purposes which they want, does this fit the constitutional test of being compulsorily acquired since it may be inconsistent with rights of ownership; secondly has the government considered that this is reasonably justifiable in a democratic society; has the issue of compensation been looked at , consider and addressed.

It seems to me that depending on the answers to these questions would determine whether or not this bill is fit to be passed without fuller consideration in the Committee of the whole, where we believe it should remain until such time as these issues are adequately addressed.



I started out by saying that we passed a law in 1997 to protect the trees and I would venture to guess that this has not saved a single tree. Within the Freeport area, the pine trees have been coming down in rapid pace. In New Providence, the hard wood trees, the pine trees have been coming down, one after the next, without any let up.

I grew up in Collins Avenue. My father loved trees and few people will remember that Collins Ave in its natural state looked just like the lands around the airport at Crooked Island, silver top palms as far as the eye can see. When my father developed his land, he saved those trees and until his death they remained there an example of topographical and plant history of that area of New Providence. Sadly, when we lost that property to the well publicized troubles of my family, the new owners had no such concern and all the trees have been taken down and so they no longer exist in that area.

I am asking the government to consider putting the silver top on the protected list, but the wider point I make here is that no matter what law you pass, unless hearts and minds are convinced that the trees are needed and should be protected, it will not happen.

There is a constant tension today between the protection of trees and security. And many Bahamians in Nassau will say to heck with the trees, its just bush and the bush is harbouring criminals. So let's cut them all down but we know that cutting the trees down is in the long run harmful to us so there is a way that it can be done by cutting the underbrush but saving the natural forestation. Let us hope that this bill raises some consciousness on this point.

Further, the public has such a jaundiced eye about the ability of the public service to perform environmental functions and to enforce environmental laws. The laws on noise, on smoke and burning fires, the laws on outing commercial operations right next to residential areas are all widely violated and little enforced. People despair about their ability to get the Departments of Government who are responsible for regulations and making sure that neighbourhoods are protected to act. And it appears that when they do act, their instructions are simply ignored by

the offenders without any consequences whatsoever.

That does not mean that we should not try to make changes but the government must be aware of the task it faces in a country where the public education is not at a level where trees and the environment are sufficiently apart of the national consciousness.

I wish to lay on the table a copy of a report by Odethia Evita Gardiner on the crabs in Andros for her master's thesis. I am concerned about Andros and we keep talking about its development. But the culture of our country including its food is important to us. Andros is where the crabs come from to feed us and are a part of our way of life. This report by Ms. Gardiner tells us that it is important to protect the sensitive eco-system in Andros if we are to save the crabs and I commend the report to this House.

My constituents in Fox Hill for generations had a tree cover which gave character to their neighbourhood. Development has now removed much of the tree cover in the area, changing forever the traditional character of the area. There are still some bit bits left and one hopes that the good that is in this bill might be used to protect the areas that are left.

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