

Tuesday » July
14 » 2009

Liberals retreat after hearing howls from business reps

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Vancouver Sun

Thursday, May 15, 2008

VICTORIA - The B.C. Liberals are scrapping a controversial measure that would have limited the government obligation to pay compensation when cancelling mining claims, timber cutting rights and other tenures on public land.

The legislative change, introduced without notice or consultation in an omnibus bill two weeks ago, had drawn strong objections from business and the resource industries.

"We're going to pull it," Lands Minister Pat Bell confirmed Wednesday.

He was lead minister for the provision, introduced as part of the grab-bag Miscellaneous Statutes Amendment Act No. 2. on April 30, the last day for tabling of legislation in the current session.

The title on the provision said it all: "No compensation for property taken unless enactment expressly provides for compensation."

At the time, Bell played down the significance of the measure. The government was simply responding to a court ruling that had obliged it to pay compensation in case where there was no expressed provision providing for it.

The court ruling "exposed a hole in the compensation regime," as he put it. The government issues a vast array of tenures on Crown land and now looked to be on the hook for myriad claims for compensation every time it set aside land for parks or other restrictive purposes.

No big deal, Bell insisted. The company in this case was the holder of two small mining claims, cancelled (by the previous New Democratic Party government, ironically) to create a provincial park.

But the bigger players in the resource industries had explicit protection for their tenures and would not be affected.

Alas for Bell, his interpretation was not shared by business and the resource industries.

Business Council of B.C.: "The section would enable a future government to 'take' private property rights embedded in tenures and other interest in land without having to offer compensation."

B.C. Chamber of Commerce: "While most larger companies may well have the secondary protection of a compensation agreement in place, smaller companies (which make up the bulk of B.C.'s businesses) for the most part do not . . . Putting these businesses in this position is unjust, and it is unacceptable."

The Association for Mineral Exploration B.C.: "The proposed amendment would severely

erode confidence of B.C.'s mineral exploration and mining sector and deter investment and financing of mineral exploration and mining activities."

The Coast Forest Products Association: "This would shake the foundation of property rights in B.C. and create instability and unpredictability for the business community and for individual British Columbians."

The Council of Forest Industries: "Member companies view the section as currently drafted to be a reversal of the longstanding and fundamental common law protection that applies when government takes property."

Those views and others arrived this week, in letters to Premier Gordon Campbell and other members of the government. Bell admitted his in-box overflowed with objections.

In the face of all that opposition, the Liberals looked for a way to rescue the provision.

Maybe they could pass it into law, but make commencement subject to cabinet approval at a later date. The government could then use the interval to lobby business to support the change.

But any option that involved passing the measure through the legislature proved to be a non-starter.

Typical was the view of the business council: "The council recommends the government delete [it] and pursue meaningful consultations with the resource and other industries that currently hold Crown tenures before proceeding to alter longstanding rules in respect of takings and compensation."

So the cabinet decided the provision will be deleted from the omnibus bill.

Bell maintains the government never intended to throw such a scare into the business community. But given the perceptions, he says it was critical to pull back and avoid any potential fallout for the investment climate.

Therefore he will embark on exactly what the business groups suggested, namely consultations about his intentions and their concerns.

As a first topic, he can doubtless expect to be challenged on another of the points raised in this week's letters.

"In general, good public policy-making requires that government not seek to implement far-reaching policy changes without first consulting with the stakeholders who are likely to be affected by such changes," wrote Jock Finlayson, executive vice-president of the business council. "Unfortunately this kind of consultation did not occur in the case of [this] bill."

Why not? business leaders must be asking themselves.

They managed to stop this travesty. But it cannot be much comfort that such a measure could emerge from a business-friendly government without so much as a courtesy phone call.

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