

**BILL C-37: AN ACTION PLAN FOR  
THE NATIONAL CAPITAL COMMISSION**

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## LEGISLATIVE HISTORY OF BILL C-37

### HOUSE OF COMMONS

| Bill Stage | Date |
|------------|------|
|------------|------|

First Reading: 9 June 2009

Second Reading: 5 October 2009

Committee Report:

Report Stage:

Third Reading:

### SENATE

| Bill Stage | Date |
|------------|------|
|------------|------|

First Reading:

Second Reading:

Committee Report:

Report Stage:

Third Reading:

Royal Assent:

Statutes of Canada

**This bill did not become law before the 2<sup>nd</sup> Session of the 40<sup>th</sup> Parliament ended on 30 December 2009.**

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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BILL C-37: AN ACTION PLAN FOR THE NATIONAL CAPITAL COMMISSION<sup>\*</sup>

BACKGROUND

On 9 June 2009, Bill C-37, An Act to amend the National Capital Act and other Acts, was introduced in the House of Commons by the Honourable Lawrence Cannon, Minister of Foreign Affairs and Minister of State (National Capital Commission), for the Honourable John Baird, Minister of Transport Infrastructure and Communities. The short title of the bill is “An Action Plan for the National Capital Commission.”

According to the government’s backgrounder accompanying the news release on the bill, the government is proposing changes to the *National Capital Act* that respond to recent public and stakeholder input and ensure that the National Capital Commission (hereinafter referred to as “the NCC” or “the Commission”) can efficiently and effectively fulfil its mandate.

In April 2006, the minister responsible for the NCC launched a review to assess the continuing relevance of the NCC, its activities and level of funding. An independent review panel invited a broad range of stakeholders and interested parties to express their views. In addition to a number of individuals, participants included federal departments and agencies, other levels of government, foreign institutions, parliamentarians, and local and not-for-profit organizations. The panel released its report in December 2006, making a number of recommendations concerning the NCC’s governance, activities and funding.

In its backgrounder, the government points out that, since that time, it has taken several steps consistent with the review panel’s recommendations. An annual \$15-million increase in funding for the NCC was announced in Budget 2007. In keeping with the *Federal Accountability Act*, which received Royal Assent on 12 December 2006, separate chairperson and chief executive officer positions were created at the NCC. As well, in September 2008, the Governor in Council approved the acquisition by the NCC of private properties in Gatineau Park.

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\* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

## A. Highlights

The highlights of the bill are these:

- The NCC Board must hold at least four meetings a year in the National Capital Region that are open to the public, although portions of those meetings may be held in camera if necessary.
- The NCC is required to submit, at least once every 10 years, a 50-year master plan for the National Capital Region, including principles and objectives, for approval by the Governor in Council and tabling in Parliament.
- The NCC may designate (or revoke designations of) properties that are part of the “National Interest Land Mass” (a term that will be defined in the *National Capital Act*) only if the Commission, with the Governor in Council’s approval, has made regulations setting out the criteria and the process respecting the designation.
- The NCC must manage its real property (or in Quebec, immovables under that province’s civil law regime) in accordance with the principles of responsible environmental stewardship.
- The NCC must give due regard to the maintenance of the ecological integrity of the Commission’s immovables located in Gatineau Park.
- The boundaries of Gatineau Park are described in proposed Schedule 2 to the *National Capital Act*.
- The NCC may, with the Governor in Council’s approval, make regulations prescribing user fees regarding its properties.
- New and enhanced regulatory authorities and enforcement provisions are introduced to enable the NCC to better protect its properties.
- The NCC is no longer required to seek Governor in Council approval for certain real estate transactions.
- The NCC is required to furnish and maintain the lands described in proposed schedules 3 (Rideau Hall) and 4 (Canada’s Guest House) to the *National Capital Act*; as well, by way of an amendment to the *Official Residences Act*, the NCC (rather than the minister of Public Works and Government Services Canada, as was previously the case) would now be required to furnish and maintain buildings on the lands described in schedules I to III of that Act or allocated under section 5 of that Act.

## DESCRIPTION AND ANALYSIS

### A. Interpretation (Clause 2)

Clause 2(1) replaces the definitions of “National Capital Region,” “property,” and “public lands” that are currently contained in section 2 of the *National Capital Act*. The definition of the “National Capital Region” has been changed to reflect the fact that the schedule referred to in the definition is now Schedule 1. In the definitions of “property” and “public lands,” text has been added to explain that in Quebec’s civil law regime the equivalent of personal property in Ontario is a “movable” and the equivalent of real property is an “immovable.”

As well, clause 2(2) adds two new definitions to section 2: “Gatineau Park” and the “National Interest Land Mass.” “Gatineau Park” is defined as the area whose boundaries are described in Schedule 2, which is being added to the Act. The “National Interest Land Mass” is defined to mean the collection of real property and immovables, or portions of them, designated by the NCC under proposed section 10.2.

### B. Commission Continued (Clauses 3–5)

Section 3(1) currently provides for the NCC to consist of 15 members, including a chairperson and a chief executive officer. Clause 3 changes that to 14 members, including a chairperson, deleting the reference to a chief executive officer. Because of the removal of the reference to a chief executive officer in section 3(1), sections 3(2), (3) and (4) are accordingly changed to reflect that removal. Section 3.1 is added to allow the Governor in Council to designate one of the members of the NCC, other than the chairperson, to be the Commission’s vice-chairperson, a position not previously provided for in the Act.

Current section 5(2) requires the NCC to meet at least three times a year in the National Capital Region. Clause 4 replaces that provision with a new section 5(2) requiring the NCC to hold at least four meetings a year in the National Capital Region and further stipulating that those meetings be open to the public. However, the provision also states that the Commission may hold portions of those meetings in camera if it considers it necessary to do so.

Section 6 presently provides that in the event of the incapacity of the chairperson or chief executive officer or of a vacancy in either office, the Commission shall authorize another member to act in that capacity, but no person may act as such for a period exceeding 60 days

without the approval of the Governor in Council. Clause 5 changes section 6 to provide that if the chairperson is absent or incapacitated or if there is a vacancy in that office, the Commission's vice-chairperson (as provided for in the amendments to the Act) shall act as chairperson. In the event that the vice-chairperson is absent or incapacitated or if there is a vacancy in that office, the Commission must authorize another member to act as chairperson, but the authorization is not valid for more than 60 days without the approval of the Governor in Council.

#### C. Officers and Employees (Clause 7)

As previously noted, clause 3 amends section 3 of the Act so that the NCC no longer includes a chief executive officer among its members. Section 8(1) currently allows the Governor in Council to appoint a general manager to hold office during pleasure and for a salary to be fixed by the Governor in Council. Clause 7 replaces that section with new sections 8(1) and (1.1). Proposed section 8(1) deletes the reference to a general manager and, in place of that, requires the Governor in Council to appoint a chief executive officer to hold office during pleasure for a term that the Governor in Council considers appropriate. According to proposed section 8(1.1), the Chief Executive Officer is to be paid a salary fixed by the Governor in Council.

#### D. Committees (Clause 8)

Section 9 currently requires the NCC to establish an executive committee comprising certain members. As well, the section permits the Commission to establish a National Capital Planning Committee and any other committees it considers necessary or desirable for the administration of the Act. Clause 7 replaces the section with a new section 9, removing the reference to the mandatory establishment of an executive committee and instead allowing the NCC to establish, from among its members, any committee that it considers necessary or desirable for the administration of the Act. Each committee so established must exercise any of the powers and perform any of the functions of the NCC that are delegated to it by the Commission and must submit at each of the Commission's meetings the minutes of that committee's proceedings since the previous meeting of the Commission.

#### E. Objects, Purposes and Powers (Clause 9)

Among the objects and purposes of the NCC are those set out in section 10(1)(a) to “prepare plans for and assist in the development, conservation and improvement of the National Capital Region in order that the nature and character of the seat of the Government of Canada may be in accordance with its national significance.” Clause 9 adds the words “including in relation to transportation in that region” after “National Capital Region.”

In addition, clause 9 adds proposed section 10(1.1) to the Act to require the NCC to furnish, maintain, heat and keep in repair the buildings on the lands described in schedules 3 (Rideau Hall) and 4 (Canada’s Guest House at 7 Rideau Gate) and to “maintain and, from time to time as required, improve those lands.”

Clause 9 also replaces the current section 10(2)(b) concerning one of the specified powers of the NCC, namely the power to “sell, grant, convey, lease or otherwise dispose of or make available to any person any property, subject to such conditions and limitations as it considers necessary or desirable.” The amended version reads, “sell, grant *or concede, transfer* or otherwise dispose of, or lease or make available to any person any property, *including by the grant of an easement or real servitude*, subject to *any* conditions and limitations *that* it considers necessary or desirable” (additions italicized).

#### F. Master Plan (Clause 10)

Clause 10 adds new sections 10.1(1) and (2) to the Act. According to proposed section 10.1(1), at least once every 10 years after the provision comes into force, the NCC must submit to the Governor in Council for approval a master plan for the National Capital Region for the next 50 years, including principles and objectives. Proposed section 10.1(2) requires the minister to cause a copy of the approved master plan to be laid before each House of Parliament within 30 sitting days after its approval.

#### G. National Interest Land Mass (Clause 10)

Clause 10 also adds proposed sections 10.2 and 10.3 regarding the “National Interest Land Mass” (definition added in section 2) to the Act. Proposed section 10.2 authorizes the NCC to designate all or a portion of any real property or immovable as part of the National Interest Land Mass or to revoke such a designation (as the case may be) but only if, with the

Governor in Councils' approval, the Commission has made regulations setting out the criteria and the process involved. Proposed section 10.3(a) authorizes the NCC, with the Governor in Council's approval, to make such a regulation, and proposed section 10.3(b) similarly authorizes the NCC, with the Governor in Council's approval, to prescribe in relation to public lands (or classes of those lands) that are designated as part of the National Interest Land Mass the process by which those lands may be acquired by the NCC or by which the administration of them may be transferred to the NCC, and any terms and conditions of such an acquisition or transfer. This is in addition to any requirements under the *Federal Real Property and Federal Immovables Act*.

#### H. Environmental Stewardship (Clause 10)

Clause 10 also results in new section 10.4 being added to the Act. Proposed section 10.4(1) requires the NCC to manage its real property (or immovables in Quebec) in accordance with the principles of "responsible environmental stewardship," a term not defined in the Act. Proposed section 10.4(2) further requires the NCC to give due regard to the "maintenance of the ecological integrity, through the protection of natural resources and processes" of any immovable of the Commission located in Gatineau Park.

#### I. Development (Clause 11)

Section 12(1)(a) currently requires that where any department (as defined in section 2 of the Act) "proposes to erect, alter, extend or demolish a building or other work on any lands in the National Capital Region," the department must, prior to the commencement of the project, submit a proposal to the Commission for approval. Clause 11 amends section 12(1)(a) to limit the application of the above provision to a building or other work, including as part of any project:

- that is to be carried out within the National Interest Land Mass;
- that involves any building designated as a heritage building; or
- that relates to a transaction to which the federal Crown or the department is a party if the transaction provides for or contemplates the right of the federal Crown or the department to occupy (including under a lease) for a term of more than 25 years an "iconic" structure or building or one that is not intended for general office space, and if, under that transaction, that structure or building becomes (or may become) public lands, other than under a lease.

J. Expropriation (Clause 13)

Clause 13 rewrites section 14 regarding expropriation to harmonize the provision with the civil law regime of Quebec; the proposed wording therefore refers not only to the expropriation of any “land or interest therein” (as it currently does) but also to an “immovable or right in it or the rights of a lessee.”

K. Property (Clauses 13–14)

Clause 13 repeals current section 15 of the *National Capital Act* in its entirety. This results in the repeal of section 15(1), which presently requires Governor in Council approval in order for the NCC to acquire real property (or immovables) for consideration exceeding \$25,000, to enter into a lease for a period exceeding five years, or to grant an easement for a period exceeding 49 years. As well, current section 15(2), which prohibits the NCC from disposing of real property (or immovables) for consideration in excess of \$10,000, except in accordance with section 99(2) of the *Financial Administration Act*, is being repealed. Current section 15(3) is also being repealed, but it reappears elsewhere as proposed section 19.2 of the Act. It stipulates that, notwithstanding section 41(2) of the *Financial Administration Act* (which states that section 41(1) of that Act does not apply to Crown corporations or the Canada Revenue Agency), the Governor in Council may make regulations pursuant to section 41(1) of that Act respecting conditions under which contracts may be awarded and that apply in respect of the NCC.

Clause 14 amends section 16 regarding payments in lieu of taxes, adding a reference to immovables in order to be compatible with Quebec’s civil law regime.

L. Enforcement (Clause 15)

Clause 15 adds new section 18.1 to the Act. Proposed section 18.1(1) authorizes the minister to designate persons (or classes of persons) to enforce the Act. The designation must specify the provisions that a designated person (or class of persons) has the power to enforce and the territory within which that power may be exercised. Proposed section 18.1(2) requires every designated person to be provided with a certificate of designation (in a form approved by the minister) that must be produced on request when exercising his or her powers under the Act.

## M. By-laws, Regulations and Orders (Clauses 16–19)

Clause 17 adds new sections 19.1 and 19.2 to the Act. Proposed section 19.1 authorizes the NCC, with the Governor-in Council's approval, to make regulations prescribing fees and other charges payable to it for access to its property, for the carrying out of activities, and for the use of resources and facilities located on any of its properties. Those fees and charges may vary by class of person.

As previously noted in the discussion of clause 13 of the bill, repealed section 15(3) reappears as proposed section 19.2 of the *National Capital Act*. This section deals with the power of the Governor in Council to make regulations pursuant to section 41(1) of the *Financial Administration Act* (concerning how contracts are to be awarded) that apply in respect of the NCC.

Clause 18 replaces the current section 20 to greatly expand the Governor in Council's regulation-making powers. Proposed section 20(1) enables the Governor in Council to make regulations:

- respecting the protection of any property of the NCC, as well as of natural resources and processes on that property and of the ecological integrity of any property of the NCC located in Gatineau Park (proposed section 20(1)(a));
- respecting the preservation of order or the prevention of accidents on any NCC property (proposed section 20(1)(b));
- restricting or prohibiting access to and activities on NCC property and controlling the use of resources and facilities located on any NCC property, including requiring the payment of fees and other charges prescribed under section 19.1 and requiring permits, licences of other authorizations (proposed section 20(1)(c));
- authorizing the NCC, in the circumstances and subject to the limits specified in the regulations, to issue, amend, suspend and revoke permits, licences and other authorizations, in relation to access to NCC property, the carrying out of activities and the use of resources and facilities located on any NCC property, and to make any permit, licence or other authorization subject to terms and conditions (proposed section 20(1)(d)); and
- exempting any class of persons from the application of any provisions of any of the above regulation-making powers (proposed section 20(1)(e)).

Proposed section 20(2) provides that any person who contravenes any regulation made under sections 20(1)(a) to (c) is guilty of a summary conviction offence. As is the case under the current section 20(2), proposed section 20(3) empowers the Governor in Council to, by regulation, prescribe a fine not exceeding the amount referred to in section 787(1) of the

*Criminal Code*: under that section, a person convicted of a summary conviction offence, unless otherwise provided, is liable to a fine of not more than \$5,000 or to a term of imprisonment not exceeding six months, or both. A new provision not previously in the Act, proposed section 20(4), prevents a term of imprisonment from being imposed under section 787(1) of the *Criminal Code* as punishment for an offence.

Clause 19 adds a new section 22.1 to the Act, providing that the Governor in Council may, by order, amend schedules 1 (description of the National Capital Region) and 2 (description of Gatineau Park boundaries).

N. Schedules to the Act (Clauses 21–23)

Clause 22 numbers the current schedule to the Act (description of the National Capital Region) as Schedule 1. Clause 21 changes the reference to the relevant section(s) that appears in brackets after the title of that schedule from “Section 2” to “Sections 2 and 22.1.”

Clause 23 adds schedules 2 (description of Gatineau Park boundaries), 3 (description of Rideau Hall) and 4 (description of Canada’s Guest House at 7 Rideau Gate) to the Act.

O. *Official Residences Act* (Clause 24)

Section 6 of the *Official Residences Act* currently requires the minister of Public Works and Government Services to furnish, maintain, heat and keep in repair the buildings on the lands described in the schedules to the Act or allocated pursuant to section 5 of the Act, and the NCC must maintain and, from time to time as required, improve those lands. Clause 24 amends that provision to require the NCC (instead of the minister) to furnish, maintain, heat and keep in repair the buildings on the lands described in schedules I (Prime Minister’s residence), II (residence of the Leader of the Opposition) and III (residence of the Speaker of the House of Commons), comprising the current schedules, or allocated under section 5, and from time to time as required, to improve those lands. Section 5 of the *Official Residences Act* permits the Governor in Council to allocate, by order, any lands in the National Capital Region (as described in the schedule [now Schedule 1] to the *National Capital Act*) and the buildings on that land as a summer residence for the Leader of the Opposition.

## P. Consequential Amendments (Clause 25)

References to the schedule of the *National Capital Act* (description of the National Capital Region) found in other federal Acts, regulations and the like are to be read as references to Schedule 1 of the *National Capital Act*, in light of the fact that the schedule now becomes Schedule 1.

## COMMENTARY

Commentary on Bill C-37 has mainly centred on issues related to Gatineau Park. A newspaper article which appeared in the *Ottawa Citizen* on 9 June 2009, the same day Bill C-37 was introduced in the House of Commons, noted that in May 2009, the Senate had adjourned debate on Senator Mira Spivak's senator's public bill on Gatineau Park (Bill S-204) after Conservative Senator Pierre Claude Nolin told senators that a government bill to protect the park would be introduced in the House of Commons soon.<sup>(1)</sup> According to the article, both Senator Spivak's bill and a similar private member's bill introduced in the House of Commons by MP Paul Dewar (Bill C-367), would have given Gatineau Park national park status but would have allowed the NCC to continue administering the park.

A subsequent article that appeared in the *Ottawa Citizen* on 10 June 2009 quoted Catherine Loubier, a spokesperson for the Honourable Lawrence Cannon, as saying that the government had decided not to create a national park because the park includes 300 private properties, and negotiations to change its status would have taken too long.<sup>(2)</sup> She said that making Gatineau Park a national park would not have provided any more protection than that provided for through the proposed amendments to the *National Capital Act* contained in Bill C-37.

In the same article, Gatineau Park activist Jean-Paul Murray was quoted saying he thinks that the bill is a step in the right direction, but he does not believe it provides the same protection as national park status. He noted that while the bill describes the park's boundaries, the boundaries can be changed by order. He stated that the NCC has the power to control development by requiring the owners of private land to offer the land to the Commission before selling to another buyer. As well, he stated that the government could expropriate land from private owners and, like a municipality, enact by-laws to limit development in the park.

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(1) Dave Rogers, "Minister expected to reveal Gatineau Park plan," *Ottawa Citizen*, 9 June 2009.

(2) Dave Rogers, "Bill protects Gatineau Park, but not as a national park," *Ottawa Citizen*, 10 June 2009.

MP Paul Dewar, the New Democratic Party critic for the NCC, was quoted in the above article as saying that the bill is a step forward, but he added that it does not provide parliamentary protection against future encroachments and unsustainable development.

In a news release issued on 10 June 2009, the Ottawa Valley Chapter of the Canadian Parks and Wilderness Society (CPAWS-OV) applauded the introduction of Bill C-37 in the House of Commons.<sup>(3)</sup> In particular, CPAWS-OV was pleased that the bill would require the manager of Gatineau Park, the NCC, to make the protection of the park's ecological integrity a priority when administering the park. It noted that the bill also makes it easier for the NCC to acquire private property within the park. The organization said it was also pleased that the bill would recognize the park's boundaries in law, noting that, unlike for national parks in Canada, the boundaries of Gatineau Park have not been set out in legislation, which has allowed the NCC to sell park land for residential and commercial development. Finally, it stated that the granting of new regulatory powers to the NCC to better protect NCC properties and the provision for at least four public board meetings are long overdue.

However, CPAWS-OV expressed its disappointment that the bill does not provide formal park status to Gatineau Park and while noting that the bill provides the NCC with the powers, including a streamlined approach, to acquire private land within the park, it noted that the bill also provides the NCC with similar powers to dispose of surplus land (including immovables in Gatineau Park) as it sees fit. More importantly, it said, local municipalities continue to retain control over zoning and development of private property within the park and no real plan for acquiring private holdings has been advanced.

CPAWS-OV also stated that the bill is lacking in that it does not require greater ecosystem management for Gatineau Park, a provision that is needed, given that activities taking place outside the park can negatively impact the ecological health of the park. Furthermore, according to CPAWS-OV, the bill does not freeze or even limit further residential or commercial development (private or public) in the park, and it does not attempt to establish a buffer zone around the periphery of the park, something the organization says is sorely lacking for a park that is so close to an urban area.

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(3) Canadian Parks and Wilderness Society (Ottawa Valley Chapter), "Bill C-37 – Protection Measures for Gatineau Park: A step in the right direction," News release, 10 June 2009.

CPAWS-OV maintains that the only way to protect Gatineau Park from the above and other threats is to provide it with the same level of protection as other federal parks – national park status.

Another group, the Gatineau Park Protection Committee (GPPC), a standing committee of the New Woodlands Preservation League, issued a news release on 9 June 2009 in which it was highly critical of Bill C-37 for not giving Gatineau Park the same level of protection granted to national parks.<sup>(4)</sup> The organization has long argued that any Gatineau Park legislation must set park boundaries in law and that any changes to them must be approved by an Act of Parliament – as is the case for all national parks. The GPPC has also said that legislation must prevent all residential development inside the park, as well as recognize Quebec’s territorial integrity.

It is the view of the GPPC that in light of the problems facing Gatineau Park – fragmentation and urbanization – any legislation to protect the park must satisfy the following criteria:

- It must provide legislated boundaries for Gatineau Park. Changes to reduce the size of the park must be approved by an Act of Parliament, while changes to expand the park must be made only with approval from the Quebec government to ensure respect for the province’s territorial integrity.
- It must prevent removal of any land from Gatineau Park by Order in Council or other administrative means. Properties must only be removed from the park through an Act of Parliament – in the spirit of protection given national parks since passage of the 1930 *National Parks Act*.
- It must ensure the prohibition or severe limitation of any residential construction through such means as giving the NCC “a right of first refusal over any property sales/subdivisions, direct purchase and even expropriation if need be.”

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(4) Gatineau Park Protection Committee, “Cannon’s Gatineau Park Bill a Failure,” News release, 9 June 2009.