Bad bills make worse acts

Bad acts were abundant this year, but the start of November was especially brutal with the introduction of Bills 34 and 35. Overhauling Alberta's Freedom of Information and Protection of Privacy (FOIP) Act, Bill 34 would make requests for information under this law — already an intensive, lengthy, and miserable process with anyone familiar — somehow even worse.

By the time this is published, AWA along with many other groups, will have waited more than three years for the release of documents related to irrigation development. With the changes introduced to FOIP by the Alberta government, the wait could be even longer, or worse, we may not get the requested information we need at all.

The purpose of FOIP is to ensure the public has access to the information produced or held by a public body. Paid with public money, it only makes sense that the government's work should be transparent and easily accessible. In practice, one quickly finds that many promised reports, results of public consultations, and general government ongoings are nowhere to be found.

This is where FOIP comes in — anybody can request to access government-held information. Whether the government abides by that request is a whole other story. Typically, you must be very specific and already know essentially what you're looking for, i.e. who the emails are between, when they were sent, what was the topic of conversation, etc., because the government does not want to send you any more than they have to. The process is iterative, drawn-out, and infuriating, and often when you finally receive the FOIP-ed documents, you're welcomed by lines and lines of blacked-out information.

Now imagine an even more unpleasant process. Notable changes introduced in November (in bold) include:

7(2)(c) A request must provide enough detail to enable the public body to locate and identify the record within a reasonable timeframe with reasonable effort

29(1)(a) The head of a public body may refuse to disclose information to an applicant if the disclosure could be reasonably expected to reveal advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive council, including background factual information and information provided for information purposes only

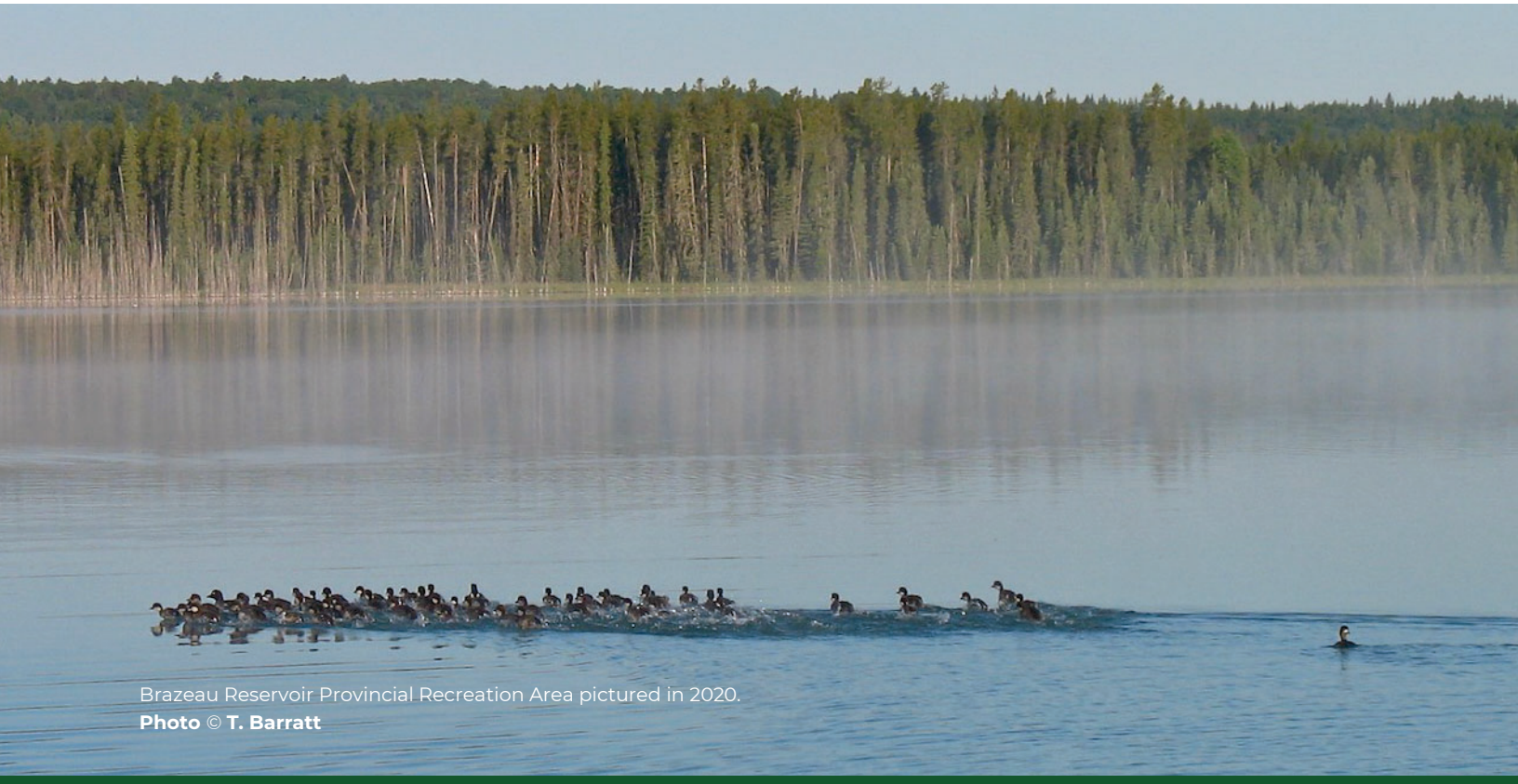
Without a strict, clear, and enforceable definition, the inclusion of 'reasonable' in section 7(2)(c) could allow public entities to dismiss any FOIP request they want. Anything can become unreasonable if you don't want a decision to become public. Section 29 (1)(a) was already problematic. The people should know what advice is being provided to the heads of our public bodies because this is presumably how they are making their decisions. Why would information, particularly factual information "for information purposes only" ever need to be hidden? Expanding what can be refused to be disclosed only increases the secrecy in which government operates, which is never a good sign.

Other anxiety-inducing potential policy changes emerge in the form of Bill 35, the All-Seasons Resort Act.

Lately, the Alberta government has been keen to expand recreation and tourism opportunities on crown lands, which cover around 60 percent of the province. Back in 2020 when Alberta's Crown Lands Vision was announced, the government promised they would develop "a common-sense conservation plan" that would reduce "red tape" and "balance the economic development, conservation, and recreation." Do all the buzzwords set your teeth on edge too?

In our feedback, AWA has been clear that there's no balancing conservation with other needs when it comes to the environment. If the proposed recreation, tourism, and economy all rely on a healthy functioning environment to exist, then the needs of the environment must be prioritized in these plans. No one wants to hike or camp in a damaged landscape; no tourist wants to visit a degraded ecological destination. If red tape refers just to regulations meant to prevent developers from destroying ecosystems, Alberta could use a few more rolls. And finally, what exactly is common-sense conservation? Is common sense a synonym for rigorously researched and evidence-based? Or is it more feelings-based management?

Meanwhile, the All-Seasons Resort Act or Bill 35, is one facet of this vision (Alberta's next Plan for Parks and Nature Strategy are others), and the current information we have about it raises concerns. The bill intends to create yet another new ministry, with the sole responsibility of designating land, approving leases, and consolidating required permit approvals for the development of all-season resorts. Media around the bill revealed the leases could be issued to private entities for terms of up to 99 years, which is lengthy compared to other leases on public lands (mineral surface leases are 15, grazing leases are max 20).



Brazeau Reservoir Provincial Recreation Area pictured in 2020.
Photo © T. Barratt

When the announcement was made and before the text of the bill was available, AWA vocalized precautions on the basis of five main points:

1. Public lands are just that, public. We should be wary of anything that could privatize the benefits and access of nature away from the public.

2. Many public lands include critical species at risk habitat, wildlife corridors, and other environmentally significant areas unsuitable for tourism development.

3. Expanding protected areas must occur in tandem, particularly in underrepresented natural areas within Alberta's parks system like the Parklands, Grasslands, and Foothills.

4. All-season resort developments must be compatible and sustainable with the ecosystem they are situated in, with defined thresholds in place to determine and halt when use is exceeding capacity.

5. All-season resort development must not be top-down, as there are ample examples where tourism economies drive up costs and push out local livelihoods — the government should look to empower communities actively looking to develop their tourism sector.

Now that the text of the bill is public, our precautionary advice seems too optimistic. Section 4(a) includes a clause stating that,

"For greater certainty, an area of public land … may be designated as an all-season resort area after the Lieutenant Governor in Council rescinds the designation of the land as a provincial park or provincial recreation area under the Provincial Parks Act, or as an ecological reserve, natural area or heritage rangeland under the Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act."

The Act could allow the Lieutenant Governor in Council, on recommendation by the ministry, to rescind protected area designations so the lands can be used to develop all-season's resorts.

Land conservation is known to be one of the key tools to address the twin climate and biodiversity crises, creating areas protected from development where species take refuge and ecological services and functionality are retained. Canada has committed to the global strategy to have 30 percent of land protected by 2030. Scientists estimate we need more ambitious protections, closer to 40 to 50 percent. In Alberta, only 15 percent is protected, and just seven percent is protected through provincial measures. Considering all that, it should be inconceivable for a provincial government to install legislative mechanisms that could essentially unprotect lands. Yet, here is it, conceived.

Public access, whether to land or information, should not be limited; sometimes governments need that reminder they work for the public.

Note: Special thanks to University of Calgary ABlawg associates Drew Yewchuk and Nigel Bankes for always keeping the pulse of environmental policy changes!

-Kennedy Halvorson