

Halfway River First Nation

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Submissions to Professional Reliance Review

This is the submission of Halfway River First Nation ("Halfway") for the provincial government's review of the professional reliance model in the natural resource sector.

1. "Please tell us what you think is working well with the current professional reliance model in B.C., and what is not."

Under the current professional reliance model, the Province is failing to fulfill its obligations to consult and accommodate the Halfway River First Nation ("Halfway") when natural resource activities impact our Aboriginal and Treaty rights. This is largely because the Province has a) delegated much of its discretion to qualified professionals who are not neutral in their decision-making; b) forfeited its authority and capacity to intervene in situations where professional reliance has failed to protect environmental or Aboriginal values; and c) failed to adequately consider the values of protecting Aboriginal and Treaty rights in setting government objectives for forestry and range.

a) Lack of neutral decision-making

We respect the training that qualified professionals receive and the ethical standards of their professional associations and regulating bodies. However, when qualified professionals are hired by proponents, we question whether they can fairly balance the economic interests of their employers with the Aboriginal values at issue. Decisions regarding natural resource operations that involve trade-offs between the interests of proponents and the rights of Aboriginal groups should not be made by a person who is financially beholden to the proponent. When there is financial pressure on a professional to certify forestry or range practices, it is reasonable to assume that the professional will struggle to make a neutral decision—and neutral decision-making is what these difficult decisions require and deserve.

It is also doubtful that qualified professionals are in fact qualified to assess the impacts of natural resource operations on Aboriginal interests. While a professional may be qualified to measure technical values in their field of expertise, if that professional does not have expertise in assessing Aboriginal values, how can he or she be expected to adequately assess and balance these values? With expertise in only one area, we are concerned that professionals may place undue weight on the values and evidence they are familiar with, relegating Aboriginal values to a footnote in the assessment.

The Province has delegated too much of its discretion to qualified professionals, who do not share the government's constitutional duty of honourable conduct when dealing with First Nations and who typically have not had adequate training in determining and

measuring Aboriginal values. The need for neutrality in natural resource decision-making involving Aboriginal interests cannot be fulfilled by non-independent professionals. This role should belong to the Province.

b) Inability of the Province to intervene to protect Aboriginal interests

The Province has removed its own ability to intervene to protect Halfway's interests when natural resource operations put them at risk.

As an example, please consider our experience with the range tenure regime under the *Range Act* and *Forest and Range Practices Act*. In recent years we have had ongoing issues with a number of range tenure holders who have allowed their cattle to access environmentally sensitive areas within our territory; areas of critical importance to Halfway as they contain traditional hunting and harvesting grounds. The cattle have caused wildlife to vacate the area, impacting our ability to exercise our Treaty rights.

While the protection of these environmental features have been identified within the range tenure licensees' plans as issues requiring protection, the actions the tenure holders have committed to pursuing in order to meet these objectives have proven inadequate. Each range season, our Treaty rights continue to be infringed.

We have raised this issue repeatedly with FLNRO representatives, and while these representatives have attempted to come to a solution with the range tenure holders, their efforts have failed to protect the environmental features. When we asked the representatives to take the further step of amending the relevant range plans or licences, they responded by saying that they cannot do anything about this infringement until these plans are up for renewal, many years from now. In the meantime, their hands are tied.

It appears that FLNRO's district office either does not have the legislative authority or the capacity to meaningfully intervene to protect our rights from infringement. This is unacceptable to Halfway. The district managers and ministry authorities must have the power to accommodate our rights in the face of infringement—this is, after all, a constitutional duty. The legislation should not restrict Provincial staff from fulfilling constitutional duties.

c) Lack of Aboriginal values as legally enforceable objectives

In the Forest Practices Board's submission to this review, the need for clear, measurable and enforceable objectives in a professional reliance regime is emphasized:

In order to fulfill the potential of professional reliance in forestry and range practices while maintaining public confidence, the government needs to set legal objectives applicable to all relevant activities; objectives that are periodically reviewed and updated. Setting such objectives needs to be a collaborative effort between government, First Nations and all parties potentially affected, in order to

ensure balance among environmental, social and economic aspects of natural resource management.¹

We agree that First Nations should be involved in the setting of objectives for natural resource development. First Nations are uniquely attuned to the environmental and cultural values within their traditional territories. First Nations should be consulted in both the setting of objectives and also in the measurement of whether plans for natural resource activities meet these objectives. Just as professionals are experts in their relevant technical areas, First Nation communities are experts in the cultural and natural features within their traditional territories.

2. “What changes, if any, are needed to maintain or improve public trust in the professional reliance model?”

Significant changes are required to improve both the public and First Nations’ trust in the Province’s management and regulation of natural resources. To either strengthen or replace the professional reliance framework, the Province should:

- Ensure that there is neutrality in natural resource decision-making involving Aboriginal interests. This means that a professional directly hired by a proponent should not be the decision-maker who assesses whether the proponent’s project meets prescribed objectives.
- Return to its district managers the authority, discretion and capacity to intervene to protect Aboriginal interests at all stages of a natural resource operation. District managers and staff should have the authority to amend plans and licences when a First Nation reasonably demonstrates that forest or range activities are infringing, or may infringe, an Aboriginal right.
- Collaborate with First Nations to establish legally enforceable objectives for protecting Aboriginal rights and values and consult with a First Nations’ experts to determine whether a given natural resource activity plan meets those objectives. The protection of Aboriginal interests must be an ongoing objective that proponents must strive to achieve. If a proponent fails to meet this objective, the Provincial office closest to the issue must have the authority to intervene to enforce compliance.

3. “Do you have any other observations or recommendations you would like to make about this review?”

This review is of particular interest to First Nations, as we are deeply connected with our lands and most seriously affected by the impact of natural resource activities on the environment. The current professional reliance framework does not effectively facilitate the government’s constitutional duties of consultation and accommodation.

¹ Forest Practices Board, “Submissions to Professional Reliance Review,” at page 2. (Our emphasis.)

We are concerned that the Province has not yet recognized the importance of this issue to First Nations and is not prioritizing the pursuit of our input. We are troubled that we were not directly asked to participate in this review.

Halfway urges the Province to engage directly with us and other First Nations as part of this review. First Nations are stakeholders in this issue, and should be contacted and given the opportunity to share their experiences with the professional reliance model.

Yours truly,

HALFWAY RIVER FIRST NATION

Per:



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