

SUBMISSION TO THE PROFESSIONAL RELIANCE REVIEW



January 19, 2018

The BC Government and Service Employees' Union (BCGEU) represents more than 73,000 workers in various sectors and occupations in more than 550 bargaining units throughout British Columbia. Our diverse membership includes direct government employees who protect children and families, provide income assistance to vulnerable individuals, fight forest fires, deliver care to people with mental health issues and addictions, administer B.C.'s public system of liquor control, licensing and distribution, staff correctional facilities and the courts, and provide technical, administrative and clerical services.

Our membership also comprises workers throughout the broader public and private sectors where members provide clinical care and home support services for seniors, a diverse range of community social services, highway and bridge maintenance, post-secondary instruction and administration, as well as other non-governmental industries, including financial services, hospitality, retail and gaming.

Nearly 5,000 BCGEU members staff the public agencies that are responsible for protecting B.C.'s environment and managing our natural resources – collectively known as the “dirt ministries.” These workers include biologists, forest technologists, check scalers, mining inspectors, park rangers, GIS analysts, oil and gas operations officers, conservation officers, First Nations relations advisors, water resource specialists, natural resource officers, environmental protection officers, administrative professionals and many more. Our members are frontline workers with firsthand knowledge about how the professional reliance model is actually working on-the-ground and in many different contexts. For many years, our members have been raising the alarm about the shortcomings of this model.

Based on the concerns and stories brought forward by our members over more than a decade, the following submission provides a brief response to the engagement questions posed by the review.

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

To begin, it is important to acknowledge that there are many well qualified and experienced professionals doing good work in the resource sector in B.C., and many operators in resource industries that maintain high standards.

But overall, the current regulatory model is clearly broken. As it has been advanced here in B.C., professional reliance is just a fancy term for deregulation. Combined with deep staff and budget cuts in the public service, this approach has contributed to unnecessary environmental damage and even major disasters like the collapse of the Testalinden and Mount Polley dams. Public safety has been put at risk, for example, when forest companies simply ignore the rules for building bridges and leave unsafe structures in place on resource roads. Reduced monitoring and enforcement has seriously limited the information available to government and the public about what is happening on the land base, and has allowed some operators to break the rules with impunity. Public participation in planning and decision making related to our collectively owned resources has also been circumscribed.

Below, some of the key concerns about professional reliance identified by BCGEU members are summarized.

Environmental laws have been weakened under the professional reliance model, and many existing rules are unclear and unenforceable.

For years, BCGEU members have expressed their frustration with the weakness of current regulations. In some cases, when questionable practices are identified in the field, ministry compliance and enforcement personnel no longer have the ability to compel a resource company to make changes.

With many planning and decision-making processes moved out of the public service, government scientific and technical staff, and even statutory decision-makers are sometimes unable to review, provide input or make changes to industry's plans.

For example, the "results-based" *Forest and Range Practices Act* allows external professionals to certify aspects of compliance with regulations, limiting government staff's ability to make changes to or require conditions on a licensee's operations. Staff are left to rely on the goodwill of licensees, or to deal with problems after the fact, if at all. Without the proper tools to effectively protect the environment and hold industry to account, government staff are often unable to proactively address concerns about forest industry operations, or to hold operators to account once the on-the-ground "results" have been achieved.

In implementing professional reliance across many regulatory regimes, the BC Liberal government assured British Columbians that cutting "red tape" and handing over work previously done by government staff to professionals hired by industry would maintain high environmental standards and encourage new and innovative practices.

BCGEU members working on the frontlines of environmental and natural resource management say that the opposite has happened. They report that proponents regularly submit and implement plans that reflect the bare minimum standards. Efforts by public servants to make changes that reflect higher levels of environmental protection are challenged and rejected. We have heard from government ecologists that they are concerned about the negative impacts of activities like placer mining and independent power projects on the health of our waterways. In the forest sector, BCGEU members tell us that instead of seeing innovation in the field, some of today's forest practices increasingly look like the "bad old days" that motivated the "war in the woods" and the creation of the Forest Practices Code in the first place.

After years of staff and budget cuts, there is a serious lack of scientific and operational capacity within government.

As the BCGEU has repeatedly documented, beginning in 2001 the BC Liberals made deep staff and budget cuts to the public agencies responsible for protecting our environment and managing our natural resources. Across the dirt ministries between 2001/02 and 2016/17, staffing levels have been reduced by almost one quarter (-23 per cent) or about 1,500 positions. Provincial spending on resources and the environment over the same time period has been reduced by almost one-third (-30 per cent).

These reductions have eroded the provincial government's capacity to do research, planning and policy development, public reporting, monitoring, and compliance and enforcement activities. In sum, the scientific and operational capacity of these public agencies has been gutted. This means that government and the public are increasingly dependent on resource industry proponents and the professionals employed by them to gather information, make plans and decisions, and monitor the impacts of their own activities. To a significant degree, environmental and natural resource regulation has been privatized.

There are important and disturbing consequences to these changes, including:

- Reduced transparency in environmental and resource management decision-making;
 - Monitoring data, environmental assessments and reports generated by industry-hired professionals can be held by resource proponents and are difficult or even impossible to access by both government staff and the public.
 - Project proponents exercise significant control over the gathering and release of information.



- Proponents often summarize and reinterpret information from professionals for both decision-makers and the public.
- Some proponents (and their lawyers) provide input or direction into what is included (or not) in environmental or social impact reports produced by the professionals they hire.
- Reduced public oversight of the work of industry professionals, including fewer audits and reviews of documents submitted by industry, fewer field inspections, and fewer resources for investigations and prosecutions of violators;
- A steep decline in up-to-date information and expertise about our resources and environmental conditions within government;
- Less public reporting about nearly all aspects of environmental and natural resource management; and
- Growing evidence of non-compliance with environmental regulations.
 - Independent reports from B.C.'s Auditor General, Ombudsperson and Forest Practices Board have identified problems with a lack of public oversight and significant non-compliance with regulations.

Public agencies have been oriented to serve the needs of industry, eroding their stewardship mandate.

Since 2001, the political direction from the BC Liberals was for ministry staff to defer to the needs of industry, and to seek out every opportunity to expand the use professional reliance. Cutting back the amount of information required for proponents to submit to government, reducing the activities for which approval is required, and limiting the discretion to reject or place conditions on industry activities has distanced public servants from their role in environmental stewardship and the protection of the public interest.

Further, input on regulations from frontline public servants has not been valued, and their participation in reviewing proposed legislative changes was reduced or eliminated. For example, in the past staff with technical expertise in the Ministry of Forests regularly reviewed and commented on proposed legislative changes. In recent years, ministry staff have only learned of legislative changes after industry had weighed in, and the changes had already been decided.

In the forest sector, the expansion of professional reliance, combined with reduced monitoring and enforcement, threatens the accuracy and integrity of government's revenue collection system.

Measuring the volume, type and quality of timber harvested from Crown land is now completed almost wholly by industry. Forest licensees also prepare appraisal submissions which government staff use to determine the amount of 'stumpage' or royalties that licensees pay for harvesting publicly-owned timber. These submissions document a licensee's harvesting activities and various costs which reduce the amount of stumpage they have to pay – including road and bridge development, administration, and silviculture obligations. The role of government staff is to complete audits and checks to ensure that the standards and rules for timber cruising, scaling, residue and waste surveys and appraisal submissions are followed and information is accurately reported.

A recent BCGEU paper about compliance and enforcement in B.C.'s forests documented deep staff cuts to the forest ministry's compliance and enforcement branch, and timber pricing and revenue staff over the past decade. Not surprisingly, staff reductions in the order of -40 per cent in these programs have corresponded with a precipitous decline in public oversight related to forest measurement activities and the appraisal process.



Our members are deeply concerned about the accuracy and integrity of the revenue collection system, and the potential negative impact on provincial revenues from our forests – an impact that could have potentially accounted for millions in lost revenue over the past decade. Clearly, industry has a strong incentive to minimize its stumpage costs, so it is critical for government to maintain strong oversight to ensure that British Columbians are getting fair value for a publicly-owned resource, and have accurate information about harvesting levels in their forests.

But, the opposite has occurred as the professional reliance model has been extended within this sector. Public oversight has declined, and enforcement of violations has been lax. Our members say there are too few staff to complete detailed audits that can identify errors or outright fraud in industry's submissions. Further, when violations are detected and reported, our members report that licensees regularly do not face serious penalties. This trend was identified in a 2014 special report from the Forest Practices Board. The Board noted an increasing use of warnings and tickets, and penalties for forest companies found to have violated the rules were low, with the vast majority (91 per cent) being less than 10 per cent of the maximum penalty. When companies know there is no one checking, and the penalties for getting caught are just a routine cost of doing business, there is little incentive for them to follow the rules.

There is a widespread lack of confidence in professional associations to monitor the work of professionals or effectively govern unprofessional conduct.

BCGEU members express little confidence in the ability for professional associations to effectively monitor the work of their members. Professional associations depend on members' fees, and have few resources. Depending on the association, there are varying discipline processes, which BCGEU members generally view as ineffective and lacking in transparency. Some of our members have reported

discomfort and a lack of clarity around the standards of practice for professionals. It seems that for many resource professionals, there is significant ambiguity about whether professional standards are not being met, or there is just a difference in professional judgment. On this, one BCGEU member commented "it seems like you can have a 'professional' rationale to justify just about anything." Further, many professionals are reluctant to report questionable conduct because they are uncomfortable making a public criticism of a colleague.

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

Restoring public trust in this area means that government must take back responsibility for environmental and natural resource management. It is government's responsibility to sustainably manage our resources and protect the public interest, not multinational resource companies or professional associations.

This shift will require legislative and regulatory changes to strengthen and improve the consistency of laws governing environmental and natural resource management. In general, government must make legislative changes to:

- Ensure democratic accountability for important decisions. This means returning planning, monitoring, and decision-making functions to agencies and public servants that are ultimately responsible to elected ministers, rather than industry players beholden to their company's bottom line;
- Establish sustainability as a core objective and incorporate the precautionary principle in all environmental and resource legislation;
- Ensure rules are clear and readily enforceable. For any system of regulation to work, there must be clear standards and accountability;
- Address conflicts of interest; and
- Require increased transparency for professionals, industry and government.



In addition, we urge the provincial government to lobby for strengthened legislation at the federal level. The federal *Fisheries Act* is one area where improvements are desperately needed.

Organizational and policy changes are also needed to restore public trust in government decision making. The stewardship mandate of our public agencies must be re-affirmed, and the public re-established as their primary client. A cultural shift must begin within public agencies away from deference to the needs of resource companies, towards a renewed focus on supporting sustainable development.

Perhaps most importantly, there is a pressing need to rebuild scientific and operational capacity in the dirt ministries. In the context of climate change and increasing pressures on the provincial land base, more staff and resources are needed to effectively manage our environment and resources for British Columbians. With more financial and human resources, additional monitoring and enforcement can be done, rigorous environmental assessments can be completed, important research can be conducted, resource inventory information can be updated and shared with the public, permits can be processed in a timely way, and so on. This work protects the environment, enhances public involvement, and supports sound planning, policy development and decision-making.

On behalf of BCGEU members, we appreciate the opportunity to provide this submission to the Professional Reliance Review.

