

January 19th, 2018

Via email

Hon. George Heyman
Minister of Environment and Climate Change Strategy
Email: ENV.minister@gov.bc.ca; George.Heyman.MLA@leg.bc.ca

Re: Review of Professional Reliance in Natural Resources

Email: CitizenEngagement@gov.bc.ca

Dear Minister Heyman,

We appreciate the opportunity to provide input on how qualified professionals (QPs) are engaged in the management of BC's natural resources. This review will have significant consequences for how BC's natural resources will be stewarded in the future, and associated impacts on human health and environmental sustainability.

Over the last 15 years, British Columbia has become increasingly reliant on QPs hired by industry and developers to fulfill many roles that in the past were undertaken by similarly qualified staff working for government. In theory, QPs hired by industry would do much of the research and analysis, project design and approval of plans while government would focus on setting objectives, monitoring, compliance and enforcement.

In practice, however, vague terms, poorly written objectives and regulations, and significantly under-resourced enforcement has meant that consultants hired by industry and developers are making decisions about trade-offs between industry profits and the public interest. Private professionals (engineers, biologists, foresters, etc.), rather than government staff, determine what level of public risk and inconvenience is acceptable, and even sign-off on plans that in many cases may not ever be reviewed by government to ensure the law has been followed. This can have, and has had, significant implications for our environment and public health.

To be clear, this is not to say that QPs working in BC are acting unprofessionally, but instead that the system they are required to operate within is not set up to engender public trust in outcomes. As well, the current natural resource management regime has become virtually inaccessible to the public, both in terms of transparency for potential impacts on public values and opportunities to influence decision-making to ensure those values are considered and protected.

This resource management approach has been termed "professional reliance," but we think the more appropriate term is "regulatory outsourcing." Government has increasingly limited or eliminated its decision-making powers over what happens to public rights, public lands and public resources in favour of industry decision-making in those arenas.

Clearly professionals – whether they work for government, industry or the non-profit sector – have a lot of training and expertise, and we would be well advised to take their analysis and recommendations seriously. At the same time, we need to recognize the appropriate roles of government and private professionals and ensure that we do not continue to lose public accountability and transparency through inappropriate reliance on professionals including through regulatory outsourcing.

In order to ensure the appropriate roles for QPs, we propose the following principles for a reformed natural resource management regime for BC and QPs' contributions within that.

We must:

- **Stop degrading the health of BC's ecosystems, and restore the environment where degraded.**
- **Guarantee that an unbiased decision-maker hears from an informed public on decisions that affect their health or environment.**
- **Ensure that First Nations are engaged and their rights respected.**
- **Ensure that BC's laws are clear, enforceable and enforced.**
- **Use "professional reliance" only where appropriate and in ways that protect the environment and health.**
- **Set standards that require professionals to be professional.**

1. Stop degrading the health of BC's ecosystems, and restore the environment where degraded.

Laws must make it clear that the purpose of all decisions under resource, public health and environmental statutes is to promote sustainability and public health. Professionals, whether working for the government or for industry, must have an ethical and legal obligation to pursue those objectives. Projects must make a net contribution to sustainability and address cumulative impacts, including our contribution to climate change.

2. Guarantee that an unbiased decision-maker hears from an informed public on decisions that affect their health or environment.

One of the oldest and best protected of legal rights is the right of a person who will be affected by a government decision to be heard by an unbiased decision-maker. Where a government decision relates to a threat to human health, the right to an unbiased decision-maker takes on a constitutional dimension.

Professionals hired by industry are not unbiased decision-makers. No matter how professional they may be, the fact that they receive a payment from an interested party creates an apparent conflict of interest and undermines public confidence in the decision.

For this reason, decisions that relate to projects that pose a significant risk to human health or the environment must be made by government, and not outsourced to industry professionals.

In addition, to allow the public to participate fully in decisions, there must be easy access to information about environmental and health decisions, including access to reports prepared by private professionals.

Where decisions threaten human health or the environment, members of the public must have a broad right of appeal.

3. Ensure that First Nations are engaged and their rights respected.

First Nations have constitutionally protected Title and Rights, and a right to be consulted and accommodated on decisions that affect their rights. It is the government's job to ensure that these rights are protected – and consultation with Indigenous Governments must take place on a government to government basis, taking into account Traditional Knowledge and in a manner consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

Government cannot adequately meet its constitutional and international obligations if it has outsourced its decision-making to private parties. Consultation, and the decisions based on it, must remain primarily the responsibility of government.

4. Ensure that BC's laws are clear, enforceable and enforced.

BC's forestry laws require private professionals to judge whether protecting water or wildlife will "unduly restrict the supply of timber" – a vague, unenforceable term that means something different to almost anyone who reads it. These types of terms require professionals to make arbitrary choices about the balance to be struck between the interests of their employers with the rights of the public. This is unacceptable.

Laws that protect human health and the natural environment must set clear, verifiable and measurable standards and create clear consequences for non-compliance.

At the same time, the government has failed to enforce environmental and public health laws. Lax enforcement means that companies and consultants that break the law are not caught while those who follow the law are at a competitive disadvantage.

The government must ensure that government agencies charged with oversight and enforcement have resources, training and a culture that enables them to detect and prosecute law breakers. Laws and policies must encourage and protect whistle blowers and citizens who call for enforcement against law breakers.

5. Use "professional reliance" only where appropriate and in ways that protect the environment and health.

There is a role for professionals in making decisions that protect the environment and promote public health – but in all cases the government must keep the power and responsibility to act as a "responsible owner" of public land and resources and ensure that decisions that could harm the public and First Nations are made by unbiased decision-makers.

In addition, a "Sustainability Board" must be created with the power to investigate and monitor government and professional actions that could negatively harm human health and the environment and to make recommendations for better practices. While drawing on existing tribunals, the Board must have broad powers to review and overturn unsustainable or unhealthy decisions made by professionals or government, and to issue sanctions and penalties, including against professionals.

6. Set standards that require professionals to be professional.

The best professional in the world is still human – still influenced by their employer and by their desire to appear competent, and still fallible. We need structures that:

- encourage professionals to protect public health and the environment,
- ensure that unprofessional decisions giving rise to such harm are detected and remedied, and
- hold professionals accountable when they fail to live up to their obligations to the public.

Government must require proponents seeking government approval to use professionals from a roster of qualified individuals that have demonstrated specific qualifications in relation to specific

statutory functions. Individuals who fail to maintain a standard of professionalism should be removed from this roster.

Government must also enact laws that:

- clarify the responsibility of professional associations in relation to public functions;
- clarify the circumstances in which professionals will be held liable for their decisions;
- require that professionals hold insurance related to circumstances in which they may be liable;
- compel professionals to report work that falls below professional standards; and
- ensure that there is periodic auditing and review of work done by professionals.

Once again, thank you for the opportunity to provide feedback on this important aspect of natural resource management in BC. Several of the signatories below may also provide separate submissions with specific experiences they have had with professional reliance and how it has impacted important public values. If you have questions about the coordination of this specific submission please contact Lisa Matthaus, Organizing for Change, at lisa@organizingforchange.org or 250-888-5194.

Sincerely,

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