

B. C. TAP WATER ALLIANCE

**Caring for, Monitoring, and Protecting
British Columbia's Community Water
Supply Sources**

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November 26, 2002 – *For Immediate Release* (Backgrounder below)

B.C. LIBERALS STRIP KEY LEGAL PRINCIPLES FROM FOREST LAWS

Vancouver - On November 20, the provincial Liberals passed Bill 74, the *Forest and Range Practices Act*, following third reading in the legislature. The new and controversial self-regulation legislation, which becomes law in the Spring of 2003, will replace the *Forest Practices Code Act* introduced in the Spring of 1994. During the debate of Bill 74 on November 18, 2002, Forests Minister De Jong repeatedly dodged questions about why the *Preamble* was removed from the former *Forest Practices Code Act* and who was responsible for its removal (Hansard, pages 4488 ff.).

Without the *Preamble*, which establishes the spirit and intent of the legislation, actions and decisions taken under the authority of the Act cannot be evaluated. Since 1996, the *Preamble* has been cited in several major Forest Practices Board investigations, six Supreme Court Judgments, and three Supreme Court Appeal cases. The *Preamble* was invoked as a benchmark for evaluating decisions affecting biodiversity and First Nation's rights. In addition, the Liberals made significant changes to the *Forest Practices Code Act* in Bill 74.

During the debate on the *Preamble* in the Legislature on May 30, 1994, lawyer and Forests Minister Andrew Petter summarized his government's reasons for including the *Preamble's* five principles as "the desire of British Columbians to seek a more balanced use of forest resources -- one that responds to the entire spectrum of current needs without compromising the needs of future generations... and expressly links forest stewardship to an ethic of respect for the land". Petter went on to explain that the *Preamble* "is a framework that recognizes the importance of biological diversity, of preserving forest soils, wildlife habitat and riparian zones, and of respecting cultural heritage resources as key values. It's a framework that facilitates the protection of special and sensitive resource features and that ensures that operational planning is consistent with higher-level land use plans, thereby providing an opportunity for greater public review and accountability". Afterwards, Liberal party Forests critic Wilf Hurd complained in the legislature that the *Preamble* "priorities" were too "environmental".

"It is obvious that the government deliberately gutted the intent of the *Forest Practices Code Act* to weaken an already weak law and to introduce new provisions which are not compatible with the original intent. This is why Minister De Jong evaded the issue in the legislature. The death of the *Preamble* signals that the Liberals' intention is to protect forest industry profits at the expense of the environment and the people of this province," Will Koop, Coordinator of the B.C. Tap Water Alliance, said recently. "We have been stripped of our ability to measure the environmental performance of this government on public lands. The Tap Water Alliance is asking the Attorney General, Geoff Plant, to fully investigate this matter, to respond to these concerns and to explain, to British Columbians, the reasons for the *Preamble's* removal".

BACKGROUND FOR NOVEMBER 26, 2002 PRESS RELEASE:

B.C. LIBERALS REMOVE KEY LEGAL PRINCIPLES FROM FOREST LAWS

A. The Forest Practices Code Act Preamble five principles:

WHEREAS British Columbians desire sustainable use of the forests they hold in trust for future generations;
AND WHEREAS sustainable use includes:

- (a) managing forests to meet present needs without compromising the needs of future generations,
- (b) providing stewardship of forests based on an ethic of respect for the land,
- (c) balancing economic, productive, spiritual, ecological and recreational values of forests to meet the economic, social and cultural needs of peoples and communities, including First Nations,
- (d) conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources, and
- (e) restoring damaged ecologies;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

B. B.C. Supreme Court Decisions concerning the Preamble:

1. Docket: A952584. Date: August 21, 1995. Registry: Vancouver.

Supreme Court of British Columbia: Between Gary Koopman (Petitioner), and; Peter Ostergaard, Paul Gevatkoff and Imperial Oil Resources Limited (Respondents), and; Chetwynd Environmental Society and Canadian Parks and Wilderness Society (Intervenors).

Transcript location: <http://www.canlii.org/bc/cas/bcsc/1995/1995bcsc11169.html>

2. Docket: A954191. Date: March 18, 1996. Registry: Vancouver.

Supreme Court of British Columbia: Between the Western Canada Wilderness Committee (Petitioner), and; the Chief Forester of British Columbia, Larry Pedersen (Respondent).

Transcript location: <http://www.courts.gov.bc.ca/jdb-txt/sc/96/03/s96-0388.txt>

3. Docket: A963993. Date: June 24, 1997. Registry: Vancouver.

Supreme Court of British Columbia: Between Chief Bernie Meticheah and the Halfway River First Nation (Petitioners), and; the Ministry of Forests and Canadian Forest Products (Respondents).

Transcript location: <http://www.courts.gov.bc.ca/jdb-txt/sc/97/09/s97-0935.txt>

4. Docket: CA021741. Date: April 8, 1998. Registry: Vancouver.

British Columbia Supreme Court of Appeal: Between Western Canada Wilderness Committee (Petitioner), and the Chief Forester for British Columbia, Larry Pedersen (Respondent).

Transcript location: <http://www.courts.gov.bc.ca/jdb-txt/ca/98/02/c98-0206.txt>

5. Docket: A970934. Date: June 3, 1998. Registry: Vancouver.

Supreme Court of British Columbia: Between International Forest Products Limited (Appellant), and; the Forest Appeals Commission (Respondent), and; the Forest Practices Board (Third Parties), and: Friends of Clayoquot Sound (Intervenors).

Transcript location: <http://www.courts.gov.bc.ca/jdb-txt/sc/98/08/s98-0838.txt>

6. Docket: CA023526, CA023539. Date: August 12, 1999. Registry: Vancouver.

British Columbia Supreme Court of Appeal: Between Chief Bernie Meticheah and the Halfway River First Nation (Petitioners), and; the Ministry of Forests and Canadian Forest Products (Respondents).

Transcript location: <http://www.courts.gov.bc.ca/jdb-txt/ca/99/04/c99-0470.html>

7. Docket: 98-1858. Date: September 23, 1999. Registry: Victoria.
Supreme Court of British Columbia: Between Thomas Paul (Petitioner), and; the Forest Appeals Commission, the Attorney General of British Columbia, and the Ministry of Forests (Respondents).
Transcript location: <http://www.courts.gov.bc.ca/jdb-txt/sc/99/14/s99-1443.txt>
8. Docket: CA026606. Date: February 28, 2001. Registry: Vancouver.
Supreme Court of Appeal for British Columbia: Between Northwood Inc. (Appellant), and: the Forest Practices Board (Respondent).
Transcript location: <http://www.courts.gov.bc.ca/jdb-txt/ca/01/01/2001bccca0141.htm>
9. Docket: 31224. Date: June 25, 2002. Registry: Kamloops.
Supreme Court of British Columbia: Between Rodney Gilbert and Linda Gilbert (Appellants), and: the Forest Appeals Commission and the Forest Practices Board (Respondents).
Transcript location: <http://www.courts.gov.bc.ca/jdb-txt/sc/02/09/2002bcsc0950.htm>

C. Excerpts from Hansard - 1994

C.1. May 16, 1994

FOREST PRACTICES CODE OF BRITISH COLUMBIA ACT

Hon. A. Petter presented a message from His Honour the Lieutenant-Governor: a bill entitled Forest Practices Code of British Columbia Act.

Hon. A. Petter: The Forest Practices Code of British Columbia Act provides the foundation for the province's first forest practices code, which will fundamentally change the way we manage our forests. The act sets a new framework of forest management. In particular, it establishes a clearer, more legally enforceable system of legislation, regulations and standards; stronger compliance and enforcement powers, including administrative penalties and offence provisions; a new, legislated forest planning framework; powers to regulate managed private forest lands and botanical forest products; administrative reforms, including the creation of a forest practices board; and greater public accountability. It will help ensure proper forest management.

Bill 40 introduced, read a first time and ordered to be placed on orders of the day for second reading at the next sitting of the House after today.

C.2. May 30, 1974

FOREST PRACTICES CODE OF BRITISH COLUMBIA ACT

Hon. A. Petter: When this government took office nearly three years ago, it promised to significantly change the way we manage our forests, to improve stewardship of our most vital resource and to restore public confidence in the way that resource is managed. Years of neglect by previous governments meant that our forests were being taken for granted, creating a legacy of problems that compromise both their economic and environmental sustainability. These problems include overharvesting -- which in some regions has led to supply shortages and instability in forest communities -- and land use uncertainty driven by conflicting demands on the resource and changing public expectations. They include the failure to develop a long-term economic strategy to secure the future of the forest economy and forest communities, and a poor record of forest management, which undermines public confidence in forestry and the forest industry.

Since coming to office, this government has responded to these problems with a number of new initiatives. Firstly, the timber supply review is addressing the need for long-term sustainability of annual allowable cuts. Secondly, the Commission on Resources and Environment and the protected areas strategy are tackling issues of

land use certainty. Thirdly, the forest renewal plan will ensure that more of the wealth generated by our forests goes back into the land and the forest community it supports.

A further challenge we face -- one of grave concern to most British Columbians -- is to transform the way we manage our forests, to improve forest practices by instituting higher standards and tougher enforcement measures. The world has changed dramatically since our seemingly limitless forests first began providing jobs and opportunities to British Columbians. Today it is clear beyond doubt that forest management has not kept pace with those changes. Forest management under previous governments has not adequately taken account of the growing intensity of forest use, the expanding range of forest values or the finite nature of the forest resource. As a result, both at home and abroad, government and industry are saddled with a reputation as poor stewards of our resources, and that in turn is hurting our economic prospects both at home and abroad. I recognize that many in industry have taken significant steps to correct that impression, but more needs to be done. In particular, government needs to demonstrate that it is prepared to act as a steward of the resource on behalf of the public interest. The Forest Practices Code of British Columbia Act is this government's response to the challenge of ensuring sustainable forest practices.

The preamble to this act speaks to the desire of British Columbians to seek a more balanced use of forest resources -- one that responds to the entire spectrum of current needs without compromising the needs of future generations. The preamble also identifies sustainable use with the conservation of resources, including biodiversity, and expressly links forest stewardship to an ethic of respect for the land.

This act provides the foundation for British Columbia's first Forest Practices Code, an entirely new framework for provincial forest management. The Forest Practices Code will replace a mishmash of statutes, regulations and guidelines, many of which were overlapping, contradictory or unenforceable, and which created costs and confusion for those who tried to live by them.

Up until now the lack of a clear legal foundation and appropriate penalties for non-compliance have made effective forest management virtually impossible in this province. That will change with this legislation and with the draft regulations and proposed standards that were released today. These regulations and standards are being circulated for public comment in the coming months and will be finalized later this year as part of the code structure. This in turn will continue this government's commitment to greater public involvement in the development of the code and in the stewardship of our precious natural resources.

Bill 40 embodies essentially five major principles. The first principle is that of legal certainty. As I said earlier, the act will replace the existing hodgepodge of statutes, regulations and guidelines with a clear, comprehensive, legally enforceable framework to regulate forest practices. It will eliminate many of the contradictions and gaps that exist within the current regime of enforcement. It is a framework that recognizes the importance of biological diversity, of preserving forest soils, wildlife habitat and riparian zones, and of respecting cultural heritage resources as key values. It's a framework that facilitates the protection of special and sensitive resource features and that ensures that operational planning is consistent with higher-level land use plans, thereby providing an opportunity for greater public review and accountability. It's also a framework which will greatly facilitate those in industry who, frankly, haven't known what rules they must live by because of the chaotic nature of the current regulatory regime.

C.3. July 5, 1994

On the preamble.

W. Hurd: I am amazed that others didn't jump up with respect to the preamble, because there was a specific decision made at the beginning of this debate -- however long ago that may have been; it seems like just a distant memory now -- that we would deal with this preamble at the end. At the time we were trying to debate the preamble, considerable concern was expressed with respect to the terms of reference that the government had chosen as sort of a rationale for this act. A glaring omission from the preamble was any mention of maintaining harvest levels in each region of the province sufficient to support jobs, families, communities and

the economies which rely on the forests for their existence. There is no mention of that in the preamble section, and that is somewhat unfortunate. Therefore, having listened to 80 amendments from the minister with respect to this act, I would now like to move one of my own. I suggest that paragraph (b) be amended to add “maintaining harvest levels in each region of the province sufficient to support the jobs, families, communities and economies which rely on forestry for their existence.” I certainly hope that the minister would be willing to entertain this amendment at this time, or to at least offer some rationale for why, when we’re dealing with a Forest Practices Code, the preamble -- which is sort of the philosophy of the bill -- makes no mention of maintaining harvest levels.

On the amendment.

Hon. A. Petter: I wouldn’t mind looking at the wording of the amendment, but I think it misses two major points.

Interjection.

Hon. A. Petter: Maybe the member would like to hear what those two points are.

Obviously the question of maintaining harvest levels, employment and stability for forest-based communities is a major preoccupation of this government. It’s why we pursued the forest renewal plan, why we are pursuing land use planning and why we’re pursuing a forest land reserve to have the stability on the land base. Indeed, because of the need to have sustainable use for both the present and the future, it’s why we have a Forest Practices Code as well. In that sense, the proposed amendment is both too overinclusive and underinclusive. The commitment that the member refers to is not confined to the Forest Practices Code; it is a commitment that can only be realized through a much broader set of initiatives.

Regrettably, the member and his party voted against a number of those initiatives. Therefore, to try attaching a principle to this act that in fact speaks to a commitment that must go well beyond this act and requires the economic vision and strategy contained in the forest renewal plan, and the commitment to land use planning contained in the forest land reserve, is simply not appropriate or desirable, in my view.

Second, this act obviously deals with issues that go beyond simply forestry issues. It deals with grazing, mining roads, botanical forest products and other uses of the forests. Therefore, to refer in this preamble simply to one of the economic goals that is relevant here would not be appropriate.

I would suggest that the preamble does speak in general ways -- in those singing general terms that preambles are supposed to use to speak to issues. It does address these issues when it speaks of “managing forests to meet present needs without compromising the needs of future generations” and when it speaks of the need to balance “productive, spiritual, ecological and recreational values” of the forest to meet the economic needs of people and communities. I am aware that the member is trying -- no doubt, with some desperation -- by putting some rhetoric into a preamble, to have the people of British Columbia forgive his and his party’s sins for not delivering on the substantive policies necessary to provide security to forest-based communities. I think it would be inappropriate to accept that kind of political posturing in this very lucid and, in my view, very appropriate preamble as it now stands.

W. Hurd: I think it’s significant, really, that as we’ve debated this bill, we’ve talked about stand management, preharvest silvicultural prescriptions and five-year development plans. We’ve spoken to a whole range of planning requirements under this code, which at the end of the day are specifically designed to ultimately enhance timber supply. One would assume that the licensees are not filing plans just in order to be in compliance with the Forest Practices Code. They are also filing these plans in the hopes that they could grow more timber on the land base. That’s clearly one of the intents.

For the minister to suggest that one specific mention of “economic” in paragraph (c) is enough to provide a broad preamble to a Forest Practices Code is unfortunate in the extreme. Clearly the omission of “a sustained

level of harvest” in the preamble and “the protection of jobs and community stability” speaks to the priorities this government has for this code. The priorities are environmental. They are the reason why, I suppose, the minister proposed this particular bill and rushed it forward in a manner which I know the previous minister would not have been comfortable with -- the speed with which it was introduced and the politics that surround it. I think it’s very unfortunate that we are going to pass a bill which makes no mention of a sustainable harvest for the province of British Columbia and no specific mention of the jobs and the communities that depend on that annual allowable harvest. Indeed, the first priority of this bill and of all the additional plans that will be required is merely to measure compliance with the code and not necessarily to protect jobs, the economy and the annual allowable harvest.

I respect the right and the ability of the government to oppose the amendment to the preamble. Undoubtedly the government will reject the amendment by sheer force of numbers -- I understand that -- but that glaring omission in the preamble was pointed out by people other than just those on this side of the House. It’s an omission that was identified by many of the stakeholder groups that participated in the overall planning and in the public input on this act. They pointed out to this minister and this government that the preamble was narrow in the extreme and really spoke to the rather narrow philosophy of this Forest Practices Code. The government will undoubtedly stick with this narrow, heavily punitive, legal definition under the preamble, but it is a glaring omission. I know the minister won’t accept that, but I wholeheartedly support the amendment standing on the order paper in my name.