



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

Re: Review of Professional Reliance in Natural Resources
Email: CitizenEngagement@gov.bc.ca

January 18, 2018

Dear Honourable Heyman,

Thank-you for the opportunity to comment on the review of Professional Reliance in Natural Resources. Our comments below are based on having participated in various review processes over the years. In our opinion, the current model has few checks and balances and needs to be overhauled to regain the public trust.

Northern Confluence is an initiative based out of Smithers that focuses on land-use decisions in northern B.C., including mining development. We are working with First Nations on resource policies and striving for more responsible mineral development in the province.

Loss of Expertise Within Government

As someone based in Smithers, B.C., it is difficult not to remember 2002 when the BC Government cut dozens and dozens of professionals (scientists in particular) from the various "dirt" Ministries. While there were several local consequences (an increase in houses for sale, people leaving the community, no co-op placements, volunteer positions unfilled, etc.), more broadly the capacity for government to make sound natural resource decisions in the public interest dropped significantly. With fewer experts inside government¹, the shift to more industry self-regulation and a reliance on qualified professionals grew and led to higher-risk decisions and consequences (such as Mount Polley).

In addition, these cut-backs have also resulted in situations where government staff are not necessarily qualified to evaluate the soundness of plans or designs submitted by professionals, or to ensure compliance and enforcement. When making inquiries about whether Imperial Metals had met the Environmental Assessment conditions for one of its tailings storage facilities for Red Chris mine two years ago, I was told by the government that a recent inspection had occurred and that they would treat my inquiry as an FOI. However, when I received the inspection report (a few months later), there was nothing on the tailings storage facility or the

¹ Estimates are that government capacity dropped by a minimum of 25% over the last 10-15 years.

related EA conditions at all. It was predominantly about compost being left out that would attract bears and other non-compliance issues that a non-technical person could easily observe and that didn't address the highest risk elements of the mine². As noted by the Auditor General in 2016 when reporting on compliance and enforcement in mining, there was a "decade of neglect" with inspections dropping significantly³. However, even when conducted periodically, the capacity or standard isn't necessarily at a sufficient level to properly evaluate potential risks⁴. Where then is the accountability?

During public comment periods in the last couple of years regarding both short and long-term water treatment plans and permits for the Mount Polley mine, I was told in one case that I had to communicate with the company's contractor AMEC to get the plan (i.e. the government didn't have a copy to forward to me even though they advertised the comment period), and in the other case to follow up directly with Mount Polley to answer my outstanding questions (even though my questions pertained to details and things the regulator should have been able to answer)⁵. Another government response regarding clean-up from the spill was: "*the assessment of options for removal of mine waste tailings from Hazeltine Creek and Quesnel Lake is being undertaken by third party consultants hired by Mount Polley Mining Corporation. These assessments have not been finalised for review by the province at this time.*" It is difficult to have confidence in the government's role as regulator when even relatively small inquiries are outsourced to contractors or the company.

August 4th, 2014 was the largest mining disaster in B.C.'s history with the dam failure at Mount Polley that spilled 24 million cubic metres of water and mine tailings into Quesnel Lake. To date, no charges, fines or penalties have been levied against the company and a private prosecution by former Chief Bev Sellars is the only legal mechanism for provincial action under the *Environmental Management Act*⁶. The lack of accountability puts into question the role of the BC government as an effective regulator. However, more specifically to this review, the BC Auditor General did find in her review of Mount Polley an over-reliance on Qualified Professionals: "It is not MEM's practice to carry out its own technical review (or to oversee an independent technical review) to confirm that tailings dams are built in accordance with the design."⁷ Perhaps ironically, Imperial Metals is suing its consultants for the failure of the dam⁸.

² EAO Inspection Record. Certificate #M05-02. Inspection date: 2015-06-17.

³ An Audit of Compliance and Enforcement in the Mining Sector. BC Auditor General. May 2016.

<http://www.bcauditor.com/sites/default/files/publications/reports/OAGBC%20Mining%20Report%20FINAL.pdf>

⁴ The last geotechnical inspection by the ministry of mines at Mount Polley took place in September, 2013, and resulted in no orders related to the tailings storage facility. "BC didn't inspect Mount Polley mine in 2010, 2011", Justine Hunter, Globe and Mail, Oct 14, 2014. <https://www.theglobeandmail.com/news/british-columbia/bc-didnt-inspect-mount-polley-mine-in-2010-2011/article21084272/>

⁵ Personal correspondence between Nikki Skuce and staff at MOE.

⁶ "No BC charges in Mount Polley dam collapse as federal investigation continues", Camille Bains, The Canadian Press, August 3, 2017. <http://www.cbc.ca/news/canada/british-columbia/mount-polley-investigation-ndp-1.4233234>;

"Decision on Private Prosecution Against Mount Polley Expected Any Day", Carol Linnitt, DeSmog Canada, Jan 17, 2018. <https://www.desmog.ca/2018/01/17/b-c-won-t-intervene-private-prosecution-against-mount-polley-horgan>

⁷ An Audit of Compliance and Enforcement in the Mining Sector. BC Auditor General. May 2016, page 8.

<http://www.bcauditor.com/sites/default/files/publications/reports/OAGBC%20Mining%20Report%20FINAL.pdf>

⁸ "Imperial Metals sues engineering firms over Mount Polley mine-waste dam failure", Gordon Hoekstra, Vancouver Sun, July 8, 2016. <http://vancouver.sun.com/business/local-business/imperial-metals-sues-engineering-firms-over-mount-polley-mine-waste-dam-failure>

Lack of Independent Science and Transparency

An environmental assessment, whether provincial or federal, is supposed to be an arm's-length process based on impartial science. Right now the science is proponent driven and controlled, with government reacting to it but not conducting its own science, and indigenous governments and intervenors commissioning their own science that is not granted the same weight. The system is broken. A glaring example of this was with the Pacific Northwest LNG project. The proponent was able to control what science was released and manipulate it to meet its objectives. Government science from forty years earlier was dismissed. Independent science was not given the same consideration by the reviewers. In the end, it is impossible to say that the approval was "science-based" and that no adverse environmental effects would result. One solution is setting up independent science advisory panels that can commission science, evaluate and interpret the data, and ensure it is publicly available.

Professionals (biologists, foresters, engineers, etc.) abide by standards set out by their professional associations. The critique of qualified professionals isn't of their individual qualifications or associations. The critique is of the system that can create bias and a manipulation of the information, such as: where large consulting firms, in the hopes of another contract, limit cautions or barriers to development in their reports; proponents look for consultants who give them the results they hope for (they can "shop around" for the expert opinion they are seeking); or the proponent purposely withholds some of the science and baseline information used in its application (that is argued to be proprietary information). A lack of checks and balances makes it questionable whether professionals are truly able to share independent and unbiased science and information (that is needed for environmental management decisions in the public interest).

Proponent controlled science also results in industry becoming the main knowledge providers. It limits the public sector accumulation of baseline data and institutional knowledge. In addition, proponents often push back and refuse to conduct adequate baseline research (often requiring multiple years of data collection) that can be used to support regulatory decisions and continued monitoring and enforcement, as well as to assess cumulative effects.

A number of Indigenous-led Environmental Assessments have arisen due to a lack of trust in provincial processes and failure to implement the principles of the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent (FPIC) (such as the Tk'emlups and Skeetchestn Indian Bands for the proposed Ajax mine in Kamloops and the Squamish Nation for the Woodfibre LNG project).

As illustrated by SkeenaWild in their submission: "Within the regulatory context, sound science that is done in a transparent manner, free of coercion and with the participation of potentially affected Indigenous groups is fundamental to achieving FPIC. The current model of industry proponents directly hiring [Qualified Professionals] QPs and controlling, withholding, and sometimes manipulating scientific and technical information does not allow for FPIC to be meaningfully obtained. This is a foundational flaw within the professional reliance model that will make it impossible for the Province to fulfill its mandate of reconciliation and to implement the UNDRIP." We agree with this statement.

Key recommendations:

Rebuild technical and professional capacity within government: While there may still be

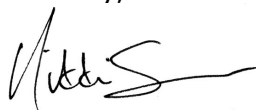
appropriate roles for Qualified Professionals based on set criteria⁹, there needs to be greater capacity within government to make decisions in the public interest, and to monitor and enforce conditions and regulations. As one public servant told me: "It's not just about putting bums in the empty chairs; it's about putting the right bums in those seats". While some new hires have been made since the Mount Polley disaster to increase capacity for monitoring and enforcement in mining, a review of gaps and needs should occur that results in more technical and professional positions in natural resource management. In addition, protocols for inspections and other standards might be needed in some ministries, such as mining, where they are weak or non-existent and to ensure a more corrective (versus collaborative) enforcement regime. Lastly, given the entrenched culture that can sometimes arise within a bureaucracy from multiple years of the same party in power, laws and policies must also protect whistleblowers.

Strengthen B.C.'s environmental laws: In efforts toward "cutting red tape" and moving toward more professional reliance, BC's environmental laws were weakened. BC's *Environmental Assessment Act* in particular needs strengthening to incorporate sustainability principles, address cumulative effects and climate change impacts, and respect the UN Declaration on the Rights of Indigenous Peoples (and incorporate Free, Prior, and Informed Consent). With stronger laws in place along with improved government capacity, greater trust can be restored around BC's regulatory regime.

Ensure independent science: It is absolutely crucial that B.C. puts checks and balances in place when it comes to science and natural resource decision-making. The system of proponent led and controlled science is failing the public and our commons. Regardless what model the Province may chose to adopt¹⁰, the result must be publically accessible data, best available science (peer reviewed), elimination of any conflict of interest or regulatory capture, and inclusion of Traditional Ecological Knowledge (TEK).

We hope that changes to the Professional Reliance model as well as the commitment to revitalize B.C.'s *Environmental Assessment Act*, results in improved public trust and natural resource management that is based on sustainability principles.

Sincerely,



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⁹ Assessment for when appropriate could be based on considerations set out by Mark Haddock in his paper: *Professional Reliance and Environmental Regulation in British Columbia*, Prepared for the Environmental Law Centre (February 2015) at page 85: http://www.elc.uvic.ca/wordpress/wp-content/uploads/2015/02/Professional-Reliance-and-Environmental-Regulation-in-BC_2015Feb9.pdf.

¹⁰ Some suggestions include the government and First Nations choosing an independent advisory panel of qualified professionals to peer review; others the US model where environmental assessments are prepared by the government, supported by consultants who are also retained by the government and funded by the proponent; others taking lessons learned from New Zealand or the Forest Practices Board where an arms-length agency is set-up.