

Lands and People

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A NEW ERA FOR LAND REFORM: THE *HAIDA* CASE

By Michael Wynn

Small pebbles can cause big waves. With little media coverage the prospects for significant land reform in British Columbia recently took a momentous leap forward. Over the next while the resulting changes could dramatically redefine the relationship between Crown, corporate and First Nations rights in land.

In February and August this year, the B.C. Court of Appeal (BCCA) delivered a long-needed rebuke to the provincial government's intransigent style of land and resource management. The Court's pair of judgments in *Haida v. B.C. and Weyerhaeuser* also offer timely ammunition to communities and First Nations that want to make industry and government more accountable, and who seek greater local control of lands and resources.

The *Haida* case is the most important decision on Aboriginal law and land management in five years. In it, the BCCA reviewed the province's approval of the transfer and replacement of Weyerhaeuser's TFL 39. The Court unanimously concluded that both ap-

provals violated the Crown's and Weyerhaeuser's legal duty to consult and accommodate Haida interests. This decision received little media attention, but analysts see the profound implications of the case.

What are those implications? The Court of Appeal, building on its *Taku* decision in

New Name for Forest Futures

You have known and supported us as "Forest Futures." Our name is now the "Dogwood Initiative" but our mission remains the same. Our old name limited us to forest issues, so we chose "Dogwood" because it's B.C.'s official flower, the symbol of the province we are working so hard to protect, and "Initiative" because it's action-oriented, as we are.

DOGWOOD INITIATIVE was founded by First Nations, environmentalists, community advocates and labour leadership.

Our mission is to create sustainable community solutions for lands and people. Through strong leadership, policy alternatives, research and campaigns, we promote collaboration to ensure sustainable, local control of land in B.C.

www.dogwoodinitiative.org

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In the August judgment clarifying Weyerhaeuser's duty to consult and accommodate, the court indicated that tenures granted (or replaced) without adequate consultation with and accommodation of affected First Nations could be struck down as defective, saying "title, if any, that is passed to the third party ... is clogged by the fiduciary's breach of duty," or may contain a "fundamental legal defect."

January, flatly rejects the province's long-standing, disingenuous position that it need not consult First Nations about land use decisions unless rights or title have been proved in court for a specific site.

Despite *Delgamuukw*'s dictates about meaningful consultation, the province has in the past five years only marginally increased the scope of its consultation with First Nations. In most cases, that consultation consists of a standard-form referral letter sent to the First Nation with 30-45 days to reply. In many cases the province doesn't even send a referral letter. The result has been the de facto nullification of *Delgamuukw*, and no change in the way the government allocates British Columbia's land and resources to corporate interests.

Today, thanks to *Haida*, the province can no longer say consultation is a matter of policy, not law. Today, the province is not only legally required to consult First Nations "when decisions are being made and alternatives are being chosen", but must accommodate the interests of the First Nation in those lands

as well. Today, consultation isn't just government's responsibility; tenure holders such as Weyerhaeuser must also consult and accommodate. And today, where the consultation or accommodation is inadequate, any Crown land tenure may be subject to a "fundamental legal defect" that invalidates it.

This is all new law—at least from the provincial government's point of view—and may give real meaning to the Supreme Court of Canada's previous landmark decisions on Aboriginal title (*Delgamuukw*, 1997) and rights (*Van Der Peet*, 1996).

All advocates for community control of land and resources should applaud this decision. In addition to the above, three other aspects of the case create hope.

First, the Court appears to be very frustrated that the Crown has continued doing business as usual without meaningfully involving First Nations. All the major court decisions, including *Delgamuukw* are cautious about overturning government decisions, and state that negotiated solutions are preferable. Unfortunately, the Crown has not responded proactively. Rather, government has steadily retrenched to the point where the court decisions have no effect. And treaty negotiations have moved at a glacial pace, while industry extracts timber, minerals, gravel, and oil and gas at an unsustainable rate with few if any benefits to First Nations.

This leads to perhaps the most telling statement in *Haida*, in which Judge Lambert states:

If the Crown can ignore or override Aboriginal title or Aboriginal rights until such time as title or rights are confirmed by treaty or by judgment ..., then by placing impediments on the treaty process the Crown can force every claimant of Aboriginal title or rights into court ... before conceding that any

Guujaw, President of the Council of the Haida Nation, looks toward a new era of land reform.

PHOTO: SPRUCEROOTS



*effective recognition should be given ...
even on an interim basis.*

In other words, the courts are fed up with the “talk and log” approach, and are no longer willing to let the government off the hook.

The Court appears to be taking a more activist stand, in response to the province’s refusal to change its operations. Judge Lambert goes on to say that the parties can apply to the Supreme Court for specific orders related to Aboriginal rights or title, as consultation and accommodation negotiations proceed. In effect, this creates an alternative legal framework for First Nations to contest title and rights issues. This is important, since past attempts to stop extraction activities through injunctions have largely failed as the courts balanced in favour of corporate economic interests.

A second noteworthy aspect of this case is the political context. One can only speculate about the impact the Haida’s strong cooperative relationship with the non-Aboriginal community on Haida Gwaii may have had on the court. It certainly didn’t hurt. Particularly when compared to the frequent situation in which non-natives claim their economic interests are threatened by Aboriginal claims. While Weyerhaeuser was preparing submissions to the BCCA questioning its duty to the Haida (the subject of the August judgment), *Maclean’s* magazine reported that the loggers working for Weyerhaeuser on Haida Gwaii took a day off to “*show support for the Haida’s land claim and for their logger-backed demand that the government and Weyerhaeuser slash the [logging rate] in half.*” When First Nation and non-First Nation communities work together it appears courts are more inclined to redefine rights. There is a lesson here for other communities.

Finally, this case demonstrates that First Nations, by putting licence holders and the government on notice of their title and rights, can force changes in the way land is managed. It validates the Haida’s decision to provide some specific information about their Aboriginal interests in the land and the trees to the province and to MacMillan Bloedel (Weyerhaeuser’s predecessor).

It is hard to say yet whether First Nations

will be able to take full advantage of the *Haida* decision. The Crown is already retrenching, even having the gall to argue that the ruling applies only to the Haida Nation and Weyerhaeuser. This view flies in the face of the reasoning of the decision, not to mention the related *Taku* decision, but it should not surprise many readers that government will not respond proactively to this case. First Nations will have to strategically choose subsequent cases to advance the decision.

Dogwood Initiative believes, however, that we can force government and industry to change the way they do business by following the Haida example: communities and First Nations working together to identify common interests and objectives for their lands and resources, and putting government and industry on notice of those objectives. Dogwood Initiative is already working with other First Nations and communities to duplicate the Haida’s approach in the coming years. ☒



The Haida judgments are available online. The original judgment is at <http://www.courts.gov.bc.ca/jdb-txt/ca/02/01/2002bccca0147.htm>. The follow-up confirmation of Weyerhaeuser’s duty is at <http://www.courts.gov.bc.ca/jdb%2Dtxt/ca/02/04/2002bccca0462.htm>



PHOTO: RICHARD TRUEMAN

a rose coloured sun –
through bare branches
a lark ascending

TERRY ANN CARTER
from a collection of Haiku poems
written in honour of the establishment
of the Dogwood Initiative

WORKING FOR WHOM?—THE LIBERAL “WORKING FOREST” PROPOSAL

By Jessica Clogg



PHOTO: NOBA ANDERSON

In British Columbia, we expect our forests to provide a range of values—to “work” for us all. Unfortunately, the provincial government is moving forward with yet another scheme that could entrench industrial logging interests in public lands. Despite the speed with which the NDP was forced to abandon their universally despised “working forest” proposal, working forests have re-emerged as a key component of the Liberal’s forestry agenda. (See *September 2001 Newsletter*.)

JESSICA CLOGG is a Staff Lawyer at West Coast Environmental Law, and is on our Advisory Round Table. The NDP and Liberal “working forest” proposals have been examined in previous newsletters. See our April 2001 and September 2001 editions for more.

What is the working forest?

The Ministry of Sustainable Resource Management (MSRM) is considering options that would lock up millions of hectares of public forestland in a designated “working forest.” While the final policy direction has not been made public, a variety of options designed to increase certainty and security for large logging corporations have been put on the table by government or industry including:

- putting the entire “timber harvesting land base” in the working forest to increase land base certainty for the forest industry, effectively freezing environmental protections at current, inadequate levels;
- putting all forested Crown land (outside of parks and protected areas) in the “working forest”—some 45 million hectares of public lands;
- setting provincial targets for timber, and allowing these targets to drive land use decisions;

- “no-net-loss” provisions designed to ensure that the logging industry has permanent access to an amount of land at least equivalent to the area currently available to commercial logging. Taken to its extreme, this approach to “working forest” could be seen as legally guaranteeing the status quo to logging corporations in perpetuity.

Timber targets

Government officials have pledged that the “working forest” will promote all activities through which forests contribute to economic prosperity, including environmental services and tourism. However, the provincial government’s real priorities become apparent when one looks at related proposals around “timber targets.” Intended to be established through new “Sustainable Resource Management Plans” (which will be developed in partnership with industry), these legally binding timber objectives would

be set for each management unit in the province. Depending on how they are implemented, these timber targets could create a virtually insurmountable obstacle to further biodiversity protections as well as complicating already difficult discussions about meaningfully accommodating Aboriginal title and rights.

Working for whom?

Despite assurances to the contrary, there is significant risk that “working forest” is being designed to “work” only for the large logging companies: the rest of us lose out. The Lib-

eral government’s major donors (logging companies) would benefit from locking in unsustainable logging targets at the expense of others (including tourism operators, community forests, value-added mills, etc.). Given the government’s campaign promise about “working forest,” stopping this ill-advised scheme will be difficult. However, opportunities do exist. For example, First Nations can legally challenge new legislation that infringes their title and rights. We must remember a broad public outcry succeeded in defeating the NDP’s “working forest” proposal. By working together British Columbians can derail this foolhardy scheme once again. ☒

IT’S TIME: A REPORT ON COMMUNITY FORESTS IN BRITISH COLUMBIA

By Will Horter

After a year of research, analysis and interviews across the province, Dogwood Initiative has just released *Connecting Lands and People: Community Forests in British Columbia*, a status report on community forest initiatives in the province.

We’re proud of this report. It’s an example of the solutions-oriented approach of Dogwood Initiative. It tells how innovative B.C. communities are taking control of their local forests and learning to practice sustainable forestry, employ local people, work together and ultimately create stronger communities. The report shows how obstacles can be overcome and how more success stories can be written. It is inspirational for everyone who wants to see more local control and stewardship of B.C. forests.

Connecting Lands and People includes many lessons, but above all our research confirmed one fundamental conclusion: community forests, and by extension other community

control initiatives, succeed because of the passion and commitment of people.

There are a great many people across the province determined to wrest control of their lands and water from industrial domination. The next step is to harness their passion and commitment so we can accelerate the changes that have already begun to happen.

The report completes phase one of our “Creating Dialogues” project. This project identifies common ground among First Nations, community leaders, municipal govern-



Please visit our website www.dogwoodinitiative.org for more on *Connecting Lands and People* or call or e-mail us for a printed copy of the full report.

ments, and environmental advocates in pursuit of local control of forests, lands and water. This first phase focused on the growing community forest movement in British Columbia, and enabled us to meet more than 75 community forest leaders who are making change happen at the local level.

The community forest movement has huge potential. With focus and broad support it can transform the future of rural communities, local and provincial economies, as well as the environment. One important step

has already been taken, with the creation of the British Columbia Community Forestry Association (*page 8*).

However, a growing, focused, grassroots movement is needed to move community forestry from the fringes to the mainstream of political debate. Dogwood Initiative's contribution will be to create the financial, legal and political leverage that will leave the provincial government and resource corporations no choice but to change the way our land is controlled and managed. ☒

Case Study

HARROP-PROCTER—B.C.'S FIRST ECOSYSTEM-BASED FOREST

By Noba Anderson and Will Horter

One of the inspiring stories documented in *Connecting Lands and People* is the community forest established by the adjacent communities of Harrop and Procter. These communities, in an isolated, beautiful nook of the West Kootenays near Nelson, are implementing the first operational community forest run on an ecosystem-based plan. The Harrop-Procter story is an instructive one.

In the late 1980s, industrial logging was proposed for the valley of Lasca Creek, adjacent to the five watersheds above Harrop and Procter that provide the community's drinking water. Many of the 800 residents took to the woods, blocking the construction of the logging road. They succeeded, and Lasca Creek became a park. However, the Ministry of Forests continued to allocate a rate of cut for the watersheds, and pressure to allow logging mounted in the late 1990s. The residents were faced with a difficult choice: take to the woods again or give up and hand their watersheds over to industry and the Ministry. After much debate, the people of Harrop and



Procter created a third option: an 11,000 hectare community forest, with a rate of cut that would protect their water supply. As Dave Miller, a Community Forest board member, puts it, "it's as if in one breath, in one combined thought, the people of this community said 'We want to protect our drinking water, so let's go log!'"

Through the focused effort of many people the Harrop-Procter community has changed. Murray Dosenberger, the road-builder whose work was stopped in 1990, has been hired by former protesters to build a logging road—this time for his community, not outside interests. He lives across the street

PHOTOS: HARROP-PROCTER
WATERSHED PROTECTION
SOCIETY



The Harrop-Procter Community Co-op can be reached at PO Box 5, Procter, British Columbia V0G 1V0; Tel: 250-229-2332, E-mail: info@hpcommunityforest.org; Web: www.hpcommunityforest.org.

from Heather Pinnell, the Harrop-Procter Community Forest Manager. Many of the others working in the community forest, as foresters, fallers, skidder operators, drivers and educators are also local. As are woodworkers who hope to gain access to more of the wood.

This community forest isn't just about local jobs, though. Harrop-Procter has also forced the Ministry of Forests to approve a rate of cut that is only about 30% of what was originally proposed for the network of five watersheds. This entire area is now part of the community forest, and is being managed to protect the drinking water and other forest values, including wildlife, recreation, and the less visible but critical interconnections of a forest ecosystem.

Woodlands Manager Ken Foot says, "to us, profit is not corporate profit, it is local employment, good viewscape, good water and the things we take for granted."

Even by more conventional definitions of profit, Harrop-Procter is demonstrating that in the long term, protection of an ecosystem and maximum economic opportunity are not conflicting goals. The first cut, during the summer of 2001, removed the smaller,

less economically "productive" trees. The trees that remain will have more light and space to grow. Eventually, many of these will be cut, when they are larger, stronger, much more valuable.

Many trees will never meet a chainsaw. Left as "full cycle trees", they will grow old, and go back to the soil. Harrop-Procter will meet its cutting targets while leaving 87% of the land base untouched.

The story of Harrop-Procter is one example of what motivated, visionary British Columbians can achieve in their own communities. It demonstrates that communities are as powerful as they think they are, and can take back the control needed to achieve balanced, sustainable stewardship that supports all the values of communities and forests.

However, many challenges remain. Provincial laws favor industrial logging, and Harrop-Procter, in collaboration with other community forest advocates, must ensure that the forestry regime is changed to enable smaller, low-impact operations.

Doing renovations or putting up a new building? Put in an order for some wood from British Columbia's first ecosystem-based community forest operation. ☒



A NEW VOICE FOR COMMUNITIES—THE B.C. COMMUNITY FOREST ASSOCIATION

By Will Horter

The community forest movement has the potential to transform the future of British Columbia—rural communities, local and provincial economies, as well as the environment. However, despite growing interest, there are significant obstacles that must be overcome before community forests can thrive.

One obstacle identified by Dogwood Initiative and other community forests advocates was the lack of an effective provincial organization to promote the interests of community forestry with key decision makers.

To address this challenge, last winter Dogwood Initiative facilitated two “visioning” meetings of community forest leaders. In March 2002, these leaders helped form the B.C. Community Forest Association (BCCFA).

The newly formed BCCFA’s mission is to promote and support the practice and expansion of sustainable community forest management throughout the province. It will act as a unified voice for the interests of all com-



GROUP PHOTO: Representatives from B.C.’s community forests: *(left to right)*

Back Row: Ramona Faust (General Manager—Harrop-Procter Community Forest), Heather Pinnell (Forest Manager (RPF)—Harrop-Procter), Bruce Ellingsen (President—Cortes Ecoforestry Society), Roger Oliver (Director—Harrop-Procter), Dennis Morgan (Manager—Bamfield/Huu-ay-aht Community Forest Society), Jim Smith (Manager—Creston Valley Forest Corporation), Gerald Nyse (Kitimat Village), Mike Fuller (Director—Burns Lake Community Forest), Carol Feagan (Director—Harrop-Procter), Irvine Johnston (Esketemc First Nation Community Forest), Gary George (Wetsu’weten First Nation), Rob Duncan (Harrop-Procter)

Front Row: Jennifer Gunter (Kaslo and District Community Forest Society), Kymm Hlady (Bamfield/Huu-ay-aht Community Forest Society), Susan Mulkey (Kaslo and District Community Forest Society), Paul Jean (Chair of Burns Lake Community Forest and Mayor), Rami Rothkop (Director—Harrop-Procter), Brian La Point (Esketemc Community Forest), Len Apedaile (Comox Valley Community Forest), Pat Chelsea (Esketemc First Nation Community Forest), Ken Guenter (General Manager—Burns Lake Community Forest)

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munities engaged in community forest management as well as those seeking to establish community forests.

In the *New Era* of deregulation, government downsizing, corporate self-management and trickledown economics, it is critical that rural voices promoting environmental and economic sustainability are supported. While the new Association is a good start, it needs broader support to succeed. Dogwood Initiative encourages all those who support sustainable land reform to join the BCCFA. Strong advocacy from grassroots voices will be a key component of redirecting the *New Era* agenda.

This new Association has a valuable role to play in promoting grassroots activism and providing support to communities. We applaud its creation.

However, the formation of the BCCFA is only the first step—albeit an important one. Its success—and ultimately the success of the community forest movement—depends on how effective the BCCFA becomes in influencing key decision makers, in moving community-centred solutions from the margins to the mainstream of conventional political debate. Dogwood Initiative will continue to help them achieve their mission. We hope you will too! ☒

LIBERAL ENERGY POLICY SUCKS WIND, BLOWS GAS

By Arthur Caldicott

The provincial government's new energy policy is an invitation and encouragement to unrestrained exploration and exploitation of fossil fuels. Despite token references to clean power targets, the real emphasis is on coal, coalbed methane and natural gas. At core, the policy is fundamentally an old-fashioned resource extraction economic program.

The 26 Policy Actions released on November 28 are another illustration of the shallowness and anti-democratic nature of the Gordon Campbell government's approach to important public policy. After cutting through the rhetoric, the policies fall into three general groups:

1. **Fossil fuel to the max!** Policies open the doors and cut down the regulatory barriers to exploration and production of gas, coal, and coalbed methane, backed up by royalty incentives, and accommodated by "streamlining" of environmental assessments, permitting requirements and other regulations.
2. **Dismantling Hydro, but slowly.** Some of the policies further the government's agenda with BC Hydro, enabling the move of big chunks to Accenture (formerly the consulting arm of Arthur Anderson,



PHOTO: ALYESKA PIPELINE SERVICE CO

Trans-Alaska Pipeline spurts over 6200 bbl oil following gunshot, Oct. 4, 2001.

- Enron's accountant), creating a nominally separate transmission company, and putting a ten-year cap on rates.
3. **Sustainable...not!** A couple of items pay lip service to environmental and greenhouse gas issues, with no legislative backup. Nothing at all about the province's incredible wind, tide, micro-hydro, biomass energy potential. *Continued...*

The energy plan uses the same results-based language currently in vogue in Victoria. And like the so-called results based forestry code, the language in the energy plan is often vague, meaningless and unenforceable. It is rife with internal contradictions and worthless voluntary environmental targets.

The proposals are of concern to advocates for First Nations, the environment and land reform. Speculation about a hidden Liberal energy privatization agenda is reinforced by careful wording around public ownership, and the promotion of private sector and “cost effective” proposals. Of particular concern are the suite of proposals to improve oil and gas access, streamline (i.e. gut) environmental assessments, licensing and permitting,

and encourage coal-bed methane development and coal-fired power plants.

Surprisingly, the plan makes no mention of First Nations. In fact, many of the proposals to *encourage development* and streamline approvals appear to be at odds with obligations for consultation and accommodation recently strengthened in the Haida case. (See article on page 1.)

The provincial government is counting on dramatically increased revenues from natural gas and electricity to stem the haemorrhaging provincial deficit. Coordinated financial, legal and political strategies against this energy plan will be an important component of a progressive political opposition. ☒

SOFTWOOD: AN OPPORTUNITY FOR REAL SOLUTIONS

By Will Horter

While the softwood dispute has receded from the front pages of most newspapers, the tide for significant changes remains strong. The provincial and federal governments continue to bury their heads in the sand, hoping to avoid the long-overdue structural reforms necessary to get rid of the subsidies that are eroding economic and environmental sustainability.

Dogwood Initiative continues to work with other Canadian and U.S. NGOs to promote made-in-B.C. softwood solutions. The Coalition for Sustainable Forest Solutions, which we helped create, continues to grow and now includes unions representing the majority of Canadian forest workers as well as many environmental, First Nations, labour and civil society groups. The Coalition continues to promote softwood solutions that redistribute opportunities to First Nations and communities, stop raw log exports, lower rates of logging and provide for stronger environmental protection.

The *Toronto Star* quoted John Ragosta, lawyer for the U.S. softwood industry, saying that proposals being put forward by Dogwood Initiative and its Coalition “would likely meet his clients’ demands” and resolve the dispute. And in June 2002, *Maclean’s* magazine reported that our softwood solutions “are based on a clear-headed analysis of what’s going on in the woods.”

Earlier this year we intervened in disputes at the WTO in Geneva and NAFTA in Washington D.C., to challenge government and industry misrepresentations about the real

See www.forestsolutions.ca for up-to-date information and actions around softwood.

FP EDITORIAL

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“This trade spat recurs every five years because Canada has failed to address the underlying causes of the dispute. The cycle will not end until we reform outdated Canadian forest policies that short-change the Canadian public for its natural resources, discourage competition in our forest industry, and lead to excessive logging rates around the country.”

Jessica Clogg and Will Horter in the *Financial Post*, August 15, 2002

Pierre Pettigrew is claiming a win in the latest WTO lumber ruling, but the war won't end until Canada addresses the underlying causes of the dispute

Phantom victory

Jessica Clogg and Will Horter

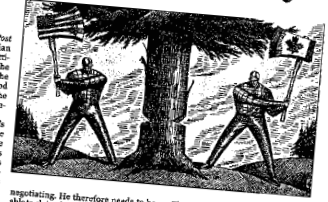
Last week the *Financial Post* reported that Canadian Trade Minister Pierre Pettigrew wants to return to the negotiating table with the United States to resolve the softwood lumber dispute. Unfortunately, his success seems to be taking the path of most resistance to get there.

Mr. Pettigrew claims that Canada's "win" in the recent WTO ruling on the U.S. interim duties has prompted the United States to want to talk again. This is curious given two things. First, it is one thing to say that the United States is not offering the path of most resistance to get there. Second, it is by no means clear that Canada did indeed "win" at the WTO, since the ruling has not been made public.

There is a real win in the sense that Canada's win on the WTO ruling, a spin put to the public. The Minister's legal arguments raised the issue of whether Canada was eight out of 10 based on his reports, one lumber official puts a "stake straight through the heart" of his U.S. report, however, say Canada won only three out of nine points, with the United States won four, and two were undecided. Some days after the initial Canadian lumber official commented that the ruling was in fact "mixed".

Halifax, Canada's two largest lumber producers - British Columbia and Quebec - both called for negotiations to resume rather than wait for the WTO. Both provinces have access to the confidential WTO rulings and have made their own conclusions.

What is behind Mr. Pettigrew's spin? Canadian provincial governments and industry executives are split on whether to negotiate with the Americans. One example, are opposed to talks. Mr. Pettigrew has thus far favoured challenging the U.S. duties at the WTO instead of



negotiating. He therefore needs to be able to claim that this strategy is the one that will resolve the dispute, even though the WTO pathway will take years to play out and will likely lead to a path in which neither side wins clearly. By claiming that the WTO ruling is forcing the United States back to the negotiating table, Mr. Pettigrew is cleverly signalling that negotiations are the way to resolve the dispute. Unfortunately, neither Canada's forest-dependent communities nor Canadian forests can afford to wait.

THERE ARE SOLUTIONS TO THE LUMBER DISPUTE: REFORM LOGGING RIGHTS AND ESTABLISH OPEN LOG MARKETS

This trade spat recurs every five years because Canada has failed to address the underlying causes of the dispute. The cycle will not end until we reform outdated Canadian forest policies that short-change the Canadian public for its natural resources, discourage competition in our forest industry, and lead to excessive logging rates around the country.

There are innovative solutions to the dispute that would be acceptable to U.S. lumber producers while safeguarding the interests of both Canadian forest communities and the environment. These include reforms to logging rights, the establishment of open log markets, and the strengthening of protections for Canada's forests.

But Mr. Pettigrew has refused to let the Canadians advocating such reforms into the softwood lumber process. Despite the fact that 94% of Canada's forests are with timber executives and lobbyists to put most of his efforts into the WTO's Canada's forests.

Recently, Mr. Pettigrew promised "to work to make trade negotiations more open and transparent." The Minister should take good on this promise by committing to release the text of all trade rulings, and push for such a policy. Canadians to inform the softwood negotiations with the United States so that an outcome that is truly in the interests of Canada's forests is achieved.

Will Horter is a staff lawyer at the Justice Clogg is a staff lawyer at the Association in Vancouver. Will Horter is the executive director of Forest Futures, an organization working on land reform issues in British Columbia.

See our website for more information about the *Empowering B.C. Communities* tour.

value of public resources and corporate interests in public lands.

In the coming months we expect the B.C. government to announce a package of tenure and pricing reforms, perhaps as early as January. The rumour is that the recycled package will mirror previous proposals that have been repeatedly rejected by U.S. negotiators and a growing number of British Columbians from diverse backgrounds. There is some indication that it may include a modest 10-20% tenure take back and incentives for First Nations, but generally it appears to be comprised of counterproductive proposals that benefit corporations at the expense of communities.

As some of the largest donors to the B.C. Liberal party, it is not surprising that the corporate loggers' agenda forms the basis of the package. Rumoured reforms include:

- allowing companies to subdivide and sell tenure without government approval;

- getting rid of the 5% take back on tenure transfer; and
 - removing obligations that produce jobs such as appurtenancy and minimum cut control.
- Given the government's neglect of rural communities it is no surprise the rumoured package gives corporations more control, while leaving communities and workers to drown in the rising tide. It is up to us to redirect the softwood discussion toward real reforms, to create a tsunami of support for solutions that protect communities, jobs and the environment.
- Dogwood Initiative has launched an *Empowering B.C. Communities* tour to build a groundswell of support for positive forestry reform. We are visiting at least 15 towns on Vancouver Island and the Kootenays this fall, and we plan to extend the tour to the rest of the province over the winter and spring.
- Join the wave of British Columbians supporting our softwood solutions. ☘

LIBERALS' "SOLUTIONS" HURT COMMUNITIES

By Ken James

In January 2001 more than 200 workers at the Youbou sawmill joined the swelling ranks of the forest industry unemployed when mill owner TimberWest closed the long-running facility on the shores of Lake Cowichan on Vancouver Island.

While the circumstances of Youbou's closure varied somewhat from shutdowns in Williams Lake, Hazelton, Port Alberni and Vancouver, it shared one thing in common.

The company that closed the mill retained access to the publicly owned trees it had when the mill operated. The result? Trees continued coming down while fewer benefits flowed to workers and their home communities.

The troubling thing is that this happened despite longstanding provincial government policies that encouraged mutually beneficial arrangements whereby companies gained ac-

cess to publicly owned resources in exchange for creating and sustaining local jobs.

Such policies made sense. But in reality, successive governments failed to do the right thing when corporate interests broke the bargain, namely, by taking back what the public, not the companies, owned.

Somehow, our elected leaders lost sight of the idea that policies relating to precious, publicly owned natural resources such as trees should benefit those who owned the trees, not just the corporations that wanted to convert those trees to cash.

"Strange as it may seem, the same guys who once drove big trucks with bumper stickers defiantly proclaiming "log it, burn it, pave it" on their way to doing just that are now finding common cause with save-the-planet types and First Nations groups pressing for land rights. In a province that has seemed to hold as its unofficial motto, "what's good for the lumber companies is good for B.C.," long-smouldering grievances have been relit by the Canada-U.S. softwood lumber dispute and fanned by the provincial government's proposals for reform. The result is that growing numbers of workers and community leaders scattered throughout B.C. believe that their future lies with the very groups they once thought threatened it."

"When Loggers Turn Green" by Sherry Peters, *Macleans*, June 17, 2002—featuring the Coalition for Sustainable Forest Solutions and Ken James.



More troubling still is that the current government appears willing to dispel any notion that those who prosper from a public resource owe the public something in return.

In March, when the down-to-the-wire negotiations in Washington failed to halt the imposition of a crippling duty on U.S.-bound Canadian softwood, Forests Minister Mike de Jong called U.S. President George W. Bush a “gutless wonder.”

But what was really gutless was the offer that de Jong put on the table in March, an offer that would bring further pain to working people and B.C. communities. (See page 11 for commentary on the current status of de Jong’s so-called reforms.)

In his desire to end American allegations that U.S.-bound softwood is subsidized, de Jong is ready to scrap any requirements that companies who log in publicly-owned forests must process logs in communities near where the logging occurs.

De Jong also said that in an effort to end American accusations that our industry is subsidized he would move some of the trees logged annually to markets where they would be bid on. Bid prices would then determine the price paid for the rest of the wood.

Unfortunately, the amount of wood de Jong has proposed for market is only 13 per cent, which would leave the door open to continued manipulation of the system by cor-

porations who hold the lion’s share of logging licences in our publicly-owned forests. Worse yet, this small amount of wood would come from programs specifically designed to encourage small business loggers and “value-added” companies.

De Jong’s proposals are clearly insufficient for the Americans, and I believe they are nowhere near enough for British Columbians either. To resolve our current problems at least half the wood controlled by corporate interests must be directed to regional log markets where bidding activity will ensure the best return to the public while getting the U.S. off our backs once and for all.

As one of the woodworkers who lost his job at Youbou I believe I speak for many displaced loggers and mill workers across B.C. when I say that we are at a critical juncture with forest policy in this province.

Yes, the 27 per cent duty imposed by the U.S. Commerce Department is cause for great concern. But in responding to that threat we mustn’t lose sight of the fact that the forests of British Columbia belong to the people of British Columbia.

Now more than ever we need to devise policies that sustain our forests, that encourage a diversity of players including companies, communities and First Nations, not just corporate interests, and that extract a fair cash return for what is logged. ✕

Ken James is a member of the TimberLess Society, formed after TimberWest’s closure of the Youbou sawmill. The Society’s website is at savebcjobs.com.

DEREGULATION VS. REGULATORY MIX

By Colin Campbell

On taking office in June, 2001, Gordon Campbell decreed that government would cut one third of all its regulations. Since then, bureaucrats have been scrambling to count regulations and figure out which ones to delete. One major aspect of the deregulation drive is the move to so-called results-based regulation, such as the Results Based Code for forest practices. The theory behind this approach is that government sets outcomes that must be achieved instead of prescribing the specific ways the regulated

party (e.g. a logging company) must behave. While a results-based approach can make intuitive sense, indications are that the Liberals’ real objective is to justify cuts to government staff and to repay the generous corporate donors who insist that the “regulatory burden” eats heavily into their profits.

The drive to reduce regulation begs the question: what are regulations for? Regulations exist to prevent environmental damage, financial mismanagement, undue influence, unfair profiteering, tax evasion, and much

other undesirable behaviour. Without them the impacts of resource extraction, for example, are particularly damaging to landscapes, biodiversity, water quality and forest productivity. Results-based regulations are meant to give business more choice. In places where a results-based approach has worked, such as Holland, the outcomes were strictly defined to be improvements in environmental quality, and the costs of failure—and risk of being caught—were high. And there's the rub. In British Columbia, the Liberals have shown no willingness to define strict outcomes or penalties. Further, rampant cuts to government field staff make enforcement implausible.

The deregulation initiative is, then, in truth an ideological attack on the idea of government oversight of corporate activity. This attack is undemocratic and uneconomic. Undemocratic, because the Liberals are excluding the public and other experts from the process of creating new regulations, in favour of closed-door regulation-drafting sessions with industry. And uneconomic, because handing off environmental management to industry will in fact hinder innovation toward environmentally friendly practices, since the incentive to innovate is less.

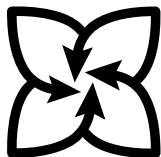
What makes more sense both economically and democratically is a regulatory mix intended to resolve the conflicting demands of business, government, the public, and the ecosystem. Maintaining a complex system such as our environment starts with scientifically determined standards and socially desirable results. Some strict command and control regulations are added, along with an effective compliance and enforcement regime. Less intrusive instruments, such as codes, standards and self-audits give further direction to corporations. When these systems are effective it is because they involve the oversight role of government and the participation of outside experts and the public. This way, the diversity of values and knowledge are included in the regulatory equation.

Unfortunately, the Liberals have so far rejected the idea of a regulatory mix and the broader public interest, in favour of a blinkered drive toward deregulation and ill-defined, unenforceable results. Our role as citizens is to halt the government's retreat from environmental responsibility by creating a realistic and coherent vision of a sustainable future, and facilitating action at the community level that cannot be ignored. ☒

Colin Campbell is the Forest Caucus Coordinator for the B.C. Environmental Network (BCEN)

President's Report

By Karen Cooling



www.dogwoodinitiative.org

There has been a flurry of activity at Dogwood Initiative this past year. First we said farewell to our dear friend **David Boyd**. David has been a board member since Forest Futures (now known as Dogwood Initiative) was launched in 1998, and was recently the Vice President. David's commitment and support has been invaluable, and we will miss his advice and his humour. Having said that, we are delighted that David has agreed to stay with us on the Advisory Round Table. This will ensure that David's knowledge of our institutional history and keen strategic analysis will not be lost. Thanks, David and welcome!

Our friend **Murray Dobbin** has recently rejoined the Board. Murray brings the organization decades of experience in the social justice movement. Murray is a long-time activist and journalist and was recently elected

to the National Board of the Canadian Centre for Policy Alternatives. We are glad to have him back with us.

Two new faces joined our board: **Garry Worth** and **Cliff Stainsby**. Garry is the past president of the Pulp, Paper and Woodworkers of Canada. He brings a vast amount of knowledge of the forest industry and the concerns of workers in rural British Columbia. We are very happy to welcome Brother Worth to our family.

Cliff Stainsby, our new Vice President, is a researcher with the B.C. Government and Service Employees' Union. Cliff has over 25 years experience as an environmental and labour activist with a focus on sustainable economics and on bringing environmental groups and unions together around common issues. We welcome Brother Cliff and enjoy

the succulent organic tomatoes he grows on his farm in Cobble Hill.

Dogwood Initiative has had a number of successes over the past year, in large part due to the fantastic staff. Since the last newsletter, there have been some staff changes. Unfortunately, **Shelley Gerber**, our former Administrative Director, has left us to move to Alberta to rejoin her partner. We miss her dearly.

Although no one can replace Shelley's joie de vivre, our Office Manager Candis Graham has continued to develop our organizational capacity and infrastructure. A published poet

and author, Candis can be seen zipping around Victoria on her new jazzy scooter. Welcome, Candis. (*Please see the Staff and Volunteers Update to learn of the other exciting changes at Dogwood Initiative.*)

Last, but not least, I want to again thank our wonderful Executive Director **Will Horter**. Will is an integral part of the Dogwood Initiative and our successes are inextricably linked to his expertise and dedication. Thanks!

Future newsletters will alternate between the President's report and the Executive Director's report. ☘

Staff and Volunteer Update

This has been a year of change at Dogwood Initiative. **Shelley Gerber** left in February, to finish a degree at the University of Victoria. Upon graduation, she moved to Calgary to join her partner. We wish Shelley well in her new endeavours in chilly Calgary, and will miss her.

Just before Shelley left, **Noba Anderson** and **Candis Graham** joined Dogwood Initiative.

Candis is our Office Manager. She has been working with non-profit groups (women in conflict with the law, immigrants and refugees, anti-poverty, child care advocacy, people living with mental illness) since 1981. She has a variety of skills including accounting, writing, office management, fundraising and project administration. In what little time we leave her for the rest of her life, she is a widely published writer and writing teacher. Join her at one of her writing workshops here in Victoria.

Noba is a consultant to our Creating Grassroots Models program. She graduated from Trent University with a B.A. in environmental studies and comparative development. Her thesis was on forest tenure issues and community forestry in British Columbia. Noba is from Cortes Island, but until recently she has been living and working with the Harrop-Procter Watershed Protection Society. The focus of her work with Dogwood

Initiative is on community outreach.

Arthur Caldicott joined us recently to expand our work into energy issues. After a career cubicled away in Dilbert-land, developing information systems, online banking applications, and database marketing systems, Arthur became a founding director of the Georgia Strait Crossing Concerned Citizens Coalition, dealing with provincial energy policy, and with BC Hydro's proposed strategy to develop new fossil fuel electricity generation infrastructure on Vancouver Island. Arthur will be working with First Nations and communities where their interests intersect with the province's burgeoning energy economy. Arthur and his family live in Cobble Hill on Vancouver Island.

Welcome to Arthur, Candis, and Noba!

In addition to our new staff, we have also been blessed this summer with the enthusiasm and skills of four volunteers who moonlight as students at UVic: **Ian Jong**, **Joanna Gaskell**, **Rachelle Rondeau**, and **Tim Lindsay**. Their duties covered a wide range of work, both inside and outside the office, and the difference to our work has been magnificent. Thank you!

Tim Lindsay, one of these hard-working volunteers, joined us as a staff intern in August. He is responsible for all the details that make an organization succeed. ☘



Noba Anderson and Will Horter

If anyone in the Victoria vicinity has an interest in offering their skills as a volunteer, please give us a call at 370-9930.

To Our Newsletter Contributors: Great work everyone. Thanks! This issue of *Lands and People* was made possible by the hard work and contributions of the following people: Noba Anderson, Arthur Caldicott, Colin Campbell, Jessica Clogg, Karen Cooling, Candis Graham, Will Horter, Frances Hunter, Ken James, Tim Lindsay, Michael Wynn.



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Until Dogwood Initiative gains charitable status, we have an agreement with Canadian and U.S. charities to provide tax receipts for gifts supporting our charitable work.

