



Riverside requested a review of the District Manager's Determinations. A Review was undertaken by a Review Panel who found that the stop work order should have been issued under section 63 of the *Act*, which applies to road maintenance, and section 17 of the Forest Road Regulation. The Panel further concluded that the Remediation order should not have been issued and should be deleted from the record. The result was that the Review Panel concluded that Riverside had not caused damage to the environment under section 45 of the *Act*.

The Review Decision has been appealed to the Commission by both Riverside and the Board on separate grounds. Riverside contends that no contravention of the *Act* has occurred and that any record of a contravention should be deleted from the system.

The Board has appealed on the grounds that the Review Panel misinterpreted the meaning of "damage to the environment" and has applied the wrong section of the *Act* and the regulations to the contravention.

It is this second appeal that the CCCC has applied for intervenor status on.

The Commission has based its decision on the following submissions: letters dated April 25 and May 8, 1996 from counsel for CCCC; letter dated May 21, 1996 from counsel for Riverside; letters dated May 21 and June 6, 1996 from counsel for the Board; a review of the District Manager's stop work and remediation orders dated August 24, 1995 and September 11, 1995; and a review of the Review Panel's decision dated November 16, 1995.

## **REVIEW OF SUBMISSIONS**

Counsel for CCCC submitted that CCCC should be granted intervenor status to make submissions on the interpretation of section 45 of the *Act* which specifically applies to "damage to the environment".

The CCCC is a non-profit society established in Williams Lake, BC. It is a coalition of 15 member organisations involved in education, research and the promotion of sustainable development and wilderness preservation in the Cariboo-Chilcotin area of British Columbia. The CCCC has been directly involved in environmental issues in the Cariboo-Chilcotin which encompasses the area where the alleged contraventions which are the subject of this appeal occurred.

The CCCC submits that it has a direct interest in this proceeding as its members use the provincial forest for recreation, sport, and business (i.e. guide outfitting). The CCCC promotes education, research, and wilderness preservation in the Cariboo-Chilcotin.

The CCCC submits that it has a unique perspective that will aid the Commission in considering the meaning and scope of "damage to the environment". In particular it submits that it has an environmental perspective

that is not represented by any of the other parties. It asserts that the Board does not represent specific interests or groups but rather represents the spirit and substance of the *Act* and the *Code*. The Respondent, Ministry of Forests, is concerned with the administration of the *Act* and the *Code*, and the Respondent, Riverside represents the interests of the forest industry.

Counsel for Riverside submits that the CCCC should not be granted intervenor status and that if intervenor status is granted then it should be restricted to written submissions only on the interpretation of section 45 of the *Act*.

Riverside submits that CCCC's intervention is unnecessary because the Board is represented before the Commission on this matter. In particular the Board represents the interests of CCCC and the public in general. The Board is a unique entity that has been given the authority to oversee forest practices in this province. It maintains communications with environmental societies and community groups. The Board can, therefore, suitably represent the interests of the CCCC.

Riverside further submits that CCCC has failed to provided the Commission with sufficient evidence that it can bring a unique perspective to the proceedings, that the CCCC will not be affected by the outcome of the decision and it would be unfair to add another party to the proceedings whose view is contrary to that of Riverside's.

Finally, Riverside submits that if intervention is allowed it should be restricted to written submissions. The reasons for this submission are that written submissions would preclude the other parties from having to respond to grounds of attack other than those which the parties choose to raise. Additionally, the restriction is justified because sub-section 131 (6) of the *Act* contemplates party status for persons with more of an interest than that of the CCCC.

Counsel for the Board submits that the Board has no objection to the application for intervenor status from the CCCC. In addition the Board has submitted that it does not agree with Riverside's submission that the Board represents the interests of the CCCC. Finally the Board submits that the same *Act* that provides the Board with standing before the Commission also contemplates the participation of intervenors.

No submission was made on behalf of the Ministry of Forests.

## **CONCLUSION**

In deciding whether intervenor status should be granted under sub-section 131 (9) of the *Act* the CCCC and Riverside submit, and the Commission agrees, that the test is whether the applicant has a valid interest in participating and can be of assistance in the proceedings Hunter v. Board of Commissioners of Public Utilities for the Province of New Brunswick et al, (1984) 11 Admin. L.R. 221 at 226 N.B.C.A.

In this case CCCC has provided some indication that they have a valid interest in participating. They represent a coalition of groups in the Cariboo-Chilcotin area that have a particular interest in the protection of the environment and sustainable development. The Commission is satisfied that the CCCC being a local group with a particular environmental interest does have a valid interest in participating in this procedure.

The second prong of the test is whether the CCCC can be of assistance in the proceedings. Riverside submits that the CCCC will not be of assistance to the proceeding because their interest is already represented by the Board. Riverside suggests that the legislature provided the Board with its broad authority to bring appeals before the Commission for the very reason that they represent the public interest and therefore represent the CCCC's interest. The Board itself has submitted that it does not agree with this characterisation of the Board's role. Indeed the Board's own Values and Guiding Principles which are found at page 14 of the Board's 1995 Annual Report state that, "The Board will represent the public's interests, not those of any single group." The Commission cannot agree that the Board will represent the CCCC's interests. Had the legislature anticipated that the Board would have such a broad mandate it surely would not have provided for intervenors within the same legislative scheme.

Riverside further submits that the Commission should consider the reasons of the Quebec Superior Court in Imperial Tobacco Ltd. v. Attorney General of Canada (1988) 55 D.L.R. (3d) 554 when reviewing this argument. In that case the court refused intervenor status to the Canadian Cancer Society in a matter concerning the constitutionality of the *Tobacco Products Control Act* as it pertained to the advertisement of tobacco products. The court held that intervenor status should be denied because the Attorney General could suitably represent the interest of the Canadian Cancer Society as it pertained generally to the "health of Canadians."

The Commission finds that it cannot follow the reasons of the court in that case for two reasons. First, that case involved a question of constitutional law that involved the constitutionality of a Federal government statute. This one does not. Secondly, and more importantly, in this case the CCCC is a local environmental group that has shown that it has a valid and separate interest that the Board acknowledges that it does not represent. In the Imperial Tobacco case the court found that the Canadian Cancer Society did not have such a special interest and that the Attorney General did represent their interests.

The question still remains can the CCCC be of assistance to these proceedings. The CCCC submits that they bring a unique environmental perspective to the proceedings. This is particularly so in that they are active users of the provincial forest that is the subject of this appeal. The Commission notes that the Preamble to the *Act* provides:

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

AND WHEREAS sustainable use includes

- (c) balancing productive, spiritual, ecological and recreational values of forests to meet the economic and cultural needs of peoples and communities, including first nations,

Considering the above, it is the decision of the Commission that a local environmental coalition can be of assistance to the proceedings and in particular may be of assistance in determining the meaning and scope of “damage to the environment” as it is used in section 45 of the *Act*.

The final question to consider is to what extent should the CCCC be permitted to participate. Riverside submits that the participation should be in writing and that it should be limited to the interpretation of section 45 of the *Act*. The CCCC submits that full submissions including an environmental perspective be put before the Commission. The Board submits that they do not object to the CCCC application because the CCCC may choose to raise issues that the Board will not.

Riverside suggests that the Commission should come to the same conclusion that the Forest Appeal Board reached in MacMillan Bloedel Ltd. v. Chief Forester, June 19, 1992. In that case the Appeal Board was considering an application for intervenor status by the Sierra Club of Western Canada into an appeal under the *Forest Act*. The appeal was over the annual allowable cut that had been arrived at between the licensee and the Ministry. The Appeal Board granted the Sierra Club limited standing to provide written argument only. Their reason for doing so was that the Board did not want to prejudice the parties by forcing them to respond to grounds of attack other than those which they chose to raise.

There are, however, differences between that case and this one. In this case the *Act* specifically provides for intervenors while the *Forest Act* does not. Similarly, in this case there is an issue under appeal that can benefit from the balancing of ecological interests against economic interests as is contemplated in the Preamble. The *Forest Act* has no such provision. Finally, the issue under appeal in the MacMillan Bloedel case was contractual in nature. In this case it is not.

Given the above it is the decision of the Commission that the Commission will benefit from the full participation of the CCCC as it applies to the appeal that has been commenced by the Board.

**DECISION**

**The application of the Cariboo-Chilcotin Conservation Council for intervenor status is granted. In that regard the Cariboo-Chilcotin Conservation Council has all of the rights provided to a party under section 131 (8) of *the Forest Practices Code of British Columbia Act* as it pertains to the appeal of the Forest Practices Board.**

David Perry, Chair  
Forest Appeals Commission

June 11, 1996