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**3RD SESSION, 37TH PARLIAMENT**

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Morning Sitting

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TUESDAY, NOVEMBER 19, 2002

The House met at 10:03 a.m.

Prayers.

### Tabling Documents

**Hon. G. Plant:** By leave I seek to table three documents: an opinion of the conflict-of-interest commissioner pursuant to section 19(3) of the Members' Conflict of Interest Act, dated January 25, 2001; a letter from the conflict-of-interest commissioner to Gillian Wallace, QC, dated January 25, 2001; and an indemnity granted by Her Majesty the Queen in right of the province of British Columbia, dated March 5, 1999.

Leave granted.

### Orders of the Day

**Hon. M. de Jong:** I call, in committee, continued debate on Bill 74.

[1005]

### Committee of the Whole House

#### FOREST AND RANGE PRACTICES ACT (continued)

The House in Committee of the Whole (Section B) on Bill 74; J. Weisbeck in the chair.

The committee met at 10:08 a.m.

On section 1 (continued).

**J. MacPhail:** I had left the minister with a question about how the objectives set by government.... How can we discuss that, given that the reference to the sections in the Forest Practices Code again change when we debate Bill 75? I'm wondering whether the minister has had time to contemplate: are we to just do all this work over again under Bill 75? Is that the intent?

**Hon. M. de Jong:** No. In fact, from her review of the legislation, the member will know that the amendments contemplated in the subsequent legislation are a transference of responsibility to the Ministry of Sustainable Resource Management and a completion of a process that was actually begun earlier this year.

**J. MacPhail:** No, I'm not aware; I've been dealing with a lot of matters. What completion of what process dealt with earlier this year?

[1010]

**Hon. M. de Jong:** Well, the member will know that with the realignment which occurred following the last election, what has, in effect, taken place is a Forests ministry and a Forest Service that have responsibility

for governing conduct on the land base as it relates to licensees, woodlot owners and ranchers. A separate arm of government that did not exist in the previous regime has assumed responsibility for land use planning decisions, and that is Sustainable Resource Management. That division is not only quite clear but, I would suggest, quite logical.

**J. MacPhail:** Fair enough. I'm aware of that, except that's not contained in legislation. What I'm asking the minister for here is a discussion about how objectives set by government refer to sections 3 and 5 of the current Forest Practices Code. Then two days from now we'll be discussing those same sections that add a whole new element to it, just as the minister describes — but a whole new element in legislation.

Let me just read his own explanatory note. We don't even have to go to the actual substance of the legislation — his own explanatory note of Bill 75, which is coming. Perhaps the minister thinks I'm belabouring this point, but not at all. These are the concerns where people are saying: "How can we possibly find out the intent of the government?"

Here's the explanatory note: "Section 6" — of Bill 75, which will be debated in a few days, I imagine — "replaces the existing provisions to enable a single minister to establish and administer resource management zones, sensitive areas, and objectives for resource management zones and sensitive areas." So that introduces a whole new element under Bill 75 to the very sections we're now debating.

I only make note of this: people are already in a state of high inquiry about what this Forest Practices Code's intent actually is. I guess we're going to do it today. We're going to discuss it today, and then we're going to do it all over again, to find out a brand new intent of the government, because what we're modifying today will be remodified — changed again — in three days. That's my point.

**Hon. M. de Jong:** Hon. Chair, I am by no means dismissive of the line of questioning, but I do want to emphasize, through you to the member, that in fact there is no addition of added elements. What is done and what is being done very purposely is to reduce the decision-making process from three ministers to one, and that minister and ministry is the Ministry of Sustainable Resource Management.

So the part of the statement made by the member that I dispute and take issue with is the suggestion that within the context of that statutory provision, new elements are being added. That's simply not the case.

**J. MacPhail:** Well, let me just say, Mr. Chair, that I very much appreciate your allowing me to discuss this, but I do want to assure you it is in the context of the changes that are occurring right now.

The minister stands up and says there are no new elements offered. Let me confess. I have had to gain an expertise over the last 18 months on this that exceeds

what is required for sitting at a cabinet table without these direct responsibilities, so let me just say that perhaps there's an easy answer to my question. What we're debating right now under this legislation is how the objectives set by government are going to be determined. What does it mean? That's the nature of my questions.

The objectives set by government in this legislation, Bill 74, refer to sections 3 to 5 of the Forest Practices Code that's in existence right now. Is it the minister's understanding, then, that sections 3 to 5 of the current practices code remain the same under Bill 74 and Bill 75? The language is substantially different.

[1015]

**Hon. M. de Jong:** In fact, the effects, the objectives remain the same with the following alterations. The first I have already mentioned: a decision-making process that heretofore has involved three ministries and will involve one; and as well, a decision-making process that is delegated from the minister as opposed to, as is presently the case, vested in specific officials within the ministry.

**J. MacPhail:** Well, I am going to leave this and then, I guess, debate it under Bill 75. I certainly read — having had this legislation for less than 24 hours — that there is change greater than that, but clearly I'm not going to get any further on this, so I'll have to leave it. I do want the minister to be aware, though, that after he has tabled Bill 75.... Bill 76 seems to be generating less concern, but after he tabled Bill 75, there is a substantial amount of concern, and not just from the EN-GOs but from others, about how the two bills are blending together.

Let's just look at Bill 74, the definition of "minister." In my briefings I was informed, as the minister has just said, that there will no longer be any joint decision-making. There used to be joint decision-making between the Minister of Environment, Lands and Parks — now the Minister of Water, Land and Air Protection — and the Minister of Forests, so that's gone. In terms of approval of forest stewardship plans, is it the Minister of Forests? Or is the minister now suggesting it's the Minister of Sustainable Resource Management — just to clarify?

**Hon. M. de Jong:** The Minister of Forests.

**J. MacPhail:** All right. Again, walk me through it. The Minister of Forests has decision-making powers, but will the objectives set by government be by the Minister of Sustainable Resource Management?

**Hon. M. de Jong:** The land use planning aspects of what takes place on the land base fall within the ambit of the Ministry of Sustainable Resource Management. I think the member's question related specifically to the approval processes for forest stewardship plans, and that falls squarely within the ambit of the jurisdiction afforded by this act to the Minister of Forests.

[1020]

**J. MacPhail:** What I'm trying to figure out is: in the definitions, what does "minister" refer to? I just asked a question about objectives set by the government, and the definition of objectives set by government says: "...means objectives established (a) by order of the minister...." I was told that that minister is the Minister of Sustainable Resource Management.

Now I've asked what minister means under the definition of "minister," and I'm told it's the Minister of Forests. How are we to know? Perhaps the minister could outline for us who does what. When it says "minister" in the legislation, who's to know what minister it refers to?

**Hon. M. de Jong:** In fact, within the bill that we are discussing now, I can advise this member that where "minister" is referred to, that reference is to the Minister of Forests.

If this helps, because the questions relate to the definition, there is a significant change in this act as compared to the existing Forest Practices Code. That is specifically with reference to the fact that there is a delegated model of authority that has very purposely been incorporated into this act. Whereas in the existing Forest Practices Code the member will see that officials, statutory decision-makers, are enumerated in specific terms — regional managers, generally district managers. In this act that power is vested in the minister, who then has authority pursuant to this act, the definition and the subsequent provisions, to delegate that authority.

The authority vests with the minister. That is, admittedly, a significant departure from the existing code.

**J. MacPhail:** Yes, I agree. What I'm trying to find out is.... The minister stood up and said there's a role for the Minister of Sustainable Resource Management. I can't find it in the legislation. Does that role come through delegation from the Minister of Forests to the Minister of Sustainable Resource Management?

Even when he referred to Bill 75 under the questions I asked about the changes to sections 3 and 5 under Bill 75, the minister said that's to change it so that there's one minister — the Minister of Sustainable Resource Management — responsible. There's no evidence in the legislation of his or her role anywhere. How do we know? Maybe the minister could explain how the delegation to other ministers is going to work.

[1025]

**Hon. M. de Jong:** If this helps the member, the delegation, to the extent that I used that term just a moment ago, refers specifically to delegated authority that flows from the Minister of Forests to officials within the Forest Service. The authority that the Minister of Sustainable Resource Management will be exercising comes by virtue, I am advised, of the Constitution Act and the provisions that the minister referred to earlier that are incorporated pursuant to the provisions

of this act and the existing Forest Practices Code. The delegation, as I use that term, refers specifically to powers that flow from the Minister of Forests to officials within the Forest Service.

**J. MacPhail:** When will the public be informed of what ministry they go to, to look at the objectives determined by government, then? I've just had the minister's word on that, but I can't find it in the legislation. I just heard now that the delegation that's under.... No, that's true; it is in the definitions section. Delegation means from the Minister of Forests to his own staff. How will we know what ministry to go to, to look at objectives or to discuss those matters?

**Hon. M. de Jong:** Insofar as specifically land use planning objectives are concerned, that is a matter which falls to the Ministry of Sustainable Resource Management, and that is clear from the amendments that apply to the Forest Practices Code. It's a second set of objectives, which relates to the values that we intend to manage to, with respect to the forest stewardship plan — things like soil, wildlife, biodiversity — and they are referred to in the body of this legislation. The responsibility rests with this ministry. There is obviously a regulatory component, and I know that's something that the member is going to discuss later on during this debate. But those specific responsibilities and enabling provisions are contained further along in the bill we're debating.

[1030]

**J. MacPhail:** You mean it's further on in the bill that I'll see the words "Minister of Sustainable Resource Management"? Literally, I can't find it anywhere in the legislation. That's why I'm curious.

Here's where I'm going, so the minister can work on this. The minister says that it's now one ministry responsible. For what? That's what I want to know. Where do we find out what the one ministry is that's responsible on its own?

Secondly, how do we jibe the relationship between it being the Ministry of Sustainable Resource Management that's going to set the objectives, and then we find out later in Bill 75...? I'm told that a minister other than the Minister of Forests will be determining resource management zones and objectives from which forest stewardship plans flow. How is this an improvement? That's what we need. There's a basic question. Show me how this is an improvement, other than by eliminating any role for the Minister of Environment.

**Hon. M. de Jong:** I'm sorry if I missed the last bit of the question. If there is confusion and I am contributing to that, it may be by my not having differentiated between the two types of objectives that are contemplated here. There are those objectives that relate to the values we intend to manage for, and they are enumerated in the bill: soil, water, biodiversity and cultural values. There is a regulatory element to that.

There's another set of broader objectives that relate to the land use planning process. I'm going to suggest to the member that it is clear from both the Interpretation Act and the amendments that relate to the Forest Practices Code that responsibility for that set of objectives lies with the Ministry of Sustainable Resource Management.

**J. MacPhail:** Okay. I guess we're going to have to take the minister's word that it's the Interpretation Act and something else, but I can't find it in here. All the minister has to do is point to a section where I'm missing it. I'd be happy for him to just point to a section that says that the broader land use planning objectives are of the Minister of Sustainable Resource Management.

Then my last question — and I accept that the minister may not have heard this — is: how is this an improvement? How will this work as an improvement over the current circumstances by having the higher level objectives determined by the Ministry of Sustainable Resource Management and then the values incorporated in the forest stewardship plan, I assume, enforced by the Ministry of Forests?

[1035]

**Hon. M. de Jong:** I think the point I want to make in response to this question is, first of all, that what we have tried to do by virtue of a broader realignment of government is to have clearer lines of accountability that relate to some of the decision-making features of operating on the land base. Broad land use planning now becomes a function of the Ministry of Sustainable Resource Management, and that responsibility lies with that minister as opposed to three ministries, as was previously the case.

I might make this observation as well. I often heard an argument that said there was something of an inherent conflict in the land use planning process that was managed out of a Ministry of Forests, insofar as there was a suspicion in some quarters that that provided for a bias in favour of a particular type of use on the land base. The notion behind the establishment of a separate land use planning ministry or resource management ministry is that all of the considerations, all of the options available for uses on the land base, were given proper consideration. There are clearer lines of authority, a single decision-maker and an agency of government with no direct ties to any single land use process.

**J. MacPhail:** Well, we'll have further discussion of that under sections 3 through 5. While that may have been a position put forward by many, there's also confusion about how this legislation addresses any of those concerns. I'll discuss that under sections 3 through 5.

One last question on this: is there no role now anywhere for the Forest Practices Code for the Minister of Water, Land and Air Protection?

**Hon. M. de Jong:** The member will see in the definitions section that we are dealing with, under the

definition of "official," that it is specifically contemplated that the Ministry of Water, Land and Air Protection will have a continued role — as will become clear further on — specifically in the fields of search and seizure, compliance and enforcement.

**J. MacPhail:** I would appreciate the minister pointing out to me later on in the sections of the act where "official" actually means the Minister of Water, Land and Air Protection.

Section 1 approved.

On section 2.

**J. MacPhail:** Section 2 is the interpretation section of the legislation. Can the minister please elaborate on what types of quasi-judicial powers can be delegated to employees of the ministry? Start with that.

**Hon. M. de Jong:** I think the short answer to the question around quasi-judicial powers is to refer the member to section 71 on administrative penalties, but the member's question may have been broader than that.

[1040]

**J. MacPhail:** Well, this is the section that talks about delegation of powers. I assume what we're talking about here is delegation of powers. It says, specifically: "The minister, in writing, may (a) delegate a power or duty of the minister under this Act, including a quasi-judicial power or duty but not including a prescribed power or duty, to a person employed in a ministry...." Later on it does say in section 5 that section 71 of this act doesn't apply to the government. I'm just trying to figure out what are the quasi-judicial powers referred to in this section that the minister may delegate.

**Hon. M. de Jong:** I think the distinction here that we're talking about is between quasi-judicial powers that are vested in the minister and what we might broadly term "administrative functions or powers" that are vested in the minister. Certainly, in the case of administrative penalties, hearings, rights to be heard that are contemplated in this act, that power, on the face, is vested in the minister. The minister has the authority to delegate those powers to officials within the ministry, contrasted with the regime that is presently in place where, with a few exceptions, those powers are vested in specific Forest Service officials.

**J. MacPhail:** My next question was going to be: what is the change from what exists now? Could we have some concrete examples of how it will work differently now?

**Hon. M. de Jong:** I wanted to make sure the answer I was going to give was the correct one. At a practical level, stakeholders — people involved with the Forest Service and governed by this act — shouldn't see much

difference in how this operates on the ground. Yet the member will also note that by virtue of how the section is worded, there is provision made for the minister, in delegating the authority, to provide directions that are actually binding on the delegate. That is an additional tool that vests in the minister and is part of that delegated function or part of that ability he or she has to delegate.

I'll repeat the first part. From the practical point of view, the objective would be for stakeholders not to encounter significant operational differences.

**J. MacPhail:** This section has no.... I don't want to put words in the minister's mouth, but there's no practical difference on the ground?

[1045]

**Hon. M. de Jong:** From the point of view of the stakeholder or licensee, that would be the objective. There is a difference in how the official exercising the power obtains that power. Under this model it is delegated by the minister, and therefore, impliedly, that power can be taken back by the minister. That was not the case under the previous code.

**J. MacPhail:** And the provision for subdelegation — is that the same or different? If it's different, how different?

**Hon. M. de Jong:** Under the existing code there is certainly a power to subdelegate, and it is likely that in many cases where powers are delegated by the minister under this legislative regime to officials, there will also be a power to subdelegate included. But it will have to be specifically included, or that power will not exist.

**J. MacPhail:** Is this a situation where delegation and subdelegation take place only within the Ministry of Forests, or is it beyond that?

**Hon. M. de Jong:** The ability that the Minister of Forests would have to delegate to an official in government outside of the Forests ministry is captured by this provision.

Section 2 approved.

On section 3.

**J. MacPhail:** Mr. Chair, this is a major point of discussion: "Part 2 — Forest Stewardship Plan, Site Plan and Woodlot Licence Plan." This is the division, the part of the legislation that reduces what was originally a requirement for seven plans, which then became three plans, to now one plan. So we are going to be spending a bit of time on this.

I want to preface my comments by a discussion that I had with a group of environmental non-governmental organizations on this matter, and also a group of forest workers who are on the ground.

They're IWA members; however, they are not IWA executive.

I think the way of explaining this best is contained in a letter, and I'm sure the minister has not had time to read it yet, because I just received mine this morning.

Interjection.

**J. MacPhail:** From West Coast Environmental Law? Okay, good.

It's a very thoughtful letter that captures some of the discussion that will proceed, so I'm going to read a part of it into the record and then proceed to ask my questions. I'm starting at page 2, where it says "Concerns re Bill 74." There is some discussion at the beginning about consultation that I'll talk about later. Mr. Chair, it's quite clear that this is from a group that is not an industry-based group — there's no question about it — but given the content of what the organization is saying, it does take into account some of the concerns that industry had.

[1050]

"With regard to Bill 74, we are of the view that although it is largely enabling legislation that will be informed by the content of future regulations, there are some structural problems in the act itself that will undermine your ministry's ability to ensure environmental values are protected on public land. We wish to make it clear at the outset that we are not trying to defend the status quo in the Forest Practices Code. As a general comment, we would say that it — meaning the current code — is procedurally burdensome and prescriptive but substantially weak when it comes to protecting environmental values.

"A policy decision was made at the time it was being drafted to prefer a more discretionary but proactive planning-based approach to a rules-based approach. There are some exceptions. This approach was supported by many in government and industry because it allowed the exercise of professional discretion on a site-specific basis rather than specific rules common to most codes of practice, such as building codes. The quid pro quo for meeting all the government's planning requirements was that compliance with an approved plan constitutes a defence to damage to the environment."

Just as an aside before I continue, what they said was that there was a give-and-take in the previous code that said if you go through the planning process — industry — and your planning is signed off, the fact that you have an approved plan and you live within the parameters of that approved plan allows you to declare that you're not damaging the environment.

Interjection.

**J. MacPhail:** The reason why this is important, Mr. Chair, is because we are discussing right now a substantial change to the planning requirements.

Carrying on with what the West Coast Environmental Law Association said to both the minister and me:

"Turning to the proposed Forest and Range Practices Act, we feel there are elements of this bill that will defeat

government's stated intent of maintaining a high level of environmental stewardship. While some of these might be matters yet to be addressed in forthcoming regulations, some key issues will not be curable.

"The key issues here are: (1) no approval of site-level plans for roads and cutblocks; (2) the general nature of the new one-plan approach of forest stewardship plans and their approval criteria, and (3) the fact that compliance with either of these plans will constitute a defence to damage to the environment, which we believe undermines the concept of 'a results-based code.'

"In our view, these structural elements, together with the introduction of a due-diligence defence for administrative penalties, will undermine the effectiveness of compliance and enforcement, regardless of whether the maximum amount of penalties are increased. We will briefly discuss each of these issues."

We will discuss the first one under section 10 of their concern, but it is this original, and what this group says is the incurable concern about the fact that with the now one-plan approach, the forest stewardship plan that eliminates other plans, that gives rise to their concern that there will not be protection of environmental values. My questions flow from that premise.

In my briefings with staff, for which I thank the staff very much, it is true that we understand that there's one plan now, the forest stewardship plan. It will be prepared by the licensee. That plan, the forest stewardship plan, replaces the forest development plan, but it also eliminates the requirement for site-level plans, silviculture designs and road layout plans. Let me just begin by asking: am I accurate in that?

[1055]

**Hon. M. de Jong:** The member is not, and I'll explain in a moment why I offer that conclusion. But if I might, because she has referred to the document and described it, I think accurately, as a thoughtful critique of the legislation — and I agree with her — I also will take this opportunity to respond to the interest that is shown by the author of the letter and the agency that he represents to re-engage with the government to deal with the work that lies ahead. I am anxious to accept that offer of re-engagement and say so now unreservedly.

Obviously there are differences of opinion between myself, the government and the author of the letter and the agency he represents with regard to the specifics laid out. We'll have an opportunity, I'm sure, in the debate that lies ahead to deal with the specific issues that are raised. I wanted to say — although I just received the letter and quickly read it a few moments ago — that I think it is properly characterized by the member as a thoughtful attempt to analyze, albeit a representation of a different point of view and perspective that is no less valuable for that fact.

The member asked me whether she characterized correctly the elimination of the need for site-level plans. The reason I said that was inaccurate was not to split hairs, which I'm not one to do, but they are still required. They are not approved, and perhaps the

member was speaking to that distinction. In fact, it was in response to Professor Hoberg's specific recommendation that that requirement now exists in this legislation, where it did not, admittedly, in the discussion paper. The discussion paper that was tabled this spring did not include that requirement. On the basis of the submissions that Professor Hoberg heard, he suggested it and we accepted.

I should say, as well, that it's my understanding and recollection that that was a submission he and the MLA panel heard from many quarters — not just the environmental community, but from licensees as well, who saw real value, as did the environmental community, in having those site-level plans prepared. The difference, admittedly, is that they are not approved in the way they were by government under the existing code regime. But it is not accurate to say they have been eliminated.

**J. MacPhail:** My understanding is that they're required, as the minister says, but they don't require any approval. They do have to be available upon request. This goes back to the point made by the author of this letter: the approval process of those plans, which are still required.... The requirement to approve those plans allowed all stakeholders to then say, once they'd been approved, that the environmental protection values were deemed to be included. That's gone now.

That trade-off, that quid pro quo, is gone by virtue of the lack of a requirement to approve those plans, so I think the author's point is well taken in that area. There's a corollary issue here. The government has made a huge deal out of the reduction of red tape and the unnecessary burden of administrivia. How does this in any way reduce red tape when they're still required, as the minister just admitted, to produce the plans, to make sure the planning process is gone through? The only element that's missed is the approval process.

[1100]

**Hon. M. de Jong:** To answer the specific question, I would say let us not underestimate the burden that interaction with government transactional red tape imposes upon anyone dealing with government. The balance that was sought here was to provide members of the public, the Crown, with a reference point to ensure that the site-specific information was available and is available but to eliminate, admittedly, a further step in the approval process, given that our objective was to consolidate that approval process into one step. I'm going to suggest to the member that the elimination of that approval exercise in and of itself removes a potential spot for delay and additional paperwork.

Now, there can be — and I think the author of this letter says it pretty clearly — a difference of opinion around whether or not that additional approval process should be preserved. This legislation makes it clear that the government believes our objectives can be met by eliminating that further approval stage while maintaining the safeguard of having the documentation avail-

able. That is presumably a difference of opinion that I'm not likely to resolve here today, but it's a pretty clear one.

**J. MacPhail:** Was the feedback that the minister got that it was the approval process that was the hassle, that the stakeholders didn't actually mind doing the planning and committing the planning to writing?

**Hon. M. de Jong:** In part. I know it's not referred to in the letter that we have been referring to for this part of the debate, but it might give both the author of this letter and the member some comfort to know that we're not exactly charting new ground here. I say that in this context: the existing code makes provision for what are called pilot projects. It is precisely the kind of regime.... I've got a forest stewardship plan from one of those pilot projects that has evolved out of the existing code, and that process and those values that are managed for in this legislation are precisely what emerges out of this document. I suppose one could make the argument that what we are, in effect, doing forms a part of a natural evolutionary process where we are taking what has, I think, heretofore been recognized to be a successful pilot exercise and giving it broader application. I must confess, when I have an opportunity to discuss with the author of this document some of the concerns, one of the questions I will be inclined to put to him is whether or not there are issues of concern that have arisen out of the pilot projects that exist with respect to the present code.

**J. MacPhail:** I've already had the opportunity to have that discussion by meeting directly with the groups, and yes, there are concerns and there are differences, one of which has already been referred to, which is the change in the test for what's a defence — the due diligence test, etc., — and they are integrally involved. The nature of moving straight from a narrow application of pilot projects that are under review to then applying that to the entire province is also one of concern, but we will, under part 10, have an opportunity to discuss that.

[1105]

Believe you me, the minister may note from the tone and the nature of the calm discussion that these are inquiring questions, not rhetorical questions. My question of curiosity around it was the approval process, or what was it in the approval process that slowed things down...? Was it the fact that three ministries had to be involved? Was it the fact that there wasn't enough staff? We actually heard, on the road in our prebudget consultation committee, that the lack of staff for approval was a huge hindrance. We heard that from an industry representative. Or was it that perhaps in the approval process, there were changes that had to be made to the plan? What was it that is now eliminated in these areas?

**Hon. M. de Jong:** I think some of this has to do with a realization of what was taking place under the

existing Forest Practices Code regime, where in so many cases what you were confronted with was a resource professional preparing a detailed site-level plan — and it is complex; it is site specific — and submitting that to government, where another resource professional, who in my view is better employed out on the land base, spent all of their time at a desk reviewing the work of another resource professional. Now, a big part — admittedly again — of the regime that we are proposing to enact here would impose greater accountability on those resource professionals, whether they are foresters, agrologists or biologists. We would seek to impose more accountability upon those professionals.

Perhaps the member has heard this — I certainly have — from practitioners or stakeholders, who said that in many ways under the existing regime, you had licensees, stakeholders, who would submit their site plan and, by signing off on that document, by having the Crown sign off on that document, were successful, in effect, at transferring liability to the Crown for everything that followed as long as they adhered to that site plan. Admittedly, when I looked at this, I thought to myself, and the government thought: let us import a greater notion of professional accountability. Let us free up those officials that we do employ in government and get them out from behind their desk, where they're being buried under a mountain of paper, and get them on the land base checking what's actually taking place in those cutblocks or on those road construction sites.

**J. MacPhail:** Well, my next question was going to be in the area of the compliance and enforcement regime, but I'm curious as a layperson. Perhaps the minister could expand on this notion that there was a transfer of complete liability to the Crown. Has there been some law, jurisprudence, on that?

[1110]

**Hon. M. de Jong:** What I wanted and want to convey to the member — and we will have this broader discussion when we get to the sections around due diligence and the liability models — under the prescription-based model that the existing Forest Practices Code represents, as a general rule it is fair to say that a licensee or a stakeholder... As long as they could demonstrate that they conducted themselves in accordance with the plan and the prescribed regulations, that largely represented a defence to whatever results might occur. If we're genuinely interested in results, then let us measure performance by those results. That is, admittedly, a significant departure from what we presently have.

**J. MacPhail:** That's very interesting. I'm informed that it's exactly the opposite — that this legislation now allows that defence, but that defence wasn't there before. We will get to that under the terms of liability. I have a complete reverse of the understanding, and that's after the briefing I had from the staff. Actually,

the chief forester said exactly what you're saying, but my understanding is it's exactly the reverse — that this law now allows for that defence.

Well, let me ask this, then: how will a compliance and enforcement regime work for silviculture, road design and site-level plans if they don't have to be turned in or approved?

**Hon. M. de Jong:** I'll try this. The site plan must be consistent with the forest stewardship plan, and failure to abide by either of those documents constitutes an offence under this act. I will say — and this is not a criticism — that we are probably jumping ahead to section 10 and beyond on a couple of these points.

**J. MacPhail:** I understand that all of this is related. My reason for asking it under this is because the forest stewardship plan is the only one that requires approval. My discussion here is around compliance and enforcement. I assume compliance and enforcement will be on the basis of an approved forest stewardship plan, so I'm asking — in the breach, in the exception — about how approval will be in these other areas.

I'm happy to ask the questions later. I'd be happy to do that. However, the questions will apply to not only the site plans, but I'm also asking about the silviculture, road design and site-level plans — the three of them.

I'm sorry, did the minister say that they'll still have to be complied with, even though they're not approved — the plans that merely have to...? I've missed the answer.

[1115]

**Hon. M. de Jong:** There must be an approved forest stewardship plan. I think we've established that. There must be the requisite site plans. I think we've established that. Failure to have the required site plans would represent an offence. The site plan must be consistent with the forest stewardship plan. That is enforceable. Compliance and enforcement action will be pursued against activities that are inconsistent with the forest stewardship plan.

**J. MacPhail:** Okay. The other levels of the plan that theoretically have been eliminated have to be carried out. They have to be consistent with the forest stewardship plan, and penalties can be assessed if they're inconsistent with the forest stewardship plan. How is that different than what's in existence now?

**Hon. M. de Jong:** I think the key here is the degree of enhanced flexibility that is afforded to practitioners on the land base. Our focus — and I acknowledge this — becomes the comprehensive forest stewardship plan. How those objectives are achieved becomes less of the focus. The results that are achieved are enumerated and must be achieved.

Government becomes much less preoccupied in this scenario with the how-tos as laid out in a site-level plan. Admittedly, there is a greater degree of flexibility on the part of licensees or stakeholders on the land

base to alter their site plans. They must still have them, and they must be consistent with the forest stewardship plan, but the government is out of the business of proving the minutiae associated with those plans.

**J. MacPhail:** Let me take it from this point of view. This is a very practical application of determining difference. The minister announced that there would be a \$3 to \$5 reduction in costs per thousand cubic metres, I think it was, as a result of the change to this legislation. How much of that \$3 to \$5 reduction in costs per thousand cubic metres is as a result of not having to approve site-level plans?

I would assume.... I've actually sat at a cabinet table where that's how you determine what the.... The minister's announced a figure attached to reduction in costs associated with reduction in red tape. This, as far as I can tell, is the one area that the minister is holding out as a reduction in red tape or paperwork.

**Hon. M. de Jong:** I'm not going to b.s. the member. I proffered an opinion based on the information available to me. I certainly qualified it as an early estimate. I'm not going to suggest to the member that I have broken it down on a stage-by-stage basis, because I haven't.

[1120]

**J. MacPhail:** So you mean there's no calculation of that \$3 to \$5 estimate of reduction in costs by the minister. I'm curious. Where did it come from?

**Hon. M. de Jong:** That's a fair question. It represents an estimate based on the best information that officials have been able to gather. Part of that relates to discussions that have taken place with industry. The member will know that in offering that estimate, the considered opinion of industry was that that may have been a dollar high. I think the suggestion several members of industry offered was \$2 to \$4. We'll see.

There was obviously a hope that by eliminating some of this red tape and regulatory burden, there were going to be cost savings. I think there is broad recognition that that is going to be the case, but I'm not going to hang my hat absolutely on a figure, because I'm just not that certain.

**J. MacPhail:** That's pretty candid. Thank you very much.

The minister has said that there will be penalties to companies if they don't have these plans on hand if demanded. It's been several moments, but I think that's what the minister said.

If the public wants to see these plans that don't require approval under the forest stewardship plan process, I assume the public can have access to each and every separate plan upon request.

**Hon. M. de Jong:** The answer to the question is yes. I'm advised that in some cases licensees are looking at a website-type arrangement where people can simply

access and pull the information as and when they require it. That apparently is the practice at one of the pilot projects presently in place. But the short answer is yes, they are to be accessible by members of the public on an individualized basis.

**J. MacPhail:** Will the penalty for companies that don't have those plans on hand if demanded be an administrative penalty? Will that be established by regulation?

**Hon. M. de Jong:** Again, I believe the answer to the member's question is yes. We're just checking to ensure that it is not listed in the offence section of the act.

[1125]

**J. MacPhail:** Can the minister point to anywhere in the legislation where there is a legal requirement to consult with first nations in developing a forest stewardship plan? Can the minister point to anywhere in the legislation where there are any obligations in relation to first nations?

**Hon. M. de Jong:** I'm going to refer the member to two sections, and both would be correctly characterized as enabling.

Section 18 specifically imposes a responsibility on those preparing a forest stewardship plan to make that plan available for public review and comment before submission. There will be additional regulatory provisions contemplated around the mechanics for doing that.

The other section I would refer the member to is section 152, which is, again, a departure from the existing code. This, again, falls under the category of enabling and contemplates further regulations but, as the member can see, refers specifically to first nations.

**J. MacPhail:** Is it the minister's view that first nations are part of the general public or are the same as any other stakeholder in the requirement to consult in these matters?

[1130]

**Hon. M. de Jong:** I apologize. I may have forgotten the specific question the member asked, but I'll try to keep my comments brief. If I miss the point, she'll remind me.

The existing code certainly included a provision for public commentary and intervention, and that is included here. There is an additional feature to this bill which refers specifically to first nations. I think it's fair to say that is, in part, a reflection of the fact that the law as it relates to obligations that the Crown and others may have to first nations has evolved, and we wanted to ensure that there was a specific regulatory power that provided for addressing those legal obligations.

**J. MacPhail:** I'm sorry. The two sections that the minister referred to.... Again, were they sections 18...?

Interjection.

**J. MacPhail:** But section 18 doesn't anywhere mention first nations, and 152 — let me just see again because I glanced at it.... Where does 152...? Am I missing something? I'm sorry: "...plans with first nations...." All right, thank you. I did miss that. It says: "...sharing of operational plans...."

My question was around consultation. The law that has developed since this Forest Practices Code is around consultation, not sharing. There's a substantial difference. I know the minister is engaged in discussions around that very issue. I also understand there are court cases, and I don't know whether they're under appeal or not — the Haida case, and there are several other ones as well. In those cases the law talks about consultation, not sharing.

My question was: does the minister see that first nations are included in a broad group of stakeholder licensees, companies, woodlot owners — in that same broad group — around obligations from the Crown?

**Hon. M. de Jong:** I think, broadly speaking, one could say first off that there is double coverage here, but the member is correct. The obligation in certain instances as it relates to first nations may go beyond the obligation that exists with respect to other members of the public. The legal definition around the term "consultation" is very much an evolving state of affairs, and I am going to be very reluctant to attempt to offer my version of what that definition is in the context of this debate with these matters presently before the courts.

**J. MacPhail:** Let me ask then a general question before I get specific. What opportunity to comment on the content of forest stewardship plans before approval is now afforded under the new act?

I've read the act, but can the minister put that in practical terms about how that will unfold? How does the consultation occur?

[1135]

**Hon. M. de Jong:** To try and offer that practical example the member inquires about, a licensee, prior to obtaining approval for their forest stewardship plan, is going to have to be able to demonstrate that they have provided a reasonable opportunity for public commentary. That commentary and involvement may be from the public. It may be from the public and first nations or just first nations.

I think the difference that we may or may not want to, but that the member may want to focus on here, is whilst additional regulatory parameters are contemplated, it is also my view that we want to preserve a sufficient degree of flexibility to take account of the fact that depending on the circumstances, what is reasonable may be different, depending on where in the province we're located or the unique local features or whether we're in an urban interface situation. What is reasonable in one circumstance as it relates to public review and comment may fall far short in another circumstance. The challenge, admittedly, in terms of craft-

ing the regulations is to provide guidance without being overly prescriptive.

**J. MacPhail:** That actually leads nicely into my second question in this area. The minister has made it quite clear that on the results-based code, there will not be.... It's on the basis that if one doesn't deliver the results, there will be enforcement and potential penalty. I'm just curious to know whether the minister sees that any of the consultation or the public review, the public comment, would occur in the area where factors may be overlooked by the company on identified problems that could have been overlooked by the company and therefore would assist in preventing damage where enforcement against the wrongdoing is the less preferable way.

What is the nature of the input? I guess that's a long way of saying: what is the nature of input of the public review and comment? Perhaps the minister could tell me, very practically: who takes that information and decides whether that public review and comment in any way require change in the submitted forest stewardship plan?

[1140]

**Hon. M. de Jong:** Hon. Chair, I apologize for the delay. I was trying to think of an example to put this in some sort of context. So there is a forest stewardship plan that is being drafted for a particular area, and it's reasonable to assume that other licensed interests might be impacted. They might be trappers, guide-outfitters or recreational users. All of those people will have an interest in what takes place in the area. They would provide input. Their initial point of entry or their initial interlocutor would be the proponent — let us assume the licensee. That might take place in the guise of public meetings; it might take place in the guise of private correspondence.

The test for the minister or his or her designate in deciding whether or not to approve the plan is to determine whether or not that involvement and the response it elicited on the part of the licensee were reasonable. I think it's important to point out that this does not in any way bestow a veto upon interested members of the public. The obligation is to engage or to provide reasonable opportunity for review and comment.

**J. MacPhail:** So the review and comment are on the status quo. The plan is the plan, and there's review and comment. I guess the licensee or the stakeholder has to live with that review and comment. There's no requirement to change, to incorporate legitimate commentary?

**Hon. M. de Jong:** I think this is an important point for us to canvass. It will be for the Crown official, the minister or his or her designate, to apply that subjective test of reasonableness, and I say further that in giving some guidance to what that test will involve, that remains a work in progress insofar as the drafting of the regulations is concerned. Again, it is not unlike — and I don't do this to be cheeky or troublesome — a

test that I am told applies with respect to the existing pilot projects. There is a similar process in place that I am also advised, to this point at least, has enjoyed some degree of success. But it does involve the application of a subjective test of reasonableness, and I don't think anyone should pretend otherwise.

Section 3 approved.

On section 4.

**J. MacPhail:** This section.... Well, at least section 4(1) is identical to section 28(1) of the Forest Practices Code, but it's got one addition. The addition is in the new legislation, 4(1)(e), and that addition adds "other prescribed purposes" to the list of possible exemptions. This section, Mr. Chair, is "Exemption from forest stewardship plans."

So the addition of allowing for an exemption under "other prescribed purposes" means what?

[1145]

**Hon. M. de Jong:** I am advised that the member's observation about the specific equivalent section in the existing Forest Practices Code is correct, but that an equivalent provision exists within the section in that act that provides for the making of regulations. The short answer is: should a circumstance arise which would justify the granting of the exemption — and I can't think of anything off the top of my head — forest health issues are dealt with in separate provisions in this act. This would enable the preparation of a regulation to take account of that circumstance.

**J. MacPhail:** Well, I'll take full comfort from the minister's comments if he can point to the section in the current Forest Practices Code to which he refers.

**Hon. M. de Jong:** Section 203(1) provides for a general exemption.

**J. MacPhail:** Does the minister have any knowledge of what exemptions have applied under the current act that's now being amended?

**Hon. M. de Jong:** Actually, one of the more recent manifestations emerging out of that section was the regulation that we created and I signed off on last year, relating to the bark beetle, the pine beetle. It provided for an expedited processing requirement as it related to the forest health situation. That was an example of a situation where we employed that general exemption provision.

**J. MacPhail:** Yes, and I'm told that that example is covered off in section 17, allowing for approval in emergency cases. Are we making sure that you get every opportunity possible to have exemptions from the forest stewardship plan? You've got that covered off in section 17.

**Hon. M. de Jong:** Section 17 refers to a very specific situation and actually represents, as it were, a codification of the beetle regulation. I think the response to the member's legitimate question is: it is entirely possible that another unforeseen circumstance would arise, which we simply haven't contemplated at this stage.

**J. MacPhail:** Another part of the effect of the government's effort to eliminate joint decision-making is that section 4 is missing subsection (2) of the code under 28. The current 28(2) is gone. I'll just read into the record what that current 28(2) said, which is now going to be gone. Section 28 is called "Exemption from forest development plans," and 28(2) said: "Despite subsection (1)" — which refers to safety hazard — "if the timber harvesting activity referred to in subsection (1) is in an area referred to in section 41(6), the district manager may not exempt a person from the requirement for a forest development plan without the approval of a designated environment official."

[1150]

Here is 41(6), which is now gone: "If a forest development plan or amendment covers an area in a community watershed, or an area that meets prescribed requirements, the portion of the forest development plan or amendment that covers the area requires the approval of both the district manager and a designated environmental official."

This is why I asked earlier what role the Minister of Water, Land and Air Protection would now have, because, of course, that minister is the current name for what is referred to in the code as the designated environmental official. My question flowing from the elimination of these requirements before providing an exemption from a forest development plan is as follows: is it the minister's intent, then, that this requirement does not apply anymore?

**Hon. M. de Jong:** I feel a bit badly; I don't know what notes the member is working from. The provision she has just read, 28(2), is actually no longer in effect.

**J. MacPhail:** That's my point. Sorry.

I said — I'll just review it again — that as part of the government's intent to eliminate joint decision-making, this section is now gone. I just read out the section that's gone. It's a requirement of environmental officials. The old section was a requirement of environmental officials to sign off in certain circumstances where environmental values may have been at risk if the exemption was given. There was a requirement under the old code for an environmental official to sign off. That requirement is eliminated in the legislation.

Interjection.

**J. MacPhail:** Oh, I'm sorry. When? Perhaps the minister could tell me when. The minister's point is.... It was eliminated — when?

**Hon. M. de Jong:** We debated that in the spring session with the member's colleague.

**J. MacPhail:** God forgive me that I forgot. My point is still well taken, then. This government eliminated that provision. As usual, things are done in stages here. We made some changes to the Forest Practices Code in the spring. The Minister of Energy and Mines did some more. We now have some more here. The point still stands: that provision has been eliminated by this government. What difference does it make in terms of the timing?

We now have a situation where there is only one plan required. I'm asking the minister: is it his intent, with this being gone now, that there is no requirement for an official from the Ministry of Water, Land and Air Protection to have any input into these exemptions where the circumstances that previously were in the code under subsection 28 exist — for instance, around effect on a watershed?

**Hon. M. de Jong:** I think I understand the question. The member may not like the answer, but this legislative regime would preserve the single sign-off authority that we previously provided for with respect to the existing code.

**J. MacPhail:** Yes, I am disappointed in the answer.

Does that apply in community? There's no requirement for any involvement of the Ministry of Water, Land and Air Protection, for instance, in community watersheds.

[1155]

**Hon. M. de Jong:** Two things. First of all, the formal approval processes. As I have described it, one need not provide legislatively for consultation between officials on a cross-ministry basis. That's the first thing. That has occurred. That will continue to occur. As we will, I'm sure, explore later, officials within the Ministry of Water, Land and Air Protection will maintain enforcement responsibilities in the area we're discussing.

**J. MacPhail:** But if there's no protection against exemptions that may negatively impact community watersheds, there's nothing to enforce. This is a specific

area where this government has eliminated special approval against exempting in an area where a community watershed is involved. In other words, under the code, before this government got its hands on it, there had to be approval of a designated environmental official on an exemption from a plan that involved a community watershed. Community watersheds provide the water for a community and should be protected specially. I mean, the Drinking Water Protection Act that this government introduced said exactly the same thing. That is now eliminated. It was eliminated in the spring, and now it has an increasing effect by the requirement for only one plan and exemptions being provided now where community watersheds have no special protection. That is of deep, deep concern.

In conclusion, because this government put through the change to eliminate the requirement for an environmental official to oversee any exemptions that may involve a community watershed, put through an amendment to the current Forest Practices Code, it means that this protection for our community watersheds doesn't exist whether one goes under the old system or the new system. I would suggest this puts at risk the viability of our community watersheds.

Section 4 approved.

**J. MacPhail:** I move that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 11:58 a.m.

The House resumed; Mr. Speaker in the chair.

Committee of the Whole (Section B), having reported progress, was granted leave to sit again.

**Hon. M. de Jong:** I move that the House do adjourn for lunch.

Hon. M. de Jong moved adjournment of the House.

Motion approved.

The House adjourned at 11:59 a.m.