

BC Supreme Court Hearing - August 21st,2007

The court session started at 10:00am with WFP's lawyer Mr. Webster making his arguments to the BC Supreme Court Judge (I believe his name is Justice Butler) and these arguments were requesting the Judge to issue a "stay" against the Order issued against WFP by our Local Board of Health (LBH).

These arguments took over three hours to cover all of the material(s) and in between breaks and lunch, WFP was not finished until about 3:00pm

The lawyer for the Regional District (Chris Murdy) then presented counter arguments to the Judge for about an hour. The 1st day of hearings concluded about 4:00pm and will resume tomorrow morning at 10:00am

The plan tomorrow is for the lawyers for the complainants to make their submissions and then presumably WFP will have an opportunity to rebut any of the evidence/materials that were presented by the SCRD and the complainants.

To summarize the first day's events, I would have to say that the lawyer for WFP is very good. He is a large man, his size alone when he is on his feet, waving his arms about, is quite the sight. He speaks with a soft voice, but he does not mince his words, and he is pretty precise and attempts to steer the Judge into reducing the whole issue into several key areas.

1. That the LBH overstepped their bounds in crafting the order against WFP the way they worded the order.
2. That the LBH cannot extinguish the rights of WFP and the Ministry of Forests (MOF) by using the Health Act.
3. That there exists reasonable evidence of bias on the LBH board due to the fact that they are all members of the SCRD who are on record as being opposed to logging in the watershed.
4. The order as written prevents WFP from doing any forest activities period.

The SCRD lawyer countered #3 with the fact that under the law, the SCRD directors have no choice but to form a LBH when a complaint is received under the Health Act, and that further, the Board found no supporting evidence of a health risk in those areas of WFP's cut block that display more gentle slopes. (Therefore how could they be biased, when they found in favor of WFP on these cut blocks).

But the order does say, that there was compelling evidence before the LBH that a hazard exists from logging on the steep slopes. The SCRD lawyer argued that there was no bias based upon these two facts.

Point #4, the SCRD lawyer suggested that WFP was interpreting the language in the order without considering the "intent" of the order, which was to allow WFP to remove any felled trees and to harvest trees outside the watershed on gentle slopes.

Items #1 & #2 are very contentious because they involve precedent setting areas of Provincial legislation where the Health Act is pitted against the Forestry Act. It is even a little bit more complicated, because the WFP lawyer suggests that the Health Act is the wrong Act to use to protect drinking water. Rather the method should be the Drinking Water Protection Act which would have greater powers than the Health Act, but it would be up to Dr Paul Martiquet to issue orders under this Act, not the SCRD or LBH. (Bear in mind that DR Perry Kendall, Chief Medical Officer, stated based upon a wrong assumption, that he would not recommend using the Drinking Water Protection Act, because an Hydrologist report said there was no health hazard, who turned out to be a Biologist instead) This was mentioned in court today, finally !!

Even if this Drinking Water Protection Act was used to issue a stop work order, then WFP lawyer would probably challenge this Act vs. the Forest Act.

It seems always to come down to what's more important, trees (\$\$) vs. water (health)

In the mean time a couple of positive things. Copy attached of recent article appearing today in the Times Colonist and a copy of a press release issued by the media relations department of the Ministry of Forests.

This press release gives one the feeling that the MOF a) felt it necessary to issue a Province wide media release WHY? that in itself is interesting.

b) MOF comes across a little bit defensive in their explanation of water issues as they relate to logging c) MOF continues to assert their rights to log in watersheds

So lets see what tomorrow brings, the positive step would be for the Judge to instruct WFP to perform those forest activities that the "intent" of the order allows, and to quickly as possible schedule a "hearing" to "appeal" the order, so that all of the facts can come out and a balanced decision can be made to either uphold the order or quash it.

Either way, the eyes of the Province are watching us as we slowly go down this path, hopefully for a conclusion that would speak to all of the people who live in British Columbia whose drinking water is currently under threat from logging in progress or planned in the future, in their drinking watersheds.

Stay Tuned

John Bebbington