THE LEGAL STATUS OF SKWAHA LAKE ECOLOGICAL RESERVE

ANALYSIS AND RECOMMENDATIONS

Dec. 1986
John Lovell

ENVIRONMENTAL LAW 329

TERM PAPER

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Flora: We should bring this to Desh's attention. Grazing permit expires in 1988 and one year's notice needed if it is not re-issued. Author feels that issue should be cleared up and suggests ways to do it. Author would like to know if we do anything about ER #88. Contact him through Murray Rankin at U. Victoria.
John

INTRODUCTION

While primarily focussed on the legal aspects of a problematic situation, this paper also touches on issues of underlying political reality and fairness in its exposition and recommendations. It proceeds by relating the background to the statutory framework of the ecological reserves program, and signals two factors relevant to the compromise which led to the creation of Skwaha Lake reserve in 1978. The practical and legal shortcomings of the current arrangement are examined, and options for an acceptable resolution explored. At the outset, I wish to acknowledge the courteous and helpful response to my request for information from the Ecological Reserves Unit of the Ministry of the Environment, and hope that this paper might be of some use to them.

The ecological reserve program came about largely through the initiative of provincial scientists participating in the Conservation of Terrestrial Communities section of the International Biological Programme in the late 1960s. A legal research team from the University of British Columbia assisted in developing a legislative model for provincial implementation.1 The Ecological Reserves Act,R.S.B.C. 1979, c. 101, has undergone no change other than housekeeping amendments since its enactment in 1971.

Crown land can be reserved under the Act under any of five criteria set out in s. 2, the broadest being "suitability for scientific research and educational purposes associated with studies in productivity and other aspects of the natural environment." Reserves are established or cancelled by Cabinet, which also has regulation-making power to protect them (ss.3,4,7). By s.5, established reserves are immediately withdrawn from any other disposition that can be made of Crown land. Disposition is defined to include any legislation affecting an interest in Crown land, even one merely permitting its use (s.1). Section 10 reinforces these already strong provisions by upholding the application of the Act to all ecological reserves notwithstanding any other provincial legislation.

The first factor of significance to the situation of Skwaha Lake is that the Act is silent on the issue of compensation to holders of prior interests in Crown land established as reserves. Nor does it set out any process for hearing them before or after deciding to set up a reserve. The explanation seems to lie in the fact that one of the major selling points of the program was that it could enable the government to serve the cause of the environment at minimal

expenditure. One of those who helped secure passage of the Act has commented: "Our brief to the B.C. Government contained no reference to funding of the program because the scientists responsible for IBT-CT asked us not to mention the issue. They had received information from sources close to the government indicating that the Legislature would not pass the legislation if it looked like it would cost any money at all. It is worth noting that $20,000 was made available in fiscal 1972-73."2

Proposals for establishing reserves, as a result, must take account of factors additional to scientific and legislative criteria. Seabird colonies on isolated coastal islets, or economically marginal bogland will be afforded reserve status more readily than representative environments of productive forest or rangeland. Departments charged with administering programs on Crown land quite naturally become defensive towards any proposal which would adversely affect their clients' interests, particularly where interdepartmental circulation of the proposal is at the behest of a program whose political stature is uncertain, and whose economic benefits are significant only in the long term. The apparent legislative priority of the reserves can mask a practical situation where the program gets the last kick at the can in attempting to create new reserves.

ENTRENCHMENT

The second significant factor concerns entrenchment of reserves, once established. The co-ordinator of the reserves has recently stated: "Ecological reserves must be permanent to allow the continuity of research over decades or even centuries. They are needed to unravel and help understand some of the basic ecological processes. Intensive short-termed research is no alternative. One cannot predict the sort of questions that will be asked of ecological reserves in 10 or 100 years; they must be set aside now in order to remain future options for mankind."3

The potential weakness of s.4 of the Act, where the same summary Cabinet procedure used to create reserves can serve to eliminate them, was noted when the bill was debated in the Legislature. The Hon. Pat McGeer (sitting as a Liberal) remarked: "We've hardly done anything to preserve ecological reserves when, with one breath, the Lieutenant Governor in Council can establish an ecological reserve and, in the next breath, dismiss it or any portion thereof...set up a reserve one minute, sign the Order-in-Council deleting it the next, bring back part of it at some future time."4 At the initiative of the leader of the Opposition, the Hon. Dave Barrett, a division of the Assembly on s.4 was recorded;5 and yet the section was not amended during the NDP term in office,

nor has it been since. At one time it had been felt that a ministerially-appointed advisory committee allowed by s.9 of the Act could serve as a counterweight to political pressure towards any precipitous move to cancel a reserve. The advisory committee has fallen into desuetude. Nevertheless, during the fifteen years of operation of the Act, 115 reserves have been created and none so far cancelled on political grounds.

SKWAHA LAKE RESERVE

Skwaha Lake ecological reserve is located approximately 13 km. West of Spences Bridge, and 25 km. North of Litton. It comprises 850 hectares, including the lakebed, and contains "superb montane steppe and subalpine meadows, plus representative forest ecosystems of montane Interior Douglas Fir zone, and of the Engelman-Spruce Subalpine Fir Zone." The lush watered meadows and wildflowers within its borders are very useful for grazing cattle, and cattle ranching is an economically significant activity in the Kamloops Division of Yale District, where the reserve is situated.

The proposal for selecting Skwaha Lake as a reserve was circulated to various departments in 1974. The Ministry of Forests, which oversees grazing on Crown Land through the Range Act, objected to the reserve, pointing out that the area had been used for cattle grazing for some three decades. In fact, there is very little Crown land suitable for grazing which has not been licensed under Range Act permits or licences. On the apparent assumption that half a loaf was better than none, a draft order creating the reserve and providing for continued grazing was submitted to Cabinet, and approved as Order in Council 293 on Feb. 10, 1978. As well as setting out the legal description of the reserve in the standard manner, the instrument continues in a second paragraph:

"And further orders that the grazing of cattle will be permitted within the reserve subject to the maintenance of good range condition as determined by the British Columbia Forest Service Range Division, and a representative of the Ecological Reserves Committee who will have control over stocking rates and the date on which cattle are first allowed on the reserve in spring."

The Ministry of Forests has continued to renew Range Act permits for the area in the reserve, and currently some fifty cattle belonging to one permittee make use of the reserve. Over the years the viability of the arrangement has been increasingly called into question from an ecological perspective. Range inspection reports show no negative impact from their standpoint, which is that of the maximum yield of forage sustainable at appropriate levels of grazing intensity. The introduction of prolific foreign plant species, such as

dandelions, is not a problem from the perspective of maintaining good range condition, but may prove disastrous to maintaining an unimpacted ecological bench-mark. Impact from cattle activity near water sources and in the relatively scarce level sites preferred for bedding will be weighed differently depending on whether good cattle production or good ecological data production is the goal. If as the ecologists now believe, the negative impact of grazing cattle is cumulative, then the value of the site is permanently at risk, and multiple use of the reserve represents not half a loaf, but no loaf at all.

VALIDITY OF O.I.C. 293

At this point, the legal effect of two irregularities surrounding O.I.C. 293 will be explored. First, the Order appears never to have been published in the British Columbia Gazette. A summary of the Order appears in a weekly government resume which lists all Orders in Council, whether or not they are subsequently to be published in the Gazette. It reports that on February 10, 1978, five reserves were established, by O.I.C. nos. 289-293.6 Notices of the establishment of four of them were published in the Gazette on March 9. Notice of Skwaha Lake was not. Somewhat inexplicably, on the endorsement of the actual Order, the square "not to be filed or Gazetted" had been checked off.7

Section 3 of the Ecological Reserves Act states:
"The Lieutenant Governor in Council may, by notice signed by the minister and published in the Gazette, establish ecological reserves of Crown land."

No other means of establishment appears anywhere else in the Act. A literal approach to the section suggests that "published in the Gazette" means exactly what it says, and represents a condition precedent to the establishment of the reserve. This condition is most likely to be insisted on in precisely the sort of situation obtaining at Skwaha Lake, where the instrument adversely affects property rights. It is quite conceivable that an adversely affected party could successfully challenge the Order on this ground.

That Skwaha Lake should turn out not to have been a reserve when for eight years everyone concerned has treated it as one, is disconcerting. The issue of disregard of procedural and formal requirements of delegated legislation is discussed in an influential British law text:
"Does failure to comply with the rules governing printing and issue, or laying, render the instrument a nullity? The predominant view is that an instrument becomes legally operative from the moment that it is "made" (i.e. made by Her Majesty in Council or signed by the appropriate Minister or his

duly authorised officer), unless a later date for the operation of the instrument has been specified. The proposition that an instrument, having become legally operative when made, will be subsequently invalidated by non-observance of the procedural rules is not readily attractive; it is therefore generally thought that those rules are directory only."8

A less literal approach would proceed by searching for the purpose of publication of notice in the Gazette. The provincial Evidence Act, R.S.B.C. 1979, c.116, s.35 states: "All copies of official and other notices, advertisements and documents printed in The Canada Gazette or in The British Columbia Gazette are evidence of the originals, and of the contents of them."

Arguably, the legislative purpose for publication in the Gazette is thus a matter of convenience rather than necessity. Another argument can be made by analogy with regulations subject to the Regulations Act, Stats.B.C. 1983, c.10. A deposited regulation, if unpublished in the Gazette, is not nullified. Rather, the public is protected from conviction of offences against the regulation until reasonable steps have been taken to give actual notice (s.7). If the regulation were to be of no effect until its Gazetting, presumably such protection would be superfluous.

The better view would seem to be that unless some injustice is occasionned by non-publication, that the order creating Skwaha Lake is not invalid on that ground alone. Some comfort for this principle can be drawn from s. 9 of the Judicial Review Procedure Act, R.S.B.C. 1979, c. 209: "On an application for judicial review of a statutory power of decision, where the sole ground for relief established is a defect in form or a technical irregularity, if the court finds that no substantial wrong or miscarriage of justice has occurred, the court may refuse relief and, where the decision has already been made, may make an order validating the decision notwithstanding the defect, to have effect from a time and on terms the court considers appropriate." Nevertheless, notice of the Order should obviously be published properly as quickly as possible.

The second irregularity concerns the validity of the part of O.I.C. 293 which purports to allow grazing to continue on the reserve. The powers assigned to the Lieutenant Governor in Council are found in ss. 3, 4 and 7 of the Act. Section 3 has been cited above. Section 4 states: "The Lieutenant Governor in Council may, by notice signed by the minister and published in the Gazette, add to, cancel in its entirety or delete any portion of an ecological reserve established under section 3."

Section 3 thus deals exclusively with the geographical boundaries of reserves.

Section 7 states:
"The Lieutenant Governor in Council may make regulations and orders and, without limiting the generality of the foregoing, may make regulations
(a) for the control,restriction or prohibition of any use, development or occupation of the land or any of the natural resources in an ecological reserve;
(b) for the control, restriction or prohibition of exercise of powers granted by any other Act or regulation by a minister, ministry of the government, or agent of the Crown specified in the regulations;
(c) for the control, restriction or prohibition of the dumping, deposit or emission within an ecological reserve of any substance; and
(d) generally for any other matter or thing necessary or incidental to the protection of an ecological reserve."

The section does not delegate any power of dispensation or exemption; there is little in it on which to base a claim that orders can be made to permit activities that otherwise would not be allowed.

Section 5 of the Act states:
"After April 2, 1971, any area established as an ecological reserve under this Act shall be immediately withdrawn and reserved from any further disposition that might otherwise be granted under any Act or law in force in the Province including, without limiting the generality of the foregoing, dispositions under the...Range Act,..."

Since the Range Act by its terms constitutes the sole means of obtaining the right to graze cattle on Crown land, it seems impossible to reconcile the Order with section 5. In the event of inconsistency, it is obviously the subordinate instrument which must give way.

If this were not enough, regulations in force at the time the reserve was established recite that:
"No person shall enter upon an ecological reserve for a purpose inconsistent with the Ecological Reserves Act, and without limiting the generality of the foregoing, no person shall ...allow domesticated animals to graze...within an ecological reserve." (B.C. Reg. 335/75). Although authorship of this provision stems from the same source, the Cabinet, as does the provision allowing grazing, the former has the legislative status of a regulation, and presumably non-regulatory orders should be made within its scope; if exemption is desired it should be by particular regulation, and not by Order.

Assuming that the Order is ultra vires insofar as it purports to allow grazing to continue, the next question becomes whether the bad can be severed from the good, or whether the entire order is invalid. Structurally the answer is straightforward. The offending provision is contained in a separate paragraph. Its severance leaves intact the first paragraph establishing the reserve; thus no difficulty arises at the legal level in correcting the error. Presumably the Cabinet can cancel the reserve if it feels that continued grazing within its confines is of paramount importance to the public interest.

JUDICIAL REVIEW

At the political level the matter has not been straightforward. If the compromise is seen to be vital to the creation of the reserve, then it follows that the reserve might stand or fall with it. Like the sword of Damocles, the possibility that a Cabinet review could just as easily result in the cancellation of the reserve as in its legalisation, hangs over the decision to bring matters to a head. If the proper ministries are unable to correct the situation, it remains to be seen whether outside parties interested in the fate of the reserve could achieve the same result.

The Judicial Review Procedure Act is one appropriate vehicle for redressing invalid government action. It enables a petitioner to seek relief in the nature of a declaration in relation to the exercise, or purported exercise of a statutory power; its proceedings are not barred by limitation periods, unless the court feels that substantial prejudice or hardship results from the delay (ss. 1, 2(2)(b), 11).

The Act contemplates the review of a Cabinet order which exceeds its authorisation, but it does not address the issue of who would have standing before the court to bring up the matter. Continued grazing on the reserve does not obviously affect particular persons, in such a way that they could be said to be the proper parties to contest the issue, in the event that the Attorney General chooses not to intervene.

Rules regarding standing have been treated more liberally in situations where constitutionality is centrally at issue. The boundaries of legislative jurisdiction between provincial and federal governments is a frequent example, but the conformity of a subordinate instrument with its enabling legislation is also properly a constitutional issue.

This principle was acknowledged by the British Columbia Supreme Court five years ago in the Waddell case, where a Member of Parliament attempted to challenge federal Orders in Council authorizing the pre-build section of the Alaska gas pipeline, arguing that the Orders went beyond the scope of their enabling statute. The Member's standing to do so was disputed. In granting standing, Murray J. referred to decisions of the Supreme Court of Canada, in a passage which begins with a comment by Laskin CJC. made in the Anti-Inflation Reference:

"'There is no principle in this country, as there is not in Great Britain, that the Crown may legislate by proclamation or Order in Council to bind citizens where it so acts without the support of a statute of the Legislature: see Dicey, Law of the Constitution, 10th ed. (1959), pp.50-54.'

In the case at bar I am fully satisfied that the plaintiff has launched an attack on the constitutionality of the Orders in Council referred to in the statement of claim. That issue being constitutional is always justiciable. It follows that some person must inevitably have the status to litigate the matter in a Court of competent jurisdiction. The Thorson case held that if no single person is particularly affected or prejudiced by the impugned legislation then any member of the public will, in the discretion of the Court, be granted status".9

Recently, the provincial Supreme Court has had to consider who might have standing to make a constitutional challenge under the Judicial Review Procedure Act. The Attorney General had tried to have an application for review dismissed, arguing that since the challenger was not going to be affected himself by the section of the Election Act he called into question, he should not have standing before the Court. The Court disagreed. Macdonald J. held that:

"The Supreme Court of Canada has granted status where the constitutionality of legislation is raised by an individual not directly affected when:
a) there is a serious issue as to validity;
b) an arguable case is made out that members of the public will be affected;
c) the petitioner has a genuine interest as a citizen; and
d) there are no other reasonable, effective and practical means to test validity and bring the issue squarely before the court."10

A similar conclusion had earlier been reached by two noted administrative lawyers in an article on standing, who went on to say:

"While the evaluation of 'genuine interest' may create procedural problems in practice, it seems fair to assume that it will be interpreted as meaning something not very different

from good faith. The second part of the test, the necessity to show that there is no other reasonable and effective manner in which the issue may be brought before the court, may sound rather difficult to prove in the abstract. In practice, it may simply be sufficient to argue that in fact no one else has challenged the legislation and, if public authorities themselves have been canvassed and the Attorney General requested to intervene without result, standing is likely to be granted."11

Likely candidates to pass such a test include members of a local naturalist club who have expressed concern about the condition of the reserve, a volunteer warden, or members of the Friends of Ecological Reserves. The British Columbia Court of Appeal has held that for the purposes of the Judicial Review Procedure Act, a society could have standing as a representative of its members, provided that the members have a legitimate interest in the subject matter of the decision under review.12

Hearing the Range Act Permittee

There is no doubt that the permittee would be a proper party to be heard in any application to judicially review the Order in Council, and could appear as a respondent in the procedure. The Judicial Review Procedure Act incorporates the Rules of Court(s.18). Proceedings are started by originating application, governed by Rule 10. Rule 10(5) states: "The petition and copies of all affidavits in support shall be served on all persons whose interests may be affected by the order sought."

The permittee could apply to be joined as a respondent along with the Attorney General under Rule 15(5).

It is less obvious whether he would have to be heard if Cabinet itself were to review its own decision, and amend or replace the Order in Council. As mentioned, the Ecological Reserves Act makes no provision for any Cabinet hearing before establishing reserves.

The Supreme Court of Canada in the Homex Realty case considered the effect of not hearing an affected company prior to passing a municipal by-law effectively cancelling their subdivision plan. Dickson J. (dissenting in the result, but not on this point) remarked:

"There is, of course, a long line of authority which establishes that before a public body can limit or abrogate the property rights of citizens, it must first give the individuals concerned an opportunity to be heard. This principle, of universal application, was established in the case of Cooper v. Wandsworth Board of Works. Nor is it necessary for the

Legislature to provide explicitly for a hearing for a Court to imply such right. On the contrary, where statutory bodies seek to limit property rights, the Courts will imply a right to be heard unless there is an express declaration to the contrary."13

The other side of the coin is that Cabinet policy is not usually subject to scrutiny as long as its power is exercised in accordance with statute, and especially insofar as its orders are of a legislative nature. It should again be noted, however, that Orders establishing reserves have not been classed as regulations under the Regulation Act. Since they are also made on an individual site-specific basis, each Order in Council affects the property of only the limited number of persons, if any, holding interests in the land reserved. Administrative fairness would seem to require that some notice and opportunity to respond be afforded to individuals adversely affected by operation of s.5 of the Ecological Reserves Act.

COMPENSATION

Grazing permits are issued for terms of five years or less, under the authority of s.6 of the Range Act, and generally will be renewed as long as forage productivity and the permittee's compliance with the Act and conditions of the licence are not a problem. Section 16 states: "Nothing in this Act, or in a licence or permit, prevents the holder of the licence or permit from applying to replace the licence or permit after the end of its term."

A permittee therefore has at the least a legitimate expectation of being able to conduct operations on a long-term basis.

Skwaha Lake ecological reserve contains within its boundaries almost 80% of the available forage of the Sheep Mountain-Skwounka Range sub-unit, half of which is currently grazed under permit. The rancher currently permitted to use the sub-unit has no permits elsewhere, and the range managers are of the opinion that there is no room to accommodate him in neighbouring areas. Cancellation of grazing in the reserve would require the rancher to reduce his herd from fifty to twenty-five head, and probably end the viability of his operation. The permit expires in 1988.

Provision is made in the Range Act for withdrawing Crown land from grazing purposes. Section 22(1)(a) states that notwithstanding a permit made under the Act, the minister may, after giving not less than one year's written notice to its holder, delete land from a grazing permit and reduce the number of animal unit months for which its holder is eligible, where he considers the land is required for a use that is

incompatible with grazing. If more than five percent of the available forage is affected, s. 23 provides that:
"the Crown shall compensate the holder of the licence or permit with respect only to the portion of the loss of production below 95% for the unexpired portion of the term of the licence or permit."
The permittee can be re-imbursed for authorized improvements under s. 24.

With the present wording of O.I.C. 293 intact, the Ministry of Forests has not chosen to invoke s.22 of the Range Act to protect the reserve. Until the validity of the Order is clarified, arguably the minister would be taking improper considerations into account in the exercise of his discretion by invoking the section.14 Once the Order was amended either by Cabinet or by judicial declaration, s.5 and s.10 of the Ecological Reserve Act would override this discretion, and notice and compensation under the terms of the Range Act would become quite appropriate.

Alternatively, the Expropriation Act, R.S.B.C. 1979, c. 117, by its second section purports to incorporate its terms into any other statute authorizing the taking of land, unless that statute explicitly excludes or is incompatible with it. In conjunction with the Ecological Reserves Act, it could provide another avenue of compensation. This option could be pursued by the permittee in the event that the Ministry of Forests refused to take responsibility for the cost of compensation to him under the Range Act.

Land is properly seen as any interest in land, according to the Interpretation Act, R.S.B.C. 1979, c. 206, s.29. A grazing permit fits nicely into the traditional notion of a profit à prendre, which is an interest held by one person in the land of another, allowing power of entry and exploitation and severance of some resource existing in or on the land. Putting an end to the exercise of this interest will be deemed to be a taking of land, even if the Crown does not intend to exercise the rights which it had alienated. This was made clear by the Supreme Court of Canada in the Tener decision.15 In that case, the Crown had alienated a mineral claim in the form of a grant, which had no fixed time limit. In this situation, it is very difficult to say what property interest a permittee has, if any, beyond the balance of the current term of a permit. This is so even if refusal to renew would threaten his livelihood. Much as "buying the rancher out" would seem the proper thing to do, it could not be arranged by way of a binding settlement under the provisions of the Crown Proceeding Act unless his legal claim to such treatment were less open to question.

EX GRATIA PAYMENTS

In 1982 the provincial Ombudsman reported on the problem of compensating complainants in situations where the relevant ministerial officials would agree that the complaint was substantiated and that compensation was appropriate, but where no statutory authority existed for the disbursement of funds.16 The report recommended an amendment to the Financial Administration Act to allow ex gratia payment at the Ombudsman's initiative, or a distinct vote under the Supply Act to be designated for the purpose. Neither recommendation has been followed.

It might be worthwhile, however, to note the vote description accompanying vote 34, the principal Forests Ministry appropriation in the provincial Estimates: "This vote provides for forest, range and recreation programs of the ministry (except fire suppression) and for the management, finance and administration of services, including ex gratia payments related to this vote."17

Appropriations for administration of the Range Act fall within the vote, and the range program sub-vote comes to over five million dollars. No further reference is contained to ex gratia payments in the detailed breakdown of spending estimates within the vote, although reference is made to grants and contributions to enhance research in the forest industry. On its face, the description could be taken for sufficient authority to make use of some of the more than two hundred million dollars authorized in the vote, in order to reach an equitable solution in this case. This form of accommodation would properly require approval at the ministerial level. Nevertheless it does afford the possibility that the Ministry of Forests (now Forests and Lands) could help the rancher in other ways than to resist proposals to set the reserve on secure legal and ecological foundations.

SUMMARY AND RECOMMENDATIONS

It is important to make explicit three "non-legal" considerations on which the recommendations are premised.

First, the establishment of the reserve can be justified in terms of the appropriateness and special value of its site, and its importance to the overall program as a representative ecological type.

Secondly, the accommodation of cattle grazing which has been attempted until now has a negative impact on the area's ecological integrity. This impact appears cumulative, despite

adherence to practices productive of good range condition. Remedial measures such as the re-location of salt licks, delaying grazing until even later in each season, or reducing the number of cattle, will not result in a practicable solution meeting the needs of those concerned.

Thirdly, the possibility of Cabinet cancellation of the reserve as a result of either internal pressure from other Ministries or outside political pressure from ranching interests is a risk which should be faced sooner rather than later. As time goes by there will be progressively less worth saving from an ecological perspective. Not rocking the boat in this situation means letting it leak until it sinks.

The time-frame imposed by the expiry of the grazing permit and the one-year notice provision in s.22 of the Range Act should be borne in mind when evaluating the following recommendations:

1. That legislative counsel from the Ministry of the Attorney General be instructed to give an opinion on the legality of issuing any further grazing permits on land included in the reserve, having first considered the validity of O.I.C. 293 in light of the Ecological Reserves Act and Regulations, the fact of non-publication in the Gazette, and the issue of severability of invalid provisions in the Order.

2. If the opinion is that grazing permits cannot be issued, despite the wording of the Order as it now stands, then the opinion should at once be forwarded to the Ministry of Forests, and if no satisfactory response is promptly received, to the Attorney General.

3. If the opinion is that grazing permits can be issued unless the Order is formally amended, then the matter should be brought to the attention of Cabinet through the Ministry of the Environment with a view towards correction on grounds both of legality and the public interest in protecting the value of the reserve. Notice should be given to the interested permittee, with an opportunity to make at least a written submission.

4. Officials in the Ministry of Forests (now Forests and Lands) who have expressed reluctance to accede to the effects of establishing a reserve without fairly compensating the permittee should be made aware of the ex gratia provision in the vote under the Supply Act authorizing expenditures for their operations (Vote 34), and asked to look into the possibility of compensation to the permittee supplementary to the compensation statutorily authorized by the Range Act.

5. Finally, citizens or groups who have expressed concern over the effect of grazing cattle on the reserve should be informed of their option to challenge the validity of the Order permitting grazing by way of application under the Judicial Review Procedure Act. Admittedly, such a response smacks of bureaucratic insubordination; but ecological reserves are established for the benefit not only of the government but of all people, and those who are entrusted with their administration must weigh their duty to the government of the day with their duty to future generations of British Columbians.

NOTES

1. For an account by a member of the team, see R.T. Franson, "Legislation to establish ecological reserves for the protection of natural areas"(1972), 10 Os. Hall LJ 583.

2. Ibid., at p. 596, note 51.

3. L. A. Goulet, "The Ecological Reserves Program in British Columbia" (Apr. 1986), B. C. Ministry of Environment, Parks Programs Branch.

4. British Columbia Legislative Assembly, Debates, 2nd Sess. 29th Parl., 1971, p. 753.

5. Ibid., p. 838.

6. British Columbia, Resumes of Orders in Council, vol.5 no.6.

7. Communication from the B.C. Ministry of Attorney General, O.I.C. Office.

8. De Smith, Judicial Review of Administrative Action, 4th ed.(1980), p. 147.

9. Waddell v. Schreyer(1981), 126 D.L.R.(3d) 431 (B.C.S.C.), at p. 437.

10. Re Election Act(B.C.) (1986), 3 B.C.L.R.(2d) 376 (S.C.), at p. 380.

11. D.J. Mullan and A.J. Roman, "Minister of Justice of Canada v. Borowski: The extent of the citizen's right to litigate the lawfulness of government action" (1984), 4 Windsor Yearbook of Access to Justice 303, at p. 351.

12. Re Saanich Inlet Preservation Society and Cowichan Valley Regional District (1983), 147 D.L.R.(3d) 174, 44 B.C.L.R. 121 (C.A.).

13. Homex Realty & Dev. Co. v. Wyoming, [1980] 2 S.C.R. 1011, at p. 1046.

14. See, for example, Re Multi-Malls Inc. and Minister of Transportation and Communications (1977), 73 D.L.R. (3d) 18 (Ont. C.A.), where the minister's decision to refuse a highway access permit was set aside when it was shown to have been based on Cabinet land use policy rather than on the more limited concerns of the relevant statute.

15. The Queen in Right of British Columbia v. Tener (1985), 17 D.L.R.(4th) 1 (S.C.C.).

16. British Columbia Ombudsman, Annual Report, 1982, p. 18.

17. British Columbia, Estimates for the fiscal year ending Mar. 31, 1987, p. 100.