



Managing Winter Recreation Conflicts near Valemount

Complaint Investigation 070756

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The Investigation

Introduction

In April 2007, a group of snowmobilers (the complainant) from the Valemount area asked the board to investigate whether it was appropriate to use section 58 of the *Forest and Range Practices Act* (FRPA) to close local areas to snowmobile access. The complainant believes that the closures benefit the commercial heli-skiing industry and that this is not the intended use of the legislation.

Background

The Valemount area provides winter recreation opportunities for a wide range of users, from local backcountry skiers and snowmobilers, to out-of-province skiers and snowmobilers and clients of heli-ski operators. The heli-skiing industry has been well established in the Valemount area for many years. Clients are typically flown up to untracked snowslopes by helicopter. Equally well established is the use of snowmobiles for non-commercial recreation by residents of the area and visitors. Snowmobiles provide easy access along unplowed roads in the winter and also allow access to non-roaded sites, greatly expanding public recreation areas in the winter. The winter tourism economy in the Valemount area continues to diversify, with commercial snowmobile tours, dog-sled tours and backcountry skiing all forming important parts of that diversity.

However, there can be incompatibility between some of the various kinds of winter recreation activities. Conflicts have arisen between heli-ski operators and snowmobilers, both in terms of the quality of the recreational experience and of safety.

The product that heli-ski companies sell to clients from around the world is safe heli-skiing in untracked terrain. A landscape containing snowmobiles and their tracks diminishes the aesthetic quality of the remoteness of the activity.

In terms of safety, heli-ski operators note that after a snowmobile passes and compacts the snow, the tracks freeze. This can create a hazard for a skier travelling at a high rate of speed down a slope and crossing a frozen track.

As well, and even more importantly, there can be considerable danger when snowmobiles, skiers and helicopters are all in the same avalanche-prone terrain. These problems have been exacerbated by the fact that heli-skiing companies have extensive operating areas and by advances in snowmobile technology, which allow operators to access previously-inaccessible terrain.

As the use of snowmobiles began growing in the mid-1990s, increasing problems developed for the heli-skiing companies and other back-country ski operations, both commercial and public. Heli-ski representatives, back-country skiers and local snowmobilers met informally to discuss

possible solutions and they agreed to trade off some areas to skiers in return for unrestricted snowmobile access to other areas.

In 1995, the *Forest Practices Code Act of British Columbia* (the Code) came into force. The Code included strategic planning requirements that translated into operational planning. It also led to regulations that included measures such as restricting recreation access, which was the responsibility of the Ministry of Forests at the time.

In 1999, the provincial government approved the Robson Valley Land and Resource Management Plan (LRMP). The LRMP provided guidance for forest management in the area while also recognizing tourism, commercial and public recreation values. The LRMP's specific objective for tourism was to:

Maintain a balance between commercial recreation, public recreation and other users through the protection and maintenance of backcountry areas.

Early efforts by the Ministry of Forests and Range (MFR) to manage the conflict between backcountry skiers and snowmobilers involved specific site closures using section 105 of the Code, an example being a closure of the Westridge area, just west of Valemound, in February 2001. The efforts did not resolve the conflicts because alternative areas offered to snowmobilers were considered unsuitable by some, and the users were more concentrated. A few snowmobilers returned to the Westridge area, and enforcement efforts had limited success.

Eventually, the problem was addressed by the Ministry of Sustainable Resource Management (now the Integrated Land Management Bureau, or ILMB), which developed the Valemound to Blue River Sustainable Resource Management Plan (SRMP) for the area in an effort to formalize work done previously in the community to resolve the ongoing winter conflicts.

SRMPs are developed by resource agencies in consultation with key stakeholders acting in an advisory capacity. They provide a more detailed level of resource management direction than LRMPs, refining LRMP objectives. In this case, local stakeholders, including representatives of the snowmobilers and the heli-skiing industry, helped develop the objectives for the SRMP.

In March 2004, prior to the development of the SRMP, local stakeholders had already agreed to restrict snowmobile access to several high elevation areas important to the heli-skiing industry, as part of a comprehensive package of negotiations. The complainant, acting as a representative for snowmobilers, understood this to be a voluntary closure.

In September 2004, a new organization of stakeholders—the Valemound Area Resource Development Association (VARDA), which included some of the original stakeholder negotiators—was formed to help implement some of the agreements. Membership changed over time, but the VARDA board helped develop the objectives for the final SRMP. The closures in the plan were modified from the original 2004 agreement and included additional areas to protect caribou. The finalized version of the SRMP was approved by government in June 2005.

In the winter of 2005/2006, a pilot project to ensure that snowmobilers complied with closures in small areas of specific concern to the heli-ski companies, as identified in the SRMP, was implemented for a three-year trial period in four controlled recreation areas (CRAs).

In September 2006, the VARDA board sent a letter to ILMB advising that, other than the pilot CRA areas, it agreed to government using section 58 of FRPA to formally close the areas identified in the SRMP. However, the complainants assert that not all of the board members realized the full scope of what was being planned.

Concurrent with the government reorganization that created the ILMB, government transferred responsibility for managing recreation on Crown land from MFR to the Ministry of Tourism, Sport and the Arts (MTSA). MTSA thus became responsible for implementing some aspects of the SRMP, including recreation management.

In February 2007, MTSA advertised closures to public access for snowmobiles in 21 areas, in effect annually from December to April, using section 58 of FRPA. The closures apply to about 28 percent of the SRMP area (200,000 hectares). Half of the closed area was to protect caribou populations and the remaining closures were to protect the quality and safety of heli-skiing, backcountry skiing and dog-sledding opportunities. It is the areas that were closed exclusively to motorized recreation that are the subject of this investigation. The provincial Conservation Officer Service enforces the closures.

While there is some concern in the community that the closures restrict local recreational opportunities, it is important to note that the public may still use the closed areas for non-motorized activities such as skiing or snowshoeing. To mitigate concerns that the closures may deter potential visitors looking for snowmobile recreation, several participants in the SRMP planning process are providing \$200,000 to the snowmobiling community to develop new opportunities and infrastructure, such as parking areas and maps. This funding is a component of a planning package that includes the recreation closures, proposed to protect caribou habitat.

The complainant was surprised by the advertised closures and concerned with the fact that the closures were being established by regulation, with government-funded enforcement. They believe this to be improper use of the FRPA legislation, which they assert was not intended to benefit and protect commercial interests over non-commercial ones.

Discussion

The complainant sees the section 58 closures as contrary to what was agreed upon in 2004. They are also concerned about the precedent that these closures may set for the long term, as companies change hands over time and government ministries shift responsibilities from agency to agency, which can cause the original intent of the closures and the agreements to fade. The concern is that the areas will become entrenched as traditional operating areas for commercial operators and may not be opened again, even if government and societal views

about the appropriateness of the closures change. The risk of this occurring is difficult to evaluate.

While the heli-skiing companies have non-exclusive tenures to operate, in the complainant's view, the section 58 orders appear to provide exclusivity to areas without the companies having to pay for it. Therefore, the complainant views the closures as government protecting commercial interests at the expense of public recreation opportunities, using taxpayers' money to enforce the closures.

However, in the Board's view, the orders do not create exclusivity because they do not prevent all public activity, only motorized activity. Whether or not the closures benefit commercial interests, the decision to have closures was made in the SRMP, which is not in the Board's jurisdiction. The Board can assess compliance with the law, and assess the soundness of forest practices, but it has no mandate for assessing strategic planning nor does it have expertise in evaluating socio-economic tradeoffs. Such tradeoffs, one of which occurred here, are made through policy direction by elected officials who are directly accountable to the public. The differences of fact and opinion between the perceptions of the 2004 stakeholder agreement and the final SRMP are beyond the Board's jurisdiction and were not investigated further.

Under current government policy, commercial heli-skiing is a legitimate recreational activity, as is snowmobiling. The strategic planning processes under the SRMP sought to establish a balance between the public interest and commercial activities. The Board views section 58 as a management tool to implement objectives of the SRMP. Rather than asking if section 58 was used to benefit commercial interests, the Board reframed the question to ask whether it was reasonable to use section 58 to implement the closures. Section 58 was created as a tool to manage recreation on Crown land, regardless of whether the recreation is commercial or non-commercial.

In this case, a discretionary decision was made to use section 58 to keep snowmobiles out of specific areas for much of the winter season. In assessing discretionary decisions, the standard that the Board applies is whether a decision falls within the range of reasonableness and not whether, in the Board's view, it was the best decision, and so the Board considered the reasonableness of that decision.

Was it reasonable to use section 58 of FRPA to implement the area closures?

In answering this question, the Board first reviewed what the SRMP said about implementing the closures and the purpose of the closures. It then considered why the order was created under section 58 of FRPA.

The 2005 SRMP provides detailed planning for both commercial recreation and public recreation. Restrictions are identified to manage use and wildlife impacts.

The SRMP is intended to be consistent with the LRMP direction. It contains a section on securing heli-skiing and backcountry ski experiences. The SRMP states that maintaining these

opportunities requires the closure of some intensively-used areas to snowmobiling. It lists locations and closure dates and explains that the intent is both to protect the experience of helicopter and backcountry skiers and to ensure the safety of all.

In its management and enforcement section, the SRMP discusses a range of legislation that is available to implement recreational closures, including the *Wildlife Act*, FRPA and the *Land Act*. The SRMP's stated objective is to establish a coordinated approach to public education and enforcement involving relevant government agencies, the local Snow Patrol, and relevant commercial operators. The area closures are to be reassessed in 2010.

The closure orders were made pursuant to section 58 of FRPA. The orders state that their purpose is to manage recreation to enhance public safety and maintain recreational experiences in accordance with the Valemount to Blue River SRMP.

Section 58 of FRPA states:

- (1) *If the minister determines that it is necessary to protect a recreation or range resource **or to manage public recreation use on Crown land**, he or she by order may restrict or prohibit ... (b) a recreational use anywhere on Crown land, except a use that is specifically permitted by or under another enactment.*

Finding: The SRMP recommends closure of some areas to snowmobiles and anticipates that legislated closures may be implemented. The orders under section 58 are being used to 'manage public recreation use on Crown land,' which is specifically authorized by the legislation.

The four pilot CRA closures were identified in the SRMP. The heli-skiing companies paid for installing signage and monitoring use in the areas, intending that the RCMP would be called in to enforce the closures only as a last resort. Ministry of Environment (MOE) conservation officers could not be used, as they had no authority to enforce the pilot closures. However, adequate manpower for monitoring usage in the pilot closures became a problem, and snowmobile operators began to enter some of the areas, reducing the safety of the areas for heli-skiers. It was not practical to rely on the RCMP for enforcement work, so government applied section 58 closures as a back-up measure to allow enforcement by conservation officers if that was necessary.

While use of the section 58 mechanism was not discussed with the original stakeholder group in 2004, it was described in the final 2005 SRMP. A meeting was held in December 2004, between staff of the Conservation Officer Service, MFR and Ministry of Sustainable Resource Management to determine the most appropriate legislation for the closures and, with a legal opinion, the group decided on section 58 of FRPA.

Although using legislation to close areas to the snowmobiling public can create further conflict, government staff believe that it is the only practical way to implement the SRMP closures. Education and the posting of signs will be the main approach. Fining individuals who ignore

the closures is a last resort, but legislation is required for officers to be able to write tickets or fine out-of-province snowmobilers. Without a formal order under section 58, there is little incentive for snowmobilers to comply with the closures.

It is important to have public support when implementing policies. ILMB staff thought they had such support through their discussions with VARDA, but complete agreement from the public is not always possible. Some non-compliance with voluntary closures seems likely, given past experiences at Westridge and with the pilot CRAs. If government had held off on the orders, some conflict may have been avoided initially but this could also have created problems on the ground in the absence of enforcement.

There is no disagreement about the safety issues and it seems reasonable to err on the side of caution and give conservation officers an ability to enforce closures. A voluntary program, followed by most but ignored by some, would not adequately address the safety concern, nor would it maintain the recreation quality, as it likely takes only a few snowmobile tracks to impact the quality of a heli-ski run.

It is important to note that the closures are not necessarily permanent or unchangeable and a review is scheduled to be conducted in 2010. The closures are not intended to prevent access to areas beyond the closed portions, and if access is needed beyond the closures, the SRMP allows for access corridors through the closures. Removing or amending the orders, including boundary refinements to remove areas that are found not to be a priority for the heli-ski operators, can be done by provincial government in region. There is flexibility to address some of the public's concerns over time.

Finding: The Act authorizes section 58 orders to manage recreation, which is what it was used for in this case. Government considered, but rejected, a voluntary approach because a regulatory link was required for conservation officers to be able to enforce the closures.

Conclusions

The elected government made a decision to give resource managers a regulatory tool to manage recreation access (section 58 of FRPA). How managers use that tool is left to them, provided the discretion is lawfully exercised. There is a history of conflict between resource users in the area. Planning processes were implemented to strike a balance between commercial and public recreation interests, with legal enforcement viewed as a last resort to enforce adherence. However, enforcement, even if a last resort, must have an effective foundation, which means that legislation must be implemented. In these circumstances, the Board finds it reasonable to create the area closures with an order under section 58.