



FOREST
APPEALS
COMMISSION

Annual Report

2009

Honourable Pat Bell
Minister of Forests and Range
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Barry Penner
Minister of Environment
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Blair Lekstrom
Minister of Energy, Mines and Petroleum Resources
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Ministers:

I respectfully submit herewith the annual report of the Forest Appeals Commission for the period January 1, 2009 to December 31, 2009.

Yours truly,



Alan Andison

Chair

Forest Appeals Commission

Eco Audit

The savings below are achieved when post consumer recycled fiber is used in place of virgin fiber. The 2009 Forest Appeals Commission Annual Report uses 386 lbs of paper which contains 100% post consumer recycled fiber.

- 4 trees preserved for the future
- 1,574 gallons wastewater flow saved
- 2,624,800 BTUs energy not consumed
- 343 lbs net greenhouse gases prevented
- 174 lbs solid waste not generated



Table of Contents

Message from the Chair	5
Introduction	7
The Commission	8
Commission Membership	8
Administrative Law	10
The Commission Office	10
Commission Resources	10
Policy on Freedom of Information and Protection of Privacy	10
The Appeal Process	11
Appeals under the <i>Forest Practices Code of British Columbia Act</i>	11
Appeals under the <i>Forest and Range Practices Act</i>	11
Appeals under the <i>Forest Act</i>	12
Appeals under the <i>Range Act</i>	12
Appeals under the <i>Private Managed Forest Land Act</i>	13
Appeals under the <i>Wildfire Act</i>	13
Legislative Amendments Affecting the Commission	14
Evaluation and Recommendations	15
Statistics	16
Summaries of Decisions	17
Appeals of Commission Decisions to the Courts	26
APPENDIX I	33
<i>Forest Practices Code of British Columbia Act</i>	33
<i>Forest and Range Practices Act</i>	38
<i>Forest Act</i>	40
<i>Range Act</i>	43
<i>Wildfire Act</i>	45
<i>Administrative Review and Appeal Procedure Regulation (B.C. Reg. 12/04)</i>	47
<i>Private Managed Forest Land Act</i>	50
<i>Private Managed Forest Land Regulation (B.C. Reg. 371/04)</i>	52

Canadian Cataloguing in Publication Data

British Columbia. Forest Appeals Commission.

Annual report. — 1995-

Annual

Issue for 1995 covers: June 15 to Dec. 31.

ISSN 1205-7606 = Annual report - British Columbia.

Forest Appeals Commission

1. British Columbia. Forest Appeals Commission - Periodicals.
 2. British Columbia. Forest Practices Code of British Columbia Act - Periodicals.
 3. Forestry law and legislation - British Columbia - Periodicals.
 4. Administrative remedies - British Columbia - Periodicals.
- I. Title.

KEB345.A7F67

354.7110082'33806

C96-960175-1

KF1750.A55F67



Message from the Chair

I am pleased to submit the fifteenth Annual Report of the Forest Appeals Commission.

A selection of the Commission's 2009 decisions has been summarized in this report.

While the appeals that come before the Commission continue to involve complex questions of fact and law, the number of appeals filed with the Commission have been decreasing. There were 26 appeals filed in this report period. The reduction in the number of appeals filed may, in part, be due to the difficult conditions in the economy, which has had a direct impact on the forest industry.

The Commission shares its staff and its office space with the Environmental Appeal Board, the Community Care and Assisted Living Appeal Board, the Hospital Appeal Board and the Industry Training Appeal Board. This shared services model of one office providing administrative support for a number of tribunals has been very successful. It gives each tribunal greater access to resources while, at the same time, reducing administrative and operating costs and allowing the tribunals to operate independently of one another.

The success of this shared services model led to the government asking for the Commission's assistance in setting up a new tribunal, the Health Professions Review Board. The Review Board conducts reviews from affected persons in relation to decisions made by any of the 20 Colleges in BC, established for different health related occupations that are designated under the *Health Professions Act*.

Setting up this tribunal was a significant undertaking for this office. I am pleased to advise that in March of 2009, the Review Board opened its doors and began accepting applications for review. The Review Board is located in the same building as the Commission and shares some administrative resources with the Commission. I would like to thank all of the Commission's staff for their tireless efforts in getting this new tribunal up and running by the targeted dates.

The Commission's membership experienced several significant changes to its roster of qualified professionals during the past year. A number of valued members left the Commission during this reporting period. I wish to thank those departing members for their exceptional contribution to the activities of the Commission over the past number of years. Those members are Sean Brophy, Bob Gerath, Al Gorley, Lynne Huestis, Katherine Lewis, Paul Love, Gary Robinson, David Thomas, Steve Willett and Alex Wood. I wish each of these individuals well in their future endeavours.

I am also very pleased to welcome four new members to the Commission who will complement the expertise and experience of the outstanding professionals on the Commission. These new members are Carol Brown, Blair Lockhart, Reid White and Lori Williams.

I am very fortunate to have on the Commission a wide variety of highly qualified individuals including professional biologists, foresters,

agrologists, engineers, lawyers with expertise in the areas of natural resources and administrative law, and mediation. All of these individuals are appointed as part time members and bring with them the necessary expertise to hear matters ranging from stumpage valuation to environmental damage arising from cattle grazing on Crown land.

Finally, I would like to take this opportunity to thank the members of the Commission and the staff for their continuing commitment to the work of the Commission.



Alan Andison
Chair



Introduction

The Forest Appeals Commission is an independent tribunal that was established under the *Forest Practices Code of British Columbia Act* (the “Code”), and is continued under the *Forest and Range Practices Act*.

This is the fifteenth Annual Report of the Forest Appeals Commission. The information contained in this report covers the twelve-month period from January 1, 2009 to December 31, 2009.

This report describes the structure and function of the Commission and how the appeal process operates. This report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period (i.e., final decisions issued);
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the report period;
- an evaluation of the review and appeal processes; and,
- recommendations for amendments to the legislation, from which it hears appeals.

Finally, a selection of the decisions made by the Commission during the report period has been summarized, legislative amendments affecting the Commission are described, and the relevant sections of applicable legislation are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the Commission’s website, and at the following libraries:

- Legislative Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Association Law Library

Detailed information on the Commission’s policies and procedures can be found in the *Forest Appeals Commission Procedure Manual*, which may be obtained from the Commission office or viewed on the Commission website. If you have questions, or would like additional copies of this report, please contact the Commission at:

Forest Appeals Commission

Fourth Floor, 747 Fort Street
 Victoria, British Columbia
 Telephone: (250) 387-3464
 Facsimile: (250) 356-9923

Website address: www.fac.gov.bc.ca

Mailing address:

Forest Appeals Commission
 PO Box 9425 Stn Prov Govt
 Victoria, British Columbia V8W 9V1



The Commission

The Forest Appeals Commission is an independent administrative tribunal, which provides a forum to appeal certain decisions made by government officials under the *Code*, the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act* and the *Wildfire Act*. The Commission is also responsible for providing the Lieutenant Governor in Council (Cabinet) with an annual evaluation of appeal and review processes, and with recommendations for amendments to forest legislation and regulations respecting reviews and appeals.

The Commission makes decisions respecting the legal rights and responsibilities of parties that appear before it and decides whether the decision under appeal was made in accordance with the law. Like a court, the Commission must decide appeals by weighing the evidence, making findings of fact, interpreting the legislation and common law, and applying the law and legislation to the facts.

In carrying out its functions, the Commission has the power to compel persons or evidence to be brought before the Commission. The Commission also ensures that its processes comply with the common law principles of natural justice.

Appointments to the Commission and the administration of the Commission are governed by the *Administrative Tribunals Appointment and Administration Act*.

Commission Membership

Commission members are appointed by the Lieutenant Governor in Council (Cabinet) under section 194(2) of the *Code*. The members appointed to the Commission are highly qualified individuals, including professional foresters, professional biologists, professional engineers, professional agrologists and lawyers with expertise in the areas of natural resources and administrative law. These members apply their respective technical expertise and adjudication skills to hear and decide appeals in a fair, impartial and efficient manner.

The members are drawn from across the Province. Commission membership consists of a full-time chair, one or more part-time vice-chairs, and a number of part-time members. The length of the initial appointments and any reappointments of Commission members, including the chair, are set out in the *Administrative Tribunals Appointment and Administration Act*, as are other matters relating to the appointees. This *Act* also sets out the responsibilities of the chair.

During the present report period, the membership of the Commission changed. Ten members' appointments expired and four new members were appointed. During the year, the Commission consisted of the following members:

MEMBER	PROFESSION	FROM
Chair		
Alan Andison	Lawyer	Victoria
Vice-chair		
David Ormerod	Professional Forester	Victoria
Members		
Carol Brown (from 2009-10-28)	Lawyer/CGA/Mediator	Prince George
Sean Brophy (until 2009-11-28)	Professional Engineer	North Vancouver
Robert Cameron	Professional Engineer	North Vancouver
Monica Danon-Schaffer	Professional Engineer	West Vancouver
Bruce Devitt	Professional Forester (Retired)	Esquimalt
Margaret Eriksson	Lawyer	New Westminster
Bob Gerath (until 2009-11-28)	Professional Geoscientist	North Vancouver
R.A. (Al) Gorley (until 2009-11-28)	Professional Forester	Victoria
Les Gyug	Professional Biologist	Westbank
James Hackett	Professional Forester	Nanaimo
R.G. (Bob) Holtby	Professional Agrologist	Salmon Arm
Lynne Huestis (until 2009-11-28)	Lawyer	North Vancouver
Gabriella Lang	Lawyer	Campbell River
Blair Lockhart (from 2009-10-28)	Lawyer/Professional Geoscientist	Vancouver
Katherine Lewis (until 2009-03-26)	Professional Forester	Prince George
Ken Long	Professional Agrologist	Prince George
Paul Love (until 2009-11-28)	Lawyer	Campbell River
Gary Robinson (until 2009-11-28)	Resource Economist	Victoria
David Searle, C.M., Q.C.	Lawyer (Retired)	North Saanich
Reid White (from 2009-10-28)	Professional Biologist/Civil Engineer	Telkwa
David J. Thomas (until 2009-11-28)	Oceanographer	Victoria
Robert Wickett	Lawyer	Vancouver
Loreen Williams (from 2009-10-28)	Lawyer/Mediator	West Vancouver
Stephen V.H. Willett (until 2009-11-28)	Professional Forester (Retired)	Kamloops
Phillip Wong	Professional Engineer	Vancouver
J.A. (Alex) Wood (until 2009-11-28)	Professional Engineer	North Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals that make decisions affecting the rights and interests of people. Administrative law applies to the decisions and actions of statutory decision-makers who exercise power derived from legislation. The goal is to ensure that officials make their decisions in accordance with the principles of procedural fairness/natural justice by following proper procedures and acting within their jurisdiction.

The Commission is governed by the principles of administrative law and, as such, must treat all the parties involved in a hearing before the Commission fairly, giving each party a chance to explain its position.

Appeals to the Commission are decided on a case-by-case basis. Unlike a court, the Commission is not bound by its previous decisions; present cases of the Commission do not necessarily have to be decided in the same way that previous ones were.

The Commission Office

The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board, the Community Care and Assisted Living Appeal Board, the Health Professions Review Board, the Hospital Appeal Board and the Industry Training Appeal Board.

Each of the tribunals operates independently of one another. Supporting six tribunals through one administrative office gives each tribunal access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared and work can be done more

efficiently.

Commission Resources

The fiscal 2009/2010 budget for the Forest Appeals Commission was \$329,000.

The fiscal 2009/2010 budget for the shared office and staff was \$1,393,000.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Commission by one party must also be provided to all other parties to the appeal.

The Commission is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If information is requested by a member of the public regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.

In addition, the names of the parties in an appeal appear in the Commission's published decisions which are posted on the Commission's website, and may appear in this Annual Report.



The Appeal Process

Appeals under the Forest Practices Code of British Columbia Act

There are no longer any decisions or determinations made under the *Code* that are appealable to the Commission. However, as other statutes refer appeals to the Commission, the *Code* is still important because it both establishes the Commission, and sets out the basic powers and procedures to be employed by the Commission on an appeal (unless otherwise specified).

Specifically, the Commission is established under Part 9 of the *Code*. This part contains the provisions setting out the structure, organization and mandate of the Commission, including its mandate to submit this Annual Report.

The general powers of the Commission on an appeal remain in Part 6 of the *Code*, with additional powers and procedures further detailed in Part 3 of the *Administrative Review and Appeal Procedure Regulation*, B.C. Reg. 12/04.

The appeal powers and procedures set out in sections 131 to 141 of the *Code* apply to appeals filed against decisions made under the *Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*. The *Private Managed Forest Land Act* does not incorporate those *Code* provisions.

Appeals under the Forest and Range Practices Act

The *Forest and Range Practices Act* provides for the continuation of the Commission under section 194 of the *Code*. As noted above, it also incorporates the Commission's powers and procedures as set out in the *Code*.

Part 6, Division 4 of the *Forest and Range Practices Act* sets out the decisions that are appealable to the Commission, which include the following:

- approval of a forest stewardship plan, woodlot licence plan or an amendment;
- authorizations regarding range stewardship plans;
- approvals, orders, and determinations regarding range use plans, range stewardship plans or an amendment;
- suspensions and cancellations regarding forest stewardship plans, woodlot licence plans, range use plans or range stewardship plans, and permits;
- orders regarding range developments;
- orders relating to the control of insects, disease, etc.;
- orders regarding unauthorized construction or occupation of a building on Crown land in a Provincial forest;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;

- determinations regarding administrative penalties;
- remediation orders and stopwork orders;
- orders regarding forest health emergencies;
- orders relating to the general intervention power of the minister;
- orders regarding declarations limiting liability of persons to government;
- relief granted to a person with an obligation under this Act or operational plan;
- conditions imposed in respect of an order, exemption, consent or approval; and,
- exemptions, conditions, and alternative requirements regarding roads and rights of way.

Prior to an appeal, an official who makes a determination may correct certain errors in the determination within 15 days after the determination was made.

In addition to this correction process, there is an internal administrative review process. If a person is subject to certain specified determinations listed in the *Forest and Range Practices Act*, and that person requests a review, a review must be conducted. However, this review is only available if there is evidence that was not available at the time of the original determination. The Forest Practices Board may also require a review of specified determinations listed under the *Forest and Range Practices Act*, if it receives consent from the person who is the subject of the determination. Either the determination, or a decision made after completion of a review of the determination, may be appealed to the Commission by the Forest Practices Board or by a person subject to the determination.

Appeals under the Forest Act

Appealable decisions under the *Forest Act* are set out in section 146 of that Act and include certain determinations, orders and decisions made by district or regional managers, timber sales managers, employees of the Ministry of Forests and Range, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester, or an employee of the Ministry of Forests and Range, may be appealed to the Commission without prior review (e.g., stumpage determinations). However, determinations, orders or decisions made by a district or regional manager, or a timber sales manager, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the Range Act

The decisions made under this Act that may be appealed to the Commission include the following:

- orders deleting land from the Crown range described in a licence or permit;
- orders by the district manager, or the minister, reducing the number of animal unit months or quantity of hay set out in the licence or permit;
- orders requiring the holder of a licence or permit to refrain from using all or part of the Crown range;
- orders exempting, or refusing to exempt, a licence or permit holder from an obligation to use animal unit months;

- orders relating to the suspension of all or some of the rights granted under a licence or permit, and orders refusing to reinstate suspended rights;
- orders relating to the cancellation of a licence or permit where rights were under suspension;
- decisions that forage or Crown range will not remain available to a licence holder; and,
- amendments to a grazing licence or grazing permit reducing the number of animal unit months due to non-compliance with the licence or permit, or non-compliance with a non-use agreement.

Prior to filing an appeal, the person affected by the order, decision or amendment may request a review, provided that there is evidence that was not available at the time of the original order, decision or amendment.

Either the order, decision or amendment, or the decision made after completion of a review of the order, decision or amendment, may be appealed to the Commission.

An appeal may be filed directly to the Commission against a minister's order issued under section 15(2) of the *Range Act*, which relates to a proposal for a licence or permit.

Appeals under the *Private Managed Forest Land Act*

The requirements for appeals under the *Private Managed Forest Land Act* are set out in section 33 of that Act. That section creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council, including:

- determinations that a person has contravened the Act or the regulations;
- remediation orders;
- stop work orders;

- notifications to the assessor regarding contraventions; and,
- requests of the Council to rescind or vary orders, decisions or determinations.

Appeals under the *Wildfire Act*

Part 3, Division 3 of the *Wildfire Act* sets out the decisions that may be appealed to the Commission. It provides that the person who is subject to certain orders may appeal either the order, or the decision made after the completion of a review of the order, to the Commission.

The Forest Practices Board may also request a review of those same orders, provided that it receives consent from the person who is the subject of the order. Further, it may appeal the order, or the decision made after the completion of the review of the order, to the Commission.

The orders that may be appealed are as follows:

- orders to abate a fire hazard;
- orders refusing compensation to persons carrying out fire control on the grounds that the person caused or contributed to the fire or to the spread of the fire;
- orders requiring a person to pay the government's costs for fire control and the costs related to the loss of Crown resources as a result of the fire, as determined by the minister;
- contravention orders;
- administrative penalties and cost recovery orders;
- remediation orders and administrative penalties resulting from a failure to comply with a remediation order; and,
- stop work orders.



Legislative Amendments Affecting the Commission

In this report period, there were no legislative changes that directly affected the Commission. Specifically, there were no amendments that affected the types of appeals the Commission hears, or that affected the Commission's powers or procedures.



Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission also makes recommendations on amendments to the legislation respecting reviews and appeals.

The Commission is pleased to report that no problems have been identified in either the review or the appeal process during the past year.

Accordingly, the Commission is not making any recommendations in relation to either of these processes at this time.



Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission and decisions published by the Commission, during the report period. The Commission publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

A total of 26 appeals were filed with the Commission in 2009. Seven of these appeals were filed under the *Forest and Range Practices Act*, 14 were filed under the *Forest Act*, 4 appeals were filed under the *Wildfire Act*, and one appeal was filed under the *Range Act*. The total number of appeals closed without a hearing during the reporting period was 15. Of this number, 3 appeals were rejected and 12 were withdrawn or abandoned. A total of 31 appeals were completed in 2009.*

The Commission issued 13 decisions in 2009, including 4 consent orders.

* Note: hearings held and decisions issued in 2009 do not necessarily reflect the number of appeals filed in 2009.

** Note: most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings on the merits of the appeal have been included in this statistic.

Appeals filed	
Appeals filed under the <i>Code/Forest and Range Practices Act</i>	7
Appeals filed under the <i>Forest Act</i>	14
Appeals filed under the <i>Private Managed Forest Land Act</i>	0
Appeals filed under the <i>Range Act</i>	1
Appeals filed under the <i>Wildfire Act</i>	4
Total appeals filed	26
Total appeals closed	27
Appeals abandoned, rejected or withdrawn	
15	
Hearings held on the merits of appeals	
Oral hearings completed	5
Written hearings completed	5
Total hearings held on the merits of appeals**	10
Published decisions issued	
Final decisions	
<i>Forest and Range Practices Act</i>	1
<i>Forest Act</i>	8
<i>Private Managed Forest Land Act</i>	0
<i>Range Act</i>	0
<i>Wildfire Act</i>	0
Consent orders	
<i>Forest and Range Practices Act</i>	2
<i>Forest Act</i>	2
<i>Private Managed Forest Land Act</i>	0
<i>Range Act</i>	0
<i>Wildfire Act</i>	0
Preliminary decisions	0
Total published decisions issued	13



Summaries of Decisions

January 1, 2009 ~ December 31, 2009

Appeals are not heard by the entire Commission; rather appeals are heard by a “panel” of the Commission. The Chair of the Commission will decide whether an appeal should be heard and decided by a panel of one, or by a panel of three members of the Commission. The size and composition of the panel generally depends upon the type(s) of expertise needed by the Commission members in order to understand the issues and adjudicate the appeal in a fair and impartial manner.

Under all of the statutes under which the Commission is empowered to hear appeals, the Commission has the power to confirm, vary or rescind the decision under appeal and to send the matter back to the original decision-maker with or without directions. In addition, under the *Private Managed Forest Land Act* the Commission may make any other order it considers appropriate. When an appellant is successful in convincing the panel that the decision under appeal was made in error, or that there is new information that will change the decision, the appeal is said to be “allowed”. If the appellant succeeds in obtaining some changes to the decision, but not all that was asked for, the appeal is said to be “allowed in part”. When an appellant fails to establish on a balance of probabilities that the decision is incorrect on the facts or in law, and the Commission upholds the original decision, the appeal is said to be “dismissed”.

The Commission also has the power to order

a party or intervenor to pay the costs of another party or intervenor. An application for costs may be made at any time in the appeal process, but will not normally be decided until the hearing concludes and the final decision is rendered.

It is important to note that the Commission encourages parties to resolve the issues under appeal either on their own or with the assistance of the Commission. For appeals under the *Forest Act*, a special procedure has been put in place in accordance with a memorandum from the Ministry of Forests and Range. Upon receipt of a Notice of Appeal under the *Forest Act*, the Commission will hold the appeal in abeyance for 30 days to allow the parties the opportunity to enter into discussions to resolve the issues under appeal.

Regardless of the statute, many appeals are resolved without the need for a hearing. Sometimes the parties will reach an agreement amongst themselves and the appellant will simply withdraw the appeal. At other times, the parties will set out the changes to the decision under appeal in a consent order and ask the Commission to approve the order. The consent order then becomes an order of the Commission. The Commission has included descriptions of some consent orders in the summaries.

It is also important to note that the Commission issues many decisions each year, some that are published and others that are not. Therefore, not all of the decisions made by the Commission

between January 1, 2009 and December 31, 2009 have been included in this Annual Report. Rather, the Commission has selected a few of its decisions to be summarized in this report that reflect the variety of subjects and issues that come before the Commission in any given year. As has been noted in the Message from the Chair, the subject matter and the issues can vary significantly in both technical and legal complexity. The summaries have been organized according to the statute under which the appeal was filed.

Finally, these summaries are an interpretation of the decisions by Commission staff and may be subject to a different interpretation. For a full viewing of all published decisions issued during this report period, and summaries of those decisions, please refer to the Commission's web page.

Appeals under the *Forest and Range Practices Act*

Parties settle appeals arising from washout of a forest road

2008-FOR-001(b) & 2008-FOR-002(b) Canadian Forest Products Ltd. v. Government of British Columbia (Forest Practices Board, Third Party; Council of Forest Industries, Intervenor)

Decision Date: February 10, 2009

Panel: Alan Andison

Canadian Forest Products Ltd. ("Canfor") held a road use permit within the Fort St. James Forest District that required Canfor to carry out maintenance on certain roads. On or about May 3, 2007, there was a partial washout on one of those roads, near a fish-bearing stream. On May 5, 2007, Canfor removed a broken section of culvert at the location of the washout, and placed gravel on the road to prevent vehicle access. On May 23 and 24, 2007, Canfor completed

removal of the culvert, pulled back the slopes of the fill, and placed hay on the slope. Those measures were undertaken as part of an environmental management plan that had been approved by the federal Department of Fisheries and Oceans, to address fisheries concerns associated with the washout. These measures resulted in the deactivation of the road. On May 23, 2007, Canfor was notified that another industrial user of the road intended to move equipment past the point of the washout, in order to access a timber sale licence area. On or about May 27, 2007, BC Timber Sales, a stand alone organization within the Ministry of Forests and Range, installed a temporary bridge at the point of the washout to allow access to the timber sale licence area.

On January 22, 2008, the District Manager, Ministry of Forests and Range, determined that Canfor had contravened section 79(6)(a) of the *Forest Planning and Practices Regulation* by failing to replace the failed culvert with an appropriate permanent structure. The District Manager also held that Canfor did not establish a defence of due diligence because it did not take necessary steps to protect the structural integrity of the road prism. Concurrent with issuing the determination, the District Manager also issued a remediation order requiring Canfor to re-establish a road prism at the washout location, including installing a suitable permanent structure. Canfor appealed both the determination and the remediation order.

Before the appeals were heard, the parties reached an agreement to settle the appeals. By consent of the parties, the Commission ordered that the determination and the remediation order were rescinded.

► Accordingly, the appeals were allowed.

Licensee's road construction and maintenance not responsible for landslide

2008-FOR-011(a) Tembec Enterprises Inc. v. Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: December 16, 2009

Panel: David Searle, R.G. Holtby, Ken Long

Tembec Enterprises Inc. ("Tembec") appealed a determination of the District Manager, Rocky Mountain Forest District, that Tembec had contravened several sections of the *Forest Practices Code of British Columbia Act* (the "Code") and the *Forest Road Regulation* (the "Regulation"). The determination was issued following an investigation of a landslide that occurred in March 2007, after a weekend of heavy rain, on a slope approximately 160 metres below a recently constructed portion of Tembec's logging road in the Sundown Creek watershed. The landslide flowed across a Forest Service Road, and some debris spilled into Sundown Creek. The District Manager determined that Tembec had not exercised due diligence to prevent the contraventions from occurring, and he levied administrative penalties totalling \$8,000.

Tembec appealed on the basis that the District Manager erred in finding that it had contravened the *Code* and the *Regulation*, that it had not exercised due diligence, and in levying the penalties. Tembec requested that the determination and the penalties be rescinded.

The Commission found that Tembec did not contravene section 63(2) of the *Code*, because the evidence established that the road was adequately maintained. In particular, photographs taken a few days after the landslide showed that the ditches and culverts along the road section in issue were functioning, and there was no sign of significant rutting or water flow on the road surface at that time. Photographs taken

two weeks after the landslide did show rutting and water pooling on the road surface, but the Commission concluded that this was caused by road use after the landslide, and therefore, Tembec's road construction and maintenance could not have contributed to causing the landslide.

The Commission also found that Tembec did not contravene section 13(2)(b) of the *Regulation*, because the evidence showed that ditches and culverts along the section of road functioned as designed, and waterbars were unnecessary for this section of the road.

In addition, the Commission held that it was unable to conclude, on a balance of probabilities, that the landslide and resulting damage to the environment were a result of Tembec's road maintenance. There was evidence that the area had experienced naturally occurring slides in the past. Consequently, the Commission found that Tembec did not contravene section 45(1) of the *Code*.

Similarly, the Commission concluded that Tembec did not contravene section 45(3)(a) of the *Code*, because no one, including Tembec, had actual knowledge, before the landslide occurred, that the area had been subject to two natural slides in the past, and that Tembec had conducted reasonable enquiries of the site and weather conditions before it constructed the road. Therefore, there was no evidence to indicate that Tembec's staff should have known that the road construction and maintenance may directly or indirectly result in a landslide.

However, the Commission did find that Tembec contravened section 9(1)(c)(iv) of the *Regulation*, because Tembec's road drainage system failed to prevent water from being directed onto a potentially unstable slope. Specifically, one of the culverts installed by Tembec directed most of the water towards an area that was unstable. The Commission then concluded that Tembec had taken reasonable care to prevent the contravention from occurring. Specifically, the road was constructed to a standard

that met or exceeded industry standards, and Tembec's assessment of the risk of slope failure employed the degree of skill that would reasonably be expected in the circumstances. The Commission found that it would have been unreasonable to expect Tembec to have been aware of the slight elevation difference that caused most of the water from one of the road culverts to flow towards the unstable area. Consequently, the Commission concluded that the defence of due diligence applied to the contravention of section 9(1)(c) (iv) of the *Regulation*. Section 119.1(1) of the *Code* (now section 72 of the *Forest and Range Practices Act*), states that no person may be found to have contravened the legislation if the person exercised due diligence to prevent the contravention.

In summary, the Commission rescinded the determinations that Tembec had contravened the *Code* and the *Regulation*. The Commission also held that Tembec could not be found to have contravened section 9(1)(c)(iv) of the *Regulation* because Tembec had established the defence of due diligence.

► Accordingly, the appeal was allowed.

Appeals under the Forest Act

All of the appeals decided under this Act in 2009 related to stumpage rates. A stumpage rate is the amount of money that a person (the licensee) must pay to the Government for harvesting Crown timber. The Ministry of Forests and Range determines the rate that a licensee must pay, and advises the licensee of the rate in a stumpage advisory notice or a stumpage adjustment notice.

Section 105 of the *Forest Act* states that these rates must be determined, redetermined or varied in accordance with the policies and procedures approved by the Minister of Forests and Range. Those policies and procedures are contained in two manuals,

one for the interior forest region, and one for the coastal forest region. For the interior, stumpage rates must be calculated in accordance with the Interior Appraisal Manual ("IAM"). For the coast, stumpage rates must be calculated in accordance with the Coast Appraisal Manual ("CAM"). The content of these manuals have the force of law under section 105 of the *Forest Act* and the Commission is required to apply them under section 149(3) of the *Act*.

Licensee cannot claim cost of bridges purchased by another company

2008-FA-029(a) 606546 BC Ltd v. Government of British Columbia

Decision Date: May 14, 2009

Panel: David Ormerod

606546 BC Ltd. (the "Appellant") appealed a stumpage rate determination issued by the Regional Appraisal Coordinator, Coast Forest Region, Ministry of Forests and Range (the "Ministry"). The determination applied to timber harvested under cutting permit ("CP") 49 issued under forest licence A19202 held by the Appellant. The Appellant argued that the Regional Appraisal Coordinator erred by failing to include the purchase costs of two portable bridges in determining the stumpage rate for CP 49.

The Appellant owns shares in Tamihi Logging Ltd. ("Tamihi"). In January 2008, Tamihi purchased four portable bridges from Cattermole Timber. In April 2008, the Appellant acquired forest licence A19202 from Cattermole Timber. When the Appellant applied for CP 49, it submitted construction cost estimate forms which included the purchase costs of two portable bridges, as well as the costs associated with moving and installing the bridges in order to harvest timber under CP 49. However, in determining the stumpage rates for CP 49, the Regional Appraisal Coordinator only allowed the costs of moving and installing the bridges.

In the appeal, the Appellant argued that the language in the CAM supported including the bridge purchase costs in determining the stumpage rate for CP 49.

The Government argued that the bridge purchase costs could not be included in determining the stumpage rate because the corporation holding the forest licence is not the same corporation that purchased the bridges, and the costs of the bridges were already included in previous stumpage appraisals related to the forest licence.

The Commission reviewed the language in sections 5.1.2 and 5.3.1.1(5)(c) and (d) of the CAM. Based on the language in the CAM and the evidence provided by the parties, the Commission found that the bridge purchase costs could be included in determining the stumpage rate if the holder of forest licence A19202, i.e. the Appellant, had purchased the bridges, or there was sufficient evidence that the licensee would incur a cost of that kind in harvesting CP 49. The Commission found that the bridges were not purchased by the Appellant; rather, they were purchased by Tamihi, which is a separate corporation and is not the holder of forest licence A19202. In addition, there was insufficient evidence that the Appellant had purchased or had agreed to purchase the bridges from Tamihi. Furthermore, the Commission found that, if the capital costs of the bridges had already been accounted for in prior appraisals for forest licence A19202, their costs to the licensee has been accounted for in reduced stumpage rates for timber harvested under the licence.

► Accordingly, the appeal was dismissed.

Stumpage determinations complied with the IAM, but delays that affected stumpage rates could have been avoided

2009-FA-005(a) & 2009-FA-006(a) Canadian Forest Products Ltd. v. Government of British Columbia

Decision Date: December 14, 2009

Panel: James Hackett

Canadian Forest Products Ltd. (“Canfor”) appealed two stumpage rate determinations set out in stumpage advisory notices issued by the Timber Pricing Coordinator, Southern Interior Forest Region. The stumpage rates pertained to timber harvested under two road permits associated with two licences held by Canfor.

The IAM states that stumpage rates for road permits are calculated using the previous twelve-month average stumpage rate for sawlogs for all cutting authorities issued under a given licence. This twelve-month period is known as the “billing history record”. Before the stumpage determinations for Canfor’s road permits were issued, Canfor had submitted reappraisal information for three cutting permits issued under the two licences associated with the road permits, and that reappraisal information had been accepted by the Ministry, which resulted in reduced stumpage rates for the three cutting permits. Canfor had expected that the reduced stumpage rates would be included in the billing history records for the two licences, and therefore, would be reflected in the stumpage rates for the road permits. However, due to a delay in processing the reappraisal information, only one of the three reduced rates was incorporated into the billing history records in time to be used in determining the stumpage rates for the road permits. Each party blamed the other for the delay.

On appeal, Canfor argued that the IAM required the reappraisal information for the three cutting permits to be incorporated in the billing history

records for the licences, and to be used in calculating the stumpage rates for the road permits. Canfor requested that the stumpage rates be re-calculated by including the reappraisal information for all three cutting permits in the billing history records.

The Commission found that the Timber Pricing Coordinator properly applied the relevant provisions of the IAM. The Commission found that, in this case, the twelve-month period of the billing history records ended on March 31, 2009, and new stumpage invoices for two of the three reappraised cutting permits were not issued before that date. The Commission held that the old stumpage invoices had to be cancelled and replaced with new invoices before the reappraisal information could be included in the billing history records. The Commission also found that Ministry policies did not set a time period by which the Ministry must update billing history records with new information. However, based on the facts, the Commission found that all of the reappraisal information could have been included in the billing history records by March 31, 2009, and that reasonable parties should have been able to agree on the accuracy of the reappraisal information well before the deadline.

► The appeals were dismissed.

Stumpage rates were correctly determined but Ministry provided no explanation for inconsistency in licensing

2009-FA-008(a) to 2009-FA-012(a) Juggernaut Development Inc. v. Government of British Columbia

Decision Date: December 3, 2009

Panel: David Ormerod

Juggernaut Development Inc. (the “Appellant”) appealed five stumpage rate determinations set out in stumpage advisory notices issued by the Regional Appraisal Coordinator, Southern Interior Forest Region. The stumpage rates

pertained to timber harvested under five occupant licences to cut (“OLCs”) that were issued to the Appellant.

The Appellant was issued a number of licences to harvest Crown timber as part of a “daylighting” project that involved clearing 20 kilometres of highway right-of-way. The project was initiated by the Ministry of Transportation and Highways, in cooperation with the Ministry of Forests and Range, to improve highway safety. The parties understood that the project would be financially marginal for the Appellant due to log market conditions. The Appellant asserted that the Ministry of Transportation and Highways had promised to help with the project costs by paying for traffic control, and the Ministry of Forests and Range had promised to help by keeping stumpage rates on the harvested timber as low as possible, but those promises were not kept. The Appellant claimed that the Ministry of Transportation and Highways stopped paying for flagging and “off loaded” the costs of debris piling and clean up to the Appellant, while the Ministry of Forests and Range added unexpected stumpage costs by changing the form of tenure from forestry licences to cut (“FLCs”) to occupant licences to cut (“OLCs”). Specifically, the first three licences issued to the Appellant were FLCs, and the next five were OLCs. The stumpage rates that applied to the FLCs were based on provisions in the IAM that apply to the salvage of damaged timber. The stumpage rates that applied to the OLCs were higher than those that would have applied to FLCs. In addition, a silviculture levy applies to OLCs, whereas FLCs are not subject to a silviculture levy. There was no dispute that the OLCs were issued for the harvest of green timber, as opposed to the salvage of damaged timber.

The Appellant appealed the stumpage rates that applied to the OLCs on the grounds that there was inconsistency in the types of harvesting licences issued to it, and in the application of the IAM. The Appellant

submitted that, around the time that the OLCs were issued to it, FLCs were issued to other operators for the harvest of green timber to clear skiing trails. The Appellant claimed that the Ministry of Forests and Range applied the highest stumpage rate possible to the Appellant's daylighting operation, and the unexpected costs incurred during the project forced the Appellant to the brink of financial ruin. The Appellant did not take a position on whether the stumpage rates for the FLCs were correctly determined.

The Commission found that the switch from FLCs to OLCs had a significant impact on the stumpage costs and silviculture levy costs paid by the Appellant. The Commission also found that there was no clear explanation why the Ministry of Forest and Range switched to OLCs after it had already issued three FLCs, and that there was inconsistency in the issuance of the licences. However, the Commission held that it had no jurisdiction to grant a remedy for this inconsistency. The Commission concluded that the stumpage rates were correctly determined, in accordance with the applicable provisions of the IAM. Accordingly, the Commission confirmed the stumpage determinations.

► The appeals were dismissed.

Appeals to the Forest Appeal Board under the *Forest Act*

Prior to 1997, appeals of decisions made under the *Forest Act* and the *Range Act* were heard by the Forest Appeal Board. In 1998, the office of the Commission began providing registry and administrative services for matters that were still before the Forest Appeal Board. That year, the Commission also began to provide summaries of Forest Appeal Board decisions in the Commission's annual report. In April 1999, the review and appeal provisions of the *Forest Statutes Amendment Act, 1997*, came into force,

and the Commission began to hear appeals of decisions under the *Forest Act* and the *Range Act*. The following decision is the last remaining appeal that was before the Forest Appeal Board.

Parties settle appeal involving asserted aboriginal right to harvest timber to construct housing

1996-FAB-001(a) & 1996-FAB-001(b) *Sonny Lulua v. Deputy Chief Forester*

Decision Dates: April 30, 2009

(Decision No. 1996-FAB-001(a) and September 15, 2009 (Decision No. 1996-FAB-001(b))

Panel: Rob Kyle, Carol Roberts, Shelley Nitikman

Sonny Lulua appealed a decision issued in January 1996 by the Deputy Chief Forester, Ministry of Forests, finding that Mr. Lulua had cut and removed trees from Crown land without authority in contravention of section 138 of the former *Forest Act*, R.S.B.C. 1979. Mr. Lulua appealed to the Forest Appeal Board (the "Board").

The timber harvesting occurred in 1994 and involved 30.6 cubic metres of timber. Mr. Lulua is a member of the Xení Gwet'in First Nation. In his submissions to the Deputy Chief Forester, Mr. Lulua claimed an aboriginal right to cut timber on Crown land if the timber is used to construct housing for aboriginal people. The Deputy Chief Forester found insufficient evidence to support Mr. Lulua's claim of an aboriginal right to cut the timber. When Mr. Lulua appealed to Board, he continued to claim an aboriginal right to harvest the timber for the purposes of housing.

The Board commenced a hearing of the appeal in May 1996. At the start of the hearing, Mr. Lulua requested an adjournment of the appeal on the basis that he intended to proceed to the B.C. Supreme Court for a declaration that sections of the *Forest Act* were unconstitutional to the extent that they

infringed a constitutionally protected aboriginal right to harvest timber for housing, as well as a declaration as to the existence, nature and extent of that aboriginal right. The Board granted the adjournment pending the outcome of the court proceedings.

Over the next few years, the Board granted several further adjournments pending the outcome of other litigation involving aboriginal rights. Once that litigation concluded, the parties sought a further adjournment for the purpose of attempting to negotiate a settlement of the appeal.

Before the Board heard the merits of the appeal, the parties negotiated a settlement. By consent of the parties, the Board ordered that the Deputy Chief Forester's decision be reversed, and that the Deputy Chief Forester shall pay Mr. Lulua's costs of the appeal (Decision No. 1996-FAB-001(a)).

Subsequently, by consent of the parties, the Board confirmed that the parties had agreed upon a quantum of costs, and the Deputy Chief Forester paid costs of \$38,428.64 to Mr. Lulua (Decision No. 1996-FAB-001(b)).

- ▶ Accordingly, the appeal was allowed, and Mr. Lulua's application for costs was granted.

Appeals under the *Private Managed Forest Land Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Private Managed Forest Land Act*.

Appeals under the *Range Act*

Cancellation of Grazing Licence rescinded

2009-RA-001 *Grawehr v. Government of British Columbia*

Anne and John Grawehr appealed a decision of the District Manager, Ministry of Forests and Range to cancel their grazing licence. Mr. and Mrs. Grawehr own a ranch near Clinton BC and hold a grazing licence over Crown Land. The grazing licence gives Mr. and Mrs. Grawehr the right to graze their cattle on designated Crown Land. A requirement of the grazing licence is that the holders of the licence submit an operational range use plan to the Ministry.

As a result of a dispute over who should be responsible for certain fencing Mr. and Mrs. Grawehr declined to submit the required operational range use plan. The fencing required by the Ministry of Forests and Range was causing considerable hardship for the Grawehrs. The District Manager then cancelled Mr. and Mrs. Grawehr's grazing licence for failure to perform an obligation to be formed by the holder of the grazing licence.

After having an 'opportunity to be heard' and follow up discussions with the Ministry the parties were able to reach a satisfactory agreement on the terms of the range use plan. As a result a new operational range use plan was submitted to the Ministry and the order of cancellation was rescinded. The appeal to the Commission was withdrawn and the Commission closed its file on the appeal.

Appeals under the *Wildfire Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Wildfire Act*.



Appeals of Commission Decisions to the Courts

January 1, 2009 ~ December 31, 2009

British Columbia Supreme Court

**Ronald Edward Hegel and 449970 B.C. Ltd. v.
Province of British Columbia (Ministry of Forests
and Range)**

Decision Date: June 29, 2009

Court: BCSC, Meiklem J.

Cite: 2009 BCSC 863

Ronald Edward Hegel and 449970 B.C. Ltd (the “Appellants”) appealed the Commission’s decision in *Ronald Edward Hegel and 449970 B.C. Ltd. v. Government of British Columbia* (Decision No. 2005-FOR-009(a), issued October 12, 2007). The events that led to the appeal are summarized as follows. Mr. Hegel was the president of 449970 B.C. Ltd. In or about 2002, 449970 B.C. Ltd. began logging private property that it owned near Avola, BC. Before logging commenced, Mr. Hegel attempted to ascertain the boundaries of the private property. In 2005, the District Manager, Ministry of Forests and Range, determined that the Appellants had contravened sections 96(1) and 97(2) of the *Forest Practices Code of British Columbia Act* (the “Code”) by failing to properly ascertain the boundaries of the private property, and by harvesting Crown timber without authority. The District Manager levied a penalty of \$132,897.40 against the Appellants.

The Appellants appealed to the Commission on the grounds that they had exercised due diligence in attempting to locate the property boundary, that they were under a mistake of fact regarding the boundary, that their actions resulted from an officially induced error, and that the penalty was excessive.

The evidence before the Commission focused on Mr. Hegel’s efforts to ascertain the property boundaries, and whether the alleged site of the unauthorized harvesting, which was referred to as “Area A” and is approximately located to the north and west of the property, is located on the Appellants’ property or on Crown land. The Commission considered a great deal of evidence regarding the boundaries of the Appellants’ private property, including modern and historical surveying reports. The property’s south and east boundaries were not in dispute.

The Commission first considered whether the Appellants had contravened the *Code* by failing to properly ascertain the boundaries of the property. The Commission accepted the Government’s expert evidence that Area A is located north of the Appellants’ property and on Crown land. The Commission also considered the evidence of a surveyor retained by the Appellants in support of their appeal, which indicated that Area A was on Crown land. The Commission held that the Appellants’ attempt to ascertain the boundaries was inadequate and resulted in the unauthorized harvest of Crown timber.

The Commission then considered whether the Appellants had established any defences. The Commission found that, although Mr. Hegel made efforts to ascertain the boundaries before harvesting began, his actions were inadequate to establish the defence of due diligence. Specifically, he had failed to locate corner pins and to measure all of the boundaries against previous survey notes. The Commission also found that the Appellants did not establish the defences of mistake of fact or officially induced error.

In conclusion, the Commission confirmed the contravention and, at the Government's request, slightly reduced the penalty based on new evidence. The appeal was dismissed.

The Appellants then appealed to the British Columbia Supreme Court on the grounds that the Commission erred in law:

- in determining the location of the property's north boundary, and in concluding that Area A is on Crown Land;
- by concluding that Mr. Hegel started his on-site investigation of the boundaries of the property from a wooden fence post;
- by concluding that the Appellants did not exercise due diligence in their efforts to determine the location of the northern boundary of the property;
- by concluding that the defence of mistake of fact did not apply to the Appellants' efforts to determine the location of the northern boundary of the property.

The Court found that the Commission made no error of law in reaching its conclusion about the location of the property's northern boundary and in concluding that Area A is on Crown land. The Court rejected this ground for appeal.

The Court also rejected the second ground for appeal. Although the Court found that the Commission misstated Mr. Hegel's evidence by stating that he started his investigation at a wooden fence post

rather than at an old staking post, the Court found that, absent this minor mistake, the Commission's decision regarding the defences of due diligence and mistake of fact would have, and should have, been no different.

Regarding the third ground for appeal, the Court found that the Commission did not misapprehend the evidence regarding the Appellants' exercise of due diligence in their efforts to determine the location of the boundary.

On the fourth ground for appeal, the Court held that the Commission was entitled to consider the reasonableness of Mr. Hegel's overall efforts to ascertain the property boundaries. The Court found no error of law in the Commission's approach to the defence of mistake of fact.

► In conclusion, the Court dismissed the appeal.

Canadian Forest Products Ltd. v. British Columbia and the Forest Appeals Commission

Decision date: July 30, 2009

Court: BCSC, Groves J.

Cite: 2009 BCSC 1040

Canadian Forest Products Ltd. ("Canfor") appealed a decision of the Commission to the British Columbia Supreme Court. In *Canadian Forest Products Ltd. v. Government of British Columbia* (Decision No. 2007-FA-023(a), issued November 13, 2007), the Commission confirmed a reappraisal of a stumpage rate that applied to timber harvested under a cutting permit issued to Canfor. The reappraised stumpage rate was set out in a stumpage advisory notice issued in March 2007 by a Timber Pricing Officer with the Ministry of Forests and Range (the "Ministry"). The reappraisal was triggered when the Ministry determined that there had been a "changed circumstance" as defined in the Interior Appraisal Manual ("IAM"). The reappraised stumpage rate was higher than the rate set in the stumpage notice sent to Canfor when the cutting permit had been issued. The reappraised rate was effective

from January 16 to March 31, 2005, which meant that it was backdated to apply to timber that had already been harvested and scaled.

Canfor appealed to the Commission on the basis that the reappraised rate could not apply to timber that had already been scaled. Canfor argued that section 103 of the *Forest Act* precludes the retroactive reappraisal of stumpage on timber that has already been scaled. Canfor submitted that the IAM is a form of subordinate legislation created under the *Forest Act*, and as such it cannot conflict with the *Forest Act*. Canfor argued that section 2.4.1 of the IAM conflicts with section 103(1) of the *Forest Act*, and therefore, is *ultra vires* the *Forest Act*. Canfor submitted, therefore, that the Commission should refuse to apply section 2.4.1 of the IAM, and rescind the reappraised stumpage rate.

The Commission found that section 2.4.1 of the IAM does not conflict with section 103(1) of the *Forest Act*. The Commission held that stumpage rates are determined under section 105 of the *Act*, and those rates are then applied pursuant to section 103(1) of the *Act*. Section 103(1) focuses on the calculation of the amount of stumpage owing, rather than the rate of stumpage, and section 103(1) does not limit the timing of the determination or redetermination of stumpage rates. Section 103(1) refers to the stumpage rate applicable under section 105, which says that “rates of stumpage must be determined, redetermined and varied ...” in accordance with the IAM. Section 2.4.1 of the IAM permits the reappraisal of stumpage applicable to timber that has already been scaled. On that basis, the Commission confirmed the reappraised stumpage rate and dismissed the appeal.

On appeal to the Court, Canfor argued that section 2.4.1 of the IAM is *ultra vires* the *Forest Act* because it conflicts with section 103(1) of the *Act* by permitting the retroactive application of a reappraised stumpage rate to timber that has already been harvested and scaled.

The Court first considered the standard

of review that applied to the Commission’s decision. The Court applied the test set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, and found that the standard of correctness applies when reviewing pure questions of law. The Court found that the issue in this case was a question of law; namely, the appropriate interpretation of sections 103 and 105 of the *Forest Act*. The Court held that this issue did not directly engage the Commission’s specialized expertise, and therefore, the appropriate standard of review in this case is correctness.

The Court then reviewed sections 103 and 105 of the *Forest Act*. The Court found that section 103 (1)(c)(i) of the *Forest Act* contains a mandatory requirement that the amount of stumpage payable must be calculated based on the rate of stumpage applicable to the timber under section 105 at the time that the timber is scaled. Section 103(1)(c) contemplates the application of stumpage rates only on a prospective basis, to timber that has not yet been scaled. Section 103(1) is not subject to section 105, although it is expressly subject to other sections of the *Forest Act*. Reading sections 103 and 105 together in the context of the *Act*, the Court found that the Minister’s power to redetermine stumpage rates under section 105(1) does not authorize the re-opening of completed stumpage assessments under section 103(1). Moreover, the Court held that it is reasonable to assume that the legislature intended some measure of finality to the calculation of stumpage owing under section 103(1), subject to the limited exceptions stated in the *Forest Act*.

Next, the Court considered the relationship between the IAM and sections 103 and 105 of the *Forest Act*. The Court held that the IAM is a form of subordinate legislation enabled by the *Forest Act*, and as such it is presumed to be inoperative to the extent that it conflicts with the *Forest Act*. The Court held that section 2.4.1(1) of the IAM conflicts with sections 103 and 105 of the *Forest Act*, in that it purports to allow the Ministry to apply a stumpage reappraisal

retroactively to timber that has already been scaled. Consequently, the Court held that section 2.4.1(1) of the IAM is *ultra vires* the *Forest Act*, and that the Commission erred in finding that there was no conflict between section 103 of the *Forest Act* and section 2.4.1 of the IAM.

In conclusion, the Court ordered that the Commission's decision was stayed, and the stumpage advisory notice issued by the Timber Pricing Officer was rescinded. The Court also declared that section 2.4.1 of the IAM is *ultra vires* the *Forest Act* to the extent that it purports to vary the stumpage payable on timber that has already been scaled.

- ▶ In late 2009, the Commission applied to the BC Court of Appeal for leave to appeal the BC Supreme Court's decision. On February 5, 2010, the Court of Appeal granted the application for leave to appeal.

Pope & Talbot Ltd. v. Province of British Columbia and the Forest Appeals Commission (Forest Practices Board, Intervenor)

Decision date: December 14, 2009

Court: BCSC, Fisher J.

Cite: 2009 BCSC 1715

Pope & Talbot Ltd. ("P&T") appealed a decision of the Commission to the British Columbia Supreme Court. The decision under appeal was *Pope & Talbot Ltd. v. Government of British Columbia* (Decision No. 2005-FOR-004(b), issued September 4, 2007). In that decision, the Commission confirmed a determination issued by the District Manager, Ministry of Forests and Range, that P&T had contravened section 67(1) of the *Forest Practices Code of British Columbia Act* (the "*Code*") by cutting trees contrary to a silviculture prescription. The silviculture prescription for the cut block identified the harvesting to be done as clear cutting "with reserves", with the objective of leaving a specified volume of "leave trees". In the cut block, a "guy-line clearing" was also to be cleared, which

was an area where no reserves were required. After clearing the guy-line area, P&T's logging subcontractor continued to clear cut the entire cut block, leaving no reserves. The District Manager assessed a penalty of \$1,000, apportioned 60 percent to P&T and 40 percent to its harvesting contractor.

P&T appealed to the Commission on the basis that P&T was duly diligent, and that the contravention was entirely the responsibility of the harvesting contractor and sub-contractor. In considering whether P&T had established the defence of due diligence, the Commission applied the test it set out in *Weyerhaeuser v. Government of British Columbia* (Decision No. 2004-FOR-005(b), January 17, 2006). First, the Commission found that the contravention was reasonably foreseeable, because the risk that harvesting may deviate from operational plans was higher than usual due to the extremely complicated silviculture prescription for the cut block. Second, the Commission considered whether P&T took all reasonable steps to prevent the contravention from occurring. The Commission found that the collective efforts of P&T, through its environmental management system, the layout of the harvesting area and P&T's supervision of its contractor, were deficient. P&T gave too much discretion to its staff, the contractor and the sub-contractor in deciding how to implement the leave tree requirements. The Commission concluded that the defence of due diligence was not established, and dismissed the appeal.

On appeal to the Court, P&T argued that:

- The Commission did not apply the correct test of foreseeability in considering the due diligence defence.
- The Commission found facts not in evidence, failed to consider relevant facts and took irrelevant facts into account in finding that P&T failed to take all reasonable steps to prevent the contravention.
- The Commission breached the rules of procedural

fairness by failing to give P&T an opportunity to be heard on the question of whether marking guy-line clearance boundaries was appropriate in the circumstances.

The Forest Practices Board made submissions on the first issue only. It submitted that, in the *Weyerhaeuser* case, the Commission stated the wrong test, and this confused the subsequent application of the defence of due diligence in this appeal.

The Court first considered the standard of review that applied to the Commission's decision, based on the test set out in *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190. Regarding P&T's first ground for appeal, the Court found that the interpretation of the due diligence test is a question of general law that is important to the legal system and is outside of the Commission's specialized area of expertise, and therefore, correctness is the appropriate standard of review. On P&T's second ground for appeal, the Court also held that correctness is the appropriate standard for reviewing the question of whether the Commission considered the evidence in such a manner as to constitute an error of law. However, the Court noted that there is no right of appeal to the Court under section 141 of the *Code* on questions of mixed fact and law. On the third ground for appeal, the Court held that consideration of breaches of procedural fairness do not engage a standard of review analysis, because a breach of procedural fairness results in a lack of due process that may result in the tribunal's decision being set aside or the matter being remitted back to the tribunal.

Turning to the merits of P&T's first ground for appeal, the Court held that the Commission was correct to apply a test of foreseeability when considering P&T's defence of due diligence, but the due diligence test set out in *Weyerhaeuser* did not accurately reflect the common law or the legislation, and the Commission's reiteration of that test in this case caused some confusion.

The Court held that although the Commission addressed foreseeability as a first step under the defence

of due diligence, it correctly focused on the foreseeability of the contravention. The Commission's finding that the contravention was reasonably foreseeable is a question of mixed fact and law, which cannot be the subject of an appeal to the Court. Consequently, the Court rejected P&T's argument that the Commission did not apply the correct test of foreseeability in considering the due diligence defence.

The Court found that the Commission did not misdirect itself on the law on the issue of reasonable care as applied to the facts. The Commission undertook the correct inquiry; namely, whether P&T took all reasonable steps to avoid the contravention. Further, the Commission's finding that P&T could have done more to prevent the contravention was supported by evidence. Consequently, the Court held that the Commission did not err in law in finding on the evidence before it that P&T failed to take all reasonable steps to prevent the contravention.

Finally, the Court held that, although the Commission concluded that the unauthorized harvesting could have been prevented by making more effort to mark the limits of guy-line clearances, and the Commission did not question parties about this issue, this did not constitute a breach of procedural fairness given the overall basis for the Commission's decision, and given that P&T had a full opportunity to respond to all of the evidence and submissions.

► Accordingly, the Court dismissed the appeal.

British Columbia Court of Appeal

Ronald Edward Hegel and 449970 B.C. Ltd. v. British Columbia (Ministry of Forests and the Forest Appeals Commission)

Decision date: November 25, 2009

Court: BCCA; Justice Kirkpatrick (in Chambers)

Cite: 2009 BCCA 527

Ronald Edward Hegel and 449970 B.C. Ltd. (the “Appellants”) sought leave to appeal the decision of the BC Supreme Court in *Ronald Edward Hegel and 449970 B.C. Ltd. v. Province of British Columbia (Ministry of Forests and Range)*, 2009 BCSC 863 (summarized above).

The Court of Appeal held that the legislation enabling appeals of the Commission’s decisions to the BC Supreme Court only permits appeals on questions of pure law and jurisdiction. The Court of Appeal considered the four grounds for appeal that were before the BC Supreme Court, and held that those grounds for appeal did not raise questions of law; rather, they raised questions of mixed fact and law. The Court of Appeal also held the right of appeal on questions of law does not include a right of appeal on questions of mixed fact and law. Consequently, the Court of Appeal concluded that the appeal was not properly before the BC Supreme Court in the first instance. Accordingly, the application for leave to appeal was dismissed.

Western Forest Products Limited v. Her Majesty the Queen in Right of the Province of British Columbia (as represented by the Minister of Forests and Range) and the Forest Appeals Commission

Decision date: August 13, 2009

Before: Newbury, J., Low, J., K. Smith, J.

Cite: 2009 BCCA 354

Western Forest Products Limited (“Western”) appealed a decision of the BC Supreme

Court that allowed an appeal from a decision of the Commission regarding the calculation of transportation costs for the purposes of assessing stumpage under the *Forest Act*. In the Commission’s decision in *Western Forest Products Ltd. v. Government of British Columbia* (Decision No. 2004-FA-003(c), issued September 21, 2005), Western had appealed a determination by the District Manager, Ministry of Forests and Range, that a log dump used by Western near Jordan River was a suitable log dump for the purposes of determining the stumpage rate applicable to timber harvested by Western near Jordan River. The issue before the Commission was whether, in determining the stumpage rate, the log dump at Jordan River was “unsuitable” for the purpose of calculating Western’s transportation cost estimates. If the log dump near Jordan River was found to be unsuitable, then a log dump further away would be used to calculate Western’s transportation costs, which would result in a lower stumpage rate.

The Commission found that the stumpage rate should be determined based on the assumption that Western was using a log dump in Sooke rather than the one near Jordan River, despite the fact that the Jordan River log dump involved a shorter truck hauling distance and was the one that Western actually used for timber harvested in that area. The Commission accepted evidence provided by Western’s witnesses that the concept of licensee neutrality is a fundamental principle in stumpage appraisals under the CAM. The Commission held that, under the CAM, harvesting costs are to be estimated independent of the actual circumstances of a particular licensee, and are to be based upon what would be done by a notional average operator. There was undisputed evidence that the Jordan River log dump’s capacity is limited and that Western fully utilized the log dump, such that the log dump had no capacity to service any other licensee. On that basis, the Commission concluded that the Jordan River log dump was not suitable for use by a notional average operator because it has constraints that prevent

a notional average operator from accessing it. Further, if Jordan River is unsuitable as an appraisal log dump for the notional average licensee, it must be unsuitable for all, and it would be unfair to appraise all other licensees in the area based on another log dump but appraise Western based on Jordan River.

The Province appealed the Commission's decision to the BC Supreme Court. In *British Columbia (Minister of Forests and Range) v. Forest Appeals Commission*, 2007 BCSC 696, the Court held that the issue before the Commission was a question of law, and that the appropriate standard of review lay between reasonableness *simpliciter* and correctness, but closer to reasonableness *simpliciter*. The Court found that applying the concept of licensee neutrality to find that Western should pay stumpage as if it were trucking logs to a further log dump in Sooke, simply because other licensees cannot use Jordan River, produced an absurd result. Therefore, the Court found the Commission's decision to be unreasonable, and ordered that the decision was stayed.

Western appealed to the BC Court of Appeal. The Court held that the judge below did not have the benefit of the principles set out in *Dunsmuir v. New Brunswick*, 2008 SCC 9, which requires the application of a standard of reasonableness to the Commission's decision. In particular, the Court held that the case turned on the exercise of discretion under section 4.1 of the CAM regarding whether a log dump is "unsuitable". The Court held that this question engaged the Commission's technical expertise in stumpage appraisal, even though the question could be characterized as one of law (i.e. the interpretation of the CAM, which is a form of subordinate legislation). Applying the standard of reasonableness, the Court found that the Commission's decision was reasonable. Specifically, the Court held that there was evidence to support the principle of licensee neutrality by the Commission, and it was not unreasonable for the

Commission to have accepted that evidence, especially in light of section 148.6 of the *Forest Act* which permits the Commission to accept evidence even if that evidence may be inadmissible in a court. After considering the meaning of section 4.1 of the CAM, the Court held that the Commission's decision was consistent with the scheme and tenor of the CAM, as explained by the unchallenged evidence of Western's witnesses, and lies within the range of acceptable outcomes that were available to the Commission. Accordingly, the Court allowed Western's appeal and ordered that the Commission's decision be restored.

Supreme Court of Canada

By the end of the 2009 calendar year there was one leave application in front of the Supreme Court of Canada. Leave was sought by the Government of British Columbia from the decision of the Court of Appeal in *Western Forest Products Ltd. v. Her Majesty the Queen in Right of the Province of British Columbia and the Forest Appeals Commission* (August 13, 2009) as described above.

APPENDIX I
Legislation and Regulations

Reproduced below are the sections of the *Forest Practices Code of British Columbia Act* and the *Administrative Review and Appeal Procedure Regulation* which establish the Commission and set out the general powers and procedures that apply to most appeals.

Also included are the appeal provisions contained in each of the five statutes which provide for an appeal to the Commission from certain decisions of government officials: the *Forest and Range Practices Act*, the *Forest Act*, the *Range Act*, and the *Wildfire Act*. Also included is the *Private Managed Forest Land Act* and the *Private Managed Forest Land Regulation*, which establish the particular powers and procedures of the Commission in relation to appeals under that enactment.

The legislation contained in this report is the legislation in effect at the end of the reporting period (December 31, 2009). Please note that legislation can change at any time. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 ~ Administrative Review and Appeals

Part 6 of the *Forest and Range Practice Act* applies

130.1 Part 6 of the *Forest and Range Practices Act* applies to this Act and the regulations under this Act, unless the context indicates otherwise.

Appeal

- 131** (1) To initiate an appeal under section 82 or 83 of the *Forest and Range Practices Act*, the person referred to in section 82(1) of that Act, or the board under section 83(1) of that Act, no later than 3 weeks after the latest to occur of
- (a) the original decision,
 - (b) any correction under section 79 of that Act, and
 - (c) any review under section 80 or 81 of that Act,
- must deliver to the commission
- (d) a notice of appeal,
 - (e) a copy of the original decision, and
 - (f) a copy of any decision respecting a correction or review.

- (2) [Repealed 2003-55-94.]
- (3) The person or board bringing the appeal must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.
- (4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.
- (5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.
- (6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and
- (a) to the board, if the notice was delivered
 - (i) by the person who is the subject of the determination, or
 - (ii) for an appeal of a failure to make a determination, by the person who would be the subject of a determination, if made,
 - (b) to the person who is the subject of the determination, if the notice was delivered by the board, or
 - (c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.
- (7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.
- (8) At any stage of an appeal the commission or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.
- (9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.
- (10) The commission, after receiving a notice of appeal, must
- (a) promptly give the parties to an appeal a hearing, or
 - (b) hold a hearing within the prescribed period, if any.
- (11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under subsection (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are disclosed as required under subsection (9) or (14).
- (12) A party may
- (a) be represented by counsel,
 - (b) present evidence, including but not limited to evidence that was not presented in the review under section 129,
 - (c) if there is an oral hearing, ask questions, and
 - (d) make submissions as to facts, law and jurisdiction.
- (13) The commission may invite or permit a person to take part in a hearing as an intervenor.

- (14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required by the regulations and in accordance with the regulations.
- (15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Repealed

131.1 [Repealed 2003-55-95]

Order for written submissions

- 132 (1) The commission or a member of it may order the parties to deliver written submissions.
- (2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.
- (3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

133 The commission or a member of it may make an interim order in an appeal.

Open hearings

134 Hearings of the commission must be open to the public.

Witnesses

135 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on

oath or in any other manner, and

- (c) to compel witnesses to produce records and things.

Contempt

136 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

- 137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,
- (a) any oral testimony, or
- (b) any record or other thing relevant to the subject matter of the appeal and may act on the evidence.
- (2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.
- (3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.
- (4) The commission may retain, call and hear an expert witness.

Repealed

138 [Repealed 2003-55-95.]

Decision of commission

- 139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.
- (2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.
- (3) The commission must make a decision within the prescribed period, if any.

Order for compliance

- 140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order
- (a) directing the person to comply with the order or decision, and
- (b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

- 141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.
- (2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.
- (3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9

FOREST APPEALS COMMISSION

Forest Appeals Commission continued

- 194 (1) The Forest Appeals Commission is continued.
- (1.1) The commission is to hear appeals under
- (a) Division 4 of Part 6, and
- (b) the *Forest Act*, the *Private Managed Forest Land Act* and the *Range Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.
- (2) The commission consists of the following members appointed by the Lieutenant Governor in Council after a merit based process:
- (a) a member designated as the chair;
- (b) one or more members designated as vice chairs after consultation with the chair;
- (c) other members appointed after consultation with the chair.
- (3) The *Administrative Tribunals Appointment and Administration Act* applies to the commission.
- (4) to (6) [Repealed 2003-47-32.]

Organization of the commission

- 195 (1) The chair may organize the commission into panels, each comprised of one or more members.
- (2) The members of the commission may sit
- (a) as a commission, or
- (b) as a panel of the commission
- and 2 or more panels may sit at the same time.
- (3) If members of the commission sit as a panel,
- (a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and
- (b) an order, decision or action of the panel is an order, decision or action of the commission.

Commission staff

- 196** (1) Employees necessary to carry out the powers and duties of the commission may be appointed under the *Public Service Act*.
- (2) In accordance with the regulations, the commission may engage or retain specialists or consultants that the commission considers necessary to carry out the powers and duties of the office and may determine their remuneration.
- (3) The *Public Service Act* does not apply to the retention, engagement or remuneration of specialists or consultants retained under subsection (2).

No oral hearing as of right

- 196.1** A person is not entitled to an oral hearing before the commission.

Delegation of powers

- 196.2** (1) The chair may in writing delegate to a person or class of persons any of the commission's powers or duties under this Act, except the power
- (a) of delegation under this section, or
- (b) to make a report under this Act.
- (2) A delegation under this section is revocable and does not prevent the commission exercising a delegated power.
- (3) A delegation may be made subject to terms the chair considers appropriate.
- (4) If the chair makes a delegation and then ceases to hold office, the delegation continues in effect as long as the delegate continues in office or until revoked by a succeeding chair.
- (5) A person purporting to exercise a power of the commission by virtue of a delegation under this section must, when requested to do so, produce evidence of his or her authority to exercise the power.

Mandate of the commission

- 197** (1) In accordance with the regulations, the commission must
- (a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,
- (b) provide
- (i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act are functioning and identify problems that may have arisen under their provisions, and
- (ii) the minister responsible for the administration of the *Ministry of Forests and Range Act* with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* are functioning and identify problems that may have arisen under their provisions, and
- (c) annually, and at other times it considers appropriate, make recommendations
- (i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,
- (ii) to the minister responsible for the administration of the *Ministry of Forests and Range Act* concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and
- (d) perform other functions required by the regulations.

- (2) The chair must give to the ministers an annual report concerning the commission's activities.
- (3) The ministers must promptly lay the report before the Legislative Assembly.

Forest and Range Practices Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 ~ Correction, Reviews and Appeals

Determinations stayed until proceedings concluded

- 78 (1) A determination that may be reviewed under section 80 or appealed under section 82 is stayed until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.
- (2) Despite subsection (1), the minister may order that a determination, other than a determination to levy an administrative penalty under section 71 or 74(3)(d) is not stayed or is stayed subject to conditions, on being satisfied that a stay or a stay without those conditions, as the case may be, would be contrary to the public interest.
- (3) Despite subsection (1), a determination is not stayed if the determination is made under prescribed sections or for prescribed purposes.

Correction of a determination

- 79 (1) Within 15 days after a determination is made under section 16, 26(2), 27(2), 32(2), 37, 51(7), 54(2), 57(4), 66, 71, 74 or 77 of this Act, the person who made the determination may

- (a) correct a typographical, an arithmetical or another similar error in the determination, and
 - (b) [Repealed 2003-55-37.]
 - (c) correct an obvious error or omission in the determination.
- (2) The correction does not take effect until the date on which the person who is the subject of the determination is notified of it under subsection (4).
- (3) The discretion conferred under subsection (1)
- (a) is to be exercised in the same manner as the determination affected by it, and
 - (b) is exercisable with or without a hearing and
 - (i) on the initiative of the person who made the determination, or
 - (ii) at the request of the person who is the subject of the determination.
- (4) The person who corrected a determination under this section must notify the person who is the subject of the determination.

Review of a determination

- 80 (1) Subject to subsection (2), at the request of a person who is the subject of a determination under section 16, 20(3), 26(2), 27(2), 32(2), 37, 38(5), 39, 51(7), 54(2), 57(4), 66, 71, 74, 77, 77.1, 97(3), 107, 108, 112(1)(a) or 155(2) of this Act, the person who made the determination, or another person employed in the ministry and designated in writing by the minister must review the determination, but only if satisfied that there is evidence that was not available at the time of the original determination.
- (2) On a review required under subsection (1) the person conducting the review may consider only
- (a) evidence that was not available at the

- time of the original determination, and
- (b) the record pertaining to the original determination.
- (3) To obtain a review of a determination under subsection (1) the person must request the review not later than 3 weeks after the date the notice of determination was given to the person.
 - (4) The minister may extend the time limit for requiring a review under this section before or after its expiry.
 - (5) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Board may require review of a determination

- 81** (1) If the board first receives the consent of the person who is the subject of a determination under section 16, 37, 71 or 74 of this Act, the board may require a review of the determination by the person who made the determination, or another person employed in the ministry and designated in writing by the minister.
- (2) To obtain a review of a determination under subsection (1), the board must require the review not later than 3 weeks after the date the notice of determination was given to the person.
 - (3) The minister may extend the time limit for requiring a review under this section before or after its expiry.
 - (4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Appeal to the commission by a person who is the subject of a determination

- 82** (1) The person who is the subject of a determination referred to in section 80, other than a determination made under section 77.1, may appeal to the commission either of the following, but not both:
- (a) the determination;
 - (b) a decision made after completion of a review of the determination.
- (2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

- 83** (1) The board may appeal to the commission either of the following, but not both:
- (a) a determination referred to in section 81;
 - (b) a decision made after completion of a review of the determination.
- (2) The board may apply to the commission for an order under section 84(2) if
- (a) the minister authorized under section 71 or 74 of this Act to make a determination has not done so, and
 - (b) a prescribed period has elapsed after the facts relevant to the determination first came to the knowledge of the official or the minister.
- (3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under subsection (1) or an application under subsection (2).

Powers of the commission

- 84** (1) On an appeal
- (a) by a person under section 82(1), or
 - (b) by the board under section 83(1),
- the commission may
- (c) consider the findings of the person who made the determination or decision, and

- (d) either
 - (i) confirm, vary or rescind the determination or decision, or
 - (ii) with or without directions, refer the matter back to the person who made the determination or decision, for reconsideration.
- (2) On an application under section 83 by the board the commission may order the official or minister referred to in section 83(2) to make a determination as authorized under the applicable provision that is referred to in section 83(2)(a).
- (3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.
- (4) After filing in the court registry, an order under subsection (3) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.
- (a) a determination, order or decision of the chief forester, under section 60.6, 68, 70(2), 77(1)(b) or 112(1),
- (b) a determination of an employee of the ministry under section 105(1), and
- (c) an order of the minister under section 75.95(2).
- (3) No appeal may be made under subsection (1) unless the determination, order or decision has first been reviewed under Division 1 of this Part.
- (4) If a determination, order or decision referred to in subsection (1) is varied by the person conducting the review, the appeal to the commission is from the determination, order or decision as varied under section 145.
- (5) If this Act gives a right of appeal, this Division applies to the appeal.
- (6) For the purpose of subsection (2), a redetermination or variation of stumpage rates under section 105(1) is considered to be a determination.

Forest Act

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 ~ Appeals

Determinations that may be appealed

- 146** (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision that was the subject of a review required under Division 1 of this Part.
- (2) An appeal may be made to the Forest Appeals Commission from
- (a) a determination, order or decision of the chief forester, under section 60.6, 68, 70(2), 77(1)(b) or 112(1),
 - (b) a determination of an employee of the ministry under section 105(1), and
 - (c) serving a notice of appeal on the commission
 - (i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145(3), and

Notice of appeal

- 147** (1) If a determination, order or decision referred to in section 146(1) or (2) is made, the person
- (a) in respect of whom it is made, or
 - (b) in respect of whose agreement it is made may appeal the determination, order or decision by
 - (c) serving a notice of appeal on the commission
 - (i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145(3), and

- (ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after that date the determination, order or decision is served on the person under the provisions referred to in section 146(2), and
 - (d) enclosing a copy of the determination, order or decision appealed from.
- (2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).
 - (3) The appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.
 - (3.1) After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government will rely at the appeal if required by the regulations and in accordance with the regulations.
 - (4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.
 - (5) A person who does not serve the notice of appeal within the time required under subsection (1) or (4) loses the right to an appeal.

Appeal

- 148** (1) The commission, after receiving the notice of appeal, must
- (a) promptly hold a hearing, or
 - (b) hold a hearing within the prescribed period, if any.

- (2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under section 147(3.1), the commission need not hold a hearing within the prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147(3.1).
- (3) Only the appellant and the government are parties to the appeal.
- (4) The parties may
 - (a) be represented by counsel,
 - (b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,
 - (c) if there is an oral hearing, ask questions, and
 - (d) make submissions as to facts, law and jurisdiction.
- (5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

- 148.1** (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.
- (2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.
 - (3) The commission must ensure that each party to the appeal has the opportunity to

review written submissions from the other party and an opportunity to rebut the written submissions.

Interim orders

148.2 The commission or a member of it may make an interim order in an appeal.

Open hearings

148.3 Hearings of the commission are open to the public.

Witnesses

148.4 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

- (a) to summon and enforce the attendance of witnesses,
- (b) to compel witnesses to give evidence on oath or in any other manner, and
- (c) to compel witnesses to produce records and things.

Contempt

148.5 The failure or refusal of a person

- (a) to attend,
- (b) to take an oath,
- (c) to answer questions, or
- (d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

148.6 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

- (a) any oral testimony, or
- (b) any record or other thing relevant to the subject matter of the appeal

and may act on the evidence.

- (2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.
- (3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.
- (4) The commission may retain, call and hear an expert witness.

Powers of commission

- 149** (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of
- (a) the person who made the initial determination, order or decision, and
 - (b) the person who conducted the review.
- (2) On an appeal, the commission may
 - (a) confirm, vary or rescind the determination, order or decision, or
 - (b) refer the matter back to the person who made the initial determination, order or decision with or without directions.
 - (3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.
 - (4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.
 - (5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of

a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

- (6) Unless the minister orders otherwise, an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

- 149.1** The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.
- (2) On request of the appellant or the minister, the commission must provide written reasons for the decision.
 - (3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

- 149.2** If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order
- (a) directing the person to comply with the order or decision, and
 - (b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

- 150** (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.
- (2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she

considers appropriate, may order that the decision of the commission be stayed in whole or in part.

- (3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 6 of the *Forest and Range Practices Act* applies

- 167.3** (1) Divisions 1 to 4 of Part 6 of the *Forest and Range Practices Act* apply to this Act and the regulations under this Act, unless the context indicates otherwise.
- (2) Without limiting subsection (1), sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under the *Forest and Range Practices Act* in respect of a contravention of this Act or the regulations under this Act.

Range Act

Part 3

COMPLIANCE AND ENFORCEMENT

Division 3 ~ Reviews and Appeals

Reviews

- 69** (1) Subject to subsection (2), at the request of a person who is the subject of, or whose licence or permit is affected by,
- (a) an order of a forest officer under section 60(1),
 - (b) an order of a district manager under section 36(1) or (2), 49(1), 50(1), 55, 60(1), 62(1)(b) or 63(1),
 - (c) a decision of the district manager referred to in section 25(5) or 50(4), or
 - (d) amendments under section 47 or 48, the person who made the order or decision or who prepared the amendments, or another person employed in the ministry and designated in writing by the minister, must

review the order, decision or amendments, but only if satisfied that there is evidence that was not available at the time of the original order, decision or amendments.

- (2) On a review referred to in subsection (1), only
 - (a) evidence that was not available at the time of the original order, decision or amendments, and
 - (b) the record pertaining to the original order, decision or amendmentsmay be considered.
- (3) To obtain a review referred to in subsection (1), the person who is the subject of, or whose licence or permit is affected by, the order, decision or amendments must request the review not later than 21 days after the date the notice of the order, decision or amendments was delivered to the person.
- (4) The minister may extend the time limit in subsection (3) before or after its expiry.
- (5) The person conducting a review referred to in subsection (1) has the same discretion to
 - (a) make an order referred to in subsection (1)(a) or (b),
 - (b) make a decision referred to in subsection (1)(c), or
 - (c) prepare amendments referred to in subsection (1)(d)that the person who made the original order or decision or prepared the original amendments had at the time of the original order, decision or amendments.
- (6) After the preparation of amendments under subsection (5)(c) to a licence or permit, and on delivery of the particulars of the amendments to the holder of the licence or permit, the licence or permit, as the case may be, is deemed to be amended to include

the amendments.

Appeals to the commission

- 70** (1) The person who is the subject of, or whose licence or permit is affected by,
 - (a) an order,
 - (b) a decision, or
 - (c) amendmentsreferred to in section 69(1) may appeal to the commission either of the following, but not both:
 - (d) the order, decision or amendments;
 - (e) a decision made after completion of a review of the order, decision or amendments.
- (2) An applicant referred to in section 15(2) may appeal to the commission an order of the minister made under that provision.
- (3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of the commission

- 71** (1) On an appeal under section 70, the commission may
 - (a) consider the findings of the person who made the order or decision or who prepared the amendments, and
 - (b) either
 - (i) confirm, vary or rescind the order, decision or amendments, or
 - (ii) with or without directions, refer the matter back to that person for reconsideration.
- (2) If an appeal referred to in subsection (1) results in amendments to a licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments as soon as the particulars of the amendments have been delivered to the holder of the licence or permit.

- (3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.
- (4) After a certified copy of an order under subsection (3) is filed with the Supreme Court, the order has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Review or appeal not a stay

72 Unless the minister orders otherwise, a review or an appeal under this Act does not operate as a stay or suspend the operation of the order, decision or amendments being reviewed or appealed.

Wildfire Act

Part 3

ADMINISTRATIVE REMEDIES AND COST RECOVERY

Division 3 ~ Corrections, Reviews and Appeals

Order stayed until proceedings concluded

- 36** (1) An order that may be reviewed under section 37 or appealed under section 39 is stayed until the person who is the subject of the order has no further right to have the order reviewed or appealed.
- (2) Despite subsection (1), the minister may order that an order, other than an order levying an administrative penalty under section 27 or 28(3)(d) is not stayed on being satisfied that a stay or a stay without those conditions, as the case may be, would be contrary to the public interest.
- (3) Despite subsection (1), an order is not stayed if the order is made under section 34.

Review of an order

- 37** (1) Subject to subsection (2), at the request of a person who is the subject of an order under section 7(3), 17(4), 25, 26, 27, 28(1) or (3) (d) or 34, the person who made the order, or another person employed in the ministry and designated in writing by the minister, must review the order, but only if satisfied that there is evidence that was not available at the time of the original order.
- (2) On a review referred to in subsection (1), only
 - (a) evidence that was not available at the time of the original order, and
 - (b) the record pertaining to the original order
 may be considered.
- (3) To obtain a review referred to in subsection (1), the person who is the subject of the order must request the review not later than 3 weeks after the date the notice of order was given to the person.
- (4) The minister may extend the time limit in subsection (3) section [sic] before or after the time limit's expiry.
- (5) The person conducting a review referred to in subsection (1) has the same discretion to make a decision that the original decision maker had at the time of the original order.

Board may require review of an order

- 38** (1) If the board first receives the consent of the person who is the subject of an order referred to in section 37(1), the board may require a review of the order by the person who made the order, or another person employed in the ministry and designated in writing by the minister.
- (2) To obtain a review of an order under subsection (1), the board must require the

review not later than 3 weeks after the date the notice of the order was given to the person who is the subject of the order.

- (3) The minister may extend the time limit for requiring a review under this section before or after the time limit's expiry.
- (4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the order under review.

Appeal to the commission from an order

- 39 (1) The person who is the subject of an order referred to in section 37(1) may appeal to the commission from either of the following, but not both:
- (a) the order;
 - (b) a decision made after completion of a review of the order.
- (2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

- 40 (1) The board may appeal to the commission from either of the following, but not both:
- (a) an order referred to in section 37;
 - (b) a decision made after completion of a review of the order.
- (2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of commission

- 41 (1) On an appeal under section 39 by a person or under section 40 by the board, the commission may
- (a) consider the findings of the decision maker who made the order, and
 - (b) either
 - (i) confirm, vary or rescind the order,or

- (ii) with or without directions, refer the matter back to the decision maker who made the order, for reconsideration.

- (2) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.
- (3) After the period to request an appeal to the Supreme Court under the *Forest Practices Code of British Columbia Act* has passed, the minister may file a certified copy of the decision of the commission with the Supreme Court.
- (4) A certified copy of a decision filed under subsection (3) has the same force and effect as an order of the court for the recovery of a debt in the amount stated in the decision, against the person named in the decision, and all proceedings may be taken as if the decision were an order of the court.

This Regulation applies to appeals under the *Code, Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*.

Administrative Review and Appeal Procedure Regulation (B.C. Reg. 12/04)

Part 1

DEFINITIONS

- 1 In this regulation: “appellant” means
- (a) for a *Forest Act* appeal, the person that initiates an appeal under section 147(1) of that Act,
 - (b) for a *Range Act* appeal, the person that initiates an appeal under section 70(1) of that Act,
 - (c) for a *Forest and Range Practices Act* appeal, the person that initiates an appeal under section 82(1) of that Act, and includes the board if the board initiates an appeal under section 83(1) of the Act, or
 - (d) for a *Wildfire Act* appeal, the person that initiates an appeal under section 39(1) of that Act, and includes the board if the board initiates an appeal under section 40(1) of that Act;

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Exemption from time specified to appeal a determination

- 16 (1) In respect of an appeal under section 83 of the *Forest and Range Practices Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

- (a) a notice of appeal,
 - (b) a copy of the original decision, and
 - (c) a copy of any decision respecting a correction or review
- no later than 3 weeks after the latest to occur of
- (d) the original decision,
 - (e) any correction under section 79 of the *Forest and Range Practices Act*, and
 - (f) any review under section 80 or 81 of the *Forest and Range Practices Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

- (2) In respect of an appeal under section 40 of the *Wildfire Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission
- (a) a notice of appeal,
 - (b) a copy of the original decision, and
 - (c) a copy of any decision respecting a correction or review
- no later than 3 weeks after the latest to occur of
- (d) the original decision,
 - (e) any correction under section 35 of the *Wildfire Act*, and
 - (f) any review under section 37 or 38 of the *Wildfire Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

- (3) In respect of an appeal under section 70(1) of the *Range Act*, section 82 (1) of the *Forest and Range Practices Act* or section 39(1) of the *Wildfire Act*, a person whose request for a review is denied by the reviewer for the reason

described in subsection (4) is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

- (a) a notice of appeal,
- (b) a copy of the original decision, and
- (c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

- (d) the original decision, or
- (e) any correction under the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*

if the appellant delivers to the commission the documents described in paragraphs (a) to (c) within 21 days after the appellant is given notice by the reviewer that the appellant's request for the review is denied for the reason described in subsection (4).

- (4) The reason referred to in subsection (3) is that the reviewer is not satisfied as to the existence of evidence not available at the time of the original determination, order, decision or amendment.

[am. B.C. Reg. 83/2006, s. 9.]

Prescribed period for board to apply for order

- 17 The prescribed period for the purpose of section 83(2)(b) of the *Forest and Range Practices Act* is 6 months.

Notice of appeal

- 18 The notice of appeal referred to in section 147(1) of the *Forest Act* and section 131(1) of the *Forest Practices Code of British Columbia Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:

- (a) the name and address of the appellant, and the name of the person, if any,

making the request on the appellant's behalf;

- (b) the address for giving a document to, or serving a document on, the appellant;
- (c) the grounds for appeal;
- (d) a statement describing the relief requested.

[am. B.C. Reg. 83/2006, s. 10.]

Deficient notice of appeal

- 19 (1) If a notice of appeal does not comply with section 18, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by
 - (a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or
 - (b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*.
- (2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the submission to the commission of further material remedying the deficiencies.
[am. B.C. Reg. 83/2006, s. 11.]

Notification of parties following receipt of notice of appeal

- 20 The commission must acknowledge in writing any notice of appeal, and
 - (a) in the case of an appeal under the *Forest Act*, serve a copy of the notice of appeal on the deputy minister of the minister responsible for the *Forest Act*,
 - (a.1) in the case of an appeal under the *Range Act*, give a copy of the notice of appeal to the minister,

- (b) in the case of an appeal under the *Forest and Range Practices Act*, give a copy of the notice of appeal to
 - (i) the minister, and
 - (ii) either
 - (A) the board, if the notice was delivered by the person who is the subject of the determination, or
 - (B) the person who is the subject of the determination, if the notice was delivered by the board, and
- (c) in the case of an appeal under the *Wildfire Act*, give a copy of the notice of appeal to
 - (i) the minister, and
 - (ii) either
 - (A) the board, if the notice was delivered by the person who is the subject of the order, or
 - (B) the person who is the subject of the order, if the notice was delivered by the board.

[am. B.C. Reg. 83/2006, s. 12.]

Procedure following receipt of notice of appeal

- 21** Within 30 days after receipt of the notice of appeal, the commission must
- (a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,
 - (b) designate the panel members if the commission determines that the appeal is to be considered by a panel,
 - (c) set the date, time and location of the hearing, and
 - (d) give notice of hearing to the parties if the appeal is under the *Range Act*, *Forest*

and Range Practices Act or the *Wildfire Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act*.

[en. B.C. Reg. 83/2006, s. 13.]

Panel chair determined

- 22** For an appeal that is to be considered by a panel of the commission, the panel chair is determined as follows:
- (a) if the chair of the commission is on the panel, he or she is the panel chair;
 - (b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;
 - (c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

- 23** (1) If the board is added as a party to an appeal under section 131(7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.
- (2) If a party is added to the appeal under section 131(8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenor

- 24** (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131(13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.

- (2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal written notice
 - (a) stating that the intervenor has been invited or permitted under section 131(13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and
 - (b) specifying the extent to which the intervenor will be permitted to participate.

Transcripts

- 25** On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for appeal decision under the *Forest Act*

- 26** The prescribed period for the purposes of section 149.1(3) of the *Forest Act* is 42 days after conclusion of the hearing.

Part 4

ANNUAL REPORT OF FOREST APPEALS COMMISSION

Content

- 27** (1) By April 30 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197(2) of the *Forest Practices Code of British Columbia Act*.
- (2) The annual report referred to in subsection (1) must contain
- (a) the number of appeals initiated under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,

- (b) the number of appeals completed under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,
 - (c) the resources used in hearing the appeals,
 - (d) a summary of the results of the appeals completed during the year,
 - (e) the annual evaluation referred to in section 197(1)(b) of the *Forest Practices Code of British Columbia Act*, and
 - (f) any recommendations referred to in section 197(1)(c) of the *Forest Practices Code of British Columbia Act*.
- [am. B.C. Reg. 83/2006, s. 14.]

Private Managed Forest Land Act

Part 4

COMPLIANCE AND ENFORCEMENT

Division 2 ~ Administrative Remedies

Appeal to commission

- 33** (1) A person who is the subject of an order, a decision or a determination of the council under section 26(1), 27(1) and (2), 30, 31(1) or 32 may appeal the order, decision or determination to the commission in accordance with the regulations.
- (2) An order, a decision or a determination that may be appealed under this section, other than a stop work order, is stayed until the person who is the subject of the order, decision or determination has no further right to have the order, decision or determination appealed.
- (3) The commission must conduct an appeal in accordance with this section and the regulations.

- (4) The appellant and the council are parties to the appeal and may be represented by counsel.
- (5) At any stage of an appeal, the commission or a member of it may direct that a person who may be directly affected by the appeal be added as a party to the appeal.
- (6) The commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor in the manner and to the extent permitted or ordered by the commission.
- (7) The commission or a member of it may order the parties to an appeal to deliver written submissions.
- (8) If the appellant does not deliver a written submission ordered under subsection (7) within the time specified in the order or the regulations, the commission may dismiss the appeal.
- (9) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party or any intervenor and an opportunity to rebut the written submissions.
- (10) The commission or a member of it may make an interim order in an appeal.
- (11) Hearings of the commission are open to the public.
- (12) The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions
 - (a) to summon and enforce the attendance of witnesses,
 - (b) to compel witnesses to give evidence on oath or in any other manner, and
 - (c) to compel witnesses to produce records and things.
- (13) The failure or refusal of a person
 - (a) to attend,
 - (b) to take an oath,
 - (c) to answer questions, or
 - (d) to produce the records or things in the person's custody or possession,
 makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.
- (14) The commission may retain, call and hear an expert witness.
- (15) An appeal under this section to the commission is a new hearing and at the conclusion of the hearing, the commission may
 - (a) by order, confirm, vary or rescind the order, decision or determination,
 - (b) refer the matter back to the council or authorized person for reconsideration with or without directions,
 - (c) order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal, or
 - (d) make any other order the commission considers appropriate.
- (16) An order under subsection (15) that is filed in the court registry has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if the order were an order of the court.

Appeal to court

- 34 (1) A party to the appeal before the commission may appeal, within 3 weeks of being given the decision of the commission in writing and by application to the Supreme Court,

the decision of the commission on a question of law or jurisdiction.

- (2) After an application is brought to the Supreme Court, a judge may order, on terms he or she considers appropriate, that all or part of the decision of the commission be stayed.
- (3) An appeal from a decision of the Supreme Court lies with the Court of Appeal with leave of a justice of the Court of Appeal.

Private Managed Forest Land Regulation (B.C. Reg. 371/04)

Notice of appeal

- 9 (1) A person who, under section 33(1) of the Act, may appeal an order, decision or determination to the commission must submit a notice of appeal to the commission that is signed by, or on behalf of, the appellant and contains all of the following:
 - (a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;
 - (b) the address for service of the appellant;
 - (c) the grounds for appeal;
 - (d) the relief requested.
- (2) The appellant must deliver the notice of appeal to the commission not later than 3 weeks after the later of the date of
 - (a) the decision of the council under section 32(2) of the Act, and
 - (b) the order, decision or determination referred to in section 33(1) of the Act.
- (3) Before or after the time limit in subsection (2) expires, the commission may extend it.

- (4) A person who does not deliver a notice of appeal within the time specified loses the right to an appeal.

Deficient notice of appeal

- 10 (1) If a notice of appeal does not comply with section 9 the commission may deliver a written notice of deficiencies to the appellant, inviting the appellant, within a period specified in the notice, to submit further material remedying the deficiencies.
- (2) If the commission delivers a notice under subsection (1), the appeal may proceed only after the earlier of
 - (a) the expiry of the period specified in the notice of deficiencies, and
 - (b) the submission to the commission of further material remedying the deficiencies.