



FOREST
APPEALS
COMMISSION

Annual Report

2013



Forest Appeals Commission

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Dear Ministers:

I respectfully submit herewith the Annual Report of the Forest Appeals Commission for the period of January 1, 2013 to December 31, 2013.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission



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Message from the Chair

I am pleased to submit the Annual Report of the Forest Appeals Commission for the 2013 calendar year.

The Year in Review – Appeals

As in previous years, the Commission continues to encourage cooperation between the Government and industry, and it appears on the face of it that this is occurring in light of the significantly reduced number of appeals filed this year. During the past year, the Commission has also worked towards reducing the number of filed appeals that proceed to a hearing. I am pleased to note that over half of the appeals that were closed in 2013 did not require a hearing. A total of 23 appeals were active during the reporting period, and 30% of those appeals were closed by the year's end. Of the appeals that were closed during the year, one was withdrawn and one was rejected for lack of jurisdiction, which meant that they did not require a hearing. In addition, two matters were concluded by way of consent orders which were issued by the Commission and agreed to by the parties. Consequently, of the seven appeals that were closed during the reporting period, only three required a full hearing and a decision on their merits. The Commission applauds all private parties, Ministry officials and the Forest Practices Board for

their ongoing efforts in resolving matters without the necessity of a formal hearing before, the Commission.

The three appeals that were heard and decided by the Commission during 2013 involved complex legal and factual issues of significant interest to the public, the forest industry and the Government. These matters addressed questions of whether bankruptcy proceedings extinguish liability with respect to a hazard abatement order, the application of the “due diligence” defence in regard to a fire hazard, and whether the amount of stumpage that licensees are obligated to pay when harvesting Crown timber must be informed by the most accurate information available at the time of determination. In addition, the Commission issued a preliminary decision in an appeal regarding pre-hearing document disclosure.

There were no decisions rendered on the merits of any matters appealed to the courts within this reporting period, however the BC Court of Appeal granted leave to the Province to appeal a decision of the BC Supreme Court summarized in last year's annual report. In that case the BC Supreme Court had dismissed the Province's appeal of a Commission decision regarding the appropriate valuation date to determine the stumpage applicable under the *Forest Act* for timber that was the subject of a cost recovery order under the *Wildfire Act*. The ultimate decision of the BC Court of Appeal, will be important as the appeal involves the interpretation and application of the statutory provisions under

appeal. Further information about this matter is included in the Summaries of Court Decisions, at the end of this report.

Efficiencies and Cost Reduction

As the Chair of three tribunals, the Forest Appeals Commission, the Environmental Appeal Board and the Oil and Gas Appeal Tribunal, I have appreciated the various benefits that arise from and actively encouraged the “clustering” of tribunals with similar processes and/or mandates. As a result, the Commission office supports a total of eight administrative tribunals. This model has numerous benefits, not only in terms of cost savings, but also in terms of shared knowledge and information. Having one office provide administrative support for several tribunals gives each tribunal greater access to resources while, at the same time, reducing costs and allowing the tribunals to operate independently of one another.

Adding to these efficiencies, the Commission will also see benefits from plans currently underway through the “cluster” office for improvements to the Commission’s website, case management and information systems. The website improvements are intended to make the appeal process more accessible and understandable to the public, while the information system enhancements will facilitate further access and information sharing with a view to streamlining processes and enabling better collection and usage of appeal data and file information.

Commission Membership

The Commission’s membership was stable and unchanged during the course of the past year. However, four members’ appointments concluded on

December 31, 2013. Those members are Dr. Robert Cameron, Bruce Devitt, Jagdeep Khun-Khun and Loreen Williams. I sincerely thank each of these distinguished members for their exemplary service as members of the Commission during their terms. In particular I wish to single out Bruce Devitt for recognition. Bruce was an original member of the Commission. Over the years he has participated on numerous appeal hearing panels, including some of the most contentious and complicated matters that have come before the Commission. Bruce Devitt’s expertise as a Professional Forester has been invaluable to the Commission over the years.

I am very fortunate to have on the Commission a wide variety of highly qualified individuals including professional biologists, foresters, agrologists, engineers, and lawyers with expertise in the areas of natural resources and administrative law, and mediation. All of these individuals, with the exception of the Chair, are appointed as part-time members and bring with them the necessary expertise to hear matters ranging from timber valuation to aboriginal rights. Throughout this reporting period the members of the Commission were also cross-appointed to the Environmental Appeal Board and the Oil and Gas Appeal Tribunal, providing further opportunities for efficiency and greater use of member expertise.

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*. The information contained in this report covers the twelve-month period from January 1, 2013 to

December 31, 2013. It covers the structure and function of the Commission and how the appeal process operates. This report also contains:

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

Finally, the decisions made by the Commission during the reporting period have been summarized, any 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; and
- 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’s website. If you have questions, or would like additional copies of this report, please contact the Commission at:

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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 *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 2013 reporting period, the membership of the Commission consisted of the following members:

MEMBER	PROFESSION	FROM
Chair		
Alan Andison	Lawyer	Victoria
Vice-Chairs		
Gabriella Lang	Lawyer (Retired)	Campbell River
Robert Wickett, Q.C.	Lawyer	Vancouver
Members		
R. O'Brian Blackall	Land Surveyor	Charlie Lake
Robert Cameron	Professional Engineer	North Vancouver
Monica Danon-Schaffer	Professional Engineer	West Vancouver
Cindy Derkaz	Lawyer (Retired)	Salmon Arm
W. J. Bruce Devitt	Professional Forester (Retired)	Victoria
J. Tony Fogarassy	Geoscientist/Lawyer	Vancouver
Les Gyug	Professional Biologist	Westbank
James Hackett	Professional Forester	Nanaimo
R.G. (Bob) Holtby	Professional Agrologist	Westbank
Jagdeep S. Khun-Khun	Lawyer	Vancouver
Blair Lockhart	Lawyer/Geoscientist	Vancouver
Ken Long	Professional Agrologist	Prince George
James Mattison	Professional Engineer	Victoria
David Searle, C.M., Q.C.	Lawyer (Retired)	North Saanich
Douglas VanDine	Professional Engineer	Victoria
Reid White	Professional Biologist/Engineer (Retired)	Telkwa
Loreen Williams	Lawyer/Mediator (Retired)	West Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals that make decisions affecting people's rights and interests. Administrative law applies to the decisions and actions of statutory decision-makers who exercise power derived from legislation. The goal of this type of law 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 decided.

The Commission Office

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

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

Each of the tribunals are legally independent of one another, but are jointly administered. Supporting eight tribunals through one administrative office gives

each tribunal access to resources while, at the same time, reducing administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Commission Resources

The fiscal 2013/2014 budget for the Forest Appeals Commission was \$310,000.

The fiscal 2013/2014 budget for the shared office and staff was \$1,455,000.

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, and names of other witnesses giving evidence in a hearing may also be included. The Commission's decisions are posted on the Commission's website and may appear in this Annual Report.



The Appeal Process

Overview

The appeal process begins with a notice of appeal filed against a particular decision of a statutory decision-maker. To determine what decisions are appealable to the Commission, who can appeal the decisions, the time for filing an appeal, whether the appealed decision is stayed pending an appeal, or what the Commission's decision-making powers are with respect to the appeal, including the power to award costs, one must consult the individual statutes and regulations which provide the right of appeal to the Commission; specifically, the *Forest and Range Practices Act*, the *Forest Act*, the *Private Managed Forest Land Act*, the *Range Act* or the *Wildfire Act*. A brief description of those statutes and their respective appeal provisions is provided under the next heading.

As will be noted in the descriptions of the statutes below, one unique feature of two of the statutes is the participation of the Forest Practices Board in appeals. The Forest Practices Board is the "forest watchdog" in BC and has an arms-length relationship from government. In addition to its other mandates and responsibilities, it has been given the ability to appeal specified decisions (or the failure to make a decision) under the *Forest and Range Practices Act* and the *Wildfire Act*. When an appeal is filed by someone other than the Board under those two statutes, the Commission is required to notify the Forest Practices Board of the appeal and invite the

Board to participate in the appeal as a third party.

In terms of the mandate of the Commission and the processes that apply once a valid appeal is filed, one must turn to the *Code*. Parts 6 and 9 of the *Code* establish the basic structure, mandate, powers and procedures of the Commission. Part 9 describes the composition of the Commission and how hearing panels may be organized, as well as the requirement to submit this Annual Report. Part 6 describes the authority of the Commission to add parties to an appeal, the requirement to notify and add the Forest Practices Board to certain appeals, the ability to order documents and summon witnesses, and the rights of the parties to present evidence. Additional procedural details, such as the requirements for starting an appeal, are further detailed in Part 3 of the *Administrative Review and Appeal Procedure Regulation*, B.C. Reg. 12/04 (the "Regulation").

It is important to note that the appeal powers and procedures in Part 6 of the *Code* and the *Regulation* apply to appeals filed against decisions made under the *Forest and Range Practices Act*, the *Range Act* and the *Wildfire Act*. The *Private Managed Forest Land Act* sets out its own powers and procedures for the Commission; it does not incorporate the *Code* provisions. Similarly, the *Forest Act* includes some of the content requirements in the *Regulation*, but has also established its own powers and procedures for the Commission.

The relevant portions of all of those statutes and regulations are included at the back of this report.

Finally, to ensure that the appeal process is open and understandable to the public, the Commission has created a Procedure Manual which contains more details and information about the Commission's policies and procedures. These policies and procedures have been created in response to issues that arise during the appeal process, from receipt of a notice of appeal, to the hearing, to the issuance of a final decision on the merits. The Procedure Manual is posted on the Commission's website.

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 stated above, the *Code* is still important because it both establishes the Commission in Part 9 and sets out the basic powers and procedures to be employed by the Commission on most appeals.

Appeals under the Forest and Range Practices Act

There are a number of enactments that govern forestry in BC. *The Forest and Range Practices Act* is one such *Act*. Since taking effect in 2004, this *Act* has played a major role in the way in which forests are managed in the province.

The *Forest and Range Practices Act* regulates operational planning, forestry practices such as road building, logging and reforestation, requirements for range use planning, range stewardship and grazing schedules, as well as protection, compliance, enforcement and monitoring.

Part 6, Division 4 of the *Forest and Range Practices Act* sets out the decisions that are appealable to the Commission. They 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 stop work 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

The *Forest Act* governs the allocation of Crown (public) timber and the administration of this resource. The primary focus of the *Forest Act* is:

- determining the rate of logging, known as the allowable annual cut;
- granting different forms of agreements or tenures which allow the harvest of Crown timber;
- establishing the rules for the administration of tenures, and the consequences for non-compliance;
- establishing rules for those allowed to harvest Crown timber, including:
 - the calculation and collection of stumpage to be paid to the government for the timber harvested;

- scaling timber (the measurement and classification of timber);
- marking timber and transporting logs; and
- milling requirements within BC.

In addition, the *Forest Act* provides for road permits and road use permits to access timber, offences and penalties, and appeals of certain decisions.

Appealable decisions under this *Act* are set out in section 146 and include certain determinations, orders and decisions made by timber sales managers, employees of the Ministry of Forests, Lands and Natural Resource Operations, the Minister of Forests, Lands and Natural Resource Operations, 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, Lands and Natural Resource Operations, may be appealed to the Commission without prior review (e.g., stumpage determinations). However, determinations, orders or decisions made by a timber sales manager, and most decisions of the Minister, 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 *Range Act* provides the authority for the management of Crown range land. It creates different forms of forage tenures, addresses various aspects of tenure management such as transfers, consolidations, subdivisions and amendments, and establishes the regulatory framework for grazing and hay-cutting licences and permits. The *Act* also includes compliance

and enforcement tools such as the power to conduct inspections, issue orders and suspend or cancel licences and permits.

Decisions that may be appealed to the Commission include the following:

- orders deleting land from the Crown range described in a licence or permit;
- orders 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*

Approximately 2% of BC's forest lands are privately owned. Because the legal requirements that apply to logging on Crown land do not apply to logging on private land, the Government decided to establish a property assessment classification of "managed forest", which was designed to encourage private landowners to manage their forest lands for long term forest production through the use of property tax incentives. This program was initially begun in 1988, and was continued in 2004 with the enactment of new legislation, the *Private Managed Forest Land Act*. This legislation established forest management objectives in relation to soil conservation, water quality, fish habitat, critical wildlife habitat and reforestation that were to be applied to private managed forest lands. The Act also set up the Private Managed Forest Land Council, an independent provincial agency responsible for administering the managed forest program. The Council's responsibilities include:

- setting and monitoring forest practice standards for these managed forest lands;
- handling complaints and investigations; and
- enforcing standards through the use of various orders, determinations, notifications and fines.

Section 33 of the *Private Managed Forest Land Act* allows individuals or companies that are subject to certain decisions of the Council to file an appeal with the Commission. The appealable decisions include:

- 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*

The *Wildfire Act* is dedicated exclusively to wildfire protection in BC. This *Act* specifies the main responsibilities and obligations with respect to fire use, prevention, control and rehabilitation. It also allows the Government to recover its fire control costs, whether on Crown land or private land, and to recover a sum of money to compensate the Crown for its loss of timber, grass land, and other forest land resources and property that is damaged or destroyed by a wildfire. The *Act* also authorizes certain orders, determinations and administrative monetary penalties to be issued for non-compliance with the legislation.

Part 3, Division 3 of the *Wildfire Act* allows an appeal to the Commission from certain orders, or a decision made after the completion of a review of the order.

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 determining that a person caused or contributed to a fire or to the spread of a 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 reporting period, there were no legislative changes 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

Part 4 of the *Administrative Review and Appeal Procedure Regulation* requires the Commission to include in this Annual Report:

- the number of appeals initiated during the reporting period; and
- the number of appeals completed during the reporting period (i.e., final decisions issued).

The following tables provide information on the appeals filed with the Commission, appeals closed by the Commission and decisions published by the Commission, during the reporting period. It should be noted that 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.

In 2013, a total of nine new appeals were filed with the Commission. Three appeals were filed under each of the *Forest and Range Practices Act*, the *Forest Act*, and the *Wildfire Act*. No new appeals were filed in 2013 under either the *Range Act* or the *Private Managed Forest Land Act*.

A total of seven appeals were completed during 2013. In regard to those appeals the Commission issued five final decisions, including two consent orders. One appeal was withdrawn and another one was rejected.

In addition to the five final decisions, the Commission issued one published decision on an application for an order for production of documents, and three unpublished preliminary decisions in 2013. One of those preliminary decisions rejected an application for lack of jurisdiction, and two granted applications for an extension of time to file an appeal.

Appeals	
Open Appeals at period start	14
Open Appeals at period end	16
Appeals filed	
Appeals filed under the <i>Forest and Range Practices Act</i>	3
Appeals filed under the <i>Forest Act</i>	3
Appeals filed under the <i>Private Managed Forest Land Act</i>	0
Appeals filed under the <i>Range Act</i>	0
Appeals filed under the <i>Wildfire Act</i>	3
Total appeals filed	9
Appeals Closed	
Withdrawn or abandoned	1
Final decisions on the merits	3
Consent orders	2
No jurisdiction/standing	1
Total appeals closed	7
Hearings held on the merits of appeals	
Oral hearings completed	2
Written hearings completed	1
Total hearings held on the merits of appeals*	3
Published decisions issued*	
Final decisions (excluding consent orders)	
<i>Forest and Range Practices Act</i>	0
<i>Forest Act</i>	2
<i>Private Managed Forest Land Act</i>	0
<i>Range Act</i>	0
<i>Wildfire Act</i>	1
Consent orders	
<i>Code/Forest and Range Practices Act</i>	1
<i>Forest Act</i>	0
<i>Private Managed Forest Land Act</i>	0
<i>Range Act</i>	0
<i>Wildfire Act</i>	1
Document disclosure decisions	
<i>Wildfire Act</i>	1
Total published decisions issued	6

*Note: hearings held and decisions issued in 2013 do not necessarily reflect the number of appeals filed in 2013.



Summaries of Decisions

January 1, 2013 ~ December 31, 2013

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, Lands and Natural Resource Operations. 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 the consent orders made in this reporting period in the summaries.

In some cases, the Commission will be asked to make certain preliminary or pre-hearing

orders or decisions before the matter proceeds to a hearing, for example, to deal with procedural issues or make orders to assist the parties in preparing for a hearing. Included in the summaries is an example of such a preliminary decision regarding pre-hearing disclosure of government documents.

It is also important to note that the Commission issues many decisions each year, some that are published and others that are not. 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 reporting period, and summaries of those decisions, please refer to the “Decisions” page on the Commission’s website.

Appeals under the *Forest and Range Practices Act*

Dispute over maintaining “visual quality objectives” in a scenic area

2011-FOR-006(a) Babine Forest Products Ltd. v. Government of British Columbia

Decision Date: July 9, 2013

Panel: Alan Andison

Babine Forest Products Ltd. (“Babine”) appealed a determination issued by the District Manager (the “District Manager”), Nadina Forest District, Ministry of Forests, Lands and Natural Resource Operations (the “Ministry”).

Babine holds forest tenures in the Lakes Timber Supply Area, for which Babine has an approved forest stewardship plan. Babine’s forest

stewardship plan includes provisions that set out results or strategies for achieving the government’s visual quality objectives with regard to harvesting in scenic areas.

Babine proposed to clear cut stands of timber that were infested with mountain pine beetle in the Babine Lake scenic area. Babine Lake is used for recreation and fishing, and there are communities along its shoreline. In August 2010, Babine applied for an amendment to its forest stewardship plan, to modify the intended result or strategy regarding the government’s visual quality objectives for the area it proposed to clear cut around Babine Lake.

In November 2011, the District Manager refused to approve the proposed amendment. Specifically, the District Manager determined that the proposed amendment did not conform to section 5(1.1) of the *Forest and Range Practices Act* because the result or strategy set out in the proposed amendment was not consistent, to the extent practicable, with the government’s visual quality objective of retention for the area. Section 25.1 of the *Forest Planning and Practices Regulation* states that results or strategies in a forest stewardship plan “must be consistent with the established objectives to the extent practicable, to take into account the circumstances or conditions applicable to that area or that part.”

Babine appealed to the Commission on the basis that the District Manager failed to properly apply the requirements in section 16(1) of the *Forest and Range Practices Act*, and the test established in section 25.1 of the *Forest Planning and Practices Regulation*.

During the appeal hearing, the Government and Babine reached an agreement to settle the appeal, whereby Babine agreed to modify the language of its proposed amendment, and the District Manager agreed to vary his determination. At that point, the Forest Practices Board withdrew from the appeal proceedings.

- ▶ By consent of the Government and Babine, the Commission ordered that the District Manager's determination was varied, Babine's modified proposed amendment was approved, and the appeal was dismissed.

Appeals under the Forest Act

Updated data for road development costs must be applied in stumpage determination

2013-FA-001(a), 002(a) *Western Forest Products Ltd. v. Government of British Columbia*

Decision Date: December 2, 2013

Panel: James Hackett

Western Forest Products Ltd. ("Western") appealed two separate stumpage determinations issued on May 31, 2013 by the Timber Pricing Coordinator (the "Coordinator"), Coast Forest Region, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"). The appeals were heard together.

The stumpage determinations pertain to cutting permit 300 ("CP 300") which covers an area within tree farm licence 19 held by Western and located in the Campbell River Forest District on Vancouver Island. At issue was whether the Coordinator erred in determining the stumpage rates by using an incorrect amount for road development costs associated with a September 28, 2011 extended road amortization agreement (the "Agreement") rather than the revised cost estimate provided in Western's appraisal data submission for CP 300. Western provided the Coordinator with updated road development cost estimates based on "as-built" conditions, and requested that the Ministry amend the Agreement to reflect the updated cost estimates. The Ministry refused to amend the Agreement and

calculated the stumpage rates using the original cost estimates set out in the Agreement.

Western appealed the stumpage determinations on the ground that the Coordinator erred in using the original cost estimates rather than the updated "as-built" estimate in determining the stumpage rates. Western's main arguments on appeal were: (1) the Coordinator determined the stumpage rates based on information that was no longer accurate, which is contrary to the requirements, objectives and intent of the *Forest Act* (the "Act") and the *Coast Appraisal Manual* (the "CAM") and contrary to requirements in the *Foresters Act* and past Ministry interpretations of the CAM; (2) the Ministry exercised its discretion under the CAM unreasonably when it declined to amend the Agreement to account for the updated and more accurate information that was available when Western submitted its appraisal data for CP 300; and alternatively, (3) the Agreement required the Ministry to determine the extended road amortization cost allowances applicable to the stumpage rates for CP 300 based on the information available when Western submitted its appraisal data for CP 300.

The Government submitted that the statutory and professional obligations to submit accurate and complete information for stumpage appraisal purposes are not relevant because the CAM and the Agreement define the originally apportioned balance of the estimated road development cost as complete and accurate for the purposes of appraising the tributary cutting authority area (i.e. CP 300) and as such there is no need to update costs with more accurate data. The Government further submitted that (1) the Commission had no jurisdiction to review the refusal to amend the Agreement because the Agreement is a contract, and the authority to make and amend such agreements was outside of the stumpage appraisal process; alternatively, (2) if the Commission did have jurisdiction to review the refusal to amend the Agreement, the refusal was a

reasonable decision in the circumstances; and (3) the Commission should give some degree of deference to the original decision.

As a specialized tribunal with expertise in deciding appeals under forestry legislation and *de novo* powers in hearing those appeals, the Commission found that it is not obligated to give any deference when reviewing the Coordinator's stumpage rate determination or the decision refusing to amend the Agreement.

The Commission found that section 105.1 of the Act, read together with the *Foresters Act* and its related bylaws, requires licensees and their forest professionals to submit accurate data to the Ministry for stumpage appraisal purposes and that section 3.2 of the CAM, which authorizes the Ministry to review appraisal data for errors or omissions, is consistent with those accuracy requirements. Accordingly, the Commission found that the accuracy of the licensee's data will always be a relevant consideration in a stumpage appraisal, which then leads to the question of the nature of the Commission's jurisdiction in relation to an extended road amortization agreement ("ERAA"). In this regard the Commission found that an ERAA operates as an integral part of the stumpage appraisal process. The Ministry's exercise of discretion in making or amending an ERAA is an "intermediate component" of that process. Therefore, the Commission's jurisdiction in deciding stumpage appeals must necessarily include interpretation and consideration of the terms of the Agreement itself and the jurisdiction to consider whether the Ministry exercised its discretion reasonably in denying the request for an ERAA amendment.

Further, the Commission found that the Coordinator should have applied the original apportioned percentages in the Agreement to the updated dollar values that Western submitted with the entire appraisal data for CP 300. There was no clear and obvious direction given to the use of percentage apportionments or static dollar amounts to tributary

appraisals in the Agreement. Given the lack of clarity, the Commission found that the Agreement must be read in the context of the CAM which implies that the monetary values within the Agreement should be updated when the tributary cutting authority is appraised, to be current with the cost base of the CAM in effect at that time.

▶ In allowing the appeals the Commission found that the Coordinator's exercise of discretion in refusing to apply the "as-built" cost estimates, which was the most accurate information available at the time when the data was submitted for the purpose of determining the stumpage rates for CP 300, and in refusing to amend the Agreement, was unreasonable because it was inconsistent with section 105.1 of the Act, the overall scheme of the CAM and the objectives and intent of the governing legislation. The Coordinator's determinations were reversed, and the matter was remitted back to the Coordinator with directions that the stumpage rates for CP 300 be determined using the appraisal data that Western submitted for CP 300, and to amend the monetary value assigned in the Agreement accordingly.

Appeals under the *Private Managed Forest Land Act*

No decisions were issued under the *Private Managed Forest Land Act* during the reporting period.

Appeals under the *Range Act*

No decisions were issued under the *Range Act* during the reporting period.

Appeals under the Wildfire Act

Does bankruptcy relieve a timber licensee's obligation to comply with a fire hazard abatement order?

2012-WFA-001(a) Ken Dalmon Oler v. Government of British Columbia

Decision Date: August 19, 2013

Panel: Cindy Derkaz, James Hackett, O'Brian Blackall

Ken Damon Oler appealed a determination issued by the Fire Centre Manager (the "Manager"), Kamloops Fire Centre, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"). The Manager determined that Mr. Oler had contravened section 7(4) of the *Wildfire Act* by failing to comply with a fire hazard abatement order issued by the Ministry in June 2009. When the hazard abatement order was issued, Mr. Oler held a timber sale licence, and pursuant to that licence, he had harvested timber on two cut blocks but left felled timber on one of the cut blocks. The hazard abatement order was sent by registered mail to the mailing address Mr. Oler had provided in his application for the timber sale licence. The order required Mr. Oler to remove the felled timber by November 19, 2009, because it constituted a fire hazard. He did not do so.

In April 2009, Mr. Oler's company filed an assignment in bankruptcy, and a trustee took over his business. On November 12, 2009, Mr. Oler declared personal bankruptcy. Also, on November 12, 2009, Mr. Oler requested an extension of his timber sale licence, which was set to expire on November 19, 2009. He did not notify the Ministry of the bankruptcy proceedings, and by some oversight the timber sale licence was not included as an asset in the bankruptcy proceedings. The Ministry granted a one-year extension to the timber sale licence.

In July 2010, a forest fire spread to the cut block, and damaged or destroyed most of the felled timber.

In November 2011, the Manager determined that Mr. Oler had contravened section 7(4) of the *Wildfire Act*. The Manager found that none of the statutory defences in the *Wildfire Act* applied, and he levied an administrative penalty of \$5,000 against Mr. Oler. The Manager also issued a cost recovery order requiring Mr. Oler to pay \$43,692.56 for the value of the Crown timber on the cut block that was damaged or destroyed, and a remediation order requiring Mr. Oler to remove the remaining felled timber and any existing fire hazard from the cut block by April 2012.

Mr. Oler appealed the Manager's determination on the grounds that: he did not receive written notice of the hazard abatement order, and therefore, did not contravene section 7(4) of the *Wildfire Act*; any liability he may have had with respect to the hazard abatement order was extinguished by the bankruptcy proceedings; the Ministry miscalculated the value of the Crown timber that was damaged or destroyed; and, the remediation order should be reconsidered given the amount of time that has passed, and if any remediation is required, he should have been given a reasonable amount of time to complete it.

The Commission found that Mr. Oler was given written notice of the hazard abatement order as required by the *Wildfire Act*. Specifically, section 63 of the *Wildfire Act* adopts section 110 of the *Forest and Range Practices Act*. Section 110(1) of that Act states that a notice required to be given to a person under the Act may be given to the person by registered mail to the person's last known postal address. Further, section 110(2) of that Act states that a notice that is mailed to a person by registered mail under subsection (1) "is conclusively deemed to be received by the person on the eighth day after it is mailed." The Commission found that the Ministry

gave Mr. Oler notice of the hazard abatement order by sending it via registered mail to the mailing address that the Ministry had on record for him at that time, and therefore, it was conclusively deemed to have been received by him on the eighth day after it was mailed.

Next, the Commission considered whether the bankruptcy proceedings relieved Mr. Oler from the obligation to comply with the hazard abatement order, and/or the determination. The Commission found that the bankruptcy constituted a default by Mr. Oler of his obligations under the timber sale licence, and the Ministry could have cancelled the licence and taken steps to abate the fire hazard if it had known of the bankruptcy. The Ministry was unable to exercise those options because the licence was not included in the bankruptcy, and Mr. Oler continued to represent himself as being entitled to an extension of the licence even though he knew that he was in bankruptcy. In these circumstances, the Commission found that the doctrine of estoppel applied, and it would be unjust to allow Mr. Oler to avoid responsibility for the order or the determination as a result of the bankruptcy.

Regarding the statutory defences under section 29 of the *Wildfire Act*, the Commission found that none applied in the circumstances. In particular, the Commission found that Mr. Oler was aware that the felled timber presented a fire hazard, and as a businessman with many years of forestry experience, it is reasonable to expect that he would have notified the Ministry in March 2009 of his financial difficulties and sought relief from his obligations under the licence. Instead, he continued to deal with the Ministry as if the licence was still under his control, and he sought an extension to the licence shortly before it would have expired, which coincided with the deadline for compliance with the hazard abatement order. The Commission concluded that the due diligence defence did not apply because Mr. Oler did not take reasonable steps to address the fire hazard and comply with the order. Further, there was no evidence

that any of the other statutory defences applied.

Finally, the Commission referred the administrative penalty, cost recovery order, and remediation order back to the Manager for reconsideration with directions. The Commission directed the Manager to reconsider whether the cost recovery order should be removed from the determination, given that the Ministry had subsequently issued several amended waste assessments to Mr. Oler that could be deducted from the value of the damaged or destroyed timber to avoid double-billing. The Commission also directed the Manager to reconsider the remediation order based on the current site conditions, given the time that had passed, and to order whatever remediation he considers to be necessary within a reasonable amount of time. In addition, the Commission directed the Manager to reconsider whether the administrative penalty should be increased, if Mr. Oler is not required to pay for the damaged or destroyed timber or the remediation of the cut block.

► Accordingly, the appeal was allowed, in part.

Appeal of order to pay fire suppression costs leads to application for pre-hearing document disclosure

2012-WFA-002(a) **Robert Unger v. Government of British Columbia (Forest Practices Board, Third Party)**

Decision Date: April 22, 2013

Panel: Alan Andison

Robert Unger appealed a review decision issued by the Fire Centre Manager (the “Manager”), Cariboo Fire Centre, Ministry of Forests, Lands and Natural Resource Operations (the “Ministry”). The Manager confirmed his previous determination that Mr. Unger had contravened section 5(1) of the *Wildfire Act* and section 20(2) of the *Wildfire Regulation* by lighting a camp fire on his privately owned land

when it was unsafe to do so, failing to establish a fuel break around the fire, and allowing the fire to escape. The Ministry responded to the resulting wildfire, which was not within the jurisdiction of a fire department. The Manager also confirmed his previous cost recovery order issued under section 25(2) of the *Wildfire Act*, which requires Mr. Unger to pay \$861,356.09 for the Ministry's fire suppression costs.

Mr. Unger appealed the review decision on numerous grounds, including that the Manager erred in interpreting and applying section 25 of the *Wildfire Act*, and erred in interpreting and applying a Ministry policy with respect to levying cost recovery orders against private land owners. He also submitted that the Manager fettered his discretion and breached the principles of procedural fairness in making the cost recovery order.

Before the appeal was heard, Mr. Unger requested that the Commission order the Government to produce certain documents. Specifically, he requested internal government documents regarding the creation and interpretation of certain sections of the *Wildfire Act*, the *Wildfire Regulation*, and any internal memoranda or emails regarding the establishment of certain aspects of the Ministry's policy on levying cost recovery orders against private land owners. He submitted that the documents were relevant to the issues in the appeal, and would assist the Commission in deciding the appeal.

The Commission denied the application with respect to any internal government documents on the creation of the *Wildfire Act* and the *Wildfire Regulation*. The Commission found that, according to the rules of statutory interpretation, the provisions of the *Wildfire Act* and the *Wildfire Regulation* must be interpreted based on the plain and ordinary meaning of the words, in their legislative context. Secondary sources of information regarding the Legislature's intention may act as aids to interpretation only if the statutory language is vague. Further, the requested

documents would likely be accorded little or no weight by the Commission, because the Commission has specialized expertise in interpreting the statutes under which it hears appeals, and it has previously determined that the opinions of Ministry officials regarding the intent of legislation carry no weight.

The Commission also denied the application with respect to any internal documents regarding the establishment of certain aspects of the Ministry's policy on levying cost recovery orders against private land owners. The Commission found that the request was overly broad, and in any case, the Manager's review decision indicates that he did not rely on that particular aspect of the Ministry's policy in reaching his decision. Moreover, the Government had already disclosed to Mr. Unger an internal policy document that was referred to in the Manager's review decision.

Finally, the Commission found that the request for internal government documents regarding the interpretation of certain sections of the *Wildfire Act* and *Wildfire Regulation* that were either available to or that were considered by the Manager in making his original determination/cost recovery order and subsequent review decision should be made available to Mr. Unger. Although the Commission may give limited weight to such documents, the Commission found that they could be useful and relevant in deciding the appeal, particularly regarding the issue of whether the Manager fettered his discretion. In addition, the early disclosure of these documents would assist Mr. Unger in preparing his case.

- ▶ Accordingly, the application for document disclosure was granted, in part.

\$2 million order for payment of fire control costs and loss of Crown timber upheld by consent

2009-WFA-002(b) *Telus Mobility Inc. v. Ministry of Forests and Range*

Decision Date: March 8, 2013

Panel: Alan Anderson

Telus Mobility Inc. (“Telus”) appealed a contravention order issued by the Fire Centre Manager (the “Forest Official”), Kamloops Fire Centre, Ministry of Forests and Range (the “Ministry”). The events that led to the appeal arose from a forest fire that occurred in July 2006.

Telus holds a licence of occupation on Crown land to “construct, maintain and use” a power line that runs along a Forest Service Road. The power line supplies electricity to a Telus communications tower. In July 2006, a dead tree or “snag” fell on the power line, causing a power failure. The snag also caused insulators to break, resulting in a conductor falling to the ground and igniting a forest fire, which grew to over 380 hectares in size.

The Forest Official determined that Telus had failed to maintain its utility line equipment as required under section 10(a) of the *Wildfire Regulation* (the “*Regulation*”). He ordered Telus to pay for the Ministry’s fire control costs, and the value of the Crown timber that was damaged or destroyed by the fire. Those costs exceeded \$2 million.

Telus appealed the Forest Official’s determination to the Commission. At the parties’ request, the Commission first heard the matter of whether Telus was liable under the *Wildfire Act* for the Ministry’s fire control costs and the Crown timber losses arising from the fire. Any issues regarding the quantum of the fire control costs and the value of the Crown timber would be decided later in a separate hearing, if necessary.

In *Telus Mobility Inc. v. Government of British Columbia* (Decision No. 2009-WFA-002(a), issued October 4, 2010), the Commission confirmed the Forest Official’s finding that Telus contravened section 10(a) of the *Regulation*. In particular, the Commission held that section 10(a) of the *Regulation* deals with the risk of fire ignition on, or adjacent to, “the site”. Section 10(a) specifically refers to “the site” and not just the utility transmission equipment. The Commission found that, for ignition to occur, both the equipment and the site combine to produce the appropriate conditions. The evidence established that trees or snags falling on overhead power lines are a known source of potential line failure and fire, and that fire prevention measures in utility transmission operations typically include a vegetation management program involving regular right-of-way inspections, brush removal, and identification and removal of snags that may fall onto power lines. The obligations on a transmission utility operator under section 10(a) of the *Regulation* include both preventive and reactive maintenance, and there was no evidence that Telus had a program of preventive vegetation management for the power line. On two additional issues, the Commission found that Telus failed to exercise due diligence in relation to the contravention, and the design and construction of the power line was not defective.

Telus appealed the Commission’s determination regarding the proper interpretation of section 10(a) of the *Regulation* to the BC Supreme Court.

In *Telus Mobility Inc. v. Minister of Forests and Range and Forest Appeals Commission*, 2012 BCSC 459, the Court first considered the standard of review that applied to the Commission’s decision. The Court found that the standard to be applied when the Commission is interpreting its own statute or a related statute is reasonableness, which means that the Court must defer to the Commission’s findings. In the present case, the reasonableness standard applied

because the Commission is a specialized tribunal and was interpreting statutes that are closely connected to the Commission's function, and with which it has particular familiarity.

Next, the Court considered whether the Commission erred in interpreting section 10(a) of the *Regulation*. The Court concluded that the Commission's interpretation fell within a range of possible, acceptable outcomes, and the Commission justified its decision in a transparent and intelligible manner. The Court concluded that the Commission's interpretation of section 10(a) was reasonable, and the Court dismissed the appeal.

- ▶ Following the Court's decision, the parties negotiated an agreement with respect to the order that Telus pay \$2,138, 262.13 for fire control costs and the loss of Crown land. With the parties' consent, the Commission ordered that the Forest Official's determination was upheld, and the appeal was dismissed.



Appeals of Commission Decisions to the Courts

January 1, 2013 ~ December 31, 2013

British Columbia Supreme Court

During this reporting period the Court issued no judgments on appeals of Commission decisions.

British Columbia Court of Appeal

During this reporting period the Court issued one judgment on a request for leave to appeal a decision of the BC Supreme Court which had dismissed the Province's appeal of a Commission decision.

Appropriate valuation date to assess costs of timber damaged or destroyed in forest fire

Her Majesty the Queen in Right of the Province of British Columbia v. Canadian National Railway and Forest Appeals Commission

Decision date: April 24, 2013

Court: BCCA; Justice Hinkson

Citation: 2013 BCCA 185

Her Majesty the Queen in Right of the Province of British Columbia (the "Province") sought leave from the BC Court of Appeal to appeal a decision of the BC Supreme Court, which had dismissed the Province's appeal of a decision issued by the Commission.

On July 29, 2005, hot metal fragments from the brakes of a train operated by Canadian National Railway ("CNR") caused a wildfire. The fire spread to Crown land and destroyed 25,010.8 cubic metres of Crown timber. At the time of the wildfire, the Province had no plans to harvest the timber. In the Fall of 2006, the salvageable timber was harvested. A total of \$4,874.80 in stumpage was paid for 19,809.79 cubic metres of timber.

In 2008, the Fire Centre Manager (the "Manager"), Ministry of Forests and Range (the "Ministry"), determined that CNR had contravened the *Wildfire Act* and the *Wildfire Regulation* in causing the fire. Section 27(1)(c) of the *Wildfire Act* and section 30(a) of the *Wildfire Regulation* provide that a cost recovery order may be issued when a wildfire is caused by a contravention, and if a cost recovery order is issued, the value of damaged or destroyed Crown timber must be calculated by ascertaining the amount of stumpage applicable under the *Forest Act*. The Manager ordered CNR to pay \$254,680.38 for the damaged or destroyed Crown timber, which was 75% of the timber's stumpage value at the time of the fire, as calculated by the Manager. CNR appealed to the Commission.

In the appeal before the Commission, the parties agreed that the amount of stumpage applicable to the timber based on the rate that applied from July 1, 2005, to September 30, 2005, would be \$280,299.19. The parties also agreed that the amount of stumpage

applicable to the timber based on the rate that applied from April 1, 2006, to 2009 would be \$6,252.50.

The issue before the Commission was when to value the timber, which would determine the appropriate stumpage rate. The Province argued that the value should be calculated using the stumpage rate that applied when the timber was damaged or destroyed by the wildfire which is the 2005 rate. CNR argued that the value should be based on the stumpage rate that applied on April 1, 2006, based on the date when the timber would have been scaled or harvested, which is the 2006 to 2009 rate.

In *Canadian National Railway v. Government of British Columbia* (Decision Nos. 2008-WFA-001(a) & 2008-WFA-002(a), issued June 27, 2011), the Commission determined that the applicable stumpage payable by CNR was \$6,250.50. Specifically, the Commission found that, under section 103(1) of the *Forest Act*, if a harvesting agreement had been in place, the damaged timber would have been valued based on the stumpage rate when the timber was scaled. The Commission also considered section 103(3) of the *Forest Act*, which describes the procedure for calculating the stumpage owing when a person “cuts, damages, destroys or removes Crown timber without authorization”. Section 103(3) contemplates using the stumpage rate that “would likely have applied to the timber” under section 105(1) of the *Forest Act* “if rights to the timber had been granted under an agreement entered into under” the *Forest Act*. The Commission interpreted this to mean that the applicable stumpage rate is the one that would have applied when the timber might have been harvested. The Commission concluded that the appropriate stumpage rate is not the one that applied when the fire occurred, given that there were no plans to harvest the timber at that time. Rather, it is the rate that would likely have applied when the timber was cruised or scaled. In addition, the Commission found that the Manager had no statutory authority to reduce the cost recovery order to 75% of the timber’s value.

Accordingly, the Commission concluded that the cost recovery order should be for \$6,252.50.

The Province appealed the Commission’s decision to the BC Supreme Court. In *British Columbia v. Canadian National Railway*, 2012 BCSC 1856, the Court held that the Commission’s conclusion on the valuation date was a reasonable exercise of its specialized expertise in relation to forestry statutes, and was also correct. The Commission reasonably concluded that the common law principles on damages did not apply, because the legislation creates a complete scheme for valuing lost Crown timber, and there is clear legislative intent not to follow the common law principles on damages. The Commission clearly and rationally explained its decision. The Commission’s specialized skill and experience qualified it to interpret the legislation and reach a different conclusion than the Manager. Accordingly, the Province’s appeal was dismissed, and the Commission’s decision was upheld.

The Province sought leave from the BC Court of Appeal to appeal the Supreme Court’s decision on the basis that the Commission went beyond the statutory scheme, and rather than interpreting the statutory wording, instead read wording into the statute that altered the plain meaning of the subsection into which the wording was read.

- ▶ The Court of Appeal granted leave to appeal. The Court held that the proposed appeal involves the interpretation and application of statutory provisions, which is important to the Province and to others who may be affected by those provisions. The decisions of the Commission and the Supreme Court are markedly different from that of the Manager. The issue on appeal does not appear to have been considered by other appellate bodies, and the benefit to be derived from the appeal is the clarification of the statutory scheme.

Supreme Court of Canada

During this reporting period, the Court issued no judgments on appeals of Commission decisions.

APPENDIX I
Legislation and Regulations

Reproduced below are the sections of the *Code* 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 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 are 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, 2013). Please note that legislation can change at any time. An updated version of the legislation may be obtained from Crown Publications. An unofficial copy of the legislation is also publicly available free of charge at www.bclaws.ca.

Forest Practices Code of British Columbia Act

Part 6

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 – Corrections, 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.

Requirement to publish

- 85** (1) The minister must publish an annual report on enforcement activities.
- (2) The minister must keep and make available to the public a performance record for holders of agreements under the *Forest Act* and the *Range Act*.

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) 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.

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** (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 amendments
- may 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) amendments
- referred 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 (3.1), 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) 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 *Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*.

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

Part 1 – Definitions

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 that 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 administration of

- those portions of the *Forest Act* for which the Minister of Finance is not responsible,
- (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. Regs. 83/2006, s. 12; 4/2010, s. 2.]

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.

Intervenors

- 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.

