Forest Appeals Commission

Annual Report

2014

BRITISH COLUMBIA

Forest Appeals Commission

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Minister of Forests, Lands and Natural Resource Operations
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Dear Ministers:

I respectfully submit herewith the Annual Report of the Forest Appeals Commission for the period of January 1, 2014 to December 31, 2014.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission

AR 2014

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Message from the Chair

I am pleased to submit the Annual Report of the Forest Appeals Commission for the 2014 calendar year.

The Year in Review – Appeals

The Commission continues to encourage cooperation between the Government and industry, and it appears that this is occurring given the number of appeals filed this year. During the past year, the Commission has also worked towards reducing the number of appeals that proceed to a hearing. I am pleased to note that most of the appeals that were closed in 2014 did not require a hearing. A total of 28 appeals were active during the reporting period, and 13 of those appeals were closed by the year's end. Of the appeals that were closed, one was withdrawn and ten were resolved by way of consent orders that were issued by the Commission and agreed to by the parties, which meant that they did not require a hearing. The Commission applauds all private parties, Ministry officials and the Forest Practices Board for their ongoing efforts in resolving matters without the need for a hearing before the Commission.

The appeals that were heard and decided by the Commission during 2014 involved complex legal and factual issues of significant interest to the public, the forest industry and the Government. One of these matters addressed whether an individual should be ordered to pay the government's costs to extinguish a wildfire caused by that individual. Another involved the application of the "due diligence" defence in a situation where a private landowner received an administrative penalty for unauthorized harvesting of Crown timber by the landowner's contractor, who failed to determine the private property boundary.

During this reporting period, the BC Supreme Court and the BC Court of Appeal issued one decision each on appeals filed by the Province against decisions of the Commission. The Court of Appeal upheld the Commission's interpretation of section 103(3) of the *Forest Act* regarding the valuation of timber that has been damaged or destroyed in a wildfire that was caused by a contravention of the *Wildfire Act*. In contrast, the BC Supreme Court overturned the Commission's interpretation of section 105.1 of the *Forest Act* and the Coast Appraisal Manual regarding agreements between the Province and licensees about the inclusion of road development costs in the stumpage appraisal process. However, another important finding in that case was the Court's rejection of the Province's claim that there was an apprehension of bias in relation to the member of the Commission that heard and decided the matter. In a separate decision regarding the same appeal, the Court refused to allow two industry associations to intervene in the proceedings before the Court.

Finally, and importantly, the Province abandoned an appeal to the BC Supreme Court that sought to challenge a decision in which the Commission held that the Province had a duty to consult with a First Nation before imposing administrative penalties on a person and a corporation which had harvested Crown timber on behalf of the First Nation, as the penalties would adversely affect the First Nation's asserted aboriginal rights and title. Further information about those decisions is included in the Summaries of Court Decisions, at the end of this report.

Commission Membership

The Commission membership experienced some changes during 2014. I am very pleased to welcome eight new members to the Commission who will complement the expertise and experience of the outstanding professionals on the Commission. Those new members are Maureen Baird Q.C., Brenda L. Edwards, Jeffrey Hand, Linda Michaluk, Howard Saunders, Daphne Stancil, Gregory J. Tucker and Norman Yates.

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, 2014 to December 31, 2014. 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; 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 2014 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		
Maureen Baird, Q.C.	Lawyer	West Vancouver
R. O'Brian Blackall	Land Surveyor	Charlie Lake
Monica Danon-Schaffer	Professional Engineer	West Vancouver
Cindy Derkaz	Lawyer (Retired)	Salmon Arm
Brenda L. Edwards	Lawyer	Victoria
Tony Fogarassy	Geoscientist/Lawyer	Vancouver
Les Gyug	Professional Biologist	Westbank
James Hackett	Professional Forester	Nanaimo
Jeffrey Hand	Lawyer	Vancouver
R.G. (Bob) Holtby	Professional Agrologist	Westbank
Blair Lockhart	Lawyer/Geoscientist	Vancouver
Ken Long	Professional Agrologist	Prince George
James Mattison	Professional Engineer	Victoria
Linda Michaluk	Professional Biologist	North Saanich
Howard Saunders	Forestry Consultant	Vancouver
David H. Searle, C.M., Q.C.	Lawyer (Retired)	North Saanich
Daphne Stancil	Lawyer/Biologist	Victoria
Gregory J. Tucker	Lawyer	Vancouver
Douglas VanDine	Professional Engineer	Victoria
Reid White	Professional Biologist/Engineer (Retired)	Dawson Creek
Norman E. Yates (from December 19, 2014)	Lawyer	Penticton

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 2014/2015 budget for the Forest Appeals Commission was $310,000.

The fiscal 2014/2015 budget for the shared office and staff was $1,453,000.

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 licenses 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, 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.

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

During this reporting period, no changes were made to the legislation that sets out the Commission's powers and procedures. However, amendments to the *Range Act* reduced the types of decisions that may be appealed to the Commission. These changes came into force on April 9, 2014, as part of a number of legislative changes made under the *Forests, Lands and Natural Resource Operations Amendment Act*, 2014, S.B.C. 2014, c. 7. The key changes to the *Range Act*, in terms of decisions that may be appealed to the Commission, are the repeal and replacement of section 15, the repeal of section 25, the amendment of section 69(1), and the repeal of section 70(2). Previously, decisions made under sections 15(2) and 25(5) of the *Range Act* could be appealed to the Commission under sections 69(1) and 70(2) of that *Act*, respectively.

Previously, section 25(5) required that holders of licences to graze on Crown range land must be notified of decisions under section 25(2) that reduced the amount of forage available to the licensee under a replacement grazing licence. Section 25(5) also required that holders of licences to cut hay on Crown range must be notified of decisions under section 25(4) that reduced the amount of Crown range available to the licensee under a replacement hay cutting licence. In both cases, such decisions were made by District Managers in the Ministry of Forests, Lands and Natural Resource Operations. Section 69(1)(c) provided that a person who is the subject of, or whose licence or permit is affected by, a decision under section 25(5) could appeal the decision to the Commission. The repeal of section 25 removed the authority of District Managers to make such decisions. At the same time, the reference to section 25(5) was removed from section 69(1) of the *Range Act*. Together, those changes mean that such decisions can no longer be appealed to the Commission.

Section 70(2) of the *Range Act* previously provided for appeals of decisions by the Minister under section 15(2) regarding objections to a proposed allocation of rights under a permit and licence to cut hay on Crown land or forage on Crown land. Before section 15 was repealed and replaced, if more than one person applied for a licence or permit, a District Manager would consider the applications, and provide a proposal to the applicants regarding the disposition of their applications. If any of the applicants objected to the District Manager's proposal, section 15(2) set out a process by which the Minister could consider their objections, and if the Minister considered that an objection raised issues that warranted reconsideration of the District Manager's proposal, the Minister was empowered to provide the applicants and the District Manager with an opportunity to be heard. Following the opportunity to be heard, the Minister could order the District Manager to either enter into a licence or permit with a specified applicant, or offer the

licence or permit through a competition involving two or more of the applicants. Section 70(2) provided that "An applicant referred to in section 15(2) may appeal to the commission an order of the minister made under that provision." With the repeal and replacement of section 15, applications for licences and permits are now decided solely by the Minister. With the repeal of section 70(2), decisions of this nature can no longer be appealed to the Commission.

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 2014, a total of 12 new appeals were filed with the Commission. Nine appeals were filed under the *Forest Act*, two were filed under the *Forest and Range Practices Act*, and one was filed under the *Private Managed Forest Land Act*. No new appeals were filed in 2014 under either the *Range Act* or the *Wildfire Act*.

A total of 13 appeals were completed during 2014. In regard to those appeals, the Commission issued 12 final decisions, including ten consent orders. One appeal was withdrawn.

In addition to the 12 final decisions, the Commission issued eleven unpublished preliminary decisions in 2014. Nine of those preliminary decisions dealt with applications for orders requiring a party to disclose documents to another party prior to a hearing on the merits of the appeals.

Appeals	
Open Appeals at period start	16
Open Appeals at period end	15
Appeals filed	
Appeals filed under the *Forest and Range Practices Act*	2
Appeals filed under the *Forest Act*	9
Appeals filed under the *Private Managed Forest Land Act*	1
Appeals filed under the *Range Act*	0
Appeals filed under the *Wildfire Act*	0
Total appeals filed	**12**
Appeals Closed	
Withdrawn or abandoned	1
Final decisions on the merits	2
Consent orders	10
No jurisdiction/standing	0
Total appeals closed	**13**
Hearings held on the merits of appeals	
Oral hearings completed	3
Written hearings completed	1
Total hearings held on the merits of appeals*	**4**
Published decisions issued*	
Final decisions (excluding consent orders)	
Forest and Range Practices Act	1
Forest Act	0
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	1
Consent orders	
Forest and Range Practices Act	8
Forest Act	0
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	2
Total published decisions issued	**12**

Note:

* Hearings held and decisions issued in 2014 do not necessarily reflect the number of appeals filed in 2014.

Summaries of Decisions

January 1, 2014 ~ December 31, 2014

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*

Parties' negotiations resolve an appeal regarding road repairs in a Provincial Forest

2013-FRP-003 Vern Latremouille v. Government of British Columbia

Decision Date: January 23, 2014

Panel: Alan Andison

Vern Latremouille appealed a determination of contravention and penalty issued by the District Manager (the "District Manager"), Ministry of Forests, Lands and Natural Resource Operations (the "Ministry").

Following an investigation, the District Manager determined that Mr. Latremouille had contravened section 22(2)(b) of the *Forest and Range Practices Act* (the "*FRPA*") by conducting road maintenance without authorization. Section 22(2)(b) provides that, if a road is in a Provincial forest, a person must not use, construct, maintain or deactivate a road except in accordance with the *FRPA*, the regulations, the standards and any forest stewardship plan or a woodlot licence plan. The District Manager levied a penalty of $100 against Mr. Latremouille. The District Manager also noted that the contravention would form part of Mr. Latremouille's performance record, as he is the holder of an agreement under the *Forest Act*.

Mr. Latremouille resides in a residential development that is accessed either by water or via a public access road through a provincial park. The residents of the development have used the park access road for many years, and have conducted maintenance on the road in the past, with the Government's knowledge, despite lacking authorization to do so.

On April 26, 2012, Mr. Latremouille, on behalf of the residents, used heavy equipment to repair the access road after it had washed out. That same day, Ministry staff acknowledged that road work needed to be done, but advised Mr. Latremouille that he had no authority to conduct road maintenance. An unintended consequence of the road maintenance was the deposit of debris and water onto a campground in the provincial park. On becoming aware of the effect on the campground, Mr. Latremouille and other residents immediately took action to address the situation, to the satisfaction of BC Parks staff.

Mr. Latremouille appealed the determination to the Commission.

- Before the appeal was heard, the parties negotiated a settlement. By consent of the parties, the Commission ordered that the determination was rescinded, and the appeal was allowed.

Due diligence defence considered in illegal harvest of Crown timber

2013-FRP-002 Forest Practices Board v. Government of British Columbia (Douglas Lake Cattle Company, Third Party)

Decision Date: June 13, 2014

Panel: Gabriella Lang

The Forest Practices Board (the "FPB") appealed a District Manager's determination that, although a contractor acting on behalf of Douglas Lake Cattle Company ("Douglas Lake") had harvested Crown timber in contravention of the *Forest and Range Protection Act* (the "*Act*"), Douglas Lake had established the defence of due diligence and was not liable for the contravention. This case involved unauthorized timber harvesting on Crown land adjacent to Douglas Lake's land in the Lillooet Land District. Douglas Lake was authorized to cut timber on its land. In 2010, it retained a contractor to harvest timber on its land. Douglas Lake had a long-standing relationship with the contractor. Douglas Lake did not inform the contractor of the boundaries of its land, and provided no oversight of the harvesting operation. The contractor attempted to determine the boundaries of Douglas Lake's land, but the eastern boundary was inaccurate. As a result, timber was harvested from adjacent Crown land without authority, contrary to section 52 of the *Act*.

The District Manager notified the contractor and Douglas Lake that their harvesting activities may have violated the *Act*. Before reaching a determination, the District Manager offered Douglas Lake and its contractor an opportunity to be heard. Douglas Lake advised that its contractor would represent its interests at the opportunity to be heard. Douglas Lake provided no submissions on its own behalf.

The District Manager determined that contraventions of the *Act* had occurred, but Douglas Lake had exercised due diligence to prevent the contraventions. The District Manager made this finding despite the fact that neither Douglas Lake, nor its contractor, raised this as a defence or provided any evidence in support. The District Manager's conclusion was based, in part, on Douglas Lake's long-standing business relationship with the contractor, its reliance on the contractor, and the contractor's admission of responsibility for the contraventions.

In a separate decision, the District Manager determined that the contractor had contravened section 53(2) of the *FRPA*, by failing to establish the boundary between Douglas Lake's land and the Crown land before cutting and removing the timber. The District Manager also determined that the contractor had contravened sections 52(1) and 52(3) of the *Act* by harvesting and removing timber from Crown land without authority. A penalty of $3,300 was levied against the contractor, because the District Manager determined that the Province should be compensated for a loss of habitat values arising from the unauthorized harvesting.

On appeal to the Commission, the FPB argued that there was no evidence before the District Manager that Douglas Lake had established the defence of due diligence, and the Commission should find that: (a) Douglas Lake did not establish the defence of due diligence; and, (b) a penalty ought to be levied against Douglas Lake for the contraventions. The FPB noted that section 52(4) of the *Act* provides that, if a person, at the direction of or on behalf of another person, cuts or removes Crown timber, that other person also contravenes the *Act*. The FPB submitted, therefore, that Douglas Lake was liable under section 52(4) for its contractor's contraventions of the *Act*.

The Commission noted that the test for due diligence is "whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking

reasonable steps to ensure the effective operation of the system." The Commission found that the defences of due diligence was not raised by Douglas Lake or its contractor at the opportunity to be heard. Further, Douglas Lake did not participate in the appeal hearing despite being invited to do so, and despite the fact that the question of Douglas Lake's due diligence was the key issue to be decided in the appeal. The Commission found that there was no evidence that Douglas Lake had exercised reasonable care, which at a minimum would have required Douglas Lake to correctly mark the boundary of its land or ensure that someone did on its behalf. Consequently, the Commission found that Douglas Lake had not established the defence of due diligence.

In addition, the Commission found that a penalty should be assessed against Douglas Lake, because the contraventions were preventable and caused harm to habitat values, Douglas Lake received a financial gain from the harvest and sale of the Crown timber, and Douglas Lake had a previous contravention of a similar nature. The Commission referred the matter of the penalty amount back to the District Manager for determination, with directions to consider all of the circumstances and to ensure that the penalty levied against Douglas Lake is no less than the penalty levied against its contractor.

▶ The appeal was allowed.

Licensee granted relief to achieve free growing stands on cut blocks damaged by wildfires

2012-FRP-006, 007, 008, 009, 010 and 011 Tolko Industries Ltd. v. Government of British Columbia

Decision Date: August 12, 2014

Panel: Alan Andison

In 2010, wildfires burned the vegetation on six cut blocks in the Quesnel District that Tolko Industries Ltd. ("Tolko") had harvested. Tolko did not cause or contribute to the cause of the wildfires. On three of the cut blocks, fire destroyed lodgepole pine seedlings that had naturally regenerated. The other three cut blocks were recently harvested and little natural regeneration was present, but Tolko had planned to allow for the natural regeneration of lodgepole pine on those cut blocks.

In 2012, Tolko applied for relief under section 108 of the *Forest and Range Practices Act* (the "*Act*"), from its obligation under section 29 of the *Act* to establish a free growing stand on each of the cut blocks. Under section 29 of the of the *Act*, licensees who harvest Crown timber are required to establish a "free growing stand" on the portions of the harvested area. "Free growing stand" is defined in the *Act* to mean "a stand of healthy trees of a commercially valuable species, the growth of which is not impeded by competition from plants, shrubs or other trees." Section 108 of the *Act* provides the Minister with discretion to relieve a person from an obligation to establish a free growing stand, or provide funding to help the person achieve the obligation, if the person satisfies the Minister that the obligation cannot be met without significant extra expense related to an event that caused damage. Tolko asserted that its obligation to establish a free growing stand on each cut block could not be met without significant extra expense, because the wildfires had forced Tolko to abandon its plans to naturally regenerate the cut blocks. The District Manager, acting as a delegate of the Minister, refused to grant that relief to Tolko.

Tolko appealed to the Commission on the basis that the District Manager erred in interpreting and applying section 108 of the *Act*. Tolko claimed that it would have achieved free growing stands of lodgepole pine on the cut blocks using natural regeneration if the fires had not occurred. Tolko submitted that the fires burnt existing seed, seedlings,

and duff layers, leaving exposed and blackened soil. As a result, natural regeneration was no longer a viable method for regeneration, and Tolko would have to manage the cut blocks more actively, including undertaking site preparation and tree planting. Tolko asserted that it would have to incur approximately $1.4 million in extra expenses to establish free growing stand on the damaged cut blocks.

After the appeals were filed, the parties requested that the appeals be held in abeyance to allow the parties time to negotiate a resolution. Ultimately, the parties agreed to settle the appeals without the need for a hearing before the Commission.

- By consent of the parties, the Commission ordered that:

    1. the appeals were allowed and the determinations were set aside; and
    2. the Minister grant relief to Tolko under section 108(4) of the *Act* in respect of the six remaining cut blocks, in the amount of $1,092,407.70.

Parties resolve an appeal involving conflicting silviculture survey results

2014-FRP-001 Stella-Jones Canada Inc. v. Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: October 8, 2014

Panel: Alan Andison

Stella-Jones Canada Inc. ("Stella Jones") appealed a determination in which the District Manager made a "provisional" decision that Stella Jones had not fulfilled its obligation to establish a free growing stand on four cut blocks, pending the results of an independent silviculture survey of the cut blocks. Stella Jones' obligation to establish free growing stands on the cut blocks is required under section 29 of the *Forest and Range Practices Act* (the "*Act*"). Once a licensee has established a free growing stand, section 107(1) of the *Act* requires the licensee to submit a free growing declaration to the District Manager for review.

The District Manager's "provisional" determination was based on his finding that there was a significant discrepancy between silviculture survey results provided by Stella Jones, and those of the Ministry's surveyor, regarding the number of trees that had achieved free growing status on the cut blocks in question. Stella Jones' survey showed that each cut block had more free growing trees than was required under the site plan for the cut block. However, the Ministry's survey showed that the number of free growing trees did not meet the requirements of the site plan for the cut block. The District Manager found that the differences between the Stella Jones' and the Ministry's surveys were significant, and the only "unbiased or fair" solution was to require an independent survey of the cut blocks. The District Manager found that there was insufficient time to re-survey the cut blocks before the end of the declaration period, because they would be covered with snow. Therefore, he decided to reject Stella Jones' free growing declarations on a provisional basis, in order to allow an opportunity to re-survey the cut blocks once they were free of snow. The District Manager also stated that he would select a qualified and independent surveyor, and would use the results of this survey to determine the final outcome of the case.

Stella Jones appealed the determination on several grounds, including that the District Manager failed to address the defence of due diligence.

- Before the appeal was heard by the Commission, the parties negotiated an agreement to resolve the appeal. With the parties' consent, the Commission allowed the appeal, and rescinded the determination.

Appeals under the *Forest Act*

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

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*

Roadside mowing results in wildfire

2013-WFA-001 and 002 Interior Roads Ltd. and Wayne Blocklock v. Government of British Columbia

Decision Date: August 7, 2014

Panel: Alan Andison

Interior Roads Ltd. ("IRL") and Wayne Blacklock each appealed separate administrative penalties and cost recovery orders issued by the Fire Centre Manager (the "Manager"), as a result of contraventions of the *Wildfire Act* that led to a wildfire in July 2010.

IRL was a contractor responsible for providing road maintenance services to the Ministry of Transportation and Infrastructure in the Central Interior region of British Columbia. Mr. Blacklock was an independent owner and operator of a tractor-mower, and provided contract roadside mowing to IRL. Mr. Blacklock's mowing work was supervised by IRL's Senior Foreman (the "Senior Foreman"). On July 14, 2010, a fire ignited about eight kilometres west of Alexis Creek along a portion of Highway 20 that Mr. Blacklock had mowed minutes earlier. At the time, the fire hazard rating in the area where Mr. Blacklock was mowing was "extreme." Ministry firefighters responded to the fire, which burned 177.2 hectares of Crown land. The Ministry's firefighting costs totalled $465,378.35. The value of the Crown timber that was damaged or destroyed by the fire was $12,522.54.

Following an investigation, the Manager found that the fire was caused by Mr. Blacklock's mower blade striking a rock. The Manager determined that Mr. Blacklock contravened sections 6(2)(a) and 6(3)(a) of the *Wildfire Regulation*, respectively, by failing to determine the relevant fire hazard rating for the area, and failing to abide by the time restrictions applicable to mowing during an extreme fire hazard, as set out in schedule 3 of the *Wildfire Regulation*. The Manager ordered Mr. Blacklock to pay a $3,000 administrative penalty, and pay a cost recovery order of $281,340.53 for the government's fire suppression costs and the Crown timber that was damaged or destroyed (i.e., 60% of the total).

As Mr. Blacklock was IRL's contractor, IRL was liable for Mr. Blacklock's contraventions pursuant to section 30 of the *Wildfire Act*, subject to the defences set out in section 29 of the *Wildfire Act*. In respect of section 6(2)(a) of the *Wildfire Regulation*, the Manager found that IRL had established the defence of due diligence, and therefore, IRL did not contravene this provision. Regarding section 6(3)(a) of the *Wildfire Regulation*, the Manager found that none of the defences in section 29 applied, as the Senior Foreman had instructed Mr. Blacklock to complete a mowing job

that he knew would result in Mr. Blacklock violating the time restrictions in schedule 3 of the *Wildfire Regulation*. The Manager ordered IRL to pay a $2,000 administrative penalty, and pay a cost recovery order of $187,560.36 for the government's fire suppression costs and the Crown timber that was damaged or destroyed (i.e., 40% of the total).

Mr. Blacklock and IRL filed separate appeals to the Commission. Before the appeals were heard by the Commission, the parties negotiated an agreement to settle the appeals.

- With the parties' consent, the Commission confirmed the contravention orders and the administrative penalties, and set aside the cost recovery orders. Accordingly, the appeals were allowed, in part.

Order to pay over $860,000 in fire control costs confirmed

2012-WFA-002(b) Robert Unger v. Government of British Columbia (Forest Practices Boards, Third Party)

Decision Date: December 29, 2014

Panel: David Searle, C.M., Q.C.

Robert Unger appealed a review decision issued by the Fire Centre Manager, arising from circumstances in which Mr. Unger lit fire to a root ball while carrying out land clearing on his private property. The fire escaped and caused a wildfire that burned for several days. The wildfire was fought by Ministry firefighters. In the review decision, the Manager confirmed that Mr. Unger had contravened section 5(1) of the *Wildfire Act* and section 20(2) of the *Wildfire Regulation* by lighting an open fire on his land when it was unsafe to do so, failing to establish a fuel break around the fire, and allowing the fire to escape. The Manager also confirmed the cost recovery order that he issued under section 25(2) of the *Wildfire Act*, which required Mr. Unger to pay $861,356.09 for the government's fire control costs.

Mr. Unger appealed to the Commission on numerous grounds. He submitted that the Manager erred in interpreting and applying both section 25 of the *Wildfire Act*, and a Ministry policy that addressed levying cost recovery orders against land owners that cause wildfires. Mr. Unger also submitted that the Manager fettered his discretion and breached the principles of procedural fairness in making the cost recovery order. Mr. Unger asserted that the Ministry had failed to disclose relevant documents to him. He further argued that the statutory defence of due diligence applied, and that he should not be liable for the contraventions.

The Commission held that it did not need to address at length Mr. Unger's submissions alleging procedural unfairness, fettering of discretion, and other breaches of natural justice by the Manager, because the hearing before the Commission cured any procedural defects in the proceedings conducted by the Manager. The Commission noted that prior to the hearing before the Commission, Mr. Unger received full disclosure of the relevant Ministry documents that were not previously disclosed to him, in accordance with a document disclosure order issued by the Commission (Decision No. 2012-WFA-002(a), April 22, 2013). Further, the Commission found that the Manager's decisions did not turn on, and his discretion was not fettered by, Ministry policies or the opinions of other Ministry staff about those policies. In addition, there was no institutional bias against Mr. Unger, based on the evidence. The Commission also found that the Ministry policies in issue would not have relieved Mr. Unger from liability for the Ministry's fire control costs, and the question of whether he had a valid insurance policy was irrelevant to the cost recovery order.

Finally, the Commission found that Mr. Unger did not exercise due diligence, as he did not take all reasonable care to avoid the contraventions. Specifically, he should have foreseen the risks associated with lighting the fire on his land given the conditions that day, and especially the wind conditions. In addition, he failed to establish a fuel break around the fire, as the evidence showed that the fuels adjacent to the burn area were dry grass and brush, and the fire quickly spread to those fuels. Although he had a water pump available, it was too far away from the fire to be useful, and he was reduced to fighting the fire with a shovel and rake. He also had no means of communication on-site, and he had to rely on a neighbour to report the fire to the Ministry. Based on the evidence, the Commission found there were no factors that would mitigate against ordering Mr. Unger to pay the full amount of the government's fire control costs.

- Accordingly, the appeal was dismissed.

Appeals of Commission Decisions to the Courts

January 1, 2014 ~ December 31, 2014

British Columbia Supreme Court

Province abandons its appeal regarding the duty to consult with a First Nation

Province of British Columbia v. Jack Sebastian, the Suskwa Chiefs Economic Development Corporation, and the Forest Appeals Commission

Decision Date: December 8, 2014

Court: BC Supreme Court

Citation: Victoria Registry No. 113953

The Province appealed a decision of the Commission to the BC Supreme Court. The Commission's decision concluded that the Province had a duty to consult with the Gitxsan First Nation regarding their aboriginal rights and title before levying administrative penalties under the *Forest and Range Practices Act* (the "*FRPA*") against an individual and a corporation that harvested timber on behalf of the First Nation.

Jack Sebastian was the chief executive officer of the Suskwa Chiefs Economic Development Corporation (the "Corporation"), a company incorporated in 2006 by six Gitxsan Houses to further their economic interests. Mr. Sebastian was also a Wing Chief of one of the Gitxsan Houses. The Suskwa Chiefs applied, on behalf of the Corporation, to the then Ministry of Forests and Range (the "Ministry") for two licences that would allow the Corporation to harvest dead and damaged Crown timber along forest service roads in the territory of one of the Gitxsan Houses. Mr. Sebastian also applied for such a licence, with the intent that the Corporation would perform the work. In 2006, the Ministry issued three licences: one to Mr. Sebastian, and two to the Corporation. Each licence identified the boundaries of the areas to be harvested. The Corporation's employees and/or contractors harvested under the licences during June to August 2006.

In mid-August 2006, the Ministry notified Mr. Sebastian that the harvesting may have gone beyond the boundaries specified in the licences, and the Ministry was investigating the matter. In response, Mr. Sebastian advised the Ministry that the Gitxsan claim aboriginal title over the area where the harvesting occurred, and he asserted that all of the harvesting was an exercise of aboriginal rights within their traditional territory. However, the Ministry engaged in no consultation with the Gitxsan about their asserted aboriginal rights and title, or how the Ministry's enforcement actions might impair those rights.

In November 2008, the District Manager found that Mr. Sebastian and the Corporation had contravened section 52(1) of the *FRPA* by harvesting timber from Crown land without authorization. Specifically, they harvested 1,238 cubic metres of

timber from areas that were beyond the boundaries identified in the three licences. The District Manager assessed an administrative penalty of $500 against Mr. Sebastian, and two penalties of $500 and $1500 against the Corporation.

Mr. Sebastian and the Corporation appealed the District Manager's determination to the Commission. They argued that the District Manager, acting on behalf of the Provincial Crown, had a duty to consult with the Gitxsan regarding their aboriginal rights during the investigation and enforcement proceedings. They also argued that their aboriginal rights, which are protected under section 35(1) of the *Constitution Act, 1982*, were adversely affected by the District Manager's determination and the associated administrative penalties.

In response, the Province argued that the District Manager had no duty to consult in this case, because Mr. Sebastian and the Corporation were engaged in commercial forestry operations outside the scope of any aboriginal rights. Moreover, the Province submitted that any duty to consult that may have existed was met, because representatives of the Gitxsan obtained the licences and agreed to the licence terms.

In *Jack Sebastian et al v. Government of BC* (Decision No. 2008-FOR-010(a), issued September 2, 2011), the Commission found that the aboriginal rights and title being asserted in this case were held by the Gitxsan as a group, and the harvesting was carried out by Mr. Sebastian and the Corporation on behalf of the Gitxsan. Further, the Commission found that the decision in *R. v. NTC Smokehouse* [2006], 2 SCR 672, indicates that corporate entities may rely on a First Nation's claim of aboriginal rights as a defence to a regulatory proceeding. Consequently, the Commission held that Mr. Sebastian and the Corporation could rely on any aboriginal rights claimed by the Gitxsan as a defence to the enforcement action, given that Mr. Sebastian and the Corporation were acting on behalf of the Gitxsan when they applied for the licences and undertook the harvesting.

Next, the Commission considered whether the Ministry's investigation and enforcement proceedings triggered a duty to consult with the Gitxsan, based on the test set out in *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 ("*Haida*"). The Commission held that a duty to consult with the Gitxsan was triggered because: (1) the Provincial Crown knew of the Gitxsan's claims of aboriginal rights and title in relation to the land where the harvesting occurred; and, (2) the Provincial Crown contemplated conduct that might adversely affect the Gitxsan's aboriginal rights. The Commission noted that according to *Haida*, the Crown is entitled to manage resources pending the resolution of aboriginal rights claims, but the Crown may not do so in a manner that deprives the aboriginal claimants of the benefits of the resources. The Commission held that the Ministry's investigation and enforcement proceedings had the effect of penalizing Mr. Sebastian and the Corporation, and consequentially the Gitxsan, for harvesting timber that they claim to own and claim to have a right to manage. The Ministry's action sent a message to all Gitxsan that they will face penalties for harvesting timber in areas where they assert title, unless they seek and receive Crown authorization for harvesting. The Commission held that it was irrelevant that Mr. Sebastian and the Corporation held licences for some of the harvested areas, because the effect of the enforcement actions on the asserted aboriginal rights was the same as if they had harvested the timber without obtaining licences; namely, the penalties were for unauthorized timber harvesting, not for violating the terms of the licences *per se*. In addition, the Commission found that the enforcement actions proceeded without considering the effects of the penalties on the Gitxsan's claim of

title to the area, and the District Manager proceeded without any consultation with the Gitxsan.

The Commission then considered whether it amounted to a collateral attack on the Province's validly enacted regulatory scheme under the *FRPA* for the appellants to assert that consultation was required in this case. The Commission found that the appellants' assertion was not a collateral attack on the Province's forestry legislation. Rather, Mr. Sebastian and the Corporation were asserting a valid defence, arising from constitutionally recognized rights, to the findings of contraventions and the issuance of penalties under the *FRPA*.

Finally, the Commission considered the appropriate remedy in the circumstances. Given that no consultation occurred before the determination was made, the Commission found that the determination and the associated penalties should be rescinded. Accordingly, the appeal was allowed.

In September 2011, the Province appealed the Commission's decision to the BC Supreme Court. Among other things, the Province submitted that the Commission erred:

- in determining that the Province had a duty to consult with the Gitxsan First Nation regarding the Ministry's investigation and enforcement proceedings;
- in determining that Mr. Sebastian and the Corporation could act on behalf of the Gitxsan First Nation;
- by implicitly determining that Mr. Sebastian, the Corporation, and the Gitxsan First Nation possess a right to harvest timber for commercial purposes and/or a right to harvest timber outside of the Provincial forestry legislation; and
- the District Manager's decision to proceed with investigation and enforcement proceedings under the *FRPA* was akin to the exercise of prosecutorial discretion in the criminal justice system, and is not a Crown action subject to the duty to consult.

Between October 2011 and early 2014, the appeal did not proceed, as Mr. Sebastian had difficulty retaining legal counsel. In February 2014, the Court made several orders, by consent of the parties, regarding the exchange of documents among the parties.

- On December 8, 2014, the Province abandoned its appeal, before the matter was heard by the Court. Consequently, the Commission's decision remains in force.

Court overturns stumpage decision but rejects an allegation of apprehension of bias by the Commission

Province of British Columbia v. Forest Appeals Commission and Western Forest Products Inc.

Decision date: November 21, 2014
Court: BC Supreme Court; Justice Bruce
Citation: 2014 BCSC 2192

The Province appealed a decision of the Commission to the BC Supreme Court. The Commission's decision concerned the stumpage rate that Western Forest Products Inc. ("Western") should pay for harvesting Crown timber. The Commission's decision arose from Western's appeal of two stumpage determinations issued by the Timber Pricing Coordinator (the "Coordinator"), Coast Forest Region, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"). The determinations set out the stumpage rates that applied to Crown timber harvested under cutting permit 300 ("CP 300"), which covers an area within a tree farm licence held by Western.

Stumpage rates in the Coast region of the Province are determined in accordance with the policies and procedures in the Coast Appraisal Manual ("CAM"), which has the force of law. Under the

CAM, stumpage rates are affected by certain variables. The variable at issue in this case was the amount that Western could claim for estimated road development costs. Western incurred road development costs to access CP 300 for harvesting, and the CAM provides that some of those costs can be applied to reduce the stumpage rate on timber harvested under CP 300. The CAM also provides that the government and a licensee may enter into an "extended road amortization agreement" that allows those costs to be apportioned between two or more cutting permits. Before CP 300 was issued, Western and the Ministry had signed an extended road amortization agreement (the "Agreement"), which apportioned estimated road development costs between one initial cutting permit, and one future cutting permit.

Months after the Agreement was signed, Western provided the Coordinator with updated road development cost estimates for CP 300, as part of the appraisal data in its application for CP 300, and Western requested that the Ministry amend the Agreement to reflect the updated cost estimates. The Ministry refused to amend the Agreement, and the Coordinator calculated the stumpage rates for CP 300 using the dollar amount that was set out in the Agreement.

On appeal to the Commission, Western's main arguments were: (1) the Coordinator determined the stumpage rates based on information that was no longer accurate, contrary to section 105.1 of the *Forest Act* (the "*Act*"), the CAM, 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 more accurate information that was available when Western submitted its appraisal data for CP 300; and alternatively, (3) the Agreement required the Coordinator to determine the extended road amortization cost allowances applicable to CP 300 based on the information that was available when Western submitted its appraisal data for CP 300. In response, the Government raised several other issues, including whether the appeals were within the Commission's jurisdiction, and whether the Commission was obligated to give deference to the Coordinator's decisions.

In *Western Forest Products Inc. v. Government of British Columbia* (Decision Nos. 2013-FA-001(a) and 002(a), issued December 2, 2013), the Commission held that, as a specialized tribunal with expertise and *de novo* powers in deciding appeals under forestry legislation, it owes no deference to the Coordinator's decisions. Turning to the Commission's jurisdiction over the appeals, the Commission found that extended road amortization agreements operate as an integral part of the stumpage appraisal process, and the Ministry's exercise of discretion in making or amending an extended road amortization agreement is an "intermediate component" of that process. On that basis, the Commission concluded that its jurisdiction over stumpage appeals must necessarily include the interpretation and consideration of the Agreement, and the jurisdiction to consider whether the Ministry exercised its discretion unreasonably by refusing to amend the Agreement.

Next, the Commission found that section 105.1 of the *Act*, read together with the *Foresters Act* and its 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 emissions, is consistent with those accuracy requirements. Accordingly, the Commission found that the accuracy of the licensee's appraisal data is a relevant consideration in a stumpage determination.

Turning to the interpretation of the Agreement, the Commission found that the Coordinator should have applied the apportioned

percentages in the Agreement to the updated cost estimates that Western provided with the appraisal data for CP 300.

Finally, the Commission found that the Coordinator exercised his discretion in an unreasonable manner in refusing to apply the updated cost estimates, which were the most accurate information available when Western submitted its appraisal data for CP 300, and in refusing to amend the Agreement. His exercise of discretion 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. Accordingly, the Commission reversed the stumpage determinations, and remitted the matter back to the Coordinator with directions to re-determine the stumpage rates for CP 300 using the updated cost estimates for CP 300, and to amend the dollar amount in the Agreement accordingly.

The Province appealed the Commission's decision to the BC Supreme Court. The Province raised four main issues in the appeal: (1) whether there was a reasonable apprehension of bias because the Commission member who decided the appeal is employed by a forest industry association and his work includes lobbying the government on forestry matters; (2) whether the Commission exceeded its jurisdiction in reviewing the Ministry's exercise of a contractual authority in relation to the Agreement; (3) if the Commission had jurisdiction to review the stumpage determinations, did it exceed its jurisdiction by failing to give deference to the Coordinator; and (4) whether the Commission erred in its interpretation the CAM, the Agreement, and the *Act*.

First, the BC Supreme Court addressed the standard of review that applied to the Commission's decision. The Court held that a standard of fairness, with no deference to the Commission, applies when considering the question of reasonable apprehension of bias. However, regarding the merits of the Commission's decision, including the Commission's interpretation of the Agreement, the CAM, and the *Act*, a standard of "reasonableness" applies. According to that standard, a decision is unreasonable if it is outside the range of acceptable or possible outcomes, and is indefensible in respect of the law and facts in the case.

Turning to the alleged apprehension of bias, the Court found that there was no reasonable apprehension of bias in the circumstances. The Court considered that most members of the Commission serve on a part-time basis and are not expected to give up their regular employment. The Court also considered that the pool of qualified potential members with the expertise to decide stumpage appeals is small, and consists of people who have worked in the forest industry or have close ties to the industry. The member in this case had been employed in the forest industry for decades. His employment in the industry was known to the Government when it recommended him for appointment to the Commission, and his work had long involved some form of lobbying for changes to forest practices in the Province. He had not lobbied for amendments to the CAM or the appraisal manual that applies to the Interior region, and there was no evidence that he had a closed mind regarding the relevant provisions of the CAM or the *Act* prior to the appeal.

Turning to the substantive issues, the Court held that the Commission had the jurisdiction to determine the issues raised by the appeal. In that regard, the Court agreed with the Commission that the Agreement is an integral part of the stumpage appraisal process in the CAM, and its terms are dictated by the CAM. The Court also found that the Commission properly characterized the decision not to amend the Agreement as an exercise of statutory discretion, which must be exercised in a reasonable manner.

However, the Court held that it was unreasonable for the Commission to find that the Agreement was unclear. The Court held that the Agreement indicated that the dollar amounts specified in it were to be included in the appraisals of the two cutting permits including CP 300, and this interpretation is consistent with the CAM. The Court also found that the underlying premise of the CAM and section 105.1 of the *Act* is that the licensee must submit accurate information only when input form the licensee is required, and the information must only be accurate based on the standards set by the CAM. The Court found that there was no need to recalculate the estimated road development costs stipulated in the Agreement when Western submitted the appraisal data for CP 300, because the dollar amounts in the Agreement were deemed by the Agreement to be consistent with the cost base in the CAM, and were to be included in the future appraisal of CP 300, whenever it was appraised. In addition, the Court held that the Commission should not have interpreted the accuracy requirement in section 105.1 of the *Act* to be a paramount and over-riding principle, because the CAM only permits reappraisals of stumpage rates in certain circumstances, and those circumstances did not apply in this case. Consequently, the Court concluded that the Commission's interpretation of section 105.1 of the *Act* was unreasonable, and as a consequence, the Commission erred when it concluded that the refusal to amend the Agreement was inconsistent with the object and purpose of section 105.1 and was an unreasonable exercise of discretion.

Accordingly, the allegation of an apprehension of bias was rejected but the appeal was allowed on the substantive grounds, and the matter was remitted back to the Commission for re-hearing. In the interim, the Court ordered a stay of the Commission's decision.

- On December 19, 2014, Western sought leave, from the BC Court of Appeal, to appeal the BC Supreme Court's decision. Also, the Province subsequently sought leave to cross-appeal on the issue of bias.

Court rejects industry groups' applications to intervene in stumpage case

Province of British Columbia v. Forest Appeals Commission and Western Forest Products Inc. (Coast Forest Products Association and Council of Forest Industries, Applicants)

Decision date: June 19, 2014

Court: BC Supreme Court; Justice Ehrcke

Citation: 2014 BCSC 2534

Before the BC Supreme Court heard and decided the matter in *Province of British Columbia v. Forest Appeals Commission and Western Forest Products Inc.* (2014 BCSC 2192), summarized above, the Coast Forest Products Association and the Council of Forest Industries (the "Applicants") applied to intervene in the Court proceedings. The Applicants are industry associations and their members are primarily forest companies. Western Forest Products Ltd. ("Western"), a respondent in the court proceeding, is a member of the Coast Forest Products Association. The Applicants sought intervener status so that they could make submissions on: (1) whether the Commission was obligated to defer to the discretionary decisions made by Ministry officials in the context of determining stumpage rates; and, (2) the interaction between the Coast Appraisal Manual, the professional obligations of forestry professionals, and section 105.1 of the *Forest Act* as it relates to the stumpage regime. They submitted that those issues were of general concern and importance to their members, and they could offer a unique and useful perspective to the Court.

The Province opposed the application for intervener status. Western and the Commission consented to the application.

- The Court found that the Applicants lacked a direct interest in the appeal. In addition, the Court found that although Western had not yet provided its submissions to the Court on the merits of the appeal, the Applicants' proposed submissions were similar to Western's previous submissions to the Commission. On that basis, the Court concluded that the Applicants' perspectives did not differ significantly from Western's, and their intervention would not bring a unique perspective to the proceedings. The Court dismissed the application to intervene.

British Columbia Court of Appeal

During this reporting period, the Court issued one judgment on an appeal of a BC Supreme Court Decision which upheld a decision of the Commission and dismissed the Province's appeal.

BC Court of Appeal upholds the Commission's decision regarding a wildfire

Province of British Columbia v. Canadian National Railway and the Forest Appeals Commission

Decision Date: May 1, 2014

Court: BC Court of Appeal; Justices Saunders, Groberman, and Willock

Citation: 2014 BCCA 171

The Province appealed a decision of the BC Supreme Court to the BC Court of Appeal. The BC Supreme Court upheld the Commission's decision in an appeal involving a cost recovery order under the *Wildfire Act*. The Commission's decision affected to the amount of money that the Canadian National Railway Company ("CNR") was obliged to pay the Province as a result of causing a wildfire that damaged and destroyed Crown timber. The central issue in the appeal to the courts was whether the Commission's interpretation of section 103(3) of the *Forest Act* was reasonable.

The wildfire started on July 29, 2005, when hot metal fragments from the brakes of a train operated by Canadian National Railway Company ("CNR") ignited dry vegetation. The wildfire damaged or destroyed 25,010.8 cubic metres of Crown timber. When the wildfire occurred, the Province had no plans to harvest the timber. In the fall of 2006, 19,809.79 cubic metres of salvageable timber was harvested. The Province received a total of $4,874.80 in stumpage revenue from the harvest of that 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 and 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 and destroyed Crown timber, which was 75 percent of the timber's stumpage value at the time of the fire, as calculated by the Manager. CNR appealed to the Commission.

The issue before the Commission was the date on which to value the timber, which would determine the stumpage rate used to calculate the timber's value. The Province argued that the value should be calculated using the stumpage rate that applied when the timber was damaged and destroyed by the fire, resulting in a value of $280,299.19. CNR

argued that the value should be calculated using the stumpage rate that applied from April 2006 to 2009, based on a future date (sometime after the fire) when the timber would have been scaled or harvested, resulting in a value of $6,252.50.

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 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, in this case, 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, the appropriate stumpage rate is the one that would likely have applied when the timber was cruised or scaled, sometime after the fire. 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. Accordingly, the Court upheld the Commission's decision.

On appeal to the Court of Appeal, the Province argued that the BC Supreme Court erred in declining to interfere with the Commission's interpretation of section 103(3) of the *Forest Act*, and that the Commission's interpretation was unreasonable and contrary to the plain meaning of the legislation. However, the Court of Appeal concluded that the Commission's interpretation was reasonable. The Court held that, given the regulatory processes surrounding the determination of stumpage rates, it was reasonable for the Commission to assess compensation from a future date when the timber could have been harvested, rather than at the time of the fire.

- Accordingly, the Province's appeal was dismissed, and the Commission's decision was upheld.

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 it if 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 natural resource officer under section 60 (1),

(b) an order of the minister under section 36 (1) or (2), 49 (1), 50 (1), 55, 60 (1), 62 (1) (b) or 63,

(c) a decision of the minister referred to in section 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) [Repealed 2014-7-62.]

(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.

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