Forest Appeals Commission

Annual Report

2015

BRITISH COLUMBIA

Forest Appeals Commission

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The Honourable Steve Thomson
Minister of Forests, Lands and Natural Resource Operations
Parliament Buildings
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Dear Ministers:

I respectfully submit herewith the Annual Report of the Forest Appeals Commission for the period of January 1, 2015 to December 31, 2015.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission

AR 2015

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Message from the Chair

I am pleased to submit the Annual Report of the Forest Appeals Commission for the 2015 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. A total of 18 appeals were active during the reporting period, and 14 of those appeals were closed by the year's end. Of the appeals that were closed, one was withdrawn and one was rejected, which meant that they did not require a hearing.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 2015 involved complex legal and factual issues of significant interest to the public, the forest industry and the Government. Nine of the appeals involved the Ministry's calculation of stumpage rates. Stumpage is a fee paid by the industry to the government when Crown timber is harvested. The calculation of stumpage rates is based on complex formulae and policies that have the force of law under the *Forest Act*. One appeal addressed whether a private landowner should be ordered to pay the government's costs to extinguish a wildfire that the landowner had caused. Three appeals involved the application of the "due diligence" defence in situations involving a human-caused wildfire, a logging road failure, and unauthorized harvesting of Crown timber.

During this reporting period, the BC Supreme Court issued one decision on an appeal filed by a corporate landowner and developer against a decision of the Commission. The BC Supreme Court upheld the Commission's interpretation of sections 2 and 3 of the *Private Managed Forest Land Regulation* regarding the payment of an "exit fee" when private managed forest land ceases to be used as managed forest land and becomes part of a residential subdivision development.

Legislative Changes

On December 17, 2015, a number of changes were made to the legislation that sets out the Commission's powers and procedures. Many of the powers and procedures that were previously found in other legislation are now found in the *Administrative Tribunals Act*. Although the changes to the legislation were extensive, the Commission's powers and procedures in respect of appeals generally remain the same. The only significant difference is that, under section 24 of the *Administrative Tribunals Act*, appellants must now file an appeal within 30 days

of the decision being appealed, whereas the previous time limit was three weeks, except for appeals filed by the Forest Practices Board which remain subject to different time limits.

Commission Membership

The Commission membership experienced some changes during 2015. I am very pleased to welcome one new member to the Commission who will complement the expertise and experience of the outstanding professionals on the Commission. That new member is Michael Tourigny. Five members' appointments concluded on December 31, 2015. Those members are O'Brian Blackall, Tony Fogarassy, R.G. (Bob) Holtby, Blair Lockhart, and Ken Long. I sincerely thank each of these distinguished members for their exemplary service as members of the Commission.

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, 2015 to December 31, 2015. 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 Act*.

Commission Membership

Commission members are appointed by the Lieutenant Governor in Council (Cabinet) under Part 2 of the *Administrative Tribunals Act*. 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 Part 2 of the *Administrative Tribunals Act*, as are other matters relating to the appointees. This Act also sets out the responsibilities of the Chair.

During the 2015 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	West Kelowna
James Hackett	Professional Forester	Nanaimo
Jeffrey Hand	Lawyer	Vancouver
R.G. (Bob) Holtby	Professional Agrologist	West Kelowna
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
Michael Tourigny (from Dec. 31, 2015)	Lawyer (Retired)	Vancouver
Gregory J. Tucker, Q.C.	Lawyer	Vancouver
Douglas VanDine	Professional Engineer	Victoria
Reid White	Professional Biologist/Engineer (Retired)	Dawson Creek
Norman E. Yates	Lawyer/Professional Forester	Penticton

Administrative Law

Administrative law is the law that governs public officials and tribunals that make decisions affecting the public'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 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 2015/2016 budget for the Forest Appeals Commission was $310,000.

The fiscal 2015/2016 budget for the shared office and staff was $1,459,000.

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 *Administrative Tribunals Act* as well as 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*, the *Wildfire Act*, and the *Range Act*. When an appeal is filed by someone other than the Board under those 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 *Forest and Range Practices Act* and the *Administrative Tribunals Act*. Previously, the Commission's mandate, and its basic powers and procedures, were set out in the *Forest Practices Code of British Columbia Act*. As of December 17, 2015, the mandate of the Commission, including the requirement to submit this Annual Report, is set out in Part 8.1 of the *Forest and Range Practices Act*. Part 8.1 also specifies which sections of the *Administrative Tribunals Act* apply to the Commission. In addition, Part 8.1 of the *Forest and Range Practices Act* sets out the requirement to notify and add the Forest Practices Board to certain appeals, the time limit for the Forest Practices Board to file an appeal, and the authority of the Commission to add parties to an appeal.

According to section 140.2 of the *Forest and Range Practices Act*, the following provisions in the *Administrative Tribunals Act* apply to the Commission: Parts 1, 2, 4 (except sections 22, 25, in some cases 33, and 34(1) and (2)), 6 (except sections 47.1 and 47.2), 7, 8, sections 59.1, 59.2, and Part 10 (except section 62). These provisions of the *Administrative Tribunals Act* establish the basic structure, powers and procedures of the Commission, as well as the Commission's ability to

make rules of practice and procedure, order document disclosure, summon witnesses, and order costs, among other things. Section 24 of the *Administrative Tribunals Act* establishes the time limit for filing an appeal, except for appeals filed by the Forest Practices Board. Additional procedural details, and the content requirements for this Annual Report, are provided in Parts 3 and 4 of the *Administrative Review and Appeal Procedure Regulation*, B.C. Reg. 12/04 (the "*Regulation*").

It is important to note that the powers and procedures in Part 8.1 of the *Forest and Range Practices Act*, the specified provisions of the *Administrative Tribunals Act*, and the *Regulation*, which generally apply to all appeals heard by the Commission, are subject to some exceptions in the specific Acts under which the Commission hears appeals. Most importantly, provisions in each of the *Forest and Range Practices Act*, the *Forest Act*, the *Private Managed Forest Land Act*, the *Range Act*, and the *Wildfire Act* specify what types of decisions may be appealed, who may file an appeal, whether parties or interveners may be added to an appeal, and the Commission's powers in deciding the merits of an appeal.

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, and has the power to create Rules of Practice and Procedure pursuant to section 11 of the *Administrative Tribunals Act*. These documents contain more details and information about the Commission's policies and procedures. These 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 Rules will be finalized and posted on the website in early 2016.

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 a 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 a 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, changes were made to the legislation that sets out the Commission's powers and procedures. These changes came into force on December 17, 2015, as part of a number of legislative changes made under the *Administrative Tribunals Statutes Amendment Act*, 2015, S.B.C. 2015, c. 10. As a result, certain sections of the *Administrative Tribunals Act* now apply to the Commission. Many of the Commission's powers and procedures that were previously provided in other legislation are now provided in that *Act*.

Specifically, Parts 1, 2, 3, 4 (except sections 22, 25, in some cases 33, and 34(1) and (2)), 6 (except sections 47.1 and 47.2), 7, 8, sections 59.1, 59.2, and Part 10 (except section 62) of the *Administrative Tribunals Act* now apply to the Commission pursuant to section 104.2 of the *Forest and Range Practices Act*. The appeal provisions in the *Forest Practice Code of British Columbia Act* have been repealed, and the appeal provisions in the *Forest and Range Practices Act*, *Forest Act*, *Private Managed Forest Land Act*, *Range Act*, and *Wildfire Act* have been either repealed and replaced, or amended. In addition, appeal provisions in the *Administrative Review and Appeal Procedure Regulation* and the *Private Managed Forest Land Regulation* have been amended. Although the changes to the legislative are extensive, the Commission's procedures and powers generally remain the same, with one key exception. Section 24 of the *Administrative Tribunals Act* now applies to the Commission, and it provides that appellants (other than the Forest Practices Board) must file an appeal within 30 days of the decision being appealed. The previous time limit for filing an appeal was three weeks. Appeals filed by the Forest Practices Board remain subject to different time limits, pursuant to section 140.4 the *Forest and Range Practices Act*.

It is important to note that these legislative changes did not affect who may file an appeal, what types of decisions may be appealed, whether parties or interveners may be added to an appeal, or the Commission's powers in deciding the merits of an appeal. Those matters are still addressed in each *Act* under which the Commission hears appeals.

As a result of the amendments, the Commission has some new powers under the *Administrative Tribunals Act* such as:

- the power to create rules of practice and procedure under section 11 of the *Administrative Tribunals Act*;
- the power to order a summary dismissal under section 31 of the *Administrative Tribunals Act*; and
- the authority to exclude the public from a hearing in certain circumstances, and/or to receive evidence in confidence (sections 41 and 42 of the *Administrative Tribunals Act*).

Evaluation and Recommendations

Under section 27 of the *Administrative Review and Appeal Procedure Regulation* and section 140.3(1)(b) and (c) of the *Forest and Range Practices Act*, 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 2015, a total of six new appeals were filed with the Commission. One appeal was filed under the *Forest Act*, two were filed under the *Forest and Range Practices Act*, and three were filed under the *Wildfire Act*. No new appeals were filed in 2015 under either the *Range Act* or the *Private Managed Forest Land Act*.

A total of 14 appeals were completed during 2015. In regard to those appeals, the Commission issued 12 final decisions. One appeal was withdrawn, and one appeal was rejected.

In addition to the 12 final decisions, the Commission issued 11 unpublished preliminary decision in 2015. That preliminary decision dealt with an application to hear the merits of an appeal based on oral submissions rather than written submissions.

Appeals	
Open Appeals at period start	12
Open Appeals at period end	4
Appeals filed	
Appeals filed under the *Forest and Range Practices Act*	2
Appeals filed under the *Forest Act*	1
Appeals filed under the *Private Managed Forest Land Act*	0
Appeals filed under the *Range Act*	0
Appeals filed under the *Wildfire Act*	3
Total appeals filed	**6**
Appeals Closed	
Withdrawn or abandoned	1
Final decisions on the merits	12
Consent orders	0
Rejected	1
Total appeals closed	**14**
Hearings held on the merits of appeals	
Oral hearings completed	2
Written hearings completed	0
Total hearings held on the merits of appeals*	**2**
Published decisions issued*	
Final decisions (excluding consent orders)	
Forest and Range Practices Act	1
Forest Act	9
Private Managed Forest Land Act	1
Range Act	0
Wildfire Act	1
Consent orders	
Forest and Range Practices Act	0
Forest Act	0
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	0
Total published decisions issued	**12**
Total unpublished decisions issued	**11**
Total decisions issued	**23**

Note:

* Hearings held and decisions issued in 2015 do not necessarily reflect the number of appeals filed in 2015.

Summaries of Decisions

January 1, 2015 ~ December 31, 2015

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.

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.

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*

Penalty confirmed for harvesting "old growth" timber from Crown land

2014-FRP-002(a) McBride Community Forest Corporation v. Government of British Columbia

Decision Date: June 1, 2015

Panel: Jeff A. Hand, Les Gyug, Howard Saunders

The McBride Community Forest Corporation ("McBride") appealed a determination of contravention and penalty issued by the District Manager (the "District Manager"), Prince George District, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"). McBride is a corporation wholly owned by the Village of McBride. In 2007, McBride entered into a long term (25-year) community forest agreement with the Province of BC, which granted McBride exclusive rights to harvest Crown timber on approximately 60,000 hectares in the Robson Valley. Under this agreement, McBride was required to manage the community forest in accordance with its forest stewardship plan ("FSP").

One of the ways that McBride harvests timber is through its Small Market Logger Program. Under that program, McBride issues contracts to local loggers, granting them the authority to harvest timber in a defined area within the community forest. McBride retains responsibility for forest management, but the small market logger is responsible for logging, transporting and marketing the timber. McBride receives a fee for each cubic metre of wood sold. In December 2010, a small market logger, Norm Goodell, requested that McBride allow him to harvest timber within the community forest. For this to occur, McBride was required to obtain a cutting authority for the specific area to be harvested, from the Ministry.

McBride's General Manager, a professional forester, prepared a site plan, which included a map that identified the boundaries of the proposed cutblock. The site plan and map also identified, amongst other things, the presence of an old-growth management area ("OGMA") adjacent to the cutblock. No harvesting was to occur within the OGMA, which formed the south western boundary of the cutblock. The site plan stated that "This block is consistent with the measures to retain biodiversity as stated in the FSP…."

In December 2010, the Ministry issued a cutting permit to McBride.

In March 2011, McBride entered into a contract with Mr. Goodell, allowing Mr. Goodell to cut and remove timber in the cutblock identified in the site plan. Mr. Goodell carried out harvesting from March 11 to 29, 2011.

On April 19, 2011, Ministry staff conducted a routine inspection of the cutblock, and found no evidence of boundary marking. After reviewing maps and GPS data, and conducting additional site visits, Ministry staff concluded that Mr. Goodell had cut and removed 176 trees from an area of 0.9 hectares within the OGMA. Ministry staff also conducted an investigation to determine what steps McBride

had taken to ensure that Mr. Goodell only harvested within the cutblock boundaries.

Following an opportunity to be heard, the District Manager determined that McBride, as the holder of the community forest agreement and the cutting permit, had contravened sections 52(1) and 52(3) of the *Forest and Range Practices Act* (the "*Act*") as a result of the unauthorized cutting and removal of timber from Crown land by Mr. Goodell. Also, given that the timber was within the OGMA, the District Manager found that McBride had contravened section 21(1) of the *Act* by not ensuring that the intended results of its FSP were achieved. The District Manager further found that McBride had failed to exercise due diligence to prevent the contraventions from occurring. The District Manager levied a penalty of $3,000, and issued a remediation order to McBride.

McBride appealed the determination to the Commission on the basis that:

- it exercised due diligence, and could not have reasonably anticipated the "reckless and willful acts" of Mr. Goodell;
- the Ministry did not provide sufficient evidence that section 21(1) of *Act* was contravened;
- determining a contravention of both 52(1) and 52(3) of *Act* was an unnecessary "piling on of charges"; and
- the District Manager made several errors and assumptions, and any penalty is not in the public interest.

McBride requested that the Commission rescind the determination, or alternatively, vary the penalty amount. McBride did not challenge the remediation order.

First, the Commission considered whether McBride contravened sections 21(1), 52(1) and 52(3) of the *Act*. McBride argued that it was impossible to precisely determine the boundary of the OGMA because the scale of the map (1:30,000) appended to its FSP is too small to allow proper boundary identification. Based on that map, McBride argued that an unauthorized harvest into the OGMA could not be confirmed. However, the Commission found that the intent of McBride's FSP is to maintain the OGMA, and McBride was obligated to take reasonable steps to identify the OGMA boundary. Further, when McBride prepared its site plan map to obtain a cutting permit, it did so at a detailed scale of 1:10,000 which clearly identifies the OGMA boundary. Having prepared the site plan map with that degree of precision, McBride could not now say that the OGMA boundary was unidentifiable. In addition, the Ministry's evidence confirmed that the boundaries of the unauthorized harvesting area were identified with simple GPS coordinates taken on the ground and transferred to the site plan map. Based on the evidence, the Commission found that 176 trees were cut and removed from the OGMA, which constitutes the cutting and removal of timber in contravention of sections 52(1) and (3) of the *Act*. The evidence also established that McBride failed to maintain the OGMA contrary to the intended result of its FSP, in contravention of section 21(1) of *Act*.

Next, the Commission considered whether McBride exercised due diligence to prevent the contraventions from occurring. The test for due diligence requires McBride to establish that it took all reasonable steps to avoid the contravention. This assessment may include consideration of a contractor's behaviour and the foreseeability of the contravention itself. The evidence established that McBride identified the OGMA in the site plan and site plan map, but did not mark the OGMA boundary on site, nor did it instruct Mr. Goodell to do so. McBride's staff had one meeting with Mr. Goodell before work commenced, but that meeting was not on site, and the OGMA boundary was not discussed in any

detail. McBride's staff did not attend the site before Mr. Goodall commenced work. Mr. Goodell testified that he was aware of the presence of the OGMA from the site plan map. He estimated the boundary distance using the map scale, and then estimated the distance on site. Although McBride argued that the boundary should have been visibly discernable due to a difference in stand type between the OGMA and the area to be harvested, the Commission found that there was no discernable difference in stand type between those areas.

Based on the evidence, the Commission found that McBride's confidence in Mr. Goodell's ability to determine the boundary, based on the fact that McBride had no previous problems with Mr. Goodell, was McBride's only means of avoiding the unauthorized harvesting. There was minimal contact between McBride and Mr. Goodell, and no supervision of his work. The Commission found that this, combined with not marking the boundary, amounted to a lack of due diligence.

Next, the Commission considered whether the penalty was appropriate in the circumstances. McBride submitted that the penalty was not in the public interest, because McBride is a non-profit corporation set up to fund community projects in the Village of McBride. However, the Commission found that the benefits that McBride, and the Village of McBride, receive from McBride's harvesting operations cannot be at the expense of the public interest in responsible harvesting and protecting Crown resources including the OGMA. After considering the factors listed in section 71(5) of the *Act*, the Commission found that the penalty was reasonable in the circumstances.

Finally, the Commission considered whether it was appropriate to find that McBride had contravened both sections 52(1) and 52(3) of the *Act*. Based on the common law rule against multiple convictions, also known as "double jeopardy," McBride argued that it should not have been found to have both cut and removed Crown timber without authorization. Specifically, *R. v. Kienapple*, [1975] 1 S.C.R. 729, established that, in criminal matters, a person should not be found guilty of two offences arising out of one crime. However, the Commission noted that it has previously held that the *Kienapple* principle does not apply to administrative penalties under forestry legislation. The Commission also found that, in the present case, one penalty was imposed for the contraventions, and therefore, the penalty resulted in no unfairness to McBride.

- Accordingly, the appeal was dismissed.

Appeals under the *Forest Act*

When is a log dump "unsuitable" for the transport of logs?

Canadian Forest Products Ltd. v. Government of British Columbia 2014-FA-001(a), 002(a), 003(a), 004(a), 005(a), 006(a), 007(a), 008(a), 009(a)

Decision Date: September 8, 2015

Panel: Jeffrey Hand, Maureen Baird, Q.C., Howard Saunders

Canadian Forest Products Ltd. ("Canfor") appealed nine stumpage rate determinations issued between December 20, 2013, and June 13, 2014 by an employee of the Ministry. The stumpage rates applied to timber harvested by Canfor under cutting permits ("CPs") issued under a forest licence. Stumpage is a fee paid to the government for harvesting Crown timber. In determining stumpage rates for timber harvested in the Interior Region, the Ministry must apply the policies and procedures set out in the Interior Appraisal Manual (the "IAM"). These appeals

raised issues regarding the proper interpretation and application of provisions in the IAM that address the log transportation costs that applied in calculating stumpage rates for the CPs. Specifically, the issue was whether the stumpage rates should be calculated based on "lake tow" (i.e., log transport on a vessel or by boom and tow) as the primary log transportation, or alternatively, based on truck haul as the primary log transportation. Lake tow is a lower cost transportation method than truck haul, and therefore, lake tow produces a higher stumpage rate.

Canfor operates a sawmill in Mackenzie, not far from the eastern shore of Williston Lake. The CPs authorize Canfor to harvest Crown timber in areas located five to fifteen kilometres from the western shore of Williston Lake. The Manson log dump, which is within Canfor's operating area, has been an access point to Williston Lake for log transport since the 1970's. In 2004, Canfor acquired the Williston Transporter (the "Barge"), a self-propelled barge built in 1995, which can carry timber across Williston Lake year-round. The Barge has operated out of many log dump sites around Williston Lake, including the Manson log dump. Canfor operated the Barge continuously between 2005 and 2007. In the fall of 2007, logging and sawmill operations in the Mackenzie area ceased for economic reasons, and Canfor anchored the Barge. Canfor intended to reactivate the Barge in the future, and conducted basic maintenance on it while it was anchored. Meanwhile, Canfor maintained its licence of occupation over Crown land at the Mason log dump, but performed no maintenance there.

In or about 2009, Canfor resumed harvesting in areas around Mackenzie that were within short truck hauling distances to the sawmill. In 2012, Canfor began to consider harvesting in more distant areas, including an area adjacent to the Manson log dump.

In 2013, Canfor applied for the CPs. The appraisal data that Canfor submitted to the Ministry with its applications for the CPs indicated truck haul as the log transportation method all the way from the CP areas to the sawmill in Mackenzie. In 2013, Canfor also started planning to put the Barge back in service by September 2015.

In October 2013, Canfor formally requested that the District Manager of the Mackenzie District deem the Manson log dump to be "unsuitable" as a log transportation route, pursuant to section 3.1(3) of the IAM. Section 3.1(1) of the IAM provided that the licensee "must submit an appraisal data submission that is capable of being used by the person who determines the stumpage rate… in a manner that will produce the highest stumpage rate." Thus, regardless of the licensee's actual method of transporting logs, the method that produced the highest stumpage rate would be applied when determining the stumpage rate. However, section 3.1(3) of the IAM contained an exception, whereby the District Manager could determine that a transportation route was "unsuitable" based on four criteria. In this case, lake tow would produce the highest stumpage rate, but Canfor submitted that truck haul should be the primary transportation method because the Manson log dump was unsuitable until either the Barge was operational or suitable infrastructure for towing was installed.

In November 2013, the District Manager decided that the Manson log dump was suitable as a log transportation route involving lake tow, for the purposes of determining stumpage rates for the CPs. The Ministry directed Canfor to re-submit its appraisal data based on truck haul as the log transportation method from the CPs to the Manson log dump, and lake tow as the log transportation method from the Manson log dump across Williston Lake. Canfor complied with that request, but objected to the District Manager's decision on suitability. The

Ministry determined the stumpage rates for the CPs based on Canfor's re-submitted data, with lake tow as the log transportation method from the log dump across Williston Lake.

In 2014, Canfor appealed the stumpage determinations on the basis that transport of the logs by water via the Manson log dump is "unsuitable" within the meaning of section 3.1(3) of the IAM. Canfor submitted that, in order for the Manson log dump to be suitable, it must actually be ready for use, and it was not ready for use when the stumpage determinations were issued.

Meanwhile, during 2014, Canfor retained an engineer to advise it on the work necessary to bring the Manson log dump back into service for use by the Barge. The engineer's recommendations included re-grading the ramps to the foreshore that had eroded, installing rock along the shoreline to prevent erosion, and expanding the site's log storage area. In January 2015, Canfor obtained the permits necessary to resume using the Manson log dump. During 2015, Canfor conducted work at the log dump, with the intention of beginning to use the site with the Barge in September 2015.

The nine appeals were heard together. In deciding the appeals, the Commission considered several issues. The main issue was whether the Manson log dump was unsuitable for water transportation when the stumpage determinations were made, pursuant to section 3.1(3) of the IAM. The other issues included whether the District Manager's decision regarding the suitability of the Manson log dump was inconsistent with the object and purposes of the IAM.

The Commission rejected Canfor's argument that a log dump must be ready for use in order to be suitable. Rather, the Commission found that suitability is achieved if the site possesses physical characteristics that make it capable of being put into use without extraordinary effort or expense. Based on the evidence, the Commission found that the Manson log dump still possessed the physical features that made it suitable as a log transportation route in the past, including roads connecting it to surrounding harvesting areas, a scale for logging trucks, a log storage area, ramps leading to an area capable of use by loading machines, and water depth and a foreshore configured to allow the Barge to access the foreshore. The Commission also found that, despite some erosion, the overall physical condition of the site in 2013/2014 was unchanged compared to when it had been in use. Although there had been erosion since the site was last used in 2007, this erosion was no different in character than the erosion that occurred when the site was in use, even if the cumulative effect was greater due to the deferral of maintenance. Canfor did not need to take extraordinary measures to return the site to operating condition. Most of the work that Canfor's engineer had recommended was for the purpose of making the site more efficient, and not to make the site safe for use.

The Commission also found that the availability of the Barge was irrelevant to determining the suitability of the Manson log dump as a log transportation route, because the criteria in section 3.1(3) of the IAM focus on the physical characteristics of the site. Canfor's use of the Manson log dump based on the availability of the Barge was a business decision. Moreover, the site was historically used for boom and tow operations, and no extraordinary measures would need to be taken to bring the site into use for that activity. Therefore, the site was also suitable for that form of water transport.

In addition, the Commission held that the District Manager's decision regarding the suitability of the Manson log dump was consistent with the language in section 3.1 of the IAM, and the market pricing system which underlies the object and purposes of the IAM. In that regard, the Commission found that the parties' expert witnesses agreed that the

purpose of the market pricing system is to resemble, but not mirror, the actual operations of licensees in similar tracts of timber. The Commission held that it would be inconsistent with the market pricing system to determine stumpage rates based on the actual operations that a particular licensee chooses to use at a particular location.

- Accordingly, the appeals were dismissed.

Appeals under the *Private Managed Forest Land Act*

Logging road failure results in damage to fish stream

2014-PMF-001(a) Erie Creek Forest Reserve Ltd. v. Private Managed Forest Land Council

Decision Date: May 11, 2015

Panel: James Hackett

Erie Creek Forest Reserve Ltd. ("Erie Creek Ltd.") appealed a reconsideration decision issued by the Private Managed Forest Land Council (the "Council"), which confirmed a previous determination of contravention and penalty issued by the Council. The Council determined that Erie Creek Ltd. had contravened section 21(3) of the *Private Managed Forest Land Council Regulation* (the "*Regulation*") by failing to maintain the structural integrity of a road prism and failing to ensure the proper functioning of the road's drainage systems, resulting in a material adverse effect on fish habitat. Part of a logging road that was used and maintained by Erie Creek Ltd. failed during the spring of 2012. Two slides occurred on the road within 100 metres of one another, causing damage to the road surface and depositing slide debris into a fish stream below the road. The Council levied an administrative penalty of $7,500 against Erie Creek Ltd, and ordered it to conduct remedial work.

On appeal, Erie Creek Ltd. submitted that the defences of due diligence and mistake of fact in section 29 of the *Private Managed Forest Land Act* (the "*Act*") applied to absolve Erie Creek Ltd. from liability for the contravention, and that the administrative penalty was inconsistent with the factors that must be considered under section 26(5) of the *Act*.

The Commission first considered whether Erie Creek Ltd. had established that either the defence of mistake of fact or the defence of due diligence applied in the circumstances. Based on the evidence, the Commission found that neither of those defences applied.

For the mistake of fact defence to succeed, Erie Creek Ltd. had to prove, on a balance of probabilities, that it reasonably and honestly believed in the existence of facts that, if true, would establish that it did not contravene section 21 of the *Regulation*. The Commission found that Erie Creek Ltd. may have honestly believed that the road was stable after it was repaired in early 2011 in accordance with an engineer's design, but that belief was not a reasonable one. The Commission found that Erie Creek Ltd. knew, or should have known, that there was a high risk of slope failure in the road section where the slides originated, and that a slope failure could have a material adverse effect on the fish stream below the road. Specifically, Erie Creek Ltd. was aware that the road was built many years ago when road-building standards were lower than modern standards, the road has steep side slopes, and the road is in an area of high precipitation. Also, in early 2011, Erie Creek Ltd. repaired the road within a one kilometre stretch of road where the slides occurred, including at the point where one of the 2012 slides originated. The repairs were undertaken because chronic erosion made the road too narrow for logging trucks. The Commission held that, although precipitation during spring 2012 was higher than normal, it was not unprecedented, and there

was no evidence that Erie Creek Ltd. had turned its mind to whether the road would be able to withstand foreseeable high precipitation events during the winter/spring, when Erie Creek Ltd.'s practice was to leave the road unmonitored. Therefore, Erie Creek Ltd. failed to establish that the mistake of fact defence applied.

For the defence of due diligence to succeed, Erie Creek Ltd. had to prove, on a balance of probabilities, that it took all reasonable steps to avoid the contravention. In particular, it had to show that it had a system in place to prevent the contravention from occurring, and that it took reasonable steps to ensure the effective operation of that system. The Commission found that Erie Creek Ltd. failed to establish that it had a system in place for assessing the risk of material harm to fish habitat from a failure of the road prism or the road's drainage systems, and determining whether action should be taken to mitigate those risks. Erie Creek Ltd. provided no evidence that it considered whether measures should be taken with the road prism or drainage structures to avoid a material adverse effect on fish habitat that could foreseeably arise during the winter/spring, when Erie Creek Ltd. left the road unmonitored. The road repairs conducted in early 2011 were not part of a system designed to minimize or prevent negative impacts on the environment caused by inadequate maintenance of the road. Therefore, the defence of due diligence also did not apply.

Given that neither of the defences applied, the Commission considered whether the administrative penalty was appropriate based on the facts and the factors that must be considered under section 26(5) of the *Act*. Based on those considerations, and given that the maximum penalty for a worst case scenario is $25,000, the Commission found that the penalty should be reduced to $3,000. In particular, the Commission found that: Erie Creek Ltd. reported the slides, cooperated with the Council's investigation, and took steps to repair the damage before it was ordered to do so; Erie Creek Ltd. had no previous contraventions; the contravention was not deliberate or continuous; Erie Creek Ltd. received no economic benefit from the contravention; and, although there was a permanent loss of fish habitat, the lost habitat was of marginal importance to fish.

- The appeal was dismissed, except for the reduction of the administrative penalty.

Appeals under the *Range Act*

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

Appeals under the *Wildfire Act*

Fire escapes from burn piles and causes wildfire

2013-WFA-003(a) Frank Schlichting v. Government of British Columbia

Decision Date: April 8, 2015

Panel: Gabriella Lang

Frank Schlichting appealed a decision issued by the Manager of the Ministry's Cariboo Fire Centre (the "Manager"). The Manager found that Mr. Schlichting had contravened section 6(1) of the *Wildfire Act* and sections 22(1)(b),(d), (e)(i)(ii) and (f)(i) and (iii) of the *Wildfire Regulation* by burning debris 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 onto Crown land. The resulting wildfire was fought by Ministry firefighters. The Manager issued an administrative penalty order of $1,000 as well as a cost recovery order under sections

27(1)(a) and (b) of the *Wildfire Act*, respectively. The latter required Mr. Schlichting to pay $7,524.62 for the Ministry's fire control costs.

Mr. Schlichting had a provincial burn registration number, active from October 14, 2011, giving him permission to burn debris piles and windrows created from land clearing activities (industrial activities).

Mr. Schlichting appealed the decision on numerous grounds, including that the Manager did not have all the facts; there was not full disclosure of all the evidence from Ministry staff; that he did not violate any of the provisions of section 22(1) of the *Wildfire Regulation*; that the Manager erred in applying section 27 of the *Wildfire Act* and a Ministry policy that addressed levying cost recovery orders against land owners that cause wildfires; and that the Manager breached procedural fairness in that he did not have an opportunity to subpoena or cross-examine witnesses from the Ministry to add credibility to his written submissions to the Manager.

The Commission held that it need not address at length, Mr. Schlichting's submissions alleging procedural fairness, and other breaches of natural justice by the Manager, because the appeal hearing cured any procedural defects in the proceedings conducted by the Manager. Moreover, prior to the hearing before the Commission, Mr. Schlichting received full disclosure of the relevant Ministry documents that were not previously disclosed to him.

In addition, the Commission found that Mr. Schlichting 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 the burn piles and smoldering windrows given the conditions of the day and on the days leading up to the May 8, 2012 incident, and especially the weather conditions and the fire danger rating on that day. In addition, he failed to establish adequate fuel breaks around the burn piles and windrows, as the evidence showed that the fuels adjacent to the burn area consisted of large stands of timber that were susceptible to a spreading fire. Based on the evidence, the Commission found there were no factors that would mitigate against ordering Mr. Schlichting to pay the full amount of the Ministry's fire control costs.

- Accordingly, the appeal was dismissed.

Appeals of Commission Decisions to the Courts

January 1, 2015 ~ December 31, 2015

British Columbia Supreme Court

Oceanview Golf Resort & Spa Ltd. v. Private Managed Forest Land Council and Forest Appeals Commission 2015 BCSC 2371

Decision Date: December 16, 2015
Court: B.C.S.C., Justice Thompson
Citation: 2015 BCSC 2371

Oceanview Golf Resort & Spa Ltd. ("Oceanview") appealed a decision of the Commission to the BC Supreme Court. The Commission's decision concerned the levying of an exit fee by the Private Managed Forest Land Council (the "Council") on five contiguous parcels of land (the "Lands") owned by Oceanview. The Lands are in the midst of a residential subdivision development process within the City of Nanaimo. The Lands were previously private managed forest land.

The "managed forest" class of property is established under the *Assessment Act*. Land classified as managed forest is taxed at a lower rate than residential land. Owners can enter and exit their land from the managed forest class by providing notice to the Council and meeting certain requirements under the under the *Private Managed Forest Land Act* (the "*PMFL Act*") and its regulations. One of the requirements for entry is to submit a forest management commitment to the Council for approval. When private managed forest land is sold, the land will be declassified under the *Assessment Act* if the buyer fails to submit a new management commitment to the Council. When land is declassified, the buyer may be liable under the *PMFL Act* and *Private Managed Forest Land Regulation* (the "*Regulation*") to pay an exit fee, if the land was managed forest land for less than 15 consecutive years and none of the exemptions in section 3 of the *Regulation* apply. The Council calculates the exit fee, which is paid by the land owner to the local municipal government. The exit fee results in the local government recapturing part of the property taxes that were avoided while the land was classified as managed forest land.

In 2005, Oceanview's corporate predecessor, Cable Bay Lands Inc. ("Cable Bay"), purchased the Lands. At that time, the Lands were classified as managed forest. When Cable Bay purchased the Lands, it failed to submit a management commitment to the Council. As a result, the Lands were declassified as managed forest land.

In 2007, the Lands were reclassified as managed forest land after Cable Bay submitted a management commitment to the Council. In January 2008, parcels 3 and 4 of the Lands were declassified as managed forest land after Cable Bay requested their withdrawal. Cable Bay paid an exit fee to Nanaimo for the withdrawal. In January 2010, at Cable Bay's

request, parcels 3 and 4 were reclassified as managed forest land.

Meanwhile, in September 2008, Nanaimo passed a new Official Community Plan ("OCP") Bylaw that included designation of the Lands as a resort centre, which is the first phase in a four-phase development process. In February 2010, Nanaimo approved a Master Plan for the proposed development, which is the second phase in the development process. The Master Plan designates portions of the Lands for future use as park land, right of ways, and public utilities.

In 2011, at Oceanview's request, the Lands were declassified as managed forest land. Subsequently, the Council notified Oceanview that the exit fee was $312,957.20. Oceanview requested that the Council reconsider the exit fee. The Council upheld its previous decision regarding the exit fee.

Oceanview appealed the Council's decision to the Commission. Oceanview requested that the Commission rescind the Council's decision and exempt all of the Lands from the exit fee; or alternatively, recalculate the exit fee based on exemptions under the Regulation for the areas designated for future use as parks, public utilities and right of ways.

In *Oceanview Golf Resort & Spa Ltd. v. Private Manager Forest Land Council* (Decision No. 2012-PMF-001(a), June 22, 2012), the Commission held that when the Lands were declassified in 2011, they had not been classified as managed forest land for more than 15 consecutive years, and therefore, they were not exempt from the exit fee under section 2(5) of the Regulation. In addition, the Commission held that section 2(1) of the Regulation requires the exit fee to be determined when land is declassified, rather than at some future date when the development process is complete. The Commission also found that delaying the determination of the exit fee would be contrary to the statutory scheme, which encourages owners of private forest land to manage their land for forestry over the long term in return for a lower tax rate.

The Commission also held that, when the Lands were declassified in 2011, no portion of the Lands fell within the exemptions in sections 3(1)(a) or (c) of the *Regulation*, which states that exemptions apply to declassified land that "is" gifted to a government or "is" subject to a right of way or easement. Consequently, the designations in the Master Plan should not be taken as certainties upon which exemptions from the exit fees may rest. Accordingly, the Commission dismissed the appeal.

Oceanview appealed the Commission's decision to the BC Supreme Court, on the basis that the Commission erred in finding: (1) that section 2(1) of the *Regulation* required the Council to determine the exit fee when the Lands were declassified, rather than upon completion of the development process with respect to the Lands; and (2) that Oceanview is not entitled to an exemption from the exit fee under section 3(1) of the *Regulation* to the extent that the Lands will be gifted to the Nanaimo or subject to rights of way or easements.

First, the BC Supreme Court addressed the standard of review that applied to the Commission's decision. The Court found that forestry practices are central to the Commission's function, and the *PMFL Act* and its regulations are intended to promote certain forestry practices on private land. The exit fees and exemption provisions are a central part of this scheme. The Council is empowered to make exit fee and exemption decisions, and the Commission, as an appeal body, has particular familiarity with the legislation delineating the Council's functions. Consequently, the Court applied a standard of "reasonableness" in reviewing the Commission's decision. This meant that Oceanview had the onus of establishing that the Commission's interpretation of the *Regulation* fell outside the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

Turning to the statutory interpretation issues, the Court found that the Commission's interpretation of the *Regulation* was reasonable. The Court held that the words in section 2(1) of the *Regulation* obligate the Council to determine the exit fee when managed forest land is declassified. Although one of the objects of the exit fee may be to discourage the program being used as a temporary property tax shelter, as asserted by Oceanview, this narrowly stated purpose is not inconsistent with the Commission's more broadly expressed object of the exit fee: to promote the continued inclusion of property in the private managed forests land program. The Court found that the prompt imposition of an exit fee upon declassification tended to support this broader purpose. Regarding section 3(1) of the *Regulation*, the Court held that the grammatical and ordinary sense of the word "is" in that section could not be stretched to encompass what will be. It was not unreasonable for the Commission to hold that the rights of way or alleged gift did not exist at the time of the Council's exit fee determination, and therefore, no exemption was applicable under section 3(1). To construe the phrase "is subject to" as meaning "is or will be subject to" or "is or may in the future be subject to" would be taking impermissible liberties with the clear language of section 3(1) of the *Regulation*.

In addition, the Court concluded that, even if it was wrong regarding the proper standard of review, and the less deferential standard of "correctness" should apply, the Commission's interpretation of sections 2(1) and 3(1) of the Regulation were correct and the Commission correctly held that Oceanview was not entitled to an exit fee exemption.

- Accordingly, the Court dismissed Oceanview's appeal, and upheld the Commission's decision.

British Columbia Court of Appeal

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

Supreme Court of Canada

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

APPENDIX I

Legislation and Regulations

Reproduced below are the sections of the *Forest and Range Practices Act*, and the *Administrative Review and Appeal Procedure Regulation* which establish the Commission and set out some 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*, the *Wildfire Act*, and the *Private Managed Forest Land Act*. Also included is the *Private Managed Forest Land Regulation*.

Finally, the applicable provisions of the *Administrative Tribunals Act* are included. The applicable provisions of that Act are set out in section 83.1 and Part 8.1 of the *Forest and Range Practices Act*.

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 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) The board, if it so requests, has standing to be a party 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) [Repealed 2015-10-85.]

Application of *Administrative Tribunals Act* to appeals under this Act

83.1 In addition to the provisions of the *Administrative Tribunals Act* incorporated under Part 8.1 of this Act, section 33 of that Act applies to appeals under sections 82 and 83 of this Act.

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) and (4) [Repealed 2015-10-85.]

Part 8.1 – Forest Appeals Commission

Forest Appeals Commission continued

140.1 (1) The Forest Appeals Commission is continued.

(2) The commission is to hear appeals under

(a) section 82 or 83, or

(b) the *Forest Act*, the *Private Managed Forest Land Act*, the *Range Act* or the *Wildfire Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.

(3) 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.

Application of *Administrative Tribunals Act*

140.2 The following provisions of the *Administrative Tribunals Act* apply to the commission:

(a) Part 1 *[Interpretation and Application]*;

(b) Part 2 *[Appointments]*;

(c) Part 3 *[Clustering]*;

(d) Part 4 *[Practice and Procedure]*, except the following:

(i) section 22 *[notice of appeal (inclusive of prescribed fee)]*;

(ii) section 25 *[appeal does not operate as stay]*;

(iii) section 33 *[interveners]*;

(iv) section 34 (1) and (2) *[party power to compel witnesses and require disclosure]*;

(e) Part 6 *[Costs and Sanctions]*, except sections 47.1 *[security for costs]* and 47.2 *[government and agents of government]*;

(f) Part 7 *[Decisions]*;

(g) Part 8 *[Immunities]*;

(h) section 59.1 *[surveys]*;

(i) section 59.2 *[reporting]*;

(j) Part 10 *[Miscellaneous]*, except section 62 *[application of Act to BC Review Board]*.

Mandate of commission

140.3 (1) In accordance with the regulations, the commission must

(a) hear appeals under this Act, the *Forest Act*, the *Private Managed Forest Land Act*, the *Range Act* or the *Wildfire Act*,

(b) provide the minister with an annual evaluation of the manner in which reviews and appeals under this Act, the *Forest Act*, the *Private Managed Forest Land Act*, the *Range Act* and the *Wildfire Act* are functioning and identify problems that may have arisen under the provisions of those Acts,

(c) make recommendations to the minister annually, and at other times it considers appropriate, concerning the need for amendments to this Act, the *Forest Act*, the *Private Managed Forest Land Act*, the *Range Act* and the *Wildfire Act* and related regulations respecting reviews and appeals, and

(d) perform other functions required by the regulations.

(2) The chair must give to the minister an annual report concerning the commission's activities.

(3) The minister must promptly lay the report before the Legislative Assembly if it is in session or, if it is not in session when the report is submitted, file the report with the Clerk of the Legislative Assembly.

Time for appeal by board

140.4 (1) If the board may appeal a decision, order or determination, the board must do so no later than 60 days after the latest of the following to occur:

(a) the original decision, order or determination;

(b) any correction of the original decision, order or determination;

(c) any review of the original decision, order or determination.

(2) The board may apply for an order under section 84 (2) no later than 60 days after the

period prescribed for section 83 (2) (b) has elapsed.

Persons and bodies entitled to notice and to be parties to appeal

140.5 (1) In this section, **"minister"** means the minister responsible for the administration of the section of the Act under which the decision, order or determination giving rise to an appeal was made.

(2) On receipt of a notice of appeal, the commission must give a copy of the notice of appeal to the minister.

(3) On receipt of a notice of appeal in which the board has standing, the commission must give a copy of the notice,

(a) if a person other than the board delivered the notice, to the board, or

(b) if the board delivered the notice,

(i) to the person who is the subject of the determination, or

(ii) for an appeal of a failure to make a determination, to the person who would be subject to the determination, if made.

(4) The following are parties to an appeal:

(a) the government;

(b) the board, if it has standing and so requests;

(c) the person who is the subject of the determination or would be the subject of the determination, if made.

(5) 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.

Appeal by new hearing

140.6 The commission may conduct an appeal by way of a new hearing.

Appeal to court

140.7 (1) A party to an appeal, or the minister, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) An appeal under subsection (1) must be filed no later than 3 weeks after the date the person filing the appeal receives the decision of the commission.

(3) On an appeal under subsection (1), a judge of the Supreme Court, on terms the judge considers appropriate, may order that all or part of the decision or order of the commission be stayed.

(4) 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.

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) This Division does not 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.

(6) For the purpose of subsection (2), a redetermination or variation of stumpage rates under section 105 (1) is considered to be a determination.

Part 8.1 of *Forest and Range Practices Act* applies

146.1 Part 8.1 of the *Forest and Range Practices Act* applies to an appeal referred to in section 146 (1) or (2) of this Act.

Parties to appeal

147 (1) If a determination, order or decision referred to in section 146 (1) or (2) is made, the determination, order or decision may be appealed by the person

(a) in respect of whom it is made, or

(b) in respect of whose agreement it is made.

(2) Only the appellant and the government are parties to the appeal.

Repealed

148 [Repealed 2015-10-79.]

Repealed

148.1 to 148.6 [Repealed 2015-10-79.]

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) and (5) [Repealed 2015-10-79.]

(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.

Repealed

149.1 [Repealed 2015-10-79.]

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.

Repealed

150 [Repealed 2015-10-79.]

Division 2.1 – Appeals of Contraventions

Forest and Range Practices Act applies to contravention appeals

150.1 Division 4 of Part 6 of the *Forest and Range Practices Act* applies to a correction, review or appeal under the *Forest and Range Practices Act* in respect of a contravention of this Act or the regulations under this Act.

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

167.3 (1) Divisions 1 to 3 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) [Repealed 2015-10-82.]

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) Part 8.1 of the *Forest and Range Practices Act* applies to an appeal under this Act.

Interveners and board standing in appeals

70.1 (1) In addition to the provisions of the *Administrative Tribunals Act* incorporated under Part 8.1 of the *Forest and Range Practices Act*, section 33 of the *Administrative Tribunals Act* applies to an appeal under this Act.

(2) The board has standing to be a party, if it so requests, to an appeal under this Act.

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) and (4) [Repealed 2015-10-160.]

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) [Repealed 2015-10-194.]

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) [Repealed 2015-10-194.]

Procedure on appeals

40.1 (1) Part 8.1 of the *Forest and Range Practices Act* applies to an appeal under this Act.

(2) In addition to the provisions of the *Administrative Tribunals Act* incorporated under Part 8.1 of the *Forest and Range Practices Act*, section 33 of the *Administrative Tribunals Act* applies to an appeal under this Act.

(3) The board has standing to be a party, if it so requests, to an appeal under this Act.

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) [Repealed 2015-10-196.]

(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

Repealed

16 [Repealed 2015-10-79.]

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.

Repealed

18 to 20 [Repealed 2015-10-79.]

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, and

(c) set the date, time and location of the hearing.

[am. 2015-10-79.]

Repealed

22 [Repealed 2015-10-79.]

Notice of additional parties and interveners

23 (1) If a party is added as a party to an appeal, the commission must promptly give written notice of the addition to the other parties and any interveners.

(2) If an intervener is invited or permitted to take part in the hearing of an appeal, the commission must promptly give written notice of the addition to the parties and any other interveners

(a) stating that the intervener has been invited or permitted to take part in the hearing, and

(b) specifying the extent to which the intervener will be permitted to participate.

Repealed

24 [Repealed 2015-10-79.]

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.

When commission must serve a decision in appeal under *Forest Act*

26 The commission must serve, on the appellant and the minister, a decision in an appeal of a determination under section 146 (2) (b) of the *Forest Act* no later than 42 days after the final day 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 140.3 (2) of the *Forest and Range Practices Act*.

(2) The annual report referred to in subsection (1) must contain

(a) the number of appeals initiated under the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act*, or the *Wildfire Act*, during the year,

(b) the number of appeals completed under the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range 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 140.3 (1) (b) of the *Forest and Range Practices Act*, and

(f) any recommendations referred to in section 140.3 (1) (c) of the *Forest and Range Practices Act*.

[am. 2015-10-79.]

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) [Repealed 2015-10-196.]

(4) The appellant and the council are parties to the appeal and may be represented by counsel.

(5) [Repealed 2015-10-196.]

(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)–(14) [Repealed 2015-10-196.]

(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, or

(c) [Repealed 2015-10-196.]

(d) make any other order the commission considers appropriate.

(16) [Repealed 2015-10-196.]

Application of Part 8.1 of *Forest and Range Practices Act*

33.1 Part 8.1 of the *Forest and Range Practices Act* applies to an appeal under this Act.

Repealed

34 [Repealed 2015-10-196.]

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

Repealed

9 [Repealed 2015-10-79.]

Deficiencies in notice of appeal

10 If the chair of the commission or the chair's delegate allows a period of time to correct deficiencies in an notice of appeal under section 23 of the *Administrative Tribunals Act*, the appeal may proceed only after the earlier of

(a) the expiry of the period specified for correcting the deficiencies, and

(b) the submission to the commission of further material remedying the deficiencies.

Administrative Tribunals Act

Part 1 – Interpretation and Application

Definitions

1 In this Act:

"applicant" includes an appellant, a claimant or a complainant;

"application" includes an appeal, a review or a complaint but excludes any interim or preliminary matter or an application to the court;

"appointing authority" means the person or the Lieutenant Governor in Council who, under another Act, has the power to appoint the chair, vice chair and members, or any of them, to the tribunal;

"court" means the Supreme Court;

"decision" includes a determination, an order or other decision;

"facilitated settlement process" means a process established under section 28 *[facilitated settlement]*;

"intervener" means a person who is permitted by the tribunal to participate as an intervener in an application;

"member" means a person appointed to the tribunal to which a provision of this Act applies;

"tribunal" means a tribunal to which some or all of the provisions of this Act are made applicable;

"tribunal's enabling Act" means the Act under which the tribunal is established or continued.

Application by incorporation

1.1 (1) The provisions of this Act do not operate, except as made applicable to a tribunal or other body by another enactment.

(2) If another enactment refers to a provision of that enactment or of a third enactment that incorporates a provision of this Act, the reference is deemed to include a reference to the incorporated provision of this Act.

(3) If another enactment incorporates section 1 *[definitions]* of this Act,

(a) the definitions in this Act apply to provisions of this Act incorporated by the other enactment, but

(b) unless a contrary intention appears in the other enactment, the definitions in this Act do not apply to a use of a term in the other enactment outside of the incorporated provisions.

(4) Subsection (1) does not apply to this section or to section 62 *[application of Act to BC Review Board]*.

Part 2 – Appointments

Chair's initial term and reappointment

2 (1) The chair of the tribunal may be appointed by the appointing authority, after a merit-based process, to hold office for an initial term of 3 to 5 years.

(2) The chair may be reappointed by the appointing authority, after a merit-based process, for additional terms of up to 5 years.

Member's initial term and reappointment

3 (1) A member, other than the chair, may be appointed by the appointing authority, after a merit-based and consultation with the chair, to hold office for an initial term of 2 to 4 years.

(2) A member may be reappointed by the appointing authority, after a merit-based process, as a member of the tribunal for additional terms of up to 5 years.

Appointment of acting chair

4 (1) If the chair expects to be absent or is absent, the chair may designate a vice chair as the acting chair for the period that the chair is absent.

(2) If the chair expects to be absent or is absent and there is no vice chair or if there is a vice chair and the vice chair is not willing or able to act as chair, the chair may designate a member as the acting chair for the period that the chair is absent.

(3) Despite subsections (1) and (2), if the chair is absent or incapacitated for an extended period of time, the appointing authority may designate a vice chair as the acting chair for the period that the chair is absent or incapacitated.

(4) Despite subsections (1) and (2), if the chair is absent or incapacitated for an extended period of time and there is no vice chair or if there is a vice chair and the vice chair is not willing or able to act as chair, the appointing authority may designate a member, or appoint an individual who would otherwise be qualified for appointment as a member or as the chair, as the acting chair for the period that the chair is absent or incapacitated.

(5) If the tribunal has no chair, the appointing authority may appoint an individual, who is a member, or appoint an individual who would otherwise be qualified for appointment as a member or as the chair, as the acting chair for a term of up to 6 months.

(6) In exceptional circumstances an individual may be appointed as the acting chair under subsection (5) for an additional term of up to 6 months.

(7) Subsections (3), (4) and (5) apply whether or not an individual is designated, under the Act under which the chair is appointed, to act on behalf of the chair.

(8) An individual designated or appointed under any of subsections (1) to (5) has all the powers and may perform all the duties of the chair.

Member's absence or incapacitation

5 (1) If a member is absent or incapacitated for an extended period of time or expects to be absent for an extended period of time, the appointing authority, after consultation with the chair, may appoint another person, who would otherwise be qualified for appointment as a member, to replace the member until the member returns to full duty or the member's term expires, whichever comes first.

(2) The appointment of a person to replace a member under subsection (1) is not affected by the member returning to less than full duty.

Member's temporary appointment

6 (1) If the tribunal requires additional members, the chair, after consultation with the minister responsible for the Act under which the tribunal is established, may appoint an individual, who would otherwise be qualified for appointment as a member, to be a member for up to 6 months.

(2) Under subsection (1), an individual may be appointed to the tribunal only twice in any 2 year period.

(3) An appointing authority may establish conditions and qualifications for appointments under subsection (1).

Powers after resignation or expiry of term

7 (1) If a member resigns or their appointment expires, the chair may authorize that individual to continue to exercise powers as a member of the tribunal in any proceeding over which that individual had jurisdiction immediately before the end of their term.

(2) An authorization under subsection (1) continues until a final decision in that proceeding is made.

(3) If an individual performs duties under subsection (1), section 10 applies.

Validity of tribunal acts

7.1 An act of the tribunal is not invalid because of a defect that is afterwards discovered in the appointment of a chair, vice chair or member.

Termination for cause

8 The appointing authority may terminate the appointment of the chair, a vice chair or a member for cause.

Responsibilities of the chair

9 The chair is responsible for the effective management and operation of the tribunal and the organization and allocation of work among its members.

Remuneration and benefits for members

10 (1) In accordance with general directives of the Treasury Board, members must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in carrying out their duties.

(2) In accordance with general directives of the Treasury Board, the minister responsible for the tribunal's enabling Act must set the remuneration for those members who are to receive remuneration.

Part 3 – Clustering

Designating clusters

10.1 (1) The Lieutenant Governor in Council may, by regulation, designate 2 or more tribunals as a cluster if, in the opinion of the Lieutenant Governor in Council, the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone.

(2) The Lieutenant Governor in Council may, by regulation, do one or both of the following:

(a) remove a tribunal from a cluster;

(b) add a tribunal to a cluster.

(3) If a tribunal is in a cluster, this Part applies to the tribunal despite any other enactment.

Executive chair

10.2 (1) The Lieutenant Governor in Council may, after a merit-based process, appoint an executive chair to be responsible for the effective management and operation of all of the tribunals in a cluster.

(2) The executive chair has all the powers, duties and immunities of the chair of each tribunal in the cluster under an enactment.

(3) To the extent necessary to give effect to subsection (2), and subject to this Part, if a tribunal is in a cluster, any reference to the chair of the tribunal in an enactment is deemed to be a reference to the executive chair of the cluster.

(4) The executive chair holds office for an initial term of 3 to 5 years.

(5) The executive chair may be reappointed by the Lieutenant Governor in Council, after a merit-based process, for additional terms of up to 5 years.

(6) The executive chair must have all the qualifications required of a chair of any tribunal in the cluster under any enactment.

(7) The executive chair is a member of each of the tribunals in the cluster for which he or she is responsible.

Tribunal chairs

10.3 (1) Subject to section 10.6 *[transition]*, the appointing authority may, after a merit-based process, appoint a tribunal chair for a tribunal in the cluster under the direction of the executive chair of that cluster.

(2) The term of appointment of a tribunal chair is the same as the term of appointment of the chair of the tribunal under the tribunal's enabling Act.

(3) A tribunal chair may be reappointed, after a merit-based process, on the same basis as the chair of the tribunal under the tribunal's enabling Act.

(4) The executive chair may delegate to a tribunal chair a power or duty of the chair of the tribunal under an enactment, including a power under the enactment to delegate a power or duty to another person.

(5) The tribunal chair has all the immunities of the chair of the tribunal under an enactment.

(6) The appointing authority may appoint the executive chair of a cluster to also be the tribunal chair of a tribunal in the cluster.

(7) The tribunal chair is a member of the tribunal for which he or she is appointed.

Alternate executive chair

10.4 (1) The Lieutenant Governor in Council may designate a member of a tribunal in a cluster, other than the executive chair of the cluster, as an alternate executive chair.

(2) If the executive chair of a cluster is absent or incapacitated, the alternate executive chair has all the powers and immunities and may perform all the duties of the executive chair.

Validity of tribunal acts

10.5 An act of a tribunal is not invalid because of a defect that is afterwards discovered in the appointment of an executive chair or tribunal chair.

Transition

10.6 (1) On the designation of a tribunal as part of a cluster under section 10.1 (1) or (2) (b) *[designating clusters]*, the individual appointed as chair under the tribunal's enabling Act is no longer appointed under the tribunal's enabling Act and is deemed to be appointed as tribunal chair under section 10.3 *[tribunal chairs]*.

(2) The term of the deemed appointment as tribunal chair under subsection (1) ends on the date the individual's appointment under the tribunal's enabling Act would have ended if the tribunal had not been designated as part of a cluster.

(3) On a tribunal in a cluster ceasing to be in any cluster, the individual appointed as tribunal chair is deemed to be the chair under the tribunal's enabling Act for the remainder of the term of his or her appointment as tribunal chair.

(4) On an individual appointed as tribunal chair being appointed as executive chair of a cluster, the individual remains the tribunal chair until his or her appointment as tribunal chair expires or is terminated.

(5) This section applies despite any other provision in this Part.

Part 4 – Practice and Procedure

General power to make rules respecting practice and procedure

11 (1) Subject to an enactment applicable to the tribunal, the tribunal has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it.

(2) Without limiting subsection (1), the tribunal may make rules as follows:

(a) respecting the holding of pre-hearing conferences, including confidential pre-hearing conferences, and requiring the parties and any interveners to attend a pre-hearing conference;

(b) respecting facilitated settlement processes;

(c) respecting receipt and disclosure of evidence, including but not limited to pre-hearing receipt and disclosure and pre-hearing examination of a party on oath, affirmation or by affidavit;

(d) respecting the exchange of records and documents by parties;

(e) respecting the filing of written submissions by parties;

(f) respecting the filing of admissions by parties;

(g) specifying the form of notice to be given to a party by another party or by the tribunal requiring a party to diligently pursue an application and specifying the time within which and the manner in which the party must respond to the notice;

(h) respecting service and filing of notices, documents and orders, including substituted service;

(i) requiring a party to provide an address for service or delivery of notices, documents and orders;

(i.1) requiring an intervener to provide an address for service or delivery of notices, orders and other documents;

(j) providing that a party's address of record is to be treated as an address for service;

(j.1) providing that an intervener's address of record is to be treated as an address for service;

(k) respecting procedures for preliminary or interim matters;

(l) respecting amendments to an application or responses to it;

(m) respecting the addition of parties to an application;

(n) respecting adjournments;

(o) respecting the extension or abridgement of time limits provided for in the rules;

(p) respecting the transcribing or tape recording of its proceedings and the process and fees for reproduction of a tape recording if requested by a party;

(q) establishing the forms it considers advisable;

(r) respecting the joining of applications;

(s) respecting exclusion of witnesses from proceedings;

(t) respecting the effect of a party's non-compliance with the tribunal's rules;

(u) respecting access to and restriction of access to tribunal documents by any person;

(v) respecting witness fees and expenses;

(v.1) respecting filing and service of a summons to a witness;

(w) respecting applications to set aside any summons served by a party.

(x) requiring or allowing that a process be conducted electronically, with or without conditions.

(3) In an application, the tribunal may waive or modify one or more of its rules in exceptional circumstances.

(4) The tribunal must make accessible to the public any rules of practice and procedure made under this section.

(5) Rules for the tribunal may be different for different classes of disputes, claims, issues and circumstances.

Practice directives tribunal must make

12 (1) The tribunal must issue practice directives respecting

(a) the usual time period for completing an application and for completing the procedural steps within an application, and

(b) the usual time period within which the tribunal's final decision and reasons are to be released after the hearing of the application is completed.

(2) The tribunal is not bound by its practice directives in the exercise of its powers or the performance of its duties.

(3) Practice directives must be consistent with any enactment applying to the tribunal and any rule of practice or procedure made by the tribunal.

(4) The tribunal must make accessible to the public any practice directives made under this section.

Practice directives tribunal may make

13 (1) The tribunal may issue practice directives.

(1.1) Practice directives must be consistent with any enactment applying to the tribunal and any rule of practice or procedure made by the tribunal.

(2) The tribunal is not bound by its practice directives in the exercise of its powers or the performance of its duties.

(3) The tribunal must make accessible to the public any practice directives made under subsection (1).

General power to make orders

14 In order to facilitate the just and timely resolution of an application the tribunal, if requested by a party or an intervener, or on its own initiative, may make any order

(a) for which a rule is made by the tribunal under section 11,

(b) for which a rule is prescribed under section 60, or

(c) in relation to any matter that the tribunal considers necessary for purposes of controlling its own proceedings.

Interim orders

15 The tribunal may make an interim order in an application.

Consent orders

16 (1) On the request of the parties to an application, the tribunal may make a consent order if it is satisfied that the order is consistent with the enactments governing the application.

(2) If the tribunal declines to make a consent order under subsection (1), it must provide the parties with reasons for doing so.

Withdrawal or settlement of application

17 (1) If an applicant withdraws all or part of an application or the parties advise the tribunal that they have reached a settlement of all or part of an application, the tribunal must order that the application or the part of it is dismissed.

(2) If the parties reach a settlement in respect of all or part of the subject matter of an application, on the request of the parties, the tribunal may make an order that includes the terms of settlement if it is satisfied that the order is consistent with the enactments governing the application.

(3) If the tribunal declines to make an order under subsection (2), it must provide the parties with reasons.

Failure of party to comply with tribunal orders and rules

18 If a party fails to comply with an order of the tribunal or with the rules of practice and procedure of the tribunal, including any time limits specified for taking any actions, the tribunal, after giving notice to that party, may do one or more the following:

(a) schedule a written, electronic or oral hearing;

(b) continue with the application and make a decision based on the information before it, with or without providing an opportunity for submissions;

(c) dismiss the application.

Service of notice or documents

19 (1) If the tribunal is required to provide a notice or any document to a party or other person in an application, it may do so by personal service of a copy of the notice or document or by sending the copy to the person by any of the following means:

(a) ordinary mail;

(b) electronic transmission, including telephone transmission of a facsimile;

(c) if specified in the tribunal's rules, another method that allows proof of receipt.

(2) If the copy is sent by ordinary mail, it must be sent to the most recent address known to the tribunal and must be considered to be received on the fifth day after the day it is mailed, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

(3) If the copy is sent by electronic transmission it must be considered to be received on the day after it was sent, unless that day is a holiday, in which case the copy must be considered to be received on the next day that is not a holiday.

(4) If the copy is sent by a method referred to in subsection (1) (c), the tribunal's rules govern the day on which the copy must be considered to be received.

(5) If through absence, accident, illness or other cause beyond the party's control a party who acts in good faith does not receive the copy until a later date than the date provided under subsection (2), (3) or (4), that subsection does not apply.

When failure to serve does not invalidate proceeding

20 If a notice or document is not served in accordance with section 19, the proceeding is not invalidated if

(a) the contents of the notice or document were known by the person to be served within the time allowed for service,

(b) the person to be served consents, or

(c) the failure to serve does not result in prejudice to the person, or any resulting prejudice can be satisfactorily addressed by an adjournment or other means.

Notice of hearing by publication

21 If the tribunal is of the opinion that because there are so many parties to an application

or for any other reason it is impracticable to give notice of a hearing to a party by a method referred to in section 19 (1) (a) to (c), the tribunal may give notice of a hearing by public advertisement or otherwise as the tribunal directs.

Notice of appeal (exclusive of prescribed fee)

23 (1) A decision may be appealed by filing a notice of appeal with the tribunal.

(2) A notice of appeal must

(a) be in writing or in another form authorized by the tribunal's rules,

(b) identify the decision that is being appealed,

(c) state why the decision should be changed,

(d) state the outcome requested,

(e) contain the name, address and telephone number of the appellant, and if the appellant has an agent to act on the appellant's behalf in respect of the appeal, the name of the agent and a telephone number at which the agent may be contacted during regular business hours,

(f) include an address for delivery of any notices in respect of the appeal, and

(g) be signed by the appellant or the appellant's agent.

(3) If a notice of appeal is deficient the chair or the chair's delegate may allow a reasonable period of time within which the notice may be corrected.

Time limit for appeals

24 (1) A notice of appeal respecting a decision must be filed within 30 days of the decision being appealed, unless the tribunal's enabling Act provides otherwise.

(2) Despite subsection (1), the tribunal may extend the time to file a notice of appeal, even if the time to file has expired, if satisfied that special circumstances exist.

Organization of tribunal

26 (1) The chair of the tribunal may organize the tribunal into panels, each comprised of one or more members.

(2) If the chair organizes a panel comprised of more than one member, the chair must designate one of those members as chair of the panel.

(3) The members of the tribunal may sit

(a) as the tribunal, or

(b) as a panel of the tribunal.

(4) Two or more panels may sit at the same time.

(5) If members of the tribunal sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the tribunal, and

(b) a decision of the panel is a decision of the tribunal.

(6) The decision of a majority of the members of a panel of the tribunal is a decision of the tribunal and, in the case of a tie, the decision of the chair of the panel governs.

(7) If a member of a panel is unable for any reason to complete the member's duties, the remaining members of that panel, with consent of the chair of the tribunal, may continue to hear and determine the matter, and the vacancy does not invalidate the proceeding.

(8) If a panel is comprised of one member and that member is unable for any reason to complete the member's duties, the chair of the tribunal, with the consent of all parties to the application, may organize a new

panel to continue to hear and determine the matter on terms agreed to by the parties, and the vacancy does not invalidate the proceeding.

(9) The chair or the chair's delegate may hear and decide any interim or preliminary matter in an application, and for that purpose may exercise any of the powers of the tribunal necessary to decide the matter.

Staff of tribunal

27 (1) Employees necessary to carry out the powers, functions and duties of the tribunal may be appointed under the Public Service Act.

(2) The chair of the tribunal may engage or retain consultants, investigators, lawyers, expert witnesses or other persons the tribunal considers necessary to exercise its powers and carry out its duties and may determine their remuneration.

(3) The *Public Service Act* does not apply to a person retained under subsection (2) of this section.

Facilitated settlement

28 (1) The chair may appoint a member or staff of the tribunal or another person to conduct a facilitated settlement process to resolve one or more issues in dispute.

(2) The tribunal may require 2 or more parties to participate in the facilitated settlement process, in accordance with the rules of the tribunal.

(3) The tribunal may make the consent of one, all or none of the parties to the application a condition of a facilitated settlement process, in accordance with the rules of the tribunal.

Disclosure protection

29 (1) In a proceeding, other than a criminal proceeding, unless the parties to an application consent, a person must not disclose or be compelled to disclose

(a) a document or other record created by a party specifically for the purposes of achieving a settlement of one or more issues through a facilitated settlement process, or

(b) a statement made by a party in a facilitated settlement process specifically for the purpose of achieving a settlement of one or more issues in dispute.

(2) Subsection (1) does not apply to a settlement agreement.

Tribunal duties

30 Tribunal members must faithfully, honestly and impartially perform their duties and must not, except in the proper performance of those duties, disclose to any person any information obtained as a member.

Summary dismissal

31 (1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:

(a) the application is not within the jurisdiction of the tribunal;

(b) the application was not filed within the applicable time limit;

(c) the application is frivolous, vexatious or trivial or gives rise to an abuse of process;

(d) the application was made in bad faith or filed for an improper purpose or motive;

(e) the applicant failed to diligently pursue the application or failed to comply with an order of the tribunal;

(f) there is no reasonable prospect the application will succeed;

(g) the substance of the application has been appropriately dealt with in another proceeding.

(2) Before dismissing all or part of an application under subsection (1), the tribunal must give the applicant an opportunity to make written submissions or otherwise be heard.

(3) If the tribunal dismisses all or part of an application under subsection (1), the tribunal must inform the parties and any interveners of its decision in writing and give reasons for that decision.

Representation of parties to an application

32 A party to an application may be represented by counsel or an agent and may make submissions as to facts, law and jurisdiction.

Interveners

33 (1) The tribunal may allow a person to intervene in an application if the tribunal is satisfied that

(a) the person can make a valuable contribution or bring a valuable perspective to the application, and

(b) the potential benefits of the intervention outweigh any prejudice to the parties caused by the intervention.

(2) The tribunal may limit the participation of an intervener in one or more of the following ways:

(a) in relation to cross examination of witnesses;

(b) in relation to the right to lead evidence;

(c) to one or more issues raised in the application;

(d) to written submissions;

(e) to time limited oral submissions.

(3) If 2 or more applicants for intervener status have the same or substantially similar views or expertise, the tribunal may require them to file joint submissions.

Power to compel witnesses and order disclosure

34 (3) Subject to section 29, at any time before or during a hearing, but before its decision, the tribunal may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an application, or

(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in an application.

(4) The tribunal may apply to the court for an order

(a) directing a person to comply with an order made by the tribunal under subsection (3), or

(b) directing any directors and officers of a person to cause the person to comply with an order made by the tribunal under subsection (3).

Recording tribunal proceedings

35 (1) The tribunal may transcribe or tape record its proceedings.

(2) If the tribunal transcribes or tape records a proceeding, the transcription or tape recording must be considered to be correct and to constitute part of the record of the proceeding.

(3) If, by a mechanical or human failure or other accident, the transcription or tape recording of a proceeding is destroyed, interrupted or incomplete, the validity of the proceeding is not affected.

Form of hearing of application

36 In an application or an interim or preliminary matter, the tribunal may hold any combination of written, electronic and oral hearings.

Applications involving similar questions

37 (1) If 2 or more applications before the tribunal involve the same or similar questions, the tribunal may

(a) combine the applications or any part of them,

(b) hear the applications at the same time,

(c) hear the applications one immediately after the other, or

(d) stay one or more of the applications until after the determination of another one of them.

(2) The tribunal may make additional orders respecting the procedure to be followed with respect to applications under this section.

Examination of witnesses

38 (1) Subject to subsection (2), in an oral or electronic hearing a party to an application may call and examine witnesses, present evidence and submissions and conduct cross examination of witnesses as reasonably required by the tribunal for a full and fair disclosure of all matters relevant to the issues in the application.

(2) The tribunal may reasonably limit further examination or cross examination of a witness if it is satisfied that the examination or cross examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the application.

(3) The tribunal may question any witness who gives oral evidence in an oral or electronic hearing.

Adjournments

39 (1) An application may be adjourned by the tribunal on its own motion or if it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held.

(2) In considering whether an application should be adjourned, the tribunal must have regard to the following factors:

(a) the reason for the adjournment;

(b) whether the adjournment would cause unreasonable delay;

(c) the impact of refusing the adjournment on the parties;

(d) the impact of granting the adjournment on the parties;

(e) the impact of the adjournment on the public interest.

Information admissible in tribunal proceedings

40 (1) The tribunal may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.

(2) Despite subsection (1), the tribunal may exclude anything unduly repetitious.

(3) Nothing is admissible before the tribunal that is inadmissible in a court because of a privilege under the law of evidence.

(4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence.

(5) [Repealed 2015-10-18.]

Hearings open to public

41 (1) An oral hearing must be open to the public.

(2) Despite subsection (1), the tribunal may direct that all or part of the information be received to the exclusion of the public if the tribunal is of the opinion that

(a) the desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, or

(b) it is not practicable to hold the hearing in a manner that is open to the public.

(3) The tribunal must make a document submitted in a hearing accessible to the public unless the tribunal is of the opinion that subsection (2) (a) or section 42 applies to that document.

Discretion to receive evidence in confidence

42 The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any interveners, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice.

Part 6 – Costs and Sanctions

Power to award costs

47 (1) Subject to the regulations, the tribunal may make orders for payment as follows:

(a) requiring a party to pay all or part of the costs of another party or an intervener in connection with the application;

(b) requiring an intervener to pay all or part of the costs of a party or another intervener in connection with the application;

(c) if the tribunal considers the conduct of a party has been improper, vexatious, frivolous or abusive, requiring the party to pay all or part of the actual costs and expenses of the tribunal in connection with the application.

(2) An order under subsection (1), after filing 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 on it as if it were an order of the court.

Maintenance of order at hearings

48 (1) At an oral hearing, the tribunal may make orders or give directions that it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any order or direction, the tribunal may call on the assistance of any peace officer to enforce the order or direction.

(2) A peace officer called on under subsection (1) may take any action that is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose.

(3) Without limiting subsection (1), the tribunal, by order, may

(a) impose restrictions on a person's continued participation in or attendance at a proceeding, and

(b) exclude a person from further participation in or attendance at a proceeding until the tribunal orders otherwise.

Contempt proceeding for uncooperative witness or other person

49 (1) The failure or refusal of a person summoned as a witness to do any of the following makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court:

(a) attend a hearing;

(b) take an oath or affirmation;

(c) answer questions;

(d) produce the records or things in their custody or possession.

(2) The failure or refusal of a person to comply with an order or direction under section 48 makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court.

(3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the court in respect of conduct by a person in a proceeding before the tribunal.

Part 7 – Decisions

Decisions

50 (1) If the tribunal makes an order for the payment of money as part of its decision, it must set out in the order the principal sum, and if the tribunal has power to award interest and interest is payable, the rate of interest and the date from which it is to be calculated.

(2) The tribunal may attach terms or conditions to a decision.

(3) The tribunal's decision is effective on the date on which it is issued, unless otherwise specified by the tribunal.

(4) The tribunal must make its decisions accessible to the public.

Final decision

51 The tribunal must make its final decision in writing and give reasons for the decision.

Notice of decision

52 (1) Subject to subsection (2), the tribunal must send each party and any interveners in an application a copy of its final decision.

(2) If the tribunal is of the opinion that because there are so many parties to an application or for any other reason that it is impracticable to send its final decision to each party as provided in subsection (1), the tribunal may give reasonable notice of its decision by public advertisement or otherwise as the tribunal directs.

(3) A notice of a final decision given by the tribunal under subsection (2) must inform the parties of the place where copies of that decision may be obtained.

Amendment to final decision

53 (1) If a party applies or on the tribunal's own initiative, the tribunal may amend a final decision to correct any of the following:

(a) a clerical or typographical error;

(b) an accidental or inadvertent error, omission or other similar mistake;

(c) an arithmetical error made in a computation.

(2) Unless the tribunal determines otherwise, an amendment under subsection (1) must not be made more than 30 days after all parties have been served with the final decision.

(3) Within 30 days of being served with the final decision, a party may apply to the tribunal for clarification of the final

decision and the tribunal may amend the final decision only if the tribunal considers that the amendment will clarify the final decision.

(4) The tribunal may not amend a final decision other than in those circumstances described in subsections (1) to (3).

(5) This section must not be construed as limiting the tribunal's ability, on request of a party, to reopen an application in order to cure a jurisdictional defect.

Enforcement of tribunal's final decision

54 (1) A party in whose favour the tribunal makes a final decision, or a person designated in the final decision, may file a certified copy of the final decision with the court.

(2) A final decision filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court.

Part 8 – Immunities

Compulsion protection

55 (1) A tribunal member, a person acting on behalf of or under the direction of a tribunal member or a person who conducts a facilitated settlement process on behalf of or under the direction of the tribunal must not be required to testify or produce evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of the member's or person's duties.

(2) Despite subsection (1), the court may require the tribunal to produce the record of a proceeding that is the subject of an application for judicial review under the *Judicial Review Procedure Act*.

Immunity protection for tribunal and members

56 (1) In this section, **"decision maker"** includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a facilitated settlement process.

(2) Subject to subsection (3), no legal proceeding for damages lies or may be commenced or maintained against a decision maker, the tribunal or the government because of anything done or omitted

(a) in the performance or intended performance of any duty under an enactment governing an application, or

(b) in the exercise or intended exercise of any power under an enactment governing an application.

(3) Subsection (2) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

Part 9 – Accountability and Judicial Review

Surveys

59.1 For the purposes of evaluating and improving its services, the tribunal may conduct surveys in the course of or after providing those services.

Reporting

59.2 At the times, and in the form and manner, prescribed by regulation, the tribunal must submit the following to the minister responsible for the tribunal:

(a) a review of the tribunal's operations during the preceding period;

(b) performance indicators for the preceding period;

(c) details on the nature and number of applications and other matters received or commenced by the tribunal during the preceding period;

(d) details of the time from filing or commencement to decision of the applications and other matters disposed of by the tribunal in the preceding period;

(e) results of any surveys carried out by or on behalf of the tribunal during the preceding period;

(f) a forecast of workload for the succeeding period;

(g) trends or special problems foreseen by the tribunal;

(h) plans for improving the tribunal's operations in the future;

(i) other information as prescribed by regulation.

Part 10 – Miscellaneous

Power to make regulations

60 (1) The Lieutenant Governor in Council may make regulations as follows:

(a) prescribing rules of practice and procedure for the tribunal;

(b) repealing or amending a rule made by the tribunal;

(c) prescribing tariffs of fees to be paid with respect to services provided, or anything done, by the tribunal, employees of the tribunal or other persons;

(d) prescribing the circumstances in which an award of costs may be made by the tribunal;

(e) prescribing a tariff of costs payable under a tribunal order to pay part of the costs of a party or intervener;

(e.1) establishing restrictions on the authority of a tribunal under sections 47.1 *[security for costs]* and 47.2 *[government and agents of government]*, including, without limiting this,

(i) prescribing limits, rates and tariffs relating to amounts that may be required to be paid or deposited, and

(ii) prescribing what are to be considered costs to the government in relation to an application and how those are to be determined;

(f) prescribing limits and rates relating to a tribunal order to pay part of the actual costs and expenses of the tribunal.

(g) prescribing the form, manner and timing of reports to the minister responsible for the tribunal;

(h) prescribing information that must be included in reports to the minister responsible for the tribunal;

(i) prescribing information the tribunal must make public;

(2) The Lieutenant Governor in Council may make different regulations under subsection (1) for different tribunals.

Application of *Freedom of Information and Protection of Privacy Act*

61 (1) In this section, **"decision maker"** includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a facilitated settlement process.

(2) The *Freedom of Information and Protection of Privacy Act*, other than section 44 (1) (b), (2), (2.1) and (3), does not apply to any of the following:

(a) a personal note, communication or draft decision of a decision maker;

(b) notes or records kept by a person appointed by the tribunal to conduct a facilitated settlement process in relation to an application;

(c) any information received by the tribunal in a hearing or part of a hearing from which the public, a party or an intervener was excluded;

(d) a transcription or tape recording of a tribunal proceeding;

(e) a document submitted in a hearing for which public access is provided by the tribunal;

(f) a decision of the tribunal for which public access is provided by the tribunal.

(3) Subsection (2) does not apply to personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, that has been in existence for 100 or more years or to other information that has been in existence for 50 or more years.

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