Forest Appeals Commission

Annual Report

2018

BRITISH COLUMBIA

Forest Appeals Commission

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

Mailing Address:
P.O. Box 9425
Stn Prov Govt
Victoria, British Columbia
V8W 9V1

The Honourable David Eby
Attorney General
Parliament Buildings
Victoria, British Columbia
V8V 1X4

The Honourable Doug Donaldson
Minister of Forests, Lands, Natural Resource Operations and Rural Development
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Ministers:

I respectfully submit herewith the Annual Report of the Forest Appeals Commission for the period of January 1, 2018 to December 31, 2018.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission

AR 2018

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Message from the Chair

I am pleased to submit the Annual Report of the Forest Appeals Commission for the 2018 calendar year.

The Year in Review – Appeals

Section 59.2(a) of the *Administrative Tribunals Act* requires the Commission to provide a review of its operations during the preceding reporting period. The Commission continues to encourage cooperation between the Government and industry, and it appears that this is occurring given the number of appeals that were closed without the need for a hearing this year. A total of 37 appeals were active during the reporting period. Of the ten appeals that were closed, two appeals were resolved by consent of the parties, two were withdrawn and two were rejected, which meant that they did not require a hearing.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.

During 2018, the Commission heard and decided appeals that involved complex legal and factual issues of significant interest to the public, the forest industry and the Government. One appeal addressed the application of the "mistake of fact" defence, and the common law rule against multiple convictions, to contraventions of the *Wildfire Act* and its regulations by a licensee and its contractor. The contraventions were due to timber harvesting activities that caused a wildfire, at a time when harvesting activities were prohibited due to the fire hazard. Another appeal involved the defence of due diligence and the degree of accuracy required when submitting timber cruise data in the stumpage appraisal process.

During this reporting period, the BC Supreme Court and the BC Court of Appeal each issued one decision involving the same decision of the Commission. The Commission's decision involved an appeal by Canadian Forest Products Ltd. ("Canfor") against eight stumpage rate re-determinations issued by the Ministry of Forests, Lands and Natural Resource Operations. Stumpage is a fee paid to the government for harvesting Crown timber. The stumpage rates were re-determined by taking into account water transportation for part of the distance that logs were transported, rather than truck haul for the entire distance. The re-determined stumpage rates were higher than the original stumpage rates. The re-determinations occurred after the Commission had issued a decision on several other stumpage appeals by Canfor involving the issue of water transportation in the same area (*Canadian Forest Products Ltd. v. Government of British Columbia*, Decision Nos. 2014-FA-001(a) to 009(a); confirmed in *Canadian Forest Products Ltd. v. British Columbia*, 2016 BCSC 2202). As a preliminary matter, the Government applied to

the Commission for summary dismissal of the new stumpage appeals on the basis that the appeals: (1) were outside of the Commission's jurisdiction; and (2) raised issues that were addressed in the Commission's 2015 decision. The Commission denied the application, and the Government appealed to the BC Supreme Court.

The BC Supreme Court found that the Commission's decision was entitled to deference and was reasonable, and dismissed the Government's appeal.

The Government then applied for leave to appeal to the BC Court of Appeal. The Court of Appeal denied leave to appeal, and held that the merits of the appeals of the stumpage re-determinations should be heard by the Commission.

Plans for improving the Commission's operations

Section 59.2(h) of the *Administrative Tribunals Act* requires the Commission to report its plans for improving operations in the future. During 2018, the Commission was involved in the replacement and upgrading of the electronic appeal management system that is used by the Commission and the seven other tribunals that are jointly administered through a shared office and staff. The existing appeal management system is nearly 20 years old and its software is no longer supported. A new appeal management system will allow the shared administrative office to continue to function effectively and efficiently, using modern information technology. The Commission plans to have the new system in place in 2019.

Forecast of workload for the next reporting period

Section 59.2(f) of the *Administrative Tribunals Act* requires the Commission to provide a forecast of the workload for the succeeding reporting period. The Commission's workload for the 2019 reporting period is expected to be consistent with the past five years. No significant increases or decreases in workload are forecast. Based on the past five years, it is expected that approximately 15 appeals will be active, 13 new appeals will be filed, and five hearings will be completed during the coming year.

Commission Membership

The Commission membership experienced some changes during 2018. I am very pleased to welcome two new members to the Commission who will complement the expertise and experience of the outstanding professionals on the Commission. Those new members are Lana Lowe and Teresa Salamone. Five members' appointments concluded during 2018. Those members are Cindy Derkaz, Kent Jingfors, John M. Orr, Q.C., Greg Tucker, Q.C., and R.G. (Bob) Holtby. 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, 2018 to December 31, 2018. 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;
- the reporting requirements set out in section 59.2 of the *Administrative Tribunals Act*; 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; and
- University of Victoria 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:

Forest Appeals Commission
Fourth Floor, 747 Fort Street
Victoria, British Columbia
Telephone: 250-387-3464
Facsimile: 250-356-9923

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

Email address: facinfo@gov.bc.ca

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

The Commission

The Forest Appeals Commission is an independent administrative tribunal, which provides a forum to appeal certain decisions made by government officials under the *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, two 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 2018 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
Lorne Borgal	Professional Agrologist (Retired)	Vancouver
Monica Danon-Schaffer	Professional Engineer	Lions Bay
Cindy Derkaz	Lawyer (Retired)	Salmon Arm
Brenda L. Edwards	Lawyer	Victoria
Les Gyug	Professional Biologist	West Kelowna
Jeffrey Hand	Lawyer	Vancouver
R.G. (Bob) Holtby	Professional Agrologist	West Kelowna
Kent Jingfors	Environmental Consultant	Nanoose Bay
Darrell LeHouillier	Lawyer	Vancouver
Lana Lowe (from December 31, 2018)	Land Use Specialist	Fort Nelson
James Mattison	Professional Engineer	Qualicum Beach
Linda Michaluk	Professional Biologist	North Saanich
John M. Orr, Q.C.	Lawyer	Victoria
Susan Ross	Lawyer	Victoria
Teresa Salamone (from July 31, 2018)	Consultant/Lawyer	Osoyoos
Howard Saunders	Forestry Consultant	Vancouver
Daphne Stancil	Lawyer/Biologist	Victoria
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 2018/2019 budget for the operations of the Forest Appeals Commission, Environmental Appeal Board, and Oil and Gas Appeal Tribunal, together with the shared office and staff that support those tribunals along with five other tribunals, was $2,143,000.

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 three 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.

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 Practice and Procedure Manual setting out the Commission's policies, and has created 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. Both the Practice and Procedure Manual and the Rules of Practice and Procedure are posted on the Commission's website.

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, Natural Resource Operations and Rural Development, the Minister of Forests, Lands, Natural Resource Operations, and Rural Development, 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, Natural

Resource Operations and Rural Development, 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 established 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 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, there were no legislative changes that affected the Commission's powers or procedures, or the types of appeals that the Commission hears.

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. In addition, section 59.2(g) of the *Administrative Tribunals Act* requires the Commission to report any trends or special problems it foresees.

The Commission is pleased to report that no problems have been identified in either the review or the appeal process during the past year. In addition, the Commission has identified no trends or special problems that need to be reported on. Accordingly, the Commission is not making any recommendations in relation to the legislation or any trends or problems 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).

In addition, section 59.2(c) of the *Administrative Tribunals Act* requires the Commission to report details on the nature and number of appeals and other matters received or commenced by the Commission during this reporting period.

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, which are included in a separate line in the statistics below.

In 2018, a total of 19 new appeals were filed with the Commission. Four appeals were filed under the *Forest and Range Practices Act*, ten were filed under the *Forest Act*, and five were filed under the *Wildfire Act*. No new appeals were filed under the *Range Act* or the *Private Managed Forest Land Act*.

A total of ten appeals were completed during 2018. In regard to those appeals, the Commission issued four final decisions that were published on the Commission's website. In addition, two appeals were resolved by consent of the parties. Two appeals were withdrawn, and two appeals were rejected.

Appeals	
Open Appeals at period start	18
Open Appeals at period end	19
Appeals filed	
Appeals filed under the *Forest and Range Practices Act*	4
Appeals filed under the *Forest Act*	10
Appeals filed under the *Private Managed Forest Land Act*	0
Appeals filed under the *Range Act*	0
Appeals filed under the *Wildfire Act*	5
Total appeals filed	**19**
Appeals Closed	
Withdrawn or abandoned	2
Final decisions on the merits	4
Consent orders	2
Rejected	2
Total appeals closed	**10**
Hearings held on the merits of appeals	
Oral hearings completed	3
Written hearings completed	1
Total hearings held on the merits of appeals*	**4**
Published decisions issued*	
Final decisions (excluding consent orders)	
Forest and Range Practices Act	1
Forest Act	0
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	3
Consent orders	
Forest and Range Practices Act	0
Forest Act	0
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	2
Decisions on preliminary applications	
Forest and Range Practices Act	8
Forest Act	1
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	5
Total published decisions issued	**6**
Total unpublished decisions issued	**14**
Total decisions issued	**20**

Note:

* Hearings held and decisions issued in 2018 do not necessarily reflect the number of appeals filed in 2018.

Performance Indicators and Timelines

Sections 59.2(b) and (d) of the *Administrative Tribunals Act*, respectively, require the Commission to report on performance indicators, and provide details of the time from filing or commencement to decision of the appeals and other matters disposed of by the Commission during this reporting period.

The Commission strives to facilitate the early resolution of appeals, and the resolution of appeals without the need for a hearing, to reduce the time and expenses associated with appeals for all parties. The Commission is pleased to report that 60% of the appeals that closed during this reporting period were resolved without the need for a hearing. As a result, the parties and the Commission avoided the time and expenses associated with a hearing in those cases.

Regarding the appeals that were concluded without the need for a hearing, the time elapsed between the filing of the appeal and the closure of the appeal was an average of 242 days. Regarding appeals which involved a hearing on the merits, the time elapsed from the filing of the appeal until the final decision was issued was an average of 530 days. The overall average for all appeals concluded during this reporting period was 357 days.

Summaries of Decisions

January 1, 2018 ~ December 31, 2018

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, Natural Resource Operations and Rural Development. 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*

Submission of inaccurate data to the Ministry results in $10,000 penalty

2016-FRP-002(a) Apollo Forest Products Ltd. v. Government of British Columbia

Decision Date: September 11, 2018

Panel: Daphne Stancil, Les Gyug, Norman E. Yates

Apollo Forest Products Ltd. ("Apollo") appealed a determination issued by the District Manager (the "Manager"), Stewart Nechako Natural Resource District, Ministry of Forests, Lands, Natural Resource Operations, and Rural Development (the "Ministry"). The Manager determined that Apollo had contravened section 105.1(3) of the *Forest Act* by submitting inaccurate data with its application for a cutting permit. The Manager levied an administrative penalty of $10,000 under the *Forest and Range Practices Act* ("*FRPA*").

Apollo holds a forest licence which grants it the right to harvest Crown timber within the licence area. Before harvesting timber in the licence area, Apollo must apply for a cutting permit. When applying for the cutting permit in this case, the Interior Appraisal Manual ("IAM") required Apollo to provide the Ministry with a stumpage appraisal data submission which included timber cruise data from the area to be harvested. Section 105.1(3) of the *Forest Act* states that the holder of an agreement, such as a forest licence, who is required to submit information to the government for use in determining a stumpage rate "must ensure that, at the time the information is submitted, the information is complete and accurate."

Stumpage is the price paid to the government for harvesting Crown timber. The IAM sets out mandatory policies and procedures for determining stumpage rates in the Interior region of BC. The stumpage payable under cruise-based cutting permits is determined from a pre-harvest estimate of the timber in the area to be harvested. A timber cruise is a process for estimating the volume of timber in an area. Sample plots are selected in the cruise area, and information about each tree in the sample plots is recorded, including tree species and diameter. The IAM requires that timber cruise data be gathered in accordance with the Ministry's Cruising Manual, which sets out procedures and standards for timber cruising.

Before applying for the cutting permit, Apollo's contractor conducted a timber cruise of the cutting permit area based on 190 sample plots, and estimated the net merchantable timber volume for the cutting permit area. Apollo provided the cruise data to the Ministry.

Ministry staff conducted field checks to determine the accuracy of Apollo's cruise data. The Ministry found statistically significant differences which resulted in the original timber cruise underestimating the merchantable timber volume in the cutting permit area. Among other things, the Ministry checked the locations of 15 of the original cruise plot centres, and found that 12 of the plot centre locations failed to meet the standards of

tolerance specified in the Cruising Manual (i.e., plus or minus 2% for horizontal distance, and plus or minus 2 degrees for the compass bearing).

The Ministry notified Apollo that the original timber cruise did not meet the requirements of the Cruising Manual (i.e., the plots were outside of the allowable standards of tolerance), and therefore, the timber cruise data was not accurate. The inaccuracy in the location of plot centres resulted in a lower estimate of timber available for harvest. If the Ministry had used the lower estimate, it would have resulted in a lower stumpage rate for timber harvested under the cutting permit.

In response, Apollo had its contractor re-cruise the cutting permit area, and Apollo submitted the re-cruise data to the Ministry. Ministry staff performed a field check of the re-cruise data, reviewing 19 plots, and rejected the re-cruise data.

Apollo then hired a different contractor to conduct another re-cruise of the area. Ministry staff conducted a field check of the new re-cruise data, and found the results to be acceptable. Apollo re-submitted its application for the cutting permit using the new contractor's data, and the Ministry issued the cutting permit.

Subsequently, the Ministry investigated the matter, and the Manager found that Apollo had contravened section 105.1(3) of the *Forest Act* in respect of the original timber cruise data. The Manager also concluded that Apollo had not established the defences of due diligence or officially induced error under section 72 of the *FRPA*, and levied a penalty of $10,000.

Apollo appealed to the Commission. Apollo argued that it had not contravened section 105.1(3) of the *Forest Act*, because it had submitted accurate timber cruise data. Alternatively, Apollo submitted that it had exercised due diligence to prevent the contravention.

The Commission first considered whether Apollo had submitted "accurate" timber cruise data as required by section 105.1(3) of the *Forest Act*. The Commission found that, in this context, "accurate" means "conforming with a given standard", and the required standards were set out in the Cruising Manual, which applied pursuant to the IAM. Thus, in order for the timber cruise data to be "accurate", the data had to be obtained using practices that complied with the standards in the Cruising Manual, and had to result in a reliable and unbiased estimate which was within the specified confidence interval or sampling intensity. The Cruising Manual's standards require every plot centre to be established where it falls according to the cruise plan. Although the Cruising Manual specifies allowable tolerances, accounting for human (and instrument) error, any plots falling outside those tolerances are unacceptable.

Based on the evidence, the Commission concluded that the only plausible explanation for discrepancies of the magnitude detected in the original cruise data was that the plot centres were not placed according to the cruise plan. The initial cruise data was flawed due to the placement of plot centres, and the data collection procedures did not meet the Cruising Manual's standards. Accordingly, he original cruise data was not "accurate" at the time that it was submitted, contrary to section 105.1(3) of the *Forest Act*.

Next, the Commission considered whether Apollo had established the defence of due diligence by taking all reasonable steps to prevent the contravention. The Commission found that Apollo did not do what is reasonably expected of a licensee to prevent the submission of inaccurate cruise data with its application for a cutting permit. Apollo did not have a system in place for supervising its timber cruising contractor, and reviewing the contractor's performance. Hiring a contractor who is a registered professional – even one with cruising experience –

does not obviate the need for supervision. In addition, it was not reasonable for Apollo to rely on Ministry cruise checks, and Apollo's internal "office checks", for quality assurance. An office check is a procedure for ensuring that all of the required information is included in a cutting permit application, but does not provide assurance that a contractor's field work is accurate. The Commission concluded that Apollo did not meet the test for due diligence.

- Given that Apollo did not appeal the $10,000 penalty, the Commission made no findings with respect to the appropriateness of the penalty amount. The appeal was dismissed.

Appeals under the *Forest Act*

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

Appeals under the *Private Managed Forest Land Act*

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

Appeals under the *Range Act*

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

Appeals under the *Wildfire Act*

Appeal of order to pay fire suppression costs resolved by consent of the parties

2017-WFA-002(a) Stephen Rappard v. Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: April 13, 2018

Panel: Alan Andison

Stephen Rappard appealed an order issued in June 2017 by the Ministry's Deputy Fire Centre Manager (the "Manager"), Prince George Fire Centre.

On the afternoon of May 21, 2015, the Ministry received a report of a wildfire near Albas Provincial Park, north of Sicamous, BC. Mr. Rappard's house was within 1 km of the fire. Within a few minutes of the fire being reported, the Ministry dispatched an air tanker to drop fire retardant on the fire, due to a house being in close proximity. Less than one hour after the fire was reported, the Ministry also dispatched a rappel initial attack firefighting crew to attend the fire. On the morning of May 22, 2015, a Ministry firefighting unit crew was also dispatched to the fire. On the afternoon of May 22, 2015, the Ministry firefighting crews departed from the fire, which was 0.5 hectares in size.

Also, on May 22, 2015, Ministry investigators attended the site to determine the fire's cause and origin. Mr. Rappard stated to investigators that he had ignited a slash pile on his property on May 20, 2015. The investigators determined that the wildfire originated from the slash pile that Mr. Rappard had ignited.

The Manager determined that open fires were prohibited in the area when Mr. Rappard lit the slash pile, and he had caused the wildlife. The Manager ordered Mr. Rappard to pay the Ministry's fire suppression costs totalling $38,788.86 under

section 25 of the *Wildfire Act* and section 31 of the *Wildfire Regulation*.

Mr. Rappard appealed the order to pay the Ministry's fire suppression costs, which he submitted was excessive and punitive. He also submitted that the evidence showed that the fire was fully contained by the evening of May 21, 2015, and there was no need to dispatch the unit crew to the fire on May 22, 2015.

Before the appeal was heard by the Commission, the parties negotiated an agreement to resolve the matter. By consent of the parties, the Commission ordered that the determination was varied, and the amount of fire suppression costs was reduced to $28,002.01.

▶ Accordingly, the appeal was allowed, in part.

Appeal of order to pay fire suppression costs resolved by consent of the parties

2017-WFA-001(a) Deborah Mondini v. Government of British Columbia

Decision Date: April 18, 2018

Panel: Alan Andison

Deborah Mondini appealed an order issued in January 2017 by the Deputy Fire Centre Manager (the "Manager"), Northwest Fire Centre, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry").

On the evening of May 23, 2015, Ms. Mondini reported to the Ministry that a wildfire was burning on her property, located approximately 25 km southwest of Rossland, BC. The Rossland Fire Department responded with 17 firefighters, two fire trucks, and two water trucks. However, they requested aerial firefighting support from the Ministry. The Ministry dispatched an air tanker to drop fire retardant on the fire that evening. The next morning, the Ministry dispatched a helicopter and a firefighting crew to attend the fire. The Rossland Fire Department also returned to the site in the morning. The fire was contained that evening, and was declared out by the evening of May 25, 2018. The fire was two hectares in size.

On May 24, 2015, Ministry investigators attended the site to determine the fire's cause and origin. The investigators determined that the wildfire likely originated from a debris pile that Ms. Mondini had ignited on May 2, 2015. She admitted igniting the debris pile, but stated that she had patrolled the fire and thought it was out.

The Manager determined that the debris pile lit by Ms. Mondini on May 2 was the likely cause of the wildfire. The Manager found that the debris could have remained smouldering underground and reignited by May 23, due to unusually warm and dry weather during May. The Manager ordered Ms. Mondini to pay the Ministry's fire suppression costs totalling $61,639.43 under section 25 of the *Wildfire Act* and section 31 of the *Wildfire Regulation*.

Ms. Mondini appealed the order to pay the Ministry's fire suppression costs. She submitted that she should not be held responsible for the Ministry's fire suppression costs because the situation could have been avoided if the Rossland Fire Department had responded to the fire with a reasonable effort, rather than waiting for the Ministry to extinguish the fire. She submitted that they set up two water tanks but did not attempt to fight the fire. She also submitted that there was rain in the days following the debris pile burning on May 2, 2015, and she had continued to monitor the area for any signs of smoke.

Before the appeal was heard by the Commission, the parties negotiated an agreement to resolve the matter. By consent of the parties, the Commission ordered that the appeal was allowed, with no costs payable by either party.

▶ Accordingly, the appeal was allowed.

Licensee's selection of incorrect weather monitoring station leads to liability for wildfire started by harvesting contractor – "mistake of fact" defence applies to contractor only

2017-WFA-005(a) & 2017-WFA-006(a) Forest Practices Board v. Government of British Columbia (D.N.T. Contracting and 391605 British Columbia Ltd., Third Parties)

Decision Date: October 2, 2018

Panel: Susan E. Ross

The Forest Practices Board ("FPB") appealed two decisions issued by the Ministry's Executive Director (the "Director"), BC Wildfire Service, under the *Wildfire Act*. Section 40(1)(a) of that *Act* provides the FPB with the authority to appeal enforcement decisions and penalties imposed under the *Wildfire Act*. The FPB was established by the Legislature as the public's "watchdog" on forest practices in BC, and to represent the public interest.

391605 British Columbia Ltd. ("391605 BC Ltd.") held a Timber Sale Licence ("TSL") in the Stewart Nechako Natural Resource District. 391605 BC Ltd. and Canfor Forest Products Ltd. ("Canfor") had a log purchase agreement for timber from the TSL, and they agreed that Canfor would select and instruct the timber harvesting contractor for the TSL. Although both 391605 BC Ltd. and Canfor had authority to supervise timber harvesting in the TSL, Canfor made decisions about harvesting operations on behalf of 391605 BC Ltd., including the selection of weather data to determine the Fire Danger Class rating in harvest areas.

Canfor selected D.N.T. Contracting Ltd. ("DNT") to harvest two cutblocks in the TSL. Canfor instructed DNT to use data from the Kluskus weather station ("Kluskus") to determine the Fire Danger Class rating and any applicable restrictions on harvesting at the cutblocks. DNT monitored the Kluskus weather data and Fire Danger Class rating on a daily basis. Canfor also monitored the Kluskus weather data to provide direction to DNT. However, Kluskus was 37.4 km away from the harvesting site, whereas the Chilako weather station ("Chilako") was only 27.4 km away. Chilako was also representative of the area, whereas Kluskus was not.

A wildfire started in a cutblock on August 11, 2014, when DNT's feller buncher machine struck rocks while harvesting. A DNT employee discovered the fire. DNT attempted to extinguish the fire, without success. The BC Wildfire Service was called in, and incurred fire suppression costs of over $700,000.

The Fire Danger Class rating at Kluskus was "high" from August 4 to 10, and increased to "extreme" on August 11. The Fire Danger Class rating at Chilako was "extreme" from August 1 to 11. When the Fire Danger Class rating is "extreme", the *Wildfire Regulation* requires the cessation of high risk activity between 1:00 pm and sunset. After three consecutive days of "extreme" rating, all high risk activity must cease. Had DNT used Chilako instead of Kluskus to determine the Fire Danger Class rating, it would have ceased harvesting after August 3.

Following an investigation by the Ministry, the Director concluded that DNT and 391605 BC Ltd. had contravened section 6(2) of the *Wildfire Act* and sections 6(2) and 6(3)(a) of the *Wildfire Regulation*, by carrying out timber harvesting when the applicable Fire Danger Class rating was "extreme", and a complete cessation of high risk activities was required under the *Wildfire Regulation*.

However, the Director found that the contraventions were excused by the defence of mistake of fact under section 29(b) of the *Wildfire Act*. The Director found that 391605 BC Ltd. reasonably relied on Canfor to instruct DNT on the selection of representative weather data, and DNT reasonably relied on Canfor's direction to use Kluskus. The

Director found that their reasonable reliance on Canfor's identification of Kluskus as the appropriate weather station to monitor was a mistake of fact integral to the contraventions.

The FPB appealed the Director's decisions, and argued that the Director erred in applying the defence of mistake of fact. The FPB submitted that 391605 BC Ltd. and DNT did not establish that Canfor, as an agent of 391605 BC Ltd., exercised reasonable care in selecting Kluskus as the representative weather station, or that DNT, as 391605 BC Ltd.'s contractor, exercised reasonable care in relying on Canfor's direction to use the Kluskus weather data. The FPB asked the Commission to impose a $10,000 administrative penalty, and order 391605 BC Ltd. and DNT to pay for the value of the damaged or destroyed Crown timber plus reforestation costs.

The parties agreed that section 29 of the *Wildfire Regulation* exempted DNT and 391605 BC Ltd. from liability for the Ministry's fire control costs.

The Commission found that Canfor had intended to select the most representative weather data, and comply with the legislation. Canfor's mistake in selecting Kluskus was an honest one, on which 391605 BC Ltd. and DNT honestly relied. However, the Commission found that, based on the relevant case law, an honestly held belief in a mistaken set of facts is not enough to establish the defence of mistake of fact; rather, the belief must also be reasonably held. The proper inquiry was whether 391605 BC Ltd. and DNT exercised reasonable care to know the true facts relevant to selecting representative weather data and determining the Fire Danger Class rating.

The Commission found that, given the nature of their relationship, Canfor's conduct was also 391605 BC Ltd.'s conduct, and the only belief 391605 BC Ltd. had in the existence of mistaken facts was Canfor's belief. The Commission also found that the evidence did not establish that Canfor's selection of the Kluskus weather station, whether on the basis of proximity alone or in conjunction with other factors, was an exercise of reasonable care. Canfor's error in selecting the wrong weather station was not reasonable. Consequently, the defence of mistake of fact did not apply to 391605 BC Ltd.

Turning to whether DNT, the Commission noted that DNT was contracted by 391605 BC Ltd. through Canfor, and DNT relied on Canfor to select the representative weather station. DNT knew that it was operating under at least a "high" Fire Danger Class rating from August 4, and understood the restrictions that would apply if the fire risk became "extreme". Although Kluskus was not the most proximate or representative weather station, it was not so distant that it should have been obviously incorrect to DNT. Based on the evidence, the Commission concluded that DNT took reasonable care to know the relevant facts, and the defence of mistake of fact applied to DNT.

Next, the Commission considered whether the common law rule against multiple convictions prevented a finding that 391605 BC Ltd. had contravened both section 6(2) of the *Wildfire Act* and section 6(3)(a) of the *Wildfire Regulation* for harvesting when prohibited by risk of fire. The Commission considered the relevant case law, and the relevant provisions of the *Wildfire Act*. The Commission found that section 6(2) of the *Wildfire Act* and section 6(3)(a) of the *Wildfire Regulation* address the same wrongful conduct, and therefore, based on the rule against multiple convictions, the Director should not have found that 391605 BC Ltd. contravened both of those statutory provisions. There should have been a finding of only one contravention, in respect of the more specific provision. Accordingly, the Commission held that 391605 BC Ltd. contravened section 6(3)(a) of the *Wildfire Regulation*, but not section 6(2) of the *Wildfire Act*, by carrying out harvesting while prohibited by the *Wildfire Regulation*.

Finally, the Commission considered whether to levy an administrative penalty and/or a cost recovery order against 391605 BC Ltd. The Commission decided not to order 391605 BC Ltd. to pay the value of damaged or destroyed Crown timber, because the Ministry did not request such an order. However, the Commission found that an order for reforestation costs should be remitted to the Director to determine the appropriate amount. Also, based on the considerations listed in section 27(3) of the *Wildfire Act*, the Commission held that an administrative penalty of $10,000 (i.e., $5,000 for each of contravention) should be levied against 391605 BC Ltd.

- Accordingly, the FPB's appeal relating to DNT (2017-WFA-005) was dismissed, and the FPB's appeal relating to 391605 BC Ltd. (2017-WFA-006) was allowed.

Harvesting debris left in cutblock leads to fire hazard abatement order

2017-WFA-003(a) Anderson Pacific Forest Products Ltd. v. Government of British Columbia

Decision Date: November 27, 2018

Panel: Jeffrey A. Hand

Anderson Pacific Forest Products Ltd. ("Anderson") appealed a fire hazard abatement order issued under the *Wildfire Act* by the Ministry's Fire Centre Manager (the "Manager"), Coastal Fire Centre. The order required Andersen to undertake fire hazard abatement in an area where it had harvested timber.

Anderson held a Timber Sale Licence that authorized it to harvest timber in a cutblock located approximately four km away from Port Renfrew on Vancouver Island. The cutblock is located in a very wet biogeoclimatic ecosystem zone, which is characterized by significant precipitation and humidity, mild winters, and a long growing season. The northeast boundary of the cutblock is adjacent to a highway.

Andersen commenced harvesting on the cutblock in June 2014. In August 2014, Ministry staff inspected the site, and observed large amounts of woody debris ("slash") along the highway. In September 2014, Ministry staff again inspected the site, and observed slash piles close to the highway. Andersen completed its harvesting operations on the cutblock in late 2014.

Andersen retained a Forest Professional, Kelly McKinnon, to prepare a burn plan to reduce the woody debris left on the cutblock. Andersen created piles of debris, and Mr. McKinnon designated some of the piles to be burned, and others to be left unburned to aid in site regeneration. The first burn was performed in April 2015, but the piles did not burn sufficiently. Andersen undertook a second burn in November 2015, which mainly involved piles located along the in-block roads that were used during harvesting. A large pile adjacent to the highway was not burned, because of concern that smoke from that pile could reduce visibility on the highway.

In early 2016, the Ministry requested that Anderson prepare a fire hazard assessment for the cutblock. In March 2016, Mr. McKinnon prepared a fire hazard assessment for Anderson, based on the process outlined in a Ministry document titled, "A Guide to Fuel Hazard Assessment and Abatement in British Columbia" (the "Guide").

Mr. McKinnon reviewed the British Columbia Fire Risk Map in the Guide, which shows the fire risk rating for areas across BC. Areas with severe or high risk are typically located in and around urban areas, due to the risk to infrastructure and public safety associated with fires close to urban areas. On that map, the cutblock area was designated as a severe risk due to its proximity to Port Renfrew. However, the Guide also stated that local topographic features and their effect on fire spread and direction may reduce potential wildfire impacts. Mr. McKinnon considered the risk of fire ignition at the cutblock to

be low, rather than severe, due to the wet conditions associated with the local biogeoclimatic zone.

Next, based on the Guide, Mr. McKinnon determined the fuel hazard present on the cutblock, based on the dominant wood species, the tonnes of debris per hectare, and the slope and aspect of the cutblock. Based on those factors, together with Mr. McKinnon's assessment that the fire risk for the local biogeoclimatic zone was low, Mr. McKinnon concluded that the fuel hazard threshold for the cutbliock was low, and no further fire hazard abatement was necessary.

In April 2016, Andersen provided Mr. McKinnon's fire hazard assessment to the Ministry. In September 2016, staff from the Ministry's Wildfire Management Branch assessed the fire hazard at the cutblock, and tried, unsuccessfully, to arrange a site visit with Mr. McKinnon and a representative of Anderson to discuss the matter.

In April 2017, a Forest Protection Technician with the Wildfire Management Branch conducted a fire hazard assessment at the cutblock. He concluded that further fire hazard abatement was required; namely, unburnt piles and remaining slash should be removed, mainly between in-block roads and the highway.

In May 2017, staff from the Wildfire Management Branch met with Mr. McKinnon and a representative of Anderson. Mr. McKinnon and Anderson's representative asserted that the risk of fire ignition was low, and no further abatement was required.

In June 2017, the Manager issued the order, requiring Anderson to abate the fire hazard on the cutblock by December 1, 2017.

Andersen appealed the order to the Commission. Anderson raised a number of arguments, but its main argument was that the risk of fire ignition and spread at the cutblock was very low due to the wet site and local weather conditions, and no further abatement was required. Anderson requested that the order be rescinded, or alternatively, that the order be varied because it was overly broad.

The Commission considered expert evidence from both parties. The Commission accepted the Ministry's expert evidence that there was an unacceptable number of unburned slash piles and significant areas of dispersed Cedar slash, particularly along the in-block roads. There was also evidence of human activity in the cutblock which increased the concern over the risk of ignition, and the corresponding risk to adjacent interface values. The Commission found that the Cedar slash presented a heightened risk of ignition, and the risk would persist while the slash slowly degrades. Based on the evidence, the Commission concluded that there was an increased risk of a wildfire starting in the cutblock, and if a fire ignited, it would spread quickly and present increased challenges for fire suppression.

Consequently, the Commission concluded that a fire hazard remained on the cutblock, and an order pursuant to section 7(3) of the *Wildfire Act* was required to abate the fire hazard. However, the Commission also found the language in the order was imprecise and overly broad, as it seemed to cover the entire cutblock, whereas the slash accumulations and unburned piles of concern were mainly located between the highway and the in-block roads. The Commission sent the order back to the Manager with directions to vary the order to make it more specific.

▶ Accordingly, the appeal was allowed, in part.

Appeals of Commission Decisions to the Courts

January 1, 2018 ~ December 31, 2018

British Columbia Supreme Court

Minister of Forests, Lands and Natural Resource Operations v. Canadian Forest Products Ltd. and Forest Appeals Commission

Decision date: May 10, 2018
Court: B.C.S.C., Justice Silverman
Citation: 2018 BCSC 771

The Minister of Forests, Lands and Natural Resource Operations (the "Minister") filed an appeal with the BC Supreme Court, against a decision issued by the Forest Appeal Commission (the "Commission"). The Commission's decision involved the denial of an application for summary dismissal of eight appeals filed by Canadian Forest Products Ltd. ("Canfor") against stumpage re-determinations issued by the Ministry of Forests, Lands and Natural Resource Operations (the "Ministry").

In 2017, Canfor appealed eight stumpage rate re-determinations issued by a Ministry employee. 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 ("IAM"). The original stumpage rates, which were determined in 2012 and 2013, were lower than the re-determined rates.

The re-determinations were issued after a delegate of the Minister directed the original stumpage rates to be re-determined under section 105.2 of the *Forest Act*. The Minister received submissions from Canfor before issuing the direction, and the Minister issued reasons for his direction. The Minister directed the Ministry employee to re-determine the stumpage rates by taking into account water transportation (lake tow) of the harvested logs for part of the distance from the CP areas (i.e., from a log dump on Williston Lake) to the point of appraisal, rather than based on truck haul for the entire distance. Lake tow is a lower cost transportation method than truck haul, and therefore, lake tow produced a higher stumpage rate.

The direction to conduct the re-determinations was preceded by a 2015 decision of the Commission regarding several other stumpage appeals by Canfor involving the issue of water transportation from the same log dump on Williston Lake (*Canadian Forest Products Ltd. v. Government of British Columbia*, Decision Nos. 2014-FA-001(a) to 009(a)). The Commission's decision was confirmed on appeal to the BC Supreme Court in November 2016 (*Canadian Forest Products Ltd. v. British Columbia*, 2016 BCSC 2202).

The Government applied to the Commission for an order summarily dismissing the

stumpage appeals pursuant to section 31(1) of the *Administrative Tribunals Act*. The Government argued that the appeals: (1) were outside of the Commission's jurisdiction because they were, in substance, challenging the Minister's direction, and the *Forest Act* does not provide for appeals of Minister's directions; (2) raised issues that were addressed in the Commission's 2015 decision, and therefore, the appeals were an abuse of process as a collateral attack, and/or their substance had been appropriately dealt with in another proceeding (i.e., was "res judicata" – had been conclusively and finally dealt with).

The Commission found that the appeals were within its jurisdiction. Section 105.2 of the *Forest Act* required the Ministry employee to take into account the information that formed that basis of the Minister's direction, but the employee was not bound by the Minister's opinion or the reasons for the Minister's direction. The appeals were against the re-determinations, and not the Minister's direction. The Commission also found that the appeals were not an abuse of process or an attempt to re-argue issues that were appropriately dealt with in another proceeding. The process that led to the Minister's direction did not take the place of the appeal process, the Commission's 2015 decision did not consider the argument that formed the basis of the 2017 appeals, and it would be unreasonable to expect Canfor to have raised that issue in the previous appeals.

For all of those reasons, the Commission denied the Government's application to summarily dismiss the appeals.

The Province, as represented by the Minister, appealed the Commission's decision to the BC Supreme Court. The Province essentially made the same arguments to the Court that it made before the Commission.

The Court found that the Province's arguments regarding res judicata, collateral attack, and abuse of process raised questions of mixed fact and law. However, section 140.7 of the *Forest and Range Practices Act* provides that the Commission's decisions may be appealed to the Court on "a question of law or jurisdiction" only. Consequently, the Commission's findings on those issues could not be appealed to the Court. The Court also found that, even if those issues could be appealed to the Court, the Commission's decision would be entitled to deference, such that the "reasonableness" standard of review would apply, and the Commission's findings were reasonable.

Regarding the Province's argument that the stumpage re-determinations were not within the Commission's jurisdiction, the Court found that the appropriate standard of review was the deferential standard of reasonableness, and the Commission's finding that it had jurisdiction to hear the appeals was reasonable. The Court found that a re-determination ordered by the Minister under section 105.2 of the *Forest Act* is a determination under section 105(1) of that *Act*, and therefore, is appealable to the Commission under section 146(2) of the *Forest Act*.

- Accordingly, the Court dismissed the Province's appeal.

British Columbia Court of Appeal

Minister of Forests, Lands and Natural Resource Operations v. Canadian Forest Products Ltd. and Forest Appeals Commission

Decision date: August 31, 2018
Court: B.C.C.A, Justice Stromberg-Stein
Citation: Docket: CA45336

Following the BC Supreme Court's decision in British Columbia (*Minister of Forests, Lands and Natural Resource Operations) v. Canadian Forest Products Ltd. and Forest Appeals Commission* (2018

BCSC 771), summarized above, the Province applied for leave to appeal to the BC Court of Appeal.

The Court of Appeal applied the test for leave to appeal that is set out in *Queens Plate Development Ltd. v. Vancouver Assessor, Area 09* (1987), 16 B.C.L.R. (2d) 104, 1987 CanLII 2626, at para. 14 (C.A.). The Court held that: the proposed appeal did not raise questions of general importance as to the extent of the Commission's jurisdiction; the proposed appeal was not limited to questions of law; and, there was no marked difference of opinion in the decisions below and sufficient merit in the issues put forward. The Court found that there was little prospect of the appeal succeeding, and no clear benefit to be derived from allowing the appeal to proceed. The stumpage appeals should be heard by the Commission and determined on the merits.

- The Province's application for leave to appeal was denied.

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, 2018). 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 decisionmaker 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 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 determine whether the appeal is to be considered by members of the commission sitting as a

(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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