



# Forest Appeals Commission

**Annual Report  
2020**



# Forest Appeals Commission

Fourth Floor  
747 Fort Street  
Victoria BC  
V8W 3E9

Phone: 250-387-3464  
Fax: 250-356-9923  
Email: [facinfo@gov.bc.ca](mailto:facinfo@gov.bc.ca)  
Website: [fac.gov.bc.ca](http://fac.gov.bc.ca)

The Honorable David Eby, Q.C.  
Attorney General and Minister responsible for Housing  
Parliament Buildings  
Victoria, British Columbia  
V8V 1X4

The Honorable Katrine Conroy  
Minister of Forests, Lands, Natural Resource Operations and Rural Development  
Parliament Buildings  
Victoria, British Columbia  
V8V 1X4

Dear Ministers:

Please find enclosed the 2020 Annual Report of the Forest Appeals Commission.

Yours truly,

Darrell Le Houillier

Chair

Forest Appeals Commission



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# Message from the Chair

I am pleased to present the Forest Appeals Commission's 2020 Annual Report. It was a busy year, involving significant restructuring and process changes to enable the Commission to serve its role to efficiently, responsively, fairly, and in a timely way, decide appeals for the people of British Columbia.

The Commission saw a significant change in its membership this year. Monica Danon-Schaffer (a member since 2009), Les Gyug (a member since 2007), Gabriella Lang (a member since 2007 and a Vice Chair since 2017), Lana Lowe (a member since 2018), Douglas Van Dine (a member since 2010), and Norman E. Yates (a member since 2014) have moved on to other opportunities. The Commission thanks each of those former members for their commitment to public service and their years of contributions toward the Commission.

The Commission also welcomed several new members in 2020. Shannon Bentley, David Bird (filling our newly created position of Vice Chair, Service Delivery), Daniela Dos Santos, Cynthia Lu, Ian Miller, and Reginald Whiten have been appointed as new members to the Commission. Former member R. Michael Tourigny has returned to the Commission as well. The Commission has benefited already from the influx of new members. I wish to thank the Crown Agencies and Board Resourcing Office (CABRO) for their assistance with the appointment of new members.

The Commission also saw significant shifts in staffing throughout the year. The Executive Director and General Counsel, Colleen Smith, retired after more than 25 years with the Commission. Colleen was a stellar public servant who provided excellent management, mentorship, and guidance for the Commission.

Colleen's successor is David Bird, who brings with him experience in adjudication, management, and Registry systems design. As the new Vice Chair, Service Delivery, David is working to modernize, and to create systemic improvements in, the Commission's operations.

The former Registrar, Jacqueline Siegel, also retired in 2020, after more than 10 years with the Commission. Jacqueline's energy, intellect, organizational skills, and interpersonal skills made her a great asset to the Commission.

Jacqueline has been succeeded by two new Registrars, now working to focus on early intervention in appeals and active case management, to help streamline processes and encourage settlement between the parties, where possible and appropriate.

The Commission's modernization has included refining an electronic case management system introduced in November 2019, working to enhance electronic data security, creating and implementing remote work possibilities for all Commission staff, improving our website, and creating and implementing live-streamed electronic hearing and mediation processes—becoming a leader in innovating service delivery in British Columbia's justice sector. The Commission continues to seek improvements and is investigating the potential for an electronic document management system to increase operational efficiency and streamline service to the public.

The Commission's electronic hearing and mediation processes have been a particular point of emphasis. The Commission now is able to maintain services without additional risk related to the COVID-19 pandemic and improve access to justice for remote communities. Additionally, electronic hearing live-streams have been viewed more than traditional in-person hearings, increasing the

accountability and transparency of the Commission's operations. Stakeholders have advised that forest-related government staff have taken the opportunity to expand their knowledge of applicable law and regulation by observing these hearings from their desks, without undue interruption to their own work. The Commission is excited to continue to refine and enhance its electronic hearing processes in the future, while maintaining access via in-person oral hearings, where and when they are appropriate.

Process improvements are also being contemplated. The Commission has reviewed a survey of recent system users, and is grateful for their input. The Commission has met with stakeholders, including members of the public, indigenous communities, and various government agencies, and is working toward a cover-to-cover redesign of appeal processes. The Commission aims at doing work in a more efficient, timely, responsive, fair, and user-focused way. This project is expected to complete and be implemented in 2022. It will be a significant step toward further reconciliation with Indigenous peoples, as described in the Truth and Reconciliation Commission's 94 Calls to Action.

In reviewing its procedures, the Commission took note of procedural requirements laid out in the *Administrative Review and Appeal Procedure Regulation*. There are two sections of the Regulation which I recommend be amended or repealed.


Lastly, internal improvements were required to respond to the effects of the global pandemic related to COVID-19. In addition to allowing staff to work remotely in a safe and productive fashion, the Commission installed physical infrastructure for the safety of staff and the public, and has developed and implemented flexible yet detailed exposure control plans, business continuity plans, and business reopening plans to respond to the ever-changing risks associated with the pandemic.

To ensure the safety of the staff and public, the Commission's physical office closed to the public for several weeks in the spring of 2020, while these measures were completed. Although business continued during that time, I exercised my discretion enshrined in the *COVID-19 Related Measures Act*, to extend the statutory timeframe for appeals that would have been due during the period of office closure, to avoid anyone being prejudiced by an inability to access the Commission's office. I am pleased to report that the Commission's office is open and expects to remain open, avoiding the need for any further general extensions of the timeframe for all appeals.

In 2020, the Commission also carried out its core legislated responsibilities: hearing and considering appeals. Six new appeals related to six separate decisions were filed with the Commission. Thirteen appeals relating to twelve different decisions were closed, reducing the Commission's appeal inventory. Most appeals that were closed were decided on the merits by the Commission, while a minority were withdrawn or settled by consent between the parties.

The appeal process took, on average, 836 days to complete. This was longer than the average from the four preceding years, 336 days. Decisions on the merits took, on average, 1,015 days in 2020 (up from 490 days on average in the preceding four years). Appeals completed without decisions on the merits took, on average, 237 days in 2020 (down from 240 days in the preceding three years).

The decisions issued on their merits in 2020 were comprised mostly of a group of eight appeals under the *Forest Act*, started in 2017. The appeals were prolonged and complex, and included a period of abeyance to allow the resolution of a related court case, from July 2017 to November 2018. This represented nearly half of the concerning 1,015-day figure. Nonetheless, the Commission is focused on improving the timeliness of its decision-making and



seeks to address the issue through increased use of electronic hearings and other technological improvements, plus process refinements to be achieved in the service delivery realignment.

The Commission's expenditures in the 2018-2019 fiscal year totalled \$90,774, below the preceding five-year average. Expenditures from April 1 to December 31, 2020 totalled \$53,210, putting the Commission on pace to again fall below its recent average expenditures. The reduced expenditures likely reflect gains in efficiency as well as a relatively low intake of appeals in 2020.



Darrell Le Houillier  
Chair



# Introduction

The Forest Appeals Commission was established in 1995 under the *Forest Practices Code of British Columbia*, and operates today under the *Forest and Range Practices Act*. The Commission provides an independent level of appeal from some 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, through its annual reports, also provides the Lieutenant Governor in Council (Cabinet) with an evaluation of appeal and review processes. The Commission may also recommend amendments to forest legislation and regulations respecting reviews and appeals.

In deciding appeals, the Commission weighs evidence and makes findings of fact. It interprets the legislation and common law and applies those sources of law to its factual findings. The Commission may compel the production of evidence and must ensure that its processes are procedurally fair to those involved in appeals.

The Minister and/or any party to an appeal, has a further right of appeal from a decision of the Commission to the Supreme Court of British Columbia, on questions of law or jurisdiction.

All decisions made by the Commission, as well as its Rules, its Practice and Procedure Manual, and information to assist the public through the appeals process, can be found on its website ([fac.gov.bc.ca](http://fac.gov.bc.ca), until replaced at an as-yet unspecified date in 2021, by [bcfac.ca](http://bcfac.ca)).

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## Review of Commission Operations

The principal work of the Commission is to process appeals from certain statutorily-authorized decisions made 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 also must provide the Minister with an annual evaluation of the manner in which reviews and appeals under those Acts are functioning, and to identify any problems that have arisen under the provisions of those Acts. Furthermore, the Commission must make recommendations to the Minister concerning any need to amend those Acts and related regulations respecting reviews and appeals. These functions are all addressed within this annual report.





# Appeal Procedures

An appeal begins when a notice of appeal is filed in response to a decision made by a statutory decision-maker. The Commission assesses whether the appeal seems to meet threshold requirements:

- the appellant has the ability to appeal the decision,
- the decision is appealable,
- the appeal was filed within the statutory timeframe allowed, and
- whether the Commission has the authority to grant the requested outcome of the appeal.

Which decisions can be appealed and who can appeal those decisions depends on the statute under which the decision was made, as discussed below.

For many appeals, depending on the statute under which the appealed decision was made, the Commission will invite the Forest Practices Board to be a party to the appeal. The Commission may also invite interveners to participate in the appeal.

The Commission may conduct appeals in writing or in person (an oral hearing), depending on the needs of the parties and based on principles of procedural fairness in administrative law.

As part of the legislative scheme governing the Commission, parties who disagree with a decision of the Commission have the right to appeal to the British Columbia Supreme Court, on questions of jurisdiction and law.

## Forest Act

The *Forest Act* governs the allocation and administration of Crown-owned timber in British Columbia. Under the *Forest Act*, determinations, orders, and decisions may be appealed to the Commission, either directly or following a review of that determination, order, or decision, by someone appointed by the Minister to do so.

Matters that may be appealed directly to the Commission are categorized as decisions related to:

- general tenure provisions, including:
  - compensation for tree farm licence holders where allowable cuts in tree farm licence areas are reduced;
  - allowances for third parties to cut timber on unused land within a tree farm licence area; and
  - reducing annual allowable cuts because of soil disturbance; and
- payments to government, including:
  - rent payable in respect of a tree farm licence, woodlot licence, community forest agreement, or first nations woodland licence;
  - stumpage rates; and
  - ministerial orders to define the volume of timber harvested under certain licences.

Matters that may be appealed to the Commission following reviews are categorized as decisions related to:

- general tenure provisions, including:
  - suspension and cancellation of a person's registration as a BC timber sales enterprise or of a BC timber sales agreement;
  - changes to the allowable cut within a timber supply area for a variety of reasons;
  - suspension, cancellation, or reduction of an agreement to allow a person to carry out innovative forestry practices;
  - the ability of the government to use Crown land for a purpose compatible with timber harvesting; and
  - the suspension of, reinstatement of, or cancellation of rights under an agreement due to failure to comply with obligations under the agreement or legislation; and
- payments to government, including:
  - rent payable in respect of woodlot licences and community forest agreements; and
  - ministerial orders limiting harvested volumes in certain circumstances.

## ***Forest and Range Practices Act***

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; protection of forests and ranges; compliance; enforcement; and monitoring. Under the *Forest and Range Practices Act*, appealable decisions are categorized as decisions related to:

- approvals, denials, and amendments to forest stewardship, site, and woodlot licence plans;
- forest practices requiring, in certain circumstances, plan-holders to submit plans to prevent, contain, control, limit the spread of, or dispose of threats to forested areas, including insects, diseases, and animals;
- approvals, orders, and determinations regarding range use plans, range stewardship plans, or amendments to either;
- the protection of resources, including orders related to unauthorized uses of Crown land for:
  - the storage of hay;
  - range development;
  - the construction or occupation of buildings;
  - the construction, rehabilitation, or maintenance of trails or recreational facilities;
- compliance and enforcement, including:
  - stop work orders;
  - remediation orders;
  - the imposition or non-imposition of administrative penalties;
  - orders related to the general intervention power of the Minister;
  - the suspension or cancellation of forest stewardship plans, woodlot licence plans, range use plans, range stewardship plans, and permits in certain circumstances;



- general provisions, including:
  - declarations limiting certain persons' liability to government and/or relieving persons from obligations under the *Forest and Range Practices Act* or an operational plan; and
  - imposing conditions in respect of an order, exemption, consent, approval, or authorization given or granted under the *Forest and Range Practices Act*; and
- regulations and standards, where the Minister exempts a person from regulations related to the construction, maintenance, use, or deactivation of certain roads, or the use of certain vehicles on forest service roads and rights of way.

Sometimes, decision-makers (or other Ministry staff authorized by the Minister) might first review an appealable determination. Those reviews may also be appealed to the Commission; however, only the determination or a review of that determination—but not both—may be appealed to the Commission.

Lastly, the Commission may, at the request of the Forest Practices Board, order the Minister or an official to make determinations related to administrative penalties or remediation orders.

## ***Private Managed Forest Land Act***

The *Private Managed Forest Land Act* encourages private landowners to manage their forests for long-term forest production by offering property tax incentives. The legislation establishes objectives with respect to soil conservation, water quality, fish habitat, critical wildlife habitat, and reforestation. The legislation also establishes the Private Managed Forest Land Council, which administers the managed forest program.

A person who is subject to certain orders, decisions, or determinations of the Council may appeal those to the Commission. Those matters, which are found within the Compliance and Enforcement provisions of the *Private Managed Forest Land Act*, include:

- determinations that a person has contravened the Act or its regulations;
- stop work orders and remediation orders;
- notifications to the government-appointed assessor that a person has contravened or is contravening the Act or its regulations; and
- variations of orders, decisions, and determinations.

## ***Range Act***

The *Range Act* governs management of Crown-owned range land, including by creating various forage tenures, addressing tenure management, and establishes the regulatory framework for grazing and hay-cutting licences and permits. The *Range Act* also includes compliance and enforcement tools.

People who are the subject of, or whose licences or permits are affected by, certain orders, decisions, or amendments made by certain government officials may appeal those to the Commission. Decisions that may be appealed to the Commission are categorized as decisions related to:

- licences and permits, including:
  - suspension and reinstatement of rights under a licence or permit for non-compliance or due to weather or natural events; and

- reduction of allowable grazing or hay harvesting under a licence or permit for a variety of reasons; and
- compliance and enforcement, by cancelling rights under a licence or permit for non-compliance.

The Commission also decides appeals from review decisions by government officials, of determinations that could themselves have been appealed to the Commission. Only the determination or a review decision of that determination—but not both—may be appealed to the Commission.

## **Wildfire Act**

The *Wildfire Act* is dedicated to wildfire protection in British Columbia. It defines responsibilities and obligations with respect to fire use, prevention, control, and rehabilitation. It allows the Government to recover its fire control costs and money for damages to Crown resources related to wildfires. The *Wildfire Act* also allows the government to make orders, issue determinations, and impose administrative penalties for non-compliance with the legislation.

Following a process of review by a government official, certain decisions under the *Wildfire Act* may be appealed to the Commission, either by a person named in the order or by the Forest Practices Board. Those decisions can be categorized as related to:

- forest and range protection, through orders for the abatement of fire hazards;
- fire prevention and fire control, by reducing compensation to those carrying out fire control because of their role in causing or contributing to a fire or its spread; and
- cost recovery and penalties, through:
  - orders for the recovery of fire control costs, damages, and costs recoveries;
  - contravention orders and associated administrative penalties and recovery of damages and costs;
  - remediation orders and administrative penalties for noncompliance with those orders; and
  - stop work orders.





# Statutory Framework

The statutory framework governing the operation of the Commission is found in Part 8.1 of the *Forest and Range Practices Act*, sections 140.1 to 140.7. Under section 140.2, the following sections of the *Administrative Tribunals Act* apply to the Commission:

- Parts 1, 2, 3, 4 (except sections 22, 25, 33<sup>1</sup>, 34(1), and 34(2)), 6 (except sections 47.1 and 47.2), 7, 8, and 10; as well as
- Sections 59.1 and 59.2.

## Performance Indicators

In 2020, the appeal process took, on average, 836 days to complete. Where decisions were issued on the merits of an appeal, the average was 1,015 days. Where appeals were resolved without a decision on the merits (in the case of 2020, by withdrawal, or consent order), the average was 237 days.

By comparison, in 2019, the average length of a resolved appeal was 443 days. Appeals resolved by a decision on the merits took, on average, 540 days. In 2019, decisions without a decision on the merits took, on average, 249 days. From 2016 to 2019, appeals were resolved, on average, in 336 days (240 days without a decision on the merits and 490 days with decisions on the merits).

The significant increase in times to complete appeals in 2020 stem mostly from eight related decisions under the *Forest Act*, started in 2017. Those appeals were placed in abeyance in July 2017, pending resolution of a related court process. That process resolved by November 2018, when the appeals were re-activated. The period of abeyance reflects nearly half of the time it took to resolve the appeals, which were procedurally and substantively complex.

The impact of these appeals is apparent from an assessment of the Commission's appeal inventory. On January 1, 2020, the appeal inventory had a total age of 14,658 days. As of December 31, 2020, that figure was 8,414 days. While the Commission is concerned over the timeliness of decision-making generally, there is an overall reduction in the age of the appeal inventory.

Timeliness in decision-making is expected to improve with ongoing improvements in technology and appeal processes; however, the Commission expects appeal durations to be relatively long once more in 2021, due to a number of delays related to oral hearings that had to be cancelled as a result of the COVID-19 public health crisis and could not proceed electronically due to accessibility concerns for the parties involved.

<sup>1</sup> Generally, section 33 of the *Administrative Tribunals Act* does not apply to the Commission; however, that section does apply to appeals advanced under sections 82 and 83 of the *Forest and Range Practices Act*.

# Appeals and Judicial Reviews of Commission Decisions

**I**n 2020, there was one appeal and one judicial review filed in the British Columbia Supreme Court in 2020, both related to a decision of the Commission: *Canadian National Railway Company v. Her Majesty the Queen in Right of British Columbia and the Forest Appeals Commission*. The decision at issue was issued by the Commission following an appeal from the Canadian National Railway Company, of a decision imposing an administrative penalty and a cost recovery order on the company, related to a wildfire that the company conceded one of its employees accidentally started, in violation of the *Wildfire Act*. The company argued that some damage to Crown resources attributed to the wildfire stemmed, in fact, from backfires lit by government firefighters to combat the wildfire, raging out of control. The company also argued that it was inappropriately charged for some government payroll loading costs as part of the cost recovery order. The Commission denied the company's appeal and increased the amount of the cost recovery order to reflect its view of the damage to Crown resources. The effect was an increase of the total quantum from the appealed decision, from \$15,992,417.97 to \$16,323,527.62.

As of the date when this annual report was published, the Court had not yet heard the appeal or the judicial review of the Commission's decision.





# Applications and Appeals in 2019

While the Commission is responsible for considering appeals on a broad range of subjects, the appeals that were active in 2020 represent a relatively narrow focus.

Within the *Forest Act*, all nine active appeals were from stumpage-related decisions under Part 7: Payments to Government.

Five of the six appeals under the *Forest and Range Practices Act* stemmed from decisions made under Part 6: Compliance and Enforcement. Of those, five also included a decision that the appellant in each case committed an offence under Part 5: Protection of Resources. The last of those six also included a decision that the appellant violated stumpage provisions contained in Part 7 of the *Forest Act*: Payments to Government. The other appeal brought under the *Forest and Range Practices Act* related to a decision under Part 2: Forest Stewardship Plan, Site Plan and Woodlot Licence Plan.

All thirteen active appeals under the *Wildfire Act* were from decisions under Part 3: Administrative Penalties and Cost Recovery. Nine of the appeals also included decisions under Part 1: Forest and Range Protection Requirements. One of those also included a decision under Part 2: Authority of Government for Fire Prevention and Control.

The table below summarizes the number of appeals in the Commission's inventory at the start of 2020, filed in 2020, and completed in 2020. These figures are broken down by the legislation under which each appeal was filed. The number of appeals appears as the first number in each field, while the second number (in parentheses) provides the number of government decision letters that were the subject of appeals (as one decision letter may generate one or more appeals).

	Inventory (Start of 2019)	New Appeals in 2019	Matters Resolved via...				Inventory (End of 2019)
			Rejection	Abandonment or Withdraw	Consent Orders	Final Decisions	
<b>Forest Act</b>	8 (8)	1 (1)	0	0	0	8 (8)	1 (1)
<b>Forest and Range Practices Act</b>	3 (3)	3 (3)	0	1 (1)	1 (1)	0	4 (4)
<b>Private Managed Forest Land Act (Part 5: Compliance &amp; Enforcement)</b>	0	0	0	0	0	0	0
<b>Range Act</b>	0	0	0	0	0	0	0
<b>Wildfire Act</b>	11 (11)	2 (2)	0	0	1 (1)	2 (2)	10 (10)
<b>TOTAL</b>	<b>22 (22)</b>	<b>6 (6)</b>	<b>0</b>	<b>1 (1)</b>	<b>2 (2)</b>	<b>10 (10)</b>	<b>15 (15)</b>

The Commission convened live hearings on the merits of two appeals in 2020, both under the *Wildfire Act*. These hearings totalled 18 days and were held via videoconference. The eight appeals concluded under the *Forest Act* were completed via written submissions.

The Commission also conducted a mediation on one appeal in 2020, taking one day to do so. The mediation was late in 2020 and the parties continue discussions. It is not known if the appeal will settle as a result of the mediation efforts.

# Forecast of Workload

**F**rom 2015 to 2016, the Commission received 5 to 10 appeals per year. From 2017 to 2019, the Commission saw a larger amount, between 13 and 19 appeals, each year. In 2020, the Commission returned to more historically representative numbers, with 6 new appeals filed. Year-to-year variability is expected given the modest volume of appeals handled by the Commission; however, based on available information (including the trend of increasing workload for the Commission and the expected, economy-wide decrease related to COVID-19), the Commission expects to receive between 5 and 15 appeals in 2021.

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## Forecast of Trends and Special Problems

**T**he Commission has not observed any trends of note. The Commission is unaware of any systemic problems related to its areas of authority. The Commission is unaware of any indications of special problems or issues related to the process of reviews at the Ministry of Forests, Lands, Natural Resource Operations and Rural Development.





# Surveys

## Survey Design

In March 2020, the Business Research and Diagnostics Group of the Ministries of the Attorney General and Public Safety & Solicitor General presented findings related to the *Appeal Processes and Procedures Survey*, conducted jointly by the Environmental Appeal Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal.

Because of the common membership, staffing, and similar procedures of the three bodies, the survey was aimed at historical system users of all three bodies to increase the chance of having a meaningful level of survey responses.

The survey was by invitation only. Invitations were extended to those who had been parties or representatives of parties to an appeal that was open, closed by way of a final decision, or closed following settlement of the issues under appeal, since January 1, 2016. All responses were anonymous.

The invitations were time-limited to ensure that information gathered reflected current work processes and staffing that was ongoing. Notably, the Commission's current practices and procedures were created in 2016, creating the need to limit survey-takers to those with relatively recent decisions from the Commission.

Appellants whose appeals had been rejected or dismissed in a preliminary decision were not considered appropriate because of their limited experience within the system. Invitations were extended to parties only because those with other statuses—participants and interveners—have variable degrees of exposure to the Commission's processes, depending on the circumstances of any given appeal. Those with open files were invited because the three appeal bodies had ongoing appeals dating back as far as 2006, with appellants who have had prolonged experience with associated appeal procedures.

## Survey Responses

Invitations were sent to 243 historical system-users. Eleven responses were provided, for a completion rate of 4.53%. This provided an accuracy rate of  $\pm 28.93\%$ , 19 times out of 20. As a result, the results cannot be considered reflective of the experience of all system-users; however, the Commission intends to use the results as qualitative information, to be used in the service delivery realignment.

Of the 11 responses, four came from historical system-users of the Commission. The appeals involved two decisions under the *Forest and Range Practices Act* and three decisions under the *Wildfire Act*, with one appellant likely having dealt with one decision under each statute. The other seven responses came from users of the Environmental Appeal Board.

Ten of the 11 responses came from appellants or appellants' representatives; one was designated as an interested Third Party to an appeal. Of the 11 responses, eight were from those who had participated in an oral hearing; the remaining three had participated in a hearing by written submissions. Those who responded came from a variety of community sizes spread throughout much of the province.



The survey results are separated into general impressions, those specific to oral hearings, and those specific to written hearings. Results are presented in the following tables, with dark blue signifying that the system-user “strongly agreed” with the opinion in question, light blue indicating that they “agreed”, light red indicating that they “disagreed”, and dark red that they “strongly disagreed”. Grey represents where the system-user did not express an opinion or that the question did not apply.

## General Impressions (11 system-users)





Overall, I was satisfied with the appeal process	
I understood the procedures throughout the appeal process	
The procedures allowed me to present my evidence	
The procedures allowed me to make my arguments	
The Board’s procedures and rules provide for a fair process	
The procedures were applied fairly throughout the appeal	
The procedures were applied consistently throughout the appeal	
It was easy to contact the Board	
The staff of the Board was professional	
The staff of the Board was respectful	
Staff communications were prompt	
Staff considered and responded to my questions or concerns	
Staff communications were clear and easy to understand	
After submissions were complete, the decision was timely	
The decision was easy to understand	
The decision addressed the evidence I presented	
The decision addressed the arguments I made	
I was satisfied with the result in the appeal	
The Board should conduct more electronic hearings	
Reading the Board’s rules helped me prepare my case	
Reading the Board’s procedure manual helped me prepare my case	
Reading previous decisions helped me prepare my case	
Reading the Board’s information sheets or other documents helped me prepare my case	
Legal sources (statutes, court cases, etc.) helped me prepare my case	
Other online resources helped me prepare my case	
The Board should be more active in case management	
The Board should more actively time preliminary applications	
The Board should more actively manage document disclosure	
The Board should better assist parties at a resource disadvantage	
The Board should offer more pre-hearing services electronically	

Some questions do not lend themselves to being summarized in the table. System-users were asked about the length of the pre-hearing process. Three of 11 said it was “Far too long”, two said it was “Too long”, three said it was “The right amount of time”, one said it was “Too short”, and one said it was “Far too short”. One declined to offer an opinion on this question.

System-users were also asked about the primary method they used to contact the Commission and the primary way they would want to contact (and be contacted by) the Commission. The results were generally consistent, with seven indicating email and two indicating telephone in response to both questions. One system-user indicated that contact had primarily been in person, while two had wished for contact primarily in person. One system-user indicated that contact had primarily been via post, although no one preferred this option.


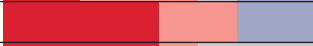






System-users were also asked about the number of participants allowed to be part of the appeal process. Five of the ten who responded to this question said there were too many participants. Four said the number of participants was correct. One said too few participants were allowed to be part of the process.

### Written Hearing Impressions (3 system-users)

I knew what to expect in the written hearing process	
The written hearing process was an efficient use of time	
The written hearing process was an efficient use of resources	
I was able to understand the rules and expectations in the proces	

One question on impressions of the written submission process did not lend itself to the table format above. It asked about the pace of deadlines in the context of a written hearing. One system-user indicated the pace was unmanageably fast, one that it was a little too fast, and one that it was a little too slow.

### Oral Hearing Impressions (8 system-users)

I knew what to expect in the oral hearing process	
The oral hearing was an efficient use of time	
The oral hearing was an efficient use of resources	
I understood the rules and expectations in the oral hearing	
Those who heard the appeal were professional	
Those who heard the appeal were respectful	
The other party/parties were professional	
The other party/parties were respectful	

System-users were invited to provide long-form feedback as well. Comments about the Commission generally included concerns about the Commission’s governmental ties and perceived bias against appeals; the power inequity between citizen-appellants and governmental respondents; the inaccessibility of Commission’s processes for laypeople; the length of time before the hearing; the need for greater screening of appeals and/or education of parties on evidentiary matters; and, the Commission’s tolerance of “court room theatrics”.

## Conclusions

As noted previously, the response rate for the survey was too low for the data to be considered representative of user experiences overall; however, the feedback provided remains valuable. The Commission is grateful to the system-users who took the time to highlight their concerns. Those concerns will be addressed throughout the service delivery realignment, through internal Commission training, and will be focal points of discussions with stakeholders during those processes.

The systemic areas of concern are:

- ensuring Commission processes (including how to present admissible evidence and effective argument) are better understood by parties;
- improving the efficiency, in both time and resources, involved in all hearings;
- ensuring the Commission's rules and procedures are fair, including by better assisting under-resourced parties;
- improving clarity and responsiveness in communications from Commission staff;
- ensuring that parties are not unduly forced into electronic hearings;
- improving the ease with which the Commission's rules, procedure manual, previous decisions, and other publications can help parties prepare their cases; and
- increasing the Commission's activity in case management, the timing of preliminary applications, and document disclosure.

Areas of potential training are:

- encouraging fairness and consistency in applying the Commission's rules and procedures;
- fostering clarity and responsiveness in decision-writing; and
- improving professionalism and respectfulness of panels conducting oral hearings.





# Plans for Improving Commission Operations

**T**he Commission will focus on improving its performance through the service delivery realignment. Over 2021, Commission staff will be considering the information obtained from the survey and stakeholder engagement to create new, more robust, efficient, and responsive appeal procedures and resources to meet the public's needs. The Commission aims to complete draft processes and procedures late in 2021, and to engage in further stakeholder dialogue before implementing these improvements in 2022.

The Commission has done some work on improving the website's infrastructure in 2020 and will be updating its content in 2021. This will improve communication and transparency with the public. The Commission will finalize measures to improve electronic data security by the end of the 2020-2021 fiscal year. Additionally, the Commission will continue to develop its electronic hearing and mediation processes as well, to offer more electronic and web-based solutions for appeal processes.

# Recommended Legislative and Regulatory Amendments

The Commission recommends amendment or repeal of two sections contained in the Administrative Review and Appeal Procedure Regulation. Both are prescriptive of the Commission's processes.

Section 21 provides that the Commission must, within 30 days of receiving a Notice of Appeal:

- a) determine whether the appeal will be heard by the whole Commission or a panel of the Commission;
- b) designate the panel members if the appeal is to be heard by a panel; and
- c) set the date, time and location of the hearing.

The Commission is presently comprised of 19 members. Practically speaking, the Commission does not hear any appeals as a singular entity; rather, it assigns panels to every appeal. As such, the first requirement can be dispensed with in the normal course of correspondence.

The second and third requirements create duplicative decision-making that is not the preference of the Commission, or stakeholders, as we heard in our engagement with them in 2020. Before a panel (typically part-time members) can be assigned, their availability must be confirmed based on the date, time, and location of the hearing. Those determinations depend on several factors, including the expected duration of the hearing, the scheduling needs of the parties, whether the hearing will be in-person, electronically, or in writing, and the nature and extent of preliminary tasks to complete before the appeal is decision-ready. This includes allowing parties to exchange information and obtain evidence necessary for the presentation of their cases.

To select a date, time and location of hearing, and to assign a panel within 30 days of receiving the Notice of Appeal invites repeated consideration of those issues, as disclosure and evidence-gathering proceeds, and while the parties see if there is a reasonable prospect of settling the appeal without a hearing.

More concerningly, section 26 of the *Administrative Review and Appeal Procedure Regulation* requires that the Commission complete an appeal of a determination under section 146(2)(b) of the *Forest Act* within 42 days of the conclusion of a hearing. Such determinations involve the calculation of stumpage rates. Such appeals can be highly technical. Submissions and evidence for a stumpage appeal typically involves hundreds of pages of material. For a part-time member to review, process, and understand that material, and then to provide a reasoned, written decision on the appeal, is extremely difficult within the 42-day period provide by the *Administrative Review and Appeal Procedure Regulation*. That requirement serves as a barrier to quality decision-making for such appeals.

The Commission recommends that it be allowed to determine its own timeframes for the processing of, and resolution of, appeals that come before it. The Commission recommends that Cabinet not prescribe an order for preliminary decision-making, as is done in section 21 of the *Administrative Review and Appeal Regulation*, or prescribe a time for completion of all appeals within a certain class. Doing so does not account for the time needed to resolve appeals in a procedurally fair way, and to produce the sort of high-quality decisions parties ought to expect from the Commission.



# Commission Membership

Members of the Commission are appointed by the Lieutenant Governor in Council under Part 2 of the *Administrative Tribunals Act*. The Commission has diverse, highly qualified members, including professional foresters, biologists, engineers, and agrologists. The Commission also has lawyers with expertise in natural resource and administrative law. Members are appointed from across British Columbia, and the Commission is committed to soliciting applications to ensure its membership reflects the diversity of British Columbians, while ensuring members have the requisite expertise and experience to carry out their responsibilities to the highest standards.

The following tables summarize the membership of the Commission as of December 31, 2019, as well as changes in membership during 2019.

## Members of the Forest Appeals Commission with Special Duties as of December 31, 2020

Name	End of Term
Darrell Le Houillier (Chair)	July 29, 2022
David M. Bird (Vice Chair)	December 31, 2023
Robert Wickett, Q.C. (Vice Chair)	December 31, 2021

## Members of the Forest Appeals Commission, January 1, 2020 to December 31, 2020

Name	End of Term	Name	End of Term
Maureen Baird, Q.C.	December 31, 2023	Susan Ross	December 11, 2022
Brenda L. Edwards	December 31, 2022	Teresa Salamone	December 31, 2022
Jeffrey Hand	December 31, 2022	Howard M. Saunders	December 31, 2022
James Mattison	December 31, 2022	Daphne Stancil	December 31, 2021
Linda Michaluk	December 31, 2023	Reid White	December 31, 2022

## New and Former Members of the Forest Appeals Commission

New Members	Start of Term	Former Members	End of Term
Shannon Bentley	June 29, 2020	Monica Danon-Schaffer	December 31, 2020
David M. Bird (Vice Chair)	June 22, 2020	Leg Gyug	December 31, 2020
Daniela Dos Santos	June 29, 2020	Gabriella Lang	September 11, 2020
Cynthia Lu	June 29, 2020	Lana Lowe	December 31, 2020
Ian Miller	June 29, 2020	Douglas Van Dine	December 31, 2020
R. Michael Tourigny	June 29, 2020	Norman E. Yates	December 31, 2020
Reginald Whiten	June 29, 2020		



# The Commission Office and Use of Resources

The Commission’s operations are facilitated through resources shared with the Community Care and Assisted Living Appeal Board, the Environmental Appeal Board, the Financial Services Tribunal, the Health Professions Review Board, the Hospital Appeal Board, the Industry Training Appeal Board, and the Oil and Gas Appeal Tribunal. These shared resources include registry services, legal advice, research support, systems support, financial and administrative services, professional development, and communications support.

Many of the expenses associated with the Commission’s operations are shared with the Environmental Appeal Board, which is the principal body in the resource-sharing arrangement described above. As such, providing a separate report on the budget of the Commission does not capture the true use of resources for budgeting purposes. This difficulty is compounded by the fact that the Commission is required, by regulation, to report based on the calendar year, whereas its fiscal year runs from April 1 to March 31. The Environmental Appeal Board’s fiscal year and reporting year also run from April 1 to March 31.

With that limitation in mind, I have provided a summary of the Commission’s direct expenses in 2020 and historically. The figures below do not account for several heads of expenditure, including some staff salaries and benefits. The following table summarizes the Commission’s expenditures in those areas, rounded to the nearest dollar. Figures are provided based on a five-year average, the 2019-2020 fiscal year, and the 2020 portion of the 2020-2021 fiscal year.

Area of Expenditure	Fiscal Years 2015-2020 Average	2019-2020 Fiscal Year	2020-2021 Fiscal Year to December 31, 2020
Member Fees and Expenses	\$55,684	\$90,774	\$35,581
Staff Travel	149	0	0
Professional Services	38,420	9,405	838
Information Systems	2,395	11,428	11,071
Office and Venue Expenses	4,591	9,585	3,800
Annual Report Publication	7,689	5,796	1,920
Other	0	0	0
<b>TOTAL</b>	<b>\$104,412</b>	<b>\$126,998</b>	<b>\$53,210</b>







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