



Forest Appeals Commission

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DECISION NO. 2008-WFA-005(a)

In the matter of an appeal under the *Wildfire Act*, R.S.B.C. 2004, c. 31.

BETWEEN:	Louisiana-Pacific Canada Ltd.	APPELLANT
AND:	Government of British Columbia	RESPONDENT
BEFORE:	A Panel of the Forest Appeals Commission Robert Wickett, Panel Chair Bruce Devitt, Panel Member Al Gorley, Panel Member	
DATE:	April 14 - 16, 2009	
PLACE:	Golden, BC	
APPEARING:	For the Appellant:	Scott King
	For the Respondent:	A.K. Fraser/Ian Wiebe, Counsel

APPEAL

[1] This appeal is brought by Louisiana-Pacific Canada Ltd. ("LP") from the September 19, 2008 determination (the "Determination") of E.A. Desnoyers, Manager of the South East Fire Centre (the "Manager"), with the then Ministry of Forests and Range (the "Ministry")¹. Mr. Desnoyers is a designated official under section 58 of the *Wildfire Act*, R.S.B.C. 2004, c. 31.

[2] The Determination was issued by the Manager following an opportunity to be heard ("OTBH") conducted by the Manager pursuant to sections 26 and 27 of the *Wildfire Act*. The Manager determined that LP had contravened sections 23(3) and 23(4) of the *Wildfire Regulation*, with respect to an approved burn plan issued on September 21, 2006, regarding a prescribed fire ignited by LP on September 27, 2006.

[3] Having found these contraventions, the Manager levied an administrative penalty in the amount of \$10,000 for each contravention. In addition, he required LP to pay the sum of \$1,128.18, representing the value of the Crown resources that were damaged or destroyed as a result of the contraventions. The total penalty levied against LP was \$21,128.18.

¹ In March of 2011, this Ministry became part of the Ministry of Forests, Lands and Natural Resource Operations.

[4] LP appeals the Determination on the grounds that it did not breach either of sections 23(3) and 23(4) of the *Wildfire Regulation*. It does not appeal the amount of the penalties in the event that the Panel determines that there have been contraventions, as described above.

[5] The Forest Appeals Commission has jurisdiction over this appeal pursuant to section 39 of the *Wildfire Act*. Section 41 of the *Wildfire Act* provides as follows:

- 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.

[6] Sections 39 and 41 of the *Wildfire Act* permit the Panel to conduct the hearing as a review of the decision made by the Manager or to conduct a fresh hearing on the evidence. [See for example, *Ling v. Government of British Columbia* (Decision No. 2011-FOR-004(a), September 19, 2011) wherein the Commission considered legislation identical to sections 39(2) and 41 of the *Wildfire Act*.] Although no argument was made by the parties to this appeal respecting the manner of the appeal, it is clear that the parties presented new evidence and argument and the Panel conducted the appeal as a fresh hearing on the evidence, not as a review of the Determination on the record.

DEFINITIONS

[7] Prior to describing the events giving rise to the Determination and this appeal, it is necessary to define some of the technical terms that arose throughout the course of the evidence heard by the Panel. They are as follows:

Drought code ("DC") is a measurement that expresses the flammability of layers below the surface and large fuel sources such as large logs. As the DC increases, more of the large logs and undersurface layers will ignite with a fire. A DC reading of 500 would indicate that 80% of a large log would be consumed in a fire. Also, a high DC indicates that the undersurface layers will burn and the fire will, therefore, be that much more difficult to contain, and will take that much longer to extinguish.

Fine fuel moisture code ("FFMC") is a measurement that relates to the moisture and, therefore, flammability of fine fuels. It is expressed on a logarithmic scale and is relevant to the ease of ignition of a fire. A reading of 75 would indicate that the fine fuels were very difficult to ignite while a reading of 90 would indicate that the fine fuels would ignite easily.

Duff moisture code ("DMC") expresses the average moisture content of organic layers at moderate depth. It indicates fuel consumption in medium sized wood.

Build up index ("BUI") is a numeric rating of the total amount of fuel available for combustion. It is a combination of the DMC and the DC.

Prescribed fire burn plan is a plan required by an applicant who wishes to conduct a prescribed burn to remove, for example, slash and waste from a licenced cutting area. The burn plan must be reviewed and approved by a designated fire official, and it constitutes the required permission to proceed with a prescribed burn.

BACKGROUND

[8] LP is an integrated forest company holding a Timber Sale Licence in the Valenciennes River drainage north of Golden, BC.

[9] On September 21, 2006, LP, represented by its local manager, Scott King, submitted a prescribed fire burn plan (the "Burn Plan") to Glen Burgess, then the Forest Protection Officer for the Columbia fire zone district of the Ministry. The Burn Plan was approved by Mr. Burgess that same day.

[10] The Burn Plan authorized LP to proceed with a prescribed burn in Block 6, Cutting Permit 407 ("CP 407"), for the purpose of disposing of slash. Block 6, which had been harvested in October of 2005, is located approximately 53 km north of Golden.

[11] Under the Burn Plan, Mr. King was designated as the burn boss, assisted by Archie McConnachie. Mr. McConnachie had been retained by Mr. King to assist with the prescribed burn, as he was a Type 1 Incident Commander with the Ministry prior to his retirement. Mr. McConnachie is acknowledged as an expert in the planning and execution of prescribed burns and in firefighting.

[12] Mr. McConnachie's retainer by LP is of note. In early 2006, Mr. Burgess and Mr. King had a discussion about conducting a prescribed burn without a wet line. Normally, a prescribed burn requires a sprinkler system or personnel with water hoses on site to wet the perimeter of the fire to ensure that it does not spread. It is an expensive safety method. Mr. Burgess suggested to Mr. King that Mr. McConnachie was an expert who could be retained to plan and supervise a prescribed burn without a wet line.

[13] Burning without a wet line required an analysis of the moisture content of the slash to be burned in relation to the moisture content of the forest outside of the burn area. Mr. King had acted as burn boss in eight previous prescribed burns, but he had never undertaken supervision of a burn without a wet line.

[14] Mr. King sought the approval of his superiors to proceed with a burn plan without a wet line and to retain Mr. McConnachie to assist in planning and supervising the burn.

THE BURN PLAN

[15] The Burn Plan is a standard 14 page document. It is divided into a variety of sections designed to describe the parameters within which the prescribed fire will occur, the predicted length and intensity of the fire, the nature of the burn operations, and a fire escape contingency plan. The fire map appended to the Burn Plan divides Block 6 into two sub areas. The first is described as area A(A), which is an area of approximately 6.2 hectares within which the prescribed fire was authorized. The second area within Block 6 is described as area A(B), which is an area of approximately 2.3 ha, and within which there was to be no treatment, i.e., it was not to be burned. Area A(B) lies across the upper reach of a forestry road, upslope from area A(A). The lower reach of the forestry road marks the lower boundary of area A(A).

[16] There are several key provisions of the Burn Plan which are relevant to the matters in issue in this appeal.

[17] Section C of the Burn Plan is titled "Prescribed Burn Objectives and Desired Fire Effect". The Burn Plan provides that the burn objectives are to:

1. Reduce slash load.
2. Reduce fire hazard.
3. Increase the number of plantable spots.

[18] Section C of the Burn Plan also provides that, because this fire was to occur in late September, fine fuels were the key indicator with respect to the plan. The Burn Plan states: "therefore the FFMC is the driving force of this plan".

[19] Section C of the Burn Plan also defines the fire weather indices/codes based on measurements taken by LP in its planning process. The Burn Plan discloses the following:

FFMC: 75-90

DMC: 25-65

DC: N/A

[20] Section F of the Burn Plan describes the "Prescribed Burn Operations". It states, in part:

Pre-Burn preparations

.... Depending on moisture, ignition will commence along the East boundary as the fuel loads in the gulley are higher. Particular attention must be paid to the existing slash piles as they could become unstable and roll out of the block during burn operations. The avalanche path along the W boundary originates from a rock wall adjacent to the NW corner of the block. The avalanche path did not contain old or dry avalanche debris adjacent to the block. Most of the debris in the avalanche path is located below the block adjacent to the WTP [wildlife tree patch]. The non-merchantable stems growing within the avalanche path will likely be killed by the radiant heat from the

burn. The burn boss will determine if the N boundary requires a wetline prior to ignition. At minimum, there will be a 6% moisture spread between the targeted slash and the adjacent timber.

[21] Section F of the Burn Plan also details the “Fire Suppression Resources” – the resources required to be provided by LP at the burn area for ignition control. The Burn Plan states that, during the burn, 3 adult persons, 3 hand tools, 2 mark 3 pumps, 3,000 feet of hose and 2 backpack tanks are required to be on site.

[22] Section F of the Burn Plan also provides for the “Escape Fire Contingency plan”. This contingency plan provides that:

All escapes will be aggressively attacked to minimize the spread. The attack plan will be to contain the escape. An S5 and S6 stream border the block. The streams can serve as additional water source should an escape occur. There is no road access above this block.

If the total burn area outside the block is fringe damage and amounts to less than 1.0 ha it will not be considered an escape. Control action may be initiated as determined by the burn boss. Any single continuous burnt area outside the block greater than [sic] 0.5 ha will have control action initiated. If the burn area outside the block exceeds 1.0 ha it will be considered an escape and a wildfire. It will be reported as required by legislation. Resources identified in the burn plan will be activated as required.

[23] In addition to the resources to be at the burn area for ignition and control, the fire escape contingency plan sets out the “Total Resources Required in Event of a Fire Escape”. The plan requires an increase in number of people and hand tools to be deployed by LP in the event of a fire escape, as well as additional and larger water tanks. In the event of an escape, the plan requires:

10 adult persons, 10 hand tools, 2 mark 3 pumps, 3,000 feet of hose, 1- 1,500 gallon relay tank and 1- 1,000 litre portable water tank.

THE BURN AND RESPONSE

[24] Mr. King gave instructions to ignite the prescribed burn on September 27, 2006. To do this, he initiated a test burn in the northwest corner of area A(A). The test burn appeared to progress as expected and Mr. King, with the concurrence of Mr. McConnachie, gave instructions to ignite a strip 30 metres below the test burn within area A(A).

[25] Mr. King and Mr. McConnachie immediately observed that the fire was burning far more intensely than anticipated and that the large fuels had ignited. Mr. McConnachie concluded that the fire could not be controlled and that it was inevitable that the fire would escape. Mr. King immediately attempted to start the two water pumps required to be present at the burn site but he was unable to do so. With the adrenaline of the moment causing him to rush, he accidentally flooded the pumps rendering them unusable.

[26] Mr. McConnachie understood that there was a glacier behind the hanging valley where the fire was located and he knew that this would cause the wind to blow down the slope placing the remainder of the block in danger. Both Mr. King and Mr. McConnachie were immediately concerned not only that the fire would escape, but also that there was a serious risk that it would become unmanageable. Mr. McConnachie therefore suggested to Mr. King that they ought to light area A(B), above the road, to burn off fuel and minimize what they both considered to be the inevitable serious escape of the fire and serious damage to the surrounding forest.

[27] Mr. McConnachie suggested to Mr. King that they ought to ignite a strip towards the top of area A(B), and then increase the size of the existing fire in area A(A) in order to pull the two fire areas towards each other at the centre of block A(B), and thereby contain the anticipated wider escape of fire below the road. Mr. King accepted this advice and area A(B) was ignited by helicopter.

[28] Messrs. King and McConnachie remained on site until dark. At that time, the fire appeared to be stable. After returning to his office, Mr. King notified Mr. Burgess by email that the fire had escaped and that, for safety reasons, he was hesitant to initiate immediate fire control activities. He estimated that the size of the escaped fire, at that time, was roughly 9 ha.

[29] The next day, September 28, Mr. King and Mr. McConnachie returned to the burn site and observed that area A(B) was almost fully consumed by the fire. They did not immediately call in fire support. They determined that the proper course was to determine the extent of the escape of the fire, and make a determination as to a safe method of fire suppression. They made some efforts to contain and fight the fire on the ground, and called in a helicopter for water drops, although this was not called for in the Burn Plan. There was some delay in obtaining a helicopter and some difficulty in locating a water source. One may speculate on whether this initial firefighting effort would have been more effective if the use of a helicopter had been mandated in the Burn Plan.

[30] The following day, September 29, the Golden fire fighting crew was brought to the site. This crew, including fire jumpers, continued to fight the fire in its various locations. The fire was finally fully extinguished by rain and snow on October 6, 2006.

[31] Fire, as its want, will spread embers through the wind. This can frequently result in spot fires igniting great distances from the original fire. In this case, the fire spread, in spots, from Block 6 (areas A(A) and A(B)) to Blocks 7, 8, 9 and 10 of CP 407. The total area of Crown land impacted by the fire was 47.6 hectares. In total, 8388 cubic metres of timber were destroyed by the escaped fire on 25.5 hectares of Crown land, including the one hectare fringe damage allowance.

THE INVESTIGATION AND DETERMINATION

[32] The escape of this fire led to an investigation by Alex McLean and, eventually, a licencing action by the Manager, the results of which are on appeal to this Panel.

[33] The Manager convened an OTBH to hear Ministry staff and LP with respect to allegations that there had been a breach of sections 23(3) and 23(4) of the *Wildfire Regulation*.

[34] Following the OTBH, the Manager concluded that LP had breached sections 23(3) and 23(4) of the *Wildfire Regulation*. He levied penalties totalling \$21,128.18, as described above. The Manager's decision was rendered on September 19, 2008.

[35] Section 23 of the *Wildfire Regulation* provides as follows:

Resource management open fire

- 23** (1) The circumstances in which a person described in section 5 (1) or 6 (1) of the Act may light, fuel or use a resource management open fire in or within 1 km of forest land or grass land are as follows:
- (a) the person is not prohibited from doing so under another enactment;
 - (b) to do so is safe and is likely to continue to be safe;
 - (c) the person submits a burn plan to an official and receives the official's approval to it in writing;
 - (d) the person obtains a burn registration number for the fire
 - (i) by
 - (A) calling the telephone number made known by the government for that purpose, or
 - (B) contacting an official by other means, and
 - (ii) by providing the information referred to in section 24;
 - (e) the person takes all necessary precautions to ensure the fire is contained in the burn area.
- (2) A person who lights, fuels or uses a resource management open fire on a burn area must ensure that the fire is extinguished by the date specified by the official or person who issued the burn registration number.
- (3) Without limiting subsection (1) or (2), a person who lights, fuels or uses a resource management open fire must**
- (a) do so in accordance with the applicable approved burn plan, and**
 - (b) ensure that the fire does not escape.**
- (4) If a resource management open fire spreads beyond the burn area or otherwise becomes out of control, the person who lit, fueled or used the fire**
- (a) immediately must carry out fire control and extinguish the fire if practicable, and**
 - (b) as soon as practicable must report the fire as described in section 2 of the Act.

- (5) A person to whom subsection (4) applies may discontinue carrying out fire control if relieved from doing so by an official.

[Emphasis added]

[36] The Manager determined that LP was in breach of the *Wildfire Regulation* in three respects. Firstly, the Manager determined that LP breached section 23(3)(a) of the *Wildfire Regulation* by failing to light, fuel or use a resource management open fire other than in accordance with the applicable approved Burn Plan. Specifically, the Manager found that LP had ignited a block outside the prescribed burn area (i.e., area A(B)), in an attempt to control the escape, when such action was not necessary or required.

[37] The Manager also determined that LP had breached section 23(3)(b) of the *Wildfire Regulation* by failing to ensure that the prescribed fire did not escape.

[38] Finally, the Manager determined that LP breached section 23(4)(a) of the *Wildfire Regulation* by failing to immediately carry out fire control and to extinguish, if practicable, the escaped resource management open fire.

[39] The Manager concluded that the fire had escaped on September 27, 2006, but that the ten person contract firefighting crew was not dispatched to the site until September 29. Further, the Manager determined that the water pumping system failed, and LP did not deploy any other resources to extinguish the fire on either October 1 or 2, 2006. The Manager determined that appropriate firefighting resources were not deployed by LP until October 3, 2006. The fire was eventually extinguished on October 6, 2006.

[40] LP raised the defence of due diligence, mistake of fact and officially induced error as set out in section 29 of the *Wildfire Act*. This section provides:

- 29** For the purposes of an order of the minister under section 26, a person may not be determined to have contravened a provision of this Act or the regulations if the person establishes that
- (a) the person exercised due diligence to prevent the contravention,
 - (b) the person reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision, or
 - (c) the person's actions relevant to the provision were the result of an officially induced error.

[41] The Manager determined that there was no evidence of unusual or unforeseeable circumstances with respect to the circumstances of the fire, or that LP's failure to comply with the Burn Plan to immediately carry out fire control was due to circumstances outside of its control.

[42] The Manager determined that it was foreseeable, upon the initial ignition of the fire, that the fire could not be contained and that LP should have ceased burning activities, particularly in light of the available forecasts for weather, including wind.

[43] The Manager further found that LP did not have a proper system in place to prevent the contravention and that its efforts to contain the spread of the fire were inadequate and contrary to the Burn Plan.

[44] The Manager noted that LP had not proved that it had complied with various items set out in the Burn Plan prior to ignition of the fire. The Manager noted that the “go no-go checklist (mandatory)” required LP to:

- determine whether the current and projected fire weather forecast was favourable;
- brief all personnel on the prescribed Burn Plan;
- ensure that the required equipment was in place and in working order;
- make sure that all resources including backup adequate for containment of a potential escape were in place;
- determine that the burn can be carried out according to the Burn Plan; and
- ensure that an adequate contingency plan had been developed and was in place.

[45] The Manager was particularly drawn to evidence which indicated that LP’s view of its due diligence obligations were to delegate those responsibilities to its employee, in this case, Mr. King. The Manager was concerned that LP did not have a process in place, Mr. King was not provided with a clear set of directions regarding pre-ignition checks, weather forecasts and contingency plans in the event of an escape. The Manager determined that this failure to provide direction at the corporate level reflected on LP, in that the actions (or negligence) of its employee, Mr. King, would be considered action (or negligence) on behalf of LP. The Manager found that there were insufficient resources, as required by the Burn Plan, to aggressively attack the spread of the escape, and there was an inexplicable delay in designating resources to the site, even in the face of a significant escape of fire.

[46] The Manager identified and relied upon all of these factors in coming to the conclusion that LP was not in compliance with the Burn Plan and was not duly diligent in acting to prevent the escape of the fire.

[47] The Manager also found that lighting area A(B) to contain the fire was not a reasonable course of action because LP had not determined the fuel and moisture conditions within area A(B) prior to igniting it.

[48] The Manager did not address the other two defences in his reasons.

ISSUES

[49] LP identifies six grounds for appealing the findings of contravention made by the Manager. LP expresses its grounds of appeal as follows:

- a. The Manager was in a conflict of interest and erred in refusing LP’s request that an alternate Manager be appointed as decision-maker.
- b. The Manager made findings unsupported or contrary to the evidence.

- c. The Manager failed to consider that the compliance and enforcement staff did not follow the Ministry's policy during the investigation. The Manager failed to consider the impact that it had on the investigation, and the weight to be given to the evidence.
- d. The Burn Plan was conducted in the manner recommended by the Ministry's protection staff, and as recommended by the expert referred to LP by the Ministry. The Manager therefore erred in failing to find that, if there were an error committed by LP, the error had been officially induced.
- e. The South East Fire Centre issued a wind warning on September 30, 2006, and did not advise LP of this warning. The Manager erred in finding that this was not an officially induced error.
- f. The Manager erred in finding that LP had not been duly diligent by consulting with, and following the advice of, the expert recommended by the Ministry with respect to the burn procedures.

[50] Having considered the evidence tendered by LP and by the Manager in this appeal, the Panel concludes that the issues, as framed by LP, conflate a number of different issues together and reflect objections to findings of fact made by the Manager. As described above, the Panel will consider the evidence anew and reach its own conclusions regarding the alleged breaches and due diligence. Therefore, the Panel concludes that it would be preferable to express the issues in a different manner than proposed by LP. Although the Panel characterizes the issues in a different manner than LP, it will, in the course of these reasons, consider and deal with all of the issues raised by LP. The Panel expresses the main issues as follows:

1. Did LP initiate (light) a resource management open fire other than in accordance with the approved Burn Plan and did it permit the fire to escape, contrary to subsections 23(3)(a) and (b) of the *Wildfire Regulation*?
2. If the fire spread beyond the authorized burn area or otherwise became out of control, did LP fail to immediately carry out fire control and extinguish the fire, if practicable, contrary to section 23(4)(a) of the *Wildfire Regulation*?
3. If LP contravened the *Wildfire Regulation*, has LP established a defence of due diligence or officially induced error to the contravention(s)?

DISCUSSION AND ANALYSIS

- 1. Did LP initiate (light) a resource management open fire other than in accordance with the approved Burn Plan and did it permit the fire to escape, contrary to subsections 23(3)(a) and (b) of the *Wildfire Regulation*?**

[51] Section 23(3) states:

- 23(3)** Without limiting subsection (1) or (2), a person who lights, fuels or uses a resource management open fire must

- (a) do so in accordance with the applicable approved burn plan, and
- (b) ensure that the fire does not escape.

[52] This section engages two questions. Did LP initiate the fire on September 27, 2006 in accordance with the Burn Plan and, secondly, did it permit the fire to escape? The first of these questions requires an analysis of the terms of the Burn Plan and of the actions taken by LP in the context thereof. The second question requires an analysis of whether LP permitted or allowed the fire to escape.

i) Did LP ignite the fire in accordance with the Burn Plan?

[53] The Burn Plan authorizes the burning of slash within area A(A). This constitutes the boundary of the authorized burn.

[54] It is clear that the fire was initially lit in accordance with the terms of the Burn Plan. Mr. King and Mr. McConnachie both testified that a test fire was ignited in the North East corner of the Block by the ignition of two or three piles of debris. The fire appeared to be behaving as expected and, at the conclusion of the test burn, both Mr. McConnachie and Mr. King considered that the conditions were favourable to proceed with the burn. Following the test burn, Mr. King, with the concurrence of Mr. McConnachie, proceeded with ignition in area A(A) commencing in the North East corner and proceeding in a North East-North West direction, as authorized by the Burn Plan.

[55] At this point, Messrs. King and McConnachie noted that the fire was burning too intensely and that the larger fuels had ignited. They recognized immediately that the fire would not extinguish by the end of the day and that, with the existing wind conditions, it was inevitable that the fire would escape. Mr. King then attempted to start the water pumps, which, as described as above, he was unable to do.

[56] Mr. McConnachie has thirty years of experience in managing prescribed burns and fighting forest fires. He testified that he has instructed fire fighters and burn bosses throughout Canada. During his time as an employee of the Ministry, he was responsible for large fire management and is qualified as a Type 1 Incident Commander. In this regard, he commanded 1,500 people from 1985 until his retirement in 2001. From that point onward, he returned to private industry to fight fires. Concerned with the risk of an escape, Mr. McConnachie advised, and Mr. King accepted, a recommendation to light area A(B) to minimize the extent of the anticipated escape.

[57] It is this intentional ignition by LP of area A(B) that engages the question of whether the fire was ignited "other than in accordance with an applicable burn plan".

The Appellant's Evidence and Argument

[58] LP submits that it intentionally lit area A(B) as a fire control measure in anticipation of the fire's imminent escape. LP submits that, once it recognized that the fire was "out of control", it was entitled to light area A(B) as a reasonable and necessary fire control measure authorized by section 23(4) of the *Wildfire Regulation*.

The Respondent's Evidence and Argument

[59] The Respondent submits that the ignition of area A(B) contravenes section 23(3)(a) of the *Wildfire Regulation* in that it was not ignited in accordance with an approved burn plan (it was a "no treatment area" and was not authorized to be ignited), and was not otherwise justified as fire control undertaken in accordance with section 23(4) of the *Wildfire Regulation*.

[60] The Respondent concedes that, if the fire had spread beyond the authorized burn area or was otherwise out of control, the ignition of area A(B) was a reasonable fire control measure intended to, and having the effect of, mitigating the damage that would have occurred if area A(B) had not been ignited. However, it argues that this action was taken too early and that LP should have waited to see if the fire would grow and actually escape from area A(A) prior to taking any fire control measures.

[61] The Respondent submits that there is no evidence that the fire had escaped (per section 23(3)(b)), or that the fire was "out of control" (per section 23(4)(a)). The Respondent submits that, in the absence of evidence that the fire had escaped or was out of control, the intentional ignition of area A(B) constitutes a clear and unequivocal breach of section 23(3)(a) of the *Wildfire Regulation*, as LP ignited an open fire other than in accordance with the Burn Plan.

[62] The Respondent further submits that Messrs. McConnachie and King's opinion that the fire was "out of control" does not assist the Panel as it brings into question the issue of expert evidence. The Respondent submits that the factual determination of whether the fire was "out of control" requires an expert's opinion, and neither Messrs. King nor McConnachie were qualified as experts. The Respondent submits that their opinions regarding the status of the fire are, therefore, inadmissible to prove that the fire was "out of control".

[63] In this regard, the Respondent submits that the Panel may rely upon Mr. McConnachie's explanation for what he did as context, but the Panel cannot rely upon it as expert evidence to prove that the fire was "out of control". Without proof that the fire was out of control, the Respondent submits that the intentional ignition of area A(B) constitutes a breach of section 23(3)(a) of the *Wildfire Regulation*.

The Panel's Findings

[64] It is clear and uncontradicted that LP lit the fire in area A(B) as a fire control measure prior to the "escape" of the fire (i.e., to prevent a contravention of section 23(3)(b)), and to comply with LP's obligations under section 23(4), as Messrs. King and McConnachie believed that the fire was "out of control". [Note: fringe damage and a burn of less than one hectare is not considered an escape under the Burn Plan].

[65] The Respondent accepts that the intentional ignition of area A(B) would have been a reasonable fire control measure if the fire had become out of control, but submits that Mr. McConnachie's recommendation, based on his years of experience, to light area A(B), was taken too early and that he should have waited to see if the fire would grow and actually escape from area A(A) prior to taking any fire control measures. The Panel rejects this submission.

[66] It is clear on the evidence that there was a reasonable basis to conclude that, if the fire had been permitted to burn without immediately igniting area A(B), a far larger conflagration could (but not necessarily would) have occurred. In the Panel's view, given the fire's behavior in area A(A), as well as the weather, fire and field conditions observed by Mr. King and Mr. McConnachie at the time, igniting area A(B) was a reasonable and appropriate measure to take in order to prevent greater damage.

[67] Igniting area A(B) was not performed under the Burn Plan. Therefore, it did not comply with the plan. However, it was never intended or claimed to be authorized under the plan. Rather, it was a response to address the regulatory requirements and the larger concerns of escape. As such, it is not an error in the understanding or application of the Burn Plan, nor an intentional or unintentional disregarding of the plan. In the Panel's view, LP's actions are not the type of "mischief" to be addressed by section 23(3)(a) of the *Wildfire Regulation*. Even the Respondent appears to concede that, in an appropriate case, this type of action may not trigger a contravention of this section. It only disagrees that this is an appropriate case.

[68] The Panel concludes that the Respondent has taken an overly technical approach to its interpretation of section 23(3)(a). It has also taken an overly technical approach to the definition of the words "out of control" as used in section 23(4)(a) of the *Wildfire Regulation*. Section 23(4)(a) states that, if a resource management fire "spreads beyond the burn area or otherwise becomes out of control", the person who lit, fueled or used the fire "immediately must carry out fire control ...".

[69] The Panel finds that the licensee is required to demonstrate that it had in place an expert, or staff with the appropriate expertise and/or training, who is qualified to manage a prescribed burn, and that person reasonably concluded that an immediate fire control effort was required as the fire was, in his or her reasonably based opinion, out of control. If the licensee does not have in place an onsite expert, or if it is unable to adduce facts sufficient to show that there was a reasonable basis for the person's conclusion that the fire was out of control, then it will not be able to meet its evidentiary burden to justify the ignition of fire outside the prescribed area (defined in the Burn Plan) as a reasonable fire control measure. The Panel finds that the determination of whether a fire is "out of control" does not require the opinion of an expert, as seems to be suggested by the Respondent. In the Panel's view, as both Mr. King and Mr. McConnachie have sufficient experience and expertise with these types of burns, the Panel is entitled to weigh their evidence and determine whether, as a matter of fact and law, they acted reasonably in concluding that the fire, as they observed it at the time, was "out of control" and that immediate fire control was necessary.

[70] The Panel further concludes that a qualified burn boss is entitled to reasonable deference in his or her onsite determination of whether a prescribed fire has become "out of control". To do otherwise could inhibit the exercise of good judgment by a burn boss in an emergency situation. The *Regulation* was not designed to impose a standard of perfection on those making decisions in the field, and one that is assessed with the benefit of hindsight.

[71] The Panel accepts the evidence of Messrs. King and McConnachie that, upon the ignition of the fire in accordance with Burn Plan, they believed that the fire became “out of control”. Specifically, the fire was not burning in accordance with the planned and predicted “Fire Behaviour” described in the Burn Plan (a low to moderate intensity surface fire). Upon ignition, Messrs. King and McConnachie immediately observed that the fire was burning far hotter than predicted and that it could not be extinguished by the end of the day. Rather than a low or moderate intensity surface fire, they observed the fire to be a high intensity fire that had ignited the large and subsurface fuels. As they believed that they could not control the fire, it was reasonable for Messrs. King and McConnachie to assume, as they did, that the fire was “out of control”. It was beyond the capacity of the people and equipment on site to control. It was therefore reasonable for them to take immediate fire control measures to mitigate the damage from the anticipated escape.

[72] Although, ultimately, the Respondent may have been correct that LP could have waited to see what would happen before igniting area A(B), this is something that is determined with the benefit of hindsight. Hindsight provides us with an opportunity for a calm and calculated assessment of the situation, whereas the people in the field must make decisions in the moment, taking into consideration the information known as well as the potential consequences of action – or the failure to take action. When it comes to fires on public lands, one such consequence of a rigid application of the terms of the Burn Plan is damage or danger to the public and to forest resources.

[73] In this particular case, the Panel finds that Mr. McConnachie correctly concluded that, as the fire was not burning as predicted, he was entitled and, indeed, required to (a), ensure that the fire did not escape, and (b) immediately initiate fire control procedures. In this regard, the Panel concludes that the decision to ignite area A(B) was taken reasonably in the circumstances as a fire control measure as authorized under the *Wildfire Regulation*. Although the ignition of area A(B) was not authorized by the Burn Plan, in this case, the Panel finds that its ignition was not contrary to the Burn Plan. In order to comply with the legislation generally, these actions were reasonably required. Thus, the plan must be “read down”, so to speak, to allow a licensee to comply with the legislation.

[74] The Panel therefore concludes that the decision to ignite area A(B) does not constitute a breach of section 23(3)(a) of the *Wildfire Regulation*.

ii) Did LP permit or allow the fire to “escape”?

[75] There is no dispute that the fire escaped from area A(A), Block 6. The question that is engaged under this subsection is whether LP failed to ensure that the fire did not escape; in other words, did LP allow or permit the fire to escape.

[76] Quite properly, LP does not contest the Manager’s finding that it “permitted” an escape of the fire. Indeed, LP intentionally ignited area A(B) in an effort to control the fire. Unfortunately, this fire control effort was not in and of itself sufficient to control the fire and it spread far beyond Block 6, escaping into other blocks.

[77] The Burn Plan states that a burn outside area A(A) that is less than one hectare will not be considered an escape. The Burn Plan further provides that any burn outside of area A(A) that exceeds one hectare will be considered an escape and a wildfire.

[78] Whether LP intended its fire in area A(B) to extend beyond one hectare is immaterial. As noted previously in these reasons, the fire spread far beyond Block 6, area A(A) and A(B), and impacted 47.6 hectares of Crown land despite fire control measures. If LP did not intend the fire to spread beyond the one ha, it certainly permitted it to occur because, for reasons discussed below, in light of existing fuel moisture and wind levels, it was inevitable that the fire would escape area A(A) and spread to the surrounding forest.

[79] Therefore, the Panel confirms the Manager's finding the LP failed to ensure the fire did not escape.

Summary of Findings on Issue 1

[80] The Panel finds that LP did not contravene section 23(3)(a), but that it did contravene subsection (b). Whether LP has established a defence to the contravention will be addressed in Issue 3.

2. If the fire spread beyond the authorized burn area or otherwise became out of control, did Louisiana-Pacific fail to immediately carry out fire control and extinguish the fire, if practicable, contrary to section 23(4)(a) of the *Wildfire Regulation*.

[81] This issue engages section 23(4) of the *Wildfire Regulation*, which is repeated for convenience as follows:

- (4) If a resource management open fire spreads beyond the burn area or otherwise becomes out of control, the person who lit, fueled or used the fire
 - (a) immediately must carry out fire control and extinguish the fire if practicable, and
 - (b) ...

[82] This contravention deals with LP's efforts to contain the escape of the fire. LP asserts that it took all reasonable efforts, consistent with safety and good practice, to contain the escape; therefore, it is not liable for a breach of section 23(4). The Respondent, in contrast, asserts that LP did not act in accordance with good practice. In particular, the Respondent submits that LP did not "immediately carry out fire control and extinguish the fire if practicable".

The Appellant's Evidence and Arguments

[83] Mr. King testified that once he and Mr. McConnachie came to the conclusion that the fire could not be contained because the large fuels had ignited, they immediately turned their minds to containing the fire. Mr. King attempted to start the pumps but, due to the adrenalin flowing in his system, he accidentally flooded the engines and rendered the pumps useless. At this point, Mr. McConnachie

recommended that Mr. King (and Mr. King agreed) that the only safe course of action was to light area A(B), as discussed previously in these reasons.

[84] Thereafter, in spite of the ignition of area A(B), the fire escaped up the rock face of the ridge above area A(B) and into the merchantable timber outside the Block.

[85] Mr. King testified that, due to darkness and the attendant safety concerns, he and Mr. McConnachie left the fire for the evening. The following morning, September 28, Mr. King reported the escape to Mr. Burgess by email. In this email, he noted that he and Mr. McConnachie were going to return to the Block that morning but that "for safety reasons, I am hesitant to initiate immediate control activity". The email does not make reference to the nature of the safety concerns at that time. Mr. King testified that, because of the DC, the escaped fire had burned large trees down to their roots, which created an ongoing burning problem and safety issues for fire control.

[86] Mr. King also testified that, as of the evening of September 27, nothing "jumped out at him" to indicate that immediate fire control activity was necessary. Upon his return the following day with Mr. McConnachie, Mr. King noted that the burn had not moved very much and that there were only a few smoking spots at that time. To Mr. King, the situation looked calm.

[87] Mr. King then noted a hot spot at about 12:30 p.m., which he and Mr. McConnachie fought with a pump and hand tank. After about 30 minutes of attacking this hot spot, they decided that the fire was too hot and that they needed a helicopter. Mr. King then requested fire jumpers and helicopter support. At roughly 4:00 p.m. that day (September 28), the helicopter arrived to use a water bucket. That evening, Mr. King again reported to Mr. Burgess in an email. In it, Mr. King noted that the wind was "howling" and that he had discovered a "small smoke" in an adjacent harvested cut block. He advised Mr. Burgess that, even with the strong winds, this additional escape had only grown to approximately one half of a hectare, and he had a firefighting crew lined up for the next day to surround this escape.

[88] The following day, September 29, six firefighters from the Golden firefighting region attacked the spot fire and then worked below the logging road to fall dangerous trees before attacking the fire above the road.

[89] With respect to the attack on the escaped spot, Mr. King noted that he had sufficient resources but not enough firefighting hose. He had to bring an extra hose and a portable water tank. His evidence was that, by the end of that day (September 29), the fire was contained in that there was no visible flame.

[90] Mr. King testified that he returned to the Block on September 30. He had expected the rain to commence, but that did not happen. In fact, a wind advisory had been issued but he did not receive it. He testified that, in his view, the failure of the Ministry to deliver a wind advisory put his crew at risk. As a consequence of the severe winds, no further efforts were made to fight the fire that day.

[91] Mr. King and his crew returned to the Block on October 2, by which time the escape had spread far and wide. Mr. King noted that some embers had blown almost a full kilometre to ignite spot fires.

[92] On the following day, October 3, Mr. King mobilized his crew who spent the day putting out spot fires. These firefighting efforts, with fire jumpers, continued on October 4 and 5. By October 6, the fire self extinguished because of heavy rain and snowfall.

[93] Mr. McConnachie testified that he was not on site every day from the 27th of September through October 6th. Rather, he assisted Mr. King on the 28th of September with his firefighting duties. In this regard, he noted that the helicopter was not available immediately on September 28 because of other clients. When the helicopter did arrive, the pilot had to verify other water sources, i.e., he had to fly around to find a spot to obtain water. Once the helicopter pilot found water, it was put onto the fire.

[94] LP submits that the general law cannot deal with every possible situation with respect to the extinguishment of a fire after it escapes. LP submits that local conditions on the ground must be taken into account in determining whether sufficient efforts to contain the fire were made. The particular local condition relevant in this case is the extreme winds experienced on September 28 and thereafter. Extreme winds can cause a fire to explode and Mr. King was required to consider, first and foremost, the safety of the firefighters. Mr. King states that these local conditions prevented him from aggressively attacking the fire as soon as it escaped.

[95] LP submits that its actions in attacking this fire are akin to a volunteer firefighting department. In this regard, LP refers to *Hammond v. Wabana (Town)*, (1995) 133 Nfld. & P.E.I.R. 116, wherein the Newfoundland Supreme Court found that it was not open for the victim of a fire to sue volunteer firefighters in negligence. Regarding the standard of care to be attributed to volunteer firefighters, the Court held as follows:

187. ... the standard expected of a volunteer fire department and its members is that, with the resources available to them, they will do their best to put the fire out. A bona fide decision or action will not be open to question unless it causes the worsening of the fire and is a substantial departure from the basic principles of firefighting. [Emphasis added]

[96] LP submits that its actions in attempting to contain the fire were reasonable and proper in the circumstances and that, in the face of the unanticipated extreme winds, there was nothing more that it could have done to contain the fire without compromising the safety of the firefighters.

The Respondent's Evidence and Arguments

[97] The Respondent points to the wording of section 23(4) of the *Wildfire Regulation*, which provides that the licensee "immediately must carry out fire control and extinguish the fire if practicable". The Respondent submits that LP's response to the fire was far too slow. The Respondent submits that LP did not employ the resources under the Burn Plan quickly enough. For instance, the

Respondent submits that Mr. King should not have waited until September 28 to bring in a firefighting crew. The Respondent does not suggest that Mr. King should have deployed firefighters in a dangerous situation; rather, he should have brought the crew to the fire immediately so that, if there was an opportunity to extinguish the fire, the resources were there and available. The Respondent submits that, by failing to bring firefighters on the 28th of September, LP failed to immediately attempt to contain the fire.

[98] The Respondent further submits that the failure of LP to attack the fire aggressively until the 3rd or 4th of October demonstrated a languid approach to attacking the fire, extreme winds notwithstanding.

The Panel's Findings

[99] The determination of whether LP met its legal obligations pursuant to section 23(4) of the *Wildfire Regulation* begins with an analysis of the provisions of the Burn Plan dealing with escape. It is worth repeating the "Escape Fire Contingency Plan". It provides:

All escapes will be aggressively attacked to minimize the spread. The attack plan will be to contain the escape. An S5 and S6 stream border the block. The streams can serve as additional water source should an escape occur. There is no road access above this block.

If the total burn area outside the block is fringe damage and amounts to less than 1.0 ha it will not be considered an escape. Control action may be initiated as determined by the burn boss. Any single continuous burnt area outside the block greater than [sic] 0.5 ha will have control action initiated. If the burn area outside the block exceeds 1.0 ha it will be considered an escape and a wildfire. It will be reported as required by legislation. Resources identified in the burn plan will be activated as required.

[100] The Burn Plan provides that the following "Total Resources" are required in the event of a fire escape:

10 adult persons;

10 hand tools;

2 Mark 3 pumps;

3000 feet of hose; and

1 - 1500 gallon relay tank and one 1000 litre portable water tank.

[101] While the Panel does not accept that LP, as a holder of a Burn Plan under the *Wildfire Regulation*, is analogous to a volunteer fire department as referred to in *Hammond v. Wabana*, the Panel does accept that section 23(4) of the *Wildfire Regulation* imports a notion of flexibility in fire containment efforts. It is not the function of the Panel to closely parse every decision made with respect to the containment of a fire. It will be recalled that section 23(4) requires LP to "immediately must carry out fire control and extinguish the fire if practicable" [Emphasis added]. The Panel concludes that, if a licensee is in compliance with its Burn Plan and takes immediate reasonable action to control the fire, consistent with

good practice and safety considerations, and continues with those efforts until the fire is extinguished, it should not be second-guessed.

[102] In this case, the Panel is concerned, however, that LP was not in a position to comply with section 24(4) of the *Wildfire Regulation* as it did not have available to it the basic resources as required by the Burn Plan. In particular:

- (a) LP did not have 10 people immediately available on site to contain the fire;
- (b) It did not have available to it 3000 feet of hose; and
- (c) It did not have available a 1000 litre portable water tank.

[103] In cross-examination, Mr. King was asked why he did not bring the ten adult persons to the site to combat the fire on September 28. Mr. King replied that he did not believe that the fire was going anywhere, and he needed to assess the situation. He added that if he had brought a ten person crew, they could have started fire control activities but they would not have accomplished very much because of the time of day. It was only on the 30th of September that a six person crew arrived to combat the fire. Mr. King explained that he brought six firefighters only because the fire was contained according to the Burn Plan.

[104] The Panel concludes that this evidence demonstrates that Mr. King was not concerned with deploying the resources mandated by the Burn Plan; rather, he was concerned with assessing the situation in an effort to save cost. This, he was not entitled to do. He was obliged to bring to bear the resources identified in the Burn Plan immediately to extinguish this fire. This is not to suggest that he was required to deploy firefighters in an unsafe situation. However, his decision to attend the fire on the 28th of September without his ten person firefighting crew does not comply with LP's obligation to immediately attack the fire. One can only speculate on what would have been the course of the fire had the firefighters been on site on September 28th.

[105] In these circumstances, the Panel concludes that LP was not in a position to "immediately" carry out fire control activities on either the 27th or 28th of September, prior to the onset of the heavy winds. The necessary resources to combat an escape were not present at the site of the prescribed burn at the ignition of the fire on September 27th, nor were they brought to the prescribed burn on September 28th. Serious firefighting efforts commenced only on September 29th and, by that point, the fire had escaped even further and winds were playing a major role. Further, LP did not attend the site at all on October 1st and no efforts at fire control were made on that day.

[106] The Panel concludes that LP did not immediately undertake the fire control efforts as it was not in a position to do so. Therefore, the Panel confirms that LP contravened section 23(4)(a) of the *Wildfire Regulation*.

3. If LP contravened the *Wildfire Regulation*, has LP established a defence of due diligence or officially induced error to the contravention(s)?

[107] As the Panel has found that LP failed to “ensure that the fire did not escape”, in contravention of section 23(3)(b), and failed to “immediately carry out fire control and extinguish the fire”, contrary to section 23(4)(a) of the *Wildfire Regulation*, the next question is whether LP has established a defence to the contraventions. Is LP entitled to take advantage of section 29 of the *Wildfire Act* which provides that a person may be excused from liability for a contravention if it can prove, on a balance of probabilities, that it acted with due diligence to prevent the contravention from occurring, or the contravention was the result of an officially induced error.

The Appellant's Evidence and Arguments

[108] In its Statement of Points, LP frames this aspect of the appeal as the Manager “erred in finding LP had not been duly diligent, including by consulting with and following the advice of a MFR [Ministry] recommended expert with respect to the burn procedures”.

[109] In its closing submissions, LP framed the issue somewhat differently. Mr. King submits that the Burn Plan itself was deficient because it failed to specify the DC which, he submits, was a critical factor. The deficiency, Mr. King submits, should have been noted by Mr. McConnachie, who had been recommended by the Ministry as an expert in managing prescribed burns.

[110] Further, Mr. King submits that Mr. Burgess bears responsibility for approving the Burn Plan knowing that the DC was not recorded. Mr. King submits that Mr. Burgess should have known that the omission of the DC in the Burn Plan was a critical mistake that, if measured and recorded, would have prevented the ignition of the fire in the first instance.

[111] Finally, Mr. King submits that the Ministry is responsible for failing to issue a wind warning which, if issued in accordance with its own policy, would also have prevented the ignition of the fire in the first instance.

[112] Upon reflection, the Panel understands LP to be asserting that, although it permitted the fire to escape and it did not immediately bring all of the resources required under the plan to combat the fire, it should not be held liable because it exercised due diligence to prevent the escape and, in any event, the contraventions occurred because of certain officially induced errors. LP also submits that the intentional ignition of area A(B) was a legitimate fire control effort and, in and of itself, constitutes due diligence in the sense that it prevented a much greater conflagration.

[113] Mr. King testified that he had a number of discussions with Mr. Burgess about this prescribed fire well before settling upon a particular plan. Mr. King told Mr. Burgess that he wanted to undertake a prescribed burn within the subject Block, but he was concerned about the cost of installing water pipes and hoses to lay down the necessary wet line. He testified that Mr. Burgess told him that it was possible to undertake a burn without a wet line and Mr. Burgess suggested that he retain Mr. McConnachie to supervise the burn as he had experience in this area.

[114] After being introduced to Mr. McConnachie, and satisfying himself that Mr. McConnachie was a well qualified expert, Mr. King caused LP to retain Mr.

McConnachie for the prescribed burn. Mr. King and Mr. McConnachie walked the entire Block and Mr. McConnachie advised Mr. King of all requirements, safety issues and potential outcomes necessary to plan a burn of this nature. Included in these pre-Burn Plan meetings with Mr. McConnachie were efforts to take moisture readings of the slash in the forest to determine which areas of the various blocks were within parameters. Upon testing of Block 6, Mr. McConnachie determined that the moisture readings were sufficient to support a burn plan. Mr. McConnachie advised Mr. King that the burn conditions were acceptable and that he could proceed with a burn.

[115] The Burn Plan was thereafter prepared and submitted to Mr. Burgess for approval. As previously noted, the Burn Plan makes no reference to a DC. Mr. King testified that he did not advise Mr. McConnachie of the DC, which he knew to be 466, because he did not believe it was applicable. Mr. McConnachie made no comment about this.

[116] The Burn Plan was then submitted to Mr. Burgess who reviewed and approved it.

[117] Mr. King testified that he does not remember whether he was told to insert "N/A" for the DC. He does not know why he inserted N/A for the DC. He speculated that he was awaiting information about the DC and was not thinking about its importance. Mr. King repeatedly emphasized that Mr. McConnachie had nothing to say about this.

[118] Mr. King also testified that spot weather forecasts are important with respect to a prescribed burn. He testified that LP was a subscriber to the Ministry's regularly issued weather reports, and that he reviewed those reports prior to submission of the Burn Plan. The weather reports that he reviewed made reference to gusty winds and scattered rain and showers as the predominant weather features for the burn area. He testified that he never received any wind advisory from the Ministry. He acknowledged that it was his duty to inform himself of the weather (including wind) that was forecasted for each day of the burn.

[119] Mr. McConnachie testified that he received a call from Mr. Burgess, who asked him to meet with Mr. King to provide him with some advice with respect to a prescribed fire. He confirmed that he met with Mr. King, reviewed the Block that was to be burned, and that he advised Mr. King about the importance of fire weather and keeping a weather record.

[120] Mr. McConnachie emphasized that he did not consider his role to be a decision-maker or a supervisor. He considered that his role was only to provide suggestions to Mr. King.

[121] Mr. McConnachie did not assist Mr. King with preparation of the Burn Plan but he did review it. On page 4 of the Burn Plan, the FFMC and DMC were noted, but the DC is marked "N/A". Mr. McConnachie says that, in retrospect, this was a mistake and that he did not "pick it up". He testified that he should have noticed this and ensured that the DC was measured and inserted. He testified that his observation of the snow and ice in the vicinity of area A(A) led him to think that the DC was not important. Mr. McConnachie conceded that this was a mistake because the DC discloses moisture in the layers below the surface and within the large fuels.

Mr. McConnachie concedes that he should have recognized that the presence of some snow and ice was not proof that the moisture content of the large fuels (the DC) was high enough to prevent the ignition of these large fuels.

[122] On the day of ignition (September 27), Mr. McConnachie believed that the Burn Plan could succeed. On the morning of the burn, he used a moisture meter to confirm the FPMC. The moisture meter gave him a reading of approximately 90, thereby indicating relatively easy ignition.

[123] He also testified that he went through the "go-no go checklist". He noted that all answers, except for the test burn, were "yes", and he thought the burn could proceed. He did not check the equipment on the "go-no go checklist" nor did he test the water pumps.

[124] Mr. McConnachie supervised the ignition of the test strip, which performed according to the Burn Plan. He believed that the conditions were favourable to light a second and then third test strip. After ignition of the test strips, he gave instructions to initiate the burn by igniting a large strip 30 metres below the test strips. Thereafter, he immediately noted that there was a problem because the large fuels (logs) had immediately ignited. This would have been predicted had the DC been measured and inserted in the Burn Plan.

[125] Mr. McConnachie knew that there was a glacier behind a hanging valley adjacent to Block 6, which causes air to run down the slope. He recognized that the fire was going to move into the block below area A(A), and that he could not stop it. He advised Mr. King that he should not ignite the block below the lower reach of the forestry road and below area A(A) but, instead, light area A(B) to draw the fire into that area and minimize the damage. He does not recall observing or noting any weather data at the time.

[126] In reliance of the evidence described above, LP submits that the Ministry (Mr. Burgess) was responsible, in law, for suggesting Mr. McConnachie as an advisor, and that any error by Mr. McConnachie was that of the Ministry. LP also suggests that Mr. Burgess' approval of the Burn Plan (reviewed by Mr. McConnachie, for whom the Ministry is responsible), which omitted a crucial piece of information (the DC), constitutes an officially induced error.

[127] LP submits that this officially induced error lead Mr. King to believe that the Burn Plan was correct and that it was safe to ignite the initial fire in area A(A) when, in fact, the Burn Plan was deficient and negligently prepared.

[128] LP also submits that the Ministry was negligent in failing to deliver a wind advisory which provided that extremely high winds were predicted from the 28th of September through the 5th of October. These high winds caused the fire to spread and, LP submits that, had that wind advisory been received, the initial fire never would have been ignited.

[129] Finally, Mr. King submits that LP was duly diligent in retaining an acknowledged expert, being Mr. McConnachie, and that his errors constitute officially induced errors for which LP cannot be held responsible.

The Respondent's Evidence and Arguments

[130] Mr. Burgess testified for the Respondent. He was the Forest Protection Officer for the Columbia fire zone, based in Revelstoke, and has been in that position since 2003. In this position, Mr. Burgess is responsible for managing wildfire activities, including staffing and budgeting for crews. He has at least ten years experience in assessing and managing prescribed fires, and has advanced wildfire training control.

[131] Mr. Burgess testified that, in his current capacity, he is responsible for approving burn plans. He testified that, in the normal course of events, he provides some input into burn plans. In this regard, burn plans are not rubber stamped; rather, they are carefully considered.

[132] With respect to the subject prescribed burn, he was initially approached by Mr. King who advised him that he wanted to burn slash in Block 6 (amongst others). In this initial phase, Mr. Burgess reviewed Mr. King's approach and provided him with some feedback. In the course of their conversations, he recalls asking Mr. King who would be working with him to assist with the preparation of a burn plan. Mr. Burgess did not have a specific recollection of suggesting Mr. McConnachie to Mr. King, but believes that he may have done so.

[133] Mr. Burgess does recall phoning Mr. McConnachie before passing his name on to Mr. King, and he fully endorsed him as a qualified and appropriate expert. In this regard, his concern was to ensure that Mr. King was referred to someone with knowledge at a base level, but that it would be up to LP to structure its affairs thereafter.

[134] Mr. Burgess testified that Ministry policy regarding wind warnings in 2006 was to provide wind warnings only to Ministry personnel. He testified that wind warnings were not sent out to industry as a matter of course.

[135] Mr. Burgess testified that he received the Burn Plan prepared by Mr. King and reviewed the plan before signing it. In his review of the Burn Plan, he noted that the DC was marked "N/A". He gave this fact some consideration. Mr. Burgess considered that the BUI was an important number and, given that it was a Fall burn, the DMC was low. He checked on the BUI, which provided him with a threshold number at a level that did not concern him with respect to this fire. He considered that, since the DMC would not likely increase because of the predicted weather forecast (rain/showers), and that the BUI would not likely build to an alarming level, the DC was therefore less important. Mr. Burgess believed that the DC was almost irrelevant because no fire mop up was going to be required because it was a Fall burn. He expected the fire to burn out naturally, and that it would not need to be extinguished.

[136] Mr. Burgess believed the BUI gave a prediction that, if it remained constant, should predict success for the fire. In spite of this, he says that it is important to know what the DC is on any particular day. In his opinion, good practice requires the burn boss to obtain the DC on the day of the burn.

[137] Mr. Burgess testified that he signed the Burn Plan on September 21, and he checked the DC on that day before signing the plan. He noted a DC of 466 or

thereabouts. He was not concerned with this, mainly because the DMC was lower and Mr. King was going to sample moisture on the day of the burn. It was not clear on the evidence where Mr. Burgess took his reading of the DC.

[138] The Respondent submits that Mr. McConnachie's error in failing to note the DC is the error of LP, and that Mr. Burgess's approval of the Burn Plan does not relieve LP of its duty to submit a Burn Plan in accordance with the appropriate standard. The Respondent also submits that the Ministry owed no legal duty to LP to provide it with the wind warning and that, in fact, it was LP's obligation to exercise due diligence by checking with the weather centre to determine if there were any wind warnings.

[139] The Respondent submits that LP has failed to adduce evidence that it acted with due diligence, or that the admitted mistake in the Burn Plan was the result of an officially induced error.

The Panel's Findings

Due Diligence

[140] The concepts of "due diligence", "officially induced error" and "mistake of fact" are all expressly referred to in section 29 of the *Wildfire Act*. However, they reflect very separate legal concepts.

[141] The garden of due diligence is well tilled.

[142] The basic principle arises in the well known case of *R. v. Sault Ste. Marie*, [1978], 2 S.C.R. 1299 [*Sault Ste. Marie*]. Dickson, J., speaking for the Supreme Court of Canada, expressed the defence in this way at pages 373-374:

I conclude, for the reasons which I have sought to express, that there are compelling grounds for the recognition of three categories of offences rather than the traditional two:

1. Offences in which *mens rea*, consisting of some positive state of mind such as intent, knowledge, or recklessness, must be proved by the prosecution either as an inference from the nature of the act committed, or by additional evidence.
2. Offences in which there is no necessity for the prosecution to prove the existence of *mens rea*; the doing of the prohibited act *prima facie* imports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care. This involves consideration of what a reasonable man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event. These offences may properly be called offences of strict liability. Mr. Justice Estey so referred to them in Hickey's case.
3. Offences of absolute liability where it is not open to the accused to exculpate himself by showing that he was free of fault.

[Emphasis added]

[143] The defence of due diligence (and mistake of fact) is codified in section 29 and the *Wildfire Act* has, in its genesis, the strict liability offence described in the second point referred to in *Sault Ste. Marie*.

[144] The application of this simply stated principle of due diligence (reasonable care) can create difficulty. In considering the application of the due diligence defence to the facts in this case, the Panel relies upon the further explanation of due diligence defence provided by the British Columbia Court of Appeal in *R. v. MacMillan Bloedel Ltd.*, 2002 BCCA 510 (Q.L.).

[145] In speaking for the majority in that case, Smith J.A., said this:

47. Thus, there are two alternative branches of the due-diligence defence. The first applies when the accused can establish that he did not know and could not reasonably have known of the existence of the hazard. The second applies when the accused knew or ought to have known of the hazard. In that case, the accused may escape liability by establishing that he took reasonable care to avoid the “particular event”.

[146] At paragraphs 48 and 49, the Court states:

48. The important point to be drawn from this discussion is that whether the accused’s conduct was “innocent”, under the first branch of the defence, or whether the accused took “all reasonable steps”, under the second branch, must be considered in the context of the “particular event.”

49. Foreseeability of a risk of harm is central to the concept of negligence. To quote the famous dictum of *Lord Atkin in Donoghue v. Stevenson*, [1932] A.C. 562 at 580, ‘You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.’ In the context of the defence of due diligence in relation to strict liability offences, the harm is not injury to a neighbour, but the contravention of the relevant statute. That proposition may be demonstrated by reference to the Imperial Oil case, to which my colleague refers at paras. 33 and 34 of her reasons for judgment. In that case, Imperial had, by its carelessness, created the relevant hazard within its plant. As it should have known of the existence of the hazard, it was liable to conviction unless it could bring itself within the second branch of the due diligence defence. This Court held that the fact that Imperial had in place a comprehensive plan to detect leaks in general was irrelevant to the defence of due diligence because, as Finch J.A. (as he then was) said, speaking for the majority, at para. 23:

The focus of the due diligence test is the conduct which was or was not exercised in relation to the “particular event” giving rise to the charge, and not a more general standard of care.

[147] In the context of the facts of this case, the Panel concludes that LP may only successfully raise the defence of due diligence if it is able to show that it took all

reasonable steps to prevent the "particular events", being the escape of the fire and the failure to provide immediate fire control.

[148] When considering how an employer might establish due diligence when the contravention was committed by an employee, the Panel notes the following passage from *Sault Ste. Marie*:

Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself. [Emphasis added]

[149] In the Determination, the Manager found that LP did not have a system in place. Specifically, he held:

There was no evidence presented by LP at the OTBH that outlined the procedures that would be implemented prior to, during, or after a resource management burn was to be implemented. There was no evidence presented that the items identified on Schedule 11 of the approved prescribed fire burn plan for this project was completed. This checklist contains items that are mandatory to be completed prior to a burn ignition. In particular I note the following items contained in the GO NO-GO CHECKLIST (mandatory)

4. Is the current and projected fire weather forecast favorable?
5. Have all personnel been briefed on the prescribed burn plan requirements?
8. Is the required equipment in place and in working order?
9. Are available resources including backup adequate for containment of potential escape? Are the assigned resources in place?
11. In your opinion, can the burn be carried out according to the burn plan and will it meet the planning objectives?
12. Is there and [sic] adequate contingency plan developed? Has it been communicated to assigned supervisors?

[150] The Manager concluded that, although Mr. King was identified as the burn boss for this project, there was no evidence of LP's policies and procedures, if any, to determine the qualifications for a burn boss for this kind of prescribed burn. Nor was there evidence of any operating procedures to be initiated when an escape occurs on a resource management burn: no operating procedures showing clear and concise steps to be implemented as part of the pre-burn checklist to ensure adequate resources are available to meet the Burn Plan requirements.

[151] There was no evidence before this Panel that LP had a “proper system” in place to avoid the contraventions. There was simply no evidence of any policies and procedures that might have been in effect to ensure that the Burn Plan was complied with, that the necessary pre-ignition checks were completed and that there were sufficient resources available in the event of an escape.

[152] The Panel finds that the contraventions were foreseeable, which is the reason that the Burn Plan includes specific measures to ensure that the fire proceeds as planned and that adequate resources are deployed in the event of an escape. Given the absence of evidence by LP of a proper system and procedures to avoid the contraventions, the Panel agrees with the Manager’s analysis and finds that LP has not established a defence of due diligence to the contraventions.

[153] LP also submits that it is not liable for the escape of the fire because it took all reasonable care to prevent the escape by retaining, relying upon and following the express direction of an expert suggested by the Ministry.

[154] The Panel finds that, irrespective of whether Mr. King or Mr. McConnachie should bear responsibility for the acknowledged error in measuring and inserting the DC into the Burn Plan, the fact is that Mr. McConnachie is, for the purposes of the prescribed fire, the agent of LP. The actions of Mr. McConnachie are those of LP. LP is the party obliged to exercise due diligence and it cannot wash its hands of that duty by retaining an expert and leaving it to him to deal with the issues. In this regard section 30 of the *Wildfire Act* provides as follows:

30(1) Subject to section 29, if a person's contractor, employee or agent contravenes a provision of this Act or the regulations in the course of carrying out the contract, employment or agency, the person also contravenes the provision.

(2) If a corporation contravenes a provision of this Act or the regulations, a director or an officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.

[155] All of the key witnesses in this appeal, being Mr. King, Mr. McConnachie and Mr. Burgess, admitted that it was an error to fail to measure the DC in areas A(A) and A(B) and insert that measurement into the Burn Plan. They all agree that, had the DC been properly monitored, the ignition of this prescribed fire would never have occurred. Put differently, had the DC been considered, as required by the reasonable exercise of due diligence, it would have been clear to all that the ignition of this prescribed fire without a wet line, and in the context of the existing winds, would inevitably have lead to an escape of the fire.

[156] It does not matter whether it was Mr. McConnachie’s error or Mr. King’s error. Both are agents or employees of LP and their contraventions are those of LP.

[157] In addition, regarding the contravention of section 23(4)(a), there was no evidence tendered to explain the reasons that LP did not have enough hose or water tanks on site. There was evidence related to manpower, which was that Mr. King did not think it was worthwhile to have all of these people on site because of conditions as he had assessed them. There is no evidence before the Panel that LP

had any specific policies, directions or procedures relating to this subject or what resources it makes available to staff.

[158] Therefore, although LP raised due diligence, the evidence before the Panel is that LP's staff intentionally chose not to have the required resources on site during the escape, and thus it has not made out the defence to this contravention.

[159] In these circumstances, LP cannot avail itself of the defence of due diligence.

Officially Induced Error

[160] Officially induced error is another element of the defences provided for in section 29 of the *Wildfire Act*.

[161] This defence is described in *Regina v. Cancoil Thermal Corp.* [1986], 27 C.C.C. (3d) 295 (O.C.A.) wherein Lacourciere J.A., speaking for a unanimous court, said this in respect of the defence of officially induced error in the context of a regulatory offence:

The defence of "officially induced error" is available as a defence to an alleged violation of a regulatory statute where an accused has reasonably relied upon the erroneous legal opinion or advice of an official who is responsible for the administration or enforcement of the particular law. In order for the accused to successfully raise this defence, he must show that he relied on the erroneous legal opinion of the official and that his reliance was reasonable. The reasonableness will depend upon several factors including the efforts he made to ascertain the proper law, the complexity or obscurity of the law, the position of the official who gave the advice, and the clarity, definitiveness and reasonableness of the advice given.

[Emphasis added]

[162] As will be seen from the quotation set out above, the defence of officially induced error is premised on the notion that the licensee was erroneously advised as to the law by a responsible official, and that it relied upon that erroneous advice to embark upon a course of action that was, in fact, illegal.

The Appellant's Position

[163] LP submits that it is not liable for the contraventions because of certain officially induced errors. The first is in approving the Burn Plan in spite of the fact that the DC was marked as "N/A". As has been previously noted, the parties to this appeal concede that the DC was a highly relevant measurement and that, had LP or its representatives recorded that measurement, this prescribed fire would never have been ignited. LP submits that, by signing the Burn Plan, Mr. Burgess, as a representative of the Ministry, was representing to LP that the DC was not a relevant measurement and that the Burn Plan was competently prepared.

[164] Another is that the burns were conducted as recommended by the expert referred to LP by the Ministry. If there were an error committed by LP, the error was, therefore, officially induced by the Ministry's agent.

[165] LP also submits that it is entitled to rely on the defence of officially induced error as a consequence of the failure of the Ministry to forward its wind advisory to

LP. LP says it was entitled to assume that, since no wind advisory was forwarded to it, that it ought not to have been concerned about the rise of high winds which later manifested themselves and contributed greatly to the spread (escape) of the fire.

The Respondent's Position

[166] The Respondent submits that LP has conflated the principles of mistake of fact with officially induced error. The Respondent submits that LP has demonstrated no erroneous representation of law; rather, it is asserting that Mr. Burgess was an "expert" upon whom LP was entitled to rely and that Mr. Burgess' error in approving the Burn Plan with the DC marked "N/A" provides LP with relief.

[167] The Respondent submits that Mr. Burgess, in approving the Burn Plan, did not function as an "expert", and his approval of the Burn Plan did not constitute expert advice to LP. The Respondent submits that Mr. Burgess' function was neither to give advice or to make representations of fact that Mr. King could rely upon to LP's detriment.

[168] Further, the Respondent submits that it has no legal obligation to provide wind warnings to the public. As a matter of policy, the Ministry provides wind warnings to Ministry staff but does not distribute wind warnings to the public. The Respondent notes that the wind warnings were freely available to LP had it sought to receive them.

The Panel's Findings

[169] The Panel accepts the submissions of the Respondent on this point. The Panel has reviewed the evidentiary record and can find no reference to any representation of law which LP could assert as the basis for the defence of officially induced error.

[170] Further, Mr. Burgess did not owe a legal duty to LP. To the contrary, it is LP that has the statutory duty to submit a competently drafted Burn Plan and to manage a prescribed fire in accordance with its contractual and statutory responsibilities. Mr. Burgess's approval of the Burn Plan was not a guarantee or a representation that LP was entitled to rely upon, nor did the approval of the plan relieve LP from its legal duties.

[171] The Panel finds that it was LP's obligation to produce a competently drafted and prepared burn plan. As stated above, Mr. McConnachie is, for the purposes of the prescribed fire, the agent of LP – not the Ministry. The Panel finds that the error in inserting "N/A" for the DC was that of Mr. King or Mr. McConnachie (and therefore of LP), and that error in the plan did not somehow transfer LP's obligation to act with reasonable care to the Ministry. As the Ministry had no legal obligation to guarantee that the Burn Plan was error free, LP cannot rely on the Ministry's approval of the Burn Plan as an "officially induced error".

[172] Likewise, the failure of the Ministry to deliver the wind advisory to LP does not constitute "officially induced error". In the first place, lack of knowledge of an available wind advisory is not a mistake of law. In any event, the Ministry had no legal obligation (or, indeed, even a policy) to forward wind advisories to licensees such as LP. It was LP who bore the legal responsibility of taking care to ensure that

this prescribed fire was lit, managed and extinguished in a safe manner and in accordance with the provisions of the *Wildfire Act* and its regulations. One basic element of that duty owed by LP was to take a proactive step to check the wind advisory.

Conclusion

[173] The Panel finds that LP has not established, on a balance of probabilities, a defence to the contraventions.

REMAINING ARGUMENTS

[174] LP raised additional issues not covered in the reasons so far. Those issues were as follows:

- The Manager was in a conflict of interest and biased in adjudicating upon this matter in the first instance; and
- There was excessive delay such as to deprive LP of procedural fairness.

[175] The Panel proposes to deal with submissions in turn.

Whether the Manager was in a conflict of interest and biased in adjudicating upon this matter in the first instance

[176] LP submits that the Manager was in a conflict of interest and biased because he was required to render a judgment regarding LP's liability and, in doing so, was motivated by conflict in approving, or disapproving, the actions of his personnel in this process. In particular, in finding LP liable for breaches of section 23 of the *Wildfire Regulation*, the Manager was, in essence, absolving Mr. Burgess of liability for his error in signing the Burn Plan and for failing to ensure that wind advisories were provided to LP.

[177] LP submits that it does not "lie in the mouth" of the Manager to be critical of procedures employed by LP without failing to acknowledge the errors made by those under his own chain of command.

[178] In response, the Respondent submits that LP misconstrues the nature of the OTBH and the position of the Manager. The Respondent submits that the Manager is not acting in a quasi-judicial capacity in conducting an OTBH; rather, he is acting on behalf of the Crown in making a determination. The Respondent emphasizes that there were no legal requirements mandating a process by which a determination of this sort can be made. The Respondent submits that the Manager was simply acting on behalf of the Crown when he acted as the Minister's delegate under section 26 and 27 of the *Wildfire Act* to find a contravention and impose a penalty. The Respondent submits that the Manager is not expected to be independent, as he is clearly acting on behalf of the Crown.

[179] The Respondent emphasizes that the Crown has no right of appeal from the decision of a manager. The Respondent says that this illustrates the point that Crown cannot appeal its own decision. The Respondent further submits that it is at the Forest Appeals Commission where the judicial process is first engaged.

The Panel's Findings

[180] The Panel concludes that LP has misconstrued the nature of an OTBH. By definition, the Manager is not acting in a judicial capacity as an employee of the Crown weighing the submissions of a licensee and of other Ministry officials. As submitted by the Respondent, the Manager's obligation in the OTBH process is to provide a fair opportunity for a licensee to be heard in relation to an alleged contravention. However, at the end of the day, the Manager must make a decision on behalf of the Crown. If it were otherwise, every OTBH would be derailed as the Manager is always called upon to weigh the evidence of other Ministry officials. Further, LP has had the benefit of a new hearing by this Panel.

[181] Therefore, this ground of appeal is dismissed.

Whether there was excessive delay such as to deprive LP of procedural fairness?

[182] LP submits that there was excessive delay in investigating and pursuing administrative penalties in this matter.

[183] This argument was not pursued with vigour in LP's submissions. In its Statement of Points, LP submits that compliance and enforcement staff did not conform to their own policy manual which provides: "the lead investigator will try to complete investigations within six months, and, subject to the events beyond their control, will complete an investigation within 1 year". LP makes the point that this investigation was not even commenced until August of 2007 and that there was no evidence explaining the delay – such as events beyond the investigator's control.

[184] LP further submits that delay in conduct of the investigation impacted the accuracy and reliability of the investigation findings, and the weight that should have given to the evidence arising from the investigation.

[185] The Panel notes that LP led no evidence with respect to this latter allegation.

[186] For its part, the Respondent submits that the issue of delay can only be considered within the context of LP's "legal rights", and those legal rights are reflected in section 33 of the *Wildfire Act* which provides for a limitation period of two years. The Respondent submits that, even if there is a breach of policy in failing to investigate the breach within six months, this is not a right upon which LP can rely as a defence to charges. Put another way, the Respondent says that the licensee must accept that the limitation is two years, and it must assume the proceedings can be commenced within that period.

[187] The Respondent further submits that the evidence of the Compliance and Enforcement Officer, Alex McLean, demonstrates that there was no breach of policy. He testified that the investigation commenced sometime after September of 2006, although he was only assigned to the case in June of 2007. The active investigation commenced in August of 2007.

[188] The Respondent also notes that Mr. King was informally interviewed on August 29, 2007 and, from that point onward, he ought to have known that the investigation was continuing.

The Panel's Findings

[189] The Panel agrees with the Respondent's position on this issue. The policy of the Ministry with respect to the commencement of an investigation is not a legally enforceable right in the hands of the licensee. The applicable limitation period establishes the statutory end date. The Crown was entitled to investigate these alleged contraventions and so long as the allegations were brought within the limitation period there can be no remedy to LP for the Ministry's failing to proceed with the investigation "quickly".

[190] There was no merit to this submission. This ground of appeal is dismissed.

DECISION

[191] In making this decision, the Panel has considered all of the Parties' submissions, whether or not specifically reiterated here.

[192] With respect to the three alleged contraventions, the Panel has concluded that:

1. LP ignited this prescribed fire in accordance with the approved Burn Plan. This ground of the appeal is allowed.
2. LP did not take appropriate steps to ensure that the fire did not escape and has not made out a defence to the contravention. This ground of the appeal is dismissed.
3. LP did not immediately carry out control and extinguish the fire if practicable and has not made out a defence to the contravention. This ground of the appeal is dismissed.
4. The Manager was not in a conflict of interest and was not biased against LP. This ground of the appeal is dismissed.
5. There is no remedy to LP in the failure of the Manager to initiate the administrative process quickly. This ground of appeal is dismissed.

[193] There were no submissions made with respect to penalty, but the Panel notes that the Respondent imposed the following penalties upon his finding that LP had contravened the provisions of sections 23(3) and 23(4) of the *Wildfire Regulation*. He found as follows:

1. He levied an administrative penalty in the amount of \$10,000.00 for breach of section 23(3) of the *Wildfire Regulation*;
2. He levied an administrative penalty of \$10,000.00 for the contravention of section 23(4) of the *Wildfire Regulation*; and
3. He determined that the amount payable in respect to Crown resources destroyed was the sum of \$1,128.18. (total \$21,128.18).

[194] As the penalty levied by the Manager under section 23(3) of the *Wildfire Regulation* contemplated breaches of both subparagraphs (a) and (b) of that section, and since the Panel has concluded that the appeal is successful, with

respect to section 23(3)(a), the Panel considers it appropriate to reduce the penalty.

[195] Without putting too fine a point on it, the Panel reduces the penalty for breach of section 23(3) of the *Wildfire Regulation* from \$10,000 to \$5,000. The total administrative penalties payable are, therefore, \$15,000, plus the sum of \$1,128.18, levied for destruction of Crown resources. The total financial penalty is \$16,128.18.

[196] Accordingly, the Panel concludes that the appeal be allowed, in part, and that the penalty be reduced to the sum of \$16,128.18.

"Robert Wickett"

Robert Wickett, Panel Chair

"Bruce Devitt"

Bruce Devitt, Panel Member

"Al Gorley"

Al Gorley, Panel Member

Forest Appeals Commission
January 10, 2012