



Forest Appeals Commission

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DECISION NO. 2018-FRP-001(a)

In the matter of an appeal under the *Forest and Range Practices Act*, S.B.C. 2002, c. 69.

BETWEEN:	Lemare Lake Logging Ltd.	APPELLANT
AND:	Government of British Columbia	RESPONDENT
AND:	Forest Practices Board	THIRD PARTY
BEFORE:	A Panel of the Forest Appeals Commission: Gabriella Lang, Panel Chair	
DATES:	March 11 - 13, 2019; concluding by written submissions on April 12, 2019	
PLACE:	Port Hardy, BC	
APPEARING:	For the Appellant: Trevor J. Egely For the Respondent: Meghan Butler, Counsel Darcie Suntjens, Counsel For the Third Party: Mark Haddock, Counsel	

APPEAL

[1] Lemare Lake Logging Ltd. ("Lemare") appealed an April 4, 2018 Contravention Determination and Notice of Penalty (the "Determination") issued by Andrew Ashford, District Manager (the "District Manager") North Island – Central Coast Natural Resources District (the "District"), of the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the "Ministry"). In the Determination, which was issued under the *Forest Range and Practices Act*, S.B.C. 2002, c. 69 (the "*FRPA*"), the District Manager found that Lemare contravened:

- section 22(2) of the *FRPA* by using a forest service road in a manner inconsistent with the *FRPA*, the regulations and standards; specifically, that its loaded logging trucks failed to comply with a traffic control device - a 5 tonne load limit sign on a bridge on a forest service road (the "Load Limit" contravention);
- section 112(3) of the *FRPA* for failing to comply with a stop work order issued under the *FRPA* (the "Stop Work Order" contravention); and,

- section 72 of the *Forest Planning and Practices Regulation*, B.C. Reg. 14/2004 (the "FPPR"), for failing to maintain a bridge on a forest service road and ensure that it was structurally safe for use by industrial users (the "Bridge Safety" contravention).

[2] The District Manager determined that none of the statutory defences in section 72 of the *FRPA* applied in this case and he assessed penalties of \$5,000 and \$15,000, respectively, for the Load Limit contravention and the Stop Work Order contravention. The District Manager did not assess a penalty for the Bridge Safety contravention.

[3] The Forest Appeals Commission is authorized to hear this appeal pursuant to section 82 of the *FRPA*. Subsections 84(1)(c) and (d) of the *FRPA* provide that, on an appeal, the Commission may:

- (c) consider the findings of the person who made the determination or decision, and
- (d) either
 - (i) confirm, vary or rescind the determination or decision, or
 - (ii) with or without directions, refer the matter back to the person who made the determination or decision, for reconsideration.

[4] Lemare asked the Commission to set aside the Determination on the basis that Lemare established the defences of due diligence or mistake of fact for each of the contraventions, and that the penalties are excessive in the circumstances.

BACKGROUND

[5] The contraventions at issue in this appeal involve Lemare's use and maintenance of Bridge V-6035 (the "Bridge") in March to April 2016. The Bridge is part of the infrastructure on the Klaskino Main Forest Service Road ("Klaskino Main FSR") on northwestern Vancouver Island. The Klaskino Main FSR is part of a network of roads in remote areas of North Vancouver Island. It runs from a log dump near Cleagh Creek on Quatsino Sound in a south, meandering in a southwesterly direction to and around most of Klaskino Inlet.

[6] The Bridge was described by witnesses during the appeal hearing as a remote access bridge. It is about a 2 to 2.5 hour drive from Port McNeill, and 5.8 kilometres from the Cleagh Creek log dump. Lemare transports harvested logs by truck using the Klaskino Main FSR to the Cleagh Creek log dump site, from which it transports the harvested logs by barge.

[7] During the appeal hearing, Mr. Chris Dutcyvich, one of Lemare's owners, said that Lemare had been in business from 1983, and is a major logging operator on North Vancouver Island. Lemare has about 400 employees and also retains contractors. More details about Lemare's road maintenance operations are provided in the Discussion portion of this decision.

[8] On April 3, 2009, the Ministry issued Road Use Permit 06-8531-02 (the "Permit") to Lemare. The Permit authorizes Lemare to use the Klaskino Main FSR,

and requires Lemare to carry out all maintenance activities for the Klaskino Main FSR, including the bridges. The specific requirements in the Permit are set out in the Discussion portion of this decision.

[9] Based on the evidence at the hearing, the following events leading up to the Determination are not in dispute.

[10] In 2013, the Ministry inspected the Bridge and notified Lemare that it needed to replace rotten sections of "bull rails" (referred to as guard rails in this decision) and risers. At that time, the Ministry labelled this a medium priority status for required repairs.

[11] In February 2015, the Ministry notified Lemare that four bridges on Klaskino Main FSR, including the Bridge, needed to be repaired. In June 2015, Mr. Josh Hiebert, then the Planning Manager for Lemare, notified the Ministry that the repairs on all of the bridges on Klaskino Main FSR were finished. At that time, and up to the events in April 2016, Mr. Hiebert was Lemare's principal contact person with the District.

[12] On March 9, 2016, Mr. Alan Bratosh from the District notified Mr. Hiebert by email that "rotten guard rails, risers and blocks" on the downstream side of the Bridge required "immediate replacement". Mr. Bratosh also wrote "Please let me know when the bridge work is complete as this is a safety issue and we will have to close the bridge to all industrial traffic".

[13] On March 23, 2016, Mr. Bratosh notified Mr. Hiebert by email that the Bridge repairs were still not done. Therefore, because of safety concerns, the load rating of the Bridge would be downgraded to 5 tonnes effective midnight March 23, 2016. Subsequently, 5-tonne load limit signs were posted at both ends of the Bridge. On March 24, 2016, Mr. Hiebert replied that Lemare was planning to fix the Bridge "ASAP".

[14] On March 31, 2016, a District Natural Resource Officer, Mr. Dacen Brooks, saw one of Lemare's loaded logging trucks crossing the Bridge when the 5-tonne load limit sign was in place. That truck appeared to exceed the load limit, and the Bridge was not repaired.

[15] On April 1, 2016, Mr. Brooks issued a stop work order (the "Stop Work Order") under section 66 of the *FRPA*, ordering Lemare to stop using the Bridge with vehicles exceeding 5 tonnes. The Stop Work Order stated that it was to remain in effect until the Bridge was safe for vehicles exceeding 5 tonnes, as signed off by a professional engineer, and District engineering staff authorized the removal of the 5-tonne load rating.

[16] Also, on April 1, 2016, Mr. Brooks served the Stop Work Order on Mr. Chris Dutcyvich. Mr. Dutcyvich told Mr. Brooks that he thought remedial work had been done on the Bridge on March 28, 2016, to make it safe until the guard rails were replaced.

[17] On April 1, 2016, Mr. Dutcyvich made a telephone call instructing the supervisor on the line to stop using the Bridge. He also expedited the repairs to the Bridge.

[18] On April 4, 2016, Mr. Brooks and another District employee went to the Cleagh Creek log dump to examine logging truck transportation documents. They found load slips indicating that several timber loads were transported by Lemare from Klaskish to the Cleagh Creek site. Those industrial loads, exceeding 5 tonnes, would have crossed the Bridge while the load limit and the Stop Work Order were in effect.

[19] On April 6, 2016, Mr. Hiebert sent the District photos of completed repair work to the Bridge, and a District representative in the engineering section authorized the removal of the 5-tonne load limit sign. On April 7, 2016, the Stop Work Order was rescinded.

The Determination

[20] The District Manager issued his Determination in a letter dated April 2, 2018. Before making the Determination, the District Manager considered evidence provided by the District's Compliance and Enforcement staff, which was consistent with the events outlined above. He also considered the evidence provided by Lemare, including Lemare's written submissions dated July 7, 2017, and the submissions it made during an Opportunity to Be Heard meeting held on October 19, 2017.

Contraventions

[21] The District Manager's findings regarding the contraventions have been summarized by the Panel, as follows:

1. Lemare contravened section 22(2) of the *FRPA* by failing to comply with section 6(5) of the *Forest Service Road Use Regulation*, B.C. Reg. 70/2004 (the "*FSRUR*"), which provides that a person must not operate a vehicle contrary to a traffic control device. Lemare operated a vehicle contrary to a traffic control device; namely, the 5-tonne load limit signs at the Bridge. Lemare's loaded logging trucks, which exceeded that limit, used the Bridge while the posted maximum load rating was in effect. Lemare did not dispute that its loaded logging trucks used the Bridge while exceeding the 5-tonne load limit.
2. Lemare contravened section 112(3) of the *FRPA* by failing to comply with the Stop Work Order issued under section 66 of the *FRPA*. The District Manager found that Lemare's loaded logging trucks crossed the Bridge when the Stop Work Order was in effect. Lemare did not dispute this contravention.
3. Lemare contravened section 72 of the *FPPR* by failing to maintain a road and bridge so that they are structurally sound and safe for industrial users. The District Manager found that Ministry inspection reports from 2013 and 2016 indicated that the guard rails on the Bridge were rotten and required replacement. The District Manager referred to section 26.81 of the *Occupational and Health Safety Regulation*, B.C. Reg. 296/97 (the "*OHSR*"), titled "Roads and Road Maintenance", which states that guard rails must be substantial and well secured. The District Manager found that the condition of the Bridge's guard rails did not meet those requirements. He also found that guard rails are a structural component of the Bridge, and are relevant to

the structural integrity of the Bridge. Therefore, until repaired, the Bridge was not structurally safe for industrial users.

[22] The District Manager also considered whether any of the statutory defences in section 72 of the *FRPA* applied: due diligence; mistake of fact; or, officially induced error. He noted that Lemare did not rely on the defence of officially induced error.

[23] Regarding a mistake of fact defence, Lemare indicated that it believed that the partial repairs on the Bridge pending complete repairs met the intent of the Stop Work Order, and therefore, the Stop Work Order “self-extinguished”. The District Manager found that it was not reasonable for Lemare to rely on this premise, because the Stop Work Order explicitly described the steps needed for it to be extinguished, and those steps had not been completed when Lemare’s loaded trucks crossed the Bridge. Lemare’s log hauling operations continued notwithstanding the Stop Work Order, and therefore, the mistake of fact defence did not apply.

[24] The District Manager further found that Lemare started repairs on March 30, 2016, which was 33 months after Lemare received the 2013 inspection report, and three weeks after it received the March 9, 2016 inspection report. Given this time frame between the discovery of the maintenance issues and commencement of the repairs, the District Manager found that Lemare had not been diligent in its efforts to maintain the bridge for industrial users. Therefore, he found that the defence of due diligence did not apply.

Penalties

[25] The District Manager referred to section 12 of the *Administrative Orders and Remedies Regulation*, B.C. Reg. 101/2005, which provides the maximum penalties for contraventions of sections 22(2) and 112(3) of the *FRPA*. Section 14 of that regulation sets out the maximum penalty for contraventions of section 72 of the *FPPR*.

[26] The District Manager also considered section 71(5) of the *FRPA*, which states that the following factors must be considered when levying a penalty for such contraventions:

1. previous contraventions of a similar nature by the person;
2. the gravity and magnitude of the contravention;
3. whether the contravention was repeated or continuous;
4. whether the contravention was deliberate;
5. any economic benefit derived by the person from the contravention;
6. the person’s cooperativeness and efforts to correct the contravention;
7. any other considerations that the Lieutenant Governor in Council may prescribe.

[27] The District Manager also emphasized the importance of penalties as a deterrent to Lemare and others, especially for disregarding the traffic control measure of the 5-tonne load limit and the Stop Work Order.

[28] He then imposed the following penalties:

1. \$5,000 for the contravention of section 22(2) of the *FRPA* (the Load Limit contravention).
2. \$15,000 for the contravention of section 112(3) of the *FRPA* (the Stop Work Order contravention).
3. \$0 for the contravention of section 72 of the *FPPR* (the Bridge Safety contravention). The District Manager considered the July 2013 Bridge inspection report as the date of the contravention, and therefore, he found that the three-year limitation period in section 75(1) of the *FRPA* for imposing penalties applied to this contravention.

The Appeal

[29] Lemare did not dispute the contraventions; however, in its evidence during the hearing and in its final submissions, Lemare relied on the defence of due diligence for the Bridge Safety contravention, and the defence of mistake of fact for the Load Limit contravention and the Stop Work Order contravention.

[30] The Respondent asserts that Lemare provided no evidence to establish any defences for any of the contraventions. The Respondent asks the Commission to:

- (1) confirm the contraventions of section 22(2) and section 112(3) of the *FRPA* and section 72 of the *FPPR*;
- (2) confirm the penalty of \$5,000 for the contravention of section 22(2) of the *FRPA*, and the penalty of \$15,000 for the contravention of section 112(3) of the *FRPA*;
- (3) find that the limitation period in section 75 of the *FRPA* had not expired with respect to the section 72 *FPPR* contravention because the contravention occurred in March 2016 and impose a penalty of approximately \$5,000 for that contravention.

[31] The Forest Practices Board (the "Board") was added as a party to the appeal pursuant to section 82(2) of the *FRPA*. The Board agreed with the Respondent's submissions.

ISSUES

[32] With respect to the contravention of section 72 of the *FPPR* (the Bridge Safety contravention), the parties agreed at the hearing that the three-year limitation period in section 75 of the *FRPA* did not begin in July 2013. As discussed below, based on the evidence, the Panel has found that the limitation period began in March 2016, and therefore, had not expired by the time the Determination was issued.

[33] Accordingly, the Panel considered the following issues in this case:

1. Did Lemare establish the defence of due diligence with respect to the contravention of section 72 of the *FPPR* (the Bridge Safety contravention)?

2. Did Lemare establish the defence of mistake of fact with respect to the contravention of section 22(2) of the *FRPA* (the Load Limit contravention)?
3. Did Lemare establish the defense of mistake of fact with respect to the contravention of section 112(3) of the *FRPA* (the Stop Work Order contravention)?
4. If Lemare did not establish the defence of due diligence or mistake of fact for the contraventions, what is the appropriate administrative penalty for each contravention?

[34] The Panel has cited the applicable legislation where it applies in its discussion of the issues.

PARTIES' WITNESSES

[35] The Panel conducted this appeal as a "new hearing"; that is, it heard evidence and submissions that were before the District Manager, as well as new evidence and submissions that were not before the District Manager.

[36] Two witnesses testified for the Appellant.

[37] Chris Dutcyvich, one of Lemare's owners, described Lemare's past and current operations, events affecting the conditions of Klaskino Main FSR and the Bridge from 2012 to the spring of 2016. He also described how the company addressed, and is now addressing, maintenance and safety issues.

[38] Trevor Egely, a Registered Forestry Technician, is Lemare's current Tenures and Planning Manager. Mr. Egely described how bridge and road repairs are undertaken in remote areas. He also listed the changes that Lemare has made to its communications systems, and its maintenance and safety operations, since 2016.

[39] Three witnesses testified for the Respondent.

[40] Alan Bratosh is a Registered Forestry Technician and has been a member of the Association of Forest Professionals since 2000. Mr. Bratosh explained that his current duties as an engineering specialist with the District include the inspection and maintenance of forest service roads and bridges for safety concerns. He said that there are about 500 bridges in the District, and the Ministry inspects all bridges about every two years. He testified about inspecting the Bridge in March 2016, his notices to Lemare about needed repairs to the Bridge, and his decision to impose the load limit on the Bridge.

[41] Dacen Brooks is a Natural Resources Officer in the Compliance and Enforcement section of the District. Mr. Brooks testified about his observation and investigation of loaded logging truck traffic on the Bridge while the 5-tonne load limit was in place, and about issuing the Stop Work Order.

[42] Brian Chow is Chief Engineer with the Ministry in the Engineering Branch, Timber Operations, Pricing and First Nations Division. He is a Registered Professional Engineer in British Columbia, and a member of the Fellow of Engineers Canada. His education includes a Master of Civil Engineering from the University of

British Columbia, and a Post Graduate Diploma in Forest Engineering from the Faculty of Forestry of the University of British Columbia. Since 1988, Mr. Chow has worked for the Ministry in various areas of forest service road engineering, administration, and the appraisal of roads and bridges in regions of the province. He also works with regional bridge engineers to address issues and concerns related to forest road bridges. In his current position, his duties include developing, implementing and evaluating professional and technical administrative engineering standards, and providing professional and technical advice related to resource roads and access.

[43] The Panel qualified Mr. Chow to give expert opinion evidence regarding the province's engineering standards for forest service road bridges, and particularly the structural function of timber guard rail systems as it relates to forest service road safety issues. In addition to his oral testimony, Mr. Chow's expert opinion report was submitted into evidence. The details of his evidence are summarized below.

[44] The Board did not submit any evidence, but did cross-examine the witnesses. The Board's submissions supported the Respondent's submissions.

[45] The Panel has considered all of the witness testimony and the documents submitted into evidence. It has summarized that evidence in its discussion and analysis of the issues, below.

DISCUSSION AND ANALYSIS

The Statutory Defences

[46] The statutory defences that Lemare relies on are provided in section 72 of the *FRPA*, which states:

- 72** For the purposes of a determination of the minister under section 71 or 74, no person may be found to have contravened a provision of the Acts if the person establishes that the
- (a) person exercised due diligence to prevent the contravention,
 - (b) person reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision, or

...

[47] The Commission has previously considered the test for the defence of due diligence under section 72(a) and has applied the test based on the Court's directions in *Pope & Talbot Ltd. v. British Columbia*, [2009] B.C.J. No. 2492 (2009 BCSC 1715). For example, see: *Interfor Corporation v. Government of British Columbia* (2015-FRP-002(a), July 29, 2016), at para. 203. For this defence to succeed, the person claiming the defence must establish, on a balance of probabilities, that they took reasonable care to avoid the contravention. That test, as applied in this case is: did Lemare exercise reasonable care to prevent the Bridge Safety contravention?

[48] The defence in section 72(b) of the *FRPA* is commonly referred to as the “mistake of fact” defence. The Commission recently considered this defence in *Forest Practices Board v. Government of British Columbia* (Decision Nos. 2017-WFA-005(a) & 2017-WFA-006(a), October 2, 2018) [*Forest Practices Board*]. Although that case dealt with contraventions of the *Wildfire Act*, section 29 of that Act provides the same statutory defences as section 72 of the *FRPA*. In paras. 62 and 66 of that case, the Commission stated as follows regarding these two defences:

Although each branch is a separate and distinct defence, reasonableness is the touchstone of both. Due diligence focuses on reasonable care to avoid the prohibited event, whereas mistake of fact focuses on reasonable care to know the true facts. The assessment of reasonable care is a factual one...

...

... as discussed above, an honestly held belief in a mistaken set of facts is not enough to establish mistake of fact. The belief must also be reasonably held: due diligence and mistake of fact are both rooted in reasonable care. ...

[underlining added]

[49] Thus, to succeed with the defence of mistake of fact, Lemare must establish, on a balance of probabilities, that it reasonably and honestly believed in the existence of facts that, if true, would establish that it did not contravene the 5 tonne load limit, or the Stop Work Order. An honestly held belief in a mistaken set of facts is not enough to establish mistake of fact - the belief must also be reasonably held.

1. Did Lemare establish the defence of due diligence with respect to the contravention of section 72 of the *FPPR* (the Bridge Safety contravention)?

[50] The Panel has considered this contravention first, because it was the condition of the guard rails on the Bridge which started the sequence of events leading to the Determination. Generally, the facts relevant to this issue are not in dispute.

[51] Lemare does not dispute its responsibilities under the Permit. The Permit’s conditions of use are set out in section 2 of the document. Section 2.01 of the Permit states that, as provided for in regulation, the Permittee is required to carry out all maintenance activities for those roads identified in the Permit. A list of those roads, and a map showing their locations, is attached to the Permit. The Klaskino Main FSR is on that list.

[52] In addition, in the Ministry’s April 2, 2009 cover letter for the Permit, the District Manager wrote:

The Ministry of Forests and Range will continue to carry out 2 or 3-year inspections of Forest Service bridges and major culverts. If responsible for maintenance, please note that you may be required to carry out the necessary

repair or replacement of bridges and major culverts. The maintenance work shall be consistent with Ministry of Forests and Range regulations.

[53] One of the regulations applicable to the Permit is section 72 of the *FPPR*, which states:

A person who constructs or maintains a road must ensure that the road and bridges, culverts, fords and other structures associated with the road are structurally sound and safe for use by industrial users.

[54] The District Manager considered July 2013 as the date when the facts that led to the Determination that the contravention had occurred first came to the knowledge of a Ministry official. This date was based on the Ministry's bridge inspection report dated July 23, 2013. However, during the hearing, the parties testified about a major storm event in the region in 2012, which extensively damaged many roads and bridges, including the Klaskino Main FSR and the Bridge. The parties agreed that after the storm, through all of 2013 and most of 2014, that road was not being used for industrial purposes, and therefore, was not a "forest service road" as classified by the Ministry. It also meant that section 72 of the *FPPR* did not apply until significant repairs to bring the road back to industrial user standards were completed.

[55] Consequently, the Panel finds that Lemare could not have contravened section 72 of the *FPPR* in July 2013, because it had no obligation at that time to maintain Klaskino Main FSR and the Bridge according to the industrial user requirements.

[56] The Respondent and the Board asked the Panel to consider March 2016 as the date when the facts that led to the Determination that the contravention had occurred first came to the knowledge of a Ministry official. This date is based on Mr. Bratosh's March 4, 2016 road maintenance inspection report, which stated that a "safety issue" with the Bridge needed "immediate attention".

[57] Mr. Bratosh testified that during a routine road and bridge inspection trip in March 2016, he observed rotten guard rails, risers and blocks on the downstream side of the Bridge. He submitted photos into evidence to show the state of deterioration. He also testified that on March 9, 2016, he notified Lemare to immediately replace the rotten guard rails, risers and blocks, because the state of disrepair was a safety issue for industrial vehicle traffic using the Bridge, and the Bridge would have to be closed to all industrial traffic.

[58] Lemare made no submissions regarding the start date of the three-year limitation period under section 75 of the *FRPA*.

[59] From the evidence at the hearing, there is no dispute that in March 2016, the Klaskino Main FSR (including the Bridge) was being used for industrial uses as authorized by the Permit, and therefore, the maintenance obligations in the Permit were in effect. Further, based on the conditions in the Permit and the requirements of section 72 of the *FPPR*, the Panel finds Lemare, as holder of the Permit, had an obligation to ensure that the Bridge was structurally sound and safe for industrial users in March 2016.

[60] Based on the evidence from Mr. Bratosh about the unsafe condition of the Bridge, and when he notified Lemare about the need to repair it, the Panel finds that the Bridge Safety contravention started on March 9, 2016. The Panel reviews the extent of that contravention below.

[61] Lemare provided evidence of what it called its industry standard maintenance approach for roads and infrastructure on North Vancouver Island. Both Mr. Dutcyvich and Mr. Egely testified about the challenges in maintaining forest service roads and bridges in that area due to weather, remote access issues, usage, ongoing deterioration of the infrastructure, etc. Mr. Egely also described how structural repairs could take time to complete in remote areas. Often repairs are batched, and bigger projects are addressed during seasonal downturns.

[62] Mr. Dutcyvich also testified about Lemare's significant operational and financial investments to bring the Klaskino Main FSR back to forest service road standards after the 2012 storm, and its ongoing investments in maintaining that road. Mr. Dutcyvich acknowledged that Lemare made a mistake in 2015 when it reported to the Ministry that the Bridge had been repaired with three others. However, he emphasized that at no time did Lemare intend to avoid repairing the Bridge. That job was on its repair schedule.

[63] Mr. Dutcyvich said that Mr. Hiebert would have initiated the Bridge repairs when he received Mr. Bratosh's March 9, 2016 email, by sourcing the guardrails from a mill. Depending on supply at the mill and other material orders, that could take time. Then the timber and other materials had to be transported to the Bridge, which is about a 2 to 2.5 hour drive from Port McNeill. Also, any work on the Bridge would have to occur during hours outside regular road use. The Klaskino Main FSR is used not just by Lemare's logging trucks, but other vehicles driven by the public and government employees.

[64] Mr. Dutcyvich emphasized that safety was very important to the company, and if Lemare believed that the Bridge posed a safety risk for industrial and other users, it would have expedited repairs. Lemare initially questioned whether the condition of the Bridge guard rails was a safety issue, arguing that guardrails are only meant to function as visual aids.

[65] The Respondent and the Board disagreed with this initial position by Lemare, and in response, they relied on the evidence from Mr. Chow, which is discussed below. They also submitted that Lemare, as the holder of the Permit, had the obligation to repair the Bridge, regardless of whether the District was conducting its inspections.

[66] Mr. Chow's responsibilities include providing advice, interpretation and guidance on forest road legislation and tenure administration, including for road use permits. He cited legislation that is related to these responsibilities, including road aspects of the *Forest Act*, R.S.B.C. 1996, c. 157, the *FRPA*, the *FPPR*, the *FSRUR*, and the *OHSR*.

[67] Mr. Chow also referred to several manuals and guidance documents, such as these which are in the Respondent's evidence: "Ministry's Engineering Branch Guidance for Selecting Bridge Guardrail Containment Level and Determining Need for Bridge Approach Barriers on FSRs"; "January 2011 report by Associated

Engineering titled "Development of Standard Curb Parameters"; and, the "Ministry's Engineering Manual" (revision dated August 1, 2018, with references to earlier versions) which provides design and construction requirements for various types of roads and infrastructures, including forest service roads and bridges.

[68] Mr. Chow testified that forest service roads are used by workers, and therefore, forest service road bridge guard rail systems must conform to the relevant provisions in the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, and the *OHSR* applicable to "Forestry Operations and Similar Activities". Specifically, he cited sections 26.81 and 4.63 of the *OHSR*, which state:

26.81 Bull Rails

The open sides of bridges, elevated truck weigh scales and associated elevated ramp approaches and other elevated structures used by logging trucks must be equipped with substantial and well secured continuous timber or log curbs or bull rails of sufficient height to prevent vehicles from running off the structure, but not less than 25 cm.

4.63 Vehicle Travel Areas

Curbs should be of substantial construction and while it may be impracticable to contain large machines, a well-constructed curb of the recommended height will provide warning to the operator that the machine is near the edge.

[69] In his expert report, Mr. Chow wrote that the Ministry's standards for bridge guard rail systems, including timber curbs, conform to this requirement.

[70] Mr. Chow said that timber bridge guard rails should not be allowed to deteriorate. They require maintenance and periodic replacement because the timber bridge curbs need to have structural integrity. Mr. Chow stated that timber curbs that have loose connection bolts or rotten wood elements will have less structural integrity than those that are well maintained and soundly connected. Guardrails need to be substantial and well secured.

[71] Although timber guardrails might be impractical to contain a large machine, according to Mr. Chow, having substantial timber guard rails provides both a visual barrier as well as a measure of impact warning for drivers close to bridge edges, and thus, such guard rails provide a degree of containment for large machines traversing bridges. There is resistance to the curbs that can help contain some errant vehicles on the bridge. Therefore, guardrails are a structural safety component of all forest service road bridges.

[72] Based on his review of the photographs submitted into evidence and the testimony that he heard during the hearing, Mr. Chow's opinion was that in March 2016, the Bridge was unsafe for heavily loaded industrial traffic, as measured by regulatory and Ministry standards.

[73] Lemare did not cross-examine Mr. Chow.

[74] Based on Mr. Bratosh's evidence and Mr. Chow's expert opinion evidence, the Panel finds that the Bridge was unsafe for heavily loaded industrial traffic and did not meet the requirements of the Permit from March 9, 2016 until April 6, 2016, when the District accepted proof of completed repairs.

[75] Regarding whether the due diligence defence applies to this contravention, the Respondent and the Board maintain that Lemare had no adequate bridge inspection protocol. Also, the District gave Lemare three succeeding notices about the need to repair the Bridge.

[76] The Panel finds that Lemare has been operating in the area for many years, and therefore, its managers and many of its employees should be very familiar with structural and safety standards for forest service road infrastructure. There is no evidence that Lemare had a protocol or system in place to regularly monitor or inspect the condition of the roads and bridges it was responsible for maintaining under the Permit, when the Bridge Safety contravention occurred. Also, regular users of the Klaskino Main FSR should have reported the deterioration of the Bridge's guard rails before the District informed Lemare of the immediate need for repair. The Panel finds that this was not due diligence by Lemare to avoid the Bridge Safety contravention.

[77] Mr. Dutcyvich explained that guard rail repairs could not happen "ASAP", and Mr. Bratosh agreed. Nevertheless, the Panel finds that the repairs could have been expedited by Lemare once it was notified of the need to immediately address a safety issue. Mr. Bratosh's warning to Lemare on March 9, 2016, that the Bridge would be downgraded if the repairs were not done, should have brought a sense of urgency to Lemare so that the 5-tonne load limit would have been unnecessary two weeks later. Instead, the repair work was expedited only on April 1, 2016, when the Stop Work Order was issued. This sequence of events does not establish that Lemare took reasonable steps to have the unsafe guardrails repaired as soon as possible and to avoid the contravention.

[78] The Panel also finds that leaving important communications between Lemare and the District to one person, as was apparently the case in 2015-2016, was not due diligence when it came to addressing important safety matters and implementing remedies.

[79] For all of these reasons, the Panel concludes that the defence of due diligence does not apply to the contravention of section 72 of the *FPPR* (the Bridge Safety contravention).

[80] At the same time, the Panel accepts Mr. Dutcyvich's evidence that Lemare did not intend to avoid repairing the Bridge, especially when the evidence of the ongoing maintenance requirements on the Klaskino Main FSR is considered. There is no evidence that Lemare intentionally tried to avoid fixing the Bridge. Although Lemare's intent is irrelevant to a finding of contravention in the context of an administrative penalty under the *FRPA*, the question of whether a contravention was deliberate is a factor to be considered in assessing a penalty under section 71(5) of the *FRPA*.

2. Did Lemare establish the defence of mistake of fact with respect to the contravention of section 22(2) of the *FRPA* (the Load Limit contravention)?

[81] Section 22(2) of the *FRPA* states that:

A person must not use, construct, maintain or deactivate a road except in accordance with this Act, the regulations, the standards and any forest stewardship plan or a woodlot licence plan, if the road is

(a) a forest service road

[82] One of those regulations is section 6(5) of the *FSRUR* which states that a person must not operate a vehicle contrary to a traffic control device. Section 1 of that regulation defines a traffic control as meaning “a gate, signal or notice which regulates the operation of a motor vehicle, and includes informational, cautionary, restrictive and prohibitory signals and notices”. The parties agree that the “Warning 5-tonne Load Limit” sign placed at both ends of the Bridge was a traffic control device as defined in the *FSRUR*.

[83] Mr. Chow explained that it is common for inspectors and engineers responsible for inspections to downgrade the allowable loads of forest service roads and bridges due to deteriorated or damaged guard rails. In his opinion, it is a reasonable measure to take to reduce the risk posed by damaged or deteriorated bridge curbs. When a 5-tonne load limit is applied, heavy industrial traffic would be precluded from using the Bridge, but most public users would not.

[84] Lemare acknowledged that its drivers contravened section 22(2) of the *FRPA* when several of its loaded logging trucks, exceeding 5 tonnes, crossed the Bridge while the load limit sign was in place. Lemare submitted that when the load limit signs were posted on the Bridge, the Cleogh Creek site foreman was notified that it was due to deteriorating guard rails. It further submitted that it proceeded with its hauling operations in good faith knowing that the defects were being adequately addressed; that is, the Bridge repairs were underway.

[85] The Respondent and the Board submitted that Lemare provided no evidence to establish a defence to this contravention.

[86] The Panel finds that Lemare’s evidence does not establish any defence to this contravention. “Proceeding in good faith” against a posted load limit restriction was clearly not obeying the traffic control devices, which were in place for safety reasons.

[87] Also, based on the evidence about the communications between Lemare and the District in March 2016, and the very clear load limit signs on the Bridge, there could have been no mistake of fact on Lemare’s part, and no erroneous understanding of the clearly posted load limit restrictions on the Bridge from March 23, 2016 to April 6, 2016. Also, from Mr. Brooks’ evidence, which Lemare did not dispute, at least four of Lemare’s drivers crossed the Bridge several times over several different days with loads exceeding 5 tonnes. They would have done so intentionally, and therefore, this contravention was deliberate and repeated.

[88] For these reasons, the Panel concludes that Lemare’s staff knowingly proceeded with hauling operations contrary to the posted load limit signs. Even if they did so based on a “good faith” belief that the safety defects were being addressed, this does not amount to a reasonably held belief in a mistaken set of facts.

3. Did Lemare establish the defence of mistake of fact with respect to its contravention of section 112(3) of the *FRPA* (the Stop Work Order contravention)?

[89] Section 66 of the *FRPA* sets out the requirements for Stop Work Orders:

- (1) If an official has reasonable grounds to believe that a person is contravening a provision of the Acts, the official may order that the contravention stop, or stop to the extent specified by the order, until the person has a required licence, permit, plan, approval, variance, exemption or other authorization.
- (2) An order to stop work under subsection (1) must be in writing and include all of the following:
 - (a) the nature of the contravention;
 - (b) the extent to which the contravention or activity must cease;
 - (c) the date by which the requirements of paragraph (b) must be met;
 - (d) notice of the person's right under section 80 to a review or under section 82 to an appeal;
 - (e) an address to which a request for a review may be delivered.

[90] The Stop Work Order met all of these requirements.

[91] Section 112(3) *FRPA* states that

If a person is the subject of an order, exemption or condition under this Act, the person must comply with the order, exemption or condition.

[underlining added]

[92] Lemare did not dispute that its drivers contravened section 112(3) of the *FRPA* when its logging trucks crossed the Bridge while the Stop Work Order was in effect. However, Lemare questioned why the Stop Work Order was "arduously" written; that is, it did not "self-extinguish" upon correction of the deficiency. Mr. Egely said that, in his experience, stop work orders are usually written to self-extinguish once the reason for the order is corrected.

[93] Mr. Chow stated that it is not unusual to specify measures to be taken to have a Stop Work Order removed. In the case of a bridge requiring a structural repair, it could be quite normal to require a review by a professional engineer to inspect and provide recommendations, to prescribe a review of the repair process and/or final product, and/or to provide a statement that the bridge has been repaired and can be used for its intended purpose.

[94] Mr. Brooks said that during his meeting on April 1, 2016 with Mr. Dutcyvich, he made sure Mr. Dutcyvich was well aware of what was required. He also testified that because the load limit sign was put in place for safety reasons, his objective for the Stop Work Order was to ensure that the Bridge could be safely used only after repairs were confirmed by a professional engineer.

[95] Lemare submitted that there was no deliberate intention on its part to contravene the Stop Work Order. Mr. Dutcyvich notified a supervisor that the Stop

Work Order was issued. He also assumed that all Bridge repairs were underway and industrial road activity could resume.

[96] However, Mr. Brooks testified that a Lemare logging truck driver he knew said he had no notice about the Stop Work Order. Three other Lemare drivers also told him that they did not know about the Stop Work Order. Based on this evidence, the Panel finds that the message from Mr. Dutcyvich did not get relayed to Lemare's drivers.

[97] The Respondent submitted, and the Board agreed, that there was no evidence of any protocols or communication systems in place in 2016 to inform Lemare's employees and contractors about the Stop Work Order, or even the load limit restriction. The Respondent and the Board also submitted that each trip with a load exceeding 5 tonnes while the Stop Work Order was in place was a separate contravention.

[98] Mr. Dutcyvich and Mr. Egely testified about the challenges of timely and reliable communications to the remote areas where Lemare operates. In 2015-2016, communications to work sites were not instantaneous and not always reliable. Although the Panel accepts that evidence, the Panel finds that the message about the Stop Work Order was not received by truck drivers for several days, more than enough time to get the message transmitted to drivers, and just as importantly, make sure it was obeyed. Also, there was no evidence that, after Mr. Dutcyvich was served with the Stop Work Order, he followed through to ensure compliance after his one phone call to a supervisor.

[99] Based on the evidence, the Panel finds that the mistake of fact defence fails. Assuming that a document states something or proceeding in good faith regardless of the requirements of a stop work order, is not a mistake of fact. There could be no erroneous interpretation or application of the terms of the Stop Work Order, especially about what was needed to extinguish it. A quick reading of the document, and effective communication to supervisors and drivers, would have prevented this contravention.

[100] On the other hand, the Panel finds that there is no evidence that Lemare intended to ignore the Stop Work Order. Mr. Dutcyvich did make a phone call instructing a supervisor in Mr. Brook's presence. Also, the drivers told Mr. Brooks that they did not know about the Stop Work Order. There is no evidence that they were told to ignore it. Although Lemare's intent is irrelevant to a finding of contravention in the context of an administrative penalty under the *FRPA*, the question of whether a contravention was deliberate is a factor to be considered in assessing a penalty under section 71(5) of the *FRPA*.

4. If Lemare did not establish the defence of due diligence or mistake for the contraventions, what is the appropriate administrative penalty for each contravention?

[101] The Panel asked the parties for submissions regarding appropriate administrative penalties, in the event the Panel decided that Lemare did not establish any of the statutory defences to the three contraventions. Specifically,

the Panel asked the Respondent and Board for information about penalties the Ministry has imposed for comparable contraventions.

[102] One reason the Panel requested this information is because deterrence is an important penalty consideration. The Commission has previously found that administrative penalties are intended to encourage compliance with the legislation by providing specific deterrence in respect of the contravener, as well as general deterrence in respect of the industry (for example, see: *Forest Practices Board v. Government of British Columbia*, Decision No. 2016-FRP-001(a), February 10, 2017). However, in the absence of readily available information about what penalties the Ministry has levied for contraventions involving similar circumstances, the Commission has limited information to determine what size of penalty may result in deterrence on others in the same regulated community.

[103] The Panel recognizes that the District Manager was not bound by previous decisions, nor is this Panel. Each case must be decided on its own merits. Nevertheless, in addition to applicable legislation, other cases can provide a helpful framework for the issues and factors to be considered when considering appropriate penalties.

[104] In determining the appropriate penalty, the Panel reviewed the District Manager's findings, including his consideration of the facts as they relate to each factor in section 71(5) of the *FRPA*. However, the Panel has made its own determinations based on the evidence and submissions from the appeal hearing. Because all three contraventions arose from the Bridge safety problem, the Panel has assessed the three contraventions together under each factor.

1. Previous contraventions of a similar nature by the person.

[105] Mr. Brooks testified that in November 2015, he issued a stop work order to Lemare for failure to maintain a different bridge that had guardrails in poor condition. Mr. Brooks followed that order with a December 8, 2015 violation ticket for \$345, which was quickly paid by Lemare. The violation ticket was for a contravention of section 79(2) of the *FPPR* for failing to maintain a road, including bridges.

[106] Lemare acknowledged that a violation ticket was issued to it in December 2015; however, Lemare considers this to be "errant information" which clouds the facts for the present penalty adjudication. Lemare pointed out that it was not the "owner" of the road with that bridge in 2015, it was not the tenure holder for which work was being conducted, and it did not hold the road use permit related to that contravention. Lemare maintains that the tenure holder should have been responsible for that bridge, but it paid the ticket to quickly resolve the issue.

[107] Both the Respondent and the Board consider this previous contravention an aggravating factor, especially coming so soon before the similar ones in this case. The Respondent submitted that this earlier violation ticket should be considered when assessing the penalty amount in this case.

[108] The Panel finds that the previous 2015 contravention has distinguishing factors, in that Lemare was not responsible for the maintenance of the bridge in the

cited stop work order. Therefore, the Panel does not consider this to be a serious previous contravention by Lemare.

2. The gravity and magnitude of the contraventions.

[109] Lemare did not contest the gravity and magnitude of the contraventions. It submitted that it takes road maintenance, traffic control devices and stop work orders seriously, and safety is an absolute priority. Lemare provided evidence about the extensive work it did, and substantial expenditures it made, to upgrade the Klaskino Main FSR for safe industrial hauling following the 2012 storm. Therefore, it argued that the Bridge guard rail conditions should not be considered in isolation, especially when road maintenance is a constant endeavor.

[110] The Respondent referred to Mr. Bratosh's and Mr. Chow's evidence about safety concerns arising from poorly maintained guard rails on forest service road bridges, particularly for heavy industrial vehicles exceeding 5 tonnes. The Respondent submits that these contraventions were serious.

[111] Regarding the Load Limit contravention, the Respondent submitted that the Ministry expects forest service road users to strictly comply with posted traffic control devices, and it denounced any suggestion that their meaning is ambiguous or open to subjective interpretation. The Respondent further submitted that stop work orders are a serious enforcement measure and should be taken seriously by whoever they are imposed on.

[112] The Board agreed with the District Manager's finding that the gravity of the contraventions was high, primarily because of the seriousness of violating a stop work order and because the underlying contravention related to the safety of the Bridge. The Board submitted that the poor condition of the guard rails was known to Lemare for several years. In addition, the magnitude of the contraventions is highlighted by the number of Lemare's truck drivers who contravened the load limit restriction and the Stop Work Order.

[113] The Panel finds that each of the contraventions were safety-related, were preventable and were very serious. The Panel also finds that the Stop Work Order is the most serious contravention. It was issued as an enforcement measure because of escalated safety contraventions, and yet was not complied with for five days.

3. Whether the contraventions were repeated or continuous.

[114] Lemare did not dispute that the three contraventions continued over a series of days until the Bridge was repaired, and until the load limit and the Stop Work Order were rescinded.

[115] The Panel finds that the Bridge Safety contravention began with Mr. Bratosh's March 9, 2016 notice to Lemare to immediately repair the Bridge. That contravention was continuous until April 6, 2016, when the District accepted that the Bridge repairs were complete. The Load Limit contravention began when Lemare's truck drivers first drove over the Bridge with trucks exceeding the 5-tonne load limit when the 5-tonne load limit signs were clearly visible. That contravention was repeated with each excess load until the downgrade was lifted on April 6, 2016. The Stop Work Order contravention began on April 1, 2016 when the order was

served on Mr. Dutcyvich. The contravention was repeated with each excess load driven over the Bridge and continued until April 7, 2016 when the Stop Work Order was rescinded.

4. Whether the contravention was deliberate.

[116] The Panel has already found, above, that the Bridge Safety contravention and Stop Work Order contravention were not deliberate, but the Load Limit contravention was deliberate.

5. Any economic benefit derived by the person from the contravention.

[117] Lemare emphasized that the guard rail repairs to the Bridge were not purposely delayed for economic benefit. It was already spending hundreds of thousands of dollars to repair the Klaskino Main FSR to bring it back up to standards for industrial use and to keep it that way.

[118] The Respondent argued that there was a significant economic benefit to Lemare from hauling timber for at least five days while the load restriction was in place.

[119] The Board submitted that economic benefits are an important penalty consideration, because the regulatory objective is to deter regulated parties from treating the consequences of non-compliance as simply the cost of doing business. The Board also noted that the 2015 violation ticket may have led Lemare to expect similarly light enforcement responses for other contraventions.

[120] The Board recognized that it is difficult to determine what economic benefit Lemare may have derived from the contraventions in this instance. However, it noted that Mr. Dutcyvich on cross-examination, said the costs to Lemare if its trucks did not haul during the contravention periods would be significant.

[121] The Panel finds that Lemare continued to haul timber while the load limit was in place and while the Stop Work Order was in place. This would have resulted in some economic benefits to Lemare. However, the Panel also accepts the evidence from Mr. Dutcyvich that Lemare has spent and continues to spend a great deal of money and applies other resources, to fix and maintain the Klaskino Main FSR. Whether there was any net economic benefit to Lemare, or how much it was during the contraventions, is difficult to ascertain absent specific financial evidence.

6. The person's cooperativeness and efforts to correct the contravention.

[122] Lemare accepted that it is fully accountable as the "owner" (and Permit holder) for the safe industrial maintenance of the Klaskino Main FSR, including the Bridge. It also referred to evidence demonstrating that it had been very cooperative with the District regarding overall maintenance and repair of the Klaskino Main FSR for several years, working with the District to do the repairs and to help finance them after the 2012 storm.

[123] Lemare admitted that it made a mistake in 2015 when it advised the District that four bridges, including the Bridge, were repaired. However, Lemare submitted that when the District brought the Bridge's condition to the attention of Mr. Hiebert on March 9, 2016, Mr. Hiebert began the repair process by ordering the timber. That is when the repairs started and they were expedited starting April 1, 2016.

[124] Mr. Dutcyvich and Mr. Egely testified that Lemare has changed its road and bridge maintenance practices. Mr. Egely said that from 2013 to 2017, Lemare's maintenance program did have inspection reports, mainly from foremen who drove the roads daily. It has now made its inspection processes more formalized to be well ahead of any maintenance issues, with its own inspections through third party contractors, action plans, and reporting procedures. However, Mr. Egely also pointed out that even with a very good maintenance system, there will always be repair issues on any forest service road, especially in a climate like on North Vancouver Island.

[125] Regarding the Bridge Safety and the Load Limit contraventions, Lemare accepted responsibility for the limited follow-up by its then planning manager, and the lack of better communications with its employees and contractors. Lemare also stated that it takes responsibility for not communicating the Stop Work Order to on-site supervisors and others who needed to know about it.

[126] Lemare reiterated its ongoing commitment to safety and to working with the Ministry, as evident in its July 7, 2017 written submissions to the District Manager, in testimony from Mr. Dutcyvich and Mr. Egely during the appeal hearing, and in its final submissions. Lemare stated that it shares common goals with the District and the Board; that is, to ensure regulatory compliance, to promote better communications, and to ensure the safe and environmentally responsible use of the Klaskino Main FSR.

[127] In the July 7, 2017 submissions to the District Manager, Lemare listed actions it had taken to address the problems which resulted in the contraventions. During the appeal hearing, Mr. Egely confirmed that these and other measures had been undertaken. Those measures were also confirmed in Lemare's final submissions. These are summarized as follows:

1. Increased the number of contact persons for District communications to include operational planning contacts and the Occupational Health and Safety advisor, especially to avoid unnecessary delays on critical issues and improve overall communications.
2. Added experienced personnel to its operational planning department, for better communication with the District and better infrastructure management.
3. Developing its environmental management system, including systematic inspection and documentation of tenures for safety and environmental maintenance and training.
4. Training all crew and supervisors to report deficiencies when encountered, to recognize traffic control devices, and to ask for clarity when they encounter changed conditions, such as road signage or bridge/road damage.
5. Increased communication with the District on any items that could affect the safe operation and maintenance of the Klaskino Main FSR.
6. Conducting regular and documented road and bridge inspections, and not relying on District inspections. Developed a spatial database that tracks such inspections, and is providing detailed maps and action plans to repair crews and/or grade supervisors.

7. Stockpiling repair timbers and hardware in remote camps to be able to conduct repairs more quickly.

[128] The Respondent relied on the District Manager's findings in the Determination.

[129] The Board submitted that although Lemare eventually repaired the guard rails, it required escalating enforcement action, starting with the posting of the load limit restriction on the Bridge. When that was not complied with, the Stop Work Order was issued, which also was not complied with. The Board argued that the evidence does not indicate a particularly high degree of cooperation and action by Lemare before the Stop Work Order was issued.

[130] The Panel finds that it did take escalating enforcement action to get the Bridge repaired, and that Lemare's communication system failed in 2016. However, the Panel also credits Lemare for taking responsibility for the events that led to the contraventions. It also credits Lemare for recognizing that changes to its operations were needed and for taking steps to make those changes, even before the Determination was issued.

7. Any other considerations that the Lieutenant Governor in Council may prescribe.

[131] The Panel finds this factor does not apply in this case.

[132] The Respondent and the Board submitted that an additional consideration the Panel should consider is the need for effective deterrence generally to the regulated community and specifically to Lemare to promote compliance and respect for the law. The Panel agrees that deterrence to both is a very important consideration and should be reflected in the penalty amounts.

The Penalty Amounts

[133] The *Administrative Orders and Remedies Regulation* sets the maximum penalties for the contraventions in this case. Section 12(c) of that regulation states that the maximum penalty for a contravention of section 22(2) of the *FRPA*, the Load Limit contravention, is \$50,000. Section 12(a) of that regulation states that the maximum penalty for a contravention of section 112(3) of the *FRPA* contravention, the Stop Work Order contravention, is \$500,000. Section 14(b) of that regulation states that the maximum penalty for a contravention of section 72 of the *FPPR* contravention, the Bridge Safety contravention, is \$50,000.

[134] Lemare made no submissions regarding the amount of the penalties, except that it argued that the penalties imposed by the District Manager were significantly high given the circumstances. Additionally, it pointed out that it has taken steps to correct maintenance, communication, and operational gaps, and it has accepted responsibility for the circumstances resulting in the contraventions.

[135] The Respondent maintained that the penalties imposed by the District Manager for the Load Limit contravention and the Stop Work Order contravention were appropriate in the circumstances and should be confirmed. To support those penalties, it relied on the District Manager's consideration of the criteria in section 71(5) of the *FRPA*. It also noted that deterrence to Lemare and others was an important consideration for the District Manager.

[136] The Respondent provided a summary of other determinations and penalties imposed by the Ministry for these types of contraventions, noting, however, that they are distinguishable on their facts. The Respondent did point out that the penalties for other stop work order contraventions, including one for \$20,000, reflected the seriousness of those contraventions.

[137] The Respondent submitted that an appropriate penalty for Lemare's Bridge Safety contravention would be at or near \$5,000, as a matter of industrial and public safety. This amount added to the \$20,000 imposed by the District Manager for the other two contraventions would both act as a deterrence and remove economic benefit, but would still be lenient.

[138] The Board submitted that the penalty amounts should encourage Lemare to achieve a higher degree of compliance with its bridge maintenance obligations to ensure worker safety, to comply with road use restrictions, and to obey stop work orders. The Board also submitted that penalties should not be so low as to be treated as a cost of doing business.

[139] The Board submitted that appropriate penalties would be:

1. \$5,000 to \$10,000 for the Bridge Safety contravention, because the underlying contravention was the failure to ensure that the Bridge was structurally sound and safe for use by industrial users. This contravention could have been avoided if Lemare had diligent road inventories, scheduled bridge inspections, and better responsiveness to inspection information.
2. more than \$5,000 for the Load Limit contravention, because of the number of repeated violations, which the Board estimates was 32. When \$5,000 is divided by that number, the penalty levied by the District Manager was about \$156.25 per incident.
3. For the Stop Work Order contravention, a penalty consistent with the significance of such contraventions as reflected in other decisions, which in the Respondent's submission range up to \$20,000 total for two individuals who damaged a Crown historic site and recruited others in that enterprise. The Board acknowledged that these cases are distinguishable, on the facts, from this one.

[140] The Panel finds that the other Ministry penalty determinations provided by the Respondent are distinguishable on their facts. However, the examples of stop work order penalties demonstrate that the Ministry considers contraventions of stop work orders to be very serious, and the Panel agrees.

[141] The Panel has found that Lemare's contraventions were all serious and preventable. However, the Panel also has taken into account the many changes that Lemare has made to its operations, even before the Determination, as indicating that it has recognized how serious these contraventions were.

[142] Having considered all of the relevant legislation and penalty factors, as well as all of the evidence, the Panel finds that the appropriate administrative penalty for each contravention is as follows:

1. For the Bridge Safety contravention: \$3,000.

2. For the Load Limit contravention: \$5,000.
3. For the Stop Work Order contravention: \$12,000.

DECISION

[143] In making this decision, the Panel has considered all the evidence and submissions of the parties, whether or not they have been specifically referred to or reiterated here.

[144] For the reasons provided, the Panel varies the Determination and the associated penalties as directed above.

[145] Accordingly, the appeal is dismissed.

"Gabriella Lang"

Gabriella Lang, Panel Chair
Forest Appeals Commission

June 25, 2019