BRITISH COLUMBIA

Forest Appeals Commission

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APPEAL NO. 96/05(c)

In the matter of an appeal under section 131 of the *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c.159.

BETWEEN:	MacMillan Bloedel Limited	**APPELLANT**
AND:	Government of British Columbia	**RESPONDENT**
AND:	Forest Practices Board	**THIRD PARTY**

BEFORE: A Panel of the Forest Appeals Commission

Toby Vigod	Chair
Gerry Burch	Member
Bruce Devitt	Member

DATE OF HEARING: June 20, 1997 and July 7, 1997

PLACE OF HEARING: Victoria, B.C.

APPEARING:

For the Appellant:	Paul Cassidy, Counsel
	Alison Taylor, Counsel
For the Respondent:	Bruce Filan, Counsel
	Wendy McKittrick, Counsel
For the Third Party:	Calvin Sandborn, Counsel

APPEAL

This is a continuation of an appeal brought by MacMillan Bloedel Limited ("MB") against the April 29, 1996 review decision of K. Collingwood, V. Ciapponi and C. Rowan (the "Review Panel"). The Review Panel upheld the February 13, 1996 determination of Don Sluggett (the "Senior Official") that MB contravened section 96(1) of the *Forest Practices Code of British Columbia Act* (the "*Code*") by unauthorized harvesting of timber. The Review Panel varied the penalty of $86,179.05 levied pursuant to section 119(1) of the *Code*, by reducing it to $83,343.15.

The appeal was brought before the Forest Appeals Commission (the "Commission") pursuant to section 131 of the *Code*.

On December 6, 1996, a request was made by the Respondent that the appeal be heard in two stages. The first stage, which was heard on December 12, 1996, dealt with the question of whether "due diligence" is available as a defence to excuse an individual or company from liability for a penalty determination under section 117 or 119 of the *Code* for a contravention of section 96(1) of the *Code*. In *MacMillan Bloedel* v. *Government of British Columbia* (Forest Appeals Commission, Appeal No. 96/05(b), February 19, 1997)(unreported)), the Commission answered this question and found that due diligence is not a defence under section 117 or 119 of the *Code* for a contravention of section 96(1) of the *Code*.

In the second stage of the hearing, which is the subject of this decision, the Commission heard evidence and argument relating to the issue of the quantum of penalty.

BACKGROUND

MB holds Tree Farm Licence 39 ("TFL 39") and Cutting Permit 41 ("CP 41") located in Phillips Arm. TFL 39 and CP 41 are administered by MB's Stillwater Division. MB contracts harvesting activities in this area to Ted LeRoy Trucking Ltd. ("T.L. Trucking").

In April 1994, the Appellant provided T.L. Trucking with two copies of a 1:20,000 map which showed Blocks 90 and 139 in CP 41 in TFL 39. One copy of the map was placed on the wall in the office of T.L. Trucking's camp at Phillips Arm. The map was updated in the spring of 1995.

In June of 1995, MB provided two "Contractor Packages" to T.L. Trucking. The packages contained pre-harvest silviculture prescriptions for Blocks 90 and 139. Also provided to T.L. Trucking were 10 copies of two 1:5,000 scale maps, one for Block 90 and one for Block 139.

T.L. Trucking was given approval by MB to commence wide right-of-way falling in July of 1995. On July 18, 1995, the fallers for T.L. Trucking began widening the cut area along the road in Block 139. In determining the area within which they were to harvest, the fallers and their supervisor, Mr. Beale, inadvertently misread the two 1:5,000 maps of Blocks 90 and 139 by assuming that the two Blocks were immediately adjacent to one another. In actual fact, there was a 975 metre "leave strip" between the two blocks. Based on the erroneous reading of the maps, the fallers proceeded to fall in the leave strip between Blocks 90 and 139.

On July 19, 1996, harvesting was shut down for 3 days due to heat. On July 22 and 23rd, the fallers were engaged in other activities in Block 139. They resumed falling in the leave strip between Blocks 90 and 139 on July 24, 1995.

On July 26, 1996 the Ministry of Forests ("MOF") was informed by MB that there was a possible contravention of the *Code*; specifically, unauthorized timber harvesting. Mr. Todd Powell, Compliance and Enforcement Officer with the MOF, conducted a site investigation the following day and confirmed that unauthorized harvesting of timber had occurred.

In his August 16, 1995 determination, the Senior Official found that MB had conducted unauthorized timber harvesting of 168 trees. Initially, a penalty of $132, 279.15 was assessed pursuant to section 119(1) of the *Code* based on the following formula: *((stumpage rate + bonus bid) + (**2 x** market value)) x volume + scaling costs*. This was reviewed and ultimately sent back for reconsideration. On February 13, 1996, the Senior Official reduced the penalty to $86,179.05 using the formula *((stumpage rate + bonus bid) + (**1 x** market value)) x volume + scaling costs*.

The Senior Official's February 13, 1996 determination was also reviewed. In its April 29, 1996 decision, the Review Panel found that the penalty levied against MB by the Senior Official was fair, with the exception of the inclusion of scaling costs in the penalty. Therefore, the Review Panel varied the penalty amount to $83,343.15 by subtracting the scaling costs. It should be noted that the figures applied to the formula were as follows:

upset stumpage rate - $28.39 per metre
bonus bid - $82.37 per metre
market value - $135.09 per metre

All parties are in agreement that unauthorized cutting of timber did occur and that MB was in contravention of section 96(1) of the *Code*. The number of trees, 168; the area involved, 0.91 hectares; and the volume cut, 339 cubic metres, were also not in dispute. Further, there was agreement that the incident was not intentional but the result of human error on the part of the contractor and the falling subcontractor. In a letter dated July 31, 1995 to Mr. Todd Powell of the MOF, T.L. Trucking accepted "full responsibility for what has happened."

ISSUE

Whether the quantum of the penalty is appropriate in the circumstances.

RELEVANT LEGISLATION

Section 96 of the *Code* prohibits the cutting of Crown timber without authorization. The relevant portion of the section is reproduced below:

Unauthorized timber harvest operations

96 (1) A person must not cut, remove, damage or destroy Crown timber unless authorized to do so

(a) under an agreement under the *Forest Act* or under a provision of the *Forest Act,*

...

(2) If a person cuts, removes, damages or destroys Crown timber contrary to subsection (1), at the direction of, or on behalf of, another person, that other person also contravenes subsection (1).

Section 119 of the *Code* provides the legislative authority for assessing a penalty for a contravention pursuant to section 96. The relevant portion of the section is reproduced below:

> **Penalties for unauthorized timber harvesting**
>
> **119 (1)** If a senior official determines that a person has cut, damaged, removed or destroyed Crown timber in contravention of section 96, he or she may levy a penalty against the person up to an amount equal to
>
> (a) the senior official's determination of the stumpage and bonus bid that would have been payable had the volume of timber been sold under section 20 of the Forest Act, and
>
> (b) 2 times the senior official's determination of the market value of logs and special forest products that were, or could have been, produced from the timber.

Section 117 also provides for penalties for contraventions of the *Code*. Section 119(2) of the *Code* states that penalties may not be levied under both section 119(1) and section 117(1). The penalty levied in this case was imposed pursuant to section 119(1) of the *Code*. However, section 117(4)(b) provides a list of factors which may be considered in assessing a penalty under section 119.

> **Penalties**
>
> **117 (4)** Before the senior official levies a penalty under subsection (1) or section 119, he or she
>
> ...
>
> (b) subject to any policy established by the minister under section 122, may consider the following:
>
> (i) previous contraventions of a similar nature by the person;
>
> (ii) the gravity and magnitude of the contravention;
>
> (iii) whether the violation was repeated or continuous;
>
> (iv) whether the contravention was deliberate;
>
> (v) any economic benefit derived by the person from the contravention;
>
> (vi) the person's cooperativeness and efforts to correct the contravention;
>
> (vii) any other considerations that the Lieutenant Governor in Council may prescribe.

In both the determination and review decision, the decision-makers considered the factors when levying the penalty against MB.

DISCUSSION AND ANALYSIS

Whether the quantum of the penalty is appropriate in the circumstances

The Appellant (MB) argues that the Senior Official and the Commission are not bound to impose a penalty under section 119(1) and that the size of the penalty was excessive and inconsistent with other recent *Code* penalties assessed by Administrative Review Panels. MB argues that the penalty should be zero or no more than $5,000. It submits that it exercised all reasonable care and that its due diligence efforts should be considered in determining the quantum of the penalty under section 119(1) of the *Code*. MB also submits that the Senior Official failed to properly consider the factors provided for in section 117(4)(b) of the *Code***.**

Regarding the section 117(4)(b) factors, the arguments of MB can be summarized as follows:

(i) It has no previous contraventions under the *Code*. However, the Review Panel found it "significant" that MB , Stillwater Division, had two previous trespass determinations in 1995 around the time of the unauthorized harvesting in this case. MB submits that the Review Panel erred in considering these previous penalties as they were levied under the *Forest Act*. It submits that the wording of section 117(4)(b)(i) is straightforward and unambiguous and that while senior officials can consider "contraventions of a similar nature" these can only refer to contraventions of the *Code*.

(ii) The affected area was small, did not result in environmental damage and did not affect any management objectives.

(iii) The violation was not repeated nor continuous.

(iv) The contravention was not deliberate - it was due to human error on the part of T.L. Trucking and MB was duly diligent in that it exercised all reasonable care to prevent the occurrence of such a contravention.

(v) It received no economic benefit from the contravention.

(vi) Both MB and T.L. Trucking were cooperative once the contravention was identified.

Regarding the first factor, the Commission agrees with the Appellant that the Review Panel erred when it considered previous trespass penalties levied against the Appellant under the predecessor sections of the *Forest Act*. Although the Respondent takes the position that previous findings of trespass under section 138 of the *Forest Act* can be taken into account when assessing a penalty for a contravention of section 96 of the *Code* as the two sections are virtually identical, the Commission cannot agree.

"Contravention(s)" is a term used throughout the *Code*. Section 117 authorizes a senior official to levy a penalty against a person who "has contravened the Act, regulations, standards or an operational plan." While section 96 of the *Code* has a predecessor section in the *Forest Act*, many of the other contraventions are unique to the *Code*. All the provisions under subsection 117(4)(b) refer to "contravention"

and not "contravention of the Act", although it is clear that the contravention of the Act is what is being referred to.

The Commission finds that "previous contraventions of a similar nature" refers to contraventions under the *Code*. The *Code* is a comprehensive statute dealing with the regulation of forest practices in British Columbia. Had the legislature intended that contraventions of other legislation, including the predecessor sections of the *Forest Act,* would be considered in a penalty determination, it could have referred to that legislation. Other sections of the *Code* refer specifically to other statutes when they are to be considered. For example, the Stopwork Order power under section 123 refers to contraventions of "this Act, the *Forest Act* or the *Range Act* ...". Therefore, the Commission has considered this contravention as if it was MB's first contravention of this nature.

Regarding the second factor, the Commission accepts the evidence that management objectives will not be affected and there was no "significant" environmental damage. However, the Commission finds that the unauthorized cutting of 168 trees and the volume of timber harvested, 339 cubic metres, cannot be considered minimal as found by the Review Panel in its decision.

Regarding the continuity or repetitiveness of the contravention, the Commission notes that, as cutting only took place on two days, July 18th and July 24th, it cannot be said that the contravention was "repeated or continuous". If the Appellant had performed better monitoring or supervision of operations at the site, the damage could have been completely prevented or, at least, significantly reduced. This will be discussed further below.

Regarding the deliberateness of the contravention, the Commission agrees that it appears the trespass was an unintentional act by T.L. Trucking. This was not in dispute. What was in dispute, and received, by far, the most attention in this appeal, was the claim by MB that its due diligence efforts are relevant to an assessment of quantum of penalty and its assertion that, on the facts, it took all reasonable care. The Commission now turns to consider these arguments.

At the hearing the Respondent took the position that, regardless of whether MB exercised all reasonable care, the exercise of due diligence could not be taken into consideration when determining the amount of a penalty under section 119(1) of the *Code*. Subsequent to the hearing, counsel for the Respondent wrote to the Commission, and the other parties, indicating a different position. It now takes the position that while due diligence is not a defence to a contravention, it is a relevant factor to be considered in determining the amount of the penalty. In this regard, the position of the Respondent is that due diligence may be a mitigating factor which senior officials may use as a reason for reducing or eliminating the disciplinary component of a penalty, but not the compensatory component. On the facts of this case, the Respondent submits that MB did not exercise reasonable care or due diligence and that the penalty imposed by the Review Panel was appropriate.

The Forest Practices Board does not take a position on the facts of this case. At the hearing, it took a position on the law similar to the one the Respondent is now

taking. Its position is that, while due diligence is not a defence to a contravention, evidence that all reasonable care was taken should be taken into account in determining the quantum of the penalty. The Board argues that, under section 117(4)(b)(iv), the decision-maker may consider "whether the contravention was deliberate," and that evidence of due diligence is relevant to this factor. The Board suggests that it may also be relevant to section 117(4)(b)(vi), which deals with the cooperativeness of the person. However, the Board submits that a person should not be allowed to profit from breaking the law and that the public should be compensated for the lost value of its timber and the cost of restoration, regardless of whether due diligence was exercised. It argues that the public should not have to bear the loss caused by a breach committed by a person conducting business on Crown land.

The Commission agrees that evidence of whether reasonable care was taken is relevant in assessing the quantum of penalty. This is consistent with the Commission's decision in *MacMillan Bloedel*, (Appeal 96/05(b)) where the application of section 117(4)(b) of the *Code* was discussed as follows:

> The Commission notes that, pursuant to section 117(4)(b), the senior official may consider a number of factors before levying a penalty under section 117(1) or section 119. These include whether the contravention was deliberate and the person's cooperativeness and efforts to correct the contravention. There are no minimum penalties under the *Code* and there is considerable discretion as to the quantum of penalty based on the factors set out in section 117(4)(b). The Commission finds that section 117(4)(b) provides for some due diligence-like factors in assessing the quantum of the penalty. These factors do not appear in the Offences section of the *Code*, where the due diligence defence is found. The Commission finds while the person's behaviour may become relevant in regard to the quantum of an administrative penalty imposed, these factors do not apply in addressing the question of whether a contravention has occurred in the first place and whether any penalty should be assessed. (p. 16)

The main evidence tendered by the parties on the question of whether MB took all reasonable care to prevent the contravention, is as follows.

Mr. Lyle McMurdo, Operations Supervisor at MB, testified that prior to July 1995, the Appellant had commenced training related to the *Code* and that the training sessions were sponsored and paid for by the company. Mr. Beale, the falling supervisor with T.L. Trucking, attended a training session on "*Code* Liability" on April 13, 1995.

A "Standard Operating Procedure" dated February 28, 1995 was supplied to all of MB's contractors, including T.L. Trucking. This procedure included a section outlining situations where a trespass might occur. While Mr. McMurdo testified that this was given out at the April 13,1995 training session, Mr. Beale did not recall picking up a copy.

Mr. McMurdo also testified that, prior to July 1995, he had hired a consultant, Mr. Jim Preiss, to assist in road upgrading, and had replaced his contract supervisor with a more proactive individual who started work on June 6, 1995. Job descriptions had also been changed so that the supervisors were now responsible for all activities within a specific area. Mr. Al Barker, the new contract supervisor, was responsible for Phillips Arm, as well as all central areas in the Stillwater Division. Mr. McMurdo indicated that the contract supervisor went into camp intermittently: one day one week, two days the following week. Engineers were also in the camp to answer any questions.

Mr. McMurdo testified that wide right-of-way falling was not considered a complicated or high risk activity. The practice in 1995 was for the engineering department to produce the maps and then give them to Mr. McMurdo for his review. The package would then be given to the contractor for review and sign-off. Mr. McMurdo indicated that he reviewed the packages for Blocks 90 and 139 on June 8, 1995 and gave them to Mr. Preiss to take up to Phillips Arm on June 12, 1995. Mr. McMurdo said that MB's policy at the time was to only walk those blocks that had sensitive areas or riparian zones. He felt that the wide right-of-way falling in this case was straightforward. He testified that Mr. Preiss had not been instructed to give information, but just to give the packages to the contractor and have them initialled as received. Mr. McMurdo admitted that there had been no office or field review of the packages. Under cross-examination, he agreed that, in hindsight, it would not have been difficult to have had an office review of the packages as well as a field review as the road had already been built through both blocks.

Mr. McMurdo testified that MB never issued a field map with more than one block on it and that it had not encountered any problems with this practice. He said that the only way to have shown both blocks on one map would have either been to double the size of the paper or to go to a scale of 1:10,000.

Mr. McMurdo indicated that boundary ribbons which were initially placed on the blocks in 1993 (Block 90) and 1994 (Block 139) were "freshened up" on June 7, 1995. He testified that the engineers did not tear down all the ribbons and re-ribbon the blocks, but that they did ensure that there were enough ribbons in place.

For the Respondent, Mr. Beale testified that he had 29 years experience in the forest industry and, starting in late February 1995, was the falling, logging and grade supervisor for T.L. Trucking. He stated that on July 18, 1995, the owner of the falling subcontractor, Mr. Jack Hill, was out of camp. Mr. Beale was asked by two of the fallers for assistance. They took out the two 1:5,000 scale maps and put them together, side-by-side, as the blocks identified in the maps appeared to fit together and to be immediately adjacent to one another. Mr. Beale testified that he did not realize there was a piece missing between the maps of the two blocks, indicating the leave strip.

Mr. Beale testified that they then walked until they saw an orange ribbon (indicating a falling boundary) whereby the fallers commenced falling. They felled the wide right-of-way in the area between the two blocks for approximately half a day on July 18th. Activities in the area were then shutdown due to heat from July 19-22

and on July 21, 22 and 23, the fallers were engaged in another activity on Block 90. On July 24th, the fallers spent the day felling more of the wide right-of-way between Blocks 90 and 139. That evening, Mr. Ed Hill, one of the fallers, spoke to his father and it was determined that a trespass might have occurred. He then contacted his supervisor, Mr. Jim Vaux, who came to the area on July 25th and confirmed the trespass. Mr. Beale, who had left camp on July 18th, returned the evening of July 24 and confirmed the trespass with Mr. Vaux on July 25th.

Mr. Beale indicated that nothing was said at the time he received the "Contractor Packages". He testified that his experience with other companies was that every block was walked whether or not there were sensitive areas. He also said that his experience was that, when there were two blocks that close together, there would have been a larger profile map. While Mr. Beale acknowledged that the larger 1:20,000 map was in T.L. Trucking's office in Philips Arm, he said that it was located behind the door and that, at most, he had only glanced at it.

Mr. Powell, Compliance and Enforcement Officer, MOF, testified that prior to going to work for the MOF, he worked a number of summers with various forest companies, where blocks were walked prior to cutting. Mr. McMurdo claimed that in discussions with various forest company officials at seminars they admitted that, while all cutting areas should be walked, they often did not do so in low risk settings, such as wide right-of-ways.

The Respondent argues that the Appellant failed to exercise due diligence by failing to conduct a review of the work, both in the field office, and on the ground. Further, the Respondent argues that the Appellant neglected to put in place a proper system of on-going supervision and field review. There had been no monitoring nor supervision during the 6 day period from July 18-24. Further, while the ribbons were freshened up, old ribbons had not necessarily been removed. It was an orange falling boundary ribbon that had, in part, led to the decision to fall in the leave strip. The Respondent submitted that the 1:20,000 scale map that was provided at the hearing that showed both blocks, and the leave strip in-between, could have easily been given to the falling sub-contractor. That map was the same size as the 1:5,000 scale maps provided to the contractor. The Respondent argued that the standard of walking the block was one that could have easily been met and that MB acted at its own peril by not doing so.

The Respondent submitted that the standard of care demanded should be that exercised by a reasonable professional as opposed to that of an average person (see *R.* v. *Placer Developments* (1983) 13 C.E.L.R. 42 (Y.T.Ct.).

The Commission recognizes that the Appellant was in the process of preparing for *Code* implementation and had put in place a program to prepare its staff and contractors. However, the issue of trespass was not new, as trespasses had been prohibited under the *Forest Act*. The *Code* training was of a general nature and does not help the Appellant establish that it took reasonable care to avoid the incident in this case. The "Standard Operating Procedure", while one of the first in the industry, is also general. Its section on trespass notes that, if timber is felled outside the ribboned harvesting area, there could be trespass charges laid against

the company. In this case, Mr. Beale and the fallers mistook the orange ribbon as an indication of a falling boundary. Further, although an office or field review would not have been difficult to undertake in the circumstances (let alone require a "superhuman" effort; see *R.* v. *Courtaulds Fibres Canada* (1992), 9 C.E.L.R. (N.S.) 304 at 313. (Ont. Ct. J.) (Prov. Div.)), neither of these reviews ever took place.

The Commission finds that, in this case, the Appellant did not exercise all reasonable care.

Regarding the last two factors identified for consideration in section 117(4)(d), the economic benefit derived from the contravention and the cooperativeness of the parties to correct the contravention, the Commission accepts the submissions of MB: there is no evidence it derived any economic benefit in this case, and all involved were cooperative. However, MB also argued that there was no corresponding loss to the Crown since the MOF failed to give directions regarding the disposition of the cut timber. The Commission notes that 168 trees were cut without authority and constitute a loss to the public, regardless of the subsequent action or inaction of the MOF.

Finally, the Appellant argued that the penalty assessed is excessive when compared to other administrative penalties assessed against other licensees in the Vancouver, Prince George and Cariboo regions in similar circumstances. It pointed out that, of the total of 128 penalties assessed under the *Code* between June 15, 1995 - June 15, 1996, the penalty assessed against the Appellant in this case is the only penalty assessed in the $50,001 to $100,000 range.

The Respondent argued that the quantum was appropriate given the volume of timber cut. It pointed to trespass violations committed by MB under the predecessor sections of the *Forest Act* where a penalty of $12,184.83 was levied on January 19, 1995 for a trespass involving 53 cubic metres of timber, and a penalty of $3,072.67 was levied on February 15, 1995 for a trespass involving 13 cubic metres. The Respondent submitted that, while the penalty in this case was seven times that of the January 19, 1995 penalty, the amount of timber involved was also approximately seven times the amount involved in that incident.

Subsequent to the hearing, the Forest Practices Board brought to the attention of the other parties, and the Commission, a number of other cases involving penalties for either contraventions of section 96 of the *Code* or section 138 of the *Forest Act*, the predecessor section to section 96. The first involved a Review Panel decision of March 19, 1996 upholding a determination dated December 7, 1995 of a contravention of section 96 of the *Code* by Public Works and Government Services Canada and the imposition of a penalty of $263,795. The Commission notes that this included an assessment of 1.5 x market value because the unauthorized cutting was done with "knowledge".

The other two cases involved a determination of February 25, 1997 whereby a $58,001.78 penalty was levied against Interfor for a section 96 contravention, and a determination dated May 6, 1997 against Weldwood for $88,872.02 for a contravention of section 138 of the *Forest Act*. The Commission notes that, in the

Interfor case, the penalty reflected an assessment of 2 x market value; in Weldwood, an assessment of 1.25 x market value was imposed.

In the Commissions view, a comparison of the penalties levied in the above-mentioned cases are of minimal assistance. Each case involved different volumes of timber, stumpage rates, bonus rates and, in some cases, previous contraventions were considered. The only factor of interest to the Commission is that, in each of the last three cases cited, the penalty included an assessment of 1.25 - 2 times market value. In MB's case, the assessment under section 119(1)(b), upon reconsideration, was 1 x market value, down from 2 x market value as previously assessed. This is clearly not "out of line" with other assessments made under the *Code*.

It has been previously stated by the Forest Appeal Board, (see *Re MacMillan Bloedel Limited v. District Forest Manager* (unreported, June 7, 1996)) and this Commission, that one of the primary purposes of sections 138 and 139 of the *Forest Act* (now sections 96 and 119 of the *Code*) is to protect the public interest in Crown timber by enabling the Crown to collect compensation for timber cut without authority.

On the evidence presented, the Commission agrees that the original penalty assessment of 2x market value was excessive and was properly reduced. In light of the number of trees cut, the volume of timber involved and our findings under the section 117(4)(b) factors, including the failure of MB to take all reasonable care in the circumstances, the Commission finds the penalty should not be further reduced - the amount of the penalty is warranted. MB could easily have prevented the situation from occurring by performing an office or field review, or simply providing the falling sub-contractor with the same map it provided to the Commission at the hearing - a 1:20,000 scale map. This map clearly identifies the leave strip between the two blocks.

The Commission also accepts the evidence of Mr. Beale, supported by the evidence of Mr. Powell, that it is not unusual for other companies to "walk the blocks" prior to any cutting whether or not the blocks contain "sensitive areas".

In the Commission's view, had MB taken any one of a number of relatively standard, inexpensive and straightforward steps, the unauthorized harvest could have been prevented.

The Commission finds that the penalty is within the range of penalties assessed for unauthorized cutting of timber of such value and volume. It is not out of line with penalties assessed under the *Forest Act* and with other penalties assessed for contraventions of section 96 of the *Code* and has been properly reduced by the decision-makers below to the current amount.

DECISION

The Commission, pursuant to section 138 of the *Code*, upholds the decision of the Review Panel and the penalty of $83,343.15. The appeal is dismissed.

COMMENT

At the hearing, the Appellant noted that the timber remains where it was felled on July 18 and July 24, 1995. It was scaled in connection with the penalty assessment, but no directions were given for the disposition of the timber. The value of the timber has substantially decreased since July 1995 due, in part, to a beetle infestation. The Commission believes that the resource should not be wasted in this way, and urges the Ministry of Forests to take steps to ensure that timber is not left to deteriorate in trespass situations.

Toby Vigod, Chair
Forest Appeals Commission

September 4, 1997