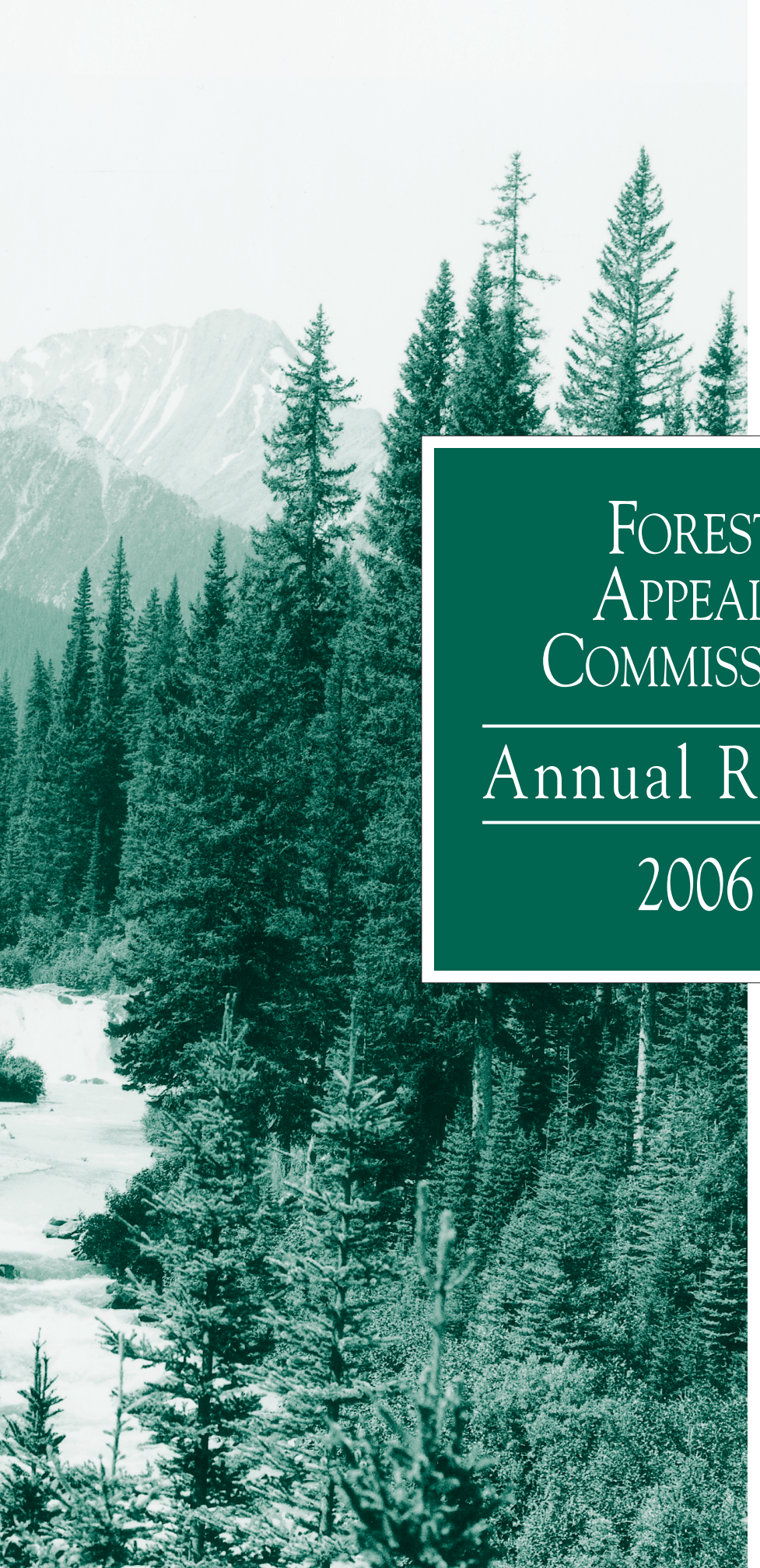

Forest Appeals Commission

Annual Report

2006

BRITISH COLUMBIA

Forest Appeals Commission

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

Mailing Address:
PO Box 9425
Stn Prov Govt
Victoria, British Columbia
V8W 9V1

Honourable Rich Coleman
Minister of Forests and Range
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Barry Penner
Minister of Environment
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Richard Neufeld
Minister of Energy and Mines
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Ministers:

I respectfully submit herewith the annual report of the Forest Appeals Commission for the period January 1, 2006 to December 31, 2006.
Yours truly,

Alan Andison
Chair
Forest Appeals Commission

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Message from the Chair

I am pleased to submit the twelfth Annual Report of the Forest Appeals Commission.

Looking back over the past year, the Commission was called upon to make many difficult decisions. It decided cases involving complicated factual and legal arguments and was required to interpret statutory provisions which had important consequences for both the government and licensees: the Commission was required to decide on the appropriate test for establishing a defence of due diligence under forest legislation, to determine whether the drought of 2003 was an "event causing damage", and to interpret whether a district manager could "pierce the corporate veil", among many other issues.

The Commission also decided many complicated issues arising out of stumpage appraisals, in particular, issues arising out of the Minister's policies as set out in the Coast Appraisal Manual and the Interior Appraisal Manual.

A selection of the Commission's 2006 decisions has been summarized in this report.

While the complexity of the appeals has been steadily increasing, the number of appeals filed with the Commission during the 2006 report period decreased. There were 100 appeals filed in this report period compared to 151 in the 2005 report period. The most substantial change occurred in relation to appeals under the *Forest Act*, which went from a record high of 132 in 2005 down to 82 appeals in 2006. The 2006 figure is more consistent with the numbers of appeals filed in previous years. Most of the appeals filed under this *Act* are in relation to the stumpage rates issued to woodlot licensees who are harvesting bark-beetle infested wood in the interior of the Province.

Appeals filed under the *Range Act* were consistent, with one appeal filed in both 2005 and in 2006. Appeals filed under the *Forest Practices Code of British Columbia Act* and the *Forest and Range Practices Act* decreased by one appeal.

During 2006, the Commission did not receive any appeals under the *Private Managed Forest Land Act* or the *Wildfire Act*.

The Commission continues to have a stable roster of highly qualified individuals, including professional biologists, engineers, foresters, and lawyers with expertise in the areas of natural resources and administrative law, who are appointed as part-time members. I would like to take this opportunity to thank all of the members, as well as the Commission's staff, for their hard work and dedication throughout the year.

The Commission strives to ensure that its appeal process and policies are understandable and accessible to those who wish to access it. Looking forward, the Commission seeks to further improve public access to its process by utilizing new technologies such as updating and improving our website and case management system, and implementing the electronic filing of appeals.

Introduction

The Forest Appeals Commission is an independent tribunal that was established under the *Forest Practices Code of British Columbia Act* (the "Code"), and has been continued under the *Forest and Range Practices Act*.

This is the twelfth Annual Report of the Forest Appeals Commission. The information contained in this report covers the twelve-month period from January 1, 2006 to December 31, 2006.

This report describes the structure and function of the Commission and how the appeal process operates. This report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period (i.e., final decisions issued);
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the report period;
- an evaluation of the review and appeal processes; and,
- recommendations for amendments to all of the forest legislation, from which it hears appeals.

Finally, a selection of the decisions made by the Commission during the report period has been summarized, legislative amendments affecting the Commission are described, and the relevant sections of the applicable legislation are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the Commission's website, and at the following libraries:

- Legislative Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Association Law Library

Detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual, which may be obtained from the Commission office or viewed on the Commission's website. If you have questions, or would like additional copies of this report, please contact the Commission office. The Commission can be reached at:

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

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

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

The Commission

The Forest Appeals Commission is an independent administrative tribunal, which provides a forum to appeal certain decisions made by government officials under the *Code*, the *Forest Act*, the *Forest and Range Practices Act*, the *Private Managed Forest Land Act*, the *Range Act* and the *Wildfire Act*. The Commission is also responsible for providing the Lieutenant Governor in Council (Cabinet) with an annual evaluation of the appeal and review processes, and with recommendations for amendments to forest legislation and regulations respecting reviews and appeals.

The Commission makes decisions respecting the legal rights and responsibilities of parties that appear before it and decides whether the decision under appeal was made in accordance with the law. Like a court, the Commission must decide appeals by weighing the evidence before it, making findings of fact, interpreting the legislation and common law and applying the law and legislation to the facts.

In carrying out its functions, the Commission has the power to compel persons or evidence to be brought before the Commission. The Commission also ensures that its processes comply with the common law principles of natural justice.

The Commission is not subject to the provisions of the *Administrative Tribunals Act*.

Commission Membership

Commission members are appointed by the Lieutenant Governor in Council (Cabinet). The members are drawn from across the Province, representing diverse business and technical experience, and have a wide variety of perspectives. Commission membership consists of a full-time chair, a part-time vice-chair and a number of part-time members. Appointments to the Commission are subject to the terms and conditions set out in the *Administrative Tribunals Appointment and Administration Act*, S.B.C. 2003, c. 47.

For this report period the Commission consisted of the following members:

MEMBER	PROFESSION	FROM
Chair		
Alan Andison	Lawyer	Victoria
Vice-chair		
David Ormerod	Professional Forester	Victoria
Members		
Sean Brophy	Professional Engineer	North Vancouver
Robert Cameron	Professional Engineer	North Vancouver
Richard Cannings	Biologist	Naramata
Don Cummings	Professional Engineer	Penticton
Cindy Derkaz	Lawyer (Retired)	Salmon Arm
Bruce Devitt	Professional Forester (Retired)	Esquimalt
Margaret Eriksson	Lawyer	New Westminster
Bob Gerath	Engineering Geologist	North Vancouver
R.A. (Al) Gorley	Professional Forester	Victoria
James Hackett	Professional Forester	Nanaimo
Lynne Huestis	Lawyer	North Vancouver
Katherine Lewis	Professional Forester	Prince George
Paul Love	Lawyer	Campbell River
Gary Robinson	Resource Economist	Victoria
David Searle, C.M., Q.C.	Lawyer (Retired)	North Saanich
Lorraine Shore	Lawyer	Vancouver
David J. Thomas	Oceanographer	Victoria
Robert Wickett	Lawyer	Vancouver
Stephen V.H. Willett	Professional Forester (Retired)	Kamloops
Phillip Wong	Professional Engineer	Vancouver
J.A. (Alex) Wood	Professional Engineer	North Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals that make decisions that affect the rights and interests of people. Administrative law applies to the decisions and actions of statutory decision-makers who exercise power derived from legislation. The goal is to ensure that officials make their decisions in accordance with the principles of procedural fairness/natural justice by following proper procedures and acting within their jurisdiction.

The Commission is governed by the principles of administrative law and, as such, must treat all the parties involved in a hearing before the Commission fairly, giving each party a chance to explain its position.

Appeals to the Commission are decided on a case-by-case basis. Unlike a court, the Commission is not bound by its previous decisions; present cases of the Commission do not necessarily have to be decided in the same way that previous ones were.

The Commission Office

The office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board, the Community Care and Assisted Living Appeal Board and the Hospital Appeal Board. Further, as of the spring of 2006, the Commission office took over responsibility for the administration of the Industry Training Appeal Board.

Each of the tribunals operates independently of one another. Supporting five tribunals through one administrative office gives each tribunal access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared and work can be done more efficiently.

Commission Resources

The fiscal 2006/2007 budget for the Forest Appeals Commission was $332,000.

The fiscal 2006/2007 budget for the shared office and staff was $1,230,000.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Commission by one party must also be provided to all other parties to the appeal.

The Commission is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If information is requested by a member of the public regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.

In addition, the names of the parties in an appeal appear in the Commission's published decisions which are posted on the Commission's website, and may appear in this Annual Report.

The Appeal Process

Appeals under the *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c. 159.

There are no longer any decisions or determinations made under the *Code* that are appealable to the Commission. However, as other statutes refer appeals to the Commission, the *Code* is still important because it both establishes the Commission, and sets out the basic powers and procedures to be employed by the Commission on an appeal (unless otherwise specified).

Specifically, the Commission is established in Part 9 of the *Code*. This part contains the provisions setting out the structure, organization and mandate of the Commission, including its mandate to submit this Annual Report.

The general powers of the Commission on an appeal remain in Part 6 of the *Code*, with additional powers and procedures further detailed in Part 3 of the *Administrative Review and Appeal Procedure Regulation*, BC Reg. 12/04.

The appeal powers and procedures set out in sections 131 to 141 of the *Code* apply to appeals filed against decisions made under the *Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*. The *Private Managed Forest Land Act* does not incorporate those *Code* provisions.

Appeals under the *Forest and Range Practices Act*, S.B.C. 2002, c. 69.

The *Forest and Range Practices Act* provides that the Commission is continued under section 194 of the *Code*. As noted above, it also incorporates the Commission's powers and procedures as set out in the Code.

Part 6, Division 4 of the *Forest and Range Practices Act* sets out the appealable decisions, which include the following:

- approval of a forest stewardship plan, woodlot licence plan or an amendment;
- authorizations regarding range stewardship plans;
- approvals, orders, and determinations regarding range use plans, range stewardship plans or an amendment;
- suspensions and cancellations regarding forest stewardship plans, woodlot licence plans, range use plans or range stewardship plans, and permits;
- orders regarding range developments;
- orders relating to the control of insects, disease, etc.;
- orders regarding unauthorized construction or occupation of a building on Crown land in a Provincial forest;

- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- determinations regarding administrative penalties;
- remediation orders and stopwork orders;
- orders regarding forest health emergencies;
- orders relating to the general intervention power of the minister;
- orders regarding declarations limiting liability of persons to government;
- relief granted to a person with an obligation under this Act, the regulations, standards or operational plan;
- conditions imposed in respect of an order, exemption, consent or approval; and,
- exemptions, conditions, and alternative requirements regarding roads and rights of way.

Prior to an appeal, an official who makes a determination may correct certain errors in the determination, within 15 days after the determination was made.

In addition, an internal administrative review must be conducted at the request of the person who is subject to certain determinations listed under the *Forest and Range Practices Act*. However, it will only be conducted if there is evidence that was not available at the time of the original determination. The Forest Practices Board may also require a review of specified determinations listed under the *Forest and Range Practices Act*, if it receives consent from the person who is the subject of the determination. Either the determination, or a decision made after completion of a review of the determination, may be appealed to the Commission by the Forest Practices Board or by a person subject to the determination.

Appeals under the *Forest Act*, R.S.B.C. 1996, c. 157.

Appealable decisions under the *Forest Act* are set out in section 146 of that *Act* and include certain determinations, orders and decisions made by district or regional managers, timber sales managers, employees of the Ministry of Forests, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester, or an employee of the Ministry of Forests, may be appealed to the Commission without prior review. However, determinations, orders or decisions made by a district or regional manager, or timber sales manager, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the *Range Act*, S.B.C. 2004, c. 71.

The decisions made under this *Act* that may be appealed to the Commission include the following:

- orders deleting land from the Crown range described in a licence or permit;
- orders by the district manager, or the minister, reducing the number of animal unit months or quantity of hay set out in the licence or permit;
- orders requiring the holder of a licence or permit to refrain from using all or part of the Crown range;

- orders exempting, or refusing to exempt, a licence or permit holder from an obligation to use animal unit months;
- orders relating to the suspension of all or some of the rights granted under a licence or permit, and orders refusing to reinstate suspended rights;
- orders relating to the cancellation of a licence or permit where rights were under suspension;
- decisions that forage or Crown range will not remain available to a licence holder; and,
- amendments to a grazing licence or grazing permit reducing the number of animal unit months due to non-compliance with the licence or permit, or non-compliance with a non-use agreement.

Prior to filing an appeal, the person affected by the order, decision or amendment may request a review, provided that there is evidence that was not available at the time of the original order, decision or amendment.

Either the order, decision or amendment, or the decision made after completion of a review of the order, decision or amendment, may be appealed to the Commission.

An appeal may be filed directly to the Commission against a minister's order issued under section 15(2) of the *Range Act*, which relates to a proposal for a licence or permit.

Appeals under the *Private Managed Forest Land Act*, S.B.C. 2003, c. 80.

The requirements for appeals under the *Private Managed Forest Land Act* are set out in section 33 of that *Act*. That section creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council, including:

- determinations that a person has contravened the Act or the regulations;
- remediation orders;
- stop work orders;
- notifications to the assessor regarding contraventions; and,
- requests of the council to rescind or vary orders, decisions or determinations.

Appeals under the *Wildfire Act*, S.B.C. 2004, c. 31.

Part 3, Division 3 of the *Wildfire Act* sets out the decisions that may be appealed to the Commission. It provides that the person who is subject to certain orders may appeal either the order, or the decision made after the completion of a review of the order, to the Commission.

The Forest Practices Board may also request a review of those same orders, provided that it receives consent from the person who is the subject of the order. Further, it may appeal the order, or the decision made after the completion of the review of the order, to the Commission.

The orders that may be appealed are as follows:

- orders to abate a fire hazard;
- orders refusing compensation to persons carrying out fire control on the grounds that the person caused or contributed to the fire or to the spread of the fire;
- orders requiring a person to pay the government's costs for fire control and the costs related to the loss of Crown resources as a result of the fire, as determined by the minister;

- contravention orders;
- administrative penalties and cost recovery orders;
- remediation orders and administrative penalties resulting from a failure to comply with a remediation order; and,
- stop work orders.

Commencing an Appeal

Notice of Appeal

For appeals under the *Code*, the *Forest Act*, the *Forest and Range Practices Act*, the *Range Act*, and the *Wildfire Act*, a notice of appeal must comply with the content requirements of the *Administrative Review and Appeal Procedure Regulation*. Procedures for filing an appeal under the *Private Managed Forest Land Act* are set out under the *Private Managed Forest Land Regulation*.

For all appeals, an appellant must prepare a Notice of Appeal and deliver it to the Forest Appeals Commission office within the time limit specified in the relevant statute, or as specified in the exemption contained in the *Administrative Review and Appeal Procedure Regulation*. The Notice of Appeal must contain the name and address of the appellant, the name of the person, if any, making the request on the appellant's behalf, the address for giving a document to, or serving a document on the appellant, the reasons why the appellant objects to the determination, order, or review decision (the grounds for appeal), the type of remedy the appellant is seeking from the Commission, and the signature of the appellant or the person making the request on the appellant's behalf. Additionally, a copy of the determination, order or decision being appealed must be included with the Notice of Appeal.

Generally, if the Commission does not receive a Notice of Appeal within the specified time limit, the appellant will lose the right to appeal. However, the Chair, or a member of the Commission, may extend the statutory time period for filing an appeal either before or after the time limit expires.

If the Notice of Appeal is missing any of the required information, the Commission will notify the appellant of the deficiencies. The Commission may refrain from taking any action on an appeal until the Notice is complete and any deficiencies are corrected.

Once a Notice of Appeal is accepted as complete, the Commission will notify the office of the official who made the original decision, or the review decision being appealed. A representative of the Government of British Columbia, or the Private Managed Forest Land Council if it is an appeal under the *Private Managed Forest Land Act*, will be the respondent in the appeal.

Third Party Status

The *Code* provides that, at any stage of an appeal, the Commission may grant third party status to a person who may be affected by the appeal. That provision applies to appeals under the *Code*, the *Forest and Range Practices Act* and the *Wildfire Act*. Also under those enactments, if the Forest Practices Board is not an appellant, the Commission will add the Board as a party to the appeal at the Board's request.

The *Forest Act* and the *Range Act* provide that only the appellant and the government are parties to appeals under those Acts.

For appeals under the *Private Managed Forest Land Act*, the Commission may grant third party status to a person who may be directly affected by the appeal.

Intervenors

The *Code* enables the Commission to invite or permit a person who has a valid interest in the proceedings to participate in a hearing of an appeal under the *Code*, the *Forest and Range Practices Act*, and the *Wildfire Act*, as an intervenor.

Under the *Private Managed Forest Land Act*, the Commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor.

In all cases, an intervenor may only participate in a hearing to the extent that the Commission allows.

The *Forest Act* and the *Range Act* do not provide for intervenor participation.

Type of Hearing

The Commission has the authority to conduct a new hearing on a matter before it.

An appeal may be conducted by way of written submissions, oral hearing or a combination of both. In most cases, the Commission will conduct an oral hearing. However, in some instances the Commission may find it appropriate to conduct a hearing by way of written submissions.

Prior to ordering that a hearing be conducted by way of written submissions, the Commission may request input from the parties.

Written Hearing Procedure

If it is determined that a hearing will be by way of written submissions, the Commission will invite all parties and intervenors to provide submissions. The appellant will provide its submissions, including its evidence, first. The other parties will have an opportunity to respond to the appellant's submissions when making their own submissions, and to present their own evidence.

The appellant is then given an opportunity to comment on the submissions and evidence provided by the other parties.

Finally, all parties will be given the opportunity to provide closing submissions. Closing submissions should not contain new evidence.

Oral Hearing Procedure

The *Administrative Review and Appeal Procedure Regulation* requires the Commission to, within 30 days of receiving and accepting an appeal, determine which members will hear the appeal. At that time, the Commission must also set the date, time and location of the hearing. This requirement does not apply to appeals under the *Private Managed Forest Land Act*.

For all appeals, once the date for a hearing is set, the parties involved will be notified. If any of the parties to the appeal cannot attend the hearing on the date scheduled, a request may be made to the Commission to change the date.

An oral hearing may be held in the locale closest to the affected parties, at the Commission office in Victoria or anywhere in the province. The Commission will decide where the hearing will take place on a case-by-case basis.

Once a hearing is scheduled, the parties will be asked to provide a Statement of Points to the Commission.

Statement of Points

To help identify the main issues to be addressed in an oral hearing, and the arguments that will be presented in support of those issues, all parties to the appeal are requested to provide the Commission, and each of the parties to the appeal, with a written Statement of Points and all relevant documents.

The Commission requires that the appellant submit its Statement of Points and documents at least 30 days prior to the commencement of the hearing. The respondent (the Government or the Council), and all other parties, are required to submit their Statements of Points and documents at least 15 days prior to the commencement of the hearing. Each party is to ensure that the Commission, and all other parties to the appeal, receive a copy of their Statement of Points and documents within the set timeframes.

The Statement of Points is, essentially, a summary of each party's case. As such, the content of each party's Statement of Points will depend on whether the party is appealing the decision or attempting to uphold the decision being appealed.

The Commission asks that the following information be contained in the respective party's Statement of Points:

(a) The appellant should outline:
    (i) the substance of the appellant's objections to the decision of the respondent;
    (ii) the arguments which the appellant will present at the hearing;
    (iii) any legal authority or precedent supporting the appellant's position; and,
    (iv) the names of the people the appellant intends to call as witnesses at the hearing.

(b) The respondent should outline:
    (i) the substance of the respondent's objections to the appeal;
    (ii) the arguments which the respondent will present at the hearing;
    (iii) any legal authority or precedent supporting the respondent's position; and,
    (iv) the names of the people the respondent intends to call as witnesses at the hearing.

Additional hearing participants that are granted party status or intervenor status are also asked to provide a Statement of Points outlining the above-noted points as may be relevant to that party.

Where a party has not provided the Commission with a Statement of Points by the specified date, the Commission has the authority to order the party to do so.

Dispute Resolution

The Commission encourages parties to resolve the issues underlying an appeal at anytime in the appeal process. Its strategies for more formal dispute resolution are as follows:

- early screening of appeals to determine whether the appeal may be resolved without a hearing;
- pre-hearing conferences (discussed further below); and
- mediation, upon consent of all parties.

In addition, a process has been developed specifically in relation to appeals under the *Forest Act*. The Commission holds *Forest Act* appeals in abeyance for 30 days after the Notice of Appeal is filed. This gives the parties an opportunity to resolve the issues underlying the appeal and avoid the need for a formal hearing. The parties may set out the terms and conditions of their negotiated settlement in a consent order which is then submitted to the Commission for its approval.

Pre-hearing Conference

Either before or after the Statements of Points and relevant documents have been exchanged, the Commission, or any of the parties, may request a pre-hearing conference.

Pre-hearing conferences provide an opportunity for the parties to discuss any procedural issues or problems, to resolve the issues between

the parties, and to deal with any preliminary concerns.

A pre-hearing conference will normally involve the spokespersons for the parties, one Commission member and one staff member from the Commission office. It will be less formal than a hearing and will usually follow an agenda, which is set by the participants. The parties are given an opportunity to resolve the issues themselves, giving them more control over the process.

If all of the issues in the appeal are resolved, there will be no need for a full hearing. Conversely, it may be that nothing will be agreed upon, or some issues still remain, and the appeal will proceed to a hearing.

Disclosure of Expert Evidence

The Commission is not bound by the provisions relating to expert evidence in the British Columbia *Evidence Act*. However, the Commission does require that reasonable advance notice of expert evidence be given and that the notice include a brief statement of the expert's qualifications and areas of expertise, the opinion to be given at the hearing, and the facts on which the opinion is based.

Summons

The Commission has the power to summon witnesses to give evidence at a hearing and bring documents related to the hearing.

If a party wants to ensure that an important witness attend the hearing, the party may ask the Commission to issue a summons. The request must be in writing and explain why the summons is required.

The Hearing

A hearing is a more formal process than a pre-hearing conference, and allows the Commission to receive the evidence it uses to make a decision.

In an oral hearing, each party will have a chance to present evidence. Each party will have an opportunity to call witnesses and explain its case to the Commission.

Although hearings before the Commission are less formal than those before a court, some of the hearing procedures are similar to those of a court: witnesses give evidence under oath or affirmation and witnesses are subject to cross-examination.

Parties to the appeal may have lawyers representing them at the hearing but this is not required. The Commission will make every effort to keep the process open and accessible to parties not represented by a lawyer.

All hearings before the Commission are open to the public.

Rules of Evidence

The rules of evidence used in a hearing are less formal than those used in a court. The Commission has full discretion to receive any information it considers relevant and will then determine what weight to give the evidence.

The Decision

In making its decision, the Commission is required to determine, on a balance of probabilities, what occurred, and to decide the issues raised in the appeal.

The Commission will not normally make a decision at the end of the hearing. Instead, in the case of both an oral and a written hearing, the final decision will be given in writing within a reasonable

time following the hearing. Copies of the decision will be given to the parties, the intervenors, and the appropriate minister(s). In an appeal under the *Forest Act*, the Commission is required to serve its decision on the parties within 42 days after the conclusion of the hearing.

If a party disagrees with the decision of the Commission, that party may appeal the decision to the British Columbia Supreme Court. This appeal must be made within three weeks of being served with the Commission's decision. A party may only appeal the Commission's decision on a question of law or jurisdiction.

Where a decision is appealed to the Supreme Court, the court may confirm, reverse or vary the decision, or make any order the court considers just in the circumstances.

Costs

The Commission also has the power to award costs. If the Commission finds it is appropriate, it may order that a party or intervenor pay another party or intervenor any or all of the actual costs of the appeal.

Legislative Amendments Affecting the Commission

In this report period, there were no legislative changes that directly affected the Commission. Specifically, there were no amendments that affected the number or type of appeals the Commission hears, or that impacts the Commission's powers or procedures.

Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission also makes recommendations on amendments to the legislation respecting reviews and appeals.

Appeals

As noted in the Message from the Chair, the number of appeals filed with the Commission in 2006 decreased from the number of appeals filed in 2005. However, 2005 was an unusual year. There were more appeals filed with the Commission that year than ever before. The current numbers are higher than the Commission average, but reflected a decline from the previous year's record high.

The Commission continues to encourage parties to resolve their appeals without the need of a full hearing before the Commission. In this regard, it continues to employ a standard procedure of holding *Forest Act* appeals in abeyance for 30 days after the Notice of Appeal is filed. This gives the parties an opportunity to resolve the issues underlying the appeal and avoid the need for a formal hearing. Appeals may then be withdrawn, abandoned or resolved by way of consent order, leading to substantial cost savings to the parties and to the Commission.

Recommendations

The nature of the appeals and the appeal processes under the *Code*, the *Forest Act*, the *Forest and Range Practices Act*, and the *Range Act* are well established and there were no new issues or problems arising in 2006 to warrant a recommendation.

No appeals have yet been filed under the *Private Managed Forest Land Act* and the *Wildfire Act*. Accordingly, the Commission will not make any comment or recommendations in relation to either of these appeal processes at this time.

Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission and decisions published by the Commission, during the report period. The Commission publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

A total of 100 appeals were filed with the Commission in 2006. Seventeen of these appeals were filed under the *Code/Forest and Range Practices Act*, 82 were filed under the *Forest Act*, and one appeal was filed under the *Range Act*. The total number of appeals closed during the reporting period was 39. As well, 14 appeals were rejected and 25 withdrawn or abandoned. A total of 20 appeals were heard in 2006.*

The Commission issued 33 decisions in 2006, including seven consent orders.

Appeals filed	
Code/Forest and Range Practices Act	17
Forest Act	82
Private Managed Forest Land Act	0
Range Act	1
Wildfire Act	0
Total appeals filed	**100**
Appeals abandoned, rejected or withdrawn	**39**
Hearings held on the merits of appeals	
Oral hearings completed	10
Written hearings completed	10
Total hearings held on the merits of appeals**	**20**
Published decisions issued	
Final decisions	
Code/Forest and Range Practices Act	9
Forest Act	12
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	0
Consent order	
Code/Forest and Range Practices Act	5
Forest Act	2
Private Managed Forest Land Act	0
Range Act	0
Wildfire Act	0
Cost decisions	
Denied	
Code/Forest and Range Practices Act	2
Forest Act	3
Total published decisions issued	**33**

Summary of results of final decisions

	Allowed	Allowed in part	Dismissed
Code/Forest and Range Practices Act	5	3	1
Forest Act	4	0	8

* Note: hearings held and decisions issued in 2006 do not necessarily reflect the number of appeals filed in 2006. Of the 33 decisions issued in 2006, 23 were in relation to appeals filed in 2005 or earlier.

** Note: most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings on the merits of the appeal have been included in this statistic.

Summaries of Decisions

January 1, 2006 – December 31, 2006

The Commission issues hundreds of decisions each year, some that are published and others that are not published. As stated under the "Statistics" section of this report, the Commission publishes all of its decisions on the merits of an appeal (final decisions), and most of the important preliminary and post-hearing decisions. A selection of published decisions has been summarized below. These decisions were issued by the Commission during 2006. They are organized according to the statute under which the appeal was filed. For a full viewing of all published decisions issued during this report period, and summaries of those decisions, please refer to the Commission's web page.

The summaries that have been selected in this Annual Report reflect the variety of subject matters and issues that come before the Commission. The subject matter and the issues can vary significantly in both technical and legal complexity. It should be noted that the summaries are an interpretation of the decisions by Commission staff and may be subject to different interpretation.

Appeals are not heard by the entire Commission; the appeals are heard by a "panel" of the Commission. The Chair of the Commission will decide whether an appeal should be heard and decided by a panel of one, or by a panel of three members of the Commission. The size and composition of the panel generally depends upon the type(s) of expertise needed by the Commission members in order to understand the issues.

Under all of the statutes in which the Commission is empowered to hear appeals, the Commission has the power to confirm, vary or rescind the decision under appeal and to send the matter back to the original decision–maker with or without directions. In addition, under the *Private Managed Forest Land Act* the Commission may make any other order it considers appropriate. When an appellant is successful in convincing the panel that the decision under appeal was made in error, or that there is new information that will change the decision, the appeal is said to be "allowed". If the appellant succeeds in obtaining some changes to the decision, but not all that he or she has asked for, the appeal is said to be "allowed in part". When an appellant fails to establish on a balance of probabilities that the decision is incorrect on the facts or in law, and the Commission upholds the original decision, the appeal is said to be "dismissed".

The Commission also has the power to order that a party or intervenor pay any or all of the actual costs of another party or intervenor. The Commission does not follow the civil court practice of "loser pays the winner's costs." The Commission has adopted a policy that costs should only be awarded in special circumstances.

It is important to note that the Commission encourages parties to resolve the subject of the appeal either on their own or with the assistance of the Commission. For appeals under the *Forest Act*, a special procedure has been put in place in accordance with a 2005 memorandum from the Ministry of Forests and Range. Upon receipt of a Notice of Appeal under the *Forest Act*, the Commission will hold the appeal in abeyance for 30 days to allow the parties an opportunity to enter into discussions to resolve the issues under appeal.

Regardless of the statute, many appeals are resolved without the need for a hearing. Sometimes the parties will reach an agreement amongst themselves and the appellant will simply withdraw the appeal. At other times, the parties will set out the changes to the decision under appeal in a "Consent Order" and ask the Commission to approve the order. The Consent Order then becomes an order of the Commission. The Commission has included a description of a Consent Order in the summaries below.

Appeals under the *Code* and the *Forest and Range Practices Act*

Forest Road Building in Steep Terrain Ends in Contraventions after Slides Occur

2003-FOR-005(b) & 2003-FOR-006(b)
Kalesnikoff Lumber Co. Ltd. v. Government of British Columbia (Forest Practices Board, Third Party; Interior Lumber Manufacturers Association, Council of Forest Industries, and Coast Forest and Lumber Association, Intervenors)
Decision Date: August 2, 2006
Panel: Lorraine Shore, Bruce Devitt, Robert Wickett

Kalesnikoff Lumber Co. Ltd. appealed two determinations made in relation to slides that occurred along the Schroeder Creek Mainline road (the "Mainline"). Schroeder Creek is located approximately 20 kilometers north of Kaslo, BC.

Kalesnikoff began construction of the Mainline in the summer of 2001 in order to access timber within various blocks of its forest licence. The terrain was steep and posed many road building challenges, so Kalesnikoff hired a number of qualified registered professionals to plan and design the road, as well as to supervise the road building itself.

In the course of building the first six kilometres of the road, there were six landslides. The last four slides led to the subject of these appeals to the Commission.

The first determination was issued in relation to a slide that occurred at or near 2+500 of the Mainline. The Deputy District Manager found that Kalesnikoff had contravened section 45(3)(a) of the *Code* which provides that:

> **45** (3) A person must not carry out a forest practice if he or she knows or should reasonably know that, due to weather conditions or site factors, the carrying out of the forest practice may result, directly or indirectly, in
> (a) slumping or sliding of land,
> (b) inordinate soil disturbance, or
> (c) other significant damage to the environment.

The Deputy District Manager found that Kalesnikoff's construction of the Mainline resulted in "the slumping or sliding of land" in the vicinity of 2+500. He concluded that Kalesnikoff had placed more "spoil" (excess material that has been excavated elsewhere during road construction) on the site than the designed capacity, resulting in oversteepened slopes. The Deputy District Manager also found that Kalesnikoff had contravened section 12(1)(b) of the

Forest Road Regulation (the "*Regulation*") by "failing to ensure that the road construction was carried out in general conformance with the requirements of the road layout and design". He imposed a fine of $1,000 for the first contravention and did not impose a penalty for the second contravention.

Both the Forest Practices Board and Kalesnikoff asked for an administrative review of the determination. In order to expedite the administrative review decision process, the Board and Kalesnikoff entered into a "without prejudice" agreement. Based on the agreement and on its own findings of fact, the review panel confirmed both contraventions and increased the penalty to $5,000 (a $2,500 penalty for each contravention). Kalesnikoff appealed this determination as varied on review to the Commission.

The second determination was issued in relation to three slides that occurred in the vicinity of 6+333 to 6+480 of the Mainline. In this determination, the Deputy District Manager again found that Kalesnikoff contravened section 45(3)(a) of the *Code* by constructing a forest road which resulted in the slumping or sliding of land. He found that Kalesnikoff had failed to construct the road using the extraordinary construction techniques prescribed for the area to prevent excessive water flow. He also found that Kalesnikoff had contravened section 13(1)(c) of the *Regulation* by failing to ensure that the drainage system for the road intercepted surface water and subsurface drainage from the cut slope, and by failing to prevent water from being directed onto potentially unstable slopes. The Deputy District Manager imposed a penalty of $3,000 for the contravention of the *Code* and $600 for the contravention of the Regulation. These penalties were confirmed in a subsequent administrative review decision and then appealed to the Commission.

Kalesnikoff appealed both determinations on the grounds that the Deputy District Manager had erred on the facts and in law. It also argued that, if Kalesnikoff had contravened the legislation, the Deputy District Manager should have found that Kalesnikoff had exercised due diligence.

The Commission considered the proper interpretation of section 45(3) of the *Code*. The Commission found that this section was designed to prevent a person from carrying out a forest practice, including road construction, which may result in significant environmental damage due to weather conditions or site factors. It concluded that the section focused on site factors to emphasize the need for licensees to be alert to the conditions encountered in the field and not to simply rely on plans or designs. The Commission found that if a significant damaging event occurs, its actual cause is of less interest under this section than whether this type of damaging event was, or could have been, foreseen in light of site and weather conditions.

Applying this interpretation of section 45(3) to the facts, the Commission found that there was no evidence to support a finding the Kalesnikoff knew or ought to have known, either prior to road construction or in the field that the placement and/or volume of spoil at 2+500 might result in a significant slide. Therefore, the Commission found that Kalesnikoff did not contravene section 45(3)(a) of the *Code* and rescinded this contravention. It then considered the contravention of section 12(1)(b) of the *Regulation*.

Section 12(1)(b) of the *Regulation* states that when constructing a road, the licensee must "ensure that the construction is carried out in general conformance with requirements of the road layout and design." On the facts of this case, the Commission found that the volume and placement of spoil was not identified in the approved road design for this stretch of the Mainline, nor is spoil

normally included in road plans and design. As the volume and placement of spoil was not included in the design and layout, the Commission found that Kalesnikoff could not have contravened this section. Moreover, considering the design specifications, the Commission found that Kalesnikoff constructed the 2+500 section of the Mainline in accordance with the approved road layout and design.

Given that the Commission found that Kalesnikoff did not contravene section 45(3)(a) of the *Code* or section 12(1)(b) of the *Regulation*, the Commission rescinded this determination.

Regarding the second determination, the Commission found that there was nothing in the information available to Kalesnikoff to support a finding that Kalesnikoff knew or ought to have known that the road construction, specifically the drainage system approved for the location, might result in a significant slide. Accordingly, the Commission found that Kalesnikoff did not contravene section 45(3) of the *Code*.

The Commission further found that Kalesnikoff did not contravene section 13(1)(c) of the *Regulation*. The Commission found that the drainage system was designed to direct the surface and subsurface water flow from culverts into existing natural gullies. This design was consistent with the design criteria set out in section 9(1)(b) of the *Regulation* and was approved by the District Manager. The Commission also found that it is common practice not to include every design detail in a drainage system design, and that the drainage system, as designed, may require modification during construction in response to site conditions. Therefore, the Commission found that section 13(1) of the *Regulation* functions as a "checklist" for road builders at the time of construction. On the facts of this case, the Commission found that the culverts, as constructed, directed the water into natural gullies as designed and that the excess water was not the result of improper construction. The Commission rescinded this determination in relation to the three slides.

Given the Commission's findings that there were no contraventions, it did not have to make a finding on the defence of due diligence. However, the Commission addressed certain aspects of the parties' submissions on due diligence in an effort to assist parties in future cases. In particular, the Commission provided some guidance on whether consulting and relying on professionals and/or experts will satisfy the requirements of a due diligence defence, or whether a second opinion or additional inquiries will be needed.

The Commission concluded that a second opinion was not necessary to establish a due diligence defence based upon professional reliance. It stated that, "… it is neither feasible nor practical to acquire second opinions when a licensee has already been provided with one by an expert." However, the Commission also found that a licensee cannot assert due diligence merely by hiring a competent expert and it cannot simply accept an expert's opinion at face value in order to establish the defence: "The Commission rejects the notion that a licensee can assert due diligence merely by pointing to the retention of a competent expert. Licensees cannot ignore obvious hazards or significant concerns that arise in the course of forestry practices. To turn a blind eye to noticeable issues would be to discharge full responsibility to experts and contractors." The Commission found that an expert is a "contractor" for the purposes of section 117(2) of the *Code* and that a licensee is, therefore, responsible for an expert's actions.

- The Deputy District Manager's determinations were both rescinded and the appeals were allowed.
- An application for costs was made by Kalesnikoff at the conclusion of the hearing.

The Commission's decision on this application was not released within the report period.

How the Statutory Defence of Due Diligence may be Established by a Licensee when the Contravention was Committed by Its Contractor

2004-FOR-005(b) Weyerhaeuser Company Limited v. Government of British Columbia (Forest Practices Board, Third Party; Sierra Club of Canada and Council of Forest Industries, Intervenors)

Decision Date: January 17, 2006

Panel: Margaret Eriksson, Richard Cannings, Stephen Willett

In this case, the Commission was called upon to answer the question, "how much supervision and instruction must a licensee give to its contractors for it to avoid liability for the contractor's contravention?" The licensee in this case was Weyerhaeuser Company Limited. There was no dispute that its contractor, Red Hot Forestry Services Ltd., had contravened section 96(1) of the *Code* by cutting Crown timber without authority. However, Weyerhaeuser maintained that it exercised all reasonable care in an effort to ensure that such incidents do not occur and therefore, it should not be liable in this case for its contractors errors; it has established a defence of due diligence under section 72 of the *Forest and Range Practices Act*. Accordingly, Weyerhaeuser argued that the determination and penalty of $2,012 levied against it should be rescinded.

As the defence of due diligence was the main issue in this case, the Commission had the opportunity to consider whether the standard of reasonable care ought to be higher for licensees when environmental values and, in this case, public resources on pubic land, are involved. It also had the opportunity to consider whether, to establish a defence of due diligence, the licensee must establish both its own reasonable efforts to avoid the contravention, and that the contractor also exercised due diligence to avoid the contravention.

The contravention occurred in January 2002, when the operator felled a total of 55.6 cubic metres (approximately one truck load) of timber outside the cutblock boundaries before he realized he was in the wrong place. There were no related soil or water impacts.

Several days before the contravention occurred, Weyerhaeuser gave express instructions to its contractor to walk the area with the operator prior to beginning the work. However, the contractor did not walk the area with the operator. Its supervisor simply reviewed the map (i.e. the logging plan) with the operator and then sent him out to work.

In addition to leading evidence of its instructions to the contractor, Weyerhaeuser led evidence about its Environment Management System which was certified both internationally and under the Canadian Standards Association's forestry standard.

Considering the defence of due diligence, the panel of the Commission was unanimous in it interpretation of the statutory defence, but was split on the final result – on whether Weyerhaeuser had, on the facts, exercised due diligence such that it was not liable for the contravention.

On the legal requirements for the defence, the Commission found that section 72(a) of the *Act* does not require that the due diligence of others involved in the contravention (i.e., the contractor), also be considered. The contractor's due diligence becomes an issue only if the contractor is also held liable, and then is assessed in terms of whether the contractor, itself, has made out the defence.

The Commission found that the defence was intended to apply "in its natural and ordinary sense" as defined by the case law so as not to impose

a higher standard tantamount to "absolute liability." It found that the legal test established by the case law was variable, in that the weight given to different factors depends on the circumstances of a particular case. It agreed that the appropriate test for due diligence was the two branch test set out in *R. v. MacMillan Bloedel Limited (now Weyerhaeuser Company Limited)*, [2002] B.C.J. No. 2083 (B.C.C.A.). In the context of this appeal, the questions for the Commission were:

(1) whether the event was reasonably foreseeable; and

(2) if so, did Weyerhaeuser take all reasonable care to establish a defence of due diligence.

Further, the Commission accepted that, in the context of a licensee who engages a contractor whose acts or omissions result in the contravention, the test applied by the Supreme Court of Canada in *R. v. City of Sault Ste. Marie* is applicable. That test requires the licensee to demonstrate that:

(a) the act took place without the licensee's direction or approval; and

(b) the licensee exercised all reasonable care by taking all reasonable steps to ensure that the contravention did not occur.

The Commission found that the standard to be applied is that of a reasonable licensee in the particular circumstances of the particular case, and that the standard would be shaped by the following factors identified in other judicial decisions:

(a) gravity of the potential harm,

(b) the available alternatives to protect against the harm,

(c) the likelihood of the potential harm,

(d) the skill required, and

(e) the extent the accused could control the causal elements of the offence.

Applying the evidence to the legal test, the majority found that Weyerhaeuser had demonstrated that it took all reasonable care in the circumstances of this particular case. They found that it had been duly diligent in the circumstances of this case. The majority concluded that it was not reasonable in the circumstances for Weyerhaeuser to directly supervise the field activities of its contractor's crew or "second guess" that its contractor would ignore a specific direction that may have prevented the unauthorized harvesting. It found that Weyerhaeuser gave a specific direction to the contractor to walk the area with the operator, that Weyerhaeuser had a training program in place, performed audits and biweekly site visits, and had a comprehensive Environment Management System. The majority found that Weyerhaeuser had taken all reasonable care in the circumstances of this case to prevent the contravention from occurring.

- Based on the majority's decision, the contravention was rescinded and the appeal was allowed.

The 2003 Drought that Killed Seedlings – Is it an "Event Causing Damage" under the *Forest Planning and Practices Regulation*?

2005-FOR-003(a) & 2005-FOR-012(a) Tolko Industries Ltd. v. Government of British Columbia

Decision Date: March 28, 2006

Panel: Alan Andison, Cindy Derkaz, Katherine Lewis

After a licensee harvests trees, it has a legal obligation to reforest the area within a specific timeframe. In forestry terms, the licensee must ultimately end up with a certain minimum number of well-spaced, healthy trees per hectare. If this minimum is not met within a prescribed period of

time the Ministry may levy penalties. That is what happened in this case.

In the spring of 2003, Tolko Industries Ltd. planted seedlings on approximately 170 previously harvested cut blocks. Unfortunately, that summer was the driest on record in 105 years and a number of the seedlings died.

In 2004, Tolko asked the Ministry for funding or relief under section 108(2) of the *Forest and Range Practices Act* from its obligation to establish a free growing stand for 26 cut blocks that had suffered drought-related mortality. It argued that it was entitled to this relief as there had been "an event causing damage", namely a drought. In two separate decisions, the District Manager denied Tolko's requests on the basis that a drought was not "an event causing damage". At the hearing, Tolko elected to proceed with the appeal of only one of the determinations, and abandoned the other.

The issue before the Commission was whether the 2003 drought was "an event causing damage" as defined in section 96(1.1) of the *Forest Planning and Practices Regulation*. The definition stated that an "event causing damage" meant, among other things, "another event that renders the area ill-suited for the establishment of a free growing stand." The Government sought a narrow interpretation of this section. It argued that the event must render the actual area of land such that it is no longer feasible to establish a new stand of trees. It argued that relief should only be granted if the area is "permanently" or significantly changed such that it could never support a stand.

The Commission did not accept the Government's view. It found that "an event causing damage" does not need to change an area permanently or otherwise significantly change the area. It found that the other examples of an event causing damage suggested that the event could be temporary; the area could be ill-suited for the duration of the drought.

After interpreting the section, the Commission found that it did not have sufficient evidence to decide whether the drought that occurred in 2003 was itself "an event causing damage." Therefore, the Commission was not prepared to make a finding that Tolko was entitled to funding.

- The District Manager's determination was rescinded and the appeal allowed.

Postscript: Four months after the Commission's decision was released, section 96(1.1) of the Regulation – the definition of "event causing damage" – was amended. Of note, the Government amended subsection (c), which was the subsection the Commission found was broad enough to include a drought. The Government amended this section so that a drought would no longer qualify as an event causing damage. The subsection was amended to say that an "event causing damage" means "(c) a landslide, or a flood, that makes it impossible to establish within 20 years of the commandment date a free growing stand on the area affected by the flood or landslide."

Dispute over whether the Trees Harvested were on Private Land or a "Public Highway"

2005-FOR-005(a) Isolde Elvira Schumann and David Alan Wills v. Government of British Columbia

Decision Date: March 14, 2006

Panel: David H. Searle, C.M., Q.C.

Isolde Elvira Schumann and David Allan Wills appealed a determination by the District Manager that they had contravened section 52(1) of the *Forest and Range Practices Act* by harvesting 15.632 cubic metres of timber from Crown land without authority. The District Manager imposed a penalty of $350 for the contravention. The Appellants argued that the District Manager erred in his findings because the timber they harvested was from their own land, not Crown land. They asked the Commission to rescind the determination of contravention and the associated penalty, and also asked for an order for costs against the Government.

The determination was based on the District Manager's understanding that the timber was taken from land designated as a public highway

in 1910. The highway had not been constructed and did not appear as an encumbrance on the Appellant's land title documents.

The Commission found that, in 1910, the Crown declared the creation of the public highway by notice in the Gazette. The Commission found that the creation of this highway complied with section 88 of the *Land Act*, S.B.C. 1908, c. 30, which was the relevant legislation at that time. Further, according to section 87 of that *Act*, the "soil and freehold of every public highway" is vested in "His Majesty, His Heirs and successors." Accordingly, the Commission found that the Crown had the authority to create the highway, and did create a highway through a portion of what is now the Appellants' land. The Commission concluded that the highway was properly created, was Crown land, and the timber harvested by the Appellants was Crown timber harvested without appropriate authorization, contrary to section 52(1) of the *Act*. The Commission considered the penalty and found that $350 was appropriate in the circumstances.

In regard to the Appellants application for costs, the Commission found that there were no special circumstances that would justify awarding costs to the Appellants.

- The appeal was dismissed. The application for costs was denied.

Burning of Logging Slash Results in Contraventions of the *Code* and the *Forest Fire Prevention and Suppression Regulation*

2005-FOR-007(a) Specialty Logging (Cariboo) Ltd. and Terry Spencer Givens v. Government of British Columbia

Decision Date: June 5, 2006

Panel: R.A. Gorley

In March and April 2004, Specialty Logging (Cariboo) Ltd. was burning logging slash on seven cutblocks in several timber sale licenses in the Quesnel area, on behalf of the licensee Terry Givens. It is common practice for logging slash (tree branches, tops, etc.) to be burned in order to reduce the risk of accidental fire, and to prepare the logging site for reforestation. In most circumstances, burning or otherwise disposing of the slash is a requirement of the forest licence. This activity must be conducted in compliance with provisions of the *Code* and the *Forest Fire Prevention and Suppression Regulation*.

Ministry staff inspected the burn sites periodically in May and June 2004, and detected evidence that a number of contraventions of the *Code* and the *Regulation* may have occurred. In a determination issued to Specialty and Mr. Givens, the Fire Centre Manager found that several of the burn sites had:

- burned beyond the area authorized (i.e. the fires had escaped);
- continued to burn after the period authorized; or
- been burned without an adequate fuel break to prevent escape.

He also found that, in five circumstances, the escapes had not been reported to the Ministry; in one case Specialty had burned without a valid burning reference number; and in two cases Specialty had failed to comply with an order. The Fire Centre Manager levied separate penalties for each of the contraventions, for a total of $5,250 in penalties.

In their appeal, the Appellants did not challenge the Manager's factual findings. Rather, they submitted that the Manager did not properly interpret and apply the legislation. They argued that there is no obligation to report the escape of a fire when it has been extinguished, there is no timeline for reporting an escape, and that the Manager misinterpreted the *Regulation* when he determined

that the Appellants had failed to establish fuel breaks. The Appellants also argued that the Manager failed to properly consider the defenses of due diligence and mistake of fact, and to properly consider the penalty criteria set out in the *Forest and Range Practices Act*. The Appellants asked the Commission to rescind the determination, dismiss the penalties, and order the Government to pay their costs.

The Government conceded that two of the contraventions, and the associated penalties, should be rescinded. The Commission agreed and made this order.

Regarding the remaining contraventions, the Commission found that, when a slash pile fire escapes from the fuel break, the person who started the fire is obligated to report it even if the escape has been extinguished. The Commission further found that the Appellants had an obligation to report any escaped fire within a reasonable amount of time and that the Appellants failed to do so. The discovery of an escaped fire by a designated forest officer does not fulfill a person's obligation to report a fire pursuant to section 88(2) of the *Code*. The Commission upheld the Manager's findings in relation to the Appellant's failure to report an escape of fire.

The Commission further found that the objective of the *Regulation* is for a fuel break to be established prior to ignition, and that it remains an effective buffer to escape while the fire is burning. The Commission found that the Appellants failed to establish a fuel break in relation to two cutblocks and upheld the contraventions associated with those cutblocks. The Commission found that there was insufficient evidence in relation to a third cutblock and rescinded the associated contravention.

In relation to the defenses of due diligence and mistake of fact, no specific arguments on the applicability of the defenses were advanced by the Appellants before the Commission. Therefore, the Commission found that the Appellants did not establish that those defenses applied in the circumstances of this case.

In relation to the assessment of penalties, the Commission found that the penalties imposed by the Manager were within the lower end of the prescribed range and none of the evidence presented showed that the Manager's decision regarding the penalties was unreasonable. The Commission found that the penalties should be upheld, with the exception of the penalties associated with the three contraventions that were rescinded. Accordingly, the total amount of the penalties was reduced by $1,500.

- The appeal was allowed, in part.
- The application for costs was denied.

Determination Changed by Consent Order

*2005-FOR-013(a) Mill and Timber Products Ltd. v. Government of British Columbia

Decision Date: June 19, 2006

Panel: Alan Andison

In 2002, a small slide occurred along a portion of forest road constructed by Mill and Timber Products Ltd. The District Manager, North Island District, issued a determination which found that Mill and Timber failed to construct a road on Crown land in accordance with the road layout and design, contrary to section 62(1)(f) of the *Code*, and failed to ensure that the construction was carried out in general conformance with the requirement of the road layout and design, contrary to section 12(1)(b) of the *Forest Road Regulation*. No penalty was levied.

* This case is an example of an appeal that has been resolved through negotiations between the parties without a hearing on the merits before the Commission. By issuing a Consent Order the Commission has given legal authority to the terms negotiated by the parties to the appeal.

The Commission is supportive of parties entering into alternate dispute resolution processes and considers this to be an important component of the appeal process.

Mill and Timber appealed the determination, arguing that the District Manager erred in his interpretation of section 62 of the *Code* and section 12(1)(b) of the Regulation.

Prior to the oral hearing, the parties notified the Commission that they had come to an agreement on how to resolve the appeal. They agreed that the contravention of section 62(1)(f) of the *Code* be confirmed, and the contravention of the *Regulation* be rescinded. These terms were set out in a Consent Order provided to the Commission for its consideration and approval.

- By consent of the parties, the Commission ordered that the contravention of section 62(1)(f) of the *Code* be confirmed and the contravention of section 12(1)(b) of the *Forest Road Regulation* be rescinded.

Liability of the President and Sole Director of a Company for the Company's Contravention

2005-FOR-015(a) Darren Smurthwaite v. Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: November 24, 2006

Panel: Alan Andison

Darren Smurthwaite is the president, secretary, and sole officer of 544559 B.C. Ltd. (the "Company"). The Company holds a road permit and a timber sale licence in the Kootenay Inlet area of Moresby Island in the Queen Charlotte Islands Forest District.

The road permit was issued to the Company and allowed it to build an access road to the licence area. The permit was not signed by a representative of the Company. The permit was addressed to Mr. Smurthwaite as president of the Company.

Several documents form part of the road permit, including a schedule and a report which identify the locations of special features, namely, karst features, and specify management objectives to minimize the potential effects of harvesting and road building on the karst features. Karst areas are characterized by sinkholes, disappearing streams, and caverns which are created when a terrain is underlain by solutional rocks such as limestone.

The road in question was constructed on behalf of the Company by a contractor. As a result of field inspections by Ministry staff, the Ministry was of the view that there had been five potential contraventions of the *Code* and its regulations relating to its road building, such as failure to protect special features. The Ministry notified Mr. Smurthwaite, President, 544559 B.C. Ltd., of the potential contraventions. The letter was sent to Mr. Smurthwaite's personal address.

Mr. Smurthwaite sent written submissions to the District Manager in response to the alleged contraventions. The facsimile cover sheet for the submissions states, "Please find enclosed the submissions re 544559 B.C. Ltd."

On November 14, 2005, the District Manager issued his determination to Mr. Smurthwaite in his capacity as president and the sole director of a corporate licensee. His determination states, in part, "I have to conclude that Darren Smurthwaite, being president of 544559 B.C. LTD. being ultimately responsible for the operations associated with Timber Sale Licence A53411, knew the requirements identified as part of the Road Permit to manage to protect the karst features within the block, and clearly failed to do so. Therefore, I find that Section 62(1) of the [*Code*] has been violated." The District Manager levied a penalty of $45,000 against Mr. Smurthwaite for the contravention.

Mr. Smurthwaite appealed the determination on the grounds that the District Manager erred by making a determination against him in his capacity as president of the licensee, and failing to

give him notice of the possibility of a determination against him rather than the corporate licensee. Mr. Smurthwaite asked the Commission to rescind the determination.

The Commission considered the legal test required under section 71(4) of the *Forest and Range Practices Act* to find a corporate director or officer liable for a contravention, and whether the District Manager had applied that test. The Commission found that the legal test has two components: (1) there must be sufficient evidence to establish, on a balance of probabilities, that a corporation contravened the Acts, and that the corporation cannot claim a statutory defence; and, (2) there is sufficient evidence to establish, on a balance of probabilities, that a director or officer of the corporation failed to prevent a foreseeable occurrence which led to the contravention.

The Commission found that the District Manager failed to properly apply the test set out in section 71(4). There was no evidentiary basis for the determination against Mr. Smurthwaite in his capacity as president, nor was there a basis upon which the Commission could evaluate the case against him. On this basis alone, the Commission would have allowed the appeal.

The Commission also considered whether there were breaches of procedural fairness in the proceedings before the District Manager, and if so, whether the appeal process could correct those errors. The Commission found that section 71(1) of the *Forest and Range Practices Act* provides that a determination may be made against a person after that person has been given an opportunity to be heard. Failure to provide an opportunity to be heard is a breach of a statutory right and may render a subsequent decision a nullity. The Commission noted that, where a corporation has only one director and officer, as in this case, that person could participate in an opportunity to be heard as both a representative of the corporation and in their capacity as a director and/or officer. The Commission also found that it is important that a director or officer be given clear notice of the dual nature of the proceedings before the opportunity to be heard occurs. Although providing notice of an opportunity to be heard is not a mandatory statutory requirement, it is a requirement of procedural fairness. Without notice of the allegations against a person, an opportunity to be heard is ineffective.

The Commission found that, although Mr. Smurthwaite received notice of an opportunity to be heard, the notice was inadequate because it did not clearly notify him that the District Manager was considering making a determination regarding his personal liability as president of the licensee. The lack of proper notice of the case led Mr. Smurthwaite to misapprehend the purpose of the proceedings and the potential penalty that he faced. Consequently, there was a breach of section 71(1) of the *Act*, as well as a breach of the requirements of procedural fairness. Given the nature of the errors in this case, the Commission found that the determination was a nullity, and therefore, the Commission had no jurisdiction to correct the errors or to send the determination back to the District Manager.

Consequently, the Commission rescinded the determination and penalty against Mr. Smurthwaite.

▶ The appeal was allowed.

Appeals under the *Forest Act*

All of the appeals decided under this *Act* during the report period related to stumpage rates. A stumpage rate is the amount of money that a person (the licensee) must pay to the Government for harvesting Crown timber. The Ministry of Forests and Range determines the rate that a licensee must pay, and advises the licensee of the rate in a stumpage advisory notice or a stumpage adjustment notice.

Section 105 of the *Forest Act* states that these rates must be determined, redetermined or varied in accordance with the policies and procedures approved by the Minister of Forests and Range. Those policies and procedures are contained in two manuals, one for the interior forest region, and one for the coastal forest region. For the interior, stumpage rates must be calculated in accordance with the Interior Appraisal Manual (the "IAM"). For the coast, stumpage rates must be calculated in accordance with the Coast Appraisal Manual ("the CAM"). The content of these manuals have the force of law under section 105 of the *Forest Act* and the Commission is required to apply them by section 149(3) of the *Act*.

The Application of Road Use Charges to Other "Tributary" Cutting Authorities

2005-FA-093(a) Western Forest Products Inc. v. Government of British Columbia

Decision Date: February 6, 2006

Panel: Alan Andison

This appeal involves a "road use charge" which is a cost incurred by a licensee as a result of a licensee paying for the right to use a road through, for instance, private land. The CAM allows road use charges to be considered as part of the "Tenure Obligation Adjustment" for licensees. It also sets out the circumstances under which road use charges may be claimed.

Western Forest Products Inc. submitted a "Request for Approval of Road Use Charge" to the District Manager of the Campbell River Forest, in relation to cutting permit 775. The road use charge it wanted approved included road use charges that Western had incurred in relation to other tributary cutting authorities.

The Ministry refused this request and issued the stumpage rate that was then appealed by Western. The rate was based upon an approved road use charge of $1.00 per cubic metre, whereas Western sought a road use charge of $12.25 per cubic metre. Western asked the Commission to rescind the stumpage determination and direct the Ministry to reappraise the stumpage rates.

The main issue was whether a licensee can claim, in calculating the Tenure Obligation Adjustment for one cutting authority, unappraised road use charges incurred for other "tributary" cutting authorities.

Western argued that the scheme of the CAM clearly contemplates that costs associated with one cutting authority can be attributable to another cutting authority, and provided examples of other sections that supported its contention. Western also noted that if the Commission accepted its view, over the long term, there would be no financial consequence to either party.

The Commission found that Western's interpretation of the provisions in the CAM worked harmoniously within the scheme of the statute as a whole, and was appropriate for policy and practical reasons.

Accordingly, the Commission found that, pursuant to the provisions of the CAM, a licensee can claim, in calculating the Tenure Obligation Adjustment for one cutting authority, unappraised

road use charges incurred for other "tributary" cutting authorities.

The Commission rescinded the stumpage advisory notice and directed the Coordinator to reappraise the stumpage rate based upon a road use charge forwarded by Western.

- The appeal was allowed. An application for costs by the Government was denied.

Whether Adjustment Records Form Part of the "Billing Records"

2005-FA-109(a) Sivert Smith Andersen and Shawn Andersen v. Government of British Columbia

Decision Date: March 6, 2006

Panel: David Ormerod

In this appeal, the Timber Pricing Officer found that "adjustments" made to the stumpage previously billed to the Andersens did not form part of the weighted average sawlog stumpage rate. Specifically, it did not form part of the "sum of the stumpage billed according to stumpage billing records of the revenue branch for the twelve-month period". He therefore applied the district average rate of $25.80 per cubic metre.

The Andersens appealed the stumpage rate. They asked the Commission to rescind the stumpage rate and vary the rate to $0.25 per cubic metre. In the alternative, they asked the Commission to send the matter back to the Timber Pricing Officer and order him to re-assess the rate taking into account the adjustments made to the "billing records".

The Commission found that adjustment records should have been taken into account in the stumpage calculation. It found that these adjustment records are for adjusted stumpage invoices, they are properly part of the billing record for the billing year and can be applied in determining the stumpage rate for blanket salvage cutting permits for the period August 1, 2005 to July 31, 2006. Accordingly, the Commission referred the matter back to the Timber Pricing Officer with directions to re-determine all of the billing records, including "adjustments".

- The appeal was allowed.

Timber Pricing Coordinator's Discretion to Reduce the Length of On-Block Roads for Appraisal Purposes

2005-FA-111(a)/112(a)/113(a) Weyerhaeuser Company Limited v. Government of British Columbia

Decision Date: April 11, 2006

Panel: Alan Andison

Weyerhaeuser Company Limited appealed three stumpage determinations issued by the Timber Pricing Coordinator for the Southern Interior Forest Region. In calculating the stumpage rates set out in the determinations, the Coordinator did not accept Weyerhaeuser's submissions regarding the lengths of roads to be constructed in order to develop and harvest the cutting permit areas. Rather, the Coordinator reduced the length of on-block roads for the purpose of calculating the stumpage rates. Weyerhaeuser appealed these determinations on four grounds, one of which was that the IAM does not set any criteria for road density and, therefore, the Timber Pricing Co-ordinator erred in creating her own criteria regarding road density.

The Commission found that the Coordinator had the discretion to reject the road length submitted by Weyerhaeuser, and to substitute a road length that was reasonable, if, based on the relevant information available to her, the length of road proposed by Weyerhaeuser was not necessary, taking into account regulatory requirements and the least cost principle. The Coordinator had the discretion to estimate the length of road using the

formulae provided in the IAM, taking into account regulatory requirements and the least cost principle.

Accordingly, the Commission decided this preliminary issue in favour of the Government.

This outcome did not dispose of the appeal because the factual merits of the Coordinator's decisions were not addressed. Consequently, the Commission decided that it would proceed to hear the merits of the Coordinator's decisions regarding the stumpage rates, if the parties so desired.

Woodlots Licensees Impacted by Retroactive Changes to the IAM

Over the past three years, the Commission has received many appeals from woodlot licensees who are negatively impacted by increases to their stumpage rates as a result of unexpected changes to the IAM. Despite concerns with the way in which these policies are implemented, the Commission does not have the jurisdiction to deviate from those policies. Two such cases are summarized below.

2005-FA-116(a) Lorne Walter Dufour, Diana Greensen, Creole Dufour & Tereina Dufour v. Government of British Columbia

Decision Date: March 27, 2006

Panel: David Ormerod

Lorne Walter Dufour, Diana Greensen, Creole Dufour, and Tereina Dufour appealed the stumpage rate issued to them by the Timber Pricing Coordinator of $31.86 per cubic metre for all coniferous sawlogs for the period of August 1, 2005 to July 31, 2006. This rate was far in excess of the rate they were expecting.

The Dufours held a blanket salvage cutting permit that they had used to salvage beetle-infested timber from their woodlot for several years. They received a large additional temporary allowable annual cut in March of 2005, for calendar year 2005. As a result, they had to increase the scale of their harvesting operations following spring break-up, including contracting out some phases. Eight people were active in the logging operations.

The Dufours knew that the stumpage rates were going to be revised at the end of July 2005, and made some enquiries of the District office to determine what these rates might be. They came away with the impression that the new rate would be under $4 per cubic metre. For the year ending July 31, 2005, the stumpage rate for sawlogs had been $0.41 per cubic metre.

At some point in the summer of 2005, the Dufours found out that the stumpage rate determination for their cutting permit would not require the usual appraisal data of logging cost estimates, but it was not until mid October that they found out that the rate would be $31.86 per cubic metre. By this time, they had completed a substantial amount of logging and hauling after the effective date for the rate change, August 1, 2005. As a consequence, they were faced with retroactive stumpage billings that meant they would lose a substantial sum of money on the wood they had already produced, and they would have to shut down operations and lay off the contractors.

The Dufours appealed the stumpage rate to the Commission. They stated that, for the quality of wood being cut under their cutting permit, the mills would only pay $42 to $48 per cubic metres. After the stumpage is paid, only $10 to $16 per cubic metres is left, which could not possibly cover the costs of logging, hauling and woodlot management. They also argued that the stumpage rate makes no sense and is inequitable when compared to rates paid by other woodlot licensees and by major licensees. The Dufours asked the Commission to set a reasonable stumpage rate to be applied retroactive to August 1, 2005.

After reviewing all of the summary data for the District's scale billing history that went into

the calculation of the $31.86 per cubic metre stumpage rate, the Commission concluded that no errors had been made in calculating the rate for the cutting permit. The Commission then considered the Dufours' argument that IAM policy was inequitable.

The Commission noted that, according to section 4(e) of the *Ministry of Forests Act*, the Government is required to assert its financial interests in the forest resources in a systematic and equitable manner. The Commission found it "questionable" whether the amendments set out in sections 6.3.1 and 6.3 of the IAM complied with this overarching requirement. The Commission expressed many concerns with the rationale and the results of the amended policy. In addition, it noted that blanket salvage cutting permits are issued as part of the Government's effort to deal with the beetle infestation and to salvage beetle-killed timber and that high stumpage rates that render licensees' operations uneconomical, may frustrate these goals.

However, the Commission found that even if the IAM is unsystematic and inequitable in respect of setting stumpage rates for blanket salvage cutting permits, it was unable to provide any remedy under section 149 of the *Forest Act*. The Commission noted that unless the Coordinator failed to adhere to section 105(1), or erred in his application of the IAM, the Commission had no authority to grant any remedy.

While the Commission found that the historic stumpage rate averaging process of section 6.3.1(2) is markedly inconsistent with the appraisal processes for most other cutting authorities, which either involve a full appraisal of costs, or use table look-ups of rates, it concluded that the process had been properly applied by the Coordinator in this case. The Commission then stated, "Unfortunately, any inequity that results from applying the IAM is beyond the control of the SIFR [southern interior forest region], and the Commission. If the Commission had jurisdiction over the remedy in this case, it would find that a lower stumpage rate should apply."

As there were no errors made in calculating the stumpage rate, the Coordinator was acting within his statutory authority and had complied with the proper procedure for determining stumpage rates as outlined in section 6.3.1 of the IAM, the Commission found that it had no jurisdiction to grant the remedy sought.

▶ The Commission dismissed the appeal.

2005-FA-122(a) Owen Lake Ranch Ltd. v. Government of British Columbia

Decision Date: June 2, 2006

Panel: James S. Hackett

Owen Lake Ranch Ltd. appealed a stumpage advisory notice issued for a cutting permit within its woodlot in the Northern Interior Forest Region. The stumpage rate was set at $28.62 per cubic metre for the period of August 1, 2005 to July 31, 2006. In determining the stumpage rate, the Timber Pricing Coordinator applied the woodlot average rate pursuant to the IAM. Both parties agreed that the stumpage rate was determined in accordance with the IAM. However, Owen Lake submitted that the IAM should not be applied in this case on the grounds that it unfairly penalizes the company, will result in a significant financial loss and is "ethically wrong" since the company was harvesting Mountain Pine Beetle infested wood and harvested the wood when it did because it was best for the long term health of the woodlot.

Owen Lake noted that had this timber not been logged, the current stumpage rate would be $3.03 per cubic metre instead of the rate it received of $28.62 per cubic metre. It stated that the $3.03 per cubic metre rate is in line with salvage stumpage rates on other woodlots in the area and should be applied in this case.

The Government objected to the Commission hearing this appeal, arguing that the IAM has the force of law and cannot be overridden by the Commission. Since there was no dispute that the stumpage rate had been determined properly, the Government stated that the Commission must confirm the original stumpage rate determination. The Government asks the Commission to order Owen Lake to pay some of the Government's costs in relation to the appeal, given that the appeal had no chance of success.

The Commission stated that it was sympathetic to Owen Lake's situation and, in this case, had concerns about the effect that the policies in the IAM were having on this appellant, and other woodlot licensees who were all working to manage the beetle infestation through their salvage operations. The Commission noted that Owen Lake was in a "no win" situation.

However, the Commission found that the *Forest Act* expressly requires the Commission to apply the policies contained in the IAM. Although sympathetic to Owen Lake's situation, the Commission found that it has no jurisdiction to rescind or modify an otherwise valid stumpage advisory notice on the ground of "ethics", or economic considerations.

Regarding costs, the Commission stated that, although the Government's initial submissions clearly stated that there was no jurisdiction to give Owen Lake the remedy it sought, there must be greater latitude given to an appellant who is unrepresented. This is particularly true when the consequences flowing from an appeal are potentially significant. Therefore, the Commission denied the Government's application for costs.

- The Commission dismissed the appeal.
- The application for costs was denied.

Appeals under the *Forest and Range Practices Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Forest and Range Practices Act*.

Appeals under the *Private Managed Forest Land Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Private Managed Forest Land Act*.

Appeals under the *Range Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Range Act*.

Appeals under the *Wildfire Act*

During the report period, there were no decisions issued on appeals from determinations made under the *Wildfire Act*.

Appeals of Commission Decisions to the Courts

January 1, 2006 – December 31, 2006

British Columbia Supreme Court

There were no judgments released by the Court during the reporting period.

British Columbia Court of Appeal

There were no judgments released by the Court during the reporting period.

Supreme Court of Canada

There were no judgments released by the Court during the reporting period.

APPENDIX I

Legislation and Regulations

The legislation contained in this report is the legislation in effect at the end of the reporting period (December 31, 2006). Please note that subsequent to the publication of this Annual Report, the legislation may have been amended. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 – Administrative Review and Appeals

Part 6 of the *Forest and Range Practice Act* Applies

130.1 Part 6 of the *Forest and Range Practices Act* applies to this Act and the regulations under this Act, unless the context indicates otherwise.

Appeal

131 (1) To initiate an appeal under section 82 or 83 of the *Forest and Range Practices Act*, the person referred to in section 82(1) of that Act, or the board under section 83(1) of that Act, no later than 3 weeks after the latest to occur of

(a) the original decision,

(b) any correction under section 79 of that Act, and

(c) any review under section 80 or 81 of that Act,

must deliver to the commission

(d) a notice of appeal,

(e) a copy of the original decision, and

(f) a copy of any decision respecting a correction or review.

(2) Repealed.

(3) The person or board bringing the appeal must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.

(6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and

(a) to the board, if the notice was delivered

(i) by the person who is the subject of the determination, or

(ii) for an appeal of a failure to make a determination, by the person who would be the subject of a determination, if made,

(b) to the person who is the subject of the determination, if the notice was delivered by the board, or

(c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.

(7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.

(8) At any stage of an appeal the commission or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.

(9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.

(10) The commission, after receiving a notice of appeal, must

(a) promptly give the parties to an appeal a hearing, or

(b) hold a hearing within the prescribed period, if any.

(11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under subsection (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are disclosed as required under subsection (9) or (14).

(12) A party may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under section 129,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(13) The commission may invite or permit a person to take part in a hearing as an intervenor.

(14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required by the regulations and in accordance with the regulations.

(15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

132 (1) The commission or a member of it may order the parties to deliver written submissions.

(2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

133 The commission or a member of it may make an interim order in an appeal.

Open hearings

134 Hearings of the commission must be open to the public.

Witnesses

135 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

136 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Section Repealed

138 [Repealed 2003-55-95.]

Decision of commission

139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.

(2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.

(3) The commission must make a decision within the prescribed period, if any.

Order for compliance

140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9

FOREST APPEALS COMMISSION

Forest Appeals Commission continued

194 (1) The Forest Appeals Commission is continued.

(1.1) The commission is to hear appeals under

(a) Division 4 of Part 6, and

(b) the *Forest Act*, the *Private Managed Forest Land Act*, and the *Range Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.

(2) The commission consists of the following members appointed by the Lieutenant Governor in Council after a merit based process:

(a) a member designated as the chair;

(b) one or more members designated as vice chairs after consultation with the chair;

(c) other members appointed after consultation with the chair.

(3) The *Administrative Tribunals Appointment and Administration Act* applies to the commission.

(4) Repealed.

(5) Repealed.

(6) Repealed.

Organization of the commission

195 (1) The chair may organize the commission into panels, each comprised of one or more members.

(2) The members of the commission may sit

(a) as a commission, or

(b) as a panel of the commission

and 2 or more panels may sit at the same time.

(3) If members of the commission sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and

(b) an order, decision or action of the panel is an order, decision or action of the commission.

Commission staff

196 (1) Employees necessary to carry out the powers and duties of the commission may be appointed under the *Public Service Act*.

(2) In accordance with the regulations, the commission may engage or retain specialists or consultants that the commission considers necessary to carry out the powers and duties of the office and may determine their remuneration.

(3) The *Public Service Act* does not apply to the retention, engagement or remuneration of specialists or consultants retained under subsection (2).

No oral hearing as of right

196.1 A person is not entitled to an oral hearing before the commission.

Delegation of powers

196.2 (1) The chair may in writing delegate to a person or class of persons any of the commission's powers or duties under this Act, except the power

(a) of delegation under this section, or

(b) to make a report under this Act.

(2) A delegation under this section is revocable and does not prevent the commission exercising a delegated power.

(3) A delegation may be made subject to terms the chair considers appropriate.

(4) If the chair makes a delegation and then ceases to hold office, the delegation continues in effect as long as the delegate continues in office or until revoked by a succeeding chair.

(5) A person purporting to exercise a power of the commission by virtue of a delegation under this section must, when requested to do so, produce evidence of his or her authority to exercise the power.

Mandate of the commission

197 (1) In accordance with the regulations, the commission must

(a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,

(b) provide

(i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act and the regulations are functioning and identify problems that may have arisen under their provisions, and

(ii) the minister responsible for the administration of the *Ministry of Forests and Range Act* with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* and the regulations relating to those reviews and appeals are functioning and identify problems that may have arisen under their provisions, and

(c) annually, and at other times it considers appropriate, make recommendations

(i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,

(ii) to the minister responsible for the administration of the *Ministry of Forests and Range Act* concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and

(d) perform other functions required by the regulations.

(2) The chair must give to the ministers an annual report concerning the commission's activities.

(3) The ministers must promptly lay the report before the Legislative Assembly.

Forest and Range Practices Act

Part 6

COMPLIANCE AND ENFORCEMENT

Division 4 – Correction, Reviews and Appeals

Determinations stayed until proceedings concluded

78 (1) A determination that may be reviewed under section 80 or appealed under section 82 is stayed until the person who is the subject of the determination has no further right to have the determination reviewed or appealed.

(2) Despite subsection (1), the minister may order that a determination, other than a determination to levy an administrative penalty under section 71 or 74 (3) (d) is not stayed or is stayed subject to conditions, on being satisfied that a stay or a stay without those conditions, as the case may be, would be contrary to the public interest.

(3) Despite subsection (1), a determination is not stayed if the determination is made under prescribed sections or for prescribed purposes.

Correction or clarification of a determination

79 (1) Within 15 days after a determination is made under section 16, 26 (2), 27 (2), 32 (2), 37, 51 (7), 54 (2), 57 (4), 66, 71, 74 or 77 of this Act, the person who made the determination may

(a) correct a typographical, an arithmetical or another similar error in the determination, and

(b) Repealed.

(c) correct an obvious error or omission in the determination.

(2) The correction does not take effect until the date on which the person who is the subject of the determination is notified of it under subsection (4).

(3) The discretion conferred under subsection (1)

(a) is to be exercised in the same manner as the determination affected by it, and

(b) is exercisable with or without a hearing and

(i) on the initiative of the person who made the determination, or

(ii) at the request of the person who is the subject of the determination.

(4) The person who corrected a determination under this section must notify the person who is the subject of the determination.

Review of a determination

80 (1) Subject to subsection (2), at the request of a person who is the subject of a determination under section 16, 20(3), 26(2), 27(2), 32(2), 37, 38(5), 39, 51(7), 54(2), 57(4), 66, 71, 74, 77, 77.1, 97(3), 107, 108, 112(1)(a) or 155(2) of this Act, the person who made the determination, or another person employed in the ministry and designated in writing by the minister must review the determination, but only if satisfied that there is evidence that was not available at the time of the original determination.

(2) On a review required under subsection (1) the person conducting the review may consider only

(a) evidence that was not available at the time of the original determination, and

(b) the record pertaining to the original determination.

(3) To obtain a review of a determination under subsection (1) the person must request the review not later than 3 weeks after the date the notice of determination was given to the person.

(4) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(5) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Board may require review of a determination

81 (1) If the board first receives the consent of the person who is the subject of a determination under section 16, 37, 71 or 74 of this Act, the board may require a review of the determination by the person who made the determination, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of a determination under subsection (1), the board must require the review not later than 3 weeks after the date the notice of determination was given to the person.

(3) The minister may extend the time limit for requiring a review under this section before or after its expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

Appeal to the commission by a person who is the subject of a determination

82 (1) The person who is the subject of a determination referred to in section 80, other than a determination made under section 77.1,†may appeal to the commission either of the following, but not both:

(a) the determination;

(b) a decision made after completion of a review of the determination.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

83 (1) The board may appeal to the commission either of the following, but not both:

(a) a determination referred to in section 81;

(b) a decision made after completion of a review of the determination.

(2) The board may apply to the commission for an order under section 84(2) if

(a) the minister authorized under section 71 or 74 of this Act to make a determination has not done so, and

(b) a prescribed period has elapsed after the facts relevant to the determination first came to the knowledge of the official or the minister.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under subsection (1) or an application under subsection (2).

Powers of the commission

84 (1) On an appeal

(a) by a person under section 82(1), or

(b) by the board under section 83(1),

the commission may

(c) consider the findings of the person who made the determination or decision, and

(d) either

(i) confirm, vary or rescind the determination or decision, or

(ii) with or without directions, refer the matter back to the person who made the determination or decision, for reconsideration.

(2) On an application under section 83 by the board the commission may order the official or minister referred to in section 83(2) to make a determination as authorized under the applicable provision that is referred to in section 83 2)(a).

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(4) After filing in the court registry, an order under subsection (3) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Forest Act

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 – Appeals

Determinations that may be appealed

146 (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision that was the subject of a review required under Division 1 of this Part.

(2) An appeal may be made to the Forest Appeals Commission from

(a) a determination, order or decision of the chief forester, under section 60.6, 68, 70(2), 77(1)(b) or 112(1),

(b) a determination of an employee of the ministry under section 105(1), and

(c) an order of the minister under section 75.95 (2).

(3) No appeal may be made under subsection (1) unless the determination, order or decision has first been reviewed under Division 1 of this Part.

(4) If a determination, order or decision referred to in subsection (1) is varied by the person conducting the review, the appeal to the commission is from the determination, order or decision as varied under section 145.

(5) If this Act gives a right of appeal, this Division applies to the appeal.

(6) For the purpose of subsection (2), a redetermination or variation of stumpage rates under section 105(1) is considered to be a determination.

Notice of appeal

147 (1) If a determination, order or decision referred to in section 146(1) or (2) is made, the person

(a) in respect of whom it is made, or

(b) in respect of whose agreement it is made

may appeal the determination, order or decision by

(c) serving a notice of appeal on the commission

(i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under section 145(3), and

(ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after that date the determination, order or decision is served on the person under the provisions referred to in section†146(2), and

(d) enclosing a copy of the determination, order or decision appealed from.

(2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).

(3) The appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.

(3.1) After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government will rely at the appeal if required by the regulations and in accordance with the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) A person who does not serve the notice of appeal within the time required under subsection (1) or (4) loses the right to an appeal.

Appeal

148 (1) The commission, after receiving the notice of appeal, must

(a) promptly hold a hearing, or

(b) hold a hearing within the prescribed period, if any.

(2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under section 147(3.1), the commission need not hold a hearing within the prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147(3.1).

(3) Only the appellant and the government are parties to the appeal.

(4) The parties may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

148.1 (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party and an opportunity to rebut the written submissions.

Interim orders

148.2 The commission or a member of it may make an interim order in an appeal.

Open hearings

148.3 Hearings of the commission are open to the public.

Witnesses

148.4 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

148.5 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

148.6 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

149 (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of

(a) the person who made the initial determination, order or decision, and

(b) the person who conducted the review.

(2) On an appeal, the commission may

(a) confirm, vary or rescind the determination, order or decision, or

(b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

(3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

(4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.

(5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

(6) Unless the minister orders otherwise, an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

149.1 The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.

(2) On request of the appellant or the minister, the commission must provide written reasons for the decision.

(3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

149.2 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

150 (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision of the commission be stayed in whole or in part.

(3) An appeal from the decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 6 of the Forest and Range Practices Act applies

167.3 (1) Divisions 1 to 4 of Part 6 of the *Forest and Range Practices Act* apply to this Act and the regulations under this Act, unless the context indicates otherwise.

(2) Without limiting subsection (1), sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under the *Forest and Range Practices Act* in respect of a contravention of this Act or the regulations under this Act.

Range Act

Reviews

69 (1) Subject to subsection (2), at the request of a person who is the subject of, or whose licence or permit is affected by,

(a) an order of a forest officer under section 60(1),

(b) an order of a district manager under section 36(1) or (2), 49(1), 50(1), 55, 60(1), 62(1)(b) or 63 (1),

(c) a decision of the district manager referred to in section 25(5) or 50(4), or

(d) amendments under section 47 or 48,

the person who made the order or decision or who prepared the amendments, or another person employed in the ministry and designated in writing by the minister, must review the order, decision or amendments, but only if satisfied that there is evidence that was not available at the time of the original order, decision or amendments.

(2) On a review referred to in subsection (1), only

(a) evidence that was not available at the time of the original order, decision or amendments, and

(b) the record pertaining to the original order, decision or amendments

may be considered.

(3) To obtain a review referred to in subsection (1), the person who is the subject of, or whose licence or permit is affected by, the order, decision or amendments must request the review not later than 21 days after the date the notice of the order, decision or amendments was delivered to the person.

(4) The minister may extend the time limit in subsection (3) before or after its expiry.

(5) The person conducting a review referred to in subsection (1) has the same discretion to

(a) make an order referred to in subsection (1)(a) or (b),

(b) make a decision referred to in subsection (1)(c), or

(c) prepare amendments referred to in subsection (1)(d)

that the person who made the original order or decision or prepared the original amendments had at the time of the original order, decision or amendments.

(6) After the preparation of amendments under subsection (5) (c) to a licence or permit, and on delivery of the particulars of the amendments to the holder of the licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments.

Appeals to the commission

70 (1) The person who is the subject of, or whose licence or permit is affected by,

(a) an order,

(b) a decision, or

(c) amendments

referred to in section 69 (1) may appeal to the commission either of the following, but not both:

(d) the order, decision or amendments;

(e) a decision made after completion of a review of the order, decision or amendments.

(2) An applicant referred to in section 15 (2) may appeal to the commission an order of the minister made under that provision.

(3) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of the commission

71 (1) On an appeal under section 70, the commission may

(a) consider the findings of the person who made the order or decision or who prepared the amendments, and

(b) either

(i) confirm, vary or rescind the order, decision or amendments, or

(ii) with or without directions, refer the matter back to that person for reconsideration.

(2) If an appeal referred to in subsection (1) results in amendments to a licence or permit, the licence or permit, as the case may be, is deemed to be amended to include the amendments as soon as the particulars of the amendments have been delivered to the holder of the licence or permit.

(3) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal

(4) After a certified copy of an order under subsection (3) is filed with the Supreme Court, the order has the same effect as an order of the court for the recovery of a debt in the amount stated in the order

against the person named in it, and all proceedings may be taken as if it were an order of the court.

Review or appeal not a stay

72 Unless the minister orders otherwise, a review or an appeal under this Act does not operate as a stay or suspend the operation of the order, decision or amendments being reviewed or appealed.

Wildfire Act

Review of an order

37 (1) Subject to subsection (2), at the request of a person who is the subject of an order under section 7(3), 17(4), 25, 26, 27, 28(1) or (3)(d) or 34, the person who made the order, or another person employed in the ministry and designated in writing by the minister, must review the order, but only if satisfied that there is evidence that was not available at the time of the original order.

(2) On a review referred to in subsection (1), only

(a) evidence that was not available at the time of the original order, and

(b) the record pertaining to the original order

may be considered.

(3) To obtain a review referred to in subsection (1), the person who is the subject of the order must request the review not later than 3 weeks after the date the notice of order was given to the person.

(4) The minister may extend the time limit in subsection (3) section before or after the time limit's expiry.

(5) The person conducting a review referred to in subsection (1) has the same discretion to make a decision that the original decision maker had at the time of the original order.

Board may require review of an order

38 (1) If the board first receives the consent of the person who is the subject of an order referred to in section 37 (1), the board may require a review of the order by the person who made the order, or another person employed in the ministry and designated in writing by the minister.

(2) To obtain a review of an order under subsection (1), the board must require the review not later than 3 weeks after the date the notice of the order was given to the person who is the subject of the order.

(3) The minister may extend the time limit for requiring a review under this section before or after the time limit's expiry.

(4) The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the order under review.

Appeal to the commission from an order

39 (1) The person who is the subject of an order referred to in section 37(1) may appeal to the commission from either of the following, but not both:

(a) the order;

(b) a decision made after completion of a review of the order.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Appeal to the commission by the board

40 (1) The board may appeal to the commission from either of the following, but not both:

(a) an order referred to in section 37;

(b) a decision made after completion of a review of the order.

(2) Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal under this section.

Powers of commission

41 (1) On an appeal under section 39 by a person or under section 40 by the board, the commission may

(a) consider the findings of the decision maker who made the order, and

(b) either

(i) confirm, vary or rescind the order, or

(ii) with or without directions, refer the matter back to the decision maker who made the order, for reconsideration.

(2) The commission may order that a party or intervener pay another party or intervener any or all of the actual costs in respect of the appeal.

(3) After the period to request an appeal to the Supreme Court under the *Forest Practices Code of British Columbia Act* has passed, the minister may file a certified copy of the decision of the commission with the Supreme Court.

(4) A certified copy of a decision filed under subsection (3) has the same force and effect as an order of the court for the recovery of a debt in the amount stated in the decision, against the person named in the decision, and all proceedings may be taken as if the decision were an order of the court.

This Regulation applies to appeals under the *Code*, *Forest and Range Practices Act*, the *Forest Act*, the *Range Act* and the *Wildfire Act*.

Administrative Review and Appeal Procedure Regulation (B.C. Reg. 12/04)

Part 1

DEFINITIONS

1 In this regulation:

"appellant" means

(a) for a *Forest Act* appeal, the person that initiates an appeal under section 147(1) of that Act,

(b) for a *Range Act* appeal, the person that initiates an appeal under section 41(4) of that Act,

(c) for a *Forest and Range Practices Act* appeal, the person that initiates an appeal under section 82(1) of that Act, and includes the board if the board initiates an appeal under section 83(1) of the Act, or

(d) for a *Wildfire Act* appeal, the person that initiates an appeal under section 39 (1) of that Act, and includes the board if the board initiates an appeal under section 40 (1) of that Act;

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Exemption from time specified to appeal a determination

16 (1) In respect of an appeal under section 83 of the *Forest and Range Practices Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to

the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 79 of the *Forest and Range Practices Act*, and

(f) any review under section 80 or 81 of the *Forest and Range Practices Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(2) In respect of an appeal under section 40 of the *Wildfire Act*, the board is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision,

(e) any correction under section 35 of the *Wildfire Act*, and

(f) any review under section 37 or 38 of the *Wildfire Act*

if the board delivers to the commission the documents described in paragraphs (a) to (c) within 60 days after the latest to occur of the events described in paragraphs (d) to (f).

(3) In respect of an appeal under section 70 (1) of the *Range Act*, section 82 (1) of the *Forest and Range Practices Act* or section 39 (1) of the *Wildfire Act*, a person whose request for a review is denied by the reviewer for the reason described in subsection (4) is exempt from the requirement under section 131 of the *Forest Practices Code of British Columbia Act* to deliver to the commission

(a) a notice of appeal,

(b) a copy of the original decision, and

(c) a copy of any decision respecting a correction or review

no later than 3 weeks after the latest to occur of

(d) the original decision, or

(e) any correction under the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*

if the appellant delivers to the commission the documents described in paragraphs (a) to (c) within 21 days after the appellant is given notice by the reviewer that the appellant's request for the review is denied for the reason described in subsection (4).

(4) The reason referred to in subsection (3) is that the reviewer is not satisfied as to the existence of evidence not available at the time of the original determination, order, decision or amendment.

Prescribed period for board to apply for order

17 The prescribed period for the purpose of section 83(2)(b) of the *Forest and Range Practices Act* is 6 months.

Notice of appeal

18 The notice of appeal referred to in section 147(1) of the *Forest Act* and section 131(1) of the *Forest Practices Code of British Columbia Act*, must be signed by, or on behalf of, the appellant and must

contain all of the following information:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for giving a document to, or serving a document on, the appellant;

(c) the grounds for appeal;

(d) a statement describing the relief requested.

Deficient notice of appeal

19 (1) If a notice of appeal does not comply with section 18, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by

(a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*.

(2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the submission to the commission of further material remedying the deficiencies.

Notification of parties following receipt of notice of appeal

20 The commission must acknowledge in writing any notice of appeal, and

(a) in the case of an appeal under the *Forest Act* or *Range Act*, serve a copy of the notice of appeal on the deputy minister of the minister responsible for the *Forest Act*,

(a.1) in the case of an appeal under the *Range Act*, give a copy of the notice of appeal to the minister,

(b) in the case of an appeal under the *Forest and Range Practices Act*, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the determination, or

(B) the person who is the subject of the determination, if the notice was delivered by the board, and

(c) in the case of an appeal under the *Wildfire Act*, give a copy of the notice of appeal to

(i) the minister, and

(ii) either

(A) the board, if the notice was delivered by the person who is the subject of the order, or

(B) the person who is the subject of the order, if the notice was delivered by the board.

Procedure following receipt of notice of appeal

21 Within 30 days after receipt of the notice of appeal, the commission must

(a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,

(b) designate the panel members if the commission determines that the appeal is to be considered by a panel,

(c) set the date, time and location of the hearing, and

(d) give notice of hearing to the parties if the appeal is under the *Range Act*, *Forest and Range Practices Act* or the *Wildfire Act*, or serve notice of hearing on the parties if the appeal is under the *Forest Act*.

Panel chair determined

22 For an appeal to be considered by a panel of the commission, the panel chair is determined as follows:

(a) if the chair of the commission is on the panel, he or she is the panel chair;

(b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;

(c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

23 (1) If the board is added as a party to an appeal under section 131(7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

(2) If a party is added to the appeal under section 131(8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenors

24 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131(13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.

(2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal notice

(a) stating that the intervenor has been invited or permitted under section 131(13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and

(b) specifying the extent to which the intervenor will be permitted to participate.

Transcripts

25 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for an appeal under the *Forest Act*

26 The prescribed period for the purposes of section 1491(3) of the *Forest Act* is 42 days after conclusion of the hearing.

Part 4
ANNUAL REPORT OF FOREST APPEALS COMMISSION

Content

27 (1) By April 30 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197(2) of the *Forest Practices Code of British Columbia Act*.

(2) The annual report referred to in subsection (1) must contain

(a) the number of appeals initiated under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,

(b) the number of appeals completed under the *Forest Act*, the *Range Act*, the *Forest and Range Practices Act* or the *Wildfire Act*, during the year,

(c) the resources used in hearing the appeals,

(d) a summary of the results of the appeals completed during the year,

(e) the annual evaluation referred to in section 197(1)(b) of the Forest *Practices Code of British Columbia Act*, and

(f) any recommendations referred to in section 197(1)(c) of the *Forest Practices Code of British Columbia Act*.

Part 5

TRANSITION

Section Repealed

28 Repealed. [B.C. Reg. 525/2004, s. (c).]

Private Managed Forest Land Act

Part 4

COMPLIANCE AND ENFORCMENT

Division 2 – Administrative Remedies

Appeal to Commission

33 (1) A person who is the subject of an order, a decision or a determination of the council under section 26(1), 27(1) and (2), 30, 31(1) or 32 may appeal the order, decision or determination to the commission in accordance with the regulations.

(2) An order, a decision or a determination that may be appealed under this section, other than a stop work order, is stayed until the person who is the subject of the order, decision or determination has no further right to have the order, decision or determination appealed.

(3) The commission must conduct an appeal in accordance with this section and the regulations.

(4) The appellant and the council are parties to the appeal and may be represented by counsel.

(5) At any stage of an appeal, the commission or a member of it may direct that a person who may be directly affected by the appeal be added as a party to the appeal.

(6) The commission may invite or permit any person who may be materially affected by the outcome of an appeal to take part in the appeal as an intervenor in the manner and to the extent permitted or ordered by the commission.

(7) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(8) If the appellant does not deliver a written submission ordered under subsection (7) within the time specified in the order or the regulations, the commission may dismiss the appeal.

(9) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other party or any intervenor and an opportunity to rebut the written submissions.

(10) The commission or a member of it may make an interim order in an appeal.

(11) Hearings of the commission are open to the public.

(12) The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

(13) The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in the person's custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(14) The commission may retain, call and hear an expert witness.

(15) An appeal under this section to the commission is a new hearing and at the conclusion of the hearing, the commission may

(a) by order, confirm, vary or rescind the order, decision or determination,

(b) refer the matter back to the council or authorized person for reconsideration with or without directions,

(c) order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal, or

(d) make any other order the commission considers appropriate.

(16) An order under subsection (15) that is filed in the court registry has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if the order were an order of the court.

Private Managed Forest Land Regulation (B.C. Reg. 371/04)

Notice of appeal

9 (1) A person who, under section 33(1) of the Act, may appeal an order, decision or determination to the commission must submit a notice of appeal to the commission that is signed by, or on behalf of, the appellant and contains all of the following:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for service of the appellant;

(c) the grounds for appeal;

(d) the relief requested.

(2) The appellant must deliver the notice of appeal to the commission not later than 3 weeks after the later of the date of

(a) the decision of the council under section 32(2) of the Act, and

(b) the order, decision or determination referred to in section 33(1) of the Act.

(3) Before or after the time limit in subsection (2) expires, the commission may extend it.

(4) A person who does not deliver a notice of appeal within the time specified loses the right to an appeal.

Deficient notice of appeal

10 (1) If a notice of appeal does not comply with section 9 the commission may deliver a written notice of deficiencies to the appellant, inviting the appellant, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the commission delivers a notice under subsection (1), the appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, and

(b) the submission to the commission of further material remedying the deficiencies.

BRITISH COLUMBIA

QP #4500157295