



FOREST
APPEALS
COMMISSION

Annual Report

2002



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 Michael de Jong
Minister of Forests
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Honourable Joyce Murray
Minister of Water, Land and Air Protection
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, 2002 to December 31, 2002.

Yours truly,

A handwritten signature in black ink, appearing to read "C. G. Andison". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Alan Andison
Chair
Forest Appeals Commission

Canadian Cataloguing in Publication Data

British Columbia. Forest Appeals Commission.
Annual report. — 1995-

Annual

Issue for 1995 covers: June 15 to Dec. 31.

ISSN 1205-7606 = Annual report - British Columbia.

Forest Appeals Commission

1. British Columbia. Forest Appeals Commission -
Periodicals. 2. British Columbia. Forest Practices
Code of British Columbia Act - Periodicals.
3. Forestry law and legislation - British Columbia
- Periodicals. 4. Administrative remedies -
British Columbia - Periodicals. I. Title.

KEB345.A7F67

354.7110082'33806

C96-960175-1

KF1750.A55F67



Table of Contents

Message from the Chair	4
Introduction	5
The Commission	7
Commission Membership	7
Administrative Law	8
The Commission Office	8
Commission Resources	8
Policy on Freedom of Information and Protection of Privacy	8
The Appeal Process	9
Appeals Under the <i>Forest Practices Code of British Columbia Act</i>	9
Appeals Under the <i>Forest Act</i>	9
Appeals Under the <i>Range Act</i>	10
Commencing an Appeal	10
Filing an Appeal	11
Written Hearing Procedure	12
Oral Hearing Procedure	12
The Hearing	14
The Decision	14
Legislative Amendments Affecting the Commission	16
Evaluation and Recommendations	17
Appeals Filed	19
Decisions	22
Appeals of Decisions	29
Statistics	31
APPENDIX I Forest Legislation and Regulations	34
APPENDIX II Administrative Review and Appeal Procedure Regulation	47



Message from the Chair

The year 2002 saw a small change in the membership of the Forest Appeals Commission with the departure of seven members. On behalf of the Commission, I wish to thank Rita Bowry, Jack Krantz, Jeanette Leitch, Patricia Marchak, Brenda Milbrath, Geza Toth and David Walkem for all their hard work and the significant contributions they have made to the Commission. Their time and dedication is greatly appreciated and I wish them well in their future endeavours.

Six new members were appointed to the Commission and I would like to welcome Robert Cameron, Richard Cannings, Don Cummings, Cindy Derkaz, Margaret Eriksson and Phillip Wong. These members are also members of the Environmental Appeal Board. They were cross-appointed to the Commission in accordance with the directions of Cabinet to consolidate the tribunals.

Some significant changes to the forest legislation were announced this year. The new *Forest and Range Practices Act* was debated in the legislature and received royal assent. At the time of this report, it had not come into force. However, interim changes to the *Forest Practices Code of British Columbia Act* have been brought into force and are discussed in this report.

Also this year, the Commission office was actively involved in preparing a Request for Legislation to implement the results of phase one of the Core Services Review to consolidate the Forest Appeals Commission with the Environmental Appeal Board. During the year, the Commission also prepared its submissions on phase two of the review.



Introduction

The Forest Appeals Commission is an independent tribunal that is established under the *Forest Practices Code of British Columbia Act* (the “Code”), which came into effect on June 15, 1995. The Commission hears appeals from decisions made under the *Code* and appeals from decisions made under the *Forest Act* and the *Range Act*. The Commission is also required to make recommendations to the Lieutenant Governor in Council (Cabinet) about review and appeal procedures under these statutes.

This is the eighth annual report of the Forest Appeals Commission. The information contained in this annual report covers the twelve-month period from January 1, 2002 to December 31, 2002.

This report describes the structure and function of the Commission and how the appeal process operates. As required by the *Administrative Review and Appeal Procedure Regulation*, this report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period;
- 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 the *Code*, the *Forest Act*, and the *Range Act* and their regulations respecting reviews and appeals.

Finally, summaries of appeals filed and the decisions made by the Commission during the report period are provided, legislative amendments affecting the Commission are described, and relevant sections of the *Code*, the *Forest Act*, the *Range Act*, and the *Administrative Review and Appeal Procedure Regulation* are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the internet, 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

Information about the Forest Appeals Commission is available from the Forest Appeals Commission office, local offices of the Ministry of Forests, selected libraries and on the internet.

More detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual, which can be obtained from the Commission office or viewed on the internet. The Commission office can be contacted with any questions, or for additional copies of this report. 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 agency, which provides a forum to appeal certain decisions made by government officials under the *Code*, the *Forest Act* and the *Range Act*. The Commission is also responsible for providing Cabinet with an evaluation of the appeal and review processes, and with recommendations for amendments to the *Code*, the *Forest Act*, the *Range Act*, and the regulations respecting reviews and appeals.

Commission Membership

Commission members are appointed by Cabinet. Their appointments may be for a term of up to three years.

Members of the Commission represent diverse business and technical experience and hold 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.

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

MEMBER	FROM
Alan Andison, Chair	Victoria
Gerry Burch, Vice-chair	Vancouver
Rita Bowry (to March 21, 2002)	Dawson Creek
Robert Cameron (from November 21, 2002)	North Vancouver
Richard Cannings (from November 21, 2002)	Naramata
Don Cummings (from November 21, 2002)	Penticton
Cindy Derkaz (from November 21, 2002)	Tappen
Bruce Devitt	Victoria
Kristen Eirikson	Victoria
Margaret Eriksson (from November 21, 2002)	Vancouver
James Hackett	Nanaimo
Jack Krantz (to March 21, 2002)	Prince George
Jeanette Leitch (to September 19, 2002)	Vancouver
Katherine Lewis	Prince George
Patricia Marchak (to March 21, 2002)	Vancouver
Brenda Milbrath (to September 19, 2002)	Victoria
David Ormerod	Victoria
Lorraine Shore	Vancouver
Geza Toth (to March 21, 2002)	Vernon
David Walkem (to March 21, 2002)	Spences Bridge
Phillip Wong (from November 21, 2002)	Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals who make decisions that affect the rights and interests of people. Administrative law applies to the decisions and actions of statutory decision-makers or people who exercise power derived from legislation. The goal is to ensure that officials follow proper procedures and act within their jurisdiction.

The Commission is governed by the principles of administrative law and, as such, must treat all of the parties involved in a hearing fairly giving each party a chance to explain its position. The *Code* and the *Administrative Review and Appeal Procedure Regulation* set out additional appeal procedures and the appeal process.

Appeals before 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 Commission office staffs nine full-time employees reporting to a General Counsel/Executive Director and the Chair. 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 Environmental Appeal Board is an independent tribunal which hears appeals from administrative decisions made under six statutes: the *Pesticide Control Act*, the *Waste Management Act*,

the *Water Act*, the *Wildlife Act*, the *Commercial River Rafting Safety Act*, and the *Health Act*.

Each of the tribunals sharing the office operates completely independently of one another. Supporting two tribunals through one administrative office gives them access to greater resources while, at the same time, cutting down on bureaucracy and costs. In this way, expertise can be shared, and work can be done more efficiently.

Commission Resources

The fiscal 2002/2003 budget for the Forest Appeals Commission was \$332,000.

The fiscal 2002/2003 budget for the shared office and staff was \$1,153,000.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Information provided by one party must also be provided to all other parties to the appeal. Further, the hearings are open to the public.

If information is requested by a member of the public regarding an appeal, that information may be disclosed. The Commission is subject to section 163 of the *Code*, which deals with confidentiality and disclosure, and the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act.

Unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act* it will be disclosed.

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



The Appeal Process

Appeals Under the Forest Practices Code of British Columbia Act

Not all determinations made under the *Code* can be appealed to the Commission. The *Code* specifies that only certain types of determinations are appealable.

For the majority of the reporting period, determinations that could be appealed under the *Code* were set out in section 127. The *Forest Statutes Amendment Act (No.2)*, 2002, S.B.C. 2002, c. 76 was brought into force by regulation on December 17, 2002, and amends the *Code*. Section 55 of the *Amendment Act* repeals and replaces section 127 of the *Code*. All of the determinations that could be appealed under the *Code* can also be appealed under the *Amendment Act*. These include the following:

- orders to abate or remove a fire hazard;
- determinations regarding fire control or suppression;
- orders regarding unauthorized construction or occupation of a building in a Provincial forest;
- orders regarding the unauthorized storage of hay on a Crown range, or range development;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- orders relating to the control of insects, disease, etc.;

- penalties for contravention of the *Code*, regulations, standards or an operational plan;
- remediation orders and stopwork orders; and,
- notices of determination that a person contributed to fire.

In addition, the *Amendment Act* adds four new appealable determinations.

These types of determinations cannot be appealed to the Commission unless they have first been reviewed by a reviewer. The review and appeal of certain specified determinations may be initiated by the Forest Practices Board or by a person subject to the determination, or both. For further information regarding the changes to this process resulting from the *Amendment Act*, please see the section titled “Legislative Amendments Affecting the Commission” in this report.

Further information regarding the review process under the *Code* may be obtained from the local offices of the Ministry of Forests or the Ministry of Water, Land and Air Protection.

Appeals Under the Forest Act

Appealable decisions under the *Forest Act* are set out in section 146 of the *Act* and include certain determinations, orders and decisions made by district or regional 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 may be appealed to the Commission without prior review. However, determinations, orders or decisions made by a district or regional manager, or employee of the Ministry, 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

The following determinations, orders and decisions under the *Range Act* are appealable to the Commission:

- determinations, orders and decisions by a forest officer or district manager relating to the suspension of all or some of the rights granted under a licence or permit;
- determinations, orders and decisions by a district manager relating to the reinstatement of suspended rights; and,
- determinations, orders and decisions by a district manager relating to the cancellation of suspended rights or the cancellation of a licence or permit where rights were under suspension.

These determinations, orders or decisions cannot be appealed to the Commission unless they have first been reviewed by a reviewer. If the person 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.

Further information regarding the review processes under the *Forest Act* and the *Range Act* may be obtained from the local Ministry of Forests' offices.

Commencing an Appeal

Notice of Appeal

To commence an appeal, an appellant must prepare a Notice of Appeal and deliver it to the Forest Appeals Commission office within three weeks of the date the review decision is served on the person. The Notice of Appeal must contain the name and address of the appellant, the reasons why the appellant objects to the review decision (the grounds for appeal), and the type of order the appellant is seeking from the Commission. The Notice of Appeal should also include the name and mailing address of the government officials responsible for the original determination and the review decision. In some cases, the review decision must be provided.

If the Commission does not receive the Notice of Appeal within three weeks of the review decision, the appellant will lose the right to appeal. However, the Chair, or a member of the Commission, may extend the deadline 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 determination, and the review decision being appealed. A representative of the Government of B.C. will be the respondent in the appeal.

Filing An Appeal

An appeal can be commenced under the *Code* by:

The person who was the subject of a decision

■
The Forest Practices Board

Appealable decisions under the *Code* are:

Administrative decisions that have undergone review by a reviewer

■
Review decision where there was a failure to make an administrative decision (can only be commenced by the Forest Practices Board)

An appeal can be commenced under the *Forest Act* or *Range Act* by:

The person in respect of whom a determination, order or decision was made

■
The person in respect of whose agreement the determination, order or decision was made

Appealable decisions under the *Forest Act* or *Range Act* are:

Administrative decisions by a district or regional manager, or by employees of the Ministry, that have undergone review by a reviewer

■
Administrative decisions by the Chief Forester

A Notice of Appeal consists of:

the appellant's name and address, along with the name and address of anyone representing him or her

■
the address to which the appellant wants notice and other official documents to be delivered

■
the name and mailing address of the government official responsible for the review decision

■
the grounds for appeal

■
description of the relief requested
(i.e. what decision the appellant would like the Commission to make)

■
if the appeal is from a determination as varied by the reviewer, a copy of the review decision must be provided with the Notice of 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. When 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.

Intervenors

The *Code* enables the Commission to invite or permit a person to participate in a hearing as an intervenor. An intervenor may participate in a hearing to the extent that the Commission allows. The *Forest Act* and the *Range Act* do not provide for intervenor participation.

Persons wishing to take part in an appeal under the *Code* as an intervenor should inform the Commission of their desire, and outline the reasons for their participation in the appeal.

If the Commission allows a person to participate as an intervenor, it will give written notice to the intervenor, and the parties involved in the appeal, specifying the extent to which the intervenor will be permitted to take part in the hearing.

Type of Hearing

The Commission has the authority to conduct a new hearing on a matter before it (i.e. hearing *de novo*).

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 order a hearing to proceed 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 the 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

As required by the *Administrative Review and Appeal Procedure Regulation*, the Commission will, within 30 days of receiving and accepting an appeal, determine which members will hear the appeal. At that time, the Commission will also set the date, time and location of the hearing. If the appeal is under the *Forest Act* or the *Range Act*, the hearing must be held within 45 days from the time the Commission receives the Notice of Appeal unless the Commission and all parties agree to a period other than 45 days.

When 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, a combination of both, 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 certain materials 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 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 time frames.

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.

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 in making 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 then will 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 between the rights of the parties.

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* or the *Range 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

One of the Government's New Era commitments was to streamline the *Code* and to establish a new "results based" forest and range planning and practices framework that maintains both environmental protection and tough penalties for non-compliance. The *Forest and Range Practices Act* ("FRPA") received Royal Assent on November 21, 2002. However, the FRPA has not yet come into force and will not do so until proclaimed by regulation. To facilitate the transition from the *Code* to the FRPA, the *Forest Statutes Amendment Act* (No. 2), 2002, SBC 2002, c.76 (the "Amendment Act"), came into force on December 17, 2002.

The *Amendment Act* makes changes with respect to planning requirements under the *Code* and implements some of the concepts in the FRPA. The *Amendment Act* will be in force until April 2005 and will co-exist with the FRPA once it comes into force. The FRPA will contain a two-year transition period within which industry and government will change from the *Code* to the FRPA. Licensees will be able to use either the *Amendment Act* or the FRPA until March 31, 2005. After April 2005, the FRPA will replace the *Amendment Act*.

Changes to the review and appeal processes that will result from the *Amendment Act* are as follows:

- The *Amendment Act* adds four new reviewable and appealable sections. These sections relate to approvals of operational plans or amendments,

declarations that certain obligations have been met by a holder of an agreement under the *Forest Act*, determinations relieving a person of certain obligations under the *Code* or approving funding to meet specified obligations to produce a free growing stand, and exemptions in relation to silviculture stocking and soil conservations performance standards;

- The *Amendment Act* allows both the Forest Practices Board and "a person" to appeal the decision to approve a plan. Under the *Code*, only the Forest Practices Board could request a review of the approval or amendment of a forest development plan or range use plan. The Board has retained the ability to request a review of a failure to make a determination in certain instances, and if the reviewer made a determination where there was not one previously, then that new decision may also be appealed to the Commission; and
- Three new defences have been added. A person cannot be found to have contravened the FRPA if the person shows that he or she exercised due diligence, reasonably believed facts that if true would prove he or she did not contravene the provision, or his or her actions were caused by officially induced error. These defences apply to determinations under sections 117, 118, and 119 made after December 17, 2002.



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 is also required to make recommendations on amendments to the *Code*, the *Forest Act* and the *Range Act* and their regulations respecting reviews and appeals.

Overall, the number of appeals filed with the Commission in 2002 was slightly higher than the number filed in 2001 and 2000. Four times as many appeals were filed under the *Forest Act* in 2002 as compared to 2001. In 2002, five appeals were filed under the *Forest Act*, compared to one filed in 2001 and a high of ten in 2000. As well, 2002 saw a minor increase in the number of appeals filed under the *Code*. There were ten appeals filed under the *Code* in 2002, compared with nine in 2001. No appeals were filed under the *Range Act* in 2002.

During the previous report period, the Commission prepared a report for the Administrative Justice Project, a review of the province's administrative justice system. In the Commission's report, it made certain recommendations to promote further efficiencies and a more cost-effective means of delivering services. These recommendations were reiterated in the Commission's 2001 annual report. The recommendations were to:

- consolidate the Commission with the Environmental Appeal Board, and any other agencies with similar mandates and functions, to "form a single tribunal with a unified, flexible appeal process that remains sensitive to the unique features of different Acts and the needs of stakeholders and government agencies;"
- adapt the mandate, policies and procedures of the consolidated tribunal to accommodate the government's shift towards results-based standards for regulating natural resource developments;
- adapt the mandate, policies and procedures of the consolidated tribunal to accommodate any new areas where the regulated industry or the public demands a right to appeal government decisions to a tribunal with scientific or technical expertise; and
- obtain legislative authority to encourage parties to settle appeals through negotiation and mediation.

On February 5, 2002, the government released the results of this phase of the Administrative Justice Project's review. In a report titled *Restructuring Administrative Justice Agencies*, the government concluded as follows with respect to the Commission and the Environmental Appeal Board:

- Both agencies serve a compelling public purpose by providing an impartial forum for the resolution of disputes. The agencies could

improve their efficiency by fully consolidating their operations.

Pending Improvements:

- The Board and the Commission will be consolidated into a single tribunal, allowing for further administrative efficiencies through shared services and cross-appointments.

The government directed the Commission and the Board to prepare and draft legislation to implement the consolidation. During 2002, the Commission office was actively involved in preparing a Request for Legislation in accordance with this direction.

In March of 2002, the Commission submitted a report on phase two of the Administrative Justice Review, the Service Delivery Review. The report makes certain recommendations including the following:

- amend the enabling legislation of the Environmental Appeal Board and the Commission so that the consolidated tribunal may order pre-hearing disclosure of documents and establish rules of practice and procedure;
- implement a more proactive process for determining whether appeals may be settled through negotiation and mediation; and
- appoint a full-time, joint vice-chair to the Environmental Appeal Board and the Commission for a fixed term.

For the purposes of this annual report, the Commission adopts these recommendations and commends them to the government for consideration.



Appeals Filed

Appeals filed under the *Code*, the *Forest Act*, and the *Range Act* have been reported separately.

In 2002, fifteen appeals were filed with the Commission. Ten of these appeals were filed under the *Code*, and five were filed under the *Forest Act*. There were no appeals filed under the *Range Act* in 2002.

Summaries of each of the appeals that were filed are provided below. The status of each of the appeals as of December 31, 2002 is provided after each summary.

Appeals under the Code

2002-FOR-001 Ole Getz v. Government of British Columbia

Appeal filed January 2, 2002

Ole Getz filed an appeal against a Review Panel decision upholding a determination that he had contravened section 96(1) of the *Code* by harvesting crown timber without authorization and that he should pay a penalty of \$500.

STATUS: Hearing held by way of written submissions concluding on October 23, 2002
Decision pending

2002-FOR-002 International Forest Products Limited v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed January 9, 2002

International Forest Products Limited appealed a Review Panel decision, which varied the determination of the District Manager approving its Forest Development Plan. The Forest Practices Board applied to dismiss the appeal on the grounds that International Forest Products lacks standing to bring the appeal.

STATUS: Preliminary hearing on the Commission's jurisdiction concluded February 15, 2002
Decision issued February 20, 2002

2002-FOR-003 Allan Colbourne v. Government of British Columbia

Appeal filed January 11, 2002

Allan Colbourne filed an appeal against a Review Panel decision upholding a determination that he had contravened sections 67(1) and 96(1) of the *Code* by harvesting Crown timber without authorization. He also appealed the penalty, which was varied by the Review Panel to \$16,700.61.

STATUS: Hearing held by way of written submissions concluding on October 23, 2002
Decision pending

2002-FOR-004 Allan Therrien v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed January 29, 2002

Allan Therrien filed an appeal against a Review Panel decision upholding a determination that he had contravened section 96(1) of the *Code* by harvesting Crown timber without authorization and that he should pay a penalty of \$20,000.

**STATUS: Hearing held May 14 and 15, and July 12, 2002
Decision issued on October 2, 2002**

2001-FOR-005 Forest Practices Board v. Government of British Columbia (Western Forest Products Limited, Third Party)

Appeal filed April 17, 2002

The Forest Practices Board filed an appeal against a Review Panel decision to rescind a stop-work Order issued to Western Forest Products Limited.

STATUS: Consent Order issued November 21, 2002

2001-FOR-006 Gordon Apostoliuk v. Government of British Columbia

Appeal filed June 27, 2002

Gordon Apostoliuk appealed a Review Panel decision upholding a determination that he contravened section 96(1) of the *Code* by harvesting Crown timber without authorization and that he should pay a penalty of \$3,255.45.

STATUS: Appeal withdrawn October 17, 2002

2002-FOR-007 Weyerhaeuser Company Limited v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed July 12, 2002

Weyerhaeuser Company Limited filed an appeal against a Review Panel decision upholding a

determination that it constructed 2 unauthorized stream crossings in contravention of section 21(1) of the *Timber Harvesting Practices Regulation* and was assessed a penalty of \$1500 for each contravention.

**STATUS: Hearing held by way of written submissions concluding on November 21, 2002
Decision pending**

2002-FOR-008 John Letkeman v. Government of British Columbia

Appeal filed December 17, 2002

John Letkeman appealed a Review Panel decision that upheld, in part, a determination that he violated section 48(1) of *Code* by not rehabilitating an area damaged under an operational plan, and upheld the penalty of \$500.

STATUS: Hearing pending

2002-FOR-009 Dale Baynes v. Government of British Columbia

Appeal filed December 17, 2002

Dale Baynes appealed a Review Panel decision upholding a determination that he contravened section 96(1) of the *Code* by harvesting Crown timber without authorization and upholding the penalty of \$3000.

STATUS: Hearing date not confirmed during this report period

2002-FOR-010 Steve Noel v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed December 17, 2002

Steve Noel appealed a Review Panel decision upholding a determination that he had contravened section 96(1) of the *Code* by harvesting Crown timber without authorization and upholding the penalty of \$22,000.

STATUS: Hearing scheduled for April 10, 2003

Appeals under the Forest Act

2002-FA-001 Cambie Cedar Products Ltd. v. Government of British Columbia

Appeal filed January 14, 2002

Cambie Cedar Products Ltd. filed an appeal against a Review Panel decision upholding a determination that it failed to comply with an obligation in a timber sales licence and imposing a one year disqualification as a small business forest enterprise pursuant to section 78(1) of the *Forest Act*.

STATUS: Abandoned February 14, 2002

2002-FA-002 Laurie Parker v. Government of British Columbia

Appeal filed January 25, 2002

Laurie Parker filed an appeal against a Review Panel decision upholding a determination that he had contravened section 138(1) of the *Forest Act* by unauthorized cutting of Crown timber. The assessed penalty of \$8,192.96 was upheld.

STATUS: Hearing held March 4 and 5, 2002

Decision issued on April 12, 2002

2002-FA-003 Laurie Parker v. Government of British Columbia

Appeal filed January 25, 2002

Laurie Parker filed an appeal against a Review Panel decision upholding a determination that he had contravened section 70(4) the *Forest Act* and upholding the cancellation of his woodlot licence.

STATUS: Abandoned March 13, 2002

2002-FA-004 Edward Reiersen v. Government of British Columbia

Appeal filed February 1, 2002

Edward Reiersen appealed the Review Panel decision, which upheld a stumpage advisory notice issued to him.

STATUS: Hearing held March 14, 2002

Decision issued on April 24, 2002

2002-FA-005 Triangle Contracting Ltd. v. Government of British Columbia

Appeal filed December 2, 2002

Triangle Contracting Ltd. appealed the Review Panel decision upholding a determination that Triangle had contravened section 78(1) of the *Forest Act* by skidding with machinery without approval, and upholding the suspension of Triangle's timber sale licence.

STATUS: The appeal is being held in abeyance at the request of the parties



Decisions

January 1, 2002 – December 31, 2002

The following are summaries of decisions rendered by the Forest Appeals Commission during 2002.

The Commission issued twelve decisions during 2002, including eight under the *Code* and four under the *Forest Act*. There were no decisions issued under the *Range Act*. Commission decisions on appeals under the *Code*, the *Forest Act* and the *Range Act* are reported separately.

Appeals under the Code

2001-FOR-002 Forest Practices Board v. Government of British Columbia (Zeidler Forest Industries Ltd., Third Party)

Decision Date: January 24, 2002

Panel: Kristen Eirikson, Bruce Devitt, James Hackett

The Forest Practices Board appealed the decision of a Review Panel to vary a determination of a District Manager. Although the Review Panel confirmed that Zeidler Forest Industries Ltd. (“Zeidler”) had contravened section 64(1)(b) of *Code* by failing to temporarily deactivate part of a forest road, and that it had contravened section 20(c) of the *Forest Road Regulation* by failing to carry out temporary deactivation to the required level, it reduced the total penalty from \$80,000 to \$5,000.

The Commission considered whether the penalty imposed against Zeidler should include an

amount that reflected the actual value of the road rebuilding costs remitted back to Zeidler as a stumpage appraisal cost allowance. The Commission found that Zeidler received a stumpage reduction it would not have received if it had not committed the contraventions, and that this resulted in an economic benefit of \$44,157 to Zeidler. The Commission also found that Zeidler received an economic benefit of at least \$1000 by failing to initially construct waterbars or cross-ditches along the road.

In addition, the Commission determined that a further penalty of \$10,000 was appropriate considering all of the relevant factors enumerated under section 117(4)(b) of the *Code*. In determining the \$10,000 penalty, the Commission considered the need for a significant deterrent, Zeidler’s co-operativeness and efforts to correct the contravention, and the gravity and magnitude of the contravention, as indicated by significant damage to the road, the loss of mature and immature trees, decreased soil productivity in a riparian area smothered by a landslide, the loss of wildlife habitat and short-term damage to fish habitat. Consequently, the total penalty for the contraventions was \$55,157.

Accordingly, the appeal was allowed.

2001-FOR-003 Lloyd Bentley v. Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: April 9, 2002

Panel: David Ormerod, Katherine Lewis,
Lorraine Shore

Mr. Bentley appealed the Review Panel decision that upheld the District Manager's determination that Mr. Bentley was responsible for contravening sections 96(1) and 97(1) of the *Code*. Specifically, the District Manager determined that Mr. Bentley caused the unauthorized harvesting of 10.52 hectares of Crown timber. The District Manager assessed a penalty of \$2,500 for the contravention of section 97(1) of the *Code*, a penalty of \$234,837.36 for the contravention of section 96(1), and a penalty of \$30,297.60 for silviculture rehabilitation as sanctioned by section 119(3)(a) of the *Code*.

The Commission first considered whether the defence of officially induced error applies to administrative penalties under the *Code*. The Commission noted that it had recognized the availability of that defence in two previous appeals. The Commission confirmed that the defence applies to administrative penalties under the *Code*.

Next, the Commission considered whether the contraventions in this case were the result of an officially induced error. The Commission concluded that Mr. Bentley had not satisfied all of the requirements of the defence. Specifically, the Commission found that while the actions of staff in the Ministry of Forests, and at other government agencies, may have contributed to Mr. Bentley's mistaken beliefs about the location of the boundaries of his family's private lands, these actions did not constitute officially induced error. The information provided to Mr. Bentley about the private property boundary was sketchy, and he was warned that he should have the

boundaries surveyed. Mr. Bentley relied on an erroneous understanding in his family, not on erroneous advice from an official.

Lastly, the Commission considered whether the penalty was reasonable. Based on its analysis of the stumpage rate to be used, the Commission reduced the penalty for the unauthorized harvesting to \$225,042.31. The Commission also rescinded the penalty assessed under section 119(3)(a) on the basis that the Crown was already compensated for its silviculture costs in the stumpage penalty assessed. Therefore, the total of administrative penalty to be paid by Mr. Bentley was \$227,542.21. Accordingly, the appeal was allowed, in part.

2001-FOR-004(a) Forest Practices Board v. Government of British Columbia (Chetwynd Forest Industries, a Division of West Fraser Mills Ltd., D & L Enterprises Ltd., Third Parties)

Decision Date: February 8, 2002

Panel: Alan Andison

The Forest Practices Board appealed a decision of a Review Panel confirming the determination of a District Manager that Chetwynd Forest Industries ("Chetwynd") had contravened the *Code* and the *Timber Harvesting Practices Regulation*. The Board appealed on the basis that D & L Enterprises Ltd. ("D & L"), Chetwynd's timber harvesting contractor, was unfairly excluded from the hearings before the District Manager and the Review Panel. The Commission subsequently requested submissions from the parties on whether the appeal fell within the jurisdiction of the Commission.

The Commission considered three issues in determining whether it had jurisdiction over the appeal. The first was whether D & L was subject of a "determination" within the meaning of the *Code*. The Commission found that no determination was made against D & L. Rather a determination was made with respect to Chetwynd.

The Commission next considered whether the grounds for appeal and remedy sought by the Board were sufficiently related to the determination and the review decision in question. The Commission found they were not. In particular, the Commission found that the Board did not appeal on the basis of an error in the determination or review decision with respect to whether Chetwynd was responsible for the contraventions, or the penalty imposed on Chetwynd. The Board also sought no remedy in respect of those matters. Further, the Commission found that any adverse effects on D & L's financial or contractual interests arose directly from the independent decision of Chetwynd to cancel its contract with D & L and seek indemnity from D & L, and not from the determination or review decision.

Lastly, the Commission found that D & L would not be deprived of redress if the Commission did not hear the appeal, because the evidence showed that D & L had already initiated mediation proceedings to resolve its contract dispute with Chetwynd, and D & L may be able to pursue a judicial review of the determination or review decision. Accordingly, the Commission found that it did not have jurisdiction to hear the matter. The appeal was dismissed, and the request for costs by Chetwynd was denied.

2001-FOR-005 Marvin Ryan v. Government of British Columbia

Decision Date: May 10, 2002

Panel: Lorraine Shore

Mr. Ryan appealed the District Manager's determination that he had harvested trees in contravention of section 67(2)(d) of the *Code*. Specifically, the District Manager found that 28 trees which should have been retained had been cut contrary to the Silviculture Prescription. The District Manager imposed a penalty of \$1,344. The determination was

confirmed in a review decision.

Mr. Ryan denied having cut the number of trees claimed by the District Manager. He argued that the District Manager's determination was based on incorrect and/or irrelevant assumptions. He submitted that the District Manager could not prove that the trees which were cut exceeded the diameter specified in the Silviculture Prescription, and that he should not have extrapolated the diameter of the trees at breast height based on their diameter at stump height. He also argued that the District Manager assumed that the standing trees sampled were reflective of the cut trees.

The Commission agreed that the best evidence of the diameter at breast height of the felled trees would be the trees themselves. Given that the trees were no longer available, the Commission considered whether the evidence concerning the estimate was sufficient, on a balance of probabilities, to show that the contravention had occurred. Based on all the evidence, the Commission found that 27 trees had been cut contrary to the Silviculture Prescription. The Commission therefore reduced the penalty to \$1,296.

The appeal was dismissed.

2001-FOR-006 Takla Development Corporation v. Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: July 4, 2002

Panel: Katherine Lewis, David Ormerod,
Brenda Milbrath

Takla Development Corporation ("Takla") appealed a Review Panel decision upholding the determination of the District Manager that it had contravened section 67(1)(e) of the *Code* by harvesting timber contrary to a silviculture prescription. The District Manager levied a penalty of \$48,498.69 (less a \$10,620.69 credit). The Review Panel varied the penalty to \$35,919.38. The District Manager made the

determination and calculated the penalty in response to directions provided by the Commission in a previous appeal concerning this matter. Takla sought an order reducing the penalty.

The Commission found that, as it had already made a decision relevant to this matter in a previous hearing, its role in this instance was limited to determining whether the previous directions of the Commission were followed. The Commission found that it was also required to determine whether the penalty that was assessed based on its previous directions was reasonable, since this was the first time it had been considered by the Commission.

The Commission confirmed that, as stated in several of its previous decisions, the defence of due diligence is not available in administrative penalty situations, but may be taken into account when assessing the quantum of the penalty. The Commission found that Takla presented no compelling evidence to show that it was duly diligent.

The Commission also confirmed its finding in previous decisions that the defence or excuse of officially induced error is available in the context of administrative penalties. However, the Commission found that the criteria required to establish such a defence had not been met in this case.

The Commission found no reason to reverse the Review Panel's decision regarding the penalty.

The appeal was dismissed.

2002-FOR-002 International Forest Products Ltd. v. Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: February 20, 2002

Panel: Alan Andison

The Forest Practices Board applied to dismiss the appeal of International Forest Products Limited ("Interfor") against a determination of a District Manager, as varied by a review decision.

The Board submitted that Interfor, as a licensee, had no right to bring the appeal since the review decision concerned the approval of a forest development plan.

The Commission found that under section 130(1) of the *Code*, a licensee may appeal a determination referred to in either section 127 or 129(5)(c) of the *Code*. However, the Commission found that the determination under appeal did not fall under either of these sections. Rather, it was a determination under section 41 of the *Code* with respect to the approval of a forest development plan. Such determinations are only appealable by the Board under section 130(2) of the *Code* and section 2(2) of the *Administrative Review and Appeal Procedure Regulation*. They are not appealable by a licensee under section 130(1) of the *Code*.

Accordingly, the Commission found that Interfor did not have standing to bring the appeal. The Board's application was granted and the appeal was dismissed.

2002-FOR-004 Allan Therrien v. Government of British Columbia (Forest Practices Board, Third Party)

Decision Date: October 2, 2002

Panel: Lorraine Shore

Mr. Therrien appealed the District Manager's determination that he contravened section 96(1) of the *Code* by cutting Crown timber without authorization while beachcombing. The District Manager's determination and penalty were upheld by a Review Panel. Mr. Therrien sought an order rescinding the determination, or, in the alternative, a determination that the \$20,000 penalty was excessive.

Mr. Therrien argued that to be found liable for a breach of section 96(1), the Government must prove on a balance of probabilities that a person cut, damaged or destroyed Crown timber.

Mr. Therrien argued that although he was found in possession of the timber, this was not sufficient to find a section 96(1) contravention.

The Commission found that the issue in this appeal was very similar to *William Hollis v. Government of British Columbia and Forest Practices Board* (Forest Appeals Commission, Appeal No. 97-FOR-13). The Commission followed the reasoning in *Hollis* and found that although the evidence against Mr. Therrien was mostly circumstantial, there was compelling physical evidence linking Mr. Therrien to the Crown timber that was harvested illegally. Further, the Commission found that, absent a credible explanation from Mr. Therrien as to how he came to possess the timber, it is more likely than not that he contravened section 96(1).

Mr. Therrien did not provide any evidence or make any legal argument in regards to the \$20,000 penalty. Therefore, the Commission upheld the District Manager's determination and the penalty.

The appeal was dismissed.

2002-FOR-005 Forest Practices Board v. Government of British Columbia (Western Forest Products, Third Party)

Decision Date: November 21, 2002

Panel: Alan Andison

By consent of the parties, the appeal of a Review Panel's decision to rescind a stopwork order issued by a forest official in the Queen Charlotte Islands was dismissed. The consent order was made subject to the joint submissions of the parties, which noted that the Government would amend its stopwork order forms, and all other documents referring to stopwork orders to clarify that stopwork orders are not formal findings of contraventions. Further, the Government agreed that a legally issued stopwork order, that has already been lifted, should not be rescinded solely on the basis of policy.

Appeals under the Forest Act

2000-FA-009 Weyerhaeuser Company Limited v. Government of British Columbia

Decision Date: March 21, 2002

Panel: Lorraine Shore, Jeanette Leitch, Geza Toth

Weyerhaeuser appealed a stumpage advisory notice that was issued by the Regional Appraisal Co-ordinator and confirmed by a Review Panel decision. The stumpage appraisal contained in the notice was based on helicopter logging on the upper east side of a cutblock, and conventional logging elsewhere, including on the upper west side of the cutblock. Weyerhaeuser appealed on the issue of whether it should have received a helicopter logging allowance in regard to the upper west side of the cutblock.

The Commission first considered the extent to which it could accept and rely upon the new information gathered after the Appraisal Co-ordinator's determination. This involved an assessment of whether the hearings before the Commission are in the nature of a hearing *de novo*. The Commission concluded that a purposive interpretation of the *Forest Act* leads to the conclusion that the Legislature intended for appeals of specialized questions of forestry to come before the Commission, and that the Commission would have an opportunity to consider those questions from its own specialized perspective. Consequently, the Commission found that it could consider information that was before the decision-maker below, as well as new evidence, in making a decision in the appeal.

The Commission next decided whether harvesting methods other than helicopter logging were "unsuitable" for the upper west side of the cutblock, under section 4.1 of the Coast Appraisal

Manual. The Commission determined that conventional logging was unsuitable on the upper west side of the cutblock. Specifically, the Commission found that a conventional system would produce an unacceptable level of ground degradation, and a conventional method of road building would result in an unacceptable likelihood of slope failure. The evidence was undisputed that if there was a failure, the streams on the slope could transport material into a fish-bearing creek. Further, the Commission held that it would be inappropriate in this case to require a licensee to undertake extraordinary methods of road building to avoid the risk of slope failure, when the same benefit could be achieved by using helicopter logging. Accordingly, the Commission concluded that the stumpage determination contained in the notice should incorporate the appropriate cost estimates for helicopter logging of the area.

The Commission rescinded the Review Panel decision, and remitted the matter back to the Regional Appraisal Co-ordinator to redetermine the appropriate stumpage rates for the cutting permit on the basis of helicopter logging as the harvesting method for the upper west side of the cutblock. The appeal was allowed.

2002-FA-002 Laurie Parker v. Government of British Columbia

Decision Date: April 12, 2002

Panel: David Ormerod

Laurie Parker appealed a Review Panel decision that upheld the District Manager's determination that Mr. Parker had contravened section 138(1) of the *Forest Act* by cutting 98 cubic metres of Crown timber without authorization. The Review Panel also upheld the penalty of \$8,192.96 assessed by the District Manager. The unauthorized harvesting had occurred in 1993, was discovered by the Ministry of Forests in 1994, and was the subject

of a criminal investigation until 1996. In March 1997, the District Manager held a hearing to determine whether an administrative penalty should be levied, and he issued his decision in June 1999.

The Commission first considered whether there had been an unreasonable delay in the proceedings leading to the appeal. The Commission found that no explanation was provided for the delay between the hearing before the District Manager and the issuance of his decision. However, the Commission found that Mr. Parker had not suffered any prejudice as a result of any delays that occurred in the proceedings that led to the appeal, and that he had contributed to the protraction of the review proceedings by failing to file evidence or participate in scheduled discussions.

The Commission next considered whether Mr. Parker was responsible for the harvesting in this case. Mr. Parker admitted responsibility for part of the area that was unlawfully harvested, but submitted that someone else was responsible for the remainder. The Commission found, on a balance of probabilities, that Mr. Parker was wholly responsible. The Commission found that Mr. Parker had provided no credible proof that someone else was partially responsible for the contravention. However, the Commission noted that the District Manager made a numerical error in calculating the penalty, and concluded that the correct penalty was \$8,016.56. Accordingly, the appeal was dismissed.

2002-FA-004 Edward Reiersen v. Government of British Columbia

Decision Date: April 24, 2002

Panel: James Hackett

Edward Reiersen appealed a November 15, 2001, stumpage advisory notice for a road permit. The stumpage appraisal contained in the notice had an effective date of August 1, 2001, and was based on an amendment to the Interior

Appraisal Manual (“IAM”), which came into effect on July 1, 2001. A review panel confirmed the notice. Mr. Reiersen appealed the notice on the basis that the effective date for the new stumpage rate applicable to sawlogs harvested under the road permit should have been November 15, 2001, and not August 1, 2001.

The Commission held that the relevant provisions of the *Forest Act* and the IAM clearly indicate that August 1, 2001, was the proper effective date for the road permit. In particular, the Commission held that it was obligated under sections 149(3) and 105 of the *Forest Act* to apply the amended IAM that was in effect as of July 1, 2001. Section 2.3.3.e of the amended IAM expressly stated that August 1, 2001, was the effective date for road permits. The Commission also found that there was evidence that Mr. Reiersen was aware of the amendment to the IAM before he received the notice. The appeal was dismissed.

Appeals under the *Range Act*

There were no appeals under the *Range Act*.



Appeals of Decisions

January 1, 2002 – December 31, 2002

British Columbia Supreme Court

Rodney Gilbert and Linda Gilbert v. Forest Appeals Commission (2002 BCSC 950)

Decision Date: June 25, 2002

Court: Mr. Justice Metzger

The Gilberts and the Minister of Forests appealed a decision of the Forest Appeals Commission confirming that the Gilberts had contravened section 96 of the *Forest Practices Code of British Columbia Act*, and directing the Ministry of Forests' District Manager to reduce the penalty levied against the Gilberts by an amount equal to the expenses they had incurred from complying with a verbal stopwork order issued by a Ministry of Forests official. The Minister of Forests appealed the Commission's findings with respect to the penalty. The Gilberts appealed the Commission's findings that they were vicariously liable for, and had benefited from, the actions of David Colebank, whom the Gilberts had hired to clear their land. Mr. Colebank and the Gilberts had agreed to share the proceeds from the sale of the timber. Without the Gilberts' knowledge, Mr. Colebank moved their private property boundary lines onto Crown land and harvested timber from both Crown land and the Gilberts' land. The Commission found that the Gilberts shared in the proceeds from the sale of the Crown timber and their timber.

The Gilberts argued that the Commission erred in law and in fact when it determined that Mr. Colebank cut the Crown timber on their behalf, and that they were in a partnership with Mr. Colebank. The Gilberts argued that the Commission also erred by upholding the District Manager's findings with respect to the amount of timber that was illegally harvested under the Gilberts' timber mark.

With respect to the appropriate standard of review, the Court adopted the findings in *International Forest Products Ltd. v. British Columbia (Forest Appeals Commission)*, [1998] B.C.J. No. 1314 (B.C.S.C.) (Q.L.), and applied a standard of reasonableness *simpliciter*.

The Court considered whether the Commission erred in its interpretation and application of section 96 of the *Code*. The Court found that sections 96(3) and 117(2) of the *Code* impose vicarious liability. Under section 117(2), liability can be imposed by virtue of the relationship between parties, such as a relationship of agency, employment, or contract. Under section 96(3), liability can also be imposed where timber was cut "at the direction or on the behalf of" another person. The Court noted that in both cases the liability is absolute. The Court found that there was no doubt that Mr. Colebank harvested the Crown timber and that the Gilberts received payment for it. The Court found that the evidence before the

Commission was consistent with the conclusion that the activity of Mr. Colebank was undertaken “on behalf of” the Gilberts, even if Mr. Colebank had acted illegally and without the knowledge of the Gilberts. The Court also found that there was no reason to disagree with the Commission’s rejection of the Gilberts’ theory that Mr. Colebank had sold a substantial amount of the Crown timber under another timber mark.

The Court found that the Gilberts had suffered damages as a result of following a verbal stopwork order issued by the Ministry. The Court noted that no written order was given as required by the *Code*, and that the Gilberts did not know that they could have ignored the order. Therefore, the Court agreed with the Commission’s decision to refer the matter back to the District Manager to determine the setoff that the Gilberts should receive as against their penalty.

The Court dismissed the appeals and ordered that the Commission’s decision to remit the matter of the penalty back to the District Manager be implemented to the extent that it directs the penalty to be reduced by an amount equal to the Gilberts’ expenses incurred as a result of the Ministry’s verbal order.

Supreme Court of Canada

28974 Attorney General of British Columbia and Ministry of Forests v. Thomas Paul, Forest Appeals Commission

Decision Date: June 13, 2002

Court: Gonthier, Major and LeBell JJ.

The application for leave to appeal to the Supreme Court of Canada by the Attorney General of British Columbia and the Ministry of Forests was granted. The application for leave to appeal by the Forest Appeals Commission was dismissed without prejudice to the Forest Appeals Commission’s rights to apply for leave to intervene in the appeal by the Attorney General of British Columbia and the Ministry of Forests.

The Forest Appeals Commission was granted intervenor status on October 23, 2002.



Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission during the period from January 1, 2002 to December 31, 2002.

A total of 15 appeals were filed with the Commission in 2002. Ten of these appeals were filed under the *Code*, and five were filed under the *Forest Act*. By the end of 2002, no appeals had been rejected, one had been withdrawn, three had been abandoned, and four had been heard.*

The Commission issued 11 decisions in 2002, including one consent order.

This table provides a summary of the appeals filed with this office and their status. *Note that hearings held and decisions issued in 2002 do not necessarily reflect the number of appeals filed in 2002. Of the 12 decisions issued in 2002, one was in relation to an appeal filed in 2000, five were in relation to appeals filed in 2001, and six were in relation to appeals filed in 2002.

Appeals filed	
Appeals filed under the <i>Code</i>	10
Appeals filed under the <i>Forest Act</i>	5
Appeals filed under the <i>Range Act</i>	0
Total Appeals filed	15
Appeals rejected	
Appeals withdrawn	1
Appeals abandoned	4
Hearings held	
Oral hearings held	5
Written hearings held	4
Total hearings held	9
Decisions issued	
Final decisions	
Under the <i>Code</i>	5
Under the <i>Forest Act</i>	3
Under the <i>Range Act</i>	0
Consent Order (<i>Code</i>)	1
Preliminary Applications	
Jurisdiction	1
Standing	1
Costs	0
Total Decisions issued	11

Number of times sections of the *Code* and its regulations were at issue in appeals filed with the Commission during report period

Section of the <i>Code</i>		
48	Ensuring soil rehabilitation	1
67	Timber Harvesting	1
96	Unauthorized timber harvest operations	6
Section of the <i>Timber Harvesting Practices Regulation</i> (B.C. Reg. 109/98)		
21	Temporary Stream Crossings	1



This table provides an overview of the determinations that were at issue in the appeals filed under the *Code* in 2002.

Number of times sections of the *Forest Act* were at issue in appeals filed with the Commission during report period

Section of the <i>Forest Act</i> , R.S.B.C. 1996, c. 157		
70	Chief forester or regional manager may reduce allowable annual cut	1
78	Disqualification of a small business forest enterprise	2
Section of the <i>Forest Act</i> , R.S.B.C. 1979, c. 140		
138	Prohibited Timber Cutting	1



This table provides an overview of the determinations that were at issue in the appeals filed under the *Forest Act* in 2002.

Parties to Forest Appeals Commission Appeals

Appellant	Number of times filed an appeal
Gordon Apostoliuk	1
Dale Baynes	1
Cambie Cedar Products Ltd.	1
Allan Colbourne	1
Forest Practices Board	1
Ole Getz	1
International Forest Products Limited	1
John Letkeman	1
Steve Noel	1
Laurie Parker	2
Edward Reiersen	1
Allan Therrien	1
Triangle Contracting Ltd.	1
Weyerhaeuser Company Limited	1



These tables show the number of times a particular party has been involved in an appeal over the report period. The tables include parties to appeals under both the *Code* and the *Forest Act*. Appeals were filed by individuals, forest companies, and the Forest Practices Board.

Third party status was granted on four occasions and there were no applications for intervenor status with respect to appeals filed during the report period.

Third Party

Number of times given third party status in appeals filed

Forest Practices Board	3
Western Forest Products Limited	1

Intervenor

Number of times given intervenor status in appeals filed

	0
--	---

APPENDIX I

Legislation and Regulations

The legislation contained in this report was up to date at the time of publication. The sections that are underlined represent the amendments to the *Code* by the *Forest Statutes Amendment Act (No.2)*, 2002, S.B.C. 2002, c. 76 brought into force by regulation on December 17, 2002. 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

Defences in relation to administrative proceedings

119.1 (1) For the purposes of a determination of a senior official under section 117, 118 or 119, no person may be found to have contravened a provision of this Act, the regulations, the standards or an operational plan if the person establishes that

- (a) the person exercised due diligence to prevent the contravention,
- (b) the person reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision, or

- (c) the person's actions relevant to the provision were the result of an officially induced error.
- (2) Subsection (1) does not apply in respect of a determination made under section 117, 118 or 119 before the coming into force of this subsection.

Division 4 – Administrative Review and Appeals

Definitions

125.1 In this Division:

“**review official**” means

- (a) for a review other than a review referred to in paragraph (b), a person employed in any of the ministries who is designated by name or title to be a review official by the deputy minister of that ministry, or
- (b) for a review requested under section 128 (3) or (4), a person employed in the Ministry of Forests who is designated by name or title to be a review official by the deputy minister of the Ministry of Forests.

Determination not effective until proceedings concluded

126 (1) A determination that may be reviewed under section 127 does not become effective 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 chief forester may order that a determination, other than a determination to levy a penalty under section 117(1), 118(4) or (5) or 119, is not stayed or is stayed subject to conditions, on being satisfied that a stay would be contrary to the public interest.
- (3) Despite subsection (1), a determination is not stayed if the determination is made
 - (a) under section 123(1), or
 - (b) under prescribed sections or for prescribed purposes.

Person subject to a determination may have it reviewed

- 127** (1) A person who is the subject of a determination under section 41, 82, 95 (2), 99 (2), 101 (2), 102 (3), 106 (1), 117 to 120, 123 (1), 162.1 (1), 162.2 (1) or (2) or 209.1 (3) may deliver, to the review official named in the notice of determination, a written request for a review of the determination.
- (2) The person must ensure that the request for review complies with the content requirements of the regulations.
 - (3) The person must deliver the request for review to the review official not later than 3 weeks after the date the notice of determination was given to the person.
 - (4) Before or after the time limit in subsection (3) expires, the review official may extend it.
 - (5) A person who does not deliver the request for review within the time specified loses the right to a review.

Forest Practices Board may have determination reviewed

- 128** (1) The board may request a review of
- (a) a determination made under section 82, 95(2) or 117 to 120,
 - (b) a failure to make a determination under section 82, 95(2) or 117 to 120, and
 - (c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendment to either of those plans.
- (2) To obtain a review of a determination under subsection (1) (a), the board must deliver a request for review to the review official specified in the notice of determination, and to the person who is the subject of the determination, not later than 3 weeks after the date the notice was given to the person who is the subject of the determination.
 - (3) To obtain a review of a failure to make a determination under subsection (1) (b), the board must deliver a request for review to the review official referred to in paragraph (b) of the definition of “review official” in section 125.1, and to the person who would be subject to the determination, not later than 6 months after the occurrence of the event that would have been the subject of the determination.
 - (4) To obtain a review of a determination under subsection (1) (c), the board must deliver a request for review to the review official referred to in paragraph (b) of the definition of “review official” in section

125.1, and to the person who is the subject of the determination, not later than the prescribed period after the approval of the plan or amendment was given to the person who is the subject of the determination.

- (5) The board must ensure that the request for review complies with the content requirements of the regulations.
- (6) A time limit referred to in subsection (2) or (4) may be extended, before or after its expiry, by
 - (a) the regional manager, for the time limit in subsection (2), and
 - (b) the deputy minister of the Ministry of Forests, for the time limit in subsection (4).
- (7) If the board does not deliver the request for review within the time specified, the board loses the right to a review.

Review

- 129 (1) A review official who receives a request for review must ensure that the review is conducted by one or more persons who
- (a) are employed under the *Public Service Act*, and
 - (b) have not made the determination under review, or are not the persons who failed to make a determination, if the review is for that reason, or have not participated in an investigation on which the determination was based.
- (2) The reviewer may decide the matter, based on one or more of the following:
- (a) the request for review and the ministries' files;
 - (b) the request for review, the ministries' files and any other communication with persons the reviewer considers

necessary to decide the matter, including communicating with the person or board requesting the review and with the person who made or failed to make the determination;

- (c) an oral hearing.
- (3) After a request for review is delivered under section 127 or 128,
- (a) the person who is the subject of the determination, or who would be the subject of a determination, if made,
 - (b) the board, if, under section 128, the board requested a review, and
 - (c) the government must disclose the facts and law on which the person, board and government will rely at the review, if required by the regulations and in accordance with the regulations.
- (4) If permitted by, and in accordance with, the regulations, the reviewer may refer to the commission a question of law raised in a review, if there is agreement to the referral by
- (a) the person who is the subject of the determination or would be the subject of a determination, if made,
 - (b) the board, if, under section 128, the board requested the review, and
 - (c) the government.
- (5) The reviewer may make a decision
- (a) confirming, varying or rescinding the determination under review,
 - (b) referring a determination or failure to make a determination back to the person who made it or failed to make it with or without directions, or
 - (c) making a determination, if the review concerns the failure to make a determination.
- (6) The reviewer must give a written decision

to the person who is the subject of the determination or, for a review of a failure to make a determination, the person who would be the subject of a determination, if made, and the board within

- (a) the prescribed period after the request for review was received by the review official, or
- (b) another period agreed to by
 - (i) the person who is the subject of the determination, or who would be the subject of a determination, if made,
 - (ii) the board, if, under section 128, the board requested a review, and
 - (iii) the government.
- (7) Despite subsection (6)(a), if the reviewer determines that the request for review does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under subsection (3), the prescribed period under subsection (6)(a) does not begin until a request for review is received that does comply with those requirements, or the facts and law are disclosed as required under subsection (3).

Determinations that may be appealed

- 130** (1) Subject to subsection (3), a person who is the subject of a determination referred to in
- (a) section 127, or
 - (b) section 129(5)(c)
- may appeal the determination to the commission.
- (2) Subject to subsection (3), the board may appeal to the commission
- (a) a determination referred to in section 128(1)(a),
 - (b) a failure to make a determination referred to in section 128(1)(b),

- (c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendments to either of those plans, and
- (d) any determination for which a review decision has been given under section 129(6).

- (3) No appeal may be made under subsection (1) or (2) unless the determination or failure to make a determination has first been reviewed under section 129.
- (4) If a determination is varied by the reviewer, the appeal to the commission is from the determination as varied.
- (5) If, as a result of a review of a failure to make a determination, the reviewer makes a determination, the appeal to the commission is from the determination made by the reviewer.

Appeal

- 131** (1) To initiate an appeal under section 130, the person referred to in section 130(1) or the board, no later than 3 weeks after receiving the review decision under section 129(6), must deliver to the commission a notice of appeal and
- (a) in the case of a determination referred to in section 130(1)(a) or 130(2)(a), (c) or (d), enclose a copy of the determination, and
 - (b) in the case of the determination referred to in section 130(1)(b) or (2)(b), enclose a copy of the reviewer's determination.
- (2) If the appeal is from a determination as varied under section 129, the person or board bringing the appeal must include a

- copy of the review decision with the notice of appeal given under subsection (1).
- (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.

Referral of questions of law

- 131.1** A hearing regarding a question of law referred under section 129 (4) must be conducted in accordance with the regulations.

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.

Powers of commission

- 138** (1) On an appeal of a determination or of the confirmation, variance or rescission of a determination, the commission may consider the findings of
- (a) the person who made the determination that is being appealed, or
 - (b) the reviewer.
- (2) On the appeal, the commission may
- (a) confirm, vary or rescind the determination appealed from, or
 - (b) refer the matter with or without directions back to the person
 - (i) who made the initial determination, or
 - (ii) in the case of a determination made under section 129(5)(c), the reviewer who made the determination.
- (3) On considering a question of law referred to the commission under section 129(4), the commission may decide the question of law and the decision is binding
- (a) on the reviewer for the purposes of the review in question, and
 - (b) on the commission for the purposes of an appeal concerning the determination or the failure to make a determination that was subject of the review in question.
- (4) The commission may order that a party or intervenor pay another party or intervenor 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.

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.

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* and *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 a chair, one or more vice chairs and other members the Lieutenant Governor in Council may appoint.
- (3) Appointments under subsection (2) may be for a term of up to 3 years.
- (4) The Lieutenant Governor in Council may
- (a) appoint a person as a temporary member to deal with a matter before the commission, or for a specified period or during specified circumstances, and
 - (b) designate a temporary member as chair.
- (5) A temporary member has all the powers and may perform all the duties of a member of the commission during the period, under the circumstances or for the purpose of the appointment.
- (6) The Lieutenant Governor in Council may determine the remuneration, reimbursement of expenses and other conditions of employment of the members of the commission.

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.

Application of other sections

- 196** Sections 191 and 193 apply to the commission.

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 of Forests 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 of Forests 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.

- (d) the chief forester, by way of a determination under section 66(4)(b) or (5)(b), of the area of Crown land described in that section.
- (2) No appeal may be made under subsection (1)(a) and (b) unless the determination, order or decision has first been reviewed under Division (1) of this Part.
- (3) If a determination, order or decision referred to in subsection (1)(a) and (b) is varied by the person conducting a review under section 145, the appeal to the commission is from the determination, order or decision as varied under that section.
- (4) If this Act gives a right of appeal, this Division applies to the appeal.

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 of
- (a) a district manager or regional manager, under the provisions referred to in section 143(1)(a) and (b),
 - (b) an employee of the ministry, under section 105(1),
 - (c) the chief forester, under section 60(2), 68, 70 (1), 77(1)(a) or 112(1), and

Notice of appeal

- 147** (1) If under the provisions referred to in section 146 a determination, order or decision 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 the date the determination, order or decision is served on the person under the provisions

referred to in section 146(1)(c) and (d), 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.

Range Act

Review and appeal

- 41** (1) A review may be required of a determination, order or decision of
- (a) a forest officer under section 34, and under a licence or permit, and
 - (b) a district manager under sections 31, 32, 34, and 35, and under a licence or permit.
 - (c) [Repealed 1997-48-152.]
- (2) A review of the determination, order and decision referred to in subsection (1)(a) and (b) is to be conducted by the regional manager.
- (3) If a review is to be conducted by the regional manager under subsection (2), the regional manager may delegate the power to decide the review to an official in the Ministry of Forests.
- (4) Subject to subsection (5), an appeal may be made to the Forest Appeals Commission from a determination, order or decision of a forest officer or district manager under the provisions referred to in subsection (1) but only if the determination, order or decision has first been reviewed.
- (5) If a determination, order or decision referred to in subsection (1) is varied by the person conducting a review, the appeal to the Forest Appeals Commission is from the determination, order or decision as varied.
- (6) The procedures and powers in respect of reviews and appeals under the *Forest Act* apply to reviews and appeals under this section.

Appeal from section 26 decision

- 42 (1) Section 41 does not apply to an appeal from a decision of a district manager made under section 26.
- (2) The holder of a licence or permit affected by a decision to change boundaries under section 26 may appeal the change to the minister by serving, within 21 days after service of the notice referred to in section 26(2), written notice of the appeal on the district manager who made the decision.
- (3) The notice of appeal must include the name and address of the appellant, the reasons in support of the appeal and a copy of the notice of the change being appealed.
- (4) The minister, or a person designated in writing by the minister, must promptly
- (a) hear the appeal,
 - (b) confirm, reverse or vary the decision of the district manager, and
 - (c) provide the appellant with a written decision by delivering a copy to the appellant, or by mailing a copy to the appellant by registered mail to the address of the appellant in the notice of appeal.

Appeal not a stay

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

Administrative Review and Appeal Procedure Regulation

Part 1

DEFINITIONS

Definitions

1 (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, or
- (c) for a *Forest Practices Code of British Columbia Act* appeal, the person that initiates an appeal under section 131(1) of that Act, and includes the board if the board initiates an appeal under section 131(1) of that Act;

“**requesting person**” means a person that requests a review of

- (a) a determination, order or decision under the *Forest Act* or *Range Act*, or
- (b) a determination under the *Forest Practices Code of British Columbia Act*, and includes the board if the board requests a review of a determination, or a failure to make a determination, under the *Forest Practices Code of British Columbia Act*;

“**reviewer**” means

- (a) for a review under the *Forest Act*,

- (i) the regional manager if the review concerns a determination, order or decision referred to in section 143 (1) (a) or (c) of the *Forest Act*,

- (ii) the chief forester if the review concerns a determination, order or decision referred to in section 143 (1) (b) of the *Forest Act*, or

- (iii) the person to whom, under section 143 (3) of the *Forest Act*, the regional manager or chief forester delegates the power to decide the review,

- (b) for a review under the *Range Act*,

- (i) the regional manager if the review concerns a determination, order or decision referred to in section 41 (1) (a) or (b) of the *Range Act*, or

- (ii) the person to whom, under section 41 (3) of the *Range Act*, the regional manager delegates the power to decide the review, or

- (c) for a review under the *Forest Practices Code of British Columbia Act*, “reviewer” as defined in section 1 (1) of that Act.

- (2) For the purposes of Division 4 of Part 6 of the *Forest Practices Code of British*

Columbia Act and this regulation, “ministries” means the Ministry of Forests, the Ministry of Environment, Lands and Parks and the Ministry of Energy and Mines.
[am. B.C. Reg. 76/2001, Sch. 1, ss. 1 and 2.]

Part 2

ADMINISTRATIVE REVIEW PROCEDURE

Division 1 – Requesting a Review

Review requests by board

- 2 (1) The board may request a review of a determination under the *Forest Practices Code of British Columbia Act* with respect to approval of a forest development plan, range use plan or amendment to either plan if the board believes that, in relation to the preparation of the plan or amendment, there has been a contravention of that Act or the regulations made under that Act.
- (2) The board may request a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to
- (a) a forest development plan,
 - (b) a range use plan, or
 - (c) an amendment to either plan
- if the board believes that, in relation to the preparation of the plan or amendment, there has been a contravention of the *Forest Practices Code of British Columbia Act* or the regulations made under that Act.
- (3) The prescribed period for the purposes of section 128 (4) of the *Forest Practices Code of British Columbia Act* is 45 days.
[en. B.C. Reg. 76/2001, Sch. 1, s. 3.]

Request for review: content requirements

- 3 (1) For
- (a) a review of a determination, order or decision referred to in section 143 (1) of the *Forest Act* or section 41 (1) of the *Range Act*,
 - (b) a review of a determination referred to in section 127 (1) or 128 (1) (a) of the *Forest Practices Code of British Columbia Act*,
 - (c) a review of a failure to make a determination referred to in section 128 (1) (b) of the *Forest Practices Code of British Columbia Act*, or
 - (d) a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to a forest development plan, range use plan or amendment to either plan,
- the request for review must be signed by, or on behalf of, the requesting person and must contain all of the following information:
- (e) the name and address of the requesting person;
 - (f) the address for service of the requesting person;
 - (g) the grounds for review;
 - (h) a statement of the relief requested.
- (2) In addition to the requirements of subsection (1), a request made by the board must also include the following information:
- (a) for a review of a failure to make a determination, the name of the person whose failure to make a determination is the subject of the request;
 - (b) for a review of a determination with respect to the approval of a forest development plan, range use plan or amendment to either plan,

- (i) the name of the agreement holder to which the plan or amendment relates, and
 - (ii) the name of the person who made the determination;
- (c) for a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to a forest development plan, range use plan or amendment to either plan, the name of the person who gave effect to the plan or amendment.
- [en. B.C. Reg. 76/2001, Sch. 1, s. 4.]

Division 2 – Procedures after Receipt of Request for Review under the Forest Act and Range Act

Reviews conducted under the Forest Act and Range Act

4 Sections 5 to 8 apply to requests for reviews under the *Forest Act* and *Range Act*.

Notification of parties following receipt of request for review

5 The reviewer must acknowledge in writing any request for review.

Deficient request for review

- 6 (1) If a request for review does not comply with section 3, the reviewer may serve a written notice of deficiencies on the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.
- (2) If the reviewer serves a notice of deficiencies under subsection (1), the requested review may proceed only after the earlier of
- (a) the expiry of the period specified in the notice of deficiencies, or
 - (b) the submission to the reviewer of further material remedying the

deficiencies.

- (3) The reviewer must serve a copy of the request and any notice of deficiency on the person who made the determination, order or decision that is the subject of the request.

[am. B.C. Reg. 76/2001, Sch. 1, s. 5.]

Notice of review

- 7 The reviewer must serve a notice of review to the person who requested the review, and to the person referred to in section 6(3), setting out,
- (a) in accordance with section 145(1) of the *Forest Act*, the basis on which the review is to be conducted, and
 - (b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

- 8 The prescribed period for the purposes of section 145(3)(a) of the *Forest Act* is 60 days.

Division 3 – Procedures after Receipt of Request for Review under the Forest Practices Code of British Columbia Act

Reviews conducted under the Forest Practices Code of British Columbia Act

9 Sections 10 to 14 apply to request for reviews under the *Forest Practices Code of British Columbia Act*.

Notification of parties following receipt of a request for review

- 10 (1) The reviewer must acknowledge in writing any request for review.
- (2) If a request for review is
- (a) made by a requesting person, other than the board, the reviewer must

- give a copy of the request to
- (i) the person who made the determination that is the subject of the request, and
 - (ii) the board, or
- (b) made by the board, the review official must give a copy of the request to the following:
- (i) for the review of a failure to make a determination, the person whose failure to make a determination is the subject of the request;
 - (ii) for a review of a determination with respect to the approval of a forest development plan, range use plan or amendment to either of those plans, the agreement holder to which the plan or amendment relates and the person who made the determination;
 - (iii) for a review of giving effect, under section 40 of the *Forest Practices Code of British Columbia Act*, to a forest development plan, range use plan or amendment to either plan, the person who gave effect to the plan or amendment.
- [am. B.C. Reg. 76/2001, Sch. 1, s. 6.]

Deficient request for review

- 11 (1) If a request for review does not comply with section 3, the review official may give a written notice of deficiencies to the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.
- (2) If the reviewer gives a notice of deficiencies under subsection (1), the requested

- review may proceed only after the earlier of
- (a) the expiry of the period specified in the notice of deficiencies, or
 - (b) the submission to the review official of further material remedying the deficiencies.

Agreement holder party to review

- 11.1 If the board has requested a review of a determination under the *Forest Practices Code of British Columbia Act* with respect to the approval of a forest development plan, range use plan or amendment to either plan, the agreement holder to which the plan or amendment relates is a party to the review.
- [en. B.C. Reg. 76/2001, Sch. 1, s. 7.]

Designation of reviewer

- 12 On receipt of a request for review, the review official must designate the reviewer or reviewers and, if more than one, appoint one of them as the chair.

Notice of review

- 13 The reviewer must give a notice of review to the person who requested the review, and to the persons referred to in section 10(2), setting out,
- (a) in accordance with section 129(2) of the *Forest Practices Code of British Columbia Act*, the basis on which the review is to be conducted, and
 - (b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

- 14 The prescribed period for the purposes of section 129(6)(a) of the *Forest Practices Code of British Columbia Act* is 60 days.

FOREST APPEALS COMMISSION PROCEDURE

Notice of appeal

- 15 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*, and the notice of appeal for an appeal under section 41 of the *Range 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

- 16 (1) If a notice of appeal does not comply with section 15, 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 *Range Act*, or
 - (b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Forest Practices Code of British Columbia 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 earlier of

- (a) the expiry of the period specified in the notice of deficiencies, or
- (b) the submission to the commission of further material remedying the deficiencies.

Notification of parties following receipt of notice of appeal

- 17 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 Ministry of Forests, and
 - (b) in the case of an appeal under the *Forest Practices Code of British Columbia Act*, give a copy of the notice of appeal to the deputy minister of the Ministry of Forests, in addition to the persons referred to in section 131(6) of that Act.

Procedure following receipt of notice of appeal

- 18 (1) 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) subject to subsections (2) and (3), set the date, time and location of the hearing, and
 - (d) give notice of hearing to the parties if the appeal is under the *Forest Practices Code of British Columbia Act*, or serve notice of hearing on the parties if the

appeal is under the *Forest Act* or *Range Act*.

- (2) The prescribed period for the purposes of section 148(1)(b) of the *Forest Act* is 45 days after the commission receives the notice of appeal.
- (3) Despite subsection (2), the parties and the commission may agree to a period other than 45 days.

Panel chair determined

19 For an appeal that is 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

- 20 (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

- 21 (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 written 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 take part.

Transcripts

- 22 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 appeal decision under the Forest Act

- 23 The prescribed period for the purposes of section 149.1(3) of the *Forest Act* is 42 days after conclusion of the hearing.
[am. B.C. Reg. 76/2001, Sch. 1, s. 8.]

Part 4

ANNUAL REPORT OF THE FOREST APPEALS COMMISSION

Content

- 24 (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 during the year,
 - (b) the number of appeals completed 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*.
- [am. B.C. Reg. 76/2001, Sch. 1, s. 9.]

Part 5

TRANSITION

Administrative appeals

- 25** If, before June 15, 1995, a person contravenes a section of the *Forest Act* or *Range Act* that is repealed and replaced by a provision of the *Forest Practices Code of British Columbia Act*, and at the date of the contravention the *Forest Act* or *Range Act* provided a right of appeal in respect of contraventions of that section, the person may appeal a determination that they contravened the section and the appeal provisions of the *Forest Act* or *Range Act* that are in effect at the date of the determination apply to the appeal.

