BRITISH COLUMBIA

Forest Appeals Commission

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**DECISION NO. FAC-FRP-20-A003(a)**

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

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|---|---|---|
| **BETWEEN:** | Altherr & Schellenberg Cattle Co. | **APPELLANT** |
| **AND:** | Government of British Columbia | **RESPONDENT** |
| **BEFORE:** | A Panel of the Forest Appeals Commission<br>Darrell Le Houillier, Chair | |
| **DATE:** | Conducted by way of written submissions concluding on July 23, 2021 | |
| **APPEARING:** | For the Appellant: | Michael Manhas, Counsel<br>Niles Bond, Counsel |
| | For the Respondent: | Andrew S. Grant, Counsel |

## FINAL DECISION

## APPEAL

[1] Altherr & Schellenberg Cattle Co. (the "Appellant") appeals a determination (the "Determination") issued on April 3, 2020, by Ian Hannah. Mr. Hannah is a Resource Manager (the "Manager") in the Cariboo-Chilcotin Natural Resource District, working for the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the "Ministry"). The Determination relates to fence repair and construction and associated land clearing by the Appellant at two sites near Alexis Creek, British Columbia, in 2017.

[2] The Manager determined that the Appellant's activities contravened section 52 of the *Forest and Range Practices Act* (the "*Act*") at one site, and contravened sections 51(1)(b) and 52 of the *Act* at the other. The Manager levied a total penalty of $15,033.90 for the contraventions.

[3] On appeal, the Appellant does not deny that it committed the contraventions. The Appellant contends that the penalty was not levied within the three-year limitation period that applies under section 75 of the *Act*.

[4] Sections 84(1)(d) of the *Act* provides that the Commission may either:

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

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

[5] The Appellant requests that the Commission find that the penalty is invalid due to the expiry of the limitation period.

## BACKGROUND

[6] The following background facts are based on the parties' Agreed Statement of Facts and the documents attached to it.

*General*

[7] The Appellant is a company engaged in ranching, and its principal is Felix Schellenberg.

[8] The Appellant's activities that led to the determination involved the removal, maintenance, and construction of fencing, and clearing 30 to 60-meter swaths of land for fencing.

[9] The first site where the contraventions occurred is located in Nazko Lake Provincial Park (the "Nazko Site"), where the Appellant also has a range use plan. The land clearing occurred between Loomis Lake and Deerpelt Lake, where an old wooden fence was replaced.

[10] The second site is located on the Tzazati Mountain Forest Service Road (the "Tzazati Site"), several kilometers north of the Nazko Site. The Appellant owns private land at the Tzazati Site and holds a grazing lease for Crown lands adjacent to its private lot. The clearing occurred on both private land and Crown land. There was no fence there prior to the clearing.

*March 30 complaint and April 5 visit at Tzazati Site*

[11] On March 30, 2017, Alvin Frank, a Natural Resource Officer ("NRO") with the Ministry's Compliance and Enforcement Branch, received a complaint from a grader operator. According to the complaint, land was being cleared at or about the 9 kilometre ("km") mark on the Tzazati Mountain Forest Service Road.

[12] A series of communications followed, between NRO Frank and another NRO with the Ministry's Compliance and Enforcement Branch, Christine Turlet. In the Agreed Statement of Facts, the parties agree that both NRO Frank and NRO Turlet are officials[1] for the purpose of section 75(1).

[13] The afternoon of March 30,2017, NRO Frank sent an email describing the complaint to NRO Turlet. Later that day, NRO Turlet responded by phone. NRO

[1] There are three definitions for an "official", according to section 1(1) of the Act. The first is someone within the ministry of, and designated by name or title as an official by, the minister responsible for the administration of the Act. The second is an employee within the ministry of the minister responsible for the *Wildlife Act*, and designated by name or title to be an official by that minister. The third is an employee of the Oil and Gas Commission who is designated by name or title to be an official by the commissioner under the *Oil and Gas Activities Act* for the purpose of that provision.

Turlet requested that NRO Frank visit the site and report his findings to her, after which a decision could be made about whether the matter should be investigated further. This exchange is described in an "NRO Chronology Report" prepared by NRO Frank, which was provided to the Commission.

[14] On the morning of April 5, 2017, NRO Frank emailed NRO Turlet, asking if she had entered the complaint in the Natural Resource Violation ("NRV") Reporting database. He also asked, if not, whether she wanted him to enter it.

[15] Later on April 5, 2017, NRO Frank and Lucy Jones, a Range Agrologist ("RA") with the Ministry, attended the Tzazati Site. At approximately 8.5 km on the Tzazati Mountain Forest Service Road, they noticed recent timber clearing on the north side of the road, including debris piles along the cleared area. Using a global positioning system ("GPS") device (an iPad), they determined that the timber clearing at Tzazati Site had occurred both on a private lot and on the adjacent grazing lease Crown lands. Copies of NRO Frank's handwritten notes from March 30 and April 5, 2017 were provided to the Commission.

[16] On April 6, 2017, NRO Turlet replied to NRO Frank's email from the day before about entering the complaint into the NRV Reporting database, stating "It would be nice for you to do since you have all the info." On April 7, 2017, NRO Turlet emailed NRO Frank and requested that he email her his notes from the site visit.

*Nazko Site and subsequent investigations of both Sites*

[17] On May 19, 2017, the Appellant emailed RA Jones to inform her that he was replacing the fence between Deerpelt Lake and Loomis Lake. He also requested fencing materials, if there were any available or that he could buy.

[18] On June 9, 2017, RA Jones informed Connie Haley, a Range Resource Technician with the Ministry, that the Appellant had cleared the right of way for the fence between Loomis Lake and Deerpelt Lake.

[19] On June 12, 2017, RA Jones and Ms. Haley met to discuss the Nazko site. According to Ms. Haley's notes from the following day, on June 12, 2017, RA Jones told her that she had pictures of the right of way.

[20] Also on June 12, 2017, RA Jones met with a BC Parks Supervisor, Karen Mohr. The two compared pictures they each had and confirmed they were of the same site. Ms. Mohr's notes indicate that, at that time, she had thought that the clearing of forest at the Nazko Site was a fire break.

[21] By June 13, 2017, RA Jones emailed the pictures of the right of way at Nazko to Ms. Haley, and she forwarded them on to a Range Officer, Chris Armes.

[22] On June 15, 2017, NRO Turlet, Ms. Haley, and Ms. Mohr attended the Nazko Site to inspect the site and document their findings.

[23] On June 25, 2017, NRO Turlet and another NRO attended the Tzazati Site to inspect the site and document their findings.

[24] On June 28, 2017, NRO Turlet and Jason McKee, a Fishery Officer, interviewed the Appellant in relation to his activities at both sites.

[25] On May 20, 2018, NRO Turlet and another NRO attended the Tzazati Site to inspect the site further and record tree measurements.

[26] On May 22, 2018, NRO Turlet flew by helicopter over the Tzazati Site and took aerial photographs of the site.

[27] On July 5, 2018, NRO Turlet received a trespass-silviculture cost estimate for the Nazko Site.

[28] On January 28, 2019, NRO Turlet received a damage assessment summary for the Tzazati Site. On February 11, 2019, NRO Turlet received a stumpage estimate for the land clearing at the Tzazati Site.

*The Determination*

[29] In a letter dated May 27, 2019, the Manager offered the Appellant an opportunity to be heard before he made a determination on the alleged contraventions of the *Act*. Included with the letter was a copy of the Ministry's evidence package.

[30] On July 8, 2019, Mr. Schellenberg, the Appellant's principal, provided written submissions by email in response to the Manager's May 27, 2019 letter.

[31] In the April 3, 2020, the Manager issued the Determination. On page 5, the Determination states that Ministry staff "discovered the alleged contraventions (on Site 2)" (i.e., the Tzazati Site) on April 5, 2017. On page 9, the Manager noted that a three-year limitation period applies under section 75(1) of the *Act*, which states:

> **75** (1) The period during which an administrative penalty may be levied under section 71 (2) … is 3 years beginning on the date on which the facts that lead to the determination that the contravention occurred first came to the knowledge of an official.

[32] Next, the Manager's determination stated, "I have determined that 2017-04-05 is when this contravention became known to an official which is within the limitation period."

[33] On page 4 of the determination, it states that the parties agreed that no authorizations were in place for destroying or constructing a fence on either site. The relevant findings of fact on page 6 of the determination state:

> Site 1 [Nazko]
>
> - Mr. Schellenberg had authorization under his range tenure agreement to maintain his fence as per his range use agreement, including a five meter wide right of way and a maximum of 25$m^3$ per year.
> - Mr. Schellenberg did not have authorization to create a 30-60 meter wide right of way for his fence.
>
> …
>
> Site 2 [Tzazati]

- Mr. Schellenberg had authorization within his grazing lease and there is no evidence to suggest he is not following a lease management plan as required.
- Mr. Schellenberg did not have authorization to construct fence or clear right of way on crown land.

…

[34] In addition, the Manager found that, at both sites, remediation would be required to address the damage done to the forest by the Appellant. The Appellant, however, realized no economic gain from the infractions.

[35] The Manager concluded that the Appellant's activities at the Nazko Site contravened section 52 of the *Act*, and the Appellant's activities at the Tzazati Site contravened sections 51(1)(b) and 52 of *Act*. The Manager levied a total penalty of $15,033.90 for the contraventions, pursuant to section 71(2) of the *Act*.

*The Appellant's receipt of the Determination*

[36] On April 3, 2020, the Manager sent the Determination to the Appellant via registered mail.

[37] On April 16, 2020, the Manager sent the Appellant a letter via registered mail to notify the Appellant of a typographical error in the Determination. The registered mail tracking and delivery information for both the Determination and the April 16, 2020 letter indicate that they were sent to the Appellant at the same address.

[38] On April 24, 2020, Mr. Schellenberg emailed the Manager and said he had not received the Determination referenced in the April 16, 2020 letter. The Manager replied by email on April 28, 2020, stating that the Determination had been sent by registered mail, but the Manager could send another copy of the Determination, by mail again or by email.

[39] In an April 28, 2020 email, Mr. Schellenberg requested that the Manager send a copy of the Determination by email, which the Manager did the next day.

[40] On April 30, 2020, Mr. Schellenberg emailed the Manager expressing his dissatisfaction with the Determination. On May 5, 2020, the Manager replied, noting that the Appellant could appeal the Determination.

*The Appeal*

[41] In a November 13, 2020 letter to the Appellant, the Ministry noted that the Determination provided an incorrect deadline for appealing the Determination. The letter also stated that the Ministry would consent to an extension of time[2] for the Appellant to appeal the Determination if the appeal was filed by December 18, 2020.

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[2] Section 140.2 of the *Act* provides that section 24 of the *ATA* applies to the Commission. Section 24(2) of that Act gives the Commission the power to extend the 30-day time limit for filing a notice of appeal if it is satisfied that special circumstances exist, even if the time for filing the appeal has already expired.

[42] On December 17, 2020, the Appellant's legal counsel filed a Notice of Appeal against the Determination.

## ISSUE

[43] As noted above, the Appellant does not dispute the findings in the Determination with respect to the contraventions, but the Appellant argues that the penalty should be "quashed" because it was issued outside the three-year limitation period imposed by section 75(1) of *Act*.

[44] The Appellant's Notice of Appeal raised an additional ground of appeal, alleging that the Manager failed to consider the defences of due diligence, mistake of fact, and officially induced error raised by Mr. Schellenberg's July 8, 2019 submission to the Manager. However, the Appellant's appeal submissions do not mention that ground of appeal. In fact, the Appellant's submissions state:

> There is only one issue in this appeal: should the administrative penalty specified by the Contravention Determination be quashed because it was issued outside the three-year limitation period imposed by s. 75(1) of FRPA?
>
> [underlining added]

[45] I find that the Appellant's submissions state that the Appellant is only advancing one issue in this appeal: whether the Determination should be reversed because it was issued outside of the limit prescribed by section 75(1) of the *Act*. The submissions exclude every other issue in the appeal, including whether the Manager erred by failing to consider the defences of due diligence, mistake of fact, and officially induced error. I therefore conclude that this ground of appeal has been abandoned and dismiss it on that basis.

[46] Alternatively, I conclude that the Appellant has failed to diligently pursue that ground of appeal. As authorized by section 31(1)(e) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the "*ATA*"), I dismiss that ground of appeal as a result. In doing so, I note that the Appellant has had the opportunity to make written submissions, as required by section 31(2) of the *ATA*.

[47] Thus, in deciding the appeal, I considered the following issue:

> Does the three-year limitation period in section 75 of the *Act* apply to prevent a penalty from being levied in relation to some or all of the contraventions?

## DISCUSSION AND ANALYSIS

### Does the three-year limitation period in section 75(1) of the *Act* apply to prevent a penalty from being levied in relation to some or all of the contraventions?

*Summary of the Appellant's submissions*

[48] The Appellant submits that the three-year limitation period applies in this case for two reasons:

(a) the facts that led to the determination that the contravention occurred first came to the knowledge of an official on March 30, 2017, more than three years before the date of the determination; and

(b) even if April 5, 2017, is used as the date for knowledge, the determination was issued outside the three-year time limit because it was only conclusively deemed to have been given to the Appellant on April 11, 2020.

[49] The Appellant submits that the Respondent bears the onus of proving that the penalty was "levied" within three years of when the facts that led to the determination that the contravention occurred first came to the knowledge of an official. According to the Appellant, the Respondent can meet this burden by establishing that: (a) the facts first came to the knowledge of an official late enough in time that the limitation period could be met; and (b) the penalty was "levied" within the limitation period.[3]

[50] The Appellant argues that section 75 of *Act* does not require an official to have full knowledge of a contravention before the limitation period begins to run. An official only had to have some knowledge of the facts that led to the finding of a contravention. The Appellant submits that officials had such knowledge on March 30, 2017, in this case.

[51] The Appellant maintains that the Manager erred in finding that the contravention became known to an official on April 5, 2017. The Appellant says the information before the Manager only included the Appellant's brief submissions and the case file prepared by Ministry investigators, and the only meaningful reference to anything occurring on April 5, 2017, is found on page 15 of the Ministry case file:

> On April 5, 2018 [sic], at approximately 1135 hours, Natural Resource Officer Frank conducted an onsite visit accompanied by Range Agrologist Lucy Jones. They arrived on site at approximately 8.5 Km and notice recent timber clearing on the northern side of road. There were debris piles along the clearing done by machinery. With the use of an iPad, Natural Resource Officer Frank located himself on the map to be on/near a Private Land DL 3435 and showed that the clearing appears to be off the Private Lot.
>
> Jones advised Natural Resource Officer Frank that the map showed the grazing lease extending from Private Land boundary to the west and north which is on crown land. Further checks to the west of the northern boundary of the grazing lease revealed further cutting along the Brown Creek FSR within leased land portion.[4]

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[3] The Appellant referenced *R. v. Biedler*, [1975] 3 W.W.R. 381 (B.C. S.C.), which addresses the burden of proof in cases where the start of the limitation period under section 135(2) of *The Securities Act, 1967 (B.C.)*, c. 45 (no longer in force). The relevant section prescribed a limitation period for proceedings. That limitation period began when "… facts … first came to the knowledge of the [B.C. Securities] Commission." The Court held that when facts first came to the attention of a decision-maker is a matter "peculiarly within the knowledge of" that party. As such, the Court stated, regardless of the ordinary burden of proof, in such a case, the burden rightfully falls upon that party.

[4] Quotation reproduced as written.

[52] The Appellant submits that this narrative provides no indication that officials learned of the contravention on April 5, 2017. The case file included no documents (whether photographs, notes, or correspondence) from the April 5, 2017 visit, to corroborate this narrative or otherwise allow the Manager to assess what knowledge was gained by officials on that date.

[53] The Appellant acknowledges that the Respondent has since provided two further documents relating to the April 5 site visit: NRO Frank's handwritten notes (from March 30 and April 5, 2017); and, the NRO Chronology Report. However, the Appellant submits that the only additional detail these documents provide is that photos were apparently taken of the land clearing. It is not possible to know what those photos revealed, since they were not produced as part of the case file or subsequently. The Appellant submits, therefore, that the record fails to support the Manager's finding that officials first learned of the contravention on April 5, 2017.

[54] Instead, the Appellant maintains that, on March 30, 2017, an official first learned about facts that led to the conclusion that a contravention had occurred. This was when NRO Frank received the complaint regarding land clearing. That complaint and NRO Frank's same-day communications with NRO Turlet are described in the NRO Chronology Report:

> 11:26 On routine road inspection 4600 road observed … a Grader working on the 0.5 Km Tzazati Mountain FSR. NRO waited for the Grader and talked with individual and discussions toward where Graded and mentioned 4600 Road/Tzazati Mountain Road to about 10 Km. Grader operator said working for NEWCO Logging Ltd as moving into old Menzie's Camp. Inquired about name … and ask about a clearing being done on 9 Km. That saw a truck in the area with BAYLIFF ENTERPRISES Ltd logo on door. Advised Grader Operator that will forward his concerns to be checked out.
>
> 13:58 Emailed NRO Christine TURLET "Christine a Grader Operator working for Newco Logging Ltd mentioned someone landing clearing up around 9 Km Tzazti Mtn FSR.
>
> …
>
> Land Clearing possible all north side from the road. (Indicated 20 to 25 acres cleared) said swamp in the background.
>
> Grader Operator … indicated saw a truck in the area with logo Bayliff Enterprise Ltd on side door.
>
> Attached map approximate location – north side possible private land."
>
> 14:12 Phone request by NRO TURLET to check out site and see what is happening and report findings to her. After my findings will decide if need further checking into and will go from there.

[55] The Appellant notes that the March 30 complaint and NRO Frank's March 30 email describing the complaint were included in the Ministry case file that the Manager considered. The Appellant submits that they demonstrate that NRO Frank was aware of the fact of the contravention on March 30, 2017.

[56] The Appellant also notes that on the morning of April 5, 2017 (before conducting the site visit), NRO Frank emailed NRO Turlet and asked: (a) whether she had entered the complaint into the NRV Reporting database; and (b) if not, whether she wanted him to enter it. Over the next two days, NRO Turlet asked NRO Frank to enter the complaint into the NRV Reporting database and email her his notes from the April 5 site visit.

[57] The Appellant says the March 30, 2017 complaint was sufficiently specific, credible, and concerning that it prompted NRO Frank to make detailed notes and swiftly communicate his concerns to NRO Turlet, a lead Compliance and Enforcement official. On March 30, NROs Frank and Turlet agreed to investigate the land clearing further, which NRO Frank did on April 5. The fact that the March 30 complaint was regarded as accurate and the beginning of the investigative process is also supported by the Ministry case file itself, which alleges that the contravention occurred "on or about the 30th day of March 2017".

[58] The Appellant maintains that on March 30, 2017, an official had some knowledge of the facts that led to the determination, and this is sufficient to begin the limitation period. The Appellant says this conclusion is supported by the Commission's decision in *Weyerhaeuser Company Limited v. Government of British Columbia*, Appeal No. 2002-FOR-007(a), November 28, 2003 [*Weyerhaeuser*].

[59] The Appellant submits that *Weyerhaeuser* involved the same issue and similar facts as the present appeal. The appellant in *Weyerhaeuser* challenged a determination on the grounds that it was made outside of the applicable limitation period established by regulation, which provided: "the time limit for levying a penalty against a person is three years after the facts on which the penalty is based first came to the knowledge of a senior official." In the determination, the District Manager levied a penalty of $1,500 for each of two contraventions, which involved the constructing two unauthorized stream crossings. The District Manager was the "senior official" for whom knowledge would trigger the limitation period. The Commission concluded that the District Manager's decision to levy a penalty was made outside the limitation period. In summary, the Appellant says the Commission made four significant findings at pages 13 and 14 in *Weyerhaeuser*.

[60] First, the limitation period began to run when the senior official first had knowledge of any facts that are material to the decision to levy a penalty, including, and most importantly, the facts surrounding the contravention.

[61] Second, the words "first came to the knowledge" indicate that the limitation period should start to run at the earliest point in the administrative process. This administrative process includes an investigation, an opportunity to be heard, a contravention determination and decision to levy a penalty.

[62] Third, the purpose of the limitation period is to ensure that the administrative penalty process moves forward in a timely fashion.

[63] Fourth, the fact that the District Manager forwarded a Department of Fisheries and Oceans Canada ("DFO") letter to Ministry Compliance and Enforcement staff was evidence that he had actual knowledge of the facts, sufficient to trigger the start of the limitation period. The DFO letter included information about the material facts of the contravention (including its nature and precise

location) and stated that the incident had been investigated by a Ministry Compliance and Enforcement officer.

[64] The Appellant submits that the language in the statutory limitation period in *Weyerhaeuser* was substantially similar to the language in section 75 of the *Act*. The significant difference between the two is that the limitation period in *Weyerhaeuser* began when the District Manager (as the "senior official") first had knowledge of any of the facts surrounding the contravention, whereas the limitation period in the present case began when knowledge was first acquired by NRO Frank or NRO Turlet (as "officials"). The Appellant says that NRO Frank learning of the land clearing activities on March 30 is directly analogous to the District Manager obtaining knowledge for the purpose of the limitation period.

[65] The Appellant submits that the "knowledge" requirement does not mean that the official must have first-hand knowledge of the facts to start the clock. NRO Frank's email confirms that the complaint was specific about the nature, extent, and location of the land clearing, and therefore, it provided sufficient information to provide knowledge of the contravention.

[66] The Appellant maintains that in *Weyerhaeuser*, the Commission emphasized that the limitation period should start to run "at the earliest point in the administrative process" which includes investigation. According to the Appellant, when NRO Frank received the complaint on March 30, 2017, he:

(i) assured the grader operator that the land clearing would be checked out;

(ii) conferred with NRO Turlet and they agreed that the complaint should be investigated further; and

(iii) suggested that the complaint should be entered into the NRV Reporting database.

[67] The Appellant maintains that, as in *Weyerhaeuser*, the fact that NRO Frank forwarded the complaint to NRO Turlet "is evidence that he had actual knowledge of the facts, sufficient to start the clock running".

[68] In summary, the Appellant submits that based on the language in section 75, the evidence in this case, and the reasoning in *Weyerhaeuser*, the Commission should find that the limitation period in this case started to run on March 30, 2017.

[69] Additionally, the Appellant argues that even if the limitation period began on April 5, 2017, the penalty was not levied in time, because: (a) the *Act* requires that, in order to "levy" a penalty, notice must be given to the person it is levied against; and, (b) section 110(2) of the *Act* "conclusively deems" that the determination sent by registered mail on April 3, 2020 would not have been received until April 11, 2020, which is outside the limitation period.

[70] The Appellant described *Four Seasons Hotels Ltd. v. Pacific Centre Ltd.*, 2002 BCSC 148. In that case, the Court noted that "levy" and "levying" have been used in various ways, and the proper interpretation will depend on the individual context in which the word is used. In some contexts, this has included not only assessing, but also collecting, a financial obligation. The Appellant says the word "levy" should

be interpreted by applying the modern approach to statutory interpretation, which was stated in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 [*Rizzo*], at para. 21:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[71] According to the Appellant, the modern approach leads to the conclusion that notice must be provided before the penalty is levied, because section 71(6) of the *Act* imposes an essential notice requirement. Section 71(6) states that, if a penalty is levied under *Act*, "the minister must give a notice of determination to the person". The notice of determination must specify certain items, including the penalty amount and the person's right to review or appeal.

[72] The Appellant submits that when section 75 is read together with section 71(6), they require that a notice of contravention be served within the limitation period. The Appellant says there is no reasonable alternative interpretation when the requirement in section 71(6) is inextricable from the power to levy penalties, and sections 71(6) and 75 are clearly aligned in purpose by providing for procedural fairness and the timely resolution of disputes.

[73] The Appellant maintains that it would be absurd to interpret section 75 of *Act* as permitting a notice of contravention under section 71(6) to be given after the limitation period. If that were so, in an "extreme" scenario, the Ministry could issue a penalty, hold it in their files for weeks, months or even years after the section 75 limitation period had passed, then validly provide the person with notice. Moreover, the current scenario could only occur on these particular facts: where the Ministry sent the notice of contravention required by section 71(6) within the limitation period, but it was not received by the person until after. Although less severe in potential consequences, such an interpretation should also be rejected, as it would erode the certainty and procedural safeguards that section 75 is intended to provide.

[74] The Appellant submits that related statutes regulating natural resource development confirm this interpretation. The Appellant says it is a principle of statutory interpretation that related statutes should be interpreted so that they are harmonious with each other (the principle of horizontal coherence), even when the related legislation was amended or passed after the legislation at issue. The *Mines Act*, the *Environmental Management Act*, and the *Oil and Gas Activities Act* explicitly provide that the limitation period for administrative penalties applies to the provision of notice. Specifically:

- section 36.6(1) of the *Mines Act* states, "The time limit for giving a notice under section 36.3 is 3 years after the date on which the act or omission alleged to constitute the contravention or failure to comply first came to the attention of the chief inspector";
- section 11 of the *Administrative Penalties (Environmental Management Act) Regulation* states, "A [notice respecting administrative penalty] may not be served more than 3 years after the later of (a) the date the alleged contravention or failure to which the notice relates occurred, or (b) the date

evidence of the alleged contravention or failure first came to the knowledge of a director"; and

- section 68(1) of the *Oil and Gas Activities Act* states, "The time limit for making a finding [of contravention] and giving a notice [of the contravention or penalty] is (a) 3 years after the date on which the act or omission that is alleged to constitute the contravention occurred, or (b) if the commissioner issues a certificate [certifying the date on which the commissioner learned of the act or omission], 3 years after the date on which the commissioner learned of the act or omission…".

[75] The Appellant maintains that section 75 of the *Act* should be interpreted similarly.

[76] Moreover, the Appellant submits that this interpretation is confirmed by Hansard records of debates in the Legislature. As noted in *Rizzo* at para. 35, Hansard can be useful in statutory interpretation as long as one is mindful of its frailties. In 2016, the Legislature debated a bill to amend the *Mines Act* by creating a framework of administrative penalties for non-compliance. In response to a question, the then Minister of Energy and Mines addressed whether the limitation period for administrative penalties under the *Mines Act* would be consistent with the *Act* and other similar legislation:

> N. Macdonald: In 36.6, it talks about the limitation period in terms of how long the chief mine inspector has to deal with the situation, and it puts the term of three years. Is that consistent with FRPA and other similar legislation? And if not, why the difference?
>
> Hon. B. Bennett: The limitation period in this piece of legislation is consistent with the *Environmental Management Act*, the *Forest and Range Practices Act* and the *Oil and Gas Activities Act*.
>
> [emphasis added in Appellant's submissions]

[77] The Appellant maintains that natural resource statutes related to the *Act* impose a clear limitation period for administrative penalties that also bars any subsequent notice of contravention or penalty outside the limitation period. Interpreting the *Act* to the contrary would be incorrect and would violate the principle of horizontal coherence.

[78] Although the Manager sent the determination by registered mail on April 3, 2020, the Appellant says it did not receive it, and it is unclear why the registered mail tracking and delivery information indicates that it was delivered. Nevertheless, section 110 of the *Act* specifies that a notice under the *Act* may be given to a corporation by: (a) leaving it with a director, officer or manager of the corporation; (b) leaving it with a receptionist at a place of business of the corporation; (c) leaving it at the registered office of the corporation; or (d) sending it by registered mail to the registered office of the corporation. Section 110(2) then states that a "notice or another document that is mailed to a person by registered mail … is

conclusively deemed to be received by the person on the eighth day after it is mailed", which in this case is April 11, 2017.[5]

[79] In conclusion, the Appellant maintains that officials became aware of the contravention on March 30, 2017, and the determination was deemed to have been received by the Appellant on April 11, 2020. The Commission should therefore apply the three-year limitation period in section 75(1), and find the penalty was invalid for lack of jurisdiction. The Appellant also argued that the delay in this case defeated the purposes of administrative penalties, that they can be assessed flexibly and issued expeditiously. The Appellant also says this delay also exceeds even what regulatory decision-makers from the Ministry's Compliance and Enforcement Branch believe to be acceptable, according to a report from a 2014 report of the Forest Practices Board, *Timeliness, Penalty Size and Transparency of Penalty Determinations*, FPB/SIR/41.

*Summary of the Respondent's submissions*

[80] The Respondent submits that the Appellant's submissions focus on the contraventions at the Tzazati Site, but the Appellant also contravened the *Act* at the Nazko Site. The Respondent submits that this is significant because the activities at each site first came to the knowledge of an official on different dates, and the total penalty of $15,033.90 equals the combined value of a stumpage estimate for the Tzazati Site ($1,308.90) and a trespass-silviculture cost estimate for Nazko Site ($13,725.00).

[81] Moreover, the Respondent maintains that although levying a penalty is statute barred after the limitation period in section 75(1), the limitation period does not apply to the determination of a contravention. Further, the Respondent says the determination levied the penalty on April 3, 2020. Therefore, for the penalty to have been levied within the three-year limitation period, the underlying facts must have first come to the knowledge of an official on or after April 3, 2017.

[82] Regarding the phrase "facts that lead to the determination" in section 75(1), the Respondent submits that "fact" is defined by the Canadian Oxford Dictionary as "a thing that is known to have occurred, to exist, or to be true." By using the word "fact", the Legislature indicated its intention that the limitation period begins only when the elements of the contravention are known as fact. Had a lower standard been intended, a different word would have been used. Suspicions or allegations are not facts, and are insufficient to trigger the limitation period in section 75(1).

[83] The Respondent maintains that this interpretation is supported by case law that involved limitations provisions triggered by knowledge of facts, such as *Thériault c. Gendarmerie royale du Canada*, 2006 FCA 61 [*Thériault*]. That case involved a matter where an RCMP officer who was subject to disciplinary proceedings objected to those proceedings on the basis that they were barred by a

[5] The Appellant referred to two cases that consider the language that appears in section 110(2) of the *Act*: *Wilson v. Environmental Appeal Board*, 1995 BCSC 2339 (B.C. S.C.) and *Amplified Electric Inc. v. Husch*, 2018 BCSC 969. The Appellant says those cases indicate that the date of delivery is calculated, regardless of whether and when service is effective, according to the wording of the section.

limitation period under section 43(8) of the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10. The Respondent submits that in paras. 30 and 33 of *Thériault*, the Court held that rumours, suspicions, or insinuations were not facts and were insufficient to start the limitation period running.

[84] In addition, the Respondent refers to *Romashenko v. Real Estate Council (British Columbia)*, 2000 BCCA 400 [*Romashenko*]. That case involved a limitation period in section 40(2) of the *Real Estate Act*, which provided that "No proceeding under this Act shall be instituted more than 2 years after the facts on which the proceeding is based first came to the knowledge of the superintendent." Huddart J.A. held at para. 17 in *Romashenko* that the limitation period commenced when there was "evidence of the material averments of the charge":

> Counsel agree the test to be applied to determine when the Council knew "the facts on which the proceeding is based" is that set down in *Ontario (Securities Commission) v. International Containers Inc.* (June 19, 1989), Doc. Toronto RE 401/89 (Ont. H.C.) and approved in *R. v. Fingold* (1996), 19 O.S.C.B. 5301 (Ont. Prov. Div.), aff'd (1999), 22 O.S.C.B. 2811 (Ont. Gen. Div.). When did the Council have evidence of the material averments of the charge? The answer is to be determined on an objective view of that which was known to the Council.
>
> [emphasis added in Respondent' submissions]

[85] Based on *Romashenko*, the Respondent submits that the limitation period begins to run once the person named in the legislation had knowledge of the facts that make up the material elements of the charge.

[86] The Respondent also refers to the Commission's decisions in *Weyerhaeuser* and *O'Brien and Fuerst Logging Ltd. and British Columbia, Re* (2019), 32 C.E.L.R. (4th) 90, 2019 CarswellBC 2076 [*O'Brien*].

[87] The Respondent notes that the Commission considered *Romashenko* in *Weyerhaeuser*. At paras. 69 and 70 (page 14) of *Weyerhaeuser*, the Commission found that the limitation period began to run when the senior official read the portions of a letter describing the results of a DFO investigation because, after having read that part of the letter:

> … the "District Manager had actual knowledge of the same material facts of the contravention, including the nature of the contravention …, the precise location of the contravention, the classification of the stream, details of the fisheries resource on the stream, and evidence that the incident had already been investigated by Ministry of Forests district staff.
>
> [emphasis added in Respondent's submissions]

[88] The Commission also found (on page 14) that the District Manager had determined that the gravity of the allegations in the letter could require a contravention determination and potentially a penalty determination which, in the end, it did.

[89] In *O'Brien*, a logging company had constructed a logging road without authority and contrary to the *Act*. One issue was the date when the facts of the

contravention first came to the knowledge of an official. The Commission found that, for the limitation period to run, actual knowledge of the contravention was required, and it might have been possible to obtain that knowledge through a formal inspection, stating at paras. 311 to 313:

> The Panel notes that section 75(1) uses the word "knowledge". It does not use the wording from section 8 of the *Limitation Act*, S.B.C. 2012, c. 13: "knew or reasonably ought to have known". There is no evidence that any Ministry personnel, a designated official or otherwise, had knowledge of the facts underling the contravention prior to September 12, 2014.
>
> The Panel agrees with the Appellant that various people were aware of the gravel shortage in the Licence area. … However, there is no indication that any of these people had knowledge of the facts that underlie this contravention. It is possible that a formal inspection of the road and stream crossings would have identified a contravention, but there is no evidence that any formal inspections of the stream crossings were performed prior to September 12, 2014.
>
> As there is no compelling evidence that any personnel within the Ministry or BCTS had knowledge of any non-compliance at the stream crossings, the Panel has no basis upon which to find that there is a breach of the three-year statutory limitation period in section 75(1) of the *Act*. Accordingly, there is no legal impediment to the penalty (or the Remediation Order) being issued.

[90] The Respondent submits that the requisite facts leading to a determination that a contravention has occurred will vary based on the elements which must be established for a specific contravention. The date on which those facts first came to the knowledge of an official will vary based on the particulars of each case.

[91] Regarding the Tzazati Site, the Respondent submits that the Appellant relies on an entry dated March 30, 2017 in the NRO Chronology Report, stating that a grader operation "ask[ed] about a clearing being done on 9 Km". In an email sent later on March 30, 2017, NRO Frank relayed the interaction with the grader operator to NRO Turlet, provided approximate directions to the site, and noted that land clearing was possible on the "north side" of the road, which was "possible private land". On March 30, 2017, NRO Turlet requested NRO Frank "check out site and see what is happening", after which a decision could be made if further "checking into" was needed.

[92] On April 5, 2017, NRO Frank and RA Jones attended the Tzazati Site. They arrived at approximately the 8.5 km mark on the Tzazati Mountain Forest Service Road, approximately half a kilometer from the location described by the grader operator. On arrival, they observed recent timber clearing. Using GPS on an iPad, they determined that the timber clearing had occurred on both private land and Crown grazing lease lands.

[93] The Respondent says those records are clear that, on March 30, 2017, NRO Frank was asked about a land clearing which may have occurred on private land, but neither NRO Frank nor NRO Turlet were aware that any contravention had occurred. If they had been, there would have been no need to decide if further "checking into" was required after NRO Frank's site visit. The Respondent submits

that the information that officials had on March 30, 2017 was incomplete and purely speculative, and could not constitute any of the "facts" that lead to the determination that a contravention had occurred. It was only upon NRO Frank's attendance at the Tzazati Site on April 5, 2017, that any of the "facts that lead to the determination that the contravention occurred" could first be known.

[94] Turning to the specific elements of the contraventions in this case, the Respondent notes that at the Tzazati Site, the Appellant contravened section 51(1)(b) of the *Act*, which states:

> **51** (1) Unless authorized in writing by the minister, a person must not
>
> …
>
> (b) carry out, construct, modify, remove, damage or destroy a range development on Crown range.

[95] The Respondent submits that section 51(1)(b) requires the following material elements to establish a contravention:

a. a person carry out, construct, modify, remove, damage or destroy a range development[6];

b. the range development is on Crown range; and

c. the activity is not authorized.

[96] The Respondent maintains that the elements of the contravention of section 51(1)(b) at the Tzazati Site were not known on March 30, 2017, because:

a. there was no evidence of any modification, damage, or destruction (or other activity) related to a range development. The evidence available on March 30, 2017 was that a grader operator inquired about clearing being done. Without a formal site inspection, it was impossible to determine if the activity could have resulted in modifying, damaging, or destroying (or another activity) a "range development" as defined in the *Act*;

b. it was not known if any alleged activity had occurred on Crown range. In providing NRO Turlet with approximate directions to the Tzazati Site, NRO Frank noted that land clearing was possible on the north side of the road, which was possible private land. Further, the directions to the Tzazati Site were approximate, and accurate only to within half a kilometer; and

c. there was no evidence as to whether the alleged activity was authorized, or as to the identity of the person(s) involved in such activity.

[97] The Respondent notes that the Appellant contravened section 52 of the *Act* in relation to both the Tzazati Site and the Nazko Site. Section 52 states that "A

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[6] Section 1 of the *Act* states "range development", in relation to the management for range purposes of range land or livestock, means: (a) a structure, (b) an excavation, (c) a livestock trail indicated in a range use plan or a range stewardship plan as a range development, or (d) an improvement to forage quality or quantity on an area that results from: (i) the application of seed, fertilizer or prescribed fire to the area, or (ii) the cultivation of the area.

person must not cut, damage or destroy Crown timber unless authorized to do so" under certain Acts, regulations, or by the minister.

[98] The Respondent submits that section 52 requires the following material elements to establish a contravention:

a. a person cut, damage, or destroy timber;

b. the timber is Crown timber; and

c. the activity is not authorized.

[99] With respect to the Tzazati Site, the Respondent submits that the elements to establish a contravention of section 52 were not known on March 30, 2017, because it was not known if the clearing activity had occurred on Crown land, and there was no evidence as to whether the alleged activity was authorized, or as to the identity of the person(s) involved. While NRO Frank may have had notice of a potential issue, no official had actual knowledge of any of the facts related to it.

[100] The Respondent maintains that section 75(1) is not a notice provision or constructive knowledge provision; it requires more than more than notice, belief, or a suspicion. The Respondent says the earliest point in the administrative process when an official could have knowledge of the material facts of the contravention was April 5, 2017, when NRO Frank first attended the Tzazati Site and observed what had occurred.

[101] Regarding the Nazko Site, the Respondent submits that it was only when NRO Turlet attended that location on June 15, 2017, that the "facts that lead to the determination that the contravention occurred" first became known to an official. Although the site was mentioned on May 19, 2017, when the Appellant emailed RA Jones to inform her that he was replacing the fence between Deerpelt Lake and Loomis Lake, and to request fencing materials, it was June 15, 2017 when NRO Turlet and others attended the Nazko Site to inspect and document their findings. The Respondent maintains that June 15, 2017 is well within the limitation period in section 75(1).

[102] Regarding the date when the penalty was "levied", the Respondent submits that notice is not a condition precedent to levying an administrative penalty under the *Act*. Rather, section 71(6) of the *Act* requires that if a penalty is levied, notice of that determination must be given. The Respondent maintains that the Appellant's argument requires reading language into the *Act*, conjuring a service requirement where there is none, and conflating the word "levy" with other words having very different meanings, such as "service" or "notice".

[103] In addition, the Respondent disputes the Appellant's submission that the deeming provision in section 110(2) of the *Act* modifies the time by which a penalty may be levied under section 75(1). The Respondent says there is no basis in the *Act* or otherwise to support that interpretation.

[104] Citing the "modern approach" to statutory interpretation, the Respondent submits that the grammatical and ordinary sense of the word "levied" can be understood, in part, by how the word is defined. *Black's Law Dictionary* provides the following definition of the verb "levy":

> 1. To impose or assess (a fine or a tax) by legal authority <levy a tax on gasoline>. …

[105] The Respondent argues that this definition should be applied with a mind to the primary goal of the *Act*, which the Respondent argues is the sustainable use of natural resources. The Respondent says that the administrative penalty regime is simply a compliance enforcement mechanism that can be used to realize that overall goal.

[106] The Respondent submits that other sections of the *Act* and its regulations support the interpretation that "levy" means to impose or assess by legal authority. For example, section 71(2)(a)(i) of the *Act* states that the minister "may levy an administrative penalty against the person in an amount that does not exceed a prescribed amount …" [underlining added in Respondent's submissions]. Sections 8 through 14 and 16 through 20 of the *Administrative Orders and Remedies Regulation*, B.C. Reg. 101/2005 (the "*Administrative Orders and Remedies Regulation*") incorporate similar language, stating that "The maximum amount that the minister may levy against a person …" [underlining added in Respondent's submissions].

[107] The Respondent acknowledges that section 71(6) of the *Act* requires that, if an administrative penalty is levied, notice of that determination must be given. However, the Respondent says the notice is not required to occur within the limitation period in section 75(1). If the Legislature intended to require that notice be provided within the limitation period, it would have said so, but it did not.

[108] The Respondent says the only reasonable conclusion based on the principles of statutory interpretation is that the language in section 75(1) means the minister (or their delegate) may assess and impose an administrative penalty, so long as it is done within three years from the date when the facts of the contravention are known to an official. Reading a service requirement into the word "levy" or section 75(1) would be inconsistent with other sections of the *Act* and would render them unintelligible.

[109] Furthermore, the Respondent submits that Hansard records related to the *Mines Act* are of limited probative value in interpreting the *Act*. However, the Respondent notes that the language used in the limitation period in section 36.6(1) of the *Mines Act* states:

> **36.6** (1) The time limit for giving a notice under section 36.3 is 3 years after the date on which the act or omission alleged to constitute the contravention or failure to comply first came to the attention of the chief inspector.
>
> [underlining added in Respondent's submissions]

[110] The Respondent submits that this language in the *Mines Act* clearly imposes a limitation on the time by which a notice can be given, and it is obviously different from that used in the *Act*. The Respondent says the fact that different language is used in the *Act* clearly indicates that Legislature intended a different result than

under the *Mines Act* and the other legislation noted by the Appellant.[7] In the *Mines Act* and the other legislation, the Legislature used precise language to impose a limitation period within which notice must be provided, but in the *Act*, the Legislature provided that a penalty must only be levied within the three-year period. "Levy" does not mean the same thing as "notice" or "service".

[111] The Respondent says, in this case, the registered mail tracking and delivery information for the determination indicates that it was sent to the Appellant the same day it was levied, on April 3, 2020, and this satisfied the requirement in section 71(6) that notice of the determination be given.

[112] With respect to the Appellant's concern that a determination could linger indefinitely with a decision maker, the Respondent submits that section 71(6) requires that that notice of the determination be given. Unreasonable or undue delay in administrative proceedings may constitute an abuse of process and, if the delay can be shown to have resulted in unfairness, can be grounds for an appeal, judicial review, or granting of a stay.

[113] With respect to the Appellant's submission that section 110(2) modifies the time by which a penalty may be levied under section 75(1), the Respondent submits that section 110 simply provides how notice may be given, and nothing more.

*Summary of the Appellant's reply submissions*

[114] In reply, the Appellant submits that *Thériault* does not assist the Respondent for two reasons. First, the Appellant submits that *Thériault* discussed at para. 31 how a credible complaint could give rise to the requisite knowledge, when the "… information [is] obtained from an identifiable source which might reasonably be expected to have such information and obtained in circumstances which would tend to support the accuracy and reliability of the information given". The Appellant says the March 30, 2017 complaint meets those criteria. Second, *Thériault* dealt with a statutory limitation period which required that disciplinary proceedings be initiated within one year from when both "the contravention and the identity [of the perpetrator] became known to the appropriate officer" (at paras. 1 and 60).

[115] In addition, the Appellant submits that in *O'Brien* there was no evidence of prior knowledge of any non-compliance before the contravention was discovered in person by a Ministry employee collecting field data, followed two days later by a site visit by other personnel. The Appellant says those facts are distinct from the facts in the present case, where the March 30, 2017 complaint gave rise to specific knowledge of facts related to potential non-compliance arising from the Appellant's land clearing activities.

[116] The Appellant also disputes the Respondent's claim that *Romashenko* supports the argument that section 75(1) requires "evidence of the 'material

[7] The Respondent referred to section 11 of the *Administrative Penalties (Environmental Management Act) Regulation*, BC Reg. 133/2014 and section 68(1) of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36, both of which impose a limitation period on when a notice respecting an administrative penalty can be served under their respective legislative schemes.

averments' of the charge". The Appellant submits that the Court in *Romashenko* did not decide that the knowledge requirement for the limitation period was only triggered when there was evidence of the material averments of the charge. Rather, the Court dealt with the issue based on the agreement of counsel that it was appropriate to apply that test. Furthermore, *Romashenko* was raised before the Commission in *Weyerhaeuser* and was not followed. The Commission instead found that the limitation period began to run "when the senior official first has knowledge of any of the facts that are material to the decision to levy a penalty, including, and most importantly, the facts surrounding the contravention".

[117] The Appellant argues that the Respondent provided no legal authority or substantive analysis to support the argument that administrative penalties were intended as a tool to assist achieving compliance with the *Act*, while reconciling the need to ensure they are not issued indefinitely. The Appellant says I should give this assertion no weight. In any event, the Appellant argues, the Respondent did not explain how those two priorities in tension should be balanced. Further, the Appellant says its position does so effectively.

[118] The Appellant also argues that I should give no weight to the Respondent's argument that reading a service requirement into section 75(1) would be inconsistent with other provisions in the *Act* and render them unintelligible. The Appellant argues that all provisions referenced by the Respondent are subject to the requirements of sections 71(6) and 75(1), and the appropriate interpretations of these inter-related sections is that requiring notice of an administrative penalty to be served within the limitation period is not inconsistent with the power to levy those penalties.

[119] Further, the Appellant says that the portion of the *Administrative Orders and Remedies Regulation* referenced by the Respondent merely describes setting the amount of penalties. This is separate from any service requirements or other administrative requirements and the Respondent has not explained how requiring the service of notice within the limitation period would be inconsistent with, or render unintelligible any portion of, the *Administrative Orders and Remedies Regulation*.

[120] The Appellant also submits that the Respondent failed to provide any examples from legislation or legal authorities to show that "levied" does not imply a requirement for service or notice. The Appellant says the Respondent also failed to explain why such an interpretation would lead to absurd results, particularly given that the Appellant referenced case law saying that "levied" could mean many different things, including interpretations that include not only the assessment, but collection, of financial obligations.

[121] With respect to the interpretation of the *Act*, the Appellant emphasizes that the notice requirements are part and parcel of the administrative requirements associated with levying administrative penalties, contained in sections 71(6) and 75(1). Section 110(2) only establishes when notice is deemed to have been served. The Appellant says the Respondent's submissions do not address this argument.

[122] Moreover, the Appellant maintains that the Respondent's submissions do not address the issue of onus, which the Appellant submits is crucial in this case, where

there is a paucity of evidence about what was learned when following the March 30, 2017 complaint, and by whom. The Appellant argues that it is unclear who among those with photographs of the Nazko Site was an official, and so when the limitation period on levying an administrative penalty began.

[123] Regarding the Nazko Site, the Appellant notes that section 75(2) of the *Act* permits an official to "… certif[y] the date the facts that lead [sic] to the determination that the contravention first occurred came to the knowledge of the official" as "proof of the matter certified" absent evidence to the contrary. The Appellant says the only such document in this case is the determination itself, which "determined that 2017-04-05 is when this contravention became known to an official". As such, April 5, 2017 must be presumed as the date for knowledge, absent proof by the Respondent to the contrary, and no such proof is present here, including any other certificate from an official.

[124] The Appellant submits that its land clearing and fencing activities at the Nazko Site were substantially similar, and close in time and physical proximity, to those conducted at the Tzazati Site. This is further reason why the March 30, 2017 complaint about land clearing activities should be understood to have started the limitation period for the Nazko Site contraventions, barring the Respondent affirmatively establishing that knowledge did not occur until after this date.

[125] In response to the Respondent's argument that the knowledge required to trigger the limitation period could only first been known when NRO Turlet visited the Nazko Site on June 15, 2017, the Appellant submits there is compelling evidence that other Ministry staff, such as RA Jones, were aware of the Nazko Site clearing before June 15, 2017, and it is unclear whether those staff were not officials at the relevant time. Thus, the Appellant argues that the Respondent has not discharged its burden to prove that knowledge of land clearing at the Nazko Site was acquired within the three-year limitation period.

[126] The Appellant agrees that the total penalty of $15,033.90 is equal to the combined value of a stumpage estimate for the Tzazati Site ($1,308.90) and a trespass-silviculture cost estimate for Nazko Site ($13,725.00). However, the Appellant submits that it would be overly simplistic to conclude that the total penalty is divisible between the sites on that basis, as the total penalty was based on several factors. The Appellant notes that the determination stated:

> Having regard to the facts of this case, I have decided that it is appropriate to levy a total penalty … in the amount of $15,033.90.
>
> The amount of this penalty is based on two factors:
>
> 1. The amount of merchantable timber that was damaged in the clearing of the fence line, using stumpage rates from the Interior Appraisal Manual (November I, 2017) at the time the contravention took place. It was estimated 111 m3 of merchantable timber was damaged for a total cost of $1,308.90.
> 2. Reforestation obligations that have been identified as either created or impacted, on an estimated 1.3 ha, for a cost of $13,725.00.

> This penalty is to show the severity of not complying with legal documents and associated legislation. The penalty should also convey that it is unacceptable to not follow an authorization document, to have a full understanding of these types of documents before conducting work and to be more aware about seeking proper authorizations in the future before conducting any work on Crown land, whether it is under a lease agreement or otherwise.
>
> [emphasis added in Appellant's submissions]

[127] The Appellant maintains that the Respondent's submissions do not address how or on what basis the Commission should proceed if section 75(1) applies to the Tzazati Site contraventions but not the Nazko Site contravention. If that is the outcome of the Commission's decision, the Appellant requests the opportunity to provide further submissions on how the penalty associated with only the Nazko Site contravention should be determined.

*The Panel's findings*

[128] To determine the intended meaning of the language in section 75(1) of the *Act*, I have applied the modern approach to statutory interpretation as stated in *Rizzo*, which both parties cited above. With this approach, the words in section 75(1) of the *Act* are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of the Legislature. This approach is also applied when considering the meaning of other sections of the *Act* that are relevant to this appeal.

[129] Regarding the parties' references to prior decisions of the Commission and the courts in support of their arguments on how section 75(1) should be interpreted, I note that the Commission's past decisions are not binding on me, but I may consider them for guidance as they involve the interpretation of section 75(1) (as in *O'Brien*) and similarly worded legislation (as in *Weyerhaeuser*). As for the court decisions, I note that none of them involved section 75(1) of the *Act* or related legislation. Rather, they involved statutory limitation provisions which had language with some similarities but also some differences compared to section 75(1), and were under legislation that had regulatory purposes but did not regulate the use of natural resources. Thus, those court decisions are not binding on me in deciding this appeal, but they may provide some guidance, to the extent that the language in the statutory provisions considered in those cases is similar to that in section 75(1) of the *Act*.

[130] At the outset, I note that section 75(1) states that the limitation period applies to "an administrative penalty … levied under section 71(2) or 74(3)(d) or an order … made under section 74(1)" of the *Act*. On a plain reading of this language, it is clear that this limitation period applies to an administrative penalty levied (or an order issued) under the specified sections of the *Act*. This language does not say that the limitation period applies to a "determination under section 71(1) of the *Act*" that a person has contravened the *Act*. Therefore, even if some or all of the total penalty in this case was levied after the expiry of the limitation period in section 75(1), the determination that the Appellant contravened sections 51(1)(b) and 52 of the *Act* is unaffected by the limitation period.

[131] To ascertain when the limitation period under section 75(1) began to run in relation to the levying of penalties in this case, the first question is, to quote from section 75(1): on what day did "the facts that lead to the determination that the contravention occurred" first come to the knowledge of an official? The second question is: on what day were the penalties for the respective contraventions levied? I address each of those questions below.

On what day did the facts that lead to the determination that the contraventions occurred first come to the knowledge of an official?

[132] I find that the Commission's interpretation in *Weyerhaeuser* of the phrase "first came to the knowledge" provides guidance on how to interpret section 75(1) of the *Act*. Although *Weyerhaeuser* involved a limitation period in section 4(1) of the *Administrative Remedies Regulation* under the then *Forest Practices Code of British Columbia Act* (the predecessor of the *Act*), this same phrase is used in both section 4(1) of that regulation and section 75(1) of the *Act*, and they served similar purposes in similar administrative penalty schemes. The main difference in statutory language is that, in section 75(1) of the *Act*, the question is when did an "official" (which includes NROs Frank and Turlet in this case) first have such knowledge, whereas in the regulation in *Weyerhaeuser*, the question was when did a "senior official" (in that case, the District Manager who made the determination) have such knowledge.

[133] At page 13 of *Weyerhaeuser*, the Commission found:

> … the words "first came to the knowledge" in section 4(1) indicate that the limitation period should start to run at the earliest point in the administrative process. This administrative process includes an investigation, an opportunity to be heard, a contravention determination and decision to levy a penalty. The Commission finds that the purpose of the limitation period in section 4(1) of the *ARR* is to ensure that the administrative penalty process moves forward in a timely fashion.
>
> [underlining added]

[134] Applying those principles to the present case, I find that the purpose of the limitation period in section 75(1) of the *Act* is to ensure that the administrative penalty process moves forward in a timely fashion. I also find that the words "first came to the knowledge" in section 75(1) indicate that the limitation period should start to run at the earliest point in the administrative penalty process when those facts came to the knowledge of an official. The administrative penalty process includes the investigation of alleged contraventions.

[135] As the Commission noted in *O'Brien* at para. 311, section 75(1) uses the word "knowledge", and not the words "knew or reasonably ought to have known". In *O'Brien*, the Commission concluded that knowledge of some facts related to the circumstances of the contravention (i.e., a shortage of gravel needed to build roads through swampy terrain and across streams in order to harvest timber) did not constitute knowledge of the facts that lead to the determination that the contravention occurred (i.e., constructing a road in a manner that was likely to harm fish habitat). In that case, officials were unaware that the road construction had likely harmed fish habitat until officials visited the site and determined that the

streams were fish bearing and stream crossings were built in a way that had likely harmed fish habitat. I note that although the decision in *O'Brien* did not discuss the meaning of the word "facts" in section 75(1), the Commission's findings in that case are consistent with the plain meaning of "fact", which is defined in the Canadian Oxford Dictionary as "a thing that is known to have occurred, to exist, or to be true." Thus, in *O'Brien*, the limitation period started to run not when officials could have suspected that the contravention occurred, or ought to have known that the contravention might have occurred, but rather, when they actually knew that the road had been constructed in a manner that likely harmed fish habitat.

[136] The statutory limitation period in *Thériault* also had a knowledge requirement, as it used the word "known", which is similar to "knowledge". The relevant portions[8] of the limitation period in *Thériault* stated, "No hearing may be initiated by an appropriate officer … in respect of an alleged contravention … by a member after the expiration of one year from the time the contravention … became known to the appropriate officer." At para. 48 of *Thériault*, the Court summarized its findings on when an appropriate officer acquires knowledge of the contravention such that the limitation period begins to run:

> … the appropriate officer acquires knowledge of a contravention … when he or she has sufficient credible and persuasive information about the components of the alleged contravention … to reasonably believe that the contravention was committed … . From that point, within the limitation period, an inquiry to check and confirm the credible and persuasive information received and now known regarding the contravention … can be carried out, if it is deemed necessary. …
>
> [underlining added]

[137] I find this passage to be persuasive because it aptly describes the distinction between "knowledge", or something that is "known", and something that is suspected, rumoured, or reported. Applying that reasoning to the present appeal, the limitation period in section 75(1) begins to run when an official has sufficient credible and persuasive information about the components of the contravention to reasonably believe that the contravention occurred. From that point, an investigation to check and confirm the information received about the contravention can occur within the limitation period. However, as stated in *Thériault* at paras. 30 and 33, rumours, suspicions, or insinuations as to the existence of a contravention may also be enough to justify initiating an investigation, they are not "facts" and do not provide the knowledge required for a limitation to begin to run, where the legislation specifies that the limitation begins to run when the contravention became "known". I agree, and find that suspicions or allegations of a possible contravention may be sufficient to trigger an investigation, but they generally do not constitute facts that lead to a determination that a contravention occurred. An allegation or complaint regarding a possible contravention may or may not consist of information that is credible enough or detailed enough to constitute that facts

[8] I have omitted the statutory language and the court's findings relating to the requirement in that legislation to know the identify of the member who committed the contravention, since section 75(1) does not expressly include a similar requirement.

that will lead to a determination that a contravention occurred. The circumstances of the particular case must be considered to determine whether the information received was not only sufficient to start an investigation, but also credible enough and detailed enough to constitute knowledge of facts of the contravention that will trigger the limitation period.

[138] I also find that the reasoning in *Weyerhaeuser* regarding the meaning of the phrase, "the facts that lead to the determination that the contravention occurred", provides guidance on the interpretation of those words in section 75(1) of the *Act*. The contraventions in *Weyerhaeuser* involved the construction of two unauthorized stream crossings contrary to section 21(1) of the *Timber Harvesting Practices Regulation*, which stated that "A person carrying out harvesting must not construct a temporary stream crossing unless it is approved in an operational plan or authorized by the District Manager in writing…". The Commission held on page 14 of *Weyerhaeuser* that the limitation period began to run when the District Manager (the "senior official" under that limitation period) "had actual knowledge of the same material facts of the contravention". The "same material facts" were found in two paragraphs of a DFO letter that the District Manager read.

[139] Specifically, the Commission considered the content of the two paragraphs in the DFO letter, and held that the "material facts of the contravention" provided in those paragraphs included the nature and location of the contravention (backspar trail crossing stream #1), the classification of the stream (S4, confirmed by a field assessment), details of the fisheries resource on the stream (good fish spawning and juvenile fish rearing habitat, confirmed by a field assessment), and evidence that the incident had already been investigated by Ministry staff. On page 14, the Commission concluded that the material facts of the contravention first came to the knowledge of the District Manager when he read those two paragraphs on November 16, 1998, despite the District Manager certifying that he became aware of the facts on which the penalty was based on July 13, 2000 (at the Opportunity to Be Heard).

[140] In summary, I find that by using the word "knowledge" in relation to the phrase "the facts that lead to the determination that the contravention occurred", the Legislature indicated that the limitation period begins when the components of the contravention for which a penalty is levied were known by an official to have occurred, to exist, or to be true. Applying that reasoning to the present appeal, I find that the limitation period in section 75(1) began to run when the components of the contraventions of section 51(1)(b) and 52 of the *Act* were known by an official to have occurred, to exist, or to be true.

[141] Turning to the contraventions in this case, I find that the components of a contravention of section 51(1)(b) of the *Act* are as follows:

i. a person carries out, constructs, modifies, removes, damages or destroys a "range development", which is defined in the *Act* as including a structure;

ii. the range development is on Crown range; and

iii. the activity is not authorized.

[142] I find that the components of a contravention of section 52(1) of the *Act* are as follows:

i. a person cuts, damages or destroys timber;

ii. the timber is Crown timber; and

iii. the activity is not authorized.

[143] In this case, contraventions of sections 51(1)(b) and 52(1) of the *Act* occurred at the Tzazati Site, and there is no dispute about the activities that caused those contraventions. Regarding the contravention of section 52(1) at the Tzazati Site, the parties agree that the Appellant cleared a fence right of way on Crown land without authorization. In doing so, 111 cubic metres of merchantable Crown timber were cut, damaged, or destroyed. I find that the key factual components of this contravention were: a person cut, damaged or destroyed timber; the timber was Crown timber; and, there was no authorization for the activity.

[144] Regarding the contravention of section 51(1)(b), there is no dispute that the Appellant built a fence on Crown land without authorization. I find that the key factual components of this contravention were: a person constructed a range development consisting of a fence; the fence was on Crown land; and, there was no authorization to build the fence.

[145] I considered the evidence before me regarding when an official first had knowledge of those factual components of each contravention, at each of the two sites. I find that NROs Frank and Turlet were aware of the following information on March 30, 2017:

- at 11:26 on March 30, 2017, during a routine inspection of another road, NRO Frank met a grader operator who gave his name, explained where he had been working, and asked about land clearing being done at 9 km on Tzazati Mountain Forest Service Road, and NRO Frank advised the grader operator that he would "forward his concerns to be checked out";
- at 13:58 on March 30, 2017, NRO Frank sent an email to NRO Turlet noting that the grader operator had mentioned land clearing at 9 km on Tzazati Mountain Forest Service Road, providing directions to the approximate location, noting that land clearing "was possible all north side from the road" and that the north side was "possible private land", and attaching a map of the approximate location; and
- at 14:12 on March 30, 2017, NRO Frank received a phone request by NRO Turlet to "check out site and see what is happening and report findings to her". After he reported his findings, "will decide if need further checking into and will go from there."

[146] I find that this was sufficient information to initiate an investigation to determine whether a contravention had occurred at the Tzazati Site, and indeed, that is what next occurred.

[147] I find that the information provided by the grader operator on March 30, 2017 marked the beginning of the investigative process. I find that this is supported by the evidence, including the NRO Chronology Report which details the

steps taken by NROs Frank and Turlet to follow up on the information provided by the grader operator. I also note that the Ministry case file alleges that the contravention occurred "on or about the 30th day of March 2017". However, I find that neither the date when the investigation began, nor the date that the contravention allegedly occurred, are necessarily the same as "the date on which the facts that lead to the determination that the contravention occurred first came to the knowledge of an official".

[148] Most importantly, I find that NROs Frank and Trulet had credible knowledge on March 30, 2017 of the approximate location of some land clearing activity, but the information from the grader operator and the information in NRO Frank's email to NRO Turlet, including driving directions and a sketch map of the location, was insufficient for them to know whether the land clearing was located only on private land, or partially on Crown land. Furthermore, there is no evidence that they knew whether the land clearing was unauthorized.

[149] I conclude that NROs Frank and Turlet, both of whom were officials, had insufficient information on March 30, 2017 about the exact location and nature of the activities at the Tzazati Site to trigger the limitation period. On March 30, 2017, the officials had insufficient credible information about the components of the contravention to reasonably believe that timber had been cut on Crown land without authorization.

[150] I find that the facts that lead to the determination that the contravention of section 52(1) occurred at the Tzazati Site first came to the knowledge of an official on April 5, 2017. According to the Agreed Statement of Facts, NRO Frank and RA Jones attended the Tzazati Site on that date, and they noticed recent timber clearing at approximately 8.5 km on the north side of Tzazati Mountain Forest Service Road, and debris piles along the cleared area. Using GPS on an iPad, they determined that the clearing at Tzazati Site had occurred on both private land and on the adjacent Crown lands. I find that this was the earliest point in time when an official (the parties agree that NRO Frank was an "official") was able to confirm that the clearing had occurred on Crown land. At that point, an official had sufficient credible information about the components of the contravention to reasonably believe that timber had been cut on Crown land without authorization.

[151] Regarding the contravention of section 51(1)(b) at the Tzazati Site, I similarly find that although the NROs had knowledge on March 30, 2017, of the general location of some land clearing activity, it was uncertain whether the activity was on Crown land.

[152] Furthermore, the information that the NROs had on March 30, 2017, contains no mention of a fence or fence construction activities at the Tzazati Site. There was not even an allegation or suspicion of an unauthorized range development on March 30, 2017. In fact, the Ministry case file shows that a new fence at the Tzazati Site was first discovered by Ministry investigators sometime after the April 5, 2017 visit.

[153] Specifically, photographs of the Tzazati Site taken on June 25, 2017, by NROs Turlet and Dubois show recent clearings and debris piles surrounded by standing trees, but no fencing. In the NRO Chronology Report, a notation dated February 20, 2018 is the first mention of a fence at the Tzazati Site. NRO Turlet's

notes from a visit at the Tzazati Site on May 20, 2018, state that she "observed that some fencing was started last year before the wildfires as some of the wooden post[s] were burnt." Her photographs from the May 20, 2018 site visit include a photograph showing a fence post with two wires extending out from it, next to charred trees and brush.

[154] Consequently, I find that on March 30, 2017, officials had insufficient information about the components of the contravention to reasonably believe that a person had constructed a range development on Crown land without authorization at the Tzazati Site. Based on the evidence, it appears that the fence was built sometime after the June 25, 2017 site visit, and an official first knew about the fence sometime after the June 25, 2017 site visit but before the February 20, 2018 notation in the NRO Chronology Report. While this leaves a wide time frame when the limitation period began to run for this contravention, for the reasons provided under the next subheading, it makes no difference to the outcome of the appeal if the limitation period for this contravention began to run on June 26, 2017 (the first day after the June 25, 2017 site visit) or on a later date in 2017.

[155] Before addressing the Nazko Site, I note that the Appellant attempted to raise factual assertions and arguments pertaining to that site in its reply submissions. This is unfair, as the Respondent did not have the opportunity to address some of those points. Nonetheless, I will address those arguments because it is not to the disadvantage of the Respondent that I do so.

[156] Regarding the Nazko Site, I reject the Appellant's argument that the March 30, 2017 information from the grader operator about land clearing activities at the Tzazati Site should be understood to have started the limitation period for the Nazko Site. I find that the facts that lead to the determination that a contravention of section 52(1) occurred at the Nazko Site first came to the knowledge of an official on a different date than the facts with respect to the contravention of section 52(1) (or section 51(1)(b)) at the Tzazati Site. The locations, nature, and circumstances of discovery of the contraventions at the two sites are significantly different from one another.

[157] At the Nazko Site, unlike the Tzazati Site, there was an old fence in an existing right of way before the contravention occurred. The removal and replacement of the old fence at the Nazko Site was accompanied by clearing a much larger fence right of way than previously existed. The contravention of section 52(1) resulted from clearing a fence right of way that was larger than authorized under the Appellant's range agreement. However, the replacement of the old fence with a new fence was found not to have contravened section 51(1)(b).

[158] Although the determination states on page 9, "… I have determined that 2017-04-05 is when this contravention became known to an official…", without specifying which contravention this refers to, I find that this is a refence to the Tzazati Site. The determination states on page 5 that Compliance and Enforcement staff "discovered the alleged contraventions (on Site 2)" on April 5, 2017, and the Tzazati Site is defined as "Site 2" in the determination. I find that the determination only addressed when the earliest limitation period began to run; i.e., in relation to the contraventions at the Tzazati Site. It did not address when the facts that lead to

the determination of the contravention at the Nazko Site first came to the knowledge of an official.

[159] In any event, what the determination says, or does not say, about when the limitation period began to run for these contraventions is immaterial to the outcome of this appeal, because I have conducted the appeal as a new hearing of the matter pursuant to section 140.6 of the *Act*. I have considered new evidence that was not before the Manager when he made the determination, and I have considered the matter afresh with respect to the issue raised by this appeal.

[160] Based on the Ministry case file, I find that on May 19, 2017, RA Jones received an email from Mr. Schellenberg stating, in part, "we are replacing the fence between Deerpelt Lake and Loomis Lake as it has not been functional in quite some time. … Some materials would be welcome…". There is no evidence before me as to whether RA Jones was designated as an "official" at that time. However, even if she was an official at that time, I find that the information in the May 19, 2017 email was insufficient to start the limitation period running. There was insufficient information to know that replacing the fence also involved widening the fence right of way by cutting Crown timber without authorization.

[161] The Ministry case file also states that on June 9, 2017, RA Jones sent an email to Connie Hayley, a Range Technician with the Ministry, stating in part that Mr. Schellenberg "has cleaned up the right of way for the fence that connects Loomis Lake and Deer pelt Lake as in has removed the old log fence". In addition, the Ministry case file states that the contravention at the Nazko Site occurred "on or about the 9th day of June 2017". However, as I have found above, the date when a contravention allegedly occurred is not necessarily the date that starts the limitation period running. I find that even if RA Jones or Ms. Hayley were an official at that time (which is not clear from the evidence), the June 9, 2017 email contained insufficient information for an official to know that removing the old fence and cleaning up the right of way also involved widening the right of way by cutting Crown timber without authorization.

[162] I do not consider it significant that the Respondent has not provided evidence as to whether JA Jones, Ms. Haley, or Ms. Mohr were, at any relevant time, officials under the *Act*. The Appellant did not raise as an issue the photographs that JA Jones and/or Ms. Mohr had before their rebuttal submissions. They did not request access to those photographs as a pre-hearing matter and the Respondent could not have reasonably known that this would be an issue when the Respondent filed its submissions. Based on the information available to me, it is not clear that anyone in the Ministry, officials or not, had enough information to know that the Appellant had committed an infraction at the Nazko site up to and including at least June 12, 2017.

[163] I find that, on June 13, 2017, Ms. Hailey had sufficient credible information about the components of the contravention to reasonably believe that Crown timber had been cut without authorization. It may be that Ms. Mohr did as well. However, it is unclear whether Ms. Mohr or Ms. Hayley was an "official" for the purposes of the *Act* at that time.

[164] In any event, two days later, on June 15, 2017, NRO Turlet, Ms. Mohr, and Ms. Hayley inspected the Nazko Site and observed land clearing and debris piles containing pine trees mixed with old fencing logs. Ms. Mohr's handwritten field notes state that they also observed "visible damage to small standing live pine trees", and some debris pile sites "were taken down to mineral soil". After measuring the clearing at several points using a GPS, they found that it was approximately 27.4 to 36.48 metres wide and 635 meters long. I find that, on June 5, 2017, NRO Turlet (an official) had sufficient credible information from Ms. Mohr and Ms. Hayley, and the observations at the Nazko Site, about the components of the contravention to reasonably believe that Crown timber had been cut and/or damaged without authorization.

[165] Based on the evidence, I conclude that the facts that lead to the determination that the contravention of section 52(1) occurred at the Nazko Site first came to the knowledge of persons who may have been officials on June 13, 2017. I also find that NRO Turley had sufficient information to determine that the contravention of section 52(1) had occurred at the Nazko Site on June 15, 2017. However, for the reasons provided below, it makes no difference to the outcome of the appeal if the limitation period for this contravention began to run on June 13 instead of June 15, 2017.

On what day were the penalties for the respective contraventions "levied"?

[166] Section 75(1) of the *Act* states that the period during which a penalty may be "levied" is 3 years beginning on the date when the facts that lead to the determination that the contravention occurred first came to the knowledge of an official. I find that the meaning of the word "levy" in section 75(1) should be determined based on the modern approach to statutory interpretation, involving an analysis of the word in its context within the *Act*, and a consideration of legislative intent. I agree with the Appellant that it is important to interpret section 75(1) together with section 71(6) of the *Act*, since the two are closely connected; section 71 authorizes and defines procedures associated with administrative penalties, and section 75 prescribes a limitation period for levying such penalties.

[167] I agree with the Appellant that "levy" or "levied" can mean different things in different contexts. As such, the wording of section 71(6) warrants detailed consideration. It states:

> **71** (6) If the minister levies an administrative penalty against a person under this section or under section 74(3)(d) the minister must give a notice of determination to the person specifying:
>
> (a) the provision contravened;
>
> (b) the amount of the penalty;
>
> (c) the date by which the penalty must be paid;
>
> (d) the person's right to a review under section 80 or to an appeal under section 82;
>
> (e) an address to which a request for a review may be delivered.
>
> [underlining added]

[168] I find that section 71(6) contemplates two different actions by the minister in relation to two different things: 1. the act of levying a penalty; and, 2. the act of giving a notice of determination specifying the contravention and the penalty amount.

[169] I find that it is significant that this section 75(1) of the *Act* does not say that the period during which an administrative penalty may be "given", "served" or "delivered" is 3 years beginning on the date on which the facts that lead to the determination that the contravention occurred first came to the knowledge of an official. The Legislature could have worded section 75(1) that way, but it did not. For example, section 68(1)(a) of the *Oil and Gas Activities Act* states that the "time limit for making a finding [of contravention] under section 62 and giving a notice [of the finding of contravention or administrative penalty] under section 64 is 3 years after the date on which the act or omission that is alleged to constitute the contravention occurred" [underlining added]. When related statutes contain limitation provisions that are clearly worded differently, it is not contrary to the principle of horizontal coherence to interpret those provisions as having a different intended meaning.

[170] Additionally, section 71(6) must be read in a way that is harmonious with section 74(3)(d), as the former applies to administrative penalties imposed under the latter. Section 74(3)(d) allows the minister to "levy an administrative penalty" for up to the amount of direct and indirect costs they determine was needed to carry out a remediation order, where that order was not complied with and the minister elected to carry out the required work instead.

[171] Notice of such an administrative penalty must comply not only with section 71(6), but also with section 74(5). That section says:

> **74** (5) The minister must give written notice to the person, who is subject of an order under subsection (3)(d), providing the person with a copy of the order and informing the person of
>
> (a) the amount of the administrative penalty and the person's liability under section 130 of the *Forest Act* to pay that amount,
>
> (b) the reasons for the administrative penalty, and
>
> (c) the person's right to a review under section 80 or to an appeal under section 82, including an address to which a request for a review or appeal may be delivered.

[172] The legislature decided to make section 71(6) apply to administrative penalties levied under both section 71(2) and 74(3)(d). The legislature also decided to make section 74(5) apply to administrative penalties levied under section 74(3)(d) but not to those levied under section 71(2). As a result, any ambiguity in section 71(6) can be addressed by referring to section 74(5). The provisions in section 71(6) and 74(5) are presumed to mean different things, as the legislature is presumed to not repeat itself in two different sections, both of which apply to the levying of administrative penalties under section 74(3)(d).

[173] This suggests that the requirements of section 71(6) do not include delivery or service of the administrative penalty, because section 74(5) requires that "a

copy of the order" which levies the administrative penalty under section 74(3)(d) must be served. This is a service requirement, and it assists me to interpret section 71(6) to not include any service requirement. The legislature decided to impose a service requirement on administrative penalties levied under section 74(3)(d) but did not include that requirement in section 71(6), which applies to administrative penalties levied under both section 71(2) and section 73(4)(d). Plainly, the intention of the legislature was to not impose that notice requirement on section 71(6).

[174] As the legislature is also presumed to not impose inconsistent requirements within legislation, section 71(6) should not be read in a way to impose any notice or service requirement, because administrative penalties levied under section 73(4)(d) would then be subject to two different sets of requirements for notice or service, one from section 71(6) and the other from section 74(5).

[175] I find that the comments by the Minister of Energy and Mines recorded in the Hansard, cited by the Appellant, provide little assistance in interpreting section 75(1) of the *Act*. Although Hansard records may assist in interpretating statutes, the Hansard is a source of information that is secondary to the words in the statute itself. As stated in *R. v. Morgentaler*, [1993] 3 S.C.R. 463, at p. 484, and quoted in *Rizzo* at para. 35, I am "mindful of the limited reliability and weight of Hansard evidence". I find that the words in sections 75(1) and 71(6) of the *Act* are sufficiently clear and unambiguous when read in their proper context. I do not need assistance from the comments made during a debate about proposed amendments to the *Mines Act*, and I do not find them to be persuasive. In any event, I find that section 36.6 of the *Mines Act* states that it imposes a "time limit for giving a notice", and not a time limit for levying a penalty.

[176] In summary, based on the language in sections 71(6) and 75(1) of the *Act*, I conclude that an administrative penalty must be "levied" in compliance with the three-year limitation period in section 75(1). I also find, for the reasons provided above, that a notice of determination need not have been received by the Appellant, either in fact or as deemed by section 110(2) of the *Act*, within that limitation period. In addition, I have already found, above, that levying a penalty necessarily precedes giving a notice of determination, and not the other way around.

[177] Regarding the Appellant's concerns that this interpretation could lead to delays in the Ministry's administrative process that would be contrary to procedural fairness and could prejudice the rights of persons who are the subject of a determination, I note that an appeal of a determination under the *Act* must be filed within 30 days of the determination being appealed. The Commission has interpreted as meaning 30 days from when the appellant received the notice of determination, and the Commission has the authority to extend the 30-day time limit in special circumstances.[9] Therefore, a delay in issuing a notice of determination, or in an appellant receiving it, would not result in the appellant losing their right of appeal.

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[9] Under section 140.2 of the *Act*, section 24 of the *ATA* applies to appeals under the *Act*.

[178] Moreover, I agree with the Respondent that an unreasonable delay in the Ministry's administrative process could amount to an abuse of process. This could be a ground of appeal before the Commission, which has noted that the Supreme Court of Canada considered whether a lengthy delay in processing complaints in an administrative proceeding amounted to a denial of natural justice in *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 SCR 307[10]. An unreasonable delay amounting to an abuse of process could also lead to certain court remedies for the person who was the subject of the determination[11].

[179] In the present case, I find that the total penalty was "levied" when the Manager made the decision to impose that penalty, and this is established by the date on the notice of determination setting out the amount of the penalties, which was April 3, 2020. Therefore, for the total penalty to be levied within the three-year limitation period in section 75(1), the facts that lead to the determination that the contravention occurred must have first come to the knowledge of an official on or after April 3, 2017, and no sooner. Based on my findings above, I conclude that those facts in respect of all of the contraventions came to the knowledge of an official on or after April 5, 2017. Therefore, the total penalty was levied within the three-year limitation period in section 75(1) of the *Act*.

## DECISION

[180] In making this decision, I have considered all of the parties' evidence and submissions, whether or not I have specifically referred to or reiterated them in this decision.

[181] For the reasons provided above, I find that the three-year limitation period in section 75(1) of the *Act* does not apply to prevent levying the total penalty against the Appellant for the contraventions in the Tzazati Site and the Nazko Site.

[182] The appeal is dismissed.

"Darrell Le Houillier"

Darrell Le Houillier
Chair, Forest Appeals Commission

September 28, 2021

[10] *Marilyn Abram v. Government of British Columbia*, Decision No. 2004-FOR013(a), April 12, 2005, at page 8.
[11] *Nisbett v. Manitoba (Human Rights Commission)*, [1993] 4 W.W.R. 420, 1993 CarswellMan 103 (MBCA), at paras. 35-39.