



**Forest
Practices
Board**

Logging and Lakeshore Management near Vanderhoof

FPB/IRC/163

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The Complaint

In May 2009, the Upper Nechako Wilderness Council (the complainant) submitted a complaint that Canadian Forest Products Ltd. (the licensee) had harvested timber within a lakeshore management reserve used by the complainant's member businesses for guided-wilderness moose hunts and hike-in fishing. The complainant said the proximity of the cutblock to the lake has caused its member businesses to abandon the lake as part of their wilderness-business operations. The complainant is concerned that, under the *Forest and Range Practices Act* (FRPA), a forest licensee has the authority to make land use decisions that can negatively impact the values of its member businesses. As a result, the complainant is worried about what may happen in future to other lakes its members use for similar business purposes.

Background

The complainant is a group of wilderness-resort businesses south of Vanderhoof. One of their business practices is to provide guided hunts and fishing trips to lakes that offer a wilderness experience. One of these lakes is not particularly remote, but because it is accessed through a system of wooded trails, and because the lakeshore had undisturbed viewpoints, it gave the illusion of being in the wilderness. The proximity, easy-to-hike access trail, and wilderness "feel" of the lake added value to the business of two of the complainant group's members.

The licensee holds several forest licences in the Vanderhoof area. In December 2008, the licensee prepared to harvest a 62-hectare cutblock of mostly beetle-killed pine near the lake. The cutblock was harvested in February 2009. The licensee retained a 40- to 60-metre wide "wildlife tree patch" between the lakeshore and cutblock. The retained area contains a mixture of dead pine, live spruce and willow.

The complainant is upset that the licensee did not adhere to a draft lakeshore classification plan (DLCP) prepared in August 2000, under the government approved Vanderhoof Land and Resource Management Plan (LRMP). The LRMP was a consensus-based plan developed in the 1990s by many participants, including the complainant and a previous holder of the forest licence. For the lake in question, the DLCP called for a 50-metre reserve zone to be retained from the lake edge and a further 50-metre management zone, intended to meet several lakeshore management objectives.

Less than one-tenth of a hectare of the logged cutblock is within 50 metres of the lake. However, the complainant anticipates that the live trees in the retained area will blow down and that the dead pine will eventually fall, diminishing the wilderness value of the lake, as the view to and from the lakeshore and cutblock is exposed. The complainant wanted a wider reserve zone with live trees nearer the lake left standing to screen the view from both directions.

Discussion

The complainant put considerable effort into helping to develop the Vanderhoof LRMP and is troubled that the licensee is not applying lakeshore management zones as earlier negotiated. The complainant is also concerned that forest licensees can make decisions that negatively impact the values of other businesses in a different industry.

The investigation considered:

1. The legal requirements for lakeshore management.
2. Whether consultation between the licensee and the complainant was effective.
3. How FRPA deals with potentially competing business values.

Legal requirements for lakeshore management

The complainant expected the licensee to apply the criteria for lakeshore management zones as negotiated for the LRMP and as written in the DLCP. The Board considered what was legally required for lakeshore management.

Under FRPA, government may make orders and set objectives for management of a variety of forest resource values, including lakeshore management zones. A forest licensee's forest stewardship plan (FSP) must include results and strategies consistent with objectives set by government.

Objectives made under the *Government Actions Regulation* often have their roots in publicly-developed, strategic-level plans such as the Vanderhoof LRMP, which was approved by Cabinet in 1997. Government set some parts of the Vanderhoof LRMP into legal objectives (i.e., visual quality) but did not do so for lakeshore management zones. Instead, following approval of the LRMP, the Ministry of Forests and Range (MFR) identified the DLCP as a district policy under the former Forest Practices Code (the Code). MFR thus expected forest licensees to apply the DLCP in the course of their forest operations.

With the transition from the Code to FRPA, the lack of an objective for lakeshore management zones means that there are no legal requirements for a licensee to include results or strategies for lakeshore management within its FSP. The licensee's approved FSP does not mention the DLCP. Therefore, there is no legal requirement, or commitment from the licensee, to apply the DLCP in the course of its forest activities.

In the absence of a government objective for lakeshore management, a forest licensee must instead apply FRPA's *Forest Planning and Practices Regulation* requirements for riparian management. For the size of the lake in question, the regulation specifies a 10-metre wide riparian reserve zone¹ and no riparian management zone. Except for certain prescribed

¹ A riparian reserve zone is measured from the edge of a water-body into the surrounding forest.

purposes, a forest agreement holder must not cut, modify or remove trees in a riparian reserve zone. The licensee's approved FSP acknowledges these legislated requirements.

The licensee was legally required to retain a 10-metre wide riparian reserve zone. The licensee left a 10-metre reserve zone and at least 30 metres more.

Effectiveness of consultation

Effective consultation includes interaction that is, among other things, early and meaningful, responsive, genuine, and continuous.²

The complainant said its expectation that the licensee would apply the DLCP was based on the consensual agreement reached through the LRMP and on an understanding from the public review and comment version of the licensee's draft FSP. The draft FSP said the licensee would apply the DLCP.

However, the licensee removed its commitment to the DLCP prior to government approval of the FSP because it considered that it needed to keep its lakeshore management options open in order to deal with extensive beetle-infested and beetle-killed forest stands. The licensee still considers the DLCP during cutblock planning but it does not use the DLCP retention levels because of the dead pine issue. The complainant is angry and frustrated by the licensee's decision to step away from using the DLCP. The complainant considered the LRMP-negotiated lakeshore management zones to be a land use arrangement that both industries agreed to live with, and that government supported this arrangement when it approved the LRMP.

Until the FSP decision, the complainant and licensee had a cooperative and productive relationship that met their respective interests. The licensee would contact the complainant's member businesses about planned cutblocks, provide a map, and start discussions to deal with specific issues. That process began, for the lake in question, with the licensee contacting one business (a fishing lodge). However, before the licensee contacted a second involved business (a guide outfitter), the first had contacted the second. The guide outfitter then began email discussions directly with the licensee.

The guide outfitter was concerned that, as the retained reserve zone blows down, the fallen timber will impact the ability to effectively hunt and fish from the lake edge. In addition, the guide outfitter was worried that the cutblock would be visible from the lakeshore and, conversely, the lake from the cutblock. The result would be that the lake would no longer have a wilderness feel to it, and the likelihood of other recreationists accessing the lake through the cutblock would increase, further diminishing the lake's value to the guide outfitter's business.

² See Board Bulletin, Volume 3 – *Opportunity for Public Consultation under FRPA*
<http://www.fpb.gov.bc.ca/assets/0/114/190/50a4c9e4-699a-4511-b7ea-0663b2631709.pdf>

The guide outfitter did not express specific concerns about his business practices to the licensee. The guide outfitter was adamant only that the licensee adhere to the DLCP-specified lakeshore reserve and that it provide an outer “management zone” to protect the remaining live trees in the reserve zone from blowing down. The guide outfitter believed that applying the DLCP would accommodate his specific interests. Ultimately, the guide outfitter offered a compromise by asking the licensee to adjust the cutblock boundary to the edge of the DLCP-described reserve zone (50 metres from the lake; about a one-tenth of a hectare reduction of the area to be harvested).

The licensee, on the other hand, was also adamant that lakeshore values were adequately addressed by the cutblock, as planned. The licensee considered what it knew about the lake and decided that its plan was adequate to manage for forest recreation. The licensee refused to change the cutblock boundary. Ultimately, there was no compromise.

In the Board’s opinion, there was ample time for consultation, but the ensuing discussion was not fully meaningful. Interests were not fully expressed and the complainant felt powerless to affect the cutblock design. That may have partly resulted from the email-only discussion, which, though genuine, likely limited the opportunity for responsive compromise. The result was that consultation was not effective. In the circumstances, it may have helped if the parties had met in person and on-site to more fully discuss their specific interests and how to resolve the disagreement.

How FRPA deals with competing business values

The complainant is dissatisfied and concerned that the licensee has the final say in the disagreement between it and the complainant group members regarding what meets the member business interests.

However, because FRPA generally emphasizes results over process, once a licensee’s FSP is approved by government, the details of where and how the licensee might harvest timber are left largely up to the licensee. Consequently, whether public concerns about specific forest activities are resolved is a matter of negotiation between the public and licensee.

In the past, MFR adjudicated disagreements. Under FRPA’s framework, MFR can only try to facilitate relationship building. The complainant has a fundamental problem with the forest licensee having the final say about how tourism-industry values might best be managed. With the forest industry in decline, the complainant believes that forest recreation in the Vanderhoof area will form the mainstay of the economy for the next few decades. To optimize that transition, the complainant believes that government—not the forest industry—should ensure that forest recreation (including lakeshore management) is managed in the public’s interest.

Government has been clear about the priority it places on the forest industry. Section 2 of FRPA’s *Government Actions Regulation* specifies that orders and objectives to deal with non-timber resource values, such as lakeshore management zones that may support the tourism

industry, are not to unduly reduce the province's timber supply. The regulation also requires that the benefits of the order to the public would outweigh any significant impact on a forest agreement holder's wood cost and rights.

In the circumstances of this complaint, the Vanderhoof LRMP set out public expectations for forest management in the 1990s—prior to both FRPA and the mountain pine beetle epidemic. No one knew the impact that mountain pine beetle would have on the landscape, what changes might result in timber supply, or whether the social direction of the Vanderhoof LRMP would remain applicable over time. Consequently, in 2004, government reviewed for amendment those LRMP values it considered “most-at-risk” from the pine beetle epidemic. Presumably, the LRMP provisions for lakeshore management were reviewed. However, no changes were made to the plan's lakeshore management guidance. That was government's land use decision; in the context of its 2004 review, it did not choose to establish legal objectives for lakeshore management.

In 2007, MFR gave specific guidance to its staff and other resource professionals about the management of lakeshore management zones under FRPA.³ In essence, the ministry decided to rely on voluntary measures from forest licensees to address lakeshore management concerns and to protect non-timber values near lakeshores. The ministry added that legal objectives would be considered where reliance on voluntary action fails.

In this case, the licensee said that it continues to consider the DLCP in its operations. The licensee reported that it has harvested 484 cutblocks since approval of its FSP in September 2005. Forty cutblocks (8.3 percent) included harvesting within a DLCP-described lakeshore management area.⁴ Six of those 40 cutblocks (15 percent) included harvesting within a lakeshore reserve zone. The total area harvested within the six lakeshore reserve zones amounted to about nine hectares. Despite its lack of a legal commitment to the DLCP, harvesting by the licensee within DLCP-described lakeshore reserve zones has not been frequent or extensive.

For the lake in question, the trees harvested within the DLCP-described lakeshore reserve zone were mostly dead pine. It is possible that such harvesting might still have occurred had lakeshore management zones been legally established. Guidance available from the former Code for lakeshore management⁵ suggests that timber harvesting can occur within lakeshore reserve zones for specific reasons, including minor salvage. Minor salvage means harvesting up to 2,000 cubic metres of timber to deal with trees that are dead, infested with pests, otherwise

³ FRPA General Bulletin Number 14, *Management of Lakeshore Management Zones under the Forest and Range Practices Act*, May 2007. See:

http://www.for.gov.bc.ca/hth/timten/FRPA_implementation/Bulletins/FRPA%20No%2014%20Management%20of%20Lakeshore%20Management%20Zones.pdf

⁴ Some timber harvesting is expected in the outer zone of a DLCP-described lakeshore management area.

⁵ Lake Classification and Lakeshore Management Guidebook: Prince George Forest Region, September 1996. See: <http://www.for.gov.bc.ca/tasb/LEGSREGS/FPC/FPCGUIDE/PGLAKE/PG-TOC.HTM>

damaged, or part of a sanitation treatment.⁶ In the timber type involved, the harvesting of 2,000 cubic metres would equate to an area of about 7.5 hectares.

In summary, FRPA deals with competing business values through regulations, including government-specified objectives. In the absence of such objectives, there is no legislated linkage between forest development and public-policy land use plans such as the Vanderhoof LRMP. In such situations, the licensee is expected to decide how best to carry out its operations. Therefore, under FRPA, a forest licensee can make decisions that potentially impact the values of another business in a different industry. Eventual conflict seems likely and, in this case, that is what happened.

The outcome has been an erosion of relationships and a lack of trust in the ability of the licensee to manage for the complainant's business values. The complainant's member businesses no longer feel secure in their business investments because they do not explicitly know how the forest licensee will manage the lands they all must share.

Conclusions

The Vanderhoof LRMP was approved by Cabinet under the former Code but government did not translate its strategic direction for lakeshore management into legally-required objectives under FRPA. As a result, lakeshore management zones in the Vanderhoof Forest District are simply "policy" and a forest licensee is not legally obligated to apply them.

In these circumstances, the licensee met and exceeded FRPA's requirements for lakeshore management. Nevertheless, the complainant remains dissatisfied and concerned that the licensee could decide the disagreement between it and the complainant group members, which affects the member business interests.

In the absence of specific regulations or government objectives about lakeshore management, the structure of FRPA puts considerable reliance on licensees working to maintain a "social licence" with the public. Given the circumstances, the licensee made what it thought was the best decision it could with the information at hand. It is not clear whether a different outcome would have resulted had consultation between the complainant and licensee been more effective. It is also not clear whether a different outcome would have resulted had legal objectives for lakeshore management zones been established. Although such zones would set minimum reserve widths, it seems likely that certain harvesting, such as minor salvage, might still have occurred within those reserves.

Ultimately, under the FRPA framework, a forest licensee can hold sway over other tenured users of the landscape. FRPA provides no mechanism to deal with competing interests of legitimate

⁶ "Sanitation treatment" meant tree removal or modification operations designed to reduce damage caused by forest pests and to prevent their spread.

resource users tenured by government to use the same Crown land area. Even if lakeshore objectives were legally established under FRPA, situations could still end up being favourable to one party and detrimental to the business interests of the other.

Here, the system resulted in disagreement and eroded trust. The complainant is no longer secure in its present or future business investments because it does not explicitly know how the licensee will manage the land the businesses must share. However, the complainant may draw some confidence in knowing the licensee has, to date, harvested in proportionately few DLCP-described lakeshore management areas. Alternatively, the complainant may remain dissatisfied and concerned about the potential for future conflict.

Recommendation

This complaint was not about how much of a lakeshore management zone was harvested; it was about the lack of a process for dealing with a conflict between two valid, tenured users of the same land base. On-the-ground conflict between tenured land and resource users is a frequent source of complaints to the Board. The Board is interested in ways that prevent and resolve such conflict.

Under FRPA, the public has an opportunity to advise forest licensees about specific public interests that may occur within a licensee's operating area. The Board suggests that the complainant meet with and provide the licensee with updated information about those lakes or areas where its member businesses have specific interests or business value. Periodic updates should occur as business values, owners, investments or areas of interest change.

Also, FRPA provides for establishing legal objectives to implement lakeshore management zones. MFR has said it will consider establishing legal objectives for lakeshore management, should reliance on voluntary measures fail. In the Board's opinion, MFR should review the DLCP in the context of the mountain pine beetle epidemic and the economic and forest-use outlook for the Vanderhoof LRMP area, and decide whether lakeshore management zones and objectives should be established under FRPA.

However, establishment of legal objectives will not necessarily resolve the complainant's concern over its business interests and investments. Even if objectives were legally established, the structure of FRPA gives considerable advantage to forest licensees which, unless there is generous goodwill, could lead to decisions unfavourable to the interests of other businesses. No legislation can avoid such inequity unless it is also set up to deal with conflict between the bona fide users of Crown land operating on the same landscape. FRPA contains no such mechanism.

A regulatory framework that makes a potentially injured party responsible for notifying a controlling party of an interest or problem, but provides no mechanism to judge the efficacy of the controlling party's response, leaves the potentially injured party at a disadvantage in any negotiation. On the other hand, a restrictive regulatory framework with legally-required

outcomes removes the opportunity for the balancing of values that may be advisable in a particular situation. Ultimately, a system of objectives and regulation coupled with respectful, mediated solution-seeking would be more equitable for the people involved, and more effective for stewardship of the many tenured interests that the province has vested on the landscape.

Under Section 131(2) of the Act, the Board recommends:

That the Integrated Land Management Bureau's Board of Directors, within the context of its Resource Management Coordination Project,⁷ develop a means to deal with direct overlapping interests of tenured land and forest resource users by a process of mediation in which the interests of the parties are effectively identified and a reasonable balance between all interests is struck, consistent with the law, but also responsive to locally specific circumstances.⁸

Under Section 132(1) of the Act, the Board requests the Integrated Land Management Bureau to notify the Board in writing of the steps taken to address the recommendation by September 1, 2010.

⁷ BC's Integrated Land Management Bureau (ILMB) is responsible for integrating, managing and delivering a range of critical services to the province's private, corporate and public citizens (see: <http://ilmbwww.gov.bc.ca/about.html>). The ILMB Board's *Resource Management Coordination Project*, among other things, works to identify and implement opportunities to better coordinate programs, policy and service across natural resource management organizations.

⁸ The Omenica Beetle Action Coalition made a similar recommendation to government in June 2009. The Coalition was established by the provincial government in 2005 to enable 14 communities from Prince George to Smithers to respond to the challenges and opportunities created by the mountain pine beetle epidemic. In its *Tourism Sector Strategy* report, the Coalition made several recommendations, including establishing an independent process for reviewing conflicts related to overlapping land use tenures and incompatible uses. See: Page 49 <http://www.ominaccoalition.ca/Strategies/Tourism/pdf/TourismStrategyWeb.pdf> .



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