Forest Practices Board

Administrative Appeals: 2002-2009

Special Report

FPB/SR/36

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Introduction

This report summarizes the administrative appeal work done by the Forest Practices Board (the Board) from January 1, 2002 to March 31, 2009. A report published in 2002—*Reviews and Appeals of Forest Practices Code Decisions in British Columbia, 1995-2001*—summarizes the administrative appeal work done from 1995 to 2001.

The report outlines the purpose of the Board's appeals programs and the issues addressed in appeals. It is intended as a source of information for the public and is part of the Board's commitment to openness and accountability.

The Board's Role in Appeals

One of the innovations of the *Forest Practices Code of British Columbia Act* (the Code), which was implemented in 1995, was a comprehensive system of administrative remedies for legislative transgressions, including administrative penalties. Under the Code, government officials—rather than the courts—were authorized to levy penalties and order remediation in cases where legislation has been contravened. Further, these penalties and remediation orders could be appealed to a tribunal called the Forest Appeals Commission (the Commission). When the *Forest and Range Practices Act* (FRPA) came into effect in 2004, this system continued, with some changes.

Administrative remedies provide an enforcement solution that does not require recourse to the courts. This has a number of advantages. For example, compared to the court process, the administrative remedies process is faster and less formal. Also, decisions are made by officials familiar with the forestry context, rather than by judges, who are usually not.

On the other hand, administrative remedies are sometimes criticized for not providing adequate procedural protections. While administrative remedies existed elsewhere in Canada before the Forest Practices Code came into effect, the Code was one of the first statutes to introduce a comprehensive system of administrative remedies. In recent years, the use of administrative remedies in an environmental context has been expanded under federal and provincial legislation.

The Board's role under FRPA in the administrative remedies system gives it the right to participate in appeals to the Forest Appeals Commission. It can:

a. Participate in an appeal by a forest or range licensee of a penalty imposed by government for non-compliance.

b. Initiate its own appeal of a penalty determination or of a remediation order.

c. Appeal a government official's decision concerning approval of a forest stewardship plan, range stewardship plan or range use plan.

The Board exercises this right so as to add a public interest perspective that may not be adequately presented by either the government or the licensee. Board submissions are compiled based on information gathered during the course of such Board work as audits, complaint investigations and special projects, and rely heavily on the expertise and experience of the professionals who accumulate that information.

This role was given to the Board as a way to give the public an avenue to provide input to the appeals process without giving them a direct right to participate; a policy choice made by the government when the Forest Practices Code was drafted. Under this system, members of the public may ask the Board to initiate an appeal, or to join an existing appeal. The Board considers such requests and gets involved if there is a strong public interest in the matter that warrants the Board doing so, and if there is a reasonable, legal ground for an appeal.

Decisions made by the Forest Appeals Commission can set important precedents for the interpretation and application of forest practices legislation. Commission direction on such issues as penalties for environmental damage, the nature of due diligence, officially induced error and administrative fairness (these concepts are discussed later in this report) can establish the direction taken by licensees and decision-makers for years to come. For this reason, the Board's appeal program, though small, is important.

The Board's administrative appeals program is guided by the Board's overall mission statement, fundamental purposes, and values and guiding principles, which are found on the Board's website located at www.fpb.gov.bc.ca.

Through its appeals program, the Board:

- Helps to improve forest and range management.
- Helps to sustain public confidence in forest and range management.
- Encourages fair and consistent application of the law.
- Provides clarification or interpretation of important sections of the legislation.

While most of the Board's appeals activity takes place before the Forest Appeals Commission, the Commission's decisions can be appealed to the BC Supreme Court if a question of law or jurisdiction arises. If the Board joined the appeal at the Commission level, it becomes full party to the appeal when it goes to Supreme Court.

Statistics

From January 1, 2002, to March 31, 2009, there were 104 appeals to the Commission under the Forest Practices Code, FRPA and the *Wildfire Act*. The Board joined 21 of these appeals and initiated an additional two. During the previous period, 1995 through 2001, the Board joined 52 appeals and initiated 4. The total number of appeals during that period was 100.

The Board decided not to join the majority of licensee appeals because the issues raised were not of broad significance. Alternatively, sometimes the Board declined to participate when it determined that its participation would not likely add value to the appeal.

The Board received 14 public requests to initiate appeals. Generally, the issues of concern were more amenable to Board investigation as a complaint or as a special investigation, than an appeal because the scope of appeals is restricted to strict legal compliance. Board investigations, in contrast, can assess soundness and fairness of forest and range practices and make recommendations for improvements.

The Board addressed the public requests as follows:

- Six were investigated as complaints.
- Two led to a special report or special investigation.
- Two were declined due to lack of jurisdiction – this led to two recommendations for legislative change, which were implemented.
- Two were declined due to the fact that there were no apparent grounds to appeal – there was no contravention of the Code.
- One was addressed by writing a letter to the district manager.
- One could not be pursued due to the expiry of the deadline to appeal – a request for an extension of time was declined.

Changes during the Period

There were significant changes in legislation and in the operating environment during this reporting period. One major change was that in 2002, the Code was amended to allow the defence of due diligence to be used against an administrative penalty. Under a due diligence defence, legislation is not contravened if a person can show they applied all reasonable care to prevent the contravention. Due diligence is discussed in a later section of this report.

In late 2002, the Code was further changed so that a person could appeal a determination directly to the Commission rather than first having to have the determination reviewed by a government official appointed for that purpose. The Board supported this change.

Another significant change that occurred in 2002 and 2003, was that the government reduced the budgets of both the Board and the Ministry of Forests. As a result, there was a reduction in Board staff dedicated to appeals.

But the most substantial change in legislation came with the repeal of most of the Code and the introduction of FRPA. Under FRPA, the MFR district managers no longer had the authority to

decide whether forest resources were being adequately managed and conserved. Under the Code, that was an important consideration before development plans could be approved.

Instead, under FRPA, delegated decision-makers are now required to approve forestry plans as long as the strategies and anticipated results are "consistent" with government objectives. The onus shifted, from "don't approve unless there is adequate consideration of all forest resources," to "approve unless there is inconsistency with objectives." Under the Code, public concerns and Board submissions on many appeals often challenged whether forest practices did adequately manage and conserve forest resources, such as wildlife and recreation. Under FRPA, there is no longer a legal basis to raise such issues at the Commission in appeals.

Also, during this reporting period, there were significant changes in the operating environment on the ground. For example, the mountain pine beetle outbreak has placed increased emphasis on attempts at beetle control and, when that generally fails, on salvage of dead pine. As well, the severe economic downturn has depressed the demand for forest products, resulting in much less activity in the forest.

With the enactment of the *Wildfire Act* in 2004, the Board considered nine wildfire appeals and joined three.

Themes and Issues

Looking back on appeals for this reporting period, several themes emerge, including: penalties for environmental damage, fairness to licensees, due diligence, officially induced error, the administrative remedies system, liability of directors and officers, interpreting results-based legislation, and conserving biodiversity in old growth forests. Each of these is discussed in the following pages.

Penalties for Environmental Damage

An ongoing area of interest for the Board is the topic of penalties for environmental damage. In 2002 the Board published a special report about this topic.[1] The Board became concerned about the occasional failure of government officials to give adequate weight to environmental damage when setting penalties for Code contraventions. Board findings indicated that while forestry officials were adept at calculating timber values, in some cases, they did not give full consideration to the impacts on environmental and other non-timber values.

The special report described the results of a number of administrative reviews and appeals taken to the Forest Appeals Commission. The report's conclusion said:

[1] Forest Practices Code Penalties and Environmental Damage - Special Report 07.

> Through these cases, review panels and the Forest Appeals Commission have affirmed the obligation of decision-makers to seriously consider environmental impacts when setting Code penalty amounts.
>
> These decisions have clarified that penalties should reflect both the loss of economic and non-economic public resource values as a result of Code infractions. This means that riparian habitat values, as well as land productivity for commercial timber and other vegetation and wildlife need to be considered. Establishing the degree of impact on water quality and fish habitat becomes important as well. The Crown should be compensated for destruction of all types of public resources, even those without traditional market value.

The following year, in 2003, the Board became aware of an appeal to the Supreme Court of Canada involving the question of compensation for environmental damage. The Board decided to ask the Court for intervener status—the right to present legal argument in the appeal—and the request was granted.

The appeal[2] concerned compensation for damage to a forest at Stone Creek, in the Prince George area, that ignited in 1992 after slash burning smoldered all winter. The resulting large forest fire burned a steep, "environmentally sensitive area", where trees had been set aside to protect fish habitat and drinking water quality.

The Board presented its views on the broad question of compensation for environmental damage. The Board argued that monetary damages awarded by the courts should compensate the public for damage to public resources, including "non-market" environmental assets such as wildlife, wildlife habitat, biodiversity, "ecosystem services" (such as the provision of clean water), recreational opportunities, and intrinsic values (such as the value of conserving forests for future generations).

Ultimately, the court gave legal recognition to the "economic" value of environmental protection and preservation, accepting that, in some cases, environmentally sensitive areas have a greater value when left intact than purely the monetary value of harvested timber. It also found that the Crown should not be penalized for acting with "ecological and environmental sanity" when deciding to leave trees standing in ecologically sensitive areas, rather than logging them.

In 2003, the Board joined one of six appeals to the Commission concerning cattle grazing on Crown range land. The appeal was launched by a rancher who had been fined $500 for allowing cattle to overgraze Crown range.[3] Because a 2001 Board assessment of the health of riparian areas had concluded that heavy cattle use was causing a significant number of streams, lakes and wetlands to not function appropriately in the drier areas of the southern interior of the

[2] *British Columbia v. Canadian Forest Products Ltd.* 2004 SCC 38 (also known as the "Stone Fire" case).
[3] FAC No. 2003-FOR-004

province, the Board argued that damage from grazing can, and does, have a significant impact on the public's range resources.

Although the appellant was— like the vast majority of the range tenure holders in British Columbia— a small rancher, there were 1,750 small-scale operations using Crown range land at the time, and the Board argued that, cumulatively, they were having a significant environmental impact. The Board said that, in a results-based regulatory regime, tenure holders must be held accountable for failure to meet the results set out in their plans. The Commission agreed, but reduced the penalty to $300.

In 2004, the Board joined another appeal concerning the clear-cutting of an area that was to have been set aside as deer winter range.[4] The appeal was settled by mutual consent, with all involved parties agreeing that an appropriate penalty for this transgression would be a total of $30,000; $20,000 to offset any economic benefit gained by the transgressor, and $10,000 as a deterrent against similar contraventions in future.

In 2008, the Board joined an appeal by a railway company concerning a grassland fire ignited by a hot brake on a railway car.[5] Government spent almost $6 million to fight the fire, and the company was fined $11,000 for deterrence plus $250,000 in damages as compensation for timber lost in the fire. The Board joined to argue that compensation for fire damage should cover forest and range resources beyond just the economic value of the timber; however, because the burned area was mainly fire-adapted grassland with no other significant resource values, the Board withdrew from the appeal.

In 2009, the Board joined an appeal concerning landslide damage caused by water from a forestry road's drainage systems.[6] The landslide ran across a road and into a fish-bearing stream. Government said it was caused by poor culvert locations, lack of water control structures, and increased water from cutblock due to a heavy spring storm. The licensee argued that it had been diligent, that it could not have foreseen the problem, that it had done adequate road maintenance and that the slide had started far downslope of the road.

The Board joined to make submissions on what constitutes damage to the environment and also to ask the Commission to revise the test for due diligence that was originally developed in 2005.[7] The hearing occurred in September 2009 and a decision is pending.

[4] FAC No. 2004-FOR-004
[5] FAC Nos. 2008-WFA-001 and 2008-WFA-002
[6] FAC No. 2008-FOR-011
[7] FAC No. 2004-FOR-005; for more on the topic of due diligence and foreseeability, see below, under "Appeals to BC Supreme Court".

Fairness to Licensees

The Board participated in five appeals involving questions of fairness, including:

- Whether a contractor who would be affected by a determination concerning a licensee has a right to participate in the determination.
- Whether the three-year limitation period starts when government officials first become aware of a potential contravention rather than when the formal hearing is held.
- Whether a particular fine was excessive.
- Whether the right balance had been found between the need for procedural fairness and the need for an efficient system of administrative remedies.
- Whether a licensee with maintenance obligations for a forest service road was legally required to build a bridge to replace a deteriorated culvert.

In February 2002, the Commission presented its decision in an appeal initiated by the Board[8] concerning a penalty determination against a licensee on the novel ground that the licensee's contractor had not been afforded procedural fairness. Although the contractor was not the subject of the penalty determination, the findings would significantly affect the contractor, yet it had not been given standing at the original hearing. The Board argued that this was unfair. However, the Commission ruled, in a preliminary ruling, that it did not have jurisdiction to hear the appeal because the determination in question only involved the licensee, not the contractor.

In 2003, the Board joined an appeal by a forest licensee that had been fined $3,000 under the Code for building unauthorized crossings over two streams on Haida Gwaii/Queen Charlotte Islands.[9] The Board supported the licensee in this case. The licensee argued that a three-year limitation period on finding a contravention had passed, and the Board further argued that the three-year limitation period should start when the district manager or his employees first become aware of the facts that establish a likely contravention, not once a formal hearing is held to determine if one occurred.

The Commission concluded that the limitation period should begin when government officials become aware of a possible contravention. In this case, a federal fisheries officer had notified provincial government officials of a potential contravention. This notification started the clock on the limitation period. However, the limitation period only applied to the penalty, so while a contravention was noted on the licensee's record, it was too late to impose a penalty.

In 2007, the Board joined a woodlot licensee's appeal of a $10,000 penalty imposed for carrying out harvesting without authorization.[10] As there was no assertion of any damage to the environment, the fine seemed potentially excessive, so the Board joined to question the appropriateness of government enforcement. The licensee was less concerned about the amount

[8] FAC No. 2001-FOR-004
[9] FAC No. 2002-FOR-007
[10] FAC No. 2007-FOR-004

of the fine than about future complications due to having a contravention notice on his record. The Board helped the parties to negotiate a compromise settlement (without a hearing) whereby the licensee would pay the fine, but government would not hold the contravention against the licensee when considering approval of another project that the licensee was planning.

In 2007, the Board joined an appeal by a licensee regarding a question of procedural fairness in the use of professional opinions.[11] The main issue for the Board was that of balancing procedural fairness with keeping the administrative remedy process efficient. Unsuccessful attempts were made to resolve the appeal and, eventually, the licensee abandoned it.

In 2008, the Board joined an appeal launched by a licensee that had refused to construct a bridge on a forest service road[12] where a washout had occurred due to the deterioration of an old metal culvert. The licensee pulled the culvert and stabilized the site, but government wanted it to re-establish permanent access, arguing that, due to legal changes, a culvert was no longer sufficient and a bridge would be required. The licensee said it had no obligation to replace a culvert with an expensive bridge so, in the interim, government put in a temporary bridge. The matter was resolved without a hearing when the Board suggested a cost-sharing arrangement. Upon further negotiation, the two parties agreed that the installation of a permanent bridge could await issuance of cutting permits for the area beyond the stream crossing, and that bridge construction costs would be reimbursed in a stumpage rate determination.

Due Diligence

The *Forest and Range Practices Act* allows for the use of the defence of due diligence in administrative proceedings. This defence was introduced into the legislation in 2003 and the Board published a bulletin at that time describing the legal context and implications of it.

As a way to ensure that high standards of stewardship were promoted in due diligence cases, the Board participated in several appeals that used this defence.

For example, in 2004, the Board joined an appeal by a licensee who was found to have caused landslides during road construction while working in some difficult terrain.[13] A question central to the appeal was whether the licensee had exercised enough care or diligence to avoid causing the landslides. While the defence of due diligence was made applicable to administrative penalties in late 2002, this was the first opportunity for the Commission to set out tests to assess how much diligence was needed for the defence to succeed. However, the Commission decided the licensee had completed all reasonable assessments and had used professionals in the road design, so there were no indicators for the licensee that its road construction might cause slides. Ultimately, the Commission found no contraventions and did not to deal with the due diligence defence in its decision.

[11] FAC No. 2007-FOR-007
[12] FAC No. 2008-FOR-001 and 2008-FOR-002
[13] FAC Nos. 2003-FOR-005 and 2003-FOR-006

In 2005, the Board joined an appeal by a licensee that was fined because its contractor misread a map and felled trees for 200 metres in the wrong place before realizing the error and shutting down his machine.[14] There were two important issues in this appeal. First, the licensee claimed it had been duly diligent in instructing the contractor, and second, given that the Commission had not made a decision on the defence of due diligence in the 2004 appeal, this was a second opportunity for it to set out tests to assess how much diligence was needed for the defence to succeed.

The Board argued that the licensee should have to prove that both it, and its contractors, had shown due diligence. The Commission disagreed, concluding that only the licensee had to show it had been diligent. In this case, the majority of the Commission agreed that the licensee could not have foreseen the contractor's apparent disregard of clear instructions, so could not be held accountable for failing to prevent what it couldn't have foreseen. Given this reasoning, the Commission found that the licensee had been duly diligent.[15]

Following this decision, the Board updated its due diligence bulletin to reflect the outcome of the commission decision.[16]

In 2005, the Board joined two appeals[17] to the Commission that invoked the defence of due diligence, but later withdrew after concluding that the Commission's 2005 decision would provide adequate guidance. However, in the case of one appeal, the licensee further appealed the Commission decision to the BC Supreme Court. The Board has joined that appeal as an intervener (see below).

Officially Induced Error

The defence of officially induced error was introduced into forest practices legislation in 2003 at the same time the due diligence defence was introduced. Officially induced error can be used as a defence in some circumstances when someone acts based on advice given by one or more government officials.

In 2003, the Board joined the appeal[18] of a licensee to a penalty determination given after the licensee was found to have crossed the boundary of his licence and harvested in another licence area. The licensee argued that a government official had told him the boundary was located at the point where snow ploughing of a road ended, and that he had acted on that advice.

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[14] FAC No. 2004-FOR-005

[15] For more on due diligence and foreseeability, see the discussion below under "Appeals to BC Supreme Court."

[16] http://www.fpb.gov.bc.ca/assets/0/114/190/9ba46e3a-5d03-421c-a95d-78d5078df052.pdf

[17] FAC Nos. 2005-FOR-001 and 2005-FOR-004

[18] 2002-FOR-010

The Commission rejected the licensee's appeal. However, their ruling outlined the key elements of officially induced error, stating:

> In order for an accused to rely on an officially induced error as an excuse, he must show, after establishing he made an error of law (or of mixed law and fact), that he considered his legal position, consulted an appropriate official, obtained reasonable advice and relied on that advice in his actions.

The Board joined two other related appeals in 2003 that raised the defence of officially induced error.[19] These appeals were settled by consent.

The Administrative Remedies System

Stop work orders are an important part of the administrative remedies system. Government officials who have reasonable grounds to believe that forest practices legislation is being contravened may issue a stop work order to prevent the contravention from continuing. The Board has joined several appeals on this topic.

In 2001, a government official discovered a failed culvert on a road where active log hauling was taking place. Sediment traps were not functioning and sediment was getting into a stream where salmon were present. The official issued a stop work order. The licensee remedied the problems but nonetheless asked for an administrative review[20] of the stop work order, even though it had been lifted. The licensee asked that the order be rescinded, as if it had never been issued. The review panel agreed and rescinded the order, basing its decision in part on government policy dealing with the use of stop work orders.

The Board appealed the review decision, concerned that the decision would discourage field officials from issuing stop work orders. The appeal[21] was settled by mutual consent, with the government agreeing to change its stop work order forms to make it clear that stop work orders are not contravention determinations. Government also agreed that a legally-issued stop work order that has already been lifted should not be rescinded solely on the basis of policy.

Also in 2001, the Board joined an appeal concerning unauthorized harvesting. In response to a submission in the appeal, the Board argued that during administrative penalty proceedings the government need not prove that a person, or persons, acted "knowingly" to establish that a contravention occurred. However, the argument was not pursued by the appellant and the Commission did not make a finding on this point. [22]

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[19] FAC Nos. 2003-FOR-007 and FAC-FOR-008

[20] Administrative reviews were an intermediate form of appeal in the legislation. They were eliminated in 2004, except where new evidence arises after the original determination.

[21] FAC 2002-FOR-005

[22] FAC 2002-FOR-004

In 2004, the Board joined an appeal launched by a person who had been charged with unauthorized harvesting. The Board's purpose in joining the appeal was to address the issue of establishing an appropriate standard of proof for an administrative remedy that was imposed in relation to forest practices.[23]

Until February 2004, the law was clear that the standard of proof for administrative remedies was proof on the balance of probabilities, not the criminal standard of proof of "beyond a reasonable doubt." However, a series of conflicting judgments made by the BC Supreme Court, mainly in the context of liquor licensing, had recently cast doubt on the concept of the "standard of proof," with some decisions suggesting that the standard of proof for administrative remedies should be raised to that of proof beyond a reasonable doubt.

The Board argued that a requirement of proof beyond a reasonable doubt would make enforcement less effective, whereas proof on the balance of probabilities would encourage effective enforcement. The Commission agreed with the Board that the standard of proof should be based on the balance of probabilities.

Liability of Directors and Officers

In 2006, the Board joined an appeal launched by a licensee's company director who was fined $45,000 for damage done by the licensee to sensitive limestone formations ("karst") during road building and forest harvesting.[24]

The Board joined the appeal to address the issue of the liability of company directors and officers under the Forest Practices Code and, overall, supported the government in asking that the Commission confirm the determination with respect to liability and impose a substantial penalty. The Commission reviewed the issue in some detail, agreeing that a corporate director or officer should be liable for failing to prevent an occurrence which ought to have been foreseen. However, the Commission noted that before a penalty is imposed on a director or officer, it must be found that a corporation has contravened the Act. Only after such a finding can government determine whether a director or officer of a corporation actually permitted the corporation's contravention. Because neither of these things was established in this case, and there had also been some significant procedural errors, in the end the fine was set aside.

Interpreting Results-based Legislation

In 2009, the Board joined two related wildfire appeals[25] in one of the first tests of results-based legislation. While previous legislation was highly prescriptive as to the fire suppression equipment required on a job site, FRPA simply states that the fire suppression system must be "adequate." In this particular case, a fire caused by a feller buncher spread over 1,800 hectares,

[23] FAC No. 2004-FOR-013
[24] FAC No. 2005-FOR-015
[25] FAC Nos. 2008-WFA-004 and 2009-WFA-001

destroying almost $7 million worth of timber, and costing government almost $2 million to suppress. The licensee told the contractor to have a water tanker on site before starting operations, however the person moving the water tank to a new cutblock stopped to do other work and the tanker was still a kilometre away when the fire broke out. The Board's interest in joining this appeal was to help interpret the phrase "adequate fire suppression system" under FRPA. The hearing of the two appeals had not yet been scheduled as of the date of this report.

Conserving Biodiversity in Old forests

In 2006, the Board joined a licensee's appeal to the Commission regarding a district manager's rejection of an FDP amendment that would have added a cutblock in an area containing old growth forest. The district manager concluded the amendment would not "adequately manage and conserve" forest resources, which was a requirement of the Forest Practices Code.

However, the licensee's appeal was instead addressed through an administrative review, which the Board did not participate in. The review panel upheld the district manager's decision. The licensee did not appeal the decision of the review panel.

Appeals to BC Supreme Court

In this reporting period, there have been two situations in which the Board was involved in appeals to the BC Supreme Court.

The first occurred in 2002, when the Board participated in a case concerning how the concepts of due diligence and vicarious liability should apply when a private landowner has hired a contractor who violates the Code.[26]

The outcome of this appeal was that the BC Supreme Court agreed with the Board's view that the liability of a private landowner who hires a contractor is not as absolute under forest practices legislation as that of a licensee who hires a contractor, because licensees are given the privilege of operating on public land.

The second appeal that the Board participated in occurred in 2007, when a forest licensee appealed a Commission decision involving due diligence.[27] In this case, the Board did not join the appeal at the Commission level, but was allowed to intervene in the appeal. The Commission found the licensee to be partly responsible for an unauthorized clear-cutting of an area that should have been selectively harvested.

[26] FAC No. 2001-FOR-001
[27] FAC No. 2005-FOR-004

In the appeal, the Board plans to suggest a modification of the due diligence test currently being applied by the Commission. That test allows the due diligence defence to be used whenever the particular circumstances of a contravention were not foreseeable. The Board's position is that the true test of due diligence is whether or not a licensee took adequate care while planning and operating, and determining this depends on many factors, only one of which is foreseeability. Factors relevant to the question of adequate care include whether a licensee followed accepted industry practices, implemented an appropriate environmental management system and used professional advice where appropriate.

As of March 31, 2009 this appeal is still pending.

Special Reports and Bulletins

The Board's appeals work occasionally leads to the publication of special reports, special investigations or complaint investigations.

For example, in addition to a special report on penalties for environmental damage (previously referenced), in 2004 the Board produced a bulletin discussing the *Forest and Range Practices Act*. Other projects include: an update of the Board's bulletin on due diligence; a bulletin describing ecosystem services provided by forest lands; and a report on protecting karst.

2006 Bulletin – Ecosystem Services and British Columbia's Forest and Range Lands[28]

The Board promotes stewardship of the full range of forest values that reflect the broad public interest in forest lands. Arising out of the Board's work related to penalties for environmental damage, this bulletin described the importance of "ecosystem services" provided by British Columbia forests. Ecosystem services include such things as provision of timber, stabilization of climate, control of storm water and provision of drinking water and recreation opportunities.

In the bulletin, the Board noted that decision-makers in government and the private sector had begun integrating information on ecosystem services into decision-making. However, this integration was not occurring as consistently or as comprehensively as it should. The Board stressed the need to take these ecosystem services into account in forest management decisions, and recommended doing so by economic valuation.

2007 Special Report - Protecting Karst in Coastal BC[29]

Karst is a landscape feature that is created by water dissolving limestone over many thousands of years, forming an intricate three-dimensional topography with shafts, sinkholes, caves, disappearing streams and springs. About ten percent of BC, primarily in mountainous parts of the coast and interior, has bedrock that is suitable for karst formation. The abundance of water

[28] Board Bulletin, Volume 8 - Ecosystem Services and British Columbia's Forest and Range Lands .
[29] Protecting Karst in Coastal BC - Special Report 31.

in BC's coastal temperate rain forests causes karst to develop more rapidly than in other karst areas, making BC's coastal karst landscapes among the most dynamic on earth.

This special report was triggered when a forest company's contractor blasted roadside areas for road materials, destroying "karst features" that had been marked by government and described to the licensee as being sensitive to damage from forest practices. The district manager levied a penalty on a director and officer of the licensee company, and this was appealed to the Commission.

The Board participated in the appeal concerning the liability of the directors and officers of the company (referenced above).

If those who carry out forest practices are to adequately conserve sensitive resource features such as karst, they must adequately inform themselves about the resource, its sensitivity and its protection. To address this, the Board decided to profile karst protection and published a special report highlighting the importance of karst.

The Board noted in its report that problems with protecting karst and other sensitive ecological features during forest practices increased when the forest practices regulatory regime changed from the Forest Practices Code to FRPA. Under the Code, government previously would not approve forest practices proposed in a licensee's forest development plan unless it was determined that those practices would adequately manage and conserve karst and other resource features.

Under FRPA, it is now the responsibility of licensees and their forest professionals to plan and carry out operations in ways that they determine will not damage or render ineffective such features.

Program Review and Future

In 2002, the Board commissioned a market research firm to conduct an anonymous survey of people who had been involved with Board work, asking about their perceptions of Board programs. Respondents included people from industry, government, environmental organizations, and others. Fifty-three of the people surveyed had experience with appeals. Of this group:

- 83 percent thought the Board's appeal submissions and other public documents were clear and concise.
- 78 percent thought the Board makes its reasons for appealing decisions, and its position, clear.
- 60 percent thought the Board's actions in appealing decisions were in the public interest.
- 55 percent thought the Board did not attempt to reach solutions in appeals.
- 48 percent thought the Board did not act independently when appealing decisions.

In 2003, as part of the provincial government's core services review and also as part of the administrative justice project, the Board reviewed all of its programs, including the appeals program. The implications of this survey were applied during this process, leading the Board to identify its appeals and complaints programs as the primary avenues by which public concerns were being heard.

Based on this, the Board decided to expand its use of dispute resolution to help resolve issues, using the complaint investigations program as its primary forum for this new direction, but also working to use dispute resolution in appeals as well. During this reporting period, using this new approach, the Board was able to help come up with a compromise solution in two appeals,[30] which eliminated the need for the Commission to hold a hearing.

In 2008, Board staff informally reviewed the appeals program once again. The results of this review led to a Board decision to adopt a less adversarial, more advisory ("friend to the Commission") approach to appeals, in order to address a continuing perception among some observers that the Board does not approach its appeals mandate in an objective way.

In addition, the Board refined its focus with regard to appeals, and, based on past experience, has highlighted a number of issues of particular interest that it expects to pursue over the next few years, including:

- due diligence
- penalties for environmental damage
- removing economic benefit from contraventions
- fairness of process
- clarification or interpretation of important sections of legislation (for example, what is an "adequate fire suppression system"? What is a "material adverse effect"? What does "unduly reducing the supply of timber" mean?)
- appropriateness of government enforcement
- reliance on forest and range professionals.

[30] FAC No. 2007-FOR-004, and FAC No. 2008-FOR-001.