Forest Practices Board

Administrative Appeals: 2009-2014

Special Report

FPB/SR/48

March 2015

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Introduction

The Forest Practices Board (the Board) participates in appeals to the Forest Appeals Commission (the Commission) under the *Forest and Range Practices Act* (FRPA) and the *Wildfire Act* (WA). These appeals concern administrative penalties (which are issued by government officials, rather than by the courts), remediation orders and government decisions concerning approval or rejection of forest stewardship plans, range stewardship plans or range use plans. The Board may initiate an appeal or join someone else's appeal.

Through its appeals program, the Board seeks to:

- improve forest and range management;
- sustain public confidence in forest and range management;
- encourage fair and consistent application of the law; and
- clarify the interpretation of important sections of legislation.

The Board seeks to add a public interest perspective that may not be presented by either the government or the licensee. Board submissions are based on expertise and experience gained through Board work, including audits, complaint investigations and special projects.

This report summarizes the work of the Board in administrative appeals from April 1, 2009, to December 31, 2014. During this period, the Board initiated 2 appeals, joined as a third party in 11 appeals and received 1 decision on an appeal that started prior to April 1, 2009. In total, between 1995 (when the right to appeal to the Forest Appeals Commission was enacted) and the end of 2014, the Board initiated 8 appeals and joined an additional 80 appeals.

Previous reports have summarized the periods from 1995 to 2001[i] and 2002 to 2009.[ii]

Themes

Three themes emerge from the Board's participation in appeals between 2009 and 2014: (1) interpretation and application of legislation; (2) due diligence and mistake of fact; and (3) fair and equitable application of legislation. This section briefly describes each of these themes.

Interpreting and Applying Legislation

Statutes and regulations are not always clear; they need to be interpreted. Sometimes it is necessary to clarify how the legislation applies to real-world situations. Through its appeals program, the Board tries to help with the interpretation and application of legislation. The Board may be able to offer a point of view different from that of the other parties. The Board advances interpretations that it believes best represent the broad public interest and the underlying intent of the legislation—FRPA, the WA and related regulations. During the period covered by this report, the Board presented arguments to the Commission on the following provisions of legislation:

- section 45 of the *Forest Practices Code of British Columbia Act* (the current equivalent is section 46 of FRPA) which prohibits forest and range practices that cause damage to the environment, unless the person is acting in accordance with a government authorization (Appeal No. 1)
- section 57 of the *Forest Planning and Practices Regulation* (FPPR), which requires forestry activities to be carried out "at a time and in a manner that is unlikely to harm fish or destroy, damage or harmfully alter fish habitat." (Appeal No. 2)
- section 6 of the *Wildfire Regulation*, which requires persons carrying out high risk activities, in some situations, to keep at the activity site "an adequate fire suppression system." (Appeals No. 5, 6, 7)
- sections 25 and 27 of the *Wildfire Regulation*, which authorize the minister to order a person to pay the government's fire-control costs in relation to a wildfire if the person has contravened the legislation or, in some situations, has "caused or contributed to" the fire. (Appeals No. 8, 9, 10)
- section 25.1 of FPPR, which requires results and strategies in forest stewardship plans to be "consistent with the established objectives to the extent practicable," along with the definitions of "result" and "strategy" in the regulation, which require measurability and verifiability (Appeal No. 11)
- sections 107 of FRPA and 97 of FPPR, which deal with declarations that certain obligations—such as reforestation obligations—have been met (Appeal No. 13)

Due Diligence and Mistake of Fact

As in the previous two reporting periods, the Board joined appeals where *due diligence* and *mistake of fact* were issues. These are statutory defences to an allegation of contravention. Due diligence applies if a person can demonstrate they took reasonable care to avoid the contravention. Mistake of fact applies if the person reasonably believed in a mistaken set of facts that, if true, would establish that they did not contravene the legislation. More information on these defences can be found in the Board Bulletin, *Due Diligence and Mistake of Fact*.

The Board presented argument on the following:

- the legal test for due diligence (Appeals No. 2, 15)
- the relationship between the defence of due diligence and the defence of mistake of fact, in FRPA—they both require reasonable care (Appeal No. 16)
- considerations relevant to determining whether a forest company exercised due diligence where:
  - a landslide occurred shortly after road construction (Appeal No. 1)
  - logging did not achieve the legally-required visual quality objective (Appeal No. 12)
- whether an owner of private land exercised due diligence in relation to its contractor's unauthorized logging of Crown timber adjacent to the private land (Appeal No. 4)

Fair and Equitable Application of Legislation

One of the Board's fundamental purposes is to encourage fair and equitable application of FRPA and the WA. During the period covered by this report, the Board:

- appealed a decision of a district manager, in order to emphasize the importance of providing adequate reasons for decision in promoting consistent decision-making by government officials (Appeal No. 3)
- participated in three appeals concerning the fairness of the interpretation of two sections of the WA that authorize government officials to recover fire-control costs from individuals and companies (Appeals No. 8, 9, 10)
- participated in an appeal where the appellant did not have legal representation, and the issue involved (the meaning of "adequate fire suppression system") was an important issue that had not been previously addressed by the Commission (Appeal No. 7)

Appeals to the Commission

The Commission issued four decisions reached after hearing appeals in which the Board was involved. Ten appeals were resolved without a hearing. This section describes each of these 14 appeals (see Appendix 1 for references).

Appeal No. 1 – Landslide Near a Forest Road

There was a landslide near an area of recent forest road construction. The slide ran across a road and into a fish-bearing stream that was home to Eastern brook trout and blue-listed (of special concern) Westslope cutthroat trout.

After an investigation and a hearing, the district manager concluded that the forest company had contravened several sections of the Forest Practices Code, including the section prohibiting damage to the environment. The manager rejected the due diligence defence and assessed a penalty of $8,000. The company appealed the decision to the Commission and the Board joined the appeal to make submissions on damage to the environment and due diligence.

In its 2009 decision, the Commission reversed the district manager's decision and set aside the penalty.

On the issue of damage to the environment, the Commission accepted, as submitted by the Board, that the slide caused damage to the environment because it entered a fish-bearing stream, leaving some debris and roots in the stream. However, the Commission was not convinced that the slide and damage were caused by the company's forest practices. Although one of the road culverts increased the amount of water flowing to the slide area, the Commission noted:

- there was a significant rain-on-snow event immediately before the slide. This one-in-five year event caused an increase in the amount of water flowing to the slide area; and
- there had been two, naturally-occurring landslides nearby in the past (more than 100 years previously).

Although the company failed to prevent drainage water from collecting on a potentially unstable slope, which is a requirement of the *Forest Road Regulation*, the Commission accepted the due diligence defence. The registered professional forester and the person in charge of road building both made decisions that a reasonable professional with appropriate expertise would have made in the situation. The company acted consistently with the regulation by directing drainage to a swale above the slide area. It was reasonable to assess the likelihood of harm as low, since instability of the nearby slope was unknown.

Appeal No. 2 – Sedimentation of Fish Habitat

A grader operator created gravel ridges on the edges of a forestry road, near a fish-stream. After a heavy rain, water flowed along the ridges, causing silt-laden water to enter the stream. The district manager concluded that the company failed to ensure the road's drainage systems were functional, and failed to conduct road maintenance at a time and in a manner that was unlikely to harm fish or fish habitat. This was a contravention of the FPPR. The manager levied a penalty of $2,000 for each contravention.

The company appealed to the Commission and the Board joined the appeal. The Board made submissions on due diligence and on the interpretation of section 57—the fish habitat section. This was the first time the Commission considered the interpretation of section 57.

The Commission allowed the company's appeal. It held that the company had demonstrated due diligence in seeking to ensure that the road's drainage systems were functional. It also held that the company did not fail to conduct road maintenance at a time and in a manner that was unlikely to harm fish or fish habitat.

The Commission agreed with the Board's submission that the focus of section 57 is the forest practice and that a contravention can occur without actual damage. The Commission said:

> Section 57 does not require evidence that Atco's actions, in fact, harmed fish or fish habitat . . . The Panel considers section 57 to be an objective test: the question being whether a reasonable, authorized person in Atco's position, would believe that these road maintenance activities were conducted at a time and in a manner that were unlikely to harm fish or fish habitat.

With respect to what may be considered harm to fish habitat, when determining whether the time and manner of an activity is unlikely to cause harm, the Commission said:

> The Panel finds that "harm to fish" involves situations where, because of timing, duration and intensity of the incident, fish, in all stages of development after spawning, cannot find sufficient food sources, seek refuge or leave the affected area. The Panel finds that "harm to fish habitat" involves situations in which sites for spawning, incubation and/or rearing are lost for a continuous period longer than one year.

Appeal No. 3 – The Importance of Reasons for Decision

The Board appealed a district manager's decision not to levy a penalty against a woodlot licensee for failing to achieve free-growing status (reforestation) on previously harvested areas. The Board was concerned that the decision did not adequately explain why it was appropriate not to levy a penalty. The district manager's determination letter indicated that the contravention was significant and deliberate, and that the licensee had derived an economic benefit. However, in spite

of this, the contravention was said to be trifling and no penalty was levied. Without adequate reasons, it was impossible to know why the district manager decided not to levy a penalty.

The Board reviewed 6 determinations of several district managers over a span of 18 months, and noted inconsistencies in the approach to deciding when a contravention is trifling and when it is not in the public interest to levy a penalty. The Board took the position that the reasons in the case under appeal should have addressed these matters. Inadequate reasons for a decision make it less transparent and harder to understand, and can make decision-making less consistent. This could undermine the public's confidence in the appropriateness of government enforcement.

The Board looks for potential resolutions to appeals, where appropriate. Sometimes the public interest can be addressed without the necessity of a full appeal. This was such a case. After discussion with the Board, the government drafted guidance for decision-makers on the importance of giving reasons. The Board's view was that the guidance, addressing the criteria that should be considered when deciding whether or not to levy a penalty, would adequately address the public interest. As a result, the Board withdrew its appeal. The Board anticipates that future penalty determinations will be improved with this guidance.

Appeal No. 4 – Responsibility for Work of a Contractor

A private landowner with ranching and forestry operations hired a contractor to cut timber on their private land. The landowner expected the contractor to locate the boundaries of the private property and manage the operation. However, the contractor did not properly locate the boundary of adjoining Crown land, which led to the unauthorized harvest of 1.1 hectares of Crown land.

A district manager concluded that the contractor contravened FRPA and levied a penalty of $3,300. The manager's rationale for the penalty was that the Crown should be compensated for the partial loss of an old growth management area and mule deer winter range. However, the manager made no finding of contravention against the landowner, whom he found had been duly diligent in preventing the contravention. The Board disagreed with this finding and appealed.

The Board argued that the decision-maker was wrong to find that the landowner exercised due diligence. The government did not oppose the Board's position on due diligence. The landowner did not participate in the appeal. The Commission decided that the landowner did not demonstrate that they exercised due diligence, and further decided that a minimum $3,300 penalty should be levied and the district manager should determine whether a higher penalty is warranted.

In October 2014, the district manager re-considered the landowner's responsibility for the contravention. The manager concluded that the magnitude of the contraventions was not large in terms of the area involved and the volume and value of timber harvested, but the gravity was moderate because it may have a detrimental effect on the mule deer winter range and old growth management area. Noting that this was the second unauthorized harvest contravention by the landowner, with the same contractor, the manager levied a penalty of $3,300 against the landowner. This was in addition to the original $3,300 penalty levied against the contractor.

Appeals No. 5 and 6 – Adequate Fire Suppression System: Harvesting

In 2009, the Board joined two related appeals in one of the first tests of the results-based WA, introduced in 2003. While previous legislation was highly prescriptive as to the fire suppression equipment required on a job site, the WA simply states that the fire suppression system must be adequate. In this particular case, a fire caused by a feller buncher (a timber harvesting machine) spread over 1800 hectares, destroying timber valued at almost $7 million, and costing government almost $2 million to suppress.

The licensee told the contractor to have a water tanker on site before starting operations, but 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 fire centre manager noted that an "industry advisory alert" warning of high risk of equipment-related fires had been sent to the licensee seven weeks before the fire. The local weather station indicated that a fire at the time could spread rapidly and be hard to control. The manager considered the water tank to be the "fire suppression system" which, according to a guideline bulletin issued by government, was recommended in addition to hand tools. The manager said that the company should have had the feller buncher operator confirm that the water tank was on site before starting operations. The manager also said the licensee should have gone on site with the contractor, rather than just approve commencement of harvesting. Finally, the manager said the company should have relied on a fire behaviour specialist to provide advice on operating in, and equipping for, high hazard conditions.

The manager levied penalties against the licensee and the contractor and they both appealed to the Commission. The Board's interest in joining these appeals was to help interpret the phrase "adequate fire suppression system" under FRPA.

In 2010, the parties settled the appeals. By consent order of the Commission, the appeals were allowed and the decisions of the fire centre manager were rescinded.

Appeal No. 7 – Adequate Fire Suppression System: Site Preparation

A contractor was carrying out site preparation for the government's BC Timber Sales Program, using an excavator. The activity and the weather conditions were both considered high risk. The machine track or scarifier head struck rock and ignited a fire, which spread over 800 hectares.

The fire centre manager concluded that the contractor did not have an adequate fire suppression system on site, and levied a penalty of $5,000. He said:

> In determining what an adequate fire suppression system should be, one needs to assess the potential risk of a fire starting from the high risk activity being carried out giving due consideration to the fire environment at hand (weather, fuels, topography).

> . . . The fire suppression system required on site would need to be significant to meet the potential indicated by the fuels and weather data. These conditions were known prior to the start of site preparation activity on the site.
>
> The fire suppression system on site consisted of one five gallon back tank and three ten pound fire extinguishers. There were other tools on site (shovel and an excavator) however these tools are not included in the definition of a fire suppression system. I find a five gallon backpack water tank and three fire extinguishers are not an adequate fire suppression system under the condition on the site at the time of operations.

The contractor appealed and the Board joined the appeal, mainly to help address fairness issues– this was an important test case, yet the contractor was essentially a one-man operation and was not represented by a lawyer.

Before the hearing of the appeal, the government realized that the penalty had been levied after the expiry of the limitation date. Accordingly, the parties agreed to a consent order setting aside the penalty.

Appeal No. 8 – Fire-Control Costs: Private Individual

An individual was clearing his land near Clinton in May 2009. Wanting to dispose of a large root wad, he lit a fire to burn it. Even though it was only May, the fire escaped and quickly spread to nearby grass and brush. By the time provincial firefighting crews were able to put it out, the wildfire had burned 140 hectares of other people's land and some Crown land. Luckily, mostly grass and brush burned and no buildings were destroyed.

After an investigation and a hearing, a fire centre manager ordered the individual to pay the government $861,356—the cost of fighting the fire. He appealed the order to the Commission, arguing that the government misinterpreted the WA—which allows the minister to order payment of fire-control costs—and that the process in reaching the decision to issue the order was not fair.

The Board joined the appeal because it was interested in whether or not the minister has discretion in making an order for fire-control costs. Fire-control costs are calculated based on wages of employees who fight a fire, costs of aircraft, fire retardant and other factors described in the *Wildfire Regulation*. The WA allows the manager, in certain circumstances, to order a person to pay the government's fire-control costs.

The Board interprets this to mean that the minister may order someone to pay only part of the costs in some circumstances. For example, if a person does not cause a fire but simply contributes in some way to its spread, or where the government did not exercise appropriate care in fighting the fire. In this appeal (and Appeal No. 9 and 10), the government took the position that the manager could order a person to pay all of the costs, or none of the costs, but nothing in-between.

The Commission published its decision in December 2014. The Commission denied the individual's appeal, but agreed with the Board on the point of interpretation. The Commission said the following:

> Had this Panel decided to order less than the full amount of fire-control costs, this Panel would not have hesitated to do so, mainly as a common sense interpretation of the *Wildfire Regulation* based on the arguments put forward by the Forest Practices Board.

In January 2015, the individual appealed the Commission decision to the BC Supreme Court.

Appeals No. 9 and 10 – Fire-Control Costs: Industrial Operation

After the previous appeal was filed, but before it was heard, the Board joined two more appeals concerning fire-control costs. These were related appeals filed by a highway maintenance company and its contractor, concerning a fire caused by a mower blade hitting a rock during roadside mowing.

The fire centre manager apportioned costs between the company and its contractor. He concluded that the contractor, as the person conducting the high risk activity, should bear a slightly greater burden of responsibility and pay 60 percent of the fire-control costs and timber/non-timber losses.

These appeals raised the same issue the Board was already addressing in Appeal No. 8: whether or not the minister can apportion fire-control costs among responsible parties. The approach taken by the fire centre manager in this appeal was consistent with the Board's view. For this reason, and because it appeared that these appeals might be decided first, the Board decided to join the appeals.

The appeals were settled without a hearing. The government and the companies reached a settlement with respect to fire-control costs and damages. The Commission approved a consent order, agreed to by the other parties, confirming the contraventions and penalties and setting aside the orders for payment of fire suppression costs and damages. The Board did not agree with the form of consent order and chose to withdraw from the appeal rather than consent to the order.

Appeal No. 11 – Visual Quality: Results and Strategies

A district manager declined to approve an amendment to a forest stewardship plan (FSP) concerning visual quality objectives (VQOs) because the amendment was not consistent "to the extent practicable" with the VQO of retention set by government for the area. FRPA requires that an FSP be consistent with government objectives. The forest company appealed and the Board joined the appeal.

This was the first appeal to the Commission involving a rejection of an FSP or FSP amendment. Results and strategies that are consistent with legal objectives and are measurable or verifiable are a key element of FRPA. The Board joined the appeal to make submissions on two points:

- First, results and strategies must be consistent "to the extent practicable" with legally established objectives for visual quality and other values. The Board intended to argue for a fairly cautious use of the term, to the extent practicable. If interpreted too broadly, the phrase could undermine the requirement for a result or strategy to be consistent with an objective.
- Second, results and strategies must be measurable or verifiable. The proposed result/strategy stated that "all reasonable efforts" would be made to be fully consistent with the VQO. The Board intended to argue that, in this context, language such as all reasonable efforts is likely not measurable or verifiable.

At the start of the appeal hearing, the parties entered into settlement negotiations. An agreement was reached between the government and the licensee to accept a modified version of the proposed amendment. While the Board generally supports seeking resolution to appeals, it had reservations about the settlement. The revisions made the result or strategy more measurable and verifiable, which had been the Board's main concern, but the Board concluded that it could not support the revisions as they included numerical measures that exceeded the acceptable level for the retention VQO. Rather than object to the settlement, the Board decided to withdraw from the appeal and the Commission then issued a consent order.

Appeal No. 12 – Visual Quality Not Achieved

A forest company harvested a cutblock near a provincial park, in a location that is subject to a legally-enforceable objective for visual quality. The VQO is "retention," which means that, after logging, the altered landscape should be difficult to see, small in scale and natural in appearance.

Before it logged the cutblock, the company conducted a visual impact assessment to estimate what the visual impact of logging would be. This involved using computer-generated visual simulations from several viewpoints. Unfortunately, the harvesting did not meet the VQO. Simply put, the cutblock was too visible from significant viewpoints.

A district manager determined that the company had contravened section 21 of FRPA, which requires licensees to ensure that "results" specified in their FSPs are achieved. VQOs were specified as "results" in the company's FSP. The district manager levied an administrative penalty of $5,000.

At the hearing before the district manager, the company argued that it exercised due diligence. The district manager rejected the due diligence defence, saying that, because the company relied on computer modeling, due diligence would require some on-the-ground monitoring during harvest.

The manager stated:

> If such monitoring had occurred, it is highly unlikely that this contravention would have happened, or happened to the extent that it did, despite any human error related to the [digital terrain model].

The company appealed to the Commission. The Board joined the appeal to make submissions on the appropriate measures that should be taken in order to establish due diligence in the context of visual quality. However, the company later withdrew its appeal.

Appeal No. 13 – Free Growing Declarations

FRPA allows licensees to "declare" that certain legal obligations—such as the obligation to reforest a site after logging—have been met. If the government does not reject the declaration within 15 months, the obligation is deemed to have been met.

In this case, a forest company declared that four cutblocks had been successfully reforested—that free growing status had been achieved. The declaration was based on survey work done by the company's forest professionals. Forest professionals employed by government conducted their own survey of the blocks and reached a different conclusion. There was a dramatic difference between the licensee's survey results and the government's survey results.

Faced with conflicting conclusions from the surveys, the district manager decided to have a further, independent survey conducted. Because it would not be possible to conduct the third survey within the 15-month period, the district manager rejected the declaration to allow time to re-survey the blocks after the snow melted.

The company appealed this decision to the Commission and the Board joined the appeal to support the district manager's use of an additional survey. At an early stage of the appeal process, the government acknowledged that the district manager did not have authority to reject a declaration unless he had concluded that free growing had not been met. In this case, the district manager was not able to reach that conclusion, so the appeal was allowed by consent and the district manager's rejection of the declaration was set aside.

Appeal No. 14 – Remediation Orders

The Board joined an appeal concerning failure to regenerate a site to the required stocking standards. The Board intended to make submissions on interpretation of the legislation that authorizes remediation orders. The Board had previously conducted a special investigation, *Remediation Orders: How Effective Are They?*, which looked at the appropriate use of remediation orders. However, after further consideration, the Board concluded that the district manager was correct and the Board withdrew from the appeal.

Appeals to the Courts

Commission decisions can be appealed to the BC Supreme Court on a question of law or jurisdiction. In turn, decisions of the BC Supreme Court may be appealed to the BC Court of Appeal, if that court agrees to hear the appeal.

Appeal No. 15 – Foreseeability and Due Diligence

In 2009, the BC Supreme Court ruled on an appeal concerning unauthorized clearcutting of an area that should have been selectively harvested. The Board was allowed to intervene in the appeal to make submissions on due diligence.

The approved cutblock was supposed to be clearcut with reserves, to accommodate heli-skiing. The faller, while logging an adjacent area, accidentally continued clearcutting into a reserve area. The district manager found the licensee partly responsible for the actions of the faller and levied an administrative penalty of $600. The licensee appealed to the Commission, arguing that it had exercised due diligence. After a hearing, the Commission denied the appeal and the company appealed to the court.

The Board's argument in the appeal concerned the place of foreseeability in the due diligence analysis. The company argued that it could not reasonably have foreseen the actions of the faller and should not be held responsible. The Board argued, on the other hand, that a person seeking to establish due diligence must always demonstrate that they took reasonable care to avoid the contravention. Simply because the specific circumstances of a contravention may not have been foreseeable does not relieve the person from having to establish that they took reasonable care. The court agreed with the Board's arguments on this point.

Appeal No. 16 – Due Diligence and Mistake of Fact

In 2011, the BC Court of Appeal ruled on an appeal concerning the defences of due diligence and mistake of fact. The Board joined the appeal as an intervenor.

An individual logging private land crossed the boundary onto Crown land and logged Crown timber without authorization. Before logging, the individual tried to locate the boundaries of the private property using the surveyor's original notes, a compass, and a laser for measuring distances. A district manager determined that the individual had contravened the *Forest Practices Code of British Columbia Act* by harvesting Crown timber without authorization, and by failing to "ascertain the boundaries of the private land."

The individual appealed to the Commission. In its decision, the Commission said that he should have realized there was uncertainty over the boundaries when he was unable to locate all the corner pins. In the circumstances, it would have been reasonable for him to have a professional survey done, and this would not have been an unreasonable cost. The Commission specifically

rejected the defence of mistake of fact. This defence is available if a person reasonably believed in the existence of facts that, if true, would establish that the person did not contravene the provision.

The Commission said there was evidence that the individual mistakenly believed in a set of facts regarding the boundaries. However, the Commission did not think the mistaken belief was reasonable. The Commission said:

> A reasonable person in his circumstances would have looked for corner pins and would have measured all the boundaries of Lot 2535, instead of relying on a fence post and then measuring only some of the boundaries.

The BC Supreme Court rejected the individual's appeal from the Commission decision, but he was granted leave to appeal to the BC Court of Appeal. The decision to grant leave to appeal placed the interpretation of section 72 of FRPA—which sets out the defences of due diligence and mistake of fact—squarely at the centre of the appeal. Accordingly, the Board sought, and was granted, permission to intervene in the appeal.

The Board argued that the reasonableness of a person's actions is relevant both to the defence of due diligence and the defence of mistake of fact. The Court agreed, and, in denying the appeal, said the following:

> As I read the Commission's decision, it found that Mr. Hegel did not do enough to locate the boundaries of DL 2535 (due diligence) and his belief that he found the northern boundary was not reasonably held because he did not locate the corner posts or run all four sides of the property (mistake of fact). Each defence was discussed separately. The reasonableness of his efforts was a necessary element in each defence. Consideration of the common factor did not, in my view, amount to treating the defences as equivalent.

Special Reports

As part of its appeals program, the Board receives copies of penalty determinations, remediation orders and fire-costs orders from district offices and fire centres. In 2014, the Board published two reports summarizing and evaluating the information contained in these determinations.

Penalty Determinations under Forest and Range Practices Legislation (April 2014) gives an overview of the 344 penalty determinations received by the Board between 2007 and 2013. The report discusses the size of penalties, statutory defences (such as due diligence), and cases where no contravention was found. The types of activity that give rise to penalties are described in seven categories: unauthorized harvesting, roads, fire, reforestation, range, contraventions by individuals carrying out recreational activities, and other. Each of these is illustrated with a descriptive example.

Timeliness, Penalty Size and Transparency of Penalty Determinations (October 2014) examines penalty determinations for the five-year period to March 31, 2014. This included interviews with

government officials. The report makes seven recommendations, including a recommendation that the government should establish a publicly-accessible, online database of all penalty determinations under FRPA and the WA.

In November 2011, the Board published, *Remediation Orders: How Effective Are They?* This report looked at 55 remediation orders made between 2004 and 2011. The investigation raised concerns about whether or not the orders were enforceable. It also found that government's response to non-compliance with remediation orders had been weak.

Appeals to the Commission originate with administrative penalty determinations, which arise from government enforcement action. In *Monitoring Licensees' Compliance with Legislation* (July 2013), the Board reported on the results of a special investigation into government enforcement. The investigation found that the number of inspections of forestry and range activities had dropped significantly. The Board noted that government needs to demonstrate that it is carrying out enough inspections to adequately monitor forest and range licensees' compliance with legislation.

Conclusion

This report is the third in a series of reports summarizing the Forest Practices Board's work in administrative appeals since the creation of the Board (and the Forest Appeals Commission) in 1995. In the future, the Board will continue to seek to bring a public interest perspective to appeals, in order to:

- improve forest and range management;
- sustain public confidence in forest and range management;
- encourage fair and consistent application of the law; and
- clarify the interpretation of important sections of legislation.

Appendix 1 – List of Appeals

Appeals to the Commission

Appeal No.1 – Landslide Near a Forest Road
Tembec Enterprises Inc. v. Government of British Columbia; Third Party, Forest Practices Board, FAC Decision No. 2008 – FOR 011(a), Dec. 16, 2009.

Appeal No. 2 – Sedimentation of Fish Habitat
Atco Wood Products Ltd. v. Government of British Columbia; Third Party, Forest Practices Board, FAC Decision No. 2010-FOR-001(a), Feb. 28, 2012.

Appeal No. 3 – The Importance of Reasons for Decision
Forest Practices Board v. Government of British Columbia and Murray McLean, FAC Appeal No. 2011–FOR-005.

Appeal No. 4 – Responsibility for Work of a Contractor
Forest Practices Board v. Government of British Columbia; Third Party, Douglas Lake Cattle Company FAC Decision No. 2013-FRP-002(a), June 13, 2014.

Appeals No. 5 and 6 – Adequate Fire Suppression System: Harvesting
Allison Logging v. Government of British Columbia; Third Party, Forest Practices Board, FAC Appeal No. 2008-WFA-004.
Gorman Bros. Lumber Ltd. v. Ministry of Forests and Range; Third Party, Forest Practices Board, FAC Decision No. 2009-WFA-001(a), Jan. 20, 2010.

Appeal No. 7 – Adequate Fire Suppression System: Site Preparation
Solana Consulting and Investment Corp v. Government of British Columbia; Third Party, Forest Practices Board, FAC Decision No. 2009-WFA-003(a), Jan. 13, 2010.

Appeal No. 8 – Fire Control Costs: Private Individual
Robert Unger v. Government of British Columbia; Third Party, Forest Practices Board, FAC Decision No. 2012-WFA-002(b), Dec. 29, 2014.

Appeals No. 9 and 10 – Fire-Control Costs: Industrial Operation
Interior Roads Ltd. and Wayne Blacklock v. Her Majesty the Queen in Right of the Province of British Columbia, FAC Appeal No. 2013-WFA-G01 (consisting of Appeal Files 2013-WFA-001 and 002), Aug. 7, 2014.

Appeal No. 11 – Visual Quality: Results and Strategies
Babine Forest Products Ltd. v. Government of British Columbia; FAC Decision No. 2011-FOR-006(a), July 9, 2013.

Appeal No. 12 – Visual Quality Not Achieved
West Fraser Mills Ltd. v. Government of British Columbia; Third Party, Forest Practices Board, FAC Appeal No. 2012-FRP-003.

Appeal No. 13 – Free Growing Declarations

Stella-Jones Canada Inc. v. Government of British Columbia; Third Party, Forest Practices Board FAC Decision No. 2014-FRP-001(a), Oct. 8, 2014.

Appeal No. 14 – Remediation Orders

Charles E. Kucera v. Government of British Columbia, FAC Appeal No. 2011-FOR-002.

Appeals to the Courts

Appeal No. 15 – Foreseeability and Due Diligence

Pope and Talbot v. British Columbia, 2009 BCSC 1715, Dec. 14, 2009.

Appeal No. 16 – Due Diligence and Mistake of Fact

Hegel v. British Columbia (Forests), 2011 BCCA 446, Nov. 8, 2011.

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[i] *Reviews and Appeals of Forest Practices Code Decisions in British Columbia, 1996-2001*, Forest Practices Board, December 2002, http://www.bcfpb.ca/reports-publications/reports/reviews-and-appeals-forest-practices-code-decisions-british-columbia

[ii] *Administrative Appeals: 2002-2009*, Forest Practices Board, November 2009, http://www.bcfpb.ca/reports-publications/reports/administrative-appeals-2002-2009

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