

annual report • 1995





The Honourable Andrew Petter

Minister of Forests

The Honourable Moe Sihota

Minister of Environment, Lands and Parks

The Honourable Anne Edwards

Minister of Energy, Mines and Petroleum Resources

Province of British Columbia

Ministers:

I am pleased to submit the 1995 Annual Report of the Forest Practices Board, to be tabled before the Legislative Assembly in accordance with the provisions of Section 189 of the *Forest Practices Code of British Columbia Act*. This is the first Annual Report of the Board.

A handwritten signature in black ink, appearing to read "Keith Moore".

Keith Moore

Chair

Victoria, British Columbia

January 1996

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Chair's statement

When the Forests Minister, the Honourable Andrew Petter, and the Environment, Lands and Parks Minister, the Honourable Moe Sihota, announced the appointment of Canada's first Forest Practices Board on December 21, 1994, they described the Board as "the public's watchdog on effective forest management."

This idea was brought into effect through Part 8 of the *Forest Practices Code of British Columbia Act*, which defines the Board's roles and responsibilities. This part, proclaimed on December 21, 1994, was the first part of the new Forest Practices Code to become law. It allowed the Board to be appointed and to begin work six months before the Code's remaining parts became law on June 15, 1995.

The Board began its work on January 3, 1995, and has now completed its first year of operation. I am pleased to submit the Board's first Annual Report.

When I was appointed as the Chair of the Board, and Gordon Baskerville, Cathy Mumford, Cindy Pearce, Clay Perry, and Jack Toovey were appointed as members, we were keenly aware of the public's interest in the Board. We also knew the importance of the obligations we had agreed to undertake, and the need to earn the public's trust through a reputation for fairness and integrity. As individuals, we welcomed the opportunity to contribute to the improvement of forest practices in the province. Collectively, we recognized the significant role the Board could play by reporting publicly and objectively about the state of forest planning and practices. We realized it was important from the very beginning to assert our independence from the government ministries, whose activities we will audit and about whose activities we will receive complaints.

We are responsible for reporting and making recommendations on compliance and enforcement of a Code that is unprecedented in scope and that regulates forest planning and practices in a large province with a great diversity of forest and range landscapes. This is a huge responsibility and has required the Board to do a great deal of preparatory work. Preparation has been the theme for our first year.

We have accomplished a lot. We agreed on important principles and priorities, established policies and procedures, met with many groups and organizations, and put in place the infrastructure and staff to undertake our work. We concentrated our efforts in four general areas that reflect both our statutory obligations and our sense of the priorities in developing the Board's work.

First, we had to establish principles that we unanimously endorse. Since we are a diverse Board, with many different individual views, we work from a basis of respect for each other. This results in a clear understanding of principles and allows the Board to work on a consensus basis.

The Code is new to all of us. It is very comprehensive and complex. We spent a significant amount of time being briefed by experts and considering interpretations of many sections of the Code. We agreed we would be a problem-solving, rather than a fault-finding, Board and would focus on results on the ground. We agreed our reports to British Columbians must be objective and timely and provide information on whether the Code is achieving its intent. We agreed we must reflect the public's interest in fair, reasonable, and technically sound applications of the Code.

Second, the Board placed a high priority on maintaining regular communications with the many organizations — community groups, environmental societies, forest workers, government, and industry — and members of the public who are interested in our activities.

In 1995, we met with a large number of organizations, published a variety of written reports, held public meetings and news conferences, and attended events to introduce the Board to British Columbians.

Third, we concentrated our efforts in areas where we have statutory responsibilities. Early in the spring, we began to develop policies and procedures for dealing with complaints from the public. Thus we were ready to respond to the first complaints filed soon after the Code became law on June 15, 1995. The experience of the Office of the Ombudsman assisted us significantly in developing our own complaint investigation procedures.

We also began, in 1995, to develop a basis for undertaking periodic independent audits. This appears to be an entirely new area of forest management where the Board must develop procedures without the benefit of similar experiences in this province, or indeed any other part of the world. We continued to develop our audit program through 1995 and will be ready to begin a limited field-auditing program in 1996. Recognizing the technical complexity and the implications of our forest practices audits, we are proceeding carefully and consulting many interested parties.



Keith Moore, Chair - Forester and former consultant in forest land management and environmental assessment.

Later in 1995, the Board began to consider its role in requesting formal reviews of certain planning and enforcement decisions made by government officials. In addition to requesting reviews, the Board may appeal decisions to the Forest Appeals Commission on behalf of the public. The Board's role in this area is new as well, but we made

significant progress in developing policies and procedures to guide the Board in this important responsibility.

This first Annual Report outlines the procedures developed for complaint investigations, audits, reviews, and appeals. It provides a summary of the Board's activity in each area and describes emerging issues.

Finally, the Board created an administrative infrastructure and recruited staff to support our work. We began in January with little more than a piece of legislation, a three-month budgetary allocation, and a large job to do in a short time. The Chair and Board members were actively involved in many of the tasks of preparing job descriptions, interviewing and hiring staff, and developing operating procedures.

Although we accomplished a great deal in each of these four areas, much remains to be done before the Board becomes fully operational. We experienced significant delays and setbacks in hiring qualified, experienced, and professional staff to fill some positions. Since many of the tasks are new to British Columbia and require unique combinations of skills, it was not always possible to find a pool of experienced people. These difficulties represent the greatest risk to the Board's success in the future.

The Board will focus on a number of areas in the coming year. We need to continue to develop appropriate means to communicate with the public, agreement holders, organizations, and government. We also need to make additional efforts to communicate with various groups, including First Nations, the mining industry, the oil and gas industry, outdoor recreationists, and forest workers. We expect to provide Special Reports to the Ministers to address issues pertaining to the application of the Code.

In 1995, we experienced delays in dealing with complaints and in developing our audit program. This was partly due to our staffing problems, our unique responsibilities, and the technical complexity of the matters before us. In 1996, we must improve our ability to respond quickly to complaints, and move quickly to firmly establish our investigation, audit, review, and appeal roles. Failure to do so will result in a loss of the confidence and support that the Board has enjoyed to date in all sectors.

The Board is committed to providing British Columbians with independent and objective information and recommendations about compliance with, and enforcement of, the Code and the achievement of its intent. I believe we have made a very good start in our first year.

We are grateful to all the government agencies, offices, and individuals who helped the Board establish itself and begin its work. We also appreciate the advice and assistance we have received from the many non-government organizations who have met with the Board in our first year.



The Board

Legislative Foundation

The provincial government created the Forest Practices Board to be “the public’s watchdog on effective forest management.” It is “the independent, expert monitor of forest management practices in B.C.,” said Forests Minister Andrew Petter, when the Board’s membership was announced.

The Board reports to the public and provides British Columbians with information and recommendations about compliance and enforcement of the Forest Practices Code and the achievement of its intent.

The Code has four components:

- the *Forest Practices Code of British Columbia Act*;
- 18 *Regulations*;
- legally enforceable *Standards*, allowed by the *Act* to be established in the future, that will expand upon *Regulations* and set out detailed requirements for forest practices; and,
- 54 guide books, which detail recommended procedures, processes, and results for specific practices.

The Board's mandate and authority are described in the *Forest Practices Code of British Columbia Act* and the *Forest Practices Board Regulation*.

[Appendix 1 provides Code provisions pertaining to the Board.]

To facilitate achievement of the Board's objectives, the Board requested and received two amendments to the *Forest Practices Board Regulation* in 1995 to allow the Board:

- to consult with parties and attempt to resolve complaints at any time during or after an investigation; and,
- to send the subject of a complaint a letter, instead of a copy of the *Notice of Complaint*, thus offering complainants and the subjects of complaints some degree of anonymity.

The *Act* and the *Forest Practices Board Regulation* define the Board's statutory roles and responsibilities. The Preamble to the *Act* and the guide books provides guidance.

The legislation requires the Board to:

- deal with complaints from the public (Sec. 177);
- undertake periodic independent audits (Sec. 176);
- report findings, with reasons, of investigations and audits (Sec. 185); and,
- submit an Annual Report to the three Ministers for presentation to the Legislature (Sec. 189).

To achieve its broader roles and responsibilities, the Board may:

- conduct special investigations (Sec. 176);
- request administrative reviews of specified determinations (Sec. 128);
- appeal those review decisions to the Forest Appeals Commission (Sec. 131);

DETERMINATION

...is any act, omission, decision, procedure, levy, order or other determination made under the Code by an official.

ADMINISTRATIVE REVIEW

...a government review of certain types of determination, which can lead to confirmation, cancellation, or variation of the determination, or to a new determination.

FOREST APPEALS COMMISSION

...independent tribunal that hears appeals from administrative review decisions made under the Code.

- make recommendations following an investigation or an audit (Sec. 185);
- follow up those recommendations (Sec. 187); and,
- make special reports on matters relating generally to the Board's duties (Sec. 189).

These roles and responsibilities extend to all activities described in Parts 3, 4, 5, and 6 of the *Act*, which include:

- operational planning;
- forest practices;
- protection of forest resources; and,
- appropriateness of government compliance and enforcement.

In addition, the Board has the ability to consider and report on matters which pertain more generally to the application and implementation of the Code, including the transitional provisions in Part 11 of the *Act*.

The Board does not have the authority to address matters relating to:

- private land, except private land included in tree farm or woodlot licenses;
- land-use decisions or strategic planning (Part 2 of *Act*);
- liability matters (Part 7); or,
- any other legislation, such as the *Forest Act* or the *Land Act*.

The Board's roles and responsibilities apply to:

- **agreement holders** under the *Forest Act* and *Range Act* — they include forest companies, mineral exploration companies, oil and gas exploration companies, ranchers, and woodlot owners operating on Crown land or on private land within tree farm licences or woodlot licences, as well as licensees under the Small Business Forest Enterprise Program administered by the Ministry of Forests; and,
- the **three government ministries** responsible for the approval of plans and for the administration and enforcement of the Code: the Ministry of Forests; the Ministry of Environment, Lands and Parks; and, the Ministry of Energy, Mines and Petroleum Resources.

The Board's activities are directed to the actions or decisions of government ministries and agreement holders, not to individuals.

AGREEMENT HOLDER

... holder of an agreement under the *Forest Act* or *Range Act*.

THREE MINISTRIES

...ministries responsible for Code administration are:

- the Ministry of Forests;
- the Ministry of Environment, Lands and Parks; and,
- the Ministry of Energy, Mines and Petroleum Resources.

The Board's primary role is to report to the three Ministers and the public. It must report the findings or conclusions of all its investigations and audits and may make any recommendations it considers appropriate. It may request to be notified of steps that have been taken to implement a recommendation and can report further to the ministers if it

believes that no adequate or appropriate action has been taken.

The Board has no power to enforce the provisions of the *Act* nor to levy penalties. These are solely the responsibilities of the three ministries.

OPERATIONAL PLANNING

...processes and work for developing any forest development, logging, access management, five-year silviculture, or range use plan, or silviculture, or stand management prescriptions.

FOREST PRACTICE

...means timber harvesting, road construction, road maintenance, road deactivation, silviculture treatments, botanical forest product collecting, grazing, hay cutting, fire use, control and suppression, and any other activity that is:

- carried out on Crown forest or range land, or private land within a tree farm license or a woodlot license; and,
- carried out by government or agreement holder for commercial purpose or to rehabilitate forest resources after an activity.

Values and guiding principles

The Board has defined the following values and guiding principles to assist it and staff in implementing the Board's roles and responsibilities. The Board will:

- represent the public's interests, not those of any single group;
- be accessible and non-adversarial;
- treat all people with respect, fairness, and sensitivity;
- be unbiased and non-partisan;
- try to solve problems, rather than find faults;
- carry out its mandate with integrity, cost-efficiency, and accountability;
- base deliberations and decisions on knowledge, experience, and common sense;
- provide timely, clear, and concise reports to the public; and,
- contribute to continuing improvements in forest planning and practices.

Board members

The Lieutenant-Governor-in-Council appointed a six-person Forest Practices Board on December 20, 1994. The Chair provides reports to the three Ministers responsible for the administration and enforcement of the Code.

The Board consists of:

Keith Moore, Chair, forester and former consultant in forest land management and environmental assessment.

Gordon Baskerville, UBC forest resource management department head.

Cathy Mumford, agrologist with a background in range management and resource planning.

Cindy Pearce, forestry consultant in silviculture, forest resource education, and planning.

Clay Perry, consultant who has represented forestry workers at provincial, national, and international levels.

Jack Toovey, forester who has held executive positions in the private sector.

The Chair is full-time and has a three-year term. The five Board members serve part time and have two-year terms.

The Board members have considerable experience in forest and range practices and planning and have worked in many parts of the province. Three reside in small resource communities on the coast, in the Kootenays, and in the Cariboo.

[Appendix 2 provides the Code of Conduct for Board members.]

The Board has staff, based at present in Victoria, to support its work.



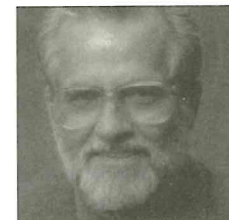
Gordon Baskerville



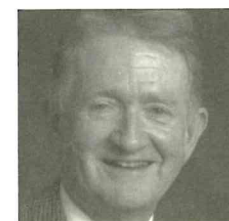
Cathy Mumford



Cindy Pearce



Clay Perry



Jack Toovey



Board's work

Contact with the public

As the Board was created to address public concerns about forest practices in British Columbia, it placed a high priority on establishing and maintaining contact with British Columbians. While it was important for the Board to clarify its legal authority and provide the public with updates on its work, it was at least equally important for the Board to hear the public's expectations regarding its functions.

Introducing the Board and hearing from the public

Beginning with its initial meeting, the Board invited representatives of a variety of organizations and government agencies, as well as other resource people, to its regular meetings to share their expertise and views. These individuals provided valuable advice and insights.

To reach British Columbians across the province, the Board held some of its regular meetings at regional locations. These regional sessions included several meetings with local interest groups and government staff, field trips focused on particular forest practices topics, broadly-advertised public meetings, and interviews with the local media, as well as the regular Board meeting with invited speakers. Board members benefited greatly from the views and information provided during these sessions.

Regular contact has been maintained with organizations representing agreement holders under the Code, forest worker organizations, environmental groups, and with the three ministries responsible for implementing and enforcing the Code. Board members have provided presentations at the regular meetings of these organizations and agencies as well as arranging special sessions when needed. Conference calls have also been used to ensure organizations from across the province can join discussions with the Board.

Individual Board members have been actively involved in meetings with various organizations, government agencies, and individuals, particularly in the local areas where they live. During 1995, approximately 50 such meetings were held. Board members intend to continue to be actively involved in meeting with British Columbians.

The following materials were distributed to assist the Board in this component of its work:

- a pamphlet, video, and display that introduces the Board and explains its roles and responsibilities;
- a pamphlet detailing the Board's role in responding to complaints from the public;

- bimonthly summaries of complaints; and,
- a newsletter outlining Board activities.

A toll-free phone line was established early in 1995 to ensure the Board is accessible to British Columbians across the province.

Emerging issues

As the organizations and agencies, which the Board has been in regular contact with, become more familiar with the Code and the Board, discussions are evolving into more complex topics. The Board must ensure Board members and staff are available to address the issues raised during these discussions.

While the Board has been successful in establishing regular communications with several groups and agencies, further work is required to develop strong contacts with other groups, such as First Nations, non-unionized forest workers, independent logging contractors, prospectors, miners, and the petroleum sector.

Several issues have arisen with respect to maintaining confidentiality during Board projects where fairness is paramount, but where public scrutiny can be substantial. The requirements of the Board relative to the *Freedom of Information and Protection of Privacy Act* have also not been fully clarified.

As the Board begins to complete and release investigation reports, audit reports, and special reports, the Board must develop communication approaches that ensure clear accurate information is available promptly.

Investigating complaints from the public

One of the important innovations in the Code is the establishment of the Board with a responsibility to deal with complaints from the public about forestry matters included in the Code.

The wording of the Code regarding complaint investigation is similar to that of the *Ombudsman Act*, and the long experience of the Office of the Ombudsman has assisted the Board in developing procedures for investigating complaints.

The Board must deal with complaints from the public, and has decided that it may consider complaints filed by agreement holders and government agencies as well.

Complaints, concerns, and contacts

Individuals and groups approach the Board in a variety of ways to raise matters involving forest management and related issues.

To clearly outline its responsibilities to deal with these matters, the Board has defined several terms.

A **complaint** is a matter that is brought to the Board in writing and includes the information required in a *Notice of Complaint* described in the *Act*.

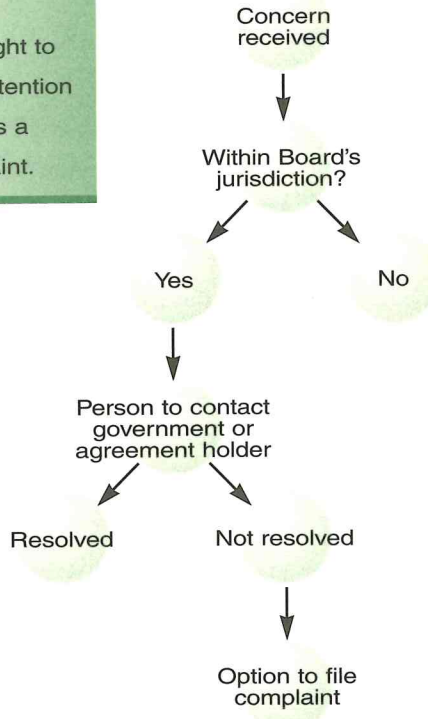


COMPLAINT

...filed in writing and includes information required in a *Notice of Complaint*.

CONCERN

...matter brought to the Board's attention but not filed as a formal complaint.



In addition to complaints, the Board receives phone calls and letters about forest practices and other forestry matters. Some individuals prefer to advise the Board of concerns rather than file a formal complaint. These are described as concerns if they are not in the form required in the Act. Some concerns are subsequently filed as complaints.

A concern that involves a forestry matter within the Board's jurisdiction, but which is not written down and filed as a complaint, is referred to as a jurisdictional concern. One that appears to involve a matter that is outside the Board's authority — for instance, a tenure or timber-supply decision — is referred to as a non-jurisdictional concern.

If a concern appears to be within the Board's jurisdiction, the Board's staff advise the person to contact the appropriate government agencies, or agreement holder, to attempt to find a remedy locally. The person is informed that the matter appears to be one about which they could file a complaint if they are unable to resolve the matter after contacting the appropriate authorities.

PARTY

...government or agreement holders under the Forest Act or Range Act.

JURISDICTIONAL CONCERN

...involves a forestry matter within Board's jurisdiction, but is not written down and filed as a complaint.

NON-JURISDICTIONAL CONCERN

...one that appears to involve a matter that is outside Board's authority.

In addition to complaints and concerns, individuals or groups send the Board copies of letters addressed to government agencies or agreement holders. These letters are not complaints or concerns and request no action from the Board. The Board acknowledges these contacts, but takes no action.

Contact made



No action

CONTACT

...phone call or letter to the Board about forestry matter that does not request any Board action.

**Procedure for
investigating complaints**

Notice of Complaint

An individual or group that wishes to file a complaint with the Board must submit a *Notice of Complaint*, as required by the *Act*, that contains

- the grounds of the complaint;
- a statement describing the relief requested; and,
- the complainant's name and address, and the name of the person, if any, who submits the complaint on the complainant's behalf.

The Board has decided that each complaint must be signed by the person making the complaint.

Although the written notice must include the complainant's name, the Board can provide anonymity for complainants and the subject of complaints, if requested, and if the Board agrees. Complainants can choose to make their identity known if they wish.

Assessment of complaints

When a complaint is received, the Board's staff notify the parties which are the subject of the complaint or are directly affected by the complaint. Staff then undertake an **assessment** to determine if the matter is within the Board's jurisdiction. This involves establishing that the complaint:

- involves actions or decisions made after June 15, 1995;
- is about compliance with a part of the Code pertaining to operational planning, forest practices, protection of forest resources, or the appropriateness of government enforcement; and,
- relates to Crown forest and range lands or private land in a woodlot license or tree farm license.

ASSESSMENT
...process through which the Board determines whether or not it must investigate a complaint.

Staff must consider whether any of the circumstances described in Section 177 (2) of the *Act* are reasons which may cause the Chair to refuse to investigate. These circumstances include the availability of other administrative remedies, or circumstances indicating that an investigation would not benefit the complainant, or that the complaint is frivolous, trivial or not made in good faith.

The merits or validity of the complaint are not considered during the assessment. This phase considers only the issues of jurisdiction and whether circumstances exist which may cause the Chair to refuse to investigate.

Decision to investigate

When the assessment is complete, staff make a recommendation to the Board to investigate or to refuse to investigate. The Board must make this decision within 60 days of receipt of the complaint.

Unless there are reasons for the Chair to refuse to investigate, the Board must investigate complaints that are within its jurisdiction. The Board must notify the complainant and the other parties named in the complaint of its decision to investigate or the reasons for its refusal to investigate.

Investigation

If the Board decides to investigate a complaint, staff must then determine the facts and circumstances of the complaint. The Board is an independent and neutral investigator, not an advocate on behalf of the complainant.

The Board expects to conduct investigations in a timely and relatively informal way although, with authority delegated by the Chair, investigators can require the provision of information.

COMPLAINT EXAMPLES

The following examples illustrate the range of topics raised by the complaints received in 1995. These examples are real — the facts are from actual complaints; details have been changed or omitted to maintain the privacy of the individuals and organizations involved.

EXAMPLE 1

An individual called the Board with concerns about road deactivation that was undertaken during the fall of 1995 while salmon eggs in a river were susceptible to silt in the water. It was the person's opinion that the road deactivation had caused extensive silting of the spawning beds, resulting in environmental damage. The person felt that the enforcement agencies had not properly enforced the Code by permitting the activity to proceed, and by not laying charges against or penalizing the agreement holder responsible. Subsequently, the person submitted a completed written *Notice of Complaint* and, at year's end, the Board was completing an assessment of the complaint.

EXAMPLE 2

An organization submitted a *Notice of Complaint* indicating a Ministry of Forests' district manager had regularly approved harvesting in areas within a tree farm license that were either not scheduled for harvest for three to four years or were not in the approved forest development plan. The complainant indicated this practice did not provide adequate time to review the newly proposed harvesting areas. Thus they did not have the opportunity to prepare and submit public input, as provided for by the Code. At year's end, Board staff were assessing the complaint.

EXAMPLE 3

An individual, a woodlot owner, submitted a written *Notice of Complaint* indicating that an agreement holder — a neighboring rancher — was not abiding by the terms of his grazing licence and range-use plan. The complainant asserted the agreement holder was permitting his cattle to graze, unhindered, on the woodlot owner's land and the cattle had damaged a large number of newly planted seedlings. The complainant stated the Ministry of Forests should assist in resolving the dispute between himself and the agreement holder. At year's end, the Board was completing an assessment of the complaint.

The Board has chosen to emphasize a problem-solving, rather than a fault-finding approach, and will attempt, during investigations, to find opportunities to assist the complainant and the subject of the complaint to resolve differences and find remedies. The Board requested and obtained an amendment to the *Act* to allow it to consult with parties and attempt to resolve complaints at any time during an investigation. If a resolution to the complaint cannot be found, the Board will complete the investigation and report its findings.

A complaint investigation does not require the cessation of work and does not hold the determinations of designated officials in abeyance.

The Board is finalizing an investigations manual outlining the principles, policies, and procedures to be followed in conducting assessments and investigations of complaints. This manual will ensure that assessment and investigation practices are clearly set out and available to all parties.

PRINCIPLES OF COMPLAINT ASSESSMENT AND INVESTIGATION:

- only investigate the actions or decisions of agreement holders and government ministries, not individual workers, professionals, or government employees;
- expect complainants to make reasonable attempts to resolve problems locally before approaching the Board; the Board can refuse to investigate if it believes there are local administrative procedures available that have not been used to find a remedy;
- to the extent possible, find solutions to complaints and assist parties to resolve disputes; assist in finding solutions rather than finding fault or assigning blame;
- be a fair and unbiased investigator of a complaint rather than an advocate for the complainant's views; and,
- in investigating complaints about decisions, consider whether the decision was fair, reasonable, and technically sound given the information available at the time; confirm the decision makers' responsibility to make appropriate decisions in a timely and effective manner.

Completing an investigation

The Board has considered a range of possible outcomes that could conclude a complaint investigation.

A complaint could be resolved by the parties with or without the Board's assistance during an investigation. In these situations, the Board will close the investigation with a report indicating the solution found.

If a full investigation is completed, the Board must provide a report with its findings. It may also provide recommendations. The Board must provide opportunities for affected parties to review and comment on the draft report, and may consider providing review opportunities to other interested parties.

The report which concludes a complaint investigation is provided to the parties and may be provided to the three ministers. The Board intends to make the report public, but will protect privacy where, in the Board's opinion, it is appropriate.

The Board cannot levy penalties or overturn decisions as a result of a complaint investigation, but can make recommendations regarding actions to be taken by the ministries responsible for the Code's administration and enforcement.

Number of complaints and concerns in 1995

The Board began to receive complaints soon after the Code's proclamation on June 15, 1995. The total number of complaints received in 1995 was 19. The total number of concerns was 20.

Four complaints were under investigation and seven were under assessment at year's end. Eight complaint files were closed after the assessment period.

The complaints received in 1995 included matters pertaining to all four parts of the Code, involved both forest and range agreement holders, and came from all regions of the province. The largest number of complaints (14 of 19) involved operational planning matters.

[Appendix 3 provides a breakdown of complaints and concerns for 1995.]

In general, the complaints were more complex and involved more complicated assessments than had been anticipated. Most complaints involved at least two parties.

Emerging issues

The Board is aware of the need to be timely in the assessment and investigation of complaints. In 1995, these were time-consuming processes. The decision on whether or not to investigate frequently took nearly 60 days and investigations also took an extended period. This was due to a number of factors.

Most complaints were complex and involved more than one agency or agreement holder and several pieces of legislation. Parties, who were the subject of complaints, were also unfamiliar with the process and sometimes reluctant to provide the Board with information without seeking advice. Additionally, the Board was cautious in making decisions to ensure that all aspects of an issue were considered.

The Board believes it must conclude assessments and investigations more quickly in 1996. This should become possible as all involved parties become more experienced and familiar with the process. Nevertheless, complaint assessment and investigation involve a delicate balance between the sometimes conflicting goals of prompt response, thoroughness, and an open fair process.

Provision of information about complaints is also an issue that will require attention in 1996. The *Act* prohibits the provision of information that may identify the subject of complaints, and the Board has interpreted this to prohibit the release of any information which may identify the parties, including the geographical area or the subject matter, until a complaint investigation is completed. It is important, in the Board's view, that the privacy of the parties be protected.

Nevertheless, there are requests from several sectors of the public and the media for the Board to provide more information than was the practice in 1995. The Board will attempt to meet these requests.

AUDITS OF FOREST PRACTICES

...involve agreement holders, government, and licensees under the Small Business Forest Enterprise Program.

AUDITS OF ENFORCEMENT

...involve only the government.

Auditing forest practices and Code enforcement

One of the Board's roles which has attracted considerable attention from government, agreement holders, environmental groups, forest worker organizations, and the public is the responsibility to conduct periodic, independent audits. The *Act* requires the Board to undertake:

- audits of forest practices (operational planning, forest practices, and protection of forest resources); and,
- audits of the appropriateness of government enforcement of the *Act*.

In 1995, the Board focused on establishing basic principles for the audit program; it did not undertake any audits. The Board developed the framework of a complete audit program, including elements necessary to ensure that the program meets its responsibilities under the *Act* and is internationally credible.

Audits of forest practices

The auditing and reporting of forest practices is a relatively new undertaking. Few jurisdictions in the world provide for an independent authority to undertake audits of compliance with forest practices legislation. Audits by the Board will provide British Columbians with independent, objective information about compliance with the Code. The Board anticipates that the audit program will be of interest to an international audience as well.

The Board has agreed that its audit program must provide information about the effectiveness of the required practices in achieving the Code's intent. It will also report on observed good forest management practices that are not required by the Code. This is consistent with the Board's view of its role to encourage the continuing improvement of forest planning and practices in the province.

The Board has been careful in proceeding with the development of its program for auditing forest practices. The philosophy is to implement an audit program that is field- and results-oriented. This will require effective integration of the auditing and forestry disciplines.

To meet its responsibilities for auditing forest practices, the Board has decided its **audit program** will include the following types of audits:

- compliance audits to determine if Code requirements have been followed;
- effectiveness audits to determine if the results of practices set out in the Code achieve the Code's objectives; and,
- comprehensive audits to assess — in addition to compliance and effectiveness audits — observed, good forest management practices that are being implemented in addition to those required by the Code.

In 1996, the Board will focus on completing the development of its audit program to meet the needs of a long-term audit plan.

The Board will undertake pilot projects and a limited number of audits in 1996. This will help test elements of the audit program as they are developed. The Board's goal is to have a full compliance program underway by 1997-98. Once the Board's compliance audit program is fully under way, the Board will begin effectiveness and comprehensive audits.

Audits of government enforcement

Audits and reports on the appropriateness of government enforcement will provide the public with information on the performance of the regulatory agencies that administer the Code. This is also uncommon in other jurisdictions.

These audits will focus on the Code's enforcement, the consistency and fairness of enforcement across the province, and the equitable application of the Code.

The development of the Board's program to audit enforcement will be concurrent with the development of forest practices audits.

Enforcement audits are planned to begin in the latter part of 1996. The Board's goal is to have its enforcement audit program fully underway by 1997-98.

BOARD'S AUDIT PROGRAM:

- compliance audits;
- effectiveness audits; and,
- comprehensive audits.

Reporting of audit results

The Board must report the results of its audits and may make recommendations. All audit reports will be released to the public. Before a report is released to the public, the Board will provide any parties that may be adversely affected by an audit's results the opportunity to review and discuss the findings.

The development of the audit program will include determining the format of audit reports to best achieve the Board's objectives for reporting to the public.

Audit reference group

Auditing forest practices is a comparatively new discipline and requires the integration of the skills of auditors, foresters, and professionals from other disciplines.

The Board has established an audit reference group to provide expert technical review and comment on elements of the Board's audit program as they are developed. These elements include determining which criteria should be used, and the information that must be collected to assess compliance with the Code, the significance of any non-compliance, and the extent of any breach.

Members of the group were chosen for experience in their disciplines and their technical knowledge of forest practices auditing.

Emerging issues

Several issues have emerged which require further exploration by the Board. In addition to the rapid growth in the number of internal forestry audits conducted by forest companies, several initiatives are expected to require audits of forestry operations to certify forest products. This has led to some confusion about possible relationships between the Board's audit program and the development of audit programs associated with certification. The Board considers its audit program to be substantially different from certification initiatives, but explanation of these differences is required.

With the rapid expansion in the auditing of forest practices and the relative lack of expertise and experience in this field, the Board anticipates considerable difficulty in finding a sufficient number of qualified, independent auditors to undertake work on the Board's behalf. The Board has recognized this need and identified its role as a catalyst, working with professional associations and educational institutions, to stimulate the development of training programs and continuing education in forest practices auditing. To this end, the Board will make the material it develops for its audit program available to the public: guiding principles, procedures, and checklists for auditing forestry practices.

Administrative reviews and appeals

The Code has introduced review and appeal procedures to allow reconsideration of certain forest planning and enforcement determinations made by government officials under the *Act*. Parties directly affected by enforcement determinations have a right to request administrative reviews, but have no similar right to request a review of the approval of plans. The *Act* does not provide other interested parties, or the public at large, the opportunity to request administrative reviews of any determinations.

The Board has the authority to represent the public interest and, on behalf of the public or interested parties, may request reviews of certain types of determinations. The determinations that are subject to review, at the Board's initiation, are:

- administrative penalties imposed under the *Act*;
- remediation orders and certain other orders, but not including stop-work orders;
- approval of forest development plans and range use plans and amendments to those plans; and,
- failures to make determinations.

ADMINISTRATIVE PENALTY

...a penalty levied by any of three ministries against a person who has contravened the Code.

REMEDICATION ORDERS

...order to an agreement holder to do work to remedy a Code contravention, including any damage to the land.

The Board has three weeks to request a review of a determination. It has six months to request a review of a failure to make a determination.

Administrative reviews are conducted by a review panel. This panel consists of one or more government employees appointed to conduct the review and may be based on an oral hearing or on written submissions. The panel conducting the review can uphold, change, or cancel the original determination, refer it back to the official who made the determination, or make a determination.

The Board may appeal the decision of a review panel to the Forest Appeals Commission or it may choose to become a party to an appeal initiated by the subject of the determination.

The *Act* and the *Administrative Review and Appeal Procedure Regulation* require that the Board be notified of all requests for review, all review hearings, all review decisions, and all appeals to the Forest Appeals Commission.

The Board received its first notification of a request for review on September 15, 1995. As of December 31, 1995, it was notified of 22 requests. Ten of these requests resulted in reviews being conducted in 1995.

The Board requested a review, and made a submission to a review panel, concerning one determination in 1995. The review panel upheld the original determination made by the government official. A Board representative also attended two review panel hearings as an observer.

The Board filed two appeals to the Forest Appeals Commission in 1995. In both cases, the agreement holder also filed an appeal. The issues raised in the Board's appeals concerned the officials appointed to serve on the review panel, the interpretation of sections of the Code pertaining to environmental damage, and procedural issues. Neither appeal had been heard by the Forest Appeals Commission at year's end.

The Board spent considerable time in 1995 developing its policies regarding reviews and appeals and expects to be active in the area of reviews and appeals in 1996. Principles which will guide the Board's decisions to request reviews and to initiate appeals are being developed.

Emerging issues

The number of reviewable determinations, including penalties and approvals of plans, will potentially be in the order of thousands per year. The Board will, therefore, need to be selective in addressing issues raised in reviews.

In order for the Board to effectively exercise its review function, it will need quick, ready access to determinations. The Board receives notice whenever a party asks for a review but it also needs to find out about determinations where a review has not been requested. The Board is discussing this issue with the responsible government agencies and is exploring ways to receive effective notification of determinations.

The short time frame for requesting a review may also become an issue for the Board. The Board has three weeks to request a review, although the Code provides the possibility for an extension of time. The three weeks starts when the subject of the determination is notified, but no notification is given to the Board.

Special investigations

Special investigations differ from complaint investigations in that they are initiated by the Board. The Board anticipates that special investigations may be undertaken where:

- certain practices have produced a high volume of complaints;
- there are matters of public interest and concern;
- the Board is requested to undertake a special investigation; and,
- there are reasons why a complaint investigation is not the appropriate method to consider matters brought to the Board's attention.

The Board did not undertake any special investigations in 1995. However, the Board has made provisions to undertake special investigations in 1996, if required.

Special reports

In addition to undertaking audits and special investigations, the Chair can make a special report to the ministers or comment publicly about a matter relating generally to the Board's duties. In 1995, the Chair made one special report, *Comment on the cutblock review*, on the Board's behalf.

This report provided the results of a study undertaken during the last quarter of 1995 on one of the Code's important transitional provisions. Sections 225 and 226 of the *Act* require that all cutblocks approved before June 15, 1995, and scheduled for harvesting after that date, be reviewed to assess conformity with five requirements outlined in the *Cutblock and Road Review Regulation*. Reports, that identified whether blocks conformed to those requirements, were required to be submitted by major license holders, woodlot license holders, and government for short-term timber sales under the Small Business Forest Enterprise Program (SBFEP), by December 15, 1995.

The Board undertook this study four months into the six-month transitional period to get an indication of:

- how many cutblocks had to be reviewed;
- how many cutblocks were assessed and reported on in the first four months;
- how many cutblocks were reported as conforming with the *Cutblock and Road Review Regulation's* requirements; and,

- which of the *Act's* five significant requirements (cutblock size, green-up, the location of the cutblocks relative to high-value, fish-bearing streams; community watersheds; and, terrain hazard assessment) substantially affected the cutblocks.

The Board's objectives were to establish a baseline for comparing past approvals with the new Code requirements, to get an indication on whether the submission of reports was proceeding on an orderly basis, and to report publicly about an important transitional provision of the Code.

The study found that 83 per cent of the cutblocks assessed and reported on by October 15, 1995, were reported to conform with the *Cutblock and Road Review Regulation*. Cutblock size was found to be the major reason for reported non-conformity in two of the three forest regions for which detailed information was obtained. Green-up requirements were the major reason for reported non-conformity in the other region.

The study found that there was a wide variation between regions in the number of reports submitted. Province-wide, about 34 per cent were reported by October 15, 1995, and 71 per cent were expected to be reported by November 15, 1995.

The Chair expects to issue a number of special reports in 1996.



Board's organization

During 1995, the Board devoted a great deal of attention to obtaining staff and establishing the financial, administrative, and organizational structures to support the work of an independent Board. This was a lengthy and time-consuming task.

The six Board members started with the *Act* and *Regulations* and a three-month budget allocation. While studying and interpreting the legislation and developing operating procedures, the Chair and the Board members prepared job descriptions, obtained job classifications, recruited and interviewed staff, developed a budgetary process, located independent office space, acquired furniture and equipment, and attended to many other organizational requirements.

Staff

The original organizational chart, prepared in 1994 before the appointment of the Board, identified 30 positions. The 1995-96 budget provided 11 full-time-equivalents (FTEs) for the Board's first year.

A significant portion of the Board's workload, particularly the investigation of complaints from the public, is externally driven and highly uncertain. The Board anticipates that the workload in three key areas — investigation of complaints, auditing of forest planning and practices, and review and appeal of decisions — will grow significantly over the next three years.

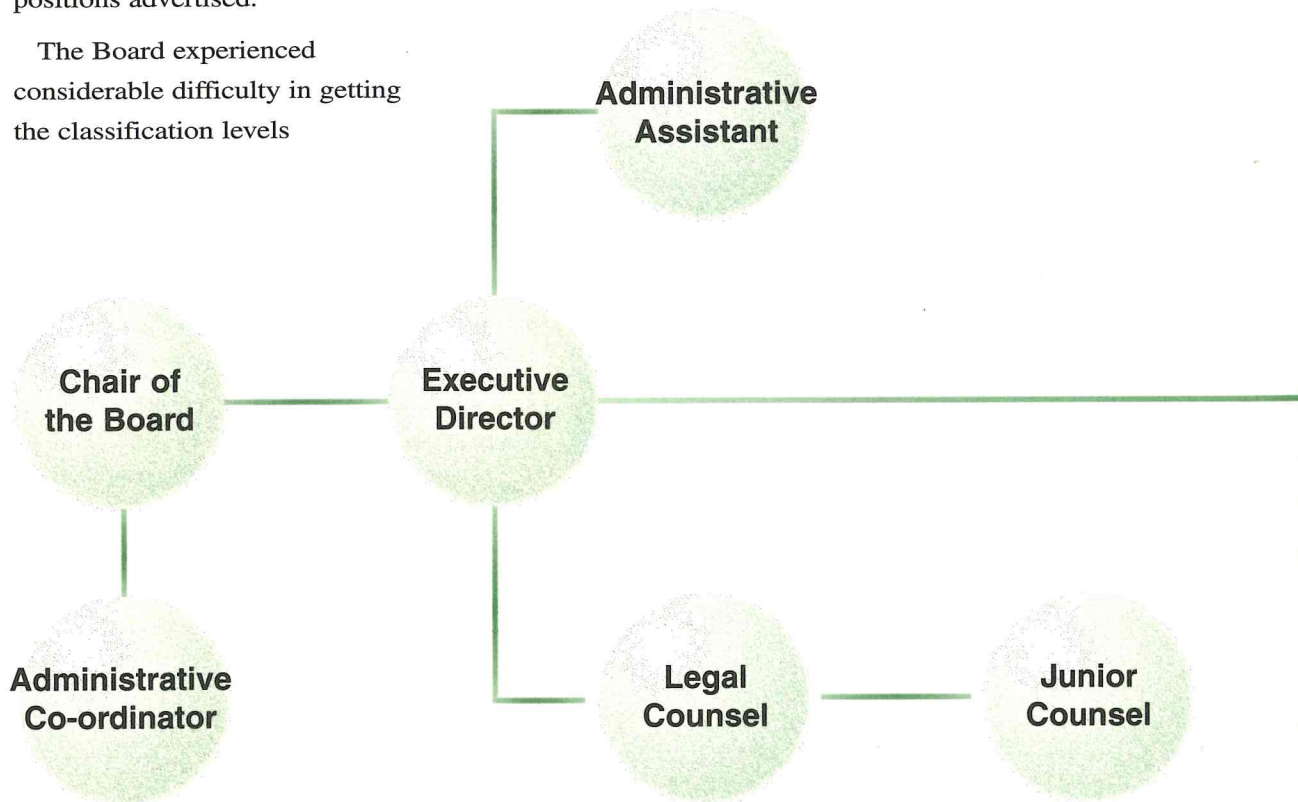
Staffing took a considerable amount of the Board's time during 1995. Job descriptions had to be prepared and approved, classifications obtained, and positions advertised.

The Board experienced considerable difficulty in getting the classification levels

necessary to attract experienced and qualified individuals, particularly to handle complaint investigations and to undertake the audit program. In addition, it was difficult to attract applicants even for the positions where appropriate classifications were obtained. The Board requires specialized skills and faces stiff competition from the forest industry, consulting firms, and government, who are also actively recruiting staff to work in the expanding fields of forest and range management.

At year's end, the Board had 11 employees, nine in permanent positions, and two on secondment from other government agencies.

Three co-op students ended their work term before year's end. Additional staff will be required early in 1996.



Budget

The Board was provided a \$400,000 - allocation for the 1994-95 fiscal year from the Ministry of Forests. The Board's expenditures by March 31, 1995, were \$269,000.

The 1995-96 provincial budget established the Board as administratively independent from the Ministry of Forests through a separate vote — Vote 65 — and allocated

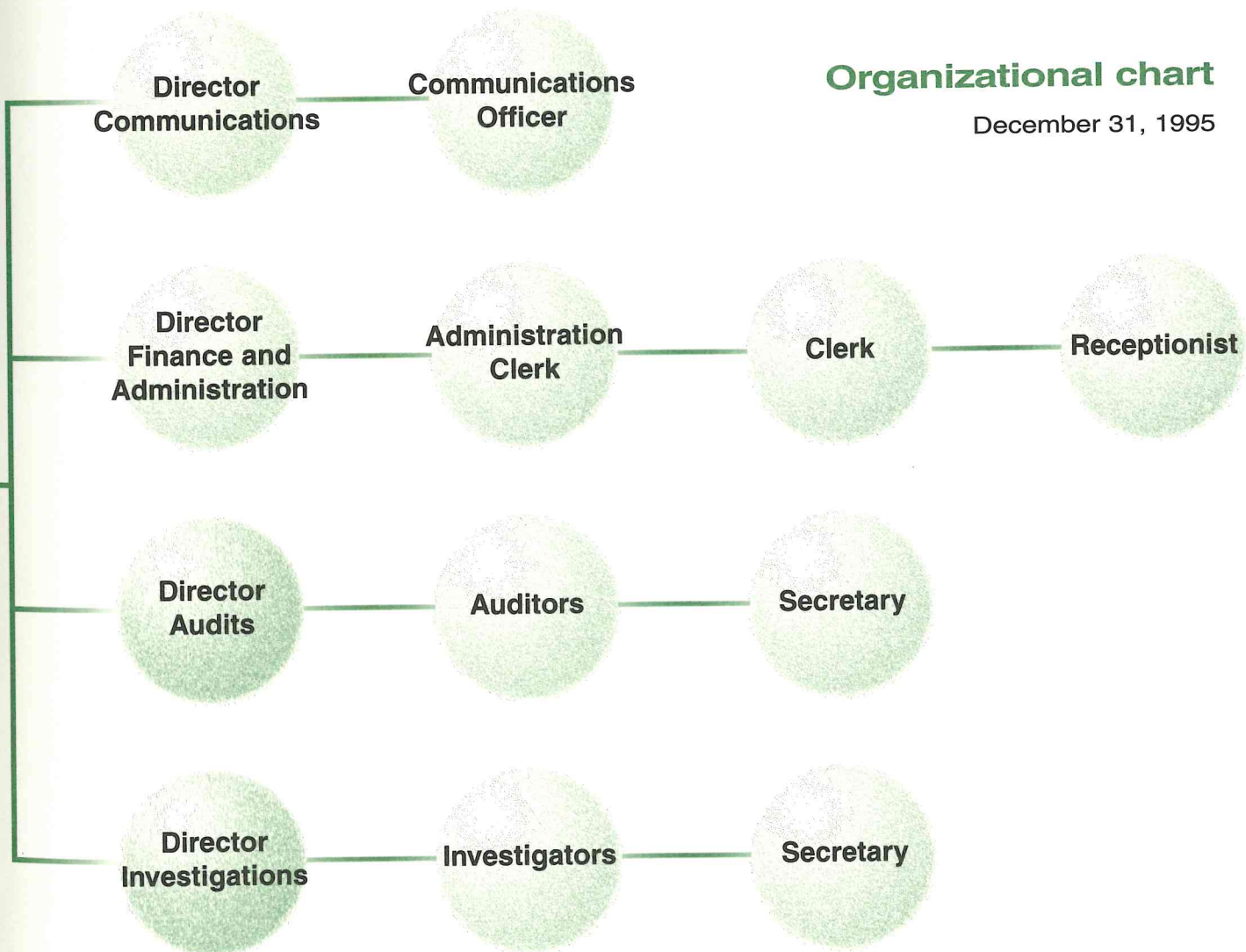
\$2.29 million for the fiscal year. At year's end, the expenditures were \$1,482,906 for the 1995 calendar year.

[Appendix 4 provides the unaudited financial information for 1995.]

The Board's budgetary requirements will grow in future years as the Board develops the capacity to meet its statutory responsibilities.

Organizational chart

December 31, 1995





Appendix

Appendix 1 **Code provisions** **pertaining to the Board**

Forest Practices Code ***of British Columbia Act***

Part 6

Compliance and Enforcement

Division 4 —

Administrative Review and Appeals

Forest Practices Board may have determination or decision reviewed

128. (1) The board may request a review of
- (a) a determination made under section 82, 95(2) or 117 to 120,
 - (b) a failure to make a determination under section 82, 95(2) or 117 to 120, and
 - (c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendment to either of those plans.

- (2) To obtain a review of a failure to make a determination, the board must deliver a written request for a review to the deputy minister of the Ministry of Forests, and to the person who would be subject to the determination, not later than 6 months after the occurrence of the event that would have been subject of the determination.
- (3) To obtain a review of a determination, the board must deliver a written request for the review to the review official specified in the notice of determination, and to the person who is the subject of the determination, not later than 3 weeks after the date the notice was given to the person who is the subject of the determination.
- (4) Before of after the time limit in subsection (3) expires the regional manager may extend it.
- (5) If the board does not deliver the request for a review within the time specified, the board loses the right to a review.

Appeal

- 131(1) Not later than three weeks after receiving a review decision under section 129 (6), the person or the board may appeal the decision by delivering to the commission a notice of appeal that meets prescribed requirements.
- (2) Before of after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

- (3) If the person or the board does not deliver the notice of appeal within the time required, the person or board loses the right to an appeal.
- (5) The government, the board, if it so requests, and the person who is the subject of the determination are parties to the appeal.

Appeal to court

- 141(1) The minister or a party to the appeal before the commission may, within 3 weeks after being served with the decision of the commission and by application to the Supreme Court, appeal the decision of the commission on a question of law or jurisdiction.

**Part 8
Forest Practices Board**

Division 1 - Definition

Definition

- 175. In this Part and the regulations related to this Part “party” means the government or the holders of agreements under the Forest Act or Range Act.

Division 2 - Complaints and Audits

Audits and special investigations

- 176. In accordance with the regulations, the board must carry out periodic independent audits and may carry out special investigations to determine
 - (a) compliance with the requirements of Parts 3 to 5 and the regulations and standards made in relation to those Parts by a party, and
 - (b) the appropriateness of government enforcement under Part 6.

Complaints

- 177.(1) In accordance with the regulations, the board must deal with complaints from the public respecting prescribed matters that relate to this Act.
- (2) Despite subsection (1), the board may refuse to investigate, or may stop investigating a complaint if, in the opinion of the chair, any of the following applies:
- (a) the complainant knew or ought to have known of the determination to which his or her complaint relates, more than one year before the complaint was received by the board;
 - (b) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved and, if the person aggrieved has not taken advantage of the remedy, there is no reasonable justification for the failure to do so;
 - (c) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;
 - (d) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint;
 - (e) in the circumstances, investigation would not benefit the complainant.
- (3) The board must promptly notify, in writing, the complainant and the party of its decision and the reasons for it and may indicate any other recourse that may be available to the complainant if it decides

- (a) to not investigate or further investigate a complaint, or
- (b) that the complaint has not been substantiated.

Powers of investigation

178. (1) Without limiting sections 176 and 177, for the purposes of those sections the board may investigate a determination.
- (2) The board may conduct an audit or special investigation or complaint investigation despite a provision to the effect that a determination is final and whether or not there is a right of appeal.
 - (3) The board may not investigate conduct occurring before the commencement of this Act.
 - (4) If a question arises as to the board's jurisdiction to investigate a case or class of cases, the chair may apply to the Supreme Court for a declaratory order determining the question.

Power to obtain information

179. (1) The board may require a party to provide information or records related to an audit, a special investigation or a complaint investigation.
- (2) The board may require the party to provide the information in the form and manner the board considers appropriate.
 - (3) The party must comply with a requirement of the board under subsection (1) or (2).
 - (4) Without restricting subsection (1), the board may do all of the following:

- (a) at any reasonable time enter and inspect business premises occupied by a party, speak in private with any person there and otherwise investigate matters within the board's jurisdiction;
 - (b) require a person to provide information or produce a record or thing in his or her possession or control that relates to an investigation at a time and place the board specifies;
 - (c) make copies of information provided or a record or thing produced under this section.
- (5) If the board obtains a record or thing under subsection (4) and the person from whom it was obtained requests its return, the board must, within 48 hours after receiving the request, return it to the person, but the board may again require its production in accordance with this section.
- (6) In conducting an audit, a special investigation or a complaint investigation, the board members have the powers given to a commissioner by sections 15 and 16 of the Inquiry Act.

Power to obtain information limited

180. The board must not require information or a record to be produced if the Attorney General certifies that the giving of the information or record may
- (a) interfere with or impede investigation or detection of offenses,
 - (b) involve the disclosure of the deliberations of the Executive Council, or

- (c) involve the disclosure of proceedings of the Executive Council or of any committee of the Executive Council, relating to matters of a secret or confidential nature, and would be harmful to the public interest.

Notification and consultation

- 181(1) If the board conducts an audit or investigation, the board must notify the party affected and any other person the board considers appropriate.
- (2) The board must consult with a party if the board receives a request for consultation from the party before the board has made its report under section 185.

Opportunity to make representations

182. If it appears to the board that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect a party or person, the board must inform the party or person of the grounds and must give the party or person the opportunity to make representations, either orally or in writing at the discretion of the board, before it decides the matter.

Evidence not admissible

183. If vidence given by a person in proceedings before the board and evidence of the existence of the proceedings are inadmissible against the person in a court or in any other proceeding of a judicial nature except for the following:
- (a) the trial of a person for perjury;
 - (b) the trial of a person for an offense under section 154;

- (c) an application for judicial review or an appeal from a decision with respect to that application.

Expenses

184. If a person incurs expenses in complying with a request of the board for production of documents or other information, the board may, at its discretion, reimburse that person for reasonable expenses.

Division 3 — Remedies

Report and recommendations

- 185.(1) After completing an audit or investigation, the board must report its conclusions, with reasons, to any complainant, to the party and, if the government is not the party affected by the audit or investigation, to the ministers.
- (2) If the board makes a report under subsection (1), it may make recommendations it considers appropriate.
 - (3) Without limiting subsection (2), the board may make any of the following recommendations:
 - (a) a matter be referred to the appropriate party for further consideration;
 - (b) an act be remedied;
 - (c) an omission or delay be rectified;
 - (d) a decision or recommendation be canceled or varied;
 - (e) reasons be given;
 - (f) a practice, procedure or course of conduct be altered;
 - (g) an enactment or other rule of law be reconsidered;
- (h) any other steps be taken.
- (4) Without limiting subsection (1), the chair may, if the regulations provide and in the manner they provide, make an application under section 128 for a review of a determination or failure to make a determination.

Party to notify Board of steps taken

- 186.(1) If the board makes a recommendation under section 185 the board may
- (a) request that the party notify it within a specified time of the steps that have been or are proposed to be taken to give effect to its recommendation, or
 - (b) if no steps have been or are proposed to be taken, the reasons for not following the recommendation.
- (2) If, after considering a response made by a party the board believes it advisable to modify or further modify its recommendation, the board must notify the party and the complainant of its recommendation as modified and may request that the party notify it
- (a) of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or
 - (b) if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.
- (3) The party must respond promptly to the board's request under subsection (1) or (2).

Report of board if no suitable action taken

- 187.(1) If within a reasonable time after a request by the board under section 186 no action is taken that the board believes adequate or appropriate, the chair may, after considering any reasons given by the party,
- (a) submit a report on the matter to the ministers, and
 - (b) after submitting a report under paragraph (a), make a report to the Lieutenant Governor in Council respecting the matter.
- (2) The chair
- (a) must attach to the report a copy of the board's recommendation and any response made to the board under section 186,
 - (b) must delete from his or her recommendation and from the response any material that would unreasonably invade any person's privacy, and
 - (c) may in his or her discretion delete material revealing the identity of a member, officer or employee of a party.

Complainant to be informed

188. After a complaint investigation, if the board makes a commendation pursuant to section 185 or 186 (2) and no action that the board believes adequate or appropriate is taken within a reasonable time, the board must inform the complainant of its recommendation and make such additional comments as it considers appropriate.

Annual and special reports

- 189.(1) In accordance with the regulations, the chair must report annually on the affairs of the board to the ministers.
- (2) The minister must promptly table the report with the Legislative Assembly.
 - (3) If the chair considers it to be in the public interest, he or she may make a special report to the ministers or comment publicly respecting a matter relating generally to the exercise of the board's duties under this Act or to a particular case investigated by the board.

Division 4 — General

Establishment of the Forest Practices Board

- 190.(1) The Lieutenant Governor in Council must establish a Forest Practices Board.
- (2) The board consists of a chair, one or more vice chairs and other members the Lieutenant Governor in Council may appoint.
 - (3) Appointments under subsection (2) may be for a term of up to 3 years.
 - (4) The Lieutenant Governor in Council may
 - (a) appoint a person as a temporary member to deal with a matter before the board, or for a specified period or during specified circumstances, and
 - (b) designate a temporary member as chair.

- (5) A temporary member has all the powers and may perform all the duties of a member of the board during the period or under the circumstances or for the purpose of the appointment.
- (6) The Lieutenant Governor in Council may determine the remuneration, reimbursement of expenses and other conditions of employment of
 - (a) the chair, vice chair and other members of the board, and
 - (b) persons appointed under the regulations to carry out audits.

Staff

- 191.(1) Employees necessary to carry out the powers and duties of the board may be appointed under the Public Service Act.
- (2) In accordance with the regulations, the board may engage or retain specialists, consultants and auditors that the board considers necessary to carry out the powers and duties of the office and may determine their remuneration.
- (3) The Public Service Act does not apply to the retention, engagement or remuneration of specialists, consultants and auditors retained under subsection (2).

No hearing as of right

- 192. A person is not entitled to an oral hearing before the board.

Delegation of powers

- 193.(1) The chair may in writing delegate to a person or class of persons any of the board's powers or duties under this Act, except the power

- (a) of delegation under this section, or
- (b) to make a report under this Act.
- (c) [Repealed 1995-18-41.]
- (2) A delegation under this section is revocable and does not prevent the board exercising a delegated power.
- (3) A delegation may be made subject to terms the chair considers appropriate.
- (4) If the chair makes a delegation and then ceases to hold office, the delegation continues in effect as long as the delegate continues in office or until revoked by a succeeding chair.
- (5) A person purporting to exercise a power of the board by virtue of a delegation under this section must, when requested to do so, produce evidence of his or her authority to exercise the power.

Forest Practices Board Regulation

Part 1

Definitions

Definitions

- 1. In this regulation: 'Act' means the Forest Practices Code of British Columbia Act; 'party' has the same meaning as in section 175 of the Act; 'significant breach' means
 - (a) with respect to a party's level of compliance with the requirements of Parts 3 to 5 of the Act and the regulations and standards made in relation to those Parts, a breach of one or more of those requirements that has caused or is beginning to cause significant harm to persons or the environment, and

- (b) with respect to the appropriateness of government enforcement under Part 6 of the Act, a breach of the government's enforcement duties under that Part that has caused or is beginning to cause significant harm to persons or the environment.

Part 2

Audits

Audit standards

- 2. The board may develop standards for the purpose of the periodic independent audits required under section 176 of the Act.

Appointment of auditors

- 3.(1) In accordance with this section, the board must appoint auditors to carry out the periodic independent audits.
- (2) The board must not engage or retain an auditor to carry out the periodic independent audits unless, in the opinion of the board, the auditor is
 - (a) familiar with the Act, the regulations and the standards established by the chief forester under section 8 of the Act,
 - (b) capable of assessing the environmental impact of forest practices,
 - (c) capable of performing the audits in accordance with the standards developed under section 2, and
 - (d) independent of the person being audited.
- (3) If an audit is to be carried out

- (a) by a single auditor, that auditor must be a member in good standing of an accredited professional body approved by the board, or
- (b) by a team of auditors, at least one member of the team must be a member in good standing of an accredited professional body approved by the board.

Significant breaches

- 4.(1) If an auditor identifies a probable significant breach, the auditor must
 - (a) contact the person being audited, and
 - (b) conduct audit tests to
 - (i) ascertain the extent of the breach, and
 - (ii) address any information provided by the person being audited.
- (2) If the auditor determines, after carrying out the requirements of subsection (1), that a significant breach has occurred, the auditor must immediately advise the following persons of the significant breach:
 - (a) the board;
 - (b) the person being audited;
 - (c) the ministers.

Release of final audit report

- 5. The board must make a final audit report available
 - (a) to the any person within 30 days of its submission by the auditor, and
 - (b) to the person being audited at least 7 clear days before the report is made available under paragraph (a).

Part 3

Complaints

Scope of complaints

6. The matters on which a person may make a complaint to the board under section 177 of the Act are the following:
- (a) a party's compliance with the requirements of Parts 3 to 5 of the Act and the regulations and standards made in relation to those Parts;
 - (b) the appropriateness of government enforcement under Part 6 of the Act.

Notice of complaint

- 7.(1) A person who wishes to make a complaint to the board must deliver a written notice of complaint to the board.
- (2) A notice of complaint must contain
- (a) the name and address of the complainant, and the name of the person, if any, making the request on the complainant's behalf,
 - (b) the address for service of the complainant,
 - (c) the grounds for the complaint, and
 - (e) a statement describing the relief requested.

Deficient notice of complaint

8. If a notice of complaint does not comply with section 7, the board

- (a) must deliver to the complainant written notice of the deficiencies, inviting the complainant, within the period specified in the notice, to submit further material remedying the deficiencies, and
- (b) need not proceed with the investigation of the complaint until an amended notice of complaint, with the deficiencies corrected, is delivered to the board.

Procedures following receipt of notice of complaint

- 9.(1) The board must acknowledge in writing any notice of complaint, or any amended notice of complaint with the deficiencies corrected, and must deliver a written notice setting out the particulars in the notice of complaint or amended notice of complaint to the persons that are the subject of the complaint.
- (2) Within 60 days after receipt of the notice of complaint or of the amended notice of complaint, the chair must determine whether the complaint is to be investigated or if, in the opinion of the chair, any of the criteria referred to in section 177 (2) of the Act applies.
- (3) The board may, at any time during or after an investigation, consult with a party
- (a) to attempt to settle the complaint, or
 - (b) for any other purpose related to a complaint or investigation.

Part 4

Annual Report

Content

- 10.(1) By March 31 of each year, the chair must submit the annual report for the immediately preceding calendar year required by section 189 of the Act.
- (2) The annual report referred to in subsection (1) must specify
- (a) the number of audits initiated and completed during the year,
 - (b) the persons audited,
 - (c) the resources used in carrying out the audits,
 - (d) a summary of the results of audits completed during the year,
 - (e) the number of complaints received during the year,
 - (f) the number of special investigations carried out as a result of the complaints received during the year,
 - (g) a summary of the results of the complaints heard, and special investigations carried out during the year, and
 - (h) the resources used in carrying out the hearings and special investigations resulting from those complaints.

[Provisions of the Forest Practices Code of British Columbia Act relevant to the enactment of this regulation: Part 10]

Appendix 2

Board's Code of Conduct

Preamble

WHEREAS:

- i) members of the Forest Practices Board must fulfill their statutory duties in a fair and impartial manner free of personal considerations and interests;
- ii) members of the Forest Practices Board, other than the Chair, are appointed on a part-time basis;
- iii) all members of the Forest Practices Board are appointed because of their expertise in areas covered by the *Forest Practices Code of British Columbia Act*; and,
- iv) members of the Forest Practices Board may have on-going private interests related to matters covered by the *Forest Practices Code of British Columbia Act*.

THEREFORE, the Forest Practices Board, as master of its own procedure, adopts the following *Code of Conduct*:

Definitions

1. "Board" means the Forest Practices Board as defined and established in the *Forest Practices Code of British Columbia Act*.
"Chair" means the Chair of the Forest Practices Board.
"Family" means the Board members' parents, siblings, children, or spouse.
"Forest Practices Code" means the *Forest Practices Code of British Columbia Act and Regulations*.

“Friend” means a person with whom there is a close personal friendship based on social interaction and shared interests outside the work or professional environment, and which usually involves entertainment or social activities in the home and with other family members.

For the purposes of interpreting this *Code of Conduct*, “friend” does not include an individual with whom there is a personal relationship based only on shared professional or workplace related interests.

“Member” means a member of the Forest Practices Board

“Private Interest” is any interest, financial or non-financial, direct or indirect, personal or pertaining to another, that is not a public interest.

“Public Interest” is an interest arising from the exercise of an official power or the performance of an official duty or function that:

- (a) applies to the general public; and,
- (b) concerns the remuneration and benefits of a member or an officer or employee of the Forest Practices Board.

“Statutory duty” means any duty, power or function granted to the members of the Board under the *Forest Practices Code of British Columbia Act*.

Conflict of interest

- 2.(1) A Board member has a conflict of interest when the member exercises a statutory power and at the same time knows, or with the exercise of reasonable diligence should know, that in the performance of the statutory duty there is the opportunity to further his or her private interest.
- (2) A Board member has an apparent conflict of interest where there is a reasonable perception, which a reasonably well-informed person could properly have, that the member’s ability to exercise a statutory duty must have been affected by his or her private interest.

Conflict of interest prohibition

- 3. A Board member shall not exercise a statutory duty if:
 - (a) the Board member has a conflict of interest or an apparent conflict of interest; or,
 - (b) the Board member’s family or friends might receive or appear to receive preferential treatment.

Disclosure statements

- 4.(1) A Board member shall within 60 days of appointment to the Board, and thereafter annually, file a disclosure statement with the Board. The disclosure statement must be provided by the Board member to the administrative co-ordinator of the Board.

- (2) The disclosure statement shall include:
- (a) any activity, including employment, carrying on a business, or holding an office or directorship, which is related directly or indirectly to the *Forest Practices Code of British Columbia Act*, of which the Board member is involved in or has been involved in during the last 12 months;
 - (b) a statement regarding the nature of assets, liabilities, and financial interests of the member and the member's spouse which may relate to the Forest Practices Board;
 - (c) a list of organizations that the Board member belongs to that are directly or indirectly related to matters covered under the Forest Practices Code;
 - (d) a list of the Board member's family members who are involved in any activity including employment, carrying on a business, or holding an office or directorship, which is related directly, or indirectly, to the *Forest Practices Code of British Columbia Act*, along with a description of the activity and the name of the business involved; and,
 - (e) a statement of the steps that the Board member has taken to eliminate conflicts of interest or perceived conflicts of interest.
- (3) A Board member must file an amended disclosure statement if there is a material change in circumstance with respect to any item listed in Section 4(2)(a) through (e). The amended disclosure statement must be filed with the administrative co-ordinator within 60 days of the material change in circumstances.
- (4) A Board member's disclosure statement may be made available to the public at the discretion of the Chair.

Acceptance of gifts or extra benefits

- 5.(1) A Board member shall not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her statutory duties.
- (2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol of social obligations. If a gift is received in such a situation, it becomes the property of the Board and not the individual Board member.
- (3) A Board member shall refrain from accepting any benefit, the acceptance of which might erode public confidence and trust in the integrity, objectivity, and impartiality of the Board member.

- (4) The Board is responsible for paying all travel costs of a Board member when such member is traveling on Board business; however, it is not a contravention of this *Code of Conduct* for a member to accept the benefit of travel in cases where there is no reasonable alternative, and there is no personal benefit to the member.

Insider information

- 6.(1) A Board member shall not use information that is gained in the execution of his or her statutory duty that is not available to the general public to further, or seek to further, the Board member's private interest.
- (2) A Board member must at all times maintain the confidentiality of information and records obtained in the course of fulfilling his or her statutory duties, until such time as it becomes a matter of general public knowledge.

Conflicting activities

7. A Board member shall take all reasonable steps to limit his or her activities which may conflict with his or her statutory duties under the *Forest Practices Code of British Columbia Act*. If a conflict or perceived conflict does arise, the Board member must follow the steps outlined in Section 8 of this *Code of Conduct*.

Procedure on conflict of interest

- 8.(1) Where, during the exercise of any statutory duty, a matter arises with respect to which a Board member has reasonable grounds to believe that he or she has a conflict of interest, he or she shall immediately disclose, in writing, to all Board members, the general nature of the conflict of interest and shall withdraw from all participation in the matter including, but not limited to:
- (a) participation in discussions with other Board members concerning the matter;
 - (b) review of any written material with respect to the matter;
 - (c) attendance of any meeting, or portion of a meeting, in which the matter is discussed;
 - (d) voting on a resolution in any way connected with the matter; and,
 - (e) attempting, in any way, to influence other Board members.
- (2) If a Board member is at a meeting of the Board and a matter arises which gives that member reasonable grounds to believe that he or she has a conflict of interest, the Board member shall:
- (a) disclose the general nature of the conflict of interest; and
 - (b) withdraw from the meeting without voting or participating in the consideration of the matter.
- (3) Where a Board member has complied with subsection (2), the following shall be recorded in the minutes:
- (a) the Board member's name and disclosure;

- (b) the general nature of the conflict of interest disclosed; and,
 - (c) the time of the withdrawal of the Board member from the meeting.
- (4) Where a Board member declares a conflict of interest, the administrative co-ordinator will ensure that other Board members do not receive information which may create a further conflict of interest with their activities.

Duty of Board members to resolve and refrain from conflicts of interest

- 9.(1) A Board member shall make all reasonable efforts to resolve any conflict of interest or apparent conflict of interest in favour of the public interest.
- (2) A Board member shall arrange his or her private affairs in conformity with the provisions of this *Code of Conduct*, and shall make every reasonable effort to prevent conflicts of interest from arising.

Non-compliance with the Code of Conduct

- 10.(1) The Chair may rule on whether there has been compliance with this *Code of Conduct*, including whether a Board member is in a conflict of interest.
- (2) If the Chair finds that the provisions of this *Code of Conduct* have been violated by a Board member, he or she may:
- a) require discontinuance of the private activity creating the conflict; or,
 - b) make recommendations to the Lieutenant Governor in Counsel with respect to actions that should be taken.
- (3) If the Board members find that the provisions of this *Code of Conduct* have been violated by the Chair, they may make recommendations to the Lieutenant-Governor-in-Counsel with respect to actions that should be taken.

Appendix 3 - Complaints and concerns

1. *Complaints by status*

Number of complaints in 1995 (June 15 to Dec. 31):	19
Number of open complaint files at Dec. 31:	11
under investigation:	4
under assessment:	7
Number of closed files:	8
not within jurisdiction [Sec. 177(1)]:	1
matter before June 15 [Sec. 178(3)]:	2
Chair refused to investigate [Sec. 177(2)]:	2
withdrawn by complainant:	2
settled:	1
Number of completed investigations:	0

2. *Subject matter of complaints*

Total number of complaints:	19
Part 3 — operational planning:	14
Part 4 — forest practices:	2
Part 5 — protection of forest resources:	1
Part 6 — compliance and enforcement:	2

3. *Geographical location of complaints*

Vancouver Region:	5
Prince Rupert Region:	1
Nelson Region:	1
Cariboo Region:	7
Kamloops Region:	2
Prince George Region:	3

4. *Concerns*

Total number of concerns:	20
Jurisdictional concerns:	14
Non-jurisdictional concerns:	6

5. *Subject matter of jurisdictional concerns*

Part 3 — operational planning:	9
Part 4 — forest practices:	2
Part 5 — protection of forest resources:	2
Part 6 — compliance and enforcement:	1

Appendix 4

Unaudited financial information

For the period from January 1 to December 31, 1995 (Note 1)

	Board		Operational Expenditures					Total
	Members Expenditures	Complaint	Audits	Special	Special	Reviews &	Administrative	
		Investigations		Investigations	Reports	Appeals	Expenditures	
Salaries and Benefits	133,866	125,515	27,315	0	0	9,036	254,315	550,047
Operating Costs	102,537	0	0	0	45,203	1,200	565,636	714,576
Asset Acquisitions	0	0	0	0	0	0	218,283	218,283
Total	236,403	125,515	27,315	0	45,203	10,236	1,038,234	1,482,906


Note 1: The calendar year 1995 combines the last three months of fiscal year 1994/95 (January to March) and the first nine months of fiscal year 1995/96 (April to December).



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