APPEALS

The *Forest and Range Practices Act* (FRPA) and the *Wildfire Act* provide for appeals of certain decisions to the independent Forest Appeals Commission (FAC). The Forest Practices Board (the Board) may initiate appeals of certain decisions (in which case it becomes the "appellant"), or join appeals initiated by others (in which case it becomes a "third party").

This document summarizes appeals that the Forest Practices Board has been involved in since 1995. Also included are the Board's decisions not to appeal determinations requested by the public. The full body of decisions of the FAC may be viewed on its website at www.fac.gov.bc.ca.

2022	2019	2016	2013	2010	2007	2004	2001	1998
2021	2018	2015	2012	2009	2006	2003	2000	1997
2020	2017	2014	2011	2008	2005	2002	1999	1996

2023

Okanagan Shuswap District Manager approval of amendments to BC Timber Sales' (BCTS) Okanagan-Columbia Forest Stewardship Plan (FSP) #771

A member of the public requested that the Forest Practices Board (the Board) appeal a district manager's decision to approve amendments to BCTS's FSP. In 2021, BCTS acknowledged that its FSP failed to include results and strategies to address an order establishing the Rose Swanson Mountain area as a sensitive area and corresponding objectives. BCTS amended its FSP and in June 2023, the district manager approved the amendments. The Board reviewed the results and strategies in BCTS's forest stewardship and determined that they are consistent with the objectives that apply to the Rose Swanson Mountain area. The Board decided not to file an appeal of the district manager's decision.

Open Letter Response

2022

Forest Practices Board v. Government of British Columbia

Third Party – Timothy Holland

FAC-FRP-21-A003(a)

The district manager found the third party in contravention of the *Forest and Range Practices Act* for cutting and removing Crown timber without authorization and levied a total penalty of $12,000. The third party held a forestry license to salvage wood for the purposes of shakes and shingles but only harvested wood from outside of the license boundary over a five-year period. The Forest Practices Board appealed the determination on the basis that the penalty amount was too low based on the magnitude of the contraventions, the deliberateness of the contraventions, the economic benefit that the third party likely derived from the contraventions, the third party's treatment of Natural Resource Officers investigating his conduct and the potential impact of the contraventions to historical Indigenous sites.

The Forest Appeals Commission mostly agreed with the Board's arguments and increased the penalty amounts tenfold.

Appeal allowed.

FAC decision: FAC-FRP-21-A003a.pdf (gov.bc.ca)

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2020

Blueberry River First Nations and Blueberry River Enterprises v. Government of British Columbia

Third Party: Forest Practices Board

2019-FRP-001(b)

The district manager found the Blueberry River First Nations and Blueberry River Enterprise in contravention of the *Forest and Range Practices Act* for constructing and maintaining trails without authorization and for causing damage to the environment. The district manager levied an administrative penalty and remediation order for the contraventions. The appellants argued that their activities were protected Treaty rights and did not cause damage to the environment. The Forest Practices Board participated in this appeal to address the remediation order issue. In particular, the Board took the position that the appellants could not be issued a remediation order under section 74 of the *Forest and Range Practices Act* because the appellants were not licensees, which is a requirement of that section. The government of British Columbia agreed with the Board's position and agreed not to pursue a remediation order in the appeal. The Board withdrew its participation after this issue was resolved. The appeal continued without the Board's participation and on August 19, 2021, the Commission issued a consent order allowing the rest of the appeal. The consent order indicates that the Government of British Columbia agreed to not pursue any contraventions or administrative penalties against the appellants.

Appeal allowed by consent.

FAC Decision: 2019frp001b_consent_order.pdf (gov.bc.ca)

Tolko Industries Ltd. v. Government of British Columbia

Third Party: Forest Practices Board

2019-FRP-004

This appeal raised issues concerning "declared areas" in forest stewardship plans, and whether a district manager has the authority to place conditions on them, such as requiring review for consistency with "objectives set by government." It proceeded by way of written submissions, which were filed between December 2019 and February 2020. Tolko withdrew its appeal in July 2020.

Appellant withdrew the appeal.

2019

Lemare Lake Logging Ltd. v. Government of British Columbia

Third Party: Forest Practices Board

2018-FRP-001(a)

Lemare appealed three contravention determinations associated with failing to properly maintain a bridge on a forest service road, continuing to use the bridge for hauling timber while subject to a 5-tonne load limit, and failing to obey a stop work order. The district manager levied a penalty of $20,000, but declined to levy a penalty for the bridge maintenance contravention because he believed the bridge condition first became known to an official more than three years earlier and the limitation period had expired. Lemare appealed on the bases that it was entitled to the defences of due diligence or mistake of fact and that the penalties were excessive. The Board joined the appeal as third party to argue that a penalty should have been levied for the bridge safety issue because the limitation period had not expired. The FAC dismissed the appeal, and agreed that the limitation period had not expired and levied a penalty of $3,000 for the bridge safety contravention. The total penalty amount remained at $20,000. The decision is a helpful clarification of how the limitation period in section 75 of FRPA applies in the context of ongoing bridge maintenance obligations and deteriorating guardrail conditions over time.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestAndRange/2018frp001a.pdf

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2018

Forest Practices Board v. Government of British Columbia

Third Parties: 391605 BC Ltd. and D.N.T. Contracting Ltd.
2017-WFA-005(a) and 2017-WFA-006(a)

This appeal was initiated by the Board to clarify the availability of the "mistake of fact" defence under the Wildfire Act. Regulations limit when high risk activity may occur according to the Fire Danger Class in an area, which is determined by conditions recorded at a representative weather station. If the Fire Danger Class is "extreme" there must be a complete cessation of high risk activities. Use of an unrepresentative weather station resulted in operations continuing during extreme danger class conditions, and a feller buncher caused a wildfire. The Board argued that reasonable care must be exercised in the selection of a representative weather station, that it was not in this case, and therefore the mistake of fact defence is not available. The FAC agreed, and found that the timber sale licence (TSL) holder could not avail itself of the mistake of fact defence because Canfor, which provided the information, had not exercised reasonable care and was acting 'in the shoes' of the TSL holder. The FAC found that the contractor had taken reasonable care to know the relevant facts in the circumstances.

Appeal allowed in respect of 391605 BC Ltd., and dismissed in respect of D.N.T. Contracting Ltd.

FAC Decision: http://www.fac.gov.bc.ca/wildfireAct/2017wfa005a_006a.pdf

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Interfor Corporation v. Government of British Columbia

Third Party: Forest Practices Board
2018-FRP-003

Interfor appealed a determination that it contravened road maintenance provision of the *Forest Planning and Practices Regulation,* resulting in an administrative penalty of $10,000. The incident involved a plugged culvert that led to a landslide and the deposit of about 1200m^3 of sediment into a stream. The Board joined the appeal, but it was later withdrawn by the appellant.

Appellant withdrew the appeal.

2017

Forest Practices Board v. Government of British Columbia

Third Party: M.G. Logging & Sons Ltd.

M.G. Logging & Sons Ltd. contravened FRPA by harvesting Douglas fir trees that were required to be retained for biodiversity reasons, contrary to its timber sale licence, and received an administrative penalty of $3500. The Board appealed on the grounds that the penalty amount was too low to reflect the seriousness of the contravention, considering both the environmental harm and the administrative justice goal of deterrence. The Board also argued that evidence of previous contraventions of a similar nature should have been considered.

The FAC found that administrative penalties are intended to encourage compliance with the legislation, by providing specific deterrence in respect of the contravener and general deterrence in respect of the industry. In addition, administrative penalties for unauthorized timber harvesting have the purpose of compensating the Crown for loss or damage to its resources. These overall purposes, in addition to the specific factors under section 71(5) of the *FRPA*, should be considered when assessing administrative penalties.

The FAC also found that when determining the penalty amount consideration of previous contraventions can include official warnings and compliance notices. Previous non-compliance by a director, an officer, or a closely related company may also be considered providing that adequate notice is given to ensure procedural fairness.

Based on new expert evidence provided by the Board regarding the environmental impact of the contravention, the FAC found that the Douglas-fir trees were ecologically important to the local area, which is near the northern limit for Douglas-fir, and it would take 50 to 100 years for the environment to recover. The FAC also found that the contraventions were continuous and repeated, and there was a high to very high degree of deliberateness, especially regarding 135 trees that were harvested after the TSL holder was reminded of his obligation to retain Douglas-fir.

Considering all of those factors, the FAC decided that the penalty should be increased to include $6,000 for deterrence, plus $21,128.76 for compensation for lost biodiversity values.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestAndRange/2016frp001a.pdf

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Canadian National Railway Company v. Government of British Columbia

Third Party: Forest Practices Board

2016-WFA-002(a)

CNR appealed a Wildfire Act determination ordering it to pay fire control and other costs relating to damage or destruction to Crown resources. The area affected by the wildfire contained timber, grass and was designated as mule deer winter range, scenic area and an old growth management area. The Board joined the appeal to make submissions on the determination of damages for "other forest land resources" and "grass land resources" in the Wildfire Regulation. Specifically, the Board argued that these terms should be interpreted in a non-mutually exclusive manner which would allow the Province to recover damages for both, rather than adopting an either/or approach adopting the polygon classification based on the government's Vegetation Resource Inventory system. The FAC did not agree with these submissions.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/wildfireAct/2016wfa002a.pdf

Russell Laroche v. Government of British Columbia

Third Party: Forest Practices Board

A district manager refused to approve a forest stewardship plan (FSP) submitted by BC Timber Sales (BCTS) Kootenay Business Area due to concerns about unacceptable risks to government objectives to water, fish, wildlife and biodiversity, and the cumulative effects resulting from large forest development units that overlapped with those of several other licensees. The Board joined the appeal because it raised a number of issues addressed in its 2015 special investigation report entitled *Forest Stewardship Plans: Are They Meeting Expectations?* Following discussions with the ministry and the Board, BCTS subsequently amended its FSP to meet the approval of the incoming district manager, and withdrew its appeal.

Appellant withdrew the appeal.

2016

Interfor Corporation v. Government of British Columbia

Third Party: Forest Practices Board

2015-FRP-002(a)

Interfor appealed a district manager's determination that it contravened FRPA by failing to meet the visual quality objective (VQO) of partial retention for a cutblock on Stuart Island. The Board joined the appeal to make submissions on the importance of visual resource management and aspects of determining compliance, including factors for assessing the due diligence defence, but did not take a position on the outcome. The FAC found that the cutblock did not meet the partial retention VQO and that Interfor did not exercise due diligence.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestAndRange/2015frp002a.pdf

2014

Stella-Jones Canada Ltd. v. Government of British Columbia

Third Party: Forest Practices Board

2014-FRP-001

This appeal relates to a decision rejecting Stella-Jones Canada Ltd.'s declaration that a free growing stand had been established on a cutblock. The decision-maker found the survey evidence to be contradictory and, for this reason, could not decide with certainty whether a free growing stand had been achieved. The decision-maker said that he would conduct his own survey before making a final decision. The Board took the position that a decision-maker should be able to conduct a survey if needed to resolve uncertainty and make the best forest management decision. However, due to the wording and requirements of section 107 of FRPA, the parties consented to an order that the appeal be allowed.

Appeal allowed.

Consent order: http://www.fac.gov.bc.ca/forestAndRange/2014frp001a_consent_order.pdf

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2013

Forest Practices Board v. Government of British Columbia

Third Party: Douglas Lake Cattle Company
2013-FRP-002

The district manager determined that Douglas Lake Cattle Company harvested and removed timber without authority, and did not inform its contractor of the boundaries of private land adjoining Crown land. However, the district manager found that the Company did not contravene FRPA as it succeeded in proving the defence of due diligence. The Board appealed the decision on the grounds that the Company did not take reasonable care to inform its logging contractor of the boundaries of private land, or in overseeing its contractor's activities, in a manner commensurate with the resource values at risk. The FAC agreed, and found that due diligence had not been established and the contravention warranted an administrative penalty. It referred the penalty amount matter back to the District Manager for determination, with instructions to consider all of the circumstances.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestAndRange/2013frp002a.pdf

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Interior Roads Ltd. and Blacklock v. Government of British Columbia

Third Party: Forest Practices Board
2013-WFA-G01

These two appeals relate to a fire centre manager's decision that Wayne Blacklock and Interior Roads Ltd. contravened the Wildfire Act and Wildfire Regulation. Mr. Blacklock, a contractor for Interior Roads Ltd., was found to have caused a fire while mowing the roadside. The manager apportioned the government's fire control costs at 60 percent to Mr. Blacklock and 40 percent to Interior Roads Ltd. The Board took the position that the Wildfire Act should be interpreted as giving the minister the discretion to decide how much of the government's costs of fire control a person should be required to pay. The Board withdrew as a party and an order allowing the appeal was consented to by the remaining parties.

Appeal allowed.

Consent order: http://www.fac.gov.bc.ca/wildfireAct/2013wfa001_002_consent_order.pdf

2012

West Fraser Mills Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
2012-FRP-003

West Fraser appealed a determination finding that it contravened FRPA by failing to achieve a visual quality objective near Bowron Lakes Provincial Park. The appeal centred on the due diligence defence and sought to revisit issues canvassed in the BC Supreme Court decision in Pope and Talbot, to which the Board was a party (discussed below, under 2007). These issues include the role of foreseeability in the due diligence analysis and the importance of foreseeability of the precise cause of the problem. This case involved reliance on computer modelling of the predicted visual impacts of logging, and what the decision-maker found to be inadequate monitoring of the actual visual impacts during harvesting. The appeal was later withdrawn by West Fraser.

Appeal withdrawn.

Babine Forest Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
2012-FRP-006

The appeal relates to a district manager's refusal to approve Babine's forest stewardship plan amendment that proposed a result or strategy for the visual quality objective for an area visible from Babine Lake. The district manager refused to approve the amendment because it did not meet the legal approval test. Babine claimed that the test was wrongly applied. The Board took the position that the district manager's decision was correct because the proposed result or strategy did not conform to the legal requirement to be measurable or verifiable. During a recess at the hearing of the appeal, Babine and the government agreed to a settlement by revising the result or strategy to make it more measurable and verifiable. The Board concluded that the revisions did not go far enough but, rather than object to the settlement, the Board withdrew from the appeal.

Appeal allowed.

Consent order: http://www.fac.gov.bc.ca/forestAndRange/2011for006a.pdf

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Robert Unger v. Government of British Columbia

Third Party: Forest Practices Board

2012-WFA-002b

In 2012, the Board joined an appeal relating to a wildfire that escaped from private land to Crown land. A government official ordered the landowner to pay the government's fire-control costs of $861,356. At issue for the Board was the scope of the manager's authority to make such an order. The manager decided that his authority was limited to ordering the owner to pay all of the costs or none of the costs. The Board seeks to encourage fair and equitable application of legislation and in this case, the Board was concerned that the manager's "all or nothing" interpretation could lead to unfair costs orders in some situations. The Board argued that managers have the discretion to order payment of something less than the full costs of fire control, in appropriate circumstances.

In December 2014, the FAC denied the individual's appeal, but agreed with the Board on the interpretation point, saying: "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 Board." In January 2015, Mr. Unger appealed the FAC decision to the BC Supreme Court. In December 2015, the government and Mr. Unger reached a settlement and the appeal was abandoned.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/wildfireAct/2012wfa002b.pdf

2011

Charles E. Kucera v. Government of British Columbia

2011-FOR-001 and 002

FRPA authorizes a decision-maker to order a licensee to carry out work that is reasonably necessary to remedy a contravention. At issue in this case was whether the order made to achieve the stocking requirements specified in a site plan for a woodlot was reasonably necessary. The Board initially joined the appeal as a party, but concluded after further analysis that the district manager was correct, and withdrew from appeal.

Appeal dismissed.

Forest Practices Board v. Government of British Columbia

Third Party: Murray McLean

2011-FOR-005

This appeal was initiated by the Board to take issue with a penalty determination against a woodlot licensee for failing to achieve "free to grow" obligations. The reasons given for not levying a penalty were inadequate because they did not discuss why the contravention was found to be trifling and whether or not it was in the public interest to levy a penalty, even though the contravention was considered significant and deliberate. The Board withdrew its appeal after the government agreed to distribute guidance to decision-makers on the importance of giving reasons for decision.

Appeal withdrawn.

Ronald Edward Hegel and 449970 B.C. Ltd. v. Government of British Columbia & Forest Appeals Commission

Intervenor: Forest Practices Board

2011 BCCA 446

In the course of harvesting timber on private land, the appellants were found to have crossed onto Crown land and harvested Crown timber without authorization. After unsuccessfully arguing that they were entitled to the mistake of fact and due diligence defence before the FAC and later the BC Supreme Court, they appealed to the BC Court of Appeal. The Board intervened at the BC Court of Appeal to make submissions on the proper test for the due diligence defence.

Appeal dismissed.

Court Decision: http://www.courts.gov.bc.ca/jdb-txt/CA/11/04/2011BCCA0446.htm

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2010

Atco Wood Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
2010-FOR-001(a)

This case involved road maintenance practices, and runoff from a forest road into a stream. Atco appealed a determination that it contravened two provisions of the *Forest Planning and Practices Regulation* (FPPR). One was section 57, which requires licensees to carry out their activities "at a time and in a manner that is unlikely to harm fish or destroy, damage or harmfully alter fish habitat." The second contravention appealed involved the requirement in section 79 to ensure that road drainage systems are functional. The Board joined the appeal to make submissions on the interpretation of section 57, but did not take a position concerning whether Atco complied and did not introduce evidence. On the section 57 issue, the Commission found that gravel ridges caused by road grading were unlikely to "harm fish or destroy, damage or harmfully alter fish habitat." On the section 79 issue, the Commission found that although Atco did not ensure that the road drainage systems were working, it exercised due diligence to avoid the contravention.

Appeal allowed.

2009

Tembec Enterprises Inc. v. Government of British Columbia

Third Party: Forest Practices Board
2008-FOR-011(a)

The appeal issue was whether due diligence and reasonable reliance on professionals in regard to a landslide across a road and into a stream due to poor culvert locations and lack of water control structures. The Board took no position on the contraventions under appeal, and focused on the law relating to due diligence. The FAC found that Tembec had exercised due diligence in the circumstances and allowed the appeal.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2008for011a.pdf

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Gorman Bros. Lumber Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
2009-WFA-001(a)

This appeal raised the issue of whether the appellant had an "adequate fire suppression system" for the circumstances. The parties agreed to a consent order granting the appeal and rescinding the determination.

Appeal allowed.

Consent order: http://www.fac.gov.bc.ca/wildfireAct/2009wfa001a.pdf

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Solana Consulting and Investment Corp. v. Government of British Columbia

Third Party: Forest Practices Board
2009-WFA-003(a)

The appeal issue was in regards to the meaning of "adequate fire supression system", due diligence, and whether the penalty was appropriate in the circumstances. The parties agreed to a consent order rescinding the contravention determination because it was made after the expiry of the limitation period.

Appeal allowed.

Consent order: http://www.fac.gov.bc.ca/wildfireAct/2009wfa003a.pdf

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2008

Canadian Forest Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
Intervenor: Council of Forest Industries
2008-FOR-001(b) and 2008-FOR-002(b)

This appeal concerned whether the road maintenance obligations in section 79 of the FPPR require a licensee to replace an old, deteriorated minor culvert with an expensive permanent bridge. The Board joined the appeal to argue that such an expectation goes beyond the normal meaning of regular maintenance. The parties eventually agreed to a consent order allowing the appeal and agreeing that Canfor's failure to build a new bridge to replace a deteriorated culvert was a contravention of section 79.

Appeal allowed.

Consent order: http://www.fac.gov.bc.ca/forestPracCode/2008for001_002b.pdf

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Canadian National Railway v. Government of British Columbia

Third Party: Forest Practices Board
2008-WFA-001 & 002

The appeal issue was how to determine the value of Crown timber destroyed by a wildfire. The Board initially joined to address issues relating to compensation for loss of non-timber resources, but later withdrew given lack of evidence of high non-timber values in the burned area. The FAC's decision addresses a number of issues concerning stumpage rates applicable to timber damaged due to wildfire.

One appeal allowed in part, and the other allowed by consent.

FAC Decision: http://www.fac.gov.bc.ca/wildfireAct/2008wfa001a_002a.pdf

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Allison Logging v. Government of British Columbia

Third Party: Forest Practices Board
2008-WFA-004

This appeal raised the issue of whether the appellant had an "adequate fire suppression system" for the circumstances.

Appeal withdrawn following a settlement agreement between the appellant and the Ministry.

2007

Kucera v. Government of British Columbia

Third Party: Forest Practices Board
2007-FOR-004

This appeal concerned whether a woodlot licensee should be penalized for undertaking forest practices which, although sound forest management, were not authorized by government.

Appeal abandoned following settlement discussions.

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Pope and Talbot Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
Intervenor: Council of Forest Industries
2005-FOR-004(b)

Pope and Talbot (P&T) appealed a contravention determination on the grounds that it exercised due diligence and the unauthorized harvesting was entirely the responsibility of its contractor. The logging involved a complex harvesting prescription for the management of caribou habitat and heli-skiing, and the FAC found that the risk that harvesting might deviate from operational plans was higher than usual. The FAC found that P&T gave too much discretion to its logging supervisory staff, the contractor and the sub-contractor in deciding how to implement the leave tree requirements of the silviculture prescription. In particular, P&T gave the contractor the responsibility to decide on the limits of the guy-line clearance areas and to select leave trees beyond these limits, without the benefit of clearance area boundary layout or leave tree markings. The FAC found that P&T did not take all reasonable steps to ensure that the contravention did not occur, and therefore the defence of due diligence was not established in this case.

P&T appealed the FAC's decision to the BC Supreme Court on the grounds that it erred in apply the due diligence defence. The Board participated as an intervenor to make submissions on the proper test for due diligence. The court agreed with the Board's submissions, and for this and additional reasons dismissed the appeal.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2005for004b.pdf
BC Supreme Court Decision: http://www.canlii.org/en/bc/bcsc/doc/2009/2009bcsc1715/2009bcsc1715.html

2006

Darren Smurthwaite v. Government of British Columbia

Third Party: Forest Practices Board
2005-FOR-015(a)

This appeal involved a contravention determination and administrative penalty of $45,000 for damage to karst features, made against the sole director of the corporate licensee. The appeal issue was in regard to when a director or officer of a licensee company is liable for a contravention by the licensee. The Board made submissions supporting the determination and liability of Mr. Smurthwaite as the sole director and officer of the company that held the timber sale licence. The FAC decided that there must be a finding of contravention by a company before its director can be liable for a penalty, and that a director or officer must be given clear notice of the dual nature of the proceedings before the opportunity to be heard takes place. Although this aspect of notice is not a mandatory statutory requirement, it is a requirement of procedural fairness. The FAC found that the lack of notice that Mr. Smurthwaite could face personal liability was not cured by the FAC's hearing.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2005for015a.pdf

2004

Weyerhaeuser Company Limited v. Government of British Columbia

Third Party: Forest Practices Board
2004-FOR-004(a)

The appeal issue was in regards to whether the licensee could deny that a cutblock required retention of trees for critical deer winter range after the harvest prescription and approval was made on that basis. The appeal was settled by a consent order that confirmed one of the contraventions, and varied the penalty to $30,000.

Consent order: http://www.fac.gov.bc.ca/forestPracCode/2004for004a.pdf

Weyerhaeuser Company Limited v. Government of British Columbia

Third Party: Forest Practices Board
Intervenor: Sierra Club of Canada
2004-FOR-005(b)

The appeal concerned unauthorized timber harvesting, and whether Weyerhaeuser could establish a due diligence defence by establishing that it took adequate steps to ensure that its contractors would not harvest timber outside of the cutblock boundaries.

Appeal allowed (with dissenting opinion).

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2004for005b.pdf

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Marilyn Abram v. Government of British Columbia

Third Party: Forest Practices Board
2004-FOR-013 (a)

The appeal issue was in regard to the burden of proof for unauthorized harvesting. The appellant argued that government must prove “beyond a reasonable doubt” that the licensee was the one who cut wood without permission. The FAC confirmed that the burden of proof is the civil standard of “balance of probabilities,” and found the evidence of contravention to be compelling.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2004for013a.pdf

2003

Steve Noel v. Government of British Columbia

Third Party: Forest Practices Board
2002-FOR-010(a)

This appeal concerned whether the appellant was entitled to the defence of officially induced error after unauthorized harvesting outside the boundary of a timber sale licence. Mr. Noel argued that a statement made by a government employee misled him as to the boundary of a timber sale licence. The FAC found that the officially induced error defence did not apply: given all of the maps and information he had before him to determine those boundaries, his attempt to rely on this general statement by a government employee was unreasonable in the circumstances. The FAC reduced the administrative penalty from $22,000 to $14,500 due to an error of fact relating to a previous contravention by the appellant.

Appeal allowed, in part.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2002for010a.pdf

Kalesnikoff Lumber Co. v. Government of British Columbia

Third Party: Forest Practices Board
Intervenors: Interior Lumber Manufacturers Assoc., COFI and Coast Forest and Lumber Assoc.
2003-FOR-005(a) and 2003-FOR-066(a)

The appeal issue was in regards to whether risks of road construction were foreseeable and whether the licensee exercised sufficient care to avoid causing four landslides. The FAC found that the licensee’s road construction complied with the legal requirements and the landslides were not foreseeable, so there was no contravention and issue of due diligence did not arise.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2003for005b_006b.pdf

Estate of Benjamin Bolen v. Government of British Columbia

Third Party: Forest Practices Board
2003-FOR-004(a)

The appeal issue was in regards to whether the appellant contravened his range use plan by overgrazing Crown range, and if so, whether the due diligence defence applied. The FAC upheld the contravention determination, but reduced the administrative penalty from $500 to $300 due to extenuating circumstances.

Appeal allowed, in part.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2003for004a.pdf

Forest Practices Board and Robert Cork v. Government of British Columbia

2003-FOR-007(a) and 2003-FOR-008(a)

The Board appealed a contravention and administrative penalty determination on the grounds that the officially induced error defence was not available in the circumstances, and the penalty did not adequately account for the environmental harm caused by loss of Douglas fir and spruce trees that were required to be retained. Mr. Cork also appealed. A consent order confirmed the contravention and increased the penalty to reflect compensation to the Crown ($47,000) and deterrence ($13,000).

Appeal allowed.

Consent Order: http://www.fac.gov.bc.ca/forestPracCode/2003for007a_008a.pdf

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2002

Allan Therrien v. Government of British Columbia

Third Party: Forest Practices Board
2002-FOR-004

The appeal addressed the adequacy of circumstantial evidence to prove contravention of unauthorized timber harvesting. The Board joined to argue that proof of *mens rea*, i.e. that the person "knowingly" trespassed is not required.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2002for004.pdf

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Forest Practices Board v. Government of British Columbia

Third Party: Western Forest Products Ltd.
2002-FOR-005

The appeal raised a number of issues concerning stop work orders, which were settled through a consent order with attached joint submissions of the parties.

Consent Order: http://www.fac.gov.bc.ca/forestPracCode/2002for005.pdf

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Weyerhaeuser Company Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
2002-FOR-007(a)

This appeal was about the limitation period (deadline) for enforcement of Code penalties. The FAC upheld the findings of contravention, but rescinded two administrative penalties that were imposed after the limitation period expired.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2002for007a.pdf

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International Forest Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
2002-FOR-002

Interfor requested administrative review of a forest development plan approval in relation to a cutblock that contained marbled murrelet habitat on the Sunshine Coast. When the ministry review panel quashed the approval for the cutblock, Interfor appealed to the FAC. The Board argued that the Code did not confer any standing to licensees such as Interfor to appeal this type of review panel decision. The FAC agreed and dismissed the appeal.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2002for002.pdf

2001

Rodney and Linda Gilbert v. Government of British Columbia

Third Party: Forest Practices Board
2001-FOR-001

This appeal concerned the vicarious liability provisions of the *Forest Practices Code* (the Code), and whether a contract logger who carried out unauthorized timber harvesting was acting as an agent for landowners who were unaware of his conduct, but who had retained him and received economic benefit from the sale of Crown timber. The Board joined the appeal to make submissions on vicarious liability. The FAC found that the vicarious liability provisions did apply because the timber harvesting was done "for the benefit" of the landowners. The landowners appealed to the BC Supreme Court, which agreed with the FAC.

Appeal allowed in part (on penalty amount issue).

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2001for001.pdf
BC Supreme Court Decision: http://www.courts.gov.bc.ca/jdb-txt/sc/02/09/2002bcsc0950.htm

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Forest Practices Board v. Government of British Columbia

Third Party: Zeidler Forest Industries Ltd.
2001-FOR-002

The Board appealed a review panel's administrative penalty determination, which reduced a penalty from $80,000 to $5,000. The Board argued that the penalty should reflect both economic gain from the contravention and environmental damage. The FAC agreed and increased the penalty to recoup an economic gain of $44,157 and determined that a further penalty of $10,000 was appropriate considering a number of factors: the need for a significant deterrent, and the gravity and magnitude of the contravention as indicated by significant damage to the road, tree loss, decreased soil productivity in a riparian area smothered by a landslide, the loss of wildlife habitat and short-term damage to fish habitat. The total penalty for the contraventions was increased to $55,157.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2001for002.pdf

Lloyd Bentley v. Government of British Columbia

Third Party: Forest Practices Board
2001-FOR-003

The appeal concerned unauthorized harvesting on Crown land adjacent to private land, and whether the defence of "officially induced error" applies to administrative penalties, given that it is only expressly mentioned in the offence provisions of Code. The Board joined the appeal to argue that the defence of officially induced error ought to be available, assuming the elements of the defence are established, because the administration of justice could be brought into disrepute by denying the defence to a person who is misled by a government official. The Board did not take any position on whether the appellant established a defence in this case. The FAC agreed that the defence is available for administrative penalties, but found that it was not established on the facts.

Appeal allowed in part (on penalty amount issue).

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2001for003.pdf

Forest Practices Board v. Government of British Columbia

Third Party: Chetwynd Forest Industries
2001-FOR-004(a)

The Board initiated this appeal due to concerns about procedural fairness for a contractor who was not given an opportunity to be heard, but whose actions led to a contravention determination for which it was potentially contractually liable. The FAC decided that no determination was made against the contractor that could be appealed, and that the grounds for appeal and remedies sought were not related to the determination appealed.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2001for004a.pdf

Takla Development Corporation v. Government of British Columbia

Third Party: Forest Practices Board
2001-FOR-006

Takla appealed a contravention determination and redetermination of an administrative penalty based on a previous FAC decision (1999-FOR-05, discussed below), on the grounds that it had exercised due diligence and that the penalty was excessive. The Board provided written submissions on due diligence and penalty. The FAC dismissed the appeal.

Appeal dismissed.
FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/2001for006.pdf

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Forest Practices Board v. Government of British Columbia

Third Party: Crestbrook Forest Industries
2000-FOR-005

The Board appealed a review panel determination concerning whether Crestbrook Forest Industries Ltd. treated an area with *Armillaria* (root rot) as required by its silviculture prescription. After appealing, new evidence became available to the Board which supported the position of Crestbrook, so the parties consented to the appeal being dismissed.

Appeal dismissed.

Consent Order: http://www.fac.gov.bc.ca/forestPracCode/2000for005.pdf

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Forest Practices Board v. Government of British Columbia

Third Party: Husby Group of Companies and Council of the Haida Nation
2000-FOR-009

The Board appealed the approval of Husby's forest development plan (FDP) on the grounds that it did not adequately manage and conserve marbled murrelet habitat. The FAC found that although proposed wildlife habitat areas were not yet legally established, the district manager still had discretion to reject cutblocks on the basis of protecting marbled murrelet habitat. In a split decision, the FAC majority upheld the approval of 46 cutblocks, but set aside the approvals of 5 cutblocks in the best murrelet habitat because harvesting would result in an unreasonable degree of risk to marbled murrelets. The FAC minority considered the approval of all 51 cutblocks to be patently unreasonable.

The Board also appealed the FDP approval on the grounds that it did not comply with watershed assessment procedure requirements. The FAC majority upheld the approval of 17 cutblocks in one area of the plan, but rescinded approval of a cutblock in another area that was not consistent with a watershed assessment. The FAC minority considered the FDP approval defective because it did not comply with watershed assessment procedure requirements and would not adequately manage and conserve forest resources.

Appeal allowed in part.

FAC Decisions:
http://www.fac.gov.bc.ca/forestPracCode/2000for009a.pdf (hearing location issue)
http://www.fac.gov.bc.ca/forestPracCode/2000for009b.pdf (party/intervenor application)
http://www.fac.gov.bc.ca/forestPracCode/2000for009c.pdf (watershed assessments issue)
http://www.fac.gov.bc.ca/forestPracCode/2000for009d.pdf (marbled murrelet habitat issue)

1999

Gloria O'Brien v. Government of British Columbia

Third Party: Forest Practices Board
1999-FOR-002

This appeal addressed the appropriate legal test for stop work orders. The Board argued that an official who rescinded a stop work order (SWO) did not consider all of the relevant evidence, and did not apply the correct legal test. The FAC found that it was unclear whether the Reviewer applied the correct legal test in determining whether the SWO was justified. The FAC found that the correct legal test is whether it was reasonable for the official to believe that a contravention existed; not whether a contravention in fact occurred.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1999for02.pdf

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The Pas Lumber Co. Ltd. v. Forest Practices Board

Third Party: Government of British Columbia
1999-FOR-04

The Board appealed a review panel's decision to eliminate an administrative penalty for Code contraventions. The parties agreed to reinstatement of the original penalties amounting to about $13,000.

Appeal allowed.

Consent Order: http://www.fac.gov.bc.ca/forestPracCode/1999for04.pdf

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Forest Practices Board v. Government of British Columbia

Third Party: Takla Development Corporation Ltd.
1999-FOR-05

The Board appealed a review panel decision that would have sent a contravention determination back to the district manager with instructions that the Board considered to be incorrect. The FAC agreed, and found that when assessing an administrative penalty, it is appropriate to take into account the environmental impact of the unauthorized harvesting as part of the gravity and magnitude of the contravention, and to assess a penalty which removes the economic benefit derived from the contravention.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1999for05.pdf

1998

Safe Enterprises D.L.S. Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
1998-FOR-04

The appeal issue was in regard to penalty assessment—whether non-Code contraventions could be considered. The Board agreed with the Appellant that it would be improper to consider former trespass violations of the *Forest Act* when calculating a penalty under the Code. However, the appeal was dismissed because the FAC decided that the penalty amount was justified for other reasons.

Appeal dismissed.

FAC Decision - http://www.fac.gov.bc.ca/forestPracCode/1998for04.pdf

Alan R. Luomo v. Government of British Columbia

Third Party: Forest Practices Board
1998-FOR-06

This appeal involved unauthorized timber harvesting on Crown land adjacent to private property. The Board joined the appeal to argue that a section 96 contravention is not restricted to those who "knowingly" cut timber unlawfully. It also argued that due diligence is not a defence to the contravention, and that a concurrent finding that the appellant did not ascertain the boundaries of private property does not amount to double jeopardy because it involves a different legal prohibition. The FAC agreed and upheld the section 96 contravention findings, rescinded one other contravention determination, and varied the penalty.

Appeal allowed in part.

FAC Decision - http://www.fac.gov.bc.ca/forestAct/1998for06_1998fab04.pdf

Riverside Forest Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
1998-FOR-07

Riverside appealed three contravention determinations relating to road construction, maintenance and damage to the environment that resulted from a landslide that occurred months later. The Board joined the appeal to argue that a forest practice and the environmental damage it brings about need not be contemporaneous for the provisions in section 45 of the Code to operate: if a given forest practice causes environmental damage that only manifests itself later, the prohibition still applies. The FAC agreed, and found that the slide was caused by inadequate measures to maintain natural drainage in the aftermath of Riverside's logging activity, and that Riverside was not acting in full compliance with its approved plans and permits, so the 'compliance with plans' defence was not available. It dismissed a contravention relating to the failure to install a ditch block, but upheld the contravention of the Forest Road Regulation requirement to ensure that road drainage systems are functional.

Appeal allowed in part.

Canadian Forest Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
1998-FOR-09

The appeal issue was whether there can be a finding of multiple contraventions for the same act due to the operation of law (e.g., where a contravention of a regulation is also automatically a contravention of the Act). The FAC confirmed its past rulings that this does not constitute "double punishment" and does not create an unfairness provided that a single penalty is assessed for the single legal prohibition.

Appeal dismissed.

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Slocan Forest Products v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-23

This appeal raised the issue of double jeopardy and whether the Kienapple principle against multiple convictions for the same act in criminal law also applies to administrative contraventions. The Board joined the appeal to argue that the approach to multiple contraventions and penalties for the same act or omission should be consistent with previous FAC decisions, two of which include International Forest Products Limited (Appeal No. 96/02, discussed below); and Hayes Forest Services Limited (Appeal No. 97-FOR-07, discussed below). The FAC agreed. The majority decision affirmed the contravention findings but reduced the penalty. The minority would not have reduced the penalty.

Appeal allowed in part.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1997for23.pdf

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Slocan Forest Products v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-22

Slocan appealed contravention and penalty determinations on several grounds, including that they offended a criminal law rule against multiple convictions for the same act. The Board joined the appeal to argue that the FAC should follow its decision in two previous appeals, namely, that the rule is not applicable to administrative contraventions under the legislative scheme encompassing the Code and its regulations. This scheme encompasses prohibitions against particular acts and/or omissions that sometimes overlap. The FAC agreed.

Appeal allowed in part, with dissenting opinion.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1997for22.pdf

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William Hollis v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-13

The appeal issue was in regard to the sufficiency of evidence and the standard of proof required to find a contravention of unauthorized harvesting under section 96 of the Code. The Board argued, and the FAC accepted, that the correct standard of proof to be applied to administrative penalties under the Code is the civil standard of proof, consistent with the FAC's decisions in previous appeals.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1997for13.pdf

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Arnold and Julie Hengstler v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-19

The appeal issue was whether landowners, who made extensive efforts to determine the legal status of a road through their property through inquiries with government agencies, contravened the unauthorized harvesting provision of the Code, and if so, whether the defence of officially induced error was available to them. The Board took no position on whether a contravention occurred in this case but submitted that, if a contravention was found, the penalty assessed may not adequately take into account the efforts made by the Hengstlers to avoid the contravention nor the extent to which the actions of government officials contributed to the contravention. The FAC found that the defence was available, and applicable in this case.

Appeal allowed in part.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1997for19.pdf

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Canadian Forest Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-16

Canfor appealed a contravention determination that it had felled trees and operated machinery across a stream. The appeal focused on whether the watercourse met the Code's definition of a "stream." The FAC found that an alluvial sediment bed does not have to be continuous throughout the course of a stream, and upheld the contravention and administrative penalty.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1997for16.pdf

Canfor Forest Products v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-30

The appeal issues were whether a remediation order concerning sediment entering the Salmon River from a bridge was issued prematurely, i.e. prior to determining that there was a contravention and providing Canfor an opportunity to be heard, raising both jurisdictional and procedural fairness concerns. The Board submitted that situations can and do arise where the need for a Remediation Order is "time-sensitive" requiring remediation of a problem to take place as soon as practically possible, as for example when an unstable slope or road needs to be stabilized so as to prevent an imminent slide and incidental damage to forest and other resources. The Board also submitted that in true emergency situations it may be necessary to issue the order without first providing any opportunity to be heard. The FAC found that there was insufficient evidence to warrant a finding that Canfor had contravened the Forest Road Regulation.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1997for30.pdf

Edward Yaremchuk v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-31

This was an appeal of a contravention determination and administrative penalty determination regarding unauthorized harvesting. The Board participated in the appeal solely on the issue of due diligence, arguing that it was not available as a defence to an administrative penalty for a contravention of section 96 of the Code. The FAC agreed and stated, consistent with previous appeal decisions, that due diligence to avoid a contravention is not a defence, but is a relevant consideration when determining the amount of penalty. It confirmed the contravention, but reduced the penalty amount.

Appeal allowed in part.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1997for31.pdf

Repap British Columbia Inc. v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-02

The appeal issue raised the issue of whether the defence of due diligence is available for administrative contravention determinations and penalties under the Code. The Board that it was not, and the FAC agreed, upholding a previous decision. It found that the degree of diligence exercised to avoid the contravention is relevant when determining the quantum of penalty.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1997for02.pdf

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Canadian Forest Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-17

Canfor appealed a contravention determination and administrative penalty of $36,000 relating to unauthorized harvesting of no harvest zones within a cutblock. The Board did not take a position on the amount of penalty, but submitted that any reduction should be contingent upon the company establishing that the cutting of the original reserve was an innocent and unintentional mistake. The penalty should be high enough to remove all economic benefits, to discipline the transgressors and to deter reserve violations. The penalty also should take into account all ecological values that had been compromised by changing the reserve area and should reflect all other losses to the Crown. Credit for the establishment of compensatory reserves should be greater if they are pre-approved by government officials, and reserves should be discouraged in areas that are simply convenient and beneficial for the contractor.

The FAC decided that a penalty amount for deterrence was not necessary because the unlawful harvesting was offset by the provision of retention patches and the prompt and cooperative response extended by Canfor. The FAC re-determined the penalty amount based on compensation to the Crown in the amount of $37,735.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1997for17.pdf

Hayes Forest Service Ltd. / TimberWest Forest Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-07 and 1997-FOR-10

This appeal involved cross-stream yarding of logs by Hayes, a contractor for TimberWest contrary to a logging plan. Both Hayes and TimberWest appealed, and the FAC addressed the appeals in two separate decisions.

Hayes Appeal:
The practice of yarding logs across a stream was prohibited by the Timber Harvesting Practices Regulation, unless expressly authorized by a logging plan. In this case, the logging plan did not allow cross-stream yarding. Failure to carry out harvesting in accordance with a logging plan was also a contravention under the Code. The Board took the position that while persons can be found to be in contravention of two or more sections of the Code for a single action, they should not be found to be in contravention of two or more sections of the Code for a single action where there is a single legal prohibition.

The Board also argued that when determining the penalty amount, previous contraventions are not “effective” until a person has exhausted his/her rights of review or appeal. In this case, two determinations of contraventions of the Code were made by a senior official, but were later rescinded by a Review Panel. The Board argued that a rescinded contravention is not a “previous contravention.”

The FAC found that Hayes was in contravention of section 67(1) of the Code for yarding in the wrong direction and cross-stream yarding contrary to the provisions of the logging plan and section 8(1) of the THPR for cross-stream yarding contrary to the logging plan. The FAC reduced the penalty due to improper considerations by the Review Panel, and assessed one penalty of $4,000 for these contraventions.

Appeal allowed in part.

FAC Decision (Hayes): http://www.fac.gov.bc.ca/forestPracCode/1997for07.pdf

TimberWest Appeal:
Licensees are vicariously liable for the actions of their contractors under section 117 of the Code: TimberWest argued that it was entitled to the defence of due diligence because of its instructions to Hayes. The Board argued that the FAC should uphold its previous rulings that due diligence is not available as a defence to administrative contravention determinations. The FAC agreed and dismissed the appeal. No penalty was assessed against TimberWest.

Appeal dismissed.

FAC Decision (TimberWest): http://www.fac.gov.bc.ca/forestPracCode/1997for10.pdf

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Canadian Forest Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
1997-FOR-03

Canfor appealed a small penalty of $150 on the grounds that it was entitled to the due diligence defence because its contractor admitted that it was solely at fault because it failed to follow Canfor's ribbons when mechanically brushing along a forest road. The FAC had previously ruled that the defence was not available in an earlier decision, and Canfor presented no evidence or argument. The Board joined the appeal to support the finding that due diligence was not a defence; however, there are instances in which the interests of justice are best served by having a determination made against a contractor or subcontractor. Such a determination is unlikely to be made due to the wording of Ministry Policy 16.10. The Board argued that the failure to make a determination against a contractor in a case where the contractor admits fault is an injustice which may undermine the public's confidence in the forest practices regime. It suggested that the FAC might make comment on the Ministry Policy.

The FAC dismissed the appeal, and declined to comment on the Ministry Policy.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/1997for03.pdf

1996

Houston Forest Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
96/07

The appeal was about the validity of a stop work order issued to prevent damage to the environment, caused by sediment management issues relating to road construction (bridge and culvert placements). The decision-maker also issued a remediation order specifying actions that would remedy the situation. Houston argued that it was not carrying out a forest practice because the work had been completed at the time the orders were issued. The Board argued that the FAC should take a broad interpretation of "carrying out a forest practice" when considering section 45 of the Code, which both orders were based upon. The FAC found that there was no activity in the area and no activity was scheduled to resume, thus, there was no legal authority or practical need for the stop work order. It found that the Code provision for remediation orders requires an actual finding of contravention, whereas the evidence in this appeal was a conservation officer's opinion that it "appears that fish habitat may have been negatively affected." This was contrasted to the Waste Management Act, which authorizes proactive prevention orders if harm to the environment "may occur."

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/96-07.pdf

Rustad Bros. & Co. Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
96/08

The appeal concerned the meaning of "damage" to Crown timber in section 96 of the Code. Rustad's logging caused minor damage to 32 trees by scarring or gouging, and the issue was whether it was substantial enough to amount to a contravention. The Board concurred with the views of the Ministry in this case, that "damage" is used broadly, and encompasses injury to non-economic as well as economic values. The FAC agreed, and found that section 96 prohibits means damage in the ordinary sense of the word, and is not restricted to damage related to economic loss. It confirmed the contravention, and agreed with the review panel that no penalty was warranted in the circumstances.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/96-08.pdf

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International Forest Products v. Government of British Columbia

Third Party: Forest Practices Board
Intervenor: Friends of Clayoquot Sound
96/02(b)

The appeal issue was in regards to double jeopardy and quantum of penalty in relation to Interfor's failure to maintain a forest road leading to liquefaction and sedimentation. Failure to meet a requirement of the Forest Road Regulation was automatically a contravention of the Act, so Interfor was found to have contravened both. The Board argued that the 'double jeopardy' issue raised by Interfor based on the Supreme Court of Canada's *Kienapple* principle against double convictions for the same act in the criminal law setting, does not apply to administrative schemes such as the Code. The FAC agreed and dismissed the appeal, but reduced the penalty from $10,000 to $7,500.

Appeal allowed in part.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/96-02b.pdf

Weldwood of Canada Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
96/03

Prior to bringing this appeal to the FAC, Weldwood had appealed a stop work order (SWO) issued by a forest official to a ministry review panel. The SWO had been issued due concerns about the presence of an aboriginal grave site within an approved cutblock, and requirements to stop or modify operations around previously unidentified cultural heritage features. The review panel vacated the SWO because it found that the official should not have found a contravention of the Code provision referenced in the SWO: however, it went on to find that Weldwood failed to promptly notify the District Manager of the previously unidentified feature, which was a contravention.

The Board joined the FAC appeal to make submissions about the nature of stop work orders, their issuance and recording. The FAC agreed that SWOs are preventative measure where there is evidence suggesting that contraventions of the Code or regulations may be occurring. The FAC agreed with the Board that if SWOs are equated with contraventions and are overturned every time a contravention is not later proven, then officials in the field will be discouraged from using them. The FAC overturned the review panel's finding of a separate contravention, and confirmed the original stop work order. It also found that, by the time the appeal was heard, Weldwood had complied with the terms of the original SWO by filing an acceptable archaeological report. It agreed with the Board that the issuance of SWOs should not be published by the ministry as if they were determinations of contravention.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/96-03.pdf

Forest Practices Board v. Government of British Columbia

Third Party: MacMillan Bloedel Ltd.
Intervenor: Sierra Club of British Columbia
96/04

The Board appealed the approval of a forest development plan (FDP) on Vancouver Island. It was the first appeal of a FDP, and raised questions as to what constituted "the plan," and whether it met the transitional period test for "substantial compliance" with Forest Practices Code requirements for fish streams, wildlife, cultural heritage resources, unstable terrain, and public review and comment. The Board argued that limited information and confusing content meant the FDP did not meet the content requirements, and therefore the FDP approval decision which required the district manager to be satisfied that the plan would adequately manage and conserve forest resources of the Crown. The FAC acknowledged that while there may be deficiencies in the plan, gaps in evidence and argument led it to dismiss the appeal.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/96-04b.pdf

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MacMillan Bloedel Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
96/05

This appeal raised issues concerning whether due diligence is available as a defence to an administrative contravention determination. The Board did not take a position on the facts in this appeal, but argued that as a matter of law that while due diligence is not a defence to a contravention, evidence that all reasonable care was taken should be taken into account in determining the penalty amount. The Board's position was that a person should not be allowed to profit from breaking the law, and the public should be compensated for the lost value of its timber and the cost of restoration, regardless of whether due diligence was exercised. The FAC ruled that due diligence is not a defence to a contravention and penalty determination under the Code, and that MacMillan Bloedel did not exercise all reasonable care to avoid the contravention. It also commented that the Ministry should take steps to ensure that timber is not left to deteriorate in trespass situations, as was the case in this appeal.

Appeal dismissed.

FAC Decisions: http://www.fac.gov.bc.ca/forestPracCode/96-05b.pdf (due diligence issue) and http://www.fac.gov.bc.ca/forestPracCode/96-05c.pdf (penalty amount issue).

International Forest Products Ltd. v. Government of British Columbia

Third Party: Forest Practices Board
96/12

This appeal concerned whether disturbance caused by yarding operations to the banks of a watercourse was a contravention to section 11 of the *Timber Harvesting Practices Regulation*. The FAC found that there was insufficient evidence to determine that the watercourse met the definition of "stream" due to the requirements that it have "continuous definable banks" and an "alluvial sediment bed," so it reversed the contravention determination.

Appeal allowed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/96-12.pdf

Houston Forest Products Company v. Government of British Columbia

Third Party: Forest Practices Board
96/06

Houston appealed a determination that its operations had caused "damage to environment" contrary to section 45 of the Code. Houston and the Ministry of Forests later made a joint submission in support of a consent order that there was insufficient evidence to conclude that there had been damage to the environment. The Board took no position on the joint submission.

Consent Order: http://www.fac.gov.bc.ca/forestPracCode/96-06.pdf

Tolko Forest Products and Forest Practices Board v. Government of British Columbia

95/02

This was the first appeal heard by the FAC. Tolko and the Forest Practices Board both appealed a review panel decision concerning a contravention finding of a district manager that Tolko damaged a riparian area. The sole member of the ministry review panel appointed to hear Tolko's initial appeal was the district manager for the adjacent forest district. The Board argued that it is improper for a district manager to review a determination made by another district manager, as it gives rise to a reasonable apprehension of bias. Instead of a district manager acting as the review official, the review should be made up of panels of three which could include staff from the central office of the Ministry of Forests and perhaps a district manager. The FAC disagreed, and dismissed the Board's appeal.

Tolko's appeal was based on procedural fairness issues in the ministry processes leading up to the contravention and penalty determinations. The FAC agreed that there were some flaws in the procedure followed, but found that its own appeal process could cure those. As Tolko did not call any evidence to refute the substance of the contraventions, the FAC dismissed its appeal.

Appeal dismissed.

FAC Decision: http://www.fac.gov.bc.ca/forestPracCode/95-02.pdf

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