BRITISH COLUMBIA

Forest Appeals Commission

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APPEAL NO. 1998-FOR-05

In the matter of an appeal under section 131 of the *Forest Practices Code of British Columbia Act,* R.S.B.C. 1996, c. 159.

BETWEEN:	Robert E. Stevens and Linda A. Krofta	**APPELLANT**
AND:	Government of British Columbia	**RESPONDENT**
BEFORE:	A Panel of the Forest Appeals Commission Barbara Fisher, Panel Chair Kristen Eirikson, Member Howard Saunders, Member	
HEARING DATE:	November 24, 1998	
PLACE:	Nanaimo, B.C.	
APPEARING:	For the Appellants: Peter W. Avis, Counsel For the Respondent: Karen S. Tannas, Counsel	

APPEAL

This is an appeal brought by Robert E. Stevens and his wife, Linda A. Krofta, of the March 25, 1998 decision of a Review Panel in respect of the amount of a penalty levied for contraventions of s. 96(1) and s. 97(2) of the *Forest Practices Code of British Columbia Act* (the "*Code*"). The Review Panel upheld the determination of the former District Manager for the South Island Forest District, Tim Sheldan, dated November 26, 1997. Mr. Sheldan's determination was that Mr. Stevens had contravened section 97(2) of the *Code* for failure to ascertain boundaries before cutting or removing timber from private land adjacent to Crown land, and that he had also contravened section 96(1) by the unauthorized harvest of an estimated volume of 117.7 cubic metres of timber on Crown land. He assessed a total penalty of $18,169 calculated as follows:

a. Compensatory penalty under section 119 for the section 96(1) contravention:	$12,169
b. Deterrent penalty	$5,000
c. Penalty under section 117 for the section 97(2) contravention:	$1,000

The Review Panel upheld Mr. Sheldan's determination of the contraventions and the compensatory penalty but referred the deterrent penalty back for reconsideration.

The contraventions are not in issue in this appeal. The Appellants appeal the determination of the amount of the compensatory penalty and question whether the deterrent penalties were warranted in the circumstances.

The appeal was brought before the Forest Appeals Commission (the "Commission") under section 131 of the *Code*.

BACKGROUND

The Appellants own a parcel of private land comprising approximately 3.7 acres near Coombs, British Columbia (the "Property"). The Property is adjacent to Crown land. The Crown land comprises of a series of road rights of way that surround the west, south and east borders of the Property. The Property was initially part of a plan for a series of lots, which were never subdivided and the road rights of way were never used. The west boundary borders on "Raymond Street", the south boundary borders on "First Avenue" and the east boundary borders on "Allan Street". These are all undeveloped rights of way. The north boundary of the Property fronts onto the Alberni Highway.

Mr. Stevens testified that the front half of the Property had been cleared before 1995. The Appellants experienced drainage problems, particularly during winter months. They determined that they needed to dig a drainage ditch around the perimeter of the Property so that water running from the south end of the Property could drain out to the north end by the Alberni Highway. In order to do this, the perimeter sections of the Property had to be cleared. Ms. Krofta obtained a Registered Timber Mark on June 12, 1995, to be used on the Property. Logging took place in June 1995. The Appellants received gross sale proceeds in the amount of $16,781.30 on 181.8 cubic metres of timber. Their actual net proceeds were approximately $9,425.

Mr. Stevens is an electronic technician and Ms. Krofta is a housewife. Neither had any experience with logging operations before the events that are the subject of this appeal. While the Appellants hired logging contractors to carry out the logging operations, in an effort to save money, they did not retain a surveyor to ascertain the boundaries of the Property. Instead, Mr. Stevens made those determinations himself, using a 1939 Plan of Subdivision of Lots 14 and 15 which he obtained from the local assessment office. Using the Plan as a guide, he measured from the north (front) of the Property to the south (back) on both west and east sides. He found the northwest corner of the Property by measuring 270 feet from the northeast pin along the centre of the Alberni Highway.

Unfortunately, the 1939 Plan did not show that approximately 32 feet had been taken from the Property when the Alberni Highway was built. This resulted in an error in marking the south boundary by about the same amount. Mr. Stevens also made an error in locating the southeast corner. He testified that he suspected that someone had tampered with the southeast corner marking of the Property, but there was no evidence provided on this point. As a result of these errors, when the logging contractor cleared the areas for the drainage ditch, timber was removed from portions of Crown land, mostly on the First Avenue (south) right of way and

also along the Allan Street (east) right of way from the middle of the Property back to the south end.

Sometime in 1995, the South Island Forest District received a complaint from a member of the public that the Appellants were cutting trees beyond the boundaries of the Property. The Ministry of Forests (the "Ministry") started an investigation on September 14, 1995. By then, the logging had been completed. Then Ministry official, Joe Furtmann, went to the Property, met with the complainant and then spoke briefly with Ms. Krofta. Mr. Furtmann testified at the hearing. He reviewed the process and result of his investigation.

Mr. Furtmann walked around the Property looking for survey posts or iron pins. He found one iron pin on the southwest corner in the centre of the newly dug drainage ditch. He found a survey post on the north west corner. He determined that the ditch ran almost exactly along the western boundary of the Property and, accordingly, no unauthorized harvest had taken place along Raymond Street.

Mr. Furtmann returned to the Property at a later date and spoke briefly with Mr. Stevens. Mr. Stevens showed him the 1939 survey. Mr. Furtmann then arranged to have the boundaries surveyed by a survey crew from the Ministry of Transportation and Highways ("MOTH"). The crew surveyed the eastern boundary of Raymond Street, the northern boundary of First Avenue and the western boundary of Allan Street. This survey assisted Mr. Furtmann to determine that approximately 160 trees had been removed from the First Avenue and Allan Street rights of way. Mr. Furtmann testified that most of the area had been cleaned up and was devoid of any stumps but there were two main areas with stumps (22 stumps along Allan Street and 2 along First Avenue). In order to estimate how many trees had been removed where there were no stumps, he conducted a representative sample plot of 200 cubic metres and measured all trees within that area. He assessed the volume at 91.36 cubic metres. In the areas where stumps were remaining, they were measured individually and the volume was calculated from a height/diameter graph. He assessed the volume in these areas at 26.34 cubic metres. The total estimated volume of timber removed from the Crown land was estimated at 117.7 cubic metres.

While the Appellants took some issue with the estimated volume of timber, they conceded for the purposes of this appeal, that the volume was 117.7 cubic metres.

By a letter dated April 11, 1997, Mr. Sheldan advised the Appellants that the Ministry investigation indicated a possible contravention of section 96(1) and section 97(1) or (2). He requested that the Appellants attend an Opportunity to be Heard meeting on July 9, 1997. On July 8, 1997, Mr. Stevens contacted the South Island Forest District office and requested that the meeting be held at the Property. Mr. Sheldan declined this invitation and proceeded with the Opportunity to be Heard meeting on July 9. Mr. Stevens did not attend.

Because he did not have information from the Appellants at the Opportunity to be Heard meeting, Mr. Sheldan wrote a letter to the Appellants dated July 11, 1997, asking them to provide relevant information. Mr. Stevens did so by a letter dated

July 20, 1997. On November 26, 1997, Mr. Sheldan issued the Notice of Determination.

The Appellants then requested a review of the determination's penalties under section 127 of the *Code*, contending that both the compensatory and deterrent penalties imposed were excessive. The Review Panel arrived at the following conclusions:

a. The fact that the Appellants had no prior involvement in managing logging operations did not relieve them from the obligations as stated on the Timber Mark certificate and under the *Code*.

b. There was no conclusive evidence to show that the Ministry's volume of 117.7 cubic metres was not a reliable estimation of tree volume removed from Crown land, and that this estimation was reasonable.

c. The Appellants' efforts to mark accurate boundaries were inadequate.

d. No weight was placed on the argument as to the possibility of boundary tampering, as no evidence was presented to substantiate this allegation.

e. The compensatory value of $12,169 that was levied against the Appellants was reasonable.

f. Because new evidence relevant to the issue of deterrent penalties was presented before the Review Panel, the Panel requested that Mr. Sheldan review the new evidence and reconsider the deterrent penalties levied under section 96(1) and section 97(2).

The Appellants appealed to the Commission under section 131 of the *Code*. Although Mr. Sheldan has not yet had an opportunity to reconsider his determination in respect of the deterrent penalties, the Appellants say that the Commission has the authority to consider all of the issues and determine both the appropriate compensatory and deterrent penalties, if any, that ought to be levied against them.

ISSUES

1. Whether the compensatory penalty levied against the Appellants for the contravention of section 96(1) is excessive and should be reduced.

2. Whether any deterrent penalties are warranted in the circumstances and whether the Review Panel ought to have overturned the penalties assessed rather than refer the matter back for reconsideration.

RELEVANT LEGISLATION

The relevant legislative provisions are as follows:

Unauthorized timber harvest operations

96 (1) A person must not cut, damage or destroy Crown timber unless authorized to do so

(a) under an agreement under the *Forest Act* or under a provision of the *Forest Act,*
(b) under a grant of Crown land made under the *Land Act*,
(c) under the *Mineral Tenure Act* for the purpose of locating a claim,
(d) under the *Park Act*,
(e) by the regulations, in the course of carrying out duties as a land surveyor, or
(f) by the regulations, in the course of fire control or suppression operations.

(2) If a person cuts, removes, damages or destroys Crown timber contrary to subsection (1), at the direction of or on behalf of another person, that other person also contravenes subsection (1).

Private land adjacent to Crown land

97 (1) Before an owner or occupier of private land that is adjacent to Crown land authorizes another person to cut or remove timber from the private land, the owner or occupier must inform that other person of the boundaries of the private land.

(2) Before a person cuts or removes timber from private land adjacent to Crown land, the person must ascertain the boundaries of the private land.

Penalties

117 (1) If a senior official determines that a person has contravened this Act, the regulations, the standards or an operational plan, the senior official may levy a penalty against the person up to the amount and in the manner prescribed.

(2) If a person's employee, agent or contractor, as that term is defined in section 152 of the *Forest Act*, contravenes this Act, the regulations or the standards in the course of carrying out the employment, agency or contract, the person also commits the contravention

...

(4) Before the senior official levies a penalty under subsection (1) or section 119, he or she

(a) must consider any policy established by the minister under section 122, and
(b) subject to any policy established by the minister under section 122, may consider the following:
(i) pervious contraventions of a similar nature by the person;
(ii) the gravity and magnitude of the contravention;
(iii) whether the violation was repeated or continuous;

(iv) whether the contravention was deliberate;
(v) any economic benefit derived by the person from the contravention;
(vi) the person's cooperativeness and efforts to correct the contravention;
(vii) any other considerations that the Lieutenant Governor in Council may prescribe.

Penalties for unauthorized timber harvesting

119 (1) If a senior official determines that a person has cut, damaged, removed or destroyed Crown timber in contravention of section 96, he or she may levy a penalty against the person up to an amount equal to

(a) the senior official's determination of the stumpage and bonus bid that would have been payable had the volume of timber been sold under section 20 of the *Forest Act*, and
(b) 2 times the senior official's determination of the market value of logs and special forest products that were, or could have been, produced from the timber.

...

(3) In addition to a penalty under section 117 or subsection (1), a senior official who determines that a person has cut, damaged, removed or destroyed Crown timber in contravention of section 96 may levy a penalty against the person up to an amount equal to the senior official's determination of

(a) the cost that will be incurred by the government in re-establishing a free growing stand on the area, and

(b) the costs that were incurred by government in applying silviculture treatments to the area that were rendered ineffective because of the contravention

DISCUSSION

1. Whether the compensatory penalty levied against the Appellants for the contravention of section 96(1) is excessive and should be reduced.

The Appellants say that the compensatory penalty in the amount of $12,169 is excessive because the value applied to the timber harvested in the trespass area was an inappropriate and unreasonably high value to place on timber harvested at this particular site. The value of $103.71 per cubic metre was calculated using the District average stumpage rate plus bonus bid for June 1995. They say that this value is high in relation to the actual value of the timber in the Vancouver Island market in June 1995. Further, they say that this value fails to take into consideration the costs of logging this particular site.

The Appellants relied on a report prepared by Huock Resource Consultants Ltd. (the "Huock Report") to show, *inter alia*, that the average stumpage rate did not take

into account the actual grade or species harvested. The Huock Report noted that the range of stumpage derived from competitive auction sales for the South Island Forest District in June 1995 ranged from $43.85 to $121 per cubic metre. This variability relates to the species composition of the stand in question, its location and the volume of timber expected to be harvested.

The Appellants say that had the timber they harvested been sold by auction, it would have produced a figure at the low end of the range described above, due to the species, grades and volumes of wood harvested. They argue that the Crown could not reasonably have expected to have received more for this timber than was received by the owners, net of their costs of logging. They say the price received by the Appellants ($97 per cubic metre) was fair market value for the logs, and that after allowing for logging costs estimated at $23 per cubic metre, a purchaser would not pay more than $74 per cubic metre. There was no evidence presented at any stage of these proceedings that the Appellants' costs of logging were unreasonably high.

The Appellants submit that to award a compensatory penalty in excess of the actual net proceeds estimated to be derived from the logging and sale of timber taken from Crown land is not compensation but is punitive. They submit that it is not reasonable to expect that the Crown would have received an amount greater than the net proceeds received by the Appellants.

The Respondent says that in assessing a compensatory penalty, it is not appropriate to consider the operating costs of the operator. It relies on section 119 of the *Code* as authorizing the total penalty based on a maximum of:

i. the stumpage and bonus bid that would have been payable to the Crown had the timber been sold under the Small Business Forest Enterprise Program ("SBFEP"), plus

ii. 2 times the market value of the logs and special forest products that could be produced.

It submits that the precise volume of the timber is not one of the factors to be considered in choosing the applicable stumpage and bonus bid for a penalty. It says that an assumption cannot be made that if a licence had been awarded under the SBFEP, the Ministry would not have combined a number of small blocks, resulting in a licence of a far higher volume than the area of unauthorized harvest.

The Respondent submits that adequate compensation to the Crown is to be based on the type of timber involved and the stumpage rates and bonus bids payable at the time of the unauthorized harvest. The primary rule of compensatory penalties is to compensate the Crown. This differs from the profit received by the operator. The best estimate of loss to the Crown is what could have been obtained had the timber been sold under the SBFEP.

The Commission agrees with the Respondent that the primary rule in determining a compensatory penalty is to compensate the Crown. Applying this rule may result in

the Crown receiving more stumpage than the timber was actually worth to the seller. This may not mean, however, that consideration cannot be given to the amount of profit received as a factor in determining a fair penalty. Section 117(4)(v) refers to the economic benefit received as a factor that may be considered in levying a penalty.

In his determination of the penalty for contravention of section 96(1), Mr. Sheldan observed that under section 119(a) and (b), the penalty could be from a minimum of $0.00 to a maximum of $47,995.20. The maximum represents the total of the average stumpage rate plus bonus bid for June 1995, for the South Island Forest District, plus twice the market value of the logs that were or could have been produced from the timber. He calculated the compensatory portion as the District average upset stumpage rate for June 1995 of $31.71 per cubic metre, plus the average bonus bid of $71.08 per cubic metre for a total of $103.39 per cubic metre.

The Huock Report estimated costs at $23 per cubic metre. The logs sold for $97 per cubic metre. The Huock Report concluded that a purchaser therefore would not pay more than $74 per cubic metre ($97 sales value less $23 costs) for the timber. The Report noted that this fell within the range of market values for East Coast South Island Forest District timber sales of less than 1,000 cubic metres that were active as of June 1995. The Report suggested that "[a]ny assessment of market value or average log values must account for at least a comparable species composition within a similar geographic location and volume."

Mr. Sheldan's calculation of the maximum amount of penalty suggests that the average log price in the Vancouver log market at the time was $152 per cubic metre. The average upset plus bonus bid for SBFEP sales at the time was $103.39 per cubic metre. The average log price therefore exceeded the average SBFEP stumpage by approximately $49 per cubic metre. The price of logs produced from the SBFEP sales may have been different from the average of all logs sold on the market, but this calculation suggests that the stumpage bid and paid by purchasers of SBFEP timber sales would not have exceeded the amount they received for logs.

Mr. Stevens' agent sold his logs for $97 per cubic metre, in what is acknowledged to be a competitive market. This is well below the average log price used by Mr. Sheldan, and suggests these second-growth logs were of lower than average quality. Using the average of SBFEP stumpage rates, Mr. Sheldan arrived at a compensatory stumpage rate for standing timber that exceeded the amount Mr. Stevens received for his delivered logs.

There was no suggestion that the Appellants' agent could have attained a higher price for the logs, and the lower-than-average price is consistent with the second-growth timber on the site. It is unlikely that the Crown could have received $103.39 per cubic metre for this timber, even if it had been sold at competitive bid. As the Huock Report indicates at page 3:

> The market used, Pacific Forest Products at Rosewell log sort, was at the period in question one of the most competitive open market log purchasers on Central Vancouver Island. It would not be possible for a

> prudent purchaser, required to deliver the logs within a short time frame, to pay a stumpage rate that would exceed the gross value of the logs. A prudent purchaser would take the gross value of the logs, deduct the cost of hauling, marketing and supervision. Additional costs, such as falling and yarding, would also be expected to be a deduction.

The compensatory portion of the penalty was determined as though the timber had been sold at competitive bid. However, for small volumes of timber on MOTH rights-of-way, the timber may not have been sold at competitive bid. In the absence of a MOTH intention to clear the right-of-way, Mr. Sheldan acknowledged that the timber could have been sold to someone such as Mr. Stevens if he applied for a direct unadvertised sale of the timber. In that case, the stumpage rate charged would have been either the South Island Forest District average upset stumpage rate for the South Island Forest District ($31.71 per cubic metre), or the appraised upset stumpage for that specific parcel of timber, without bonus bid. Even if the timber had been sold at competitive bid, the stumpage rate would not have exceeded the market value of the logs less costs of production and delivery. In other words, if the appraised stumpage had been greater than the Huock Report's estimate of $74 per cubic metre, then the timber could not have been sold.

The Commission finds that it is unlikely the Crown could have obtained $103.39 per cubic metre as calculated in the determination, because of the nature and location of the timber.

Section 119(1) of the *Code* provides the maximum amount of a penalty that can be imposed for a contravention of section 96. The penalty imposed in this case was not calculated at the maximum. However, the compensatory portion of the penalty ($12,169) results in the Crown receiving more than it likely would have received in June 1995, considering the species, grade and volume of the timber. According to the evidence, the estimates of the stumpage the Crown would have received were:

1. If sold by direct sale at the South Island Forest District average stumpage: $31.71 per cubic metre

2. If sold by direct sale at appraised upset stumpage: $42.64 per cubic metre

3. If sold by competitive bid (per estimate in Huock Report): $74.00 per cubic metre.

The estimates outlined in (1) and (2) above do not include any costs government would expect to incur to establish a free-growing stand on the area, as permitted in section 119(3)(a) of the *Code*. These costs are not generally added when timber is sold by competitive bid, as it is expected that those costs will be recovered from the bonus bid. In this case, it is not clear whether the Crown will replant the area, considering that it is a right of way.

When he made his determination in November 1997, Mr. Sheldan did not have very much information from the Appellants. This is unfortunate, because it would have

been open to Mr. Sheldan to consider what the Crown would have received for the sale of this timber and calculate a compensatory penalty on the basis of any of the above three estimates. Instead, he used a standard calculation based on an estimate of the stumpage value of the timber. This is an acceptable way in which to calculate compensatory penalties, and, in most cases, it works fairly.

We have had the benefit of receiving further evidence. We have considered whether the compensatory penalty in this case ought to be calculated in a manner differently from the estimated stumpage value of the timber; in other words, whether any of the above three methods should be applied in the particular circumstances of this case. Either of the first two stumpage rates represents what the Crown may have received by way of direct sale, and could be a reasonable estimate of minimum compensation. However, an estimate of minimum compensation may not properly compensate the Crown, neither does either method take into account the economic benefit received by the Appellants. Their net proceeds in respect of all timber harvested were approximately $9,425. For the estimated 117.7 cubic metres harvested on Crown land, the economic benefit received by the Appellant was approximately $6,105.

The third method, taken from the Huock Report, would compensate the Crown and remove some of the economic benefit to the Appellants. The compensatory penalty payable according to this method would be $8,709.80, based on 117.7 cubic metres.

The Review Panel considered that the method used by the District Manager for calculating the compensatory penalty was appropriate. They gave little weight to the market value received by the Appellants, as there was no evidence provided as to whether the Appellants went to more than one company for price comparisons. They did not review the factors set out in section 117(4) in reviewing the compensatory penalty.

At this appeal, the Appellants provided the evidence contained in the Huock Report, which was not before the Review Panel. The Commission considers the following factors in section 117(4) to be relevant in considering whether the compensatory penalty assessed by the District Manager, and affirmed by the Review Panel, was excessive in the circumstances:

i. There have been no previous contraventions by the Appellants. They are not in the logging business.

ii. The contravention was reasonably serious.

iii. The violation was not repeated or continuous.

iv. The contravention was not deliberate. While Mr. Stevens should have retained professional assistance in determining the boundaries of the Property, he did a reasonably careful job in establishing the boundaries himself notwithstanding his errors as described above.

v. The Appellants received some economic benefit from the contravention.

vi. The Appellants did not report the contravention, but once the Ministry began its investigation they were not uncooperative. There was some dispute and confusion about Mr. Stevens' failure to attend the Opportunity to be Heard meeting, but this ceased to be a significant factor by the time of the administrative review.

Considering all of these factors, it is the Commission's view that the compensatory penalty in this case should be based on the competitive bid method described above.

Accordingly, the compensatory penalty is reduced from $12,169 to $8,709.80.

2. Whether any deterrent penalties are warranted in the circumstances and whether the Review Panel ought to have overturned the penalties assessed rather than refer the matter back for reconsideration.

The District Manager levied an additional penalty of $5,000 for the section 96(1) contravention, and a further amount of $1,000 for the section 97(2) contravention. Because the Review Panel had additional evidence, it referred these issues back to the District Manager for reconsideration.

The Respondent submits that the Review Panel did not err in referring this aspect of the penalty back to the District Manager, who has not reconsidered the matter due to this appeal. It says that the Commission ought to uphold the Review Panel's decision in this regard.

The Appellants submit that the Review Panel should have determined the issue. There was evidence upon which it could have made a decision. If the Commission does not decide the issue, then they could be faced with the possibility of another appeal process if they disagree with the District Manager's decision after a reconsideration.

The Commission has *de novo* powers. Due to the length of time that has passed in this case, it is the Commission's view that upholding the referral back to the District Manager could impose a hardship on the Appellants.

The District Manager imposed the deterrent penalties because Mr. Stevens failed to properly ascertain his boundaries, failed to adequately supervise the harvesting operation adjacent to the Crown land and, upon discovery of the unauthorized harvesting, did not report the matter to the Ministry. On this basis, he imposed the $5,000 additional penalty for the section 96(1) contravention as "sufficient deterrent to prevent this action in the future."

In assessing the appropriate penalty for the section 97(2) contravention under section 117, the District Manager considered Mr. Stevens' responsibility to identify his boundaries adjacent to Crown land. In his view, there was no evidence that the boundaries shared with the Crown rights of way were clearly located prior to the

harvesting. The Review Panel heard evidence about Mr. Stevens' effort to determine the boundaries, as did this Commission on appeal.

The Appellants say that a deterrent penalty is not appropriate, as there is no evidence that the Appellants acted intentionally or were willfully reckless in regard to the trespass. Because the Appellants are not involved in the logging industry, there is little or no likelihood that they will ever conduct logging operations again and, therefore, do not need to be deterred from further activity in the nature of trespass. The Appellants submit that this is a case where the quantum of penalty should have regard to "due-diligence-like factors" as referred to in *MacMillan Bloedel v. British Columbia,* (1997) 23 C.E.L.R. 47. They submit that the penalty should be assessed having regard to a number of factors. The Commission agrees that the following factors are relevant:

i. The Appellants are not persons of substantial means. They were attempting to fix a standing water problem on their Property in the most cost efficient manner.

ii. They have no experience in logging.

iii. Mr. Stevens made reasonable efforts to try and determine his property boundary. However, he should have retained a professional surveyor to properly determine the boundaries.

iv. Mr. Stevens was misled in part by relying on the 1939 survey plan, which he could not reasonably have known to be inaccurate.

v. The timber in question was not part of a commercial stand and would likely not have been harvested, except under a direct sale, if at all.

Mr. Stevens' testimony showed that he had honestly attempted to carry out these operations properly. He acknowledged that if he were to do it over again, he would employ a surveyor to ascertain the boundaries. In the Commission's view, the District Manager could have exercised his discretion to impose no deterrent penalty in these circumstances. The Respondent's Book of Authorities refers to several Commission decisions on appeals from decisions in respect of penalties assessed for section 97(1) contraventions. In one case, *Frank McIntyre* v. *Government of British Columbia*, (Forest Appeals Commission, Appeal No. 97-FOR-18, August 17, 1998)(unreported), the contravention was more substantial than that in this case, and no deterrent penalty had been levied.

It is the Commission's view that no deterrent penalty should have been levied in this case.

Accordingly, the appeal is allowed. The total penalty is assessed at $8,709.80.

Barbara Fisher
Forest Appeals Commission

March 15, 1999