



# Forest Appeals Commission

Fourth Floor 747 Fort Street  
Victoria British Columbia  
**Telephone:** (250) 387-3464  
**Facsimile:** (250) 356-9923

Mailing Address:  
PO Box 9425 Stn Prov Govt  
Victoria BC V8W 9V1

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## **DECISION NOS. 2008-FA-001(a), 2008-FA-002(a), 2008-FA-003(a), 2008-FA-004(a), & 2008-FA-005(a)**

In the matter of an appeal under section 146 of the *Forest Act*, R.S.B.C. 1996, c. 157.

**BETWEEN:** Pristine Log and Timber Ltd. **APPELLANT**

**AND:** Government of British Columbia **RESPONDENT**

**BEFORE:** A Panel of the Forest Appeals Commission  
Alan Andison, Panel Chair

**DATE:** Conducted by way of written submissions  
concluding on June 2, 2008

**APPEARING:** For the Appellants: Paul Wery  
For the Respondent: Bruce Filan, Counsel

### **APPEAL**

[1] Pristine Log and Timber Ltd. appeals five separate stumpage determinations set out in notices issued on August 28, 2007, and September 24, 2007. The determinations apply to timber harvested under cutting permit 1 ("CP 1"), non-replaceable forest licence ("NRFL") A79840. NRFL A79840 is held by the Appellant, and covers the Okanagan Timber Supply Area. Brian Russell, Timber Pricing Coordinator, Southern Interior Forest Region, Ministry of Forests and Range (the "Ministry"), issued the stumpage determinations.

[2] The stumpage determinations under appeal replaced stumpage determinations that applied to timber scaled from September 12 to 30, 2006, October 1 to December 31, 2006, January 1 to March 31, 2007, April 1 to June 30, 2007, and July 1 to September 30, 2007. The appealed determinations were issued after the Ministry discovered that the original determinations, which set the total stumpage rate at \$0.25 per m<sup>3</sup>, failed to include the bonus bid of \$5.43 per m<sup>3</sup>. The appealed determinations set the stumpage rate at \$5.68 per m<sup>3</sup>, retroactive to the periods covered by the original determinations.

[3] This appeal is heard pursuant to Part 12, Division 2 of the *Forest Act*. The powers of the Commission on an appeal are set out in section 149(2) of the *Forest Act*:

149 (2) On an appeal, the commission may

- (a) confirm, vary or rescind the determination, order or decision, or
- (b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

[4] The Appellant asks the Commission to order that the revised stumpage rate for CP 1 applies as of September 1, 2007, rather than applying retroactively to the periods covered by the original determinations.

## BACKGROUND

[5] Harvesting of Crown timber in British Columbia is authorized by a cutting authority appurtenant to one of several forms of tenure. In this case, the cutting authority is CP 1, and the tenure agreement is NRFL A79840. Forest licences may be replaceable or, as in this case, non-replaceable.

Under section 13(2) of the *Forest Act*, the Minister of Forests and Range may invite applications for forest licences, and applicants must "by written tender in a sealed container propose only a bonus bid or only a bonus offer." Under section 13(3)(b) of the *Forest Act*, an application for a forest licence must "include an offer by the applicant to pay to the government, in addition to other amounts payable under this Act and the regulations... stumpage under Part 7,... waste assessments, and...either a bonus bid or bonus offer, whichever is required under subsection (2), in the amount tendered."

[6] A bonus bid is essentially a premium that a logging operator agrees to pay for the rights to harvest certain timber. "Bonus bid" is defined in section 1(1) of the *Forest Act* as follows:

**"bonus bid"** means a bid

- (a) tendered in order to acquire the right to harvest timber under an agreement under this Act,
- (b) calculated on a dollar value per cubic metre of competitive species and forest products harvested and measured in compliance with the agreement, and
- (c) payable from time to time in accordance with the agreement;

[7] In this case, there is no dispute that the Appellant proposed a bonus bid of \$5.43 when it applied for NRFL A79840. The way that this bonus bid came to be offered by the Appellant and accepted by the Ministry is set out as follows.

[8] On April 27, 2006, the Appellant submitted an "Application and Tender" for NRFL A79840 to the Regional Manager, Southern Interior Forest Region. A copy of that document, which is signed by a director of the Appellant, was provided to the Commission. It states, in part, as follows:

Upon acceptance of the FL A79840, I/the applicant commit to pay to the government, in addition to other amounts payable under this licence, the *Forest Act* and Regulations, a bonus bid per cubic metre (\$XX.XX/m<sup>3</sup>) in respect of all coniferous sawlogs (grade 1 and 2), cut and removed or assessed as waste, under a cutting permit or road permit associated with this licence of... \$3.70

[9] The Appellant subsequently increased its original bonus bid in order to break a tie with another bidder. On May 23, 2006, the Appellant submitted an "Addendum Tie Breaking Application and Tender" for NRFL A79840 to the Regional Manager. A copy of that document, which is signed by the same director of the Appellant as the first tender and application, was also provided to the Commission. It states, in part, as follows:

This is a tie breaking tender application between tied tenders submitted for Non-replaceable Forest Licence A79840 between Schapol Logging Ltd. and Pristine Log Homes and Manufacturing Ltd. In order to be accepted for this tie breaking to application Non-replaceable Forest Licence A79840, this application must be submitted by only the two aforementioned parties, and must be submitted to the Regional Manager...

I/WE:

[the document sets out Appellant's name and other personal information]

1. OFFER TO PAY A BONUS BID OF \$1.73 /m<sup>3</sup>, PLUS THE ORIGINAL BONUS BID OF \$3.70 /m<sup>3</sup> for Non-replaceable Forest Licence A79840...
2. Acknowledge sum of the two bonus bids listed above will replace the bonus bid amount of my original application and tender for A79840.
3. I acknowledge that all other conditions are as specified in my original application and tender for Non-replaceable Forest Licence A79840.

[10] NRFL A79840 was issued to the Appellant on August 1, 2006. The purpose of the licence is to facilitate the harvest of insect-damaged timber from specific areas in the Okanagan timber supply area. NRFL A79840 has a two-year term and an annual allowable harvest of 75,000 m<sup>3</sup>. Clause 10.01(a) of NRFL A79840 states that the licensee must pay to the Government:

- (i) stumpage under part 7 of the *Forest Act* at rates determined, redetermined and varied under Section 105 of that Act...
- (ii) any payment required as a result of a waste assessment under part 4.00, and
- (iii) a bonus bid of \$5.43 per cubic metre in respect of timber removed under a cutting permit with this licence...

[11] According to section 105 of the *Forest Act*, stumpage rates must be determined in accordance with the policies and procedures approved for the forest region by the Minister of Forests and Range. The policies and procedures approved for the Interior Region are set out in the Interior Appraisal Manual ("IAM"). The IAM is amended from time to time, and a revised manual is issued every few years. On July 1, 2007, a new IAM came into force, and replaced the IAM which had been in force since November 1, 2004.

[12] Under section 149(3) of the *Forest Act*, the Commission must, in deciding an appeal of a stumpage determination, apply the version of the IAM that was in effect at the time of the initial determination. Given that the determinations under appeal were issued on August 28, 2007 and September 24, 2007, the IAM as amended effective August 1, 2007, applies to these appeals.

[13] A minimum stumpage rate may be prescribed by regulation pursuant to section 105(6) of the *Forest Act*. Under the *Minimum Stumpage Rate Regulation*, B.C. Reg. 354/87, the minimum stumpage rate is \$0.25 per m<sup>3</sup>.

[14] On November 9, 2006, the Timber Pricing Coordinator issued a stumpage advisory notice to the Appellant that applied to timber scaled from September 12, 2006 to September 30, 2006. The notice set out a "total stumpage rate" of \$0.25 per m<sup>3</sup> for sawlogs.

[15] It should be noted that the phrases "total stumpage rate", "upset stumpage rate" and "reserve stumpage rate" have particular meanings in the context of the IAM. Section 5.6.6 of the IAM, effective July 1, 2007<sup>1</sup>, states that "The total stumpage rate is the upset stumpage rate plus any bonus bid." Section 5.6.5 of the IAM states that "The upset stumpage rate is the total of the reserve stumpage rate plus any development, silviculture and administration levies which may be charged as defined in section 6.7." Section 5.6.3 of the IAM states that "the reserve stumpage rate is determined by selecting the greater of the indicated stumpage rate, or the prescribed minimum stumpage rate."

[16] Three stumpage adjustment notices were issued to the Appellant on November 9, 2006, December 12, 2006, and March 21, 2007. Together, those notices applied to timber scaled from October 1, 2006 to June 30, 2007. Those notices also set out a total stumpage rate of \$0.25 per m<sup>3</sup> for sawlogs.

[17] According to the Appellant, all of the timber harvested under NRFL A70840 was scaled between October 2006 and December 2006.

[18] In August 2007, a Ministry employee discovered that the stumpage notices issued for CP 1 did not include the bonus bid in the total stumpage rate.

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<sup>1</sup> The November 1, 2004 IAM, as amended effective August 1, 2006, contained the same language regarding those phrases as the July 1, 2007 IAM, but the section numbers are slightly different.

[19] On August 28, 2007, the Timber Pricing Coordinator sent the Appellant a stumpage advisory notice and three stumpage adjustment notices, all of which set out a total stumpage rate of \$5.68 per m<sup>3</sup> for sawlogs. The stumpage advisory notice indicates that it is effective for the period from September 12, 2006 to September 30, 2006. The stumpage adjustment notices indicate that they are, together, effective for the period from October 1, 2006 to June 30, 2007.

[20] On September 24, 2007, the Timber Pricing Coordinator issued a stumpage adjustment notice to the Appellant that applied to timber scaled from July 1, 2007 to September 30, 2007. The notice sets out a total stumpage rate of \$5.68 per m<sup>3</sup> for sawlogs.

[21] On January 24, 2008, the Commission received the Appellant's Notice of Appeal regarding the four stumpage determinations issued on August 28, 2007, and the one issued on September 24, 2007. Although the appeals were received after the expiry of the 21-day period for filing an appeal, the Commission accepted the appeals based on the Appellant's explanation for its delay in filing the appeals. The Government did not object.

[22] The Appellant submits that the Timber Pricing Coordinator's failure to include the bonus bid in the original stumpage determinations was a "correctable error" under the IAM; namely, it was "an error... in performing the calculations specified in the manual" under section 2.4(1)(c) of the IAM. The Appellant argues, therefore, that under section 2.4(5)(c)(ii) of the IAM, the revised stumpage rates should only be effective for timber scaled on or after September 1, 2007, which is the first day of the month following the month that the error was discovered.

[23] The Government submits that, when the Appellant signed NRFL A70840, it agreed to pay the bonus bid on all timber harvested under NRFL A70840. The Government submits that the Appellant is required, under section 103(1)(d) of the *Forest Act*, to pay the bonus bid and the prescribed minimum stumpage rate. The Government maintains that the Appellant is essentially arguing that it should not have to pay the bonus bid that it agreed to pay when it signed the forest licence agreement, and is obligated to pay under the *Forest Act*.

[24] The Government also submits that section 5.6.6 of the IAM, which sets out the total stumpage rate under the IAM, does not contain "a calculation specified in the manual". The Government submits, therefore, that the failure to include the bonus bid in the original stumpage rate determinations was not an error in the performance of "the calculations specified in the manual." The Government submits that the determinations should be confirmed and the appeals should be dismissed.

## **ISSUES**

[25] The Commission has considered the following issues:

1. Whether the failure to include the bonus bid in the original stumpage rate determinations was "an error... in performing the calculations specified in the

manual" within the meaning of section 2.4 of the IAM, and is, therefore, a correctable error under the IAM.

2. If the error is not a correctable error under the IAM, what is the appropriate remedy in this case?

### **RELEVANT LEGISLATION**

[26] The following sections of the *Forest Act*, R.S.B.C. 1996, c. 157, are relevant to these appeals:

#### **Amount of stumpage**

**103** (1) Subject to sections 107, 108 and 142.7, if stumpage under section 104 or under an agreement entered into under this Act is payable to the government in respect of Crown timber, the amount payable must be calculated by multiplying the volume or quantity of the timber

(a) reported in a scale made under Part 6...

...

by the sum of

(c) the rate of stumpage applicable to the timber under section 105 when

(i) the timber is scaled, or

(ii) the volume or quantity is calculated under section 106, and

(d) if applicable, the bonus bid offered in respect of the timber.

#### **Stumpage rate determined**

**105** (1) Subject to the regulations made under subsections (6) and (7), if stumpage is payable to the government under an agreement entered into under this Act or under section 103 (3), the rates of stumpage must be determined, redetermined and varied

(a) by an employee of the ministry, identified in the policies and procedures referred to in paragraph (c),

(b) at the times specified by the minister, and

(c) in accordance with the policies and procedures approved for the forest region by the minister.

[27] The powers and procedures for administrative reviews and appeals are found in sections 143 to 149(2) of the *Forest Act*. The following sections are relevant to this appeal:

**Powers of commission**

**149** (2) On an appeal, the commission may

- (a) confirm, vary or rescind the determination, order or decision, or
- (b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

(3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

[28] The following sections of the IAM, as amended effective August 1, 2007, are relevant to this appeal:

**2.4 Correctable Errors**

1. In this section, a correctable error means:

- a. an error in transcribing or compiling approved cruise field data or in the application of approved loss factor and taper equations,
- b. an error in a calculation made as part of the appraisal data submission,
- c. an error in transcribing the data from an appraisal data submission or in performing the calculations specified in the manual, or
- d. an error in the application of published appraisal parameters.

...

5. Where the regional manager or the director determines that a correctable error has been made, then:

- c. (i) where the regional manager determines that a correctable error has been made in an appraisal or a reappraisal the cutting authority area shall be reappraised to correct the error by the person who determined the stumpage rate, using the procedure under subsections 2.1(6) to 2.1(7), and,
- (ii) the effective date of the reappraisal shall be the first day of the month following the date on which the notice of the correctable error was received by the regional manager.
- d. (i) where the director has determined that a correctable error has been made in the calculation of a quarterly stumpage

adjustment, the adjustment must be correctly recalculated unless the cutting authority, the appraisal manual or the application and tender for a timber sale licence specifies that the stumpage rate is fixed, and,

- (ii) the effective date of the redetermined rate shall be the first day of the month following the date on which the notice of the correctable error was received by the director.

## 5.6 Calculation of Stumpage Rate

...

### 5.6.2 Prescribed Minimum Stumpage Rate

The minimum stumpage rate is prescribed by the *Minimum Stumpage Rate Regulation* (B.C. Reg. 354/87). The current minimum stumpage rate is \$0.25 per cubic metre.

### 5.6.3 Reserve Stumpage Rate

For each cutting authority area, except those containing timber licence volume, the reserve stumpage rate is determined by selecting the greater of:

- the indicated stumpage rate, or
- the prescribed minimum stumpage rate.

...

### 5.6.5 Upset Stumpage Rate

The upset stumpage rate is the total of the reserve stumpage rate plus any development, silviculture and administration levies which may be charged as defined in section 6.7.

### 5.6.6 Total Stumpage Rate

The total stumpage rate is the upset stumpage rate plus any bonus bid.

## DISCUSSION AND ANALYSIS

1. **Whether the failure to include the bonus bid in the original stumpage rate determinations was “an error... in performing the calculations specified in the manual” within the meaning of section 2.4 of the IAM, and is, therefore, a correctable error under the IAM.**

[29] The Appellant submits that the failure to include the bonus bid in the original stumpage determinations was “an error... in performing the calculations specified in the manual” under section 2.4(1)(c) of the IAM. In that regard, the Appellant submits that section 5.6 of the IAM specifies the process for calculating stumpage



rates, including the total stumpage rate which is set out in section 5.6.6. The Appellant argues, therefore, that under section 2.4(5)(c)(ii) of the IAM, the revised stumpage rates should only be effective for timber scaled on or after September 1, 2007. Section 2.4(5)(c)(ii) states, "Where the regional manager or the director determines that a correctable error has been made, then... the effective date of the reappraisal shall be the first day of the month following the date on which the notice of the correctable error was received by the regional manager."

[30] In addition, the Appellant submits that the Ministry notified it of the revised stumpage rates nine months after all of the timber was harvested and scaled under CP 1. The Appellant maintains that, by making the stumpage revisions retroactive, the Appellant incurs additional costs that were not considered prior to harvest, and it is assessed a financial penalty for errors made by the Ministry. The Appellant submits that it incurred significant costs to haul the timber to Okanagan Falls based on the belief that the stumpage rate was \$0.25 per m<sup>3</sup>. It says that, if it had been advised of the error before it delivered the timber, it would have explored alternative log sales and destinations.

[31] The Government submits that the Appellant agreed under NRFL A79840, and is obligated under the *Forest Act*, to pay the bonus bid on every cubic metre of timber harvested under the licence, regardless of the outcome of the appeals. Specifically, the Government submits that section 103(1)(d) of the *Forest Act* requires licensees to pay stumpage to the Government for timber harvested under a licence. It submits that, under that section, stumpage includes not only the stumpage rate multiplied by the volume of timber harvested, but also the bonus bid multiplied by the volume of timber harvested. Under clause 10.01(a)(iii) of NRFL A79840, the Appellant agreed to pay the Government a bonus bid of \$5.43 on every cubic metre of timber harvested under the licence or assessed as waste.

[32] The Government notes that, because all of the timber harvested under CP 1 was scaled between October and December 2006, none of the timber would be affected by the corrected stumpage rates if the rates are effective as of September 1, 2007. The Government argues that the Appellant is essentially saying that it should not have to pay the bonus bid that it promised to pay on timber harvested under NRFL A79840.

[33] In addition, the Government submits that, according to harvest billing records, over 40% of the timber harvested by the Appellant under CP 1 was scaled at Okanagan Falls in October 2006, before the Appellant was notified of the \$0.25 per m<sup>3</sup> stumpage rate. The Government submits that this indicates that the Appellant had decided that it was going to use the Okanagan Falls sawmill regardless of the stumpage rate. The Government submits that, in any case, business decisions that a licensee may make based on that stumpage rate are irrelevant to the question of whether the error in the determinations was a correctable error under section 2.4(1)(c) of the IAM.

[34] Regarding the language in the IAM, the Government submits that the IAM is a form of subordinate legislation under the *Forest Act* that has the force of law: *MacMillan Bloedel Ltd. v. British Columbia (Ministry of Forests)*, 189 D.L.R. (4<sup>th</sup>)

281. The Government submits that subordinate legislation must be interpreted in accordance with its parent legislation, and the parent legislation must prevail over inconsistent or conflicting provisions in subordinate legislation. Consequently, when interpreting subordinate legislation, interpretations that reconcile it with the parent legislation are preferred: *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 [*Oldman River*], at page 43. Based on those principles, the Government submits that the IAM must be interpreted in accordance with the *Forest Act*, and in a way that reconciles it with the *Forest Act*.

[35] The Government submits, therefore, that the provisions of the IAM must be read in a manner that does not conflict with section 103 of the *Forest Act*. In particular, sections 2.4(1)(c) and 5.6.6 of the IAM cannot be read in a manner that is contrary to the requirement in section 103 of the *Forest Act* that a person must pay stumpage which is the sum of the rate of stumpage applicable to the timber multiplied by the volume of timber scaled, and the bonus bid multiplied by the volume of timber scaled.

[36] The Government maintains that the interpretation of the IAM proposed by the Appellant is in direct conflict with section 103 of the *Forest Act*. The Government submits that section 5.6.6 of the IAM is not a "calculation specified in the manual." Rather, that section sets out, as a matter of law, the total stumpage rate under the IAM. The Government points to a number of sections in the IAM that use or contain algorithms to specify how certain calculations must be carried out in an appraisal. The Government submits that algorithms are found in sections 3.3, 4.4.2(6)(a), 4.4.3(1), 4.4.3(4)(a), 4.4.4, 4.4.5, and 4.5.2.1 of the IAM. Section 5.6.6 does not contain an algorithm.

#### *Commission's findings*

[37] The Commission agrees with the Government that the B.C. courts have found that the policies and procedures approved by the Minister under section 105 of the *Forest Act*, including the IAM, are akin to subordinate legislation. Therefore, the principles of statutory interpretation apply in interpreting the words in the IAM.

[38] In deciding on the intended meaning of the relevant sections of the IAM, the Commission has first considered the ordinary meaning of the words in those sections, in the context of the IAM. The parties agree that the failure to include the bonus bid in the total stumpage rate was an error on the Ministry's part. However, they dispute whether the error was "an error in the performance of a calculation specified in the manual" within the meaning of section 2.4(1)(c) of the IAM, and was, therefore, a correctable error under that section. If it was a correctable error under that section, then sections 2.4(5)(c) and (d) provide that "the effective date of" either the reappraisal or the redetermined rate (depending on whether the error was made in an appraisal or a reappraisal, or in the calculation of a quarterly stumpage adjustment) "shall be the first day of the month following the date on which the notice of the correctable error was received by" the appropriate Ministry official.

[39] In other words, if the error in this case is found to be a correctable error within the meaning of section 2.4(1)(c) of the IAM, then section 2.4(5) applies, and the effective date of the higher stumpage rate is September 1, 2007, as asserted by the Appellant. Alternatively, if the error is not found to be a correctable error, then section 2.4(5) does not apply, and therefore, the Commission will have to consider what remedy applies.

[40] Section 2.4(1) of the IAM contains a list of what constitutes a correctable error for the purposes of the IAM. The list is an exhaustive one, as indicated by the use of the word "means", rather than the word "includes", in the first part of subsection (1). Thus, in order for an error to be a "correctable error" within the meaning of section 2.4(1), it must fall within one of the categories of errors listed in subsections (a) through (d). In this case, the focus is on subsection (c), which is set out below:

## 2.4 Correctable Errors

1. In this section, a correctable error means:

...

- c. an error in transcribing the data from an appraisal data submission or in performing the calculations specified in the manual, or

[underlining added]

[41] Thus, the question becomes whether the "total stumpage rate" set out in the stumpage notices results from "performing the calculations specified in the manual". That leads to a consideration of the language in section 5.6.6, which refers to the "total stumpage rate", and whether section 5.6.6 sets out a "calculation specified in the manual".

[42] Section 5.6.6 of the IAM states as follows:

### 5.6.6 Total Stumpage Rate

The total stumpage rate is the upset stumpage rate plus any bonus bid.

[43] One possible interpretation of the words in section 5.6.6 is that they set out a definition of "total stumpage rate" for the purposes of the IAM. This interpretation focuses on the use of the word "is" in relation to the phrase "total stumpage rate". Under this interpretation, the word "is" functions in a way similar to the word "means." The *Forest Act* does not define "total stumpage rate", nor does it define "upset stumpage rate", "reserve stumpage rate" or "indicated stumpage rate". Those phrases are, arguably, terms of art that are defined in section 5.6 of the IAM.

[44] A possible alternative interpretation of section 5.6.6 is that it sets out a "calculation"; namely, a mathematical calculation. This interpretation focuses on the use of the word "plus". Under this interpretation, the word "plus" indicates that

one thing (i.e. the upset stumpage rate) is added to another (i.e. the bonus bid) to produce a sum (i.e. the total stumpage rate). From this perspective, the main difference between section 5.6.6 and the algorithms referred to by the Government is that the former sets out a simple addition process using words, whereas the algorithms set out more complex mathematical calculations using a combination of mathematical symbols and words. In any case, the Commission notes that section 2.4(1)(c) refers to "calculations specified in the manual", and not "algorithms specified in the manual" [underlining added]. Consequently, the Commission finds that section 2.4(1)(c) encompasses not only the algorithms specified in the IAM, which are one type of calculation; it also applies to any other "calculations" specified in the IAM.

[45] The Commission finds that section 5.6.6 has two plausible meanings, based on a plain reading. It could set out a definition of "total stumpage rate" for the purposes of the IAM, or it could set out a "calculation" in the IAM. Consequently, the Commission has considered the relevant sections of the *Forest Act*, which is the IAM's parent legislation. The statutory scheme created by the *Forest Act* and the IAM should be interpreted and understood as a whole.

[46] In particular, the Commission has considered the language in sections 103 and 105 of the *Forest Act*. Although the Minister's authority to approve the policies and procedures in the IAM arises from section 105 of the *Forest Act*, the Commission has previously found that section 103 may be relevant to interpreting the IAM. In *Canadian Forest Products Ltd. v. Government of British Columbia*, (Decision No. 2007-FA-023(a), November 13, 2007) (unreported) [*Canfor*], the Commission held at page 9 that:

... section 103 may, in some cases, be relevant in deciding appeals of stumpage determinations, because calculating the amount of stumpage owing pursuant to section 103(1)(c) of the *Act* uses, as one of its inputs, "the rate of stumpage applicable to the timber under section 105." Thus, while stumpage rates are determined under section 105 of the *Act*, those rates are applied pursuant to section 103(1) of the *Act*. Consequently, section 103(1) may provide contextual assistance when interpreting section 105 of the *Act*, as well as the policies and procedures that are approved pursuant to section 105.

[underlining in original]

[47] In *Canfor*, the Commission also found that subordinate legislation cannot conflict with its parent legislation, and an Act will prevail over inconsistent or conflicting subordinate legislation, citing *Oldman River*. However, according to *Oldman River*, interpretations that reconcile the subordinate and parent legislation are preferred. At page 45 of *Oldman River*, "inconsistency" is defined as "a situation where two legislative enactments cannot stand together."

[48] For convenience, section 103 is reproduced below:

**Amount of stumpage**

**103** (1) Subject to sections 107, 108 and 142.7, if stumpage under section 104 or under an agreement entered into under this Act is payable to the government in respect of Crown timber, the amount payable must be calculated by multiplying the volume or quantity of the timber

(a) reported in a scale made under Part 6...

...

by the sum of

(c) the rate of stumpage applicable to the timber under section 105 when

(i) the timber is scaled, or

(ii) the volume or quantity is calculated under section 106, and

(d) if applicable, the bonus bid offered in respect of the timber.

[49] Section 103(1) explains how to calculate the “amount payable” if stumpage is owed to the government under an agreement entered into under the *Forest Act*, such as NRFL A79840. Although section 103(1) uses the word “stumpage” broadly, subsections (c) and (d) distinguish between the bonus bid and “the rate of stumpage applicable to the timber under section 105” as separate components of the amount payable under section 103. This provides that the bonus bid is distinct from “the rate of stumpage applicable to the timber under section 105”. This indicates that the addition of the bonus bid to the “upset stumpage rate” under section 5.6.6 of the IAM is not a calculation that is “specified in the manual”.

[50] In this case, regardless of whether section 5.6.6 provides a definition of “total stumpage rate”, or one of “the calculations specified in the manual”, it does reflect the provisions in section 103(1) of the *Forest Act*; namely, that the total amount payable to the government on a per cubic metre basis, otherwise known as the total stumpage rate, is the sum of the bonus bid and the rate of stumpage applicable to the timber under section 105, otherwise known as the upset stumpage rate. In particular, it is to be noted that section 105(1)(c) of the *Forest Act* directs that the policies and procedures approved by the Minister, which in this case are found in the IAM, are to be used for the determination of stumpage rates. The bonus bid is not a stumpage rate. Rather, it is a distinct financial obligation under the *Forest Act* that is added to the stumpage rate to create the “total stumpage rate”. Therefore, the addition of the bonus bid to the previously calculated stumpage rate is not a calculation specified in the manual, and consequently, it is not a correctable error under section 2.4(1)(c) of the IAM.

[51] The Commission further finds that section 2.4 of the IAM does not contemplate correcting the omission that occurred in this case. Here, the Timber Pricing Coordinator completely omitted the bonus bid from the “total stumpage rate”. If section 2.4 applied, the Appellant would pay no bonus bid on any of the

timber harvested under NRFL A79840. This omission, and the result that would occur if section 2.4 applied, is contrary to the Appellant's mandatory legal obligation to pay the bonus bid, as set out in section 103(1) of the *Forest Act* as well as clause 10.01(a)(iii) of NRFL A79840. Applying a procedure in the IAM, a form of legislation subordinate to the *Forest Act*, that produces a result which goes against the clear and express language of the *Forest Act* cannot be what the Minister intended. The rules of statutory interpretation require that, if there is a plausible interpretation of section 2.4 that avoids conflict with the *Forest Act*, that interpretation is to be preferred. Consequently, the Commission finds that the types of "errors" contemplated in section 2.4(1) of the IAM do not include a complete failure to include the bonus bid in the total stumpage rate such that the licensee avoids paying any bonus bid whatsoever. Failing to include the bonus bid at all is contrary to the *Forest Act*, and on the facts in this case, would create a conflict between the IAM and the *Forest Act*.

[52] For all of these reasons, the Commission finds that the failure to include the bonus bid in the original "total stumpage rate" was not "an error... in performing the calculations specified in the manual", within the meaning of section 2.4 of the IAM, and is not, therefore, a correctable error under the IAM.

## **2. What is the appropriate remedy in this case?**

[53] The Government submits that the stumpage rates and effective dates set out in the determinations under appeal must be confirmed. Specifically, the Government submits that when an employee of the Ministry does not carry out the provisions of the IAM in strict accordance with the IAM, the stumpage determination must be corrected from the beginning. The Government submits that a stumpage determination is an administrative decision, and not an adjudicative decision, and that administrative decisions made in breach of the law are void.

[54] The Appellant did not address the question of what remedy would be appropriate if the Commission found that the failure to include the bonus bid was not a correctable error under the IAM.

[55] The Commission agrees with the Government that that a stumpage determination is an administrative decision, and not an adjudicative decision. Given the Commission's findings above, the Commission finds that the total stumpage rate in the original notices issued by the Timber Pricing Coordinator could not be corrected under section 2.4 of the IAM. The original total stumpage rate was void and the total stumpage rate had to be calculated anew, which is what the Timber Pricing Coordinator did in this case. The Timber Pricing Coordinator properly included the bonus bid in the new total stumpage rate, and properly set the effective dates of the new notices to be the same as the original notices. Accordingly, the Commission finds that the appeals should be dismissed.

**DECISION**

[56] In making this decision, this panel of the Commission has considered all of the evidence and arguments provided, whether or not they have been specifically reiterated here.

[57] For the reasons provided above, the Commission finds that that the stumpage determinations under appeal should be confirmed.

[58] The appeals are dismissed.

"Alan Andison"

Alan Andison, Chair  
Forest Appeals Commission

July 14, 2008