



Forest Legislation and Policy Reference Guide 2009

Chapter Ten

Monitoring and Auditing

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Monitoring and Auditing

10.1 Compliance and Enforcement

Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. The plethora of legislation dealing with forestry and range issues in a broad conceptual context is set out to provide opportunities and enable accountability.

Previous chapters discussed the opportunities and next few sections will discuss accountability. There are three main regimes available to counter concerns of non-compliance. They are contractual (licences, permits), administrative (administrative penalties, remediation orders, suspending, canceling) and prosecutorial (offences).

The *Forest and Range Practices Act* (FRPA), in association with the *Forest Act* (FA), *Range Act* (RA), and the *Wildfire Act* (WA), provides for a broad range of administrative remedies (including monetary penalties and remediation orders) related directly to field practices, and a comprehensive review and appeal process. The Ministry of Forests and Range is primarily responsible for administration of the FRPA, with input being provided from the: Ministry of Environment (water quality, wildlife, and wildlife habitat), Ministry of Tourism, Culture and the Arts (trails, recreation sites and interpretive forests), the Ministry of Agriculture and Lands (Higher-level plans, non-native, aquaculture and invasive pests), and the Ministry of Energy, Mines and Petroleum Resources (mineral tenures, oil and gas exploration, and development). There are also audit and special investigation provisions, which may be carried out by the Forest Practices Board. Forest revenue audit provisions are found under Part 11.1 of the *Forest Act*.

The FRPA outlines mandatory requirements for all forest activities on Crown land and on private land associated with Crown tenures (Tree Farm Licences/Woodlots). Administrative remedies act as deterrents to ensure compliance with the legal requirements of the FRPA and to ensure that the Crown is compensated. Contraventions identified as offences under the *Offence Act* could lead to court ordered fines and/or imprisonment. Compliance and enforcement provisions are found in **Part 6** of the FRPA and **Part 3** and **4** of the *Wildfire Act*.

In the event of a contravention of the Acts, regulations or standards, specified or delegated employees of the ministries can impose penalties as an alternative to court ordered fines. These “Administrative Penalties” are listed in the Regulations: Administrative Orders and Remedies Regulation (BC Reg. 101/2005), or under **Part 6** of the Wildfire Regulation (BC Reg. 38/2005). Note that under FRPA **Part 6**, “**the Acts**” means one or more of this Act (FRPA), the regulations or the standards, the *Forest Act*, the *Range Act* or a regulation made under the *Forest Act* or the *Range Act*.

Remediation work to repair environmental damage can be ordered by a delegated decision maker. If the remediation order is not complied with the government may complete the work and bill the offender for costs of carrying out the work. Officials may issue a stop work order instructing a person to cease an activity that is believed to be in contravention or issue violation or warning tickets for contraventions that are identified as offences. These tickets are similar to a ticket a person may receive from a Royal Canadian Mounted Police officer for speeding.

Part 6 describes the inspection and investigative powers that ministry employees have with respect to entry, search and seizure; and a person's right to an administrative review and appeal of specified determinations made by a ministry official. The Act specifies what powers are given to the court to convict and impose penalties, where a conviction of an offence can result in monetary fines up to \$1,000,000 and/or imprisonment for up to three (3) years.

The *Forest Act* (FA) and *Range Act* (RA) also have sections that allow the suspension and cancellation of tenure and reductions to allowable annual cut, or to animal unit months, where there has been a breach of the statutes. Licensees engaged within the government's BC Timber Sales may be disqualified for any failure to abide by the conditions of a licence agreement.

On March 31, 2005, the *Wildfire Act* (WA) came into effect, and governs fire management and practices on both Crown and private land. The WA also brought in a significant change to how the Crown may determine damages to forest or range resources and subsequent compensation through administrative remedies or prosecution.

10.1.1 Current Statutory Framework

The following guide is provided for information purposes only. While every effort has been made to ensure accuracy, this guide is only intended to provide an overview. It should not be interpreted as ministry policy or legal advice, and it should not be used in place of the *Forest and Range Practices Act*, the *Wildfire Act*, the *Forest Practices Code of British Columbia Act*, the *Forest Act*, the *Range Act*, or their associated regulations and standards.

In general, the four primary Acts (FRPA, FA, RA, and WA), along with the transitional requirements (Code) all provide for inspection of activities and practices for determining compliance with operational plans and other requirements of the Acts and regulations. The Acts enable government to conduct inspections and to seek compliance with the statutes through either administrative measures or through prosecutorial measures.

In the following sections these definitions apply:

- **Minister** includes the minister's delegate;
- **official** under **section 1 of the FRPA**
 - (a) ministry of the minister responsible for the administration of this Act, which employee is designated by name or title to be an official by that minister for the purpose of that provision,
 - (b) ministry of the minister responsible for the *Wildlife Act*, which employee is designated by name or title to be an official by that minister for the purpose of that provision, or
 - (c) Oil and Gas Commission who is designated by name or title to be an official by the minister responsible for the *Oil and Gas Commission Act* for the purpose of that provision;
- Under **section 1 of the WA:**
 - (a) employed in the ministry of the minister responsible for the administration of this Act, who is designated by name or title to be an official by the minister for the purpose of a provision of this Act or of the regulations that is specified in the designation,

- (b) employed in the Oil and Gas Commission and designated, by the minister responsible for the *Oil and Gas Commission Act*, by name or title to be an official for the purpose of a provision of this Act or of the regulations that is specified in the designation, or
- (c) who is a conservation officer designated by the minister responsible for the *Environmental Management Act*, by name or title to be an official for the purpose of a provision of this Act or of the regulations that is specified in the designation;
- **forest officer** means a person employed in the ministry of the minister responsible for the administration of this Act (*Forest Act*) who is designated by name or title to be a forest officer by the minister, the chief forester, a regional manager or a timber sales manager.
- **forest revenue official** means a person who is designated as a forest revenue official under section 142.11 (2) and includes, other than in section 142.11, the commissioner.

Clarification regarding Compliance and Enforcement staff and the *Foresters Act*

This letter points to the requirements of C&E staff with regards to the practice of professional forestry.

April 1, 2005

Mr. Jerome Marburg, LL.B., MBA
 Association of BC Forest Professionals
 1030 – 1188 West Georgia Street
 Vancouver, British Columbia
 V6E 4A2

Dear Jerome Marburg:

Re: Compliance and Enforcement Staff and the *Foresters Act*

This will confirm the agreement we reached during our recent discussions regarding the application of the *Foresters Act* to the compliance and enforcement function within the Ministry of Forests:

Compliance and enforcement officers do not engage in the practice of professional forestry by the mere fact that they are performing compliance and enforcement functions. If compliance and enforcement officers are making decisions or determinations that involve synthesis or analysis of information/data (beyond the measurement of objective physical states of being) and that synthesis or analysis calls on the expertise of a registered member, those decisions or determinations fall within the statutory definition of the practice of professional forestry. The compliance and enforcement officer must then:

- Be a registered member;
- Rely on advice of a registered member for that decision or determination; or
- Be supervised by a registered member in making those decisions or determinations.

Prosecutorial discretion – the decision whether or not to issue a citation, charge, order, etc based on measurement of objective physical states of being or decisions or determinations based on synthesis or analysis - is an independent decision within the purview of the government/enforcement agency alone and not within the sphere of interest of the ABCFP.

I trust the foregoing accurately represents our agreement. If so, please signify your agreement by signing both copies of this letter in the space indicated below and by returning one executed copy to me for our files.

Jerome, thanks for your help in coming to a resolution on this.

Yours truly,
Dan Graham
Director
Compliance and Enforcement Branch

I confirm that this letter accurately reflects the agreements the parties have reached on the captioned matter:

Jerome Marburg LL.B., MBA
General Counsel and Registrar
Association of BC Forest Professionals
(the original copy is signed)

Date

10.1.1.1 Inspecting, Stopping and Seizing

The following is a synopsis of inspection, stopping and seizing provisions under **Part 6 of the FRPA**. Under **Part 3 of the WA** or under **Part 11.1 of the *Forest Act*** there are similar provisions, except for those related to seizure or forfeiture.

Entry on land or premises and Inspection

For any purpose related to the administration or enforcement of the Acts or an agreement under the *Forest Act* or the *Range Act*, or related to the verification of a statement made in application for an agreement under the *Forest Act* or the *Range Act*, an official may enter, at any reasonable time, on land or premises, other than a dwelling house or a room being used as a dwelling, if the official has reasonable grounds to believe that the land or premises:

- has timber located on it that is required to be scaled or marked with a timber mark under the *Forest Act*;
- is the site of a forest or range practice that is regulated under the Acts or is carried on by a person who is required under the Acts to hold a licence or permit to carry out that practice,
- is the site of trading in botanical forest products, or
- is the site of an activity that under the Acts requires a licence, permit, plan or an approval.

At any reasonable time an official may enter on land that is in or within 1 km of a forest (identified as forest land or grass land within the context of WA) to inspect for fire hazards if the official has reasonable grounds to believe that an activity is being carried out or a condition exists on the land that might cause or produce a fire hazard.

A forest revenue official entry on land or premises is regulated under **section 142.2 (1)** of the *Forest Act*:

- Subject to **subsection (2)**, for the purpose of ensuring compliance with the provisions of this Act, the regulations or an agreement that relate to the harvesting of Crown timber, stumpage or the payment of stumpage, a forest revenue official may enter, at any reasonable time, on any land or premises and conduct an inspection or audit referred to in **section 142.21**.

During an inspection an official may inspect anything that is reasonably related to the purpose of the inspection and request production of required records.

Inspection of vehicle or vessel transporting forest products

For any purpose related to the administration or enforcement of the Acts, an official may stop and inspect a vehicle or vessel the official has reasonable grounds to believe that: the vehicle or vessel contains or is transporting timber, special forest products, seed, botanical forest products or hay; or a person is contravening or has contravened one or more provisions of the Acts.

Production and Retention of Records

The minister may, by written order, require the holder of an agreement under the *Forest Act* or *Range Act* to produce records that are related to an activity that requires a licence, permit, plan or approval under the Acts.

At any reasonable time, an official may enter the business premises where these records are kept in order to inspect or copy these records required be kept under the Acts.

Retention of records related to revenue is regulated under **section 142.3 (1)** of the *Forest Act*:

- Subject to this section, a person who is required to keep records under this Act must keep each record in a prescribed category of records for a period of six (6) years after the date the record was created.

Obligation of an official

An official must be prepared to provide proof of identity to the person who has apparent custody of any goods being seized or any property or activity being inspected.

Obligation of person inspected

A person being inspected or being requested to stop a vehicle or vessel must stop, provide proof of identity or provide records as requested and must not obstruct an official in the lawful exercise of an inspection. Also important to note the changes to the *Motor Vehicle Act*, with a new requirement requiring drivers of vehicles to slow down, move into adjacent lane when passing a stopped emergency vehicle with its lights flashing, including a forest service vehicle used by officials who are also Special Provincial Constables.

Warrant to search and seize evidence

A search warrant may be issued to an official to enter premises and search for and seize evidence of a contravention of the Acts. The provisions of the *Offence Act* apply.

Peace officers may accompany

An official may be accompanied by a peace officer when exercising powers or duties under Part 6.

Stop Work Order

If an official has reasonable grounds to believe that a person is contravening a provision of the Acts, the official may order that the contravention stop, or stop to the extent specified by the order, until the person has a required licence, permit, plan, approval, variance, exemption or other authorization. The stop work order must be in writing, and must include the nature and extent to which the contravention or activity must cease, the date by which it must cease and inform the person of their right to a review or appeal, and the address to which a request for a review may be made.

The issuing official or the minister may rescind the order if they determine that there were insufficient grounds for issuing the order, or rescind the order in prescribed circumstances.

A stop work order is not stayed when a person exercises their right to a review or an appeal of the stop work order.

Seizure of timber, chattels, hay, livestock, etc.

An official may seize, based on reasonable grounds, the following:

- Crown timber cut or removed without authority;
- forest products on which the government has a lien;
- timber, including special forest products,
 - i) not correctly timber marked (**Sec. 84/Forest Act**),
 - ii) which has not been scaled (**Sec. 94/Forest Act**) and is being or has been
 - A) transported to an unauthorized scaling site, or
 - B) used in manufacturing,
 - iii) is being transported outside BC in contravention of **Sec. 127/Forest Act**,
 - iv) is being or has been transported in contravention of any regulation under the *Forest Act*,
 - v) is mixed with timber noted above;
- any timber product that has been manufactured from timber that has not been scaled under **Sec. 94/Forest Act**;
- seed that the official has reasonable grounds to believe has been collected contrary to the prescribed requirements
- hay that has been cut, removed or damaged contrary to **Sec. 50(2)/FRPA**;
- hay that has been stored contrary to **Sec. 51/FRPA**;
- botanical forest products bought or traded contrary to **Sec. 104/FPC**;
- vehicle or vessel transporting seized product - vehicle or vessel must be released from seizure once product is delivered to specific location.

The minister may sell at a public auction or by private sale items seized. The proceeds from the sale must be paid to the consolidated revenue fund. Under certain conditions, the excess money realized from sales must be paid to the person who possessed the property when it was seized. (**Section 67** should be studied for additional requirements for seizure and sale.)

Forfeiture of livestock

If an official has reasonable grounds to believe that a person has contravened **section 50 (1)**, the official, or person authorized by the official, may do one or more of the following:

- drive the livestock from Crown range;
- round up, seize, tranquillize and hold livestock; and
- destroy the livestock under prescribed circumstances.

The minister may sell at a public auction or by private sale any livestock held. The proceeds from the sale must be paid to the consolidated revenue fund. Under certain conditions, the excess money realized from sales must be paid to the person who possessed the property when it was held. (**Section 68** should be studied for additional requirements for seizure and sale of livestock.)

Common provisions for seizure and forfeiture

The minister may release things seized under **section 67 or 68** and return or deliver them at the direction of that person.

On a sale under **section 67 or 68** the purchaser acquires absolute ownership free of encumbrances.

No Interference with notice

Without the permission of the minister a person must not, remove, alter, destroy or deface a notice posted by the government for the purposes of notifying the public of a seizure under the **FRPA section 67 or 68**.

10.1.1.2 Administrative Remedies

The following is primarily a synopsis of the administrative remedies for non-compliance of the FRPA (**sections 71 to 85**). Under the FRPA “**the Acts**” means one or more of this Act (FRPA), the regulations or the standards, the *Forest Act*, the *Range Act* or a regulation made under the *Forest Act* or the *Range Act*. Under the *Wildfire Act* (WA) administrative penalties are dealt with in **Part 3 of that Act**. The notable change in the process for determining penalties as a result of a fire will be discussed below under the heading of administrative penalties and cost recovery. The outcomes from forest revenue audits are dealt with under **Part 11.1, Division 3** of the *Forest Act*.

Penalties

Section 71 of FRPA allows the minister, or delegated decision maker (DDM), after giving a person who is alleged to have contravened a provision of the Acts an opportunity to be heard, may determine whether the person has contravened the provision. If the DDM determines that the person has contravened the provision, he or she may levy an administrative penalty against the person in an amount that does not exceed a prescribed amount.

Prior to levying a penalty under **section 71** the minister (or DDM) must consider the following:

- any previous contraventions of a similar nature;
- the gravity and magnitude of the contravention;
- if the violation was repeated or continuous;
- if the contravention was deliberate;
- any economic benefit the person derived from the contravention;
- a person's cooperativeness and efforts to correct the contravention; and,
- other considerations that the Lieutenant Governor in council may prescribe.

The minister (or DDM) who levies a penalty(s) under FRPA must give notice of determination to the person setting out the following:

- nature of the contravention;
- the amount of the penalty;
- the date by which the penalty must be paid; and
- the person's right to a review and appeal including the title and address of the review official to whom a request for a review may be made.

For the purpose of **section 71**, the Lieutenant Governor in Council may prescribe penalties that vary according to:

- area of land;
- volume of timber;
- number of trees;
- amount of forage destroyed;
- amount of hay; or
- number of livestock affected by the contravention.

Administrative penalties and cost recovery (WA)

Under the *Wildfire Act*, if the minister determines by order that the person has contravened a provision, the minister by order:

- (a) may levy an administrative penalty against the person in an amount that does not exceed a prescribed amount;
- (b) may determine the amount of the government's costs of fire control under **section 9** for a fire that resulted, directly or indirectly, from the contravention, calculated in the prescribed manner;
- (c) may determine the amount that is equal to the dollar value of any
 - (i) Crown timber,
 - (ii) other forest land resources,
 - (iii) grass land resources, and
 - (iv) other property,of the government damaged or destroyed as a result, directly or indirectly, of the contravention, calculated in the prescribed manner; and
- (d) except in prescribed circumstances, may require the person to pay the amounts determined under paragraphs (b) and (c), subject to the prescribed limits, if any.

Administrative penalties related to forest revenue (WA)

Under **Part 11.1** of the *Forest Act*, if the commissioner is satisfied that an assessment against a person under **section 142.51 (4)** is based on the person's willful:

- (a) contravention of this Act, the regulations or an agreement entered into under this Act, or
- (b) provision of a false or deceptive statement,

the commissioner may assess against the person, in addition to any other penalty, a penalty that does not exceed 100% of the assessment under **section 142.51 (4)**.

- (2) If the commissioner is satisfied that an assessment against a person under **section 142.51 (4)** is based on the person's contravention of this Act, the regulations or an agreement entered into under this Act, the commissioner may assess against the person, in addition to any other penalty, a penalty that does not exceed 25% of the assessment under **section 142.51 (4)**.
- (3) If the commissioner assesses a penalty under subsection (1) against a person, the commissioner may not impose a penalty under subsection (2) with respect to the same assessment against that person.

Penalty revenue to be paid to special account (FRPA)

All revenues collected from administrative remedies are deposited into the Environmental Remediation Sub-account of the Forest Stand Management Fund special account established by the *Special Accounts Appropriation and Control Act*.

Remediation Orders

If the minister determines that a person has contravened the Acts, regulations, the standards or an operational plan he/she in a notice of determination may order that person to do remediation work to remedy the contravention.

Remediation orders may take the form of carrying out a standard forest practice, which the person has not carried out, or to repair damage to the land caused by the contravention.

In making a remediation order (under the **FRPA sec. 74** or the **WA sec. 28**) the minister (or DDM) must give written notice to the holder or person, specifying all of the following matters:

- the provision contravened;
- the nature of work to be done to remedy the contravention;
- the date by which work must be completed;
- the person's right to review and appeal, including where and to whom; and
- the right of government to complete the work and levy a penalty if the person fails to comply with the remediation order.

Failure to comply with a remediation order may result in restrictions or prohibitions, forfeiture of any securities and the government completing the work. A penalty may then be levied in an amount the official determines to be not more than twice the sum of expenses incurred by the government to complete the work.

Limitation Period

The period during which an administrative penalty may be levied under **section 71 (2) or 74 (3) (d)** or an order may be made under **section 74 (1) of the FRPA** is three (3) years beginning on the date on which the facts that led to the determination that the contravention occurred first came to the knowledge of an official. Under the WA the period during which an order may be made under **section 26** determining that a contravention occurred is two (2) years beginning on the date on which the facts that led to the order first came to the knowledge of an official. Limitation periods specific to forest revenue audits are detailed under **section 142.6 , Part 11.1** of the *Forest Act*.

Defences in relation to administrative proceedings

For the purposes of a determination by the minister under **section 71 or 74 of the FRPA**, no person may be found to have contravened a provision of the Acts, the regulations, the standards or an operational plan if the person establishes that:

- (a) the person exercised due diligence to prevent the contravention;
- (b) the person reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision; or
- (c) the person's actions relevant to the provision were the result of an officially induced error.

10.1.1.3 Offences and Court Orders

Offences are specifically outlined in the FRPA and WA. Offences are prosecuted by violation tickets or in court, rather than an administrative penalty process. You can determine if there is an offence for a particular contravention by the words that precede the section. Offences are always preceded with the words:

- “A person commits an offence”; or
- “A person who contravenes section commits an offence”; or
- “It is an offence to”.

Regulation offences are typically listed in one the last sections of the regulation, detailing the maximum fine and imprisonment term.

The following is a synopsis of prosecutorial provisions under **Part 6 of the FRPA (sections 86 to 103)**.

Limitation Period

The time limit for charging an offence under the FRPA is three (3) years after the date on which the facts that led to the laying of the information first came to the knowledge of an official. Under the WA the time limit for laying any information respecting an offence under this Act or the regulations is two (2) years after the facts on which the information is based first came to the knowledge of an official.

Any document, which has been issued by any of the persons mentioned above, which certifies the day on which they became aware of the facts, is admissible without proof.

Offence Fines

There are four categories of fines related to specific referenced sections which when contravened, make a person liable for the following fines not to exceed:

- \$1,000,000, or to imprisonment for not more than three (3) years, or to both;
- \$500,000, or to imprisonment for not more than two (2) years, or to both;
- \$100,000, or to imprisonment for not more than one (1) year, or to both; or
- \$5,000, or to imprisonment for not more than six (6) months, or to both.

Maximum fines are double on a second or subsequent conviction for the same offence.

The Lieutenant Governor in Council may, by regulation, provide that a contravention of a regulation or standard is an offence and a person if convicted is subject to a fine or term of imprisonment.

Remedies preserved

A proceeding, conviction, or penalty for an offence under this Act does not relieve a person from other liability.

Limitation on proceedings

The government may not proceed under this Act with both an offence and an administrative penalty for the same contravention. However, this does not derogate from the government's ability to make an order respecting compensation or remediation.

Order for Compliance

In the event that a person is not complying with an order or determination made by a ministry official, the Minister may apply to the Supreme Court for an order that:

- directs the person to comply with the order or restraining the person from violating the order; or
- directs the directors and officers of the person to cause the person to comply with or to cease violating the order.

Court order to comply

If a person is convicted of an offence under a provision of this Act or of the regulations, then, in addition to any punishment the court may impose, the court may order the person to comply with the provision.

Restitution

If a person is convicted of an offence under this Act or the regulations, then, in addition to any other penalty, the court may order the person to pay compensation or make restitution.

Continuing offence

If a contravention of a specified section continues for more than one day, the offender is liable to a separate penalty, without notice and without a separate count being laid, for each day that the contravention occurs.

Prosecution for unauthorized timber cutting

Prosecution for unauthorized cutting or storage of hay

Prosecution for unauthorized trail or recreational facility construction

For the sections above it is not a defence to a prosecution under a specified section that the person charged with the offence had the right to conduct an activity or practice on private land (or Crown land, e.g., Park) adjacent to Crown land and did not know the boundaries of the private land (or the boundaries of that parcel of Crown land).

Interference, non-compliance and misleading

A person who intentionally interferes with, fails to comply with a lawful requirement or intentionally makes a false statement to or misleads another person who is employed under the *Public Service Act*, a member of the board, commission or council may be found to be in contravention of this section. If the contravention is in relation to the approval of a plan or permit, the plan or permit may be suspended or canceled by the minister.

Court orders

Upon conviction of an offence under the Act or regulations, the court may do one or more of the following in addition to any other punishment:

- prohibit a person's actions to ensure they are not continuing or repeating the offence;
- direct a person to take action to remedy or avoid harm to the environment resulting from their act or omission that constituted the offence;
- direct a person to publish the facts related to the conviction;
- direct a person to compensate the Minister for all or part of the costs of remedial or preventive acts taken as a result of the act or omission that constituted the offence;
- direct a person to pay court costs; or
- direct a person to pay investigation costs.

Penalty for monetary benefit

The court may increase a fine by an amount equal to the court's estimation of the amount of monetary benefit acquired by the person because of the offence.

Employer Liability

In a prosecution for an offence under this Act or the regulations, it is sufficient proof of the offence to establish that it was committed by the defendant's contractor, employee or agent.

Defences to prosecution

Due diligence, mistake of fact and officially induced error are defences to a prosecution under this Act.

Offence by directors and officers

A director or officer of a corporation who authorized, permitted, or acquiesced in the offence also commits the offence.

10.1.2 Looking Ahead

Government is undertaking an initiative to develop a cross-organizational approach for greater collaboration and coordination with compliance and enforcement activities for a greater number of statutes. The initiative, called the "Resource Management Coordination Project" (RMCP), currently involves compliance and enforcement activities of statutes administered by the Ministries of Agriculture and Lands; Environment; Energy, Mines and Petroleum Resources; Forests and Range; Tourism, Culture and the Arts; and the Integrated Land Management Bureau.

10.1.3 References

An excellent source of current information can be found at the Ministry of Forests and Range, Compliance and Enforcement Branch's website: www.for.gov.bc.ca/hen/

The site will have direct links to legislation and other information relating to the Compliance and Enforcement program of the Ministry of Forests and Range. Please note that the information and links that are provided on this website do not constitute legal advice, and that the advice contained on these web sites is provided solely for consideration and informational purposes only.

10.1.4 Apply the Knowledge

1. Revenue information submitted to gov't by a licensee has been determined by a delegated decision maker to be inaccurate or is a material misrepresentation. Which sections of the *Forest Act* and FRPA may be involved? How may this involve, or not involve, the practice of professional forestry?
2. In conducting or carrying out a forest practice could a person who has allegedly committed a serious offence face prosecution under both the FRPA and *Criminal Code* of Canada?
3. As a delegated decision maker (District Manager) under FRPA you are about to decide how much of a penalty to levy in respect to the company's contravention of a forest practice requirement under the Forest Planning and Practices Regulation. What factors would you consider? How would you determine the penalty?
4. You are a person carrying out a prescribed burn on private land (or pile burning of multiple piles) and the fire escapes onto Crown land causing 50 hectares of damage to Crown forest and grass land resources. Going into an opportunity to be heard (OTBH) what defences, if any, are available to you? Could you be levied a monetary penalty, and could you be billed for damaging or destroying non-forest resources in addition to a penalty?
5. Is a forest revenue official authorized to inspect a licensee's revenue records for the previous eight (8) year period? Why or why not?

10.2 Administrative Reviews and Appeals

In the *Forest and Range Practices Act* (FRPA), *Wildfire Act*, *Forest Act*, and *Range Act*, as with other statutory rights of appeal, only those matters that are expressly appealable can be dealt with via an administrative appeal route. Those matters that are administratively appealable are set out in **sections 78 to 85** in the FRPA, **sections 143 to 150** of the *Forest Act*, **sections 69 to 72** of the *Range Act* and **sections 35 to 41** of the *Wildfire Act*. Where there are statutory decisions, which are not expressly appealable, a party may still seek a re-examination of the decision-making process by the courts through judicial review. A judicial review is not the same as a statutory appeal to a tribunal, with both the procedures and remedies differing to some extent.

As with most procedures arising from statute, there are specific steps to follow. Failure to abide by the steps set out in the statute may result in the request for review or appeal being rejected. The request for a review must be sent to the correct person, within the time limit, setting out (with some degree of specificity) the grounds for the complaint, and in the form required by the regulations specific to the Acts.

This chapter will deal primarily with the appeal provisions specified under FRPA; however some of the issues discussed are transferable between the Acts as there is some commonality between the appeal provisions. However, there are differences in the review provisions provided by the Acts, for example, a review must be conducted prior to an appeal being granted under the *Forest Act*.

10.2.1 Review of Determinations

Under the FRPA or WA a determination only becomes effective after the person who is the subject of the determination has no further right of review or appeal. Some determinations, may, by order of the minister, not be stayed, if such a stay would be contrary to the public interest. In addition, Stop Work Orders are not stayed pending a review or an appeal. This effectively ensures that an order remains in effect or valid while the review and appeal process is underway.

This is in contrast with the *Forest Act* or *Range Act*, where a review or appeal does not automatically stay the determination. Under the *Forest Act*, unless the minister orders otherwise, a review of a determination, order or decision does not operate as a stay or suspend the operation of the determination, order or decision. Under the *Range Act*, unless the minister orders otherwise, a review or an appeal under this Act does not operate as a stay or suspend the operation of the order, decision or amendments being reviewed or appealed.

Correction or clarification of a determination

Within 15 days after a determination is made under specified sections of the Acts, the person who made the determination may correct a typographical, an arithmetical or another similar error in the determination, and correct an obvious error or omission in the determination.

Review of a determination

A person who is subject to a determination under specified sections of the Act may request a review in writing to the review official named in the determination notice. The person who made the determination, or another person employed in the ministry and designated in writing by the minister must review the determination, but only if satisfied that there is evidence that was not available at the time of the original determination. The request for a review must be received no later than three weeks after the date of the notice of determination. The minister may extend this period.

Forest Practices Board may require review of determinations

If the board first receives the consent of the person who is the subject of a determination under **section 16, 37, 71 or 74 of the FRPA** or **section 37 of the WA**, the board may require a review of the determination by the person who made the determination, or another person employed in the ministry and designated in writing by the minister.

To obtain a review of a determination, the board must require the review not later than three (3) weeks after the date the notice of determination was given to the person.

Further details regarding the Forest Practices Board's authority to conduct compliance audits, enforcement audits and special investigations can be found in the next part of this chapter.

The minister may extend the time limit for requiring a review under this section before or after its expiry. The person conducting the review has the same discretion to make a decision that the original decision maker had at the time of the determination under the review.

10.2.2 Appeal of a Determination

The person who is the subject of a determination referred to in **section 80 of the FRPA**, or **section 37 of the WA**, other than a determination made under **section 77.1 of the FRPA**, may appeal to the Forest Appeals Commission either of the following, but not both: the determination; or a decision made after completion of a review of the determination.

Appeal to the commission by the Forest Practices Board (Board)

The Board may appeal to the commission either of the following, but not both: a determination referred to in **section 81 under FRPA** or to an order referred to in **section 37 of WA**; or a decision made after completion of a review of the determination or order.

The Board may apply to the commission for an order under **section 84 (2) of FRPA** if the minister authorized under **section 71 or 74** of this Act to make a determination has not done so, and a prescribed period has elapsed after the facts relevant to the determination first came to the knowledge of the official or the minister.

Sections 131 to 141 of the *Forest Practices Code of British Columbia Act* apply to an appeal.

Appeal (Code Section 131)

An appeal must be requested, in writing, to the Forest Appeals Commission, no later than three (3) weeks after the review decision has been received. The right to appeal is lost after that period expires unless extended by the commission.

Upon receipt of the notice to appeal, the commission must give a copy of the notice to the ministers, who represent government, the Forest Practices Board and the person who is the subject of the determination.

The commission may permit anyone who they feel may be affected by the appeal to be party to the appeal, and may invite or permit a person to take part in a hearing as an intervenor.

The commission must promptly give the parties an appeal. Parties may be represented by counsel, present evidence, ask questions in an oral hearing and make submissions as to facts, law and jurisdiction.

Order for written submissions (Code Section 132)

The commission or a member of it may order the parties to deliver written submissions. If the party that initiated the appeal fails to deliver a written submission ordered within the time specified in the order, the commission may dismiss the appeal.

The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim Orders (Code Section 133)

The commission or a member of it may make an interim order in an appeal.

Open to Public (Code Section 134)

Hearings of the commission must be open to the public.

Witness (Code Section 135)

The Appeals Commission has the same power as the Supreme Court to summon witnesses, to compel these witnesses to give evidence and to compel these witnesses to produce records.

Powers of the commission (Code Section 138)

The commission may confirm, vary or rescind the original determination, make a determination that the person whose decision was appealed could have made or refer the matter back to the original parties.

Decision of commission (Code Section 139)

A final decision must be made available to the ministers, the parties and any intervenor.

Appeal to court (Code Section 141)

The Minister or any other party to the appeal can, within three weeks of the commission's decision, appeal to the Supreme Court on a question of law or jurisdiction.

Powers of the commission

On an appeal by a person or the board under **section 84 of the FRPA** or **section 41 of the WA**, the commission may consider the findings of the person who made the determination or decision, and either confirm, vary or rescind the determination or decision, or with or without directions, refer the matter back to the person who made the determination or decision, for reconsideration.

Requirement to publish

The minister must publish an annual report on enforcement activities. In addition, the minister must keep and make available to the public a performance record for holders of agreements under the *Forest Act* and the *Range Act*.

10.2.3 Appeals of Assessments

In part 142.9 (1) of the *Forest Act* Appeal to revenue minister

If a person disputes:

- (1) (a) an assessment made under **section 142.51 (4) or (5)**, or
(b) a penalty assessed under **section 142.61 (1) or (2)**,

the person or the person's agent may appeal to the revenue minister in accordance with this section.

- (2) An appeal under this section may be commenced by serving a notice of appeal on the revenue minister within 90 days of the date that the notice of assessment referred to in **section 142.71** is served on the appellant.
- (3) The notice of appeal must
 - (a) be in writing,
 - (b) be addressed to the revenue minister in the City of Victoria, and
 - (c) set out clearly the reasons for the appeal and all the facts relevant to it.
- (4) On receiving the notice of appeal, the revenue minister must
 - (a) consider the matter,
 - (b) affirm, amend, change or vary the assessment or penalty, and
 - (c) promptly notify the appellant in writing of the result of the appeal.

Part 142.91 of the *Forest Act* **Appeal to court states:**

- (1) A decision of the revenue minister under **section 142.9** may be appealed to the Supreme Court by way of an originating application.
- (2) The Rules of Court relating to originating applications apply to appeals under this section, but Rule 49 does not apply.
- (3) A petition commencing an appeal under this section must be filed in the court registry within 90 days of the date of the revenue minister's notification of the result of the appeal.
- (4) Within 14 days of the filing of a petition under subsection (3), the petition must be served on the government in accordance with section 8 of the *Crown Proceeding Act* and in the petition the government must be designated "Her Majesty the Queen in right of the Province of British Columbia".
- (5) An appeal under this section is a new hearing that is not limited to the evidence and issues that were before the revenue minister.
- (6) The Supreme Court may
 - (a) dismiss the appeal,
 - (b) allow the appeal,
 - (c) vary the decision from which the appeal is made, or
 - (d) refer the decision back to the commissioner for reconsideration.
- (7) An appeal lies from a decision of the Supreme Court to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 142.92 of the *Forest Act* **Affect of pending appeals states:**

Neither the serving of a notice of appeal by a person nor a delay in the hearing of the appeal

- (a) affects the date of payment, the interest or penalties or the liability for payment in respect of the assessment that is the subject matter of the appeal, or
- (b) delays collection of the assessment.

10.2.4 References

- *Forest and Range Practices Act*: www.for.gov.bc.ca/tasb/legsregs/frpa/frpa/frpatoc.htm
- FRPA Regulations: www.for.gov.bc.ca/tasb/legsregs/frpa/frparegs/frparegs.htm
- *Forest Act*: www.for.gov.bc.ca/tasb/legsregs/forest/foract/contfa.htm
- *Forest Act* Regulations: www.for.gov.bc.ca/tasb/legsregs/forest/faregs/faregs.htm
- *Range Act*: www.for.gov.bc.ca/tasb/legsregs/range/rangeact/range.htm
- Range Regulation: www.for.gov.bc.ca/tasb/legsregs/range/rangeregs/ranger.htm
- *Wildfire Act*: www.for.gov.bc.ca/tasb/legsregs/wildfire/wildfireact/wildfire.htm
- *Forest Practices Code of BC Act* Regulations:
www.for.gov.bc.ca/tasb/legsregs/archive/fpc/fpcaregs/fpcaregs.htm
- *Forest Practices Code of BC Act* Guidebooks:
www.for.gov.bc.ca/tasb/legsregs/fpc/FPCGUIDE/Guidetoc.htm
- Forest Appeals Commission: www.fac.gov.bc.ca/

10.2.5 Apply the Knowledge

Topics for potential discussion:

1. You are a professional, and owner operator of a logging company that has just been inspected by an forest official who has just handed you a written stop work order (SWO) for operating contrary to a forest practice requirement under the Forest Planning and Practices Regulation. Should you abide by it knowing that you are going to submit an appeal to it this afternoon? What would the consequences be if you did or did not abide by the SWO?
2. You have received a determination under **section 71 of the FRPA** and you notice some errors in the notice. Is it possible to discuss these errors with the original delegated decision maker (DDM) and have these errors corrected? Can the DDM correct these errors without having another hearing? What is the limitation on correcting errors?
3. A company receives a notice of stumpage re-appraisal and a notice of determination after a DDM had determined that the company had contravened section 105.1 of the *Forest Act*, but received no administrative penalty under **FRPA section 71**. Two weeks after the company had received this notice they receive a notice of appeal from the Forest Appeals Commission stating that the Forest Practices Board was appealing the DDM's previous determination and penalty. How could this chain of events have come about?
4. You are a (licensee or Timber Sales Manager) appealing a determination made under **FRPA sec. 71** for failing to deactivate a road. Under what circumstances could this occur?

10.3 Forest Practices Board

10.3.1 Policy Objective

The Forest Practices Board is an independent public agency established under the *Forest Practices Code of British Columbia Act* (the Code), whose role continues under the *Forest and Range Practices Act* (FRPA) and the *Wildfire Act* (WA). The Board is the independent watchdog for sound forest and range practices in British Columbia.

The Board provides British Columbians with objective and independent assessments of the state of forest and range planning and practices in the province, compliance with and enforcement of FRPA and the WA, and the achievement of their intent. The Board makes recommendations that contribute to sound forest and range practices and stewardship of all publicly owned forest resources.

10.3.2 Current Policy

The Board's main roles are auditing forest practices, undertaking investigations in response to public complaints, undertaking special investigations of FRPA-related forestry and range issues, participating in appeals of administrative decisions, and reporting to the public and government about Board activities, findings and recommendations.

The Board helps apply the FRPA to improve forest and range practices in the province. The Board's independent oversight is a critical element in achieving public credibility for BC forest and range practices, both domestically and internationally. The Board serves BC as an independent and therefore a credible voice on the state of such practices in the province.

The Board fills three needs:

1. independent auditing of compliance with, and enforcement of, FRPA and WA (an **Auditor General** of the forest);
2. independent investigation of public complaints about compliance with and enforcement of FRPA and WA (an **Ombudsman** of the forest); and
3. in the absence of the general public's right to appeal decisions made under FRPA, an avenue for the public to request administrative appeals.

There is not another similar body in Canada, and many of the Board's responsibilities are unique in the world.

The Board's mandate and authority are set out in **Part 8 of FRPA**, **Part 6 of WA** and the Forest Practices Board Regulation. The Board provides reports to the public and to the ministers of the following ministries: the Ministry of Forests and Range, the Ministry of Environment, the Ministry of Agriculture and Lands and, where applicable, the Ministry of Energy, Mines and Petroleum Resources and the Ministry of Tourism, Culture and the Arts. Board members are appointed for two or three year terms by Order-in-Council. However, the Board is not regulated or directed by the ministers – it is independent.

The legislation requires the Board to:

- undertake periodic independent audits (**sec. 122 of FRPA, sec. 68(1) of WA**);
- deal with complaints from the public (**sec. 123 of FRPA, sec. 68(3) of WA**); and
- report findings, with reasons, of investigations and audits (**sec. 131 of FRPA, sec. 68(3) of WA**).

In order to achieve its broader roles and responsibilities, the Board may:

- conduct special investigations (**sec. 122 of FRPA, sec. 68 of WA**);
- appeal determinations to the Forest Appeals Commission (**sec. 83 of FRPA, sec. 40 of WA**);
- make recommendations following an investigation or audit (**sec. 131 of FRPA, sec. 68 of WA**);
- follow up those recommendations (**sec. 132 of FRPA, sec. 68 of WA**); and
- make special reports on matters relating generally to the Board's duties (**sec. 135 of FRPA, sec. 68 of WA**).

The Board can investigate or audit “parties” (i.e. government and licence holders) and, in situations where a licensee is claiming a defense available to it under FRPA (such as the “due diligence” defense), “persons” (i.e. an individual working for government or licence holders) (**sec. 122 of FRPA, sec. 68 of WA**).

The Board only has authority to address issues dealing with operational planning, forest and range practices, protection of forest resources and authority of government for fire prevention and control (**Parts 2 to 5 of FRPA, Parts 1 and 2 of WA**); and the appropriateness of government enforcement (**Part 6 of FRPA, and Part 3 of WA**).

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

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

The Board does not have the power to enforce provisions of the FRPA or WA or to levy penalties. These are solely the responsibility of the ministries responsible for FRPA and WA enforcement. Instead, the Board may make recommendations to licensees and government, which may address ways to improve specific forest practices or may propose changes to legislation.

The Board can sit in panels of one or more Board members. A panel of the Board has the same powers as the full Board, and may consider an audit or complaint investigation, produce a report on the findings and make recommendations.

The Forest Practices Board Regulation sets further requirements for audits, complaints and significant breaches.

The regulation requires that audit standards be developed, that auditors be appointed to carry out periodic independent audits, specifies the qualifications for auditors and requires that audit reports be released within specific timeframes.

The regulation provides direction on the scope of complaints that the Board may consider for investigation, the content requirements for a complaint and the procedures that are to be followed once a complaint is received.

It also defines what must be done if an auditor discovers a significant breach of FRPA.

10.3.3 Looking Ahead

The Board's priorities are to maintain relevance and impact as an independent steward of the public interest, and to contribute to the successful implementation of FRPA. Accordingly, the Board is modifying its approach, looking beyond compliance and assessing whether forest and range practices are sound and effective.

10.3.4 References

- *Forest and Range Practices Act*, Part 8 - Forest Practices Board:
www.bclaws.ca/Recon/document/freeside/--%20f%20--/forest%20and%20range%20practices%20act%20%20sbc%202002%20%20c.%2069/00_02069_01.xml#part8
- Forest Practices Board Regulation:
www.bclaws.ca/Recon/document/freeside/--%20f%20--/forest%20and%20range%20practices%20act%20%20sbc%202002%20%20c.%2069/05_regulations/13_15_2004.xml#FOUND-NOTHING
- *Wildfire Act*, Part 6: Forest Practices Board:
www.bclaws.ca/Recon/document/freeside/--%20w%20--/wildfire%20act%20%20sbc%202004%20%20c.%2031/05_regulations/13_15_2004.xml#FOUND-NOTHING

Board reports and bulletins are available at FPB - Reports and Publications: www.fpb.gov.bc.ca/landingpage.aspx?menuid=14. The Board comments on a variety of issues and topics that can be useful for helping examinees develop their own opinions.

Bulletin topics include an updated discussion on due diligence (www.fpb.gov.bc.ca/bulletins/Due_Dilligence_Revised.pdf), and a discussion on the role of an independent watchdog in an era of forest certification. (www.fpb.gov.bc.ca/bulletins/Watchdog%20role.pdf)

So far in 2009, three audit reports, eight complaint investigation reports, and four special investigation reports have been publicly released by the Board. These publications cover a range of topics and can be found on the Forest Practice Board web site.

Investigation Reports: www.fpb.gov.bc.ca/Reporttree.aspx?Taxid=298

- Closing Letter: Fauquier Salvage
- Closing Letter: North Canyon Improvement District
- Closing Letter: Trophy Mountain Pine
- Closing Letter: Wardner Woodlot
- Construction of the McCorkall and Woodpecker Forestry Roads
- First Nations Consultation on the Maiyoo Keyoh
- Logging in Spotted Owl Habitat in the Blackwater Creek Valley
- Motorcycles, Rare Frogs and Water Shrew Habitat at Kanaka Creek
- Road Construction and Harvesting in a Woodlot near Carter Creek
- Salvage Logging after a Wildfire at Sitkum Creek

Audit Reports: www.fpb.gov.bc.ca/Reporttree.aspx?Taxid=286

- Audit of Timber Harvesting Road Construction Maintenance and Deactivation, Western Forest Products Inc. Tree Farm Licence 39 Block 6
- Creston Valley Forest Corporation - Forest Licence A54214
- Forestry Audit: British Columbia Timber Sales Cariboo-Chilcotin Business Area (Quesnel Field Unit)
- Skeena Stikine Forest District, Audit of District Manager Obligations on Forest Service Roads

Special Investigation Reports: www.fpb.gov.bc.ca/reportsearch.aspx

- Fish Passage at Stream Crossings
- High Retention Harvesting and Timber Sustainability on the British Columbia Coast

10.3.5 Apply the Knowledge

Topics for potential discussion:

1. Do you think that there is a need for an “independent watchdog” such as the Board, given the increased reliance on professionals, the disciplinary powers of the ABCFP, and the move by many forest companies towards third-party certification?
2. FRPA emphasizes results over process. Previous Board work identified challenges associated with a results-based approach (*A Special Report on the use of Water Quality Objectives under Forest Practices Legislation: Lessons for the Future*, February 2003) but also profiled an example where a results-based approach is working (*Reforestation BC's Public Lands – an Evaluation of Free Growing Success, Special Report*, June 2003). As a professional forester, how would you ensure that intended results are achieved?
3. You are professional forester employed by a forestry company, assigned responsibility for timber development. You are considering developing an area designated in a resource management plan (RMP) as temporary owl habitat, in which harvest is restricted until stands become suitable long-term owl habitat in an adjacent area. The RMP specifies that a stand must average at least 100 years in age and 20 meters in height before it can be designated as suitable long-term owl habitat. The RMP recommends using Resource Inventory Committee (RIC) standards and procedures to determine whether forest stands meet age and height requirements. You send out a crew, which does not follow RIC standards, to collect information for a stand suspected of meeting owl habitat requirements. They return with somewhat ambiguous field data, which is neither conclusive nor supportable. In your opinion the candidate stand meets age and height requirements and you proceed with timber development in the temporary habitat area. An owl habitat biologist is not consulted to confirm habitat suitability and your knowledge regarding owl habitat is limited. Have you and the company exercised “due diligence”? Discuss the relevant considerations or information needed to decide.
4. An owner of some private property on Longhorn Creek built a fence to exclude a range licensee's cattle from that property. The fence caused the cattle to drift into a deep gully to get water and to cross an S6 stream reach. At this crossing, the stream channel is embedded with sediment and the banks trampled with little to no riparian vegetation remaining, so that the bank has limited habitat value. The impact on Longhorn Creek is locally severe with steep and sloughing gully sidewalls over a distance of about 80 metres. The sloughing indicates that the riparian area cannot withstand normal peak flows, which will exacerbate stream bank erosion. A riparian assessment classified the health of this site as “highly at risk” and recommended that cattle access be stopped. Has there been a material adverse effect on this stream and what factors would you consider? Does cattle use comply with the Range Practices and Planning Regulation?

10.4 Forest and Range Practices Act Effectiveness Evaluation

The provincial government's *Forest and Range Practices Act* (FRPA) reflects a new approach to forest management in British Columbia. The Act makes the forest industry responsible for developing results and strategies (or using specified defaults) that will result in the sustainable management of resources; and makes government responsible for ensuring compliance with set outcomes, strategies, and other practice requirements, and for evaluating the effectiveness of forest and range practices in achieving management objectives.

To monitor and evaluate the effectiveness of FRPA and its regulations in achieving these objectives, the Ministry of Forests and Range and the Ministry of Environment established the Forest and Range Evaluation Program (FREP) in 2003.

The program aims to determine whether forest and range practices are meeting not only the intent of the FRPA's objectives but also government's broader intent for the sustainable use of resources.

FREP Vision: Sustainability of forest and range resources through science and stewardship.

FREP Mission: To be a world leader in resource stewardship monitoring and effectiveness evaluations by providing the science-based information needed for decision-making and continuous improvement of British Columbia's forest and range practices, policies, and legislation.

10.4.1 Objectives

The objectives of the Forest and Range Evaluation Program are to:

- evaluate the status or trends of the 11 resource values identified in the *Forest and Range Practices Act*;
- determine the factors leading to the status or trends;
- determine whether the 11 resource values are being managed in a sustainable manner through proven or alternative forest practices;
- communicate the results of evaluations; and
- recommend changes to forest and range practices, policies, and legislation where appropriate.

10.4.2 Current Policy

Through the provincial Forest and Range Evaluation Program (FREP), government is acting on its commitment to evaluate and monitor the effectiveness of FRPA-related forest practices, policy, and legislation. The program oversees development, testing, and implementation of indicators and the associated protocols and methodologies for all of the 11 resource values identified under FRPA.

Those resource values are: biodiversity, fish/riparian, water quality, soils, cultural heritage resources, forage and associated plant communities, resource features, wildlife, visual quality, timber, and recreation.

How the Program Works

FREP works on a continuous cycle of improvement (Figure 1). The main components of the program are summarized below and shown in Figure 2.

Forty-one priority (or “right”) questions have been developed in consultation with various stakeholders. These 41 questions are reviewed by the stakeholders on an 18 month basis and new questions are added and priorities adjusted as necessary. The questions are categorized according to the 11 resource values. A team leader and team are assigned to investigate each question. The team is made up of a headquarters representative, specialists, and district and other agencies’ staff.

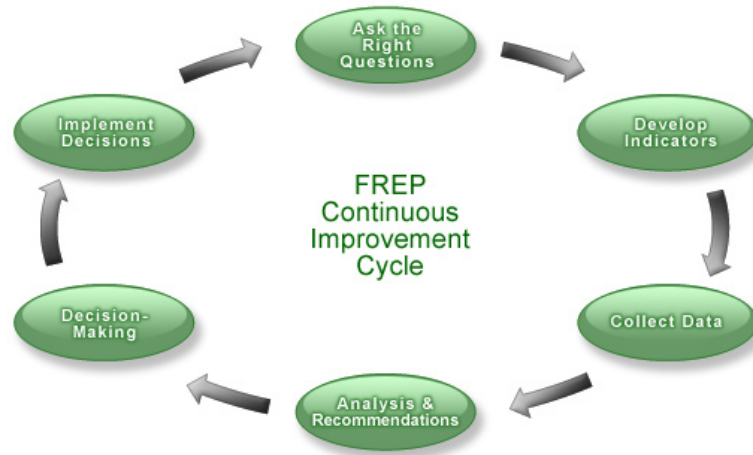


Figure 1. The key steps in FREP’s implementation.

The process involves the following steps:

- The team identifies the specific issues to be addressed based on the priority question and then defines indicators and criteria to be used (based on best available information and research).
- A protocol and checklist are developed and tested in the field for a minimum of two field seasons before full implementation goes ahead. The data and methodology are reviewed to ensure the appropriate data is collected to answer the question posed for that resource value..
- Changes are made and full implementation is scheduled.
- All District staff to participate in data collection. Experts and team leaders conduct both field and office quality assurance procedures, capture the data in a database, and conduct the analysis.
- Trends are reviewed annually and observations and recommendations on risks and causes are provided.
- From this, information is provided to the district and stakeholders and all parties are encouraged to work with the licensee or other agencies to improve the condition of the resources for the future.

FREP does not conduct compliance and enforcement. The mandate for FREP is also not the same as that of the Forest Practices Board. Instead, FREP’s intent is to work with stakeholders, other agencies and First Nations to improve on-the-ground practices that are reflected in better

management of all natural resources. FREP also has the mandate to assess the adequacy of policy and legislation and to encourage innovation to ensure sustainable forest and range management.

The Program's 5-Year Strategic Plan

FREP's first 5-Year Strategic Plan was peer-produced and endorsed by the Executive in 2007 and revised in 2008. Subsequent to 2008, a review will be conducted every 18 months to assess how well the program is providing direction and meeting objectives (or deliverables) under its six strategic themes:

- clarity of priorities;
- leadership;
- people focus;
- program development and implementation;
- continuous improvement and critical reflection; and
- communication or influencing change through collaboration and information sharing.

Types of Resource Stewardship Monitoring

Resource stewardship monitoring consists of monitoring on-the-ground forest and range practices on randomly selected sampling sites to assess whether resource value objectives or strategies are being achieved. There are three levels of resource stewardship monitoring:

Routine

- District level evaluations to assess conditions of specific resource values at a specific place and time, identify red flags;
- Conducted by district stewardship staff;
- Low intensity evaluation, inexpensive and rapid data collection;
- Involve visual estimates and “yes/no” checklists; and
- Identify management trends or issues that may require more detailed evaluations.

Extensive

- Conducted by region or branch staff;
- Detailed evaluation involving the collection of categorical data using visual estimates or relatively simple measurements;
- More rigorous and quantitative than routine evaluations; and
- Collect more detailed information on a given area.

Intensive

- Provincial level evaluation to assess status or trends of resource values and impacts of operational activities on specific resource values using comparison with baseline data;
- Conducted by region or branch staff;
- Time consuming, expensive comprehensive quantitative data collection;
- Used to provide input into science-based recommendation for changes in practices and forest legislation and policies; and
- Priorities are determined from the results of routine evaluations as well as from emerging operational or political issues.

Types of Resource Stewardship Evaluation

Four different types of evaluations are common in evaluation/monitoring: implementation, effectiveness, validation and compliance. Resource stewardship monitoring usually involves implementation or effectiveness evaluations.

- Implementation evaluations measure progress towards a specific goal (e.g., adoption of new practices, policies or guidelines) and determine whether practices were implemented as planned.
- Effectiveness evaluations determine whether plans and practices are achieving objectives and anticipated outcomes.

Later, validation evaluations are used to assess the assumptions upon which forest management strategies, practices and standards are based.

Quality Management

A Quality Management Strategy helps ensure FREP's success. The strategy is based on the key principles outlined in the National Quality Institute's certification process and linked directly into the six strategic themes in the program's 5-Year Strategic Plan. The National Quality Institute is an internationally recognized non-profit organization that works with companies in Canada to build organizational excellence and a healthy workplace.

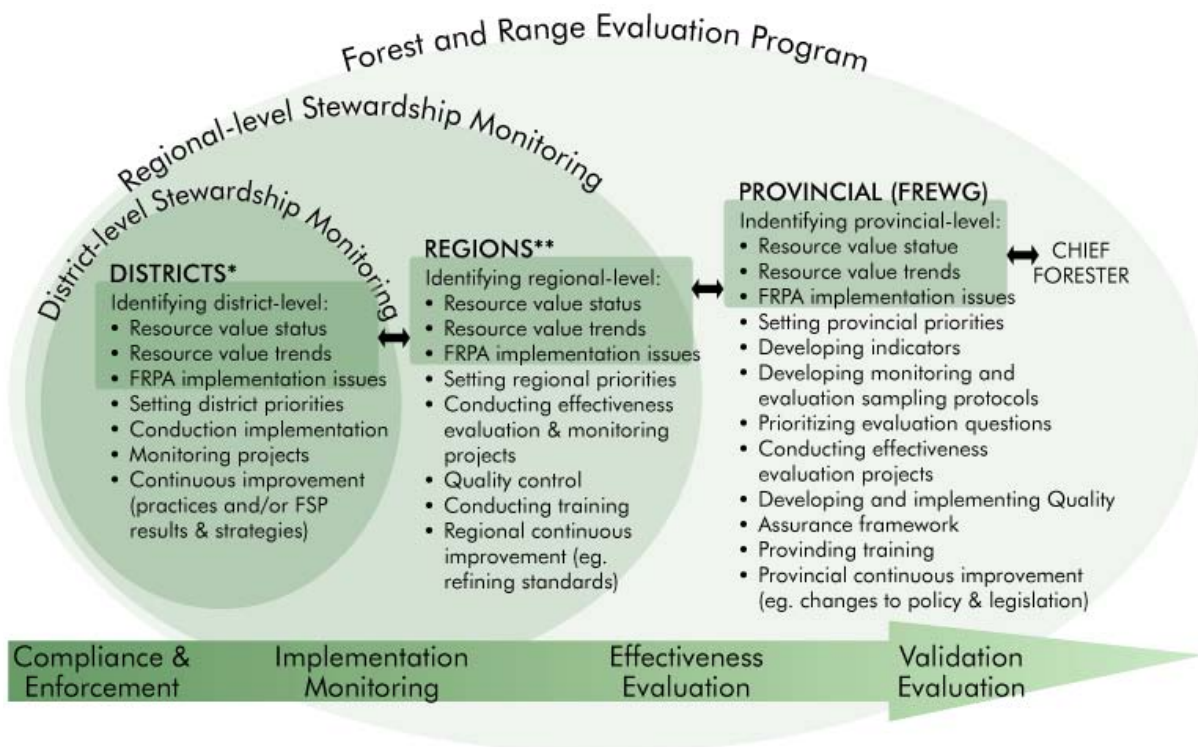


Figure 2. An overview of levels and responsibilities for monitoring and evaluation through the Forest and Range Evaluation Program.

Professional Benefits of Monitoring and Evaluation

Monitoring of results and outcomes to determine resource value status and trends is critical for achieving continuous improvement of field practices and of forest policy and legislation. Furthermore, monitoring and evaluation provide professionals with opportunities to enhance local knowledge, assess alternative management and operational approaches, and continually improve forest practices.

To read more about the FREP indicators and protocols, go to:
www.for.gov.bc.ca/hfp/frep/indicators/index.htm.

First Nations

Building First Nations' awareness of and involvement in various aspects of FREP has been a focus of the cultural heritage resource (CHR) value team since 2007. A number of First Nations representatives have been integrally involved in the development of field monitoring protocols and data collection tools for the CHR value. Four First Nations field technicians were hired in 2008 to build cross-cultural awareness and to provide a capacity building and employment opportunity for these individuals in their respective traditional territories. First Nations are also invited to collaborate at both the planning (i.e., block selection) and data collection stages of implementation. Integrating First Nations' perspectives into the program as a whole will be a continued focus and ongoing learning process.

10.4.3 Looking Ahead

Effectiveness evaluations of FRPA and regulations have now been under way at both the regional and provincial levels for several years. Indicators, protocols, methodologies, and evaluation results are published on the FREP website as they become available. In the 2008/09 field season, resource stewardship monitoring protocols are being implemented for the following values: fish-riparian, visual quality, fish passage, soils (cutblock level), water quality, karst, soils, and stand-level biodiversity. Pilot-testing is under way for the following indicators: biodiversity (landscape level), cultural heritage, timber (partial cutting), and wildlife (wildlife habitat areas, ungulate winter ranges, conservation analysis).

Resource stewardship monitoring is a district and regional government staff responsibility. However, opportunities continue for a broader group of First Nations and other stakeholders – including industry, academia, and environmental NGOs – to be involved in other aspects of the program, such as indicator development and review of intensive evaluation projects. Monitoring and evaluation indicators and protocols are freely available to others conducting evaluation and monitoring activities.

10.4.4 References

- FREP website: www.for.gov.bc.ca/hfp/frep

10.5 Forest and Range Practices Advisory Council

Government has established this practices advisory council to periodically review and evaluate requirements of the *Forest and Range Practices Act* for its continued improvement.

Considering a broad range of interests, the Forest and Range Practices Advisory Council (PAC) will report and provide recommendations to the Minister of Forests on policy matters related to forest and range practices. The minister may approve council recommendations or refer them to cabinet for decision.

10.5.1 Terms of Reference

General purpose of PAC (from *Forest and Range Practices Act*, section 170)

1. To undertake periodic reviews of the requirements that apply to:
 - operational planning and forest practices or range practices under the Act;
 - the regulation and the standards.
2. Make recommendations to the minister on any specific matters relevant to this Act that is referred to the council by the minister.

Term

The term of the PAC will be at the minister's discretion.

Membership and chair

The minister will appoint members and the chair. Membership will represent a cross-section of forest and range interests but will be limited to no more than 10 members. Members must consider a broad range of interests that will include organizations and sectors that are not directly represented on the council.

The current membership includes:

- BC Cattlemen's Association
- Forest Caucus, BC Environmental Network (from July 3, 2003 to their withdrawal March 22, 2004)
- Natural Resource Committee, Union of BC Municipalities
- Federation of BC Woodlot Associations
- First Nations Summit Task Group
- Central Interior Logging Association
- Industrial Wood & Allied Workers of Canada
- Major Licensees
- Council of Tourism Associations
- Guide Outfitters Association of British Columbia
- Grasslands Conservation Council of British Columbia
- Ministry of Forests and Range

Consultation

To help ensure the council's recommendations reflect the public interest, the council can hold workshops with broader stakeholder representation, meet with various interest groups, develop draft documents for public review, and employ other consultation tools it feels are effective in its deliberations.

Reporting

The council reports to the minister. The minister may refer some council recommendations to cabinet for decision. As a consequence, the minister may advise the council that some matters are to be addressed in confidence. All decisions made by the minister or cabinet in response to the council's recommendations will be made public.

Liaison

The chair of the council will meet regularly with the chair of the Forest Practices Board to ensure efforts are coordinated and to avoid duplication.

Agency support

The council will receive policy and technical support from the Joint Steering Committee (JSC) and the Joint Management Committee (JMC).

Meetings and minutes

The council will meet at the request of the minister or chair. Minutes from all meetings will be made available to the public and posted on a website.

Reports

Council reports will be made available to the public and posted on the PAC website. Reports subject to cabinet confidentiality will be available after a cabinet decision is made. The council will prepare an annual report that summarizes its activities and accomplishments.

10.5.2 References

- Forest and Range Practices Advisory Council: www.for.gov.bc.ca/code/pac.htm

10.5.3 Apply the Knowledge

1. How might PAC assist the Minister and staff in evaluating the overall effectiveness of the results-based model used to develop FRPA, including the goals for FRPA stated in the 2002 discussion paper (e.g. “reduce cost to industry and government, encourage innovation, provide freedom to manage)?

10.6 Private Managed Forest Land Council

The Private Managed Forest Land Council (Council) was established under **section 4** of the **Private Managed Forest Land Act** (Act) and consists of five members. It is made up of two members appointed by the Minister of Agriculture and Lands, two members elected by private managed forest owners, and a fifth member who is the Chair. The Council administers the Act and associated regulations. The Council members bring with them a wide range of backgrounds and perspectives. The Council's powers and their limitations are set out in the Act.

The Council is an independent tribunal with statutory authority to establish regulations in respect of forest management requirements on private managed forest land. The Council has statutory authority to make administrative and quasi-judicial decisions with respect to a variety of matters regulated by the Act and the regulations made under the Act. These statutory decisions range from evaluation submissions of management commitments and amendments to adjudicating whether or not a person has contravened a requirement of the Act and regulations.

There is other legislation that applies to private managed forest land, for example, the *Water Act*, *Wildfire Act*, *Environmental Management Act*, and *Fisheries Act*. This section is specific to compliance and enforcement with respect to the *Private Managed Forest Land Act* and associated regulations.

10.6.1 Regulatory Mechanisms

The *Private Managed Forest Land Act* and regulations place many requirements on the owners of private managed forest land. The Act also establishes several mechanisms that may be used by the Council to ensure compliance with the owner's requirements. Potential enforcement mechanisms are stop work orders, administrative remedies including determinations and remediation orders, consent agreements, and offences. The Council has a formal Inquiry Process as well as a Compliance Determinations Procedure Manual.

Stop Work Order

The Council is empowered to issue a stop work order if it considers that the owner or the owner's employee, contractor or agent may have contravened a provision of the legislation. No formal finding of a contravention is required before a stop work order may be issued. This enables the Council to act quickly to address a situation that may otherwise result in damage to the environment. The person who receives the stop work order may request that it be reviewed, in which case the Council's Compliance Determinations Procedure Manual applies.

Administrative Remedies

The Council is empowered to determine whether or not a contravention has occurred. If the Council determines that a contravention did occur, the Council is empowered to impose a number of different forms of administrative remedy, including fines of up to \$25,000 and remediation orders. The Council follows the process in its Compliance Determinations Procedure Manual when determining whether or not a contravention occurred and what, if any, the appropriate remedy should be.

Consent Agreement

The Council and the owner may agree that the owner or the owner's employee, contractor, or agent may have contravened a provision of the legislation. In these circumstances, the Council and the owner may have an opportunity to enter into a consent agreement. An agreement may provide for remedial measures to be carried out and potentially for a penalty of up to \$5,000 to be imposed.

Consent agreements are not determinations. The Council has not applied the contravention determination making process in respect of a specific fact pattern. Consent agreements do not result in a formal record of contravention. Consent agreements represent the final administrative disposition of a particular matter. Once entered into, the owner cannot challenge the remedial measures or the penalty specified in the agreement. Conversely, the Council may not make a formal determination or impose an additional penalty. The only exception is where the owner fails to comply with the agreement.

Offences

The Act specifies that the contravention of particular provisions of the Act and regulations constitutes an offence. Offences are matters of guilt or innocence and must go before the Courts to be determined. The Ministry of Attorney General has sole jurisdiction in respect of commencing a proceeding for an offence under the legislation. The Council has no role in prosecutions. The decision to commence a prosecution in respect of a particular incident may impact the decisions of the Council. If there is to be a prosecution, then any Council proceeding in respect of an administrative penalty for the same incident is stayed. Fines for contravening some sections of the Council regulation are up to \$25,000 while for other sections the maximum fine is \$500,000.

10.6.2 Enforcement of Decisions

The Council does not have the power to enforce its decisions directly. However, decisions of the Council may be filed in the court registry and has the same effect of an order of the court for recovery of debt. The Council may also notify BC Assessment that an owner has failed to comply with a requirement of the Act or regulations. This notification may result in the loss of managed forest land status and potential exit fees. In addition, the failure to comply with a decision may constitute another potential contravention. For example, it is a contravention for a person to not comply with a remediation order.

10.6.3 Administrative Review and Appeal

The person who is the subject of a Council order or compliance decision or determination is entitled under **sec. 32** of the PMFL Act to request that the decision be reviewed. Reviews are carried out according to the Council Compliance Determinations Procedure Manual and may be rescinded.

In addition, a person who is subject to an order or compliance decision or determination is entitled under **sec. 33** of the PMFL Act to appeal the decision to the Forest Appeals Commission provided that the appeal conforms to the requirements of the Act and regulations. Appeals to the Forest Appeals Commission are described in the Forest Appeals Commission Procedure Manual.

10.6.4 References

Both of the following documents are accessible on the Council website: www.pmflc.ca

- Guide to Making Private Managed Forest Land forest Practices Inquiries and Complaints
- Compliance Determinations Procedures Manual