

Scary Bedtime Stories: The Tale of Forest Revenue Collection

SECTION 4 OF THE MINISTRY OF FORESTS AND RANGE ACT IDENTIFIES numerous “purposes and functions” of the Ministry. That said, there is one purpose and function that appears to stand above all: the need to assert the government’s financial interest in its forest resources.

A forest tenure agreement will usually require the licensee to maintain a deposit with the government, and will authorize government to draw upon this deposit to collect monies that are owed to government. The agreement will also require the licensee to replenish any draws taken from the deposit. If the licensee does not comply with this obligation, then it is in contravention of the agreement, and the tenure may become subject to suspension and cancellation under sections 76 and 77 of the *Forest Act*.

If the amount of a deposit is not sufficient to satisfy the amount of stumpage government claims is outstanding from a licensee or any person “not at arm’s length” from that licensee then, under section 81 of the *Forest Act*, government may refuse to issue a forest tenure, road permit, cutting permit or a scale site authorization to the licensee. This legislatively authorizes government to interfere with a licensee’s business so long as the government claims the licensee owes stumpage.

The government also has remedies available against third parties. Section 131 of the *Forest Act* provides that any party who “acquires or deals in timber on which” stumpage is outstanding must pay the outstanding stumpage to government. The courts have stated that the words “deals in” timber apply to anyone who exercises a “measure of control” over the progress of the felled log from the stump to the point of manufacture.

Section 130 of the *Forest Act* creates a lien in favour of government on the forest products and other personal property of any person who owes stumpage (or other money) to the government, including any third party who became liable for stumpage under section 131 of the Act. Section 131 also allows government to file a certificate with a court registry to the effect that someone owes it money. Government is then entitled to use the court’s processes to collect the amount claimed as though the certificate were a court order. In effect, government is able to obtain a judgment of the court for the amount claimed without the need to go to trial.

Over the last few years government has gone to some lengths to allow itself to reopen stumpage rates long after timber is harvested, sold and manufactured. Section 105.2 allows a government official to re-determine a stumpage rate if, in the official’s opinion, the original stumpage rate was based upon inaccurate information. The re-determined rate takes effect as of the effective date of the original stumpage rate, and all the remedies discussed earlier will apply to any new stumpage charges. Third parties who may have acquired or dealt in the timber at issue are, apparently, not immune from any retro-active stumpage increases.

There are also administrative remedies available to the government in circumstances where government believes a stumpage rate is based upon inaccurate information. Section 105.1 requires a licensee to submit “accurate” information for use in stumpage appraisals. Sections 105 (5.2) require a licensee to submit a “changed circumstances”

reappraisal if required under the appraisal manuals. A failure to comply with either provision may result in an administrative penalty of up to \$500,000. While administrative remedies and collections remedies are, technically, different creatures, the two are inextricably intertwined: a stumpage determination based upon so-called ‘inaccurate information’ or an unreported ‘changed circumstance’ leads to both stumpage collection issues and compliance issues.

The vicarious liability provisions of the FRPA are also of concern to a licensee’s officers and directors. Section 72(4) of the *Forest and Range Practices Act* (FRPA) provides that if a corporate licensee contravenes a provision of “the Acts”, then so does any officer or director of that corporate licensee who “authorized, permitted or acquiesced” in the contravention. “The Acts” include the *Forest Act* and, more particularly, sections 105.1 and 105(5.2) of the *Forest Act*. What is meant by “authorized, permitted or acquiesced” is not entirely clear but, to date, the Forest Appeals Commission has suggested that it means a failure to prevent an occurrence that the officer or director ought to have foreseen.

Under a new Part 11.1 of the *Forest Act*, forest revenue officials are now given broad powers to enter a premises and inspect records, or demand production of records. If, based upon these records, an official called the ‘commissioner’ determines that stumpage was underpaid (for any number of reasons), the commissioner may make an estimate of the outstanding stumpage, and make an assessment against a person for that amount. Moreover, if the commissioner is of the view that the assessment resulted from the person’s willful conduct, the commissioner may also impose a penalty of up to 100% of the assessment.

Ultimately, the government’s objective for this panoply of remedies is to ensure that the province receives proper value for its forest resources—a laudable goal. The difficulty is that these are powerful remedies that could potentially allow government to do significant damage, even if the government is mistaken. 🐉

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