

By Jeff Waatainen, LLB, MA, BA (Hons)

The Inherent Neutrality of Appraisals

“Appraisal. A valuation or an estimation of value of property by disinterested persons of suitable qualifications. The process of ascertaining a value of an asset or liability that involves expert opinion rather than explicit market transactions”.

Black’s Law Dictionary, 6th ed.

IN BC, WE DETERMINE THE PRICE PAYABLE FOR CROWN TIMBER IN accordance with the *Coast Appraisal Manual* or the *Interior Appraisal Manual* (both known as the Manual), as the case may be. In other words, we determine the price payable for timber based upon an appraisal of the timber. As much as we refer to market pricing system (MPS), appraisals are still estimates as opposed to explicit market transactions. Even under MPS, a stumpage appraisal merely incorporates accumulated transactional data from the market to estimate the value of the timber. It is still licensee neutral—meaning it is not based upon the transactions of a specific licensee. If it were, we would no longer have an appraisal system, but some sort of revenue-sharing scheme.

Since the move away from the former comparative value pricing system (CVPS) towards MPS, government is seemingly more and more interested in the actual operations of specific licensees. In its decision from *International Forest Products Limited v. Government of British Columbia* released last June, the Forest Appeals Commission described the government’s current position in this regard:

The Government maintains that the Ministry has the right to go from ‘estimate’ in the original data submission to ‘actual’ in the reappraisal process.

Regardless of whether an original appraisal or reappraisal is at issue, a stumpage determination based upon actual results is incompatible with the notion of licensee neutrality.

The concept of ‘licensee neutrality’ is a not a relic from CVPS. It did not come into existence due to the particularities of CVPS. It exists due to the fact that neutrality is inherent in any appraisal system. The more stumpage determinations focus on the actual activities of specific licensees rather than a neutral valuation of the timber, the further removed we are from appraising timber. We begin to appraise the activities of specific licensees, and Crown revenue becomes based upon the value of those activities, rather than upon the value of the timber.

Neutral valuations of timber require the valuator to consider harvest methods that the typical operator (as opposed to the specific operator) would employ and the conditions that typical operator would encounter. The typical operator will harvest timber as efficiently as possible in order to reduce costs and maximize return. The typical operator also assumes risk on account of unknown or unknowable conditions.

But not all licensees are equal. Some may spend more resources on equipment maintenance or modernization (or whatever) to improve

overall production and efficiency. As a matter of policy (and as a matter of law under the *Ministry of Forests and Range Act*) we should encourage operators to increase efficiency and productiveness. Other operators may have the good fortune of better-than-expected operating conditions that result in higher-than-expected production. However, those same operators also accepted the risk that they would find worse-than-expected operating conditions.

When government appraises the actual activities of specific licensees, or the actual conditions that a specific licensee may happen to encounter, government effectively expropriates the value of a licensee’s efficiency or good fortune. This is regrettable because it discourages ingenuity and risk-taking. Why would anyone try to improve efficiency or take a risk if government is going to claim any benefit by way of a “changed circumstances” reappraisal under the Manual, or an “inaccurate information” stumpage correction under section 105.2 of the *Forest Act*?

What is missing in our stumpage appraisal system is the “disinterested person with suitable qualifications.” Both government and industry have persons with suitable qualifications; but neither government nor industry is disinterested. Under CVPS, when an individual stumpage appraisal had no impact on overall Crown revenue, government was disinterested in the revenue consequences of any particular stumpage appraisal. Government would get its target revenue no matter what. Under MPS, stumpage appraisals have become an adversarial process, and the benefits that flow to one are at the direct expense of the other. Professionalism is the glue that is supposed to hold the system together, begging the question: is the zero-sum nature of stumpage appraisals under MPS more than professionalism can handle? 🍷

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