

DECISION NO. 2008-FA-029(a)

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

BETWEEN:	606546 BC Ltd.	APPELLANT
AND:	Government of British Columbia	RESPONDENT
BEFORE:	A Panel of the Forest Appeals Commission David Ormerod, Panel Chair	
DATE:	Conducted by way of written submissions concluding on April 16, 2009	
APPEARING:	For the Appellant: Jan W. Jonker, RFT Leonard D. Blackstock, RFT For the Respondent: Bruce Filan, Counsel	

APPEAL

[1] This appeal is brought by 606546 BC Ltd. against the November 26, 2008, Stumpage Advisory Notice ("SAN") for cutting permit 49 ("CP 49") of Forest Licence A19202, situated in the Chilliwack Forest District of the Coast Forest Region, Ministry of Forests and Range (the "Ministry").

[2] Robert B. Glassford, RPF, Regional Appraisal Co-ordinator, issued the SAN which set the stumpage rate at \$24.56 for sawlogs scaled between April 17, 2008 and June 30, 2008. In doing so, he refused to apply certain bridge development cost estimates in the stumpage appraisal of CP 49.

[3] The Appellant, 606546 BC Ltd., appeals the SAN on the basis that purchase cost estimates for two portable bridges, in the amounts of \$100,600 and \$84,200, were improperly disallowed in the stumpage determination made for CP 49.

[4] The Government says that the appealed costs were not incurred by the Appellant and cannot be allowed in the stumpage rate determinations for CP 49.

[5] These appeals are 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.

BACKGROUND

[6] Forest Licence A19202 was originally issued to Cattermole Timber (a general partnership between 318037 BC Ltd. and Mohammed Enterprises Ltd.). In February 2008, Cattermole Timber was in discussions with the Ministry's Chilliwack Forest District over details of CP 49, which had been submitted as part of the application for CP 49.

[7] The first Coast Appraisal Data Submission ("CADS") for CP 49 was prepared by Len Blackstock, RFT, and Richard Anderson, RPF, and included construction Cost Estimate Forms ("CEF") for two bridges, referenced as CEF #2 and CEF #3.

[8] CEF #2 was for the re-use of an 18 meter portable span at Branch 101A Station 1+241, to be moved there from Road A102 [Anderson River]. CEF #3 was for the re-use of a 15 meter portable span at Branch 101C Station 0+860, to be moved there from the north fork of Siwash Creek.

[9] The total project cost estimates for CEF #2 and CEF #3 were \$9,763.18 and \$13,055.26, respectively: these costs were for moving and installing the bridges, and did not include any amounts for the capital value of the bridges.

[10] Forest Licence A19202 was transferred from Cattermole Timber to 606546 BC Ltd. in April 2008, further to written notice given to the Ministry in December 2007 pursuant to section 54 of the *Forest Act*. The Minister consented to the transfer on March 20, 2008.

[11] CP 49 was issued to 606546 BC Ltd. on April 17, 2008.

[12] The equity in 606546 BC Ltd. was identified in the notice of disposition as being 100% held by Dorman Timber Ltd. 606546 BC Ltd. holds 200 common shares in Tamihi Logging Ltd.

[13] Cattermole Timber sold four portable steel bridges to Tamihi Logging Ltd. on January 17, 2008; two each of 18.3 meters in length, and two each of 15.4 meters in length.

[14] On April 4, 2008, the Ministry requested that CEFs for two bridges on CP 49 be re-submitted. In the revised submissions, CEF #2 and CEF #3 described the work and costs to move and install the two bridges identically to that in the first CADS, but included a new line item "purchase cost of the bridge", in each case, with a footnote. The footnotes to the revised CEFs state as follows:

This bridge is now owned by the Dorman group of Companies. The numbered company 606546 BC Ltd has purchased the Forest Licence A19202 that was owned by Cattermole Timber, the bridges were purchased under a separate agreement (copy sent to the Chilliwack Forest District). In order to harvest this CP the two bridges purchased

by Tamihi Logging will have to be used in this CP. The CEF includes the tabular cost of the bridge plus the installation.

[15] A SAN for Forest Licence A19202, CP 49, was issued on November 28, 2008, based on the revised CEFs. The SAN set the stumpage rate for sawlogs to be scaled between April 17, 2008 and June 30, 2008, at \$24.56/m³ (per cubic meter).

[16] The Market Pricing Rate Confirmation report ("MPRC"), which sets out the details of the SAN issued, contains a Tenure Obligation Adjustment ("TOA") for "development" of \$12.91/m³. Attached to the MPRC are several pages of "MPS Data Listing" ("MPSDL") which include the detailed components of the amounts summarized in the MPRC.

[17] The total reconstruction and replacement amount for CP 49 is \$186,607, which includes \$9,763 and \$13,055 for "BR101A 1+234 bridge" and "BR101C 0+858 bridge", respectively. Although these amounts are shown against "project identifiers" CEF 5 and CEF 6 in the MPSDL, the descriptions identify them as the CEF #2 and CEF #3 bridge cost estimates that are the subject of this appeal.

[18] The "net cruise" volume of CP 49 is shown in the MPSDL as 54,638 cubic meters. Dividing this into the \$186,607 reconstruction and replacement total produces the \$3.42/m³ "reconstruction and development" line item found in the "development TOA" breakdown shown in the "development summary" part of the MPSDL. The development summary also shows \$0.18/m³ for "tabulated" bridges, \$0.64/m³ for "tabulated" culverts, and \$0.02/m³ for "engineered" culverts. The balance of the \$12.91/m³ development TOA, \$8.65/m³, is for "tabulated" roads.

[19] The bridge purchase prices shown in the revised CEF #2 and CEF #3, \$100,600 and \$84,200, are not included in the MPSDL or elsewhere in the MPRC. These are the cost items that are under dispute in this appeal. The Appellant has submitted that these amounts are "tabular limit" bridge purchase costs.

[20] 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 Coast Region are set out in the Coast Appraisal Manual ("CAM"). According to section 149(2) of the *Forest Act*, the Commission must apply the policies and procedures approved by the Minister, in this case the CAM, that were in effect at the time of the initial determination.¹

[21] Under section 5.1.2 of the CAM, TOAs may be calculated where "the licensee will incur a cost of that kind when exercising their authorities or obligations under the cutting authority". For new road construction, section 5.3.1.1(5) [Bridge Cost Estimates] limits the costs for re-use of bridges, as follows:

¹ The CAM relied upon in the appeals was effective March 1, 2008 [including Amendments 2 and 3 to the June 1, 2007 CAM].

- c. where bridge materials are reused by the original purchaser at a different site, the bridge cost estimate may include the cost of dismantling the materials at the site where they were previously used, and transportation to and installation at the different site, but may not include the initial materials cost and delivery costs.
- d. where used bridge materials are purchased by the licensee from a legally non-associated party, only the lowest possible cost of purchasing and shipping those materials may be included in the bridge cost estimate.

[22] For road reconstruction, section 5.3.1.2 [Road Reconstruction] limits the costs for re-use of bridges, as follows:

7. Where bridge materials are reused by the original purchaser at a different site, the bridge reconstruction cost estimate may include the cost of dismantling the materials at the site where they were previously used, and transportation to and installation at the different site, but may not include the initial materials cost and delivery costs.
8. Where used bridge materials are purchased by the licensee from a legally non-associated party, only the lowest possible cost of purchasing and shipping those materials may be included in the bridge reconstruction cost estimate.

[23] The Appellant relies on the language "will incur" used in section 5.1.2, and on subsections 5.3.1.1(5)(c) and (d), in claiming that the bridge purchase costs shown in revised CEF #2 and CEF #3 apply in the appraisal.

[24] The Government says that the corporation holding CP 49 is a separate "person" from the corporation that actually purchased the bridges; that the bridges in question were used in prior stumpage appraisals for the forest licence, and therefore, these costs cannot be used in the stumpage appraisal of CP 49.

ISSUE

[25] The issue in this appeal is whether or not bridge acquisition costs incurred by a corporation, Tamihi Logging Ltd., that is associated with the licensee, 606546 BC Ltd., can be allowed as a TOA in the stumpage appraisal of CP 49?

RELEVANT LEGISLATION

[26] Stumpage rates are determined under authority of section 105 of the *Forest Act*, R.S.B.C. 1996, c. 157.

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.

149 (2) 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.

DISCUSSION AND ANALYSIS

[27] The relationship between the Appellant, 606546 BC Ltd., and Tamihi Logging Ltd. is unclear. Evidence has been provided that 606546 BC Ltd. owns 200 common shares of Tamihi Logging Ltd., and the footnote to revised CEF #2 and CEF #3 states that "This bridge is now owned by the Dorman group of Companies". The Appellant states that Tamihi Logging Ltd. is a wholly owned subsidiary of 606546 BC Ltd., but other than the common shares certificate, no other information about the registration of Tamihi Logging Ltd. and the total distribution of shares has been provided to the Commission. The Panel notes that the two companies (Tamihi Logging Ltd. and 606546 BC Ltd.) apparently share offices.

[28] Even if Tamihi Logging Ltd. were a wholly owned subsidiary of 606546 BC Ltd., it is not the corporate entity that holds Forest Licence A19202. Rather, 606546 BC holds Forest Licence A19202. The CAM indicates that it is the licensee that may claim certain costs in relation to used bridges, if the licensee incurs or will incur those costs. In particular, section 5.1(2)(a) of the CAM states that a cost may be used in the calculation of the TOA and used in an appraisal "where... the licensee will incur a cost of that kind when exercising their authorities or obligations under the cutting authority" [underlining added]. Similarly, section 5.3.1.1(5)(d) states that "where used bridge materials are purchased by the licensee from a legally non-associated party," certain costs in relation to those materials may be included in the bridge cost estimate [underlining added]. Based on the findings below, the Commission finds that the bridges in this case were not purchased by the licensee, nor is there sufficient evidence that the licensee will incur the purchase costs of the bridges; rather, the evidence shows that the bridges were purchased by Tamihi Logging Ltd., which is a separate corporation from the licensee.

[29] The words used in section 5.3.1.1(5)(c) of the CAM "where used bridge materials are purchased by the licensee from a legally non-associated party" do create some uncertainty about the intent of the CAM with respect to fair allowance for capital costs in stumpage appraisal TOAs. The Market Pricing System is a comparative system, and it does adjust for qualitative differences between the harvesting authorities being appraised and the timber sales that generate average

“market” rates. That is the rationale behind the TOAs specified in section 5 of the CAM. There is nothing in the preamble to clarify what the concern is about legally associated parties, and the wording “associated party” is not found anywhere else in the CAM. It may only be an accounting consideration, or it could be a concern about contractual relationships. In any event, the Commission finds that, regardless of any equity or contractual relationships between Tamihi Logging Ltd. and 606546 BC Ltd., the language in section 5.3.1.1(5)(c) concerning a “legally non-associated party” has no bearing on the determination of TOAs for the CP 49.

[30] The chain of ownership of these bridges from Cattermole Timber to Tamihi Logging, and the history of their use on Forest Licence A19202, is not well documented in the evidence provided to the Panel. The notice of disposition of the forest licence does not provide any information on the financial or in-kind considerations made between Cattermole Timber and 606546 BC Ltd. The statement of adjustments showing the sale of four bridges to Tamihi Logging Ltd. is pursuant to the “Assignment and Assumption Agreement Dated January 17, 2008”. The Commission has not been provided this agreement, but in the absence of submissions by the Government to the contrary, the Commission finds that this sale is pursuant to the transfer of Forest Licence A19202 to 606546 BC Ltd.

[31] Further, the bridges referenced in revised CEF #2 and CEF #3 are said by the Government to have been previously included in prior stumpage appraisals for Forest Licence A19202 when held by Cattermole Timber, and the Appellant acknowledges that this is “technically correct”. Consequently, the Commission finds that the portable bridges referenced in revised CEF #2 and CEF #3 are two of the four bridges sold to Tamihi Logging Ltd. in a “side-deal” with 606546 BC Ltd. and Dorman Timber Ltd. at the time the forest licence was transferred. However, these findings do not establish that 606546 BC Ltd. has purchased, or intends to purchase, these bridges from Tamihi Logging Ltd.

[32] The bridge purchase statement of adjustments does state that the bridges are being purchased for re-sale, and consequently Cattermole Timber did not collect any Provincial Sales Tax on the transaction. This is the only evidence provided to the Panel that shows that some of the bridges may have been intended to be “sold on” to 606546 BC Ltd. However, as the Panel has not been provided with evidence of such a sale, or agreement for future sale, the Commission finds that the purchase cost of the bridges referenced in revised CEF #2 and CEF #3 are not costs that have been or will be incurred by the holder of Forest Licence A19202; namely, 606546 BC Ltd. Rather, the bridge purchase costs were incurred by Tamihi Logging Ltd., which is identified in the bridge purchase statement of adjustments as “The Purchaser”.

[33] The Appellant says that the inclusion of the bridges in prior stumpage appraisals for Forest Licence A19202 is irrelevant, and disallowance of the “tabular limit” purchase cost amounts are inconsistent with the CAM, and therefore, are in contravention of section 105(1) of the *Forest Act*. The Commission finds that this argument is flawed, as the CAM goes to considerable lengths to ensure that there is no “double counting” of cost elements in determining the stumpage rates. If the capital costs of the two bridges have already been amortized against harvested

volume in prior TOA calculations and appraisals for Forest Licence A19202, their cost to the holder of the licence has been accounted for in reduced rates. The fact that the licence was transferred to 606546 BC Ltd. is irrelevant in terms of approximate re-capture of the capital costs against the operations on the licence area. The Government is not responsible for fair financial consideration given to Cattermole Timber by 606546 BC Ltd. for the tenure, be it monetary or in-kind.

[34] In conclusion, the Commission finds that the purchase costs for the portable bridges referenced in revised CEF #2 and CEF #3, in respect of the stumpage appraisal of CP 49, are not costs that can be used in determining TOAs. The purchase of these bridges by Tamihi Logging Ltd. from Cattermole Timber, and their subsequent use by 606546 BC Ltd. on Forest Licence A19202, is of no relevance based on the language in the CAM. Only the costs of moving and installing these bridges are costs that can be used in setting the stumpage rates for CP 49, through determination of TOAs. It would make no difference if the bridges were being reused in new road development or in road reconstruction, as the terms of the CAM in each case are identical.

DECISION

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

[36] For the reasons stated above, the Panel confirms the stumpage determination set out in the SAN issued for CP 49.

[37] The appeal is dismissed.

"David Ormerod"

David Ormerod, Panel Chair
Forest Appeals Commission

May 14, 2009