



Forest Appeals Commission

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APPEAL NO. 1997-FOR-26

In the matter of an appeal under section 131 of the *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c. 159.

BETWEEN: Peter Grundmann **APPELLANT**

AND: Government of British Columbia **RESPONDENT**

BEFORE: A Panel of the Forest Appeals Commission
Katherine Lewis Panel Chair

DATE of HEARING: March 31, 1998

PLACE OF HEARING: Quesnel B.C.

APPEARING: For the Appellant: Peter Grundmann
For the Respondent: Neena Sharma, Counsel
Gary Horley

APPEAL

This is an appeal by Mr. Grundmann against the August 22, 1997 decision of a Review Panel which upheld the June 16, 1997 determination of the District Manager that Mr. Grundmann contravened section 96 of the *Forest Practices Code of British Columbia Act* (the "Code"). Section 96 provides that:

- (1) A person must not cut, remove, damage or destroy Crown timber unless authorized to do so
 - (a) under an agreement under the *Forest Act* or under a provision of the *Forest Act*,
 - (b) under a grant of Crown land made under the *Land Act*,
 - (c) under the *Mineral Tenure Act* for the purpose of locating a claim,
 - (d) under the *Park Act* ,
 - (e) by the regulations, in the course of carrying out duties as a land surveyor, or
 - (f) by the regulations, in the course of fire control or suppression operations.

A penalty of \$1709 was assessed by the District Manager under section 119 of the *Code*.

The appeal was brought before the Forest Appeals Commission (the "Commission") pursuant to section 131 of the *Code*. Mr. Grundmann wishes to have the decision of the Review Panel and the determination rescinded, and also seeks a recommendation that regulations and guidelines relating to trappers' cabins be clarified and made more accessible to the public.

BACKGROUND

In 1983, the Appellant, Mr. Peter Grundmann, purchased a trapline in the vicinity of Indian Creek and the Bowron River. In addition to his trapline, Mr. Grundmann operates a guide/outfitting business based out of Wells, B.C.

According to Mr. Grundmann, in 1984 he built a cabin for his trapline using Crown timber and, at that time, nothing was said to him by the Ministry of Forests ("MOF"). In 1986, Mr. Grundmann apparently lost the cabin to a fire resulting from a slashburn. Mr. Grundmann stated the Forest Service was responsible for the burn.

Sometime during winter/spring of 1997, Mr. Grundmann cut logs from a location on Indian Lake Road with the intent of replacing the lost cabin. He transported most of the logs to his property in Wells where he began construction of the cabin with the intent of later dismantling and moving it to the trapline site.

On May 5, 1997, Garry Horley, Compliance and Enforcement Supervisor, Quesnel Forest District, received a report, apparently from a Wells resident, that Mr. Grundmann had harvested logs on Crown land. On May 6, 1997, Garry Horley and Dave Lyle (MOF) went to the location on Indian Lake Road where the logs had been cut. They observed trees flagged with blue ribbon that had not been cut, and counted and measured the diameter of cut stumps. A total of 65 trees had been cut with stump diameters averaging 18 - 22 cm. Stump heights ranged from 12 cm to 1.2m. The cut trees were scaled and volume determined to a 10 cm top. The volume cut was 22 cubic metres according to the compilation performed by MOF. The Appellant had transported approximately 12 cubic metres of this to his property in Wells by May 6, 1997, when Mr. Horley and Mr. Lyle observed the logs in the Appellant's yard. When asked, Mr. Grundmann admitted to having cut the logs from the Indian Road site. He stated that he did not know he needed a Cash Sale License for the logs, and that he believed he was allowed to cut logs in order to construct trap line cabins.

On May 7, 1997, Mr. Horley contacted the Ministry of Environment, Lands and Parks ("MELP") Regional Office in Williams Lake, and the Lands Branch of MELP, to determine the rights of trappers and guide/outfitters with respect to trapline cabins. A 1985 agreement regarding trapline cabins between the then Ministry of Environment and Parks and the then Ministry of Forest and Lands was summarized in a document entitled "Instructions for Mapping Trapline Cabins", submitted by the Respondent. This document indicates that, for traplines, cabins may be built according to certain specifications for size and location. Each cabin must be approved. Cabins used for guide/outfitting do not fall under the trapline cabin

policy. The document provided is silent on the use of Crown timber to build trapline cabins. With respect to cabins in

guiding areas, on May 7, 1997, Mr. Horley was told that authority to build cabins came in the form of a License of Occupation from Lands Branch. According to Mr. Horley, Ms. May Pinette at Lands Branch was unable to find such a licence in Mr. Grundmann's name.

On May 8, 1997, Mr. Horley advised Mr. Grundmann by telephone that he may be billed for the timber and, at that time, advised him of his right to be heard and the appeal process.

On May 13, 1997, Mr. Grundmann met with Mr. Horley and Doug Flintoft, Quesnel District Manager, MOF, for an opportunity to be heard. On June 16, 1997, a notice of determination was sent by Doug Flintoft to Mr. Grundmann that found a contravention of section 96 of the *Code*. A fine of \$1709 was assessed under section 119 of the *Code*. This amount is equal to one third of the maximum penalty allowed under section 119(a) and (b).

On July 2, 1997, Mr. Grundmann requested an administrative review of the determination, citing his need for a cabin to replace the burnt one, and the lack of logs at his cabin site. The review was held on August 14, 1997 before Gerry Grant and Dirk Trigg. The Review Panel confirmed the determination.

On August 22, 1997, Mr. Grundmann requested an appeal of the Review Panel's decision. Mr. Grundmann's grounds of appeal are as follows:

1. The trees he felled were being used to build a cabin to replace one that he submitted had been burnt during a Forest Service slashburn.
2. Trappers make little money and cannot afford to purchase building materials for trapline cabins.
3. Mr. Grundmann did not know he was not allowed to cut trees without a permit due to what he believes is a lack of regulations or instructions regarding trapline cabins.

On January 2, 1998 a letter was sent to the Commission by Dr. John Wilson, MLA, in support of Mr. Grundmann. The letter outlined Dr. Wilson's opinions on the payment of stumpage by trappers and Mr. Grundmann's honest nature.

This appeal was heard on March 31, 1998.

ISSUES

There are two issues to be examined in this appeal:

1. Does the Appellant have a defence to the determination that he contravened section 96 of the *Code*?
2. If not, is the penalty appropriate in this particular case?

DISCUSSION AND ANALYSIS

1. Does Mr. Grundmann have a defence to the determination that he contravened section 96 of the *Code*?

The facts are not in dispute. Mr. Grundmann admits to cutting the logs and there is general agreement on the number of trees cut and the volume of the trees. It is also clear, and not disputed, that the Appellant's sole purpose for cutting the trees was to construct the trapline cabin. It is also evident that the Respondent firmly believes that Mr. Grundmann's actions were due to lack of knowledge, not out of disregard for the regulations.

The Appellant argued that he built the new cabin because the Forest Service's slashburning destroyed his original cabin in 1986. He placed considerable emphasis on this as a justification for his later actions.

The destruction of the Appellant's cabin by fire in 1986 is not viewed by the Commission as relevant to this case. Neither is the cause of the fire relevant to this case. The Appellant's concerns in relation to this unfortunate event should have been addressed at the time it happened. While the 1986 fire explains why a replacement cabin was needed, it has no bearing on the outcome of this appeal.

It is clear that the *Code* prohibits individuals from cutting Crown timber without authority to do so. However, the Commission recognizes that the *Code* is not easily accessible to everyone who may have an interest in obtaining and using Crown timber. The "Instructions for Mapping Trapline Cabins" clearly specifies size and location requirements for cabins, but is silent on what materials may be used under what authority. If this is the only information available to trappers, it does appear to the Commission that a trapper may not be aware of the laws relating to the harvest of Crown timber. The Commission agrees with the Appellant that there is a need for more information to be provided to registered trappers on this issue.

Having said that, ignorance of the law is no defence. Section 96 of the *Code* is very clear on the circumstances when Crown timber may be harvested. The Appellant does not meet any of them.

The letter from Dr. Wilson supports the honest nature of Mr. Grundmann, which as already stated, is not being disputed. It also suggests that trappers should be exempt from stumpage fees for cabin building logs. This is a policy matter and it is not within the jurisdiction of Commission (section 138 of the *Code*) to change existing policy and legislation.

2. Is the penalty appropriate in this particular case?

The amount of the penalty assessed to Mr. Grundmann was calculated according to the formula in section 119(1)(a) and (b) of the *Code* which states:

Penalties for unauthorized timber harvesting

119. (1) If a senior official determines that a person has cut, damaged, removed or destroyed Crown timber in contravention of section 96, he or she may levy a penalty against the person *up to* an amount equal to

- (a) the senior official's determination of the stumpage and bonus bid that would have been payable had the volume of timber been sold under section 20 of the *Forest Act*, and
- (b) 2 times the senior official's determination of the market value of logs and special forest products that were, or could have been, produced from the timber.

The District Manager used the district average stumpage and bonus bid rates to calculate the amount owing under section 119(a). He also calculated the market value of the logs. The District Manager then applied a factor of one third to the total amount owing under 119(a) and (b). In doing so, the assessed penalty was *one-third* of what would otherwise be the penalty assessed under this formula for the same volume of timber.

In his reasons for assessing this penalty, the District Manager stated that he considered the fact that Mr. Grundmann was unaware of his need to obtain cutting rights, and the fact that this was Mr. Grundmann's first offence. The District Manager assessed a penalty that, in his opinion, compensated the Crown for its loss, removed any economic benefit for unauthorized harvest, and provided a reasonable deterrent.

The Respondent considered six cash sales of building logs in 1996 and 1997 which used the average stumpage plus average bonus bid (\$43.90 and \$10.03 respectively) to arrive at the price of the logs. Using these average stumpage and bonus figures, the cost of the Appellant's logs would be $(\$43.90 + \$10.03) \times 22.9 \text{ m}^3 = \1235 .

While giving his evidence, Mr. Horley stated that, had Mr. Grundmann approached MOF in pursuit of a license to cut, it was quite possible that a lower price than the average stumpage rate could have been negotiated based on the small amount of timber required, and the small size of the logs. In his initial discussions with Mr. Grundmann on May 8, 1997, Mr. Horley estimated a value of approximately \$1000 on a cash sale basis. This estimate was made after the stump cruise was completed, but before the scaling compilation was done.

The sum assessed using the average stumpage and bonus bid is to compensate the Crown for its lost timber. The Commission finds that this part of the penalty is appropriate. The remaining question is whether the additional part of the penalty, \$474 ($\$1709 - \1235) is appropriate.

The Respondent testified that in a similar trespass case in 1996, the assessment was the district average stumpage rate, plus average bonus bid, plus one half the trespass stumpage rate which is greater than the penalty assessed to Mr. Grundmann. The Commission was not provided with any further details of this case in relation to size and quality of logs, location, previous record of the trespasser etc.

Section 119 states that a penalty may be assessed *up to* an amount equal to the outcome of the formula in 119(a) and (b). While the Crown should receive some compensation for its loss in this case, the Commission is of the view that the additional penalty, while relatively small, is not warranted in the circumstances. This trespass involved a relatively small quantity of timber of small sized trees, there were unusual circumstances surrounding the event and, according to the evidence of the MOF official, the Appellant stated that, had Mr. Grundmann approached MOF for a license, it was quite possible that a lower price than the average stumpage rate could have been negotiated for the timber needed.

DECISION

The Commission finds that a contravention of section 96 of the *Code* did occur but that the penalty should be reduced to \$1235. The appeal is allowed in part.

Katherine Lewis, Panel Chair
Forest Appeals Commission

May 21, 1998