



# Forest Appeals Commission

Fourth Floor 747 Fort Street  
Victoria British Columbia  
**Telephone:** (250) 387-3464  
**Facsimile:** (250) 356-9923

Mailing Address:  
PO Box 9425 Stn Prov Govt  
Victoria BC V8W 9V1

## APPEAL NO. 2002-FOR-004

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:** Allan Therrien **APPELLANT**

**AND:** Government of British Columbia **RESPONDENT**

**AND:** Forest Practices Board **THIRD PARTY**

**BEFORE:** A Panel of the Forest Appeals Commission  
Lorraine Shore, Panel Chair

**DATE OF HEARING:** May 14 and 15, and July 12, 2002

**PLACE OF HEARING:** Hagensborg and Vancouver, B.C.

**APPEARING:** For the Appellant: Robert Wickett, Counsel  
For the Respondent: Bruce Filan, Counsel

## APPEAL

This is an appeal brought by Allan Therrien of the August 9, 2001 determination by Otto Pflanz, District Manager, Mid Coast Forest District (the "District Manager"), that Mr. Therrien had contravened section 96(1) of the *Forest Practices Code of British Columbia Act* (the "Code"). The District Manager imposed a penalty of \$20,000. The District Manager's determination was confirmed in a Review Panel decision dated January 10, 2002.

The Forest Appeals Commission (the "Commission") has the authority to hear this appeal pursuant to section 131 of the *Code*. Under section 138 of the *Code*, the Commission may confirm, vary or rescind the determination appealed from. The Commission may also refer the matter back to the person who made the determination, with or without directions.

Mr. Therrien is seeking an order rescinding the contravention, or in the alternative, a determination that the \$20,000 penalty is excessive.

**BACKGROUND**

Many of the facts in this matter are not in dispute, and the parties proceeded at the hearing on the basis of the finding of facts made by the District Manager in his determination, with the exception of two findings. These facts were supplemented by oral evidence from Mr. Therrien and five other witnesses.

In early 1998, Mr. Therrien was working as a beachcomber near Bella Coola. Beachcombers are allowed to take wood they find floating or on the beach below the high water mark. They are prohibited from removing timber from above the high water mark, and from cutting standing timber, except where a permit or licence has been issued by the Ministry of Forests. It is undisputed that Mr. Therrien had no such licence or permit.

Mr. Therrien was salvaging in the Burke Channel and Kwatna Inlet areas, and tied up his tugboat at a former logging camp dock at Kwatna Bay. The camp belonged to Joe and Jeremy Hinke. The only occupant of the floating camp was Grant Bryson, a watchman who was there from December 1997 until March 1998, with the exception of 10 days in the middle of this period. Mr. Therrien salvaged during the day and returned with logs at night.

On an unspecified date in early 1998, the Mid Coast Forest District office in Bella Coola was contacted by a log buyer from Probyn Log Ltd., who advised that he had a barge coming to the mid-coast area to pick up wood from various locations. He asked if the Ministry of Forests had conducted their inspections of the wood and if they had any concerns about the wood.

As a result of this call, two forest officers, Brent Luck and Rick Dreise, visited Kwatna Bay on March 12, 1998. They observed an unoccupied tug, with a black hull and gray house, and four bags (log booms) of wood tied up in the bay. Mr. Bryson told them he believed the tug belonged to Mr. Therrien. The first bag of wood belonged to Mr. Therrien. The second and third bags were together and were identified by Mr. Bryson as belonging to Forest Mearns and Torfin Samuelsen. The fourth bag was across the bay, approximately a half mile away, and Mr. Bryson did not know its ownership.

The two forest officers inspected the bags of wood. The first bag, belonging to Mr. Therrien, contained mainly cedar with some spruce. A significant amount of the wood was large and green. In the opinion of the two forest officers, the logs were not consistent with wood that had been washed on the beach. There were no rub marks or ends that were frayed or weathered from wave action.

The forest officers found no timber marks on the logs. A Scaler's Raft Tag was found on a large green cedar in the middle of the bag. The Tag indicated that the bag had been scaled by Kenneth Hincks and that the parcel contained 153 pieces of timber. Mr. Hincks' scale report was submitted to the Mid Coast Forest District on March 23, 1998. It showed a volume of 438.7 m<sup>3</sup> in the parcel. In evidence, Mr. Hincks identified his scale report dated March 3, 1998, and said that although he

had no independent recollection of the date of his visit, the report would have been done on the date he visited the boom.

The two bags owned by Mr. Mearns and Mr. Samuelsen were inspected and found to contain timber consistent with beachcombed wood. Scaler's Raft Tags, which were present on both bags, showed Mearns' bag contained 51 pieces of wood including sticks, and Samuelsen's contained 33 logs and 7 sticks. The fourth bag was found to contain 18 pieces of green cedar. No Scaler's Raft Tag was found.

The forest officers began to check the shoreline in the area, and over the next few days identified 72 sites where 109 logs had been taken from blowdown or standing timber above the high water mark. In most cases, the timber had been removed from well inside the forest prism. On some sites, the stumps were covered with moss and branches. The stumps appeared to have been recently cut. The stumps were all cedar on the first sites visited. The forest officers took Polaroid photos of all cuts.

On returning to Kwatna Bay, after inspecting the first 11 sites, the forest officers made a possible match with one of the logs in the fourth bag. As a result, the forest officers returned to Kwatna Inlet and placed seizure notices on the wood in that bag.

The forest officers continued to check the shoreline in the area. At site 27, the officers found a spruce stump that had been partly covered with moss and branches. They made a possible match with one of the logs in Mr. Therrien's bag, and as a result on March 14, 1998, they placed seizure notices on the wood in his bag. On a subsequent visit to this site, an axe was found and branch samples were taken. The branches were possible matches for two logs in Bag 4 and the spruce log in Mr. Therrien's Bag.

On March 16, 1998, Mr. Therrien spoke to the Operations Manager of the Mid Coast Forest District and asked if his boom was being seized and the grounds for seizure. Mr. Therrien denied cutting down any trees.

David Steele, a timber scaler and forest officer from the Vancouver Forest Region, Ministry of Forests, scaled the wood in Mr. Therrien's bag. He found a total of 152 pieces with a volume of 485.4 m<sup>3</sup>. He observed that 61 were green freshly cut, 21 were dead and down, 66 were beach worn and 4 were unknown.

Arrangements were made to have a tug, operated by Lee Kyall, tow the two seized bags to a dry land sort in Bella Coola. The two bags were put into a boom and double stuck to prevent the loss of logs. The tug with the boom left Kwatna Inlet on March 19, 1998, and arrived the following day at the booming grounds at Clayton Falls, near Bella Coola. The boom was secured to the dolphins and another two rows of boomsticks were added. The seizure notices were visible.

On March 22, 1998, the Ministry of Forests learned that the seized boom had been released. As two forest officers were preparing to search for the wood, they encountered Mr. Therrien, who called across the street to them "I didn't do it." At

the Commission hearing, Mr. Therrien admitted that he had released the boom. The wood was subsequently found scattered down the south shore of North Bentinck Arm. All but about 15 pieces of wood were recovered.

During the course of the investigation, Wayne Sissons, the proprietor of Bella Coola Air, advised the Ministry of Forests that on February 13, 1998, while flying in the Kwatna Inlet area he had seen a black-hulled tug with a long gray house pulling wood off of the shore. He did not observe any other tugs in the area at the time.

On August 9, 2001, the District Manager issued his determination that Mr. Therrien had contravened section 96(1) of the *Code*. In the determination, he acknowledged that there was "no direct evidence" that Mr. Therrien was responsible for the contravention. However, he found that there was sufficient circumstantial evidence to conclude that it was "more probable than not that Mr. Therrien was responsible for the unauthorized cutting and/or removal of the Crown timber in question." The District Manager issued a penalty of \$20,000, which he stated was "in the lower one quarter of the penalty range, but is substantive".

Mr. Therrien requested a review of the District Manager's determination. In a decision dated January 10, 2002, the Review Panel agreed with the District Manager that "on a balance of probabilities," Mr. Therrien was responsible for the contravention. In reaching its decision, the Review Panel found that Mr. Therrien's claim that he had found the wood floating was "not credible," and that "[t]he evidence, although circumstantial, is quite strong in this case."

On January 29, 2002, Mr. Therrien appealed the matter to the Commission. He appeals on the basis that the Review Panel "erred in concluding that it was more probable than not" that Mr. Therrien contravened section 96 of the *Code*. He submits that the Crown must prove that Mr. Therrien "knowingly" cut, damaged, or destroyed Crown timber. In the alternative, Mr. Therrien argues that the penalty is excessive in the circumstances.

The Government submits that, on a review of the evidence, it is more likely than not that Mr. Therrien contravened section 96 of the *Code*.

The Forest Practices Board (the "Board") accepted Third Party status in this appeal. It did not attend the hearing, but provided written submissions on the issue of whether it must be proved that Mr. Therrien "knowingly" contravened section 96.

## RELEVANT LEGISLATION

Section 96(1) of the *Code* states:

### Unauthorized timber harvest operations

**96** (1) A person must not cut, 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 or for other prescribed purposes,
- (d) under the *Park Act*,
- (e) by the regulations, in the course of carrying out duties as a land surveyor,
- (f) by the regulations, in the course of fire control or suppression operations, or
- (g) by the regulations, in the course of carrying out activities
  - (i) under a range use plan or a consent under section 101 or 102,
  - (ii) under a silviculture prescription for a backlog area or a stand management prescription, or

...

## ISSUES

1. Whether Mr. Therrien contravened section 96(1) of the *Code*.
2. Whether the penalty is appropriate in the circumstances.

## DISCUSSION AND ANALYSIS

### 1. Whether Mr. Therrien contravened section 96(1) of the *Code*.

Section 96(1) prohibits a person from cutting, damaging or destroying Crown timber without authorization. There is no dispute that Mr. Therrien did not have authorization to cut Crown timber. He was only authorized to salvage wood that was floating or was below the high water mark.

Mr. Therrien admits that there was stolen wood in his bag. However, he claims that he did not steal the wood, and says that the possession of timber, which has been stolen by someone else, is not sufficient to find a contravention of section 96(1) of the *Code*. He submits that to find him liable for such a breach, the Government must prove, on the balance of probabilities, that he cut, damaged or destroyed Crown timber.

Mr. Therrien further acknowledges that six pieces of wood in his bag matched stumps that the Ministry of Forests found at some of the sites. He acknowledges that, without an explanation, this fact would probably be enough to find him in

contravention of section 96(1). Mr. Therrien says that he did provide an explanation for possession of the stolen wood. He testified that he found 27 pieces on dog lines attached to one line at Cathedral Point. He said that this had probably been tied to the beach at some time, but it was not attached to the shore when he found it. He said that he found the other logs, one or two at a time, on the shoreline. He said he cut the roots off and towed the logs away.

Mr. Therrien argues that it is not uncommon for bags to contain some green or dead and down wood; it may result from wind or from wood being found on the beach below the high water mark. The Ministry of Forests acknowledges that there is no fixed percentage of such wood in a bag that arouses suspicion. In this case, if one subtracts the 27 pieces which were found at Cathedral Point, that reduces the ratio of green or dead and down wood significantly.

Mr. Therrien further argues that two pieces of objective evidence point away from his guilt. The first is the timing. Mr. Therrien states that he concluded his beachcombing by February 21, 1998, which is the date when his herring skiff was recorded as being back at the Bella Coola dock. He says that he returned to Kwatna Bay only once, in the skiff, to retrieve the tug. He notes that the forest officers attended on March 12, 1998, and checked out the bags of wood. He states that the forest officers then found sites from which logs had been cut, and determined that the cutting had been done within the preceding month. He argues that this estimate was supported by the condition of the stumps themselves – there was no weathering, and there was the presence of sawdust which would have washed away in the wet and windy weather on the mid-coast. He argues, therefore, that the logging must have been done after mid-February. Mr. Therrien maintains that he stopped beachcombing no later than February 21, 1998, and could not have done all this harvesting in such a short period.

Mr. Therrien further argues that the existence of Bag 4 points away from Mr. Therrien's guilt. Mr. Therrien argues that whoever assembled Bag 4 is likely the person who cut the wood at the 72 sites. That bag contained 18 green pieces and no beachcombed timber. One piece in that bag matched a stump at one of the 72 sites. Mr. Therrien argues that if he was responsible for the green and dead and down timber in both bags, that would mean he had 82 pieces in Bag 1 and 18 in Bag 4, and he would never have found any legitimate beachcombed timber. He argues that it would be odd for him to have two bags of wood in Kwatna Bay. A beachcomber only gets paid for wood that is scaled, and here only Bag 1 was scaled. Further, Bag 4 was in the same bay and would be discovered by the Forest Service. Mr. Therrien submits that Mr. Bryson did not see Mr. Therrien near Bag 4, but he did see someone else there.

The Government argues that the physical evidence is strong in this case, and Mr. Therrien's explanations for possessing the green timber are not credible. The Government's submissions are summarized as follows:

- There is evidence linking Mr. Therrien to Bag 4. The spruce that was found in Mr. Therrien's Bag 1 matched a stump at site 27. In Bag 4, there was a cedar

that matched a stump at site 27. The Government submits this is likely the result of Mr. Therrien cutting timber alone or in concert, and dividing the wood between the two bags.

- The evidence does not support Mr. Therrien. There has been no legal logging in the area for a year. There were no new landslides or windstorms during the period in question that could have deposited that amount of timber into Kwatna Bay or Kwatna Inlet, so there is no way that the green or dead and down wood found in Bag 1 could have naturally fallen below the high tide mark. There were no reports of booms breaking apart. The area is uninhabited. The pieces of bagged wood that were matched with sites of illegal harvesting were large pieces of wood. There are similar things at various illegal logging sites; for example, the axe found at Site 27 had blue markings, which are consistent with the blue wedge pieces, found at other sites. Debris was placed on many of the stumps in order to hide them.
- Mr. Therrien's explanation is not credible. He says that he found 27 pieces of wood at Cathedral Bight, but he has no idea where this timber came from. It is inconceivable that someone would take the trouble of cutting such valuable pieces of wood and then abandon them. He said that other green timber was the result of blow downs. With blow downs, the root wad has to be cut off, but some of his timber still had the root wad attached. Further, his Permit to Buck Marine Salvaged Timber requires him to record when he cuts a root wad, but he has no such record. The berthage record shows that his aluminum punt was out from March 5 to 7, 1998, but he claims that he does not know where it was. His initial evidence was that he was in Kelowna or Vancouver at that time; later he said he was in Kelowna or Bella Coola.
- Mr. Therrien's own evidence at this hearing is inconsistent with his evidence at prior proceedings. At the hearing before the District Manager, he denied releasing the seized log booms; but here he admitted it. And at this hearing, he said for the first time that someone else was taking timber illegally. At the Review Panel hearing, he said his logbook had been confiscated; but here he said it was destroyed by the deceased owner of the tug.

These submissions by the Government were supported by a number of documents and photos, as well as written statements and testimony from several witnesses including Mr. Bryson (the watchman), Mr. Driese (the Ministry of Forests scaler), Mr. Kayll (the tug operator who towed the seized wood to Bella Coola and secured it at the booming grounds), and the District Manager.

The Government submits that this case is similar to that of *William Hollis v. Government of British Columbia and Forest Practices Board* (Forest Appeals Commission, Appeal No. 97-FOR-13, August 31, 1998) (unreported) (hereinafter "*Hollis*"). In that case, the Commission concluded that the Appellant had cut the timber in contravention of section 96(1) when 61 stumps were located on Crown land and six matches were made between the stumps and logs located on the roadway adjacent to the Appellant's property. The Commission held that it was

more than reasonable to presume on the basis of six matches and the lack of matching stumps on the Appellant's property that the logs had been illegally harvested by the Appellant.

In response, Mr. Therrien said that the Government cannot resile from the facts found by the District Manager. He notes that the District Manager found that the illegal cutting had been done within the last month before discovery, but now the Government wishes to change that to "recently." In addition, Mr. Therrien notes that the Government has introduced Mr. Bryson's testimony that Mr. Samuelson told Mr. Therrien that Mr. Therrien had too much green wood in his bag and this would make it tough for all beachcombers. Mr. Therrien maintains that that conversation was never put to him in cross-examination at the hearing before the Commission. In reply to the Government's submission that Mr. Therrien had never, at a previous hearing, said anyone else was taking timber, Mr. Therrien submits that he did mention at the hearing before the District Manager that Mr. Samuelson had been operating in the area.

The Board argued that the Government need not prove that a person acted "knowingly" to establish, in the context of an administrative proceeding, that the person contravened the *Code*. The Board said that it is sufficient for the Government to prove the breach; there is no need to prove mental intent. The Board submits that the requirement to establish that a person acted "knowingly" only applies to certain criminal offences in which the *mens rea* (guilty mind or criminal intent) of the accused is a necessary element of the offence. The Board submits that, in this appeal, a contravention of the *Code* is an administrative contravention, and not a criminal offence, and it would be odd if the Crown could not recover compensation for damage done to its property unless the wrongdoer acted "knowingly" in taking Crown property.

The Panel notes that the Board appears to have provided this submission in response to a submission in Mr. Therrien's Statement of Points. However, Mr. Therrien did not pursue that argument in the hearing before the Commission. Therefore, the Commission need not make a finding with respect to the Board's submissions.

In the Commission's view, there is no question that the circumstantial evidence against Mr. Therrien is compelling. The most obvious piece of evidence is, as he acknowledges, that he was in possession of wood that had been cut without authorization. There is no dispute that at least six pieces in his bag have been matched to stumps at sites of illegal cutting in the area.

In the context of administrative proceedings, the onus is on the Government to prove on the balance of probabilities that the person allegedly responsible for the breach, in this case Mr. Therrien, contravened the *Code*. The Commission finds that the circumstantial evidence in this case is sufficient to satisfy that onus. The Commission also finds that Mr. Therrien has failed to provide a credible explanation as to how that wood got into his bag, if he did not cut it, or provide evidence that someone else was responsible for the illegal cutting.

Mr. Therrien claimed that he found 27 pieces on dog lines at Cathedral Point (also known as Cathedral Bight) as well as one or two pieces on other days. But no evidence was produced which would account for such a large number of pieces of wood to be the result of legal harvesting. The evidence is to the contrary. Specifically, the evidence indicates that there had been no legal logging activity in the area during the period in question. Mr. Dreise said that Interfor, a major licensee in the area, had not been operating for a year, and the Hinke operation, which took over from Interfor, was shut down. The area is basically uninhabited. In addition, the evidence indicates that there had been no natural occurrences, such as windstorms or mudslides, which could account for a large amount of green timber in the area. Mr. Dreise also testified that if a licensee loses a boom, the area around the boom becomes subject to a closure, which prohibits beachcombing.

Alternatively, the Commission finds that it is unlikely that the 27 pieces Mr. Therrien claims to have found at Cathedral Point were the result of illegal harvesting by an unknown person. The Commission agrees with the Government that it does not make sense that someone would have gone to the considerable trouble of cutting so many trees illegally, covering up many of the stumps with moss and branches, and tying the wood together, only to abandon the logs. It is possible that a trespasser could have assembled the bundle with the intention of returning to claim it later, but on the evidence, that is not probable in this case. Specifically, no evidence has been put forward that an unidentified individual was seen beachcombing in the area. Even Mr. Therrien, when asked in direct examination if he had seen anyone else in his travels, mentioned only Torfin Samuelsen, another beachcomber. Given the fact that there are few people in the area, it is likely that Mr. Therrien, the other beachcombers or the watchman, Mr. Bryson, would have noticed an individual who was engaged in the level of activity necessary to cut trees at 72 different sites.

In fact, the evidence is that Mr. Therrien was the main person seen operating as a beachcomber in the area in the relevant time period. The watchman, Mr. Bryson, identified three individuals in addition to Mr. Therrien, as being in the Kwatna Inlet area during the time that he was watchman. He said an individual named "Dwayne" was doing mechanical work on one of the Hinke tugboats for three weeks. He did not suggest that Dwayne was beachcombing. Mr. Bryson said that Forest Mearns and Torfin Samuelsen were beachcombing and came into the bay on and off for a couple of days. By contrast, Mr. Bryson said, in a written statement dated April 4, 1998, that he had seen Mr. Therrien bring in wood behind his boat and place it into the boom 30 or more times.

Further, it was Mr. Therrien's Bag 1 that contained the high proportion of green wood. Mr. Dreise testified that the bags of Mr. Mearns and Mr. Samuelsen did contain some green wood, but they "met the standard." He acknowledged that there was no set standard; rather it was a rule of thumb, which would take into consideration such things as heavy weather, which would cause green wood to be in the water.

In his evidence, Mr. Therrien attempted to cast suspicion on Torfin Samuelson. In his direct evidence, he said that he had witnessed Torfin Samuelson stealing wood from above the high water mark. He said this was probably about three weeks before the scale. In cross-examination, Mr. Therrien initially said he saw Mr. Samuelson take one log. He acknowledged that he had not raised this allegation at the hearings before the District Manager or the Review Panel, and that he was raising this for the first time at the Commission hearing. When asked if he considered this to be a significant matter, he agreed, and then said that he was not really close and he just saw the boat pulling something off the shore.

The Commission does not accept Mr. Therrien's evidence in regard to Mr. Samuelson. The allegation that someone else was doing what Mr. Therrien is accused of doing is significant. The Commission does not accept that Mr. Therrien would have failed to mention such an observation in two prior proceedings, had such an event occurred. Further, when challenged on his evidence, Mr. Therrien backed away from his earlier assertion and became more vague as to what he had witnessed.

In fact, the undisputed evidence is that Wayne Sissons, the proprietor of Bella Coola Air, had seen a tug pulling wood off the shore in Kwatna Inlet, adjacent to the camp, on February 13, 1998. The tug was described as black hulled with a long gray house. That description matches the tug seen by forest officers Brent Luck and Rick Dreise on their visit to Kwatna Bay on March 12, 1998. Mr. Bryson identified that tug as belonging to Mr. Therrien.

The Commission does not accept Mr. Therrien's argument that he could not have done the illegal cutting due to the timing of the cutting. First, Mr. Therrien based his argument on the berthage record, which shows the aluminum punt used by Mr. Therrien as being berthed in Bella Coola continuously from February 21 through March except for March 5-7, 1998. The difficulty with accepting the berthage record as proof that Mr. Therrien was in Bella Coola, and not in the Kwatna Inlet area, is that it is based on the morning boat count. It does not show that the boat was there all day or night. The difficulty is illustrated in mid-March. The berthage record shows the punt as being docked except for March 5-7. But the undisputed evidence is that on the evening of March 16, Mr. Therrien was spotted leaving the dock in Bella Coola in the punt. Late that night, an outboard came into Kwatna Bay, and early the next morning it was noted that Mr. Therrien's tug had left. But there is nothing in the berthage record that would show this overnight trip was made.

Second, while Mr. Therrien's counsel argued that Mr. Therrien was not beachcombing in the Kwatna Bay area after February 21, Mr. Therrien's own evidence was not as concrete. In response to a question from his counsel as to when he finished his beachcombing trip, Mr. Therrien said "mid to end of February." In cross-examination, he was asked when and where he had seen Mr. Samuelson taking a log. Mr. Therrien said it was the end of February or early March – "just prior to my leaving." In view of Mr. Therrien's own evidence, the Commission does not accept Mr. Therrien's claim that he was not beachcombing after February 21.

Finally, Mr. Therrien argues that the Government is bound by the facts found in the District Manager's determination; in particular, the finding that the illegal harvesting was done no earlier than mid-February.

The determination sets out the facts in chronological order, and reads as follows at paragraph 35, in regard to March 19, 1998:

It was noted at each of the sites (1 through 64) inspected, that the wood had been taken from above high tide mark and in most cases from well inside the forest prism. All wood cuts, sawdust butt ends of logs and stumps appeared to have been cut in and around the same time period, which the investigating forest officials all agree was within one month from the date of discovery.

The Government says that its position is not that all cutting had been done within one month preceding discovery, but that the cutting had been done "recently." It referred to the report of Mr. Steele, the Ministry of Forests scaler, who defined "green and freshly cut" as being within an estimated six-month period.

The difficulty with Mr. Therrien's argument is that the clarification or alteration of the time period stated in the determination arose as the result of questions put to Mr. Dreise in cross-examination. When Mr. Dreise was asked about the "within one month" reference, he said that this was "an estimate." When asked again in cross-examination about this reference, he said that "recently" would have been a better description. In re-examination, Mr. Dreise said that there are many variables in making a time estimate, such as the weather, and whether the chain saw used in cutting was running well. He said that it takes a long time for fresh cut faces to degrade, but the face would darken in one season.

Taking into account all of Mr. Dreise's evidence, it is clear that the Ministry of Forests was giving a rough estimate when it referred to a "one month" time period. The Commission finds that it would be more accurate to refer to the cutting as having been done "recently" rather than confining it to a precise 31-day period.

Consequently, the Commission concludes that Mr. Therrien was beachcombing in the area when the illegal harvesting was being done. The timing of the illegal harvesting does not rule out his possible involvement in such harvesting.

With regard to Mr. Therrien's argument that the person who assembled Bag 4 cut the wood, the Commission finds that, to accept that argument, one would have to accept that there were two people, operating in the same area at the same time, who coincidentally acquired large quantities of green timber. Mr. Therrien would have had to find sufficient green and dead and down timber to make up more than 50 per cent of his bag. The other person, who Mr. Therrien suggests was responsible for the illegal harvesting, would have had to collect 18 pieces of green timber (the number found in Bag 4) in the same bay where Mr. Therrien was operating.

The Commission does not accept that there was an unidentified individual operating in the area at the same time as Mr. Therrien. For the reasons set out earlier, the likelihood of such a person operating and cutting wood at 72 different sites, and not being observed by anyone, is too improbable to be accepted.

The existence of Bag 4 does not seem odd in the circumstances. The evidence from Mr. Dreise was that the Ministry of Forests accepts a certain amount of green timber in a bag. But it is clear that an excessive amount of green timber will raise questions about the origin of the wood. The amount of green wood in Mr. Therrien's bag was apparently the source of some concern to the other beachcombers. Mr. Bryson said that there was an occasion when Mr. Samuelson said that the green wood in Mr. Therrien's bag was going to make it tough on all the beachcombers. Mr. Therrien's bag was already more than 50 per cent green and dead and down. If Mr. Therrien was the person collecting Bag 4, then there was good reason to keep it separate, in order not to add more green timber to a bag that already contained a substantial amount.

There is a linkage between Mr. Therrien's bag and Bag 4 in regard to Site 27. Two cedar logs in Bag 4 and one spruce log in Mr. Therrien's bag were all found to have come from Site 27. There is little likelihood that three logs, all illegally cut from the same site, would end up in two separate bags in the same bay, if the same person was not creating those bags. Further, an axe was found by the Ministry of Forests at Site 27. Mr. Dreise said this was a falling axe used to drive in wedges to fall the tree. The wedges are made of plastic and come in white, orange or blue. This axe showed bits of blue plastic on it. Similar blue chips were found at Sites 25 and 57. Site 25 is one of the sites where stumps were found to match logs in Mr. Therrien's bag.

There are other pieces of evidence that do not assist Mr. Therrien. Mr. Dreise, who was familiar with falling techniques and tools, described the stumps left at the sites as being poorly cut. In his evidence, Mr. Therrien acknowledged that although he had worked in the forest industry he had no training or experience in falling. Second, a Budweiser beer can was found at Site 59. Site 59 was one of the sites where a stump matched one of the logs in Mr. Therrien's bag. Lee Kayll, one of the men who towed the seized booms into Bella Coola, testified that on March 22, 1998, he had a conversation with Mr. Therrien concerning the booms having been released. At that time, Mr. Therrien was carrying a case of Budweiser beer.

Further, Mr. Therrien was unable to produce the salvage logbook which beachcombers are required to maintain. Mr. Therrien's evidence was that he had kept such a record and photos, and that he left them on the tugboat, which he returned to its owner when the timber was seized. Mr. Therrien said he tried to retrieve the book a week later but the owner had thrown Mr. Therrien's personal belongings away. He said the owner is now deceased. Mr. Therrien did not explain why he left the book on the boat.

The Commission finds that Mr. Therrien's explanation is illogical. Specifically, it would not have made sense for Mr. Therrien to leave the logbook and photos on the

boat. When Mr. Therrien returned the boat, he knew that the timber had been seized as a result of allegations that some of it had been illegally cut. If the salvage logbook supported Mr. Therrien's account that he obtained the wood legally, then, logically, he would have retained such an important record.

Finally, there is the matter of the release of the seized wood. Mr. Therrien acknowledges that he did this, but argues that this tells nothing about his state of mind or guilt. The Government says that Mr. Therrien's conduct does show his state of mind.

The Commission finds that Mr. Therrien's explanation that he released the boom because he was angry and drunk does not make sense. About 40 percent of the seized wood was legitimate beachcombed wood, worth about \$28,000. The Commission is of the view that an innocent person would have claimed that wood. The Commission finds that Mr. Therrien released it to obstruct the investigation and protect himself from being caught, because he knew that the wood in his bag was harvested illegally. It is the Commission's view that, while Mr. Therrien was undoubtedly frustrated and angry over the wood seizure, it cannot be ignored that the release of the wood could, and perhaps did to some degree, obstruct the investigation. About 15 pieces of wood were not recovered. Further, the Commission notes that Mr. Therrien did not acknowledge his responsibility for the release at prior proceedings. At the hearing before the Commission, he said that he released the wood because he thought it was "unfair" that the Ministry of Forests took it, and that if they wanted it, they could go beachcomb it like he did. This failure to previously acknowledge his responsibility leads the Commission to doubt Mr. Therrien's credibility.

This appeal bears a number of similarities to the *Hollis* appeal, cited above. In both appeals, there is no direct evidence that the Appellant cut the trees from Crown land, but in both the Appellants were found in possession of timber which matched stumps on Crown land. As the Commission said in *Hollis* (at page 7):

The evidence was sufficiently direct and compelling to link the Appellant to the offence. Though some of the evidence was circumstantial, it is acceptable on either a civil or criminal standard to consider compelling circumstantial evidence. On either standard it is not necessary to catch the offender in the act or match every stump or cookie sample with the logs in issue and it is more than reasonable to presume on the basis of six matches, and lack of matching stumps on the Appellant's property, that the 49 logs in issue were all illegally harvested by the Appellant.

In Mr. Therrien's case, there is no dispute that he was in possession of a large number of green logs in Bag 1, six of which were found to match stumps on Crown land. The Commission finds that he has provided no credible explanation as to how he came into possession of these logs. There was no logging activity in the area, nor were there storms or slides which would account for this volume of green timber. Further, Mr. Therrien was the only person observed operating in the area for any extent of time. The evidence, while circumstantial, is strong.

Based on all of the evidence, the Commission finds that it is more probable than not that Mr. Therrien was the person responsible for illegally cutting the Crown timber.

**2. Whether the penalty is appropriate in the circumstances.**

In his appeal, Mr. Therrien sought a determination that the fine of \$20,000 was excessive in the circumstances. However, at the hearing, Mr. Therrien did not provide any evidence or make any legal arguments in regard to the penalty.

The Commission has no reason to vary the penalty levied by the District Manager and upheld by the Review Panel. Therefore, the Commission upholds the penalty of \$20,000.

**DECISION**

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

For the reasons provided above, the Commission confirms the District Manager's determination.

Accordingly, the appeal is dismissed.

Lorraine Shore, Panel Chair  
Forest Appeals Commission

October 2, 2002