



Options for forest verification

Case Study

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Country Case Study 2

Verification in the Forest Sector of British Columbia, Canada

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SUMMARY

This case study examines the role of the Forest Practices Board, an independent public watchdog in the forest sector of British Columbia. British Columbia is Canada's most forest-dependent province with 62% of the province covered in forest and a forest industry that generates \$1.2 billion revenue p.a. and directly employs 4.4% of the province's workforce. The BC forest industry came to international attention during the so-called 'war in the woods' in the 1980s/90s, when there was high profile protest over the damage to BC's unique fauna and flora caused by a relatively unregulated industry. Confrontation between the government and environmentalists peaked in 1993, when the arrest of some 900 protesters provoked adverse publicity both domestically and internationally. The government responded in 1995 by passing the Forest Practices Code and establishing a Forest Practices Board (FPB) to provide an independent 3rd party view of (i) the compliance of licensees with the Code; (ii) the efficacy of the Code; and (iii) Government administration of the Code.

The FPB carries out audits of companies, of the government agency responsible for developing and auctioning timber sales licences, and of the government's compliance and enforcement branch. In addition to random audits, the FPB carries out thematic audits, investigates complaints and carries out special investigations of issues of general concern. The independence of the FPB is assured by legislation and it reports directly to the public without interference or vetting. It receives its funding from the Treasury to avoid any undue sectoral influence and its eight members are appointed by Cabinet, representing a broad spectrum of forestry and environmental experience.

With no power to apply sanctions and a limited mandate to comment on policy, some people consider the FPB to be largely irrelevant to the big issues of improving the policy framework for sustainable forest management and land use planning. These are related in particular to the continuing degradation of the British Columbian landscape, and potential loss of a number of highly endangered species, in spite of a forest industry that achieves 94% compliance with the law. Others point to the constructive role played by the FPB in working with auditees, where it emphasises solutions rather than assigning blame. Furthermore, its special investigations (e.g. on endangered species) are praised for providing a neutral forum for the discussion of contentious issues.

In 2004, in a spirit of deregulation, the Forest Practices Code was replaced by the results-based Forest and Range Practices Act (FRPA). The FPB was retained though its role became more difficult as the FRPA has no clear indicators against which to audit. Nevertheless, the shift from the Code to the FRPA has opened the way for the FPB to push its mandate and comment more widely on policy, as it talks to the expected 'results' rather than simply auditing compliance to prescriptions. Its independence and related objectivity are key factors in explaining the important role the FPB plays alongside other, less impartial, actors in assuring verification in the BC forest sector.



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Introduction

The focus of this case study is the Forest Practices Board of British Columbia, a globally unique agency with a mandate to hold both the government and forest industry publicly accountable for forestry practices. The case study begins with a brief overview of the forest sector in Canada and, more specifically, in the province of British Columbia, highlighting some of the major issues it is currently facing. This is followed by a description of the changing forest policy regime, which provides the context for a discussion of the roles of the main state and non-state actors involved in forest sector verification.

The Canadian Forest Sector

The forest products industry is one of Canada's largest manufacturing industries in terms of value-added in manufacturing, employment and wages. Well over \$60 billion¹ in goods, predominantly softwood lumber, pulp and newsprint, are exported every year, representing about 15% of total Canadian manufacturing shipments and 20% of the world trade in forest products (Hessing et al., 2005). About 300,000 people are directly employed in the forest industry (80% in manufacturing and 20% in logging operations), which also generates a similar number of indirect jobs (Hessing et al., 2005).

In spite of its national importance, forestry in Canada is predominantly a provincial affair. The 1987 National Forest Sector Strategy for Canada limited the federal role to forest research, export enhancement and continued funding for provincial forest management efforts without any input into the establishment of these

programmes (Hessing et al., 2005). The most important bodies at federal level are the Ministry of State for Forests and the Canadian Council of Forest Ministers (CCFM). Of particular importance to the forest industry is the federal government's power over international trade, where its focus has been on eliminating tariff and non-tariff barriers to increased trade in Canadian forest products (Hessing et al., 2005). The long-running softwood lumber dispute between Canada and the US (see below) illustrates the high level at which these issues are dealt with. The other area in which the federal government has a direct impact on the sector is in its attempt to coordinate Canadian activities with respect to the international environmental agenda. In all other respects, decision-making in the forest sector remains within the mandate of provincial legislatures.

The British Columbia Forest Sector

It is hard to overstate the importance of the forest sector in British Columbia (BC). Forest covers 62% of the province's 95 million hectares (COFI, 2005) (see Fig. 1) and the forest industry generates \$1.2 billion in annual revenues for the BC government (see Table 1) (MoF, 2003). In 2002/3 there were 87,300 forest workers (MoF, 2003), accounting for 4.4% of total employment in the province². Total employment linked to the forest sector may be as high as 14% (MoF, 2004). The forest industry also plays a political role, with five of the ten largest contributors to the successful BC Liberal party in the 2001 elections being forest companies (Wilderness Committee, 2003). Notwithstanding the importance of the sector, however, the BC forest industry has seen recent declines due to growing competition from other

Figure 1: Map of British Columbia showing forest areas in Green

Source: MoF, 2004 on line at: <http://www.for.gov.bc.ca/hfp/sof/maps/fl.jpg>



producer countries, particularly China, Russia and many tropical producers with faster-growing timber, cheaper labour and high proportions of illegally harvested timber (Cashore et al., 2006).

Table 1. Contribution of Forest Sector to BC Government Revenue

Year	Total BC Government revenue ^a (\$billions)	Revenue from the forest sector ^b (\$billions)	Revenue from the Forest Sector (%)
1997-98	20.286	1.847	9.1
2002-03	22.038	1.212	5.5

^a Data from BC Government Budget
^b Data from MoF 2003

For the last 20 years, around 30 large companies have dominated the industry. Only recently have they been joined by many smaller operators including First Nations and community forestry groups. The industry is highly mechanised and capital-intensive in both harvesting and processing, with a relatively small value-added industry in BC (Markey et al., 2005). The main focus is on softwood lumber production for the US market and low value-added pulp, making it susceptible to cyclical commodity price fluctuations. In the 1990s, the average total timber harvest was 75 million m³ per year (MoF 2004). For historical reasons, the older coastal forest industry tends to operate with 25-year area-based licenses, while the more recent interior forest industry typically has 15-year volume-based licences.

BC is unusual in that about 95% of land is in public ownership (MoF, 2004). The first Forest Act in 1912 introduced competitive forms of tenure as the primary vehicle for future dispositions of Crown timber (Reader, 2000). By 1978, over 80% of the province's timber supply was allocated to major forest companies. Although a range of tenure types now exists, the main difference is between 'major licensees' and 'small business licensees'. Major licensees consist mainly of holders of replaceable timber sale licences with an allowable annual cut greater than 10,000m³. Within the framework of Forest Stewardship Plans, these licensees have responsibility for many of the Forest Service's traditional silvicultural activities.

Small business licensees predominantly obtain their rights to harvest timber from BC Timber Sales (BCTS). This is the government agency responsible for developing and auctioning timber sales licences, a harvesting opportunity targeted at market loggers, sawmill operators, lumber remanufacturers and speciality wood products manufacturers (Reader, 2000). In 2004, as part of a Forestry Revitalization Plan, which aimed to diversify the sector and determine market-based stumpage fees, the government took back 20% of long-term logging rights held by the largest tenure holders in BC. These harvesting rights were allocated mainly to BCTS, the intention being to make around

20% of the province's total harvest (<http://www.for.gov.bc.ca/bcts>) available through the open market with lots being awarded to the highest bidder. These licensees can concentrate on timber harvesting activities and rely on the BCTS to prepare operational plans and carry out traditional Forest Service management responsibilities.

The remainder of the harvesting rights were reallocated to a range of small players, many of whom had few staff and little experience, including First Nations groups and community forests. In total, the Government proposes to allocate up to eight per cent of the province's total allowable annual cut to First Nations (MoF, 2004). First Nations are subject to the same laws and policies as other tenure holders, and pay the same fees, including stumpage. The tenures are non-transferable. Like other licensees, First Nations have the option of logging timber for their own use, selling it to other processors, or working to develop and sell it in partnership with others in the forest sector.

Key Issues in the Forest Sector

The softwood lumber dispute with the US

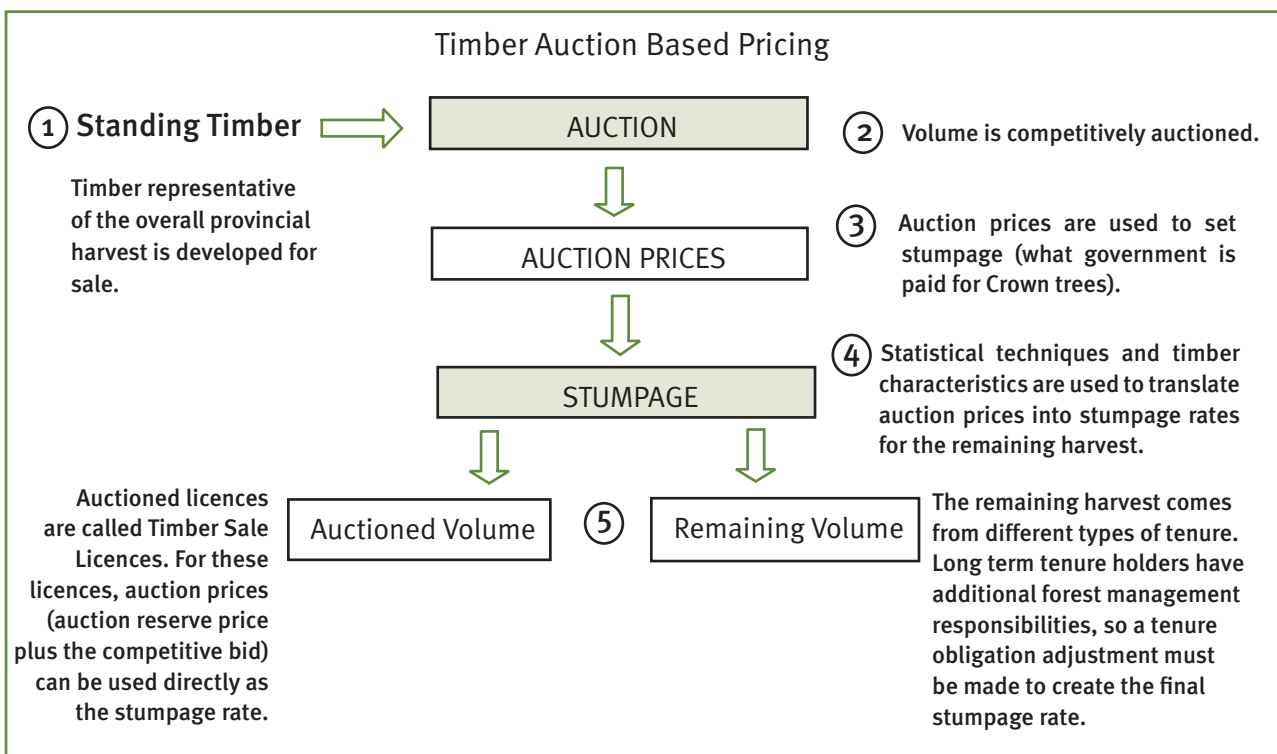
The dispute over import tariffs for lumber imports from Canada to the US has been a recurrent problem since the early 1980s and is frequently serious enough to involve the two Heads of States. Softwood lumber – mainly spruce, pine and fir – is one of the largest single export goods from Canada, sold predominantly into the US residential construction market where it competes with US-produced lumber. As Canadian exports have grown, US lumber producers have launched a series of challenges to Canadian logging and forestry practices designed to penalise Canadian products and raise their prices to make US domestic lumber more competitive (Hessing et al., 2005). The key US complaint is that the way in which timber companies are allocated harvesting rights in Canada puts them at a competitive advantage. While companies in the US purchase harvesting rights through open auction, companies in Canada pay stumpage fees set by forest ministries based on a variety of factors including market prices for final products, the employment goals of provincial governments and locally-specific factors such as difficulty of access.

To make good what they consider to be arbitrarily low stumpage fees that amount to illegal subsidies to the Canadian industry, the US lumber industry has lobbied the US legislature resulting in the implementation of countervailing duties and antidumping measures against Canadian products (Hessing et al., 2005). The Canadian government has challenged the US action through GATT, NAFTA and the WTO. Recent decisions have tended to find in Canada's favour, which is therefore arguing for a refund of the reportedly US\$5 billion of tariffs paid in the last five years. The proposal by some US senators to use this money to support US logging firms has infuriated the Canadian industry, which considers the root of the problem to be the inefficiency of the US timber industry relative to its own.

British Columbia is particularly hard hit by this dispute because it supplies 50% of all Canadian softwood lumber exported to the US, providing BC with sales

Figure 2: Market-based system for determining stumpage values

Source: after MoF, 2003



revenues of over \$7 billion in 1999. One result of the dispute has been that the BC timber industry is actively seeking to diversify its markets, looking in particular towards Japan and China. Another result has been that BCTS auctions are now used to determine market-based stumpage values for non-auctioned timber, after being adjusted to take into account the tenure obligations (e.g. planning costs, road building, reforestation, etc.) borne by licensees holding long-term tenures (see Fig. 2).

First Nation Treaty negotiations

In most of Canada, treaties between First Nations and the government of the time were negotiated in the 18th and 19th Centuries. British Columbia, however, refused to recognise aboriginal rights until the landmark Delgamuukw judgement by the Supreme Court of Canada in 1997, which confirmed that aboriginal title does exist in BC. The Treaty process, ongoing since the early 1990s, aims to achieve reconciliation between the Title of the First Nations – essentially their right to exist as a people – and the nation state of Canada, including British Columbia, with the three parties negotiating on a government-to-government basis (Richardson, 2003) supported by a Treaty Commission. It is slow work as it encompasses land, resource, governance and jurisdiction issues. Most of the 30 or so First Nations, and sometimes groups within them (known as ‘Bands’), negotiate separately and many have overlapping land claims.

The Supreme Court of Canada has ruled that the government must consult with any Band that alleges an aboriginal right prior to giving out cutting permits. Furthermore, the BC Appeals Court has ruled that companies have an obligation to consult with First Nations and accommodate their title, even when the full extent of that title is not yet known. Many First Nations have, therefore, signed interim agreements on

forestry-related matters, which provide a greater degree of stability for investment and development while treaty negotiations continue. Some of these agreements have spurred joint venture and training opportunities between forest companies and First Nations. Nevertheless, the Treaty process leads to a palpable sense of uncertainty as to who will have what kind of jurisdiction over which lands in the longer term. Faced with this uncertainty, industry has found it difficult to take a strategic view and its current approach is to give a great deal of flexibility to operational level managers to take their own decisions on how to work with First Nations and other local communities. As a result, approaches are very variable ranging from perfunctory consultation to serious negotiation and compromise. In general, the forest industry consider the Treaty issue and their resulting relationship with First Nations to be a serious factor of ‘competitive advantage’, but are unsure as yet whether it will turn out to be a positive or negative factor.

Environmental issues

BC is known internationally for its unique flora and rare fauna, such as the spotted owl and the mountain caribou. Coastal BC is home to 20% of the world’s remaining temperate rain forest (WRI, 2001). With its relatively low population density, extensive natural resources, and a Protected Area System covering 11.8% of the province (BC Stats 2004)³, achieving sustainable forest management has not been treated as a matter of urgency by the BC government. Although Canada has a federal Species at Risk Act, this applies only to territories under federal jurisdiction, which make up less than one percent of BC’s land base. BC itself has no stand-alone endangered wildlife legislation. Yet, according to the FPB (2005a), ‘there is a systemic failure in government policy to protect endangered species such as marbled

murrelets⁴ on crown lands'. Another species, the survival of which is the subject of widespread public concern, is the mountain caribou – only 1900 individuals remained in 2002, the population having fallen by 17% from 1996 (FPB, 2004; MCP, 2005). There is a common public perception (shared by some in the Forest Service) that BC forests are being degraded even where licensees are fulfilling all their contractual obligations (Reader, 2000). In part this is considered to be because policy makers consistently set the Annual Allowable Cut above government-determined, sustainable levels (Markey et al., 2005), and because 91% of logging is carried out using clear-cut methods, which may be detrimental to the environment (SDLF, 2002).

Concerns have been heightened by the massive infestation of Mountain Pine beetle (*Dendroctonus ponderosae*) in the interior – seven million hectares in 2004 alone – reportedly linked to warmer winters, which have allowed the beetle to multiply and spread at an unprecedented rate. The beetle transmits a fungus, killing trees within two years and staining the timber blue, though leaving it structurally unchanged. The outbreak is causing havoc with timber harvesting plans as attempts are made to halt its spread by a policy of 'leading edge harvesting', in which patches of attacked trees are cut, and sometimes burned on site, to prevent the beetle moving into adjacent forests. In other areas, the spread is beyond control and the industry is operating a strategy of value recovery, which includes salvage logging to recuperate the dead timber as well as clearing of dead trees to restore the aesthetic quality of sites of high tourist value. The resulting increase in logging – of some 11 million cubic metres of additional logs per year – is unprecedented and, while leading to a temporary economic boom, will inevitably be followed by a bust in the fortunes of timber dependent communities (Parfitt and Garner, 2004).

These environmental issues have led to a high degree of public concern over the substance of forest practices requirements and the effectiveness of their enforcement by government. The result has been the growth of a strong and vociferous civil society movement, predominantly focused on environmental issues. Part of the government's response to public concern has been to establish the Forest Practices Board, first established together with the Forest Practices Code (see below) and retained under the more recent Forest and Range Practices Act.

Forest Sector Policy and Legislative Framework

The Forest Practices Code

In the late 1980s/early 1990s the BC forest industry came under heavy fire from environmentalists criticising the damage caused by an unregulated industry. A protracted dispute, known as the 'war in the woods', culminated in 1993 when tens of thousands of people protested the clear cutting of coastal old growth rainforests in Clayoquot Sound. The ensuing mass trials and jail sentences of 932 people constituted the largest criminal prosecution of peaceful dissenters in Canada's history (SLDF, 2002). Environmental groups consciously targeted BC exports

in Europe and US forest products markets in an effort to increase regulation of the industry (Cashore et al., 2006), with the result that some European and American customers of the logging company active in Clayoquot cancelled their contracts. Adverse publicity, both domestically and internationally, contributed to the government decision to set up a Forest Resources Commission, bringing together representatives of Labour, Industry and Communities. The Commission found that 'past failure to recognize and adequately manage for forest values other than timber and to manage more intensely for timber values has put the very existence of B.C.'s largest economic sector at risk' (cited in SDLF, 2002). To remedy what it saw as a lack of consistency in forest stewardship, the Commission recommended bringing together several separate Acts and regulations in a single Forest Practices Code (FPC). The FPC was introduced in 1995 and provided a process to make land-use plans legally binding, set out rules for planning prior to logging, set standards for how approved logging operations were to proceed, and established a new monitoring and enforcement regime. Along side the Code, the government introduced a Forest Practices Board (FPB) to provide an independent third party view of the compliance of licensees with the Code, the efficacy of the Code and government's administration of the Code.

Transition to the Forest and Range Practices Act (FRPA)

The Forest Practices Code, comprising some of the most stringent forest regulations in the world, performed an important role in increasing confidence in the manner in which the forest industry in BC operated (Cashore et al., 2006). Nevertheless, industry began voicing its concerns about the heavy burden of the prescriptive management of the Code ('forest stewardship by cookbook'), repetitive planning and mapping requirements and the fact that it left little room for foresters to manage resources in a site-specific manner. It was argued, for example, that the Code's prohibition of logging within a certain distance of a stream could lead to streams edged with long narrow strips of trees that were very prone to wind blow, thus causing an insurmountable barrier for spawning salmon. Foresters argued it was preferable to set objectives (such as protection of spawning grounds) and allow foresters to use their skills to determine the best way of achieving these aims in any situation.

In 2001 a new Liberal government took power in BC with the promise of cutting red tape and bureaucracy. In a context of general deregulation, the government began discussions to introduce results-based management in forestry, culminating in the passing of a new Forest and Range Practices Act (FRPA), which came into effect in January 2004. The FRPA identifies 11 forestry and environmental results (e.g. in relation to timber, soils, visual quality, wildlife, etc.) to be achieved but allows forestry professionals and companies to decide how best to attain those results.

The government claims that the FRPA reduces the regulatory burden on logging companies by 55% (WCEL, 2004). Companies are now expected to submit Forest Stewardship Plans (FSPs), which provide guidance for their forest operations, but they no longer need to obtain approval for site-level operational plans

(FPB, 2006). Instead the FSP must state objectives (results) for a particular 'forest development unit' and the strategies intended to achieve them. Developing FSPs is particularly demanding for small licensees with limited expertise, some of whom are therefore working with neighbouring large operators to produce joint FSPs. By late 2005, there was as yet no experience of auditing an FSP, and the general feeling was that it would take several years before it became clear whether the new FRPA was an improvement on the Code in terms of ensuring sustainable forest management and in meeting the needs of the industry.

In the consultation process leading up to the development of the FRPA, which included many highly critical submissions, all parties agreed that the Act should include clear, transparent and enforceable standards. Thus the lack of any specific measurable standards in the final legislation has been a particular disappointment. Environmentalists are especially concerned because, for most non-timber values, including soil, water quality, fish habitat and all wildlife including threatened and endangered species, the objectives are to be achieved 'without unduly restricting the supply of timber from BC's forests', relegating environmental considerations to second place. A further concern among critics of the FRPA is that the Minister of Forests must approve FSPs as long as they conform to some basic content requirements, are consistent with government objectives (where they exist) and with timber harvesting rights. Forest Service District managers are no longer able to reject plans on the basis that they do not 'adequately manage and conserve' public forest resources, nor do they have their former ability to compel companies to produce additional information in support of the plan or decision-making, except in limited circumstances (WCEL, 2004). Given that FSPs are for five years, and extendable to ten, the opportunity for public consideration of, and input into, FSPs is much reduced (FPB, 2006).

The capacity for public oversight has been affected by the reduction of staff available to carry out the more complex compliance and enforcement activities required in a deregulated system. Deregulation came shortly after massive staff and budget cuts across the civil service. For the Ministry of Forests this meant a decrease in its budget from \$538 million in 2001/02 to \$350 million in 2004/05, and a reduction in staff from 4,061 to 2,628 full time equivalents. Significantly, entire district and regional offices were closed, decreasing capacity for fieldwork (SLDF, 2002). In the same period, the then Ministry of Water, Land and Air Protection saw its budget fall from \$214 million to \$127 million, and staff numbers reduced from 1298 to 897 (SDLE, 2002).

Verification Activities by State Bodies

Compliance and Enforcement Branch

The MoF is organised in 3 regions and 29 Forest Districts. It has an office in each Forest District with 15-40 people of whom about 20% are Compliance and Enforcement staff, the law enforcement branch of the Ministry. The main purpose of the C&E branch is to ensure that

forestry laws are being followed in BC's public forests, and to take action where there is non-compliance. C&E staff evaluate licensee operations for risk and develop an inspection plan for high risk priority sites. They can also carry out reactionary inspections based on information received from other staff, agencies, operators or the public, and follow-up inspections to address identified concerns. C&E officials conduct more than 16,000 inspections (www.for.gov.bc.ca/hen) per year to assess compliance with forest laws. Specifically, inspectors aim to:

- Promote compliance through an effective field presence;
- Mitigate damage by providing timely notification of any potential non-compliance; and
- Investigate non-compliance in a timely manner.

Before 1979, Ministry of Forests compliance checks focused on timber harvesting contracts and unauthorised timber harvests (illegal logging). Inspection of forest practices and non-timber values was added in 1979, but compliance assessments only became more systematic to help enforce the Forest Practices Code Act of 1995 (MoF, 2004).

The transition from compliance to enforcement takes place when a contravention of the law is detected. If the contravention is minor or is about to occur (e.g. during harvesting), it can be addressed informally through the use of compliance actions such as warning tickets and compliance notices, which average 1800 per year (MoF, 2004). For more serious contraventions, formal enforcement actions are used, the most common of which are monetary penalties and violation tickets (which carry set fines for specific offences). Their purpose is to remedy harm, compensate for loss, prevent profit from a contravention and deter careless or intentional misconduct (MoF, 2004). In 2003/4, a total of 332 enforcement actions were taken, of which 102 were monetary penalties, averaging \$5000 each, and 95 were violation tickets, averaging only \$250 (C&E, 2004). Environmental groups argue that these are paltry sums that neither constitute sufficient deterrent nor cover the costs of the C&E staff needed to collect them (SLDF/FW, 2002). The FPB has also voiced its concern about the inadequate consideration of environmental and other values in penalty decisions (FPB, 2002). The industry disagrees, arguing that a determination of non-compliance may threaten the certification status of the affected company and damage public relations, both of which are much more of a deterrent than the financial penalty.

More serious enforcement actions are available but rarely used. These include Stop Work orders (21 in 2003/4), remediation orders, licence suspension or cancellation, timber sale disqualification and orders to vacate. In extreme cases, the C&E inspectors may recommend a prosecution by the Attorney General. Courts order about 2 jail sentences per year (MoF, 2004).

Under the FRPA, C&E activities are expected to shift away from their current focus on compliance with detailed prescriptions of the Code (80% of actions) to more use of enforcement actions (up to 50% of actions) when stated results are not achieved. This shift

is expected for several reasons (Forest Service, 2004):

- Investigations under FRPA will be more complicated and time-consuming than under the Code. Combined with fewer C&E staff, this means there will be fewer routine inspections during active operations (e.g. harvesting) when compliance tools can still be applied;
- A government review process recommended a shift in focus from environmental protection (mostly achieved through compliance activities) to revenue/forest crimes, resulting in the same number of resources being applied to a broader spectrum of responsibilities;
- The FRPA focus on end results means that C&E staff have less opportunity to use their compliance tools and will by default focus more on enforcement actions on results and strategies that have not been met.

Enforcement of the Code was already problematic as indicated by a 2001 audit by the FPB of the government's enforcement of the Code in one district. This concluded that there were a number of 'significant weaknesses' in the enforcement of the Code, with officials too often either not recognising non-compliance, or treating it as minor (cited in SLDF/FW, 2002). The more complicated nature of C&E investigations under FRPA means that staff need a very different set of skills. The technical skills necessary to measure compliance with the clear prescriptions set by the Code need to be supplemented by the confidence to interview timber companies about their strategies for achieving the results required by the FRPA.

Key issues of non-compliance

Outstanding issues of non-compliance relate to:

- Unauthorised harvest outside of boundaries ('trespass');
- Timber theft by individuals;
- Road issues, maintenance of culverts, etc.;
- Pricing issues to ensure government obtains its fair revenue (stumpage);
- Timber marking, to ensure that the correct stumpage rates are being applied per block.

Between 1995 and 2004 the FPB found 62 cases of significant non-compliance, of which 37% were to do with road construction, maintenance and deactivation (taking roads out of service). A further 16% were related to riparian management. Nevertheless, the FPB has noted a clear trend towards better enforcement in recent years and both government and industry consider the average compliance rates of 94% to be high. They argue that there is little incentive for people on the ground purposely to break the law but that mistakes may occur, particularly where contractors cut corners.

Environmental groups disagree. In their 2002 report *Who's Minding our Forests?*, the Sierra Legal Defence Fund and Forest Watch of British Columbia argue that 'present enforcement of B.C.'s forestry laws is abysmal, handcuffed by bureaucratic bungling and conflicts of interest'. Not only are logging companies charged with having a poor environmental record leading to a continuing decline in populations of species at risk of extinction, but lax monitoring is also leading to a

significant loss in revenue for the government. According to SLDF/FW(2002), the Ministry of Forest's Compliance and Enforcement Branch publicly acknowledges an annual loss of revenue of \$10-20 million (equivalent to 0.8-1.6% of annual revenue), not including the value of the timber stolen. SLDF itself calculates that, over a two-and-a-half year period, BC's major forest companies avoided paying \$344 million in stumpage fees to the provincial government (SLDF, 2001a; 2001b). Much of this was apparently due to the practice of 'grade-setting', permitted by a legislative loophole that has since been closed, whereby companies intentionally logged low-quality timber first, to trigger lower stumpage fees, and then went on to log higher-quality timber for which they paid a lower rate. In recent years, a cut of 38% in the number of Forest Service scalers (who check the accuracy of forest company log scales), has meant that at most one in every 147 truckloads of logs is spot-checked (Parfitt and Garner, 2004).

The Forest Appeals Commission

Companies or individuals can appeal against a non-compliance determination at the Forest Appeals Commission. This independent tribunal has the statutory authority to hear appeals from administrative decisions made with respect to a variety of matters regulated by the FRPA, the Forest Act, the Range Act, the Wildfire Act and the Private Managed Forest Land Act. It consists of part-time members representing diverse business and technical experience supported by a staff of seven full-time employees. The FPB may also appeal decisions to the Forest Appeals Commission on behalf of the public.

The Forest Practices Board: an independent public watchdog

Establishment and mandate

The FPB was established by the government in 1995 in parallel with the establishment of the Forest Practices Code after the 'war in the woods' described earlier. The Board was a device to reassure both the market and the public, by providing an independent monitor of government and industry activities under the new Code. Its mission to 'serve the public interest as the independent watchdog for sound forest practices in British Columbia' (see Box 1) was reconfirmed under the FRPA in 2004. Its mandate is defined in legislation and requires it to audit both government and industry forest practices on public lands, audit government enforcement of the FRPA, investigate public complaints, undertake special investigations of forestry issues and participate in administrative appeals. The FPB can only comment on legislation or policy if this relates to the pursuit of specific forest practices as raised within the context of an audit. The shift from the Code to the FRPA, however, has freed up the FPB to talk to the expected 'results' (of the results-based management) rather than simply auditing compliance to prescriptions. The FPB has therefore embarked on a collaborative exercise with a wide range of stakeholders to develop scientifically based indicators for each of the values identified by FRPA.

Box 1: Purpose, mandate and guiding principles of the Forest Practices Board, British Columbia

Fundamental Purpose

In fulfilling its mandate, the Board encourages:

- sound forest practices that warrant public confidence.
- fair and equitable application of the Forest and Range Practices Act.
- continuing improvements in forest practices.

Mandate

The Board's main roles under the Forest and Range Practices Act are:

- Auditing forest practices of government and licence holders on public lands.
- Auditing government enforcement of FRPA.
- Investigating public complaints.
- Undertaking special investigations of forestry issues.
- Participating in administrative appeals.
- Providing reports on board activities, findings and recommendations.

Values and Guiding Principles

The Board applies certain guiding principles, reflecting key organisational values, as a guide to day-to-day practices and operations. The Board:

- acts on behalf of the public's interests, not those of any single group.
- is straightforward in its approach.
- emphasises solutions over assigning blame.
- behaves in a non-adversarial, balanced manner.
- treats all people with respect, fairness, and sensitivity.
- performs in a measured, unbiased and non-partisan manner.
- carries out its mandate with integrity and efficiency.
- provides clear and concise reports to the public.
- bases actions and decisions on knowledge, experience, and common sense.
- is accessible and accountable.

Independence

Within the limits of its mandate, the current FPB is seen by all parties to act with independence. Its reports show no visible favourites, with recommendations targeted at both the forest industry and at government. In fact, Ministers and government are reportedly worried when a FPB report is due out. The Board's independence from licensees and the government is ensured by legislation, which also enables it to report to the public without interference and vetting. While the Board addresses its reports to the Minister of Forests, the Minister of Water, Land and Air Protection, the Minister of Sustainable Resource Management and the Minister of Energy and Mines, its reports and findings are not provided to government for revision or comment in advance of public release. The Board also has the power to compel the giving of evidence in the course of its investigations, and it has the authority to audit and investigate government's forest practices and enforcement actions.

The Board is accountable to Cabinet rather than to the legislature (as is the case for the Ombudsman and the Auditor-General). This means that the Board's independence – in terms of its funding and membership – is potentially vulnerable to manipulation by Cabinet and, indirectly, by the influential timber industry through its election support to particular political parties. The Board's funding, which was about \$3.6million for 2004/5 and again in 2005/6, comes directly from the Treasury Board. This helps to insulate it from funding pressures that might arise from an association with any of the four ministries responsible for the administration

of forest lands. Nevertheless the Board is not immune to government-wide cutbacks and recently suffered a reduction from its original \$5 million budget, thus constraining its capacity for action. In terms of staffing, the Board has 8 members supported by a staff of 25 professional foresters, biologists, accountants and lawyers. Board members represent a broad range of expertise and experience in forestry and the environment from across the province. They are appointed in a personal capacity rather than as representatives of a specific interest group. A Code of Conduct has been adopted to ensure that Board members fulfil their statutory duties in a fair and impartial manner free of personal considerations and interests. The Board Chair goes through a selection process and must be approved by Cabinet, as must other Board members who are recommended by the Chair.

Activities of the FPB

The Board carries out a range of activities, the most important of which are audits, investigations of complaints and preparation of special reports.

Audits

The Board carries out three types of audit:

- A limited or full scope audit examines some or all of the auditee's forest and range planning and practices in their licence area, such as operational planning; road construction, maintenance and deactivation; timber harvesting; silviculture; and fire protection.
- A thematic audit examines forest and range planning

and practices of one or more licensees that relate to a specific forest value in a selected geographic area, such as riparian, soil or visual quality.

- An enforcement audit examines whether enforcement of the FRPA and regulations by government agencies is appropriate.

A typical audit is undertaken by a team of 3-6 professionals and involves 1-3 weeks of fieldwork. Once a draft report is prepared, anyone who may be adversely affected is invited to make representations, which may lead to amendments. The report may include recommendations to the auditee's forest practices or to the legislation or policy that guides forest practices. The final report is released to the auditee first, and then to the public and government (FPB, no date).

The FPB carries out random audits, using a lottery system to determine where it will audit particular activities such as road construction, harvesting, silviculture. Once a licence has been the subject of a Board compliance audit, it is removed from the 'pool' for audit selection for five years to ensure that more licences are audited through the random audit selection process, and reducing the possible burden of recurring audits on licence holders. Initial audits were considered very expensive for licensees as they went well beyond the 5-10% sampling levels of more usual compliance audits. The industry is still concerned at the possible duplication of work when inspections are required for certification as well as randomly by the FPB. However, since 2002, when the FPB audited its first certified company, it has been willing to use information produced during inspections by certifying bodies. This reduces field time and costs for the Board and the licensee but is only possible if the audited company is willing for this information to be made public. The Board carried out 95 audits of licensee and government forestry operations in its first 10 years (FPB, 2005). A further nine audits were undertaken of the appropriateness of government enforcement of forest practices legislation. Following criticisms of the very negative style of early audit reports, which focused predominantly on highlighting 'non-compliance' or 'significant non-compliance' issues, the FPB now strives for a more constructive relationship with its auditees. An important point is that the FPB cannot itself impose a penalty, even where non-compliance is encountered. Rather, it is up to the MoF C&E branch to follow up if they see fit, possibly leading to a fine.

Complaint investigations

In addition to random audits, the FPB can investigate a wide range of complaints, down to complaints against individuals. 123 complaint investigations were carried out in the last 10 years, taking an average of 11.8 months (FPB, 2005). During investigations, the Board acts as an independent and neutral investigator, not an advocate on behalf of the complainant. It may consult with all parties and attempt to resolve the complaint. On completion of an investigation, a report – including recommendations as appropriate – is submitted to the parties concerned, the public and the relevant ministers. The Board may request to be informed about how its recommendations are implemented.

Special Reports

The Board can also produce special reports on issues that come up frequently in audits as subjects of public concern. The FPB has complete freedom to choose which topics to investigate. Recent issues have included the Mountain Caribou, forest fuels, logging in highlands, forest practices surrounding management of the mountain pine beetle epidemic, rehabilitation of forest land after forest fire fighting, the need to reconcile NTFP management with forestry planning and practices, etc.

Impact of the FPB

The FPB has no power to impose penalties or ensure the uptake of its recommendations, relying only on 'moral suasion' to achieve impact. The Board's independence means that its reports carry significant public weight. In tracking its own recommendations, the FPB finds that many are taken up without reference to the fact that they were originally recommended by the FPB. Although audits may cause work for MoF District offices, the FPB's frequent recommendations for more and better tools and resources to improve enforcement are often welcomed by MoF headquarters. Some of the FPB's special reports have had a very visible impact – thus one of its most high-profile special reports on 'BC's Mountain Caribou: Last Chance for Conservation?' (FPB, 2004) resulted in the province setting up a unit for endangered species management. Nevertheless, just six months later, environmental groups produced a report claiming that, in spite of the urgency highlighted in the Forest Practices Board report, the timber industry was continuing to operate as usual in mountain caribou habitat, with one of the worst offenders being the government's own BCTS (MCP, 2005). In a similar vein, the FPB issued a report in 2004 to re-assess the situation following its 2003 report on the management and conservation of nesting habitats of the marbled murrelet, one of BC's endangered species, and found that although there had been some improvements, conservation was still limited and slow.

The fact that the FPB can monitor compliance with the rules, but has only a limited mandate to comment on the rules themselves, is considered a shortcoming by the FPB. Many environmental groups would also like to see the FPB's role extended beyond mere stewardship to acting as a policy watchdog that also has oversight of issues currently governed by the Forest Act, including determinations regarding road permits and cutting permits, the adequacy of the Timber Supply Review process, the determination and apportionment of the Allowable Annual Cut and determinations regarding issuance and renewal of tenure agreements (SDLF/FW, 2002). They would also like to see the FPB have the ability to issue a Stop Work order where necessary to permit the investigation of complaints or to prevent imminent or on-going environmental damage, as well as the right to recommend appropriate enforcement actions.

There is also a view that the FPB mandate not only needs to be broadened to commenting more generally on forest policy but also needs to be extended to the wider arena of natural resource use or land use planning. This reflects the growing public perception that, in spite

of high levels of compliance, the cumulative impact of legal practices on biodiversity is nevertheless negative and that other land uses may also leave a heavy footprint on the landscape. In the interior, for example, forestry is increasingly a secondary player to the essentially self-regulated oil and gas industry, which may have a much greater impact on the environment and local communities.

Verification by non-state actors

Professional regulation

In order to operate in British Columbia, a forester must be a registered professional forester or forest technologist. Like other professional regulatory bodies, the Association of BC Forest Professionals (ABCFP) sets standards of competence and practice for its members to protect the public interest in stewardship of resources and to hold members accountable for their actions through discipline and quality assurance processes. The ABCFP code of ethics states that foresters are accountable to the public, though what constitutes the 'public' is not clearly defined. One issue of concern is how foresters should act when faced with forest practices that are legal but which they do not consider to constitute sustainable forest management. Another issue is the concept of 'due diligence', introduced into the Foresters Act at the same time as the FRPA was passed. In effect this means that if a complaint is received about a company or an individual forester, they can defend themselves by claiming that they 'followed the rules' and are therefore not liable for the results. The FPB argues that everybody in the forest sector should be equally diligent and that companies are responsible for supervising their contractors. The industry argues that ISO certification (which most companies have) requires rigorous documentation of environmental management systems so that companies already spend a great deal of effort on supervising their contractors, particularly with respect to silvicultural methods and health and safety issues. An increasing number of contractors are also growing in size and themselves becoming certified. There is nevertheless a concern that liability may be pushed down the chain to the smallest, usually non-certified and potentially most vulnerable individual subcontractor. Furthermore, it is not yet clear where responsibility for remediation or compensation lies when a contravention has been confirmed but the licensee establishes due diligence (FPB, 2003).

In general, under the FRPA, compliance will rely increasingly on professional accountability (Forest Service, 2004). Two complaint investigations carried out by the Forest Practices Board raised issues about professional responsibilities and reliance on professionals to prevent environmental damage when carrying out forest practices. They highlighted that the responsibility for managing risk and deciding whether professional assessments are necessary before carrying out a forest practice is shifting from government to licensees. Licensees therefore need to clearly outline the parameters for any professional assessments to ensure that all risks are identified, and professional associations are called upon to clearly define the responsibilities

for assessments conducted by their members. This includes ensuring that their members, when preparing assessments, either follow best management practices or provide a rationale for not doing so (FPB, 2003).

Industry initiatives

The BC timber industry is represented by two major associations – the Council of Forest Industries for companies in the interior, and the Coast Forest Products Association for companies operating on the coast. Both are active as advisers on regulatory issues for the harvesting and lumber manufacturing companies who are their members. One of their key concerns is to keep the industry competitive in the face of changing global markets and they recognise the importance of verification of legality and environmental sustainability in achieving this (COFI, 2005; CFPA, 2004).

Another concern of the industry is to ensure the health and safety of its workers. To this end the British Columbia Forest Safety Council was created in September 2004 as a not-for-profit society dedicated to promoting forest safety. It includes all of the major forestry organisations and is mandated to work within the forest industry to eliminate fatalities and injuries. One of its first actions has been to announce a comprehensive industry-led initiative designed to improve safety in the forest sector. The SAFE Companies programme requires all operations in the sector to become qualified as Safety Accord Forestry Enterprise (SAFE) companies. A Forestry Safety Ombudsman is also being created along with a number of Safety Advocates. The initiative is backed by BC's major forest companies, forest contractors, WorkSafeBC (the Workers' Compensation Board of BC) and the provincial government (www.bcforestsafe.org).

Third party certification

There is a lot of interest in Canada in the possibility of certification systems replacing the need for strict government regulation. Most forest companies in BC have environmental management systems certified by the International Organization for Standardization (ISO 14001 EMS). This requires a company to identify main areas of environmental impact, track progress on minimising impact, and document all related activities and information, but sets no specific standards for forestry, ecosystems or species at risk (SLDF, 2005). In addition, many of the larger companies are members of one of the three forest certification schemes used in Canada today: the Sustainable Forestry Initiative (SFI), the Canadian Standards Association (CSA) and the Forest Stewardship Council (FSC). Given that the FPB's role is restricted to verifying legality, these schemes have a potentially important role to play in certifying sustainable forest management, even if only at the level of forest management units.

The American Forest and Paper Association (AFPA) launched the SFI certification scheme in 1994. Amongst other things, it requires a company to comply with the law, to have plans in place for species at risk, and to use the best available scientific information (SLDF, 2005). The CSA Sustainable Forest Management Standard established in 1996 is based on the Canadian Council of Forest Ministers' (CCFM) set of Sustainable Forest

Management criteria and indicators. Only the FSC scheme meets the demands of environmentalists in BC because it provides performance standards with clear minimum environmental and social thresholds, allows for equitable and balanced participation and decision-making, and includes a credible chain of custody as a basis for product labeling. Unlike CSA and SFI, FSC certification is based on 'effectiveness auditing' in that certification depends on the actual impact of practices in the forests. It also adopts a precautionary approach and addresses the need to protect and maintain ecosystem functioning and species habitat before they become endangered. Furthermore, its principles and criteria do not presume that local laws and regulations assure exemplary forest management, having measurable criteria and prescribed actions that may in many circumstances exceed legal standards (SLDF, 2005). Until recently there was very little FSC certification in BC, with only five small operations (totalling less than 30,000ha) being certified. However, in 2005 TEMBEC, one of Canada's major forest companies managed to certify its BC operations comprising of a 350,000ha Tree Farm License in the southeastern interior.

Environmental groups are concerned that many provincial governments are tailoring their laws to meet certification systems when the public generally do not understand enough about certification or what the different systems mean. In BC, the forest industry questions why FPB audits are necessary when third party certification schemes are in place. They are concerned by the duplication of work when they are audited by several bodies, although the FPB is willing to utilise information produced during certification audits as long as the company concerned is willing for this information to be made public. In 2002, the FPB carried out its first audit of a certified company in which it was able to rely on the work of the certifiers to reduce field time and costs for the Board and the licensee. Forest companies are also conscious of the fact that their main buyers (such as the huge US home improvement chain, Home Depot) simply assume that they have certification without distinguishing between different types. According to the industry, buyers want to be sure that companies have dealt properly with conservation issues to avoid the possibility of bad press, but will not pay extra for certified timber. Although it brings them no apparent financial benefit, timber companies do see other benefits from certification such as improved staff morale, promotion of good practices within a company and promotion of good relations with local communities.

Conclusion

The size and economic contribution of the forest industry to BC makes the health of the industry a critical factor in providing economic opportunities for communities throughout the province (Markey et al., 2005). Whether the new results-based Forest and Range Practices Act will lead to a healthy forest industry that not only contributes to the economy but also does so in an environmentally sustainable manner is a matter of

current concern in British Columbia.

The Forest Practices Board is mandated to monitor how well government and industry are meeting the intent of British Columbia's forest practices legislation. It is not expected to comment on the rules themselves. This leads some conservationists, who are highly dissatisfied with the FRPA, to consider the Board largely irrelevant to their cause of improving the policy framework for sustainable forest management and land use planning. It could be argued, however, that part of the reason the FPB retains its credibility is because it is seen to operate within its current mandate – stretching it slightly but not going beyond it to represent any particular perspective. The FPB only addresses policy concerns where they arise in the context of audits or complaint investigations and are clearly issues of public concern. Its opportunity to do so has increased under the new FRPA, which was introduced without measurable indicators, giving the FPB an important role in helping to define the exact intent of the legislation.

The debate in the province is therefore less about the effectiveness of the FPB in fulfilling its limited mandate than about the relative merits of different approaches to achieving sustainable forest management. Proponents of the current combination of market mechanisms, certification schemes and an auditing body (the FPB) are opposed by environmentalists arguing for stronger and more effective forest laws.

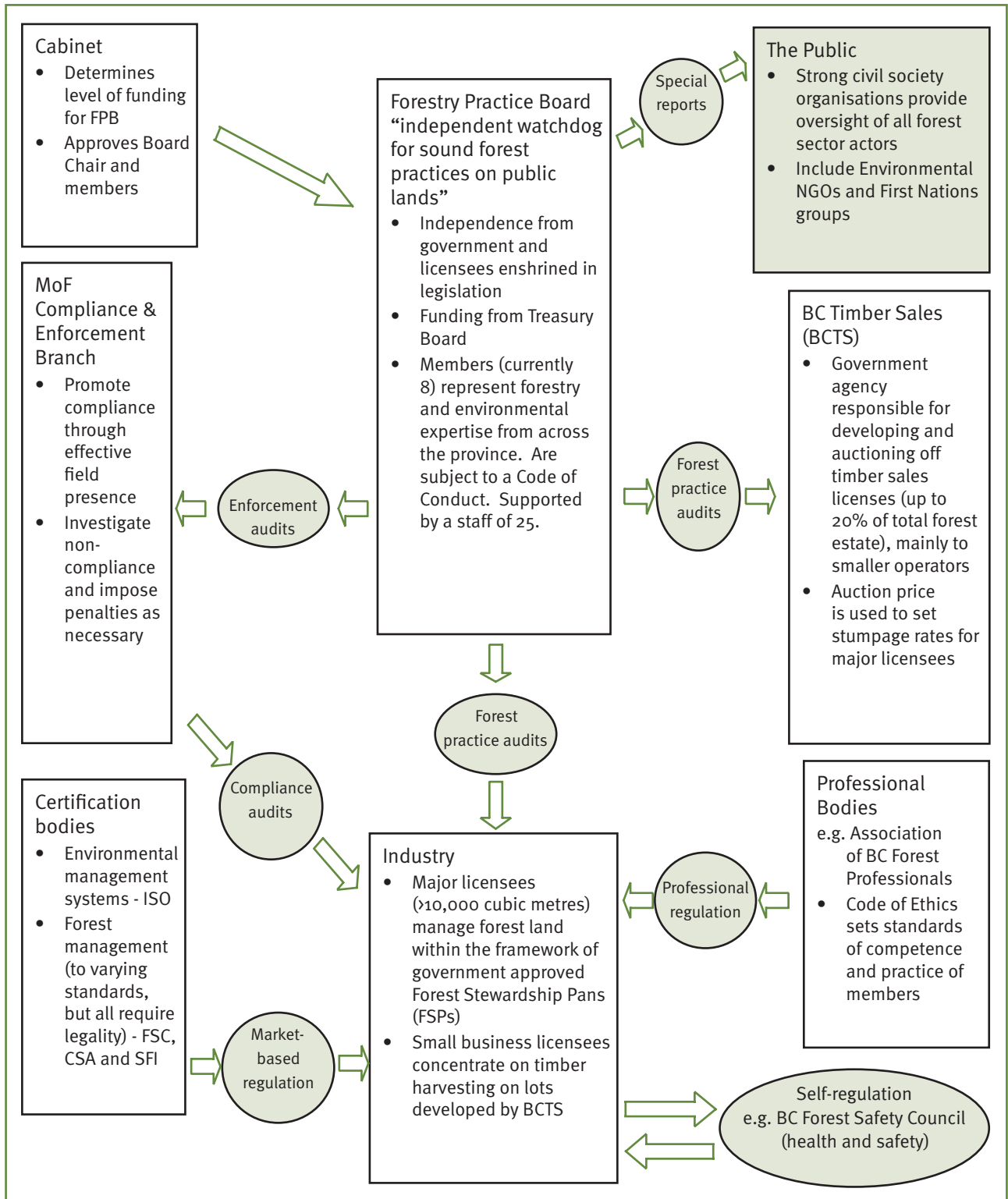
Within its limited operational mandate, the FPB is successful for a number of reasons.

- Forestry is a high profile industry in British Columbia and there is strong civil society concern with its conduct, thus ensuring that there is ongoing political will to support the existence and effective functioning of the FPB.
- The FPB is seen to be independent of government, the industry and pressure groups, reporting directly to the public in an objective manner. It scrutinises both government and industry forestry operations.
- It has a skilled staff base and sufficient resources, in spite of recent funding cutbacks, to respond to complaints and carry out a wide-ranging programme of audits that enables it to retain an overview of key issues in the forest sector.
- Its ability to select issues for special reports enables it to address issues of public concern, which also serves to bring its auditing role to public attention.
- There is a significant Forest Service Compliance and Enforcement Branch, which carries out day-to-day checking of forest company activities. The FPB plays an important role in checking the effectiveness of the C&E Branch and recommending improvements in its practices.
- It provides a forum, particularly during preparation of its special reports, for different stakeholders to discuss certain contentious issues before these become too polarised, thus avoiding possible embarrassment for the government.
- A key to its success is its constructive tone and ability to find the right balance between criticism of inadequate practices and fair due process for those investigated and audited.

Finally, it is not the FPB alone that is responsible for the high level of compliance with legality achieved in BC. The FPB operates in a verification context consisting of a number of interacting components (Fig. 3). These include professional regulatory bodies, industry associations, the MoF C&E Branch, third party certifiers of sustainable forest management and a

well-informed and organised civil society. Each of these elements has a different agenda, leading to an ongoing process of debate and action to ensure that the British Columbia forest sector retains its important role in the province's economy in a manner that will be sustainable in the long term.

Figure 3: Verification in the British Columbia Forest Sector



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Acronyms

ABCFFP	Association of BC Forest Professionals
BC	British Columbia
BCTS	British Columbia Timber Sales (government agency responsible for developing and auctioning timber sales licences)
C&E	Compliance & Enforcement Branch of the MoF
CFPA	Coast Forest Products Association
COFI	Council of Forest Industries
CSA	Canadian Standards Association
FPB	Forest Practices Board
FPC	Forest Practices Code
FRPA	Forest and Range Practices Act (replaced the FPC from 2004)
FSC	Forest Stewardship Council
GATT	General Agreement on Tariffs and Trade
MoF	BC's Ministry of Forests
NAFTA	North America Free Trade Agreement
SFI	Sustainable Forestry Initiative
SLDF	Sierra Legal Defence Fund
US	United States of America
WTO	World Trade Organisation

Footnotes

- ¹ Throughout this report, \$ refers to the Canadian dollar (CAD), where CAD1 = US\$0.87 (January 2006).
- ² Based on a total employed population of 1,973,000 (BC Stats 2004).
- ³ Another 1.2 million ha of old growth forest (or 1.3% of the province's land surface) were added in the February 2006 'Great Bear' Rainforest agreement (Cashore et al., 2006).
- ⁴ Small sea birds that nest in old-growth forests.

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