Forest Practices Code

Compliance and Enforcement Branch Advice to Statutory Decision Makers and their Staff

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Challenges to the jurisdiction of senior officials and reviewers by persons claiming aboriginal rights or title

Purpose

This bulletin is intended to clarify the authority of senior officials and reviewers to exercise their statutory powers to make or review determinations under the *Forest Practices Code of British Columbia Act* (the Code) when this authority is challenged by a person claiming aboriginal rights or title.

Background

Thomas Paul, a member of the Ahousaht First Nations, argued at his Forest Appeals Commission hearing that the Commission did not have the jurisdiction to adjudicate his appeal because he was claiming an aboriginal right to cut timber. The Commission ruled that it has the jurisdiction to adjudicate all issues before it including aboriginal rights and title. The B.C. Supreme Court upheld the Commission's ruling and Mr. Paul appealed to the B.C. Court of Appeal.

The Court of Appeal released its decision on June 14, 2001. The Court found, among other things, that the Code does not empower the Forest Appeals Commission to adjudicate claims of aboriginal rights or title.

Commentary

The *Thomas Paul* decision establishes that senior officials and reviewers do not have the jurisdiction to adjudicate claims of aboriginal rights or title.

Senior officials and reviewers whose jurisdiction is challenged by a person claiming aboriginal rights or title may continue to exercise their statutory powers to make or review a contravention determination. Senior officials and reviewers may not, however, make determinations regarding a claim of aboriginal rights or title when determining liability or penalty.

The *Thomas Paul* decision does not prevent senior officials or reviewers from continuing to consider a person's individual circumstances when determining the deterrent component of a penalty.

In the event a person seeks an adjournment to have an issue of aboriginal rights or title adjudicated by a Court, the senior official or reviewer has the discretion to grant or deny the adjournment. Should an adjournment be requested, it is recommended that legal advice be sought from Legal Services Branch, Ministry of Attorney General. The Court of Appeal in *Thomas Paul* will be deciding on a remedy that may provide some guidance on this issue.

The *Thomas Paul* decision does not change how operational plan approval determinations or reviews of these determinations are made under the Code. In particular, the Aboriginal Rights

and Title policy 15.1, which addresses First Nation consultation, continues to apply to these determinations.

Contacts

For more information or any questions regarding this bulletin, please contact one of the following:

Compliance and Enforcement Branch:

Mike Pankhurst	(250) 356-7596	Mike.Pankhurst@gems6.gov.bc.ca
Guy Brownlee	(250) 356-7526	Guy.Brownlee@gems6.gov.bc.ca

Aboriginal Affairs Branch:

Diane Goode	(250) 356-7902	Diane.Goode@gems4.gov.bc.ca