



No. 26011
Prince George Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:)
)
 CARRIER LUMBER LTD.)
)
 PLAINTIFF)
)
 AND:)
)
 HER MAJESTY THE QUEEN IN RIGHT)
 OF THE PROVINCE OF BRITISH)
 COLUMBIA)
)
 DEFENDANT)

REASONS FOR JUDGMENT
 OF THE HONOURABLE
 MR. JUSTICE MACZKO
 (IN CHAMBERS)

B. Byle Counsel for the Plaintiff
 T. Leadem Counsel for the Defendant
 Date and Place of Hearing September 20, 1993
 Vancouver, B.C.

This is an action for a declaration that a licence to log in an area of the province is not a forest licence within the meaning of the Forest Act R.S.B.C. 1979 c. 140.

The plaintiff is a timber processing company which manufactures lumber and also manufactures sawmills. Within the

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4 industry the plaintiff is known for its high-tech, high volume
5 portable mills.

6
7 On December 31, 1983, the Forest Service issued a licence
8 self-described as Forest Licence A20022 which conveyed to the
9 plaintiff the right to harvest 5 million cubic metres of timber
10 within the Anahim, Tatla and Chilcotin Supply Blocks of the
11 Williams Lake Timber Supply Area. The licence was issued to help
12 control an outbreak of mountain pine beetle infestation. The
13 licence was for ten years, was non-replaceable and expires on
14 December 31, 1993.

15
16 The area, under normal circumstances, could not be logged
17 economically because the area was not a fruitful producer and
18 because of the beetle infestation. Also, the area began 100 miles
19 from the railhead which made transportation expensive.

20
21 The plaintiff presented a plan to the Ministry of Forests to
22 establish mills in the cutting area thereby avoiding the necessity
23 of transporting the logs to the railhead. The plaintiff set up
24 five mills for the processing of timber employing 250 to 300
25 people.

26
27 Clause 9.01 of the licence provides as follows:

28 Following the completion of timber harvesting
29 and slash disposal operations under a cutting
30 permit and subject to the management and

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4 working plan then in effect, the licensee will
5 establish on the land subject to the cutting
6 permit a crop of commercially-valuable species
7 of timber, in the manner and to the standards
8 determined by a forest officer who is a
9 Registered Professional Forester and approved
10 by the licensor or the District Manager.

11 In September 1987 the British Columbia Legislature amended the
12 Forest Act to provide that all holders of major licences "at their
13 own cost" are required to carry out basic silviculture for all
14 areas harvested after September 30, 1987.

15 On July 27, 1990, the Forest Act was further amended to
16 provide that the district or regional manager of the Forest Service
17 could require a major licence holder to provide security to ensure
18 that the silviculture requirement was carried out. Section
19 129.3(4) of the Forest Act, provides as follows:

20 The district manager or regional manager may,
21 at the times, and in the amounts and in the
22 form determined by the district manager or
23 regional manager, as the case may be, require
24 the holder of a major licence or woodlot
25 licence that is not replaceable to provide
26 security for the performance of the holder's
27 duty to carry out basic silviculture under
28 this Part, and the holder of the licence shall
29 forthwith comply with the requirement.
30

31 The security requirement was imposed on the plaintiff but the
32 plaintiff refused to post the security claiming it was not the
33 holder of a major licence. On October 1, 1992, the regional

3
4 manager cancelled the plaintiff's licence effective January 15,
5 1993.
6

7 On January 6, 1993, at the plaintiff's request, a hearing was
8 convened before the Cariboo Forest Regional Manager to reconsider
9 the cancellation of the licence. The manager confirmed the
10 decision. In a letter dated January 14, 1993, the plaintiff
11 appealed to the Chief Forester who denied the appeal.
12

13 It is open to the plaintiff to further appeal to an appeal
14 board pursuant to s. 154(2)(c) of the Forest Act. However, the
15 parties agree that because the matter before me is a pure question
16 of law, it would be expedient to have the legal question decided
17 before taking that appeal.
18

19 I raised the question of the propriety of my proceeding before
20 all other remedies had been exhausted, but both counsel assured me
21 that I had jurisdiction to proceed and neither was prepared to
22 argue that I did not have the necessary jurisdiction.
23

24 The essence of the plaintiff's position is that the licence it
25 received was not a forest licence as defined by the Forest Act.
26 The parties agreed that in 1983 the Ministry of Forest advertised
27 the sale of the licence as a forest licence and was issued as
though it was a forest licence.

3
4 The issue for me to decide is whether the licence that was
5 issued is a forest licence as defined by the statute. The
6 importance of the issue is that if the licence is a forest licence,
7 the plaintiff will be required to perform very significant and
8 expensive silviculture for the harvested area, which is called
9 basic silviculture, and if it is not a forest licence, the
10 plaintiff will be required to perform less extensive silviculture.
11

12 The plaintiff argued that the licence, whatever it is called,
13 must strictly conform to the requirements of the statute to qualify
14 as a forest licence, and in this instance it does not. Section 12
15 of the Forest Act sets out the requirements for the issuance of a
16 forest licence:

17 12. A forest licence

- 18 (a) shall, subject to sections 13 to 15,
19 be for a term not exceeding 20
20 years;
21 (b) shall describe a public sustained
22 yield unit or a timber supply area
23 within which timber may be
24 harvested;
25 (c) shall, subject to sections 13 to 15,
26 specify an allowable annual cut that
27 may be harvested under the licence;
28 (d) shall require its holder to pay to
29 the Crown, in addition to other
30 amounts payable under this Act and
the regulations, stumpage under Part
7 and a bonus offer, if any, in the
amount tendered in his application;
(e) shall require its holder to submit,
for the approval of the regional
manager as often as the licence
requires, a management and working
plan prepared by a professional

- 4 forester, as defined in the
5 *Foresters Act*;
6 (e.1) shall require its holder to carry
7 out basic silviculture required by
8 or under Part 10.1 and the
9 regulations;
10 (f) shall provide for cutting permits to
11 be issued by the Crown to authorize
12 the allowable annual cut to be
13 harvested, within the limits
14 provided in the licence, from
15 specific areas of land in the public
16 sustained yield unit or timber
17 supply area described in the
18 licence;
19 (g) shall require its holder to continue
20 to operate, construct or expand a
21 timer processing facility in
22 accordance with a proposal made in
23 the application for the licence;
24 (h) may make provision for timber to be
25 harvested by persons under contract
26 with its holder; and
27 (i) may include other terms and
28 conditions, consistent with this Act
29 and the regulations, determined by
30 the regional manager.

19 The plaintiff argued that for the licence to be a forest
20 licence it must strictly comply with subsections (a) to (g) because
21 each section begins with the word "shall" whereas subsections (h)
22 and (i) begin with the word "may".

24 The Crown argued that I should interpret the word "shall" to
25 mean "may" because interpreting the word "shall" to be imperative
26 would lead to an absurdity. I reject the Crown's submission on the
27 interpretation of the word "shall". I see no absurdity that would
28 arise from giving the word "shall" its ordinary meaning.

3
4 The context of s. 12 makes it clear that the legislature must
5 have put its mind to the difference between the word "shall" and
6 "may" because some of the subsections in s. 12 use the word "shall"
7 whereas two of the subsections use the word "may".
8

9 The British Columbia Interpretation Act, R.S.B.C. 1979,
10 Chapter 206, s. 29 defines various expressions and the words in
11 question are included within those definitions as follows:

12 "May" is to be construed as permissive and
13 empowering.

14 "Shall" is to be construed as imperative.

15 The British Columbia Court of Appeal put its mind to this section
16 in *Sealey v. Crystal* (1987), 14 B.C.L.R. (2d) 235. Mr. Justice
17 Lambert at page 239 said:

18 In my opinion, the Interpretation Act
19 definitions ought to be applied unless it is
20 clear from the context that they cannot be
21 sensibly applied. That is what is meant by a
22 contrary intention appearing in the Act. It
23 is not a sufficient ground for ignoring the
24 defined term in the Interpretation Act that
25 there are alternate meanings which could give
26 a sensible construction. If there is no
27 reason for not applying the definition in the
28 Interpretation Act then it must be applied.

29 I see no basis for interpreting the word "shall" to mean "may"
30 and I reject the Crown's argument.

3
4 The plaintiff argued that only holders of major licences are
5 required to carry out basic silviculture and that it is not the
6 holder of a major licence. Section 1 of the Forest Act defines
7 major licence as follows:

8 "major licence" means

- 9 (a) a timber sale licence that is
10 (i) replaceable under this Act and that has
11 an allowable annual cut greater than
12 10,000 [cubic meters]...
13 (e) a forest licence...

14 The plaintiff's licence cannot be a major licence as defined
15 in subsection (a) because the plaintiff's licence is not
16 replaceable. The issue then, is whether the licence the plaintiff
17 received is a forest licence.

18 The requirements of a forest licence are set out in s. 12 of
19 the Forest Act. The plaintiff's licence does not strictly comply
20 with s. 12(g) which provides as follows:

21 A Forest Licence...shall require its holder to
22 continue to operate, construct or expand a
23 timber processing facility in accordance with
24 a proposal made in the application for the
25 licence;

26 Clause 12.01 of the licence in question states that:

27 All timber harvested under this license or its
28 equivalent shall be processed through

- 29 (a) A timber processing facility or
30 facilities owned or operated by the
licensee or any other of its

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4
5 affiliates within the meaning of the
Company Act, or

6 (b) A timber processing facility or
7 facilities owned by parties other
8 than the licensee where the licensor
9 or the District Manager determines
10 the utilization of logs or special
11 forest products would be improved or

12 (c) A timber processing facility or
13 facilities owned by parties other
14 than the licensee where the licensee
15 does not own or operate a timber
16 processing facility...
17 (my emphasis)

18 Section 12(g) requires that a licence holder continue to
19 operate, construct or expand a timber processing facility, whereas
20 clause 12.01(c) of the licence issued to the plaintiff contemplates
21 a licence holder who does not own or operate a timber processing
22 facility. In that situation, a party other than the licensee is
23 permitted to establish the facility through which the timber will
24 be processed.

25 After noting that the issuance of the licence in 1983 was
26 motivated to harvest "low-volume beetle-kill stands of timber", the
27 Chief Forester decided that it was not unreasonable for a
28 dispensation to have been granted in favour of the plaintiff so
29 that it did not have to strictly comply with the provisions of s.
30 12. The discrepancy between s. 12 and clause 12.01 of the licence
was dismissed as a mere technicality and the plaintiff's licence
was found to comply with s. 12.

3
4 The inference to be drawn from the decision of the Chief
5 Forester, is that the plaintiff was released from the strict
6 requirement of s. 12(g) in order to harvest an area which would
7 normally be uneconomical. Given this inference, the difference
8 between s. 12.(g) and clause 12.01 is not a mere technicality.
9 This licence is a special case which does not fall within the
10 definition of a forest licence. The legislature could not have
11 intended the holder of this licence to perform basic silviculture
12 without expressly bringing the licence within the definition of a
13 major licence.

14
15 The Chief Forester also put weight on the fact that the
16 licence was advertised, applied for, evaluated, approved and issued
17 as a licence which was named a forest licence. However, at the
18 time the licence was issued, the term "forest licence" had no
19 special meaning, and it is unlikely that the parties put their
20 minds to whether this licence was in fact a forest licence or some
21 other type of licence. That distinction only became important in
22 subsequent legislative amendments when a forest licence was defined
23 as a major licence.

24
25 The mere fact that what was issued to the plaintiff was called
26 a forest licence does not make it so. To qualify as a forest
27 licence it must conform to the specific provisions of the statute.
28
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4 Clause 12.01 of the licence does not meet all the mandatory
5 requirements of s. 12, but it does meet all the requirements of a
6 timber sale licence as defined in s. 17 of the statute:

7 Content of timber sale licence

8 17. A timber sale licence entered into under this
9 Act

- 10 (a) shall be for a term not exceeding 10
11 years;
12 (b) shall describe an area of land
13 within which Crown timber may be
14 harvested;
15 (c) may specify an allowable annual cut
16 that its holder is eligible to
17 harvest;
18 (d) may provide for cutting permits to
19 be issued by the Crown to its holder
20 to authorize an allowable annual cut
21 to be harvested, within the limits
22 provided in the licence;
23 (d.1) shall, where the timber sale licence
24 is a major licence, require its
25 holder to carry out basic
26 silviculture required by or under
27 Part 10.1 and the regulations;
28 (e) shall require its holder to pay to
29 the Crown, in addition to other
30 amounts payable under this Act and
the regulations, stumpage under Part
7 and the bonus bid or bonus offer,
if any, in the amount tendered; and
(f) shall include other terms and
conditions, consistent with this Act
and the regulations, determined by
the regional manager or district
manager.

I find that the licence received by the plaintiff is not a
forest licence and therefore is not a major licence as defined by
the Forest Act. To find otherwise would have the effect of

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4 retroactively imposing on the plaintiff costs for which it did not
5 bargain.

6
7 As I understand the law, a legislative enactment is not to be
8 read as prejudicially affecting accrued rights or existing status
9 unless the language in which it is expressed requires such a
10 construction.

11
12 In my view, the language of the statute does not require such
13 a construction.

14 *J. Maczko J.*

15
16 MACZKO J.

17
18
19 October 18, 1993
20 Vancouver, B.C.