IN THE MATTER OF THE FOREST ACT

AND

IN THE MATTER OF

AN APPEAL BY

WOODLAND LUMBER LTD. AND SCANA INDUSTRIES LTD.

FROM A DECISION OF

THE CHIEF FORESTER

RELATED TO

STUMPAGE DETERMINATION

APPEAL BOARD:	Douglas C. Baker, Esq., Member J. Russell Jones, R.P.F., Member Robin L. Caesar, R.P.F., Chairman
DATE OF HEARING:	December 6-10, 1993 January 17-18, 1994
PLACE OF HEARING:	Victoria, British Columbia

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1.0 THE APPEAL

This Appeal is brought pursuant to Sections 154 and 156 of the Forest Act R.S.B.C. The Appeal brought by Woodland Lumber Ltd. and Scana Industries Ltd. (Woodland) is from a decision of the Chief Forester dated April 14, 1992 with respect to the determination of stumpage rates.

An Appeal on this matter was previously heard in June 1992; however, the decision was quashed by decision of the Supreme Court dated September 20, 1993 and it was ordered that a new Appeal Board be constituted to hear the Appeal.

Order in Council No. 1458, dated October 20, 1993 appointed Robin L Caesar, R.P.F. as Chairman, Douglas C. Baker, Esq. and J. Russell Jones, R.P.F. as Members to hear the Appeal. The Appeal was heard in Victoria during the periods December 6-10, 1993 and January 17-18, 1994.

The Appellants' grounds for appeal were set forth as follows:

1. The Valuation Branch, the Regional Manager, and the Chief Forester have erred in applying Section 2.1(a) of the Interior Appraisal Manual instead of developing policies under Section 2.1(d) of the Interior Appraisal Manual.
2. The procedures adopted by the Valuation Branch have the effect of creating a subsidy towards the dimension lumber industry in the amount (for the Prince George timber supply area) of 2 times 12 percent times the decrease in the Mean Value Index from October of 1987 to the present date, and, as such are discriminatory.
3. The procedures adopted by the Valuation Branch result in a subsidy to the integrated pulp/dimension lumber industry in that the chip price is understated, and as such, are discriminatory.
4. The competitive value pricing system for extracting stumpage revenues for the Crown was never, at its inception, meant to apply to small business wood. The Value Indices for S.B.F.E.P. timber is not included in the calculation of the

Mean Value Index for a timber supply area, as a result of which the small business sector is subsidising the dimension lumber and the pulp industry.

5. The terms of the licenses held by the Appellants direct that the fibre produced by the licenses be milled and remanufactured at the Appellants manufacturing centres in the City of Prince George, whereas the Appraisal Branch has appraised the licenses to a different facility, with respect to some of the licenses, located at Clear Lake, in the Prince George TSA.

6. The Valuation Branch has refused to take into account the unique labour and manufacturing costs of the Appellants in manufacturing value added products and is treating the Appellant's manufacturing centres as though they were producing dimension or stud lumber, when in fact they are producing edge-glued and finger-jointed secondary and tertiary lumber products.

7. The Valuation Branch, and subsequently the Regional Manager and the Chief Forester have, in misapplying the policies and the procedures of the Ministry, defeated the intent of the Legislator in enacting Section 16.1 of the Forest Act.

8. The Ministry of Forests is estopped from pleading that the stumpage payable by the Appellants should be greater than $6.33 per cubic meter, in that senior members of the Ministry of Forests, in positions of authority, have repeatedly represented to the Appellants that the stumpage would be set at such a level, and the Appellant, in reliance of such assertions and representations, has continued in its value added business, and will suffer irreversible detriment and, the destruction of its business, should the Ministry be permitted to so reverse itself.

Submissions of the Appellants were grouped into two broad areas; Doctrine of *Ultra Vires* and Doctrine of Legitimate Expectations.

2.0 FACTS

The forerunner of the Appellants, Woodland Sash and Door Ltd., started business in the Prince George area about 1968. Stock for remanufacturing was purchased from sawmills.

The business of manufacturing doors and windows was expanded about 1980 to include laminated products for sale to the Ikea Company. To produce these laminated products a new plant was started called Scana Industries Ltd. The products were successful and during the early 1980's the market was expanded to domestic and Japanese customers.

It was soon realized that if Scana was to succeed, it must have an assured supply of the right type of raw materials.

In 1985 a rundown sawmill was purchased and remodelled. This mill became Woodland Lumber Ltd.

During the period 1986 to 1988 Woodland was awarded two cutting authorities, Forest Licence 26501 and Timber Sale A28490.

In September, 1987 a new stumpage appraisal system was adopted known as the Comparative Value Pricing (CVP) system. This system was introduced partially as a means of counteracting the United States' countervail on lumber.

A senior officer of the Appellants firms sat on a committee which prepared recommendations to the Government regarding development of the value-added lumber industry. Section 16.1 of the Forest Act was subsequently enacted.

In July 1988, Section 16.1 of the Forest Act came into effect. The purpose of this Section is to encourage the manufacture of value-added products, thereby promoting higher forest use, greater investment and more employment.

During 1988 at least two cabinet ministers visited the Scana mill. The operation was considered to be a fine example of the fulfilment of the intent of Section 16.1 and was referred to as a "flagship" operation.

In November, 1988 the Ministry of Forests (Ministry) invited proposals for a Timber Sale Licence under Section 16.1. The invitation showed the average upset stumpage rate would be $15.79 per m^3 (cubic metre).

Woodland submitted a proposal which included an undertaking to manufacture value-added products, financial calculations indicating Woodland would require a stumpage rate of $6.33 per m^3, and a request for stumpage variance.

The Ministry agreed to award the Sale on the condition the request for stumpage variance was withdrawn. Woodland withdrew the request, Timber Sale Licence A33752 was awarded on November 29, 1988, and logging was commenced immediately.

Early in 1989 Woodland commenced a prolonged campaign to obtain relief from stumpage rates it considered were too high.

In March, 1989, Hon. Dave Parker, Minister of Forests, informed Woodland by letter that he was not prepared to lower the stumpage rate from $15.79 per m^3.

In October, 1989, Hon. Dave Parker, responding at the request of the Premier, again informed Woodland that the stumpage rates were in accordance with the Timber Sale Agreement.

In January, 1990 Woodland submitted proposals and was awarded two more Timber Sales, A27973 and A36148. Upset stumpage rates ranged from $12 to $17 per m^3.

During the period December, 1988 to August, 1990, Woodland paid stumpage at the full rate. Payments were then stopped until February, 1992 when a "catch-up" payment of $15,811 was made. Woodland stated that it had then paid for all timber logged at a rate of $6.33 per m^3. Invoices from the Ministry showed $1.8 million still owing.

In December, 1990, the Ministry advised Woodland by letter that it was the Ministry's policy that stumpage concessions would not be granted to any sector of the forest industry. The central reason for the policy was to avoid any allegations by the United States that the B.C. forest industry was being subsidized.

In January, 1991, Hon. Claude Richmond and senior members of his staff attended a meeting with Woodland. The Minister directed his staff to find an answer to the stumpage problem, and advised Woodland to continue logging.

Extensive efforts were made by Ministry staff to find a solution, however, necessary Cabinet approval was not obtained. While this decision became known to the Ministry about March 1991, the Appellants maintain notice of the decision was delayed in being communicated to them.

In April, 1991, Hon. Claude Richmond requested assistance from the B.C. Job Protection Commission to find a solution to the financial burden placed on Woodland by the high stumpage rates. Efforts by the Job Protection Commission continued over the next 8 months to no avail.

Phase II of an Economic Plan prepared with the assistance of the B.C. Job Protection Commission included a clause requiring the "write-off" of stumpage and interest debts in the amount of approximately $1.285 million, and fixing stumpage rates at $7.50 per m^3 for 12 months. Terms of the plan were agreed to by Woodland, but not by the Ministry.

In November, 1991, Hon. Dan Miller, Minister of Forests, advised the Job Protection Commission that there could be no remission order against any portion of accrued stumpage, nor a reduction to stumpage rates for Woodland.

During the period December, 1988 to December, 1990, stumpage rates for Timber Sale Licence A33752 were redetermined at intervals. The appraised rates ranged from $13 to $18 per m^3.

In December, 1991, Woodland brought an Appeal against stumpage determination to the Regional Manager, under Section 154 of the Forest Act. The Regional Manager, in his decision dated January 9, 1992 states that Sec. 154 (3) of the Forest Act requires that the Appeal be limited to a question of whether the determination was done correctly using the approved policies and procedures. Since he found no evidence that the procedures were incorrect, he dismissed the Appeal.

In April, 1992, the Appeal was taken to the Chief Forester. In his decision dated April 14, 1992, the Chief Forester found there were no grounds to conclude that stumpage rates for timber sold under Sec. 16.1 of the Forest Act should be different from the rates of timber sold under other Sections of the Act. He also found there was no indication of intent to determine lower stumpage rates to encourage value-added activity.

In May, 1992, the Regional Manager registered in the Supreme Court a debt of $1,965,486 owing by Woodland for stumpage and interest.

3.0 ISSUES

The principal issues before the Board are as follows:

1. Did the Forest Officer exercise proper discretion in applying Section 2.1(a) of the Interior Appraisal Manual to determine stumpage rates applicable to Woodland Lumber?
2. Was the technical determination and redetermination of stumpage correctly done?
3. Did the Minister make a commitment to Woodland that alternative means of determining stumpage would be used, or that there would be remission of stumpage?
4. If Woodland is in financial difficulties primarily due to high stumpage rates, is there an obligation for the Minister to provide relief, and to change the procedure for determining stumpage for Sec. 16.1 Licences?

4.0 LEGISLATION

The authority and jurisdiction of the Appeal Board are set out in Sections 154 and 156 of the Forest Act.

154. (1) Where under the provisions referred to in subsection (2) a determination, order or decision is made the person
- (a) in respect of whom it is made; or
- (b) in respect of whose agreement it is made may appeal the determination, order or decision according to this Division.

(2) An Appeal lies from a determination, order or decision of
- (a) a forest officer under sections 60, 84(1), 117(1) and under a woodlot licence respecting the determination of the volume of timber to be harvested during each year or other period of its term, to the regional manager;
- (a.1) a district manager under sections 59(1), 59(5), 60, 61(1)(c), 61.1, 90(2), 97(2), 117 and 139(1)(a) and under woodlot licence respecting the determination of the volume of timber to be harvested during each year or other period of its term, to the regional manager.
- (b) a regional manager under paragraphs (a) or (a.1) or section 49(1), 52, 55.2(6)(b), 56, 56.01(1)(c), 58, 59(1) and (5), 60, 61(1)(b), 84(1), 90(2), 97(2), 117(1), 119(1), 122, 139(1)(a), or under a woodlot licence respecting the determination of the volume of timber to be harvested during each year or other period of its term, to the chief forester;
- (c) the chief forester under paragraph (b), section 53(2), 55.4, 61(1)(a), 90(1), or under a tree farm licence respecting the determination of an allowable annual cut, to appeal board; and
- (d) the chief forester by way of determination, under sections 55.2(4)(b) or (5)(b), of the area of Crown land that is capable of producing an annual cut not greater than a deficiency in the volume of timber harvested, to an appeal board.

(2.1) For the purpose of this section, a redetermination or variation of stumpage rates under Section 84(1) is deemed to be determination.

(3) The appeal board or person who decides an appeal of a determination made under section 84 shall, in deciding the appeal under subsection (5), apply the policies and procedures approved by the minister under section 84 that were in effect at the time of the initial determination being appealed.

(4) Where this Act or an agreement entered into under this Act gives a right of appeal, this Division applies to the Appeal.

(5) On an appeal under this Act, the regional manager, chief forester or an appeal board, as the case may be, may
   (a) confirm, reverse or vary the determination,order or decision appealed from; or
   (b) make such other order as he or it considers appropriate in the circumstances.

156.(1) Where an appeal is taken under this Act or the Range Act to an appeal board the appellant shall, within 21 days after notice of the determination, order or decision to be appealed is served on him, serve written notice of appeal on the minister, enclosing a copy of the decision appealed from and a written submission stating the reasons for the appeal.

(2) The Lieutenant Governor in Council shall, within 21 days after service of the notice of appeal under subsection (1),
   (a) appoint not more that 3 persons to the appeal board and establish its terms of reference; and
   (b) fix the remuneration each person is to receive for each day he is engaged in the appeal.

(3) Within 14 days after the appointments, the minister shall serve the appellant with notice of the appointment and the terms of reference.

(4) The appeal board within 30 days after its appointment shall convene a hearing in which the regional manager, district manager or a forest officer and the appellant may make submissions.

(5) The appeal board may
   (a) receive and examine evidence and information on oath, by affidavit or otherwise which in its discretion it considers proper, whether or not the evidence is admissible in a court; and
   (b) make such examinations of records and inquiries as it considers necessary, and a member of the board may administer an oath.

(6) The appeal board shall, within 21 days after the conclusion of the hearing, serve copies of its decision on the minister and the appellant.

(7) In its decision the appeal board may order that either party pay to the other costs in respect of the appeal, and unless the decision is reversed, varied or referred back under subsection (8) the order has, after filing in the court registry, the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

(8) The appellant or the minister may, by application to the Supreme Court made within 21 days after a decision of an appeal board is served on him, appeal the decision of the appeal board in a question of law or jurisdiction.

(9) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

The authority and responsibilities of the Minister of Forests are set out in Section 4 of the Ministry of Forests Act:

> **4.** The purposes and functions of the ministry are, under the direction of the minister, to
>
> (a) encourage maximum productivity of the forest and range resources in the Province;
>
> (b) manage, protect and conserve the forest and range resources of the Crown, having regard to the immediate and long-term economic and social benefits they may confer on the Province.
>
> (c) plan the use of the forest and range resources of the Crown, so that the production of timber and forage, the harvesting of timber, the grazing of livestock and the realization of fisheries, wildlife, water, outdoor recreation and other natural resource values are coordinated and integrated, in consultation and cooperation with other ministries and agencies of the Crown and with the private sector;
>
> (d) encourage a vigorous, efficient and world competitive timber processing industry in the Province; and
>
> (e) assert the financial interest of the Crown in its forest and range resources in a systematic and equitable manner.

The manner of determining the Crowns' financial interest is set out in Section 84 of the Forest Act:

> **84** (1) Subject to the regulations made under subsections (4) and (5), where stumpage is payable to the Crown under an agreement entered into under this or the former Act, the rates of stumpage shall be determined, redetermined and varied by a regional manager or forest officer authorized by him.
>
> (a) at the times specified by the minister, and
>
> (b) in accordance with the policies and procedures approved for the forest region by the minister.
>
> (2) [Repealed 1983-10-22, effective October 26, 1983 (B.C. Reg. 393/83.]
>
> (3) The policies and procedures for a forest region shall within 30 days after the minister approves them, be filed with the regional manager for the forest region who shall make them available for inspection by any person.
>
> (4) A stumpage rate shall not be lower than a prescribed minimum.
>
> (5) Where the Lieutenant Governor in Council considers it to be in the public interest, he may order that stumpage rates applicable to all timber or a class of timber in an area of the Province or cut under an agreement shall be lower than the rates determined under subsections (1) and (4), for a period not exceeding one year.

The procedures for determining stumpage rates for the Interior are shown in the Interior Appraisal Manual. In the Manual it is stated that the Manual has been approved by the Minister of Forests.

Four alternative types of stumpage determination are shown in Sec. 2.1 of the Manual as follows:

> **2.1** Types of Determination
> Stumpage rates are determined by one of the following methods:
> (a) a full appraisal as described under Chapter 3 and 4 of this manual;
> (b) an Order-in-Council directive setting rates under the Forest Act, Section 84;
> (c) pricing under Chapter 6 of this manual;
> (d) the use of rates developed by Regional Valuation staff, and approved by the Regional Manager.

In 1988 an amendment, Sec. 16.1, to the Forest Act provided for a Timber Sale Licence to be awarded on the merits of proposals.

> **16.1** (1) On request or on his own initiative the minister or a person authorized by him may, by an advertisement published in the prescribed manner, invite applications for a timber sale licence, and may specify in the advertisement that applications for the timber sale licence will be accepted only from one or more categories of small business forest enterprises as established by regulation.
> (2) An application for a timber sale licence shall
> (a) be in the form specified by the minister or a person authorized by him,
> (b) be submitted in a sealed container to the minister or a person authorized by him,
> (c) if the advertisement required by subsection (1) so specifies, include a proposal to the minister or to a person authorized by him, containing the information that the minister or the person authorized by him requests, and
> (d) include an offer by the applicant to pay to the Crown, in addition to other amounts payable under this Act and the regulations, stumpage under Part 7 and the amount of the bonus offer or bonus bid, if any, in the amount tendered.
> (3) The minister or a person authorized by him shall evaluate each application, including its potential for
> (a) creating or maintaining employment opportunities and other social benefits in the Province,
> (b) providing for the management and utilization of Crown timber,
> (c) furthering the development objectives of the Crown,

(d) meeting objectives of the Crown in respect of environmental quality and the management of water, fisheries and wildlife resources, and

(e) contributing to Crown revenues.

(4) The minister or a person authorized by him may approve one or more applications for all or part of the advertised volume of timber and may include in his approval terms and conditions he considers necessary, or may decline to approve all the applications.

(5) Where an application is made in accordance with this section in response to the advertisement, and the minister or a person authorized by him approves the application under subsection (4), the regional manager or the district manager shall enter into an agreement in the form of a timber sale licence.

(6) No timber sale licence issued under this section is replaceable.

5.0 ARGUMENTS

5.1 *Ultra Vires* Argument

5.1.1 General

Blacks LAW DICTIONARY describes *ultra vires* as follows (verbatim):

> An act performed without any authority to act on subject. Acts beyond the scope and the powers of a corporation, as defined by its charter or laws of state of incorporation. The term has a broad application and includes not only acts prohibited by charter, but acts which are in excess of powers granted and not prohibited. ..... *Ultra vires* act of municipality is one which is beyond powers conferred upon it by law.

The Appellants state that their operation suffered financial damage due to high stumpage rates billed for timber. Furthermore, these bills put the company's viability into jeopardy. This result is contrary to certain objectives stated in the Ministry of Forests Act, Section 4 (d) and in the Forest Act, Section 16.1(3)(a) and (c). Therefore, the Appellants claim that the procedures used to determine stumpage rates on Woodland's Section 16.1 Timber Sale Licences are the product of either *ultra vires* legislation, or else they are the result of discretionary error or omission on the part of the Regional Manager and his staff. The Appellants advanced their argument within a document titled: "Submission of the Appellants' Doctrine of Ultra Vires." the objective of the argument is twofold:

i) to annul the application of a "full appraisal", under Section 2.1(a) of the Interior Appraisal Manual, to Woodland's Section 16.1 Timber Sale Licences.

ii) to cause the Regional Manager to be directed to Section 2.1(d) of the Interior Appraisal Manual in order to apply a specially designed stumpage determination to Section 16.1 Timber Sale Licences.

Paragraph numbers 1, 12, 13, 25 and 29 in the Appellants argument emphasize their logic and reasoning. Paragraph 29 is:

> "It is the submission of the Appellants that the Valuation Branch, in applying the Interior Appraisal Manual in the manner that it did to the Appellants Licences was not acting in accordance with the Policies and Procedures as set in that Manual itself. Conversely, if the Minister intended stumpage under a Section 16.1 Licence to be calculated under Section 2.1(a) of the Interior Appraisal Manual, the Minister was acting *ultra vires* Section 84(1)(b) of the Forest Act and had no power to promulgate such Policies and Procedures. Either way, the determination of the Valuation Branch is void; it is either an incorrect application of the Minister's own

> Policies and Procedures, or, in the alternative, it is a correct application of Policies and Procedures that are *ultra vires*."
> (Appellants' emphasis)

If the Interior Appraisal Manual is not subordinate legislation, it could not be challenged on the legal grounds that it is *ultra vires*. However, the Appellants attempt to challenge the Interior Appraisal Manual upon legal grounds. The mechanism to achieve this is to "lift" the Interior Appraisal Manual from a "policies and procedures" level to that of subordinate legislation. Therefore, the Appellants state in Paragraphs 26 and 27 that the Interior Appraisal Manual falls within Halsbury's class of legal instruments called "subordinate legislation." If any "subordinate legislation" is contrary to the enabling legislation it is *ultra vires*. The Appellants claim that if Section 2.1(a) of the Interior Appraisal Manual is applied to determine the stumpage rate for Section 16.1 timber, then this produces results which are contrary to the will of the Legislature. Therefore, that procedure, involving as it is claimed "subordinate legislation," is *ultra vires*.

Accordingly, this Appeal Board must consider the following questions:

- Question 1

  Is it correct to classify the Interior Appraisal Manual as "Subordinate Legislation"? Subordinate legislation was defined by Driedger, The Construction of Statures, Appendix IV, on page 274:

  > In the *Chemicals Reference*[•] Chief Justice Duff said that "every order in council, every regulation, every rule, every order, whether emanating immediately from His Excellency the Governor General in Council or from some subordinate agency, derives its legal force solely from..[an] Act of Parliament", and, quoting from *The Zamora*, he said that "All such instruments derive their authority from the statute which creates the power, and not from the executive body by which they are made."[••]
  >
  > These subsidiary laws are known by a variety of expressions - regulations, rules, order, by-laws, ordinances - or, collectively, as subordinate legislation or delegated legislation.

[•] [1943]S.C.R. 1, at p. 13.

[••] *The Zamara*, [1916] 2 A.C. 77; *The Case of the Proclamations* (1611), 12 Co. R. 74, 77 E.R. 1352.

- Question 2

  Does the Doctrine of *ultra vires* apply in this case? This case refers specifically to the question of applying Section 2.1(a) of the Interior Appraisal Manual to Woodland's Section 16.1 Timber Sale Licences.

With respect to Question #1, the Board is guided by the following authority: MacFarlane, J.A. in the MacMillan Bloedel Limited v. Minister of Forests of British Columbia (February, 1984). Page 113 - 51 B.C.L.R.:

> I agree with the chambers judge that in establishing policies and procedures to be applied in fixing stumpage, and in particular percentage allowances for risk of chance and for defect and breakage, the minister was exercising a power analogous to regulation making. Such a power is more legislative that it is administrative, particularly having regard to the function of the minister to assert the financial interest of the Crown as the vendor of provincial timber resources. Such a power does not lend itself easily to judicial intervention.

MacFarlane J.A.'s statement, in the opinion of this Board, does not lend support to the Appellants' suggestion that the Interior Appraisal Manual, which contains the Minister's approved policies and procedures for use in determining stumpage rates, is "subordinate legislation."

The Ministry of Forests Act in Section 4(e) states:

> "4. The purposes and functions of the ministry are, under direction of the minister, to
> (e) assert the financial interests of the Crown in its forest and range resources in a systematic and equitable manner."

The Minister holds wide discretion to designate the policies and procedures used to determine stumpage rates. It is helpful to review the Minister's historical power to set a stumpage rate.

- Before January 1, 1979 the power to fix stumpage was reserved to the Minister. There was no appeal from that decision.
- From January 1, 1979 through July 29, 1980, Section 84 of the Forest Act permitted the Regional Manager to determine rates of stumpage according to Section 84 and regulations, which include the following:
  Section 84(2) In determining stumpage rates the Regional Manager or forest officer shall
  (d) make an allowance for profit and risk that he considers will be adequate in relation to the relevant operation referred to in paragraph (c).
- As of July 30, 1980, Section 84 of the Forest Act was changed completely to the effect that stumpage rates shall be determined by the regional manager according

> to the policies and procedures approved by the minister. Appeal procedures are provided.

Therefore, MacFarlane J.A. observed on page 114 of citation:

> The legislature has, by amending the legislation, removed the question of adequacy and has said, in effect, that the opinion of the minister is final. By deleting any reference to the question of adequacy and by empowering the minister to approve policies and procedures, the legislature has reintroduced a policy component which was not so apparent in the 1979 Act. Judicial review on the basis of alleged lack of regard for factual foundation becomes more difficult and inappropriate in this case.

Furthermore, MacFarlane J.A. stated on page 115:

> I agree with counsel for the Crown that imposition of stumpage charges on the various contracting parties in the logging industry in the different regions of the province from time to time is largely a matter of policy.

With respect to Question No. 1 above, this Appeal Board accepts that the Interior Appraisal Manual was not intended to be a regulation, nor has it been subject to the legislative process. Therefore, this Appeal Board considers that it is incorrect to classify the Interior Appraisal Manual as "subordinate legislation."

This Board considered evidence presented to it in the light of the whole of the authorizing statues as suggested by Driedger:

Driedger, Construction of Statutes (2nd edition, 1983) Page 105:

> The decisions ... indicate that the provisions of an enactment relevant to a particular case are to be read in the following way:
>
> 1. The Act as a whole is to be read in its entire context so as to ascertain the intention of the Parliament (the law as expressly or impliedly enacted by words), the object of the Act (the ends sought to be achieved), and the scheme of the Act (the relation between the individual provisions of the Act).
>
> 2. The words of the individual provisions to be applied to the particular case under consideration are then to be read in their grammatical and ordinary sense in the light of the intention of Parliament embodied in the Act, and if they are clear and unambiguous and in harmony with that intention, object and scheme and with the general body of the law, that is the end.

With respect to Question No. 2 above, this Appeal Board acknowledges the statement by MacFarlane J.A. on page 116 (of citation):

> If his policy-making power under the Act were subject to review each time it was alleged that his policies were not in accord with what a T.F.L. holder or industry experts conceived to be actual costs at a particular time in a particular region, the situation would be chaotic. Furthermore, the court would be turning back the clock to the day when adequacy was the standard and ignoring the legislative reality that the minister is empowered to approve policies and procedures without being constrained by any statutory standards or criteria.
>
> The evidence does not establish that the minister exercised his power capriciously or that he exercised a power different from the one that was conferred on him by statute.

However, this Board also accepts the evidence that high stumpage rates were one of the primary factors jeopardizing Woodland's ongoing viability, if not the primary factor. Woodland's stumpage rates were set in an equitable and systematic manner applied to all licensees. The Board finds no deliberate attempt by the Ministry of Forests to discriminate against Woodland. Although, Woodland's precarious position is contrary to one of the stated intents of the Legislature, the stumpage rates billed to Woodland are a result of the Minister's mandate to generate revenue in a systematic and equitable manner.

In considering the answer to Question No. 2, this Board accepts that the Interior Appraisal Manual is policy, not "subordinate legislation", and that Woodland's stumpage rates were determined correctly according to policies and procedures approved by the Minister. Accordingly, this Appeal Board concludes that the Doctrine of *ultra vires* does not apply to Woodland's case. Therefore, the answer to Question No. 2 is negative.

The Appellants' corollary concern about the Ministry's inertia to apply Section 2.1(d) of the Interior Appraisal Manual to Woodland's licences will be addressed further along in this decision.

If, however, one assumes that the Doctrine of *ultra vires* actually does apply to Woodland's case, then this Board asks the following:

- Question No. 3

  "What is the intent of the legislation with respect to the Minister of Forests and to Section 16.1 Timber Sale Licences?"

The Minister of Forests directs the Ministry's activities in various "front lines" of action, as described in Section 4 of the Ministry of Forests Act. Competing objectives and priorities always occur, therefore, the Minister in setting priorities does a strategic balancing act in attempting to satisfy some

concerns. Southin J. in Rustad Bros. & Co. Ltd. v. Minister of Forests stated with respect to Section 4 of the Ministry of Forests Act:

> These are very broad purposes. As to the best way of carrying them out, there will be profound differences of opinion. I cannot think of a concept more capable of giving rise to differences of opinion than that of "social benefits".

Therefore, the Minister has a duty to consider each major objective, before making a decision that is "in concert" with the overall priorities.

Accordingly, this Appeal Board acknowledges that the Minister cannot normally be bound by a single ideal; that is, he cannot focus on one goal to the exclusion of others when he makes a decision. The Minister is bound by the Legislature to consider all purposes and functions which are within his mandate.

With respect to Section 16.1 the Appellants' brought forward the Minister's statements recorded in the Legislature May 31, 1988 prior to reading proposed Section 16.1 legislation.

> To encourage industry diversification we are substantially expanding our small business forest enterprise program, doubling the wood available to smaller operators - up to 15 percent of the current apportioned volume in the province from a level of just over 7 percent.
>
> The amendments will also stimulate additional wood processing in our province. We want higher returns for industry and the province from value-added products and through diversified marketing. Our initiative to increase industry diversification will therefore provide more jobs for British Columbians.

The Minister appears to be emphasizing the fact that the timber supply allocated to small business will be doubled, so that additional wood processing will produce value-added products and therefore higher returns for the province, including more jobs. The language in Section 16.1(3) clearly states that bid proposals will be evaluated on the basis of jobs and social benefits, development objectives, and adding to revenues, etc. Section 16.1(3) is THE LAW upon which a bid proposal is evaluated for the purpose of deciding which bid proposal will be selected in awarding a particular timber sale. THE LAW describes five objectives of the small business bid proposal program, therefore, all five objectives comprise the intent of the Legislature. Section 16.1 is the legal mechanism by which timber sales are allocated to secondary manufacturing operations.

Section 16.1 became effective in July 1988. Then the Ministry published an Interim Policy paper respecting Timber Sales under Section 16.1. Extracts from the first page follow:

PURPOSE:
The purpose of this Policy statement is to outline and explain the Ministry's policies and general procedures for sales under Section 16.1 of the Forest Act.

DISCUSSION:
These sales - called Bid Proposals - have features which distinguish them from other sales under the Small Business Forest Enterprise Program (S.B.F.E.P.). These features are outlined and explained below.

First, Section 16.1 was put into the Forest Act in July 1988, with the intent of increasing employment and encouraging the diversification of B.C.'s forest industry.

Therefore, bid proposals are awarded so as to promote and encourage further manufacturing in B.C.

Second, B.C.'s secondary and tertiary manufacturers are very diverse in terms of products produced....

Therefore, it is important that the Ministry's policies and procedures be sufficiently flexible to accommodate this diversity.

Third.

Moreover, applicants should know in advance how their bid proposals will be evaluated so they can submit the best proposal possible.

This Appeal Board has considered evidence pertaining to the intent of Legislature in approving Section 16.1 in 1988. The evidence is found in the daily record of the Legislature in Section 16.1 and in the Ministry's INTERIM POLICY paper. Accordingly, this Board holds the opinion that the intent of the Legislature in approving Section 16.1 was to create and maintain employment through systematically allocating timber to re-manufacturers, within the context of all of Section 16.1(3) and Section 84 of the Forest Act, and the Ministry of Forests Act. This is the will of the Legislature.

The Minister encourages secondary industry by providing a timber supply. There is no duty to guarantee survival of an operator by setting a price for stumpage lower than the price applicable to other operators. Section 16.1 of the Forest Act is a timber allocation mechanism. Therefore, in answer to Question No. 3, it is the opinion of this Appeal Board, that even if the Doctrine of *ultra vires* could in fact be applicable to the case before us, there is still no evidence of Ministry action that is *ultra vires* the intentions of the Legislature.

Section 16.1(3) of the Forest Act states that one of the criteria applied to evaluate a bid proposal is the potential for:

(a) creating or maintaining employment opportunities and other social benefits in the Province.

The Appellants have created and/or maintained employment in an exemplary manner, and thus they tend to highlight this worthy achievement. However, the Appellants appear to be requesting that an authority or court also focus on this singular objective, over and above other objectives stated in Legislation. Therefore, this Appeal Board is drawn to propose a question in this regard:

- Question No. 4

  "Does an outside body such as a licensee or a court have the authority to direct the Ministry to emphasize one stated objective more that another stated objective?"

The Board refers to various authorities prior to making a decision. In the recent case, Sierra Club v. A.G.B.C. (1991) 83 D.L.R. (4th) 708, J. Curtis J. at page 716 said:

> It is not open to this court to review the actual policy involved in reaching the decisions made by the chief forester, nor should it be; government by judges is no democracy. Under our system of government the elected officials, and the civil service are empowered to develop and implement government policy. The court's role is limited to ensuring the procedure by which this is done does not offend the law.

In MacMillan Bloedel Limited v. Minister of Forests of British Columbia, (1983) MacFarlane J.A. in 51 B.C.L.R., page 114, said:

> The policy was applied in an equitable manner in the sense that all T.F.L. holders were treated equally. I do not think that a difference if opinion between the minister and those in industry as to what allowances were adequate is a basis for saying that the minister failed to act in an equitable manner.
>
> In summary it would be inappropriate because the court would be dictating policy to the policy makers. The court would be imposing on the minister an implied statutory obligation to make allowances that are adequate (reasonable) in relation to the costs of the regional operator, when the legislature has removed that specific requirement, and has given the minister a broader mandate.
>
> Should the court direct the minister what policies and procedures he should approve, and the date upon which he must approve them? The answer must be no. I have said that the court will not dictate policy. Neither will it tell the minister what factors he must select, and what weight he must attach to those factors in determining what procedures should be applied in assessing stumpage.

In addition, Section 154(3) of the Forest Act constrains an appeal board to apply the policies and procedures in effect at the time of the initial determination being appealed. Therefore, this Appeal Board, upon considering the above authorities, has formed its opinion that the answer to Question No. 4 is negative.

The Appellants have asked this Board to direct the Regional Manager to Section 2.1(d) of the Interior Appraisal Manual in order that greater emphasis may be given to Section 16.1(3)(a) of the Forest Act: i.e. employment and social benefits. However, Section 16.1 is not structurally linked to Section 84 which contains policies and procedures used to determine stumpage rates. Upon considering this fact and the various authorities quoted previously when deliberating the answer to Question No. 4, case law and legislative restrictions prohibit the Board from directing the Regional Manager to a particular part of the Interior Appraisal Manual. Therefore, this Appeal Board cannot recommend the remedy preferred by the Appellants.

The Appellants argued a number of points, which have been condensed into nine arguments within the Doctrine of *Ultra Vires*.

5.1.2 Fails to Meet the Will

The Appellants argued that use of Sec. 2.1(a) of the Manual is not appropriate for Woodland and resulted in failure to meet the will of the Legislature. Thus, either the Manual should be struck down, or an alternative Sec. such as Sec. 2.1(d) should be used.

This Board accepts that the intent of the Legislature in approving Section 16.1 was to create and maintain employment through systematically allocating timber to re-manufacturers, within the context of all of Section 16.1(3) and Section 84 of the Forest Act, and the Ministry of Forests Act. This is the will of the Legislature.

This Board also accepts that Woodland was in financial jeopardy and that stumpage rates were one of the primary forces causing this state of affairs. The stumpage rates were determined by Section 2.1(a) of the Interior Appraisal Manual, which was approved by the Minister. Woodland's financial jeopardy is contrary to the implied intent of the Legislature as stated in the Ministry of Forests Act, Section 4(d), which is to encourage a vigorous timber processing industry. The will of the Legislature was not met by Woodland because financial vigour was not achieved.

Offsetting this, Woodland did meet the intent of the Legislature with respect to Section 16.1(a) of the Forest Act because employment and social benefits were maintained. Furthermore, the Ministry allocated timber to Woodland, therefore, the Ministry encouraged this operation in accord with Section 4(d) of the Ministry of Forests Act.

In regard to other aspects of the will of the Legislature, this Board is not in a position to judge whether or not the will was met.

Section 2.1(a) was applied because there were no stumpage rates in effect as determined under Section 2.1(d).

There is no appeal from a decision of regional valuation staff not to create policy, or not to develop stumpage rates.

Section 84 of the Forest Act states that a forest officer shall determine rates of stumpage in accordance with the policies and procedures approved by the Minister. The Interior Appraisal Manual embodies the policies and procedures which were approved by the Minister and in effect at the time that a stumpage determination was made for Woodland's licences. The Minister may cancel all applications of Section 2.1(a) of the Interior Appraisal Manual to Section 16.1 licences, if he so chooses. The Minister may influence a Regional Manager to develop special stumpages under Section 2.1(d) of the Interior Appraisal Manual, or alternatively, he may direct him to refrain from doing so.

This Appeal Board has no authority to direct a Regional Manager, the Minister, or an Appraisal Officer with respect to his selection of available options in the Interior Appraisal Manual.

5.1.3 Dimension Mill vs Re-Manufacturer

Stumpage was determined based on selling prices and costs for lumber, which are not applicable to a unique integrated operation with secondary and tertiary manufacturing.

Policies and procedures used to determine the stumpage rates reflect a process that sets the selling price of the tree on the stump. The Reserve Stumpage Rate set for the timber in Woodland's Section 16.1 licences is virtually the same rate for almost any other kind of licensee, whether Forest Licensee, Tree Farm Licensee or Major Timber Sale Licensee. Similarly, the rate is the same for a plywood mill operator, logger, lumber mill or pole yard. Bureaucratic chaos would be the result if the Ministry "customized" each stumpage appraisal to the licensee's own particular conditions. Dimension lumber is the most common end product made of solid wood in the Interior: a primary product in the manufacturing process. Using costs and prices for this commodity can be justified within a "mass appraisal" system.

The argument may be re-worded to:

> "Allowable Manufacturing Costs and Selling Prices Conflict with Fact, and Woodland's Bid Proposal".

Arguments which are directed at a Licensee's specific operating conditions are elaborated in Section 5.1.7 following.

5.1.4 Water-bed Effect

"The Water-bed Effect and other factors are discriminatory to Woodland."

This section addresses perceived subsidies and effects that are perceived to be discriminatory.

The "water-bed effect" results from the fact that large operators have large licences which are spread over a wide territory, thus allowing them some flexibility. They can decide to modify the profile of stands they cut. For example, they can increase cutting in stands most remote from the point of appraisal, thereby reducing their Value Index. This kind of "group action" can result in lowering the Mean Value Index. This shift would have an upward effect on the stumpage rate for a cutting right with a short haul to point of appraisal.

The "water-bed effect" is spread among a variety of kinds of tenures (licences) which are located relatively close to a point of appraisal. The effect is the same, regardless of tenure. The Reserve Stumpage Rate would be the same for a Tree Farm Licence, Small Business Section 16.0 and Section 16.1 Timber Sale over 2 000 m^3, Forest Licence, and Licence to Cut over 2 000 m^3. Therefore, the CVP System does not discriminate between kinds of licensees. Nor does it discriminate between kinds of operators, whether the operator is a logger, a sawmiller, or a secondary manufacturer. However, the "water-bed effect" probably affects re-manufacturers more than lumber mills.

While a system may affect an operator adversely, adverse affects are not necessarily the result of discrimination. It is a "Rule" that creates discrimination. Intended discrimination will result in a "Rule" to that effect.

Value Indexes (VI) for SBFEP timber sales are excluded from the calculation of Mean Value Index (MVI). This practice started when the CVP system was initiated as indicated on page 6 of the B.C. Forest Service publication "Comparative Value Timber Pricing" dated September 15, 1987:

> "Determination of Mean Value Index (MVI)
> The cut-off dates for the rolling twelve-month periods will be the end of January, April, July and October each year. Only Tree Farm Licences, Forest Licences, Timber Sale Harvesting Licences, Watershed Licences, and Timber Sale Licences which specify an allowable annual cut will initially be included in the calculation of Mean Value Indices."

SBFEP licences are not the only licences excluded from a determination of the MVI: woodlot licences and timber sales with no allowable annual cut are also excluded. However, the majority of the Timber Sale volume excluded would probably be held by SBFEP licensees.

The Appellants submitted five examples of the "water-bed effect" in Exhibit 2, Volume 5, Tab 9. The five examples compare four operating conditions. The conditions for Operator D (SBFEP licensee) are excluded from the calculation of MVI. The stumpage rate for Operator D increases

when other operators move into stands yielding a lower VI. Therefore, the Appellants claim that small business licensees are subsidizing other operators, therefore, discrimination occurs.

Mr. Falkiner, Manager, Timber Pricing with the Valuation Branch, upon being queried by the Board regarding this matter, indicated that a check on VI's for small business timber sales shows that they average out about the same as for the major tenures. Therefore, excluding them makes very little difference to the MVI applied. However, no evidence was submitted to this Appeal Board to support Mr. Falkiner's statement.

Furthermore, the Respondents did not refute the examples shown in Ex. 2, Vol. 5, Tab 9. No evidence was supplied by the Respondent to show that average SBFEP reserve stumpage rates are the same as the average for major licensees. No evidence was supplied by the Respondent to demonstrate that the SBFEP sector is not subsidizing the dimension lumber and the pulp industry.

This Appeal Board acknowledges that calculating the MVI, as initially done incorporating the majority but not all of the VIs, provides the potential for discrimination against all the small volume tenures. The Board is compelled to accept the evidence at hand. Therefore, this Appeal Board recognizes that there is potential that is built into the calculation of the MVI which could result in discrimination against SBFEP and other small volume licensees.

In addition, there is a different but related matter. Mr. Falkiner stated before this Board (Transcript Day 6, page 51) that anomalies occur where stumpage is priced at special or modified rates, i.e., \$0.25 wood, \$1.25/per m^3 at Fort Nelson and stumpage bearing the "half-cap". As a result of these applications, the Base Rate is higher than the Target Rate by about \$2 per m^3. Therefore, lower value and higher value timber was "subsidized" by the overall rate increase of \$2 per m^3. Some of Woodland's licences probably had the "half-cap" applied, therefore, may have been "subsidized".

If there is a subsidy to the dimension lumber and pulp industry, then the small business sector does not appear to be the only kind of licensee contributing to it.

No evidence was led to show that Woodland did not suffer adversely because of the waterbed effects, therefore, the Board acknowledges that this probably happened.

5.1.5 Forced Bankruptcy

Use of Sec. 2.1(a) of the Interior Appraisal Manual will force Woodland into bankruptcy, which is contrary to the intent of the legislation.

The CVP system at its inception was definitely meant to apply to small business timber sales. Explanatory briefs indicate this, as shown in the British Columbia Forest Service's publication: Comparative Value Timber Pricing, dated September 15, 1987:

page 2:

" Upset prices for Small Business Enterprise Program timber sales will be set at or above the Ministry's direct costs of administering such sales. "

page 3:

" Determination of Cutting Authority Stumpage Rates

The stumpage rate for each cutting authority (timber mark) will be determined as follows:

$$IR = BR + (VI-MVI)$$

where IR = Indicated Rate for the appraised timber
BR = Base Rate for the Coast or Interior as appropriate
VI = Cutting Authority Value Index
MVI = Mean Value Index for the Coast or Interior as appropriate.

All terms are expressed as $/m^3$. The Indicated Rate will then be compared to the Prescribed Minimum Rate. The Upset Rate will be the higher of the two. Any Bonus Bid will be added to the Upset Rate to determine the Final Rate charged.

page 9:

" Applicability of New Timber Prices and Effective Dates

New prices based upon Comparative Value Pricing will be charged for timber scaled on or after the following dates.

Form of Agreement	Effective Date
New Cutting Authorities	
Group 4) All new cutting authorities issued after September 30, 1987.	Effective date of appraisal

The statement quoted from page 9 is abundantly clear. No exceptions are stated. Furthermore, the B.C. Forest Service published "A Summary of Major Decisions" dated September 15, 1987, which states on page 2:

" Distribution of Revenue Changes:

Small Business Enterprise Program - This program will operate on the basis of full recovery of planning and development costs and basic silvicultural costs. These costs will form part of upset stumpage and government revenues will reflect bids above these recoverables. "

In fact, many Small Business Sales in 1987 and 1988 were sold competitively with a Bonus Bid added to the Upset Rate as determined by the CVP system.

However, this Appeal Board acknowledges and accepts the following:

- that Woodland is and/or was in financial jeopardy;
- that stumpage rates were one of the primary forces driving Woodland into this state;
- that the stumpage rates were determined by Section 2.1(a) of the Interior Appraisal Manual. Use of Section 2.1(a) was approved by the Minister;
- that Woodland's financial jeopardy is implied to be contrary to the imputed intent of the Legislature;
- that efforts to resolve Woodland's dilemma have been made at the political level.

The CVP system is an unavoidable effect of the Memorandum of Understanding and the Addendum thereto, which was signed by Canada and the United States regarding lumber tariffs. Therefore, the Minister chose to refrain from applying different methods of determining a stumpage rate for Woodland's licences.

No evidence has been produced before this Appeal Board to show that another fully integrated wood re-manufacturing firm who also has a Section 16.1 Timber Sale Licence is profitable. Evidence put before the Appeal Board indicates that applying part 2.1(a) of the Interior Appraisal Manual has proven detrimental to the Woodland's operation: the Appellants claim that they cannot survive within the Comparative Value Pricing System.

The Minister has been given an unfettered discretion to set policies and procedures to determine stumpage rates and to assert the financial interest of the Crown. The Minister or Regional Manager did not fail in his duty to encourage Section 16.1 licensees, by failing to set low stumpage rates for Section 16.1 Timber Sales. The Minister encourages secondary industry by providing a timber supply. However it is not his duty to guarantee survival of a Section 16.1 operator by setting the price for stumpage lower than it is sold to other operators.

5.1.6 Silvicultural Costs

Deducting silvicultural costs is contrary to the Act, thus Manual is Ultra Vires.

It was submitted that the appraisal system results in increased stumpage rates for the Appellants since their actual cost of silviculture is lower than the average.

While the Board acknowledges that the CVP system may result in inequities to some Licensees, the Board has no authority to suggest changes to the system.

The Appellants stated that under the Forest Act a Licensee is required to "replant a tree at your own expense"' whereas in actual practise the planting is done by the Ministry with Licensee paying the cost. This is cited as another instance where the Manual is *ultra vires*.

Sec. 129.2 of the Forest Act states, that where harvesting of timber is carried out on Crown land under a Small Business Licence, basic silviculture shall be carried out by the Crown. Sec. 129.3 states that, in the case of a Major Licence, the Licensee shall carry out silviculture "at his own expense".

In view of these distinctions, the Board is not persuaded that this procedure demonstrates the Manual to be *ultra vires*.

5.1.7 Point of Appraisal

Point-of-appraisal Conflicts with Fact, and with Woodland's Proposal.

The Woodland/Scana Bid Proposals, which are a part of Woodland's Sec. 16.1 Timber Sale Licences, indicate that the timber will be manufactured in Prince George at the Licensee's plants. However, the Ministry's traditional appraisal practice costs timber to the closest permanent sawmill. Such point of appraisal results in an increase in the rate of stumpage payable of approximately $4 to $4.50 per m^3 on some of Woodland's licences.

This Appeal Board has found in examining the intent of the Legislature with respect to Section 16.1 of the Forest Act that the Bid Proposal is a mechanism by which alternative bidders are evaluated, thereby facilitating a decision as to who is awarded a timber sale licence. Thus, the Bid Proposal is a key to allocating timber to a SBFEP registrant.

Section 16.1 Bid Proposals are evaluated under criteria that are similar to the criteria used to evaluate a proposal for a Forest Licence or a Tree Farm Licence. However, details of a Bid Proposal are not part of the process to determine a stumpage rate by Section 2.1(a) of the Interior Appraisal Manual.

Appraising Woodland's licences to the closest permanent sawmill is a procedure that is consistent with the procedure used to appraise most other timber. The principle of "Licensee Neutrality" governs consistency throughout most appraisal practices. The licensee knows the rules in this regard.

With respect to point of appraisal, applying the traditional practice of Section 2.1(a) of the IAM to a Section 16.1 licence is consistent with the Ministry's practice of applying it to all other kinds of licences. These may have similar contractual restrictions directing where timber is to be processed. Generally speaking, this practice does not discriminate against any particular kind of tenure, nor does it discriminate against any particular group of operators.

Appraising each stand of timber to each licensee's particular circumstances would result in chaos; the Appraisal Officer would be fettered. Applying the CVP system and Section 2.1(a) of the Interior Appraisal Manual, the Appraisal Officer has the full authority of the Minister supporting him, because he applies the policies and procedures which the Minister has approved.

There is a contractual nature to the agreement known as a Timber Sale Licence. The Bid Proposal is a part of each Section 16.1 Timber Sale Licence, therefore, it is part of the agreement. Therefore, there is argument to treat the Bid Proposal as a part of "the contract", thereby justifying the point of appraisal to be determined by the point of delivery as specified in "the contract".

However, the agreement does not specify that the Forest Officer shall appraise the timber to the manufacturing site specified in the Bid Proposal.

In conclusion, this Appeal Board finds that the procedures used to determine Woodland's stumpage rates were approved by the Minister. If the Minister had approved different policies and procedure, with respect to the point of appraisal, then evidence was submitted that Woodland's stumpage rates would be reduced by $4.00 to $4.50 per m^3 for some of its licences.

5.1.8 Make it Fit Woodland

The Manual includes Sec. 2.1(d) which is a more appropriate means of determining stumpage for Woodland.

Section 2.1(d) of the Interior Appraisal Manual is available to the Regional Manager so that he may determine a stumpage rate for timber that is situated in a locale that requires a unique harvesting method: one that is not incorporated in the manual. The unique harvesting method is necessary as a result of either difficult access and/or environmentally sensitive conditions. Uphill helicopter logging was cited by the Ministry of Forests as an example. Timber harvested by Woodland did not require a unique harvesting method. Therefore, standard procedures found in Section 2.1(a) of the Interior Appraisal Manual were applied. No special stumpage rates had been developed for average timber in average conditions which was under licence to a Section 16.1 small business operator. The principle of "licensee neutrality" is an overall guide to the Ministry, therefore, standard procedures were applied.

Evidence before this Appeal Board indicates that, on a "day-to-day" basis, no thought was given by the Valuation Branch and the Regional Manager's valuation staff to developing special stumpage rates for remanufacturing companies registered under the Small Business Forest Enterprise Program by using Section 2.1(d) of the Interior Appraisal Manual. The Regional Manager refrained from exercising this option. Section 84 of the Forest Act states that a forest officer shall determine rates of stumpage in accordance with the policies and procedures approved by the Minister. The Interior Appraisal Manual embodies the polices and procedures which were approved and in effect.

There is no appeal from a decision of regional valuation staff not to create policy, or not to develop a special stumpage rate. It appears that the Regional Manager did not have special stumpage rates developed under Section 2.1(d) of the Interior Appraisal Manual, therefore, the Appellants have no legal ground to influence the decision of the Regional Manager in this decision.

5.1.9 Exercise Discretion

The Forest Officer failed to exercise his discretion.

The Appellants submit that the Forest Officer made a mistake in exercising his discretion to use Sec. 2.1(a) of the Manual, instead of using Sec. 2.1(d). It was maintained that the Forest Officer based his decision solely on one principle, "maintaining licensee neutrality", and that he failed to consider the objective of Sec. 16.1 of the Forest Act, which is to encourage value-added industry.

The testimony of Mr. Falkiner was compelling when he stated that for years the Ministry had been focused on developing a system designed to appraise timber on its value, regardless of who buys it; or as he called it, "licensee neutrality". He also inferred this objective was Ministry policy when he stated the procedures had stood the test of time, and it was the policy adopted to fulfil the Minister's obligation to have systematic and equitable timber pricing.

The Board acknowledges that the Regional Manager is not compelled to use Sec. 2.1(a) of the Manual. He is authorized to exercise discretion, and might have selected Sec. 2.1(d), as favoured by the Appellant. The Board cannot speculate on the reasons why Sec. 2.1(a) was selected; however, it is apparent that a uniform policy of licensee neutrality was basic, and the Regional Manager would undoubtedly have taken this into account in exercising his discretion.

The Regional Manager is seen as having unfettered authority to exercise discretion with respect to which process under Sec. 2.1 of the Manual will be used. After the decision has been made, this Board has no authority to review that decision.

5.1.10 Sticks

The Appellants submitted that Sec. 2.1(c) of the Manual could have been used because "sticks" are the principal product manufactured by the Appellants.

Sec. 81 of the Forest Act requires that stumpage be determined by multiplying the volume of timber scaled by the applicable stumpage rate. Sec 73(1) of the Forest Act requires that no person shall manufacture products from timber cut from Crown land where such timber is required to be scaled.

Thus the Board does not agree that it is permissable under the Forest Act, where standing timber has been cut, to scale the volume as manufactured sticks, rather than as logs.

5.2 Legitimate Expectations Argument

The Appellants' submission in respect of legitimate expectations is that:

(a) The doctrine of legitimate expectation is applicable in this case;
(b) The facts of the case require the doctrine's application;
(c) The result is that the Ministry did not accord sufficient consultation/ communication in respect of the Appellants' grievances and, by inference, that the continued application of stumpages as varied from time to time is inappropriate.

It is alleged that the legitimate expectation of a "stumpage deal" for the Appellants was created by the actions and communications of the Ministry of Forestry representatives, including Ministers.

As a corollary, the Appellants also argue that a "contract" was established the terms of which prohibit the Ministry from charging stumpage in excess of $6.33 per m^3.

It is agreed by counsel that no estoppel against the Crown is possible. As a consequence, the Appellants seek to bring to bear the doctrine of legitimate expectation which can be a mixture of fact and law. The doctrine is best stated in the case of Reference re: Canada Assistance Plan Attorney General of British Columbia v. Attorney General of Canada; Attorney General for Ontario et al, Intervenors (1991), 83 D.L.R. (4th) 297, decision of the Supreme Court of Canada. At Page 319 of the decision Mr. Justice Sopinka in the Reasons of the Court quotes Old St. Boniface Residents Assn. Inc. v. Winnipeg (City) (1990), 75 D.L.R. (4th) 385:

> "The principle developed in these cases is simply an extension of the rules of natural justice and procedural fairness. It affords a party affected by the decision of a public official an opportunity to make representations in circumstances in which there otherwise would be no such opportunity. The court supplies the omission where, based on the conduct of the public official, a party has been led to believe that his or her rights would not be affected without consultation."

It is clear from the law and in the submissions of both counsel that the doctrine only provides, as a tenet of natural justice, the right of an aggrieved party to be advised, consulted and heard on issues affecting him or her **if the actions of government officials reasonably create the expectation in the aggrieved party that a decision will not be made or a course of action not adopted until the party has been heard, and that the decision will be communicated.**

The Appellants hold that a pattern of conduct, and that several steps in particular, gave the Appellants a legitimate expectation of being consulted in respect of a requested reduction or change in ongoing stumpage charges or relief from accrued stumpage arrears.

The pattern could be generally stated as repeated entreaties by letter from the Appellants' principals and by personal meetings with government officials including the following:

(a) Meetings:

October 31, 1990 (with H.V. Lewis, Director, Valuation Branch)
January 11, 1991 (with Hon. Claude Richmond, Minister of Forests)
December 10, 1991 (with Hon. Dan Miller, Minister of Forests).

(b) Letters or communications:

February 6, 1989 to Hon. David Parker (Minister of Forests)
July 5, 1989 to Hon. Bruce Strachan (Minister of Economic Development and Local M.L.A.)
September 8, 1989 to Hon. William Vander Zalm (Premier)
December 31, 1990 to Hon. Bruce Strachan (Minister and M.L.A.)
June 28, 1991 to Hon. Claude Richmond (Minister)
November 15, 1991 to Douglas A. Kerley (Commissioner, Job Protection Commission)
December 30, 1991, formal letter of appeal to Regional Manager, Prince George Forest Region.
February 27, 1992 to Regional Manager re: calculation of stumpage payment.

There is no question that the Appellants have consistently and repeatedly placed before the Ministry and its officials the Appellants' concerns regarding the stumpage rate being charged on its timber sales. The Ministry, however, has clearly refused a reduction on numerous occasions (viz letters March 30, 1989 (Hon. Dave Parker, Minister to P. Byl), October 12, 1989 (Hon. David Parker, Minister to P. Byl), December 11, 1990 (Hartley Lewis, Director, Valuation Branch to P. Byl).

At this point one incident in particular should be reviewed though its consideration at this point may anticipate and overlap with the Appellants' submission regarding a contract (above).

In the fall of 1988, the Ministry of Forests advertised for bid proposals for a timber sale licence in the Prince George area. The Appellants have characterized this as an offer and that the Appellants' resulting bid was a counter-offer on terms which were rejected by the Ministry. This is incorrect. The advertisement was an "invitation to treat" and the Appellants' bid was an offer. The offer was a model of its kind, being one of the first made in application for timber under Section 16.1 of the Forest Act, R.S.B.C. 1979, C.140. The bid was exhaustive in its description of the Appellants' corporate citizenry, history, the number of jobs it provided, the nature of its remanufacturing and value added enterprise, the intended use of timber, etc. Key, however, is the fact that the bid was accompanied by separate and confidential financial documents and a letter requesting a reduction in the upset stumpage rate as set by the Ministry to $6.33 per m^3. This rate was calculated by the Appellants as the maximum payable to produce a 5% profit.

In its reply, by letter dated November 24, 1988, the Ministry (through Julius Juhasz, Director, Timber, Harvesting Branch), clearly and explicitly stated that the license would be issued

"...subject to the following conditions:

1. Woodland Lumber Ltd. withdraws its request for a variance in upset stumpage rates and agrees to pay upset stumpage rates as outlined in the Notice of Intending Applicants for a Timber Sale Licence Bid Proposal, and the Application and Tender for Timber Sale Licence,..."

By letter dated November 25, 1988 the Appellants (per Peter Byl) stated:

> "I accept your conditions and hereby withdraw my request for a variance in upset stumpage rates".

Evidence at the hearing of this appeal indicated that the Appellants' letter of November 25, 1988 followed a telephone conversation with Mr. Juhasz respecting his letter of November 24, 1988. Mr. Peter Byl and Mr. Juhasz discussed the requested variation in stumpage and in particular the choice by the Appellants of either "standard stumpage rate adjustment" or "fixed stumpage rates", an election which had to be made upon the application. At this time the stumpage appraisal system had recently converted to the Comparative Value Pricing system and stumpage rates were high. It was expected, both by Mr. Byl and Mr. Juhasz, that stumpage would fall. Also, there was some consideration of a possible change in the "point of appraisal" (i.e. arbitrary assignation of presumed destination points for logs irrespective of the actual millsite), which would effect a reduction in appraised stumpage of approximately $4.00 per m^3. As a consequence, the Appellants chose the standard stumpage rate adjustment option.

It would be incorrect to fix upon the telephone discussion between Peter Byl and Julius Juhasz of November 24/25, 1988, any legal consequence or significance. Firstly, the Appellants are faced with parol evidence difficulties. The rule in such cases is stated by Cross (5th Edition) as:

> "Extrinsic evidence is generally inadmissible when it would, if accepted, have the affect of adding to, varying or contradicting the terms of a judicial record, a transaction required by law to be in writing, or a document constituting a valid and effective contract or the transaction".

There are numerous exceptions to this rule which include (again Cross):

> "...extrinsic evidence is admissible to show that a written contract or any other document is void for mistake or illegality or for non-compliance with the provisions of a statute or voidable on account of a fraudulent or innocent misrepresentation."

Closer to the circumstances alleged by the Appellants, perhaps, might be the exception allowed in the case of (Cross):

> "...a collateral oral contract might be proved when it was concluded in consideration of the execution of a written contract".
> and:

> "A Court may likewise come to the conclusion that the parties intended their contract to be partly oral and partly in writing in which case the oral parts may be proved by parol testimony".

Certainly, Appellants' counsel recognized the rules concerning parol evidence and its introduction, but stated in submissions that the exception validly applied to the facts before this Board. The exception can be used to explain inconsistencies, contradictions or confusion contained in the documents evidencing the original licence/contract between the Appellants and the Ministry of Forests. It is the opinion of this Board that oral evidence concerning the conversation between Mr. Juhasz and Mr. Byl of November 24/25, 1988, as that evidence is tendered to vary the terms established by the Appellants' licence herein, is inadmissible as parol evidence. There is no misunderstanding or confusion on the face of or created by the letters of Mr. Juhasz and Mr. Byl above, or by the actual licencing document. Nor is there any evidence of mistake at law or misrepresentation, for reasons stated below. Similarly, there is no evidence that the documentation was executed by the Appellants in consideration of a collateral oral agreement. It was clearly established by the Appellants, in their testimony, that they anticipated a lower stumpage rate and thus elected the standard stumpage rate adjustment option. It is not clear, however, that they did so as a condition of executing the agreement. Simply put, they made an election based on an expectation that simply did not come to pass.

Even if parol evidence is accepted, the Appellants could not successfully argue that Mr. Juhasz in any way altered the terms of the Appellants' licence/contract with the Crown. Mr. Juhasz no more knew the future stumpage rates than did the Appellants. Mr. Juhasz apparently speculated that a reduction in stumpage could not benefit the Appellants if they elected the fixed stumpage rates in their bid, and his statements in that respect were correct. The Appellants clearly hoped and expected to benefit by a reduction in stumpage rates as adjusted from time to time and cannot now abjure any liability for an increase in the rates. Mr. Juhasz' comments in that respect do not constitute misrepresentation.

We raise this point here to make it clear that the Appellants <u>even at the time of their application</u> made their position and requests re stumpage reduction an important point. However, the Ministry consistently refused a reduction, both at the time of the Juhasz discussion and at subsequent times.

Do the facts give rise to legitimate expectation? This Board's answer is that they do not. As indicated, the position of the Ministry was clear that no stumpage reduction would be given. What the Ministry and particularly its Ministers (Hon. Claude Richmond and, to some degree, Hon. Dan Miller) <u>did</u> do was to extend sympathy to the Appellants for their difficulties and they did instruct staff and at least one other government agency to make every effort to find a solution to the Appellants' dilemma. But at no time did the Ministry commit to a reduction in stumpage rate to accomplish this.

One key element of the Appellants' case, in this regard, concerns a meeting with Hon. Richmond and Hon. Strachan, both Ministers of the Crown, on January 11, 1991 at Prince George. At that

meeting as well were several senior staff members of the Ministry. The Appellants presented a detailed complaint focused clearly on its high stumpage rates as the source of its difficulty. Satisfied that the problem was understood, Hon. Richmond instructed his staff: "Gentlemen, you know the problem, find me a solution". When asked at this meeting by Mr. Peter Byl, principal of the Appellants, what the Appellants should do in these circumstances: ie., that he could not pay the stumpage rate, the Minister apparently advised them to "keep logging". The meeting with the Ministers ended but continued between the Appellants and Ministry staff.

Following this meeting, staff very quickly (January 15, 1991) suggested four possible options to the Minister:

> "1. Remove the silviculture levies from the stumpage rates charged Woodland Lumber on its Section 16.1 licences.
> 2. Implement points of appraisal changes in Woodland's stumpage calculations.
> 3. Fix the stumpage rate at the rate which the company initially estimated it could afford to pay for harvested timber.
> 4. Forgive payment of stumpage fees presently outstanding and for some future period, by Remission Order."

The fourth option was recommended for consideration, i.e. forgiveness of the outstanding and soon-to-be-incurred stumpage total estimated at approximately $800,000.00. The Financial Administration Act (S.B.C. C.15 Index C.128.5) is onerous in its use to forgive or remit monies due the Crown and, at the very least, with debts in excess of $100,000, requires the approval of the Lieutenant Governor in Council (Section 15(1.1)). However, Section 15(1.2) states that:

> "This section does not apply to a forfeiture, fine, pecuniary penalty, tax, royalty, fee or other sum imposed or authorized to be imposed by an enactment"

which would arguably include stumpage as appraised. If so, the appropriate section is Section 16(1) which states that the Lieutenant Governor in Council may remit such a sum where

> "great public inconvenience, great injustice or great hardship to a person has occurred or is likely to occur...".

Obviously, the requirements are extremely high and the act of remission must be very carefully considered. Evidence, in fact, was led that such a remission may follow only after a judicious and appropriate path of considerations as directed by Ministry of Finance and Treasury Board policies.

In the Economic Plan Phase II, prepared in conjunction with the Job Protection Commission, Clause 9 stipulates that the Minister of Forests is to "write-off" stumpage and interest accrued to August 31, 1991 (estimated to be $1.285 million). It should be noted that acceptance of this Clause by the Ministry would not have resulted in a solution as sought by the Appellants. Section 14(2) of the

Financial Administration Act states that, "the write-off of all or part of a debt or obligation under this section does not extinguish the right of the government to collect the amount or liability written off."

For whatever reason (the details of which are not in evidence), the Cabinet never approved remission of the stumpage notwithstanding that a draft Order in Council was prepared for Hon. Richmond and for Cabinet consideration.

One should recall, however, that throughout most of the pertinent time of this appeal British Columbia was subject to a United States countervailing duty of 15% on softwood lumber, so that all steps, decisions or policy respecting stumpage appraisal were done with extreme care to avoid any inference of government subsidy to the forest industry.

It is submitted by the Appellants that an important document is a memo dated March 18, 1991 by Hartley Lewis, Director of Valuations, to Phil Halkett, Deputy Minister of Forests stating:

> "Re: Woodland/Scana stumpage request: Has anyone advised Peter or John Byl of the Minister's direction that there will not be a stumpage deal and that they should contact the Job Protection Commissioner, Doug Kerley?"

It is clear that, although discussion may not have proceeded during the January 11, 1991 meeting on the point of remission, the Appellants were made aware of this possibility on or about January 22nd when Mr. Dan Evans, representing Hartley Lewis, telephoned the Appellants requesting specific information necessary to prepare a draft Order in Council.

It is not clear to this Board that the Appellants were assured that there would be a remission in the nature of an Order by the Lieutenant Governor in Council. It is hard to credit such an assurance since such a remission clearly needed Cabinet approval. In any event, the Appellants state that they were not aware of the Minister's decision not to remit stumpage (notwithstanding the aforesaid memo) until the first hearing of this appeal in June of 1992, when a copy of the aforesaid memo was first placed in evidence. The Appellants' submissions allege that "...a political decision appears to have been made not to notify the Appellants of this..." The Appellants suggest the coming election of October 1991 as a reason, but there is no evidence of any such motivation. In fact, by letter of November 18, 1991, the then Minister of Forests, Hon. Dan Miller, advised Douglas A. Kerley, Commissioner of Job Protection Commission:

> "Neither a remission order against any portion of accrued stumpage nor a reduction to stumpage rates established under the comparative value pricing system are available to the Ministry of Forests to assist the Woodland/Scana group".

The Appellants have acknowledged that they received a copy of this letter to Mr. Kerley on November 29, 1991 and therefore must be taken to have known, at that time that no remission would be following.

On April 10, 1991, the then Minister of Forests, Hon. C. Richmond, referred the matter to a possible alternative solution, i.e. reference to the Job Protection Commission (Douglas A. Kerley, Commissioner).

Mr. Kerley's office and authority is established by the Job Protection Act (S.B.C. 1991, C.4, Index Chapter 208.5), assented to on March 22nd, 1991. The objects of this statute are established by Section 2 which states:

> " 2. The objects of this Act are
> (a) to minimize job loss and the consequent destabilization of regional or local economies, particularly those mainly dependent on one industry, and
> (b) to preserve, restore and enhance the competitiveness of business enterprises in British Columbia and in the global marketplace by introducing temporary measures designed
> (c) to encourage business enterprises to obtain management consulting and counselling services,
> (d) to provide mediation services to business enterprises and interested parties in order to encourage cooperation conducive to the effective operation of the business enterprises, and
> (e) to enable business enterprises and interested parties to establish, subject to this Act, economic plans."

It is quite clear that the role of the Commissioner is mediative as a facilitator. This role is further established and emphasized by Section 8(3):

> "In carrying out functions under subsection (2), the commissioner or a special commissioner may provide any mediation and consultation services that he or she considers necessary to enable the business enterprise, interested parties and public bodies to make arrangements or reach agreements that will assist the effective operation of the business enterprise."

Most importantly, the effect and limits of the Commissioner's intervention are clearly cited in Section 9(3):

> "No economic plan and no agreement entered into under an economic plan has any force or effect unless and until
>
> (a) the plan is reduced to writing,
> (b) the plan names every participant,
> (c) the plan has been approved in writing by the Job Protection Commissioner, and
> (d) every agreement required by the plan to be entered into by the participants has been reduced to writing and executed by the necessary parties to it,

> and contains all the terms and conditions specified by the Commissioner under subsection (4).

We pay particular attention to the legislative framework for the involvement of Mr. Kerley as evidence was tendered to suggest that the Appellants saw Mr. Kerley and the Job Protection Commission as "representing" or speaking for the Ministry of Forests on occasion. Clearly, he could not do so and clearly the Job Protection Commission in no way acted as agent, delegate or representative of the Ministry of Forests. Nevertheless, the Appellants in their view (quoted from final submissions) felt that "...the whole Job Protection process was conducted on the basis that there would be a 'stumpage deal'" (Appellants' emphasis). With respect, the limits of Section 9(3)(d) are clear and all participants to the Job Protection process must be taken to know this.

It should be said at this point that this Board has considerable sympathy for the Appellants' frustration with the failure of the Job Protection process. The process resulted in two Draft Economic Plans (Phase I and Phase II). Phase II required considerable concessions from the Federal Business Development Bank (deferring payments on loan), Canadian Imperial Bank of Commerce (establishment of a line of credit), I.W.A. Union wage rollback (10%), 10% wage reduction for non-Union employees, 20% salary reduction for management, layoffs, the sale of a capital asset (a warehouse), Ministry of Finance concessions regarding a Western Diversification Fund loan, and finally (Clause 9) "writeoff of stumpage and interest accrued to August 31, 1991 (estimated amount $1.285 million) and set a stumpage rate of $7.50 per m^3". Implementation by the Ministry of Clause 9 as drafted would be extremely difficult, if not impossible, for the following reasons:

(a) The phrase "write-off" was clearly inappropriate (Note the references to this phrasing in comments re Financial Administration Act above);
(b) Any remission over $100,000 would clearly be subject to Cabinet approval and was not within the sole purview of the Ministry or its agents;
(c) Throughout these discussions the Ministry was extremely cognizant of the unrelenting scrutiny accompanying the U.S. countervailing duty on softwood lumber.

Notwithstanding these difficulties, staff (Mr. Nicholas Crisp) attempted to formulate a wording of Clause 9 on behalf of the Ministry that might not run afoul of countervail arguments. These efforts seemingly were unsuccessful.

The extraction of creditor and union/employee concessions, together with their own reduction of 20% of their salary must have been achieved with great pain and difficulty to the principals of Woodland. One can sympathize therefore with the extreme frustration that John Byl and Peter Byl must have felt when a concession on what they regarded as the main problem, stumpage, was not achieved.

Nevertheless, the Board cannot conclude on the evidence before us and given the provisions of the Job Protection Act that the Job Protection process held out or promised that "there would be a "stumpage deal".

The process of meetings and the Job Protection efforts demonstrate, rather, that the Ministry of Forests, particularly its Ministers, were keenly aware of the Appellants' economic difficulties and that the Ministry was sympathetic and made efforts to find a solution. But, on the facts as this Board finds them, this sympathy and effort never amounted to those circumstances necessary to establish legitimate expectation.

If legitimate expectation **were** created, what is the Appellants' recourse? Sopinka, J. quoted, above: "...it affords a party affected by the decision of a public official an opportunity to make representations in circumstances in which there otherwise would be no opportunity".

It seems to this Board that, whatever transpired from the fall of 1988 to June of 1992 (when the first appeal herein was heard) in the relations between the Appellants and the Ministry of Forests, the Ministry of Forests afforded the Appellants every reasonable opportunity to be heard and to detail their complaints and concerns. The Job Protection Commissioner further facilitated this process.

In the absence of "abuse of discretion" (Sopinka, J., page 320, quoting Dickson J. in Martineau v. Matsqui Institution Disciplinary Board (No. 2) (1979), 106 D.L.R. (3d) 385 at Page 410), the fact that the Ministry did not accept the Appellants' proposed solutions does not assist the Appellants. A similar question was considered by Curtis, J. in Re: Sierra Club of Western Canada et al and Attorney General of British Columbia et al, (1991) 83 D.L.R. (4th) 708, a decision of the Supreme Court of British Columbia. That case pertained to the issuance (during a promised period of public consultation) of cutting and roadbuilding permits that affected the relevant forest area. The applicants alleged that the promise of consultation had raised legitimate expectations. But the Court found that:

> "there was no representation that the Petitioners or public would be heard before further cutting or road permits were issued under extended M.W.P. No. 1. The issuance of the permits cannot be said to have defeated legitimate expectations induced by the Chief Forester promising to hear submissions on M.W.P. No. 2.".

Curtis, J. also stated:

> "It is not open to this court to review the actual policy involved in reaching the decisions made by the chief forester, nor should it be; government by judges is no democracy. Under our system of government the elected officials, and the civil service are empowered to develop and implement government policy. The court's role is limited to ensuring the procedure by which this is done does not offend the law. The essence of the petitioners' predicament is not that the law has been broken but rather that they have as yet been unable to convince those duly empowered to set and implement forest policy to accept their views concerning logging in the lower Walbran. They do, however, have the opportunity to be heard on that very issue prior to the chief forester's acceptance of MWP No. 2.".

Paraphrasing Curtis, J.'s judgment, we would agree that the essence of the Appellants' predicament is not that the law has been broken but rather that they have, as yet, been unable to convince those duly empowered to set and implement forest stumpage appraisal policy to accept the Appellants' views concerning Section 16.1(3)(a) of the Forest Act.

In the result, the Appellants' appeal, as founded on the doctrine of legitimate expectations, fails on the facts of this appeal and on the law applicable.

6.0 CONCLUSIONS

6.1 Issue 1

Did the Forest Officer exercise proper discretion in applying Section 2.1(a) of the Interior Appraisal Manual to determine stumpage rates applicable to Woodland Lumber?

Under Sec. 4 of the Ministry of Forests Act the Minister is responsible to both encourage maximum productivity and to assert financial interests of the Crown in a systematic and equitable manner. As a means of asserting the financial interests of the Crown in a systematic and equitable manner, the Minister has developed appraisal procedures. These procedures have been designed to provide licensee neutrality, with no special concessions granted to any section of the Industry.

Woodland was well aware, before the contract was signed, that stumpage would be determined using the standard appraisal system. Woodland did provide financial data to the Ministry showing that stumpage of $6.33 per m^3 was the maximum that could be paid. This represents Woodland's claim for a concession but does not give Woodland grounds to specify to the Minister what it will pay to purchase Crown timber.

The Forest Officer has the authority to exercise discretion in applying different alternatives under Sec. 2.1 of the Manual. There was no evidence that this discretion was exercised in an arbitrary or abusive manner. Thus, the discretion is not subject to review by this Board. To the extent that this Board is empowered to review this discretion, the Board concludes the discretion was properly exercised.

6.2 Issue 2

Was the technical determination and redetermination of stumpage correctly done?

It is conceded by Woodland that the calculations to determine stumpage rates were correctly done.

6.3 Issue 3

Did the Minister make a commitment to Woodland that alternative means of determining stumpage would be used, or that there would be a remission of stumpage?

When the Timber Sale contract was signed in November, 1988 Woodland undertook to pay stumpage "at a rate determined in the manner approved by the Minister". That obligation was reconfirmed by the Minister on several occasions.

The Minister did make extensive efforts to find a means of providing financial relief to Woodland. He did however, decline on several occasions to grant special stumpage rates.

The Minister also considered the possibility of remitting accrued stumpage. The necessary approval for remission was not obtained from Cabinet.

The Board concludes there was no commitment by the Minister to grant to Woodland special stumpage rates, or a remission of accrued stumpage. Nor is there evidence that the Minister, or his representatives, misled the Appellants into reasonably expecting a "stumpage deal".

6.4 Issue 4

If Woodland is in financial difficulties primarily due to high stumpage rates, is there an obligation for the Minister to provide relief, and to change the procedure for determining stumpage for Sec. 16.1 Licences?

The Minister, under the Ministry of Forests Act is charged with. "asserting the financial interest of the Crown in its forest and range resources in a systematic and equitable manner." The manner in which this is done by the Minister is not subject to review by the Appellants.

The Board concludes there is no obligation for the Minister to provide relief, or employ special procedures to determine stumpage rates for Sec. 16.1 Licences.

7.0 ORDER

The Appeal is dismissed.

Dated at Vancouver, B.C. this 4th day of February, 1994.

Douglas C. Baker, Esq., Member

J. Russell Jones, R.P.F., Member

Robin L. Caesar, R.P.F., Chairman