



Market Forces and the Impact of Legislative Changes on the Forest Industry

Prepared by

Peter Affleck, Council of Forest Industries, and

Peter Baird, Canadian Forest Products Ltd,

for the 5th Annual Forestry Summit

Emerging Legal Issues for the Forest Industry in B.C.

May 17, 2004

The Forest Revitalization Plan



- unprecedented agenda of change to the way we do business in the forest sector
 - 20 Bills introduced
 - 29 new or revised regulations attendant to these Bills
 - basic tenet is market based forest policy
-

The Forest Revitalization Plan



In structuring the FRP, the government realized – with our input:

- the BC forest industry competes on a global scale where market forces dominate
 - trade litigation, or at best managed trade, with our biggest customer is an overwhelming issue
 - need to create access to timber at fair market value for the full spectrum of interested parties
 - efficiency gains are mandatory to stay globally competitive in the commodity markets of our BC forest products companies
-

Market Forces



➤ External Forces

➤ Exchange rates, lumber panel and pulp prices, trade litigation, offshore competition

➤ Internal Forces

➤ timber pricing, tenure, costs, beetles, fires, competition for logs

The Implications of the FRP to the Forest Industry



The FRP affects:

- Tenure and Ownership
 - Woods Operations
 - Mill Operations
 - Marketing
-

Changes at a Glance



Tenure and Ownership

1. Forest Revitalization Act
 2. Acquisition of Control / Tenure
 3. Consolidation / Subdivision
-

Changes at a Glance



Woods Operations

4. Stumpage
 5. Contract and Subcontract Regulation
 6. Cut Control
 7. Cutting Permits
 8. Utilization
 9. Forest Practices
-

Changes at a Glance



Changes Affecting Mills

10. Mills Delinked from Tenure



Changes Affecting Tenure Rights & Ownership



1. Forest Revitalization Act

(a) Changes

- (i) “20%” taking
- (ii) Compensation, valuation & dispute resolution

(b) Implications

- (i) Significant loss of tenure
 - (A) negotiation of location / timing of loss
 - (B) fair and reasonable compensation
 - (ii) Meanwhile, must carry on under “loan back”
 - (A) possible cut control issues
 - (iii) Once takings done:
 - (A) restructure replaceable contracts
 - (B) replace lost fibre as required
-

Changes Affecting Tenure Rights & Ownership



2. Acquisition of Control or of Tenure

(a) Changes

- (i) Need for consent gone
- (ii) 5% AAC penalty gone
- (iii) Conditions on consent gone
- (iv) No new Job Protection Plans
- (v) Competition test & procedural rules added

(b) Implications

- (i) Should encourage transactions:
 - (A) No consent means greater freedom to make deals
 - (B) No conditions & no penalty means greater value in transactions
 - (ii) But:
 - (A) Must meet competition test
 - (B) Some problems with procedural rules
 - (C) Existing JPP's continue to 2006
-

Changes Affecting Tenure Rights & Ownership



3. Consolidation & Subdivision

(a) Changes

- (i) New unilateral right to do so
- (ii) Forest management test added
- (iii) Must do so according to specified methods
- (iv) Some transactions no longer permitted

(b) Implications

- (i) Unilateral right gives greater freedom to restructure
 - (ii) Subdivision should facilitate transactions
 - (iii) Consolidation may be more valuable for area than volume based if AAC leverage available
 - (iv) Must address forest management test
-

Changes Affecting Woods Operations



4. Stumpage

(a) Changes

- (i) Change to MPS
- (ii) Treasury Board, not Minister, sets TOA's
- (iii) New rules re conspiracy / information / appeals

(b) Implications

- (i) MPS beneficial to extent it improves economic operability
 - (ii) But CP symmetry that goes with it has created issues
 - (iii) Treasury Board, not Ministry, could become focal point for TOA discussions
 - (iv) For new rules re conspiracy and information, ensure compliance systems in place
 - (v) To extent stumpage reviews ever successful, now looking at potentially higher costs for challenges
-

Changes Affecting Woods Operations

5. Harvesting Contract and Subcontract Regulation

(a) Changes

- (i) Changes still in process
- (ii) Among anticipated changes:
 - (A) No “new” replaceable contracts
 - (B) Can negotiate out of existing replaceables, amount of work & other requirements (but not contractor clause)
 - (C) Rate disputes – timelines; peers; criteria; awards
 - (D) Special process for Bill 28 reductions

(b) Implications

- (i) Reduce / restructure replaceable contracts:
 - (A) 2 routes – Bill 28 and negotiation
 - (B) Bill 28 route carries no / less cost than negotiation
 - (C) May combine in single approach
 - (ii) Rates: greater chance of licensee success at arbitrations may yield better rate negotiations
 - (iii) Use negotiating out for other requirements
-

Changes Affecting Woods Operations



6. Cut Control

(a) Changes

- (i) Annual gone; minimum for 5 year gone
- (ii) Licensee can restart 5 year at its choice
- (iii) Carry forward eliminated; award of undercut to others remains

(b) Implications

- (i) Greater flexibility to log according to market
 - (ii) Manage period length for compliance – watch deadlines for notice; where possible, avoid undercut
 - (iii) By now, should have applied for one time transitional carry forward
-

Changes Affecting Woods Operations



7. Cutting Permits

(a) Changes

- (i) Existing permits expire by March 2007 – with 2 year extension opportunities and surrender opportunities
- (ii) New permits limited to 4 years maximum
- (iii) Extensions: limited to 1 year; fee on new, unless waived

(b) Implications

- (i) Cutting permit management more significant
 - (ii) For existing CP's > 4 years, use anticipated new extension right
 - (iii) For new CP's select term carefully – avoid extensions but, if term < 4 years and extension required, document reasons and seek waiver of fee
-

Changes Affecting Woods Operations



8. Utilization

(a) Changes

- (i) Take or pay replaces obligation to utilize and AAC penalty if not utilized
- (ii) New financial penalties on the way
- (iii) Still debating policy on when standing timber will be charged

(b) Implications

- (i) Significant issue when combined with CP terminations that will trigger utilization penalty
 - (ii) For existing CP's with standing timber, utilize opportunity to surrender with no penalty, no cut control, if and as may be negotiated
 - (iii) Going forward, greater flexibility to leave material behind, but may face significant financial penalty – some uncertainty about legal description of obligation / penalty
-

Changes Affecting Woods Operations



9. Forest Practices

(a) Changes

- (i) Bill 75 Amendments to FPC started improvements:
 - (A) Planning: 1 plan approval; minor amendments
 - (B) Practices: more results based - most benefits in roads
 - (C) C&E: declarations; relief; due diligence
 - (ii) FRPA:
 - (A) Objectives Driven
 - (B) FSP vs. FDP:
 - (I) More licensees and licences
 - (II) Broader area
 - (III) Longer term
 - (IV) Results & Strategies
 - (C) Practices requirements more results based
 - (D) Transition:
 - (I) By December 2005
 - (II) General rule: FPC applies to authorizations pre conversion
-

Changes Affecting Woods Operations



9. Forest Practices (cont'd)

(b) Implications

(i) FPC continues to apply

(ii) FRPA

(A) Opportunity:

(I) to streamline planning

(II) for greater operational flexibility

(III) to move away from more costly methods under FPC

(B) Innovators can be rewarded

(C) Key FSP decisions will influence value of FRPA to licensee:

(I) when to convert

(II) choice of licensees, licences, area and term

(III) selecting results & strategies

(IV) avoid doing more than is required

(D) Change field practices to reflect results

(E) Manage the objectives process – protections have been put in for licensees' benefit, but have to be vigilant

Changes Affecting Mills



10. Mills Delinked from Tenure

(a) Changes

(i) Appurtenancy

(A) Eliminated now for replaceable TFL's and FL's

(B) Eliminated later of now / 10th anniversary for non- replaceable TFL's and FL's

(C) No change for some tenures

(ii) Timber Processing - same as appurtenancy

(iii) Closure and Curtailment - completely eliminated

Changes Affecting Mills



10. Mills Delinked from Tenure (cont'd)

(b) Implications

- (i) Opportunity to realign mills to wood supply
 - (ii) Combine with greater opportunity for tenure & corporate transfers, consolidation & subdivision
 - (iii) Results:
 - (A) Tenures can be transferred / traded free of mill
 - (B) No longer any concern about volume going to licensee's mills vs. onto BC market
 - (C) Freedom to curtail / close mills to adjust to market conditions without facing AAC penalty
 - (iv) Watch those tenures that are delayed or not changed
-

Issues for Your Spare Time



11. Land Use and Working Forest

12. Licence Replacements

13. Bill 96, Ending TL Royalty Litigation

14. Others:

- Integrated Pest Management Act
 - Wildfire Act
 - IWMS
 - SARA
 - First Nations
 - Bill 33
-

Summary



- Bulk of planned policy changes made and in force
 - Changes affect industry's core business segments
 - Significant opportunities, but also challenges
 - Change ongoing, but focus now on implementation
 - Companies need strategies to implement
-