

Introducing Bill 30: the *Forest Resource Act*

ON APRIL 15TH THE PROVINCIAL GOVERNMENT introduced the *Forest Resource Act* (the Act) as Bill 30 into the Legislature. Forestry roads have always produced some challenging regulatory issues, so government's decision to enact specific legislation directed at forestry roads is not altogether surprising.

Until we receive the regulations that will fill out the legislative frame created under Bill 30, the practical significance of Bill 30 is difficult to assess. However, one practical change is that Bill 30 deletes those portions of the *Forest Act* and the *Forest and Range Practices Act* (FRPA) that are currently most significant to forestry roads Part 8 of the *Forest Act* and Part 3, Division 2 of FRPA in particular. The Act will now become the primary legislation that forestry professionals look towards with respect to both the authority to construct and maintain forestry roads, and the standards of practice applicable to these activities.

What is also clear is the Act will govern forestry roads through the creation of two new government agencies. The Resource Road Authority, otherwise simply referred to as 'the authority,' will take over from the Ministry of Forests and Range as the governmental agency responsible for the regulation of forestry roads. The authority will consist of a chair and one or more vice-chairs that will preside over a staff of officers, employees and consultants. The other new agency is the Resource Road Appeal Tribunal. It will take the place of the Forest Appeals Commission with respect to appeals of administrative determinations under the Act. Under the Act, the Forest Practices Board will still have the authority to undertake investigations and audits, and to participate in administrative

reviews and appeals relating to forestry roads.

Otherwise, the Act is largely an effort to consolidate and create a stand-alone piece of legislation with respect to forestry roads. For example, much of the administrative remedies as well as the compliance and enforcement provisions of the Act are very similar, if not identical, to those already existing under FRPA. Government easily could have adopted the FRPA regime of administrative remedies and compliance and enforcement for purposes of the Act. However, it chose not to do this. So, while many of the ideas in the Act are not new, new terminology and a higher level of detail are included.

That said, the Act contains some new twists. For example, government will have the authority to charge a deactivation-release fee "in prescribed circumstances" (whenever government says so, in other words) if a licensee wants released from its deactivation obligations even though government does not want the road deactivated. As currently written, the Act would then allow the authority to impose a deactivation requirement upon another user of the road. Those who have deactivation or continuing maintenance obligations will want to closely scrutinize the regulations made under the Act with respect to deactivation-release fees.

The Act also changes the scope of the defenses previously available against administrative remedies. Similar to FRPA, the Act still

includes the defenses of due diligence, mistake of fact and officially induced error. However, Bill 30 also provides that if a person uses one of these defenses to avoid liability for a contravention of the Act, that person is still liable to pay to government any economic benefit that person derived from the contravention (even though that person is not liable for the contravention).

The ethical obligation of the ABCFP's members to "have regard for existing legislation" has definitely become more onerous with Bill 30—262 sections more onerous, to be precise. The legislative treatment of forestry roads has become more detailed under the Act, and will involve a whole new terminology. And while Bill 30 may ultimately prove to effectively address many of the questions that have historically plagued this area of regulation, one cannot help but expect that the Act's complexity will create as many new issues as it resolves. 🐼

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