



December 21, 2017

VIA EMAIL: mark.haddock@gov.bc.ca

Mark Haddock
Lead, Professional Reliance Review
Ministry of Environment and Climate Change Strategy
Victoria, B.C.

Dear Mark,

Please find attached a short paper the BCGEU has produced regarding compliance and enforcement in B.C.'s forests. As you may know, the BCGEU represents most staff in the Ministry of Forests, Lands, Natural Resource Operations and Rural Development's Compliance and Enforcement Branch.

Our members have important concerns about staffing levels, the operation of the program, and the laws they are responsible for enforcing. Along with supporting information, these concerns are outlined in the attached paper. The paper also includes several recommendations for the Ministry to improve its compliance and enforcement program.

We think this information will be informative and useful to you in your review of professional reliance. If needed, we are available to provide additional information or to discuss these issues further.

Sincerely,

Stephanie Smith
President

MS/gg
MoveUP

cc: Honourable Doug Donaldson, Minister of Forest, Lands, Natural Resource Development and Rural Development, doug.donaldson.mla@leg.bc.ca
George Buis, Vice-President, Environment Technical and Operational, BCGEU
Maria Middlemiss, Vice-President, Administrative Services, BCGEU
Judy Fox-McGuire, Vice-President, Social, Information and Health, BCGEU

A new dawn for BC Forests?

B.C.'s new government promises a different approach to forest management in B.C.. The Minister of Environment and Climate Change Strategy has begun an expansive review of professional reliance, the regulatory model that currently governs forest practices. The NDP has also committed to increase local wood processing, invest in reforestation, modernize land-use planning, and strengthen environmental laws.

Undoubtedly, these changes will impact how public officials monitor and oversee industry activity in B.C.'s forests. But this government has not yet offered any specifics about how it might reshape the compliance and enforcement (C&E) branch in the ministry responsible for forests- now called the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNRORD).

As such, it is timely to assess the current state of the Ministry's compliance and enforcement unit, and how it might be improved going forward. The following brief traces the key changes that occurred under the B.C. Liberals, outlines current issues, and makes some general recommendations for government to improve compliance and enforcement in our forests.

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New Forest Practices Legislation: Problems with Enforceability

In late 2002, the B.C. Liberal government introduced legislation to overhaul the rules governing forest practices. The Forest and Range Practices Act (FRPA) replaced the "prescriptive and inflexible" Forest Practices Code (FPC) with a "results-based" code.

Under the new system, detailed planning and practice requirements were eliminated, and discretion over operational decisions were shifted from government to forest licensees. Licensees would now create an overarching Forest Stewardship Plan (FSP) outlining the results and strategies they intend to use to meet government's eleven objectives for managing and protecting forest values. The Government's role would be to focus on setting objectives and holding industry to account for the on-the-ground results of their practices.

At the time, Forests Minister Mike de Jong assured British Columbians that the new code would not compromise the province's high standards of forest management, and that it would be "backed by tougher and more effective enforcement."¹

Indeed, compliance and enforcement formed one of the three main "pillars" of the legislation, according to government. C&E staff would no longer enforce the prescriptive activities that comprised the FPC's planning requirements. Rather, they would play a critical role inspecting and enforcing the results and strategies, measures and stocking standards established in licensees' approved plans.²

The government claimed FRPA's reliance on professionals employed or contracted by the forest industry would result in better and more innovative forest practices, and reduce costs for both industry and government by removing unnecessary approvals and "red tape." Focusing compliance and enforcement personnel on enforcing "results" left them to deal with problems after the fact.

With so much planning and decision-making moved out of government, the ability for C&E staff to take proactive steps to fix suspect forest practices or avoid environmental damage is seriously limited.

Further, to ensure that compliance and enforcement is effective, the results and strategies to which licensees commit must be measureable and verifiable. In short, they must be enforceable. However, over time it has become clear that many of the results and strategies included in licensees' Forest Stewardship Plans (FSPs) are not readily enforceable.

In 2006 and again in 2015, the independent Forest Practices Board conducted special investigations of industry's FSPs. In both reports, the Board concluded that a high proportion of the commitments made by industry within the plans are not enforceable. As the Board noted in 2006, "If it is not clear what commitment is made in the FSP, it will not be easy for government compliance and enforcement officials to determine if the commitment has been met, thus hindering their ability to enforce FSPs."³

Despite the serious problems in FSPs identified by the Board beginning a decade ago, the provincial government did not move to resolve the issues. Between 2006 and 2015, the Board found that in terms of the enforceability of licensees' results in FSPs, there was no improvement over time. In fact, the Board wrote that these documents "do not meet the public's interest, are not adequate for their intended purpose and the Board questions whether they are the right tool for the job."⁴

Thus, the B.C. Liberals' promise of "tougher and more effective enforcement" rings hollow. Rather than having the tools to effectively protect the environment and hold industry to account, under FRPA's professional reliance model, C&E officers' ability to proactively address concerns about forest operations has been severely curtailed. And, once the on-the-ground results' are achieved, in many cases they are not even enforceable.⁵

Deep Staff Cuts

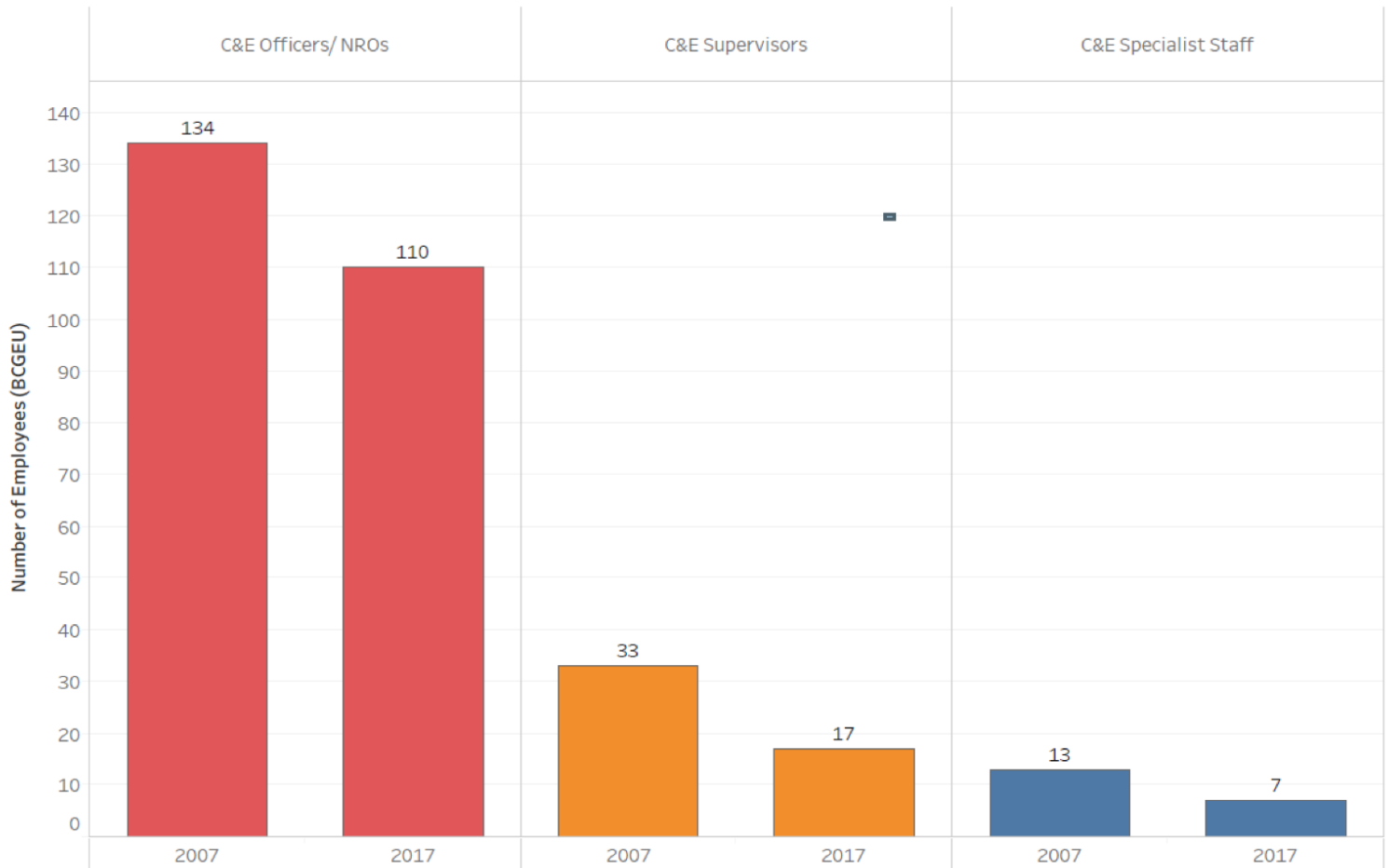
Despite simultaneously closing three regional and 29 district Forest Service offices, laying off hundreds of Forest Service employees, and cutting the budget for C&E by 14 per cent, in 2002 the B.C. Liberals insisted that the Ministry's compliance and enforcement program would be strengthened under the new forest practices regime.⁶ At the time, a government news release said the Ministry was restructuring to focus on monitoring and enforcing "results." One quarter of forest district positions would be dedicated to compliance and enforcement, and 300 staff would be trained and in place within three years.⁷

However, the planned expansion in C&E staffing was not fully achieved. Instead, over time the number of staff was reduced significantly. Government documents show that overall compliance and enforcement branch FTEs were reduced by almost 40 per cent from 289.7 FTEs in 2009 to just 182.0 FTEs in 2015.⁸

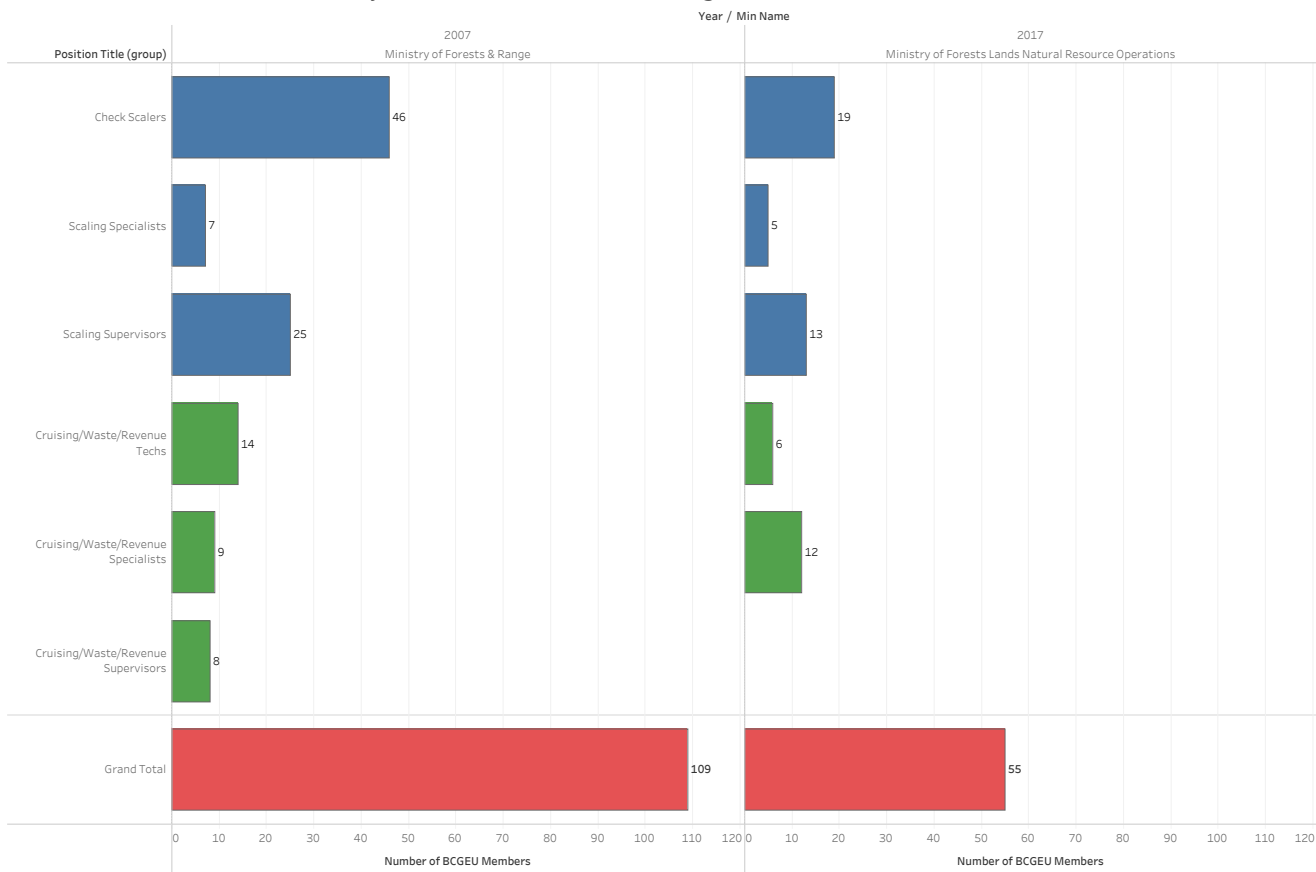
The vast majority of C&E Branch staff are members of the B.C. Government and Service Employees' Union (BCGEU), and data from BCGEU seniority reports also show a reduction in staffing levels over time.⁹ In 2007, when FRPA was finally fully implemented, there were 180 BCGEU members working as C&E officers (later called Natural Resource Officers), C&E supervisors or C&E specialists. By early 2017, just 134 BCGEU members were working in these positions (-26%).

Despite the serious problems in Forest Stewardship Plans identified by the Board beginning a decade ago, the provincial government did not move to resolve the issues.

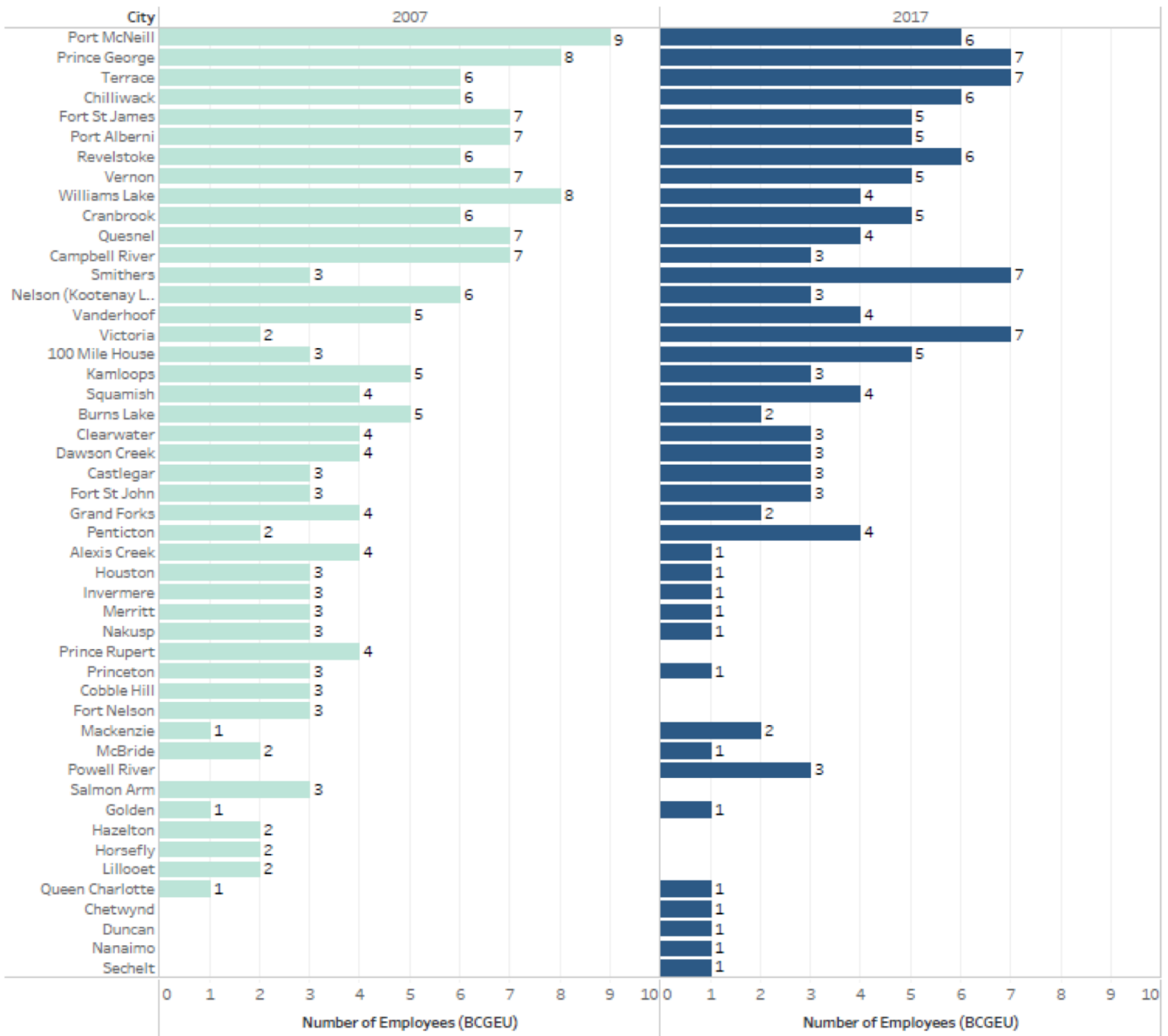
BCGEU Compliance and Enforcement Staff (Forests), 2007 and 2017



BCGEU Members in Ministry of Forests Timber Pricing Branch, Selected Position Titles, 2007 & 2017



BCGEU C&E Staff (Forests) by Location, 2007 and 2017



There are fewer staff in almost every ministry office, and many offices no longer have a local C&E person.

In addition, compared to 2007 there are now many more locations where one C&E officer is working on their own and covering a large area

The graph on page 4 shows the shrinking footprint of BCGEU C&E staff across the province. There are fewer staff in almost every ministry office, and many offices no longer have a local C&E person.

In addition, compared to 2007 there are now many more locations where one C&E officer is working on their own and covering a large area (there were 13 offices with one C&E officer in April 2017 versus only three in 2007). For example, in the Cascades forest district, there were eight C&E officers in 2007. Two were located in Lillooet, three in Merritt, and three in Princeton. By April 2017, only two officers remained.

Government documents show that overall compliance and enforcement branch FTEs were reduced by almost 40 per cent

One officer in Merritt and one in Princeton were responsible for trying to maintain a credible C&E field presence across an area covering 2.25 million hectares. Since April, further staff changes have been made, so there are no longer any C&E officers located in the Cascades district.

Transfer of the Special Investigation Unit (SIU)

Amid a restructuring of the natural resource Ministries in 2010, the C&E Branch's Special Investigation Unit (SIU) was transferred to the Ministry of Environment's Conservation Officer Service. The SIU was responsible for investigating and assisting with the prosecution of serious forest crimes, and was comprised of fifteen of the Branch's most senior investigators. The SIU's members had played an important role at the Branch, delivering training internally and providing support and mentorship for other C&E officers.

The transfer of the SIU was a loss of capacity and expertise that FLRNORD's C&E Branch has not since replaced.

At the time, the work of the SIU was amalgamated with the Conservation Officer Service's Commercial Environmental Investigations Unit, whose mandate was expanded to include forestry crime.¹⁰ It is unclear whether their focus on forest crimes has continued, given the broader mandate of the SIU's new organization. Certainly, there are many competing demands and ongoing capacity constraints within the Conservation Officer Service (COS) as well. In particular, over the past three years investigating the Mount Polley disaster has been a central focus, meaning fewer resources have been available to work on forestry-related files. And, BCGEU members have reported anecdotally that over time and due to changes in the unit, forestry expertise among the COS's specialized investigators has been reduced.

Added Responsibilities

In addition to deep staff cuts, the forests C&E program has taken on expanded responsibilities. In the past, C&E staff dealt primarily with forest and range legislation. However, in 2010 and 2011 B.C.'s resource Ministries were significantly restructured, and with the introduction of the Natural Resource Compliance Act in 2011, the program's mandate expanded to include a broader range of legislation across the natural resource sector.

Previously called "Compliance and Enforcement Officers," staff were issued new uniforms, given a new title ("Natural Resource Officers"), and handed much broader responsibilities. According to the Ministry's website, today these officers educate the public, maintain a presence in the field, conduct compliance inspections and take enforcement actions, including investigations of commercial business operations and activities of individual members of the public. They are now responsible for monitoring and enforcing compliance with 15 different statutes.¹¹

One emerging and worrisome outcome of this change is that the depth of forestry-related knowledge and experience among NROs is slipping. Existing NROs simply spend less of their time on forest issues, and added other demands mean officers are less able to keep up to speed on their skills or track emerging developments in forestry. In addition, the broadened mandate of the Branch means that newly-hired NROs often do not have strong forestry backgrounds, as it is no longer the primary focus of the job. Going forward, NROs' capacity to understand forest practices and identify issues proactively is reduced.

The Role of Timber Pricing and Revenue Staff

Ministry staff are also responsible for overseeing forest measurement activities to ensure that the standards and rules for timber cruising, scaling, residue and waste surveys, and appraisal submissions are followed. While timber pricing and revenue staff are not part of FLNRORD Compliance and Enforcement Branch, they play an important monitoring, compliance, and enforcement role. These officials- including check scalers, revenue technicians, and cruising and waste specialists - are critical in maintaining the accuracy and integrity of the government's revenue collection system.

Today, licensees are responsible for completing forest measurements to assess the volume, type and quality of timber, and making submissions about their road and bridge development costs. FLNRORD staff complete checks and audits to ensure compliance with the rules.

However, there have also been deep staff cuts in this area. Data from BCGEU seniority reports showing the change in scaling and other timber pricing staff involved in overseeing forest measurements is outlined in the bottom graph on page 3. This year, the Ministry's scaling program has less than half the frontline staff it did in 2007 (37 staff in 2017 versus 78 in 2007). Similarly, other timber pricing staff have been cut by about 40 per cent (18 staff in 2017 versus 31 in 2007).

Dramatically Reduced Oversight of Forest Activities

Among scaling and timber pricing staff, deep staff cuts have translated into less oversight of forest measurement activities. For example, in 2013/14, just 0.2 per cent of all loads of harvested timber were check-scaled.¹² In the past, government scalers provided at least five times that level of oversight. In the mid-1990s, between 1 per cent (for piece scaled) and 6.5 per cent (for weight scaled) of loads were check-scaled.¹³

This trend of declining oversight of forests is happening within the Compliance and Enforcement Branch as well. According to the Branch, by 2016 less than 30 per cent of the remaining C&E officers' time in the field was spent dealing with forest management activities.¹⁴ From 2009/10 on, the number of inspections of forest and range operations plummeted to less than one third of previous levels. About 15,000 inspections were conducted each year between 2002/03 and 2009/10. By 2013/14, that number had dropped to less than 4,000.¹⁵ Since 2013/14, the Branch has not published an annual report that includes the number of inspections of forest activities conducted by the Branch.¹⁶

Instead of regularly reporting the number of inspections it conducts, the Branch adopted a new performance measure called "Presence Hours." This measure is defined as the amount of time NROs spend in the field or interacting with industry licensees or the public. BCGEU members report that the working definition of "presence" is very unclear. Initially, it meant time spent in the field, but more recently some office work has been included in what counts as "presence." Given that it does not detail whether officers are conducting inspections, in an office preparing reports, or driving long distances in their truck, the new measure provides little information or assurance for the public that "on-the-ground" forest activities are actually being adequately inspected by government officials.

The reduction in forest-related inspections is not a reflection of significantly reduced timber harvesting activity.¹⁷ Rather, staff cuts combined with a widened mandate have destroyed the Branch's capacity to provide the same level of monitoring and enforcement of forest activities. Certainly, with fewer resources available, efforts have been made to increase the efficiency and effectiveness of FLNRORD's Compliance and Enforcement Branch. The Branch has adopted procedures to target and prioritize oversight of the highest risk activities. As well, an online reporting system has been implemented.

However, given the huge reductions in staff and resources, and the resulting decline in the number of inspections, it is difficult to conclude anything other than that under the B.C. Liberal government, there has been a significant decline in public oversight of forest activities.

Growing Evidence of Non-Compliance

As the Compliance and Enforcement Branch's oversight has been rolled back, and operators are well aware there are fewer government staff monitoring their activities, there is evidence that non-compliance with forest practices legislation is growing. In its 10-year review of the Forest and Range Practices Act (FRPA), the independent Forest Practices Board, which conducts regular audits of forest practices across the province, expressed its concern about an apparent increase in non-compliance, writing that:

The Board is concerned, however, that it has found more non-compliances in recent years. In its 2010 and 2011 audits, the Board found five times more significant non-compliances, unsound practices and practices needing improvement than there were in the preceding five years combined.¹⁸

Subsequently, the Forest Practices Board has released other reports that point to a widespread failure to follow established guidelines and regulations. A 2014 special investigation of bridge planning, design and construction found 15 per cent of over 200 bridges investigated had serious safety issues, and there were incomplete plans for a staggering 40 per cent of bridges. The Board commented that "the issue is not that the legislation and guidance are lacking, but that a significant number of professionals are not following them."¹⁹

This September, the Board released another shocking report, this time about resource road construction in steep terrain. Of the 26 road segments the Board audited, just ten met all the legal requirements and followed all of the professional practice regulations. Furthermore, six of the road segments (23 per cent of the sample) were considered to be structurally unsafe. All types and sizes of licensees had simply failed to follow the rules and regulations. The Board bluntly concluded that "these results are unacceptable."²⁰

Erosion of Trust in Government and Industry

The above examples are disturbing, though not entirely unexpected given the lack of resources available for monitoring and enforcing forest practices laws. British Columbians should be concerned about whether existing rules for forest practices are actually being respected.

It is perhaps even more significant, though, that the decline in monitoring and enforcement over time has made information about compliance with regulations increasingly scarce. Consequently, it is difficult to reliably understand and track trends. In the absence of an adequate base of publicly available information, speculation abounds about what is actually happening on the land base.

This state of affairs has important consequences. It erodes public trust in both the Branch responsible for enforcing forest practices rules, and in the industry.

Too little oversight limits the information available to adequately understand and manage environmental risk- both for authorities and for the public. As well, the ability of the Ministry to identify and respond credibly to emerging issues is eroded. As the Forest Practices Board noted in 2014, "in order to maintain public confidence, government needs to be able to demonstrate that it is appropriately inspecting and enforcing [legislation]."²¹

Conclusion and Recommendations

In the context of limited resources, Natural Resource Officers and other staff in the Compliance and Enforcement Branch do their best to monitor and protect our forests. However, it is obvious that change is needed. Problems with the structure and enforceability of existing rules combined with a serious lack of capacity within the Ministry have led us to a place where British Columbians can have little confidence that there is proper public oversight of activities in B.C.'s forests.

Too little oversight limits the information available to adequately understand and manage environmental risk.

The provincial government should take action immediately to improve compliance and enforcement in B.C.'s forests.

Broad recommendations include:

- Review and amend existing forest practices legislation (and accompanying regulations) to ensure rules are enforceable, and forest district staff have the authority to intervene to protect the environment and the public interest in B.C.'s forests.
- Immediately take steps to increase staffing levels in FLNRORD's Compliance and Enforcement Branch and in the Timber Pricing Branch, with the aim of restoring staff to at least 2009 levels.
- Put a hold on planned staff relocations until a clear plan to strengthen the compliance and enforcement program going forward is in place.
- Commit to adopting clear priorities and defensible measures of the Branch's work, and to publish detailed information about compliance and enforcement activities in a regular and timely fashion.
- Take steps to ensure that as an organization, the C&E Branch is focused on protecting the public interest, and that NROs are well-supported in their work.



1. BC Ministry of Forests New Release, "Code Protects Environment, Promotes Economic Growth," Nov.4, 2002.
2. BC Ministry of Water, Land and Air Protection-FRPA Training Development Team, "FRPA Training Companion Guide: Forestry Modules," February 2004.
3. BC Forest Practices Board, A Review of the Early Forest Stewardship Plans Under FRPA: Special Report, May 2006, p. 3.
4. BC Forest Practices Board, Forest Stewardship Plans: Are They Meeting Expectations?: Special Investigation, August 2015, p.i.
5. In response to the Forest Practices Board's 2015 report, the Chief Forester and District Managers sent letters to all licensees identifying what is required in FSPs. While there is some indication of positive change in new FSPs, it is too early to assess whether widespread and substantive change will occur. In the meantime, existing FSPs that include results that are not measureable or verifiable may remain in place for years to come.
6. Patricia Marchak and S. Denise Allen, BC Forests 2003: An Appraisal of Government Policies, David Suzuki Foundation, 2003, p.16.
7. British Columbia Ministry of Forests News Release, "Code Protects Environment, Promotes Economic Growth," Nov.4, 2002.
8. FLNRO, Minister's Briefing Binder prepared for 2015/16 Estimates Debate, Spring 2015.
9. The BCGEU receives quarterly seniority reports for all BC Public Service employees from the BC Public Service Agency. The data are from the April 2007 and April 2017 reports. The data referred to above does not include BCGEU administrative workers, members of the Professional Employees Association, or excluded managers within the FLRNORD C&E Branch.
10. BC Ministry of Environment, 2010/11 Annual Service Plan Report, 2011.
11. The C&E Branch's website can be found at <http://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/natural-resource-law-enforcement/natural-resource-officers>.
12. FLNRO, Minister's Briefing Binder prepared for 2015/16 Estimates Debate, Spring 2015.
13. Auditor General of British Columbia, 1996/97 Report on the 1995/96 Public Accounts, p.159.
14. FLNRO C&E Branch, Presence Hours by Function, 2016.
15. BC Forest Practices Board, Monitoring Licensees' Compliance with Legislation: Special Investigation, July 2013, and FLNRO C&E Branch, Annual Report 2013.
16. Instead of publishing a detailed annual report for each of the past three years, the Branch's website provides just three one-page graphs with very limited and basic statistics about the Branch's activities in 2016- "Presence Hours by Function," "Enforcement Presence Hours by Parent Act," and "2016 Natural Resource Officer Enforcement and Patrol Statistics."
17. During this time period, harvesting levels were relatively stable, with the exception of 2009 when harvesting dropped significantly (to 48.8 million m3). Otherwise, between 2006 and 2015 harvesting levels ranged between a high of 80.3 million m3 in 2006 to a low of 61.1 million m3 in 2008. In 2015, 68.5 million m3 was harvested. Data from FLNRO, 2015 Economic State of the B.C. Forest Sector, August 2016.
18. BC Forest Practices Board, A Decade in Review: Observations on Regulation of Forest and Range Practices in British Columbia Special Report, May 2014, p. 12.
19. BC Forest Practices Board, Bridge Planning, Design and Construction Special Investigation, March 2014, p.10.
20. BC Forest Practices Board, Resource Road Construction in Steep Terrain, Special Investigation, September 2017, p.i.
21. BC Forest Practices Board, A Decade in Review: Observations on Regulation of Forest and Range Practices in British Columbia Special Report, May 2014, p. 17.