

## Is British Columbia Leading the Way in Natural Resources Management? Part III: The Forest Resources Commission

by Monique Ross\*

### Introduction

This third article in the series focuses on the Forest Resources Commission (FRC). The FRC, which ceased to exist in 1992, represents an important link in the chain of events leading to the establishment of the Commission on Resources on Environment (CORE). Despite the fact that its recommendations were largely ignored by both the Social Credit government which established it and the NDP government which disbanded it, the FRC fulfilled a necessary, if difficult, task in identifying fundamental problems which have plagued forest management in the province.

Further, the FRC played a role in inducing the provincial government, in recent years, to institute new processes in order to address long-standing problems. This article provides a brief outline of events leading to the establishment of the FRC, presents the major FRC findings and recommendations, and assesses the FRC's impact on forest policy development in British Columbia.

### Background

In 1987, British Columbia's Minister of Forests announced his proposed policy of converting major volume-based tenures to area-based tree farm licences (TFLs).<sup>1</sup> The policy would have increased the proportion of harvestable timber within TFLs from 29 to 67 percent of the allowable annual cut on the public forest land base. The rationale

### Résumé

En 1989, le gouvernement de la Colombie-Britannique établissait à titre consultatif la Commission sur les ressources forestières. La commission était chargée spécifiquement de formuler des recommandations relatives au type de gestion forestière en cours dans la province (en particulier, le système des tree farm licences), au développement de processus de consultation du public en matière forestière, et à l'amélioration des pratiques de coupe forestière. Cet article résume les principales recommandations de la commission

et évalue brièvement son influence sur la politique forestière de la province. Bien que le gouvernement n'ait pas donné suite à la plupart des recommandations soumises par la commission, notamment celles relatives à un nouveau système d'allocation des droits de coupe, les recommandations relatives à la mise en place d'un système provincial d'aménagement du territoire sous la direction d'une commission provinciale, à la codification des pratiques forestières et à la mise à jour des inventaires forestiers ont eu plus de succès.

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advanced in support of the proposal was that a stronger, more secure tenure with increased silvicultural responsibilities would encourage higher standards of silvicultural practice, as well as increase investment in manufacturing plants and value-added product development. In response to the negative public reaction, the Minister of Forests conducted eight public information sessions around the province in early 1989. The published summary of public response to the proposed forest licence conversion policy<sup>2</sup> noted that the people of British Columbia had seized the opportunity "to air wide-ranging concerns for the system of forest management and the impact of forestry on the life of the province."<sup>3</sup> Beyond the immediate issue of the proposed conversion of volume-based licences to tree farm licences, public submissions addressed broader concerns about excessive concentration of long-term tenures in the hands of a few large multi-national firms, limited community involvement in forest planning and management, the sustainability of current forest management practices, the capacities of the Forest Service and other resource management agencies to perform effectively their stewardship functions on public lands, and the inclusion into TFLs of land areas with unresolved native land claims. Many participants requested a public inquiry or a Royal Commission to examine all aspects of forest use and management in the province.<sup>4</sup>

In response to that demand, the FRC was established on June 29, 1989, as a permanent, independent body<sup>5</sup> to "provide the Minister of Forests, and through him, the Government, with a comprehensive view of what the forests of British Columbia should represent", taking into

account the full range of forest values and the total economic impact of the forests on the province.<sup>6</sup> Specifically, the FRC received a mandate to advise government on "the effectiveness of Tree Farm Licences as a form of tenure", "to recommend ways to improve public participation in forest planning and management" and "to review and recommend ways of improving forest harvesting practices, focusing on clear-cutting and its associated forest practices and their impacts".<sup>7</sup>

### **FRC's Recommendations**

The Commission published its major report entitled *The Future of Our Forests* in April 1991. The report went well beyond the specific terms of its mandate and was an ambitious and comprehensive attempt at redefining the institutional, legal and financial framework of forest management in the province. Based on more than 1,700 written submissions and presentations made at public meetings and workshops, as well as on extensive independent background research,<sup>8</sup> the report formulated 108 recommendations dealing with, *inter alia*, a) land use planning issues, b) new administrative structures for forest management, c) financial reforms, d) a revised tenure system, e) forest practices, and f) public participation and education. The FRC's attempt to be all-encompassing and to present a complete package of extensive reforms essential to achieve "enhanced stewardship" explained, in part, the lack of enthusiasm with which the report was greeted by major stakeholders.

Acknowledging the high level of public dissatisfaction with the way forests were being managed by government and industry and the necessity to shift from managing

primarily for timber values to managing for all values, the FRC observed at the outset that the choice lies between either withdrawing vast tracts of forest lands from commercial exploitation, or managing all forest land more efficiently in order to maintain the production of all values. The Commissioners' position, which provided the rationale for many of their recommendations, was the following: the greatest benefits to all British Columbians would not be gained by significantly reducing commercial activity in the forests, but rather by managing the forests better so that all values would be maintained on the largest possible forest land base.<sup>9</sup> This goal, however, could only be achieved through "enhanced stewardship", that is intensive-integrated management of the forests for all values. The Commission's perspective was expressed in the following statement: "the forests of British Columbia will provide for the economic, environmental, social and spiritual well-being of all British Columbians through successive generations".<sup>10</sup> This statement of principle provided the basis upon which the Commission's prescriptions for integrated management were constructed.

The complex and numerous issues analyzed in the FRC's report cannot be discussed in detail here. However, this article will present the FRC's main recommendations and the basis upon which they were made. The recommendations can be grouped into five categories: 1) land use planning, 2) integrated management, 3) financial and economic reforms, 4) tenure reform and 5) forest practices and public participation.

## 1. Land use planning

At the outset, the Commission advocated the development of a comprehensive land use plan for the entire province to serve as "a blueprint for managing all values across the full provincial landscape" and to provide "the foundation upon which further changes in the structure of integrated resource planning depend". A three-tier organizational structure for the development and implementation of the land use plan was proposed. Firstly, a Land Use Commission would have to be created in order to develop broad provincial goals and objectives and make recommendations to Cabinet on land use classifications for values and uses that fell within provincial goals. Secondly, regional planning groups, established by the Commission, would serve as a bridge between provincial goals and objectives and local issues and concerns. Thirdly, local planning groups would be made responsible for assessing the capabilities and value attributes of the land base and for assigning land use classifications. A mediation and dispute settlement process to resolve conflicts over land use classifications, as well as an appeal process to adjudicate disputes among users within approved plans, were also envisioned. The FRC further suggested that public involvement in the planning process be legislated, since it was deemed to be essential in order to ensure that multiple social values were considered.

It was recommended that the planning initiatives under way in various ministries (regarding the setting aside of parks and ecological reserves, wilderness areas, and old growth forests) be developed in

conjunction with the overall land use plans and be made an integral part of the Land Use Commission's planning responsibilities. A land use classification, composed of three broad categories (protection/preservation, integrated use management areas, areas of restricted use) was proposed. While recognizing that existing resource inventories, indispensable to assess the capabilities of lands and forests, were inadequate, the FRC recommended that the planning process be initiated without delay at the local level using available information, while gaps in inventories were being addressed.

The need to remedy deficiencies in provincial forest resource inventories, a long-standing problem in forest management, was identified as critical to the success of any land use planning process and integrated resource management. The Commission noted that "the state of renewable forest resource inventories in this province is inconsistent at best, and woefully inadequate at worst" and in general "is a disgrace".<sup>11</sup> A major problem was the lack of coordination among the several agencies and ministries collecting data for their specific areas of jurisdiction, resulting in incompatible data systems. The Commission recommended the establishment of a Provincial Forest Resource Inventory Committee, with responsibility for recommending standardized systems to develop inventories for all renewable forest resource values.

The provincial timber inventory, although more comprehensive than other forest resource inventories, was also criticized as being "outdated and weak in several aspects". In particular, it was

criticized for its inability to estimate reliably volumes of specific stands and to provide dependable estimates of site quality and growth potential, making it impossible to accurately forecast future timber yields. Consequently, the FRC recommended the formation of a Timber Inventory Task Force comprising public and private technical experts and inventory users, to design and plan the development over a ten-year period of an accurate timber inventory. The Commission also urged that a growth and yield program to quantify the growth rates of second growth forests be established on a systematic, priority basis.

## 2. Integrated management

Recommendations aimed at promoting integrated management of all forest resources and values were interspersed throughout the report. A significant recommendation in that respect was the reform of management structures. The Commission observed that the integration of all resource values would be very difficult to achieve within the existing narrowly focused administrative structures and suggested the creation of a new Ministry of Renewable Resources. This Department, which would have replaced and assumed many of the functions of the existing Ministry of Forests, as well as the water, fish and wildlife management functions of the Ministry of Environment, would have been responsible for the protection and enhancement of the full range of forest values. Its mandate would have included the development of policies and regulations related to the key values of timber, water management, range lands, recreation, fish and wildlife as

well as the management of the non-commercial land base.

### 3. Financial and economic reforms

Various recommendations were put forward to address basic, long-standing problems in forest management related both to forest revenues and investment in forests. The FRC deplored the fact that revenues accruing to government from timber harvesting, instead of being reinvested in forests to ensure their long-term health, were being processed through the province's general revenue accounts and used to fund a variety of services. The predictable result had been, over time, an erosion of the forest capital base. Further, the Commission observed that whatever reinvestments were made in the forest were usually aimed at perpetuating its commercial values. It noted that, since the beginning of the century, at least 14 "permanent" silviculture funds had been established and abandoned.

The need to secure stable, long-term funding that would guarantee "enhanced stewardship" for the forests led the FRC to recommend the creation of a Forest Resources Corporation. The Corporation would manage all commercial forest and range lands designated as integrated management areas under the land use plan. It would have the legal capacity to enter into contracts with private companies or individual forest resource managers and to receive all direct commercial revenues from resources under its jurisdiction. Dividends would be paid to government only after all the financial requirements of enhanced stewardship had been met. Management of non-commercial forest values would only be undertaken by the Corporation in

return for an annual appropriation covering the costs.

The question of forest revenues was examined in the broader context of the economic value assigned to a variety of forest resources. On the basis of studies undertaken to provide a professional assessment of these values, the FRC concluded that 1) "there are strong indications that [the value of standing timber] is probably significantly higher than is reflected by the stumpage paid to the provincial government for its use", and 2) "values for non-industrial activities - recreation, wildlife, etc.- cannot be reliably quantified with existing information".<sup>12</sup>

The FRC believed that the Crown should capture a much higher value from the forests than was the case. One specific recommendation designed to help the province realize the full value of its resources and generate the income needed to achieve enhanced stewardship was the establishment of a province-wide log market. A healthy, competitive log market could ensure that "prices are maximized in keeping with the true market value of the resource", "reduce waste in the woods", and "ensure that the most economic value is captured through manufacturing higher value-added products".<sup>13</sup> This particular recommendation was coupled with far-reaching proposals to reform the tenure system.

### 4. Tenure reform

The Commission suggested that its recommendations regarding a restructuring of the tenure system be published as a white paper to be discussed and analyzed over a period of time. First, it expressed concern with the level of corporate concentration in tenure holdings<sup>14</sup>

and the rigidity of the tenure system, which could not accommodate society's changing values. The FRC deplored the fact that restricted access to wood supplies by new users precluded small business initiative and innovation in new, value-added forest products manufacturing and marketing. Second, examining the two major types of tenure systems (area-based and volume-based) and their underlying philosophies, the FRC expressed its belief that reliance on the principles of private ownership did lead to enhanced stewardship through "self-interest", but concluded that "selling off the province's public lands is not a realistic alternative".<sup>15</sup>

The compromise proposed by the Commission reflected these two arguably opposite concerns and purposes: on the one hand, ensuring access to a wider range of users and increasing competition for timber, and on the other, providing increased security of tenure. The volume of timber controlled by a few large corporations would have been significantly reduced<sup>16</sup> and the freed-up volume, which could have been either managed by the Forest Resources Corporation or reallocated to small area-based tenures managed by communities, aboriginal peoples and woodlot operators, would have been used to develop the competitive provincial log-market discussed above. At the same time, the remaining tenured wood supply would have been made more secure. Volume-based tenure holders would have had the option of converting their forest licences to area-based resource management agreements or more secure wood supply agreements, and existing tree farm licences would have been maintained and converted to resource management agreements. These long-term agreements (25

years) would have been renewable subject to management performance audits and would have included compensation provisions for the removal of timber harvesting rights. Finally, the FRC suggested that a review of various user permits and licences (eg. hunting, trapping, grazing, mineral exploration, and development) be undertaken in order "to determine the appropriateness of converting them to contractual area-based tenures".<sup>17</sup>

### **5. Forest practices and public participation**

With respect to forest practices, which the FRC was specifically requested to review, the Commission noted that they had become the symbol of what was wrong with current forest management systems and stated that "an ecologically sound and socially responsive forestry is now required".<sup>18</sup> Recognizing that no single code existed governing all aspects of harvesting and silviculture, the FRC recommended the establishment, through a Forest Practices Act, of a single, all-encompassing code of forest practices. With respect to harvesting systems, the Commission recommended the adoption of ecologically sound timber harvesting, which would respect the physical and biological capabilities of each site, the requirements of the trees to be grown and the impact upon other forest values over time. The rate of harvesting should retain local and regional biodiversity. The Commission also discussed the issue of environmental degradation caused by the construction of access roads and offered recommendations to minimize their negative impact.

One of the three specific tasks assigned to the FRC, public

participation, was primarily dealt with in the last chapter of the report. The Commission first observed that public participation had been tacked on to a forest management system which reflected earlier trends towards a reliance on decision-making by elected representatives and administrators, with little thought for public involvement. Since few requirements for public involvement were legislated, the FRC recommended that provisions for public participation be formally enshrined in legislation. The Commission also stated that public participation should occur not during the operational phase, but early in the planning and management process in order to have an impact on decision-making. Early public input was recommended in the development of five-year management and working plans and development plans (updating annually the 5-year plans).

#### **Assessment of the FRC's Influence on Forest Policy Development**

In assessing the impact of its recommendations on governmental policies a year after its report was released, the Commission noted in its concluding comments that action had been initiated in several areas: the Commission on Resources and Environment (CORE) had been established in January 1992 to undertake comprehensive, province-wide land use planning,<sup>19</sup> a Forest Practices Code had been announced and was being developed by the Ministry of Forests,<sup>20</sup> and funds had been allocated in the 1992-93 budget to improve inventories in the Ministry of Environment, Lands and Parks and the Ministry of Forests.

The most significant of these initiatives was undoubtedly the establishment of CORE. It would be incorrect to state that CORE was solely a response to the recommendations of the FRC, since the implementation of a provincial land use strategy had already been suggested by others, notably the Dunsmuir Group.<sup>21</sup> However, several of the suggestions put forward by the FRC with respect to the land-use planning structure and processes have been adopted by CORE.

Despite the consultations and extensive research undertaken in the course of its three-year existence, the FRC's work appears to have received surprisingly little coverage in British Columbia and to have had little influence on government policy. The reasons may be related to the controversial nature of several of its major recommendations, to their political unacceptability and to the extent of the changes proposed. One reviewer commented that "all sides will find something to cheer and something to jeer about in this report".<sup>22</sup> In its attempt to incorporate many viewpoints, the report has been criticized for lacking consistency and depth. While the Commission's identification and severe assessment of past and current shortcomings in forest management are difficult to challenge, and its vision of enhanced stewardship is convincing, its recommendations regarding tenures, administrative restructuring and financial reforms were bound to provoke disagreement. In particular, the proposed restructuring of the tenure system was greeted, for different reasons, with distrust by both industry and environmentalists. Although the forest industry was in agreement with the principle of increasing the security of tenures by

an extension of the area-based form of tenure, it was critical of the proposal to reduce by half the volume of timber allocated through licences. Environmentalists and small operators were satisfied by the provision of increased access to a variety of users but were concerned with the proposal to expand area-based tenures.

Even though it appears to have fallen into oblivion rather quickly, the FRC has left a legacy of research upon which further reforms can be based. It identified serious deficiencies in forest management (institutional, legal, financial and technical), some of which were already well-known to forest managers, and indicated possible solutions to remedy those deficiencies. In the Commission's own words, its existence "provided a much needed focus on critical issues", with the result that "the level of debate was enhanced and all parties moved closer to finding solutions to some very serious problems".<sup>23</sup> Given the amount of time and public funds expended on its behalf, the work of the FRC should not be allowed to lapse.

## Conclusion

Is, then, British Columbia leading the way in natural resources management? The answer to this question is far from simple given the complexity and the magnitude of the tasks assigned to the three commissions. The recognition of the need to develop new approaches to natural resources allocation and management, which led to the creation of the three commissions, reflects a serious commitment on the part of the B.C. government to confront existing problems head-on. The commissions were specifically requested to address some of the

most difficult and pressing issues confronting governments in their endeavour to move towards sustainable development of natural resources. These relate to land use and resources allocation or re-allocation, and the compensation issues arising out of these decisions, as well as to valuation of natural resources, types of tenure and management. The B.C. government should be lauded for implementing transparent processes to deal with these issues. It is arguable that the attempt to confront in a global manner the above contentious issues in natural resources management is overly ambitious. On the other hand, the move towards integrated resource management demands coherent and consistent reforms. As the FRC justly pointed out, the various recommendations submitted are "like pieces in a jigsaw puzzle ... Leave some pieces out, and the vision is not complete".<sup>24</sup>

In the context of extremely polarized viewpoints in British Columbia, particularly with respect to the allocation and management of forest resources, recommendations inevitably attract criticism and tend to be unpopular with certain interest groups. So too do the political decisions taken upon submission of the commissions' recommendations. If the "success" of the three commissions is measured in terms of actual implementation of their recommendations, then the FRC has "failed" to a large extent, and it is too early to assess whether or not the Schwindt Commission and CORE will fare any better. However, all three commissions have made substantial contributions to the debate on, and the identification of solutions to, critical issues of natural resources allocation and management. This, in itself, may be termed "success".

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## Notes

1. The major difference between the two types of forest tenures is: TFL holders are granted secure long-term rights to harvest timber on a defined area and assume management responsibilities (including forest inventory, determination of an annual allowable cut (AAC), planning, reforestation) for that area under supervision of the Ministry. Volume-based tenure holders are merely entitled to harvest certain volumes of timber within timber supply areas (TSAs) administered by the Ministry of Forests, and these holders assume less extensive management functions.

2. Province of British Columbia, Ministry of Forests, *Summary Public Input at Public Information Sessions on the proposed policy and procedures for the replacement of major volume-based tenures with tree farm licences* (Victoria: Queen's Printer for British Columbia, 1989).

3. *Id.*, at 1.

4. The last Royal Commission appointed in B.C. to review the provincial forest policy, known as the Pearse Commission, dated back to 1975; see British Columbia, *Timber Rights and Forest Policy in British Columbia: Report of the Royal Commission on Forest Resources* (Victoria: Queen's Printer, 1976).

5. The Commission was established pursuant to s. 2(3)(b) of the *Ministry of Forests Act*. The 13 member Commission, chaired by Alexander (Sandy) Peel, a former Deputy Minister of Education, remained in existence for three years.

6. Tree farm licence replacements were deferred for a period of two years pending the FRC's review.

7. British Columbia, Forest Resources Commission, *The Future of Our Forests*, April 1991, Appendix 1- Mandated Tasks.

8. Eleven volumes of background papers were prepared for the Commission.

9. In a speech delivered in September 1991 to the Union of B.C. Municipalities Convention, Mr. Peel forcefully warned of the dangers of maintaining the status quo, alleging that as a result of mill over-capacity, pressures to withdraw lands from commercial capacity for preservation purposes, and the move from old-growth to second-growth harvesting, a loss of up to 50% of direct jobs in the forest industry could be expected.

10. *Id.*, at 8.

11. *Id.*, at 75.

12. *Id.*, at 55.

13. The FRC's recommendations regarding the necessity of opening the log market to new entrants (eg. independent loggers and sawmillers) were reminiscent of the views expressed by Dr. Peter Pearse in 1974: see *Timber Appraisal: Policies and Procedures for Evaluating Crown Timber in British Columbia - Second Report of the Task Force on Crown Timber Disposal, July 1974* (Victoria, Ministry of Lands, Forests and Water Resources, 1974).

14. *Id.*, at 35-37. In British Columbia, 85% of the Allowable Annual Cut is allocated to 20 large manufacturing companies, with 17% being controlled by a single company.

15. *Id.*, at 39.

16. The AAC of tenure holders with manufacturing facilities would have been reduced to no more than 50% of the lesser of either their processing capacity or their present harvesting quotas.

17. *Id.*, at 53.

18. *Id.*, at 87.

19. See Mr. Kennett's first article in this series. Following its 1991 report, the Forest Resources Commission was requested by the Minister of Forests to provide more details on how land use planning might be implemented. A report entitled *Land Use Planning for British Columbia* was submitted to the Minister in December 1991.

20. In January 1992, the FRC was requested by the Minister of Forests to

provide detailed advice on the framework needed to implement a Forest Practices Code. The Commission submitted its recommendations in July 1992 (*Providing the Framework: A Forest Practices Code*, July 1992). At present, the Ministry of Forests is in the process of drafting the Forest Practices Code.

21. See Commission on Resources and Environment, *Report on a Land Use Strategy for British Columbia*, August 1992, Appendix IV.

22. West Coast Environmental Law Research Foundation Newsletter, Vol 5:8, May 13, 1991, at 2.

23. Forest Resources Commission, *Concluding Comments*, July 1992, at 3.

24. Forest Resources Commission, *The Future of Our Forests*, *supra* note 7, at 7.

## Institute Conference on Natural Resources Law

The Sixth Institute Conference on Natural Resources Law was convened in Ottawa on May 13 and 14, 1993. Co-sponsored by the Institute and the University of Ottawa Faculty of Law (Common Law), the conference attracted approximately 180 participants to discuss the theme of "Law and Process in Environmental Management". The Conference focused on the wide range of contexts where environmental decision-making and conflict resolution are essential. Speakers included legal and non-legal experts from the academic community, government, industry, private practice, and aboriginal and public interest groups, with interests in the complex and multidisciplinary area of environmental management. Steven Kennett was the principal organizer of the Conference. He is presently editing the essays from the conference, which will be published shortly by the Institute.

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# Recent Developments in Canadian Oil and Gas and Mining Law

by Susan Blackman\*

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## Mining

### Compensation for Expropriation of Recorded Mineral Claim – British Columbia

In *Cream Silver Mines Ltd. v. British Columbia*, [1993] B.C.J. No. 304 (QL), the province of British Columbia appealed a decision of the British Columbia Supreme Court awarding compensation to Cream Silver for the effective expropriation of its mineral claims. Cream Silver had staked claims in Strathcona Provincial Park and duly recorded them pursuant to the requirements of the *Mineral Act*, R.S.B.C. 1979, c.259 and its predecessors. Through a series of legislative amendments and orders-in-council, the B.C. government prohibited exploration, development, and production of minerals in provincial parks by denying park use permits to claim holders. Cream Silver sued on the basis of the Supreme Court of Canada decision in *Tener v. British Columbia*, [1985] 1 S.C.R. 533. In that decision, and in *Casamiro Resource Corporation v. British Columbia* (1991), 55 B.C.L.R. (2d) 346 (B.C.C.A.), the plaintiffs were awarded compensation for the expropriation of their Crown-granted mineral claims by the change in park policy.

In *Cream Silver*, the British Columbia Court of Appeal drew a distinction between Crown-granted mineral claims and recorded or located mineral claims. The latter were characterized as chattel interests not known to the common law. As a statutory creation with no life apart from the statute, the legislation dictated what rights were conferred

upon the holder of the claim. The relevant statutes provide no scheme of compensation for the expropriation of such a claim. Therefore, the appeal was allowed and no compensation was payable.

## Oil and Gas

### Petroleum Incentives Program Act - Eligible Expenses

The federal *Petroleum Incentives Program Act*, S.C. 1980-81-82, c.107, provided for incentives in respect of eligible expenses incurred by qualified persons during exploration for oil and gas on lands held by the federal Crown. The program has been wound down; however, controversies over the incentive payments and the determination of eligible expenses are now appearing in court.

In *Mon-Oil Ltd. v. Canada*, [1993] F.C.J. No. 226 (QL), the Crown appealed a decision of the Federal Court, Trial Division, allowing a claim by Mon-Oil for petroleum incentives for 1985. Mon-Oil provided financing on projects operated by Exco during 1983-1985. In 1985, the parties operated under a letter agreement before signing a formal agreement. Although the letter agreement was an agreement to agree and would not normally be binding, the court held that in the circumstances, the conduct of the parties showed the intention to be bound. Therefore, expenditures incurred before the formal agreement was signed were indeed incurred by Mon-Oil.

The Crown also alleged that the expenses incurred were not reasonable expenses as required by regulations. The Court held that the plaintiff had shown on a balance of probabilities that the expenses were reasonable. The Crown was unable to show that they were unreasonable,

especially because its own staff had initially judged the expenses to be reasonable. One of the wells drilled in 1985 was a dry hole, and the Crown argued that such expenses could never be reasonable. The Court held, however, that participation even in a dry hole gave Mon-Oil an interest in future prospects in the area. Therefore, this expense was reasonable.

The approach taken to the determination of whether expenses were reasonable was to call witnesses familiar with industry practices and with the circumstances of exploration in northern Canada. These circumstances are much less favourable conditions for work than would normally be found in southern Canada, therefore, expenses are higher. In the result, most of the expenses were found to be reasonable.

Pre-judgment interest before February 1992 was not awarded to Mon-Oil because until that date the *Federal Court Act*, R.S.C. 1985, c.F-7, s.36, stated that no interest would be payable in the absence of a contract or statute stating that interest could be paid. Since February 1992, the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50, provides in s.31 that the availability of pre-judgment interest is governed by the laws in force in the province where the cause of action arose. Therefore, from February 1992, Mon-Oil was entitled to interest according to the law in Alberta relating to pre-judgment interest in proceedings to recover a debt owed.

The decision of the Federal Court, Trial Division ([1992] F.C.J. No. 154 (QL)) was upheld.

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