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**DLA PIPER'S  
BRITISH COLUMBIA FORESTRY LAW**  
Garry E. Mancell, Brian D. Gilfillan and Jeff Waatainen  
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Updates to October 31, 2018

**What's New in this Update:**

**Case Highlights**

- *Forest Practices Board and British Columbia (Re)*, 2018 CarswellBC 2629 (B.C. Forest Appeals Comm.) is discussed at FRA ss.71 and 72 and WFA ss. 26 and 29: The common law rule barring multiple convictions for the same wrongful conduct applies to administrative contraventions and, in the absence of clear statutory language, there is no reason to confine the rule to the penalty assessment stage of administrative hearings.

The failure of a person subject to a contravention determination to have permitted its employees to interview with compliance and enforcement investigators, or to have provided responsive answers to the investigator's questions, may count against the person in terms of that person's cooperativeness in the assessment of an administrative penalty.

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An honestly held belief in a mistaken set of facts is not enough to establish a mistake of fact defence: the belief must also be reasonably held. Due diligence and mistake of fact are both rooted in reasonable care. A proper inquiry into whether the defence of reasonable care is available is whether the person who seeks the benefit of the defence exercised reasonable care to know the true facts.

- *Apollo Forest Products Ltd. v. Government of British Columbia*, 2018 CarswellBC 2518 (B.C. Forest Appeals Comm.) is discussed at FRA ss. 72, 83 and 105.1; FA ss. 105.1 and 146 and WA ss. 29 and 39: The due diligence standard is not necessarily to find errors, but to show there is a system in place to try to find — and prevent — them. Finding the error is the goal, but taking reasonable steps to prevent the foreseeable consequences is the means. Although reasonable care does not require superhuman efforts or taking all conceivable steps, it does mean a high standard of awareness and decisive, prompt and continuing actions.

A party who contracts out services cannot rely on its contractual relationship with the contractor nor the professional designation of the contractor's personnel alone to provide a system of prevention that would support a defence of due diligence in the absence of some form of oversight.

For the purposes of s. 105.1 of the *Forest Act*, “accurate” means “conforming with a given standard” and, for stumpage appraisal purposes, the given standards are set out in appraisal manuals. Accuracy is determined with reference to the standards in effect at the time of submission of information, not with reference to the facts known to the licensee at the time of submission. In determining compliance with legislation, the ministry is not “time limited” in the sense that if further investigation and analysis indicates that the information provided to the ministry was not accurate at the time it was submitted, then that further investigation and analysis ought to be considered when determining whether there has been a contravention.

In an appeal before the Forest Appeals Commission, the appellant bears the onus of proving the facts of his or her case on the balance of probabilities.