

Lies, guitars and a few facts about Fairey Creek b

Written by Joan Russow

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By David Broadland April 6



As arrests at Fairy Creek Rainforest begin, arm yourself with some truth about what's actually happening. The injunction was obtained by inaccurate, self-serving descriptions of the impact of the blockades by the company.

IF THERE'S ONE SITUATION in which you would expect a company's accountant to be accurate about the numbers, it would be in a sworn affidavit in which the company is seeking a high-profile injunction from the BC Supreme Court. Right?

Not these days.

Teal Cedar Products Ltd filed such an application in mid-February, asking for injunctive relief, enforceable by the RCMP, in response to ongoing blockades of some of its logging operations in TFL 46 on southern Vancouver Island. On April 1, Justice Fritz E Verhoeven ruled in favour of Teal's application. Verhoeven accepted information in affidavits provided by Teal CFO Gerrie Kotze concerning the impact of the blockades on Teal. Some of the information was grossly inaccurate, and Verhoeven based his decision on that information.

I [wrote recently](#) about the fact that Teal's cut in TFL 46 rose dramatically above the previous two years logging in spite of the blockades. In 2018, when there were no blockades in place, Teal took 255,975 cubic metres of timber out of TFL 46. In 2019, again with no blockades in sight, the company removed 282,096 cubic metres. In 2020, the year in which the blockade started (in August), Teal trucked 437,982 cubic metres of logs out of the TFL. That's an

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increase of 71 percent over 2018 and 55 percent over 2019.

Teal Cedar Products Ltd is clearcutting old-growth forests, like this former forest in the Cayuse River Valley (Photo by TJ Watt)

Yet Teal stated in its application that the company had suffered "irreparable harm" as a result of the blockades, and Verhoeven agreed. A finding of irreparable harm was a legally necessary condition for allowing Teal's application for injunctive relief and civil damages.

Not only did Teal apparently misstate the impact that the blockades had on its operations, but other details, including information in affidavits provided by Kotze, appear to seriously underestimate the value of the logs the company removed from TFL 46 and the value of the products manufactured from those logs. Verhoeven accepted this information, analysed it in his judgment and concluded that Teal had suffered irreparable harm.

I find the details of this case particularly compelling because they demonstrate how, in the face of industrial destruction of Earth's life support systems, institutions that are needed to support the public interest "like government and the courts" are failing the public. The evidence of this is deep in the details of this case. C'mon in.

In a section of Teal's injunction application covering "Impact of the Blockades," the document stated: "Teal Cedar estimates that the value of the products manufactured from timber sourced from TFL 46 to be about \$19.4 million, which is an incremental value-added over the value of the logs of approximately \$9 million." This statement cites "Kotze Affidavit #1" as the source of that information. Again, Kotze is Teal's chief financial officer, and his numbers are not credible.

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The market value of the 437,982 cubic metres of raw logs removed from TFL 46 in 2020 was close to \$60 million, based on the volume and the ministry of forests' average log price that year. According to the ministry of forests' Harvest Billing System, Teal paid \$10,580,295.06 in stumpage to the Province for those logs, the most stumpage it has ever paid for its logging in TFL 46.

The value of the wood products manufactured from the logs Teal removed from TFL 46 in 2020 was likely around \$220 million, not \$19.4 million. (FOCUS estimated this number by using information provided in Western Forest Products' 2020 financial statement, and the volume Western Forest Products harvested from its coastal operations, as determined by the ministry of forests' Harvest Billing System. Western Forest Products has TFLs on Vancouver Island, one of which is beside Teal's TFL 46.)

It's evident that Teal grossly underestimated the value of the wood that it had removed in 2020. Yet that inaccurate information was then used by Justice Verhoeven to determine whether to grant Teal an injunction. Did Teal intentionally construct numbers that would lead Verhoeven to find in its favour?

In the "Irreparable Harm" section of Verhoeven's decision, the judge stated, "Teal employs approximately 450 people within its processing and manufacturing facilities. If Teal is unable to log within the area of TFL 46, it will not have an adequate timber supply for its mills. It may be forced to shut down its mills, resulting in layoffs of employees, and Teal's inability to supply its customers. Teal estimates that the end product value of the products that it will produce from the timber sourced from TFL 46 is approximately \$20 million. Teal stands to lose market share, and to suffer damage to its reputation as a reliable supplier of its products."

Two points stand out:

First, Verhoeven's speculation about Teal being "unable to log within the area of TFL 46," suggests he had little understanding of the situation on the ground. According to the ministry of forests, there is plenty of second growth the company could have logged. It isn't being defended by blockades. I will come back to this point later.

Second, Verhoeven took the information Kotze supplied, added \$600,000 for unknown

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reasons "rounding?" and used this updated total of "approximately \$20 million" to find that Teal had suffered "irreparable harm." As mentioned above, irreparable harm was a necessary condition for Verhoeven to award injunctive relief.

Our estimate of \$220 million for the value of products manufactured from logs removed from TFL 46 was only part of Teal's revenue in 2020. In its application for an injunction, the company stated, "Teal Cedar relies on its own timber licences to supply approximately 50 percent of its fibre needs for the three mills, mostly from TFL46."

If TFL 46 supplied most of that 50 percent, then Teal's total sales for all the volume it processed in 2020 would be roughly twice the \$220 million we estimated for TFL 46, or \$440 million.

In its injunction application, Teal especially highlighted a decline in production of its Tonewood Division, which supplies old-growth Red Cedar to guitar manufacturers. For that division, Teal claimed a loss of \$250,000. Based on our estimate of total sales of over \$400 million in 2020, the Tonewood decline would represent a loss in sales of just five-tenths of one percent. To put that decline in perspective, Verhoeven's careless rounding error in restating the "value of the products" produced by Teal amounted to \$600,000.

Teal didn't provide any additional numbers that would have summarized how the value of its products "like lumber" declined, because they didn't. They went up over sales in 2019. Way up.

Keep in mind that the blockades are aimed only at Teal's logging of old-growth forest. The company has plenty of second-growth forest available for logging in TFL 46. Verhoeven did not seem to understand this when he speculated that Teal would be "unable to log within the area of TFL 46." The most recent (2011) review of the TFL by the ministry of forests set the allowable annual cut (AAC) for the TFL at 403,000 cubic metres, well under what the company took out in 2020. The 2011 review assumed that "at least 180,000 cubic metres per year" would come from second-growth stands. Over the past 11 years, Teal's cut has averaged 392,172 cubic metres per year and the stumpage assessed by the ministry of forests has averaged \$8.20 per cubic metre. Teal has been cutting close to the AAC and, until recently, paying very low stumpage rates. In 2011, it paid just 56¢ per cubic metre for 401,567 cubic metres of wood.