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CON·STRUCT

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Seeing the Forest from the Trees: Opportunities for Harvesting Carbon Assets

British Columbians are well acquainted with their province's economic reliance on the forest industry as an economic resource. Less commonly known and understood is forest carbon sequestration - the use of the forests for the carbon resource they hold - a resource that can be utilized without harvesting the timber. For this article, we focus on the potential use by community forest operations of the forest carbon assets from which carbon offsets can be generated and sold.

The concept of sequestering the carbon stored in trees and turning it into a saleable carbon offset offers a relatively novel approach towards managing a community resource. It is noteworthy, however, that carbon offsets can be generated from many other types of projects that are effective in reducing (e.g. using energy efficient technology), avoiding (e.g. renewable energy for heating) or eliminating (e.g. landfill methane capture) greenhouse gas emissions.

So, what is a "carbon offset"? It is simply the credit for the GHG reduction that is achieved by a party through an emission offset project, which credit can be purchased by a party seeking to offset its GHG emissions. By way of background, the notion of carbon trading arose from the green movement of the 1980/90s as a market- based approach to regulating industrial polluters by allowing them to reduce GHG emissions by purchasing GHG credits, or carbon "offsets", to meet their regulatory GHG emissions targets. For British Columbia, a suite of "green" legislation was introduced in 2007/08, including the Greenhouse Gas Reduction Targets Act and the Emissions Offsets Regulation. This regulation set out requirements for greenhouse gas reductions and removals from projects or actions to be recognized as emission offsets for the purposes of fulfilling the provincial government's commitment to a carbon-neutral public sector from 2010 onward. The regulation was repealed December 31, 2016 and replaced with the Greenhouse Gas Emission Control Regulation ("Regulation"), under the Greenhouse Gas Industrial Reporting and Control Act ("Act").

A community forest is a forest operation in which stakeholders, such as First Nations and local governments, legally arrange to undertake the long-term management of the forest resource in a collaborative manner. Various regulatory requirements need to be met, and contractual and corporate arrangements need to be made to achieve the overarching objective. For example, the stakeholders may collectively form a new incorporated entity to hold the forest tenure or one of the partners may hold the forest tenure in its name solely. Further corporate and/or contractual arrangements are required to legalize the chosen framework and provide certainty for the ongoing rights and obligations of the respective parties.

In the case of a community forest used also as a carbon offset project, the community forest may be managed by the stakeholders as a community asset rather than purely as a revenue generating resource, meaning that multiple uses and objectives can be balanced to better serve the needs of the community, such as competing interests for timber harvesting, tourism, recreation, wildlife and biodiversity. A notable example of such a project is the Cheakamus Community Forest, a collaborative project between the Squamish and the Lil'Wat First Nations and the Resort Municipality of Whistler. With a vision of having a more sustainably managed forest, the stakeholders sought to limit harvesting for timber and turned to the financial benefits of selling carbon offsets to make up for some of the shortfall.

A forest carbon project must comply with regulatory requirements before the emission offsets will be legally recognized as saleable offsets. As noted above, the Act and the Regulation provide the statutory framework for establishing a forest carbon project and, briefly, this framework requires the following:

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preparing a forest carbon project plan

submitting the plan for validation to an accredited validator

having the plan validated by an accredited validation body

preparing a project report in respect of the emissions reduction for the applicable period

having the project report verified by an accredited verification body in accordance with recognized standards

making an application to the Province for the issuance of carbon offsets

ongoing monitoring and maintenance

preparing monitoring reports and submitting the same for verification to an accredited verification body

Practically speaking, the revenue generation possible from a forest carbon project will be no match to the financial yield from a traditional harvesting operation. However, when considered as a community resource, rather than a purely economic resource, forest carbon sequestration may offer a valuable piece for the holistic management of the resource.

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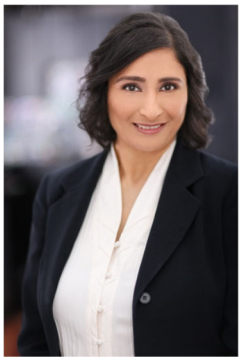
This article is intended for the general information of organizations in British Columbia. If your organization has specific issues or concerns relating to the matters discussed in this article, please consult a legal advisor.



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Sonia is a founding partner of Civic Legal LLP, and practises in the areas of procurement, construction and land development, with a particular focus on tendering law, procurement fairness, construction contracting and use of standard form construction contracts. Sonia routinely provides advise on structuring and administering public tenders and competitive RFPs, managing contractor performance and lien issues and securing land tenure.

She practised as a professional engineer for 10 years and worked on civil and geotechnical design and construction projects in British Columbia and abroad. She provides legal advice with practical insight by drawing upon her unique professional understanding of construction and engineering projects.

Sonia keeps a watchful eye on technological disruptions to the construction industry, and how these may impact the traditional relationships between parties, such as with the use of BIM technology and smart contracts.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.
