

## FOREST ACT

## CHAPTER 140

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## PART 1

## Interpretation

## 1. In this Act

“allowable annual cut” means a rate of timber harvesting specified for an area of land;

“burning permit” means a burning permit issued under section 113;

“chief forester” means the chief forester appointed under the *Ministry of Forests Act*;

“control of a corporation” means beneficial ownership of more than 50% of its issued capital, having full voting rights in all circumstances, by

(a) one person; or

(b) a group of persons not dealing with each other at arm's length;

“Crown” means Her Majesty in right of the Province;

- “Crown land” has the same meaning as in the *Land Act*, but does not include land owned by an agent of the Crown;
- “Crown timber” means timber on Crown land, or timber reserved to the Crown;
- “cutting permit” means a cutting permit issued under an agreement entered into under this or the former Act;
- “farm woodlot licence” means a farm woodlot licence issued under the former Act;
- “firmwood reject” means “firmwood reject” as defined by regulation;
- “forest land” means land classified as forest land under section 4;
- “forest licence” means a forest licence entered into under Part 3, Division (2);
- “forest officer” means a person employed in the Ministry of Forests who is designated by name or title to be a forest officer by the minister, the chief forester or a regional manager;
- “forest region” means a forest region established by regulation;
- “forest service road” means a road that is not a public highway under the *Highway Act* and
- (a) is built, maintained or modified by the minister under section 102;
  - (b) is or becomes a forest service road under section 95 (1) (b) or (c) or (2) (b); or
  - (c) was, under the former Act, built or maintained by the minister, or declared a forest service road;
- “former Act” means the *Ministry of Forests Act* repealed by this Act;
- “free use permit” means a free use permit entered into under Part 3, Division (8), or under the former Act;
- “licence to cut” means a licence to cut entered into under Part 3, Division (8), or under the former Act;
- “management and working plan” means a management and working plan approved under a tree farm licence, forest licence or woodlot licence;
- “merchantable timber” means, for an old temporary tenure or a timber licence, trees that
- (a) on January 1, 1975 were older than 75 years; and
  - (b) are on an area of Crown land in quantities determined by the regional manager to be sufficient to be commercially valuable at the time when a timber cruise submitted under section 57 is made;
- “old temporary tenure” means a special timber licence, timber lease, pulp licence, pulp lease or timber berth;
- “private land” means land that is not Crown land;
- “private tenure” means a timber licence, old temporary tenure, or private land, in a tree farm licence area;
- “Provincial forest” means forest land designated under section 5;
- “public sustained yield unit” means Crown land designated as a public sustained yield unit under section 6;
- “pulp lease” means a pulp lease renewed under the former Act;
- “pulp licence” means a pulp licence renewed under the former Act;
- “pulpwood agreement” means a pulpwood agreement entered into under Part 3, Division (6);
- “pulpwood area” means an area designated or continued under section 34;
- “pulpwood harvesting area agreement” means an agreement entered into under the former Act under which an option was granted to purchase pulpwood on an area of Crown land designated under the former Act as a pulpwood harvesting area;

- “regional manager” means a regional manager appointed for a forest region under the *Ministry of Forests Act*;
- “road permit” means a road permit granted under Part 8;
- “salvaged logs” means salvaged logs as defined by regulation;
- “special forest products” means poles, posts, pilings, shakes, shingle bolts, Christmas trees and other similar forest products designated by regulation as special forest products;
- “special timber licence” means a special timber licence renewed under the former Act;
- “timber” means trees, whether standing, fallen, living, dead, limbed, bucked or peeled;
- “timber berth” means a licence to cut timber in the Province given in furtherance of the agreement made February 20, 1930 between Canada and the Province;
- “timber lease” means a timber lease renewed under the former Act;
- “timber licence” means a timber licence entered into under Part 3, Division (4);
- “timber sale harvesting licence” means a timber sale harvesting licence entered into under the former Act;
- “timber sale licence” means a timber sale licence entered into under Part 3, Division (3), or a timber sale licence entered into under the former Act;
- “timber supply area” means Crown land designated as a timber supply area under section 6;
- “tree farm licence” means a tree farm licence entered into under Part 3, Division (5), or under the former Act, and includes a forest management licence entered into before January 1, 1958;
- “tree farm licence area” means the area of land subject to a tree farm licence;
- “wood residue” means wood chips, slabs, edgings, sawdust, shavings and hog fuel;
- “woodlot licence” means a woodlot licence entered into under Part 3, Division (7);
- “woodlot licence area” means the area of land subject to a woodlot licence.

1978-23-1; 1979-11-1.

## PART 2

### Inventory of land and forests

2. The chief forester shall develop and maintain an inventory of the land and forests in the Province.

1978-23-2.

### Assessment of potential

3. The chief forester shall assess the land in the Province for its potential for
- growing trees continuously;
  - providing forest oriented recreation;
  - producing forage for livestock and wildlife; and
  - accommodating other forest use.

1978-23-3.

### Forest land

4. The chief forester shall classify land as forest land if he considers that it will provide the greatest contribution to the social and economic welfare of the Province if predominantly maintained in successive crops of trees or forage, or both.

1978-23-4.

**Provincial forests**

5. (1) The Lieutenant Governor in Council may designate any forest land as a Provincial forest and may order that Provincial forests be consolidated or divided.

(2) Notice of an order made under subsection (1) shall be published in the Gazette.

(3) All Crown land in a tree farm licence area is a Provincial forest and, where an amendment is made to the boundaries of a tree farm licence area, the boundaries of the Provincial forest shall be deemed to be amended accordingly.

(4) Subject to the regulations, a Provincial forest shall be managed and used only for

- (a) timber production, utilization and related purposes;
- (b) forage production and grazing by livestock and wildlife;
- (c) forest oriented recreation; and
- (d) water, fisheries and wildlife resource purposes.

(5) Crown land in a Provincial forest

- (a) shall not be disposed of under the *Taxation (Rural Area) Act* or, subject to subsection (6), under the *Land Act*; and
- (b) shall be used or occupied under the *Mineral Act*, *Mining (Placer) Act*, *Coal Act* or *Petroleum and Natural Gas Act* only in accordance with regulations made under this Act.

(6) Crown land in a Provincial forest may be disposed of under the *Land Act* for

- (a) an easement or right of way; or
- (b) any other purpose that the chief forester considers is compatible with the uses described in subsection (4) or permitted by regulation,

but, except for the purposes of a highway, transmission line, or pipeline right of way, no disposition shall be made of the fee simple interest in the land.

(7) Nothing in this section restricts the use of private land in a Provincial forest.

(8) The Lieutenant Governor in Council may, except for land in a tree farm licence area, cancel a Provincial forest or delete land from it on being satisfied that the land, if used for a purpose other than those described in subsection (4) or permitted by regulation, would result in a greater contribution to the social and economic welfare of the Province.

(9) Where land is deleted from a Provincial forest and is granted by the Crown, it shall, if it later reverts to the Crown, be deemed to be included in the Provincial forest without further order of the Lieutenant Governor in Council.

1978-23-5.

**Public sustained yield units, timber supply areas**

6. The minister may,

- (a) designate as a public sustained yield unit Crown land that is not in a tree farm licence area;
- (b) designate as a timber supply area one or more public sustained yield units, tree farm licence areas, areas of other Crown land or private land; and
- (c) for public sustained yield units and timber supply areas, order their consolidation, division or abolition, or order their boundaries to be changed.

1978-23-6.

**Allowable annual cut**

7. (1) The chief forester shall determine an allowable annual cut for
- (a) every public sustained yield unit and for the Crown land, except tree farm licence areas and woodlot licence areas, in every timber supply area; and
  - (b) every tree farm licence area, according to the licence.
- (2) The regional manager shall determine a volume of timber to be harvested under a woodlot licence during each year or other period of its term, according to the licence.
- (3) In determining an allowable annual cut under subsection (1) (a) the chief forester shall consider
- (a) the rate of timber production that may be sustained on the area, taking into account
    - (i) the composition of the forest and its expected rate of growth on the area;
    - (ii) the expected time that it will take the forest to become re-established on the area following denudation;
    - (iii) silvicultural treatments to be applied to the area;
    - (iv) the standard of timber utilization and the allowance for waste and breakage expected to be applied with respect to timber harvesting on the area;
    - (v) the constraints on the amount of timber produced from the area that reasonably can be expected by use of the area for purposes other than timber production; and
    - (vi) any other information that, in his opinion, relates to the capability of the area to produce timber;
  - (b) the short and long term implications to the Province of alternative rates of timber harvesting from the area;
  - (c) the nature, production capabilities and timber requirements of established and proposed timber processing facilities;
  - (d) the economic and social objectives of the Crown, as expressed by the minister, for the area, for the general region and for the Province; and
  - (e) abnormal infestations in and devastations of, and major salvage programs planned for, timber on the area.

1978-23-7.

**Apportioning cut**

8. The minister may specify a portion of the allowable annual cut approved for
- (a) a public sustained yield unit; or
  - (b) the Crown land not in a tree farm licence area or woodlot licence area in a timber supply area
- to be available for granting under a form of agreement referred to in section 10.

1978-23-8.

## PART 3

## DIVISION (1) — FORMS OF RIGHTS TO CROWN TIMBER

**Rights to Crown timber**

9. Subject to the *Land Act* and the *Park Act*, rights to harvest Crown timber shall not be granted by or on behalf of the Crown except in accordance with this Act and the regulations.

1978-23-9.

**Form of agreements**

10. Subject to this Act and the regulations, a regional manager or the minister, on behalf of the Crown, may enter into an agreement granting rights to harvest Crown timber in the form of a

- (a) forest licence;
- (b) timber sale licence;
- (c) timber licence;
- (d) tree farm licence;
- (e) pulpwood agreement;
- (f) woodlot licence;
- (g) free use permit;
- (h) licence to cut; and
- (i) road permit.

1978-23-10.

## DIVISION (2) — FOREST LICENCES

**Applications**

11. (1) On request or on his own initiative the chief forester may, by advertising in the prescribed manner, invite applications for a forest licence.

(2) The regional manager shall not enter into a forest licence under this section unless it is advertised as provided in subsection (1).

- (3) An application for a forest licence shall
- (a) be in the form prescribed by the chief forester;
  - (b) be submitted to the chief forester in a sealed container;
  - (c) if required by the chief forester in the advertising, include a proposal to the chief forester, providing such information as the chief forester requests, for the continuance, establishment, or expansion of a timber processing facility in the Province; and
  - (d) include an offer by the applicant to pay to the Crown, in addition to other amounts payable under this Act and the regulations, stumpage under Part 7 and a bonus, if any, in the amount offered in his application.
- (4) The chief forester shall evaluate each application, including its potential for
- (a) creating or maintaining employment opportunities and other social benefits in the Province;
  - (b) providing for the management and utilization of Crown timber;
  - (c) furthering the development objectives of the Crown;

- (d) meeting objectives of the Crown in respect of environmental quality and the management of water, fisheries and wildlife resources; and
  - (e) contributing to Crown revenues.
- (5) The chief forester shall approve an application or shall, at the direction of the minister, decline to approve all applications.
- (6) Where the chief forester approves an application the regional manager and the applicant shall enter into an agreement in the form of a forest licence.
- (7) This section does not apply to a forest licence entered into under sections 13 to 15.

1978-23-11.

#### Content of forest licence

##### 12. A forest licence

- (a) shall, subject to sections 13 to 15, be for a term not exceeding 20 years;
- (b) shall describe a public sustained yield unit or a timber supply area within which timber may be harvested;
- (c) shall, subject to sections 13 to 15, specify an allowable annual cut that may be harvested under the licence;
- (d) shall require its holder to pay to the Crown, in addition to other amounts payable under this Act and the regulations, stumpage under Part 7 and a bonus, if any, in the amount offered in his application;
- (e) shall require its holder to submit, for the approval of the regional manager as often as the licence requires, a management and working plan prepared by a professional forester, as defined in the *Foresters Act*;
- (f) shall provide for cutting permits to be issued by the Crown to authorize the allowable annual cut to be harvested, within the limits provided in the licence, from specific areas of land in the public sustained yield unit or timber supply area described in the licence;
- (g) shall require its holder to continue to operate, construct or expand a timber processing facility in accordance with a proposal made in the application for the licence;
- (h) may make provision for timber to be harvested by persons under contract with its holder; and
- (i) may include other terms and conditions, consistent with this Act and the regulations, determined by the regional manager.

1978-23-12; 1979-11-2.

#### Replacement

13. (1) During the 6 month period following the fourth anniversary of a forest licence the regional manager shall,
- (a) unless the forest licence provides that a replacement shall not be offered for the forest licence; and
  - (b) if the holder of the forest licence in a notice served on the regional manager during the 2 months before the fourth anniversary requests a replacement for the forest licence,
- offer, in a notice served on its holder, a forest licence to replace the existing forest licence.

- (2) A forest licence offered under subsection (1) shall
  - (a) have a term commencing on the fifth anniversary of the existing forest licence;
  - (b) be for a term equal to the lesser of
    - (i) the whole original term of the existing forest licence; or
    - (ii) 15 years;
  - (c) authorize timber harvesting in the public sustained yield unit or timber supply area specified in the forest licence then in force;
  - (d) specify an allowable annual cut that may be harvested under it equal to the allowable annual cut under the existing forest licence; and
  - (e) include other terms and conditions, consistent with this Act and the regulations, set out in the offer.
- (3) A notice of an offer made under subsection (1) shall be published in the prescribed manner.
- (4) An offer made under subsection (1) may be
  - (a) amended; and
  - (b) accepted by written notice of acceptance served on the regional manager not later than 3 months after the offer is served.
- (5) Where an offer made under subsection (1) is accepted
  - (a) an agreement in the form of a forest licence containing the terms and conditions set out in the offer, including amendments, shall be entered into by the regional manager and the holder of the forest licence; and
  - (b) the forest licence then in force shall expire on its fifth anniversary.
- (6) Where an offer made under subsection (1) is not accepted, the existing forest licence continues in force until its term expires, after which it has no further effect.
- (7) No forest licence is renewable.

1978-23-13.

**Surrender of timber sale and timber sale harvesting licences**

- 14.** (1) With the approval of the regional manager the holder of one or more, or a combination of,
- (a) timber sale harvesting licences; and
  - (b) timber sale licences entered into under this or the former Act may surrender it or them for replacement by one or more forest licences under subsection (2).
- (2) In respect of all timber sale harvesting licences and timber sale licences surrendered under subsection (1) that authorize the harvesting of Crown timber in an individual public sustained yield unit or timber supply area, the regional manager shall with their holder enter into one or more forest licences
- (a) for a term of 15 years;
  - (b) that authorize Crown timber to be harvested from the public sustained yield unit or timber supply area; and
  - (c) that, in total, specify an allowable annual cut equal to the total of the allowable annual cuts
    - (i) specified in the surrendered timber sale harvesting licences, plus increases and minus decreases, if any, in the allowable annual cuts made by the Crown since they were entered into; and



(ii) specified in the surrendered timber sale licences, plus increases and minus decreases, if any, in the allowable annual cuts made by the Crown since they were entered into, or such portion of them as the regional manager determines.

(3) A notice of a surrender shall be published in the prescribed manner.

1978-23-14.

### Expiry

**15.** (1) Notwithstanding its terms, a timber sale harvesting licence expires on the expiry of its term that is in effect on January 1, 1979, and it shall not be renewed.

(2) For a timber sale harvesting licence that is not surrendered the regional manager shall, if requested to do so by its holder during the first 6 months of the final year of its term, in a notice served on its holder within 3 months after the request, offer a forest licence that would

(a) be for a term of 15 years commencing on the expiry of the timber sale harvesting licence;

(b) authorize Crown timber to be harvested from the public sustained yield unit specified in the timber sale harvesting licence; and

(c) specify an allowable annual cut equal to the allowable annual cut specified in the timber sale harvesting licence, plus increases and minus decreases, if any, in the allowable annual cut made by the Crown since the date it was entered into.

(3) Where the holder of the timber sale harvesting licence surrenders under section 14 (1) one or more timber sale licences with a request under subsection (2), the allowable annual cut specified in a forest licence offered under subsection (2) shall be equal to the total of the

(a) allowable annual cut specified under subsection (2) (c); and

(b) allowable annual cuts specified under section 14 (2) (c) (ii).

(4) An offer made under subsection (2) may be

(a) amended; and

(b) accepted by written notice of acceptance served on the regional manager within 3 months after the offer is served.

(5) A timber sale harvesting licence that is due to expire within 2 years after January 1, 1979 is, unless surrendered under section 14, extended until January 1, 1981.

(6) Where an offer made under subsection (2) is accepted, the regional manager and the person accepting the offer shall enter into a forest licence to replace the expiring timber sale harvesting licence and timber sale licences, if any, surrendered.

(7) A notice of an offer made under subsection (2) shall be published in the prescribed manner.

1978-23-15.

### DIVISION (3) — TIMBER SALE LICENCES

#### Applications

**16.** (1) On request or on his own initiative the regional manager may, by advertising in the prescribed manner, invite applications for a timber sale licence.

(2) Subject to section 18, the regional manager shall not enter into a timber sale licence unless he advertises as provided in subsection (1).

- (3) The regional manager
- (a) may, unless the timber sale licence has been requested under subsection (5) by a person who is not a small business enterprise, specify that applications for the timber sale licence shall be accepted only from one or more categories of small business enterprises as established by regulation; and
  - (b) shall, subject to subsection (5), determine whether bonus bids shall be submitted orally in auction or by written tender in sealed containers.
- (4) An application for a timber sale licence shall be in the form required by the regional manager and shall include an offer by the applicant to pay to the Crown, in addition to other amounts payable under this Act and the regulations, stumpage under Part 7 and a bonus, if any, in the amount bid.
- (5) Where within one year before the expiry of a timber sale licence referred to in subsection (8), the designated applicant requests a timber sale licence to replace the timber sale licence then in force that would
- (a) authorize timber to be harvested in the public sustained yield unit or timber supply area described in the timber sale licence then in force;
  - (b) subject to subsection (9), specify an allowable annual cut not exceeding the allowable annual cut specified in the timber sale licence then in force, plus increases and minus decreases, if any, in the allowable annual cut made by the Crown since it was entered into; and
  - (c) have a term commencing on the expiry of the timber sale licence then in force,
- the regional manager shall invite applications for the timber sale licence, with bonus bids to be submitted by written tenders in sealed containers.
- (6) The regional manager shall
- (a) approve the application containing the highest bonus bid submitted under subsection (4);
  - (b) notwithstanding paragraph (a), approve an application made by a designated applicant, if the designated applicant submits a second bonus bid that matches the highest bonus bid submitted for the timber sale licence; or
  - (c) at the direction of the minister, decline to approve all applications.
- (7) An agreement in the form of a timber sale licence shall be entered into by the regional manager and the applicant for the licence whose application is approved.
- (8) In this section "designated applicant" means the holder of a timber sale licence
- (a) entered into under the former Act, that is in force on January 1, 1979, and
    - (i) to which section 17 (1a) of the former Act applied; or
    - (ii) that the regional manager designates to be subject to subsection (5); or
  - (b) entered into pursuant to a request under subsection (5) by its holder or by a previous holder of the licence.
- (9) With respect to a designation under subsection (8) (a) (ii), the regional manager shall determine the allowable annual cut that the designated applicant is eligible to specify in a request under subsection (5), for the first replacement for the timber sale licence under this Act.

(10) A timber sale licence referred to under subsection (8) that is due to expire within 2 years after January 1, 1979 is, unless surrendered under section 14, extended to January 1, 1981.

(11) The regional manager may amend a timber sale licence that is extended under subsection (10) by adding an area of Crown land that is sufficient to allow the licensee to sustain his rate of harvesting timber until the expiry of the licence.

1978-23-16; 1979-11-3.

#### Content of timber sale licence

- 17.** A timber sale licence entered into under this Act
- (a) shall be for a term not exceeding 10 years;
  - (b) shall describe an area of Crown land within which Crown timber may be harvested;
  - (c) may specify an allowable annual cut that its holder is eligible to harvest;
  - (d) may provide for cutting permits to be issued by the Crown to its holder to authorize an allowable annual cut to be harvested, within the limits provided in the licence;
  - (e) shall require its holder to pay to the Crown, in addition to other amounts payable under this Act and the regulations, stumpage under Part 7 and a bonus, if any, in the amount bid; and
  - (f) shall include other terms and conditions, consistent with this Act and the regulations, determined by the regional manager.

1978-23-17.

#### No advertising required

**18.** (1) Notwithstanding sections 16 and 17 the regional manager may, without advertising or accepting applications from other persons, enter into an agreement in the form of a timber sale licence where

- (a) the volume of timber specified in the application is less than 2 000 m<sup>3</sup> and only one application is made for the timber;
- (b) the timber sale licence is required to satisfy the obligations of the Crown under a pulpwood agreement or pulpwood harvesting area agreement or under section 37 (2);
- (c) an applicant for a tree farm licence, in the minister's opinion, requires for his current operations timber on the land described in the application, and the land described in the application is under reserve under section 27 (8);
- (d) Crown land is required for a purpose other than timber production and the regional manager considers that the timber on the land should be removed expeditiously;
- (e) timber, in the opinion of the regional manager, is in imminent danger of being lost or destroyed;
- (f) Crown land is to be used for experimental purposes and, in the opinion of the regional manager, timber is to be harvested under controlled scientific or investigative conditions;
- (g) timber is to be used for firewood or special forest products; or
- (h) a timber sale licence has been advertised, no applications are made within the time prescribed in the advertising, and the application is made within 60 days after that time.

(2) Notwithstanding this Division, the regional manager or a forest officer authorized by him may, without advertising or accepting applications from other persons, enter into an agreement in the form of a timber sale licence, where the stumpage payable in respect of timber specified in the application is \$500 or less.

1978-23-18; 1979-11-4.

#### DIVISION (4) — TIMBER LICENCES

##### Expiry of old temporary tenures

**19.** Notwithstanding its terms or another Act, a special timber licence, pulp licence, timber lease and timber berth that is in force on January 1, 1979, and a pulp lease that was in force on September 1, 1975, except pulp lease CZ-3 as identified in the records of the ministry,

- (a) continues in force until it expires under section 57 or as provided in paragraph (b) or (c);
- (b) if it is in a tree farm licence area on January 1, 1979, expires
  - (i) when the tree farm licence is replaced under section 33; or
  - (ii) as provided in section 20 (3), if the tree farm licence is not replaced under section 33;
- (c) if it is not in a tree farm licence area on January 1, 1979, expires
  - (i) when it is replaced by a timber licence under section 21 (5); or
  - (ii) on December 31, 1981, if it is not replaced by a timber licence under section 21 (5).

1978-23-19.

##### Rights in tree farm licences

**20.** (1) An old temporary tenure that, on January 1, 1979, is in a tree farm licence area shall be replaced by a timber licence if and when the tree farm licence is replaced under section 33.

(2) An agreement in the form of a timber licence shall be entered into by the regional manager and the holder of the old temporary tenure that the timber licence is to replace and, subject to section 57, the timber licence shall

- (a) be for a term that
  - (i) commences on the commencement of the term of the replacement for the tree farm licence; and
  - (ii) continues in force until it expires under subsection (3); and
- (b) describe the area of Crown land subject to the old temporary tenure.

(3) Where a tree farm licence expires or otherwise terminates and is not replaced under section 29 or 33, an old temporary tenure or timber licence that is then in the tree farm licence area

- (a) expires one year after the expiry or termination of the tree farm licence; and
- (b) may be replaced by a timber licence under section 21.

1978-23-20.

##### Rights not in tree farm licence

**21.** (1) A person who holds old temporary tenures, or any combination of them, that, on January 1, 1979, are not in a tree farm licence area may, by December 31,

1980, submit to the regional manager a schedule proposing a time and a sequence for the orderly harvesting of the merchantable timber that is subject to the tenures.

(2) A person who holds an old temporary tenure or timber licence that is due to expire under section 20 (3) (a) may, within 6 months after expiry or termination of the tree farm licence, submit to the regional manager a schedule proposing a time and a sequence for the orderly harvesting of the merchantable timber that is subject to the tenure or licence.

(3) After considering a schedule proposed under subsection (1) or (2) the regional manager shall, in a notice served on its holder within 3 months after receiving the schedule, offer to the holder one or more timber licences that, subject to section 57,

(a) describe the Crown land subject to the old temporary tenure or timber licence; and

(b) expire on a date specified in the timber licence by the regional manager.

(4) The offer may be accepted by written notice served on the regional manager not later than 3 months after it is made.

(5) Where the offer is accepted, the regional manager and the holder shall enter into an agreement in the form of a timber licence.

(6) A notice of an offer made under subsection (3) shall be published in the prescribed manner.

1978-23-21.

#### One timber licence

22. Where the regional manager considers that efficient forest planning and management would be served, he shall enter into one timber licence under section 20 (2) or 21 (5) for 2 or more old temporary tenures, or any combination of them, or for 2 or more timber licences.

1978-23-22.

#### Royalty or stumpage election

23. (1) A person who is eligible for a timber licence under this Division shall elect, in the form required by the regional manager, to pay to the Crown either royalty or stumpage under Part 7 for timber harvested under all timber licences held by him.

(2) Where 2 or more corporations, affiliated within the meaning of the *Company Act*, are eligible for timber licences under this Division, one election shall be made under subsection (1) on behalf of all the affiliated corporations.

(3) The regional manager shall not enter into a timber licence with a person referred to in subsection (1) or a corporation referred to in subsection (2), until an election is made in accordance with this section.

(4) Where an election is made to pay royalty, the cost of all work required under the timber licence, this Act and the regulations to be performed on the area of Crown land described in the timber licence shall be borne by the holder of the timber licence, unless otherwise provided in this Act.

1978-23-23.

#### Payments due

24. The regional manager shall not enter into a timber licence unless all payments due to the Crown under this or the former Act for the old temporary tenure that it is to replace, are paid.

1978-23-24.

**Content of timber licence**

**25.** A timber licence shall

- (a) describe an area of Crown land over which it is to apply;
- (b) be for a term determined under this Division;
- (c) grant to its holder the exclusive right during its term to harvest all merchantable timber in the area of Crown land described in it;
- (d) where the timber licence is in a tree farm licence area, require its holder to harvest timber in accordance with the tree farm licence and the management and working plan approved under it;
- (e) where a timber licence is not in a tree farm licence area, require its holder to submit, for the approval of the regional manager as often as the licence requires, an operating plan prepared by a professional forester as defined in the *Foresters Act*;
- (f) provide for cutting permits to be issued by the Crown to its holder authorizing timber to be harvested from specific areas of land described in the timber licence;
- (g) require its holder to pay to the Crown, in addition to other amounts payable under this Act and the regulations, stumpage or royalty under Part 7 in accordance with the election made under section 23;
- (h) require its holder to apply to the land described in the timber licence reforestation or other treatment for the re-establishment of forest on the land determined by the regional manager; and
- (i) include other terms and conditions, consistent with this Act and the regulations, determined by the regional manager.

1978-23-25; 1797-11-5.

**Non-timber use**

**26.** (1) Except where the timber licence or old temporary tenure is in a tree farm licence area, where the minister determines that an area of land or any portion of it that is subject to the licence or tenure is needed for a purpose other than timber production he may, in a notice served on the holder of the licence or tenure, require that the merchantable timber on the area be harvested within the time specified in the notice.

(2) On the expiry of the specified time, or of an extension of that time granted by the minister, the minister may delete from the licence or tenure the area of land described in the notice.

1978-23-26.

**DIVISION (5) — TREE FARM LICENCES****Applications**

**27.** (1) On request or on his own initiative the minister may, by advertising in the prescribed manner, invite applications for a tree farm licence.

(2) The minister shall not enter into a tree farm licence under this section unless he advertises as provided in subsection (1) and a public hearing is held on the applications.

(3) The application shall be made to the minister in a form required by him and

- (a) shall include a description of every private tenure held by the applicant in and near the area of land proposed for the tree farm licence; and

- (b) shall, if requested by the minister in the advertising, include a proposal, providing the information the minister requests, for the continuance, establishment or expansion of a timber processing facility in the Province.
- (4) After a date specified in the advertising, the minister or his designate shall
  - (a) convene a public hearing in which any person may make a submission respecting applications for the tree farm licence; and
  - (b) determine the procedures for the public hearing.
- (5) Following the public hearing the minister shall evaluate each application, including its potential for
  - (a) creating or maintaining employment opportunities and other social benefits in the Province;
  - (b) providing for the management and utilization of Crown timber;
  - (c) furthering the development objectives of the Crown;
  - (d) meeting the objectives of the Crown in respect of environmental quality and the management of water, fisheries and wildlife resources; and
  - (e) contributing to Crown revenues.
- (6) The Lieutenant Governor in Council may, on recommendation of the minister, approve an application for the tree farm licence.
- (7) The minister shall not enter into an agreement in the form of a tree farm licence until the chief forester approves a management and working plan for the proposed tree farm licence area.
- (8) The minister may reserve from disposition under this Act the timber in the area described in the advertising, pending the entering into of an agreement in the form of a tree farm licence or rejection of all applications made under this section.
- (9) Subject to subsection (7), the minister shall enter into an agreement in the form of a tree farm licence with an applicant whose application is approved under subsection (6).
- (10) This section does not apply to a tree farm licence entered into under section 29 or 33.

1978-23-27.

#### Content of tree farm licence

- 28.** A tree farm licence entered into under this Act shall
- (a) be for a term of 25 years;
  - (b) subject to sections 29 and 33, describe a tree farm licence area composed of
    - (i) an area of Crown land, the timber on which is not otherwise encumbered, determined by the minister; and
    - (ii) such private tenures held by its holder as are determined by the minister;
  - (c) require its holder to pay to the Crown, in addition to other amounts payable under this Act and the regulations,
    - (i) for timber harvested under the tree farm licence from land referred to in paragraph (b) (i) and sections 31 (1) and (2) and 32 (1), stumpage under Part 7; and
    - (ii) for timber harvested from a timber licence included in the area described under paragraph (b) (ii), stumpage under Part 7, or royalty under Part 7, as elected under section 23;

- (d) require its holder to submit for the approval of the chief forester, once every 5 years or more often where the chief forester considers that special circumstances require, a management and working plan prepared by a registered professional forester, containing
  - (i) information on the inventory of the forest resources and, where available to its holder, on the fisheries and wildlife resources and recreational capabilities, of the tree farm licence area;
  - (ii) a proposal for developing timber harvesting operations on the tree farm licence area;
  - (iii) a proposal for protecting forest in the tree farm licence area from damage by fire, insects and disease;
  - (iv) a proposal for reforestation and providing other silvicultural treatments to the tree farm licence area; and
  - (v) such other information on the development, management and use of the tree farm licence area as the chief forester requires;
- (e) subject to paragraph (m) and sections 30 and 55, grant to its holder the exclusive right to harvest timber from the tree farm licence area during the term of the tree farm licence;
- (f) provide for cutting permits to be issued by the Crown to its holder authorizing the allowable annual cut to be harvested from specific areas in the tree farm licence area, within the limits provided in the licence;
- (g) require the chief forester to approve, from time to time, management and working plans acceptable to him for the tree farm licence area, that specify
  - (i) an allowable annual cut that he determines may be sustained from the tree farm licence area, having regard to
    - (A) the composition of the forest on the tree farm licence area and its expected rate of growth, determined from an inventory of the forest;
    - (B) the expected time that it will take the forest to become re-established on the tree farm licence area following denudation;
    - (C) silvicultural treatments to be applied to the tree farm licence area;
    - (D) the standard of timber utilization and the allowances for waste and breakage it is expected will be applied with respect to timber harvesting operations conducted on the tree farm licence area; and
    - (E) any other information that relates to the capability of the tree farm licence area to produce timber; and
  - (ii) measures taken and to be taken by the holder of the tree farm licence, consistent with the tree farm licence, this Act and the regulations, for developing, protecting, restoring and improving the forest resources in the tree farm licence area;
- (h) make provision for its holder to use the services of one or more registered professional foresters to manage the tree farm licence area;
- (i) require that each year during its term a volume of timber equal to
  - (i) 50% of the volume of timber harvested by or for its holder from the tree farm licence area during the year, multiplied by



- (ii) the result obtained by the division of
  - (A) the portion of the allowable annual cut then approved for the tree farm licence that the chief forester determines is attributable to Crown land referred to in paragraph (b) (i) and sections 31 (1) and (2) and 32 (1), by
  - (B) the allowable annual cut then approved for the tree farm licence
 shall be harvested by persons under contract with its holder;
- (j) allow its holder to contract for the harvesting of more than the volume calculated under paragraph (i);
- (k) provide that the minister may, under the regulations, relieve the holder, in whole or in part, from the requirement under paragraph (i);
- (l) require its holder to continue to operate, construct, or expand a timber processing facility in accordance with a proposal made in the application for the tree farm licence;
- (m) reserve to the Crown the right to enter into a free use permit on the tree farm licence area with a person other than the holder of the tree farm licence; and
- (n) contain other terms and conditions, consistent with this Act and the regulations, determined by the minister.

1978-23-28.

#### Replacement

**29.** (1) During the 6 month period following the ninth anniversary of a tree farm licence entered into under this Act the minister shall,

- (a) unless the tree farm licence provides that a replacement shall not be offered for the tree farm licence; and
- (b) if the holder of the tree farm licence in a notice served on the minister during the 2 months before the ninth anniversary requests a replacement for the tree farm licence,

offer, in a notice served on its holder, a tree farm licence to replace the existing tree farm licence.

(2) A tree farm licence offered under subsection (1) shall

- (a) be for a 25 year term commencing on the 10th anniversary of the existing tree farm licence;
- (b) describe as a tree farm licence area the area subject to the existing tree farm licence; and
- (c) include other terms and conditions, consistent with this Act and the regulations, set out in the offer.

(3) A notice of an offer made under subsection (1) shall be published in the prescribed manner.

(4) An offer made under subsection (1) may

- (a) be amended; and
- (b) be accepted by written notice of acceptance served on the minister not later than 3 months after the offer is served.

(5) Where an offer made under subsection (1) is accepted

- (a) an agreement in the form of a tree farm licence containing the terms and conditions set out in the offer, including amendments, shall be entered into by the minister and the holder of the tree farm licence; and
- (b) the existing tree farm licence expires on its 10th anniversary.

(6) Where an offer made under subsection (1) is not accepted, the existing tree farm licence continues in force until its term expires, after which it has no further effect.

(7) No tree farm licence is renewable.

1978-23-29.

#### Timber available to others

**30.** A tree farm licence entered into under

(a) section 27; or

(b) section 29 or 33, where it replaces a tree farm licence that makes such a provision,

may provide that timber on part of the tree farm licence area shall be available for disposition under Division (3) to persons other than the holder of the tree farm licence.

1978-23-30.

#### Private tenure

**31.** (1) On the expiry of an old temporary tenure or timber licence that is held by the holder of a tree farm licence and that is in the tree farm licence area, the land that was subject to the old temporary tenure or timber licence shall remain in the tree farm licence area and shall continue to be subject to its provisions.

(2) Where an old temporary tenure or timber licence that is contiguous to a tree farm licence area expires and the old temporary tenure or timber licence was not held by the tree farm licence holder, the land that was subject to the old temporary tenure or timber licence shall become part of the tree farm licence area if the minister so determines, and the tree farm licence shall be amended accordingly.

(3) Where the holder of a tree farm licence acquires a private tenure that is contiguous to the tree farm licence area

(a) the holder shall promptly notify the minister of the acquisition; and

(b) where the chief forester determines that forest management would be improved by doing so, the holder and the minister shall enter into an agreement amending the tree farm licence, adding the private tenure to the tree farm licence area.

1978-23-31.

#### Private land

**32.** (1) Private land that is transferred to the Crown

(a) shall remain subject to the tree farm licence if it is in a tree farm licence area; or

(b) shall be added to the tree farm licence area if it is contiguous to the area and the chief forester determines that forest management would be improved by doing so.

(2) Where paragraph (b) applies, the minister and the tree farm licence holder shall enter into an amendment to the tree farm licence, adding the land to the tree farm licence area.

1978-23-32.

#### Expiry

**33.** (1) Notwithstanding a tree farm licence or another Act, a tree farm licence that is in force on January 1, 1979 expires on the earliest of

- (a) the expiry of the term of the tree farm licence that is in effect on January 1, 1979;
- (b) the expiry of the management and working plan that is in effect for the tree farm licence on December 31, 1979; or
- (c) December 31, 1985.

(2) For a tree farm licence that is due to expire under subsection (1) the minister, if requested to do so by its holder during the first 6 months of the final year of its term, shall in a notice served on its holder within 3 months after the request, offer one or more tree farm licences to replace the existing licence, that would have terms commencing on the expiry of the existing licence and describe as tree farm licence areas the same area subject to the expiring licence.

(3) An offer made under subsection (2) may be amended and may be accepted by written notice to the minister not later than 3 months after it is served.

(4) Where an offer made under subsection (2) is accepted, the minister and the person accepting the offer shall enter into an agreement in the form of a tree farm licence to replace the expiring licence.

(5) A perpetual tree farm licence that is dated before March 20, 1958 and is in force on January 1, 1979 expires on the earlier of the dates referred to in subsection (1) (b) or (c), and not otherwise.

(6) A notice of an offer made under subsection (2) shall be published in the prescribed manner.

1978-23-33.

#### DIVISION (6) — PULPWOOD AGREEMENTS

##### Application

**34.** (1) Where the minister determines that

- (a) wood chips, sawdust, shavings, hog fuel or other residues or byproducts of timber processing are produced in an area of the Province; or
- (b) timber below the standard of utilization then in effect for sawmilling purposes exists on an area of Crown land in a public sustained yield unit or a timber supply area in the Province,

or both, in sufficient quantities to warrant the continuance, establishment, or expansion of a timber processing facility, the minister may designate the area as a pulpwood area and may enter into a pulpwood agreement for that area.

(2) Where the minister makes a determination under subsection (1) he may, on request or on his own initiative, by advertising in the prescribed manner, invite applications for a pulpwood agreement.

(3) The minister shall not enter into a pulpwood agreement under this section unless he advertises as provided in subsection (2) and a public hearing is held on the applications.

(4) The application shall be made to the minister in a form required by him and shall include a proposal, providing information the minister requests, for the continuance, establishment or expansion of a timber processing facility in the Province.

(5) After a date specified in the advertising, the minister or his designate shall

- (a) convene a public hearing in which any person may make a submission about applications for the pulpwood agreement; and
- (b) determine the procedures for the public hearing.

- (6) Following the public hearing the minister shall evaluate each application, including its potential for
- (a) creating or maintaining employment opportunities and other social benefits in the Province;
  - (b) providing for the management and utilization of Crown timber;
  - (c) furthering the development objectives of the Crown;
  - (d) meeting the objectives of the Crown for environmental quality and the management of water, fisheries and wildlife resources; and
  - (e) contributing to Crown revenues.
- (7) The minister may, with the approval of the Lieutenant Governor in Council,
- (a) approve one application;
  - (b) determine that the pulpwood agreement shall be granted by competition under subsection (8); or
  - (c) decline to approve all applications.
- (8) Where a pulpwood agreement is to be granted by competition the minister shall
- (a) determine the form of the pulpwood agreement;
  - (b) specify a date by which tenders for the agreement must be received by him; and
  - (c) consider every tender received on or before that date, delivered in a sealed container and consisting of an offer to pay to the Crown, in addition to other amounts payable under this Act and the regulations, stumpage under Part 7 and a bonus.
- (9) After considering the tenders the minister, with the approval of the Lieutenant Governor in Council, shall approve the tender containing the highest bonus offer or decline to approve all tenders.
- (10) A pulpwood agreement shall be entered into by the minister and an applicant whose application or tender is approved under subsection (7) or (9).
- (11) This section does not apply to a pulpwood agreement entered into under section 36, 38 or 39.
- (12) A pulpwood harvesting area designated under the former Act continues as a pulpwood area under this Act.

1978-23-34.

#### Content of pulpwood agreement

35. A pulpwood agreement shall,
- (a) subject to sections 36, 38 and 39, be for a term not exceeding 25 years;
  - (b) subject to sections 36, 38 and 39, describe an area of land as a pulpwood area;
  - (c) require its holder to construct, expand or continue a timber processing facility in accordance with his application;
  - (d) require its holder to purchase, as provided in the pulpwood agreement, wood residue produced by timber processing facilities in the pulpwood area;
  - (e) subject to sections 36 (2) (d) and 40, grant to its holder the option to obtain from the regional manager, without advertising or competition from other applicants, timber sale licences authorizing the harvest from Crown land in the pulpwood area of a maximum annual volume of

timber not exceeding the volume, and according to the terms, specified in the pulpwood agreement;

- (f) require that its holder shall not exercise an option under paragraph (e) without first complying with the requirement under paragraph (d); and
- (g) include other terms and conditions, consistent with this Act and the regulations, determined by the minister.

1978-23-35.

### Replacement

**36.** (1) During the 6 month period following the ninth anniversary of a pulpwood agreement the minister shall,

- (a) unless the pulpwood agreement provides that a replacement shall not be offered for the pulpwood agreement; and
- (b) if the holder of the pulpwood agreement in a notice served on the minister during the 2 months before the ninth anniversary requests a replacement for the pulpwood agreement,

offer, in a notice served on its holder, a pulpwood agreement to replace the existing pulpwood agreement.

(2) A pulpwood agreement offered under subsection (1) shall

- (a) have a term commencing on the 10th anniversary of the existing pulpwood agreement;
- (b) be for a term equal to the whole original term of the existing pulpwood agreement;
- (c) describe as a pulpwood area the area described in the existing pulpwood agreement;
- (d) specify a maximum volume of timber that its holder would be eligible to harvest each year during its term equal to the maximum volume specified in the existing pulpwood agreement; and
- (e) include other terms and conditions, consistent with this Act and the regulations, set out in the offer.

(3) A notice of an offer made under subsection (1) shall be published in the prescribed manner.

(4) An offer made under subsection (1)

- (a) may be amended; and
- (b) may be accepted by written notice to the minister not later than 3 months after the offer is served.

(5) Where an offer made under subsection (1) is accepted,

- (a) an agreement in the form of a pulpwood agreement containing the terms and conditions set out in the offer, including amendments, shall be entered into by the minister and the holder of the pulpwood agreement; and
- (b) the pulpwood agreement then in force shall expire on its 10th anniversary.

(6) Where an offer made under subsection (1) is not accepted, the existing pulpwood agreement continues in force until its term expires, after which it has no further effect.

(7) No pulpwood agreement is renewable.

1978-23-36.

**Special sale area**

**37.** (1) Notwithstanding a pulpwood harvesting area agreement or a timber sale licence, rights under a pulpwood harvesting area agreement with respect to timber on land described as a special sale area established under section 27 of the former Act, by order in council 2811 dated November 22, 1962 as amended, shall not be extended beyond December 31, 1978 and a timber sale licence entered into with respect to the timber on that land expires on December 31, 1978.

(2) The regional manager shall, under section 18, approve an application for a timber sale licence made by the holder of a pulpwood harvesting area agreement or the holder of a pulpwood agreement entered into under section 38 or 39 that replaces the pulpwood harvesting area agreement, authorizing the harvesting of Crown timber from the land referred to in subsection (1), where

- (a) the pulpwood harvesting area agreement, before January 1, 1979, included rights to Crown timber on the land referred to in subsection (1);
- (b) the holder of the agreement, in the opinion of the minister, requires the Crown timber for the operation of its pulpmill at its capacity as of January 1, 1979;
- (c) the holder of the agreement is complying with its terms; and
- (d) the timber is available for disposition by the Crown.

(3) The total volume of timber that may be harvested under subsection (2) shall not exceed the total volume the holder was, before January 1, 1979, eligible to harvest from the land referred to in subsection (1) under a pulpwood harvesting area agreement.

1978-23-37.

**Surrender**

**38.** (1) With the minister's approval the holder of a pulpwood harvesting area agreement may surrender the agreement for replacement under this section.

(2) Where a pulpwood harvesting area agreement is surrendered under subsection (1) the minister and the person surrendering the agreement shall enter into a pulpwood agreement that

- (a) shall be for a term of 25 years commencing on the date of the surrender;
- (b) subject to section 37 (1), describes as a pulpwood area the pulpwood harvesting area described in the pulpwood harvesting area agreement; and
- (c) specifies a maximum annual volume of timber that its holder is eligible to harvest during its term.

(3) A notice of a surrender shall be published in the prescribed manner.

1978-23-38.

**Expiry**

**39.** (1) Notwithstanding its terms, a pulpwood harvesting area agreement that is in force on January 1, 1979 expires on the expiry of its term and shall not be renewed.

(2) Where a pulpwood harvesting area agreement is not surrendered the minister, if requested to do so by its holder during the first 6 months of the final year of its term, shall in a notice served on its holder within 3 months after the request offer a pulpwood agreement that

- (a) is for a term of 25 years commencing on the expiry of the pulpwood harvesting area agreement;
- (b) subject to section 37 (1), describes as a pulpwood area the pulpwood harvesting area described in the pulpwood harvesting area agreement; and
- (c) specifies a maximum annual volume of timber that its holder is eligible to harvest during its term.

(3) An offer made under subsection (2) may be amended and may be accepted by written notice to the minister within 3 months after it is served.

(4) Where an offer made under subsection (2) is accepted, the minister and the person accepting the offer shall enter into a pulpwood agreement to replace the expiring pulpwood harvesting area agreement.

(5) A notice of an offer made under subsection (2) shall be published in the prescribed manner.

1978-23-39.

#### Timber volume

**40.** In determining a maximum volume of timber under sections 38 (2) (c) and 39 (2) (c), the minister shall consider the maximum volume of timber specified in the pulpwood harvesting area agreement, and the wood fibre requirements of the pulp mill of its holder at its capacity on January 1, 1979.

1978-23-40.

### DIVISION (7) — WOODLOT LICENCES

#### Applications

**41.** (1) On request or on his own initiative the regional manager may, by advertising in the prescribed manner, invite applications for woodlot licences.

(2) The regional manager shall not enter into a woodlot licence under this section unless he advertises as provided in subsection (1).

(3) An application for a woodlot licence shall be made to the regional manager in a form required by him and shall include

- (a) a description of any private land owned or leased by the applicant contiguous to or in the vicinity of the area of Crown land described in the advertising; and
- (b) a declaration by or on behalf of the applicant attesting to the qualifications of the applicant for a woodlot licence.

(4) A woodlot licence shall be entered into only with

- (a) a Canadian citizen who is 19 years of age or older;
- (b) a society incorporated under the *Societies Act*, where the majority of its members meet the qualifications referred to in paragraph (a);
- (c) a band as defined in the *Indian Act* (Canada); or
- (d) a corporation that is controlled by persons who meet the qualifications referred to in paragraph (a).

(5) A woodlot licence shall not be entered into with a person, corporation, band or society that

- (a) owns, or controls a corporation that owns, a timber processing facility in the Province; or

- (b) holds another woodlot licence or, subject to section 44, a farm woodlot licence.
- (6) The regional manager
  - (a) shall evaluate all applications for a woodlot licence and shall consider
    - (i) the place of residence of every applicant and, where the applicant is a corporation or society, the place of residence of each of its members; and
    - (ii) the location and character of any land, owned or held under lease by every applicant, contiguous to or in the vicinity of the area of Crown land described in his applicationafter which he may
  - (b) approve an application;
  - (c) decline to approve all applications; or
  - (d) determine that the woodlot licence shall be granted by competition under subsection (7).
- (7) Where a woodlot licence is to be granted by competition the regional manager shall
  - (a) determine the form of the licence;
  - (b) specify a date by which tenders for the licence must be received by him; and
  - (c) consider every tender received on or before that date, delivered in a sealed container and consisting of an offer to pay to the Crown, in addition to other amounts payable under this Act and the regulations, stumpage under Part 7 and a bonus.
- (8) After considering the tenders the regional manager shall approve the tender containing the highest bonus offer or, at the direction of the minister, decline to approve all tenders.
- (9) The regional manager shall not enter into an agreement in the form of a woodlot licence until a management and working plan is approved by the Crown for the proposed woodlot area.
- (10) The regional manager may reserve from disposition under this Act the timber in the area described in the advertising, pending the entering into of an agreement in the form of a woodlot licence or rejection of all applications made under this section.
- (11) Subject to subsection (9), the regional manager shall enter into an agreement in the form of a woodlot licence with every person whose application or tender is approved under subsection (6) or (8).
- (12) This section does not apply to a woodlot licence entered into under section 43 or 44.

1978-23-41.

**Content of woodlot licence**

- 42.** A woodlot licence shall,
- (a) subject to section 44, be for a term not exceeding 15 years;
  - (b) subject to sections 43 and 44, describe a woodlot licence area determined by the regional manager to be composed of
    - (i) private land, if any, owned or held under lease by its holder or a reserve as defined in the *Indian Act* (Canada); and
    - (ii) not more than 400 ha of Crown land, the timber on which is not otherwise encumbered;



- (c) subject to section 55, give to its holder the exclusive right to harvest timber on the Crown land referred to in paragraph (b), for its term;
- (d) require its holder to pay to the Crown, in addition to other amounts payable under this Act and the regulations, stumpage under Part 7 in respect of timber harvested from land referred to in paragraph (b) (ii), and a bonus, if any, in the amount tendered;
- (e) provide for cutting permits to be issued to its holder to authorize timber to be harvested from specific areas in the woodlot licence area;
- (f) require the regional manager, from time to time, to approve for the woodlot licence area management and working plans acceptable to him that
  - (i) determine a volume of timber to be harvested from the woodlot licence area during each year or other period of its term; and
  - (ii) contain such information respecting the development, management and use of the woodlot licence area as the regional manager requires; and
- (g) include other terms and conditions, consistent with this Act and the regulations, determined by the regional manager.

1978-23-42.

### Replacement

**43.** (1) During the 6 month period following the fourth anniversary of a woodlot licence the regional manager shall,

- (a) unless the woodlot licence provides that a replacement shall not be offered for the woodlot licence; and
- (b) if the holder of the woodlot licence in a notice served on the regional manager during the 2 months before the fourth anniversary requests a replacement for the woodlot licence,

offer, in a notice served on its holder, a woodlot licence to replace the existing woodlot licence.

(2) A woodlot licence offered under subsection (1) shall

- (a) have a term commencing on the fifth anniversary of the existing woodlot licence;
- (b) be for a term equal to the whole original term of the existing woodlot licence;
- (c) describe as a woodlot licence area the area subject to the existing woodlot licence; and
- (d) include other terms and conditions, consistent with this Act and the regulations, set out in the offer.

(3) Notice of an offer made under subsection (1) shall be published in the prescribed manner.

(4) An offer made under subsection (1)

- (a) may be amended; and
- (b) may be accepted by written notice to the regional manager not later than 3 months after the offer is served.

(5) Where an offer made under subsection (1) is accepted

- (a) an agreement in the form of a woodlot licence containing the terms and conditions set out in the offer, including amendments, shall be entered into by the regional manager and the holder of the woodlot licence; and

(b) the existing woodlot licence shall expire on its fifth anniversary.

(6) Where an offer made under subsection (1) is not accepted, the existing woodlot licence continues in force until its term expires, after which it has no further effect.

(7) No woodlot licence is renewable.

1978-23-43.

#### Surrender

**44.** (1) The holder of a farm woodlot licence may, on or before December 31, 1984, surrender the farm woodlot licence for replacement under this section.

(2) Where a farm woodlot licence is surrendered under subsection (1) the regional manager and the person surrendering the licence shall enter into a woodlot licence that

(a) shall be for a term of 15 years commencing on the date of the surrender; and

(b) describes as a woodlot licence area the area described in the farm woodlot licence.

(3) Notwithstanding its terms, a farm woodlot licence that is in force on January 1, 1979 expires on the earlier of December 31, 1985 or the date it is surrendered under this section.

(4) A notice of a surrender shall be published in the prescribed manner.

1978-23-44.

#### DIVISION (8) — MISCELLANEOUS

#### Free use permit

**45.** (1) An agreement in the form of a free use permit shall be entered into only with

(a) an occupier of land who requires Crown timber for developing the land for agricultural purposes;

(b) a person who requires firewood for his personal domestic purposes and not for sale to others;

(c) a school board that requires firewood for school purposes;

(d) a person who requires Crown timber for the purpose of scientific investigation;

(e) an owner of a Crown grant of a mineral claim, authorizing the use of Crown timber on land described in the grant in a mining operation conducted on that land; and

(f) a holder of a coal licence issued under the *Coal Act*, a holder of a lease or mining lease not in production, mineral claim or 2 post claim issued under the *Mineral Act*, or a holder of a placer lease under the *Mining (Placer) Act*, authorizing him to cut timber

(i) from land within the licence, claim or lease for the purpose of exploring for and developing minerals or coal, including all operations related to the exploration and development of minerals or coal or the business of mining but excluding operations and business respecting preparation for production; or

- (ii) on any Crown land, for use during the development stage of a mining operation on that land for stulls and props for underground use or for the construction of buildings.

(2) Notwithstanding subsection (1), a free use permit shall not be entered into where the applicant has, on land he owns or occupies, sufficient timber that is reasonably accessible for the purpose specified in the application.

1978-23-45.

#### Application and content

**46.** (1) An application for a free use permit shall be made in the form required by the regional manager.

(2) A free use permit

- (a) shall be for a term not exceeding one year;
- (b) shall give to its holder the right to harvest Crown timber from an area of Crown land for the purposes specified in it;
- (c) shall be limited to an area not exceeding 65 ha;
- (d) may, notwithstanding Part 4, Division (4), be suspended or cancelled, or both, without notice by the forest officer where its holder fails to comply with its terms and conditions, this Act or the regulations;
- (e) shall not require its holder to pay stumpage or royalty for the timber cut, or to pay rent; and
- (f) shall contain terms and conditions, consistent with this Act and the regulations, determined by the forest officer respecting the cutting, destruction and use of timber.

(3) The person in respect of whom or in respect of whose agreement a decision is made under subsection (2) may appeal the decision to the regional manager and the decision of the regional manager is final and binding.

(4) Notwithstanding section 154 (4), only sections 154 (5), 155 and 157 of Part 14, Division (1), apply to an appeal under subsection (3).

1978-23-46; 1979-11-6.

#### Licence to cut

**47.** (1) Where a person who purchases or occupies Crown land does not otherwise have the right to harvest Crown timber from the land, the regional manager may enter into an agreement in the form of a licence to cut authorizing the person to cut or remove, or both, timber on the land.

(2) The licence shall include terms and conditions and require payment of stumpage under Part 7, determined by the regional manager.

1978-23-47.

#### Use by Crown employees and agents

**48.** The regional manager may authorize employees and agents of the Crown, acting in the course of their duties, to harvest Crown timber or to use and occupy Crown land in a Provincial forest, on terms and conditions he considers appropriate.

1978-23-48.

## PART 4

## DIVISION (1) — INTERPRETATION

## Interpretation and application

## 49. (1) In this Part

“affiliate” has the same meaning as in the *Company Act*;

“agreement” means an agreement entered into under this or the former Act;

“deletion period” means, with respect to

- (a) a tree farm licence and replacements for it, each successive 25 year period commencing with the beginning of the term of the original tree farm licence entered into under section 27 or 33;
- (b) a timber licence or timber sale licence, the term of the licence;
- (c) a forest licence and replacements for it, each successive 15 year period commencing with the beginning of the term of the original forest licence entered into under section 11, 14 or 15; and
- (d) a woodlot licence and replacements for it, each successive 15 year period commencing with the beginning of the term of the original woodlot licence entered into under section 41 or 44;

“5 year cut control period” means the 5 year cut control period as defined in a forest licence, timber sale licence, timber sale harvesting licence, tree farm licence or woodlot licence, as the case may be, and where a 5 year cut control period is not defined in a licence, means the 5 year cut control period designated by the regional manager.

(2) Notwithstanding the definition of agreement, sections 52 to 54 and 56 do not apply to a tree farm licence or timber sale licence entered into under the former Act.

1978-23-49; 1979-11-7.

## DIVISION (2) — TRANSFER AND EXCHANGE

## Consent to transfer .

50. (1) Notwithstanding section 61 but subject to this section, the minister without notice may cancel

- (a) an agreement where, without his prior written consent
  - (i) the agreement or an interest in it is disposed of, except by way of security given in good faith;
  - (ii) the control of a corporation that holds the agreement, or of another corporation that, directly or indirectly, controls that corporation, changes or is acquired; or
  - (iii) a corporation that holds the agreement amalgamates with another corporation; or
- (b) a tree farm licence or woodlot licence, where without his prior written consent, private land, or an interest in it, in the licence area is disposed of, except by way of security given in good faith.

(2) Subsection (1) does not apply to

- (a) a disposition of an agreement or private land from a corporation to an affiliate corporation;
- (b) a change in or acquisition of control of a corporation

- (i) between affiliate corporations; or
- (ii) that is caused by a transmission of shares in its capital from the estate of a deceased person to his personal representative;
- (c) an amalgamation of affiliate corporations;
- (d) a disposition of an agreement or of private land made, on default of a bond, debenture, mortgage or other debt security, to the holder of the bond, debenture, mortgage or other debt security, or to a trustee, receiver or receiver-manager of the holder of the bond, debenture, mortgage or other debt security; or
- (e) a disposition of an agreement or private land by way of transmission from the estate of a deceased person to his personal representative that, within 3 months, is reported to the minister and, in the case of a disposition of an agreement, is evidenced by an assignment in a form required by the minister.

(3) In this section the control of a corporation shall be deemed not changed by reason only that shares in the capital of the corporation are assigned by way of security given in good faith.

1978-23-50.

#### Exchanges of rights

**51.** (1) The minister may, with the consent of the Lieutenant Governor in Council,

- (a) enter into, in exchange for the surrender of a timber licence, a new timber licence describing Crown land the timber on which is not otherwise encumbered; and
- (b) enter into under section 20 or 21, in respect of an old temporary tenure, a timber licence describing Crown land the timber on which is not subject to the tenure and is not otherwise encumbered.

(2) Notwithstanding section 85 of the *Land Act*, the Lieutenant Governor in Council may under that section accept, in exchange for Crown land, private forest land of greater or lesser value.

(3) Before a transaction is completed under subsection (1) or (2), the minister shall obtain a current appraisal of the value of the lands or timber, as the case may be, involved in the transaction, prepared by an independent appraiser appointed by the minister.

1978-23-51.

#### DIVISION (3) — INCREASES, DELETIONS AND REDUCTIONS

##### Increase of allowable annual cut

**52.** Where the holder of a forest licence or timber sale licence

- (a) applies silvicultural treatments to Crown land in the public sustained yield unit or timber supply area specified in the licence in addition to the silvicultural treatments required under the licence; or
  - (b) consistently practises a standard of utilization in operations under the licence to a standard higher than the standard required under the licence,
- the regional manager may, on application by the holder, increase the allowable annual cut authorized under the licence by a volume equal to the regional manager's determination of

- (c) the gain in productivity of Crown land for timber production, attributable to the additional silvicultural treatments; or
- (d) the excess in the standard of timber utilization.

1978-23-52.

#### Deletions and reductions

**53.** (1) The minister may, in a notice served on its holder at least one year in advance,

- (a) delete Crown land from a tree farm licence area or woodlot licence area, where the deletion does not affect the allowable annual cut approved for the tree farm licence or woodlot licence;
  - (b) delete from a tree farm licence area, Crown land referred to in section 28 (b) (i), 31 (1) or (2), or 32 (1), to be used
    - (i) for the purposes of highway, pipeline or power transmission line rights of way or of water storage; or
    - (ii) for a purpose other than referred to in subparagraph (i) and other than timber production;
  - (c) delete from a woodlot licence area or the area described in a timber licence Crown land to be used
    - (i) for the purposes of highway, pipeline or power transmission line rights of way or of water storage; or
    - (ii) for a purpose other than referred to in subparagraph (i) and other than timber production; or
  - (d) reduce the allowable annual cut authorized in a forest licence or timber sale licence where Crown land in the public sustained yield unit or timber supply area specified in it is to be used
    - (i) for the purposes of highway, pipeline and power transmission line rights of way or of water storage; or
    - (ii) for a purpose other than referred to in subparagraph (i) and other than timber production.
- (2) Where the total deletions made during a deletion period
- (a) from a tree farm licence area under subsection (1) (b),
    - (i) for purposes referred to in subsection (1) (b) (i), have the effect of reducing the portion of the allowable annual cut then approved for the tree farm licence that the chief forester determines is attributable to the Crown land referred to in sections 28 (b) (i), 31 (1) and (2) and 32 (1) by more than 5% of the portion of the allowable annual cut for the tree farm licence that the chief forester determines was attributable to that land at the beginning of the deletion period; or
    - (ii) for purposes referred to in subsection (1) (b) (ii), have the effect of reducing the portion of the allowable annual cut then approved for the tree farm licence area that the chief forester determines is attributable to the Crown land referred to in sections 28 (b) (i), 31 (1) and (2) and 32 (1) by more than 5% of the portion of the allowable annual cut for the tree farm licence that the chief forester determines was attributable to that land at the beginning of the deletion period; or
  - (b) from a woodlot licence area under subsection (1) (c),
    - (i) for purposes referred to in subsection (1) (c) (i), have the effect of reducing the allowable annual cut approved for the woodlot

licence by more than 5% of the allowable annual cut approved at the beginning of the deletion period; or

- (ii) for purposes under subsection (1) (c) (ii), have the effect of reducing the allowable annual cut approved for the woodlot licence by more than 5% of the allowable annual cut approved at the beginning of the deletion period.

the Crown shall compensate its holder in respect of the amount of the reduction exceeding 5%, for the unexpired portion of its term.

(3) Where the total deletions made under subsection (1) (c) during a deletion period from the area described in a timber licence

- (a) for purposes referred to in subsection (1) (c) (i) exceed 5% of the area described in the timber licence at the beginning of the deletion period; or
- (b) for purposes under subsection (1) (c) (ii) exceed 5% of the area described in the timber licence at the beginning of the deletion period,

the Crown shall compensate its holder in respect of the area exceeding 5%.

(4) Where the total reductions in the allowable annual cut authorized in a forest licence or timber sale licence made during a deletion period, in consequence of Crown land use

- (a) for purposes referred to in subsection (1) (d) (i) exceed 5% of the allowable annual cut authorized for the licence at the beginning of the deletion period; or
- (b) for purposes under subsection (1) (d) (ii) exceed 5% of the allowable annual cut authorized for the licence at the beginning of the deletion period,

the Crown shall compensate its holder in respect of the amount of the reduction exceeding 5%, for the unexpired portion of its term.

(5) In addition to compensation otherwise payable under this section, the Crown shall compensate the holder of a tree farm licence, woodlot licence, timber licence, forest licence or timber sale licence for improvements made to Crown land that

- (a) are authorized by the Crown; and
- (b) are not paid for by the Crown under this or the former Act.

(6) Where the amount of compensation is not agreed on, it shall be submitted for determination by one arbitrator or 3 arbitrators appointed under the *Arbitration Act* and

- (a) the person who is to be compensated shall, in a notice served on the minister, elect whether one or 3 arbitrators shall be appointed; and
- (b) the *Arbitration Act* applies to the submission.

(7) Notwithstanding this Act but subject to the consent of the person entitled, compensation payable under subsection (2), (3) or (4) may take the form of an agreement authorized under Part 3.

(8) A tree farm licence, woodlot licence, timber licence, forest licence or timber sale licence is deemed to be amended to the extent provided in a notice served under subsection (1) and its holder shall enter into an agreement with the Crown, evidencing the amendment.

1978-23-53.

#### Proportionate reduction

**54.** (1) Notwithstanding a forest licence or timber sale licence, the minister, in a notice served on all persons who hold forest licences or timber sale licences in a public sustained yield unit or timber supply area, may proportionately reduce the allowable annual cuts authorized in all of the licences, where the allowable annual cut determined

for the public sustained yield unit or timber supply area is reduced under section 7 (1) for any reason other than a reduction in the area of land in the public sustained yield unit or timber supply area.

(2) A forest licence or timber sale licence is deemed to be amended to the extent provided in a notice served under subsection (1) and its holder shall enter into an agreement with the Crown, evidencing the amendment.

1978-23-54.

#### Reduction of allowable annual cut

**55.** (1) Where the volume of timber harvested under a forest licence, timber sale licence, or timber sale harvesting licence during a 5 year cut control period is less than the minimum volume required to be harvested during that period in the forest licence, in a management and working plan approved under the forest licence, or in the timber sale licence or timber sale harvesting licence, the regional manager, in a notice served on its holder, may reduce, by a volume not greater than the deficiency, the allowable annual cut to be authorized under the forest licence, timber sale licence, timber sale harvesting licence, or a replacement for it, after the date specified in the notice.

(2) Where the volume of timber harvested under a tree farm licence or woodlot licence during a 5 year cut control period is less than the minimum volume required to be harvested during that period in the tree farm licence, in the woodlot licence, or in a management and working plan approved under it the

- (a) chief forester may, in a notice served on its holder,
  - (i) reduce, by a volume not greater than the deficiency, the allowable annual cut determined for the tree farm licence or a replacement for it; and
  - (ii) delete from the portion of the tree farm licence area referred to in section 28 (b) (i), 31 (1) or (2), or 32 (1), Crown land that he determines to be capable of producing an allowable annual cut not greater than a reduction made under subparagraph (i); and
- (b) regional manager may, in a notice served on its holder,
  - (i) reduce by a volume not greater than the deficiency, the volume of timber authorized to be harvested under the woodlot licence or a replacement for it; and
  - (ii) delete from the portion of the woodlot licence area described under section 42 (b) (ii), Crown land that he determines to be capable of producing a volume not greater than a reduction made under subparagraph (i).

(3) Unless Crown land is deleted under subsection (2) (a) (ii) or (b) (ii), the regional manager may under section 16 enter into with any person a timber sale licence authorizing the harvest in any year from the tree farm licence area or woodlot licence area, a volume of timber not greater than a reduction made under subsection (2) (a) (i) or (b) (i), as the case may be.

(4) Whether or not a reduction is made under subsection (2) the regional manager may under section 16 enter into with any person a timber sale licence authorizing the harvest from the tree farm licence area or woodlot licence area a volume of timber not greater than the deficiency under subsection (2).



(5) Where under a tree farm licence its holder submits for the approval of the chief forester a management and working plan and, after considering it, the chief forester determines that

- (a) the allowable annual cut that may be sustained on the tree farm licence area is higher than the allowable annual cut then authorized for
  - (i) the tree farm licence; or
  - (ii) a tree farm licence entered into under this or the former Act that the tree farm licence has replaced; and
- (b) the excess, or any part of it, is not attributable to a factor referred to in

section 28 (g) (i) (B) to (E) or to land added to the tree farm licence area, the minister may, in a notice served on its holder, delete from the portion of the tree farm licence area referred to in section 28 (b) (i), 31 (1) or (2), or 32 (1), an area of Crown land that the chief forester determines to be capable of sustaining an allowable annual cut not greater than the excess that is not so attributable.

(6) On being served a notice under subsection (5), the holder shall submit for the approval of the chief forester an amended management and working plan.

(7) A forest licence, timber sale licence, tree farm licence or woodlot licence shall be deemed to be amended to the extent provided in a notice served under this section and its holder shall enter into an agreement with the Crown, evidencing the amendment.

1978-23-55; 1979-11-8.

#### Reduction for failure to comply

**56.** Where the holder of a forest licence or timber sale licence

- (a) fails to comply with this Act, the regulations or the terms of the forest licence or timber sale licence, and the failure reduces the timber productivity of Crown land; or
- (b) consistently and without the consent of the regional manager practises a standard of timber utilization in operations under the licence that is lower than the standard required under the licence,

the regional manager, in a notice served on its holder, may reduce the allowable annual cut authorized in the licence by a volume of timber not greater than the regional manager's determination of

- (c) the reduction in timber productivity of Crown land caused by the failure; or
- (d) the deficiency in the standard of timber utilization.

1978-23-56.

#### Timber cruise

**57.** (1) The regional manager may, in a notice served on the holder of an old temporary tenure or timber licence, require him to submit a timber cruise, to a standard required by the regional manager, of the area of land subject to the tenure or licence.

(2) Where a timber cruise required under subsection (1) in respect of an area of land

- (a) is not submitted when required or, if submitted, discloses no merchantable timber on the area,
  - (i) no timber licence shall be entered into with respect to the area; and
  - (ii) an old temporary tenure or existing timber licence over the area, notwithstanding its terms and conditions or this Act, expires on the next anniversary of the day of its issue; or

- (b) discloses that a portion of the area is not covered by merchantable timber,
- (i) the portion shall, if the regional manager so orders, be surveyed by and at the expense of the holder of the tenure or licence; and
  - (ii) the regional manager may, in a notice served on its holder,
    - (A) delete the portion from an old temporary tenure or existing timber licence over the area; and
    - (B) exclude the portion from a future timber licence to be entered into for the area.

1978-23-57.

#### Compatible use

**58.** No agreement made under this or the former Act shall prevent or impede the Crown from using, or granting the use of, Crown land for any purpose that the regional manager considers is compatible with timber harvesting.

1978-23-58.

#### DIVISION (4) — SUSPENSION AND CANCELLATION

##### Suspension of rights

**59.** (1) Subject to section 60 and in addition to any penalty under this Act or the regulations, the regional manager may suspend, in whole or in part, rights in an agreement where its holder

- (a) made a material misrepresentation, omission or misstatement of fact in his application for the agreement or in information furnished with it;
- (b) fails to perform an obligation to be performed by him under the agreement; or
- (c) fails to comply with this Act or the regulations.

(2) Before the rights are suspended, the regional manager shall serve a notice on the holder

- (a) specifying the alleged failure of performance or compliance; and
- (b) allowing the holder at least 14 days after the date of service to remedy the failure of performance or compliance.

(3) Subject to section 60 a suspension of rights takes effect on the expiry of the time allowed in the notice and continues until the rights are reinstated by the regional manager or cancelled under this Act.

(4) On request of the holder, the regional manager shall allow him an opportunity to be heard and shall rescind the notice where he considers that the holder is not subject to subsection (1).

(5) On the application of the holder of the agreement the regional manager shall reinstate rights suspended under this section or section 60 where the holder is performing his obligations and is complying with this Act and the regulations.

1978-23-59.

##### Suspension by officer

**60.** The regional manager or a forest officer authorized by him may, by written order and without notice, suspend in whole or part the rights under an agreement where he believes on reasonable and probable grounds that its holder has failed to perform an

obligation to be performed by him under the agreement or has failed to comply with this Act or the regulations, and that the failure of performance or compliance is causing or may imminently cause serious damage to the natural environment.

1978-23-60.

#### Cancellation

**61.** (1) Where rights are under suspension

- (a) the chief forester may cancel a tree farm licence, pulpwood harvesting area agreement or pulpwood agreement; and
- (b) the regional manager may cancel an agreement other than an agreement referred to in paragraph (a).

(2) At least 3 months before cancelling an agreement the chief forester or the regional manager, as the case may be, shall serve on its holder a written notice of cancellation specifying the grounds of cancellation and the day on which cancellation takes effect.

(3) Where, within 30 days after a notice of cancellation has been served the holder so requests, the chief forester or the regional manager, as the case may be, shall give him an opportunity to be heard.

(4) A notice of cancellation may be rescinded or the day on which a cancellation takes effect may be postponed.

(5) Notice of a cancellation shall be published in the Gazette.

1978-23-61.

#### Continuing liability

**62.** Notwithstanding the expiry, surrender, suspension or cancellation of his agreement the holder is liable

- (a) to pay the rent, fees, costs and penalties owing to the Crown in respect of the agreement; and
- (b) to perform all other obligations under the agreement incurred before its expiry, surrender, suspension or cancellation.

1978-23-62.

#### No compensation

**63.** No compensation is payable by the Crown and no proceedings shall be commenced or maintained to claim compensation from the Crown or to obtain a declaration that compensation is payable by the Crown in respect of an expiry, failure to extend, reduction, deletion or deeming under section 15 (1), 19 (b) and (c), 20 (3), 33 (1) and (5), 37 (1), 39 (1), 44 (3), 53 (except as provided in it), 54 to 57, or 95.

1978-23-63.

### PART 5

#### Timber marking: interpretation

**64.** In this Part "registrar" means the registrar designated by the minister to administer timber marks.

1978-23-64.

**Timber marks**

- 65.** (1) No person shall remove timber from Crown or private land unless he
- (a) obtains a certificate under section 66 (1); and
  - (b) conspicuously marks the timber in the prescribed manner with the timber mark described in the certificate.
- (2) The timber mark on timber that is to be floated or put into rafts in water shall be located so that it is readily discernible when the timber is in the water.
- (3) The chief forester and regional manager may exempt timber from this section and may attach conditions to the exemption.

1978-23-65.

**Applications**

- 66.** (1) On receiving an application in a form required by the minister, and on payment of a fee required by the minister, the registrar shall issue to the applicant a certificate that describes a timber mark and identifies the land to which it pertains.
- (2) On receiving an application from the holder of a timber mark, the registrar may approve the use of a timber mark for timber cut on land other than the land that was originally described in the certificate and shall amend the certificate issued under subsection (1) and the timber mark register accordingly.
- (3) On the recommendation of the regional manager the registrar may cancel a timber mark.

1978-23-66.

**Marine log brand**

- 67.** (1) On receiving an application the registrar may approve a marine log brand that, in his opinion, does not so closely resemble any other marine log brand as to be misleading.
- (2) An application shall be in the form required by the minister, include a prescribed fee and contain a facsimile of the marine log brand applied for.
- (3) Where he approves a marine log brand the registrar shall issue to the applicant a certificate containing a facsimile of the marine log brand.

1978-23-67.

**Marking with brand**

- 68.** The holder of a marine log brand may, after timber is marked with a timber mark according to this Part and after it is scaled according to Part 6, conspicuously mark the timber in the prescribed manner with the marine log brand so that the brand is readily discernible when the timber is in water.

1978-23-68.

**Transfer**

- 69.** (1) No person shall use a timber mark or marine log brand without the consent of the holder of the certificate that describes the mark or brand.
- (2) Without the written consent of the regional manager and prior notification to the registrar, the right to use a timber mark or marine log brand is not transferable.

1978-23-69.

**Evidence**

**70.** A certificate, purporting to be signed by the registrar or the chief forester, to the effect that a timber mark certificate has been issued to, or a marine log brand has been approved for use by, a person, shall be received in court as proof of the facts stated in it.

1978-23-70.

**Registers**

**71.** The registrar shall keep

- (a) a timber mark register in which shall be noted the characters of each timber mark, the name of its holder and the land the mark pertains to; and
- (b) a marine log brand register in which shall be noted the characters of each marine log brand approved and the name of its holder.

1978-23-71.

**PART 6****Timber scaling: interpretation**

**72.** In this Part

“acting scaler” means a person appointed under section 78 (3) (a);

“licensed scaler” means a person who holds a scaling licence issued under section 78 (2);

“forest service scaler” means a forest officer appointed under section 78 (3) (b);

“scale” means to determine the volume and classify the quality of timber for the purpose of this Act.

1978-23-72.

**Timber to be scaled**

**73.** (1) No person shall manufacture products from, sell or remove from the Province

- (a) timber that is cut from private land unless it is scaled by a licensed scaler authorized by the regional manager to scale the timber; and
- (b) timber that
  - (i) is cut from Crown land and that under the terms of the authority to cut is required to be scaled; or
  - (ii) is salvaged from water or foreshore, unless it is scaled by a forest service scaler.

(2) Where the regional manager considers it necessary to avoid unreasonable delays or costs, he may order that

- (a) timber that is required to be scaled by a forest service scaler may be scaled by a licensed scaler who is not a forest service scaler or by an acting scaler; and
- (b) timber that is required to be scaled by a licensed scaler may be scaled by an acting scaler.

(3) The chief forester, a regional manager and a forest officer authorized by either of them may exempt timber from this section and may attach conditions to the exemption.

1978-23-73.

**Metric scale**

- 74.** (1) A person who scales or purports to scale timber under this Act
- (a) shall carry out the scale according to the prescribed procedures; and
  - (b) shall express the scale in cubic metres or another unit of metric measure required by the chief forester for special forest products.
- (2) A scale that is expressed in cubic metres shall be known as British Columbia metric scale.
- (3) The chief forester may authorize the use of the British Columbia cubic scale specified under the former Act where he considers that use of British Columbia metric scale is not practical.

1978-23-74.

**Scale return**

- 75.** A person who performs a scale shall complete a scale return in a form required by the chief forester and deliver copies of the scale return to the regional manager and the person who requested the scale.

1978-23-75.

**Scaling fees**

- 76.** A person who requests a scale to be performed by an employee of the Ministry of Forests shall pay to the Crown the prescribed scaling fees.

1978-23-76; 1979-11-9.

**Second scale**

- 77.** (1) Where a person who has had a scale performed under section 73 or whose interest is affected by a scale performed under section 73
- (a) in a notice served on the regional manager objects to the scale return completed for the scale; and
  - (b) pays to the Crown a deposit in an amount equal to the regional manager's estimate of the scaling fees for the second scale,
- the regional manager shall have the timber scaled again and a second scale return prepared.
- (2) Where the second scale return
- (a) varies from the original scale return by more than the extent prescribed in the regulations,
    - (i) the second scale return governs for all purposes;
    - (ii) no scaling fees are payable in respect of the second scale; and
    - (iii) the regional manager shall refund the deposit paid under subsection (1); or
  - (b) does not vary from the original scale return by more than the extent prescribed in the regulations
    - (i) the original scale return shall govern for all purposes;
    - (ii) the person who objected to the original scale shall pay scaling fees in respect of the second scale; and
    - (iii) the deposit paid under subsection (1) shall be applied toward the scaling fees and any excess shall be refunded.

1978-23-77.

**Scaling**

**78.** (1) A person who applies for a scaling licence shall be examined by one or more scaling examiners appointed by the chief forester.

(2) Where an applicant passes the examinations approved by the chief forester, the chief forester may issue a scaling licence to him.

(3) The regional manager may appoint

(a) any person as an acting scaler; and

(b) a forest officer who holds a scaling licence as a forest service scaler.

1978-23-78.

**Re-examination**

**79.** (1) The chief forester may, in a notice served on a licensed scaler, require the licensed scaler to be examined under section 78.

(2) Unless the licensed scaler passes the examination within the time specified by the chief forester in the notice, his scaling licence terminates at the end of the specified time.

1978-23-79.

**Suspension and cancellation**

**80.** (1) Where a licensed scaler fails to properly perform his duties or comply with this Part or the regulations respecting scaling,

(a) the regional manager may, in a notice served on him, suspend his scaling licence for a period or time; and

(b) the chief forester, whether or not the licence is under suspension, may, in a notice served on him, cancel his scaling licence.

(2) Before he cancels a scaling licence the chief forester shall give the licensed scaler an opportunity to be heard.

1978-23-80.

**PART 7****Amount of royalty or stumpage**

**81.** Subject to sections 86 and 87, where royalty or stumpage is payable to the Crown in respect of Crown timber, the amount payable shall be calculated by multiplying

(a) the volume of the timber reported in a scale made under Part 6, or calculated under section 85; by

(b) the rate of royalty under section 82 or stumpage under section 84, as the case may be, applicable to the timber when the scale is made.

1978-23-81.

**Rate of royalty and stumpage**

**82.** (1) Notwithstanding another Act or agreement,

(a) the holder of an old temporary tenure shall pay to the Crown, in respect of timber cut under it and scaled after January 1, 1979, royalty at the rates in Schedule A; and

(b) the holder of a timber licence shall pay to the Crown, in respect of timber cut under the licence and scaled after January 1, 1979,

- (i) royalty at the rates in Schedule A; or
  - (ii) stumpage at rates determined under section 84 according to the election made under section 23.
- (2) Royalty that is payable in respect of special forest products scaled after January 1, 1979 shall be at the prescribed rates.
- (3) Notwithstanding subsection (1), the regional manager may reduce, by not more than 75%, a royalty rate payable with respect to timber where the regional manager is satisfied that the timber is dead or severely damaged from fire, insects, disease or other means, not caused by the person who has the right to cut the timber, and its value has been significantly diminished as a result.
- (4) Notwithstanding another Act or a grant of Crown land, no royalty is reserved or payable to the Crown in respect of timber cut from private land and scaled after January 1, 1979.

1978-23-82.

**Forest products for stumpage**

**83.** For all or part of a forest region the minister shall specify the forest products, the values and production costs of which shall be used in determining stumpage rates applicable to timber cut in that forest region or part.

1978-23-83.

**Stumpage rate determined**

**84.** (1) Where stumpage is payable to the Crown under an agreement entered into under this or the former Act, the rates of stumpage shall be determined under this section and the regulations by the regional manager or a forest officer authorized by him and the rates shall be varied according to the agreement.

- (2) In determining stumpage rates the regional manager or forest officer shall
- (a) consider an estimate of the volume, species composition and quality of the timber;
  - (b) estimate the quantities and values of the forest products specified under section 83 that may be produced from the timber;
  - (c) estimate the cost that he considers will be incurred to
    - (i) provide access to and harvest the timber, deliver it, and process it into the forest products specified under section 83; and
    - (ii) perform the holder's responsibilities included in the agreement under which the timber is cut;
  - (d) make an allowance for
    - (i) profit and risk that he considers will be adequate in relation to the relevant operations referred to in paragraph (c); and
    - (ii) the cost of silvicultural treatment and construction of a primary access road where the cost was approved under the former Act and compensation has not been made; and
  - (e) consider any incentives required to encourage the harvesting of timber that otherwise would be lost.

(3) Notwithstanding subsection (2), where the regional manager considers it appropriate he may authorize a forest officer to determine stumpage rates for timber based on stumpage rates determined for similar timber on Crown land in the vicinity of the land from which the timber is to be cut.



(4) A stumpage rate shall not be lower than the prescribed minimum.

(5) Where the Lieutenant Governor in Council considers it to be in the public interest, he may order that stumpage rates applicable to timber in an area of the Province shall be lower than the rates determined under subsections (2) to (4), for a period not exceeding one year.

1978-23-84; 1979-11-10.

#### Cruise instead of scale

**85.** With the approval of the regional manager, the amount of royalty or stumpage payable on Crown timber may be calculated using the information provided by a cruise of the timber conducted before it is cut, instead of the volume reported in a scale of the timber made under Part 6.

1978-23-85.

#### More than one rate

**86.** Where the regional manager considers it appropriate and where more than one royalty rate or stumpage rate, or both, applies to timber cut in a timber harvesting operation, a single rate of royalty or stumpage, calculated as the average of the rates that otherwise would be applicable weighted according to the respective volumes of timber estimated by the regional manager to be subject to each rate, shall be payable on the timber.

1978-23-86.

#### Rate on unscaled timber

**87.** Where Crown timber on which royalty or stumpage is payable is processed, sold or removed from the Province without first being scaled under Part 6, the amount of royalty or stumpage payable shall be calculated by multiplying

- (a) the regional manager's estimate of the volume of the timber; by
- (b) the rate of royalty or stumpage, as the case may be, that the regional manager considers would have applied if the timber had been scaled under Part 6.

1978-23-87.

#### Credit to stumpage

**88.** Where, under an agreement made under this or the former Act

- (a) a person incurs an expense in respect of a forest nursery or seed orchard on private land or performs work on Crown land by
    - (i) constructing a logging access road;
    - (ii) applying reforestation or other silvicultural treatment; or
    - (iii) carrying out another responsibility that is not considered in the determination of stumpage rates;
  - (b) the work is approved in advance by the regional manager;
  - (c) the expense of performing the work, or a formula for ascertaining the expense, is approved by the regional manager; and
  - (d) the work is performed to the satisfaction of the regional manager,
- the expense that is approved, or that is ascertained according to the formula, shall be applied as a credit against stumpage payable by the person in respect of timber harvested in a prescribed area of the Province.

1978-23-88; 1979-11-11.

**Annual rent**

- 89.** (1) Notwithstanding another Act or an agreement, the holder of
- (a) an old temporary tenure, tree farm licence, timber sale licence or timber sale harvesting licence entered into under the former Act, that is in force on January 1, 1979; and
  - (b) a forest licence, timber sale licence, timber licence, tree farm licence or woodlot licence entered into under this Act

shall pay to the Crown on or before a date specified by the minister, annual rent at the rates in Schedule B.

(2) Where an old temporary tenure or timber licence expires under Part 3, Division (4), and is replaced by a timber licence, annual rent that is paid and attributable to the unexpired portion of its term shall be credited to the annual rent payable for the first year of the term of the timber licence.

(3) Notwithstanding subsection (1), where the annual rent payable in respect of a timber sale licence is less than \$25, the regional manager shall exempt the holder from the payment of the annual rent.

1978-23-89; 1979-11-12.

**Calculation of annual rent**

**90.** (1) The annual rent payable for a tree farm licence shall be calculated by adding

- (a) the total annual rent payable for old temporary tenures or timber licences in the tree farm licence area; and
- (b) the portion of the allowable annual cut approved for the tree farm licence that the chief forester determines is attributable to land
  - (i) that is not subject to a private tenure, where the tree farm licence was entered into under the former Act; or
  - (ii) referred to in sections 28 (b) (i), 31 (1) and (2) and 32 (1), where the tree farm licence is entered into under this Act,

as the case may be, multiplied by the annual rent rate in Schedule B for tree farm licences.

(2) The annual rent payable for a woodlot licence shall be the portion of the volume authorized to be harvested under the licence that the regional manager determines is attributable to land referred to in section 42 (b) (ii), multiplied by the annual rent rate specified in Schedule B for woodlot licences.

1978-23-90.

**PART 8****Road permit application**

**91.** (1) Where a person who has a right to harvest timber does not have access to the timber over an existing road on Crown or private land, and the most efficient means of providing access to the timber is by the building or modification of a road on Crown land or by the use of a forest service road, the regional manager shall, subject to this Part, grant a road permit to the person to provide access to the timber.

(2) On application, the regional manager may grant a road permit conferring on a person the right to use a forest service road for any purpose.

(3) An application for a road permit shall be in the form required by the chief forester.

1978-23-91.

**Regional manager to determine**

- 92.** (1) In respect of an application for a road permit by a person who has the right to harvest timber, the regional manager
- (a) shall determine whether access to the timber is to be provided by one or both of
    - (i) a forest service road; or
    - (ii) a new road to be built, or an existing road to be used or modified, by the applicant; and
  - (b) shall, where a new road is to be built or an existing road is to be modified by the applicant, determine
    - (i) a right of way that, in his opinion, will provide access to the timber without causing unnecessary disturbance to the natural environment; and
    - (ii) whether access across private land on the right of way is to be acquired by the Crown or by the applicant.
- (2) Before entering into a road permit with respect to Crown land outside a Provincial forest, the regional manager shall notify the regional land manager of the Ministry of Lands, Parks and Housing.

1978-23-92.

**Road permit content****93.** A road permit

- (a) shall describe
  - (i) the forest service road, where a forest service road is to be used; or
  - (ii) a right of way, where a new road is to be built or an existing road used or modified by its holder;
- (b) shall, where a new road is to be built or an existing road modified by its holder on Crown land,
  - (i) grant to its holder the right to build or modify the road, to use it, and to harvest timber on the right of way; and
  - (ii) require its holder to pay to the Crown, where royalty is not otherwise payable under this Act in respect of the timber, stumpage at rates determined under Part 7;
- (c) shall, where a forest service road is to be used, grant to its holder the right to use the forest service road on terms and conditions specified in the road permit; and
- (d) shall include other terms and conditions, consistent with this Act and the regulations, determined by the regional manager.

1978-23-93.

**Right of way across private land**

- 94.** (1) A holder of a road permit who requires access across private land under section 92 (b) (ii) and a person who otherwise requires access across private land to timber that he has the right to harvest, after a notice has been published in the Gazette and served on every person having a registered interest in the private land, with or without the consent of a person having an interest in the private land and on paying compensation under this section,

- (a) has a right of way on the land described in the notice, for the period specified in the notice;
  - (b) may, where the registrar is satisfied that compensation has been paid to the person or into court under this section, register a copy of the notice as a charge against the land; and
  - (c) may build, use and maintain a road on the right of way according to the notice.
- (2) A person having a right of way under subsection (1) shall compensate a person having an interest in the private land for the extinguishment of his interest under this section.
- (3) Where the amount of compensation is not agreed on it shall be submitted for determination to one arbitrator or 3 arbitrators appointed under the *Arbitration Act* and
- (a) the person who is to be compensated shall elect whether one or 3 arbitrators shall be appointed; and
  - (b) the *Arbitration Act* applies to the submission.
- (4) A person who is to pay compensation under this section may pay into court the amount agreed on or the amount awarded under subsection (3), as the case may be, pending the determination of amounts respectively payable to persons who have interests in the private land and on payment under this subsection the payer shall be deemed to have performed his obligation to compensate under subsection (2).
- (5) Payment under subsection (2) or (4) constitutes a complete extinguishment of every interest in the right of way, to the extent and for the period set out in the notice.
- (6) The width of a right of way under this section shall not exceed
- (a) 20 m, where the grade level of the road is less than 2 m higher or lower than the land adjacent to the road; and
  - (b) a distance greater than 20 m that is reasonably required to accommodate side slopes and ditches, where the grade level of the road is more than 2 m higher or lower than the land adjacent to the road.
- (7) A person served with a notice under subsection (1) may appeal the location of the right of way to an appeal board.

1978-23-94.

**Deemed ownership**

- 95.** (1) A road on Crown land that is used, built or modified under a road permit
- (a) shall, unless the permit provides that the expense approved for the road is to be applied as a credit against stumpage under section 88, be deemed to be owned by the holder of the road permit until the earlier of the date
    - (i) the road permit expires; or
    - (ii) the holder, by a declaration in a form required by the minister, elects that the road shall not be deemed to be owned by him;
  - (b) is a forest service road, if the road permit provides that the expense approved for the road is to be applied as a credit against stumpage under section 88; and
  - (c) shall become a forest service road if and when, after the road is no longer deemed to be owned by the holder of the road permit, the minister so determines.
- (2) A road that was built on Crown land under the former Act and deemed, before January 1, 1979, to be the private property of a person

- (a) shall be deemed to be owned by the person until the earliest of
    - (i) the expiry of the agreement or authority under which the road was built;
    - (ii) the date the person by a declaration in a form required by the minister elects that the road shall not be deemed to be owned by him; or
    - (iii) the date any part of an amount approved for the road is applied as a credit against stumpage under section 88; and
  - (b) shall become a forest service road if and when, after the road is no longer deemed to be owned by the person, the minister so determines.
- (3) Notice of a determination of the minister under subsection (1) (c) or (2) (b) shall be published in the Gazette.

1978-23-95.

**Non-industrial use**

**96.** (1) Subject to this section and to regulations respecting the road made under the *Highway (Industrial) Act*, a road deemed owned under section 95 may be used for non-industrial purposes by any person.

(2) Where use of a road under subsection (1) would likely cause significant damage to the road or endanger life or property, the deemed owner of the road may

- (a) close the road by means of gates;
- (b) restrict the use of the road by posting a notice on the road; and
- (c) at the expense of its owner, remove a vehicle or animal that is on the road unless it is there lawfully.

1978-23-96.

**Industrial or timber use**

**97.** (1) A person who wishes to use a road deemed to be owned under section 95 but who is unable to reach agreement with the deemed owner respecting use of the road may apply to the regional manager for a determination.

(2) On application under this section, the regional manager shall make a determination, consistent with a regulation respecting the road made under the *Highway (Industrial) Act*, that he considers fair and reasonable for the use of the road and for compensation to be paid to the deemed owner.

1978-23-97.

**Forest service road use**

**98.** No person shall use a forest service road for transporting timber or for any other industrial purpose except under a road permit, unless the regional manager or a forest officer authorized by him exempts the road from this section.

1978-23-98.

**Consent to connect**

**99.** Subject to the *Highway Act* and the *Ministry of Transportation and Highways Act*, no person shall connect a road to a forest service road without the regional manager's consent.

1978-23-99; B.C. Reg. 91/79; B.C. Reg. 537/79.

**Not public highway**

**100.** Notwithstanding the *Highway Act*, a road built or maintained under this or the former Act is not a public highway unless the Lieutenant Governor in Council orders it to be a public highway.

1978-23-100.

**Branch and spur roads**

**101.** Nothing in this Part prevents the building and use of branch and spur roads on Crown land that is subject to

- (a) a cutting permit issued under a timber licence, timber sale harvesting licence, forest licence, tree farm licence, farm woodlot licence or woodlot licence;
- (b) a timber sale licence;
- (c) an operating plan approved under an old temporary tenure; or
- (d) a free use permit or licence to cut, according to the terms of the permit, licence or tenure.

1978-23-101.

**Road and trail building**

**102.** (1) For the purpose of providing access to timber and notwithstanding section 4 of the *Ministry of Transportation and Highways Act*, the minister may

- (a) build, maintain and modify roads and trails;
- (b) enter on and take possession of private land, and of roads and trails on private land;
- (c) enter on private land and take from it timber, stones, gravel, sand, clay or other materials for the purpose of building roads and trails;
- (d) build, take possession of and use temporarily roads for the purposes of paragraph (c); and
- (e) enter on private land and build and maintain on it drains to carry water from a road.

(2) Where private land is taken under subsection (1) (b) and, as a result of the taking, the total area in the original grant of the private land from the Crown that is taken by the Crown

- (a) for highways purposes, as referred to in section 16 (1) (b) of the *Highway Act*; and
- (b) under this Act

since the date of the original grant from the Crown exceeds 5% of the total area in the original grant from the Crown, the Crown shall pay compensation in respect of the area exceeding 5%.

(3) Where private land taken under subsection (1) has, since the date of the Crown grant, been subdivided into 2 or more parcels by a registered conveyance or subdivision plan,

- (a) the area of a parcel that may be taken without compensation shall not exceed 5% of the area of the parcel; and
- (b) the total area to be taken without compensation shall be apportioned among all parcels, portions of which are taken at the same time, in proportion to the area taken from each.

(4) The Crown shall pay compensation in respect of improvements on all private land taken under subsection (1).

(5) Where an amount of compensation payable under this section is not agreed on, it shall be submitted for determination to one arbitrator or 3 arbitrators appointed under the *Arbitration Act* and

(a) the person who is to be compensated shall in a notice served on the minister elect whether one or 3 arbitrators shall be appointed; and

(b) the *Arbitration Act* applies to the submission.

(6) Land that is taken under this section shall be deemed to be taken for the purpose of a highway, as referred to in section 16 (1) (b) of the *Highway Act*.

(7) Notice of a road built under this section shall be published in the *Gazette*.

1978-23-102; B.C. Reg. 91/79; B.C. Reg. 537/79.

#### Limited liability

**103.** Except for misfeasance no action lies against

(a) the Crown, in respect of the condition of a road built under this or the former Act;

(b) the holder of a road permit, in respect of the condition of the road specified in the road permit; or

(c) a person who is deemed under section 95 to own a road, in respect of the condition of the road he is deemed to own.

1978-23-103.

### PART 9

#### Designation of forest recreation sites and trails

**104.** (1) The chief forester may designate Crown land

(a) within a public sustained yield unit or timber supply area; or

(b) that is subject to a tree farm licence, woodlot licence or timber licence as a recreation site or recreation trail.

(2) A recreation site or recreation trail shall not be designated on Crown land that is subject to

(a) a cutting permit issued under a timber sale harvesting licence or forest licence;

(b) a timber sale licence, tree farm licence, woodlot licence, free use permit, licence to cut, old temporary tenure or timber licence;

(c) a grazing licence, grazing permit, hay cutting licence or hay cutting permit entered into under the *Range Act*; or

(d) an interest issued or granted under the *Land Act*, without the consent of the holder of the licence, permit, tenure or interest.

(3) The chief forester

(a) may amend and may cancel a designation made under subsection (1); and

(b) shall notify the Minister of Lands, Parks and Housing of a designation made under subsection (1) and an amendment or cancellation made under this subsection.

1978-23-104; 1979-20-14(1).

**Prohibited use**

**105.** Except under the *Mineral Act*, *Mining (Placer) Act*, *Coal Act* or *Petroleum and Natural Gas Act*, a recreation site or recreation trail designated under section 104 that is within a Provincial forest shall not be used or occupied for a purpose that the regional manager considers is incompatible with use for recreation purposes.

1978-23-105.

**Development and maintenance**

**106.** The minister may

- (a) develop and maintain recreation sites and recreation trails;
- (b) enter into an agreement with any person providing for the development and maintenance of recreation sites and recreation trails; and
- (c) make rules concerning the use of recreation sites and recreation trails.

1978-23-106.

**Stumpage credit**

**107.** Where a forest licence, timber sale licence, tree farm licence or woodlot licence requires its holder to develop and maintain recreation sites or recreation trails, the expense incurred shall, if approved under section 88, be applied as a credit against stumpage.

1978-23-107.

**PART 10****DIVISION (1) — FOREST PROTECTION: INTERPRETATION AND APPLICATION****Interpretation**

**108.** In this Part

“fire season” means the period each year commencing April 15 and ending October 15, or any other period ordered by the Lieutenant Governor in Council for a particular calendar year;

“forest” means land containing timber, shrubs, slash or peat;

“occupied area” means

- (a) a parcel, as defined in the land title legislation, of private land or of Crown land subject to an interest under the *Land Act*, that is not in a tree farm licence area or woodlot licence area;
- (b) Crown land subject to
  - (i) an old temporary tenure, free use permit, licence to cut or road permit; or
  - (ii) a timber sale licence that does not make provision for cutting permits;
- (c) Crown or private land subject to a cutting permit issued under a tree farm licence, woodlot licence, forest licence, timber sale harvesting licence, timber sale licence or timber licence; or
- (d) Crown land that is actually occupied by a person for an industrial operation, except an industrial operation carried on under a tenure,



licence or permit referred to in paragraph (b) or (c), including Crown land within 100 m of the perimeter of the operation;

"slash" includes brush and other forest debris;

"snag" means a dead tree.

1978-23-108.

#### Application

**109.** This Part does not reduce an obligation imposed by, and shall be construed to be in addition to enactments of, a municipality, regional district and improvement district.

1978-23-109.

### DIVISION (2) — FIRE PREVENTION

#### Burning permit

**110.** (1) Subject to this Part, no person shall light, fuel or make use of an open fire in or within 1 km of a forest

(a) anywhere in the Province, during the fire season; or

(b) in an area of the Province specified in an order made under section 112, during the period specified in the order other than under and in compliance with a burning permit.

(2) The Lieutenant Governor in Council may by order exempt a part of the Province from subsection (1).

1978-23-110; 1979-11-13.

#### Cooking and warmth

**111.** (1) Subject to the regulations, a person may, except in an area and during a period specified in an order made under section 114, light, fuel and make use of an open fire for cooking or warmth.

(2) A person who, for cooking or warmth, lights, fuels or makes use of an open fire shall comply with the regulations, and shall not leave the open fire unattended.

1978-23-111.

#### Outside fire season

**112.** (1) Where he considers it necessary for controlling smoke or for silvicultural or other resource management purposes during a period that is not included in a fire season, the regional manager may order that, during the period and in the area specified in the order, no person shall light, fuel or make use of an open fire except for cooking or warmth, other than under and in compliance with a burning permit.

(2) Notice of the order shall be published or broadcast, or both, in or near the area specified in the order.

1978-23-112.

#### Issue of burning permit

**113.** (1) A regional manager, a forest officer authorized by the regional manager or a person authorized in writing by either of them, may issue a burning permit authorizing its holder to light, fuel and make use of an open fire for any purpose,

and the burning permit may contain terms and conditions the person who issues the permit considers appropriate.

(2) A regional manager or a forest officer authorized by him may, in a notice served on its holder, suspend for a period or cancel a burning permit where

- (a) the permit is not complied with; or
- (b) the holder of the permit contravenes this Part or a regulation made respecting this Part.

1978-23-113.

#### Suspension of permit

**114.** Where he considers it necessary as a precaution against forest fire

(a) the regional manager may, in a notice published or broadcast, or both, in or near an area of the Province,

(i) suspend, cancel or restrict the use of all burning permits issued for the area; and

(ii) order that no person shall light, fuel or make use of an open fire in the area for cooking or warmth or for any other purpose; and

(b) the regional manager or a forest officer authorized by him may, in a notice served on its holder, suspend, cancel or restrict the use of a burning permit.

#### Restricted district

**115.** (1) Where the minister considers that life or property is endangered by hazardous fire conditions, by the occurrence or spread of fire in a forest in an area, or by forest protection operations he may, in a notice published or broadcast, or both, in or near the area, order that,

(a) after a date specified in the notice and until an order is made under paragraph (b), the area is a restricted district; and

(b) after a date specified in the notice, the area is no longer a restricted district.

of the regional manager or a forest officer authorized by him,

(a) enter or be in the restricted district for a purpose prohibited in the order; or

(b) carry on industrial or other operations of a kind prohibited in the order, in, or within 1 km of, a forest in the restricted district.

(3) This section does not prevent a person

(a) who resides on land in a restricted district from travelling to and from, or occupying, his residence;

(b) from using a highway, as defined in the *Highway Act*; or

(c) from travelling to and from an industrial or other operation that is not of a kind prohibited in the order.

1978-23-115.

#### Fire to be extinguished

**116.** A person who in or within 1 km of a forest

(a) throws or drops a burning match or lighted cigarette, cigar, ashes of a pipe or other burning substance; or

- (b) causes a fire by any means or for any purpose, shall ensure that the match, cigarette, cigar, ashes of a pipe or other burning substance, or fire, is extinguished before leaving the area.

1978-23-116.

### DIVISION (3) — SLASH AND SNAG DISPOSAL

#### Slash disposal

**117.** (1) Where slash is on Crown or private land as a result of

- (a) a timber harvesting, land clearing, or timber processing operation; or
- (b) other industrial operations conducted in or within 1 km of a forest

the regional manager or a forest officer authorized by him may, in a notice served on the person conducting the operation, order the person to dispose of the slash by burning or other means.

- (2) An order under subsection (1), respecting Crown land, may
- (a) specify that slash on part of an area not be disposed of;
  - (b) specify measures to be taken by the operator to protect soil, seedlings, young trees, standing timber or other property; and
  - (c) require payment of a deposit to the Crown, in respect of the disposal.

(3) Where an order made under subsection (1) requires slash to be disposed of by burning during a fire season or during a period specified in an order under section 112 (1), a burning permit shall be issued to the person conducting the operations.

1978-23-117.

#### Snag falling

**118.** (1) A person who carries on a timber harvesting, land clearing, or other industrial operation involving timber cutting, shall concurrently fall every snag that is standing in the area of the operation.

(2) The regional manager or a forest officer authorized by him may exempt a person from subsection (1).

1978-23-118.

#### Contravention

**119.** (1) Where slash is not disposed of or snags are not felled as required under this Division

- (a) the regional manager may dispose of the slash or fall the snags, and the person who was required to do so shall pay to the Crown the costs incurred by the Crown, as determined by the regional manager; or
- (b) the regional manager may order the person who is required to dispose of the slash or fall the snags to pay to the Crown an amount determined under the regulations.

(2) The regional manager may refund to a person all or part of an amount paid by him under subsection (1) (b) where the slash is disposed of or the snags are felled to the regional manager's satisfaction.

1978-23-119.

## DIVISION (4) — FIRE SUPPRESSION

**Extinguishing and reporting**

**120.** A person who sees an unattended open fire burning in or within 1 km of a forest shall

- (a) use his best efforts to control and extinguish the fire; and
- (b) report the fire to a forest officer or peace officer without delay.

1978-23-120.

**Fire control**

**121.** Where an uncontrolled fire is burning on or has burned across

- (a) an occupied area, as referred to in subparagraph (i) of that definition, that a person occupies for any purpose;
- (b) an occupied area, as referred to in subparagraph (ii) or (iii) of that definition, on which a person is carrying on an operation under the tenure, licence or permit; or
- (c) an occupied area, as referred to in subparagraph (iv) of that definition, on which a person is carrying on an industrial operation referred to in that subparagraph,

the person shall, regardless of the cause or the origin of the fire, use his best efforts to control and extinguish the fire and for that purpose shall, subject to an agreement entered into under this or the former Act,

- (d) employ a number of persons equal to the maximum number of persons employed by him within 24 hours before discovery of the fire, in the operations carried on on the occupied area and on a forest service road or right of way under a road permit that provides access to the occupied area;
- (e) engage all appropriate equipment that is on or reasonably close to the occupied area when the fire is discovered; and
- (f) if ordered to do so by the regional manager or a forest officer authorized by him, place those persons and that equipment at their disposal for the purpose of controlling or extinguishing the fire,

unless the regional manager or a forest officer authorized by him exempts the person in whole or in part from this section.

1978-23-121.

**Compensation**

**122.** (1) A person who incurs expense, other than on private land owned or occupied by him, in

- (a) complying with section 121; or
- (b) voluntarily attempting to control or extinguish a fire burning in or within 1 km of a forest,

shall, subject to this section, be compensated by the Crown in an amount determined by the regional manager calculated at the prescribed rates for labour and equipment.

- (2) Compensation is not payable if the regional manager determines that
  - (a) the fire was caused by the person or by a person employed on the occupied area;
  - (b) the person did not comply with section 120; or
  - (c) the person, if required to, did not comply with section 121.

1978-23-122.

**Forest officer may enter**

**123.** (1) Where an uncontrolled fire burns across an occupied area a regional manager or a forest officer authorized by him may,

- (a) without the consent of a person who has a right to occupy the area; and
- (b) with men and equipment,

enter the area and conduct whatever operations on the area he considers necessary to control and extinguish the fire.

- (2) Where entry is made or operations are conducted under subsection (1)
  - (a) the occupier of an occupied area is not for only that reason relieved from performing an obligation required of him under this Division; and
  - (b) on private land, the owner of the private land shall on demand pay to the Crown the cost incurred by the Crown in attempting to control or extinguish the fire.

1978-23-123.

**Mandatory assistance**

**124.** (1) Where ordered to do so by a regional manager, a forest officer authorized by him, or a peace officer,

- (a) a person shall provide appropriate equipment he owns or has the use of; and
- (b) a person who is 19 or older and fit to do so, shall assist in controlling and extinguishing a forest fire.

(2) Compensation for equipment and labour provided under this section shall be paid by the Crown at the prescribed rates.

(3) A person who, with the approval of a regional manager or a forest officer authorized by him, is appointed as a forest fire prevention officer by

- (a) the holder of an agreement entered into under this or the former Act;
- (b) the owner of private land;
- (c) a person carrying on timber harvesting, land clearing, timber processing or other industrial operations; or
- (d) a municipality

may, over the land described in the appointment and after presenting the notice of appointment on demand, exercise the powers of a forest officer under this section.

(4) Where money appropriated for fire suppression in any year is insufficient, the money required shall be paid out of the consolidated revenue fund without any other appropriation other than this subsection.

1978-23-124.

**DIVISION (5) — INSECT AND DISEASE CONTROL****Insect and disease control**

**125.** Where, in timber

- (a) on private land; or
- (b) on Crown land that is subject to an agreement made under this or the former Act, except a pulpwood harvesting area agreement or pulpwood agreement,

there are insects or diseases that the regional manager considers are dangerous to the health of timber, the regional manager may, in a notice served on the owner of the

private land or the holder of the agreement, order him to take such measures, subject to the *Pesticide Control Act*, to control or dispose of the insects or disease as he determines.

1978-23-125.

#### Forest officer may enter

**126.** (1) Where measures are not taken in accordance with an order made under section 125, a regional manager or forest officer authorized by him may enter the land and may, subject to the *Pesticide Control Act*, without the consent of a person who has a right to occupy the land, take whatever measures he considers necessary to control or dispose of the insects or disease.

(2) Subject to an agreement made under section 127, where entry is made and measures are taken under subsection (1) on private land or on Crown land that is subject to an agreement entered into under this or the former Act, the owner of the land or the holder of the agreement, as the case may be, shall on demand pay to the Crown the cost incurred by the Crown, as determined by the regional manager, in attempting to control or dispose of the insects or disease.

1978-23-126.

#### Agreements to control

**127.** On behalf of the Crown the regional manager may enter into agreements for control and disposal of insects or disease on forest land and for sharing costs of control and disposal.

1978-23-127.

### DIVISION (6) — GENERAL FOREST PROTECTION

#### Forest protection agreements

**128.** (1) On behalf of the Crown the minister may make agreements with

- (a) the government of Canada or of a province;
- (b) a municipality, regional district or improvement district; or
- (c) any other person

under which the Crown provides forest protection and fire, insect or disease suppression services for the forest.

(2) An agreement made under subsection (1) shall contain such terms and conditions as the minister considers appropriate, and money paid to the Crown under the agreement in any period shall be in addition to money appropriated for that purpose for the period by the Legislature and may, without an appropriation other than this Act, be spent on forest protection and fire, insect and disease suppression.

1978-23-128.

#### Right of proceeding

**129.** Nothing in this Part limits, interferes with, or extends the right of a person to commence and maintain a proceeding for damages caused by fire.

1978-23-129.

## PART 11

## Log salvage district

- 130.** The minister may, by publishing a notice in the Gazette,
- (a) establish an area of the Province as a log salvage district; and
  - (b) abolish, or change the boundaries of, a log salvage district.

1978-23-130.

## Receiving station licence

**131.** (1) The minister may grant to a person who meets the prescribed qualifications a receiving station licence authorizing its holder to accept delivery of salvaged logs within a log salvage district.

(2) A receiving station licence shall contain the terms and conditions, consistent with this Act and the regulations, determined by the minister.

(3) The holder of a receiving station licence shall,

- (a) after the date specified in the licence, maintain facilities in the log salvage district for receiving, storing and sorting salvaged logs;
- (b) dispose of salvaged logs in the prescribed manner;
- (c) pay to the Crown the prescribed licence fees;
- (d) account for, hold, disburse and use the revenue he receives from the sale of salvaged logs in the prescribed manner; and
- (e) subject to the regulations, pay to holders of log salvage permits for salvaged logs delivered to him or a place specified by him, compensation in the prescribed amount.

(4) Where a holder of a receiving station licence fails to comply with his licence, this Part or the regulations respecting log salvage, the minister may suspend his licence for a period of time and, whether or not the licence is under suspension, may cancel his licence.

(5) Before he cancels a receiving station licence the minister shall give the holder of the licence an opportunity to be heard.

(6) A log receiving station licence granted under the former Act continues in force under this Act as a receiving station licence.

1978-23-131; 1979-11-14.

## Log salvage permit

**132.** (1) Subject to the regulations, no person shall salvage logs in a log salvage district without a log salvage permit.

(2) The regional manager may grant a log salvage permit to a person who meets the prescribed qualifications.

(3) A log salvage permit shall contain the terms and conditions, consistent with this Act and the regulations, determined by the regional manager.

(4) Where the holder of a log salvage permit fails to comply with the permit, this Part or the regulations respecting log salvage,

- (a) the regional manager may suspend his permit for a period of time; and
- (b) the minister, whether or not the permit is under suspension, may cancel his permit.

(5) Before he cancels a log salvage permit the minister shall give the permit holder an opportunity to be heard.

1978-23-132.

**Disposal and acquisition of salvaged logs**

**133.** After January 1, 1979 no person shall dispose of a log salvaged from a log salvage district and no person shall accept delivery of a log salvaged from a log salvage district, except as provided in the regulations.

1978-23-133; B.C. Reg. 577/78.

**Area closure**

**134.** (1) Where he is notified that logs have been lost in an area of coastal waters, the regional manager may, in a notice published or broadcast, or both, in or near the area

- (a) order that the area described in the notice be closed to log salvaging for a period not exceeding 10 days for each order; and
- (b) amend the description of the area and, subject to the 10 day maximum, extend or shorten the period of the order.

(2) While an area is closed no person, except the owner of a log or his agent, shall salvage a log in the area described in the order.

1978-23-134.

**PART 12****Crown timber to be used in Province**

**135.** Unless exempted under this Part, timber that is harvested from Crown land, from land granted by the Crown after March 12, 1906 or from land granted by the Crown on or before March 12, 1906 in a tree farm licence area, and wood residue produced from the timber, shall be

- (a) used in the Province; or
- (b) manufactured in the Province into
  - (i) lumber;
  - (ii) sawn wood products, other than lumber, manufactured to an extent required by the minister;
  - (iii) shingles or fully manufactured shakes;
  - (iv) veneer, plywood or other wood-based panel products;
  - (v) pulp, newsprint or paper;
  - (vi) peeled poles and piles having top diameters less than 28 cm and fence posts;
  - (vii) Christmas trees; or
  - (viii) sticks and timbers having diameters less than 15 cm, ties and mining timbers.

1978-23-135.

**Exemptions**

**136.** (1) The Lieutenant Governor in Council may exempt from section 135

- (a) a species of timber or kind of wood residue and may limit the volume of a species of timber or kind of wood residue to which the exemption applies for a period or for successive periods of time; and
- (b) a volume of timber, whether or not harvested, or a volume of a wood residue, on receiving an application in a form required by the minister.

(2) On receiving an application in the form required by him, the minister may exempt from section 135 a volume of timber that has been harvested, not exceeding 15 000 m<sup>3</sup> for each application.



- (3) An exemption shall not be given under this section unless the Lieutenant Governor in Council or the minister, as the case may be, is satisfied that
- (a) the timber or wood residue will be surplus to requirements of timber processing facilities in the Province;
  - (b) the timber or wood residue cannot be processed economically in the vicinity of the land from which it is cut or produced, and cannot be transported economically to a processing facility located elsewhere in the Province; or
  - (c) the exemption would prevent the waste of or improve the utilization of timber cut from Crown land.

1978-23-136.

#### Exemption conditions and permit

- 137.** An exemption made under section 136 may
- (a) stipulate conditions to be met and fees to be paid to the Crown; and
  - (b) provide for the granting of a permit by the regional manager in respect of the timber or wood residue described in the exemption.

1978-23-137.

### PART 13

#### DIVISION (1) — TRESPASS

#### Prohibited timber cutting

- 138.** (1) No person shall cut, remove, damage or destroy Crown timber otherwise than
- (a) under and in compliance with an agreement entered into or an authority given under this or the former Act, or the regulations;
  - (b) under and in compliance with a grant of an interest in Crown land issued under the *Land Act*;
  - (c) under the *Mineral Act* for the purpose of locating a mineral claim or 2 post claim;
  - (d) under the *Park Act*;
  - (e) in the course of his duties as a land surveyor; or
  - (f) as permitted under the regulations.
- (2) Notwithstanding another Act or a grant of land from the Crown, timber on private land granted by the Crown after April 6, 1887 and before April 29, 1888 may be harvested without the authority of the Crown.

1978-23-138.

#### Penalty

- 139.** (1) Where section 138 (1) is contravened, the regional manager may
- (a) require the person who contravened it to pay to the Crown, in addition to any other penalty under this Act, or under an agreement entered into under this or the former Act, royalty or stumpage under Part 7 plus a penalty not exceeding 3 times the royalty or stumpage, as determined by the regional manager; and
  - (b) seize the timber and sell it by public or private sale.

- (2) The proceeds of a sale shall be paid into the consolidated revenue fund.
- (3) Nothing in this section prevents the holder of an agreement entered into under this or the former Act from proceeding against a person who cuts or removes timber that is subject to the agreement.

1978-23-139; 1979-11-15.

#### Prohibited construction and occupation

**140.** (1) No person shall, without the consent of the regional manager, construct a road or construct or occupy a building or other structure on Crown land in a Provincial forest.

(2) The regional manager may, in a notice served on the person, order a person who contravenes subsection (1) to remove or destroy, or both, the road, building or other structure and to restore the land underlying it.

(3) Where a person fails to comply with an order under subsection (2), the regional manager may carry out the order and the person who constructed or erected the road, building or other structure or who prior to the removal or restoration last occupied the building or other structure, shall on demand pay to the Crown the costs incurred.

1978-23-140.

#### DIVISION (2) — RECOVERY OF MONEY

##### Lien

**141.** (1) Money that is required to be paid to the Crown under this or the former Act or under an agreement made under this Act or the former Act

- (a) is due and payable by the date specified for payment in a statement to, or notice served on, the person who is required to pay it;
- (b) bears interest as prescribed;
- (c) may be recovered in a court as a debt due to the Crown; and
- (d) constitutes, in favour of the Crown,

- (i) a lien on timber, lumber, veneer, plywood, pulp, newsprint, special forest products and wood residue owned by the person who owes the money; and

- (ii) a lien on chattels or an interest in them, other than chattels referred to in subparagraph (i), owned by the person who owes the money.

(2) A lien under subsection (1) (d) (i) has priority over all other claims, and a lien under subsection (1) (d) (ii) has priority over all other claims other than claims secured by liens, charges and encumbrances registered against the chattels before the money is due and payable.

(3) A lien constituted under subsection (1) is not lost or impaired by reason only that

- (a) proceedings to recover the money are taken or not;
- (b) partial payment of the money is tendered or accepted; or
- (c) the lien is not registered.

(4) Where default is made in the payment of all or part of the money due and payable the minister may issue a certificate stating

- (a) the amount that remains unpaid, including interest; and
- (b) the name of the person who is required to pay it and may file the certificate with a court having jurisdiction.

(5) A certificate filed under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the certificate against the person named in it, and all proceedings may be taken as if it were an order of the court.

1978-23-141.

#### Person acquiring timber responsible for payment

**142.** A person who acquires timber from any person or deals in timber produced from Crown land on which stumpage or royalty has not been paid shall

- (a) report the acquisition or dealing to the regional manager, in a form required by the minister, not later than 10 days following the date on which the event occurred; and
- (b) pay to the Crown all money payable to the Crown in respect of the timber under this or the former Act or under an agreement entered into under this or the former Act.

1978-23-142.

#### Seizure and sale

**143.** (1) The regional manager or a forest officer authorized by him may seize one or more of the following:

- (a) timber, lumber, veneer, plywood, pulp, newsprint, special forest products, wood residue and chattels on which the Crown has a lien under section 141 (1) (d);
- (b) timber removed from land in contravention of section 65 (1);
- (c) timber that, on reasonable and probable grounds, he believes
  - (i) has not been scaled under section 73 and is in the course of transit outside the Province;
  - (ii) is in course of transit outside the Province in contravention of section 135; or
  - (iii) is mixed with timber to which paragraph (a) or (b) or subparagraph (i) or (ii) applies; or
- (d) a boat, barge or other vessel, truck, trailer or railcar in which is found, or that is towing, timber to which paragraph (a), (b) or (c) applies.

(2) A chattel or timber seized under subsection (1) (a) to (c) may be sold by the Crown at a public auction.

(3) Notice of the public auction shall be published at least 10 days in advance in or near the area where the sale is to take place and the notice shall

- (a) specify the time and place of sale; and
- (b) identify the name of the person whose property is to be sold.

(4) Where a seizure is made under subsection (1) (a) or (c) (iii), and the money realized from the public auction exceeds the money that is due and payable to the Crown, including interest and cost of seizure, storage and sale, the surplus shall be paid to the person who possessed the property when it was seized unless, within 30 days after the sale, a claim to the surplus is made by another person in a notice served on the regional manager, and in that case the surplus shall be retained until the determination of the respective rights of persons who have made claims.

(5) Where timber seized under subsection (1) (b) or (c) (i) or (ii) is sold, the total proceeds shall be paid into the consolidated revenue fund.

(6) A boat, barge or other vessel, truck, trailer or railcar seized under subsection (1) (d) shall be released from seizure once the timber is delivered to a location required by the regional manager.

1978-23-143.

#### Powers cumulative

**144.** (1) The powers in this Division for the Crown to recover money by proceeding in court, by filing a certificate and by seizure and sale, may be exercised separately, concurrently or cumulatively.

(2) The imposition of a fine or penalty on a person under this Act does not affect the powers of the Crown in this Division.

1978-23-144.

### DIVISION (3) — MISCELLANEOUS

#### Reforestation

**145.** A person who harvests Crown timber under an agreement entered into under this or the former Act shall establish a crop of commercially valuable species of timber on the area in the manner and to the standards provided

(a) in the agreement, if the agreement so provides; or

(b) in the regulations, if the agreement does not so provide,

unless he obtains an exemption from the regional manager.

1978-23-145; 1979-11-16.

#### Young trees

**146.** The regional manager may dispose of young trees and enter into agreements for the growing of trees.

1978-23-146.

#### Mill licences

**147.** (1) Before a person constructs or expands the capacity of a timber processing facility in the Province, he shall notify the regional manager of the fact and of the timber supply that he intends will be processed in the facility.

(2) Where the minister so requires in a notice served on a person within 30 days after the regional manager is notified under subsection (1), the person shall obtain a mill licence respecting the construction or expansion and he shall not

(a) construct or expand the capacity of a timber processing facility otherwise than under and in accordance with a mill licence issued by the minister; or

(b) operate a timber processing facility that has been constructed or expanded without a mill licence having been obtained.

(3) The minister may issue mill licences and a mill licence shall contain such terms and conditions as the minister determines.

1978-23-147.

#### Wood residue prices

**148.** (1) Notwithstanding any other enactment, or an agreement or arrangement made before, on or after January 1, 1979, the Lieutenant Governor in Council may by order, in respect of all or part of the Province,

- (a) determine the price or range of prices at which wood residue, or a grade or type of wood residue, produced in the Province for processing in the Province, shall be sold; and
- (b) prescribe formulas for determining the prices.

(2) Where an order made under subsection (1) conflicts with a provision of an agreement or arrangement made before or after this Act came into force, the agreement or arrangement is varied to the extent necessary to be consistent with the terms of the order.

1978-23-148.

#### Records and returns

**149.** (1) A person who harvests timber, buys or sells timber or operates a timber processing facility shall keep accurate records and, where required by the minister, shall submit to the regional manager, in the manner and at the times required by the minister, reports of

- (a) the volume of timber harvested;
- (b) the volumes and prices of timber bought or sold; and
- (c) the quantities of products manufactured in the facility and the prices obtained for them.

(2) The regional manager and a forest officer authorized by him may at reasonable times inspect records kept under subsection (1).

(3) Subject to a lawful requirement, no person employed in the Ministry of Forests shall release or divulge a report submitted under subsection (1) (b) or (c) or information contained in it unless

- (a) the person who submitted the report gives his consent; or
- (b) the information is released or divulged as part of a summary that presents it in such a way that it cannot be identified with the person who submitted it.

(4) The contravention of subsection (3) constitutes just cause for dismissal.

1978-23-149.

#### Entry on land

**150.** (1) The regional manager and a forest officer authorized by him,

- (a) to administer this Act, the regulations, or an agreement, entered into under this or the former Act; or
- (b) to verify a statement made in an application for an agreement under this or the former Act,

may at all reasonable times enter land owned or occupied by the holder of or the applicant for an agreement under this or the former Act, but he shall not, without the consent of the holder or applicant, enter his dwellings.

(2) A peace officer has the powers of a regional manager under subsection (1) with respect to the enforcement of the provisions of this Act and the regulations respecting marine log salvage.

1978-23-150.

#### Notice

**151.** (1) Where service of a notice or other document is required under sections 13, 15, 21, 26, 29, 33, 36, 39, 43, 53 to 57, 59, 61, 77, 79, 80, 94, 102, 113, 114,

117, 125, 140, 141, 147, 155 and 156, the notice or document shall be conclusively deemed to have been served if

(a) served on the person; or

(b) sent by registered mail to the last known address of the person.

(2) Where service is by registered mail the notice or document shall be conclusively deemed to be served on the eighth day after its deposit in Canada Post at any place in Canada.

1978-23-151.

#### Extension of time

**152.** Except with respect to the Crown, the minister may extend a time required for doing anything under this Act.

1978-23-152.

#### Personal liability

**153.** No forest officer, regional manager, chief forester or member of an appeal board is personally liable for loss or damage suffered by a person by reason of anything done or omitted to be done in the exercise or purported exercise of a power under this Act or the *Range Act* or under regulations under either Act, unless it was done in bad faith.

1978-23-153.

## PART 14

### DIVISION (1) — APPEALS

#### Appeals generally

**154.** (1) Where under the provisions referred to in subsection (2) a determination, order or decision is made the person

(a) in respect of whom it is made; or

(b) in respect of whose agreement it is made

may appeal the determination, order or decision according to this Division.

(2) An appeal lies from a determination, order or decision of

(a) a forest officer under sections 60, 84 (2), or 117 (1), to the regional manager;

(b) a regional manager under paragraph (a) or sections 49 (1), 52, 55 (2) (b) (ii), 56, 58, 59 (1) and (5), 60, 61 (1) (b), 84 (2), 90 (2), 97 (2), 117 (1), 119 (1), 122, 139 (1) (a), or under a woodlot licence respecting the determination of the volume of timber to be harvested during each year or other period of its term, to the chief forester; and

(c) the chief forester under paragraph (b), sections 53 (2), 55 (2) (a) (ii), 55 (5), 61 (1) (a), 90 (1), or under a tree farm licence respecting the determination of an allowable annual cut, to an appeal board.

(3) In respect of an appeal of a determination under section 84 (2), the person to whom the appeal is taken or the appeal board, as the case may be, shall, subject to the regulations, consider the factors referred to in section 84 (2) (b), (c) and (d).

(4) Where this Act or an agreement entered into under this Act gives a right of appeal, this Division applies to the appeal.

- (5) On an appeal under this Act, the regional manager, chief forester or an appeal board, as the case may be, may
- (a) confirm, reverse or vary the determination, order or decision appealed from; or
  - (b) make such other order as he or it considers appropriate in the circumstances.

1978-23-154; 1979-11-14.

#### Appeal to regional manager or chief forester

**155.** (1) Where an appeal is taken under this Act or the *Range Act* to the regional manager or the chief forester the appellant shall, within 21 days after notice of the determination, order or decision to be appealed is served on him, serve written notice of appeal on the person to whom the appeal is taken enclosing a copy of the determination, order or decision being appealed from and stating the reasons for the appeal.

(2) The appellant shall be given an opportunity to be heard, if he so requests in the notice of appeal.

(3) A written decision shall be served on the appellant within 45 days after the notice of appeal is served.

1978-23-155.

#### Appeals to appeal board

**156.** (1) Where an appeal is taken under this Act or the *Range Act* to an appeal board the appellant shall, within 21 days after notice of the determination, order or decision to be appealed is served on him, serve written notice of appeal on the minister, enclosing a copy of the decision appealed from and a written submission stating the reasons for the appeal.

(2) The Lieutenant Governor in Council shall, within 21 days after service of the notice of appeal under subsection (1),

- (a) appoint not more than 3 persons to the appeal board and establish its terms of reference; and
- (b) fix the remuneration each person is to receive for each day he is engaged in the appeal.

(3) Within 14 days after the appointments, the minister shall serve the appellant with notice of the appointment and the terms of reference.

(4) The appeal board within 30 days after its appointment shall convene a hearing in which the regional manager or a forest officer and the appellant may make submissions.

(5) The appeal board may

- (a) receive and examine evidence and information on oath, by affidavit or otherwise which in its discretion it considers proper, whether or not the evidence is admissible in a court; and
- (b) make such examinations of records and inquiries as it considers necessary,

and a member of the board may administer an oath.

(6) The appeal board shall, within 21 days after the conclusion of the hearing, serve copies of its decision on the minister and the appellant.

(7) In its decision the appeal board may order that either party pay to the other costs in respect of the appeal, and unless the decision is reversed, varied or referred back under subsection (8) the order has, after filing in the court registry, the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

(8) The appellant or the minister may, by application to the Supreme Court made within 21 days after a decision of an appeal board is served on him, appeal the decision of the appeal board on a question of law or jurisdiction.

1978-23-156.

#### Appeal not a stay

**157.** Unless the minister orders otherwise, an appeal taken under this Act does not operate as a stay or suspend the operation of the determination, order or decision being appealed.

1978-23-157.

### DIVISION (2) — REGULATIONS

#### Regulations

**158.** (1) The Lieutenant Governor in Council may make regulations.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations respecting

- (a) the use of Crown land in Provincial forests;
- (b) fire precautions to be taken in relation to plants, machinery and equipment in or near forests and in relation to railways and utilities;
- (c) penalties and waste and damage assessments to be paid by a person who damages or destroys timber on Crown land;
- (d) the establishment of an area of the Province as a forest region, the abolition and variation in boundaries and the name of a forest region and the consolidation of 2 or more forest regions;
- (e) the method to be used to calculate compliance with a provision in a tree farm licence or forest licence that requires timber to be harvested under contract, and defining a "person under contract";
- (f) the salvaging of logs including the rights of property in salvaged logs, and the collection, marking and disposing of salvaged logs;
- (g) the use of, and operation of vehicles on, forest service roads;
- (h) timber harvesting operations under timber berths and pulp leases;
- (i) the payment of deposits to the Crown and imposing fees payable to the Crown;
- (j) harvesting cascara bark from Crown land;
- (k) the collection, drying, processing, registration, transportation, purchase, sale, disposition and standards of quality of tree cones and tree seeds;
- (l) respecting the growing and harvesting of Christmas trees on Crown land;
- (m) the operations of holders of log salvage permits and station licences; and
- (n) the seizure, sale and other disposition of salvaged logs by a regional manager where the logs are salvaged or dealt with in contravention of this Act or the regulations.

1978-23-158; 1979-11-18.



## DIVISION (3) — OFFENCES AND PENALTIES

## Offence

**159.** It is an offence

- (a) to contravene section 65 (1), 69 (1), 73 (1), 74 (1), 75, 98, 99, 132 (1), 133, 134 (2), 138 (1), 140 (1), 147 (1) or (2), or 149 (1) or (3);
- (b) to mark timber with a marine log brand unless it is first marked with a timber mark under Part 5 and scaled under Part 6;
- (c) for a person to represent that he is authorized to perform a scale under Part 5 when he is not so authorized;
- (d) subject to the *Highway Act*, *Land Act*, *Ministry of Transportation and Highways Act* or *Park Act*, to build, modify or maintain a road or trail on Crown land for the purpose of harvesting timber except in accordance with this Act or a road permit or with a consent or other authority given by the Crown under the former Act;
- (e) to remove timber from the Province in contravention of section 135; or
- (f) to hinder, obstruct or impede a regional manager or forest officer in the discharge or performance of a duty or the exercise of a power or authority under this Act.

1978-23-159; B.C. Reg. 91/79; B.C. Reg. 537/79.

## Part 3 offence

**160.** (1) A person commits an offence who

- (a) by intimidation or threat hinders or prevents a person from making an application for an agreement, or from submitting a tender or bid, under Part 3;
- (b) for an improper purpose threatens to make an application for an agreement, or to submit a tender or bid, under Part 3; or
- (c) participates in or is a party to an agreement or arrangement among 2 or more persons, under which
  - (i) one or more of the persons agrees or undertakes not to make an application for an agreement, or to submit a tender or bid, under Part 3; or
  - (ii) particulars in an application made for an agreement, or the amount of a tender or bid submitted, under Part 3, by one or more of the persons are arrived at.

## (2) Subsection (1) (c) does not apply to

- (a) an agreement or arrangement made only among 2 or more corporations that are affiliated within the meaning of the *Company Act*; or
- (b) an application for an agreement under this Act made jointly by 2 or more persons.

(3) A person who is convicted of an offence under subsection (1), and a corporation controlled by him, is disqualified from making an application under Part 3, either by himself or through an agent, for 2 years after the date of his conviction.

1978-23-160.

**Part 10 offence**

**161.** (1) A person who contravenes section 110, 111 (2), 116, 118 (1), 120, or 121 or fails to comply with a burning permit issued under section 113 or with an order made under section 114 (a) (ii), 115 (2), 117 (1), 124 (1), or 125

(a) commits an offence; and

(b) shall pay to the Crown on demand

(i) the costs incurred by the Crown; and

(ii) the value of Crown timber or other Crown property destroyed or damaged,

directly or indirectly, as a result of the contravention or failure of compliance.

(2) In a prosecution under section 115 (2) it is a defence that the accused was in a restricted district when an order was made under section 115 (1) and the accused did not have knowledge of the order.

1978-23-161.

**Wood residue offence**

**162.** (1) A person who

(a) contravenes an order made under section 148 (1); or

(b) knowingly assists in, engages in or participates in, as purchaser or otherwise, the sale of wood residue in contravention of an order made under section 148 (1)

commits an offence and is liable on conviction to a fine of not more than \$10,000 or to imprisonment for not more than one year, or to both.

(2) For the purposes of this section, the delivery of each rail car, truck or barge load, of wood residue sold in contravention of an order made under section 148 (1) constitutes a separate offence.

1978-23-161.

**Officers of corporation**

**163.** Where a corporation commits an offence under this Act, an officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence and, notwithstanding that the corporation is convicted, is liable on conviction to fine and imprisonment.

1978-23-163.

**Limitation on prosecution**

**164.** A prosecution of an offence under this Act may be commenced at any time within 2 years after the commission of the offence.

1978-23-164.

SCHEDULES

SCHEDULE A

ROYALTY RATES  
(Section 82)

(Dollars per cubic metre)

Species of Timber	Forest Region		
	Vancouver (That Part West of the Cascade Mountains)	Prince Rupert (That Part West of the Cascade Mountains)	All Forest Regions and Those Parts of Regions East of the Cascade Mountains
Fir.....	2.00	1.50	1.50
Spruce.....	2.00	1.50	1.50
Balsam.....	1.20	.80	.80
Cedar.....	1.50	.80	.80
Hemlock.....	1.20	.80	.80
Cypress.....	1.50	.80	.80
White pine.....	1.50	.80	.80
Yellow pine.....	.80	.80	2.50
Larch.....	.80	.80	.80
Lodgepole pine.....	1.20	.80	1.50
Other conifers.....	.80	.80	.80
Cottonwood.....	.50	.50	.80
All other non-coniferous species*	.50	.50	.50
Firmwood reject (all species).....	nil	nil	.50
			nil

\*Except for cottonwood, no royalty is payable on non-coniferous species scaled before January 1, 1988.

1978-23-Sch.

SCHEDULE B

ANNUAL RENT  
(Section 90)

Form of Agreement	Rate
Old temporary tenures .....	\$1.25/ha
Timber licences .....	\$1.25/ha
Timber sale licences that specify an allowable annual cut .....	\$0.10/m <sup>3</sup> of allowable annual cut
Timber sale licences that do not specify an allowable annual cut .....	\$1.25/ha
Timber sale harvesting licences .....	\$0.25/m <sup>3</sup> of allowable annual cut
Forest licences .....	\$0.25/m <sup>3</sup> of allowable annual cut
Tree farm licences .....	\$0.45/m <sup>3</sup> of allowable annual cut
Woodlot licences .....	\$0.25/m <sup>3</sup> of allowable annual cut

1978-23-Sch.