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[Table of Public Statutes](#)

[Main Site](#)

[How current is this statute?](#)

[Responsible Department](#)

RSNL1990 CHAPTER F-23

FORESTRY ACT

Amended:

1991 c43 s9; 1992 c16 ss5, 6 & 7; 1992 c39 s5; 1993 c42;
1996 cR-10.1 s32; 1997 c13 s24; 1999 c30; 2001 c28; 2001 cN-3.1 s2; 2002 c10; 2004 cL-3.1 s36;
2005 c40; 2006 c17; 2008 c11; 2008 c56;
2008 cE-9.1 s26; 2013 c13 s5; 2013 c16 s25

CHAPTER F-23

**AN ACT TO REVISE THE LAW RESPECTING THE MANAGEMENT,
HARVESTING AND
PROTECTION OF THE FORESTS OF THE
PROVINCE**

Analysis

[1. Short title](#)

[2. Definitions](#)

[3. Duty of minister](#)

[3.1 Labrador Inuit rights](#)

PART I
FOREST SERVICE

[4. Forest service](#)

[5. Chief forester](#)

[6. Timber resource analysis](#)

PART II
FOREST MANAGEMENT

[7. Forest management district](#)

[8. Management principles](#)

[9. Annual allowable cut](#)

[10. Rep. by 2005 c40 s7](#)

[11. Rep. by 2005 c40 s7](#)

[12. Exchange of cutting rights](#)

[13. Rights unaffected](#)

[13.1 Rep. by 2013 c13 s5](#)

[14. Right to cut Crown timber](#)

[15. Crown timber licence](#)

[16. Lands to be described](#)

[17. Forest management agreement](#)

[18. Terms of an agreement](#)

[19. Assignment, etc. of licence, etc.](#)

[20. Rectification of default](#)

[21. Timber excluded from agreement](#)

[22. Timber sale agreement](#)

[23. Public tender](#)

[24. Notice of sale](#)

[25. Terms of agreement](#)

[26. Preparation for sale](#)

[27. Cutting permit](#)

[27.1 Cutting permits validated](#)

[28. Provisions of permit](#)

[29. Royalty payable](#)

[30. Unpaid royalties](#)

[31. Lien on timber](#)

[32. Seizure of timber](#)

[33. Garnishment](#)

[34. Acquisition of timber prohibited](#)

[35. Regulations re: royalties](#)

[36. Timber harvesting standards](#)

[37. Export of timber](#)

[38. Regulations](#)

PART III

FOREST MANAGEMENT TAXATION

[39. Definitions](#)

[40. Application for certificate](#)

[41. Provisions not applicable](#)

[42. Contents of application](#)

[43. Order re: managed land](#)

[44. Consolidation order](#)

[45. Consolidation order](#)

[46. Certificate of managed land](#)

[47. Annual report](#)

[48. Appeal to board](#)[49. Assessor](#)[50. Annual return](#)[51. Secrecy](#)[52. Annual assessment roll](#)[53. Supplementary roll](#)[54. Persons having mutual rights](#)[55. Certificate of assessor](#)[56. Assessment notice](#)[57. Error in form](#)[58. Appeal board](#)[59. Appeal to board](#)[60. Appeal to Trial Division](#)[61. Ministers to give effect to orders](#)[62. When tax due unaffected by appeal](#)[63. Liability for tax](#)[64. Assessment directed by minister](#)[65. Recovery of taxes by action](#)[66. Issue of tax certificate](#)[67. Demand on 3rd party](#)[68. Power to recover taxes](#)[69. Taxes a lien on trees](#)[70. Forfeiture of trees](#)[71. Right to harvest trees](#)[72. Payment of tax by creditor](#)[73. Interest and penalty](#)[74. Disposition of taxes](#)[74.1 Refunds](#)[75. Offences](#)[76. Regulations](#)[77. Prevalence of this Part](#)

PART IV

LICENSING OF MILLS

[78. Definitions](#)[79. Licence](#)[80. Limitation on licence](#)[81. Cancellation of licence](#)[82. Removal of mill](#)[83. Annual returns, etc.](#)[84. Recovery of fees](#)[85. Offence](#)

[86. Regulations](#)[87. Penalty](#)PART V
FOREST PROTECTION[88. Measures to protect forests](#)[89. Status of independent contractors](#)[90. Use of pesticide](#)[91. Injunction](#)[92. Application of Division](#)[93. Forest travel](#)[94. Forest travel permit](#)[95. Person to show permit](#)[96. Offence](#)[97. Fire season](#)[98. Permit to burn](#)[99. Minister may prohibit fires](#)[100. Where forest fire occurs](#)[101. Disposal of matches, etc. prohibited](#)[102. Woods operation](#)[103. Where fire hazard exists](#)[104. Burning debris](#)[105. Operating permit](#)[106. Provincial emergency](#)[107. Costs of fighting fire](#)[108. Reward](#)[108.1 Seizure permitted](#)[109. Regulations](#)[110. Offence](#)[111. Priority of this Division](#)PART VI
FOREST ROADS[112. Rep. by 2005 c40 s16](#)[113. Construction or abandonment to be approved](#)[114. Minister may close road](#)[115. Use of road prohibited](#)[116. Maintenance and rehabilitation required](#)[117. Crown not liable](#)[118. Rep. by 1996 cR-10.1 s32](#)PART VII
TIMBER SCALING[119. Definitions](#)[120. Timber to be scaled](#)

[121. Right of entry](#)[122. Units of measurement](#)[123. Timber Scalers Board](#)[124. Duties of board](#)[125. Sittings of board](#)[126. Training period](#)[127. Certificate](#)[128. Classes of certificates](#)[129. Renewal of certificate](#)[130. Ineligibility for certificate](#)[131. Oath](#)[132. Duties of timber scalers](#)[133. Monthly return](#)[134. Temporary permit](#)[135. Scaler's statement](#)[136. Referral of disputes](#)[137. Appeal to board](#)[138. Revocation of certificate](#)[139. Obstructing scaler](#)[140. Offence](#)[141. Regulations](#)

PART VIII

GENERAL

[142. Entry on to private land](#)[143. Officer may seize timber, etc.](#)[144. Cost of extinguishing fire](#)[145. Civil action not precluded](#)[146. Trespass or nuisance](#)[147. Cutting trees near a highway](#)[147.1 Fees and forms](#)

PART IX

OFFENCES AND PENALTIES

[148. Removal of sign](#)[149. Power of arrest](#)[149.1 Search warrants](#)[150. Obstructing official](#)[151. Officer may request permit](#)[152. Refusal to give name, etc.](#)[153. Offence and penalty](#)[154. Rep. by 1996 cR-10.1 s32](#)[155. Regulations re offences](#)[156. Possession of timber](#)

Short title

1. This Act may be cited as the *Forestry Act*.

1990 c58 s1

[Back to Top](#)

Definitions

2. In this Act

- (a) "annual operating plan" means a document covering a period of one year which sets out in detail the timber harvesting areas, silviculture treatment areas and forest access roads to be constructed within a parcel to which the plan applies and containing the information that may be required by regulation;
- (b) "Crown lands" means
 - (i) all lands within the province, except
 - (A) lands that may be in the use or occupation of a department of the government of the province or of an officer or servant of the department as a servant,
 - (B) those lands that may, before the enactment of this Act, have been lawfully set apart or appropriated for a public purpose, and
 - (C) lands lawfully alienated from the Crown,
 - (ii) lands considered to be Crown lands under section 88 of the *Crown Lands Act*, and
 - (iii) lands declared to be abandoned lands under the *Abandoned Lands Act*;
- (c) "Crown timber" means timber located on Crown or public land and includes timber in respect of which the Crown may demand and receive a royalty;
- (d) "cutting permit" means a permit issued under the authority of the minister to cut or uproot and remove timber from Crown lands or public lands;
- (e) "department" means the department presided over by the minister;
- (f) "5 year operating plan" means a document covering a 5 year period that sets out information respecting forestry activities within operating areas located within a parcel of land to which the plan applies and which provides for sustained yield forest management of the parcel that is consistent with the sustainable forest management strategy of the province and the principle of sustainable development and containing other information that may be required by regulation;
- (f.1) "forest access road" means a road that provides access to a proposed or actual area designated for forestry activities in a 5 year operating plan but is not a highway within the meaning of the *Works, Services and Transportation Act* and the *Highway Traffic Act* ;
- (f.2) "forestry activities" include but are not limited to forest access road construction, maintenance and decommissioning of forest access roads, timber harvesting, silviculture treatment, forest protection, forest management research and monitoring, conservation activities for the maintenance of ecosystems and other activities carried out in accordance with sustained yield forest management practices under a sustainable forest management plan;
- (g) "forest land" means land upon which are growing or standing trees or shrubs and includes dry marsh, bogland and land commonly known as "barrens";

- (h) "forest management district" means an area of Crown lands, public land or land owned by 1 or more persons, to which Part III applies or in relation to which 1 or more persons have rights to the timber, organized for efficient administration and control and operated according to 1 sustainable forest management plan;
- (i) [Rep. by 2005 c40 s1]
- (j) "forest operator" means a holder of a right of any kind to an area of land or to trees growing on the land for the purpose of cutting timber on the land or otherwise producing timber from the land commercially and whether received or held under grant, lease, licence, permit, contract or assignment or by some other means;
- (k) "forestry official" means an official of the forest service authorized by the minister to carry out the provisions of this Act and the regulations and includes wild life officials relative to offences occurring within park boundaries;
- (l) [Rep. by 2005 c40 s1]
- (m) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (m.1) "operating area" means an area designated for forestry activities which has clearly defined natural or man-made boundaries as delineated on a map and for the purposes of the regulations may be considered to be a part of a parcel;
- (m.2) "parcel" means a block, lot or area of land or a combination of blocks, lots or areas of land, however acquired, of 120 hectares or more in extent to which the right to cut and remove trees is vested in the Crown or in a person or from which the Crown or person derives a continuing benefit from having the trees cut and removed on his or her behalf and which is wholly contained within one forest management district;
- (n) "person" includes an association of persons and a partnership;
- (o) "productive forest" means an area of forest land producing or capable of producing, at rotation age and under natural conditions, a forest stand containing a minimum merchantable timber volume of 30 m³ (solid) per hectare;
- (p) "public land" means land owned or otherwise held by a department or agency of the government of the province but does not include Crown lands, land constituted as a provincial park under the *Provincial Parks Act* or land set aside as a wilderness reserve or an ecological reserve under the *Wilderness and Ecological Reserves Act*;
- (q) "silvicultural treatments" means treatments designed to control the establishment, composition, structure, and growth of forests;
- (r) "sustainable development" means, in relation to forest resources, the development of those resources in a manner that meets the needs of the present without compromising the ability of future generations to meet their own needs;
- (r.1) "sustainable forest management plan" means the 5 year operating plan together with the annual operating plans for an area covered by the 5 year operating plan and amendments to those plans;
- (s) "sustained yield forest management" means a policy, method or plan of management to provide for an optimum continuous supply of timber in a manner consistent with other resource management objectives, sound environmental practices and the principle of sustainable development; and
- (t) "timber" means standing trees, felled trees, parts of standing or felled trees, shrubs, round logs, wood chips or logs that have been slabbed on 1 or more sides.
- (u) [Rep. by 2005 c40 s1]

1990 c58 s2; [1993 c42 s1](#); [1996 cR-10.1 s32](#); [2005 c40 s1](#)

[Back to Top](#)

Duty of minister

3. (1) The minister shall consult with and advise all departments of government respecting the planning, development and use of the forest resources of the province.

(2) The minister shall, in a manner that he or she considers to be appropriate, consult with residents of the province who may be directly affected by the

- (a) preparation of a sustainable forest management plan under subsection 7(3);
- (b) issuing of a Crown timber licence or a timber sale agreement under subsection 14(1);
and
- (c) preparation of a sustainable forest management strategy for the province.

(3) Where, under subsection 7(4), the minister orders a person to prepare a sustainable forest management plan, that person shall provide an opportunity for members of the public, the governments of the province and Canada and other agencies having an interest in the management of the area covered by that plan

- (a) to meet for consultation at a place adjacent to or in the geographical area covered by that plan; and
- (b) to have provided to persons affected by or having an interest in that plan, the information respecting sustainable forest management planning; and
- (c) to record and respond to the concerns of the local community respecting the environmental effects of the forestry activities proposed in the sustainable forest management plan.

(4) The procedures for establishing and conducting public consultation meetings under subsection (3) shall be in accordance with the regulations and as required by the minister.

1990 c58 s3; [2005 c40 s2](#)

[Back to Top](#)

Labrador Inuit rights

3.1 (1) This Act and regulations made under this Act shall be read and applied in conjunction with the *Labrador Inuit Land Claims Agreement Act* and, where a provision of this Act or regulations made under this Act is inconsistent or conflicts with a provision, term or condition of the *Labrador Inuit Land Claims Agreement Act*, the provision, term or condition of the *Labrador Inuit Land Claims Agreement Act* shall have precedence over the provision of this Act or a regulation made under this Act.

(2) Where, under this Act or regulations made under this Act, the minister issues a permit or licence he or she may add to that permit or licence terms and conditions that the holder of the permit or licence must comply with in order to ensure compliance with the terms and conditions of the *Labrador Inuit Land Claims Agreement Act*.

[2004 cL-3.1 s36](#)

PART I FOREST SERVICE

[Back to Top](#)

Forest service

4. (1) To ensure the management, protection and utilization of the forest resources of the province there is established within the department a branch to be known as the Forest Service of Newfoundland and Labrador .

(2) The forest service shall supervise, control and direct all matters relating to

- (a) constructing and maintaining forest access roads;
- (b) protecting the forests of the province from fire, insect and disease;
- (c) carrying out programs of afforestation, reforestation, forest improvement and tree improvement;
- (d) cutting, classifying, measuring, manufacturing, marking and inspection of trees and timber;
- (e) preparing timber management plans for areas of productive forest land; and
- (f) developing and maintaining an up-to-date inventory of the timber resources of the province.

1990 c58 s4; [2001 cN-3.1 s2](#)

[Back to Top](#)

Chief forester

5. The Assistant Deputy Minister (Forestry) shall be the chief forester for the province and shall manage and direct the forest service.

1990 c58 s5

[Back to Top](#)

Timber resource analysis

6. (1) Commencing on December 31, 2005 and every fifth year afterward, the minister shall prepare a timber resource analysis for the province.

(2) Every tenth year after December 31, 2003 the minister shall prepare a sustainable forest management strategy for the province.

(3) A timber resource analysis and the sustainable forest management strategy for the province prepared under subsections (1) and (2) shall be submitted to the Lieutenant-Governor in Council for approval.

(4) The sustainable forest management strategy for the province prepared under subsection (2) shall set out the nature and extent of the forest resources of the province, the results of the most recent timber resource analysis, the goals and indicators of forest management and the forest resource management strategies intended to achieve those goals for a region of the province and for the entire province.

(5) Notwithstanding subsection 14(2) and that an annual allowable cut has been determined in accordance with section 9 for each year of a 5 year timber resource analysis period indicated under subsection (1), the minister may permit the cutting of timber within a forest management district or with respect to a combination of parcels under subsection 9(2) in excess of the annual allowable cut for that district or combination, provided that the total allocation of timber for that district or combination over the 5 year period covered by the timber resource analysis does not exceed the total of the annual allowable cuts approved under the sustainable forest management strategy referred to in subsection (2) for that 5 year period.

[2005 c40 s3](#)

PART II FOREST MANAGEMENT

[Back to Top](#)

Forest management district

7. (1) With the approval of the Lieutenant-Governor in Council, the minister may proclaim an area of forest lands as a forest management district.

(2) A proclamation made under subsection (1) shall contain a description of the boundaries of the forest management district and shall be published in the *Gazette*.

(3) Where the minister proclaims a forest management district under subsection (1), he or she shall prepare a sustainable forest management plan in the manner prescribed by the regulations.

(4) The minister may order a person who has a right to cut and remove timber from a parcel wholly contained within one forest management district or who is vested with a continuing benefit of having timber cut for that person from a parcel wholly contained within one forest management district, to prepare a sustainable forest management plan for that parcel.

(5) Where a person has a right to cut timber or is vested with a continuing benefit from having timber cut and removed from parcels in more than one forest management district, the minister may, with the approval of the Lieutenant-Governor in Council, order that person to prepare a sustainable forest management plan that provides one sustainable forest management plan for all parcels contained in more than one forest management district.

(6) A 5 year plan included in a sustainable forest management plan ordered under subsection (4) or (5) shall provide for sustained yield forest management of the parcels consistent with the sustainable forest management strategy of the province and principles of sustainable development.

(7) The minister, with the approval of the Lieutenant-Governor in Council, may vary the time by which a sustainable forest management plan is to expire.

[1990 c58 s7; 2005 c40 s4](#)[Back to Top](#)

Management principles

8. A forest management district shall be managed in accordance with the principles of sustained yield forest management.

[2005 c40 s5](#)[Back to Top](#)

Annual allowable cut

9. (1) The minister shall determine an annual allowable cut for each forest management district taking into consideration

(a) the rate of timber production that may be sustained, for a specified time period, in the district, taking into account

(i) the species composition and age class distribution of the forest and its expected rate of growth,

(ii) the expected time that it will take the forest to become re-established following

disturbance by insects, fire, disease, harvesting or other causes,

- (iii) silvicultural treatments to be applied,
 - (iv) the standards of timber utilization and the allowance for decay, waste and breakage expected to be applied with respect to timber harvesting,
 - (v) the constraints on the amount of timber that reasonably can be expected due to use of the area for purposes other than timber production, and
 - (vi) other information that, in the opinion of the minister, 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 district;
 - (c) the nature, production capabilities and timber requirements of established and proposed timber processing facilities;
 - (d) the economic and social objectives of the forest management district, the region and the province;
 - (e) damage to timber due to insects, disease, wind or fire and salvage programs; and
 - (f) those other matters that the minister considers appropriate.

(2) Notwithstanding subsection (1), the minister may combine parcels from 2 or more forest management districts for the purpose of determining an annual allowable cut for those combined parcels.

1990 c58 s9; [2005 c40 s6](#)

[Back to Top](#)

Rep. by 2005 c40 s7

10. [Rep. by 2005 c40 s7]

[2005 c40 s7](#)

[Back to Top](#)

Rep. by 2005 c40 s7

11. [Rep. by 2005 c40 s7]

[2005 c40 s7](#)

[Back to Top](#)

Exchange of cutting rights

12. (1) For the purpose of facilitating a voluntary exchange or transfer of timber cutting rights, the Lieutenant-Governor in Council may by order authorize the minister to acquire for the Crown all or a part of

- (a) the right to manage and cut timber on land held by a person;
- (b) the right to hold possession of the land on which the timber referred to in paragraph (a) is located for the purpose of exercising the right to cut that timber;
- (c) the title to all improvements on the land referred to in paragraph (b) reasonably necessary for the exercise of the right to cut timber referred to in paragraph (a); and

- (d) the right to build and maintain roads, erect and maintain buildings, structures and other works and do all other things on the land referred to in paragraph (b) reasonably necessary for the exercise of the right to manage and cut timber referred to in paragraph (a),

whether the land or any of the rights or improvements are held under a grant, lease, licence or other title, or a claim, whether possessory or otherwise.

(2) When an order is made under subsection (1), the area of land covered by the order shall be described in the order.

(3) The acquisition of rights as a result of an order made under subsection (1) may be made by an agreement in which the right to cut all or designated species and types of timber on Crown lands anywhere in the province and to the extent approved by the Lieutenant-Governor in Council may be exchanged for the right to cut so acquired, or the acquisition may be made for the other consideration that the Lieutenant-Governor in Council approves.

(4) An agreement made under subsection (3) shall contain those additional terms and conditions that may be ordered by the Lieutenant-Governor in Council.

(5) An acquisition of cutting rights under this section shall have effect notwithstanding that the holder of the cutting rights with whom the minister makes an exchange is prohibited by the terms of his or her grant, lease, licence or other title from alienating any of his or her rights.

(6) The minister may issue a permit to cut timber or otherwise dispose of timber acquired under this section as if the timber were Crown timber located on Crown lands.

(7) In this section "cutting rights" means the rights referred to in subsection (1).

1990 c58 s12; [2005 c40 s8](#)

[Back to Top](#)

Rights unaffected

13. Notwithstanding sections 14 to 28, timber licences or other rights to cut timber issued or conferred prior to the coming into force of this Act remain in force.

1990 c58 s13

[Back to Top](#)

Rep. by 2013 c13 s5

13.1 [Rep. by 2013 c13 s5]

[2013 c13 s5](#)

[Back to Top](#)

Right to cut Crown timber

14. (1) Crown timber shall not be cut or removed from Crown lands or public lands except under

- (a) a Crown timber licence;
- (b) a timber sale agreement; or
- (c) a cutting permit.

(2) Crown timber cut under subsection (1) shall be cut in accordance with the annual allowable cut calculated under section 9.

1990 c58 s14; [1992 c39 s5](#); [1993 c42 s3](#); [2005 c40 s9](#)

[Back to Top](#)

Crown timber licence

15. (1) The minister, with the approval of the Lieutenant-Governor in Council, may issue a Crown timber licence to a person who

- (a) owns or operates a timber processing facility in the province or who undertakes by agreement with the minister to construct and operate a timber processing facility in the province; and
- (b) has entered into a forest management agreement with the minister that has been approved by the Lieutenant-Governor in Council.

(2) Where a person applies for a Crown timber licence, the Lieutenant-Governor in Council may, in accordance with the regulations made under section 38, require that timber cut under the licence be

- (a) sold to a person specified by the Lieutenant-Governor in Council; or
- (b) first offered for sale to a person specified by the Lieutenant-Governor in Council,

and where the licence is issued, that requirement and other terms and conditions that the Lieutenant-Governor in Council may require shall be considered to be a term or condition of that licence.

1990 c58 s15; [2006 c17 s1](#)

[Back to Top](#)

Lands to be described

16. A Crown timber licence and a timber sale agreement shall describe the area of Crown lands covered by the agreement and shall set out the respective powers and duties of the minister and the agreement holder for the management and use of those Crown lands.

1990 c58 s16

[Back to Top](#)

Forest management agreement

17. (1) A forest management agreement shall be for a 20 year period.

(2) At the end of each 5 year period of a forest management agreement, the minister shall review the performance of the other party to the agreement.

(3) Where the minister is satisfied with the performance of the other party to a forest management agreement, the minister, with the approval of the Lieutenant-Governor in Council, may extend the term of the agreement by 5 years beyond the then existing term of the agreement.

(4) Where, in the opinion of the minister, a party to a forest management agreement is in default of a provision of the agreement the minister may

- (a) impose a financial penalty against that party as provided for in the agreement or by the regulations;
- (b) where the default is capable of being made good, order the agreement holder to rectify the default within a specified period of time; or
- (c) with the approval of the Lieutenant-Governor in Council, cancel the forest management

agreement.

1990 c58 s17

[Back to Top](#)

Terms of an agreement

18. (1) A party to a forest management agreement shall manage the area of Crown lands covered by the agreement in accordance with the principles of sustained yield forest management and to this end shall submit to the minister for approval a sustainable forest management plan prepared in accordance with the regulations.

(2) A sustainable forest management plan and revisions to the plan approved by the minister shall constitute part of the forest management agreement to which they belong.

(3) Except as may be provided in subsection (4) or a cost-sharing arrangement which may be agreed to by the minister with the prior approval of the Lieutenant-Governor in Council, the holder of a forest management agreement shall be responsible for all expenses associated with the implementation of a sustainable forest management plan and the implementation of the other measures that may be specified in the agreement.

(4) The minister may, subject to the approval of the Lieutenant-Governor in Council, permit a party to a forest management agreement to retain a portion of the royalties payable under section 29.

(5) Royalties retained by a party to an agreement under subsection (4) shall be used in the manner directed by the minister.

1990 c58 s18; [2005 c40 s10](#)

[Back to Top](#)

Assignment, etc. of licence, etc.

19. (1) The holder of a Crown timber licence or a party to a timber sale agreement shall not

- (a) pledge, charge, assign or otherwise use the licence or agreement as security for a debt; or
- (b) otherwise assign or transfer the licence or agreement

except with the prior written approval of the minister and a pledge, charge, assignment or other use of a licence or agreement, and a transfer of a licence or agreement, without that approval is void.

(2) Where, with the approval of the minister, the holder of a Crown timber licence or a party to a timber sale agreement pledges, charges or assigns the licence or timber sale agreement or otherwise uses it as security for a debt, the holder shall continue to be responsible for all obligations imposed under the licence or agreement.

(3) The minister shall not approve the transfer of a Crown timber licence or timber sale agreement from one person to another until all royalties, dues or other charges payable to the Crown have been paid by the holder and all the conditions of the licence or agreement have been complied with.

(4) Every pledge, charge or assignment of a Crown timber licence or a timber sale agreement shall be registered in the Registry of Deeds and a certified copy furnished to the minister.

1990 c58 s19

[Back to Top](#)

Rectification of default

20. (1) Immediately upon becoming aware that a Crown timber licence holder or a party to a timber sale agreement is not complying with a provision of this Act, the regulations or the licence or agreement the minister shall give written notice to the licence holder or party to the agreement stating the nature of the noncompliance.

(2) The minister may require a licence holder or a party to an agreement to comply with the licence or agreement or a provision of the Act or the regulations within 10 days of receipt of a notice under subsection (1).

(3) Where a licence holder or party to an agreement fails to comply within the required 10 days, the minister, or a forestry official, shall give a further written notice requiring the licence holder or the party to the agreement to cease all activities in the locality mentioned in this further notice until the terms of the 1st notice have been carried out, and for every day or part of a day that those activities are continued after the delivery of the 2nd notice or while the terms of the 1st notice are not complied with the licence holder or party to the agreement shall be subject to the penalty that may be provided for in the regulations.

(4) Where, within 30 days after receipt of the 2nd notice referred to in subsection (3), a licence holder or party to an agreement has not complied with the terms of the 1st notice, the minister, or a forestry official, may undertake to rectify the default complained of and the cost of doing so shall be a charge against the licence holder or party to an agreement and may be recovered in a court as a debt due the Crown.

(5) Where the default complained of cannot be rectified, the minister may require the licence holder or party to an agreement to immediately cease all activities in the locality mentioned in the notice and for every day or part of a day that those activities are continued, the licence holder or party to an agreement shall be subject to the penalty that may be provided for in the regulations.

1990 c58 s20

[Back to Top](#)

Timber excluded from agreement

21. (1) Where, with respect to a forest management agreement,

- (a) the right to cut and remove certain species, classes or stands of timber within an area covered by the agreement has not been conveyed to an agreement holder;
- (b) an agreement holder refuses or neglects to comply with an order from the minister to salvage dead or damaged timber;
- (c) a short term timber surplus exists within an area covered by the agreement; or
- (d) a long term timber surplus, not due to silvicultural treatments that have been paid for out of royalties retained under subsection 18(4), exists within an area covered by the agreement

the minister, or his or her designate, may, after consultation with the agreement holder,

- (e) in the case of paragraph (a), (b) or (c), take the action that is necessary to have the timber cut; and
- (f) in the case of paragraph (d), redefine the boundaries of the area of Crown lands or public land within the area covered by the agreement so as to exclude an area having the capacity to produce an annual timber crop equal to the long term timber surplus.

(2) A party to a forest management agreement shall

- (a) not claim any property, lien, charge or other encumbrance in or to timber or an area that is withdrawn from an area covered by the agreement under subsection (1);
- (b) where requested by the minister, undertake silvicultural treatments within those areas

covered by the forest management agreement harvested by a person other than a party to the agreement; and

- (c) permit unrestricted entry on to and exit from an agreement area, and abutting land held by the party to the agreement, to permit the minister to exercise his or her rights under paragraph (1)(e).

1990 c58 s21; [1993 c42 s4](#)

[Back to Top](#)

Timber sale agreement

22. (1) The minister may enter into a timber sale agreement with a person who operates or who proposes to establish and operate a timber processing facility, other than a pulp and paper mill, or who conducts or who proposes to establish and conduct a logging operation in the province.

(2) Where it is proposed that a timber sale agreement be entered into under subsection (1), the Lieutenant-Governor in Council may, in accordance with the regulations made under section 38, require that timber cut under the agreement be

- (a) sold to a person specified by the Lieutenant-Governor in Council; or
- (b) first offered for sale to a person specified by the Lieutenant-Governor in Council,

and where the timber sale agreement is entered into, that requirement and other terms and conditions that the Lieutenant-Governor in Council may require shall be considered to be a term or condition of that timber sale agreement.

1990 c58 s22; [2006 c17 s2](#)

[Back to Top](#)

Public tender

23. A timber sale agreement shall be entered into

- (a) under a tender
 - (i) either to the public generally, or
 - (ii) to a particular class or group of persons determined by the minister; or
- (b) by the minister, by a negotiated agreement with a person referred to in section 22.

1990 c58 s23; [2001 c28 s1](#)

[Back to Top](#)

Notice of sale

24. (1) Where tenders are called for under section 23, the minister, or a forestry official, shall publish an advertisement of the proposed sale for a period of not less than 14 days by not less than weekly insertions in at least 1 newspaper published in and circulating throughout the province.

(2) An advertisement of sale referred to in subsection (1) shall contain a general description of the timber tract being proposed for sale and the quantity and type of timber contained on the tract, the location of the timber tract and the minimum price.

1990 c58 s24

[Back to Top](#)

Terms of agreement

25. (1) A timber sale agreement entered into under section 23 shall be valid for a period not exceeding 5 years.

(2) Where the volume of timber authorized for cutting by a timber sale agreement has not been cut at the expiration of the agreement, the minister may renew the agreement for a further term of up to 1 year, provided that

(a) the agreement holder has cut a minimum of 75% of the timber volume authorized by the agreement; and

(b) the agreement holder has complied with the terms of the agreement, this Act and the regulations.

(3) It shall be a condition of every timber sale agreement entered into that

(a) a cutting schedule acceptable to the minister shall be negotiated; and

(b) the bid price shall be paid on the basis of the payment schedule set down in the agreement.

(4) The minister may cancel a timber sale agreement where a party to the agreement fails to comply with paragraph (3)(a).

1990 c58 s25; [1993 c42 s5](#)

[Back to Top](#)

Preparation for sale

26. (1) Where the minister, or a forestry official, considers it advisable to allocate available timber supplies under a timber sale agreement, the minister or the official shall

(a) cause the tract of timber to be laid off on a map; and

(b) cause the tract of timber to be cruised for the purpose of making as exact an estimate as possible of the quantity of timber on the tract, ascertaining its general condition, its accessibility, and those other matters that may be necessary to determine the value of the timber.

(2) Upon receipt of the cruise information obtained under subsection (1), together with the further information that may be required by the minister, or a forestry official, the minister shall fix a minimum price at which the tract of timber shall be disposed of and no tract shall be sold at less than the price so fixed.

1990 c58 s26

[Back to Top](#)

Cutting permit

27. (1) The minister, or a forestry official, may issue a cutting permit to a person to cut timber on or remove timber from Crown lands or public lands.

(1.1) In considering whether to issue a cutting permit under this section, the minister may take into consideration the fact that the person applying for the permit

(a) failed to cut timber he or she was authorized to cut under a permit given to him or her previously; and

(b) does not have, personally, a means to harvest or process the timber that the permit would

authorize him or her to cut.

(2) Where a person applying for a permit to cut timber for his or her personal consumption is a member of a household to which there belongs a person who has been issued a permit, the person applying for the permit is not eligible to receive one unless otherwise provided by regulation.

(3) A cutting permit shall not be assignable or transferable to another person, but a person to whom a permit is issued to cut timber for his or her personal consumption may obtain the assistance of another person, whose name shall appear on the permit, to assist him or her in cutting the quantity of timber that the permit allows.

(4) A cutting permit shall be valid for the period set out in it.

(5) A cutting permit shall not be issued to a person who is in default of the terms and conditions of a timber cutting permit previously issued in that person's name.

(5.1) Where a cutting permit is or has been issued under this section, that issuance shall not create a right or expectation in a permittee for the renewal of that cutting permit, and does not in any case create a right of renewal of a cutting permit.

(5.2) A person who, having been issued a cutting permit, believes he or she had a right to the renewal of the permit does not have a cause of action against the Crown and no compensation is owed to him or her by the Crown solely as a result of the passage of subsection (5.1).

(6) A beneficial interest in a cutting permit is not assignable, transferable or subject to sale in any way.

(7) Where the holder of a cutting permit issued under this section does not comply with

- (a) the conditions of the permit;
- (b) all applicable federal, provincial and municipal laws respecting the cutting of timber; or
- (c) other forest management requirements prescribed by the minister,

the minister or a forestry official may cancel that permit.

(8) Where a person applies for a cutting permit, the Lieutenant-Governor in Council may, in accordance with the regulations made under section 38, require that timber cut under the permit be

- (a) sold to a person specified by the Lieutenant-Governor in Council; or
- (b) first offered for sale to a person specified by the Lieutenant-Governor in Council,

and where the permit is issued, that requirement and other terms and conditions that the Lieutenant-Governor in Council may require shall be considered to be a term or condition of that permit.

[1990 c58 s27](#); [1993 c42 s6](#); [1999 c30 s1](#); [2006 c17 s3](#); [2008 c56 s1](#)

[Back to Top](#)

Cutting permits validated

27.1 Where, before the coming into force of this section, the minister or a forestry official issued a cutting permit under this Act and a term or condition of the cutting permit specified that timber cut under the permit be first offered for sale as directed by the minister or the forestry official, that term or condition and cutting permit shall be considered to have been validly issued under this Act.

[2006 c17 s4](#)

[Back to Top](#)

Provisions of permit

28. A cutting permit issued under section 27 may contain provisions respecting

- (a) the species, class and volume of timber which may be cut or removed;
- (b) the location where the timber shall be cut;
- (c) the location where timber shall be piled for scaling and inspection;
- (d) the safeguarding and protection of the environment in the immediate area where the trees are to be cut under the permit;
- (e) the payment of timber royalties; and
- (f) those other provisions that the minister or the forestry official issuing the permit considers appropriate.

1990 c58 s28; [1993 c42 s7](#)

[Back to Top](#)

Royalty payable

29. (1) Unless otherwise provided for in the regulations a royalty, payable to the Crown, shall be charged on all timber and classes of timber cut on Crown lands or public land except on timber cut under a timber sale agreement.

(2) The royalty payable with respect to timber cut under a Crown timber licence or a cutting permit shall, unless otherwise provided for in regulations, be paid by the holder of the Crown timber licence or the cutting permit.

(3) The royalty for each class of timber shall be prescribed by the regulations.

(4) Except where the minister has entered into an agreement setting a longer period over which a royalty may be paid, the royalty for each class of timber shall be paid over a 12 month period beginning January 1 of each year.

1990 c58 s29; [1993 c42 s8](#); [2008 c11 s1](#)

[Back to Top](#)

Unpaid royalties

30. All money due and payable to the Crown under this Act, the regulations or an agreement entered into under this Act and the regulations that is not paid at the time it becomes due and payable shall, until paid, bear interest at a rate to be prescribed by regulation and this money with interest is recoverable in a court as a debt due to the Crown.

1990 c58 s30

[Back to Top](#)

Lien on timber

31. (1) There exists in favour of the Crown a lien on all timber cut on Crown lands or public land and products manufactured from that timber until all royalties and interest in respect of the timber have been paid.

(2) A lien under this section has preference and priority over all other claims, liens, charges, privileges or encumbrances in respect of the timber or products manufactured from the timber.

(3) The lien created by this section and its priority shall not be lost or impaired by the neglect, omission or error of the minister or a forestry official, or by the taking of, or failure to take,

proceedings to recover money and interest or by the tender or acceptance of a partial payment of money and interest.

1990 c58 s31; [1993 c42 s9](#)

[Back to Top](#)

Seizure of timber

32. (1) Where royalties and interest due and payable under this Act, the regulations, or an agreement entered into under this Act or the regulations are not paid, the minister or a forestry official may

- (a) seize the timber that is subject to a lien under section 31; or
- (b) seize timber or products manufactured from timber in the hands of the agreement holder or permittee, whether or not the timber or the timber from which the manufactured product was made was cut from Crown lands or public land, sufficient to secure the payment of the royalties and interest charges and to recover the expenses of seizure and sale.

(2) Where, within 30 days, the outstanding money and interest charges on timber, or products manufactured from the timber, seized under subsection (1) have not been paid, the minister may sell by public tender the timber or the products manufactured from timber that have been seized.

(3) The money realized as a result of a sale referred to in subsection (2), after deducting outstanding royalties and interest charges and the expenses of seizure and sale, shall be paid to the owner of the timber or products manufactured from the timber.

1990 c58 s32; [1993 c42 s10](#)

[Back to Top](#)

Garnishment

33. (1) Where the holder of a Crown timber licence or a cutting permit has disposed of timber or a product manufactured from the timber on which there were outstanding royalty and interest charges, the minister may, by letter delivered personally or sent by registered mail to a person who is indebted, or is about to become indebted, to the holder of the licence or the cutting permit who is liable for that royalty and interest charges, demand that that person pay to the minister the whole or part of the money payable by that person to the holder of the licence or the cutting permit.

(2) The receipt of the minister for money paid under subsection (1) constitutes a good and sufficient discharge of the liability of the person indebted to the holder of a licence or a cutting permit to the extent of the amount stated in the receipt.

(3) A person who, after receiving a demand from the minister under subsection (1), discharges his or her liability by payment to the holder of a licence or a cutting permit referred to in that subsection is personally liable to the Crown to the extent of the liability so discharged as between him or her and the holder of a licence or a cutting permit to the extent of the liability of the holder of a licence or a cutting permit for royalty and interest charges, whichever is the lesser amount.

1990 c58 s33

[Back to Top](#)

Acquisition of timber prohibited

34. (1) No person may purchase or otherwise acquire timber cut on Crown lands or public land for subsequent sale or barter or for processing into a product which is intended to be sold or bartered except under a licence issued in accordance with this Act and the regulations.

(2) The holder of a licence under subsection (1) may, with the consent of a party to a timber sale agreement or cutting permit holder, remit to the Crown timber royalties which are due and payable by the party to the agreement or the permit holder.

(3) Where the holder of a licence under subsection (1) fails to remit to the Crown timber royalties which were collected under subsection (2) the licence is void and no further licence shall be issued until all outstanding royalties, interest and penalties have been paid.

1990 c58 s34

[Back to Top](#)

Regulations re: royalties

35. (1) The Lieutenant-Governor in Council may make regulations

- (a) specifying classes of timber and the royalty rate applicable to them;
- (b) providing for the exemption of a class of timber or class of persons from the payment of royalty;
- (c) prescribing the rate of interest to be charged on all royalties due and payable under this Act and the regulations which are unpaid;
- (d) prescribing the manner in which notice of seizure is to be served; and
- (e) prescribing the period of time over which royalties may be paid.

(2) Regulations made under subsection (1) respecting stumpage rates or other royalties or charges may be made with retroactive effect to January 1 of the year in which the stumpage rates or other royalties or charges are payable.

1990 c58 s35; [1996 cR-10.1 s32](#); [2008 c11 s2](#)

[Back to Top](#)

Timber harvesting standards

36. Timber cutting operations carried out on Crown lands or public land shall be conducted in accordance with utilization standards prescribed by the regulations.

1990 c58 s36; [1993 c42 s11](#)

[Back to Top](#)

Export of timber

37. Except as may be provided for in this Act and the regulations no person shall export from the province unmanufactured products of timber from trees cut or taken on or from Crown lands, public land or freehold lands or lands which are now or may be demised from the Crown or lands held by virtue of a lease, licence or agreement issued under this Act or a former Act.

1990 c58 s37

[Back to Top](#)

Regulations

38. The Lieutenant-Governor in Council may make regulations

- (a) prescribing the procedure for obtaining a Crown timber licence or a cutting permit;

- (b) prescribing different classes of cutting permits;
- (b.1) respecting a first offer refusal system that may apply to the sale of timber under a Crown timber licence, timber sale agreement or cutting permit issued or made under this Part;
- (b.2) establishing the terms and conditions that may be added to a Crown timber licence, timber sale agreement or cutting permit with respect to first offer refusals for the sale of timber;
- (b.3) respecting the manner in which a first offer refusal system is to operate;
- (b.4) determining the times, situations, areas and to whom paragraphs (b.1), (b.2) and (b.3) apply;
- (b.5) respecting a directed sale of timber under a Crown timber licence, timber sale agreement or cutting permit issued or made under this Part;
- (b.6) establishing the terms and conditions that may apply to a Crown timber licence, timber sale agreement or cutting permit with respect to a directed sale of timber;
- (b.7) respecting the manner in which a directed sale of timber is to operate;
- (b.8) determining the times, situations, areas and to whom paragraphs (b.5), (b.6) and (b.7) apply;
- (b.9) prescribing the penalties to be imposed for cutting or removing timber contrary to the provisions of a Crown timber licence, timber sale agreement or cutting permit;
- (c) prescribing conditions under which a cutting permit may be issued, including who may receive one and respecting the circumstances under which the minister may issue more than 1 permit to a household;
- (d) [Rep. by 1997 c13 s24]
- (e) prescribing the manner and time of the returns to be made by the holder of a Crown timber licence or a cutting permit;
- (e.1) respecting a system for the purpose of tracking harvested timber;
- (f) providing for different types of agreements;
- (g) prescribing the terms and conditions under which a timber sale agreement may be entered into;
- (h) [Rep. by 2005 c40 s11]
- (i) defining timber utilization standards and the penalty to be imposed for contravening these standards;
- (j) [Rep. by 1997 c13 s24]
- (k) prescribing the terms and conditions under which a timber export permit may be issued and prescribing penalties for breach of those terms and conditions;
- (l) [Rep. by 1997 c13 s24]
- (m) prescribing the conditions to be applied to a timber purchase licence;
- (n) prescribing the manner in which public consultations are to be held under this Act and the information to be made available during that consultation;
- (o) respecting sustainable forest management, 5 year operating plans, annual operating

plans and sustainable forest management plans;

- (p) respecting annual reports required under this Act;
- (q) prescribing the penalties to be imposed for cutting or removing timber from Crown lands or public land contrary to the provisions of this Act;
- (r) prescribing the penalties generally to be imposed for contravening this Act; and
- (s) prescribing the form, content and due dates for sustainable forest management plans.

[1990 c58 s38](#); [1993 c42 s12](#); [1996 cR-10.1 s32](#); [1997 c13 s24](#); [2001 c28 s2](#); [2005 c40 s11](#); [2006 c17 s5](#)

PART III FOREST MANAGEMENT TAXATION

[Back to Top](#)

Definitions

39. In this Part

- (a) "assessor" means the assessor appointed under section 49 and includes a person authorized to carry out the duties of the assessor under this Part;
- (b) "board" means the Forest Land Tax Appeal Board constituted under section 58;
- (c) "managed land" means a parcel of land that is certified by the minister as managed land under this Part and includes land considered to be managed land by virtue of an order made under subsection 43(2);
- (d) "parcel", notwithstanding paragraph 2(m.2), means a block, lot or area of land or some combination of blocks, lots or areas of land, however acquired, of 120 hectares or more in extent to which the right to cut and remove trees is vested in the same person or from which that person derives a continuing benefit from having the trees cut and removed on his or her behalf and which is wholly contained within one forest management district;
- (e) "roll" means the assessment roll prepared under section 52, and includes a supplementary assessment roll;
- (f) "tax" means the tax imposed by this Part and includes all penalties, costs and interest that may be added to the taxes under or by virtue of this Part;
- (g) "taxpayer" means a person liable to pay money by way of tax under this Part; and
- (h) "water body" means a lake, pond, river or other body of water that is greater than 2 hectares in extent as determined by the minister.

[1990 c58 s39](#); [2005 c40 s12](#)

[Back to Top](#)

Application for certificate

40. (1) Except as may be provided for in section 41 a person who has the right to cut and remove trees from a parcel of land or who is vested with a continuing benefit from having the trees cut and removed on his or her behalf shall submit to the minister an application for a certificate of managed land.

(2) Where a person fails to make an application under subsection (1) the minister may by notice in writing require that person to submit an application for a certificate of managed land.

(3) The failure of a person to make an application under subsection (1) or (2) does not relieve that person of his or her obligation to manage the land in accordance with the provisions of this Part or relieve that person of an obligation to pay those taxes that may be calculated under this Part.

1990 c58 s40

[Back to Top](#)

Provisions not applicable

41. The provisions of section 40 do not apply to land

- (a) that is situated within a city incorporated under an Act of the Legislature;
- (b) in respect of which the sole and exclusive right to cut and remove trees is vested in the Crown in right of the province or in right of Canada ;
- (c) in respect of which the sole and exclusive right to cut and remove trees has been conveyed by or on behalf of the Crown
 - (i) for a term of 1 year or less, or
 - (ii) for a term of more than 1 year in consideration of the payment of a royalty, rental, stumpage fee, or charge that is capable of being varied within each year of that term at the sole discretion of the government of the province or a department or agency of the government; or
- (d) that is specifically excluded from the application of this Part by the regulations.

1990 c58 s41

[Back to Top](#)

Contents of application

42. (1) An application for a certificate of managed land shall be made in writing in the form prescribed by the minister and shall contain

- (a) an accurate description of the boundaries of the parcel that is the subject of the application and its area in hectares;
 - (b) a statement respecting how the land in question was acquired and, if registered in the Registry of Deeds, stating the volume and folio numbers of each document registered; and
 - (c) a map, in form and size satisfactory to the minister, showing the location of the land.
- (2) The minister may require the applicant for a certificate of managed land
- (a) to cause a survey and inventory of the parcel which is the subject of the application to be made at the expense of the applicant by a person approved by the minister; and
 - (b) to submit additional facts and information respecting the application that the minister may require.

1990 c58 s42; [1997 c13 s24](#)

[Back to Top](#)

Order re: managed land

43. (1) Upon receiving an application for a certificate of managed land the minister may

recommend to the Lieutenant-Governor in Council that an order under subsection (2) be made with respect to the parcel that is the subject of the application.

(2) The Lieutenant-Governor in Council, following receipt of the recommendation of the minister under subsection (1), may make an order certifying the parcel to be managed land from a date, either before or after the making of the order, specified in the order and upon making the order, which shall contain a description of the boundaries of the land affected and the area of the land, the land shall be considered to be managed land for the purposes of this Part.

(3) An order made under subsection (2)

(a) shall be made subject to the condition that the applicant submit to the minister a sustainable forest management plan or specified parts of a plan acceptable to the minister and prepared in accordance with

(i) the sustainable forest management strategy for the province, and

(ii) terms and conditions that may be specified in the order, and

(iii) regulations made under this Act,

for each parcel or part of a parcel to which the order relates; and

(b) shall be valid for a period of not more than one year from the date specified in the order, but no order under subsection (2) shall be made more than twice with respect to the same parcel of land or a part of that parcel.

(4) The Lieutenant-Governor in Council may, upon being satisfied that a term or condition of an order made under subsection (2) has not been satisfied or complied with, cancel the order, which shall, upon the issuance of the cancellation, be considered never to have been made.

(5) The Minister of Forestry and Agriculture shall send a copy of an order made under subsection (2) and a cancellation of an order made under subsection (4) to the assessor and the assessor shall enter the relevant information in the roll or supplementary roll as may be required.

1990 c58 s43; [1993 c42 s13](#); [2001 c28 s3](#); [2005 c40 s13](#)

[Back to Top](#)

Consolidation order

44. Where the minister is satisfied that

(a) the right to cut and remove the trees from more than 1 lot, block or area, or parts of them, is vested in the same person and the combined area of those lots, blocks or areas, or parts of them, is 120 hectares or more;

(b) the right to cut and remove the trees from 1 or more parcels within the meaning of paragraph 39(d), or from 1 or more of those parcels and other areas, or parts, is vested in the same person;

(c) the same persons are vested with a continuing benefit from having the trees from more than 1 lot, block or other area, or parts of them, cut and removed on his or her behalf and the combined area of those other areas, or parts, is 120 hectares or more; or

(d) the same persons are vested with a continuing benefit from having the trees from 1 or more parcels, within the meaning of paragraph 39(d), or from 1 or more of those parcels and other areas, or parts, cut and removed on his or her behalf,

the minister may order that a specified group of those parcels, lots, blocks or other areas or parts of them be consolidated into 1 parcel.

1990 c58 s44; [1991 c43 s9](#)

[Back to Top](#)**Consolidation order**

45. (1) An order of consolidation made under section 44 shall
- (a) describe each block, lot or area of land, or part, situated within the area being consolidated;
 - (b) state the name of the person having the right to cut and remove the trees from all the blocks, lots or areas of land, or parts of them, or vested with a continuing benefit from having the trees cut and removed on that person's behalf; and
 - (c) immediately be served on
 - (i) the person referred to in paragraph (b) by registered mail, and
 - (ii) the assessor.
- (2) The minister may rescind, revoke, amend or vary an order made under section 44.

1990 c58 s45

[Back to Top](#)**Certificate of managed land**

46. (1) Where the minister approves a sustainable forest management plan, or those parts of a sustainable forest management plan that may be specified under paragraph 43(3)(a), the minister shall issue a certificate of managed land to the applicant, and upon the issuance of the certificate, which shall contain a description of the boundaries of the parcel and the area of the parcel, the parcel so described, or a portion of the parcel, is managed land for the purpose of this Part, as long as the certificate remains in force or is not amended under subsection 47(3) or (4).

- (2) A certificate issued under subsection (1)
- (a) may be issued subject to those terms and conditions; and
 - (b) is valid for the period

that may be stated in the regulations, but it shall be a condition of the granting of every certificate issued under this section that the person in whose favour it is made does not violate a provision of this Part with respect to a parcel of land, or part, to which this Part applies, whether or not the parcel or part comprises the land specified in the certificate.

(3) The assessor shall be furnished with a copy of the certificate of managed land immediately after it is issued.

1990 c58 s46; [2001 c28 s4](#); [2005 c40 s14](#)[Back to Top](#)**Annual report**

47. (1) A person to whom a certificate of managed land is issued shall make a report to the minister once in each year at a time determined by the minister, or at more frequent intervals covering specified periods as the minister may require, showing, in addition to the matters prescribed by the regulations, the progress being made by that person towards the implementation of and compliance with the management plan.

(2) The minister may during the currency of a certificate of managed land amend the terms and conditions upon which it is granted or make additions to or deletions from the management plan.

(3) Where, during the currency of a certificate of managed land, the minister is of the opinion that the holder is not managing the land, or a portion of the land, to which the certificate relates in accordance with the management plan, or is in default of a term or condition of the certificate, the minister may, with the approval of the Lieutenant Governor in Council,

- (a) cancel the certificate from the date specified in the cancellation, and that date may be earlier than the date of issuance of the cancellation; or
- (b) declare a portion of the land to which the certificate relates to be unmanaged land without affecting the validity of the certificate of the remaining portion, from a date contained in the declaration and that date may be earlier than the date of issuance of the declaration.

(4) Where, within 2 years after the end of the term of a certificate of managed land, the minister forms the opinion that the person who held the certificate did not manage the land, or a portion of the land, to which that certificate related in accordance with the management plan or that the person who held the certificate was in default of a term or condition of that certificate, the minister may, with the approval of the Lieutenant Governor in Council,

- (a) revoke the certificate retroactively to the date of commencement of the term of that certificate, or to some other date within the term of the certificate, with effect, as if the certificate had been cancelled during its term or on that date; or
- (b) declare a portion of the land to which the certificate relates to be unmanaged land without affecting the validity of the certificate of the remaining portion, from a date contained in the declaration and that date may be earlier than the date of issuance of the declaration.

(5) A cancellation or amendment of, addition to, or deletion from a certificate or a management plan shall be communicated in writing immediately by the minister to

- (a) the holder of the certificate by registered mail; and
- (b) the assessor.

1990 c58 s47; [2001 c28 s5](#)

[Back to Top](#)

Appeal to board

48. (1) A person (in this section referred to as the "appellant") aggrieved by

- (a) the refusal of the minister to issue a certificate of managed land;
- (b) a term or condition on which a certificate of managed land is issued;
- (c) the period of validity of a certificate of managed land;
- (d) an amendment to a term or condition on which a certificate of managed land is issued;
- (e) an addition to or deletion from a management plan;
- (f) the cancellation of a certificate of managed land; or
- (g) anything contained in an order of consolidation

may, within 28 days from the date of notification of the refusal, or the issuance or cancellation of the certificate, or of the amendment to the term or condition of the certificate, or of the addition to or deletion from the management plan, appeal to the board established under section 58.

(2) A person appealing to the board shall serve written notice of the appeal on the minister.

(3) The notice served under subsection (2) shall set out the grounds of complaint of the appellant with the facts upon which the complaint is based.

(4) The board shall

- (a) hear the appeal on a day appointed by it for the purpose, which day shall not be later than 30 days from the date the appeal is filed with the board;
- (b) decide the matter of the appeal within 45 days from the date of hearing the appeal by making whatever orders for or against the minister that it considers proper; and
- (c) immediately afterward record the decision and orders in writing, disclosing in the record whether the decision is unanimous or by majority, and transmit copies of the decision to the appellant and to the minister.

(5) The minister shall produce before the board prior to the hearing of the appeal all papers and documents which are in the possession of the Crown and which may affect the outcome of the appeal.

(6) The board may award costs of an appeal under this section for or against the Crown and fix their amount.

(7) Notwithstanding anything contained in this Part, the minister shall give effect to an order made upon him or her by the board respecting the subject matter of the appeal referred to in subsection (1).

1990 c58 s48

[Back to Top](#)

Assessor

49. (1) The Minister of Finance shall appoint an assessor to carry out the functions and duties conferred upon the assessor under this Part.

(2) There may be appointed in the manner authorized by law officers, clerks and other employees to assist the assessor, or that may be necessary for the proper administration of this Part.

1990 c58 s49

[Back to Top](#)

Annual return

50. (1) A person who has the right to cut and remove trees on or from a parcel or is vested with a continuing benefit derived from having the trees cut and removed on the person's behalf shall, without a notice of demand, once in each year, on or before the prescribed date, complete and deliver to the assessor a return for the parcel in a form approved by the Minister of Finance containing

- (a) the name and address of the person making the return;
- (b) where the person making the return has no address or place of business within the province, the address of a trustee or agent within the province to which assessment notices and other documents required under this Part may be mailed or served;
- (c) a description of the boundaries of the parcel in which the right or benefit exists together with
 - (i) the area in hectares of the parcel, and
 - (ii) the area in hectares of the parcel after deducting from the area the total area of each water body; and

(d) the additional information and facts that may be prescribed.

(2) The return referred to in subsection (1) shall be signed by the person required to complete and deliver it, or by the agent, trustee or representative of that person, and in the case of a corporation, association or a partnership, the return shall be signed by an officer or member of the corporation, association or partnership having personal knowledge of the facts and disclosures made in it.

(3) For the purpose of assisting in the preparation of the roll, the assessor may by notice in writing require a person who has submitted a return to supply further details, or to produce documentary evidence to support facts and disclosures made in the return, and upon receipt of the notice, the person to whom it is directed shall comply with the requirements contained in the notice within 14 days after being sent by registered or prepaid mail by the assessor.

(4) A person who fails to submit a return containing the particulars required by this Part, or who fails to comply with the requirements contained in a notice given under subsection (3) or who furnishes false or misleading information either on the return, or to the assessor, is guilty of an offence.

1990 c58 s50; 1993 c42 s14

[Back to Top](#)

Secrecy

51. Subject to an Act respecting the compilation of data and completion of statistics, or an agreement with the Government of Canada or of a province of Canada respecting exchange of confidential information, information given on returns or to the assessor under this Part is available only to persons authorized by the Minister of Finance and that authorization shall be given solely for the purposes of this Part or an Act of the province which provides for the imposition of a tax.

1990 c58 s51

[Back to Top](#)

Annual assessment roll

52. (1) The assessor shall, once in each year, not later than a date during the year to be prescribed by the regulations, prepare and enter upon an assessment roll

- (a) the name and address of the person having the right to cut and remove trees on and from a parcel or vested with a continuing benefit derived from having those trees cut and removed on that person's behalf;
- (b) where the person referred to in paragraph (a) has no address or place of business within the province, the name and address of the trustee or agent of the person within the province;
- (c) a brief description of the parcel showing the area in hectares of the parcel and the net area in hectares of the parcel after deducting from the area the total area of each water body; and
- (d) the other information that may be prescribed by the regulations.

(2) For the purposes of preparing the roll, or for inclusion of the matters required to be included in the roll, the assessor, or another officer who may be authorized by the assessor, has the right to resort to all sources of relevant and available information, and in particular has

- (a) the right of free and uninterrupted access to and egress from all parcels, or parts of them, for the purposes of computing the area of those parcels, and the fair market value applicable to them;

- (b) the power to examine persons under oath upon all matters pertaining to the duties imposed on the assessor; and
- (c) access to all pertinent documents, records, accounts, books and vouchers, with the right to take extracts from or make copies of them.

(3) A person who deliberately misleads, interferes with or impedes the assessor in carrying out his or her duties under this Part, or who fails to provide assistance to the assessor when rightfully requested, is guilty of an offence.

1990 c58 s52

[Back to Top](#)

Supplementary roll

53. (1) Where, at any time up to 6 years subsequent to the time in a year required by this Part, or the regulations, for the preparation of the roll,

- (a) land to which this Part applies is not included, or is incorrectly included, in the roll for that year;
- (b) a certificate of managed land has been issued, cancelled or revoked with respect to a parcel and not recorded in the roll for that year;
- (c) the assessable area of a parcel of land is incorrectly recorded in the assessment roll for that year; or
- (d) a material error, which has resulted in a substantial overpayment or underpayment of the tax for that year, appeared in the roll for that year,

the assessor shall prepare a supplementary assessment roll for the appropriate year, and the provisions of this Part respecting the roll including the publication for examination and the examination of the roll, the preparation and mailing of assessment notices and the consequences of those notices, the rights and powers of the assessor, and the provisions respecting appeal against assessment shall apply with the necessary changes to the supplementary roll as they apply to the roll.

(2) Where a land holder is subject to retroactivity, the minister may consider lands to be managed or unmanaged for a period not exceeding 6 years.

1990 c58 s53

[Back to Top](#)

Persons having mutual rights

54. Where a person has a right to cut and remove trees from a parcel, or a part of a parcel, or is vested with a continuing benefit derived from having the trees cut and removed on his or her behalf, jointly or in common with another person, that person is considered to have sole and exclusive right to cut and remove the trees or be vested with the continuing benefit derived from having the trees cut and removed on his or her behalf for the purposes of liability for payment of the tax, and an assessment, levied or taken under this Part with respect to that parcel may be made, levied or taken against that person without reference to another person enjoying those rights or benefits.

1990 c58 s54

[Back to Top](#)

Certificate of assessor

55. (1) Upon completion of the roll, the assessor shall

- (a) sign the roll;
- (b) endorse on the roll or attach to it a certificate setting out the date upon which the roll was completed; and
- (c) deliver it to the Minister of Finance and provide the minister with a signed and endorsed copy.

(2) The Minister of Finance shall within 21 days after the roll has been delivered to him or her publish a notice in the *Gazette* that a copy of the roll, together with the certificate referred to in subsection (1), is open for examination within the offices of the Department of Finance for the period set out in the notice, which shall not in any event be less than 14 days.

1990 c58 s55

[Back to Top](#)

Assessment notice

56. (1) The assessor shall within 1 month after the publication of the notice required under subsection 55(2) prepare and send by registered mail to each person whose name appears on the roll

- (a) an assessment notice for each parcel or part of a parcel in respect of which that person is disclosed as having the right or benefit referred to in paragraph 52(1)(a); and
- (b) a copy of the provisions of this Part respecting an appeal against an entry made in the roll or liability for the tax.

(2) Every assessment notice shall state the particulars appearing on the roll with respect to

- (a) the area within the parcel, or part of the parcel, assessed;
- (b) the applicable tax rate; and
- (c) the amount of tax payable.
- (d) [Rep. by 1993 c42 s15]

(3) A certificate of acknowledgment issued by the postal authorities of the mailing of the assessment notice by registered mail is, in the absence of evidence to the contrary, proof of the mailing of the assessment notice on the date of the certificate without further proof.

1990 c58 s56; [1993 c42 s15](#)

[Back to Top](#)

Error in form

57. No entry on the roll is invalid because of an error, omission or misdescription in an assessment notice, or because a person to whom the assessment notice was addressed did not receive it.

1990 c58 s57

[Back to Top](#)

Appeal board

58. (1) The minister shall, with the approval of the Lieutenant-Governor in Council, appoint a board to be known as the Forest Land Tax Appeal Board consisting of 3 persons, 1 of whom is a member of the Law Society of Newfoundland, who shall be the chairperson, and 2 of whom are experienced in forestry.

(2) The members of the board shall

- (a) hold office for a period of 3 years from the date of their appointment, and shall be eligible for reappointment;
- (b) carry out the functions and duties required of the board by this Part and the regulations; and
- (c) be entitled to the payment for remuneration, travel expenses and other outlays incurred by them in the performance of their duties that is fixed by the Lieutenant-Governor in Council or by the regulations.

(3) Where a member of the board ceases to be a member, or refuses or is unable by reason of illness or disqualification or other cause to act as a member, the minister shall, with the approval of the Lieutenant-Governor in Council, remove the member who refuses or is unable so to act, and shall immediately fill the vacancy created by the cessation or removal.

(4) The minister may, where a member of the board is unable by reason of temporary indisposition to act as a member for a period not exceeding 6 months, with the approval of the Lieutenant-Governor in Council, appoint a member to act in the indisposed member's place for the period, not exceeding 6 months, that may be specified in the appointment.

(5) For the purposes of the hearing of an appeal under this Part, the board is vested with all the powers that are conferred on commissioners by the *Public Inquiries Act* and, where the regulations confer upon the board the power of an investigating body within the meaning of the *Public Investigations Evidence Act*, it is vested with all the rights of a body under that Act.

1990 c58 s58

[Back to Top](#)

Appeal to board

59. (1) A person (in this section referred to as the "appellant") aggrieved by an entry made with respect to the appellant in the roll or to the amount of tax payable by the appellant as set out in the assessment notice, or who considers that he or she is not liable to taxation under this Part, may appeal to the board.

(2) A notice of appeal under this section or section 48 shall be filed with the chairperson of the board with copies of the notice being served upon the Minister of Finance and the minister.

(3) A notice of appeal under this section or section 48 shall set out the grounds of the appeal and the facts upon which it is based.

(4) An appeal under this section shall be made within 6 months of the date on which the appellant receives the assessment notice.

(5) The board comprising all its members shall

- (a) hear the appeal on a day appointed by it for the purpose, which day shall not be later than 30 days from the date of receipt by the chairperson of the board of a notice of appeal;
- (b) decide the matter of the appeal within 45 days of the date of hearing the appeal; and
- (c) immediately after the appeal record its decision in writing, disclosing in that record whether the decision is unanimous or by majority, and transmit copies of the decision to the appellant and to the Minister of Finance and the minister.

(6) The board may, prior to deciding the matter of an appeal, refer a question of law raised at the hearing of the appeal for the opinion of the Trial Division.

(7) The Minister of Finance and the minister shall produce before the board on the hearing of the appeal, and to the Trial Division upon a reference made under subsection (6), all papers and

documents which are in the possession of the Crown and which may affect the outcome of the appeal.

(8) The board may award costs in an appeal under this section for or against the Crown and fix their amount.

1990 c58 s59

[Back to Top](#)

Appeal to Trial Division

60. (1) An appeal lies from the decision of the board under section 48 or 59 to the Trial Division upon a point of law raised upon the hearing of the appeal before the board.

(2) The Trial Division may award costs in an appeal under subsection (1) for or against the Crown and may fix their amount.

1990 c58 s60

[Back to Top](#)

Ministers to give effect to orders

61. The Minister of Finance and the minister shall give effect to an order made upon them by the board, or the Trial Division, following an appeal under section 59 or 60.

1990 c58 s61

[Back to Top](#)

When tax due unaffected by appeal

62. (1) Neither the giving of a notice of appeal by a person, nor a delay in the hearing of the appeal, affects the due date, interest or penalties, or a liability for payment provided by this Part in respect of the tax that is the subject matter of the appeal, or delays the collection of the tax.

(2) Where the tax is set aside or is reduced on appeal, the Minister of Finance shall refund to the person who paid it the amount of the tax or excess which has been paid, together with additional interest or a penalty which was imposed upon and paid on the tax, with interest, as prescribed by the regulations, from the date of payment of the tax until the date of refund.

1990 c58 s62

[Back to Top](#)

Liability for tax

63. (1) Every person who has the right to cut and remove trees from a parcel or part of a parcel appearing on the roll, or who is vested with a continuing benefit derived from having those trees cut and removed on his or her behalf, is liable for and shall pay to the Minister of Finance within 3 months of the mailing of the assessment notice by the assessor

- (a) where the parcel or part of a parcel is managed land, an annual managed land tax, calculated in accordance with the regulations; and
- (b) where the parcel or part of a parcel is not managed land, an annual, unmanaged land tax calculated in accordance with the regulations.

(2) The tax referred to in paragraph (1)(b) shall increase for each year the land remains unmanaged land for 2 or more consecutive years.

(3) Notwithstanding subsection (1), instead of paying the tax provided for in subsection (1)

a person receiving an assessment notice may choose to surrender a right to cut and remove trees, or a continuing benefit from having those trees cut to the Crown provided that the surrender occurs within 3 months of the mailing of the assessment notice by the assessor.

(4) Where the tax is paid in respect of land to which this Part does not apply, the Minister of Finance may refund the tax in accordance with the regulations to the person who originally paid it.

1990 c58 s63; [1993 c42 s16](#)

[Back to Top](#)

Assessment directed by minister

64. (1) Where a person who has the right to cut and remove trees or who is vested with a continuing benefit from having those trees cut and removed on his or her behalf fails or refuses to make a return as required by this Part, or no return is made for a parcel or part of a parcel in respect of which a tax is payable under this Part, the Minister of Finance may direct the assessor to make an assessment of the tax payable by that person, or in respect of that parcel.

(2) An assessment under subsection (1) is final and conclusive against all persons, and the provisions of this Part respecting appeals against assessments do not apply to an assessment so made.

(3) Where the name and address of a taxpayer remains unknown to the Minister of Finance after reasonable inquiry, notice of assessment made under subsection (1) shall be published in the *Gazette* and in a newspaper circulating within the district where the parcel or part of the parcel is located.

(4) The publication of a notice of assessment under subsection (3) shall describe the parcel or part of the parcel and shall be considered to be full and proper service of notice of assessment upon all persons for the purpose of this Part.

1990 c58 s64

[Back to Top](#)

Recovery of taxes by action

65. The Minister of Finance may recover the amount of tax that is due and payable under this part by action in a court of competent jurisdiction as a debt to the Crown, and the court may award costs in the action for or against the Crown.

1990 c58 s65

[Back to Top](#)

Issue of tax certificate

66. (1) Where a taxpayer fails to pay the tax, or a part of the tax, that is due and payable under this Part, the Minister of Finance may issue a certificate stating the amount of the tax due and remaining unpaid, and the name of the person by whom it is payable.

(2) The Minister of Finance may file the certificate issued under subsection (1) with the Trial Division and when it has been so filed the certificate is of the same force and effect and all proceedings, including appeal, may be taken on it as if it were a judgment of that court for the recovery of a debt of the amount specified in the certificate against the person named in it.

(3) The Minister of Finance may recover all reasonable costs and charges attendant upon the filing of a certificate under subsection (2) in like manner as the amount stated in the certificate.

1990 c58 s66; [2013 c16 s25](#)

[Back to Top](#)

Demand on 3rd party

67. (1) The Minister of Finance may by letter, delivered personally or sent by registered mail to a person who is indebted, or is about to become indebted, to a taxpayer who is liable to pay tax under this Part, demand that the person pay to the Minister of Finance on account of that taxpayer's liability under this Part the whole or part of the money payable by that person to the taxpayer.

(2) The receipt of the Minister of Finance for money paid under subsection (1) constitutes a good and sufficient discharge of the liability of the person indebted to the taxpayer to the extent of the amount stated in the receipt.

(3) A person who, after receiving a demand from the Minister of Finance under subsection (1), discharges a liability by payment to the taxpayer referred to in that subsection is personally liable to the Minister of Finance to the extent of the liability so discharged as between the person and the taxpayer or to the extent of the liability of the taxpayer for taxes, whichever is the lesser amount.

1990 c58 s67

[Back to Top](#)

Power to recover taxes

68. The powers conferred by this Part for the recovery of taxes by action in court by filing a certificate, or by demand under section 67, may be exercised separately or concurrently or cumulatively, and the liability of a taxpayer for the payment of the tax is not affected by the fact that a fine, penalty or forfeiture has been imposed, paid or incurred by the taxpayer under this Part.

1990 c58 s68

[Back to Top](#)

Taxes a lien on trees

69. (1) The taxes payable under this Part constitute a lien or charge in favour of the Crown upon the trees standing on the parcel in respect of which the tax is payable and that lien or charge has priority over all other claims, liens, charges, privileges or encumbrances of every person, except those which have been registered under a statute providing for their registration prior to the date the assessment notice is sent under subsection 56(1).

(2) The lien or charge created by this section and its priority shall not be lost or impaired by a neglect, omission or error of the Minister of Finance, or an agent or officer of the Minister of Finance, or by the taking of, or failure to take, proceedings to recover the taxes, interest or penalties due, or by the tender or acceptance of a partial payment of the taxes, interest or penalty payable under this Part.

1990 c58 s69; [1991 c43 s9](#)

[Back to Top](#)

Forfeiture of trees

70. (1) Where in respect of a parcel the tax on the parcel or a part of the tax on it remains unpaid on April 1 in the year following the year in which the tax became due and payable, the Minister of Finance shall, as soon as possible after that date

- (a) send by registered mail to the taxpayer and to any other person who, to the knowledge of the Minister of Finance, appears to have an interest in the trees on the parcel or part of it, in respect of which the tax, or part of the tax, is unpaid; or
- (b) where no taxpayer or person having an interest in the parcel that is subject to the tax is known to the Minister of Finance, publish in the *Gazette* and in a newspaper circulating in the area in which the parcel is located

a notice (referred to in this section as a "notice of forfeiture") that the tax or part of the tax is unpaid.

(2) A notice of forfeiture shall state that unless the tax is paid on or before a date specified in the notice, which date shall be not less than 3 months after the date of the mailing of the notice, the rights vested in a taxpayer, and in another person, to the trees standing on the parcel, or part of the parcel, including the right to cut and remove the trees, the privileges enjoyed by a taxpayer and another person of access to the parcel and egress from the parcel, the right to plant, cultivate, cut and remove new trees on and from the parcel, or part of the parcel, and those other rights that may be prescribed shall be forfeited to and become the property of the Crown.

(3) A notice of forfeiture shall, in addition to the matters specified in subsection (1), contain a description of the parcel in respect of which the tax, or part of the tax, is unpaid and a statement of the amount of the tax remaining unpaid.

(4) Where the tax, or part of the tax, in respect of which a notice of forfeiture is sent, remains unpaid on the date specified in that notice, all rights vested in the taxpayer, and other persons, to the trees growing on the parcel including the right to cut and remove the trees, the privileges enjoyed by the taxpayer and other persons of access to the parcel and egress from the parcel, the right to plant, cultivate, cut and remove new trees on and from the parcel, or part, and those other rights that may be contained in the notice of forfeiture are on and from that date forfeited to and become the property of the Crown and all right, title and interest of the taxpayer, and of other persons, to those trees is extinguished.

(5) No compensation is payable to a person in respect of the operation of subsection (4).

(6) A copy of a notice of forfeiture in respect of which there is attached an affidavit or a certificate on oath by a person having knowledge that the notice of forfeiture was sent or published as required under subsection (1) and that the amount stated in the notice of forfeiture, or a part of the amount remains unpaid, shall be considered to be included among the deeds and other documents to which reference is made in section 7 of the *Registration of Deeds Act*.

(7) The copy of the notice of forfeiture with the affidavit or attached certificate shall, notwithstanding anything in the *Registration of Deeds Act* to the contrary, be registered in accordance with that Act without proof for registration and without payment of fees.

(8) The provisions of the *Registration of Deeds Act* shall apply with the necessary changes to the copy of the notice of forfeiture, with the affidavit or certificate attached, as if the Minister of Finance were a purchaser of the rights and privileges specified in the notice for valuable consideration from the person to whom the notice was sent.

1990 c58 s70

[Back to Top](#)

Right to harvest trees

71. Where the trees growing on a parcel are forfeited to the Crown, the minister may enter into an agreement with a person to harvest the trees on the parcel and may also enter into an agreement respecting silviculture treatment on those terms and conditions that the minister considers appropriate.

1990 c58 s71

[Back to Top](#)

Payment of tax by creditor

72. (1) A mortgagee of a parcel, or part of a parcel, the holder of a registered mechanics' lien against that parcel, or part, and an execution creditor of the taxpayer have the right to pay the tax, or a part of the tax, in respect of the parcel, or a part of the parcel, or trees on the parcel, against which the mortgage or mechanics' lien is registered or that is bound by the writ of execution.

(2) A mortgagee, who pays the tax or part of the tax under subsection (1), may add the

amount paid to the sum secured by the mortgage and the amount so paid shall bear interest at the mortgage rate from the date of payment and otherwise be subject to all the terms and conditions of the mortgage.

(3) A holder of a registered mechanics' lien, who pays the tax or part of the tax under subsection (1), may file with the Registrar of Deeds the receipt for the amount paid, and the registrar shall note on the claim of lien filed the date of payment and the amount paid, and the amount of the lien holder's claim shall be increased by that amount, and the rights of the lien holder and of all other persons shall be as they would have been if the amount of the addition had been justly due for work or services done or materials placed or furnished.

(4) An execution creditor who pays the tax or part of the tax under subsection (1) may file with the sheriff the receipt for the amount paid and the sheriff shall add that amount to the sum remaining unpaid under the execution, and the amount so added shall bear interest at the prescribed rate from the date of payment, and the sheriff in the return of the writ shall refer to the amount and to the manner of its addition.

1990 c58 s72

[Back to Top](#)

Interest and penalty

73. (1) Where a person does not pay the tax in the time and manner required, interest shall be levied upon that tax at the rate and in the manner prescribed by the regulations, and the regulations may provide for a minimum amount upon which interest shall be levied.

(2) Where a person does not pay tax in the time and manner required, a penalty may be assessed in the manner prescribed by the regulations.

(3) Where a certificate is issued under section 66, interest under subsection (1) shall continue to be added to the amount of the tax payable as contained in the certificate.

(4) The minister may remit the penalty or the interest imposed under this section.

(5) A remission under this section may be total or partial, conditional or unconditional, and may be granted whether before or after or pending a suit or proceeding for the recovery of the penalty or interest and before or after a payment of it has been made or enforced by process or execution.

[1992 c16 s5](#)

[Back to Top](#)

Disposition of taxes

74. All taxes, costs, penalties, interest and fines paid by a person or recovered from a person under this Part form part of the Consolidated Revenue Fund.

1990 c58 s74; [1992 c16 s6](#)

[Back to Top](#)

Refunds

74.1 (1) Where a person pays to the Minister of Finance an amount which exceeds the amount of tax required to be paid, the Minister of Finance may refund to that person the amount of the overpayment, together with interest, at the rate and in the manner prescribed by the regulations.

(2) Notwithstanding subsection (1), where a person owes money to the Crown under this or another Act, the Minister of Finance shall deduct the amount owing from the refund and shall inform the person of the set-off.

(3) Notwithstanding subsection (1), the Minister of Finance shall not make a payment under this section unless the overpayment is disclosed to or by the minister within 3 years from the date on which that overpayment was made.

(4) Notwithstanding subsection (1), refund and interest payments under this section may be restricted or denied as prescribed by the regulations.

(5) Money paid under this section shall be paid out of the Consolidated Revenue Fund and shall be accounted for as a reduction of revenues under this Act.

[1992 c16 s7](#)

[Back to Top](#)

Offences

75. (1) Every person who

- (a) fails to pay the tax; or
- (b) is guilty of an offence under this Part or the regulations

is liable on summary conviction to a fine not exceeding \$2,000 and in default of payment of the fine to imprisonment for a term not exceeding 6 months, or to both the fine and imprisonment.

(2) Where a company is guilty of an offence under this Part or the regulations, an officer, director or agent of the company who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence.

(3) An information in respect of an offence under this Part or the regulations shall be laid within 6 years from the date of the offence.

(4) Sections 736 or 737 of the *Criminal Code* shall not be applied in disposing of a complaint made or in imposing punishment for an offence under this Part.

(5) An information or complaint for contravening a provision of this Part or a regulation may be for 1 or more offences and no information, complaint, warrant, conviction or other proceeding in a prosecution under this Part or the regulations is objectionable or insufficient by reason of the fact that it relates to 2 or more offences.

[1990 c58 s75](#)

[Back to Top](#)

Regulations

76. (1) The Lieutenant-Governor in Council may make regulations

- (a) excluding land from the application of this Part for purposes of paragraph 41(d);
- (b) exempting generally a class of persons from the payment of the whole or part of the taxes imposed by this Part;
- (c) [Rep. by 1996 cR-10.1 s32]
- (d) [Rep. by 1996 cR-10.1 s32]
- (e) prescribing, either specifically or generally, the type of forest inventory and inventory data which shall be used in the compilation of a sustainable forest management plan;
- (f) specifying the circumstances under which an applicant for a certificate of managed land shall prepare a sustainable forest management plan or specified parts of a plan;

- (g) respecting the due dates for the submission of 5 year operating plans, annual operating plans and annual reports;
- (h) prescribing penalties for late filing of a sustainable forest management plan or a return required to be made by this Part;
- (i) [Rep. by 1996 cR-10.1 s32]
- (j) [Rep. by 1996 cR-10.1 s32]
- (k) prescribing the methods and formulae, or either, to be applied for compiling the managed land tax and the unmanaged land tax;
- (l) fixing the duties of the assessor and other officers and persons appointed or designated to carry out the provisions of this Part;
- (m) prescribing the annual managed land tax;
- (n) prescribing increases in the unmanaged land tax, as required by subsection 63(2), with respect to a parcel or part of a parcel of land that is not managed land for 2 or more consecutive years;
- (o) [Rep. by 1996 cR-10.1 s32]
- (p) prescribing the duties of the board, with power to confer upon the board the power of an investigating body under the *Public Investigations Evidence Act*, fixing the remuneration payable to the chairperson and other members and providing for reimbursement of outlays and travel expenses;
- (q) fixing the date in each year when the roll is to be prepared by the assessor and prescribing matters to be included in the roll;
- (r) prescribing the circumstances under which refunds and interest may be granted or denied and setting restrictions on the granting or denying of refunds and interest;
- (s) prescribing rates and methods of calculating interest, the records, times and the manner of paying refunds, interest and making other payments;
- (t) prescribing the penalty to be paid for a period during which a tax or part of a tax remains unpaid; and
- (u) generally for giving effect to this Part.

(2) Regulations made under paragraphs (1)(a) and (b) may be made with retroactive effect to a date stated in the regulations which shall not in any event be more than the period of 12 months before the date of publication in the *Gazette*.

[1990 c58 s76](#); [1992 c16 s8](#); [1993 c42 s17](#); [1996 cR-10.1 s32](#); [2005 c40 s15](#)

[Back to Top](#)

Prevalence of this Part

77. Nothing in an Act of the province, or a grant, deed, licence, contract, agreement or other document, whether or not that grant, deed, licence, contract, agreement or other document has received ratification by the Legislature, passed, given, made or entered prior to January 10, 1975 shall be construed so as to defeat a provision of this Part, or to impose a liability on the part of the Crown, and where a provision of this Part is in conflict with anything contained in a statute, grant, deed, contract, agreement or other document, the provisions of this Part shall prevail.

[1990 c58 s77](#)

PART IV LICENSING OF MILLS

[Back to Top](#)

Definitions

78. In this Part

- (a) "licence" means a licence to operate a mill issued or renewed under this Part;
- (b) "licensee" means a person to whom a licence is issued; and
- (c) "mill" means a facility in which timber is manufactured into a product prescribed by the regulations.

1990 c58 s78

[Back to Top](#)

Licence

79. (1) No person shall construct, reconstruct or operate a mill or increase the productive capacity of a mill or convert an existing mill into a mill of another type without first obtaining a licence from the minister.

(2) The minister may issue a licence under this section subject to those terms and conditions that may be stated in the licence.

(3) A licence issued under this section shall specify the mill for which it is being issued and does not entitle the person to whom it is issued to operate another mill.

1990 c58 s79

[Back to Top](#)

Limitation on licence

80. A licence does not convey to the licensee a right other than the right to operate a mill.

1990 c58 s80

[Back to Top](#)

Cancellation of licence

81. The minister may cancel a licence where the minister is of the opinion that the operation of the mill in respect of which the licence was issued is

- (a) not in compliance with a term or condition of the licence; or
- (b) not in compliance with a provision of this Part or the regulations.

1990 c58 s81

[Back to Top](#)

Removal of mill

82. (1) Where a licence expires or is cancelled under this Part and the mill in respect of which the licence was issued is on Crown lands, the licensee shall within 6 months after the date of the

expiration or cancellation of the licence remove the mill and all building or machinery forming part of the mill from the lands and where the licensee does not do so within that time the mill and those buildings and machinery become the property of the Crown.

(2) The minister may dispose of a mill, building or machinery which becomes the property of the Crown under subsection (1).

(3) No compensation shall be paid to a licensee or to a person claiming under the licensee or on that person's behalf in respect of a mill, building or machinery which becomes the property of the Crown under subsection (1), and no action lies on behalf of that person against a person who takes possession of the mill, buildings or machinery under subsection (2) in respect of compensation or payment for the mill, buildings or machinery.

1990 c58 s82

[Back to Top](#)

Annual returns, etc.

83. (1) Every licensee shall

(a) 4 times in each year, in the manner and form that the minister may require, furnish to the minister a return sworn to by the licensee, an agent of the licensee or an employee of the licensee having knowledge of the facts contained in the return showing the quantity of

(i) timber, and

(ii) each timber product,

manufactured during the preceding 3 months in the mill in respect of which the licensee held a licence; and

(b) keep books and records that the minister may require in which the licensee shall enter a record of the quantity of timber cut or purchased for the mill in respect of which the licensee held a licence and the disposition of the products manufactured from the timber.

(2) The licensee, the agent of the licensee or an employee of the licensee having the custody of those books and records shall produce them for inspection whenever required to do so by a forestry official.

(3) A person who fails to comply with subsection (1) or (2) is guilty of an offence and liable on summary conviction to the penalty provided by the regulations.

1990 c58 s83; [2001 c28 s6](#)

[Back to Top](#)

Recovery of fees

84. A person who operates an unlicensed mill is, in addition to a fine or penalty provided for by this Part, liable to pay to the minister the amount of the fees in respect of the period of the operation of the mill that would have been payable if a licence had been issued to that person and the amount may be recovered in a court of competent jurisdiction as a debt due the Crown.

1990 c58 s84; [1993 c42 s18](#)

[Back to Top](#)

Offence

85. A person who operates

(a) an unlicensed mill; or

- (b) a mill manufacturing timber obtained from Crown lands or public land otherwise than in accordance with this Act and the regulations

is guilty of an offence and liable on summary conviction to the penalty prescribed by regulations.

1990 c58 s85; [1993 c42 s19](#)

[Back to Top](#)

Regulations

86. (1) The minister may make regulations

- (a) establishing levels of permissible wastage in the manufacturing of timber;
- (b) regulating the disposal of waste from mills;
- (c) providing for the grading of products of a mill and establishing standards by which different grades of those products shall be known;
- (d) appointing inspectors for the purposes of this Part;
- (e) prescribing the records to be maintained by a mill operator and the location at which those records are to be maintained;
- (f) prescribing conditions for the issuance of licences and their renewal under this Part;
- (g) establishing different types and classes of mills;
- (h) prescribing penalties for a violation of a provision contained in this Part;
- (i) [Rep. by 1997 c13 s24]
- (j) respecting the location and relocation of mills; and
- (k) generally, to give effect to the provisions of this Part.

(2) Regulations made under subsection (1) may be made to apply to the whole or to a part of the province specified in the regulations.

1990 c58 s86; [1997 c13 s24](#)

[Back to Top](#)

Penalty

87. (1) A person who contravenes this Part or the regulations is guilty of an offence and is, in addition to another penalty provided by this Part, liable to a fine of not less than \$200 or in default of payment of the fine to imprisonment for a period not exceeding 6 months.

(2) A licence issued under this Part shall not be renewed where the person to whom it was issued has not paid a fee associated with its issuance or has not provided information with respect to the licence that has been lawfully requested.

1990 c58 s87

PART V FOREST PROTECTION

[Back to Top](#)

Measures to protect forests

88. (1) The minister may undertake all reasonable measures to provide for effective protection of the forests whether on Crown lands, public land or privately owned land.

(2) In taking measures under subsection (1), the minister may use forestry officials or may employ or authorize independent contractors to take the measures that the minister directs.

1990 c58 s88; [1993 c42 s20](#)

[Back to Top](#)

Status of independent contractors

89. Where independent contractors are employed or authorized by the minister under subsection 88(2) they are considered to be

- (a) agents of the Crown; and
- (b) officers of the Crown for the purposes of subsection 15(2) of the *Proceedings Against the Crown Act*.

1990 c58 s89

[Back to Top](#)

Use of pesticide

90. The minister may, subject to the *Pesticides Control Act*, use or authorize the use of

- (a) a pesticide or other chemical registered under the *Pest Control Products Act* (Canada);
or
- (b) methods of biological control,

in a measure taken to protect or manage the forests of the province.

1990 c58 s90

[Back to Top](#)

Injunction

91. An interim or permanent injunction shall not be granted by a court against the minister, the Crown, an officer or agent of the Crown, or an independent contractor, to prevent the taking of measures authorized or directed by the minister under section 90.

1990 c58 s91

Division I - Forest Travel

[Back to Top](#)

Application of Division

92. (1) Notwithstanding another statute or law or a grant, lease, licence or other right granted, given or reserved to a person under an Act, this Division applies to all forest land within the jurisdiction of the province.

(2) Notwithstanding subsection (1) this Division does not apply to

- (a) the roadway portion of a highway as defined in the *Department of Works, Services and Transportation Act*;

- (b) persons who are required to be in a restricted area in the course of their duty under a law of the province; or
- (c) provincial parks, municipal parks or private camp grounds.

1990 c58 s92

[Back to Top](#)

Forest travel

93. (1) The minister may by order declare an area of forest land to be a restricted travel area for the period set out in the order for the purpose of

- (a) reducing the probability of a wild fire during periods of high fire hazard; and
- (b) restricting entry upon lands immediately before, during and immediately after they are sprayed by insecticides or herbicides.

(2) An order may describe the restricted travel area by the boundaries of the area or by the use of a name by which the area is generally or commonly known.

(3) Notice of an order made by the minister under subsection (1) may be given in the manner that the minister considers will give it the most prompt and adequate publicity and an order varying or revoking a designation may be made in a similar manner.

(4) Subject to this Part, no person shall travel through or be in a restricted travel area while an order is in force except in accordance with the provisions of that order or under and in accordance with a permit.

(5) The minister may in an order

- (a) allow travel in or use of a restricted travel area or part of an area for those purposes and upon those conditions that may be specified in the order;
- (b) exempt from the operation of the order those persons or classes of persons that may be specified in the order; and
- (c) exempt from the operation of the order an area of forest land or class of forest land specified in the order.

(6) The minister may make different orders in respect of different forest lands or in respect of the same forest land for different times.

(7) The minister may vary an order in respect of the period during which it applies, the area in which it applies and the person or classes of persons to whom it applies.

(8) A copy of a newspaper containing an order shall be evidence in court of the publication and the content of the order without further proof of the matter.

1990 c58 s93

[Back to Top](#)

Forest travel permit

94. (1) The minister may issue a forest travel permit for travel in or use of a restricted travel area or part of an area for those purposes and subject to those conditions that the minister may prescribe in the permit.

(2) Notwithstanding subsection (1), a permit does not give to the holder a right or privilege that the holder would not have had in respect of travel in or use of a restricted travel area if the permit had not been issued to the holder.

(3) The minister may by personal service or registered mail notify the holder of a permit of the cancellation or variation of the permit or a condition of the permit to which the holder is subject.

(4) The minister may cancel a permit under subsection (3) by publishing a notice to that effect in a newspaper having general circulation in the province.

(5) The minister may authorize other persons to issue permits in the name of the minister where the terms of those permits have been approved by the minister.

1990 c58 s94

[Back to Top](#)

Person to show permit

95. (1) A person found within a restricted travel area may be required by a forestry official to show the travel permit issued to that person and where one is not shown the forestry official may take the name, address, destination, route of travel and location of camp of that person.

(2) A forestry official who encounters a person in a restricted travel area without a valid permit may order that person to leave the area and a person who does not obey the order to leave is guilty of an offence.

1990 c58 s95

[Back to Top](#)

Offence

96. A person who violates or fails to comply with a provision of this Division or of an order or of a permit or a condition attached to that permit is guilty of an offence and liable on summary conviction to a fine of not less than \$200 and in default of payment to imprisonment for a term not exceeding 3 months or to both a fine and imprisonment.

1990 c58 s96

Division II - Forest Fires

[Back to Top](#)

Fire season

97. (1) The minister may by order declare a period in each year to be known as the forest fire season in the province.

(2) An order made under subsection (1) may apply to the whole or a part of the province and may apply to different parts of the province at different times and may be extended or shortened for the whole or a part of the province.

(3) Notice of an order made under this section may be given in a manner that the minister considers will give it the most prompt and adequate publicity.

(4) A copy of a newspaper containing the order shall be evidence in court of the publication and the content of the order without further proof of the matter.

1990 c58 s97

[Back to Top](#)

Permit to burn

98. (1) During the forest fire season no person shall, except in accordance with the regulations,

ignite a fire or cause a fire to be ignited on forest land or within 300 metres of forest land without a valid permit to burn.

(2) Notwithstanding subsection (1), a person may ignite a fire on forest land or within 300 metres of forest land under the circumstances set out in an order made under section 97.

(3) A person who wishes to light a fire on forest land during the forest fire season shall first apply for and obtain a permit to burn from the minister.

(4) A permit to burn shall be in the form prescribed by the regulations and may be issued by a forestry official or other person authorized by the minister.

(5) A forestry official may include in a permit to burn those terms and conditions that he or she considers appropriate or may refuse to issue a permit to burn.

(6) A permit to burn may, by oral or written notice, be cancelled or suspended at any time by a forestry official and upon receiving notice of a cancellation or suspension, the permit holder shall extinguish a fire started under the permit.

(7) The possessor of a valid permit to burn who ignites or causes a fire to be ignited shall take every reasonable precaution to prevent the fire from spreading and shall not leave the fire unattended until it is extinguished.

(8) The possession of a permit to burn does not discharge the person to whom it is issued from responsibility for damage resulting from a fire lit by that person.

(9) A person to whom a permit to burn is issued shall keep a copy of the permit on the site where the burning is taking place.

1990 c58 s98

[Back to Top](#)

Minister may prohibit fires

99. (1) Notwithstanding the other provisions of this Division, the minister may, whenever he or she considers it necessary for the protection of forest land, by proclamation prohibit the setting of fires on forest land or within 300 metres of forest land in a part of the province during the period specified in the proclamation except under conditions specified in the proclamation.

(2) Where a proclamation is made under subsection (1), a person shall not, except in accordance with the proclamation, ignite or cause to be ignited a fire on forest land or within 300 metres of forest land during the period specified in the proclamation.

(3) Notice of proclamation issued under this section may be given in a manner that the minister considers will give it the most prompt and adequate publicity.

(4) A copy of a newspaper containing the proclamation shall be evidence in court of the publication and the content of the proclamation without further proof of the matter.

(5) Every person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of not less than \$1,000.

1990 c58 s99

[Back to Top](#)

Where forest fire occurs

100. (1) For the purpose of controlling and extinguishing a fire on forest land, a forestry official may requisition the use of privately owned equipment and may order persons to assist in extinguishing a fire.

(2) Rates of pay for persons fighting fire on forest land and compensation for the use of privately owned equipment used by the department may be set by the minister.

(3) Every person who refuses to follow an order of a forestry official and provide assistance or refuses the use of that person's equipment requisitioned by a forestry official under subsection (1) is guilty of an offence.

(4) Every person who is aware that a fire has started and exists on forest land shall notify a forestry officer or the department and a person who does not do so is guilty of an offence.

1990 c58 s100; 1993 c42 s21

[Back to Top](#)

Disposal of matches, etc. prohibited

101. (1) A person who is on forest land or within 300 metres of forest land during the forest fire season shall not throw, drop or otherwise deposit a burning match, cigarette, cigar or other smoking material, live coals, hot ashes or other burning substance or fail to extinguish such a thing.

(2) Where a person is permitted to ignite a fire by this Division, that person shall take every reasonable effort to prevent the fire from spreading and shall not leave the fire unattended until it is completely extinguished.

(3) Every person in charge of a forestry operation, or other activity conducted on forest land or within 300 metres of forest land, shall provide and maintain at the place of the forestry operation or other activity the fire fighting equipment that is required by the regulations.

(4) No person shall operate on forest land or within 300 metres of forest land a burner, engine, incinerator or other spark emitting outlet that is not provided with an adequate device for arresting sparks.

(5) No person shall refuel or leave unattended a power saw or like equipment on forest land or within 300 metres of forest land unless the equipment has cooled to the point where it is unlikely to cause fire or has been put in a place where it is unlikely to start a fire.

(6) No person shall, on forest land, store or transport gasoline, fuel oil or a similar volatile flammable substance in a container other than one approved for the purpose by the Canadian Standards Association.

(7) During the forest fire season, a person in charge of a group entering onto forest land shall ensure that he or she and all persons under that person's charge are fully informed of the provisions of this Division and the regulations pertaining to forest fire protection.

1990 c58 s101

[Back to Top](#)

Woods operation

102. (1) A person having charge of a logging camp, mine, mill, or garbage dump located on forest land or within 300 metres of forest land shall have the area surrounding the site cleared of flammable debris for a distance of at least 30 metres or the further distance that may be required by a forestry official.

(2) During the forest fire season or whenever directed by a forestry official, an owner or operator or person in charge of a mill who ignites a fire or allows a fire to be ignited in trimming, edgings, sawdust or refuse on the premises shall not leave the fire unattended.

(3) Where a fire is burning or starts on forest land where a forestry operation or other activity is being carried on, the person in charge of the operation or activity shall take immediate action to control and extinguish the fire and for that purpose shall employ at that person's expense

the necessary personnel and equipment.

(4) When a forest fire originates on forest land where trees are being cut or removed, the person carrying out that operation shall immediately notify the nearest forestry official and commence fighting of the fire until relieved of this responsibility by a forestry official or until the fire is extinguished.

1990 c58 s102; [1993 c42 s22](#)

[Back to Top](#)

Where fire hazard exists

103. (1) Where a forestry official becomes aware of a condition that in the opinion of the forestry official may cause a fire resulting in damage to property or forest land, the forestry official may direct the person who has caused the fire hazard to take whatever action the forestry official considers necessary to remove that hazard.

(2) Where a person has been directed to remove a fire hazard described in subsection (1) and fails to comply, a forestry official may take whatever action the forestry officer considers necessary and the minister may recover associated costs and expenses.

(3) A person who fails to comply with subsection (1) is guilty of an offence.

1990 c58 s103

[Back to Top](#)

Burning debris

104. A person who clears forest land shall pile and burn all debris in accordance with a permit to burn or dispose of the debris to the satisfaction of a forestry official.

1990 c58 s104

[Back to Top](#)

Operating permit

105. (1) During the forest fire season and except as may be provided for in the regulations, every person who cuts or removes trees from forest land or who is engaged in an activity that is likely to cause a wild fire without first having obtained an operating permit from a forestry official is guilty of an offence and liable on summary conviction to a fine of not less than \$150.

(2) An operating permit shall be issued subject to the terms and conditions that may be prescribed by the regulations and those other special conditions that the forestry official issuing the permit considers necessary in the circumstances.

(3) An operating permit may be temporarily suspended by a forestry official where the forest fire danger rating for that locality is high to extreme.

(4) An operating permit may be cancelled at any time by a forestry official for a breach of this Division or the regulations or the terms and conditions of the permit.

(5) A person who continues to cut or remove trees or continues to engage in an activity that is likely to cause a forest fire after a permit has been suspended or cancelled is guilty of an offence and liable on summary conviction to a fine of not less than \$200 for every day or part of a day that person continues in violation of the notice of suspension or cancellation.

1990 c58 s105

[Back to Top](#)

Provincial emergency

106. (1) In the event of an emergency declared as a result of a wild fire under the *Emergency Services Act*, the provisions of that Act shall prevail over the provisions of this Act.

(2) Where an emergency is declared under the *Emergency Services Act* as a consequence of a wild fire, measures taken by officials under that Act to fight the fire shall be taken in consultation with forestry officials.

[2008 cE-9.1 s26](#)

[Back to Top](#)

Costs of fighting fire

107. (1) The Lieutenant-Governor in Council may by regulations require owners, lessees, licensees and other persons having possession or control of lands within the province to pay all the costs incurred by the Crown in extinguishing forest fires from those lands or the part of those costs that may be prescribed in the regulations.

(2) The regulations made under this section shall specify the circumstances in which payment is to be made in respect of costs incurred in extinguishing forest fires.

[1990 c58 s107](#)

[Back to Top](#)

Reward

108. The Lieutenant-Governor in Council may authorize the minister to offer rewards for information that will lead to the recovery of a penalty imposed by this Division.

[1990 c58 s108](#)

[Back to Top](#)

Seizure permitted

108.1 Where a forest fire has

- (a) commenced; or
- (b) burned and been extinguished,

on forest land, a forestry official may seize anything that he or she considers to be evidence of, or of assistance in the determination of, the cause of that forest fire.

[1999 c30 s2](#)

[Back to Top](#)

Regulations

109. (1) The minister may make regulations

- (a) specifying conditions under which logging and other operations may be carried out on forest lands during the forest fire season and prohibiting those logging and other operations to be carried out by a person except in compliance with those conditions;
- (b) providing that logging and other operations shall not be carried out on forest land unless the person carrying out the operations provides on the site of the operations the

equipment, of a type, in an amount and in the location that the regulations may specify;

- (c) providing that a person carrying out logging and other operations on forest land shall take whatever action that the regulations may specify for the purposes of preventing, extinguishing and assisting in the extinguishing of forest fires in the area where the person is carrying out logging operations;
- (d) prohibiting or controlling the use of stoves or other devices utilizing fuel during the forest fire season as prescribed and defined by the regulations;
- (e) prohibiting the use of power saws and other machinery or equipment utilized in the harvesting or extraction of timber or the use of a motorized vehicle that may be used for the transportation of timber, persons or equipment on forest land except in accordance with the safeguards for the prevention of forest fires that may be specified in the regulations;
- (f) considered necessary by the minister for preventing the originating or spread, or both, of forest fires;
- (g) prescribing the circumstances and conditions under which an outdoor fire may be lit without contravening the provisions of this Act;
- (h) exempting a person or class of persons from 1 or more of the provisions of this Division or the regulations; and
- (i) respecting those other matters necessary or advisable to carry out effectively the purposes of this Division.

(2) Different regulations may be made under subsection (1) respecting different classes or kinds of stoves, devices, machinery or equipment or respecting different periods of the year or respecting different classes of persons or respecting the same class of persons under different circumstances.

(3) [Rep. by 1993 c42 s23]

1990 c58 s109; [1993 c42 s23](#)

[Back to Top](#)

Offence

110. Notwithstanding the other provisions of this Division, a person who deliberately lights or starts a forest fire is guilty of an offence and liable on summary conviction to imprisonment for a period of not less than 2 weeks and not more than 2 years.

1990 c58 s110

[Back to Top](#)

Priority of this Division

111. In the event of a conflict between the provisions of this Division and the provisions of the *Municipalities Act* where they affect the suppression of a forest fire, the provisions of this Division prevail.

1990 c58 s111

PART VI FOREST ROADS

[Back to Top](#)

Rep. by 2005 c40 s16

112. [Rep. by 2005 c40 s16]

[2005 c40 s16](#)

[Back to Top](#)

Construction or abandonment to be approved

113. (1) The minister or a forestry official may construct and maintain a forest access road that he or she considers necessary for the carrying out of good sustainable forest management practices.

(2) The minister or a forestry official may authorize the

(a) construction by another person of a forest access road that he or she considers necessary for the carrying out of good sustainable forestry practices; or

(b) abandonment or closure of a forest access road upon those terms and conditions that the minister or forestry official considers necessary to restore and rehabilitate the areas affected by the construction of that road to a condition acceptable to the minister or the forestry official.

(3) A person shall not construct, close or abandon a forest access road without the authorization of the minister or a forestry official.

(4) A person shall not, by timber harvesting, or another activity, damage or cause damage to a forest access road.

[2005 c40 s17](#)

[Back to Top](#)

Minister may close road

114. (1) The minister or a forestry official may close a forest access road or a portion of it to travel by a class of vehicle or by a person or class of persons or may restrict travel on a forest access road to a class of vehicle or a class of persons for all or a part of the year

(a) for the purpose of insuring the safety of the public and forest workers;

(b) to prevent damage to the road-bed; and

(c) for other reasons that are directly related to good forest management.

(2) Where a forest access road is closed under subsection (1), signs and barricades shall be posted or erected to indicate that the road or portion of it has been closed to travel.

[1990 c58 s114](#)

[Back to Top](#)

Use of road prohibited

115. (1) No person, without lawful authority, shall

(a) travel on a forest access road or portion of it that has been closed to travel and notice of which has been given under subsection 114(2);

(b) remove or deface a sign or a barricade posted or erected under subsection 114(2); or

(c) barricade or post signs on a forest access road.

(2) A person who violates subsection (1) is guilty of an offence and is liable on summary

conviction to a fine of not less than \$100 and not more than \$1,000 and each time a person travels on a forest access road contrary to subsection (1) constitutes a separate offence.

(3) A person who travels on a forest access road contrary to subsection (1) shall be liable for the costs of repairing damage to the road caused by that person and an amount expended by the department to repair that damage is a debt due the Crown and may be recovered in a court.

1990 c58 s115

[Back to Top](#)

Maintenance and rehabilitation required

116. (1) A party to a forest management agreement or a timber sale agreement or a person who has a right to cut timber under a timber licence, timber lease, terms and conditions of an approved management plan or another person may

- (a) subject to section 113, construct a forest access road or perform other work incidental to that construction;
- (b) restrict travel over a forest access road constructed by that party or person; and
- (c) subject to section 113, close or abandon a forest access road or perform work incidental to that closure or abandonment.

(2) A forest access road built on Crown land or public land shall be built, used and maintained to standards established by the minister or as the minister delegates to a forestry official.

[2005 c40 s18](#)

[Back to Top](#)

Crown not liable

117. The Crown is not liable for an injury suffered by a person or for damage caused to the property of a person as a result of the use of a forest access road.

[2005 c40 s19](#)

[Back to Top](#)

Rep. by 1996 cR-10.1 s32

118. [Rep. by 1996 cR-10.1 s32]

[1996 cR-10.1 s32](#)

PART VII TIMBER SCALING

[Back to Top](#)

Definitions

119. In this Part

- (a) "board" means the Timber Scalers Board established under section 123;
- (b) "board foot" means a unit of measurement used to measure sawn lumber or to estimate the lumber volume that can be sawn from a log;
- (c) "certified scaler" means a person who holds a certificate under section 127;

- (d) "chief scaler" means an official scaler who is responsible for the administration of the provincial timber scaling program;
- (e) "cubic metre (solid)" means a unit of measurement used to measure the solid wood volume of a log;
- (f) "cubic metre (stacked)" means a unit of measurement used to measure the quantity of round timber that can be properly piled within a space of 1 cubic metre without deduction for bark or for normal air space;
- (g) "employer" means a forest operator or other person who engages the services of a logger to perform the work involved in a logging operation whether payable on a piecework basis or by wages;
- (h) "forest operator" means the holder of a right of any kind to an area of land or to trees growing on the land for the purpose of cutting timber or otherwise producing timber commercially and whether received or held under grant, lease, licence, permit, contract or assignment or by other means;
- (i) "logger" means a person engaged in the cutting, trimming, peeling, hauling or loading of pulpwood, pit props or other forms of timber or in another work connected with a logging operation whether of the foregoing kinds or not but does not include a person employed by a railway, steamship or trucking operator in the transporting of timber;
- (j) "logging operation" means the arrangements made for the purpose of carrying out the work involved in converting trees into timber, the loading and unloading of timber on and from trains, ships and trucks and the delivery of timber on and from trains, ships and trucks and the delivery of timber to a point of export or a point where it is converted into other products but does not include transportation of timber by a railway, steamship or trucking operator;
- (k) "official scaler" means a certified scaler appointed or employed by the department in the manner authorized by law;
- (l) "timber scaler" means a certified scaler or a person who holds a permit issued under section 134; and
- (m) "scaling" means the measurement of timber to determine its volume and mass.

1990 c58 s119

[Back to Top](#)**Timber to be scaled**

120. (1) All timber cut for commercial purposes on forest land in the province shall be scaled by a timber scaler before being manufactured.

(2) All timber cut on Crown lands or public land upon which a royalty is due and payable to the Crown shall be scaled by a timber scaler before being manufactured.

(3) An individual who manufactures timber which is required to be scaled before it is scaled is guilty of an offence and is liable upon summary conviction to a penalty of not less than the value of the timber manufactured.

1990 c58 s120

[Back to Top](#)**Right of entry**

121. A timber scaler may at any time in carrying out his or her duties under this Act and the

regulations enter a place where logging operations are being carried out.

1990 c58 s121

[Back to Top](#)

Units of measurement

122. Where timber is purchased or where a logger is paid, in whole or in part, on a piecework basis, payment shall, unless otherwise permitted by the regulations, be made on the basis of the units of measurement prescribed by the regulations.

1990 c58 s122

[Back to Top](#)

Timber Scalers Board

123. (1) The minister may appoint a board to be known as the Timber Scalers Board, consisting of 3 qualified persons, who may be appointed from among persons employed in the public service of the province.

(2) The minister shall designate the chairperson of the board and the secretary of the board from among the members and may prescribe the duties of each.

(3) A member of the board who is not employed in the public service of the province may be paid an amount for attendance at meetings of the board and to defray expenses incurred by reason of performing the duties of a member of the board that the minister may prescribe.

1990 c58 s123

[Back to Top](#)

Duties of board

124. It is the duty of the board

- (a) to examine the ability and knowledge of persons who apply to be certified to scale timber;
- (b) to issue certificates to persons found after examination to be qualified to scale timber;
- (c) to issue renewals of certificates to persons who are qualified under this Part to scale timber;
- (d) notwithstanding subsection 129(2), to revoke or suspend or refuse to renew certificates issued under this Part where after a hearing it is satisfied that a person no longer has the ability or knowledge to scale timber;
- (e) to hear appeals made to it under subsection 137(1);
- (f) to recommend to the minister new scaling methods before they are used; and
- (g) to perform those other duties that may be assigned to it by the minister.

1990 c58 s124

[Back to Top](#)

Sittings of board

125. (1) For the purposes of holding examinations, the board shall sit at the places and on the days

that may be fixed by the chief scaler.

(2) Before being accepted for examination by the board a candidate for a scaler's certificate shall

- (a) have at least 6 months' experience as an assistant to a timber scaler or be a forestry graduate of a university or technical school recognized for the purposes of this Part by the board;
- (b) have attended a course in scaling timber that has been approved by the board; and
- (c) provide the board with the information that may be prescribed by the regulations.

(3) Notwithstanding paragraph (2)(b), a candidate for a scaler's certificate who does not have 6 months' experience as an assistant to a timber scaler may be accepted for examination by the board where the board in its discretion considers that the candidate has had equivalent experience.

1990 c58 s125

[Back to Top](#)

Training period

126. (1) Where required to do so by the board, a candidate for a scaler's certificate shall spend a period in training on the job as an assistant to a certified scaler that the board may require before the candidate assumes full responsibility for scaling timber.

(2) A requirement made under subsection (1) shall be set out in the certificate issued to the candidate and is a condition of that certificate which, if contravened, may, in the discretion of the board, be cause for cancellation of the certificate by the board.

1990 c58 s126

[Back to Top](#)

Certificate

127. (1) After examination of a candidate for a scaler's certificate, the board shall

- (a) issue a scaler's certificate to the candidate if the candidate has passed the examination and, in the opinion of the board, is otherwise qualified to perform the duties of a timber scaler; or
- (b) reject the application of the candidate for a scaler's certificate and notify the candidate of the rejection, if the candidate fails the examination or, in the opinion of the board, is otherwise unqualified to perform the duties of a timber scaler.

(2) Notwithstanding paragraph (1)(a), where the board is of the opinion that a candidate would with more practical training be qualified to perform the duties of a timber scaler, the board may issue a conditional certificate to that candidate.

1990 c58 s127

[Back to Top](#)

Classes of certificates

128. The scalers' certificates issued by the board shall be distinguished, in the manner that the regulations may provide, to denote competency to perform 1 or more of the following activities, namely:

- (a) to scale timber measured collectively;

- (b) to scale timber measured as individual units; and
- (c) to scale timber measured by mass.

1990 c58 s128

[Back to Top](#)

Renewal of certificate

129. (1) A scaler's certificate expires on March 31 in each year.

(2) A person who, under this Part holds a scaler's certificate, or has held a scaler's certificate, is entitled, upon application to the board and upon payment of the prescribed fee, to receive a renewal of a scaler's certificate for the year in respect of which the application is made.

1990 c58 s129

[Back to Top](#)

Ineligibility for certificate

130. Where a person who has been issued with a scaler's certificate fails to make an application within 3 years after the certificate or the latest renewal of a certificate was issued to the person for a renewal of the certificate, the person is not entitled to and shall not be issued with a renewal of a scaler's certificate.

1990 c58 s130

[Back to Top](#)

Oath

131. A timber scaler shall on his or her appointment and before beginning his or her duties take the oath of office, in the form prescribed by the minister, before a person empowered to administer oaths and the oath shall immediately be transmitted to the chief scaler.

1990 c58 s131; [1997 c13 s24](#)

[Back to Top](#)

Duties of timber scalers

132. (1) A timber scaler shall scale timber in accordance with the procedures and methods that may be prescribed in a manual of scaling instructions authorized by the regulations, making those deductions that may be necessary to allow for defects and culls.

(2) When a timber scaler believes that timber contains so many defects that it would be impossible to make a reasonable scale, the timber scaler may recommend to the chief scaler that a measure be taken at the plant where manufacturing of the timber is undertaken, and the decision of the chief scaler regarding the acceptability of that measure is final.

1990 c58 s132

[Back to Top](#)

Monthly return

133. A timber scaler shall make a monthly return on forms supplied by the department showing the volume and class of timber scaled during the preceding month, the name of the employer of the scaler's services, and the permit number under which the timber was cut.

1990 c58 s133

[Back to Top](#)

Temporary permit

134. Where the board is satisfied that the services of a certified scaler are not available, the board may issue a temporary permit to a person who appears to the board competent to scale timber, authorizing that person to scale timber for a period not to exceed 6 months or until the next examinations are held following the issuance of the temporary permit, and for those purposes that may be prescribed in the permit.

1990 c58 s134

[Back to Top](#)

Scaler's statement

135. Where a logger so requests, a timber scaler shall provide the logger with a statement showing a detailed description of all measurements made and the calculations made to determine the net volume of timber for which the logger is seeking to be paid.

1990 c58 s135

[Back to Top](#)

Referral of disputes

136. (1) Where there is a dispute between a logger and a timber scaler or an employer or forest operator or a person paying for the preparation and delivery of timber and the dispute is as to the net amount of wood for which the logger is to be paid, a party to the dispute may ask the minister or chief scaler to provide the services of an official scaler to determine the matter of the dispute.

(2) The submission of a dispute under subsection (1) shall be made before the timber is removed from the site where it was originally scaled.

(3) Where the minister or chief scaler receives a request under subsection (1), the minister or chief scaler shall make the services of an official scaler available to the parties to the dispute.

(4) The minister may fix, in accordance with the scale of fees prescribed by him or her, the fees payable by the party against whom an official scaler gives a decision in a dispute that is referred to an official scaler under this section.

(5) The minister may demand payment of all reasonable expenses incurred by an official scaler in dealing with a dispute including the payment of fees fixed under subsection (4).

(6) The minister may recover fees and expenses payable under this Act as a debt due to the Crown.

(7) Subject to section 137, the decision of an official scaler in a dispute is binding on all parties to the dispute.

1990 c58 s136; [1997 c13 s24](#)

[Back to Top](#)

Appeal to board

137. (1) A party to a dispute under section 136 may appeal the decision of an official scaler to the board.

(2) The board may compel the official scaler to appear before it as a witness.

- (3) The decision of the board in an appeal submitted to it under subsection (1) is final.

1990 c58 s137

[Back to Top](#)

Revocation of certificate

138. Where a certified scaler

- (a) contravenes the provisions of this Part or a regulation; or
- (b) in the performance of the duties of a scaler wilfully makes false measurements, unreasonably rejects timber or makes false returns,

the board may revoke the scaler's certificate.

1990 c58 s138

[Back to Top](#)

Obstructing scaler

139. A person who hinders, obstructs or interferes with a timber scaler in the discharge of the scaler's official duties is guilty of an offence and liable on summary conviction to a fine of not less than \$1,000 or to imprisonment for a term not exceeding 3 months or to both a fine and imprisonment.

1990 c58 s139

[Back to Top](#)

Offence

140. A person who contravenes a provision of this Part or the regulations other than section 139 is guilty of an offence and liable on summary conviction to a fine of not less than \$500 or to imprisonment for a term not exceeding 1 month or to both a fine and imprisonment.

1990 c58 s140

[Back to Top](#)

Regulations

141. The minister may make regulations

- (a) [Rep. by 1997 c13 s24]
- (b) [Rep. by 1997 c13 s24]
- (c) authorizing the use of manuals of scaling instructions and scaling techniques;
- (d) respecting the duties of timber scalers;
- (e) [Rep. by 1997 c13 s24]
- (f) respecting the procedures to be used in timber scaling;
- (g) prescribing the procedure to be followed in the hearing of appeals or other matters by the board;

- (h) prescribing the location where timber shall be piled for scaling;
- (i) prescribing the unit of measurement for each class of timber;
- (j) prescribing the circumstances under which a scaler's certificate may be suspended or revoked; and
- (k) respecting those other matters necessary or advisable to carry out effectively the purpose of this Act.

[1990 c58 s141](#); [1993 c42 s26](#); [1997 c13 s24](#)

PART VIII GENERAL

[Back to Top](#)

Entry on to private land

142. (1) After making reasonable efforts to notify the owner or occupier of privately owned lands, the minister, employees of the department including all forestry officials, together with persons assisting them, may enter upon that land for the purpose of performing their duties and functions under this Act and the regulations.

(2) Where a forest fire occurs on privately owned lands and the minister or a forestry official considers it necessary to enter on to the lands for the purpose of fighting the fire he or she may do so without first having given notice to the owner or occupier of the lands.

[1990 c58 s142](#)

[Back to Top](#)

Officer may seize timber, etc.

143. (1) A forestry official may seize timber cut on Crown lands or public land or timber that the forestry official believes on reasonable grounds was cut on Crown lands or public land

- (a) without a valid timber cutting permit;
- (b) in respect of which a royalty has not been paid; and
- (c) from the holder of a valid cutting permit who contravenes a
 - (i) condition of that permit, or
 - (ii) provision of this Act or the regulations.

(2) Where a forestry official seizes timber under subsection (1), the official may also seize chain-saws, motor vehicles, animals and all-terrain vehicles used and other tools or implements used in the cutting and transporting of the wood.

(3) Where a person is convicted of an offence under this Act or the regulations, the Provincial Court judge or justices hearing the charge, irrespective of another penalty imposed, may order timber, implements and vehicles seized under subsections (1) and (2), be forfeited to the Crown.

[1990 c58 s143](#); [1993 c42 s27](#); [1999 c30 s3](#)

[Back to Top](#)

Cost of extinguishing fire

144. In addition to a penalty imposed under this Act, a court may impose the full cost or a portion of the costs or expenses incurred by the minister in controlling or extinguishing a fire, together with costs or expenses related to the loss of timber and rehabilitation of the area burned or for removing a fire hazard.

1990 c58 s144

[Back to Top](#)

Civil action not precluded

145. Nothing contained in this Act shall be held to limit or interfere with the right of the Crown or a person to bring and maintain a civil action for damages occasioned by a forest fire.

1990 c58 s145

[Back to Top](#)

Trespass or nuisance

146. No action in trespass or nuisance may be brought against the Crown or its agents for the doing of an act or the carrying out of an operation necessarily incidental to the exercise of a duty or power under this Part or the regulations except where the trespass or nuisance results in injury to the person or damage to property.

1990 c58 s146

[Back to Top](#)

Cutting trees near a highway

147. (1) This section applies to

- (a) privately owned land and land that is held under a lease from the Crown; and
- (b) land in relation to which a person has a licence from the Crown to cut timber

that is not enclosed by a fence.

(2) No person shall cut down, uproot or in another way destroy trees within 100 metres of the centre line of the travelled portion of a highway as defined in the *Department of Works, Services and Transportation Act*.

(3) The Lieutenant-Governor in Council may make regulations to control and regulate the cutting of trees referred to in subsection (2) and may make different regulations in respect of the same species of trees in different circumstances and regulations may be made so as to apply generally or to a particular part of the province or different regulations may be made in respect of different parts of the province.

(4) The minister or a forestry official may, by a permit in writing, authorize a person to cut down, uproot or otherwise destroy trees referred to in subsection (2) subject to the regulations and to those terms and conditions not inconsistent with the regulations, that he or she may prescribe in the permit or to which the permit may be made subject.

(5) Where the holder of a permit commits a breach of a term or condition of a permit referred to in subsection (4) or the regulations the minister or a forestry official may cancel the permit and in addition the holder of the permit is liable to the same penalty as for a breach of subsection (2).

(6) A person who contravenes this section or the regulations is guilty of an offence and is liable on summary conviction, in the case of a 1st offence, to a fine not exceeding \$100, and, in the case of a 2nd or subsequent similar offence, to a fine not exceeding \$200 and in either case in default

of payment to imprisonment for a term not exceeding 3 months.

(7) Trees referred to in subsection (2) which are cut down, uprooted or otherwise destroyed

(a) except in accordance with this section and the regulations and the terms and conditions referred to in subsection (4); or

(b) in accordance with this section and the regulations and the terms and conditions prescribed in a permit and not removed within a period of 12 months after they are cut down, uprooted or otherwise destroyed

are vested in the Crown.

(8) No compensation is payable to a person in respect of trees vested in the Crown in accordance with subsection (7).

1990 c58 s147; [1993 c42 s28](#)

[Back to Top](#)

Fees and forms

147.1 The minister may set fees and prescribe forms for the purpose and administration of this Act.

[1997 c13 s24](#)

PART IX OFFENCES AND PENALTIES

[Back to Top](#)

Removal of sign

148. A person who, without authority conferred by law, removes a sign or notice posted by the minister is guilty of an offence.

1990 c58 s148

[Back to Top](#)

Power of arrest

149. A forestry official has the powers of a peace officer under the *Criminal Code* for the purpose of enforcing this Act or the regulations.

[1999 c30 s4](#)

[Back to Top](#)

Search warrants

149.1 Where a forestry official believes that a search warrant is required or is desirable for the purpose of enforcing this Act, or the regulations he or she may obtain the warrant, and the matter or thing may, where this Act does not provide for that seizure, be seized in accordance with the provisions of the *Criminal Code* .

[1999 c30 s4](#)

[Back to Top](#)

Obstructing official

150. No person shall obstruct or cause or incite another to obstruct a forestry official in the exercise of his or her authority under this Act or the regulations or a person assisting the forestry official in the exercise of that authority.

1990 c58 s150

[Back to Top](#)

Officer may request permit

151. A forestry official may, where he or she believes on reasonable and probable grounds that a person is engaged in an activity for which a permit is required, without having first obtained a permit, request that person to produce the permit for inspection by the official.

1990 c58 s151

[Back to Top](#)

Refusal to give name, etc.

152. Where a forestry official believes on reasonable grounds that a person has contravened a provision of this Act, the official may request that person to give his or her name and address and date of birth and the person to whom that request is made shall comply.

1990 c58 s152; [1991 c43 s9](#)

[Back to Top](#)

Offence and penalty

153. (1) Every person who

- (a) violates a provision of this Act or of the regulations;
- (b) violates an order of the minister or a forestry official; or
- (c) refuses or neglects to observe or perform a duty or obligation created or imposed by this Act or by a regulation or an order of the minister or a forestry official

is guilty of an offence, and each day's continuance of the violation, refusal or neglect constitutes a new and distinct offence.

(2) Notwithstanding the *Summary Proceedings Act*, unless otherwise provided by this Act or the regulations, a person who has been convicted of an offence under this Act or the regulations is liable to a fine of not more than the maximum and not less than the minimum amount prescribed for the offence in the regulations or where no fine is prescribed, to imprisonment for a term not exceeding the maximum and not less than the minimum period prescribed for that offence in the regulations.

(3) A person who has been convicted of an offence under this Act or the regulations for which a penalty has not been specifically provided in this Act or in the regulations is liable

- (a) in the case of the 1st offence to a fine of not less than \$100 nor more than \$500 and in default of payment to imprisonment for a term not exceeding 20 days; and
- (b) in the case of a 2nd or subsequent offence within a period of 1 year after the date of the last previous offence to a fine of not less than \$500 nor more than \$1,000 and in default of payment to imprisonment for a term not exceeding 120 days.

(4) The Minister of Justice or a person authorized by that minister may, either before or after the institution of proceedings against a person for a violation of this Act or the regulations, accept from the person alleged to have been guilty of the violation a payment of a sum not less than

the minimum nor more than the maximum fine prescribed by the regulations for the violation.

(5) The payment of an amount under subsection (4) shall, for the purpose of this Act, have the same effect as if the person paying the amount had been convicted for the violation in respect of which the amount was paid and a certificate or a copy of a receipt signed by a person authorized by the Minister of Justice under subsection (4) for the amount so paid is evidence of the conviction without further proof.

(6) All fines imposed under the provisions of the Act or the regulations and recovered on summary conviction shall be paid over by the convicting Provincial Court judge to the Consolidated Revenue Fund.

(7) For the purposes of subsections (2) and (3) an offence committed more than 1 year after the date of the last previous offence shall be considered to be a 1st offence.

1990 c58 s153

[Back to Top](#)

Rep. by 1996 cR-10.1 s32

154. [Rep. by 1996 cR-10.1 s32]

[1996 cR-10.1 s32](#)

[Back to Top](#)

Regulations re offences

155. The Lieutenant-Governor in Council may make regulations

- (a) prescribing offences under this Act and prescribing penalties in relation to those offences;
- (b) [Rep. by 1996 cR-10.1 s32]
- (c) notwithstanding section 149, respecting the powers of a forestry official to enforce the provisions of this Act.

1990 c58 s155; [1991 c43 s9](#); [1996 cR-10.1 s32](#)

[Back to Top](#)

Possession of timber

156. The possession by a person of newly cut timber shall, unless the contrary is proved, be considered to be evidence that the timber was cut by that person.

1990 c58 s156

(In force - Apr. 15/91)

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