

CONSOLIDATION OF FOREST MANAGEMENT ACT
R.S.N.W.T. 1988,c.F-9

(Current to: October 20, 2006)

AS AMENDED BY:

S.Nu. 2003,c.26,s.251

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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FOREST MANAGEMENT ACT

INTERPRETATION

Definitions

1. (1) In this Act,

"charges" means prescribed charges; (*droits*)

"fees" means prescribed fees; (*redevances*)

"forests" means

- (a) forests on "Commissioner's land" as defined in the *Commissioner's Land Act*,
- (b) forests described in an order of the Governor in Council, respecting the management of forests, made under paragraph 16(v) of the *Northwest Territories Act* (Canada), and
- (c) forests, the control, management and administration of which are transferred to the Commissioner under the *Territorial Lands Act* (Canada); (*forêts*)

"licence" means a licence issued under this Act and the regulations; (*licence*)

"management of forests" includes the conservation of forests; (*aménagement des forêts*)

"mill" means a plant in which logs or wood-bolts are initially processed and includes a saw mill and a pulp mill; (*moulin*)

"officer" means a forest management officer appointed under subsection 4(1) and a person who is *ex officio* a forest management officer under subsection 4(2); (*agent*)

"permit" means a permit issued under this Act and the regulations; (*permis*)

"Supervisor" means the Forest Management Supervisor appointed under section 2; (*surveillant*)

"timber" means trees in forests that are alive or dead and that are standing or have fallen. (*bois*)

Aboriginal rights

(2) Nothing in this Act or the regulations shall be interpreted so as to affect aboriginal rights.

ADMINISTRATION

Forest Management Supervisor

2. The Minister may appoint a Forest Management Supervisor.

Direction of Minister

3. (1) The Forest Management Supervisor shall perform his or her duties and exercise his or her powers under the direction of the Minister.

Supervision of officers

- (2) The Supervisor shall supervise all officers in the performance of their duties and in the exercise of their powers.

Powers

- (3) The Supervisor may
- (a) design, implement and supervise programs and activities respecting the management of forests;
 - (b) conduct research respecting forests; and
 - (c) approve the form of permits, licences, applications, reports and notices for use under this Act and the regulations.

Other duties and powers

- (4) The Supervisor may perform any of the duties and exercise any of the powers of an officer.

Delegation

- (5) The Supervisor may, in writing, authorize an officer to perform any of the Supervisor's duties or exercise any of the Supervisor's powers.

Forest management officers

4. (1) The Minister may appoint forest management officers.

Ex officio officers

- (2) The following persons are *ex officio* forest management officers:
- (a) conservation officers appointed under the *Wildlife Act*;
 - (b) members of the Royal Canadian Mounted Police.
S.Nu. 2003,c.26,s.251.

Oath

- (3) An officer, on being appointed under subsection (1) and before performing his or her duties or exercising his or her powers, shall take the prescribed oath.

Duties and powers

5. An officer has the duties and powers set out in this Act and the regulations.

Administering oaths

6. An officer may administer an oath in any affidavit required under this Act or the regulations.

Liability

7. Subject to section 34, the Supervisor or an officer is not liable for loss caused by anything done or not done by him or her in good faith in the performance of his or her duties or in the exercise of his or her powers.

TRANSFERS AND AGREEMENTS

Transfer of forests

8. The Commissioner, on the recommendation of the Minister, may by order, transfer the control, management and administration of any forest to a Minister of the Government of Canada.

Forest management agreements

9. (1) The Minister may, on behalf of the Government of the Northwest Territories, enter into agreements with the government of a province or the Yukon Territory or with any person, institution or firm relating to

- (a) the harvesting of timber;
- (b) research respecting forests; or
- (c) the management of forests.

Government of Canada

(2) The Minister and the Commissioner may, on behalf of the Government of the Northwest Territories, enter into agreements with the Government of Canada relating to

- (a) the harvesting of timber;
- (b) research respecting forests; or
- (c) the management of forests.

Authority under agreement

(3) An agreement referred to in subsection (1) or (2) may authorize the government, person, institution or firm named in the agreement to conduct the activities described in the agreement without obtaining a permit or licence.

PERMITS AND LICENCES

Permits and licences

10. The Supervisor may issue permits and licences in accordance with the regulations that authorize a person to

- (a) cut timber;
- (b) use timber;
- (c) transport timber;
- (d) conduct research respecting forests;

- (e) conduct a program or activity respecting the management of forests;
- (f) operate a mill; or
- (g) scale timber.

Restrictions

11. Every permit and licence is subject to this Act and the regulations and to the terms and conditions that apply to the permit or licence.

Fees

12. Every application for a permit or licence must be accompanied by the prescribed fee.

Charges

13. The calculation of charges under a licence shall be based on the measurement of timber by a person holding a licence to scale timber.

Form of permit

14. Every permit, licence, application, report and notice for use under this Act or the regulations shall be in the form approved by the Supervisor.

Assignment of permits

15. A permit or licence may not be assigned or transferred without the consent of the Supervisor.

Terms and conditions

16. The Supervisor may, in addition to any prescribed term or condition, impose on a permit or licence, terms or conditions that the Supervisor considers necessary for the proper management of forests.

Non-payment of fees

17. (1) The Supervisor may suspend a permit or licence where fees or charges in respect of the permit or licence are owing and have not been paid for 30 days.

Period of suspension

(2) The Supervisor may suspend a permit or licence referred to in subsection (1) until the Supervisor receives the fees or charges that are owing.

Refund of fees and charges

18. The Supervisor shall, in accordance with the regulations, refund to a holder of a permit or licence a portion of the fees and charges paid by the holder in respect of the permit or licence where the control, management and administration of all or any of the forests to which the permit or licence applies have been transferred under section 8.

Contravention of Act

19. (1) The Supervisor may suspend a permit or licence for such period as the Supervisor thinks fit where the Supervisor believes on reasonable grounds that the person holding the permit or licence, or an employee or agent of that person, has contravened this Act or the regulations.

Restriction on suspension

(2) Where a justice of the peace refrains from suspending or cancelling, under subsection 51(1), the permit or licence of a person who is found guilty of an offence under this Act or the regulations, the Supervisor shall not suspend the permit or licence of that person in respect of that contravention.

Reinstatement

(3) Where the Supervisor suspends the permit or licence of a person for a contravention of this Act or the regulations and a justice of the peace acquits the person of the charge of contravening this Act or the regulations, the Supervisor shall reinstate the permit or licence.

APPEALS

Right to Written Reasons

Request for written reasons

20. (1) A person whose application for a permit or licence is refused may request from the Supervisor written reasons for the decision to refuse the application.

Service of reasons

(2) Within 10 days after receiving a request made under subsection (1), the Supervisor shall

- (a) personally serve the person making the request with the written reasons; or
- (b) send the written reasons by double registered mail to the address contained in the application of the person making the request.

Duty to provide written reasons

21. (1) Where the Supervisor

- (a) suspends a permit or licence, or
- (b) imposes terms or conditions on a permit or licence,

the Supervisor shall provide the holder of the permit or licence with written reasons for the decision.

Duty to provide an accounting

(2) Where an officer seizes timber for the non-payment of fees or charges, the officer shall provide the holder of the permit or licence whose timber has been seized with a written accounting showing the calculation of fees or charges owing.

Service of reasons

(3) The written reasons referred to in subsection (1) and the accounting referred to in subsection (2) must be

- (a) personally served on the holder of the permit or licence, or
- (b) sent by registered mail with an acknowledgement of receipt to the address of the holder of the permit or licence contained in the application of the holder of the permit or licence,

within five days after the decision or seizure being made.

Receipt of reasons

(4) Where written reasons or an accounting have been sent by registered mail with an acknowledgement of receipt under paragraph (3)(b), the written reasons or accounting shall be deemed to have been received 14 days after the written reasons or accounting were mailed.

Right to Appeal

Right to appeal refusal

22. (1) Subject to subsection (2), a person whose application for a permit or licence is refused, may, within 30 days after receiving notice of the refusal, send a notice of appeal from this decision to the Minister.

Designation of permits and licences

(2) This section applies only to the classes of permits and licences designated in the regulations.

Other rights of appeal

23. A person

- (a) whose permit or licence has been suspended under section 17 or 19,
 - (b) whose permit or licence has been made subject to terms and conditions under section 16, or
 - (c) who has had timber seized for the non-payment of fees or charges,
- may
- (d) with respect to a decision referred to in paragraph (a) or (b), send a notice of appeal from the decision to the Minister within 30 days after receiving the written reasons for the decision, or
 - (e) with respect to a seizure referred to in paragraph (c), send a notice of appeal relating to the amount of the fees or charges alleged to be owing to the Minister within 30 days after receiving the written accounting relating to the seizure.

Advisor

24. (1) On receiving a notice of appeal referred to in section 22 or 23, the Minister shall, within 30 days, appoint an advisor to advise and make recommendations to the Minister respecting the appeal.

Restriction on appointment

(2) No person shall be appointed under subsection (1) who works in the department of the public service that administers this Act.

Submissions

25. On receiving a notice of appeal from the Minister, the advisor shall set a time and place when the appellant and the Supervisor may make oral and written submissions and present evidence respecting the appeal to the advisor, and the advisor shall notify the appellant and the Supervisor of that time and place.

Natural justice

26. The advisor shall be bound by the rules of natural justice when hearing the submissions and evidence of the appellant and Supervisor.

Report

27. The advisor shall prepare a report that contains

- (a) a summary of the facts presented by the appellant and Supervisor,
- (b) the recommendations of the advisor respecting the appeal and the reasons of the advisor for the recommendations,

and the advisor shall send the report to the Minister and to the appellant within 30 days after hearing the submissions of the appellant and the Supervisor.

Powers of Minister

28. (1) The Minister may, after considering the report of the advisor,

- (a) in respect of an appeal made under subsection 22(1), confirm the decision of the Supervisor or direct the Supervisor to issue the permit or licence applied for;
- (b) in respect of an appeal made under paragraph 23(d), confirm, vary or quash the decision of the Supervisor; and
- (c) in respect of an appeal made under paragraph 23(e), confirm or vary the amount of fees or charges owing or order that no fees or charges are owing.

Reasons

(2) The reasons for the decision of the Minister shall be in writing and shall be sent to the appellant and the Supervisor within 30 days after the Minister receives the report of the advisor.

Decision of Minister

29. The decision of the Minister is final.

ENFORCEMENT

Order of Supervisor

30. (1) Where, on reasonable grounds, the Supervisor believes that a person is contravening this Act or the regulations, the Supervisor may order that person to comply with this Act or the regulations by doing or refraining from doing any act.

Order of judge

(2) Where a person fails to comply with an order of the Supervisor under subsection (1), the Supervisor may apply to a judge of the Supreme Court for an order requiring that person, or the employees or agents of that person, to comply with the provisions of this Act or the regulations referred to in the order of the Supervisor.

Inspections

31. (1) Where an officer believes on reasonable grounds that

- (a) timber, or
- (b) books and records required to be maintained under the regulations,

are located in a place, building or vehicle, other than a residence, the officer may, at any reasonable time, enter and inspect the place, building or vehicle for the purpose of determining if there is compliance with this Act and the regulations.

Copies of books and records

(2) An officer may, in the performance of an inspection authorized by this section, make copies of books and records referred to in paragraph (1)(b).

Definition of "exigent circumstances"

32. (1) For the purposes of subsection (4), "exigent circumstances" includes circumstances in which the delay necessary to obtain a warrant under subsection (2) would result in danger to human life or safety or the loss or destruction of evidence.

Authority to issue warrant

(2) Where on ex parte application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is in any place, building or vehicle

- (a) anything on or in respect of which a contravention of this Act or the regulations has been or is suspected to have been committed, or
- (b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of a contravention of this Act or the regulations,

the justice of the peace may issue a warrant under his or her hand authorizing the officer named in the warrant to enter and search that place, building or vehicle for any such thing subject to the conditions that may be specified in the warrant.

Search

(3) An officer may, in accordance with the authority contained in a warrant issued under subsection (2), search any place, building or vehicle identified in the warrant.

Where warrant not necessary

(4) Where an officer has reasonable grounds to believe that there is in any place, building or vehicle anything referred to in paragraph (2)(a) or (b), but by reason of exigent circumstances it would not be practicable to obtain a warrant under subsection (2), the officer may search that place, building or vehicle without a warrant.

Assistance to officers

33. The owner or the person in charge of a place, building or vehicle entered by an officer under section 31 or 32 and every person found in the place, building or vehicle shall give the officer all reasonable assistance in that person's power to enable the officer to carry out his or her duties under this Act and the regulations and shall furnish the officer with such information with respect to the administration of this Act and regulations as the officer may reasonably require.

Power to cross lands

34. (1) An officer may, in the exercise of a duty or in the performance of a power, enter and pass over any public or private land without being liable for trespass.

Personal liability

(2) An officer who enters and passes over land under the authority of subsection (1) is liable for damages to the land caused by the wilful or negligent acts of the officer.

Persons assisting officers

(3) Subsections (1) and (2) apply to a person who is assisting an officer.

Seizure of equipment and records

35. An officer may, in the performance of a search authorized by section 32, seize equipment, books, records or documents that the officer has reasonable grounds to believe are evidence of a contravention of this Act or the regulations.

Definition of "timber"

36. (1) For the purposes of this section and section 37, "timber" includes any product of timber.

Seizure of timber

(2) An officer may, in the performance of an inspection or search authorized by this Act, seize timber that the officer has reasonable grounds to believe is the subject-matter of a contravention of this Act or the regulations.

Timber mixed with other timber

(3) An officer may seize any timber that has been mixed with timber referred to in subsection (2) where it is impracticable or difficult to distinguish or to separate that timber from the timber referred to in subsection (2).

Removal

(4) An officer may remove timber seized under subsection (2) or (3) to any place that the officer considers necessary for the safekeeping of the timber.

Timber in possession of carrier

(5) If timber is seized when in the possession of a carrier, the timber shall be removed by the carrier to the place the officer directs.

Transportation charges

(6) The Government of the Northwest Territories is liable for

- (a) transportation charges, and
- (b) all other charges that the Supervisor considers proper,

incurred by the carrier resulting from the directions given by an officer under subsection (5).

Order of forfeiture

37. (1) Where a territorial judge finds a person guilty of an offence under this Act or the regulations, the territorial judge may, in addition to any other punishment that may be imposed, order that any timber forming the subject-matter of the offence and that has been seized under subsection 36(2) be forfeited to the Government of the Northwest Territories.

Considerations regarding forfeiture

(2) In deciding whether to order forfeiture under subsection (1), the territorial judge shall consider

- (a) the nature of the offence;
- (b) whether the owner or, if there is no owner, the person in possession of the timber at the time of seizure, knew or ought to have known that the timber was the subject-matter of a contravention of this Act or the regulations; and
- (c) the hardship that the forfeiture will cause to the owner or, if there is no owner, the person in possession of the timber at the time of seizure, in light of that person's connection to the offence.

Disposal of timber

(3) Subject to subsection (4), timber identified in an order referred to in subsection (1) may be disposed of in such manner and at such time and place as the Supervisor may direct.

Restriction on disposal

(4) Timber identified in an order referred to in subsection (1) shall not be disposed of pending an appeal against the conviction or before the time within which the appeal may be taken has expired.

Seizure for unpaid fees or charges

38. (1) Where the holder of a permit or licence has not paid any fees or charges, an officer may seize so much of the timber in the possession of the holder of the permit or licence as, in the opinion of the officer, will secure

- (a) payment of those fees and charges; and
- (b) the expense of the seizure and any subsequent sale of the timber.

Time limit before sale

(2) Where timber is seized under subsection (1) and the payment of the fees and charges is not made within 60 days after the date of the seizure, an officer may sell the timber that has been seized.

Distribution of proceeds

(3) The proceeds of the sale referred to in subsection (2) shall be applied

- (a) firstly, to the cost of the seizure and sale; and
- (b) secondly, to the payment of the fees and charges owing under the permit or licence.

Balance of proceeds

(4) The remainder of the proceeds of the sale shall be paid to the holder of the permit or licence.

Powers of arrest

39. An officer may arrest, without a warrant, a person whom the officer finds contravening this Act or the regulations if the officer has reasonable and probable grounds to believe that the public interest, having regard to all the circumstances, including

- (a) the need to establish the identity of the person,
- (b) the need to secure or preserve evidence of or relating to the contravention,
- (c) the need to prevent the continuation or repetition of the contravention or the commission of another contravention, and
- (d) the probability that the person will fail to attend in the court in order to be dealt with according to law,

requires that the person be arrested without a warrant.

OFFENCES AND PUNISHMENT

General prohibitions

40. No person shall

- (a) cut timber,
- (b) use timber,
- (c) transport timber,

- (d) conduct research respecting forests, or
- (e) conduct a program or activity respecting the management of forests,

unless authorized by a permit or licence or exempted from holding a permit or licence by the regulations.

Damage to standing timber

41. No person shall damage standing timber unless authorized by a permit, licence or the regulations.

Breach of condition

42. No person who holds a permit or licence, or an employee or agent of that person, shall breach a term or condition that applies to the permit or licence.

Possession of timber

43. No person shall acquire timber who has reasonable grounds to believe that the person from whom he or she acquires the timber has no authority under this Act or the regulations to transfer the timber.

Operating a mill

44. No person shall operate a mill unless authorized by a permit or licence or exempted from holding a permit or licence by the regulations.

Personation

45. No person who is not an officer shall

- (a) hold himself or herself out as an officer; or
- (b) wear a badge or an article of uniform that is likely to cause person to believe that he or she is an officer.

Obstructing an officer or Supervisor

46. No person shall

- (a) obstruct, delay or interfere with, or
- (b) give false information to,

the Supervisor or an officer in the performance of his or her duties or in the exercise of his or her powers.

Interference with seized timber

47. (1) Subject to subsection (2), no person shall interfere with timber or any product of timber that has been seized under this Act.

Exception

(2) Subsection (1) does not apply to anything done by an officer or the Supervisor in the performance of his or her duties or in the exercise of his or her powers.

Continuing offence

48. A contravention of this Act or the regulations that is of a continuing nature constitutes a separate offence for each day on which the contravention continues.

Offence and punishment

49. Every person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both.

Additional penalty

50. In addition to any punishment imposed by this Act, a person who is found guilty of contravening paragraph 40(a) is liable to a penalty in an amount of not less than the amount of the fees and charges for the timber cut unlawfully and not exceeding five times the amount of those fees and charges.

Power of justice of the peace

51. (1) In addition to any punishment imposed by this Act, a justice of the peace who finds a person guilty of an offence under this Act or the regulations may

- (a) suspend any permit or licence held by that person for such period as the justice of the peace thinks fit; or
- (b) cancel any permit or licence held by that person.

Surrender of permit

(2) Where a permit or licence is suspended or cancelled under subsection (1), the holder of the permit or licence shall immediately surrender the permit or licence to the justice of the peace.

Transmittal to Supervisor

(3) The justice of the peace, on receiving the permit or licence, shall mark the permit or licence suspended or cancelled, as the case may be, and send it to the Supervisor.

Limitation period

52. A prosecution for an offence under this Act or the regulations may not be commenced after one year from the time when the offence was committed.

REGULATIONS

Regulations

53. (1) The Commissioner, on the recommendation of the Minister, may make regulations

- (a) establishing classes of permits and licences that authorizes a person to
 - (i) cut timber,
 - (ii) use timber,
 - (iii) transport timber,

- (iv) conduct research respecting forests, or
- (v) conduct a program or activity respecting the management of forests,
in a forest management unit, zone or area;
- (b) respecting eligibility of applicants for a permit or licence and the information to be provided by an applicant for a permit or licence;
- (c) respecting exemptions from the requirement to obtain a permit or licence;
- (d) setting out terms and conditions that apply to classes of permits and licences;
- (e) respecting fees for permits and licences;
- (f) respecting charges for the cutting of timber or for the transportation of timber under the authority of a permit or licence;
- (g) respecting procedures for the suspension of permits and licences;
- (h) respecting books and records that the holder of a permit or licence is to maintain;
- (i) respecting reports and information to be sent to the Supervisor by the holder of a permit or licence;
- (j) designating parts of the Territories as forest management units, zones or areas;
- (k) setting out standards and methods for cutting timber;
- (l) respecting the transportation of timber;
- (m) setting out methods and standards for programs of silviculture, reforestation and afforestation;
- (n) respecting permits and licences that authorize the operation of mills;
- (o) respecting procedures relating to appeals authorized by this Act;
- (p) designating the classes of permits and licences to which section 22 applies;
- (q) prescribing the oath for officers;
- (r) respecting procedures for seizures authorized by this Act;
- (s) respecting buildings, equipment and materials brought into forests in relation to activities authorized by this Act or the regulations;
- (t) respecting the measurement of timber and licences to scale timber; and
- (u) respecting any other matter that the Commissioner considers necessary or advisable for carrying out the purposes and provisions of this Act.

Adoption of codes of rules or standards

- (2) Where a code of rules or standards concerning the subject-matter of this Act
 - (a) has been promulgated by an association, person or body of persons, and
 - (b) is available in printed form,

the Commissioner, on the recommendation of the Minister, may adopt the code by regulation and on adoption, the code shall be in force in the Territories either in whole or in part or with such variations as may be specified in the regulation.

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