

LEGISLATIVE INTERPRETATIONS

Topic: H & S Forestry Operations	Issued by: V.P., WorkSafe Services
Statute: Occupational Health and Safety Act Crown Lands and Forests Act	Date Issued: February 8, 2005
Section: 9, 10.1 and 11 of the OHS Act	Date Revised:

Crown Lands and Forests Act:

"Crown" means Her Majesty in right of the Province;

"Crown Lands" means all or any part of the lands vested in the Crown that are under the administration and control of the Minister and includes any water upon or under the surface of such lands;

"Crown timber license" and "license" means a Crown timber license issued under section 28, and includes a timber license continued as a Crown timber license under subsection 27(4);

"Crown timber sub-license" and "sub-license" means a Crown timber sub-license issued under section

"Crown timber permit" or "permit" means a Crown timber permit issued under section 49;

"forest management agreement" means an agreement described in subsection 29(1);

"freehold lands" and "private lands" means lands other than Crown Lands and other lands vested in Her Majesty;

"licensee" means the holder of a Crown timber license;

"permittee" means the holder of a Crown timber permit;

"private woodlot" means all forest land except

- (a) Crown Lands,
- (b) forest land owned by a person whose principal business is the operation of a wood processing facility, or
- (c) forest land consisting of an aggregate of five thousand hectares owned by one person;

"sub-licensee" means the holder of a Crown timber sub-license;

"timber license" means a timber license within the meaning of the *Crown Lands Act*;

Occupational Health and Safety Act:

"contracting employer" means a person who through a contract, agreement or ownership, directs the activities of one or more employers as defined in paragraph (a) of the definition "employer";

10.1(2) A contracting employer who directs the activities of one or more employers involved in work at a place of employment shall ensure, as far as is reasonably practicable to so do, that each employer complies with this Act and the regulations in respect of that place of employment.

10.1(3) Every contracting employer shall comply with this Act, the regulations and any order made in accordance with this Act or the regulations.

10.1(4) Notwithstanding subsection 3(1), this section does not apply to a place of employment that is a private home.

"employer" means

- (a) a person who employs one or more employees,
- (b) a manager, superintendent, supervisor, overseer or any person having authority over an employee, or
- (c) an agent of any person referred to in paragraph (a) or (b);

9(1) Every employer shall

- (a) take every reasonable precaution to ensure the health and safety of his employees;
- (b) comply with this Act, the regulations and any order made in accordance with this Act or the regulations; and
- (c) ensure that his employees comply with this Act, the regulations and any order made in accordance with this Act or the regulations.

9(2) Without limiting the generality of the duties under subsection (1), every employer shall

- (a) ensure that the necessary systems of work, tools, equipment, machines, devices and materials are maintained in good condition and are of minimum risk to health and safety when used as directed by the supplier or in accordance with the directions supplied by the supplier;

- (b) acquaint an employee with any hazard in connection with the use, handling, storage, disposal and transport of any tool, equipment, machine, device or biological, chemical or physical agent;
- (c) provide such information, instruction, training and supervision as are necessary to ensure an employee's health and safety;
- (d) provide and maintain in good condition such protective equipment as is required by regulation and ensure that such equipment is used by an employee in the course of work;
- (e) co-operate with a committee, where such a committee has been established, a health and safety representative, where such a representative has been elected, and with any person responsible for the enforcement of this Act and the regulations.

"owner" includes a trustee, receiver, mortgagee in possession or a tenant or a person for whose direct benefit on completion work is being done, but does not include a landlord who, under the terms of the lease, has transferred all responsibility for risks in relation to a place of employment;

11 Every owner of a place of employment or part thereof shall

- (a) comply with this Act, the regulations and any order made in accordance with this Act or the regulations; and
- (b) take every reasonable precaution to ensure the health and safety of any person having access to or using that place of employment or part thereof.

Question:

How does the *Occupational Health and Safety Act* apply to harvesting wood from Crown and private lands in light of the *Crown Lands and Forests Act* and the relationships that are created in that legislation?

Answer:

The *Crown Lands and Forests Act* forms the basis of industry access to wood supply on Crown lands. Under that *Act*, the province's Crown lands are divided into ten timber licences that are managed under Forest Management Agreements by six licensees. Each of the licensees is a large forestry company who is an employer in their own right. Under the Forest Management Agreement the licensee is required to develop an Industrial Plan, a Management Plan and an Operating Plan. In effect, the licensee acts as a steward for that area and addresses both timber and non-timber objectives. Timber objectives are those that ensure mills in New Brunswick have an adequate supply of wood. Non-timber objectives ensure adequate forests for wildlife and protect watercourses, among other objectives.

There are several parties who have a role to play in forestry activities.

The first party involved in forestry operations on Crown lands is the licensee. Each licensee is responsible to maintain a large area of Crown land. The licensee takes this authority under an agreement with the Crown. While the licensee is permitted to undertake forestry operations

under the agreement, they do not have the exclusive right to conduct forestry operations in that area. The Crown also enters into agreements with sub-licensees who will also be permitted to conduct forestry operations.

Sub-licensees are also forestry companies, and the licensee for one area may be a sub-licensee in another area managed by another licensee. In most instances though, the sub-licensee is a smaller forestry company who is not large enough to act as a licensee but still require wood to keep their operations running.

Permittees are those companies who are granted a permit to harvest specific wood in a particular area.

In many cases the parties described above do not use their own employees to harvest wood. It will often be contracted to another employer, and in some cases that employer may further sub-contract the harvesting to an even smaller employer. In these cases, the role of owner, contracting employer and employer must be considered.

Though there are many possible contractual variations for how wood is harvested, the *Occupational Health and Safety Act* has application to all of them.

There are several different scenarios possible. It should be noted that subsection 33(2) of the *Crown Lands and Forests Act* makes the licensee the owner of the timber authorized to be harvested under the license when it is harvested by the licensee or on the licensee's behalf. Some likely arrangements for harvesting wood are as follows:

- Where a licensee is harvesting wood on their own license using their own employees, the licensee has all the obligations of an employer.
- Where the licensee contracts with another employer or individual(s) to harvest wood for the benefit of the licensee, the licensee has either the obligations of an owner or as a contracting employer, depending on the specific contract in place. The obligations of an owner and a contracting employer are, in essence, the same. The employer who is undertaking the harvesting has the obligations of an employer.
- Where the licensee contracts with another employer to harvest wood for the benefit of the licensee and that employer further sub-contracts to another employer or individual(s) to actually undertake the harvesting, the licensee has the obligations of an owner, the first party contracted with has the obligations of a contracting employer, and the sub-contractor has the obligations of an employer if there are employees involved.

In instances where the wood to be harvested is allocated to a sub-licensee, the licensee has a limited role. In these cases, even though the licensee is responsible for managing the license, the Crown retains the right to enter into agreements with sub-licensees and is not obligated to consult with the licensee. Because of this, while the licensee has legal obligations to the sub-

licensee, these obligations do not arise under the *Occupational Health and Safety Act*. As such, the licensee has limited obligations for health and safety.) The Crown, as owner, carries those obligations. It should be noted that section 42 of the *Crown Lands and Forests Act* makes the sub-licensee the owner of the timber authorized to be harvested under the sub-license when it is harvested by the sub-licensee or on the sub-licensee's behalf. Some likely arrangements for harvesting wood are as follows:

- Where a sub-licensee is harvesting wood under their own sub-license using their own employees, the sub-licensee has all the obligations of an employer.
- Where the sub-licensee contracts with another employer or individual(s) to harvest wood for the benefit of the sub-licensee, the sub-licensee has either the obligations of an owner or as a contracting employer, depending on the specific contract in place. The obligations of an owner and a contracting employer are, in essence, the same. The employer who is undertaking the harvesting has the obligations of an employer.
- Where the sub-licensee contracts with another employer to harvest wood for the benefit of the sub-licensee and that employer further sub-contracts to another employer or individual(s) to actually undertake the harvesting, the sub-licensee has the obligations of an owner, the first party contracted with has the obligations of a contracting employer, and the sub-contractor has the obligations of an employer if there are employees involved.

As with licensees and sub-licensees, permittees have similar obligations for health and safety depending on how the wood is harvested. Like with licensees and sub-licensees, the Crown has obligations as the owner since they enter into the agreement with the permittee apart from the license. It should be noted that section 51 of the *Crown Lands and Forests Act* makes the permittee the owner of the timber authorized to be harvested under the permit when it is harvested by the permittee or on the permittee's behalf. Some likely arrangements for harvesting wood are as follows:

- Where a permittee is harvesting wood using their own employees, the permittee has all the obligations of an employer.
- Where the permittee contracts with another employer or individual(s) to harvest wood for the benefit of the permittee, the permittee has either the obligations of an owner or as a contracting employer, depending on the specific contract in place. The obligations of an owner and a contracting employer are, in essence, the same. The employer who is undertaking the harvesting has the obligations of an employer

- Where the permittee contracts with another employer to harvest wood for the benefit of the permittee and that employer further sub-contracts to another employer or individual(s) to actually undertake the harvesting, the permittee has the obligations of an owner, the first party contracted with has the obligations of a contracting employer, and the sub-contractor has the obligations of an employer if there are employees involved.

While a significant amount of wood is harvested commercially in the province on Crown lands , a considerable portion of it still comes from freehold, or privately held lands. In the case of freehold lands, the landowner may contract with an employer or individual(s) to cut the wood for which the cutter will receive a fee.

In some cases, an employer or individual(s) may approach a landowner to ask if that owner is interested in selling the stumpage. When an employer approaches the landowner, the *Occupational Health and Safety Act* applies and the landowner has the obligations of an owner as set out in the Act.

When an individual approaches a landowner to ask if that owner is interested in selling the stumpage, this is a contract between two individuals and the *Occupational Health and Safety Act* does not apply. There is no employment relationship in this arrangement.

As with all private owners, WorkSafeNB must carefully consider the role of each individual owner in light of the contract in place, skills and knowledge that they may or may not possess. Also in these cases, the employer who brings employees in to cut wood has all the obligations of an employer or contracting employer under the *Occupational Health and Safety Act*, as the case may be.

It should also be noted that in some cases where wood is being cut on private lands the *Occupational Health and Safety Act* may not have application. In some cases, the owner may be cutting the wood personally or with the assistance of family members. The *Occupational Health and Safety Act* only has jurisdiction over employment situations. If there is no employer / employee relationship, then the *Act* does not apply.