

Primary Forest Products Marketing Act

CHAPTER 355

OF THE

REVISED STATUTES, 1989

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An Act to Establish the Nova Scotia
Primary Forest Products Marketing Board
Short title

1 This Act may be cited as the Primary Forest Products Marketing Act. R.S., c. 355, s. 1.

Purpose of Act

2 The purpose of this Act is to

- (a) provide for the organization and funding of bargaining agents;
- (b) provide for the registration of bargaining agents;
- (c) provide for the resolution of bargaining disputes;
- (d) facilitate and support the continued development of the forest resources held by private woodlot owners;
and
- (e) enable private woodlot owners to have a fair share of the available market for primary forest products and receive a reasonable return for primary forest products sold. R.S., c. 355, s. 2.

Interpretation

3 In this Act,

- (a) "association" means any organization of producers or buyers of primary forest products that has a written constitution, rules or by-laws setting forth its objectives and purposes and defining the conditions under which persons may be admitted as members thereof and continue in such membership;
- (b) "Board" means the Nova Scotia Primary Forest Products Marketing Board;
- (c) "buyer" is a person who buys primary forest products for resale, export or processing;
- (d) "group venture" means a co-operative or company formed for the purpose of implementing forest management activities on the land of any member of that co-operative or company;
- (e) "marketing" includes buying, selling, bargaining, storing, offering for sale, offering to buy and resale;
- (f) "Minister" means the Minister of Lands and Forests;
- (g) "person" includes partnership, corporation and an organization formed for the purpose of bargaining collectively pursuant to Section 13;
- (h) "plan" means any plan for the marketing or regulating of any primary forest product which is in force in the Province or any part thereof under this Act;
- (i) "prescribed" means prescribed by this Act or the regulations;
- (j) "primary forest product" means wood cut and prepared primarily for processing into wood pulp, paper, paper products, lumber, compressed board or any product manufactured from wood fibre, including Christmas trees, sawmill chips, pulpwood chips, fuel chips and any wood fibre intended for use in heat or power generation;
- (k) "producer" is a person who owns the primary forest product at the time it is cut and prepared from trees for sale, a woodlot owner or a person who is primarily a processor of primary forest products other than pulp and paper products;
- (l) "subdivision" means any area of the Province designated as such by the Minister for the purpose of this Act. R.S., c. 355, s. 3.

Composition of Board

4 (1) The Nova Scotia Primary Forest Products Marketing Board consists of seven members appointed by the Governor in Council.

Membership

(2) The membership of the Board shall include

(a) one person experienced in the sawmill industry;

(b) one person experienced in the pulp and paper industry;

(c) two woodlot owners who are not engaged in the sawmill industry or the pulp and paper industry; and

(d) three persons not engaged in the production, marketing or processing of primary forest products.

Term of office

(3) The term of office of each member is for such duration as the Governor in Council determines.

Appointment of members

(4) The Governor in Council may appoint one of the members who is not engaged in the production, marketing or processing of primary forest products to be the full-time Chairman of the Board and one of the other members who is not engaged in the production, marketing or processing of primary forest products to be Vice-chairman of the Board.

Replacement of member

(5) Where a member of the Board fails or neglects to perform the duties of a member of the Board for three consecutive months, the Minister may remove that person and appoint another person for the unexpired portion of the term of office of the person removed from the Board.

Quorum

(6) A quorum of the Board is five members, at least one of whom is the Chairman or Vice-chairman.

Vote by Chairman and Vice-chairman

(7) The Chairman or, in the absence of the Chairman, the Vice-chairman may not vote at a meeting of the Board except in the event of a tie vote.

Decision of Board

(8) A decision of the majority of the members of the Board present is the decision of the Board.

Headquarters

(9) The headquarters of the Board is at such place as the Minister determines and meetings of the Board shall be held at such place as the Board determines.

Rules of procedure

(10) The Board may make rules concerning its proceedings pursuant to this Act.

Remuneration of members

(11) The Governor in Council may fix the salary or other remuneration, including expenses, of a member of the Board. R.S., c. 355, s. 4.

Personnel

5 The Board may, with the approval of the Governor in Council, employ such technical, professional, and other officers and employees as the Board deems necessary or desirable, and such persons may receive such salaries or remuneration, including expenses, as may be fixed by the Governor in Council. R.S., c. 355, s. 5.

Powers

6 The Board may

(a) recommend to the Minister for approval a procedure or strategy for the organization and registration of producers or buyers of any or all primary forest products;

(b) register or de-register any association as a bargaining agent for any producers or buyers of any or all primary forest products under a procedure or strategy approved by the Minister pursuant to clause (a);

(c) investigate the cost of marketing, producing, distributing and transporting any primary forest products, prices, price spreads, trade practices, methods of financing, management, grading, policies and other matters relating to the marketing of primary forest products;

(d) investigate the availability and future availability of wood supply from Crown lands and from privately owned land and the future wood requirements of the major users of primary forest products, on a Provincial, subdivision or county basis;

(e) do such acts and make such orders and directions as are necessary to enforce the due observance and carry out the provisions of this Act, the regulations or any plan;

(f) stimulate, increase and improve the marketing of primary forest products for the purpose of carrying out any plan;

(g) exempt from any plan or any order or direction of the Board any person or class of persons engaged in the producing or marketing of any primary forest products or any class, variety or grade of primary forest products;

(h) require persons engaged in the acquiring or purchasing of primary forest products in any area or areas designated by the Board to register with the Board the quantity of primary forest products acquired or purchased by them and the names, addresses and occupations of persons from whom primary forest products are acquired or purchased, and require persons engaged in the producing or marketing of primary forest products to furnish such additional information in regard to the said primary forest products as the Board may determine;

(i) co-operate with any board or agency established under any Act of the Parliament of Canada or any Provincial Act or any Act of any province to market or promote, facilitate, control, regulate or prohibit the marketing of primary forest products and to act jointly with any such board or agency;

(j) accept, have and exercise all powers or regulation in relation to the marketing of primary forest products outside the Province in interprovincial and export trade that are conferred upon it by or pursuant to any Act of the Parliament of Canada and for the purpose of such regulation to exercise all the powers conferred upon the Board by this Act;

(k) participate with the Trade Development Authority established pursuant to the Trade Development Authority Act in marketing and trade development of primary forest products;

(l) make recommendations to the Minister with respect to any matter referred to in clauses (a) to (k). R.S., c. 355, s. 6.

Investigations and recommendations

7 The Board shall carry out such investigations as the Governor in Council or the Minister directs and make recommendations to the Governor in Council or the Minister, as the case may be. R.S., c. 355, s. 7.

Regulations

8 (1) The Governor in Council or, with the approval of the Governor in Council, the Board may make regulations

(a) regulating and controlling the marketing of primary forest products, including the agency or agencies through which such primary forest products may be marketed within the Province;

(b) providing for the licensing of persons regularly engaged in the marketing of primary forest products and fixing the licence fees payable by such persons at different amounts, and providing for the payment of such licence fees in instalments, which licence fees may be made payable to the Board and may be used by the Board for the purpose of carrying out the provisions of this Act;

(c) providing the form of licences and the terms and conditions upon which such licences may be issued, renewed, suspended or revoked;

(d) providing for the making of returns or the furnishing of information by any licensed person under this Act;

(e) providing for the carrying out of any plan;

(f) providing for the furnishing of security or proof of financial responsibility by persons who purchase primary forest products for resale;

(g) exempting any person or class of persons from the provisions of the regulations or any portion thereof;

(h) establishing guidelines for the purposes of Section 10 or 13;

(i) defining any word or expression used but not defined in this Act;

(j) generally for the better carrying out of this Act.

Application of regulations

(2) Any regulations made under this Section may be limited as to the time or place or to any grade or class of primary forest products. R.S., c. 355, s. 8.

Suspension or revocation of licence

9 (1) The Board may suspend or revoke any licence provided for under the regulations for failure to observe, perform or carry out any of the provisions of this Act, the regulations or any plan or order or direction of the Board.

Opportunity to appear

(2) In every such case the applicant shall be afforded an opportunity of appearing before the Board to show cause why the licence should not be suspended or revoked. R.S., c. 355, s. 9.

Separate fund

10 For the purpose of carrying out this Act, the Board may establish a separate fund and may impose charges, in respect of the producing, marketing or processing of primary forest products, which shall be payable by such persons engaged in the producing, marketing or processing of primary forest products as the Board may determine. R.S., c. 355, s. 10.

Use of fund

11 The Board may use the fund referred to in Section 10 to

(a) defray the expenses of the Board;

(b) make payments, grants and loans to persons, on such terms and conditions as the Board determines, to assist those persons in carrying out the purposes of this Act. R.S., c. 355, s. 11.

Audit of accounts

12 The accounts of the Board may be audited by the Auditor General. R.S., c. 355, s. 12.

Registration as bargaining agent

13 (1) An association may make application to the Board to be registered as the bargaining agent for all or any group or groups of producers or buyers of one or more primary forest products and upon registration by the Board is the sole bargaining agent for the producers or buyers for which it is registered as bargaining agent, and before registering any such association as a bargaining agent the Board shall hold a public hearing.

Prerequisites to registration

(2) Before registering an association pursuant to subsection (1), the Board shall satisfy itself that

(a) the association has the support of the producers or buyers, as the case may be, in the group for whom the association seeks to be registered as a bargaining agent; and

(b) the group for whom the association seeks to be registered as a bargaining agent is an appropriate group for collective bargaining.

Application to de-register

(3) Any person may make an application to the Board to de-register any association registered by the Board as a bargaining agent and, before de-registering any such association, the Board shall hold a public hearing. R.S., c. 355, s. 13.

Annual statements

14 Within such times as the Board directs, an association registered as a bargaining agent shall submit annually to the Board statements for the immediately preceding year of revenue and expenditures and assets and liabilities and such financial reports as will disclose the operations and financial condition of the association, and such statements shall be prepared in accordance with generally accepted accounting principles consistently applied and be audited by a public accountant within the meaning of the Public Accountants Act. R.S., c. 355, s. 14.

Declaration of bargaining situation

15 An Association that has been registered as a bargaining agent may

- (a) at any time where no collective agreement exists; or
- (b) preferably no later than three months before the expiry of an existing collective agreement,

make application to the Board for a declaration that a bargaining situation exists between the association and another person or another bargaining agent and, where the Board is satisfied that a bargaining situation exists, the Board shall make a declaration to that effect. R.S., c. 355, s. 15.

Duty to bargain upon declaration

16 When the Board has issued a written declaration pursuant to Section 15, the parties named in such declaration shall

- (a) within twenty days from the date of such declaration, commence collective bargaining; and
- (b) bargain in good faith with a view to the conclusion of a collective agreement,

and any collective agreement concluded is binding upon all persons named in such declaration. R.S., c. 355, s. 16.

Terms and agreement apply during negotiation

17 (1) During any negotiating period and until a new collective agreement is signed, the buyer shall continue to buy and the seller shall continue to sell primary forest products on the same terms as in the former collective agreement and, when a new collective agreement is reached, the new price is retroactive to the date of the expiration of the former collective agreement.

Where no existing agreement

(2) Where there is no existing agreement, the buyer shall continue to buy and the seller shall continue to sell primary forest products in accordance with the arrangements in place prior to the date of commencement of negotiations and, when a collective agreement is reached, the price is retroactive to that date. R.S., c. 355, s. 17.

Application for declaration of deadlock

18 Upon the expiration of not less than six months after the parties have entered into bargaining and the parties have been unable to reach agreement, any party to the bargaining may make application to the Board for a declaration of deadlock. R.S., c. 355, s. 18.

Declaration of deadlock

19 If the Board is satisfied that a situation exists whereby the parties are unable to come to agreement, it shall by written declaration declare a deadlock. R.S., c. 355, s. 19.

Application for mediation

20 (1) At any time after the Board has issued a written declaration of deadlock, either party to the negotiations may make application to the Board for mediation of the dispute.

Mediator

(2) With the consent of both parties, the mediation may be by one mediator in which case all costs shall be borne equally by the parties to the mediation.

Request for mediation tribunal

(3) Where the parties fail to agree on mediation by one mediator, either party to the negotiations may request the Board to establish a mediation tribunal and the Board shall serve notice to this effect on both parties.

Mediation tribunal

(4) The mediation tribunal shall consist of three mediators, one nominee to be chosen by each party and a chairman to be chosen by mutual agreement of the two parties.

Appointment by Chief Justice

(5) If either party fails to choose a nominee or if the parties fail to choose a chairman within two weeks of the Board serving notice pursuant to subsection (3), the appointments shall be made by the Chief Justice of Nova Scotia.

Costs of tribunal

(6) The costs of the mediator chosen by each party shall be borne by that party and all other costs of the mediation tribunal, including the costs of the chairman, shall be borne equally by the parties to the mediation. R.S., c. 355, s. 20.

Powers of mediator or tribunal

21 (1) Where a mediator or mediation tribunal has been established, the mediator or mediation tribunal has the power to

(a) investigate the causes of the existing dispute;

(b) attempt to bring about a settlement of the dispute or prevent a dispute.

Written report

(2) The mediator or the mediation tribunal shall, within sixty days of being established, make a written report to the Board and the Minister and notify the parties to the dispute that a report has been sent to the Board and the Minister.

Extension of time

(3) Notwithstanding the time period referred to in subsection (2), the parties to the dispute, the mediator or the mediation tribunal may jointly apply to the Board for an extension of time.

Confidentiality

(4) A report made pursuant to subsection (2) is confidential and the Minister and the Board shall not disclose any of its contents to a third party.

Procedure

(5) The mediator or the mediation tribunal shall determine the mediation procedure but shall in every case give an opportunity to all interested parties to present evidence and make representation. R.S., c. 355, s. 21.

Inadmissibility of report and proceedings

22 No report of the mediator or mediation tribunal and no testimony or proceedings before the mediator or mediation tribunal is receivable in evidence in any court except in the case of a prosecution for perjury. R.S., c. 355, s. 22.

Binding arbitration

23 (1) Notwithstanding Section 17, if the parties to the dispute have not reached a collective agreement within thirty days of the receipt of notice of the making of the report of the mediator or mediation tribunal, either party may apply to the Board to have the matter resolved by binding arbitration.

Procedure

(2) The procedure outlined in Section 20 applies, mutatis mutandis, to the arbitration process.

Decision

(3) The arbitrator or arbitration tribunal shall, within sixty days of being established, submit a decision to the parties to the dispute, the Board and the Minister and the decision of the arbitrator or arbitration tribunal is binding on the parties to the dispute, retroactive to

(a) where there is no collective agreement, the date of the commencement of negotiations; or

(b) where there is a former collective agreement, the date of the expiration of the former collective agreement.

Extension of time

(4) Notwithstanding the time period referred to in subsection (3), the parties to the dispute may jointly apply or the arbitrator or the arbitration tribunal may apply to the Board for an extension of time. R.S., c. 355, s. 23.

Prohibitions

24 (1) No person shall seek to compel a person to refrain from

(a) becoming or ceasing to be a member of an association;

(b) testifying or otherwise participating in a proceeding or making a disclosure required pursuant to this Act; or

(c) filing a complaint pursuant to this Act.

Failure or refusal to sell

(2) No person shall refuse to purchase or sell or continue to purchase or sell any primary forest product from or take any other action against any person because that person has exercised or may exercise any right or obligation pursuant to this Act.

Retaliatory action

(3) No person shall take retaliatory action against another person because that other person is or seeks to become a member of a group venture. R.S., c. 355, s. 24.

Complaint

25 (1) Any person may make a complaint in writing to the Board that any other person has violated or failed to comply with a provision of a collective agreement or a provision or requirement of this Act.

Inquiry

(2) Where a complaint is made to the Board pursuant to subsection (1), the Board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any person to do such things as in

the opinion of the Board are necessary to give full effect to the terms and conditions of a collective agreement or comply with any provision or requirement of this Act. R.S., c. 355, s. 25.

Offence

26 (1) Any person violating any of the provisions of this Act or of any regulations or refusing or neglecting to fulfil, perform, observe or carry out any duty or obligation created or imposed by this Act or any regulations of the Board shall be guilty of an offence and liable upon summary conviction to a penalty of not more than five hundred dollars and costs for the first offence or one thousand dollars and costs for a second or subsequent offence.

Offence by officer or agent of corporation

(2) Where any person not being an individual is guilty of an offence under this Act, and if an officer, director, employee, or agent of the corporation wilfully directed, authorized, assented to, acquiesced in or participated in the commission of the offence, that person is a party to and guilty of the offence. R.S., c. 355, s. 26.

Limitation period

27 Every prosecution under this Act or the regulations shall be commenced within two years from the date upon which the offence is alleged to have been committed. R.S., c. 355, s. 27.

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