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Peter A. Love*

Renewing Our Renewable
Forest Resource: The
Legislative Framework

I. *Introduction*

Since the first settlers arrived on Canada's shores, the forests have been looked to as a major source of economic activity and wealth. Year after year and decade after decade, Canadians have gone to the woods to fell trees in order to satisfy the ever-increasing demands of both the country and the world. In the nineteenth century, the magnificent pine and oak timber of eastern Canada, highly prized as lumber for construction and ship building, was the first to be depleted.¹ The beginning of the twentieth century saw the loggers moving north and west as the demand for paper and the pulp that produced it gave value to the spruce and jack pine forests of the vast Boreal region, which stretches in a broad swath from the Yukon to Newfoundland. The loggers also went to British Columbia, where the firs and spruce dwarfed anything the east had to offer. As the years passed, the loggers went further and further inland and further and further north, always seeking the virgin forests that could meet the growing demand for forest products. It now appears that, like the people of Kansas City, they've gone about as far as they can go. The forest industry is on the verge of entering a new era, in which it will no longer be able to supply its mills from the natural forests that our forefathers discovered. The amount of unexploited productive forestland is diminishing rapidly, and what remains tends to be relatively inaccessible and uneconomic to harvest. The timber that will supply the industry in the twenty-first century will have to be provided through the process of regeneration, carried out on lands that have been harvested previously.

The inevitability of the depletion of the natural forests is, and has been, obvious to anyone who ever considered the matter.² Yet, until

*Of Blake, Cassels & Graydon, Toronto.

1. See Lower, A.R.M., *The North American Assault on the Canadian Forest* (Ryerson Press: Toronto, 1938).

2. Concern over the necessity to provide for preservation of the forests in Ontario was expressed as long ago as 1865 by the then Commissioner of Crown Lands in Upper Canada. See Lambert, R.S., *Renewing Nature's Wealth* (Ontario Dept. of Lands and Forest: Toronto, 1967) at p. 178.

recently, very little action has been taken by the governments of Canada, either federal or provincial, to ensure that regeneration will supply the timber necessary to allow the forest industry to survive and expand in the twenty-first century. The resulting situation has been well described in a recent report of the Science Council of Canada, as follows:

The forests provide a renewable resource. Until the last decade, however, Canadians have often regarded forests as something to be exploited and have depended too heavily on natural regeneration rather than scientific management for optimal regeneration. We are now suffering the results of this attitude. Much of Canada's high-quality, old-growth forest has been harvested; much that remains accessible is overmature and defective. Fires, insects, disease and wind destroy two-thirds as much timber as is harvested annually. Local shortages of commercially suitable wood have developed in every province in recent years, and conflicts of interest over land use are increasing. One-eighth of Canada's productive forest area has deteriorated to the point where huge tracts lie devastated, unable to regenerate a merchantable crop within the next 60 to 80 years. Each year some 200,000 to 400,000 ha. of valuable forests are being added to this shameful waste.³

In Europe and in other parts of the world that are not blessed with an abundance of forests, it has been accepted for decades, if not centuries, that trees are a crop, and that, as with any other agricultural crop, due regard must be paid to the planting and tending of forests if their benefits are to be reaped. In Canada, however, government has only just begun to recognize its responsibility for ensuring that the country's forests are managed along scientific principles which are aimed at optimizing the production of timber. The point of this paper is to describe the present legislative framework, with particular reference to the province of Ontario, within which measures are being taken to reverse the effects of past neglect.

II. *Legislative Responsibility*

(a) *Provincial Authority under the Constitution*

From a constitutional perspective, the authority and primary responsibility for legislation governing forest management lies with

3. Science Council of Canada. *Canada's Threatened Forests* (Ottawa, 1983) p. 5.

the provinces. Section 92(5) of the Constitution Act, 1867⁴ (formerly the British North America Act, 1867) provides each province with exclusive power to make laws regarding the management and sale of both the public lands that belong to the province and the timber and wood thereon. Under section 109 of the act,⁵ the four original provinces retained all lands belonging at Confederation to the former provinces of Canada, Nova Scotia, and New Brunswick. The four western provinces were dealt with similarly under the Constitution Act, 1930,⁶ as were Newfoundland and Prince Edward Island under the terms of their entry into the Dominion. In light of the fact that approximately ninety percent of the productive forestlands in the ten provinces are owned by the provinces and only two percent are owned by the federal government⁷ (the latter comprising national parks largely), section 92(5) of the act has given to the provinces effective control over almost all forest harvesting activity on public lands. Jurisdiction over forest management on privately owned lands lies with the provinces under section 92(13) (regarding property and civil rights in the province) and 92(16) (regarding, in general, all matters of a merely local or private nature in the province).

If any doubt ever existed as to the exclusive jurisdiction of the provinces over forest management in the provinces, the issue must now be considered to have been laid to rest by the natural resource provisions contained in the Constitution Act, 1982.⁸ Section 50 of that act amends the Constitution Act, 1867 by adding a new section, 92A, which reads, in part, as follows:

- (1) In each province, the legislature may exclusively make laws in relation to . . .
- (b) development, conservation and management of . . . forestry resources in the province, including laws in relation to the rate of primary production therefrom . . .
- (2) In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from . . . forestry resources in the province . . . but such laws may not authorize or provide for discrimination in prices or supplies exported to another part of Canada.

4. 30-31 Vict. c. 3 (U.K.), as re-named by the Canada Act, 1982. c. 11 (U.K.).

5. See also section 117 of the act.

6. 20-21 Geo. V., c. 26 (U.K.).

7. *Supra*, note 3, p. 8.

8. Schedule B to the Canada Act, 1982. *supra*, note 4.

(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

(4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(a) . . . forestry resources in the province and the primary production therefrom . . .

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province . . .

(5) Nothing in subsection (1) to (5) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of this section.

Section 51 of the Constitution Act, 1982 further amends the Constitution Act, 1867 by adding a schedule which provides a definition of "production from a forestry resource" for the purposes of the above suggestions. Section 92A of the act, in addition to ensuring that forest management on both public and private lands lies within the exclusive legislative jurisdiction of the provincial legislatures, also would appear to remove the jurisdictional pitfalls that previously may have constrained provincial legislation which established marketing boards for forest products from private land⁹ (such as those which now exist in Quebec and New Brunswick)¹⁰ and taxation systems upon the volume of shipments of the industry.¹¹ Subsection (6) of the new section, 92A, protects the pre-existing powers and rights of the provincial governments, as well as those of their legislatures, from any diminishment otherwise to be found in the section. The executive branch of each province has, in the absence of constitutional or legislative restrictions, the right to deal with assets belonging to the provincial Crown as it sees fit.¹²

9. See Hogg, *Constitutional Law of Canada* (1977), pp. 310-312.

10. Ontario Ministry of Natural Resources, *Private Land Forests — A Public Resource* (1982), pp. 86, 93; see *Farm Products Marketing Act*, R.S.Q. 1977, c. M-35, as amended; *Farm Products Marketing Act*, R.S.N.B. 1973, c. N-2, as amended.

11. See *A.G. — B.C. v. McDonald Murphy Lbr. Co.*, [1930] A.C. 357 (P.C.).

12. See LaForest, *Natural Resources and Public Property under the Canadian*

In *Smylie v. The Queen*,¹³ the Ontario government, in its capacity as owner of crown lands, was held to have wider powers over the disposition of crown timber than the Ontario legislature would have over the sale of timber under its general law-making powers. In that case, the Ontario Court of Appeal held *intra vires* an act whereby licences to cut crown timber would be subject to a condition that pine timber not be exported from the country in an unmanufactured state. The court reasoned that the province, as owner of the asset, had the same rights as any other owner to make a sale of its asset subject to whatever conditions it liked, notwithstanding the apparent effect on extraprovincial trade, which was, of course, the legislative preserve of Parliament. Section 92(5) of the Constitution Act, 1867, pursuant to which the court found that the legislative authority to pass the act existed, expressly recognizes the legislature's authority to control the exercise, by the government, of its prerogative powers over crown lands and timber.

Subsection 92A (6) seems, therefore, to preserve the right of the provinces to make sales of crown timber subject to conditions requiring the timber to be processed within the province, notwithstanding any resulting discrimination against potential buyers seeking supplies for mills located in other provinces. Such conditions are commonly a part of timber licences issued by provinces and are becoming increasingly so as provincial governments gear their timber licence issuance policy to the support of particular mills suffering from supply shortages.¹⁴

(b) *Federal Authority under the Constitution*

The federal parliament has almost no legislative authority to deal directly with forest management, apart from its authority over lands in the Northwest Territories and the Yukon and in national parks. Notwithstanding that fact, the federal government has an important role to play in encouraging forest management, specifically through

Constitution (1969), p. 164; Hogg, *op. cit.* p. 392.

13. (1900), 27 O.A.R. 172.

14. The practice is expressly authorized in Ontario by the Crown Timber Act, R.S.O. 1980, c. 109, s. 17. In the absence of the special rights arising as a result of the province's ownership of the timber, legislation establishing such discrimination would probably contravene section 92A(2) of the act, and possibly also section 121 (see Rand J.'s comments in *Murphy v. C.P.R. and A.-G. Canada*, [1958] S.C.R. 626 at 642), and may be *ultra vires* as falling within Parliament's exclusive jurisdiction under section 91(2) (the regulation of trade and commerce).

its spending power. The federal government has also played an important role in obtaining statistical information on the country's forests and in carrying out forest management research. The Science Council's report, referred to earlier, has recommended that the federal government substantially increase funding for forest management research.

(c) *National Aspirations and the Constitution*

Some of the changes to the Constitution that were incorporated by the recent amendment embody ideals which are recognized as being of lasting importance to the country. These ideals, while not binding on Parliament or the legislature, can be ignored by our politicians only at their peril, given that they are regarded as being fundamental to our political system. The provisions of the Canadian Charter of Rights and Freedoms¹⁵ that regard regional disparity and that may be overridden, pursuant to section 33 of the Constitution Act, 1982 and subsection 36(1) of that act, are two examples of such directory provisions.

A thought-provoking proposal along the same lines, with respect to management of the country's natural resources, was made by Professors Paul L. Aird and David V. Love of the University of Toronto in a brief presented, on November 21, 1980, to the Joint Committee of the House of Commons and the Senate on the Constitution of Canada. Pursuant to the proposal, what is now section 36 of the Constitution Act, 1982 would have been amended by the insertion of a new subsection (a), respecting natural resources, so as to read in part as follows:

36.(1) without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

(a) advancing the management and use of Canada's natural resources to meet the needs of society in perpetuity;

The proposal did not receive any publicity at the time, which is not surprising considering that there were more controversial provisions in the federal government's constitutional package, and the proposal was not adopted by the Joint Committee.

15. Constitution Act, 1982. Part 1, *supra*, note 8.

In Canada, constitutional amendments tend to follow, rather than lead, public concerns, and as yet, the wider Canadian public has not become aware of the plight of our forests. With time, however, the implications of inadequate management cannot help but become more and more evident. A time will come, I predict, when a proposal to constitutionally entrench the country's commitment to proper management of its resources will receive the public support it deserves.

III. *Legislation in Ontario*

The forest products industry has been a major contributor to the economy of Ontario, and the province has always prided itself on the progressive approach it has taken to the management of its forests. Ontario was the second jurisdiction in North America to provide a forest fire prevention program (which it did in 1878),¹⁶ and Algonquin Park, a 1,300 square-mile provincial park, located about 150 miles northeast of Toronto, was, when it was established in 1893, one of the first forest reserves of its kind on the continent.¹⁷ (It is first interesting to note, in light of the attitude of preservationists opposed to cutting operations, that one of the reasons for establishing the park was to prevent farmers from settling on the lands, in order that the lumber industry in the area might have a continuing supply of timber.)¹⁸

Ontario is fairly typical of Canada as a whole, with respect to the proportions of productive forestland owned privately and by the province. For the country as a whole (excluding the Northwest Territories and the Yukon), nine percent of productive forestlands are privately owned; in Ontario, ten percent is privately owned. In the western provinces, privately owned forestlands make up a relatively insignificant proportion — two percent in Alberta and five percent in British Columbia — while in the Maritimes, the majority of productive forestlands are privately owned — seventy-two percent in Nova Scotia and fifty-three percent in New Brunswick.¹⁹ Ontario has recently passed legislation dealing with forest management on both crown and private land, as have many of the other provinces. While each region and province of the country has

16. S.O. 1878, c. 23; *supra*, note 2, p. 161. Quebec was the first jurisdiction to pass forest fire prevention legislation; see S.Q. 1870, c. 19.

17. S.O. 1893, c. 8; see *supra*, note 2, p. 172.

18. *Ibid*, p. 167.

19. *Supra*, note 10, p. 79.

its own unique problems to deal with in the area of forest management, most of the issues are common throughout the country. The situation in Ontario serves as an example of how those issues are being dealt with and will be dealt with in future.

(a) *Crown Lands*

In Ontario, approximately 380,000 square kilometers of crown lands are considered to be productive forest land,²⁰ the harvesting of which is governed by the Crown Timber Act.²¹ The act dates back to 1849,²² and the procedures it prescribed in 1849 had, more or less, been established as early as 1826 by means of instructions to the Surveyor-General of Upper Canada.²³ The act was, in its original form, exclusively concerned with ensuring that the Crown received payment in exchange for granting the right to cut timber on crown lands. An annual ground rent, in addition to dues, or “stumpage”, for the amount of timber actually cut, were payable under the licence. The only change made in the act during the nineteenth century occurred in 1898, when it was amended to impose the manufacturing condition which became the subject of the *Smylie* case, referred to earlier.²⁴

Legislation providing for the management of crown timber did not appear until passage of The Forest Management Act, 1947.²⁵ Under this act, holders of timber licences were, if so required by the Minister of Lands and Forests, to prepare inventories of timber in the areas in which their licences applied and were to cut only in accordance with long range “master plans” and “annual plans”, approved in advance by the minister.²⁶ The 1947 legislation followed the release of the report of the Ontario Royal Commission on Forestry (the “Kennedy Commission”) in the same year. The commission called for harvesting of the forest resource to take place on a “sustained yield” basis, under which the volume of timber

20. *Ibid.*, p. (ix).

21. R.S.O. 1980, c. 109.

22. 12 Vict. c. 30 (Canada).

23. A history of the act and prior procedures in the nineteenth century is set forth in the judgment of Osler J.A. in *Smylie v. The Queen*, *supra*, note 13 at pp. 172-179.

24. S.O. 1898, c. 9.

25. S.O. 1947, c. 38. The provisions of the act have since been incorporated in the Crown Timber Act.

26. Similar requirements had been inserted as conditions to the timber agreement between the Ontario government and Abitibi Power and Paper Company in 1945. See, *supra*, note 2, p. 408.

harvested each year would be equaled by the volume of regrowth within the managed area.²⁷ Under the master plans, required pursuant to the 1947 Act,²⁸ it was to be the licensee's responsibility to ensure that the regeneration of timber on cut-over areas would be sufficient to allow cutting on a sustained yield basis. In 1962, the Crown Timber Act was amended so as to transfer to the government the responsibility for carrying out silvicultural treatment of cut-over lands, subject to regeneration agreements under which licensees would agree to carry out the work.²⁹ In fact, all of the major companies entered into such regeneration agreements, with the government reimbursing the licensees for out-of-pocket expenses.³⁰

The 1962 amendment to the Crown Timber Act followed a growing awareness that natural regeneration of cut-over areas was not effective in replacing mature forests with new forests of appropriate species, and that silvicultural treatment of cut-over areas was required in order to ensure that satisfactory regrowth would occur. Scarification, or the preparation of the land for seeding, and planting were found to be necessary on a large proportion of cut-over lands, and thinning operations were found to be necessary on some lands in order to optimize forest growth.³¹ In 1962, the Ontario government felt that, as owner of the lands, it was appropriate for the province to take direct responsibility for carrying out these activities. By 1975, the Ontario government was spending almost as much on forest management (\$25 million) as it was receiving by way of stumpage revenue from sales of crown timber (\$27 million).³²

After 1962, the division between the licensee and the government of the responsibility for harvesting and regenerating forests led to problems in coordinating the two activities,³³ and in 1979, further amendments to the act were passed³⁴ which established the present policy of the Ontario government.

27. *Supra*, note 2, p. 401.

28. Explicitly recognized in the legislation by an amendment to the Crown Timber Act, S.O. 1954, c. 19.

29. S.O. 1961-62, c. 27.

30. *Supra*, note 2, p. 418.

31. *Ibid*, p. 418.

32. See Armson, K.A., *Forest Management in Ontario* (Ontario Ministry of Natural Resources: Toronto, 1976).

33. *Ibid*, p. 21-33.

34. S.O. 1979, c. 92.

Pursuant to the 1979 Act, licencees may now enter what are called "forest management agreements",³⁵ pursuant to which:

- a) the licensee agrees to manage the agreement area on a sustained yield basis,³⁶
- b) the licensee agrees to carry out silvicultural work on the land to specifications set out in the agreement,³⁷
- c) the licensee commits itself to achieving standards of regeneration set out in the agreement,³⁸
- d) prices for Crown timber cut are established,³⁹
- e) the government agrees to provide funding for construction and maintenance of roads,⁴⁰
- f) the licensee is given an incentive, by way of reduced stumpage charges, for any increased volume of timber available for cutting that results from its silvicultural activities,⁴¹ and
- g) the government relinquishes the powers it has under other types of licences to order the cutting of killed or damaged timber, to order that timber be offered to specified mill operators, to sell the lands to a third party, to cancel the licence, to limit the species or quantities of timber that may be cut, or to order the use for which timber be employed.⁴²

Under the act, the Minister of Natural Resources is required, every five years, to report to the legislature on the amount of harvesting and regeneration of timber that has been achieved in the area, subject to each agreement.⁴³ Thirteen forest management agreements, covering approximately 80,000 square kilometres, have been entered to date, and a government spokesman indicates that seventeen more are expected to be signed by 1986 and that all of the productive crown forest lands in the province are expected to be under the new agreements by 1990.⁴⁴ Under the agreements signed to date, the government provides funds for road construction and a

35. Crown Timber Act, R.S.O. 1980, s. 6(1).

36. *Ibid.*, s. 6(1).

37. *Ibid.*, s. 6(1)(a).

38. *Ibid.*, s. 6(1)(b).

39. *Ibid.*, s. 6(1)(c).

40. *Ibid.*, s. 6(1)(e).

41. *Ibid.*, s. 6(1)(f).

42. *Ibid.*, s. 6(3).

43. *Ibid.*, s. 6(4).

44. See "Ontario reforestation shifts to private section", *The Globe and Mail*, March 28, 1983; "Preservationists could kill off Ontario forests, industry claims", *Toronto Star*, March 29, 1983, p. F-1.

portion of planting costs, while the licensee in effect guarantees that certain levels of regeneration will be achieved.

Several major concerns of industry have been addressed in the forest management agreements. First, the preparation of harvesting and silvicultural plans can be coordinated by the licensee, although the government still plays a role in monitoring the results of silvicultural programs. Second, industry has an incentive to reduce the cost and improve the effectiveness of silvicultural treatment, as it will be bearing a portion of the cost and will be rewarded by lower stumpage charges for increased timber yield above projected levels. The stumpage charge reduction need not apply directly to the excess timber produced by improved silvicultural practices (which will, in general, be immature in early years), but may be allocated to mature stands of timber.⁴⁵ Finally, the forest management agreements provide the licensee with long-term tenure in the managed forest, to an extent that was previously unavailable. Recent studies, prepared for both the Ontario government⁴⁶ and the federal government,⁴⁷ have emphasized the importance of lengthening tenure to obtain industry's cooperation and participation in forest regeneration programs. Given a vested interest in the crops of the future, industry can be expected to take a greater interest in managing the forests allocated to it, secure in the knowledge that it will, in the future, reap the benefits of exercising sound management today. The forest management agreements signed to date in Ontario contain an "evergreen" clause,⁴⁸ pursuant to which the agreement is extended every five years for a further five years, so long as the licensee is satisfying its obligations under the agreement.⁴⁹

The success of the new forest management agreement program in achieving adequate forest regeneration remains to be seen, although both industry and government seem to be optimistic that it will lead to improvements; one industry spokesman called it "the best regulatory formula for managing forests in Canada".⁵⁰ One item still to be settled, however, is the source and amount of government

45. *Ibid.*

46. *Supra*, note 32, p. 25.

47. See F.L.C. Reed & Associates Ltd., *Forest Management in Canada, Vol. I* (Canadian Forestry Service: Ottawa, 1978), p. (iii).

48. *Supra*, note 32, p. 27.

49. *Supra*, note 44.

50. *Supra*, note 44.

grants that will be provided for silvicultural and other management activities in order to improve the rate of regeneration to acceptable levels.

(b) *Private Lands*

Privately owned forestland accounts for about ten percent of all productive forestland in the province of Ontario.⁵¹ In 1980, privately owned lands provided 3.5 million cubic metres or about fifteen percent of the wood supply used by industrial mills, as well as an additional 2.8 million cubic metres of firewood.⁵² According to a survey⁵³ carried out by the provincial Ministry of Natural Resources in 1981, however, only a small proportion of the owners of these lands consider themselves to be in the business of commercial timber production. The survey showed that only six percent of the woodlot owners carried out any form of forest management with the intent of harvesting timber for commercial purposes.⁵⁴

Privately owned woodlands, the majority of which are in southern Ontario, are more accessible and tend to be more productive than crown lands, which are located predominantly in northern Ontario. The private lands are considered to be capable of producing a higher proportion (17.5 percent) of the annual allowable cut that the province as a whole is capable of producing on a sustained yield basis than their proportion of total forest land area (10 percent) would indicate. Furthermore, there are large areas of unforested and under-utilized private land in the province, which could provide valuable timber crops if reforested.⁵⁵ In addition to privately owned lands, substantial forestland holdings, also located predominantly in southern Ontario, are held by municipalities and other public noncrown bodies, the management of which is dealt with under a separate provincial legislative regime.

The province has a long history of legislation oriented toward promoting reforestation on noncrown lands. This legislation dates back to 1871, when the Tree Planting Act, which provided for the encouragement of tree planting along roads, was enacted.⁵⁶ During the late nineteenth and early twentieth centuries, soil erosion,

51. *Supra*, note 10, p. 9.

52. *Ibid.*, pp. 21, 22.

53. *Ibid.*, p. 19.

54. *Ibid.*, p. 20.

55. *Supra*, note 10, p. 31.

56. S.O. 1870-71, c. 31.

caused by uncontrolled clearing of lands unsuitable for farming, became a serious problem in southern Ontario and reforestation programs were introduced as a means of both halting the erosion and returning the lands to productive use.⁵⁷ Under the Reforestation Act, passed in 1921, the government was authorized to enter into agreements with land owners for the purposes of reforesting and managing their lands for forestry purposes.⁵⁸ The legislation, which in 1927 was re-named the Forestry Act, continues in force to the present.⁵⁹ Under the legislation, the province administers approximately 110,000 hectares of "agreement" forests. The agreements, which last for a minimum of twenty years, generally provide that:

- a) the Ministry of Natural Resources manages the forest, provides planting stock and generally pays all expenses of management,
- b) the Ministry is entitled to all revenues from sales of timber during the agreement,
- c) the owner has the option, at the termination of the agreement, of:
 - (i) paying the Ministry all net costs of management during the Agreement, without interest, and assuming management itself, or
 - (ii) extending the agreement for at least twenty more years, or
 - (iii) selling the lands to the Crown for the owner's purchase price.
- d) the agreements are registrable against title and binding against successors.⁶⁰

Agreement forests are usually managed with more than one objective in mind. The production of timber, the prevention of erosion, and the provision of recreational opportunities and a habitat for wildlife are all authorized purposes for which agreement forests may be managed under the act.⁶¹ Forests planted under the act in the 1920s have begun producing revenue from periodic thinnings, and

57. The Counties Reforestation Act, S.O. 1911, c. 74; The Reforestation Act, S.O. 1921, c. 19.

58. Borczon, E.L., *Evergreen Challenge, The Agreement Forest Story* (Ontario Ministry of Natural Resources: Toronto, 1982).

59. R.S.O. 1980, c. 175.

60. *Supra*, note 58, p. 29.

61. R.S.O. 1980, c. 175, s. 1(a).

will soon be in a position to provide valuable crops of mature timber on what was once wind-blown wasteland.⁶²

With the exception of the forests covered by an agreement with Domtar Inc., all of the agreement forests are owned by public bodies, such as counties, municipalities, and conservation authorities.⁶³ The government has several other programs for assisting individual and corporate owners of woodlots.

Under the Woodlands Improvement Act,⁶⁴ passed in 1966, the Ministry of Natural Resources will enter into agreements with private owners of lands which are suitable for forest purposes. Under such a program, the Ministry agrees to plant or pay for the planting of trees on unforested lands and to provide management plans and assistance in improving existing woodlands and reforested areas. The owner pays for planting stock, agrees to take measures to protect the woodlands, and commits the lands covered by the agreement to forestry purposes for the fifteen-year term of the agreement. The agreement is not registered against title, and the owner is obliged to notify the Ministry if the lands are sold; the new owner is entitled to assume the agreement upon taking title. The Ministry is entitled to be re-imbursed for its expenses if the land is not maintained as forestland to the end of the term of the agreement.⁶⁵ After the fifteen-year term is completed, the owner may enter into what is termed an Advisory Services Agreement, under which the Ministry provides a management plan for a further fifteen years, with the owner assuming all costs of carrying out the plan. Landowners under Woodland Improvement Agreements and Advisory Services Agreements are eligible for municipal property tax reductions for management forests.⁶⁶ To date, over 8,500 Woodlands Improvement Agreements, covering over 50,000 hectares of land, have been entered, and over 113,000 trees have been planted under the program.⁶⁷

One provision in the Woodlands Improvements Act, pursuant to which the Ministry is precluded from assisting the owner in identifying mature trees appropriate to harvest,⁶⁸ has been criticized

62. *Supra*, note 58, p. 38; *supra*, note 10, p. 52.

63. *Supra*, note 58, p. 23.

64. R.S.O. 1980, c. 535.

65. *Ibid*, s. 4.

66. *Supra*, note 10, p. 35.

67. *Ibid*, p. 32.

68. R.S.O. 1980, c. 535, s.1(b).

on the grounds that harvesting may be one of the most constructive improvements that could be carried out on the lands.⁶⁹ The act has proved to be an effective means of returning under-utilized lands to managed forest growth, but it would be more effective, from the perspective of supplying industrial wood, if it provided more encouragement to land owners to harvest their timber crops on a regular basis at maturity.

The Ministry of Natural Resources also provides various services to private woodlot owners who are not parties to agreements under the Woodlands Improvement Act. Millions of seedlings are provided each year and are available at subsidized prices to land owners ordering at least one hundred trees. In addition, the Ministry provides free assistance in preparing inventories and management plans for woodlots and identifying trees appropriate for harvesting, and provides advice to owners about selling their timber.⁷⁰ Finally, under the province's Managed Forest Tax Reduction Programme, which was authorized pursuant to an amendment to the Forestry Act in 1975,⁷¹ owners of woodlots are eligible for a rebate of fifty percent of their municipal property taxes in respect of the managed forest area if their lots are being managed to acceptable standards.⁷²

Although Ontario has a comprehensive legislative scheme for encouraging reforestation and forest management on private lands, it lags behind two other provinces, Quebec and New Brunswick, in providing programs designed to make private woodlands owners participate actively in the forest industry. In both Quebec and New Brunswick, legislation is in place, pursuant to which owners' associations are authorized to negotiate timber prices for their members with industrial purchasers. In addition, they are authorized to administer government-funded grants and, in the case of Quebec, low-interest loans, provided for the purpose of improving forestry management and harvesting on private woodlots.⁷³ The organization of small woodlot owners into associations for the purpose of representing the owners' interests in dealings with industry and government is a long-established tradition in Europe and in other parts of the world where forested areas tend to consist of large

69. *Supra*, note 32, p. 44.

70. *Supra*, note 10, pp. 31, 36.

71. S.O. 1975, c. 20.

72. *Supra*, note 10, p. 40.

73. *Ibid*, pp. 84-88, 94; *supra*, note 10; Forestry Credit Act, R.S.Q. 1977, c. C-78, as amended.

numbers of individual, privately owned woodlots.⁷⁴ Given the tendency of private woodlot owners in Ontario to regard the commercial production of timber as a secondary or incidental reason for their ownership of woodlands, it seems unlikely that similar legislative programs will be introduced in the province in the near future. However, as the demand for timber in the province continues to increase, land owners cannot help but become more aware of the commercial potential of their woodland holdings, and associations similar to those in Quebec and New Brunswick may become active in promoting the owners' interests.

IV. *The Federal Government's Role*

The major impediment to forest regeneration in the country is financial; in short, the benefits to be derived from replanting cut-over areas in 1983 will likely not be realized before 2043. In addition, the period of time during which the crop rotation will occur will extend beyond the lives of most decision-makers today, and therefore has tended to make the necessary investment relatively unattractive. Taking as self-evident the fact that we cannot allow our forests to degenerate into wastelands, thereby leaving future generations without the valuable heritage that was given to us, the question arises as to who should bear the expense of renewing our forests.

The provinces, as owners of most of the resource and the direct recipient of the royalties derived from its exploitation, have a clear responsibility, and industry, which also benefits from present exploitation, has a role to play as well. The present trends in arrangements between the provinces and the industry, under which industry is given a long-term interest in the lands from which it derives its timber supply, will also increase its responsibility for ensuring that sound management practices are followed. However, in light of the order of magnitude of expenditures that will be required in order to provide adequate regeneration and management to the country's forests, both provincial governments⁷⁵ and industry

74. *Ibid.*, pp. 119-142, 150-154.

75. See, for example, Canadian Council of Resource and Environmental Ministers, *Forestry Imperative for Canada* (discussion paper for 1979 meeting of the CCREM, Kelowna, B.C., 1979).

spokesmen⁷⁶ have urged the federal government to make a major contribution, pointing out the significant revenues that the federal government derives from forest industry activity.

The federal government has responded positively to these suggestions. At a meeting of provincial resource ministers, held in Corner Brook, Newfoundland, in September 1982, the federal government proposed that the nation's forest renewal expenditures be more than doubled by 1987 and that federal contributions increase from \$50 million to \$130 million per year in the areas of research, support for private land owners, and specific intensive-management projects which would be offered as incentives to the provinces and industry.⁷⁷ The federal funding would follow the negotiation of agreements with the individual provinces and would require each province entering an agreement to prepare a long-term management strategy for its forests.

The federal government's contributions to forest renewal have, in recent years, been made through programs addressed to employment creation and to the reduction of regional economic disparity.⁷⁸ What has been lacking, and what should be provided in the future, is a recognition of forest renewal as a legitimate national concern and responsibility. In addition, a commitment to long-range stability in funding is essential if effective forest management practices are to be achieved.

V. Conclusion

In Ontario, as in other provinces to a greater or lesser extent, the need for dramatically increased levels of forest regeneration has been identified and legislative programs have been introduced within which the task can be carried out. However, such statutory programs are empty vessels unless they produce the changes they are designed to achieve, and such changes will require action and substantially increased levels of funding from both levels of government. Forests are a renewable resource, capable of perpetually sustaining a significant proportion of this country's

76. See "Preservationists could kill off Ontario forests, industry claims". *Toronto Star*, March 29, 1983, p. F-1.

77. See "Millions needed to save woods industry". *The Globe and Mail*, December 30, 1982, p. 4.

78. *Supra*, note 3, p. 9.

economic activity, as well as providing numerous other amenities that contribute to our way of life. Whether or not future generations of Canadians will derive the same advantages from their forests that Canadians have always enjoyed depends upon the commitment of the present generation to ensuring that the resource is, in fact, renewed.