



**Wildlands League**

*a chapter of the Canadian Parks and Wilderness Society*

*This series of fact sheets has been produced to increase public understanding of forestry in Ontario and to present innovative ideas on how it can be improved. Forestry is the single largest use of public lands in Ontario and forestry activities can have a major impact on ecosystems. The Wildlands League is committed to improving forestry practices and reducing the ecological impact of logging by working directly with government and industry and by improving public awareness and involvement in forestry issues.*

# Control of Public Forests

## *How it works and new opportunities for change*

### **INTRODUCTION**

Canada is a land of forests. Almost half of the country's land area is forested<sup>1</sup>. Ninety percent of Canada's forest is publicly owned ("Crown land"). Care of these lands is entrusted to the resource ministries of the provincial governments. These provincial governments, in turn, have licensed large portions of these public forests to large forest companies. This fact sheet begins with a discussion of the nature of these agreements and the advantages and disadvantages of the current system of control of public lands. It follows with a discussion of how forces in our economy and society are creating oppor-



*Ninety percent of Ontario's lands are owned by the public. Above: a forest in the Algoma region.*

tunities to change the existing system and it concludes by presenting some ideas about how this system should be reformed.

### **LICENCE AGREEMENTS**

Forest licences (often described as "forest tenure" or simply "tenure") refers to the package of rights and responsibilities given to private interests in Canada to allow logging on public, or Crown, land. Each type of arrangement determines the balance of public and private rights over the land, sets forestry standards that must be achieved by companies, and establishes how the benefits from forest resources will be shared<sup>2</sup>.

The forest tenure system is

an important social and environmental tool because it determines the beneficiaries of forest management, the relative priority of timber and non-timber objectives, and assigns specific responsibilities to forest managers. The greater the rights granted to private forest companies, the less flexibility the public retains to meet the needs of all forest users or to invoke changes in land use.

Rather than actually carrying out forest management, provincial governments most often delegate this task to forest companies. Licence agreements typically specify:

- ❖ The forest company that will undertake and receive benefits from forest management (the licensee);
- ❖ The forest value that the licensee can benefit from, such as timber, wildlife, water or recreation (most licences in Canada are restricted to timber);
- ❖ The duration for which the right to the timber is granted;
- ❖ Any fees payable to the government for access to timber;
- ❖ The acceptable level of timber use (cutting), or the process



*Much of our public land is licensed to large forestry companies.*

through which that level is to be determined;

- ❖ Limitations on timber cutting to protect forest values, such as wildlife habitat, recreational use, soil conservation and water-quality protection;
- ❖ The relationship between the rights of the licensee and other forest users.

Forty-two percent of public forests in Canada are allocated to private companies through volume-based or area-based licences. Volume licences confer limited rights to private companies to cut wood. The volume to be cut, the general area it must be cut in and the time period for completing cutting are all specified. The company usually has limited management responsibilities for the area in which cutting occurs.

Area-based licences, often called forest-management agreements, generally give a company the exclusive or majority right to harvest timber within a specified area and require the company to assume responsibility for management planning and reforestation. They have long, renewable terms and provide companies with a greater degree



Top: Brad Cundiff; centre: WL files; bottom: Lori Labatt



The boreal region is one of the most important to the forestry industry, but is also one of the most intact forest regions in the world.

of economic security. In return for the right to cut wood on public land, companies must pay the government a fee known as stumpage.

**THE TENURE SYSTEM IN ONTARIO:  
AN EXAMPLE OF A MODIFIED AREA-  
BASED SYSTEM**

The most common form of tenure in Ontario is an area-based agreement called a sustainable forest licence (SFL). SFLs grant rights to a licence holder to cut wood in a specified area. Licence holders are responsible for forest-management planning, conducting inventories, monitoring compliance with provincial laws and guidelines and conducting all reforestation activities. SFLs have a 20-year term that is extendable every five years<sup>3</sup>. Independent forest audits are conducted every five years to determine whether the terms of the licence are being met and whether the license should therefore be extended. Within an SFL area, there may be overlapping licences that allow companies other than the SFL holder to harvest wood.

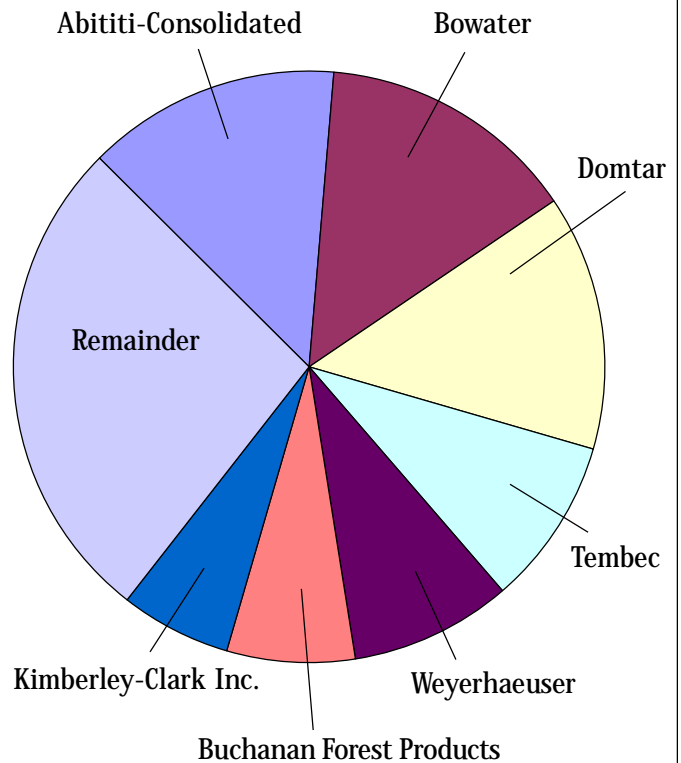
Sustainable forest licences have taken three forms (number in brackets indicates number of licences of this type):

- 1. Single company: One company holds licence (35)
- 2. Cooperative: Several companies form a cooperative to hold the licence. Each company is then

allocated a specified proportion of the annual harvest (9)

- 3. Community-based Cooperative: Westwind Forest Stewardship provides an example of an inno-

**Figure 1. Percentage of Crown Land Annual Allowable Cut Allocated Through Sustainable Forest Licences – Seven Largest Companies**



Source: U. S. Dept. of Commerce, 2001. Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Response of the Province of Ontario to the Department's May 1, 2001 Questionnaire

vative shareholder licence in Ontario. The company is a non-profit organization with a board of directors elected from the forest industry and local communities. It is a modified version of the cooperative SFL.

Sustainable Forest Licences cover large areas and are usually held by large integrated (carry out both cutting and processing of timber) forest companies that operate a mill in the region. There are 49 SFLs in Ontario. They range in size from 1,718 to 20,163 square kilometres. The five largest SFLs account for 25% of the total area allocated to SFLs in the province.

A recent wave of mergers and acquisitions among large forest companies has led to significant concentration of licenses/tenures. However, area-based tenure in Ontario is somewhat restricted in that not all of the available Annual Allowable Cut (timber volume available for cutting) within an SFL is automatically available to the SFL holder. Instead, there are sub-agreements between the province and the SFL holder specifying the actual volume of wood that will flow from the SFL area to the SFL holder's mill(s)<sup>4</sup>. Wood volumes in excess of this level can, and often are, directed to other industrial uses. Thus there has been a consistent trend toward new allocations of wood from existing SFLs to new companies or mills when technology has made it possible to utilize new tree species or different wood qualities.

## PROS AND CONS OF THE CURRENT SYSTEM

The existing tenure system across Canada has evolved over time. It continues to change in response to shifting economic and social conditions. Some of the strengths and weaknesses of the current system from a public-interest viewpoint are discussed on opposite page.



*The current tenure system favours large companies that control large public forest areas through licences. Smaller mills (bottom) may find it difficult to access adequate wood supplies.*

From top to bottom: Gary McGuffin; FSC Canada; WL files; FSC Canada

## Pros and Cons of the Current System

Important considerations for tenure systems	Positive Aspects	Negative Aspects
Public input into allocation of tenures	Existing system has few positive attributes from a public-interest perspective.	Most jurisdictions do not require a public process to discuss allocations of new tenures. Instead they are negotiated privately between government and industry and the criteria for decision-making usually are not made publicly available.
Opportunities for alternative tenure models and/or transferability to accommodate Community or First Nation control and management of forest areas.	Most provincial legislation provides mechanisms for tenure re-assignments. Some provide opportunities for alternative tenure arrangements (e.g. Forest Boards under Ontario's <i>Crown Forest Sustainability Act</i> )	Very few non-corporate tenure agreements have been actually established and it is socially and economically difficult to revoke or reassign a licence once it has been granted.
Balance of ownership rights between the public and the private forest companies	Public ownership remains in place. From an industry perspective, strong social and political forces provide a high degree of security for industrial wood supply and related processing investments (e.g. mills, machinery).	Increasing delegation of management responsibility to industry has increased the public and industry misperception that public lands are corporate lands. Decisions to increase tenure for industry are usually not publicly debated.
Provisions for other forest values	In recent years the amount of land dedicated to non-timber values has increased (e.g. protection of key wildlife habitats, creation of parks).	The tenure system is focused on provision of wood volume for manufacturing. As a result, other values are often dealt with as constraints, rather than planned for in a proactive fashion.
Provisions for other resource users	Tenure is allocated to one principal entity, making public accountability for management actions clear. Public ownership means that other users are allowed to enter licensed areas and forest management remains under public scrutiny.	Tenures are generally established to allow for a forest company to receive benefit from wood harvest. In practice other resource users (e.g. tourism, trappers) have fewer rights on the land area and are treated as secondary interests.
Financial benefits to public landowners	Stumpage payments flow to provincial consolidated revenue accounts and, in some cases, dedicated forest regeneration and investment funds.	The lack of a mechanism (e.g. auction) to establish a true competitive market price for wood may deprive the public landowner of the best price for wood harvested from public lands.
Relevance to trade discussions (e.g. softwood lumber agreement)	Several recent reforms to stumpage systems have tied parts of the total stumpage fee to the market price for wood products.	Most tenures direct wood flow to a specific mill, usually owned by the dominant tenure holder. This feature, and the predominance of Crown wood over private in the marketplace, prevents a true independent market price for logs from developing.



Top: Lori Labatt; bottom left: WL files; bottom right: Deborah Freeman

*In Ontario, parks and protected areas are not included in forestry licence areas, however logging does continue in Ontario's oldest park — Algonquin — under the control of the Algonquin Forest Authority.*

## DRIVING FORCES FOR CHANGE

There are several tenure-related issues that are currently increasing in importance across Canada.

1. Significant new industrial allocations of forests are about to take place in several jurisdictions across Canada (Yukon, Ontario, Manitoba, Saskatchewan). Many, if not all, of these allocations

will take place in areas where Aboriginal peoples are the sole or dominant residents. We should use this opportunity to examine whether some alternative to existing industrial tenure models could be more useful for delivering community social and economic benefits in these regions.

2. In many areas of Canada the industrial wood harvest for most species is approaching (or exceeding in some cases) the long-term sustainable yield. This is leading to increased calls by industry for governments to guarantee long-term wood supply through stronger licences and/or sale of public land<sup>5</sup>. We should examine whether some alternative model provides a better way to ensure a continuous flow of social, economic and environmental benefits from public forests.

3. The cross-border debate concerning the trade in softwood lumber has gained renewed vigour with the expiry of the Softwood Lumber Agreement. Several forest policy commentators

have suggested that greater industrial control could provide Canadian forest companies with a



Lori Labatt

defence against charges of government subsidy from U.S. producers<sup>6, 7</sup>. It is likely that this idea will continue to be explored given the importance of the outcome of these discussions to the financial health of a large portion of the Canadian forest industry. However, it is equally important to look at alternative ways of creating a better market-based valuation for wood produced from public lands in Canada.

## PRINCIPLES FOR TENURE REFORM

It is an appropriate time to begin a discussion about reforming the tenure system in Canada in a way that meets the following objectives.

- ❖ Protects and ensures continued public ownership of public lands
- ❖ Enables and/or allows for continued industrial tenures but provides the flexibility to allow community-based and First Nation tenures to be assigned in appropriate circumstances.
- ❖ Encourages and facilitates the adoption of ecosystem-based forest landscape management, including completion of land-use planning to reserve lands for non-timber uses. (See our Making Forestry Better factsheet.)



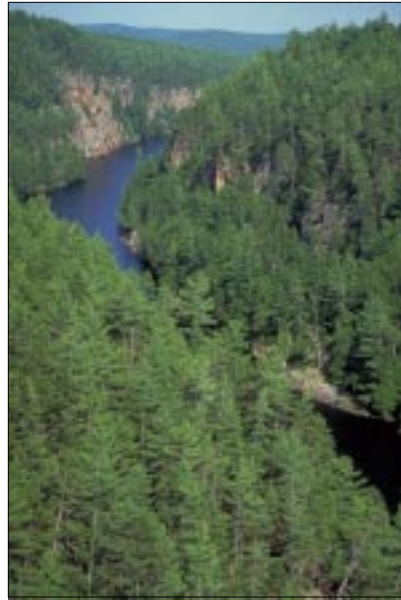
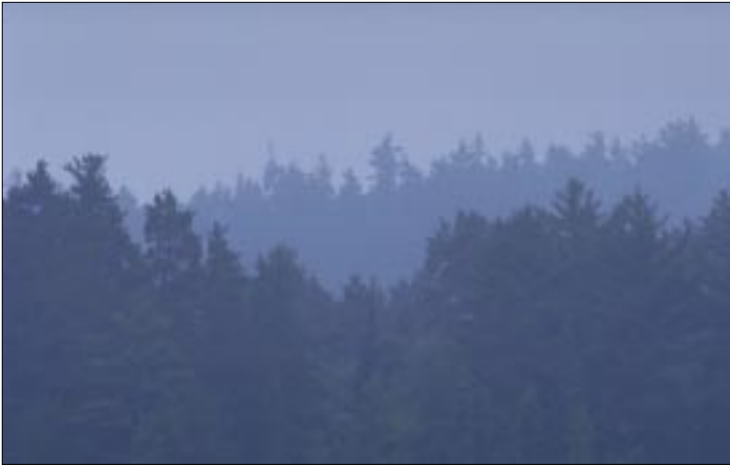
*The current tenure system makes it difficult to put other interests, such as community control or ecological protection, before logging.*

- ❖ Operates within an exports-reliant market system in a manner that will maintain and/or enhance the Canadian forest industry's competitiveness and market access.

## NEXT STEPS

Canada needs to review how our public forests should be managed and how their multiple benefits should be best allocated. Land-use and resource-allocation decisions that are underway need to provide real opportunities for broad public input on the issue of timber control and licensing. These discussions can fit within:

- ❖ Discussions about the licensing of additional forest areas.
- ❖ Discussions about re-allocation of licences where mills have closed.
- ❖ Discussions about how to provide jobs and economic benefits to communities
- ❖ Discussions about how to meet Treaty and other legal obligations to Aboriginal peoples.
- ❖ Discussions about how to deal with trade issues.
- ❖ Discussions between government and forest industry on tenure review or enhancement.



We have an opportunity today to look at how control of public lands is structured.

Wildlands League is working with people in communities, government, and forest industry to develop alternative approaches to forest licensing and benefit. You can find out more about these efforts by contacting our staff or visiting our website at [www.wildlandsleague.org](http://www.wildlandsleague.org).

*This fact sheet written by Tim Gray, Gillian McEachern and Chris Henschel, October 2001*



## WILDLANDS LEAGUE

*a chapter of the Canadian Parks and Wilderness Society*

The Wildlands League was founded in 1968 to protect wilderness in Ontario and is a chapter of the Canadian Parks and Wilderness Society (CPAWS). We are solutions oriented and we get results. We are respected for our science-based campaigns to establish new protected areas, our efforts to ensure that nature comes first in the management of protected areas, and success at addressing issues of resource management and community development.

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Printed on recycled paper containing 100% post-consumer recycled fibre.

## Forestry in Ontario

Other fact sheet topics in this series

- Forest Certification
- Intensive Forest Management
- Conservation of White Pine
- Protecting Shoreline Forests
- Maintaining the Ecological Integrity of the Boreal Forest