

Plant Protection Act

1990, c. 22

An Act to prevent the importation, exportation and spread of pests injurious to plants and to provide for their control and eradication and for the certification of plants and other things

[Assented to 19th June, 1990]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Plant Protection Act*.

PURPOSE

Purpose of the Act

2. The purpose of this Act is to protect plant life and the agricultural and forestry sectors of the Canadian economy by preventing the importation, exportation and spread of pests and by controlling or eradicating pests in Canada.

INTERPRETATION

Definitions

3. In this Act,

"Assessor" «*évaluateur*»

"Assessor" means the Assessor or any Deputy Assessor appointed under Part II of the *Pesticide Residue Compensation Act*;

"conveyance" «*véhicule*»

"conveyance" means any aircraft, carriage, motor vehicle, trailer, railway car, vessel, cargo container or other contrivance used to move persons or things;

"dispose" *Version anglaise seulement*

"dispose" includes destroy;

"inspector" «*inspecteur*»

"inspector" means a person designated as an inspector pursuant to section 21;

"justice" «*juge de paix*»

"justice" means a justice as defined in section 2 of the *Criminal Code*;

"Minister" «*ministre*»

"Minister" means the Minister of Agriculture and Agri-Food;

"peace officer" «*agent de la paix*»

"peace officer" means a peace officer as defined in section 2 of the *Criminal Code*;

"penalty" «*sanction*»

"penalty" means an administrative monetary penalty imposed under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* for a violation;

"pest" «*parasite*»

"pest" means any thing that is injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants, and includes any plant prescribed as a pest;

"place" «*lieu*»

"place" includes a conveyance;

"plant" «*végétal*»

"plant" includes a part of a plant;

"prescribed" *Version anglaise seulement*

"prescribed" means prescribed by regulation;

"thing" «*choses*»

"thing" includes a plant and a pest;

"Tribunal" «*Commission*»

"Tribunal" means the Review Tribunal continued by subsection 4.1(1) of the *Canada Agricultural Products Act*;

"violation" «*violation*»

"violation" means

- (a) any contravention of any provision of this Act or of a regulation made under this Act,
 - (b) any contravention of any order made by the Minister under this Act, or
 - (c) any refusal or neglect to perform any duty imposed by or under this Act
- that may be proceeded with in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

1990, c. 22, s. 3; 1994, c. 38, s. 25; 1995, c. 40, s. 75; 1997, c. 6, s. 81; 2001, c. 4, s. 173(F).

HER MAJESTY

Binding on Her Majesty

4. This Act is binding on Her Majesty in right of Canada or a province.

CONTROL OF PESTS

General

Duty to notify Minister

5. Where a person becomes aware of the existence of a thing that the person suspects to be a pest in an area where the pest has not previously been known to exist, the person shall immediately notify the Minister of the suspected pest and provide the Minister with a specimen of it.

Prohibition

6. (1) Except as permitted under this Act or the regulations, no person shall move, grow, raise, culture or produce any thing that there are reasonable grounds to believe is a pest, that is or could be infested with a pest or that constitutes or could constitute a biological obstacle to the control of a pest.

Prohibition of movement

(2) Where an inspector believes on reasonable grounds that a thing is a pest, is or could be infested with a pest or constitutes or could constitute a biological obstacle to the control of a pest, the inspector may prohibit the owner of the thing or the person having the possession, care or control of it from moving it without the written authorization of an inspector.

Notice

(3) A prohibition under subsection (2) shall be communicated by personal delivery of a notice to the owner or person having the possession, care or control, or by sending the notice to the owner or person.

Importation and Exportation

Presentation for inspection

7. (1) No person shall import or admit into Canada or export from Canada any thing that is a pest, that is or could be infested with a pest or that constitutes or could constitute a biological obstacle to the control of a pest, unless

- (a) the thing is or has been presented to an inspector in accordance with subsection (2) at a place designated by the regulations or by an inspector;
- (b) the person has produced to an inspector all permits, certificates and other documentation required by the regulations; and
- (c) the thing is imported or exported in accordance with any other requirements of the regulations.

Manner of presentation for inspection

(2) A thing that is required to be inspected shall be presented in such manner and under such conditions as the inspector considers necessary to carry out the inspection.

Removal of imports

8. (1) Where an inspector believes on reasonable grounds that a thing has been imported into Canada and that it

- (a) was imported in contravention of this Act or the regulations, or
- (b) is a pest, is or could be infested with a pest or constitutes or could constitute a biological obstacle to the control of a pest,

the inspector may, whether or not the thing is seized, require the owner of the thing or the person having the possession, care or control of it to remove it from Canada.

Notice

(2) A requirement under subsection (1) shall be communicated by personal delivery of a notice to the owner or person having the possession, care or control of the thing, or by sending the notice to the owner or person, and the notice may specify the period within which or the manner in which the thing is to be removed.

Forfeiture where non-compliance

(3) Where a thing is not removed from Canada as required under this section, it shall, notwithstanding section 32, be forfeited to Her Majesty in right of Canada and may be disposed of as the Minister may direct.

Prohibition of possession or disposition

9. (1) No person shall possess or dispose of a thing that the person knows was imported in contravention of this Act or the regulations.

Presumption

(2) In any prosecution for an offence under subsection (1), an accused who is found to have been in possession of a thing that was imported in contravention of this Act or the regulations shall be considered, in the absence of evidence to the contrary, to have known that the thing was so imported.

International Assistance

Assistance in controlling or eradicating pests outside Canada

10. The Minister may provide financial or technical assistance to any person or government outside Canada in controlling or eradicating a pest that affects or could affect plants, or products or by-products of plants, in Canada.

INFESTED PLACES

Declaration of infested place

11. (1) Where an inspector suspects or determines that a place is infested with a pest and is of the opinion that the pest could spread, the inspector may in writing declare that the place is infested.

Delivery of declaration

(2) When the declaration is delivered to the occupier or owner of the place to which it relates, the place, together with all contiguous lands, buildings and other places occupied or owned by the occupier or owner, constitutes an infested place until the Minister determines otherwise.

Further declaration

12. (1) Where an inspector declares under section 11 that a place is infested and is of the opinion that the pest could spread to any other land, building or place, the inspector may in writing declare that the other land, building or place is infested.

Delivery of declaration

(2) When a declaration is delivered to the occupier or owner of any land, building or place mentioned in subsection (1), the land, building or place, together with all contiguous lands, buildings and places occupied or owned by the same occupier or owner, constitutes part of the infested place.

Interim powers of inspector

13. (1) Where an inspector is of the opinion that immediate action is required to control a pest, the inspector may, in a declaration under section 11 or 12, and for a period of not more than ninety days, prohibit or restrict the movement of persons and things within, into or out of the infested place for the purpose of controlling the pest.

Cessation of prohibition or restriction

(2) A prohibition or restriction contained in a declaration under section 11 or 12 ceases to have effect where

- (a) the inspector rescinds the prohibition or restriction; or
- (b) the declaration is revoked by the Minister under subsection 15(2).

Where occupier or owner not found

14. Where an inspector cannot, after the exercise of due diligence, find the occupier or owner of any land, building or other place, delivery of a declaration may be effected by posting it on the building or on any building or conspicuous object on the land or at the place.

Report to Minister

15. (1) An inspector who declares that a place is infested shall, as soon as is practicable, send a report of the declaration to the Minister.

Revocation of declaration

(2) Where a place has been declared infested under section 11 or 12, the Minister may revoke the declaration and, on revocation, the place shall cease to be an infested place.

Powers of Minister

- (3) The Minister may, by order,
- (a) declare any place to be infested that is not already the subject of a declaration under section 11 or 12;
 - (b) determine and subsequently vary the area of any place that is declared infested;
 - (c) extend the period of any prohibition or restriction declared by an inspector under subsection 13(1);
 - (d) prohibit or restrict the movement of persons and things within, into or out of any place that is declared infested; and
 - (e) permit any movement of persons and things within, into or out of a place that would otherwise be prohibited by this section or section 6.

Description of area of infested place

16. In a declaration under section 11 or 12 or subsection 15(3), the area of an infested place may be described by reference to a map or plan deposited and publicly available at a place specified in the declaration, or by reference to any farm, county, district, municipality, province or any part thereof.

Prohibition or restriction supersedes

17. A prohibition or restriction imposed by the Minister or an inspector supersedes any order of a local authority that is inconsistent with it.

Not a statutory instrument

18. A declaration under section 11 or 12, a revocation of a declaration under subsection 15(2) and an order under subsection 15(3) are not statutory instruments for the purposes of the *Statutory Instruments Act*, but the Minister shall take such steps as may be practicable in the circumstances to bring any order under subsection 15(3) to the notice of persons likely to be affected by it.

ADMINISTRATION

Facilities

Designation of facilities

19. The Minister may designate areas, offices, laboratories or other facilities inside or outside Canada for a specified purpose or generally for the administration of this Act or the regulations and may at any time amend, cancel or reinstate any such designation.

Definition of "international transportation undertaking"

- 20.** (1) For the purposes of this section, "international transportation undertaking" means
- (a) an undertaking that transports persons or things internationally;
 - (b) an international road, railway, bridge or tunnel;
 - (c) an airport that receives any aircraft operating on an international flight;
 - (d) a port that receives any ship sailing on an international voyage; and
 - (e) a warehouse or other facility that receives any international air, water, rail or road traffic.

Required facilities

(2) The owner or operator of an international transportation undertaking shall, where required in writing by the Minister, provide and maintain adequate areas, offices, laboratories and other facilities, including buildings, accommodation, equipment, furnishings and fixtures, for inspection or for any other purpose related to the administration of this Act or the regulations.

Powers of Minister

- (3) The Minister may
- (a) cause to be made such improvements as the Minister considers desirable to any area, office, laboratory or other facility provided pursuant to subsection (2);
 - (b) post, on or about the area, office, laboratory or other facility, any signs that the Minister considers appropriate for its operation or safe use or for the administration of this Act or the regulations; and
 - (c) continue to use the area, office, laboratory or other facility for as long as the Minister requires it for the administration of this Act or the regulations.

Construction or repairs

(4) Where an area, office, laboratory or other facility that is provided by an owner or operator pursuant to subsection (2) is not adequate for the purposes mentioned in that subsection, the Minister may require the owner or operator to carry out any construction or repairs in order to render the area, office, laboratory or other facility adequate for those purposes, and if the owner or operator fails to do so, the Minister may cause the construction or repairs to be carried out and the owner or operator shall be liable for all reasonable costs incurred by the Minister and those costs may be recovered by Her Majesty in right of Canada.

Notice

(5) A requirement under subsection (4) shall be communicated by personal delivery of a notice to the owner or operator or by sending the notice to the owner or operator, and the notice may specify the period within which or the manner in which the construction or repairs are to be carried out.

Arbitration

(6) Subject to subsection (7) and any regulations made under subsection (8), a dispute over the adequacy of any area, office, laboratory or other facility may be resolved by arbitration in accordance with the *Commercial Arbitration Act*.

Canada Labour Code

(7) Any area, office, laboratory or other facility that fails to meet the applicable requirements of Part II of the *Canada Labour Code* shall be deemed to be not adequate for the purposes mentioned in subsection (2).

Regulations

(8) The Governor in Council may make regulations for determining the adequacy of any area, office, laboratory or other facility for the purposes mentioned in subsection (2).

Inspectors

Designation of inspectors

21. (1) The President of the Canadian Food Inspection Agency may designate inspectors under section 13 of the *Canadian Food Inspection Agency Act* for the purposes of this Act.

Certificate to be produced

(2) Inspectors shall be given certificates in a form established by the President of the Canadian Food Inspection Agency attesting to their designation and, on entering any place under this Act, an inspector shall show the certificate to the person in charge of the place if the person requests proof of the inspector's designation.

1990, c. 22, s. 21; 1997, c. 6, s. 82.

Inspectors may exercise Minister's powers

22. (1) An inspector may, subject to any restrictions or limitations specified by the Minister, exercise any of the powers and perform any of the duties or functions of the Minister under this Act, except the powers mentioned in subsection 15(3).

Powers concerning movement and loading

(2) For the purpose of determining whether a conveyance or other thing is free of any pest, an inspector may

- (a) permit or require the conveyance or other thing to be moved or prohibit its movement; or
- (b) prohibit or interrupt the loading, unloading or partial loading of the conveyance or other thing or permit or require the conveyance or other thing to be loaded, unloaded or partially loaded.

Impeding inspector

23. (1) No person shall obstruct or hinder or make any false or misleading statement either orally or in writing to an inspector who is performing duties or functions under this Act or the regulations.

Assistance to inspectors

(2) The owner or the person in charge of a place entered by an inspector under section 25 and every person found in the place shall

- (a) give the inspector all reasonable assistance in the owner's or person's power to enable the inspector to perform duties and functions under this Act or the regulations; and
- (b) furnish the inspector with such information relevant to the administration of this Act or the regulations as the inspector may reasonably require.

Assistance of peace officer

(3) A peace officer shall provide such assistance as an inspector may request for the purpose of enforcing this Act or the regulations.

Seals

Broken seal

24. (1) Where a seal or other identifying device authorized by the regulations has been affixed to a conveyance or other thing and the seal or device is broken, altered, tampered with or removed in contravention of the regulations, an inspector may require that the conveyance or other thing, or any thing contained in it, be stored, treated, placed in quarantine, disposed of or moved as the inspector may direct.

Notice

(2) A requirement under subsection (1) shall be communicated by personal delivery of a notice to the owner or person having the possession, care or control of the conveyance or other thing or by sending the notice to the owner or person, and the notice may specify the period within which or the manner in which the conveyance or other thing is to be stored, treated, quarantined, disposed of or moved.

Inspection

Inspection

25. (1) For the purpose of detecting pests or ensuring compliance with this Act and the regulations, an inspector may

- (a) subject to section 26, at any reasonable time, enter and inspect any place, or stop any conveyance, in which the inspector believes on reasonable grounds there is any thing in respect of which this Act or the regulations apply;
- (b) open any receptacle, baggage, package, cage or other thing that the inspector believes on reasonable grounds contains any thing in respect of which this Act or the regulations apply;
- (c) examine any thing in respect of which this Act or the regulations apply and take samples of it;
- (d) require any person to produce for inspection or copying, in whole or in part, any record or other document that the inspector believes on reasonable grounds contains any information relevant to the administration of this Act or the regulations; and
- (e) conduct any tests or analyses or take any measurements.

Operation of data processing and copying equipment

- (2) In carrying out an inspection at any place under this section, an inspector may
- (a) use or cause to be used any data processing system at the place to examine any data contained in or available to the system;
 - (b) reproduce any record or cause it to be reproduced from the data in the form of a print-out or other intelligible output and take the print-out or other output for examination or copying; and
 - (c) use or cause to be used any copying equipment at the place to make copies of any record or other document.

Warrant required to enter dwelling-place

26. (1) An inspector may not enter a dwelling-place except with the consent of the occupant of the dwelling-place or under the authority of a warrant.

Authority to issue warrant

- (2) Where on *ex parte* application a justice is satisfied by information on oath that
- (a) the conditions for entry described in section 25 exist in relation to a dwelling-place,
 - (b) entry to the dwelling-place is necessary for any purpose relating to the administration of this Act or the regulations, and
 - (c) entry to the dwelling-place has been refused or there are reasonable grounds to believe that entry will be refused,

the justice may at any time sign and issue a warrant authorizing the inspector named in the warrant to enter the dwelling-place, subject to any conditions that may be specified in the warrant.

Use of force

(3) The inspector who executes a warrant shall not use force unless the inspector is accompanied by a peace officer and the use of force is specifically authorized in the warrant.

Seizure

27. Where an inspector believes on reasonable grounds that a violation, or an offence under this Act, has been committed, the inspector may seize and detain any thing

- (a) by means of or in relation to which the inspector believes on reasonable grounds the violation or offence was committed; or
- (b) that the inspector believes on reasonable grounds will afford evidence in respect of the commission of a violation, or an offence under this Act.

1990, c. 22, s. 27; 1995, c. 40, s. 76.

Search

Warrant

28. (1) Where on *ex parte* application a justice is satisfied by information on oath that there are reasonable grounds to believe that there is in any place any thing

- (a) by means of or in relation to which a violation, or an offence under this Act, has been committed or is suspected of having been committed, or
- (b) that there are reasonable grounds to believe will afford evidence in respect of the commission of a violation or an offence under this Act,

the justice may at any time sign and issue a warrant authorizing the inspector named in the warrant to enter and search the place for the thing and, subject to any conditions that may be specified in the warrant, to seize and detain it.

Search and seizure powers

(2) The inspector who executes a warrant may exercise the powers described in section 25 and may seize and detain, in addition to any thing mentioned in the warrant, any other thing

- (a) by means of or in relation to which the inspector believes on reasonable grounds a violation, or an offence under this Act, has been committed; or
- (b) that the inspector believes on reasonable grounds will afford evidence in respect of the commission of a violation, or an offence under this Act.

Execution of search warrant

(3) A warrant shall be executed by day unless the justice authorizes its execution by night.

Where warrant not necessary

(4) An inspector may exercise any of the powers referred to in subsections (1) and (2) without a warrant if the conditions for obtaining a warrant exist but, by reason of exigent circumstances, it would not be practical to obtain a warrant.

1990, c. 22, s. 28; 1995, c. 40, s. 77.

Disposition of Seized Things

Notice of reason for seizure

29. An inspector who seizes and detains a thing under this Act shall, as soon as is practicable, advise the owner of the thing or the person having the possession, care or control of it at the time of its seizure of the reason for the seizure.

Storage, removal, etc.

30. (1) An inspector who seizes and detains a thing under this Act, or any person designated by the inspector, may

(a) store, treat, quarantine or dispose of the thing at the place where it was seized or move it to any other place for storage, treatment, quarantine or disposition; or

(b) require its owner or the person having the possession, care or control of it at the time of its seizure to store, treat, quarantine or dispose of it or move it to any other place and store, treat, quarantine or dispose of it.

Notice

(2) A requirement under paragraph (1)(b) shall be communicated by personal delivery of a notice to the owner or person having the possession, care or control of the thing or by sending the notice to the owner or person, and the notice may specify the period within which or the manner in which the thing is to be moved, stored, treated, quarantined or disposed of.

Proceeds

(3) An inspector who seizes and detains a thing under this Act may dispose of it and any proceeds realized from its disposition shall be paid to the Receiver General.

Interference with seized things

31. Except as authorized in writing by an inspector, no person shall remove, alter or interfere in any way with a thing that is seized and detained under this Act.

Detention

32. (1) A thing that is seized and detained under this Act, or any proceeds realized from its disposition, shall not be detained after

(a) a determination by an inspector that the thing is in conformity with the provisions of this Act and the regulations, or

(b) the expiration of one hundred and eighty days after the day of seizure, or such longer period as may be prescribed,

unless before that time proceedings are instituted in relation to the thing, in which case it, or the proceeds from its disposition, may be detained until the proceedings are finally concluded.

Application for return

(2) Where proceedings are instituted in accordance with subsection (1) in respect of the thing and it has not been disposed of, confiscated or forfeited under this Act or the regulations, the owner of the thing or the person having the possession, care or control of it at the time of its seizure may apply

(a) in the case of a violation, to the Tribunal, or

(b) in the case of an offence, to the court before which the proceedings are being held,

for an order that it be returned.

Order

(3) The Tribunal or court, as the case may be, may order that the thing be returned to the applicant, subject to such conditions as the Tribunal or court may impose to ensure that it is preserved for any purpose for which it may subsequently be required, where the Tribunal or court is satisfied that sufficient evidence exists or may reasonably be obtained without detaining the thing and that it is not a pest, is not infested with a pest and does not constitute a biological obstacle to the control of a pest. 1990, c. 22, s. 32; 1995, c. 40, s. 78.

Forfeiture

33. (1) Where the Tribunal decides that a person has committed a violation, or a person is convicted of an offence under this Act, the Tribunal or the convicting court, as the case may be, may, on its own motion or at the request of any party to the proceedings, in addition to any penalty or punishment imposed, order that any thing by means of or in relation to which the violation or offence was committed, or any proceeds realized from its disposition, be forfeited to Her Majesty in right of Canada.

Forfeiture without conviction

(2) Where the owner of a thing that is seized and detained under this Act consents to its forfeiture, it is thereupon forfeited to Her Majesty in right of Canada and shall be disposed of as the Minister may direct. 1990, c. 22, s. 33; 1995, c. 40, s. 79.

Disposal of forfeited things

34. (1) Where proceedings mentioned in subsection 32(1) are instituted within the time provided in that subsection and, at the final conclusion of those proceedings, the Tribunal, in the case of a violation, or the court, in the case of an offence, orders the forfeiture of the thing that was seized and detained, it shall be disposed of as the Minister may direct.

Return of seized things where no forfeiture ordered

(2) Where the Tribunal or court, as the case may be, does not order the forfeiture of a thing, it or any proceeds realized from its disposition shall be returned to the owner of the thing or the person having the possession, care or control of it at the time of its seizure.

Exception

(3) Where the Tribunal decides that the owner of a thing or the person having the possession, care or control of it at the time of its seizure has committed a violation, or the owner of a thing or the person having the possession, care or control of it at the time of its seizure is convicted of an offence under this Act, and a penalty or fine, as the case may be, is imposed,

(a) the thing may be detained until the penalty or fine is paid;

(b) the thing may be sold under execution in satisfaction of the penalty or fine; or

(c) any proceeds realized from its disposition under paragraph (b) or subsection 30(3) may be applied in payment of the penalty or fine.

1990, c. 22, s. 34; 1995, c. 40, s. 80.

Confiscation

Confiscation

35. (1) An inspector may confiscate and dispose of any thing that the inspector believes on reasonable grounds is a pest, is or could be infested with a pest or constitutes or could constitute a biological obstacle to the control of a pest.

Notice of reason for confiscation

(2) An inspector who confiscates a thing shall, as soon as is practicable, advise the owner of the thing or the person having the possession, care or control of it at the time of its confiscation of the reason for the confiscation.

Storage and movement

36. (1) A confiscated thing may be stored at the place where it was confiscated until it is disposed of, or may, at the inspector's discretion, be moved to any other place for storage or disposition.

Disposition

(2) An inspector may take such action as the inspector considers appropriate in relation to a confiscated thing or may require the owner of a confiscated thing or the person having the possession, care or control of it at the time of its confiscation to take any action the inspector considers appropriate in relation to the confiscated thing.

Notice

(3) A requirement under subsection (2) shall be communicated by personal delivery of a notice to the owner or person having the possession, care or control of the thing or by sending the notice to the owner or person, and the notice may specify the period within which or the manner in which any action shall be taken by the owner or person.

SAMPLES

Disposition of samples

37. (1) A sample taken under this Act or the regulations may be disposed of in such manner as the Minister considers appropriate.

Her Majesty not liable

(2) Her Majesty is not liable for any costs, loss or damage resulting from the taking or disposition of a sample under this Act or the regulations.

LIMITATION ON LIABILITY

Her Majesty not liable

38. Where a person must, by or under this Act or the regulations, do anything, including provide and maintain any area, office, laboratory or other facility under section 20, or permit an inspector to do anything, Her Majesty is not liable

- (a) for any costs, loss or damage resulting from the compliance; or
- (b) to pay any fee, rent or other charge for what is done, provided, maintained or permitted.

COMPENSATION

Compensation for treatment, etc.

39. (1) The Minister may, in accordance with the regulations, order compensation to be paid from the Consolidated Revenue Fund in respect of

- (a) any treatment of a place or any treatment, storage or disposition of a thing required under this Act or the regulations;
- (b) any prohibition or restriction on the use of a place or on the movement of persons or things within, into or out of a place imposed under this Act or the regulations; or
- (c) any prohibition or restriction on the use of a thing or on the sale or other disposition of a thing imposed under this Act or the regulations.

Limitation

- (2) No compensation is payable under subsection (1) in respect of
 - (a) a thing that is imported into Canada or exported from Canada in contravention of this Act or the regulations or a thing that is found to be a pest, to be infested with a pest or to constitute a biological obstacle to the control of a pest when it is inspected on importation or exportation; or
 - (b) the prohibition or restriction of the sale or movement of a thing where the sale or movement is prohibited or restricted as a result of an amendment, suspension or revocation of, or a refusal to

issue or renew, a permit, certificate or other document that is required under this Act or the regulations.

Limitation

(3) No compensation is payable to a person who commits a violation, or an offence under this Act, and claims compensation in respect of any place or thing by means of or in relation to which the violation or offence was committed.

1990, c. 22, s. 39; 1995, c. 40, s. 81; 1997, c. 6, s. 83.

Appeal

40. (1) A person who claims compensation and is dissatisfied with the Minister's disposition of the claim may bring an appeal to the Assessor, but the only grounds of appeal are that the failure to award compensation was unreasonable or that the amount awarded was unreasonable.

Time limit for bringing appeal

(2) An appeal shall be brought within three months after the claimant receives notification of the Minister's disposition of the claim, or within such longer period as the Assessor may in any case for special reasons allow.

Powers of Assessor

41. (1) On hearing an appeal, the Assessor may confirm or vary the Minister's disposition of the claim or refer the matter back to the Minister for such further action as the Assessor may direct.

Costs

(2) Costs may be awarded to or against the Minister in an appeal.

Decisions final

(3) The decision of the Assessor on an appeal is final and conclusive and not subject to appeal to or review by any court.

Sittings and hearings

42. (1) The Assessor may sit and hear appeals at any place or places and shall arrange for sittings and hearings as may be required.

Travel allowances

(2) The Assessor is entitled to be paid such travel allowances as are payable for the attendances of a judge of the Federal Court under the *Judges Act*.

Procedure

43. (1) Subject to the approval of the Governor in Council, the Assessor may make rules respecting the conduct of appeals and the procedure for the bringing of appeals.

Transitional

(2) Subject to any rules made under subsection (1), all rules respecting the conduct of appeals and the procedure for bringing appeals to the Assessor made under section 18 of the *Pesticide Residue Compensation Act* that are in force at the time this section comes into force shall, to the extent that they are not inconsistent with sections 40 to 42, apply in respect of appeals brought under section 40.

Registrar

(3) The functions of the registrar of appeals and any other person necessary to carry out the purposes of sections 40 to 42 shall be carried out by the persons who carry out similar functions under Part II of the *Pesticide Residue Compensation Act*.

1990, c. 22, s. 43; 2001, c. 4, s. 173(F).

FEES, CHARGES AND COSTS

Fees, charges and costs for inspections, etc.

44. (1) Her Majesty may recover from any person referred to in subsection (2) any prescribed fees or charges and any costs incurred by Her Majesty in relation to anything required or authorized under this Act or the regulations, including, without limiting the generality of the foregoing,

- (a) the inspection, treatment, testing or analysis of a place or thing, or the quarantine, storage, removal, disposal or return of a thing, required or authorized under this Act or the regulations; and
- (b) the seizure, confiscation, forfeiture, detention or disposal of a thing under this Act or the regulations.

Persons liable

(2) The fees, charges and costs are recoverable jointly and severally from the owner or occupier of the place or owner of the thing and from the person having the possession, care or control of it immediately before its inspection, treatment, testing, analysis, quarantine, storage, removal, return or disposal or, in the case of a thing seized, confiscated, forfeited, detained or disposed of under this Act or the regulations, immediately before its seizure, confiscation, forfeiture, detention or disposal.

Fees, charges and costs for requested services, etc.

45. Her Majesty may recover from any person who requests a service or the issue, renewal or amendment of a permit, certificate or other document under this Act or the regulations any prescribed fee or charge and any costs incurred by Her Majesty in relation to rendering the service or issuing, renewing or amending the document.

Unpaid fees, charges or costs

46. Any fees, charges or costs that are recoverable by Her Majesty under this Act or the regulations may be recovered as a debt due to Her Majesty.
1990, c. 22, s. 46; 1993, c. 34, s. 102.

REGULATIONS

Regulations

47. The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and prescribing anything that is to be prescribed under this Act, including regulations

- (a) prohibiting or regulating the importation and admission into Canada, the exportation from Canada and the processing, handling, packaging, distribution, sale, disposition, loading, unloading and movement within Canada of pests and other things that are or could be infested with pests or that constitute or could constitute biological obstacles to the control of pests;
- (b) governing the issue, renewal, amendment, suspension and revocation of permits, certificates or other documents on such terms and conditions as may be required for the purposes of this Act;
- (c) prohibiting or regulating the importation of food or garbage into Canada;
- (d) regulating any activity referred to in section 6;
- (e) designating places of entry where things may be presented for inspection and admittance into Canada;
- (f) governing investigations and surveys to detect pests and to identify areas of infestation;
- (g) respecting the declaration of things infested with pests and things free of infestation;
- (h) respecting the declaration under sections 11, 12 and 15 of places that are infested;
- (i) prohibiting or regulating the use of places that are, or are suspected of being, infested with pests and of things that are, or are suspected of being, pests or infested with pests or that constitute or could constitute biological obstacles to the control of pests;
- (j) governing the quarantine of things;
- (k) for the establishment of inspection and treatment centres and quarantine stations;
- (l) governing the disposition of things that are, or are suspected of being, pests or infested with pests or that constitute or could constitute biological obstacles to the control of pests;
- (m) respecting the detention or disposition of things seized, forfeited or confiscated under this Act;
- (n) governing the treatment or manner of treatment to be administered to places or things and requiring persons to administer or to arrange the administration of the treatment;
- (o) governing the removal from places where treatment is administered of persons or things that present obstacles to the treatment or that may be adversely affected by it;

- (p) requiring things to be marked or identified or to have affixed to them labels, tags, seals or other devices and prohibiting the removal, breaking, tampering with or altering of those marks, labels, tags, seals or other devices;
- (q) prescribing the terms and conditions on which compensation may be ordered under section 39 and the maximum levels of compensation;
- (r) requiring documents to be furnished to or by inspectors; and
- (s) prescribing any fees or charges, or the manner of calculating any fees or charges, required for carrying out the purposes and provisions of this Act or the regulations.

1990, c. 22, s. 47; 1993, c. 34, s. 103.

OFFENCES AND PUNISHMENT

General offence

48. (1) Every person who contravenes any provision of this Act, other than section 9, or the regulations or who refuses or neglects to perform any duty imposed by or under the Act or the regulations is guilty of

- (a) an offence punishable on summary conviction and liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months, or to both; or
- (b) an indictable offence and liable to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

Possession of illegal imports

(2) Every person who contravenes section 9 is guilty of an offence punishable on summary conviction and liable to a fine not exceeding fifty thousand dollars.

No imprisonment

(3) Notwithstanding the *Criminal Code*, no person shall be committed to prison for default of payment of a fine imposed under subsection (2).

1990, c. 22, s. 48; 1995, c. 40, s. 82.

Failure to comply with notices

49. Every person who fails to comply with a notice communicated to the person under section 6, 8, 24, 30 or 36 or the regulations is guilty of

- (a) an offence punishable on summary conviction and liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months, or to both; or
- (b) an indictable offence and liable to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

1990, c. 22, s. 49; 1995, c. 40, s. 83.

Contravention of prohibition or restriction

50. (1) Every person who contravenes a prohibition or restriction imposed under subsection 13(1) or 15(3) is guilty of

- (a) an offence punishable on summary conviction and liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding six months, or to both; or
- (b) an indictable offence and liable to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both.

Defence

(2) No person shall be found guilty of an offence consisting of a contravention of a prohibition or restriction imposed by the Minister or an inspector unless it is proved that, at the time of the alleged contravention,

- (a) the person had been notified of the prohibition or restriction; or
- (b) reasonable steps had been taken to bring the substance of the prohibition or restriction to the notice of persons likely to be affected by it.

1990, c. 22, s. 50; 1995, c. 40, s. 84.

Limitation period

51. (1) Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within, but not later than, two years after the time when the Minister became aware of the subject-matter of the proceedings.

Minister's certificate

(2) A document purporting to have been issued by the Minister, certifying the day on which the Minister became aware of the subject-matter of any proceedings, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and, in the absence of evidence to the contrary, is proof of the matter asserted in it.

Ticket offences

52. The Governor in Council may make regulations designating the contravention of any provision of this Act or the regulations as an offence with respect to which, notwithstanding the provisions of the *Criminal Code*,

(a) an inspector may lay an information and issue and serve a summons by completing a ticket in the prescribed form, affixing the inspector's signature thereto and delivering the ticket to the person alleged to have committed the offence specified therein at the time the offence is alleged to have been committed, or

(b) the summons may be served on an accused by mailing the summons to the accused at the accused's latest known address,

and any regulations made under this section shall establish a procedure for voluntarily entering a plea of guilty and paying a fine in respect of each offence to which the regulations relate and shall prescribe the amount of the fine to be paid in respect of each offence.

Recovery of fines

53. Where a person is convicted of an offence under this Act and a fine that is imposed as punishment is not paid when required, the prosecutor may, by filing the conviction, enter as a judgment the amount of the fine and costs, if any, in the superior court of the province in which the trial was held, and the judgment is enforceable against the convicted person in the same manner as if it were a judgment obtained by Her Majesty in right of Canada against the person in that court in civil proceedings.

Officers, etc., of corporations

54. Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to or acquiesced or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Offences by employees or agents

55. In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that

(a) the offence was committed without the knowledge or consent of the accused; and

(b) the accused exercised all due diligence to prevent the commission of the offence.

Place of trial

56. A prosecution for an offence under this Act may be instituted, heard and determined in the place where

(a) the offence was committed or the subject-matter of the prosecution arose;

(b) the accused was apprehended; or

(c) the accused happens to be, or is carrying on business.

EVIDENCE

Certificates and reports

57. (1) In any proceedings for a violation, or for an offence under this Act, a declaration, certificate, report or other document of the Minister or an inspector, purporting to have been signed by

the Minister or the inspector, is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, is proof of the matters asserted in it.

Copies of documents

(2) In any proceedings for a violation, or for an offence under this Act, a copy of or an extract from any record or other document that is made by the Minister or an inspector under this Act or the regulations and that appears to have been certified under the signature of the Minister or the inspector as a true copy or extract is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, has the same probative force as the original would have if it were proved in the ordinary way.

Presumed date of issue

(3) Any document referred to in subsection (1) or (2) shall, in the absence of evidence to the contrary, be deemed to have been issued on the date that it bears.

Notice

(4) No declaration, certificate, report, copy, extract or other document referred to in this section shall be received in evidence unless the party intending to produce it has, before the trial, served on the party against whom it is intended to be produced reasonable notice of that intention, together with a duplicate of the declaration, certificate, report, copy, extract or other document.

1990, c. 22, s. 57; 1995, c. 40, s. 85.

TRANSITIONAL

Orders continued

58. Any orders made under section 8 of the *Plant Quarantine Act* and in force immediately before the repeal of that Act by section 59 of this Act shall continue in force as if they were orders made under subsection 15(3) of this Act.

REPEAL

59. [Repeal]

COMING INTO FORCE

Coming into force

***60.** This Act or any provision thereof shall come into force on a day or days to be fixed by order of the Governor in Council.

*[Note: Act in force October 1, 1990, *see* SI/90-110.]

AMENDMENT NOT IN FORCE

-- **1992, c. 47, s. 84 (Sch., s. 12):**

12. Section 52 is repealed.