

Relationships between First Nations and the Forest Industry: The Legal and Policy Context

A report for:

**the National Aboriginal Forestry Association (NAFA)
the Forest Products Association of Canada (FPAC), and
the First Nations Forestry Program (FNFP)**

Prepared by:

**Jake Wilson and John Graham
Institute On Governance
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NAFA

**Forest Products
Association of Canada**



**Association des produits
forestiers du Canada**

**First Nations Forestry Program Programme forestier
des Premières nations**



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For further information, please contact:

National Aboriginal Forestry Association
875 Bank Street
Ottawa, ON
K1S 3W4
Tel: (613) 233-5563
Fax: (613) 233-4329
Email: nafa@web.ca
Website: www.nafaforestry.org

Forest Products Association of Canada
99 Bank, Suite 410
Ottawa, Ontario
K1P 6B9
Tel: (613) 563-1441
Fax: (613) 563-4720
Email: ottawa@fpac.ca
Website: www.fpac.ca

First Nations Forestry Program (NRCan/INAC)
Jack Smyth
Canadian Forest Service
580 Booth St., 7th Floor
Ottawa, Ontario K1A 0E4
Tel: (613) 947-7380
Fax: (613) 992-5390
E-mail: info@fnfp.gc.ca
Website: www.fnfp.gc.ca

John Graham or Jake Wilson
Institute On Governance
122 Clarence St.
Ottawa, Ontario
Canada, K1N 5P6
Tel: (613) 562-0090
Fax: (613) 562-0097
Email: info@iog.ca
Website: www.iog.ca



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Relationships between First Nations and the Forest Industry: the Legal and Policy Context

Executive Summary

Outline

The forest sector, a mainstay of the Canadian economy, generates about \$74 billion in revenues annually – including \$43 billion in forest products exports – and is the source of 361,400 direct jobs.¹ While First Nations make up a significant portion of the population living in and around the forest, studies indicate that they remain underrepresented in the forest sector in terms of both employment and business activity – a significant lost opportunity for First Nations’ socio-economic development, for smooth growth in the forestry industry, and for sustainable forest stewardship in general. That said, forestry companies and First Nations have established a range of business relationships in recent years – experiences that highlight the potential, as well as some of the difficulties, in achieving increased First Nations participation in the sector.

A number of questions are thus being asked: How are these relationships progressing? What have been the results? What difficulties have been encountered? How are the relationships influenced by contextual factors – industry trends, market forces, court rulings, legislative changes, advances in community governance? What can the various players – industry, First Nations, federal and provincial governments – do to move things ahead?

A research team based at the University of British Columbia is conducting an in-depth study on business partnerships between First Nations and forestry companies, which will provide some of the answers. This study, in addition to providing valuable insights in its own right, will complement and provide a framework for the UBC work by outlining the nature of the legal and policy environment in the various provincial and territorial jurisdictions across the country (except Nunavut, for obvious reasons), and its effect on:

- a. **First Nation - forest industry relationships**, and elements ranging from co-operation on forest management plans, to employment opportunities, to business partnerships
- b. **First Nations participation in the forest sector**, in terms of jobs, business opportunities, forest stewardship and other activities
- c. **the nature of the operating environment for business**, including the certainty of fibre supply and the implications of regulatory requirements relating to First Nations.

Three sponsors have come together to make this study possible: the Forest Products Association of Canada (FPAC), the National Aboriginal Forestry Association (NAFA), and the federal government’s First Nations Forestry Program (FNFP), which is a joint initiative of Natural Resources Canada (NRCan) and Indian and Northern Affairs Canada (INAC).

¹ The State of Canada’s Forests 2002-2003, at <http://www.nrcan-rncan.gc.ca>

The Institute On Governance (IOG) conducted some 60 interviews with individuals in First Nations, industry, and provincial/territorial and federal governments as part of the research for this study in addition to 17 interviews conducted in a study earlier in 2004 focussing solely on British Columbia, the findings of which have been incorporated here. Comments have not been attributed to individuals in order to preserve confidentiality but the organizations' participation has been acknowledged in the Annex.

The study is organized into five principal sections. The first provides a statistical overview of the forest sector. The second outlines general factors affecting First Nation – forest industry relations nationwide, such as Supreme Court rulings, international commitments, environmental initiatives, national strategies, and trends in industry, markets, and First Nations governance. In the third section we provide details of particular policy issues in each provincial and territorial context. A fourth section outlines the pros and cons of particular policy approaches and funding programs before coming to some conclusions and recommendations, the focus of the fifth and final section of the paper.

The remainder of this summary includes an overview of the policy context in each jurisdiction, and repeats the study's chief conclusions and recommendations.

Overview of the Policy Context in each Jurisdiction

In the **YUKON** and **NORTHWEST TERRITORIES**, there are only a few mills operating sporadically, and the potential for industrial development is limited to areas where only around 20% of the population might benefit. A major current issue in both territories is the devolution of resource-related powers from Indian and Northern Affairs Canada (INAC) to the territorial government as well as to First Nations under self-government. In both the Yukon and NWT the significant First Nation populations have a significant degree of control over forest development, particularly in the areas covered by comprehensive claims agreements.

BRITISH COLUMBIA accounts for a good portion of Canada's First Nations population and almost a third of the forest industry. However, forest sector revenues have dropped precipitously in recent years, and there are major outstanding issues affecting First Nations economic development. The following developments are particularly important:

- Legal rulings, trade disputes, and new legislation are causing significant uncertainty for all.
- Many are frustrated with the slow pace of the treaty process, which adds to this environment of uncertainty and makes it difficult to build long-term First Nation - industry relations.
- Recent legislative measures, including revenue sharing and tenure reallocations (of some 8% of the annual allowable cut) to First Nations are causing great controversy, as is the process of industry deregulation, and a shift to results-based forest management.
- The tenure reallocations to First Nations are often too small to be economical, or First Nations lack the capacity to establish businesses on them or manage them effectively.

Nevertheless, most of our interviewees in British Columbia remain positive about the long term prospects for First Nation-Industry relationships and note that there has been considerable progress over the last decade.

In **ALBERTA**, a number of treaty land entitlement processes are underway, and are the prime driver of increased First Nations forest sector participation and industry efforts to build relationships. Much of the Alberta forest is fully allocated both for forestry, oil and gas, and other purposes, so there is little room to transfer tenures to First Nations without breaking existing commitments. With creativity, however, some business opportunities are available. Because of the range of businesses operating in the forest, there is a particular need for effective and responsive systems to share Aboriginal traditional use information to ensure rights are respected on an ongoing basis, while ensuring the information remains confidential. There are labour shortages in the forest sector, a factor which has spurred Aboriginal employment, although the forest industry needs to compete with the better endowed oil and gas sector. A few joint ventures are under development. Generally industry takes a lead role in building relations with First Nations in the province. There are some tensions between the Province and First Nations to overcome, including around a new Public Lands Amendment Act that some First Nations see as limiting their ability to blockade resource development in their traditional territory.

SASKATCHEWAN is clearly ahead among all jurisdictions nationwide in terms of the extent of Aboriginal forest sector participation. Nearly all major licensees are engaged in or are developing a significant partnership with First Nations or Métis communities in their area of operations. The Meadow Lake Tribal Council is a major player in the industry, with a large tenure, significant stakes in milling operations, and some 500 forest sector jobs for community members. These advances have been achieved through an exceptional configuration of factors:

- Major forest sector growth – a quadrupling of production over the last 20 years
- Strong leadership on all sides, and effective First Nations governance arrangements in certain key areas
- A major political effort by the Provincial government in 1999 to reallocate significant portions of the major licensee’s tenures to First Nations
- The unique opportunity to privatize some Province-owned forestry enterprises
- Relatively smooth settlement of treaty land entitlement issues
- Significant provincial and federal investments in training, research (through the establishment of a new Forest Centre), capacity building, and seed investments

MANITOBA is comparable in some respects to Saskatchewan, as the First Nations population is an equally significant proportion of the total, and the size of the forest industry is similar. However, the level of First Nations participation in Manitoba’s forest sector is much lower, for a variety of reasons:

- Limited capacity in First Nations – poor finances, limited business and technical capacity, low levels of educational attainment and skills development
- Cultural barriers between First Nations and non-Aboriginal communities
- Limited incentives and strategies for a major expansion of industry
- Significant outstanding treaty land entitlement issues

Despite these barriers, an ambitious planning process is underway in the East Side of Lake Winnipeg in advance of a major road project to open the region up to development, and the many First Nations communities in the area are involved. There is also some promise for First Nation - forest company partnerships – with Tembec on the East Side of Lake Winnipeg as well as in Tolko and Louisiana Pacific’s areas of operations – which are all at an early stage.

In **ONTARIO**, there are major differences between the Province and First Nations around the scope of Aboriginal and treaty rights, and the Province has had a generally strained relationship with these communities in recent years. Consultation processes are led by the Ministry of Natural Resources' District Managers, rather than coordinated centrally, so the extent and form of consultation and accommodation varies across the Province. Condition 34 of the Province's Class Environmental Assessment regulations stipulates that District Managers negotiate with First Nations ways of sharing the benefits of forest development. Under Order-in-Council 993/95, District Managers are also able to award new licenses to Aboriginal people on a non-competitive basis in order to provide economic opportunity, though this possibility has not been pursued. Because most licenses are fully allocated, and there is little remaining tenure to allocate to First Nations, the impacts of Condition 34 are in many cases limited to silviculture and harvesting contracts. However, two significant developments may create pressure on the Province to increase its efforts to improve First Nations participation:

- A Private Member's Bill, calling for negotiations around the sharing of resource development benefits with First Nations, was debated in legislative committee in the fall of 2004 and will have raised expectations in this regard, whether or not it passes
- The *Powley* decision reaffirming Métis rights has created pressures to resolve issues around natural resources not only with the Métis but also with First Nations.

The policy and legal context is distinct in Ontario North of 51°, some regions of which are gradually being opened up for forestry development, albeit with a more ecosystem-based approach to forest management and with a very high degree of First Nations involvement.

In **QUEBEC**, the Provincial government plays a greatly increased role on First Nations issues in comparison with previous decades, including on forestry issues. A recent step forward was the conclusion of the 'Paix des Braves' agreement with the James Bay Cree, which resolves a number of legal disputes around resource developments, fills some gaps in the Cree's 1975 land claims agreement, and ensures a strong First Nations voice in forest management in their traditional territory. Other First Nations in Quebec are far behind the Cree in progress on self-government and participation in the forest sector, particularly the Algonquin, which have two communities currently involved in long-term road blockades. An Agreement-in-Principle has however been reached with the Quebec Innu. A number of training initiatives are underway with federal and provincial funding to improve forest sector participation, but with the exception of the Cree territory and two joint-ventures in the province with controlling First Nations interests, First Nations involvement in the sector remains largely limited to silviculture and harvesting opportunities.

In **NEW BRUNSWICK**, an industry-wide slump and a number of major legal issues are driving political dynamics. In 1999, as the *Marshall* ruling on First Nations treaty rights around fisheries was being debated, and a number of First Nations people were charged with 'illegally' harvesting Crown forests – both for personal use and for minor commercial opportunities – the Province attempted to accommodate First Nations needs and mollify the dispute by agreeing to reallocate 5% of the annual allowable cut to First Nations, on a roughly per capita basis, without prejudice to treaty rights. Some are critical of the tenure reallocation process, arguing that it enriches a few First Nations harvesters and non-Aboriginal sub-contractors, while generating

inadequate revenues for the communities, because the First Nations pay their harvesters and haulers significantly more than other licensees. The creation of the \$85 million nationwide Aboriginal Skills and Employment Partnership (ASEP) stimulated federal, provincial, First Nations, and industry partners in New Brunswick to launch an initiative in Fall 2004 dedicating some \$4 million over four years to develop the forest sector skills of New Brunswick First Nations. As the harvesting cases await a Supreme Court ruling, industry remains concerned about how the expanding scope of Aboriginal and treaty rights will affect their operations. Even despite the recent partnership initiative, First Nations - industry relationships are generally not strong and will likely require the current period of transition and trust-building before any major cooperative business ventures are undertaken.

Comparable issues to those in New Brunswick affect **NOVA SCOTIA**, which has a similar treaty context, a similarly small First Nations population, as well as high levels of private land ownership. In this context government and industry conduct relatively little consultation with First Nations around resource development, according to our interviewees. Stora Enso, the dominant company in Cape Breton, has relatively positive relations with local First Nations and provides a number of contracting opportunities. Some Nova Scotia First Nations have innovative governance structures and have established a number of well-functioning businesses.

PRINCE EDWARD ISLAND is a small player nationally, but a federally funded eco-tourism project in Lennox Island First Nation has attracted a great deal of tourism-related economic opportunity to the community's modest forest resource.

In **NEWFOUNDLAND**, the one First Nations community of Miawpukek (formerly Conne River) has recently entered a self-government process with the federal government. In **LABRADOR**, meanwhile, a self-government agreement with the Inuit has been concluded, and a process with the Innu is underway. The Labrador Métis struggle to have both levels of government recognize them as an Aboriginal nation. A process agreement with the Innu has led to implementation of an ecosystem-based approach in which the Innu are co-managers with the Province, and around half of their traditional territory has been dedicated to conservation purposes. The forest industry remains very modest, and Aboriginal employment or business in the sector is minor. The Innu are considering a joint-venture initiative for a mill in their territory, once their negotiations are concluded.

Conclusions

1. Increased participation in the forest sector can help achieve multiple objectives for First Nations:

- a. Economic objectives:** jobs in a variety of areas of the industry, contracts for First Nations entrepreneurs, financial investments in mills and other ventures, community revenues, stimulus of value-added and non-timber forest products businesses, and a strong connection to broader economic development strategies;
- b. Social objectives:** skills development, youth opportunities, a sense of empowerment and self-reliance, respect for First Nations spiritual values around forests, and mutual understanding between First Nations and non-Aboriginal people;
- c. Ecological objectives:** respect for traditional ecological values and knowledge, as well as for the needs of First Nations forest users, and a more ecosystem-based approach to forestry.

2. Increasing First Nation participation in the forest sector requires concerted efforts to simultaneously build both First Nations' 'stake' and 'capacity'. Neither element is sufficient on its own.

3. There are several routes for First Nations to gain a 'stake' in the forest industry:

- Concluding treaty land entitlements or comprehensive treaty settlements and gaining title or use of lands
- Gaining forest management licenses
- Gaining a significant role in forest management planning processes
- Developing wholly-owned businesses or joint ventures with established firms.

In many cases all of these paths still need to be pursued. However, everything cannot be achieved at once and gradual approaches appear to be most beneficial, particularly to the development of businesses.

4. Having an effective 'stake' in the industry requires developing 'capacity' – this includes everything from individuals' employment skills to community financial, business, technical, and managerial capacity. Rather than gaining short-term economic benefits from royalties and employment, First Nations are increasingly attempting to ensure that their relationships with the forest industry help them build long-term capacity as part of broader economic development initiatives. Similarly, in order to concertedly build capacity, communities require assurance that they will gradually gain a 'stake' in the forest sector. Commitments by industry and government are crucial to building the sense among First Nations that they are 'in the driver's seat' as they pursue long-term initiatives.

5. The extent and form of First Nations participation in the forest sector varies widely across the country – different companies and communities make different levels of effort to build partnerships; and some jurisdictions have implemented assertive policy frameworks granting First Nations increased control over the resources, while others have relied more on the economy to naturally absorb First Nations into the sector – to greater or lesser success. In some areas First Nations people are on the Board of major companies, in others they are engaged in blockades of companies' operations.

6. **Based on qualitative analysis, there has been considerable progress in the overall relationship between the forest sector and First Nations over the past decade.** Most respondents indicated that on the whole there is somewhat less confrontation, more conversation, more mutual respect, and indeed more cooperation in business activity, yielding tangible benefits to First Nations as well as to companies' bottom lines. Although there is wide diversity in the range of opinions about the relationships, and considerable distance remains between the most polarized views, the common ground among the parties has grown considerably in the past ten years. Most interviewees were guardedly optimistic about future First Nations - industry collaboration.
7. **A number of pressures are building to improve First Nations participation:**
- **A growing First Nations land base** – the resolution of land claims and treaty settlements is greatly expanding the forest lands which First Nations own and manage.
 - **Legal rulings** like *Delgamuukw*, *Marshall*, *Haida*, and *Powley* are clarifying and in some cases expanding the scope of Aboriginal and treaty rights, and consultation and accommodation requirements. Governments and industry are making efforts to address Aboriginal rights issues as further cases make their way to the Supreme Court.
 - **International commitments** like the Rio Declaration, the Statement of Forest Principles, the Biodiversity Convention, and Kyoto put a greater onus on sustainable forest management, including on accommodation of the rights of indigenous forest dwellers.
 - **The Canadian Boreal Initiative** is gaining momentum, as conservationists and forest sector companies are forging linkages with First Nations in a bid to better conserve boreal regions across Canada.
 - **The National Forest Strategy 2003-2008** includes seven action items aimed at facilitating Aboriginal involvement in the sector.
 - **The Canadian Council of Forest Ministers' Criteria and Indicators**, which have recently been established, will help to some extent in measuring progress and setting goals around First Nations forest sector participation
 - **Certification Standards** like the Canadian Standards Association, Forest Stewardship Council and now also the Sustainable Forest Initiative standards require evidence of significant efforts to involve Aboriginal people in forest management processes.
 - **Corporate Social Responsibility** – an approach to management based on pursuing the 'triple bottom line' of social, environmental, and economic objectives, and ensuring all stakeholders benefit from company activities – is gaining acceptance throughout the forest sector and places emphasis on positive First Nations relations.
 - **First Nation Governance advances** – such as the establishment of arm's-length economic development corporations; longer election cycles; improved financial management systems; and forestry coordination units at a Tribal Council level – facilitate capacity building and more stable relationships with external partners.
8. **Some companies are beginning to see positive First Nations relations as potential competitive advantages, and are strategically positioning themselves as 'preferred partners' in the long-term.** Many companies predict increased First Nations involvement in the forest sector in the long-term, particularly through expanded tenure, and increasingly see the 'upsides' of First Nations relations – such as potential business opportunities, improved long-term access to resources, and improved company image – rather than the 'downsides' such as potential confrontations, negative publicity, and competition for tenure.

9. The principal barriers to increased First Nation involvement in forestry appear to be the following:

- Difficult market conditions – particularly with the ongoing softwood lumber dispute – have led to mill closures and layoffs. Building positive First Nations relations implies costs and is seen as a long-term investment for many companies, not all of whom are currently in a position to make concerted efforts in this area.
- Lack of skills and capacity (financial, technical, business, organizational) within the First Nation community to contribute effectively to forest sector businesses, and inadequate training opportunities;
- Lack of capacity on the part of some major forest companies to manage the unique issues around First Nations partnerships;
- Lack of infrastructure in the regions where First Nations have the most reserve lands, largest licenses, or most significant stakes in forest management planning processes;
- The highly capital-intensive nature of the industry requires strong financial positions for investment which many communities lack;
- Much of the best land is tied up in long-term renewable licenses, so that any new commitment to First Nations would require cancelling existing agreements unless innovative approaches are developed;
- Well-paid jobs in mills are often unionized and require significant training – while First Nations people can join unions, generally a critical mass of First Nations employees or part ownership of the mill are necessary for many to pursue and gain these jobs;
- First Nations sometimes lack unity of purpose and are torn between competing economic, social, and environmental objectives;
- First Nations businesses are often inadequately insulated from politics and cannot focus on financial sustainability and profit;
- There are tensions between ‘individual’ and ‘communal’ rights and entitlements with regards to forestry, so that managing the expectations of First Nations entrepreneurs vis-à-vis community members can be a major challenge for First Nations leaders;
- Due to the constitutional division of powers, limited federal capacity to fulfill province-like roles on reserve, and the growing number of First Nations operating under the First Nations Lands Management Act, a ‘regulatory gap’ around forest management – both in terms of law and enforcement – exists on First Nations lands;²
- Since there are so many players that need to cooperate to achieve progress (federal, provincial, First Nations, and industry) it is rare that leaders in all camps will happen to ‘see eye-to-eye’ at any one time, so there are few real ‘windows’ for progress;
- Government support for First Nations initiatives is too short-term, is in too many pots and is spread too thinly;
- Planning for forest sector investment, building relations with industry, developing capacity and skills, incorporating ecological values into decision processes, and other key elements are long-term propositions. However, the pace of business and the instability of First Nations politics under the Indian Act make it difficult to achieve the level of long-term commitment required to see initiatives through to success.

² For more information, see comments by John Moffet in “Notes on the third TANAGA Roundtable Meeting, on Environmental Management and the Regulatory Gap”, Nov. 17, 2004, at iog.ca/TANAGA/summary_nov2004.pdf

10. Better defining Aboriginal and treaty rights and resolving land issues are of fundamental importance to the long-term vitality of the forest industry and to increasing First Nations participation in it. Unresolved land and treaty issues – particularly in British Columbia but also in areas where treaties have been signed such as New Brunswick and Nova Scotia – are a major impediment to forest sector investment as well as to partnership development between First Nations and industry. In cases where rights and land issues are unresolved, development can be retarded for a number of reasons:

- Government players are hesitant to provide funding to initiatives in the area for fear of pre-empting, compromising, or creating obstacles to negotiated agreements
- First Nation leaders are focussed on political rather than economic concerns
- First Nations can disrupt or resist companies’ initiatives in order to gain leverage in negotiations
- Industry, fearful that its tenures will be reduced as part of a settlement, may resist partnering with groups they see as challenging their position

However, concluding self-government processes and other major agreements requires long periods of negotiation. Interim measures should be put in place to ensure that business relationships can progress at the same time.

11. A critical factor in overcoming these barriers is concerted political will on the part of all governments – federal, provincial/territorial and First Nations. But there are many reasons why political will is elusive. Significant commitments have been made to the established companies and their unionized workforces, and the largely non-Aboriginal communities they sustain. In addition, what is required is time, patience, political capital and creativity on the parts of federal, provincial, industry and First Nations leaders and managers – and with many other goals these elements are in short supply.

An additional problem relates to the federal - provincial division of powers. With the exception of land claims settlements, it is the Provinces that have the most potential to stimulate First Nations forest sector participation (through tenure reallocation, for example), though much of the First Nations file is seen as lying within federal jurisdiction and Provincial governments (perhaps with the exception of provinces with large Aboriginal populations like Saskatchewan and Manitoba) do not face strong pressures to make Aboriginal issues a priority, either from the public or their own bureaucracies. Finally, First Nation forestry has not been a sufficiently high priority for the federal government.

12. Aggregated First Nations organizations such as Tribal Councils can play a major role in achieving significant levels of First Nation forest sector participation, and facilitate effective long-term relationships with government and industry, if the organizations manage to keep their activities well connected to community priorities. There is considerable debate over the effectiveness of ‘aggregated’ approaches to First Nations governance, and a lot of communities are resistant to transferring authority to other First Nations bodies like Tribal Councils. However, many major forest sector initiatives which would have been difficult to achieve on a community-by-community basis have been built through Tribal Councils, such as Carrier-Sekani (BC), Meadow Lake (SK), West Region (MB), North Shore (ON), and the Grand Council of the Crees (QC).

- 13. First Nations are increasingly focussing not just on the *quantity* of jobs available in the forestry sector, but also on their *quality*.** First Nations participation in the forest industry has tended to be concentrated in the silviculture, harvesting, and hauling areas, but First Nations (and government officials) are increasingly trying to create jobs in mills, value-added industries, and – most importantly for the long-term – business management and forestry.
- 14. There is no agreement as to the viability and success of joint venture models or other forms of business partnerships.** While some models appear to be promising – in particular tripartite ventures between outside firms, First Nations development corporations and consortia of local investors – there have been many failed partnerships in the past. More information on best practices and lessons learned is required.
- 15. There appear to be two distinct policy contexts across Canada on First Nations forest sector participation issues – the ‘North’, and the ‘South’. Different strategies for forest development need to be developed for each, and different lessons and best practices are relevant in each context.**

In more Northern regions, such as Labrador, Northern Quebec, Ontario North of 51°, the East Side of Lake Winnipeg, the Peter Ballantyne region of Saskatchewan, Northern Alberta, Yukon and NWT, the following common factors allow for a high degree of First Nations influence over forest management, though economic opportunities are limited:

<ul style="list-style-type: none"> ▪ A preponderant First Nations population ▪ Little transportation infrastructure ▪ Marginal economic value of wood resources ▪ A relatively fragile and undisturbed forest ecosystem 	<ul style="list-style-type: none"> ▪ Concluded or ongoing land claims or self-government negotiations ▪ A low annual allowable cut and few areas licensed for harvest ▪ Little presence of major companies
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In more Southern regions across the Provinces, the following factors are constraints on First Nations participation – both in forest management or in economic opportunities:

<ul style="list-style-type: none"> ▪ A smaller First Nations proportion of the population with less political ‘clout’ ▪ Near full allocation of forest resources through long-term commitments to major licensees: few greenfield areas ▪ Historically contentious First Nations - industry relations ▪ Limited skills and capacity in First Nations communities 	<ul style="list-style-type: none"> ▪ A slumping forest industry ▪ Major disagreements over the scope of Aboriginal and treaty rights and title, major unresolved legal battles ▪ Mill jobs on decline, and mostly unionized and skill-intensive ▪ Heavy rates of utilization of forest resources – greater potential to infringe First Nations forest values
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Recommendations

In light of the above conclusions, we recommend that:

- 1. The federal government and virtually all provincial governments (the one exception is Saskatchewan) should accord a much higher priority to enhancing the participation of First Nations and other Aboriginal groups in the forest sector. For many First Nations in northern regions, forestry offers the best opportunity for sustainable economic development.** In terms of the federal government, this should mean, among other things, the development of a government-wide Aboriginal forestry strategy. Such a strategy would be based on a province by province (and north/south) analysis of opportunities for federal involvement, better coordination among its economic development programs, more resources dedicated to forestry initiatives, and above all ongoing involvement by Ministers and senior officials. Some interviewees complained of a ‘silo mentality’ between levels of government, which needs to be overcome if progress is to be made.
- 2. The key players should develop strategies to promote the capacity development of First Nations in the long-term, particularly financial, business, technical, and managerial capacity.** This may require the establishment of a multi-party process, involving both levels of government, First Nations, industry, and representatives of training institutions (and possibly also banking institutions).
- 3. First Nations should continue efforts to improve community governance structures so as not to deter business relations with outside investors and to ensure that benefits are widely shared within their communities.** A model highly regarded by most interviewees involves the setting up of an arms-length, community-owned economic development corporation. But as indicated in a past IOG survey of a number of Aboriginal communities in Canada and abroad, more than the establishment of a separate corporate entity is required. The structure should allow the company administrators to focus on business but, in addition, there must be clear and transparent means of distributing the benefits of the enterprise among the community. Further, to increase the odds of long term viability, there ought to be a strategic fit with the community’s long-term goals.
- 4. First Nations should continue efforts to achieve significant benefits from forestry through aggregation.** As noted in the conclusions, examples of really significant First Nation participation, with few exceptions, involve aggregated bodies like tribal councils, which tend to have more political clout and greater capacity to take advantage of emerging opportunities.³
- 5. The federal and provincial governments should develop measures to assist First Nations to meaningfully participate in forest management planning processes.** In general, First Nations communities require government funding to ensure meaningful consultation, accommodation, and participation in planning. Provincial governments need to develop strategies – along with necessary funding – to improve First Nations communities’ capacity to work within their frameworks.

³ See Institute On Governance policy brief # 18, “Aggregation and First Nation Governance”, at www.iog.ca.

6. **The key industry and governmental players should develop approaches to support small First Nations business in the value-added and non-timber forest products sectors**, perhaps through arrangements with banks such as loan guarantees or matching loans.
7. **Strategies to develop First Nations capacity to manage their growing reserve land base must also be undertaken. In particular, some First Nations operating under the First Nations Lands Management Act (FNLMA) need to develop Sustainable Forest Management codes to fill a regulatory ‘gap’ on their reserve lands.** Once these are developed, the legal text of the codes, as well as information on other management practices, experiences and insights should be other shared with other First Nations.
8. **The key players should improve data collection and conduct further research on First Nations forest sector participation – including on employment, contracting, forest inventories, business partnerships best practices, and other issues – and make the results accessible to the public.** Governments should improve their own statistical data and require or provide incentives for forest companies and First Nations to resume tracking and compiling information on First Nations employment and contracting. Research should be conducted to develop legal means to track this important information without potentially discriminating against employees. Research on joint ventures and other forms of forest sector partnerships should also be conducted in order to gather lessons learned and best practices, particularly relating to how joint ventures can help build First Nations business capacity.

To conclude, all of the issues we have discussed affirm that, like forest stewardship, building effective and cooperative relations between First Nations and the forest sector is a long-term venture. Progress requires patience, and firm commitments to building trust, respect, and mutual understanding in the face of multitudes of smaller, divisive issues. Some failures are inevitable, for that is the nature of business. There are no quick fixes, but frank communication and debate will create some modest practical steps that can grow into major advances over time.

Relationships between First Nations and the Forest Industry: the Legal and Policy Context

Introduction

The forest sector, a mainstay of the Canadian economy, is worth about \$74 billion annually – including \$43 billion in forest products exports – and is the source of 361,400 direct employment opportunities.⁴ While First Nations make up a significant portion of the population living in and around the forest, studies indicate that they remain underrepresented in the forest sector in terms of both employment and business activity – a significant lost opportunity not only for First Nations’ socio-economic development, but also for smooth growth in the forestry industry, as well as for sustainable forest management in general. But still, forestry companies and First Nations have established a range of business and other relationships in recent years – experiences that highlight the potential, as well as some of the difficulties, in achieving increased First Nations participation in the sector.

A number of questions are thus being asked: How are these relationships progressing? What have been the results? What difficulties have been encountered? How are the relationships influenced by contextual factors – industry trends, market forces, court rulings, legislative changes, advances in community governance? What can the various players – industry, First Nations, federal and provincial governments – do to move things ahead?

Origins of the Study

In 1998, the Institute on Governance (IOG) undertook a study for the Canadian Forest Service and Natural Resources Canada, focusing on the relationships between Aboriginal peoples and the Canadian forest industry, and built on this over the next two years with studies focussing on best practices and on business partnerships.⁵ Funded by the National Aboriginal Forestry Association (NAFA), the Forest Products Association of Canada (FPAC), and the federal government’s First Nations Forestry Program (FNFP), which is a joint initiative of Natural Resources Canada (NRCan) and Indian and Northern Affairs Canada (INAC), the IOG subsequently updated the 1998 study in 2004 with a focus on British Columbia.⁶

A team headed by Dr. George Hoberg of the University of British Columbia is conducting a national study of a similar nature to the one completed by the IOG in British Columbia earlier this year. This UBC study will concentrate mainly but not exclusively on business partnerships, and will endeavour to track progress across the country since the IOG study of 1998. Missing

⁴ The State of Canada’s Forests 2002-2003, at http://www.nrcan-rncan.gc.ca/cfs-scf/national/what-quoi/sof/latest_e.html.

⁵ See Institute On Governance, 1999, “the Relationship Between Aboriginal Peoples and the Canadian Forest Industry”; Institute On Governance, 1999, “Aboriginal Communities and the Canadian Forest Industry: An Inventory of Best Practices”; and Institute On Governance, 2000, “Aboriginal-Forest Sector Partnerships: Lessons for Future Collaboration”; all at www.iog.ca.

⁶ See John Graham and Jake Wilson, Institute On Governance, May 2004, “First Nations and Forest Industry Relationships: Some Perspectives from British Columbia”, at www.iog.ca

from the UBC study, however, will be an important component of the IOG studies of 1998 and 2004: the policy and legal context that helps both drive and explain the relationships developing between the forest industry and First Nations.

This study is meant to fill this gap by outlining the nature of the legal and policy environment in the various provincial and territorial jurisdictions across the country (except Nunavut, for obvious reasons), and its effect on:

- a. **First Nation - forest industry relationships**, including elements ranging from cooperation on forest management plans, to employment opportunities, to business partnerships
- b. **First Nations participation in the forest sector**, in terms of jobs, business opportunities, forest stewardship and other activities
- c. **the nature of the operating environment for business**, including the certainty of fibre supply and the implications of regulatory requirements relating to First Nations

Satisfied with the results of the earlier study on British Columbia, NAFA, FPAC, and FNFP have come together again to sponsor this nationwide study. The sponsors have a mutual interest in the results, as they will help ensure that all are 'on the same page' in their efforts at building relationships at various levels across the country and developing policy to stimulate the process. The three sponsors have contracted the IOG to play an independent 'outsider' role in conducting the study, because the IOG has no 'bones to pick' or interests with respect to the forestry issues at play.

Rationale

The state of First Nations - forest industry relationships is of crucial concern for several reasons:

- The great majority of First Nations communities in Canada are located in the forest, and represent a significant portion of the population in these areas. For many of these communities, the forest sector – including primary and value-added activities – represents a leading source of economic opportunity. The long-term economic and social sustainability of many communities will likely depend on productive involvement in the sector. Furthermore, the traditional cultural and spiritual values of many First Nations communities are deeply connected with the forest ecosystems in which they live, and involvement in the stewardship of the forest is crucial to the maintenance of their way of life.
- For industry, significant uncertainty over the long-term stability of wood supply to mills is created by unresolved issues around First Nations land claims, Aboriginal and treaty rights, and the extent of First Nations involvement in forest management decision-making. Also, in many parts of the country, industry will depend on the growing First Nations population as a principal source of labour in the future. Finally, the industry depends on a small but growing number of First Nation entrepreneurs and businesses who are involved in areas ranging from harvesting to forestry to value-added activities. Where these businesses do not yet exist their establishment will create a confluence of interests between First Nations and industry and lead to more positive future relationships.

- Acknowledging the importance of increased First Nations participation in the sector and a more predictable and conducive operating environment for industry, governments at both levels as well as the courts have used a variety of tools to stimulate positive relationships between the two sets of players and to balance their interests where they compete. While successful in many cases, in others, policy and legal decisions have had unintended and deleterious impacts.

Objectives

This study will describe in general terms the current state of First Nation - forest industry relationships and discuss the impact on them of the following factors, both from a national perspective and in each provincial and territorial context (except Nunavut):

1. The key elements of legislative and policy frameworks (federal and provincial/territorial)
2. Outstanding issues around Aboriginal and treaty rights, and land claims
3. Court rulings
4. Industry trends and market factors
5. Advances in First Nations governance
6. Other developments (such as international commitments, third party forestry certification regimes, environmental initiatives, etc.) that are affecting the relationships.

The study will attempt to include an assessment of impacts not only on the relationships *per se*, but also on the level of First Nations participation in the forest sector and on the nature of the operating environment for business, so as to take a balanced approach. Further, the document will present any relevant data available and will come to some conclusions as to how the relationships have changed (if at all) in the six years since the last IOG study on this issue in 1998.

Research Methodology

Between October and December, 2004, the IOG approached nearly 100 people for interviews – in all provinces and territories except for B.C. and Nunavut, representing First Nations, industry, government organizations (federal as well as provincial/territorial), and universities. In all, we conducted some 60 interviews in addition to 17 previous interviews that were conducted in B.C. in the Spring of 2004, as part of the related B.C. project which has been incorporated here.

The interviews were done on the understanding that individuals would not be identified and that particular comments would not be attributed to them or their organizations in the report, although the organizations' participation would be acknowledged (see the list in Annex 2). The IOG began with a number of contacts provided by the sponsors, and additional interviewees were located on the suggestion of previous participants or through internet searches. In addition, a variety of public documents available online were consulted as part of the research process.

The IOG succeeded in interviewing a good balance of people from First Nations, industry, provincial and federal government organizations in all but a few small provinces and territories (such as Labrador, Yukon, and the Northwest Territories, where there is little industry

operating). While standard interview questionnaires were developed, in practice the interviews focussed more on the interviewees' particular areas of interest and expertise. The IOG did not interview any Métis forestry experts, although the report is sensitive to impacts on the Métis from any legal or policy developments.

Acknowledgements

The IOG and the project sponsors wish to thank all the people who participated in the study and provided frank and thoughtful comments. Their considerable experiences and varied perspectives were indispensable to the efforts to produce a thorough and accurate depiction of the issues at play across the country.

Organization

Following the introduction, the paper proceeds through five principal sections. The first of these provides a statistical overview of the forest sector. The next outlines legal and policy issues that have impacts nationwide: Supreme Court rulings, international agreements, environmental initiatives, certification standards, market factors, industry trends, and advances in First Nations governance.

The third section then focuses on each particular provincial and territorial jurisdiction (except Nunavut), moving from the Northwest to the East. The fourth major section analyses and compares the variety of circumstances and policy approaches of the various jurisdictions in order to identify some key lessons applicable nationwide.

Based on these four analytical sections the paper then proceeds to some conclusions and recommendations, which have been repeated in the Executive Summary as well.

I. Statistical Overview

There is currently no one national mechanism or set of indicators available to measure the level of Aboriginal involvement in the forest sector nationwide, a state of affairs that makes it difficult to identify trends in quantitative terms. As there are laws preventing companies from inquiring as to their employees' ethnic origins, information on Aboriginal forest sector employment is mostly anecdotal. As a result, we must rely on information from a number of different sources to show certain parts of the picture.

The Forest Industry in Canada

Canada's forests cover 417.6 million hectares, approximately 10% of the world's forests. Most of this – 88% – is provincially owned, some federally (5%), and the remainder privately (6%). Roughly 0.4 %, or about one million hectares, of Canada's commercial forests are harvested yearly.⁷

⁷The State of Canada's Forests 2001-2002 at http://www.nrcan-rncan.gc.ca/cfs-scf/national/what-quoi/sof/latest_e.html

The forest sector, a mainstay of the Canadian economy, is worth about \$74 billion annually – including \$43 billion in forest products exports – and is the source of 361,400 direct jobs in 2002-2003, plus at least as many indirectly employed.⁸ The sector is the country’s largest non-urban employer with over 300 communities dependent on the sector for their livelihood.⁹

The chart below shows the annual allowable cut by province (though they are not strictly comparable as the dates of the latest calculations vary) as well as the First Nations population.

*Annual Allowable Cut by Province*¹⁰

Jurisdiction	Total AAC (000m ³)	Total AAC (% of nat'l)	Latest Period Calculated	FN Population ¹¹	
				#	%
Newfoundland and Labrador	2 470.6	1.0	2002-2021	29,709	1.3
Prince Edward Island	490.0	0.2	1992-2002		
Nova Scotia	6 700.0	2.8	2001-2002		
New Brunswick	11 311.6	4.8	2002-2007		
Quebec	54 506.2	23.0	2000-2004	66,504	0.9
Ontario*	31 741.0	13.4	2002-2003	161,718	1.3
Manitoba	9 631.3	4.1	2002	115,339	9.9
Saskatchewan	8 905.0	3.8	2001-2020	114,248	11.5
Alberta	24 050.4	10.1	2002-2003	92,060	2.9
British Columbia	75 325.1	31.8	2002	116,136	2.8
Yukon	324.5	0.1	2002	7,927	25.9
Northwest Territories	2001-2002	15,855	37.6
CANADA	237 000	100	2002	719,496	2.3
* AAC not set: figure based on sum of estimated possible harvest on all Forest Management Plans in province					

⁸ The State of Canada's Forests 2002-2003.

⁹ The State of Canada's Forests 1997-1998.

¹⁰ Forestry figures derived from National Forestry Database Program, Compendium of Canadian Forestry Statistics, at www.nfdp.cfm.org. Total AAC percentages are rough estimates and do not add up to 100% due to slightly differing years of calculation.

¹¹ Population percentages are derived by dividing the total number of Registered Indians in the INAC Indian Register by region in 2003 by Statistics Canada projections of the total population of Canada in 2003 (based on the 2001 census). These figures include both reserve and non-reserve residents.

Aboriginal employment and businesses in the forest sector¹²

According to the 2001 Census, unemployment among Aboriginal people in Canada is disproportionately high: 19.1% compared to the national average of 7.1%. The situation is particularly severe on-reserve, where unemployment is on average 27.6% while participation rates in the labour force are low, 52.1% (compared with 66.4% nationally).

Aboriginal Land and Tenure

Only 0.25% of Canada's total forested area is considered Aboriginal land.¹³ In addition Aboriginal groups and individuals hold a total annual allocation of some 7.0 million m³ of Canada's Crown timber – 4.1% of the 169.5 million m³ allocation nationwide (for purposes of comparison, some of Canada's largest forest companies each cut more than 10 million m³).¹⁴

Regarding business activity on-reserve, INAC (with the assistance of Statistics Canada and Public Works and Government Services) conducted a statistical analysis of existing Canada Revenue Agency data. The analysis covered 60.3% of First Nations communities nationwide, comprising 70.4% of the total on-reserve population. The analysis found that in those communities there are 1,493 on-reserve “reserve establishments” related to forestry (forestry-related types of business are broken down in *Chart 1* below). These represent 8.6% of total “reserve business establishments”. These businesses employed a minimum of 16,927 people nationwide, 12.4% of all reserve establishments' employees, for an average of about 6 staff per business. The vast majority of these primary businesses were very small (706 businesses employed 1-4 people), while only 12 had more than 100 employees. These figures are broken down in Chart 1 below.

	# of businesses	% of businesses	'minimum' employment	% of employment
Logging & contract logging	804	55.2%	5185	30.6%
Support activities for forestry	221	14.8	1073	6.3
Forest products trucking	233	15.6	925	5.5
Mills (sawmills, pulp and paper, other forest products)	159	10.0	9007	48.0
Value-added activities (wood & paper manufacturing, etc.)	40	2.7	384	2.3
Total	1493	100%	16,927	100%

¹² INAC Economic Development Programs Directorate (EDPD), 2003, “Economic Development On Reserves: Profile from the 2001 Census”; INAC EDPD, 2003, “Reserve Establishments and Minimum Employment”.

¹³ National Forestry Database Program (NFDP), cited above.

¹⁴ NAFA, 2003, “Aboriginal Held Forest Tenures in Canada”, p. 73.

The above statistics are admittedly patchy. What is clear, however, is that many First Nations are already highly active in the forest sector, that many Aboriginal people are employed either by Aboriginal-run businesses or elsewhere in the forest sector, but also that much remains to be done. Too little information currently exists, however, to be able to identify trends with any certainty. The most we can do is echo the statement of the federal government in its *National Forest Strategy 2003-2008*, as follows:

Aboriginal participation in the forest sector has generally increased in recent years. Opportunities for employment, contracting and business development are more abundant, with the forest industry willing to enter into various forms of partnership. However, the lack of technical, human, and financial resources and the lack of appropriate policy frameworks make it difficult for Aboriginal Peoples to participate in forest management and forest-based economic activities.¹⁷

II. Legal and Policy Issues Common to All Jurisdictions

The following section details legal and policy issues common to all jurisdictions, in order to set the stage for the analyses of each provincial and territorial context which follow.

Legal Context

Aboriginal interest in the forest is based on a unique historical and legal perspective which is acknowledged by the Canadian Constitution. As a result, forest management practices in Canada must reflect the constitutional protection afforded Aboriginal and treaty rights. Recent court decisions – *Delgamuukw* and *Haida-Weyerhaeuser* in particular – demonstrate that the legal scope of Aboriginal and treaty rights is continuing to expand. These legal decisions translate, among other things, into responsibilities on governments to honour a legal duty to consult with Aboriginal Peoples and accommodate their interests on natural resource developments that may infringe on Aboriginal and treaty rights. The manner in which provinces or their agents incorporate these legal responsibilities in provincial frameworks or corporate policy is a central factor in the relationship between Aboriginal communities and forest sector firms.

In contrast to areas such as fishing, hunting, trapping, and gathering, where there is some clarity, the exact scope of Aboriginal and treaty rights around forest sector participation is uncertain. Extractive forestry operations on the scale seen today were not envisioned when historic treaties were signed, so there is little clarity in most treaty relationships. Rights around commercial forestry operations remain contested and are interpreted differently by the various parties in different parts of the country. What is important, and subject to a growing body of law, is how First Nations are consulted and their rights accommodated in the management of the resources and lands around them. These consultation processes are an important factor in the provision of opportunities and benefits to First Nations affected by forestry development.

¹⁷ P. 15, at <http://nfsc.forest.ca/strategies/nfs5.pdf>.

Haida-Weyerhaeuser and Taku River Tlingit cases

The recent *Haida-Weyerhaeuser* and *Taku River Tlingit* decisions at the Supreme Court are of particular interest to First Nations, industry, and government players involved in forest management planning. The following is an attempt to summarize the key elements of the ruling and the various players' reactions.

In the *Taku River Tlingit* case, a road was proposed to be built to a Redfern mine in territory claimed by the community – though their title had not been determined in court. A three-and-a-half year environmental assessment process was conducted, during which the Tlingit were consulted in a similar manner to other stakeholders, and the results of the final report were not accepted by the Tlingit community. The Tlingit argued that industry and government had not adequately consulted them or accommodated their rights.

In the *Haida-Weyerhaeuser* case, the Province of British Columbia issued a Tree Farm License (TFL) to a large firm in 1961, covering about a quarter of Haida Gwaii, to which the Haida claim title, though it has not been legally recognized. The TFL was renewed in 1981, 1995, and 2000, and it had been transferred from MacMillan Bloedel to Weyerhaeuser in 1999, with no changes to the tenure's terms and conditions. The Haida raised objections and did not consent to the 1999 transfer and the 2000 replacement. The chambers judge ruled that government had a moral, not a legal, duty to negotiate with the Haida. The B.C. Court of Appeal reversed the decision, saying that both the government and the company had a duty to consult with and accommodate the Haida with respect to harvesting timber in the TFL. The Supreme Court upheld the legal duty of the B.C. government to consult and accommodate, but rejected the B.C. Court's ruling that the company should do so as well.

The Supreme Court ruled on *Taku* and *Haida* at the same time, and the argument in both cases was consistent: a duty on the Crown to consult with and accommodate Aboriginal people arises when (a) the Crown has knowledge of a real or potential Aboriginal or treaty right (including the right to title); and (b) the Crown's decision may potentially lead to an infringement of the Aboriginal or treaty rights. In other words, the Crown has to consult around rights that have been asserted as well as rights that have been legally proven. The scope and content of the consultation and accommodation, the Court ruled, depend on the merit of the claim. For example, notice of action may be sufficient if the claim is dubious, whereas if the claim is strong, negotiation would be required.

The Supreme Court also explained that, in these two cases, this duty to consult and accommodate arises from the Honour of the Crown and not from a specific fiduciary obligation related to the administration of a particular statute as in the *Sparrow* case.

Finally, the Court also ruled that the Crown cannot delegate its duty to consult and accommodate to industry (thus overruling one part of the B.C. Court's decision), but that it can – with industry's consent – delegate certain procedural aspects.

For the case at hand, the Court's logic meant that the consultation with the Haida was inadequate, but in the case of the *Taku River Tlingit* it had in fact been adequate (because of the differing facts in the case and the nature of the two claims).

While it will be some time before it is clear how particular practices will have to change in the various treaty contexts across the country, preliminary conversations conducted by the IOG have indicated a degree of satisfaction with the ruling among individuals in all groups – industry, government, and First Nations. While the scope of the consultation duty of government has been expanded but better defined, uncertainty around the legal obligations of companies has been reduced. While First Nations might have wished a greater legal obligation on companies, the exact nature of this would have been very difficult to determine, and the legal case for extending consultation obligations to industry licensees from government had generally been seen as somewhat tenuous.

It is important to note, however, that the ruling does not appear to imply that industry can or should reduce its efforts at building relations with Aboriginal communities. Industry has been accommodating Aboriginal interests to the extent that it does primarily because it makes business sense and helps ensure ‘peace in the valley’, not because of concern about legal obligations. And companies are aware that if they act with disregard for Aboriginal rights and interests, those affected will find channels through government, the courts, political forums and the public (and particularly consumers) to affect their operations.

Despite the increased clarity rendered by the decisions, especially around the responsibilities on government to cover *consultation costs*, one important question still remains to be resolved in each particular context across the country: exactly how will Aboriginal rights be accommodated, and how will the costs of *accommodation* be borne?

Other rulings of note

In the *Skeena Cellulose* ruling, the B.C. Supreme Court upheld the principle that the Minister of Forests’ power to consent to a change in control of a forest license triggered consultation requirements on the part of the Province, obligations which had not been met in this particular case.

Another important case, *Omega Salmon*, clarified the duties of Aboriginal groups in the process: here, the B.C. Supreme Court ruled that in essence, the right to be consulted did not mean that Aboriginal groups can exercise a veto over land use decisions by failing to avail themselves of (or rejecting) the consultation process. It also reaffirmed that government must take account of and balance competing rights (in this case including those of the company, which had made significant investments in the resource before the First Nation finally reacted to the pending licenses) in determining whether infringement of Aboriginal title and rights is justified. While the ruling made it clear that the consultation requirement cannot be used by First Nations as a means of obstruction, the question of what constitutes ‘adequate’ consultation – particularly the tricky concern of funding for Aboriginal participation – continues to loom large.

The groundbreaking *Powley* decision deriving from a case in Northern Ontario may affect forestry companies’ consultation activities, in this case in relation to Métis Peoples. This Supreme Court ruling not only reaffirmed the Aboriginal rights of the Métis, including to be consulted and accommodated as with First Nations, but also defined Métis people on the basis of criteria of self-identification, community acceptance, and ancestral connection. While acknowledging the difficulty in delineating Métis communities, the ruling stated that these challenges should not detract from the protection of Métis Peoples’ full constitutional rights. This may create the additional challenge for forestry companies of considering case-by-case

whether there are local Métis communities in their area of operations, who the members are, and whether there are site-specific Aboriginal rights that may be affected.

Another case of note is the Supreme Court's *Marshall* decision, issued in 1999. In relation to disputes over fishing rights in New Brunswick, the Court upheld a 1760 treaty giving First Nations people the right to fish without licenses and out of season, although the government can limit these rights through regulation, as long as the limitations can be justified. The ruling was interpreted by some as exempting First Nations from federal and provincial regulatory regimes and violent confrontations ensued. Shortly after the original ruling the Court rejected a request to reconsider the case, affirming that the ruling was only intended to deal with fishing, hunting and gathering, and not – as some had suggested – with mining, logging, and natural gas: “The judgement did not rule that the appellant had established a treaty right ‘to gather’ anything and everything physically capable of being gathered. The issues were much narrower and the ruling was much narrower”.

The *Bernard* case, also originating in New Brunswick, is now before the Supreme Court and a ruling is expected in the new year. Originally Joshua Bernard, an Eel Ground First Nation resident, tried to make his livelihood by cutting 23 trees on Crown land and selling them. He was subsequently tried and convicted on a charge of illegal possession of Crown timber. The New Brunswick Court of Appeal overturned the decision in 2003, arguing that Bernard had a treaty right *as an individual* to harvest and sell trees on Crown land that was historically occupied by First Nations people. The Court stayed the decision for one year to give the province, First Nations and industry time to negotiate a peaceful sharing of resources. The New Brunswick government has since appealed the decision to the Supreme Court. A similar case emanating from Nova Scotia is also being pursued to the Supreme Court level.

Another case pending before the Supreme Court involves a dispute between the *Mikisew Cree* of Northern Alberta and the *Thebacha Roads Society*, in which the Mikisew are arguing that their rights to hunt and trap in their traditional territory were infringed by a decision to build a winter road through Wood Buffalo National Park. An appellate court ruled that the Mikisew had a constitutional right to be consulted on the matter, and that efforts by federal officials to discuss the matter were inadequate. The Federal Court of Appeal overturned the decision in a 2-1 ruling, which the Supreme Court has since agreed to consider.

International Commitments

In addition to national legal influences on forestry, international commitments to sustainable development continue to evolve and, to varying degrees, influence Canadian approaches to forest management. These commitments to sustainable development require increased efforts to address the socio-economic and cultural needs of forest-based peoples, and have in fact become one of the motivating factors for industry to enter into collaborative relationships with Aboriginal peoples – particularly in order to achieve environmental certification standards which have developed alongside these international initiatives. Some of the relevant international agreements that affect the Aboriginal – forest industry relationship include:

- **The Rio Declaration, 1992** - To which Canada was a signatory and which stated among other things that “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge

and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”

- **United Nations Convention on Biological Diversity, 1992** - Article 8 of the Convention commits the parties to “...as far as possible and as appropriate... (j) subject to national legislation, respect, preserve and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biodiversity and promote their wider application...”.
- **Statement of Forest Principles, 1992** – the Rio conference also gave rise to agreement on a non-binding set of Forest Principles, which included the following points relating to indigenous peoples:
 - 2 (d) Governments should promote and provide opportunities for the participation of interested parties, including local communities and indigenous people, industries, labour, non-governmental organizations and individuals, forest dwellers and women, in the development, implementation and planning of national forest policies.
 - 5 (a) National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for the sustainable management of forests.
 - 12 (d) Appropriate indigenous capacity and local knowledge regarding the conservation and sustainable development of forests should, through institutional and financial support and in collaboration with the people in the local communities concerned, be recognized, respected, recorded, developed and, as appropriate, introduced in the implementation of programmes. Benefits arising from the utilization of indigenous knowledge should therefore be equitably shared with such people.

These three agreements suggest an important trend of recognizing and indeed valuing the diversity of indigenous world views and incorporating these into forestry management strategies.

In addition, Canadian forest management practices are further influenced by other agreements which it has ratified, particularly in regards to Climate Change:

- **The Framework Convention on Climate Change, 1992 (FCCC)** – In Article 4.1. (d), the FCCC commits parties to “promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans, as well as other territorial, coastal and marine ecosystems”.
- **The Kyoto Protocol to the FCCC, 1997** – In Article 2.1(a), each party agrees to “implement and/or further elaborate policies and measures in accordance with its national circumstances, such as: ... (ii) protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation.”

While neither of these two major protocols include text on indigenous peoples, they reinforce a sustainable ecosystem-based approach to forest management that may well coincide with the interests and priorities of First Nations in Canada.

Environmental Initiatives

Boreal Forest Initiative

The Canadian Boreal Initiative, an initiative of a number of conservation organizations, First Nations, and resource companies (including Alpac, Tembec, and Domtar), released its Boreal Forest Conservation Framework in late 2003. The initiative notes that the Canadian boreal forest contains one-quarter of the world's remaining original forests, and represents the largest intact forest ecosystem left on Earth. Its chief goals are to:

- protect at least 50% of the region in a network of large interconnected protected areas, and
- support sustainable communities, world-leading ecosystem-based resource management practices and state-of-the-art stewardship practices in the remaining landscape.

The principles guiding the initiative include the following:

- Maintain ecological processes which account for the overall health of the boreal forest across the full spectrum of human uses;
- Ensure sustainable economic benefits to Northern communities and the viability of commercial interests;
- Respect the lands, rights and ways of life of Aboriginal peoples and First Nations;
- Achieve optimal additional environmental and social benefit from the least raw material supply, cost, and workforce adjustment impact; and
- Utilize scientific knowledge, traditional knowledge, and local perspectives to achieve the conservation of natural and cultural values.

There is considerable concern among some industry, government, as well as some First Nations officials as to the potential impacts the Boreal Forest Initiative will have on development, particularly in historically unharvested Northern areas, but also in areas currently utilized by major licensees. Some participants expressed the view that the initiative is stimulated largely by “urbanites and environmentalists”, with little understanding of the diverse priorities First Nations and Northern communities may have – which are not limited to ‘traditional’ ways of life. Other participants saw the initiative as useful, because it would provide a politically attractive framework for companies and First Nations to work together in sustainably harvesting remote Northern resources which have not yet been developed.

What is interesting in this context is that environmentalists and industry are noticing that First Nations can be important allies in strengthening their initiatives, and both need them on-side. First Nations have resisted not only attempts to clear-cut old-growth forests but also initiatives to establish parks or heritage areas in their traditional territories, for example. First Nations communities and people are as diverse as the rest of Canadian society in their approaches to the environment and development. The Boreal Initiative is still at an early stage and the degree to which First Nations, industry, and government will support the process remains to be determined.

Federal Initiatives

National Forest Strategy

Recognizing that Aboriginal Peoples remain underrepresented in the forest sector, there are a number of efforts underway in Canada to increase their participation. Chief among these is the *National Forest Strategy 2003-2008*, which calls for “bold institutional arrangements between governments and Aboriginal communities relating to forest management”.¹⁸ The Strategy’s ambitious action plan includes the following steps relating to Aboriginal Peoples:

1. Initiate processes with Aboriginal Peoples and the appropriate levels of government to establish:
 - a. a shared and grounded understanding of Aboriginal rights, title, and treaty rights;
 - b. the roles and responsibilities of Aboriginal Peoples, governments, and forest stakeholders; and
 - c. measures to fulfill government fiduciary responsibilities and the legal duty to consult.
2. Implement institutional arrangements between Aboriginal Peoples and governments that reflect a spirit of sharing responsibilities and benefits for the management, conservation and sustainable use of forest lands and resources; and give effect to land claim settlements, treaties and formal agreements on forest resource use and management.
3. Incorporate traditional knowledge in managing forest lands and resources in accordance with the Convention on Biological Diversity.
4. Direct federal and other available funding to support Aboriginal capacity building and participation in implementing the National Forest Strategy, through measures such as a renewed and expanded First Nation Forestry Program and the development of a parallel Métis forestry program, and in supporting Aboriginal participation in related local, regional and international meetings.
5. Provide for access to a fair share of benefits from the use of forest lands and resources.
6. Provide for Aboriginal interests in the development of international trade agreements.
7. Review and update the status of forest inventories and management plans of Indian Reserve forest areas and identify resources to implement these plans.

While the strategy is largely silent on the issue of promoting Aboriginal forestry business development and employment, it is clear that the Strategy’s action plan will be difficult to achieve without considerable efforts in this regard – a reflection which points to the centrality of the role of industry as well as government in increasing Aboriginal participation in the forest sector.

¹⁸ At <http://nfsc.forest.ca/strategies/nfs5.pdf>.

First Nations Forestry Program

The First Nations Forestry Program, a joint initiative between Natural Resources Canada (NRCan) and Indian and Northern Affairs Canada (INAC), is of course a prime agent in the implementation of the Aboriginal part of the National Forestry Strategy. Since 1996, the First Nations Forestry Program (FNFP) has funded some 1,500 projects, even though the budget has remained constant at about \$5.0 million annually since that time (this level was a major reduction compared to funding for the previous Federal-Provincial Resource Development Agreements). FNFP's partnerships among First Nations, the Government of Canada and industry have created opportunities for over 5,800 First Nations people to improve their skills and apply sustainable forest management practices.

FNFP's principal purpose is "to improve the economic conditions in status First Nation communities with full consideration of the principles of sustainable forest management". This purpose comprises four objectives which determine where funding is directed:

- to enhance the capacity of First Nations to sustainably manage their forest lands;
- to enhance the capacity of First Nations to operate and participate in forest-based development opportunities and their benefits;
- to advance the knowledge of First Nations in sustainable forest management and forest-based development; and,
- to enhance the institutional capacity of First Nations at the provincial and territorial level to support their participation in the forest-based economy.

One major concern voiced by a variety of participants, which is worthy of note here, is this: there are too many sources of money for Aboriginal forestry initiatives, and they are consequently spread too thinly. Programs include FNFP, INAC's economic development arm, Human Resources and Skills Development Canada (HRSDC), Aboriginal Business Canada, the federal government's regional development agencies, in addition to various provincial Ministries. FNFP is in fact a small player in this spectrum, although it is the only federal First Nations forestry *dedicated* program. The sheer range of sources creates an administrative burden for First Nations forestry coordinators, and makes it difficult for the various levels of government to target the best opportunities and ensure fairness in the distribution of resources across the country.

Another concern some participants voice about FNFP is the program's tendency to spread its money thinly, because it receives far more funding requests than it can address. The result is that in many cases, only 'seed' money or leveraging funds have been available. A number of interviewees also pointed out that FNFP has greater requirements in terms of paperwork than other programs.

Regulatory Gaps On-Reserve

As John Moffet of Stratos – Strategies to Sustainability has explained in detailed research on the subject, a 'regulatory gap' exists with respect to a wide range of environmental and health-related issues on-reserve. At its root, the gap derives from the fact that constitutional authority over environmental issues off reserves is divided among the federal and provincial governments, and the Provinces typically address a wide range of issues related to environmental management.

However, most of these provincial environmental management measures do not apply in their own right on reserve. Instead, there are a number of federal laws – some applying universally and some First Nation-specific – as well as some First Nation by-laws passed pursuant to the *Indian Act*. However, this patchwork of laws and bylaws misses a number of important aspects of environmental and related health issues that are regulated in the off-reserve context. In addition to these significant gaps in the law, in practice the gap is even more significant because in some cases the laws that do exist are not properly implemented because of a lack of performance standards, enforcement mechanisms, and administrative capacity in the First Nations and federal departments that attempt to handle these functions. The gaps are thus both legal and functional – and both of these concerns need to be addressed.

First Nations Lands Management Act

Since 1999, with the passing of the First Nations Lands Management Act (FNLMA), the possibility has been available to participating First Nations to remove themselves from the Indian Act regime with respect to lands management – including the regulations governing timber harvesting on-reserve – giving them the authority to develop their own codes. Because in many cases FNLMA signatories have not yet developed land codes with forestry management components, the legal and regulatory ‘gaps’ around on-reserve forest management have now widened. This is a significant issue, as some fourteen First Nations are already operating under the FNLMA, while another 36 are in the process of developing their own land codes. Up to 75 may adopt the Act within a given five-year period, but more may do so subsequently.

Some First Nations already under the FNLMA intend to develop custom timber codes, but in the interim are simply following the regulations in place on Crown land, albeit without authority to penalize transgressors or otherwise administer the regime. Other First Nations are managing timber harvesting on-reserve in a more ‘ad hoc’ manner, without clear policies and guidelines in place. One First Nation, Nipissing (Ontario), indicated that it will eventually hire a lawyer to draft an amended version of the Crown land forest regulations that ‘fits’ with the First Nation’s own land code. McLeod Lake First Nation in B.C. is also adapting Provincial regulations to the First Nation, as it agreed to ‘meet or beat’ Provincial standards as part of the agreement it reached with the federal government in adhering to Treaty 8 and gaining land in the process.

In both cases, the purpose is to ensure a degree of harmonization of the regime in place on and off-reserve, so that the First Nation’s own harvesters and entrepreneurs develop the familiarity required to operate and compete effectively both on and off reserve. The amended code developed by Nipissing should be made available to other First Nations which are working to develop their own codes. Indeed, one interviewee suggested that it would be useful if the National Aboriginal Forestry Association developed model codes around on-reserve forestry for First Nations to use. One of the key elements of such codes, one participant indicated, would be to determine what sorts of issues could be decided by the First Nation administration, and what sorts of issues merit broader community consultation.

As part of developing this regulatory structure, some of the challenges that First Nations have to address around on-reserve forest management include conducting inventories of their forest resources, calculating annual allowable cuts, determining the community royalties to charge harvesters (in many cases these are based on provincial stumpage rates), and developing systems

to ensure reforestation (responsibility for silviculture can be a challenge for small harvesting contractors).

National Initiatives

The Canadian Council of Forest Ministers formed the Canadian Criteria and Indicator Task Force in 1995 to prepare reports on progress on sustainable forest management, and to continually review whether its 83 indicators remained suitable for its performance measurement purposes. Among the core indicators most relevant to First Nations are the following indicators around ‘society’s responsibility’:

- Extent of consultation with Aboriginals in forest management planning and in the development of policies and legislation related to forest management
- Area of forest land owned by Aboriginal peoples
- Area of forested Crown land with traditional land use studies
- Proportion of participants who are satisfied with public involvement processes in forest management in Canada
- Rate of compliance with sustainable forest management laws and regulations.

Other indicators that could be relevant for First Nations, depending on the definition of ‘forest-based communities’, include the following:

- Economic diversity index of forest-based communities
- Education attainment levels in forest-based communities
- Employment rate in forest-based communities
- Incidence of low income in forest-based communities

Sustainable Forest Management Certification Standards

One concrete means by which companies are being rewarded economically for their activities with regards to corporate social responsibility (CSR) is through a variety of certification schemes – increasingly in demand by buyers and retailers of forest products who would like assurances that the products they purchase are derived from well-managed, third-party certified forests. Many companies see such standards increasingly as requirements of doing business – and that if they do not attain the standards they will lose market share. In Canada, firms are dealing with three established standards that deal specifically with forest management certification:

- the Canadian Standards Association’s Sustainable Forest Management standard (CSA);
- the Forest Stewardship Council standard (FSC); and
- the Sustainable Forest Initiative standard (SFI)

Significant numbers of companies have achieved the CSA or SFI standards in various areas of their operations, while a small number are pursuing or have reached the FSC standard.

Canadian Standards Association (CSA)

The CSA's Sustainable Forest Management standard was first introduced in 1998 and revised in 2002 to incorporate new approaches. Many companies endorsed the standard and have gained certification for particular forest areas. For each forest area that the company seeks to certify, the standard requires companies to demonstrate that they have taken the following steps:¹⁹

- Made efforts to contact Aboriginal forest users and communities affected by or interested in forest management in the designated forest area
- Made efforts to encourage Aboriginal forest users and communities to become involved in identifying and addressing Sustainable Forest Management Values
- Identified, recognized and respected Aboriginal and treaty rights
- Provided participation opportunities for Aboriginal peoples with respect to their rights and interests in Sustainable Forest Management
- Respected traditional Aboriginal forest values and uses identified through the Aboriginal input process

The technical standard document does however provide the caveat that “the appropriate bodies to make decisions related to Aboriginal and treaty rights are the governments”. This caveat distinguishes the standard significantly from the FSC standard (below), which requires First Nations to themselves certify in writing that companies have recognized and respected their rights.

Forest Stewardship Council (FSC)

Of all the standards FSC certification appears to be the most difficult for companies to achieve, although it is preferred by many Aboriginal and environmental organizations, including the National Aboriginal Forestry Association and the World Wildlife Fund. Many industry officials have stated, however, that some elements are simply unachievable, for example Principle 3.1.1(i) of the B.C. Regional Standard, which requires that “First Nation(s) formally indicate, clearly, unambiguously and normally in writing, that their legal and customary rights over their lands, territories, and resources have been recognized and respected”. While the standard clearly states that such an indication will not be construed as prejudicing or affecting treaty or land claims settlements, some First Nations explain that they would have difficulty making such a declaration while major land issues with the Crown remain outstanding. Other elements of the standard are relatively demanding as well. Some companies have gained FSC certification in other parts of the country, particularly Ontario.

¹⁹ CSA, *CAN/CSA-Z809-02 Sustainable Forest Management: Requirements and Guidance*, at: www.csa-international.org/product_areas/forest_products_marking/program_documents/Z809-02_revised_1030.pdf

Sustainable Forest Initiative (SFI)

The Sustainable Forestry Initiative® (SFI) program was originally developed by the American Forest and Paper Association for its own membership, but it is now available across North America through licensing. The SFI Standard requires adherence to several environmental objectives and performance measures that integrate the growing and harvesting of trees with the protection of wildlife, plants, soil and water quality.

At the outset, the SFI Standard was aimed at private land ownership in the USA, and thus it did not have specific text on Aboriginal issues until very recently. However, one of the SFI Standard commitments has direct links with special sites, and SFI also provides an interpretation statement on land claims.

International Standardization Organization (ISO)

In addition, many companies have applied the ISO 14001 Environmental Management System Standard to their forestry operations and have been successfully certified. Many forestry companies are pursuing or have gained ISO 14001 series certification, as a stepping stone to one of the three forestry-specific standards. By implementing an environmental management system, companies can ensure they have the policies, resources, procedures, programs, and training in place to identify environmental risks and manage for them. As a generic environmental management system, ISO 14001 is silent on Aboriginal issues *per se*, but may help companies organize themselves to better address these concerns.

Developing an 'Aboriginal' Brand or Standard

There has recently been some discussion on the merits of marketing 'Aboriginal' branded forest products, or indeed of establishing a certifiable 'Aboriginal' standard. For many, the idea would make sense only if it is clear that (a) the brand or standard would significantly increase products' marketability; and (b) that the products are of particularly high quality. It is important to keep in mind that the branding works both ways, as the Aboriginal origin adds value to the product *and* the product's quality rubs off on the reputation of Aboriginal businesses – and as such can be a double-edged sword. Even so, there are concerns that developing a *certifiable* Aboriginal standard could conflict with efforts to address issues around Aboriginal rights and title through existing standards. Participants indicated that such a brand or standard would also likely be most applicable to value-added products rather than primary materials.

Statistics on Certification

The chart on the following page shows the amount and proportion of lands (in hectares) and annual allowable cut (in m³) certified to each of the various standards, nationally and by province. 'Total sustainable forest management standards' includes CSA, FSC, and SFI; 'all standards' also includes ISO, which is not a sustainable forest management standard *per se*.²⁰

²⁰ All figures derived from Kathy Abusow, 2004, "Canadian Forest Management Certification Status Reports", at <http://www.sfms.com/status.htm>. Certification data is as of December 31, 2004. Total SFM standards and all standards figures are less than the sum of each of their components, because some lands are certified to more than one standard and are only counted once. The '% of AAC' figure refers to the proportion of the total AAC that is certified to an SFM standard (i.e. not including ISO), and is derived by dividing Kathy Abusow's totals by the total AAC figures as listed in the National Forestry Database System. Figures for the territories and PEI are unavailable.

<i>Lands and AAC certified to sustainable forest management standards, by province, 2004</i>										
	CSA		FSC		SFI		Total SFM Stds (CSA/FSC/SFI)		All Standards: CSA/FSC/SFI + ISO	
	ha	m ³	ha	m ³	ha	m ³	ha	m ³	ha	m ³
	<i>(Millions)</i>								<i>(Millions)</i>	
Natl	47.4	43.3	4.4	1.8	35.5	35.2	86.5	79.5	151	129
BC	10.8	16.5	.25	.034	18.2	22.0	29.3	38.2	58.3	61.4
AB	8.5	9.6			3.6	2.4	12.1	12.0	18.9	15.5
SK	4.9	4.3					4.9	4.3	5.2	4.4
MB	8.5	1.6			2.0	0.9	10.6	2.6	11.5	2.9
ON	5.7	5.2	4.1	1.7	3.4	.29	13.2	7.1	22.1	12.3
QC	4.5	4.1	.027	.063	2.1	2.6	6.6	6.8	25.5	23.2
NB			1.4	-	4.7	6.1	4.7	6.1	4.4	6.5
NS	.63	.55	.0004		1.2	1.0	1.3	1.0	1.3	1.1
NL	3.8	1.5					3.8	1.5	3.8	1.5

While there are still considerable areas which could be certified, particularly in the provinces of Quebec and Ontario, it is important to note the impressively rapid growth in the total forest area certified that has been achieved to-date. Between June 1, 2002 and December 31, 2004, the area certified under CSA increased from 8.8 to 47.4 million hectares; under SFI from 8.4 to 35.5 million ha; and under FSC from 1.0 to 4.4 million ha.

Market Issues

Market conditions are of particular note because there is evidence that companies' efforts to build relations with Aboriginal communities tend to lag during adverse economic circumstances. In many cases Aboriginal relationships are seen more as long-term investments, and in difficult times some companies appear willing to risk future problems in order to cut costs, including around consultation, training, partnering and other initiatives.

The U.S.- Canada softwood lumber dispute has been a central cause of concern for the forestry industry in recent years. While the dispute is subject to bilateral negotiation and processes at NAFTA, the WTO, as well as national courts, many provincial governments are taking steps to address U.S. concerns, particularly by moving towards a more market-based timber pricing system. A very recent move in the dispute has been a reduction in tariffs from 27.2% to 21.2%, somewhat less of a reduction than the Canadian industry had anticipated.

Some First Nations have added an interesting twist to this complex dispute by filing amicus briefs to NAFTA, the WTO, and the U.S. Department of Commerce in support of the U.S. government's argument that Canadian pricing systems constitute an unfair subsidy. They have

done so on the grounds that current stumpage fees ignore unresolved land issues and First Nations rights to a share of royalties.

In general, the ongoing trade dispute has contributed significantly to the slump in the forestry industry, which includes a number of First Nations businesses, affects many First Nations employees, and compounds the difficulties for First Nations businesses attempting to enter into the industry. Recently, however, a booming U.S. home construction market has spurred a rebound in engineered wood production, which has reduced the urgency of resolving the trade dispute.

Another recent concern is the rise in the Canadian dollar relative to the U.S. dollar, which makes Canadian products less competitive in the important U.S. market. On the other hand, however, the rising Canadian dollar would lower the cost of capital inputs bought in U.S. dollars, so there may be a minor upside to the trend.

Industry Trends

Corporate Social Responsibility

Corporate social responsibility (CSR) represents the notion that corporations have responsibilities to society beyond their responsibility to maximize the economic value of shareholders' interests. This view is captured in the Conference Board of Canada's definition of CSR:

Corporate social responsibility is the overall relationship of the corporation with all of its stakeholders. These include customers, employees, communities, owners/investors, government, suppliers and competitors.

A central element of CSR is achieving *environmental sustainability* in a company's operations – also of key importance to forest sector firms, particularly in terms of their relationships with Aboriginal communities. Such commitments are guided by the same philosophy that underpins the international agreements discussed above, as well as by an acknowledgement that environmental and social goals cannot be achieved by governments alone, but that companies play a major role as well.

According to some of our interviewees, notions of CSR appear to have guided a shift in thinking in many forest sector firms: they have moved away from the traditional view that partnerships with Aboriginal communities must be justified by strong, short-term business cases, and that companies should be wary of – and even actively oppose – any shifts in government Aboriginal policy that might affect industry's control over forest resources. For many companies, First Nations relations were seen as 'downside' business concerns – the key goals were to avoid confrontation with First Nations that might interrupt the timber supply, and at the same time to resist attempts to transfer control over forest resources from industry to these communities. Over time, this approach has proven somewhat counter-productive for industry (not to mention the effects on Aboriginal communities), as confrontations were not always successfully avoided, companies' public reputations were endangered, and real opportunities for cooperative business dealings with Aboriginal communities were neglected.

Today it appears that many forest sector firms in Canada have integrated notions of CSR into company policy – and have thus made commitments to building effective working relationships with the Aboriginal communities that the firms count among their stakeholders. (It is important to note, however, that First Nations prefer not to be grouped in with other ‘stakeholders’ such as non-Aboriginal community groups, environmental organizations or others, because they have unique rights, particularly in relation to land, and need to be treated as governments and not ‘stakeholders’.) Now, some companies see merit in a strategy of building long-term trust with Aboriginal communities in order to position themselves as a preferred partner down the road, as First Nations conclude treaties, gain increasing control over forest resources, and build forest-related business capacity. Some indeed see positive Aboriginal relations as part of their competitive advantage in the market. Increasing cultural sensitivity among some company managers has helped, in part because such sensitivity leads to fewer misunderstandings in Aboriginal relations. There is still a debate within industry as to which approach is most profitable; trends seem to indicate that the balance is tipping towards increased cooperation and relationship-building.

First Nations Governance Issues

Finally, to round out our analysis of the context for the relationship between First Nations and forest sector firms, a number of developments internal to First Nations communities are of note. Many communities have recently taken a number of steps of their own accord to making their political and administrative structures more effective, accountable, and culturally legitimate.

Establishing Arm’s-Length Economic Development Corporations

Of greatest significance in the forestry context, many First Nation communities have established arm’s-length development corporations responsible for one or more First Nation-owned businesses, so as to insulate business decisions from the caprices of the political system. This has improved significantly on the traditional model, where Chief and Council were responsible for the everyday management of community-owned businesses, in addition to their myriad political duties. Interviewees from companies across the country have expressed great satisfaction at these advances, as the instability of the two-year election cycle in place in First Nations was seen as a prime deterrent to putting resources into partnership-building with these communities.

Tribal Council Coordination

Another important trend which can aid stable relationships between First Nations, federal and provincial government, and industry leaders is the building of ‘aggregated’ First Nation governance authorities such as Tribal Councils, Provincial/Territorial Organizations, or Treaty Organizations with involvement in forest management. (‘Aggregation’ refers to a formal arrangement among governments to share or delegate services and powers through the creation of new public bodies or by shifting responsibilities from one level of government to another).

These aggregated bodies can often build a greater level of capacity than each member community might be able to on their own, and can sustain coordinators – including of government relations, resources, forestry, training or business activities, for example – who can build long-term relations with players on the industry or government side.

Tribal Council roles in Forest Sector Activity

Tribal Councils (TCs) can play a useful role in coordinating relations with forestry companies in the traditional territory, but require operating funding from government (both levels can participate) and industry until revenues from businesses allow them to sustain themselves. Forestry coordination units at the Meadow Lake TC in Saskatchewan, the West Region TC in Manitoba, or the North Shore TC in Ontario provide a variety of important functions to their member communities that small communities might have difficulties managing independently, such as:

- Coordinating Tribal Council or First Nation - owned businesses, seeking out new opportunities
- Effectively negotiating tenures, terms of business partnerships, accommodations of Aboriginal rights, and other tough issues
- Helping community members access jobs and training
- Protecting fish and wildlife habitats, traplines, and sources of medicines
- Protecting culturally sensitive sites
- Encouraging youth to get involved in forestry
- Coordinating proposals and funding requests and accessing various government programs
- Maintaining positive personal relations with industry and government officials
- Providing input into policy decisions at the Provincial level
- Keeping abreast of new knowledge generated by forestry related networks and institutions
- Effectively guiding strategic planning at the community level around forest sector participation
- Facilitating stability in relations with outside players while Chiefs and Councils at the First Nation level change every 2 years
- Building relations with other groups such as environmental organizations or non-Aboriginal community associations
- Connecting to national-level advocacy efforts such as those managed by the National Aboriginal Forestry Association and the Assembly of First Nations

Many First Nations do prefer to handle their affairs independently, and there are a number of issues (particularly around land) that will always remain in the hands of community authorities. While government and industry have generally encouraged aggregated approaches for a variety of reasons, not all First Nations can be expected to choose such a model, nor are these models universally appropriate.²¹

²¹ For more information on aggregation, see Institute On Governance policy brief #18, “Aggregation and First Nation Governance”, by John Graham, available at www.iog.ca.

Some participants indicated that ‘aggregated’ approaches to First Nation participation in the forest sector can be helpful, but can also cause problems. If one particular First Nation has adequate capacity on its own, it is easier to sustain community and political support for a particular venture than if the politics of a number of communities need to be accommodated. Thus companies wishing to enter into relations with a group of First Nations can either do so by concluding separate but similar agreements with each community individually, or by building the relationship with a representative body (a Tribal Council, for example). Generally land issues need to be dealt with on a community-by-community basis, though there may be roles for an aggregated tier of First Nations government in other areas, such as training, environmental management, business structuring, and so on.

In some cases companies have developed close relationships with forestry coordinators located at the Tribal Council level, but when it comes time to dealing with particular First Nations, they have found the communities inadequately ‘bought-in’ to the decisions made on their behalf, which can stall initiatives that were expected to proceed smoothly. A number of participants pointed out that ‘everything in the forest sector happens on the ground’. In other words, productive relationships can be built between mill managers and entrepreneurs in First Nations communities, and the further the people making decisions are from the situation ‘on the ground’, the less will be achieved. There also exists the risk that member First Nations may withdraw from Tribal Councils, as their authorities are delegated rather than permanent. This possibility can weaken the agreements, relationships, and business deals the Tribal Councils have forged with outside companies. So there are differing views on the effectiveness of aggregation.

Conclusion

This completes our survey of national legal, policy and industry trends. When taken together, they lead to the conclusion that First Nations participation in the forest sector will continue to increase, albeit unevenly across the country. In the next section, we turn to an analysis of how these and other trends play out in each of the provinces and territories.

III. Provincial and Territorial Analyses

The following section details some of the chief policy issues in each province and territory nationwide, with the exception of Nunavut. In each section, most of the following issues are discussed, where possible:

- An overview of the size of the industry, major companies, and the size of the First Nations population, including any available statistics²²
- An overview of the treaty, land claims, and land tenure context
- Any key legal rulings at play (beyond those discussed above in the ‘legal context’ section)
- A depiction of the current level of First Nations involvement in the forest industry and the extent of First Nations – forest sector partnerships.
- Market environment factors particular to the province or territory
- Some comments on the nature of the operating environment for business
- A description of the chief elements of the provincial or territorial government’s policy approach – both currently and in comparison to the past, and views of industry and First Nations interviewees of these policies
- An overview of exceptional federal involvement in the province or territory
- An overview of impressions as to the degree of ‘progress’ in recent years and current trends

Yukon

Overview

There are 7,927 status Indians connected with the 14 First Nations in the territory, amounting to more than a quarter of the territorial population.

Trees grow quite slowly North of 60°, dictating long rotation intervals and an estimated annual allowable cut of only 325,000 m³. Inventories are less complete and thorough than in other parts of the country, so it is possible that this AAC is in fact over-estimated. While trees cover more than half of the Yukon, only around 15% of the territory is capable of sustaining commercial harvesting.

There is relatively little forest industry activity in the territory, and what exists is confined to a modest commercial forest belt in the South, which extends from the B.C. boreal forest. There are no large tenure holders; small operators handle most activity. Three large mills have opened over the past 15 years, though all closed after a short operating period. Because of these and other failures, some believe that speciality, value-added products, firewood and roughly processed lumber for local consumption are likely the only economical uses of the territory’s wood resources in the long-term. However, on some occasions the territory has exported wood to mills in adjacent provinces.

²² Statistics are repeated from the chart in the ‘statistical overview’ section.

Treaty and Land Claims Context

In April, 2003, Ottawa handed control of land and resource development to the territorial government, a function previously handled by INAC. However, INAC continues to play a major role in the territory, particularly in relation to the negotiation and implementation of self-government. Of the Yukon's 14 First Nations, 9 have completed self-government agreements, 3 more are in a ratification process expected to be completed in Spring, 2005, and the remainder should also reach self-government status in the medium term. The federal government has recently made great efforts to advance self-government agreements in the territory in order to ensure a good fit with the devolution of powers to the territorial government. Those First Nations that have settled agreements now have control over substantial land bases and have received significant cash transfers as well.

The situation is such that the roles and responsibilities of federal, territorial and First Nations governments are very much in flux. At the same time, there also exist a number of significant gaps in the area of natural resource and environmental management, gaps which are not present in the South. However, the territorial government is rapidly assuming the range of roles required under its new jurisdictional authorities for forestry, including the inventorying of the forest resources, calculating the annual allowable cut, and establishing a forestry department. Significant progress has already been made.

Extent of Partnerships, First Nations Involvement

Yukon and First Nation governments are also working jointly to develop forest management plans that will apply to both First Nation and public lands. The territory is divided into 13 forest management units and 14 First Nation traditional territories. The Yukon and First Nation governments are responsible for the final approval and implementation of forest management plans in lands under their jurisdiction. Three collaborative forest management plans are currently underway in the Champagne & Aishihik, Teslin Tlingit, and Kaska Nation traditional territories.

There are around 5 or 6 First Nations in the territory that have particular potential to become involved in forestry development. Many of these communities face similar challenges to other parts of the country, such as a lack of forestry-related skills, and limited financial, managerial, and business capacity. Most federal funding to First Nations in the territory is thus aimed at building capacity rather than developing new business projects.

The Yukon government held a Yukon Forest Summit in 2001, a broad consultative exercise with First Nations, Renewable Resource Councils, and INAC, as part of the development of a forest policy framework for the territory. As the government explained, the results of the exercise will be used "to develop informed Yukon Government positions and policies on forestry matters in the territory ... ; and to help form the Yukon Government's long term vision for forest management and development in the Yukon". Most parties appeared focussed on ensuring that an ecosystem-based management framework is implemented, one that meets local social, environmental and economic needs.

Northwest Territories

First Nations Populations and Land Claims

The Northwest Territories is home to some 15,855 First Nations people, accounting for 37.6% of the territorial population. There are 26 First Nations communities in the territory. It is estimated that around 20% of the total population, or some 8,000 people, reside in areas that may be able to develop a forest-based economy.

There are two principal treaty groups in the Northwest Territories – Treaty 8, and Treaty 11. Five First Nation groups have asserted land claims, 2 have been settled, one more is in progress, while 2 others are outstanding.

The Territorial Forest Industry

Roughly 20,000 to 35,000 m³ are harvested in the territory annually, largely for fuelwood. Some 20-30% of NWT homes use fuelwood for part or all of their heating. For this reason and because of the high price of other forms of heating, fuelwood is considered a ‘right’, and territorial residents are granted free timber cutting permits for firewood, a long-standing policy that is expected to endure. It was pointed out that from a carbon emissions perspective, use of wood for fuel is better than fossil fuels, for the forests renew naturally and sequester carbon in the process. Firewood prices in Yellowknife are currently very high, and there is some hope that local harvesting in the Fort Providence area may be able to meet this considerable demand, if area First Nations consent and local entrepreneurs are supported. However the territory’s limited transportation infrastructure is a major impediment to efforts to meet local need with local production.

There have been periodic ‘spikes’ of industrial use of white spruce sawlogs in the territory, including a short-term venture by Ache Dene Koe First Nation near Fort Liard to supply logs to a Fort Nelson mill on a volume of between 50 to 100,000 m³. The peak harvest in the territory occurred in the early 1990s; today there are up to 10 small sawmills sporadically operating in the territory – including in Fort Resolution and Hay River, where First Nations have developed proposals to expand their business capacity. Only three mills operate consistently every year, employing a modest number of people. The territorial government is a partner in some of these ventures. As with the Yukon, the NWT has on occasion exported logs to adjacent provinces for milling.

With this low level of local milling, NWT is in fact a net importer of lumber by a substantial margin, despite the tremendous transportation costs required to ship it from the South. Much of the economic development efforts in the forestry area are thus focussed on dealing with this situation and producing for local consumption. But hopes to establish a planing or kilning operation in the territory remain unfulfilled at the current juncture.

Because much of the territorial forests are on the verge of having economic value, a small shift in economic conditions in the South (that would raise the price of wood products) could give rise to a significant increase in production in the territory. Generally the view is that the pressures will never be tremendous, however, and the forests will remain of marginal value for industrial production.

First Nations Participation

The effective policy stance of the territorial government is that any significant ventures (i.e. on volumes of more than 1000 m³) in the territory will require First Nations consent. Several departments and governments have strong First Nations consultation requirements around various areas of activity. In practical terms, it is unlikely that any major forestry development will occur in the territory without First Nations involvement. First Nations have managed to stop planned forest development ventures in their traditional territory in the past, in part because royalties offered were not adequate.

The territorial government is currently in the process of attempting to build First Nations capacity in order that they can identify and exploit forest-related economic opportunities. There are also number of ‘champions’ in several First Nations communities encouraging their youth and other community members to get involved in forestry. The federal government has provided some support in this regard, and a number of First Nations youth are participating in training programs related to environmental management. But resources are limited in comparison with the more ambitious initiatives underway in the South.

Interviewees explained that forest management practices in the North vary considerably in comparison to the South, as the non-timber forest values are of much greater importance. Because so much of life in the territory revolves around forest-based activities such as hunting, fishing, trapping, and ecotourism, many communities place great emphasis on the conservation of the resource. Many point out that forest management research and priorities set in the South are not adequately applicable to the North, and that a separate research effort should be mounted for Northern forests, perhaps applying to the territories, Northern parts of the Prairie provinces, Ontario North of 51°, Northern Quebec, and Labrador. Participants indicated that one of the key connections that needs to be made in these areas is between climate change policy and forest policy, as the potential for sustainable development of Northern forests is far greater if the environmental services they provide are recognized and commodified, perhaps through schemes such as carbon trading. It should be noted that there is debate, however, as to whether the Northern forests are carbon ‘sinks’ or ‘sources’, because of the large number of wildfires.

Evolving Jurisdictions

As in the Yukon, the Northwest Territories is in the process of devolution of some federal jurisdictions to the territory. There are currently three governmental authorities controlling certain aspects of forest management. First, forest resources (including fire management) are the responsibility of the territorial government, and have been so since they were devolved from INAC in 1987. Ten years later, INAC developed the Mackenzie Valley Land and Water Review Board, which issues land use permits and thus has regulatory authority over some aspects of forest management. For political reasons, First Nations chose not to participate on this Board. Finally, the federal government has retained enforcement responsibilities relating to land management. Some streamlining and clarification of the three roles is still underway. Generally the territorial government can enforce *forest use* regulations, but if the issue is more related to *environmental protection*, the Territory has to approach the federal government for enforcement. One measure might include a recommendation to the Mackenzie Valley Board to revoke a land use permit, for example.

This regulatory system is seen as a major impediment to forest sector development, as the regulatory requirements of all three authorities involved can be relatively onerous.

As devolution to the territorial government unfolds, many authorities will also be transferred to First Nations as part of self-government negotiations. The territory sees its position in this process as essentially a 'sieve', retaining only a few responsibilities as they are passed on from the federal government to First Nations. For the territory to manage this responsibility effectively, however, a 'baseline' regime is required, including forest inventories, annual allowable cut calculations, and capacity building.

Mackenzie Valley Pipeline

It is important to note that the form of the Northwest Territories' forestry industry and the policy context in which it functions is now and will be heavily influenced by the proposed Mackenzie Gas Project, including the Mackenzie Valley Pipeline leading to southern markets. The project will amount to a multi-billion dollar investment and will generate tremendous revenues for the territory and its communities. A feasibility study for the project has been completed, and a four-year project definition phase before construction begins is gradually coming to an end. The project definition phase involves the following activities, many of which will affect forestry activities and First Nations involvement:

- Engaging in public consultation,
- Gathering Traditional Knowledge from local people,
- Conducting technical engineering studies,
- Conducting environmental field work,
- Assessing the effect of the project on local communities,
- Developing northern benefits plans that address education, training, employment and business opportunities, and
- Preparing regulatory applications.

The effects on forestry are various: road and pipeline construction necessitates and facilitates timber harvesting; gas field and pipeline projects require revenue sharing agreements with First Nations groups and spur self-government negotiations; priority is given to improve resource-related consultations processes with First Nations; and new revenues to First Nations from pipeline-related activities can lead to investment in other activities such as forestry. On the other hand, conflicts and disputes around pipelines can affect timber operations or cooperation on other issues.

British Columbia

The following section on the policy context in British Columbia derives from a separate study conducted in the Spring of 2004 by the Institute On Governance, involving 17 interviews with industry, government, and First Nations respondents. The information has been updated here in order to ensure the full national picture is covered.

The B.C. Industry

In British Columbia, there are 51.74 million hectares of timber-productive lands, 95% of which is owned by the province, 4% privately, and the remainder by the federal government. Home to some of Canada's most productive forests, B.C.'s total timber allocation constitutes more than 30% of the total nationwide. The 2001 B.C. timber harvest amounted to 73.64 million cubic metres,²³ approaching the total annual allowable cut (which in the following year was calculated at just over 75 million m³). In B.C., 90% of forest products are exported outside the province, with a value of \$14 billion, more than half of B.C.'s annual exports.²⁴

Since 1997, the B.C. forestry industry has been in a serious crunch: total B.C. forest revenues in 2002-2003 shrunk by a third, from \$1.85 to \$1.12 billion, resulting in the closure of more than 27 mills and the loss of 13,000 forest jobs. Furthermore, the return on capital in the industry over 1996-2000 was a mere 3.3%, less than half the Canadian average of 7.1%, and well below the level required to attract reinvestment and maintain industry competitiveness.²⁵ (Recently, however, lumber sector profits, spurred by a booming U.S. housing market, have rebounded somewhat).

Aboriginal participation in the industry

British Columbia is home to 116,136 status Indians, about 2.8% of the provincial population. In B.C., Aboriginal forest lands cover some 198,000 hectares, 0.38% of the province's timber productive lands.²⁶ In addition, the annual allocation of Crown timber to First Nations groups totalled some 3.7 million m³ as of October, 2003, 6.1% of the provincial total, a figure which is currently in flux with a tenure reallocation process and temporary increases in the annual allowable cut.²⁷ At this point the First Nations allocation was divided among B.C.'s 198 communities into no less than 141 tenures – most of which are woodlots and other small tenures of less than 20,000 m³; 30 of which are between 20,000 and 100,000 m³; only 11 are more than 100,000 m³.²⁸ These allocations are also disproportionately short-term, non-replaceable tenures. These figures are changing significantly at the moment, however, because under the B.C. government's Forestry Revitalization Plan, 20% of existing tenures held by major companies are being reallocated, including 8% to First Nations (more information on this initiative follows).

While First Nations play a vital role in the development of Forest Stewardship Plans, there are very few trained, professional foresters who are Aboriginal. One respondent claimed that only 12 of B.C.'s 3500 professional foresters are Aboriginal.

Treaty and Land Claims Context

In 1990, the B.C. government declared it would proceed to negotiate and settle First Nations land claims, but progress has been slow. In 2002, progress was affected somewhat with the Campbell government's controversial treaty referendum. There have been achievements over the years all

²³ Derived from the National Forestry Database Program (NFDP), Compendium of Canadian Forestry Statistics, 1991 inventory data. See <http://nfdp.ccfm.org>.

²⁴ Government of British Columbia, *the Forestry Revitalization Plan*, at www.for.gov.B.C.ca/mof/plan/frp/pdf.htm

²⁵ Ibid.

²⁶ National Aboriginal Forestry Association, *Aboriginal-held Forest Tenures in Canada*, October 2003, pp. 60-70.

²⁷ Ibid

²⁸ Ibid

the same, as there are now some 45 negotiating tables open, with some 55 of B.C.'s 198 First Nation communities represented (some communities are negotiating at common tables). These communities represent about two-thirds of B.C.'s total First Nations population. Five First Nations have signed Agreements in Principle – the blueprints for a final treaty – and are currently engaged in negotiations on the final stage.

While the extent of Aboriginal rights and title is partially determined through these negotiation processes as well as through court rulings, the courts have ordered the government to consult and accommodate First Nations where there is *prima facie* evidence of the existence of Aboriginal rights. The government is thus pursuing a number of Interim Accommodation Agreements with many First Nations, central elements of which include forest tenure reallocation, and revenue sharing agreements, which have been enabled through recent legislation.

The Government of British Columbia has developed a framework to ensure the appropriate, consistent, and fair application of accommodation measures province-wide. This framework guides the consultation and accommodation activities of the Ministry of Forests. The chief elements of the framework are as follows²⁹:

- Accommodation should provide a clear and demonstrable economic benefit to British Columbia
- Accommodation should contribute to certainty with respect to the management and development of Crown land and resources
- Accommodation should be undertaken when there is evidence of a sound claim to Aboriginal rights and/or title
- Accommodation should be acknowledged as a fulfilment by the Province of a legal obligation
- Accommodation should be founded on a sound business case and increase First Nations' stake in the economy; and
- Accommodation should be managed across government and Crown agencies in a manner that is consistent, fair and mindful of precedent.

Particular Legal Rulings

While the *Haida-Weyerhaeuser* decision (see explanation in the 'legal context' section above) has expanded the scope of consultation requirements for government, the Province of B.C. has adopted legislative measures that reduce the number of decisions that require Ministerial consent and would therefore trigger consultation, particularly in relation to land-use planning and tenure renewal. Those decisions that will trigger consultation, however, will likely need to cover more ground. Of particular note is the removal of Ministerial consent for tenure transfers or changes of control, and a shift from a prescriptive method of forest resource planning which concentrates on *cut-block level* plans, to a more results-based, flexible approach looking at the larger *forest development blocks* more generally. More detail on provincial legislative initiatives follows.

²⁹ B.C. Ministry of Forests, 2003, "Strategic Policy Approaches to Accommodation", at <http://www.for.gov.bc.ca/haa/Policies.htm>

Legislative Developments

The legislative and regulatory framework for the First Nation – forestry industry relationship in the Province of B.C. has transformed rather dramatically in recent years, particularly with the shift from an NDP to a Liberal provincial government. The changes have been made in response to a number of factors, particularly the U.S.-Canada Softwood Lumber Dispute and the related industry-wide slowdown in recent years, as well as the court rulings discussed earlier in this paper. The B.C. Government's *Forestry Revitalization Plan* included four separate pieces of legislation as well as many changes to regulations. Changes have been felt in particular in five areas: (a) a tenure reallocation process; (b) the introduction of revenue-sharing agreements; (c) industry deregulation; (d) a shift to results-based forest management; and (e) changes to government programs and departments.

a) Tenure Reallocation

One chief element of the Forestry Revitalization Plan is a long-term goal to reallocate a total of 20% of the tenure currently held by about 28 major companies, as follows:

- Roughly 10% to B.C. Timber Sales, a new government organization responsible for auctioning the timber on the open market, in order to help set 'market-based' stumpage rates (part of the process of addressing U.S. grievances over Canadian lumber pricing);
- Roughly 2% to community forests and woodlots; and
- 8%, a total of about 3 million m³ per year, to First Nations across B.C. (excluding urban First Nations and treaty signatories) as part of Interim Accommodation Agreements.

The great majority of these First Nation tenure allocations are short-term (generally 5 years), and relatively small in size (on the order of 50 - 100,000 m³ per year or less), because of the large number of communities involved. The rationale for the 8% figure is that it is roughly proportionate to the First Nations share of the rural B.C. population, based on INAC figures. This tenure is also intended to be comparable on average to what remains in major companies' control in terms of quality, profile and potential profitability.

Almost all the First Nation tenures are also 'renewable'. This means that there is no legal requirement for the government to replace the tenure after the tenure period is expired where all commitments have been met, unlike the 'replaceable' tenures issued to major companies (which are also generally granted for longer terms). While the First Nation tenures are less permanent from a legal perspective, the B.C. government has indicated a willingness to renew the tenures for an additional 5-year period where First Nation commitments have been met and if the community is interested in further developing the resource. Where requested, some of the tenure agreements have also included 'opt-out' clauses, so that the First Nation can withdraw without penalty if they do not wish to continue operating the tenure. As the B.C. Ministry of Forests indicated, the government is reluctant to offer more permanent tenures to First Nations under Interim Accommodation Agreements, so as not to pre-empt the treaty process, which is intended to resolve such issues more definitively.

The 8% portion of the tenure is still in the process of reallocation, as Interim Accommodation Agreements are signed. But in addition to this 'core' reallocation, the provincial annual allowable cut has been temporarily inflated to handle beetle- and fire-affected wood which needs

to be salvaged, and some other ‘under-cut’ positions have been made available to First Nations, so the total current tenure allocation to B.C. First Nations is now in the 5 to 5.5 million m³ range, according to the B.C. Ministry of Forests. Much of this ‘additional’ allocation is of lesser economic value than the ‘core’ reallocation.

A number of interviewees expressed concerns over the formula the government is using for the tenure awards, as the stated assumption was that the tenures would be distributed to non-Urban First Nations on a largely per-capita basis. Some interviewees indicated that they believed much of the tenure was being redistributed to relatively few of the Province’s 198 First Nations. The B.C. government pointed out by way of explanation that the availability of timber varies widely across the province (there is more forest per capita in the North than in the South), as does the willingness of First Nations to take on the tenures (the tenures are often too small and uneconomical to justify operating independently). The Ministry of Forests indicated that it has avoided taking the issue of the strength of a First Nations’ claim to the land into account in the allocation process, as it sees this as an issue best left to the treaty process or the courts. All the same, a degree of unevenness in the distribution of First Nation tenures may be necessary to ensure that at least some are large enough to stimulate viable First Nation forestry economies.

Some concerns were also expressed over the decision to exclude treaty signatories such as those in the Treaty 8 region from the reallocation, as it is seen as penalizing First Nations for entering into treaties and rewarding those that have not.

There is considerable debate as to how this tenure reallocation process will affect the relationship between First Nations and the forest industry. Some on the First Nations side believe the reallocation process is motivated more by the need to move to a market-based pricing system in reaction to U.S. grievances, and the need to be ‘seen to be doing something’ with respect to Aboriginal claims than by the genuine desire to promote the socio-economic development of Aboriginal communities and properly address land issues.

Regardless of such suspicions about the political motivations, many have pointed out that the allocations to First Nations may be problematic in several respects: first, the tenures are often too small for First Nations businesses to gain access to capital and operate them independently; second, the five-year time frame and non-replaceable nature of many of the tenures is insufficient to allow First Nations businesses to access loans and pay off their investments, and furthermore leaves too short a window for the businesses to market their product effectively; and third, the tenures are too often of marginal economic value (as they are from undercut positions, or affected by beetles or fire). Finally, there is also concern that even where the tenures are of sufficient size or duration, some First Nations lack the managerial, business, and financial capacity to manage the tenures, and that major forest companies or ‘outside’ contractors will be brought on to handle these tasks – so the situation hardly changes in practice.

Thus for some, the tenure awards run the risk of “setting First Nations up for failure”. As this could be potentially more damaging to First Nations’ reputation and confidence (not to mention their finances and credit rating) than not gaining the tenures in the first place, some have recommended that First Nations not take on the tenure awards unless they are of an economical size and duration. This message may be particularly important because the reallocation process appears to have raised false expectations in some communities – even despite words of caution from the provincial government – which may lead to frustration.

On the other hand, the reallocation process has already required and will in the future require forest companies to enter into agreements with the First Nations tenure holders in order to cooperatively develop the resource, agreement. Such a requirement should yield tangible employment, contracting, and other benefits to the communities. And furthermore, one of the key means by which First Nations can develop managerial, business, and financial capacity (apart from through the education and training of their members), is through such partnerships with established companies. Thus some First Nations voices have expressed hope that the 8% share will grow to 20% down the road – a share comparable to that of a larger B.C. forest product company – at which point real economies with greater benefits to the communities involved might be realized. While there are deficiencies to the tenure reallocation process, some argue that First Nations economic development requires small, steady steps – progress may not come as rapidly as many hope.

b) Revenue Sharing

With tenure reallocation, the other principal element of the Interim Accommodation Agreements are provisions for the sharing of forestry revenues. The Ministry of Forests' budget included \$15 million for this purpose in 2003-04, rising to \$30 million in 2004-05 and \$50 million the following year, a level expected to continue or to rise in the future. Between September 2002 and April 2004, the Minister of Forests signed 32 Interim Accommodation Agreements with First Nations, committing over \$41 million in forestry revenues in addition to the tenure awards discussed above. Some respondents stated that while revenue sharing is a positive step, particularly from a legal perspective, a situation where First Nations gain such revenues by actually controlling, managing, and developing the forest resources themselves might be a preferable long-term goal.

c) Industry Deregulation

Another major element of the government's new approach is a departure from the traditional prescriptive system of forestry regulation to a more flexible, results-based model, a process implemented over the course of 2004. This will involve eliminating the following requirements for tenure holders:

- Minimum cut requirements (this became problematic as the market soured because companies, in order to avoid losing their tenures, were forced to cut wood that they were unable to process or sell);
- “Appurtenancy” requirements – for companies to build local mills in order to gain access to tenures;
- Penalties for mill closures;
- Ministerial consent requirements for tenure transfers or changes of control (as discussed above, this will make things more flexible and less bureaucratic for logging); and
- Limitations on consolidations and subdivisions of forest tenures.

These regulatory and legislative changes have facilitated a major process of consolidation and rationalization of the BC forestry industry. At least 27 mostly smaller mills have closed across

B.C., due to a variety of pressures including the softwood lumber dispute.³⁰ Some have been replaced by capital and technology-intensive ‘supermills’. Several mergers have occurred, spurred by the need to secure larger tenures to compete in global markets, thus tenures are concentrating somewhat in the hands of a few major tenure holders, particularly in Northern B.C. Some interviewees expressed concerns that First Nations will be adversely affected by this process, particularly through the closing of local mills in small communities in which many First Nations people had found work (though these worries may not be borne out for the time being as a recent surge has many companies recalling former employees³¹). There are also concerns that industry consolidation will strengthen the hand of large milling companies vis-à-vis the independent harvesting and hauling contractors, an area in which First Nations business is concentrated, and where there are already very low margins.

One area of significance for First Nations business that remains unchanged, however, are the contract and sub-contract regulations of Bill C-13. These stipulate that major companies must have a certain portion of their operations under replaceable contracts, and that if contractors are doing their job satisfactorily companies cannot simply hire other groups on to replace them. These regulations are particularly restrictive in the areas of harvesting and hauling, but not as much in silviculture. While the regulations are meant to protect contractors in the long-term, some point to them as inadvertently restricting First Nations participation.

d) Results-based Forest Management

Under the deregulated model, forest planning will now take place at the broad forest development block, rather than the cutblock level. The new ‘Forest Stewardship Plans’ (replacing the old ‘Forest Development Plans’) will require consultation with Aboriginal communities in identifying sites and features of cultural importance in the forest as a whole, concerns which will have to be addressed and accommodated. While the shift is still underway and the implications for First Nations remain somewhat unclear, it seems the change will be a ‘double-edged sword’ for these communities. On the one hand, Aboriginal communities will be able to voice their concerns in a more comprehensive and less urgent manner than before, where they tended to have to ‘chase companies block to block’. On the other hand, however, the shift will also present challenges as many of these communities are only now coming up to speed with the old system – especially in terms of getting Geographical Information Systems online – and it will be some time before they can adapt to the new model. One concern is that no measures have been taken to help First Nations through this transition.

e) Government reorganization

In recent years there have been a number of other changes in government, including a reduction in some provincial programs focussed on increasing Aboriginal participation in the forest sector, particularly through Forest Renewal British Columbia, which used to provide incentives for companies to hire Aboriginal employees and contractors and engage in other relationships with First Nations. Also, the old Ministry of Environment was split into two departments, the Ministry of Water, Land, and Air Protection, and the Ministry of Sustainable Resource

³⁰ Government of British Columbia, *the Forestry Revitalization Plan*, at www.for.gov.B.C..ca/mof/plan/frp/pdf.htm

³¹ Peter Kennedy, “Lumber sector thrives despite trade war”, *Globe and Mail*, April 19, 2004.

Management. This change, some believe, has added complexity to forest management processes.

Consultation Approaches

The approach B.C. forest sector firms take to consultation around Forest Development or Stewardship Plans varies significantly. Some companies resent having to play this role, and see themselves ‘picking up the slack’ where government has failed. Many companies, however, are now committed to consultation and accommodation with affected Aboriginal communities in drafting these plans, particularly as can be part of certification processes. Some companies have corporate-wide policies that make broad (albeit vague) commitments on these issues; in practice, however, most companies restrict themselves to accommodating site-specific Aboriginal land use values.

Some First Nations respondents did indicate that companies are generally willing to respect site specific requests – relating to camps, cabins, graves, wildlife habitats, and so on. But on other requests, relating for example to protecting berry-picking areas, companies may respond by asking communities to simply move on to other areas. One First Nations interviewee was concerned, thus, that giving in on such issues can over time amount to “death by a thousand cuts” – and render accommodation meaningless.

Issues of cultural importance to First Nations communities are not, however, limited to site-specific matters. Many First Nations, for example, object to the use of chemical pesticides and herbicides that are widely used in forestry operations – an issue which they may be able to bring to the international arena through environmental campaigns. Another issue of particular importance in the coastal region relates to the preservation of culturally-modified trees (trees that bear the marks of traditional Aboriginal use), which cannot all be identified during consultation processes and at a certain point must simply be left in the hands of loggers, who may or may not leave them standing. The cutting of culturally-modified trees is a particular ‘hot-button’ issue for First Nations, particularly in the context of treaty negotiations where such markings can help identify Aboriginal title.³²

One particular question for companies is whether to take special measures to incorporate traditional ecological knowledge techniques in data gathering. Some companies are indeed open to this possibility, handling it on a case-by-case basis. In general, however, the issue of funding for First Nations participation in consultation is critical – as First Nations interviewees indicated, they “don’t have this knowledge off the top of their heads”. Achieving ‘meaningful consultation’ can mean hiring a forestry technician, as well as engaging elders in Forest Stewardship Plans, and using expensive photographic and Geographic Information System technology. Many suggested that government funding may be required for such activities.

At some point consultation will always be difficult. Many communities are small and they often have only one person dealing with all government and industry relations issues. Sometimes language issues can complicate things further as well. As one participant explained, First Nations officials are forced to be generalists – as they cannot afford specialized staff, and do not have the time or technical expertise to look through complex planning documents. Community

³² The B.C. government has produced a handbook on culturally-modified trees, available at <http://www.for.gov.bc.ca/hfd/pubs/docs/mr/mr091.htm>

officials often have to handle land use, forestry, and business management functions, as well as sometimes serving as councillors in their communities. The form and extent of consultation – and particularly funding arrangements – will likely continue to be an important issue in forest sector partnerships, even as courts and governments provide increasingly detailed policy guidance for the parties involved.

Key Policy Concerns

A few general comments can be made about the state of First Nations – forestry industry relationships in British Columbia:

- “Uncertainty Reigns” – Pending court decisions, ongoing trade disputes, and legislative transformations underway are causing considerable uncertainty for all parties. The situation is very dynamic both for industry and First Nations.
- There is a great deal of controversy over recent legislative changes by the provincial government – Some measures, such as the permitting of direct tenure awards to First Nations, are generally seen as positive, necessary steps. But there is also considerable debate around the following key issues:
 - Tenure Reallocation – how to achieve fairness in the distribution of tenure to First Nations while still allowing for economies of scale
 - Revenue Sharing – how to ensure that revenue sharing meets legal requirements while moving First Nations along to a position of increased economic autonomy
 - Industry Deregulation – how to ensure long-term industry profitability and growth while minimizing the socio-economic costs to communities of transition
 - Results-Based Forest Management – how to help First Nations adapt to the new system and to ensure that sustainability in forest management is achieved
 - The B.C. Treaty Process – how to ensure that forestry policy is consistent with longer-term treaty and land claims agreement goals
- As participants from all sides commented, First Nations will only be able to reap significant economic benefits from forest sector activity if they are granted long-term, replaceable forest tenures that are large enough to warrant major capital investments. Many of the tenures currently being awarded to First Nations are non-replaceable, of very short term, small in size, or focussed on areas affected by wildfires or beetle infestations, and as such are of limited economic value. But a fundamental problem in the tenure allocation process – one unlikely to be resolved easily – is that the 8% portion destined for First Nations simply cannot be divided up equally among all of B.C.’s 198 First Nations while maintaining economies of scale necessary for business profits.
- Resolving land issues – in particular through the Treaty Process – is of fundamental importance to the long-term viability of the B.C. forest industry and to increasing First Nations participation in the forest industry. In addition, the resolution of land claims issues may allow B.C. to shift to area-based tenure (or even ownership) arrangements, which are necessary to create incentives for sustainable forest management in the long-term.

- There is no agreement as to the viability and success of joint ventures and other forms of business partnerships. While some models appear to be promising – in particular tripartite ventures between outside firms, First Nations development corporations and consortia of local investors – there have been many failed partnerships in the past. More information on best practices and lessons learned is required.

Progress over the past years

To generalize, there has been considerable progress in the overall relationship between the forest sector and First Nations in British Columbia in the past years. *All* respondents indicated that on the whole there is somewhat less confrontation, more conversation, more mutual respect, and indeed more cooperation in business activity, yielding tangible benefits to First Nations as well as to companies' bottom lines.

Alberta

Overview

Alberta is home to 47 First Nations, located in 120 reserve communities of varying sizes, with a total First Nations population of around 92,060 according to INAC figures, equalling 2.9% of the provincial population. In part of the north-central region of the province, Aboriginal Peoples (including Métis) comprise around 50% of the population, and the population is also significant elsewhere in the North. There more than 50 major players in the Alberta primary forest industry. The total annual allowable cut of some 24 million m³ is around 10% of the total nationwide.

Treaty and Land Claims Context

Cree, Chippewyan and Beaver nations in Northern Alberta are signatories to Treaty #8 of 1899, and are represented by the Grand Council of Treaty 8 First Nations. In central Alberta there are a few forest-land First Nations that are signatories to Treaty #6 of 1876. The provincial government takes the firm stance that the treaties ceded Aboriginal title throughout the province. Some Aboriginal participants suggested that the long-term trend of federal policy and court rulings could eventually prompt the Province to revisit this long-standing position on title, although provincial officials were clear that they do not agree with this hypothesis.

Since the Natural Resources Transfer Agreement of 1930 transferred Dominion lands to the Province of Alberta, Alberta has gradually assumed responsibility for a growing variety of functions on these lands, leaving national parks, military bases, and First Nations lands under the jurisdiction of the federal government. What remains is fully allocated in most parts of the province for a variety of purposes – including water, grazing, sub-surface development, forestry, etc. One piece of land can have eight to ten leases on it. All of these previous commitments can limit the Province's ability to allocate the land to First Nations.

There is debate over how assertive the Alberta government has been in resolving treaty land entitlement (TLE) issues in the Province. It appears however that substantial progress has been made over the years, but some First Nations people argue that this has been achieved despite, not because of, the approach of the Alberta government. Some provincial officials indicated,

however, that they were not aware of these views as they had not been expressed to the government directly. It has to be noted, though, that most TLE issues have been resolved or the processes are progressing relatively well, except for a few examples such as the Lubicon Cree. In most cases all sides have acknowledged that negotiation will yield better results than litigation, and the Province and federal government have been willing to make some significant concessions to the First Nations. Between 1996 and 2000, 11 TLEs have been settled. Up to 2004, some 212,500 acres of entitlement lands were transferred to First Nation control – a substantial portion of which are forest lands – in addition to cash transfers of \$204 million.

Forest Management Plans for some areas recently transferred to First Nations through TLE agreements have not been developed, a significant issue in the case of the more recent and larger settlements, which cover 15,000 to 40,000 ha. Participants indicated there may be a need to reinventory some of the forest lands in older TLE areas as well.

Interviewees indicated that an encouraging impact of the TLE process has been to bring industry to the table in order to ensure future business opportunities related to the lands and resources subject to increasing First Nation control.

Control of Forest Tenures

In the late 1980s, in an attempt to diversify the province's economy, Alberta granted a large number of tenures to major forestry companies. The government was criticized for negotiating these licenses without public consultation. The allocations led to a dramatic increase in timber production, as 90% of the annual allowable cut was allocated to companies operating long-term tenures. As of 2001, the industry provided some 23,000 direct and 17,000 indirect jobs.

The Alberta government is not considering tenure reallocation processes in the province because all of the annual allowable cut has been allocated (with possibly some exceptions in relation to hardwoods), and so new commitments to First Nations would require renegeing on previous commitments to other players. The TLE process in Alberta is seen as a more likely means to achieve greater First Nations involvement in the forest sector.

Particular Market Factors

The extensive activities of oil and gas companies in Alberta impact forestry development, for the two industries often have shared interests around road building, mapping, and indeed in ensuring that First Nations in their area of operations are accepting of the development occurring around them. Some major oil and gas companies actively engage forestry businesses and First Nations on an ongoing basis to ensure the fluidity of their fast-paced operations. On the other hand, a number of small players in the oil and gas industry lack in-house capacity to conduct proper First Nations consultations, a situation which requires some remedy. With a few important exceptions, sharing of costs and planning between energy and forestry industries has on the whole been limited and remains a significant outstanding issue.

A concern that affects the forestry and oil and gas sectors equally is a dearth of qualified personnel. Alberta has a relatively small labour pool relative to the size of its resource industry – and technical requirements for qualified machine operators and other jobs can be considerable. The booming oil and gas sector can generally provide more attractive employment conditions

than the more constrained forest sector, and a few of the skills are transferable between the two sectors. Labour shortages are thus a key motivating factor for companies to seek employees and contractors in First Nation communities. The outcomes of this tight labour market are generally positive in terms of First Nations employment, although the situation is highly problematic for industry. These labour shortages exist even despite the considerable impact of the softwood lumber dispute on the overall growth of the industry.

In terms of forest management standards, Alberta has had an additional quasi-certification program for quite some time, the Alberta Forest Products Association's *Forest Care* standards. Like other standards, it requires independent audits, quality reporting, and other components. Since this standard has existed for some time most Alberta companies are familiar with certification and in a position to attain it. Some have also been targeted by environmental groups so they are well aware of the usefulness of having certification standards. Some players in Alberta are pursuing FSC (including Alberta Pacific, for the largest Forest Management Agreement in the province) while others are concentrated on CSA, SFI and ISO certification.

One important market factor worthy of note that limits the viability of small scale operations on small tenures has been the rise in Workers Compensation Board premiums in Alberta, a development that makes traditional hand-falling operations uneconomical. The significant investment required to purchase machinery sets a high 'bar' that can be out of range for many First Nation entrepreneurs.

Extent of Partnerships, First Nations Involvement

There is a wide variety of relationships between First Nations and the many – upwards of 50 – large companies operating in the province. Some companies are quite proactive, while others are less so. On the other hand some First Nations are very interested in business opportunities, while others are more concerned with conservation of the ecosystem in the traditional territories.

Some companies' efforts have included providing First Nations with personnel, technical support. Most companies are making efforts to hire, train, and retain First Nation contractors, particularly for modest harvesting or silviculture jobs. Some of these small band-owned companies have managed to gradually expand on their successes. Other initiatives include supplying logs for particular community projects, or offering scholarship opportunities.

A number of major agreements around employment opportunities have been achieved, as well as some co-management agreements (although uncertainty over the outcomes of the Haida-Weyerhaeuser case led to the province considering revisiting this practice).

There have been experiments with First Nation - forestry company co-management agreements in Alberta, including significant tenure arrangements with Little Red River Cree Nation, Dene Tha, and several others. A few joint-venture sawmills have been proposed in various parts of the province, attempting to take advantage of taxation, location, and employment opportunities available in First Nation communities. Progress on implementing these partnerships has, however, been limited in most cases. The majority of publicly and privately held forest companies restrict their involvement with First Nations to providing employment and contracts; only a few have entered into joint ventures.

Nature of Business Operating Environment

The various factors at play in Alberta have created a fairly stable and clear operating environment for companies. The considerable economic opportunities available in oil and gas and forestry have encouraged the various players to adopt a pragmatic approach to doing business and build productive relationships over time. In Alberta more so than in many provinces, industry has taken relatively progressive approaches to First Nations relations, and so government has had to use the coercive measures at its disposal less and less frequently.

In general, Alberta leaves more forest management decisions in the control of companies than other provinces, such as B.C.: there is a ‘hands-off’ approach, with little legislation and regulation. As a result, industry self-regulates to a greater extent, including the handling of field monitoring, for example.

Provincial Policy Approach

The Alberta government is principally guided by the ‘Strengthening Relationships’ policy framework, developed in 2000. The framework essentially has two goals: to improve social and economic well-being of Aboriginal communities; and to rationalize the roles and responsibilities of the federal, provincial and Aboriginal governments. It includes a component relating to the Métis as well as First Nations.

Traditionally the Province has left industry to play a significant role in consultation with Aboriginal communities around resource development. In response to recent court rulings which put more onus on government, however, the Province is developing a First Nations - resource industry consultation protocol, for which the ‘Strengthening Relationships’ policy document will serve as an umbrella. Each of the six Ministries involved in the horizontal exercise will eventually have its own set of guidelines that fit into the consultation protocol. The process began in Fall 2003 with a series of open house meetings between First Nations and industry, and has proceeded through a fairly arduous redrafting process. The goal of the protocol is to ensure that industry acts as a ‘good neighbour’ in consulting with First Nations around particular projects, ensures that First Nation traditional land-use values are respected, and provides opportunities for economic participation. The protocol is intended to ensure that First Nations are involved both at the very beginning and throughout the Forest Management Plan development process. Once the plans are approved, forest companies will have to demonstrate ongoing First Nation involvement in order to gain yearly approvals.

Interviewees indicated that in a few cases First Nations have requested ‘consultation fees’ with companies before traditional use information is shared and business activities can be conducted. While in the oil and gas sector such short-term arrangements are understood as acceptable costs of business for larger companies, many smaller players cannot afford the First Nation fees, nor do the First Nations have the capacity to deal with the wide range of companies operating in their territory. Forestry companies also argue that they lack the resources of the oil and gas sector and that the costs of consultation in this manner can be too high. Many companies would rather ensure that their contributions are also used in a strategic manner that develops First Nation capacity in the forestry or oil and gas sector, rather than being used for other community purposes. Traditionally the Province has not stayed clear of this process, seeing it as largely a ‘business’ question, but it has now determined that a better course is to try to find means

acceptable to First Nations to gather traditional use information and share it in a more coordinated manner.

One of the goals of the draft consultation policy that is under development is thus to develop an efficient process by which companies can use data from First Nations' traditional use studies in such a way that protects it from wide dissemination but does not impede the pace of resource development. In this regard, the Alberta government has established a fund of \$750,000 per year over three years to conduct 'traditional use studies' in a number of First Nations across the province (note that the term 'land' is not used, so as not to spur land claims). The studies attempt to capture traditional ecological knowledge while it still exists, in order to determine the most important First Nation land-use values in areas beyond reserve lands. The oil and gas and forestry industries, INAC, Alberta Aboriginal Affairs, and the Canadian Forestry Service are all involved in the process. Access to the data which is collected is sensitive and will be restricted, however, because it could affect negotiations around TLEs and could endanger the identified sites. A Model Forest initiative in the foothills region in which West Fraser, the Canadian Association of Petroleum Producers, and a number of Aboriginal communities are taking part is also considering related issues. The results of these exercises will be useful to resource industry players and First Nations nationwide.

Some companies' position is that certification standards, government protocols, and court rulings are not necessary, as the companies are successful in pursuing productive relationships with First Nations. In cases where industry's efforts are inadequate, however, the Province is maintaining the possibility of getting more closely involved.

Another provincial initiative has involved the allocation of volumes of some 750,000m³ to First Nations through various tenures, mostly quotas. This tenure allocation has enabled First Nations to access capital from banks, and stimulate some successful businesses.

A new Public Lands Amendment Act (formerly Bill 49) has recently been proclaimed in the Province, clarifying the process for managing unlawful travel on closed roads and interfering with the lawful use of highways, roads and public land. Some participants explained that the legislation was largely driven by oil and gas activity, although it affects forestry as well. Some First Nations interviewees expressed concern that the Act is aimed at limiting their ability to challenge unwanted resource development in their traditional territory, and criticized the government for proceeding after little First Nations consultation.

Finally, a long-standing provincial initiative is also in place, aimed at increasing First Nation access to short-term contracts with the provincial government related to fire suppression. Alberta has a long history of employing First Nation forest fire fighters. Training for this activity is substantial, as the regulations are increasingly stringent, so some federal assistance has been provided to ensure that First Nations maintain the required skills and continue to gain a significant portion of the more than 30 contracts tendered annually in a competitive process.

Federal Initiatives

In this context the province sees the role of the federal government as best focussed on training, education, and support for First Nations self-sufficiency efforts. However, there is concern that

if training efforts focus on the on-reserve context, First Nations people living off-reserve, who could also be potentially involved in resource development, may be overlooked.

INAC, FNFP, and HRSDC all provide funding for on-the-job training opportunities, including in milling, harvesting, and other areas of the forest industry. A significant amount of federal funding is channelled through Aboriginal Human Resource Development Agreements (AHRDAs) with regional Aboriginal organizations, which determine priority areas.

There are also a number of shorter-term training programs, such as the training component of the Mountain Pine Beetle Initiative, which has been expanded to include parts of Alberta that have become infested. Some Alberta First Nations have received money through this program to manage the problem on-reserve.

Progress over the past years

Progress can be characterized as ‘steady but slow’. First Nation participation in the forest sector is increasing, and recent court cases have raised the bar, as has the ongoing process of developing a consultation protocol. Industry is ‘there to stay’, and is increasingly aware that it is in their best interest to work with communities, including through consultation and providing training opportunities where possible. Industry is also aware of the ‘up-sides’ of such activities in helping them achieve certification standards, which are useful in marketing.

In some parts of Alberta where First Nations have made significant advances, there is worry that this may cause political backlash. As one commentator explained, “some people are scared by success of others”. Some First Nations have noticed some hesitancy on the part of local politicians to be seen to be dealing with First Nations, a development that may reflect popular sentiment. Despite the tangible progress achieved the political situation remains a cause for concern.

Saskatchewan

Overview

Saskatchewan is home to 74 First Nations, including some that are among the most active in the forest sector in Canada. The total population of 114,248 Registered Indians amounts to some 11.5% of the Province’s population, and accounts for the dominant share of the population in many parts of the North.

Saskatchewan’s annual allowable cut amounts to some 8.9 million m³, around 3.8% of the national total. The largest players in the Saskatchewan forest industry include Weyerhaeuser, Carrier Lumber, Mistik Management, L&M Forest Products, Millar Western, Tolko, and the full or partly Aboriginal-controlled businesses MeeToos Forest Products, Norsask Forest Products, and Northwest Communities Forest Products. In all, there are over 300 firms in the sector – both Aboriginal and non-Aboriginal.

Saskatchewan has two pulp mills (one with an integrated paper line), five major sawmills, two OSB plants and a plywood plant. There are numerous smaller sawmills operating throughout the province which contribute to the industry as well. According to the Industry and Resources Minister, forestry is the fifth-largest exporting industry in Saskatchewan, employing over 9,000 people (or about 2% of total employment).

Treaty and Land Claims Context

The Saskatchewan government has formally recognized that 29 of 72 First Nations in the Province did not receive the amount of land they were promised under treaties. These entitlement settlements were reached through a TLE Framework Agreement signed between the Province, Canada, and 25 First Nations, as well as four separate but similar agreements signed since then. The agreements will provide some \$516 million to the 29 First Nations over 12 years to buy up to 1.95 million acres of land to add to their reserves.

In addition, since 1986, specific and special claims have been settled with 13 First Nations as well as the Treaty Four Association, in cases where reserve land was unfairly or wrongly taken from the communities. These settlements have amounted to payments of some \$300 million and transfers of 186,000 acres to the communities involved. There are some 25 other claims in inquiry phases across the province, while others are in abeyance or have been rejected or closed.

Particular Court Rulings

While the Haida-Weyerhaeuser case will have resonance nationwide, in Saskatchewan most players indicated that the ruling will have little effect, in part because ‘Aboriginal people are already in the Boardrooms’ and the communities have a strong stake in the development process.

Particular Market Factors

For a long time Saskatchewan (as well as Manitoba and the Atlantic provinces) was excluded from the quotas instituted under the Softwood Lumber Agreements, but as of 2002 the 27% duties unilaterally imposed by the United States applied to all provinces, dampening the prospects of Saskatchewan’s largely U.S.-oriented industry and delaying a number of planned mill investments. Nevertheless, the Saskatchewan forest industry has been growing steadily for the past 20 years, amounting to a roughly four-fold increase since 1985, to a total value of more than \$600 million annually. This growth included an ambitious plan developed by industry and government in 1999 to double the Saskatchewan forest industry (see below for more information).

Extent of Partnerships, First Nations Involvement

This growth in the industry has occurred over the same time period that First Nations title and tenure over forest lands has increased significantly, and major investments in First Nations economic development have been made. Unlike in other provinces and territories, where the establishment and expansion of the forest industry occurred at a time when First Nations were largely disenfranchised, First Nations in Saskatchewan have benefited significantly from this industrial growth and played an important role in advancing it. But this required a willingness to pursue business opportunities through pragmatic partnerships with existing firms. As one First

Nation interviewee explained, ‘the only way into the industry is through partnerships with major players, because they have the capacity and control over all the areas with good resources and infrastructure’. It was also pointed out that the areas in which First Nations have the most control over resources tend to have marginal forest resources, poor infrastructure, and are often also saddled with controversial environmental concerns.

Among the larger players in the Province are Norsask Forest Products Inc., owned by Meadow Lake Tribal Council (MLTC). Norsask’s 2 million hectare tenure (the second largest in the province) is operated by Mistik Management, a company half owned by Norsask and half by Millar Western Pulp Ltd. The 20-year forest management plan incorporates traditional knowledge and is driven by integrated resource management principles. MLTC also has a 25% stake in a highly modernized OSB mill, the second largest in the world. Of the 1000 jobs the ventures have generated, about half are staffed by First Nations people. MLTC’s various ventures constitute the largest cluster of First Nations forest sector businesses in the country.

An exceptional configuration of factors allowed for the success of the MLTC ventures. Treaty Land Entitlement issues in the MLTC area are largely resolved, so political considerations do not enter into business dealings as much as elsewhere. Furthermore, Saskatchewan is unique in that it had until recently one of the few state-owned forestry corporations in Canada, which included a mill in Meadow Lake that was operating at a great loss and privatized in 1988. Nine First Nations partnered with the millworkers to take the mill over, modernize it, and bring it back to viability.

The Province also made significant training investments around this time. The mill had very good management as well as good luck, as the takeover came with a period of rising prices (which continued with Saskatchewan’s exemption to the Softwood Lumber quotas until 2001). In 1998 the millworkers decided to ‘cash in’ on their investments, and MLTC levered their interests in order to buy them out and assume 100% ownership. The mill’s value has increased tenfold since 1998, and is a large source of revenues for the MLTC communities, including for housing, development of a variety of other MLTC businesses, and social programs. Spending in many of these areas exceeds INAC transfers, and better reflects community priorities. Even though the mill is owned outright by First Nations, it remains unionized, and so much of the workforce has remained non-Aboriginal. A rough estimate is that 20% of workers are First Nations in addition to 30% who are Métis, with the others are non-Aboriginal. The great majority of woodlands contractors, however, are indeed First Nations people. Norsask’s woodlands division is undertaking CSA certification, after which point it intends to pursue FSC as well.

The success of the MLTC experience has encouraged the Province to take a proactive approach to other Aboriginal businesses, and provide opportunities for Aboriginal communities to become equity participants in any new businesses that arise. Today, a number of other examples of significant First Nations involvement in the sector exist, including Wapawekka Lumber Ltd., co-owned by Weyerhaeuser and three Woodland Cree First Nations, which began production in 1999. Over 60% of the mill employees are Aboriginal. Peter Ballantyne Cree Nation (PBCN) is working towards a term supply license through Mee-Toos Forest Products, their forest development company. They are also considering involvement in a new Tolko mill. The PBCN area of operation has less transportation infrastructure than other areas, however, a factor that appears to be an impediment to business development.

There are also two other ventures of note: a Lac La Ronge First Nation - Zelensky Brothers partnership around a sawmill and proposed remanufacturing facility, and the Northwest Communities Wood Products Partnership (with five Métis communities). There are another 4 or 5 small First Nations milling ventures in the province. With all of these ventures considered, there is little forest development underway in Saskatchewan at this point without a significant Aboriginal component.

While the bulk of First Nations people work in silviculture, harvesting, and hauling, there are also an increasing number in mills, in forestry, and business management. Some pointed out that most companies only make concerted efforts to hire First Nations employees once there are First Nations representatives on the Board – a hurdle which has been overcome in Saskatchewan. Still, however, mills are unionized, and there are strong commitments to the existing workers, many of whom have devoted decades of service to the company, and there is little turnover. Furthermore, the training requirements for millwrights are increasingly high, requirements which can be a barrier for First Nations communities with insufficient educational opportunities.

Most of these business ventures are structured in such a way that Aboriginal land use values are incorporated into forest management decision-making processes well before harvesting occurs. Mistik Management, for example, includes co management boards with members from each community as well as trappers, guides, commercial fishermen, and elders. The eventual plans are then unveiled in ‘open house’ meetings in each community.

Provincial Policy Approach: Current and Historical

The current state of affairs should be considered in its historical context. In the 1970s there was considerable effort made by both the federal and provincial governments to create economic opportunities for First Nations. The concept driving this effort was the ideal of a ‘social economy’. The provincial government understood that new businesses needed to operate in a hard-nosed manner at least until the break-even point, but after that point they were expected to ensure that the growth translated into substantial benefits for the employees, communities, and stakeholders. Five-year ‘Northern Development Agreements’ were signed between the Province and federal government, with significant funds channelled through Aboriginal Human Resource Development Agreements for resource development and training. These agreements were renewed for a second round until a change in policy approach in the mid-1980s reduced significantly support for Aboriginal economic development. At the same time, however, the expectations on business were reduced, which put industry on a firmer business footing over time and encouraged growth.

According to one respondent, a policy in place in the 1970s that merits reconsideration involved sending people requiring unemployment insurance to logging training camps. Many First Nations people involved in the industry learnt the skills they have and built their careers on their experiences in those camps. There is concern that the present generation has not had similar experiences, a factor which explains some ambivalence among today’s Aboriginal youth in joining the industry.

In 1999 the Province unveiled an ambitious plan to double the size of the forest industry and better include communities in the expansion. Goals included the creation of 10,000 new direct

and indirect jobs and some \$850 million in new investments. The plan included the following measures:

- Implementing **stricter environmental regulations** in a new *Forest Resources Management Act*: these and other measures have allowed Saskatchewan to become the only Province in Canada with certification for a government forest management program – in this case, ISO 14001. All major companies in the province have either CSA or ISO certification.
- **Updating the inventory** of timber resources
- **Stimulating value-added** goods production – both traditional industrial products and new niche or artisanal products
- **Reallocating existing wood supply** to encourage Aboriginal community business: Prior to 1999, much of the available forest area in Saskatchewan was allocated in long-term tenures held by a few forest management companies. In the years leading up to 1999, concerned with the continued marginalization of the province's Aboriginal population, the NDP Provincial Government signaled the need for companies to develop 'social contracts' with communities and stakeholders reliant on or affected by their operations. A hard-fought political battle around 1999 resulted in the clawing back of up to 50% of the long-term wood supply and its reallocation to Aboriginal business interests (both Métis and First Nations). Most of the previous tenure-holders have since developed partnerships with these Aboriginal groups. Participants pointed out that political opposition has arisen to this wood supply arrangement, largely based on views that the Aboriginal tenures are not operated in compliance with environmental regulations, although the Province's view is otherwise.
- Developing a research and knowledge base in a new **forestry centre**: the Saskatchewan Forest Centre opened in Prince Albert, with federal, provincial, and industry funding. The Centre is governed by an independent Board, including significant First Nations representation. Among other things, the Centre researches issues around traditional ecological knowledge (including in relation to fire management), joint venture models, and value-added industry opportunities. The province hoped to establish an Aboriginal component at the Centre, but funding was not secured.
- Creating a **training plan** for new and existing forestry workers: a training committee consisting of forest companies, funding agencies, and training providers administer the plan, including annual funding from the province of around \$1 million, which with leveraged funds from the partners of an additional \$2.5 million is enough to train some 240 people per year.

The plan has been relatively successful, as employment and investment has risen significantly in the past years. These initiatives and others have allowed the Saskatchewan government to enjoy strong relations with many First Nations in the province, although a few are on less positive terms or are pursuing legal avenues to resolve outstanding issues.

One long-standing provincial policy has been to not use 'Aboriginal tenures' or to award tenures directly to First Nations (Chief and Council), but rather grant standard tenures just to companies, which may be owned by Aboriginal communities or anyone else. This policy has prompted most Saskatchewan First Nations and Tribal Councils to establish economic development arms,

appropriately insulated from their political councils so as to create a stable environment for business considerations, and use these to access tenures. All interviewees indicated that the creation of appropriate divisions of responsibilities between political and business decision-makers has been a key factor in the successes to-date, although it is equally important that the First Nations businesses remain accountable to the communities and their economic, social, and ecological priorities.

Industry has complemented these provincial initiatives as a number of companies have instituted formal or informal policies to increase Aboriginal participation in woodlands contracting. Where Aboriginal communities have insufficient capital to form a contracting company of their own, some companies have asked their contractors to ensure that a portion of their labour force – perhaps 20% – are Aboriginal. Interviewees on both sides indicated that this is an effective measure to transfer skills and build relations between the various groups working in the woodlands.

Federal Initiatives

FNFP, INAC, Aboriginal Business Canada (ABC), and Human Resources and Skills Development Canada (HRSDC) have all been active in Saskatchewan. Local First Nations have now developed a significant level of forestry capacity through training programs, and many of the partnerships discussed above were aided by federal seed money.

Nature of Business Operating Environment

Before the considerable changes introduced in 1999, the operating environment was somewhat uncertain for the forestry industry, though they did control the bulk of forest resources. The transition period was challenging for industry, but all agree that the environment and relations with Aboriginal communities are now on a more stable footing. Nearly all non-Aboriginal forestry companies in the province are now committed to involving Aboriginal communities in their operations and have adapted fairly well to this new approach to business.

Key Policy Concerns

Despite the considerable progress to-date in increasing Aboriginal participation, building relationships, and stabilizing the business environment, there are still considerable capacity and skills needs. The Aboriginal population is growing quickly and will soon assume a dominant share in the forested areas of the province. As many participants indicated, First Nations and Métis people are the industry's labour force of the future. Because skills and interest in forest sector careers are in part passed down from generation to generation, training today's workers is essential to ensuring an excellent labour supply in the future.

Progress to-date

Progress over the years has been significant. Years ago, industry did not even consult with local communities on forest management decisions. Now, First Nations people are in the boardrooms of many of the companies, or are employed in all areas of the industry, and the industry is growing steadily. Interviewees indicated that a prime factor was the presence of 'champions' on all sides – politicians and public servants at the provincial and federal levels, and industry and

First Nations leaders – who were willing to put differences aside and find viable ways to improve First Nations opportunities while advancing the industry as a whole. In addition, a combination of increased Aboriginal control over the land and the facilitation of collaborative business partnerships with established industry players was required for First Nations to develop both a sense of ownership as well as capacity to effectively participate. Training plans to build First Nation capacity and research initiatives to link traditional and scientific knowledge have also been indispensable components.

It was pointed out that every jurisdiction requires a certain amount of ‘pushing and shoving’ to occur before First Nations - forest industry relationships reach a stable, long-term footing. Much of this process is now seen as complete in Saskatchewan. While the eventual picture will vary from province to province, many other jurisdictions nationwide have hardly even begun this important transition period.

One participant explained that the ‘dream’ for most players in the Saskatchewan industry is to manage everything in the forest – not just the wood – in an integrated way. Some Northern jurisdictions, like the Northwest Territories for example, are doing so, but without allowing significant economic development. Saskatchewan’s strength is that it has allowed progress towards both goals at the same time.

Manitoba

Overview

Manitoba has some 62 First Nations, with a total of 115,339 members on and off reserve, almost 10% of the province’s people. Many of Manitoba’s First Nations are in difficult financial circumstances and their populations are among the poorest in Canada. A large proportion of the population in Northern Manitoba is First Nation.

The province’s annual allowable cut is also quite similar to that of Saskatchewan, at just below 10 million m³. However, there remain a great deal of unallocated forest resources in the province. The province’s forest industry is dominated by Louisiana Pacific, Tolko, and Tembec. In comparison to other parts of the country, Manitoba’s forest industry is at modest level of development, and there is generally seen to be considerable potential for growth, if a few barriers can be overcome.

In terms of political issues, most believe that relations among First Nations, industry and government are not as polarized as in some other parts of the country – a positive state of affairs. That said, there appears to be relatively little business capacity on the First Nations side so the potential for rapid development through partnerships is seen by interviewees as modest, without considerable support from government and industry.

Treaty, Land Claims, and Land Tenure Context

In 1997, Treaty Land Entitlements with 19 First Nations were settled, allocating almost 400,000 hectares of Crown Land to expand their reserves, in addition to about \$76 million to purchase

other land from private owners on a willing seller - willing buyer basis in order to fulfill the conditions of the various numbered treaties to which those First Nations adhered. While most claims have been settled, some processes continue in Manitoba, however, in particular because of the impacts on First Nations lands of hydroelectrical and mineral development. Such claims – including on 200,000 hectares in Tolko’s license alone – may have significant ramifications for the forest industry and for First Nations’ influence on forest management. Some interviewees noted that outstanding TLE processes in the Province have made it nearly impossible for companies to access tenures in the meantime, a factor which has affected employment opportunities for the very communities involved. While First Nations *land* is expanding, few forest *tenures* are in First Nations control relative to other parts of the country. A few small woodlots are managed by them, but no major tenures have been granted. The increasing land under First Nations’ control has led to pressure by both the Provincial government and First Nations to increase funding for forest-based programs such as FNEP.

Particular Market Factors

Manitoba has significant mining and hydroelectric development. These create additional pressures on land, the environment, and labour markets, pressures that have impacts on forest sector operations – both positive and negative.

In general the potential for industry expansion in Manitoba is good as the province contains a significant volume of unallocated hardwood, which many companies are interested in accessing.

Extent of Partnerships, First Nations Involvement

Currently, few First Nations are involved in more than silviculture and harvesting contracts in the Province’s forest industry. However, a number of more ambitious initiatives are under development, including on the East Side of Lake Winnipeg, in the West Region Tribal Council area, and in the Swampy Cree traditional territory near the Saskatchewan border. Long-term relationships which could build over time to include joint ventures or other activities are envisioned.

Louisiana Pacific is in the course of negotiating a Memorandum of Agreement (MOA) with the West Region Tribal Council (WRTC) to create a more co-operative relationship. This growing relationship has been made possible in part by the establishment of a forestry coordination unit – with federal, provincial, and industry funding – which represents the Tribal Council’s seven First Nations and roughly 8,000 members. The MOA has to-date produced a commitment to provide First Nations communities approximately 20 jobs in silviculture, 45 in harvesting, and some 4-5 jobs in the mill, a significant jump from the roughly 12 jobs currently held by members of these communities. The MOA initiative represents significant progress in comparison with 10 years ago, when Louisiana Pacific’s 10-year plan for the same area met with significant opposition. The MOA will involve the creation of a joint management advisory committee, including representatives from each of the First Nations in Louisiana Pacific’s operating area.

Tembec and a number of First Nations on the East Side of Lake Winnipeg hope to pursue a significant partnership once the planning process is complete. A newspaper mill exists in the area, but a sawmill is required. The First Nations’ goal is to work towards being able to buy-out

the venture from Tembec in the future. Similar goals have been set for woodlands operations around the mill. If the initiative proceeds, Tembec intends to pursue FSC certification.

In The Pas area, with a high First Nations population, Tolko has had some success in providing First Nations jobs in their sawmill and paper mill, as well as in their woodlands operations, where a majority of contractors are First Nations. One First Nation- owned company is co-managing a Tolko license, and the hope is that the First Nation will eventually take over the operations. Tolko has also entered a partnership with the Swampy Cree Tribal Council, which represents 5 of the 8 communities in Tolko's area of operations. Through the partnership, Tolko funds 2 staff people at the Tribal Council level who help with planning, finding economic opportunities for particular communities, and dealing with conflicts. INAC funding is also leveraged to support the activities.

Provincial Policy Approach: Current and Historical

Interviewees explained that, despite the somewhat 'rocky' relationships between the province and First Nations in the past, the current government has a strong mandate to assist and empower First Nations, and so the relationships are improving. Among the government's efforts is a commitment to ensuring that any new developments in the forest sector involve a high degree of First Nations participation. Where possible, the government also expects companies to pursue joint venture arrangements with First Nations – at least on a 90-10% basis at first, with a goal to building towards a 50-50% basis over time.

Several areas of the Province may soon see significant expansion of the forest industry and important partnerships with First Nations. First, the East Side of Lake Winnipeg (an area which extends to the Ontario border) represents one of the most economically significant regions in Canada yet to be opened for large-scale forestry development. Hydroelectric and forestry-related opportunities are driving discussions around infrastructure investments to develop the region. A high-profile, comprehensive planning process is currently underway with the various communities in the area, most of which are First Nations. Discussions are currently at the stage of broad conceptual planning, focussing on the articulation of the local communities' principal values, including those around economic development and conservation. Some of the First Nations leaders in the area are active in the Canadian Boreal Initiative and are pursuing UNESCO designation for the area as a 'world heritage site'. Some government and industry officials are concerned that such efforts, if successful, will allow 'outside' interests increased influence over decisions which local people should make.

The Manitoba Model Forest, a multi-partner initiative, has been successful in bringing together industry, First Nations, universities, NGOs, non-Aboriginal communities, and government. It is funded largely by the Canadian Forest Service, with around \$500,000 per year in core funding. As a number of participants indicated, Model Forest initiatives are useful in developing tools for use in a variety of areas. For example, the Model Forest is making a significant role to the East Side planning process, by facilitating citizen engagement. The lessons learned by First Nations participation in the Manitoba Model Forest have been transmitted to the other ten Model Forests located across Canada. Model Forests provide a 'testing ground' for research and alternative governance arrangements that has benefited industry, academic inquiry, and First Nations communities.

The Province is also undertaking a preliminary assessment of underutilized hardwood opportunities. The Province has indicated that First Nations will be invited to participate in any identified opportunity, although consultation still may be required.

The Manitoba government is committed to consulting with First Nations as existing licenses are renewed, including a major Louisiana-Pacific tenure which expires soon. It is anticipated that First Nations in the area may assert that this tenure, if renewed in its current form, will imply an infringement on their rights, and consultation by the Province of Manitoba may be required.

Planning forest management in a manner that is sensitive to Aboriginal forest values is a complex affair, particularly because of the wide range of forest uses by the wide range of community members affected. Chiefs and councils, according to some interviewees, do not possess all relevant information, nor do their priorities always encompass all the needs that should be addressed to ensure rights are respected and community-industry relations are positive. One model employed by Tembec in Manitoba is worthy of note. It involves the establishment of traditional area advisory committees, including trappers, fishers, loggers, hunters, elders, and youth, which meet as often as every 2 weeks to make recommendations to Chief and Council, who then meet with resource developers as forest management plans are drafted.

While the Manitoba government has indicated no willingness to reallocate tenures directly to First Nations, some interviewees suggested that as the First Nations share of the labour pool grows and First Nations communities remain marginalized from the economic activity occurring around them, tenure reallocation or other means to improve First Nations participation may need to be considered in the future.

The Manitoba government provides some Aboriginal workforce programs, but none that is forestry-specific. Provincial officials often try to leverage federal or other sources of funding through partnerships because the Province (and particularly the Department of Conservation) generally has limited funds to contribute. For this reason, the Manitoba government has been vocal in requesting a change in the FNFP funding formula, from the current approach based on total forest areas to a new approach based on Aboriginal population. Although wood supply has been nearly fully allocated in some parts of the province, Manitoba still has forest lands to exploit, and there is a significant Aboriginal population that could benefit from any development that does occur. One interviewee suggested that a balance between the two factors could be the most appropriate approach. A number of interviewees pointed out that Manitoba is attempting to push industry to improve Aboriginal participation without contributing adequate funding to provide real incentives for this to occur. They pointed out that partnerships should be tripartite – including First Nations, government, and companies – but the reality at the moment is that companies are expected to develop positive relations with First Nations with little government involvement or support.

The Province does provide some funds through the Community Economic Development Fund (CEDF), an economic development agency aimed at small Northern community-based businesses. The CEDF is operated similarly to a traditional finance company and has supported a number of First Nations companies over the years.

Other Federal Initiatives

Interviewees noted that until recently, ongoing federal-provincial coordination of Aboriginal forestry initiatives was somewhat limited. More recently, however, the three federal departments INAC, NRCan (CFS), Western Economic Diversification and a number of Provincial ministries have begun holding regular meetings, a development that has led to actions such as the creation of forest inventories.

Key Policy Concerns

Interviewees indicated the following principal policy concerns around First Nations – forest sector relationships in Manitoba:

- A lack of clarity around how consultation with First Nations must be conducted. The Manitoba government has dictated that forestry companies are expected to actively consult with First Nations, though no clear protocol has been developed. Furthermore, it is unclear where funding for the processes will come from.
- Problems with the structuring of the East Side of Lake Winnipeg planning process. The form and extent of consultation is a principal factor here, as there are many diverse views that have to be accommodated in this long-term, strategic exercise.
- Inadequate cultural awareness in some areas of the forest industry, although this situation is improving.
- Poor governance in some First Nations communities, particularly around electoral systems and the rapid 2-year election cycle. Furthermore, few communities have been able to institute a permanent ‘public service’ which survives changes in political leadership.
- A lack of educational attainment in forest-based First Nations communities, which prevents people from gaining skills required to pursue forestry careers.
- Inadequate reforestation of softwoods – although practices have begun to improve. Some First Nations have called on the government to reduce its softwood allocations, in order to achieve greater sustainability.

Progress over the past years

Some participants drew parallels between Manitoba and Saskatchewan, noting that there is just as much potential in Manitoba, although less has been achieved to-date. A number of interviewees explained that First Nation employment and business involvement in the sector have improved somewhat over the years, though not as much as some First Nations hoped. Most of those interviewed believe that the various partnership arrangements between the Province, industry, and First Nations are currently laying the groundwork for major advancements in the future. As in other parts of the country, there is some impatience and frustration at the slow pace of change. It was pointed out that some companies are working very proactively with First Nations, while others are still ‘waking up’ and gradually improving their practices. In general there has been progress, particularly in terms of the tone of First Nation – forestry company dealings, which are far more cooperative than around 10 years ago, according to one respondent.

Ontario

Overview

Ontario has some 139 First Nations, with total membership of over 160,000. The First Nations population amounts to just 1.3% of the province-wide population, but at least 10% in the North, and the majority north of 51°. With few exceptions, reserve forest land is limited and often of poor economic quality (a ‘regulatory gap’ under the Indian Act has contributed to its degradation). A rough estimate is that about one-half to two-thirds of Ontario First Nations are actively involved in some sort of forest sector activities, in addition to another one-quarter which are involved to a minor degree. Most communities which are not involved are in more urban, Southern areas.

More than half of forested Crown Land in the province has been allocated to the forest industry, which accounts for the great majority of the forest South of 51° where most is harvested. Ontario does not set a province-wide annual allowable cut per se, but the National Forest Database System estimates that the sum of harvestable timber on the province’s tenures would amount to an AAC of more than 31 million m³. The great majority of this tenure is currently harvested, leaving little leeway for industrial expansion.

Treaty and Land Claims Context

The treaty context is diverse, involving agreements concluded over a long historical period with widely varying components. There are more than 50 specific claims in effect in Ontario, covering a large portion of the Province. Fifteen settlement agreements have been implemented over the past 20 years, three are being implemented, five negotiations have reached the Agreement-in-Principle stage, and 19 other negotiations are ongoing. The federal government is also pursuing one self-government negotiation with the United Anishinabeg Councils. The parties recently signed a final agreement, which they now must ratify.

As a number of participants pointed out, the Ontario government takes a relatively narrow view on Aboriginal and treaty rights in the off-reserve context, a view which differs strongly from that of most First Nations. Most Ontario First Nations assert that they have significant rights relating to land and resources in their traditional territories, including a share of revenues and a stake in resource management. The Ontario government takes a different position, as it believes many of the First Nations’ arguments are not substantiated by the text of the historic treaties signed in Ontario. The Province also argues that there is limited applicability of legal rulings from other provinces to the Ontario context because of the different nature of the treaties. While First Nations often bring up treaty and rights issues in their negotiations with government over access to forest resources, the Province takes the position that the treaties signed by First Nations allow the Province to undertake forestry, and that they do not determine forest management decisions or business arrangements.

Overview of the Provincial Policy Approach: Current and Historical

While major strides towards pro-First Nations policies were taken in the one-term NDP Government (1990-1995) – including the signing of a *Statement of Political Relationship with Ontario’s First Nations*, which outlined a ‘government-to-government’ approach to relations –

government policies since that time have been less ambitious. Indeed, many participants indicated that on the whole, relations between the subsequent Progressive Conservative government in power in Ontario from 1995 to 2003 and most First Nations could only be characterized as poor. Over this time a number of blockades arose periodically across the Province on a wide range of issues, generally related to alleged infringements of traditional land-use values by forest companies. A few participants argued that Ontario has a poor record of actively implementing court directions around First Nations participation in the forest sector, or seriously addressing issues around First Nations needs that are raised under environmental assessments. Many expect the new Liberal government, elected in October 2003, to take a somewhat different approach, though no major policy shifts have yet been announced.

However, on a more person-to-person level, relations between the Ministry of Natural Resources (MNR), mill managers and First Nations continued a long-term trend of improvement over this time period. An insightful report conducted for the MNR and the Union of Ontario Indians concentrating on 18 of the 43 Anishinabek First Nations pointed to a trend over 1995 and 2002 of “increased interest and capacity on the part of First Nations, increased commitment from MNR and the Forest Industry and improved cooperation, understanding and trust between First Nations and MNR and the Forest Industry”.³³ While the report also pointed out a number of areas requiring renewed efforts, overall the trend was positive.

The Province’s long-standing priority with respect to First Nations issues, particularly in Northern Ontario, is on economic development. A participant explained that as government pursues initiatives in this field on a variety of fronts, there are two general reactions in First Nations. On the one hand are First Nations with an ‘all or nothing’ approach, who are not willing to participate in particular economic development initiatives and wish a broad settlement of a variety of outstanding treaty and rights-related issues. As the Province has been seen as largely unwilling to cede significant concessions on these fronts, little development or increased authority has been achieved by these communities in general. On the other hand are a number of First Nations who are willing to put political considerations aside and embrace government initiatives, and many of these have made some progress with respect to economic development over the last decade or two.

As the 2002 Timber Class Environmental Assessment Review noted, there has been progress over the years: “At the provincial level, in 1986 only about 100,000 cubic metres of wood were licensed to Aboriginal people. By the year 2000, over 1.5 million cubic metres of wood within the area of undertaking [i.e. South of about 51°] were allocated to, cut by, contracted to, or offered to Aboriginal people and businesses. Approximately one million cubic metres was harvested, accounting for 4-5% of the wood harvested in Ontario”.

Consultation Policy

The Ontario consultation process is guided by a forest management planning manual, which has recently been updated and is being phased-in, and includes a requirement for the consideration of Aboriginal values. Forest planning in Ontario is a collaborative process between license holders and the MNR. The MNR notifies First Nations of the commencement of their planning process,

³³ Transitions Training and Consulting, 2003, “Aboriginal Involvement in Forest Management: Strategies and Practical approaches to Aboriginal Involvement in Forest Management in Ontario”.

and invites the communities to be involved. The level of involvement depends on the situation. Currently First Nations consultation is directed by two different requirements depending on the planning manual being used.

For forest management plans being developed using the 1996 manual, First Nations can choose to participate in the general public consultation process for forest management planning, or request a separate Native Consultation Program. For forest management plans being prepared using the revised manual (2004), District Managers may discuss with the First Nation a consultation approach that will work for the community members (as long as it does not delay the planning process unduly). Generally a balance must be struck between consulting with the leaders and consulting with the membership. Consultation is conducted at the district level and is not centrally coordinated, so the extent of consultation can vary province-wide, depending on the First Nations' level of interest, capacity to work with the Province and forest industry, and their historical use of the area. Federal funding is used to help communities build capacity in some cases. Where communities use the areas at stake intensively, they may have a representative on the planning team, contributing to the planning effort and having early input into decisions made.

As part of the forest management planning process, the planning team must prepare an Aboriginal background information report, detailing the Aboriginal use of the area, and including an Aboriginal values map. These maps may or may not be made public, as they identify burial grounds, spiritual sites, gathering sites, and other values significant to the community. At the end of the process a 'Report on the Protection of Identified Aboriginal Values' is produced by the MNR, identifying and documenting how Aboriginal values have been protected in the plan.

In sum, as the *Haida - Weyerhaeuser* ruling (see the 'legal context' section) has reaffirmed, the Ontario position is that the consultation duty is clearly on government. In Ontario, MNR District Managers are the clear leads, (although they may delegate operational responsibilities to staff), and have considerable discretion within their districts. In this context government will engage companies, as they too have a vested interest in the process and can provide some of the solutions. At the end of the day, if there are any legal challenges around consultation or rights, the Province rather than the company will be liable. Companies do generally engage, however, in order to nurture a future workforce, avoid production-halting disputes, build joint ventures, and improve their public image. While even the most progressive companies can be subject to such events because of disagreements with government on unrelated issues, generally companies can play a major part in ensuring smooth relationships.

Key Provincial Policy Tools

The key element of the policy context in Ontario south of 51° around which much debate is focussed is Condition 34 of the MNR's Class Environmental Assessment for Forest Management on Crown Lands in Ontario, set out in the box on the following page. The text of Condition 34 is similar to its predecessor Term and Condition 77.

The Condition stipulates that the MNR District Manager has to negotiate with the First Nations community ways of sharing benefits of forest development. The condition is interpreted by many First Nations as meaning that government must share stumpage revenue and provide wood and opportunities to harvest, while the Province takes a narrower view and does not believe it

has a duty to share revenues. In practice the District Managers bring companies and First Nations together around harvesting opportunities, because companies have been licensed for all species of trees in the area. These negotiations are conducted separately from forest management planning processes, in part so that traditional land-use values and benefits-sharing issues are not confused. There are considerable expectations on companies in many parts of the Province to provide employment and contracting opportunities for First Nations, and many companies have indeed done so.

Text of Condition 34

During the term of this approval, MNR district managers shall conduct negotiations at the local level with Aboriginal peoples whose communities are situated in a management unit, in order to identify and implement ways of achieving a more equal participation of Aboriginal peoples in the benefits provided through timber management planning. These negotiations will include but are not limited to the following matters:

- (a) Providing job opportunities and income associated with bush and mill operations in the vicinity of Aboriginal communities.
- (b) Supplying wood to wood processing facilities such as sawmills in Aboriginal communities.
- (c) Facilitation of Aboriginal third-party licence negotiations with existing licensees where opportunities exist.
- (d) Providing timber licences to Aboriginal people where unallocated Crown timber exists close to reserves.
- (e) Development of programs to provide jobs, training and income for Aboriginal people in forest management operations through joint projects with INAC.
- (f) Other forest resources that may be affected by timber management or which can be addressed in the forest management planning process.

The MNR shall report on the progress of these ongoing negotiations district-by-district in the Provincial Annual report on Forest Management that will be submitted to the Legislature.

Participants indicated that the introduction of Term and Condition 77 and its successor Condition 34 has spurred major advances in First Nations participation in the sector, as most previous opportunities were limited to 'cone picking and silviculture'. The new focus is on harvesting opportunities as well as joint-ventures around mills, although this latter goal has proven somewhat elusive.

The Class Environmental Assessment has also created a need for traditional use surveys. Nonetheless, First Nations often lack the funding required to conduct these thoroughly. Again, the FNFP has provided some funding to this end.

The Ontario government in general indicates satisfaction that progress has been made with benefits provided to First Nations under Condition 34. First Nations generally differ, arguing that the efforts lead to few initiatives or areas of opportunity that companies have not offered in the past. Participants indicated that the level of consultation and the sharing of benefits may gradually increase.

There are two other policy levers that are available to the Ontario government in order to improve First Nations participation in the forest industry, although neither of these has been employed extensively. First, Section 23 of the *Crown Forest Sustainability Act* (CFSA) essentially enables co-management, stating that “the Minister may enter into agreements with First Nations for the joint exercise of any authority of the Minister under this Part” (i.e. the authority for forest management planning). Participants indicated that although many First Nations are interested in pursuing this route, this legal possibility has yet to be explored.

Second, Order-in-Council 993/95 creates an exception to the CFSA’s requirement that forest resources licenses only be granted in accordance with a competitive process, if the license “satisfies economic opportunities for aboriginal people”. But greenfield opportunities in the Province are limited as most major companies use nearly all of their allocations – including both hardwood and softwood species. In one case, a small company sold its license to the North Shore Tribal Council, which pooled the resources of a number of First Nations in the region and gained some funds through the expired Northern Ontario Development Agreement to establish a forestry office. A few other Tribal Councils and regional First Nations organizations have taken advantage of other similar opportunities.

Provincial Policy North of 51°

The policy context differs in regions North of a line roughly following the 51st parallel (North of the Area of Undertaking of the Class Environmental Assessment, to be precise), which have not been heavily harvested and are populated primarily by First Nations communities. Condition 34 does not apply here. In 1999, a provincial land use planning exercise for the vast region resulted in a Forest Accord, signed by environmental organizations, industry, and the provincial government. One of its stipulations states that development North of 51° will only be undertaken if First Nations communities are in full agreement, if the terms of an environmental assessment are respected, and if Parks and Protected Areas are recognized and regulated. In 2001, the Ontario government released a concept document for a new ‘Northern Boreal Initiative’, which had the goal of allowing First Nations in far-Northern Ontario to develop a commercial forestry in previously unharvested areas. To date Pikangikum and Moose Cree First Nations are actively pursuing forest management licenses, while other Northern First Nations communities are considering the opportunities and taking preliminary steps towards getting involved. Pikangikum and Moose Cree First Nations have accessed some \$2 million in federal funding over several years, and are working towards developing forest management plans, business plans, and conducting a timber inventory and wildlife assessment, with an aim to sustainably developing their forest resources.

Other initiatives

Because so much of the primary sector is already ‘tied up’, opportunities for First Nations in value-added areas and non-timber forest products have often been sought. Some innovative initiatives undertaken to-date include harvesting of yew plants for pharmaceutical purposes, and retrieval of well-preserved logs in a flooded reservoir. Some comments from participants in Ontario and other jurisdictions on value-added opportunities are summarized in the box on the following page.

The MNR has required that all forest management units be certified by 2007, although no preference for one scheme – CSA, SFI, or FSC – has been indicated. Most already have attained or are pursuing CSA or SFI, only a few are pursuing FSC. It was argued that the MNR process meets about 80% of the FSC requirements, and that the Province cannot require this standard because the Aboriginal component is so stringent that it would appear to dictate Provincial policy. The Province’s position is that the Minister of Natural Resources has the sole right to ‘consent’ to forest harvesting, and that the ‘consent’ of First Nations is not legally required.

Beyond all of these initiatives, participants pointed out that one of the chief reasons for companies to build relationships with First Nations is because First Nations will be a significant share of the labour force in the future, particularly in Northern Ontario. The non-Aboriginal population is declining while the First Nations population is on the rise.

Another policy initiative is worthy of note: a Private Member’s Bill, Bill 97 of 2004, has been tabled by Gilles Bisson, the NDP MPP for Timmins-James Bay, calling for negotiations among resource companies operating in the ‘traditional territories’ of Ontario First Nations to conclude comprehensive revenue-sharing agreements so that the communities benefit from the economic activities around them. (The benefits would not necessarily have to be royalties, they could take any form, including tenure allocations). Negotiations unresolved in three years would go to binding arbitration. While Private Members’ Bills rarely succeed, Mr. Bisson’s bill has been considered by Legislative Committee after second reading, and may still be submitted to the full House of Commons for a vote. If it does succeed the initiative would likely have tremendous impact on the structure of the forest industry and the level of First Nations participation in the sector. The forest industry does not officially oppose the Bill, as they see it as a matter for governments and First Nations to resolve, as long as industry is not expected to cover new obligations, because it is currently stretched to the limit financially.

Finally, the impact of the *Powley* case (discussed in the ‘legal context’ section above) could also affect the way Ontario deals with First Nations. The ruling is adding to the pressures on the Ontario government to deal with resource-related issues not only with the Métis, but also with First Nations.

Federal Initiatives

Perhaps more than other Provinces, Ontario looks to the federal government as having principal responsibilities for First Nations issues. At the same time, however, the Province has a vested interest in building First Nation economic capacity, and so provides some funding towards training programmes and other initiatives to address the wide range of social ills besetting many First Nations communities. Most provincial contributions come in the form of in-kind support,

including aerial photographs, technical assistance, or liaison technicians to help First Nations work through technical regulatory requirements, for example. FNFP generally provides small quantities of ‘seed’ money for initiatives, while the Federal Economic Development Initiative for Northern Ontario (FedNor), INAC, ABC, and the provincial Northern Ontario Heritage Fund (part of the Ministry of Northern Development and Mines) occasionally supports proposal-driven initiatives with larger investments.

Some First Nations with greater on-reserve land bases are critical of the lack of FNFP and other funding that is available for on-reserve forest management, which is seen as a fiduciary obligation of the federal government.

Progress over the past years

There has been some progress over the years, though perhaps at a slower pace than in some other jurisdictions. Many expect some ongoing strife in some areas, as has been the case in the past. There has been a steady increase in contracting opportunities for First Nations companies over the years. One participant indicated that there was huge improvement from two decades ago, when many First Nations were reluctant even to approach the MNR, whereas today most are reasonably comfortable in discussing concerns. Participants indicated that they have witnessed a significant change in tone on the part of Provincial officials, who are indicating more willingness to promote opportunities for First Nations, even if they still have to maintain strict legal positions in writing, positions which essentially confer the responsibility to the federal government. There is hope that the recent change in government may herald some advances on the Aboriginal policy front in Ontario, though some believe expectations may be overly high.

Companies are also increasingly seeing the role they can play in ensuring positive relations with First Nations and gaining certainty over their timber supply. As one participant indicated – “First Nations won’t shut down operations if half of their workers are employed in them”. Beyond avoiding disputes and lumber supply delays, however, a number of companies are taking a more holistic view to First Nations relationships, noting the gains that can be made from a larger labour pool, greater access to traditional knowledge, improved company image, and new business partnership opportunities.

Finally, changes in governance in First Nations communities – including the empowerment of Tribal Councils and the establishment of arm’s-length economic development corporations – have facilitated stable and effective relations with government and industry, and improved all sides’ ability to strategize and plan for the long-term. Increasing numbers of First Nations foresters and forest technicians are gaining the required training year after year, and many are returning to their home communities to support them on forest-related issues. As indicated by a significant increase in FNFP funding requests in the province, First Nations are also focussing increasing energy on taking advantage of the resources around them to build sustainable economies. This increase has occurred despite participants’ observations that many First Nations do not even bother applying because of the high level of competition for little funding.

Value-added opportunities – Pros and Cons

Many believe the greatest economic opportunities for First Nations in the forest sector relate to value-added activities, for several reasons: (a) primary sector opportunities are too often committed to big companies, millworkers' unions, or long-standing contractors; (b) many First Nations are small and thus lack the labour pool or financial position to develop and maintain large business organizations such as mills; (c) First Nations have a great deal of cultural, traditional, hand craft, and ecological knowledge which can be applied in certain niche value-added areas; and (d) value-added activities may be more suited to some First Nations people's way of life than extractive activities. Although some might argue that such a characterization romanticizes First Nations culture and the goals of the individuals in the communities, a good number do believe that a balance between primary and value-added activities could fit well with First Nations needs and priorities.

One concern, however, is that many value-added ventures are seen as too high-risk to merit government funding. Some observe that government funding agencies prefer to fund 'templatable' business opportunities, such as stud mills, or other such ventures which have predictable and clearly measurable markets. Value-added ventures are often simply too small, too diverse or too 'niche' for government to be able to make informed decisions as to their viability. Indeed, many people who work in value-added areas do so only when lumber prices are depressed and contracts in primary areas dry up. The cyclical nature of this kind of work thus contributes to its 'high-risk' image. Furthermore, value-added businesses often start very small and expand the variety of products they offer over time. The gradual, step-by-step approach to developing these 'organic' sorts of businesses is somewhat difficult to reconcile with the funding approaches of government. Some pointed out that dynamic approaches to supporting small business in the value-added sector need to be developed, perhaps through arrangements with banks such as loan guarantees or matching loans.

Big forest companies, meanwhile, also have little understanding or interest in value-added opportunities. At the heart of it, one commentator noted, "there is no great science to banging out two-by-fours". The business model of large firms is often different from that of the sorts of small businesses that do best in value-added markets.

Another impediment to the growth of the value-added industry in First Nations relates to the communal land and housing ownership structures on reserve, which denies residents the principal source of seed money for business that is available elsewhere: remortgaging the family home (although changes to this regime are under debate). Thus the issues around First Nations forest sector participation are linked to a complex set of governance gaps and obstacles existing under the Indian Act that need to be addressed. Fortunately, a number of Aboriginal organizations are spearheading conferences and research around value-added opportunities with a view to addressing some of the gaps and barriers restricting Aboriginal participation.

Quebec

There are 40 First Nations in Quebec, with total membership of 66,504, about 1% of the province's people. Of these, around 25 are steadily involved on forestry issues, including Cree, Innu, Algonquin, Atikamekw, Abinaki, and Mi'kmaq communities, among others.

With the exception of British Columbia, the province has the largest forest products industry in the country, with an annual allowable cut of almost 55 million cubic metres, the great majority of which is currently harvested. The forest sector provides some 150,000 jobs in the province, and accounts for more than 5% of the province's GDP.

Treaty and Land Claims Context

The only groups in Quebec to have achieved self-government are the James Bay Cree and the Naskapi. They signed the James Bay Northern Quebec Agreement in 1975, the first modern treaty, and subsequently negotiated self-government agreements in the early 1980s. An Agreement-In-Principle has been reached between the federal and provincial governments and the Innu in the East of the Province as well. Other Nations, such as the Algonquin in Eastern Quebec, are not united politically and so are not participating in any such processes. Indeed, two Algonquin communities are currently engaged in blockades of forestry operations, although the other eight are not all in solidarity. These disputes relate to trilateral agreements signed in 1991 and 1998. The result is significant disparity between the degree of control over forest resources and the share in the benefits of development that are enjoyed by the various First Nations in the province.

In Quebec there appears to be a tendency towards large, comprehensive agreements with a particular group of First Nations, agreements which are intended to resolve a lot of issues in the long-term. The danger in this approach is that little can be accomplished while so many rights and treaty issues are on the table, and the higher the stakes are, the longer it takes to conclude such agreements. The Cree Agreements have also had the effect of raising the expectations of other Aboriginal groups substantially, which may draw the processes out further. The lack of hydroelectric resources in other regions – an important incentive for industry and government to negotiate with the Cree - may also result in frustration for these other Aboriginal groups. A major challenge in Quebec is how to pursue broad agreements without sacrificing the 'on-the-ground', piecemeal, step-by-step efforts that achieve real advances over time.

The original James Bay Agreement contained only one sentence in some 400 pages, saying essentially that forestry should be compatible with fishing, hunting, and trapping, and that companies' plans should reflect this. As the rate of harvesting and hydroelectric development in the Cree territory increased and impacts on traditional land uses increased, the Cree took the federal and provincial governments and 27 forestry companies to court in 1998. A series of tough negotiations around the cases finally resulted to the signing in 2002 of the 'Paix des Braves', aimed at increasing cooperation between all the governments, facilitating resource development projects in the James Bay area, and harmonizing logging with Cree land-use values. The Cree won a settlement worth some \$3.5 billion over 50 years (\$70 million per year) in the process, a significant victory for the population of 14,000. Ongoing revenue sharing is not part of the agreement, as the settlement money and the other stipulations are intended to provide a strong foundation for economic development.

The Paix des Braves also created the Cree Quebec Forestry Board, a new entity embedded in the Forestry Act, to oversee the implementation of the forestry regime outlined in the Paix des Braves. The new regime states that Quebec regulations apply on Cree territory, adjusted for three objectives:

- a. activities should be adapted to Cree traditions and way of life;
- b. sustainable forest management practices should be undertaken; and
- c. the Cree should participate fully in planning processes.

Under each objective there are number of specific aspects that are outlined in the agreement. Among these measures is a setting-aside of 25% of forest lands for conservation, the location of which is determined by the Cree. The Board has equal numbers of government and Cree officials and an independent chair. In addition, each community has a 'joint working group' in place, including two government officials and two Cree representatives, whose job is to verify whether activities respect traplines and other traditional uses. Any problems identified are reported to the full Board, as well as to the Ministry of Forests and the Grand Council of the Crees.

The Cree are now very active in forestry, own a number of forestry businesses, and hold tenure over some 5% of the total provincewide. However, industry operating in the region has had cut back on harvesting, as some new areas have been dedicated to conservation. Industry interviewees expressed some frustration that the agreement was made through a bilateral rather than a trilateral process because they felt they could have made useful contribution to a Cree economic development strategy.

One participant indicated that the Paix des Braves provides a useful opportunity to explore the concept of 'sustainable development' and its social, environmental, and economic pillars. On the social side, the challenge is to increase Cree participation, to ensure their way of life is respected, and to bridge cultural barriers to better understand their values. On the environmental side, the agreement provides the means to use both traditional knowledge and scientific methods to measure the forest's maximum sustainable productive capacity and to sustain the complex ecosystem. Finally on the economic side, the goal is to create long-lasting jobs for local residents and to feed these activities into other areas of the economy.

Provincial Policy Approach: Current and Historical

According to participants, historically First Nations had relatively poor relations with the Quebec government, and preferred to deal with Canada in a bilateral manner. However, since the early 1990s Quebec has taken an increasing role on First Nations issues, and provides levels of funding generally higher than other provinces.

Until recently, no Quebec act or regulation regarding forestry included the words 'Aboriginal rights' or 'Aboriginal title'. For years, very few of the major licensees paid significant attention to the First Nations communities living in their areas of operation and depending on the land. However, as court decisions expanded the scope of Aboriginal and treaty rights, and with a number of blockades and related actions in the late 1980s and 1990s, the Quebec government

was spurred to review its long-standing position and develop means to give First Nations greater say in the resource development occurring around their communities.

Today, a number of the major companies have a forester or senior manager dedicated to First Nations issues. While federal funding – particularly through INAC – is in many cases aimed at building First Nations - forest industry partnerships in order to facilitate knowledge transfer, capacity building, skills development, and market access, the Province's focus is elsewhere.

There are cross-government guidelines in place at the Provincial level on First Nations Affairs, and each Ministry has its own guidelines. In the Forest Act, there are mandatory regulations for companies to ensure that First Nations have a role in several specific steps of the forest management plans development process, before the final plans are submitted to government. Steps have been taken to ensure that First Nations have adequate time to react to proposals before they are implemented, a constraint that had previously been a problem. The consultation processes have two goals: to ensure that First Nations values are integrated into the management plans and to ensure that First Nations have access to a fair share of economic opportunities. The Ministry of Natural Resources has some 48 local managers ensuring that these guidelines are respected. However, the Forest Act places First Nations on a similar level to other forest users, such as municipalities, outfitters, and other stakeholders. First Nations argue that because of their Aboriginal rights, they are privileged users, and should be accommodated on a different scale than other groups. The Forest Act does not acknowledge this claim for special status.

Apart from the high degree of involvement in the industry enjoyed by the Cree, most economic opportunities for First Nations in Quebec remain limited to silviculture and harvesting, although a few more significant ventures are underway. Some First Nations have obtained forest supply licenses on public lands, for example. A venture between Waswanipi Cree Nation and Domtar on a volume of 200,000 m³, and another between Abitibi Consolidated and Atikamekw Opitciwan First Nation, are both based on the same model, with 45% ownership by the company and 55% in the hands of the First Nation. Participants indicated that in many cases political considerations upstage economic initiatives, and economic development opportunities suffer as a result. Many Quebec First Nations are currently demanding a share of stumpage fees, although the Province is resisting these calls at the moment, and focussing more on implementing processes to determine First Nations rights to territory.

In 1999 the Province introduced a Forestry Development Program, through which some \$2 million in funding flows to 25 to 30 communities in order to build capacity for forest contracts, and to organize themselves to participate in integrated forest management plan processes. The federal government has also shifted its funding focus to off-reserve planning from its historical efforts to improve on-reserve forest management. Very little funding is now available for on-reserve forest management planning, despite the relatively poor condition of many on reserve forests. Another activity which FNEP is no longer able to sustain is storing traditional use data – including GIS information – which in many cases has been lost as First Nations consultations coordinators are hired and let go.

The Coulomb Commission on Forestry recently released a report on timber and non-timber forest uses, including a chapter on First Nations issues. The Commission report discussed a number of First Nations-related issues, and made the following recommendations with respect to First Nations:

- That the political authorities of Native communities located in forest regions meet with the political authorities of these regions (Regional Environmental Councils or Regional County Municipalities) to harmonize communication and participation strategies and agree on the established concertation mechanisms.
- That training and job creation programs be extended so as to favour the development of Native silvicultural labour.
- That Native forest operations be invited to actively participate in intensive silvicultural and inhabited forest projects, and that the conditions facilitating their stability and the development of their management capacities and professional skills be implemented (accreditation, increased planning responsibility, management contracts extending over periods of 3 to 5 years, more flexibility in the performance of work, etc.)

Progress over past the years

Over the past 25 years there has been major progress on Aboriginal issues in Québec in general and forestry issues in particular. One participant noted that, while there are ongoing disputes between Chiefs and Councils and government and industry, relations between entrepreneurs and other community members and particular operations are improving over time. Training efforts have borne fruit, as the number of First Nations forest technicians has increased from around 8 to around 25 in recent years, and there are also a number of First Nations foresters working across the Province (though rarely in their home communities).

New Brunswick

Overview

New Brunswick is the most important player in the forest industry in Atlantic Canada with an annual allowable cut of more than 11 million cubic metres, accounting for almost 5% of the national total. Major licensees include J.D. Irving, UPM Kymmene, Weyerhaeuser, Nexfor Fraser and Bowater. Around half of New Brunswick forest land is private and half belongs to the provincial Crown.

There are 15 Mi'kmaq and Maliseet First Nations communities across New Brunswick, with a combined population of around 12,000, or about 1.4% of the provincial population. In the Atlantic region as a whole, there are some 29,709 status Indians, about 1.3% of the regional population. On Crown Land, some 233,880 cubic metres of wood fibre have been allocated to First Nations, in addition to what is available for harvest on reserve lands (and private lands if First Nations have made such arrangements).

Treaty and Legal Context

Historic 'peace and friendship' treaties were signed between the British Crown and Mi'kmaq and Maliseet peoples in New Brunswick. The two sets of treaties differ somewhat in substance. Generally, First Nations do not interpret these treaties as ceding land, rather as simply providing

access to resources. The Province and federal government, meanwhile, do not concur with this interpretation.

In dispute in particular are the terms of the treaties relating to community members' rights to natural resources off-reserve such as wood – whether these rights were extinguished, whether they are limited to personal use (for fire, crafts, shelter), or whether trees harvested can be sold or bartered. A related question is whether these rights are individual or communal. Some argue that access to wood for personal use is an First Nations right, where access for commercialization would derive from the treaties. In this legal context the First Nations right to title is not generally invoked, although one judge in the *Bernard* case (see 'legal context' section) did make mention of it and there is some concern that title-related issues may be the focus of future legal disputes.

All of these questions are currently before the courts, because a number of First Nations individuals across the Province have been charged in recent years with harvesting wood on Crown land (and in the process either exercising a treaty right or breaking the law, depending on how the courts rule). Interviewees pointed out that occurrences of these activities are now less than at their peak in 1998, when around some 100 cases were noted. A similar legal dispute exists in Nova Scotia, although Nova Scotia has not gone so far as to charge people who harvested the wood for personal use, as in the case of New Brunswick. Two major cases – *Bernard* and *Marshall* – are of particular relevance in this context, although because they reached the Supreme Court level they are of interest nationwide (for details see the 'legal context' section above). According to some interviewees, the uncertainty surrounding these cases appears to be driving in large part provincial and federal initiatives in the First Nations forest sector. The key question, one which will require both legal and political processes to resolve, is how many cubic metres of what kind of wood can each First Nation individual or community in the Province legally harvest on Crown land (if any). Courts alone will not be able to determine this question.

Particular Market Factors

The New Brunswick pulp mills are in a slump, largely related to the price on world markets and oversupply. One mill recently went bankrupt and another has recently been shut down, while two other companies are laying off staff. In total, some 1,000 people have been laid off. At the same time, some parts of the province are experiencing labour shortages and one company is negotiating to attract migrant workers to fill jobs.

Provincial Policy Approach: Current and Historical

In order to address Aboriginal grievances as legal issues are being settled, the Province has recently taken several major measures to improve Aboriginal forest sector participation. First, beginning in 1997, as part of interim accommodation agreements with First Nations, the Province reallocated 5.0% of the annual allowable cut to New Brunswick's First Nations, on a per capita basis (because the total AAC has since diminished, the areas under First Nation licenses now account for a total of 5.3%). Some interviewees indicated, however, that the quality of these tenures was not as good as the Crown land allocated to the major licensees, while others' views differ. Allocations were made without prejudice to rights determinations. The

total value of these opportunities is estimated at around \$12 million annually. Further, the province collects and distributes about \$3 million of Crown royalties to First Nations.

The first such agreements were only 2 pages long, applied for only one-year and were thus fairly flexible. The agreements remain straightforward as they have been renewed for longer periods (five years) without substantial redefinition. Some interviewees are concerned that this flexibility does not provide for sufficient assurances that the communities actually benefit from the new resources in the form of jobs, revenues, and contracting opportunities. A number of respondents pointed out, for example, that many non-First Nations people are being sub-contracted to harvest the resources.

One condition on the original agreements was that the wood harvested be brought to New Brunswick mills because New Brunswick's milling capacity significantly exceeds its sustainable harvest level and as a result, much wood is brought in from neighbouring jurisdictions. Now First Nations have the flexibility to also use the wood for housing in their own communities, for example. A new round of agreements will be developed for 2007 to cover a new five-year period, and the hope is that greater First Nation participation in forest management planning will be achieved in that time period.

The Province mandated that all forestry operations on Crown land had to be certified as of 2004, although a three-year extension was granted for First Nations to get 'up to speed'. Most operations are SFI certified, some are CSA certified, but none is certified to FSC. According to a participant, JD Irving at one point had reached the FSC standard in Maine and was considering doing so in New Brunswick as well, though it felt that the local advisory group might be too difficult to continually accommodate. First Nations operations on Crown land are also subject to provincial environmental regulations. Some interviewees expressed concern that First Nations may not have the capacity to attain certification of harvesting activities.

In the fall of 2003, HRSDC announced a new \$85 million over 5 years Aboriginal Skills and Employment Partnership (ASEP) program to support Aboriginal participation and jobs in major resource development projects nationwide. In the fall of the next year, federal, provincial, First Nations and industry partners launched a regional forestry skills training partnership initiative to benefit all 15 New Brunswick First Nations, worth \$4 million over four years. Partners supporting the initiative include New Brunswick Tribal Councils, the First Nations Human Resources Development Corporation, the New Brunswick Aboriginal Peoples Council, the New Brunswick Forest Products Association, the Government of New Brunswick, as well as HRSDC and FNFP. Through this initiative, the partnership expects to create and retain up to 180 sustainable full-time jobs for Aboriginal people in the forest industry and provide forestry employment-related training and training upgrading for 700 Aboriginal workers. There are three principal goals: to match currently trained First Nations workers with existing jobs in harvesting and silviculture; to upgrade skills to fill jobs; and to ensure that youth are interested in forestry.

That so much intergovernmental cooperation has been achieved is in some ways surprising, as the Province and federal government are at odds over which level of government should bear the cost of improving First Nations forest sector participation.

In relation to personal use timber, a permitting system is currently in place to ensure resources are managed at sustainable levels, although some First Nations interviewees characterized the

system as dysfunctional. The Province and First Nations are currently conducting a negotiation procedure over access to resources – specifically personal-use wood – with the objective of ensuring ‘without prejudice’ access to wood fibre for personal use by First Nations people in New Brunswick.

Extent of First Nations Forest Sector Participation

Today, some 550 to 600 First Nations people province-wide are trained to work in forestry, although only 250 to 300 are actually currently employed, mostly in harvesting and silviculture. Seasonal fluctuations in labour needs, political considerations internal to First Nations which limit access to certain individuals, and other economic opportunities (including fisheries) contribute to the somewhat limited translation of training to employment in the area.

While the tenure reallocation process has greatly increased First Nations participation, some have voiced criticism. Some argued that it enriches a few First Nations harvesters and non-Aboriginal sub-contractors, while generating inadequate revenues for the communities, because the First Nations pay their harvesters and haulers significantly more than other licensees. Partly because of this, most First Nations harvesters work primarily on First Nations licenses rather than elsewhere. Participants indicated that in some cases, First Nations businesses sub-contract the harvesting work on their licenses to outside contractors, and still receive substantial revenues. Some interviewees indicated that they believe First Nations governments could generate greater revenues from harvesting and ensure that the benefits are better distributed among the community.

Other participants also pointed out that for many First Nations, their tenures are managed more as short-term employment generation vehicles than as long-term economic development strategies – a large number of people are hired for a limited amount of work, which can impede skills development, limit ongoing investment and business growth, and generate fewer net revenues to the community.

There are exceptions to this pattern, however. A number of New Brunswick First Nations have semi-independent economic development corporations which administer forestry businesses in order to achieve some insulation from political influences. Some community members are uncomfortable with these arms’ length arrangements, and greater accountability mechanisms are being developed, such as annual or even quarterly reports.

Because the interim accommodation agreements agreed to with the Province treat the 5.3% tenure as a communal tenure, many First Nations individuals who are denied access to the opportunity are concerned that the court rulings will make a final determination that forest resource rights are communal, and their situation will endure.

There are no major First Nation-owned mills in the province. There is also very little First Nations employment in industry-owned mills, as there are considerable cultural obstacles to be overcome and most mills are staffed with long-term, unionized career workers. Openings are scarce as layoffs occur province-wide. Likewise, industry has not been closely connected to the interim accommodation agreement process and so have not made major commitments such as memoranda of understanding with hiring quotas, joint venture partnerships, or other such initiatives. Industry has however made substantial investments in training of First Nations

people through the new multi-partner skills development program, one of industry's first major initiatives in this area.

Because of the preponderance of private land in New Brunswick, large forestry companies are accustomed to consulting with First Nations at a lower standard than other jurisdictions where more land is held by the Crown and there is more potential for treaty or TLE settlements. Industry's view is that it consults adequately around sites of cultural importance to First Nations; some First Nations have differing views. In some cases industry has made allowances for First Nations to gather ash for baskets or use other important areas of cultural importance on privately-owned land. Recent court challenges have, however, raised the 'bar' for consultation, and industry is gradually moving to meet the new standards. Many First Nations, meanwhile, have hired forestry specialists to represent them as detailed forest management plans are reviewed.

Progress over the past years

In general relations between First Nations and the Province and industry were problematic for many years, culminating in major disputes around the Marshall and Bernard cases. The interim accommodation agreements and the multilateral training program have mollified the situation substantially, and some participants indicated that relations are more positive now than ever before. That said, major differences remain. What is lacking is a clear vision on the part of the three parties for how the relationship should look in the future, but it is difficult to crystallize one in the uncertain legal environment. Many interviewees noted that most companies in the New Brunswick forest industry tend to defer the lead role in building relationships with First Nations to government, in comparison to other jurisdictions such as Alberta, for example, where the situation is the opposite. Industry is seen by some as working reactively rather than proactively as determinations of First Nations rights' evolve and pressure to increase their level of participation mounts.

First Nations and government interviewees indicated that they believe the Bernard decision and other court rulings will clarify the situation and resolve alleged illegal harvesting issues. Others, however, particularly on the industry side, are concerned that any court legitimization of Aboriginal or treaty rights off reserve will embolden individual harvesters on Crown land and create greater problems in the future. Much revolves around the outcome of the Bernard case but political leadership in the aftermath will be equally important. Some interviewees continue to characterize the current situation as one of 'lawlessness' or 'crisis'.

While the current state of relations may seem problematic, in some ways it has to be noted that New Brunswick has had some success considering the circumstances: a slumping forest industry; a small and marginalized First Nations population; generally poor relations with surrounding communities on resource issues; little manoeuvring room on forest opportunities as much land is privately held and tenures are fully allocated; and limited skills and capacity in First Nations communities. The Province's initiative to allocate resources somewhat in excess of the First Nation proportion of the population was in some ways a bold, confidence building measure which may lay the foundations for long-term development in the future. However, more work remains to be done. A range of issues related to skills and training, enforcement of permits, First Nations governance, and business capacity need to be dealt with.

Prince Edward Island

Prince Edward Island is of course a very small player in the Canadian forestry industry, with an Annual Allowable Cut of just 490,000 cubic metres and a First Nation membership associated with the Island's two First Nations – Lennox Island and Abegweit – of just 1,345 people.

One initiative of note, however, is an ecotourism project on some 1350 acres of Lennox Island territory, including a museum, some hiking trails, and an ecotourism lodge, which attract a great number of tourists. The community is committed to using its forest resource in a non-consumptive manner. FNEP funding has been provided to support this ecotourism initiative as well as to preserve the near-extinct black ash population on PEI.

The little First Nation involvement in commercial forestry is off-reserve, on private land, and these opportunities are limited. A greater concern to the community is the preservation of sites of traditional cultural importance, a task which is a challenge as most of the island is privately owned (only 10 or 12% remains Crown land). The Mi'kmaq Confederacy of PEI is currently undertaking a traditional use study to document such values. The study may generate some controversy if findings relate to private land.

Nova Scotia

Nova Scotia is home to some 13 First Nations, and the census-reported First Nation population amounts to about 17,000. The Annual Allowable Cut in the Province is around 6,700,000 cubic metres, amounting to about 2.8% of the national total. The dominant player in the province's industry is Stora Enso Inc., based in Cape Breton.

In Nova Scotia, roughly 50% of the land base is in small private holdings (upon which much of the commercial forest industry is based), 25% is held by industry, and 25% is in Crown hands, including 3% of federal land (mainly National Parks, First Nation reserves and Department of National Defence holdings.) What remains in Crown hands tends to be what was not desired for settlement purposes and is generally uneconomical, including swamps, bogs, rocky land, etc.

Historic treaties established First Nations reserves in various parts of the province. As much of the province's economically useful land is privately held and forest resources are fully allocated, opportunities for increased First Nations land tenure are limited. Where First Nations have a need for wood for personal use, generally for heating or for shelter, the Province tries to find resources to meet these needs, although stumpage fees are charged. Some users do agree to pay these fees, while others refuse or cannot afford them. On the other hand the Province has been active in prosecuting First Nations and non-Aboriginal people who illegally harvest wood for commercial purposes. Unlike New Brunswick, however, the Province has not laid charges relating to personal use.

The Provincial government has concluded an umbrella agreement with the Confederacy of Mainland Mi'kmaq of Nova Scotia (CMMNS), covering a wide range of social, legal, and economic issues. Very little in the agreement dealt with access to or control over natural resource development, which is subject to rights-based legal processes. The federal First Nations Forestry Program runs its projects through one contribution agreement with the CMMNS, in contrast with other regions where agreements with each individual community are required.

Many regard the CMMNS as a relatively strong and effective advocate and representative of its member communities' interests around natural resources.

In addition, a framework agreement has been concluded to guide negotiations, addressing consultation protocols with First Nations. First Nations are hesitant to move forward on negotiations, however, until the Marshall and Bernard cases are resolved at the Supreme Court and their rights are better defined.

Interviewees characterized Stora Enso as taking a proactive approach to relations with First Nations. The company has offered employment in harvesting to First Nations individuals, although there is no long-term training or capacity building strategy in place. The company does hope to attract First Nations people to the industry, however, as interest in the general population decreases, and community colleges devote less attention to forestry training. There is high turnover among employees in woodlands operations, an issue of some concern because of the long time required for workers to reach economic levels of productivity.

Other issues for First Nations relate to non-timber forest values, such as medicinal plants or eagle feathers, which the government makes some effort to ensure are available for communities' use. There are also a number of heritage areas that First Nations are interested in preserving, particularly archeological and burial sites. Because some of these areas may draw unwanted interest from others, First Nations are hesitant to share information about culturally important sites to industry, a practice which can occasionally cause disruptions to operations. However, most First Nations reserves are situated along bodies of water, so the surrounding areas are protected from machine harvesting by riparian buffer zones.

Generally little consultation with First Nations is conducted regarding the use of private or Crown land before harvesting occurs. There is some concern that the Haida-Weyerhaeuser judgement may require the Province to revisit its practices in this regard. However, the Province does consult First Nations on integrated natural resource management frameworks when they are developed. Nevertheless, participation levels on the part of First Nations vary province-wide and the process is not always as thorough as some would like.

There is some concern that if the Bernard and Haida decisions lead to a shift in control over forestry resources it may cause some controversy, as the Marshall case did in the case of fisheries. Generally such decisions cause difficulties for a short period of transition and uncertainty, before acceptable ways to balance the various interests in the resource are found.

Another emerging challenge will be to implement a more ecosystem-based approach to forest management in the Province, as this creates a complex set of requirements. Adaptation will be required not only on private land but also on First Nations land as some communities will have to adapt their practices considerably to ensure sustainability. There is a strong lobby developing in favour of expanded wilderness areas in the Province, and many First Nations are on side with the environmentalists. However, communities are divided as First Nations harvesters are certainly opposed to this political partnership.

One outstanding question is whether rights to wood for personal purposes are individual or communal. Until this question is resolved, First Nations will be unwilling to 'rein-in' members who may be harvesting illegally, and have little capacity to do so regardless. Indeed there have

been cases where First Nations community members have notified the Nova Scotia government that another member is cutting ‘their wood’ on Crown land. This situation of uncertainty is particularly difficult for First Nations, government and police whose goal is to reduce conflict.

A number of First Nations communities in Nova Scotia – including Membertou First Nation and Indian Brook – are making substantial progress on economic development, and have adapted their governance in innovative ways in order to facilitate this transformation.

Newfoundland and Labrador

Overview

Newfoundland and Labrador is a smaller player in the national forest industry, with an annual allowable cut of just 2.5 million cubic metres (only 1% of the national total). The value of the forest industry for the province does amount, however, to \$1.4 billion. The great majority of this is from pulp and paper operations, although there is a \$62 million sawmill industry and a \$10 million value-added industry. The chief operators are Cornerbrook Pulp and Paper and Abitibi Consolidated, controlling three pulp and paper mills. The industry employs approximately 10,000 workers province-wide, directly and indirectly.

Mainland Newfoundland is home to just one recognized First Nations reserve, Miawpukek (also known as Conne River), with a registered population of about 2,200. However, the Federation of Newfoundland Indians, numbering some 4,000 non-status members, is in discussions with Canada and the Province on the creation of a landless band. Other non-status Mi’kmaq groups exist in the Province as well. Labrador, on the other hand, has a large Aboriginal population, including among the 30,000 total residents around 5,300 Inuit; up to 2,100 Innu in the two communities of Sheshatshiu and Natuashish; and 6,000 Métis.

Miawpukek First Nation

The Supreme Court of Newfoundland and Labrador has ruled that the Mi’kmaq of Newfoundland do not enjoy Aboriginal or treaty rights in Newfoundland on the basis that their ancestors migrated to the island from the Maritimes after the arrival of European settlers, and the Province shares this view. The federal and provincial governments are, however, negotiating a self-government framework agreement with the First Nation.

Labrador Inuit Association

The Province has recently ratified a self-government and land claim agreement with the Labrador Inuit Association, to cover their territories in the North of Labrador. The Inuit territories are mostly barren, although there is one small Inuit company operating a small cut of about 12,000 cubic metres annually.

Labrador Métis Nation

The Labrador Métis Nation (LMN) are not members of the Métis National Council and are not recognized by the Province or the federal government as having Aboriginal status or rights under section 35 under the Constitution, a stance which is causing significant controversy in the region.

The LMN is however acknowledged as an important stakeholder group, and the provincial government does consult with the LMN on a variety of issues, including forest stewardship, although it is very careful not to commit to anything that might be used to further a land claim. The Province's position is that the federal government must determine whether negotiations on the Métis land claim will proceed before it raises its level of consultation with the group. Nevertheless, the Province has concluded a 2-year agreement with the LMN worth \$200,000 a year to build capacity around resource management.

Innu Nation of Labrador

The Province is in the course of negotiating a comprehensive land claim agreement with the Innu, with whom no treaty had been signed. In the interim the Province has committed to involving the Innu Nation in forestry through a co-management approach – a higher degree of decision-making than is used with the LMN. A 'process agreement' signed in 2001 gave the Innu a substantial say in the two-year planning process of a 70 million hectare district around their territory. The process resulted in a unique example of the application of an ecosystem-based management approach to a large area of undeveloped boreal forest. As part of the plan, the allowable cut in the district was halved, from 400,000 to 200,000 cubic metres. The Innu have indicated that they are generally content with the results, and see their values respected in the plan.

Four Innu guardians are working 'on the ground', ensuring that harvesting is conducted to Innu standards – a difficult job to which they have reportedly shown great dedication. The Province and the Innu Nation are currently considering ways to get these Innu guardians and other people employed as Conservation Officers, particularly around caribou stewardship, as this might ease disputes with the Québec Innu and would suit Innu cultural priorities.

The Province has concluded a 5-year agreement to build Innu Nation capacity to work on resource issues. They control an allocation of some 15,000 m³, but still require a permit to operate it. There is some talk of a partnership with Quadra Pulp and Paper around a mill, possibly to be located on-reserve in Sheshatshiu. Abitibi Consolidated is also pursuing joint-venture or Memorandum of Understanding possibilities with the Innu, in order to access volumes in Central Labrador.

While there are currently no Innu businesses harvesting the forest on a large scale, the Innu are very interested in pursuing economic opportunities within a strict sustainability framework, once their land claim issues are settled. Most of the exploitable resources in Labrador are on the South side of the Churchill River, although a proposed \$110 million Trans-Labrador highway project from Cartwright to Goose Bay is under consideration, which will create access and economic opportunity further North. Interviewees acknowledged, however, that the maximum economic opportunities available to the Innu will be on the order of 60 woodlands and 60 mill jobs, in addition to potential value added work.

Because of these initiatives (as well as the conclusion of an impact benefits agreement related to the Voisey's Bay mineral development), the Province and Innu now enjoy generally positive relations. An unprecedented proposal that one participant indicated was under debate in the Province would involve the government submitting to the Innu for prior consultation all relevant Cabinet papers from the Province's Aboriginal Affairs Department and possibly also the Forest

Services branch. One approach that could be taken would be having Cabinet papers reviewed by Cabinet Committee first, and they would be shared with the Innu only if the Committee recommends their consideration by the full Cabinet. This would ensure that bold initiatives could receive some consideration at the political level without creating unnecessary controversy and misunderstanding in cases where they are rejected at an early stage. While ambitious, there are no clear signs from the Province that this idea will proceed.

Emphasis on Conservation

According to participants, Labrador forests – particularly those in the Innu territory – are governed with a strong emphasis on conservation, and are subject to one of the strongest environmental regimes in the country. Innu Nation is connected to the Sustainable Forest Management Network and has taken advantage of opportunities to disseminate the forest management model internationally. FNFP has been particularly active on a number of research projects with the Innu. The group is also a signatory to the Boreal Forest Initiative and have driven its advancement nationwide.

The recent Haida – Weyerhaeuser decision is not expected to impact heavily, because consultation in Labrador is already at a high level. Likewise, respondents indicated that the implementation of the Boreal Forest Initiative will not affect Labrador forest practices significantly as the region is already operating at this level of sustainability. Because little of the Labrador forest is heavily developed, the Province has had sufficient flexibility to implement broad alienations across the region in order to protect biodiversity and other features, including caribou habitats. In all, up to 50% of the region's forest has been alienated. Technically, there are no National Parks in Labrador, although there is agreement to create the Torngat Mountains National Park Reserve. There is also a study underway to determine whether a Park or Park Reserve will be created in the Mealy Mountains, and interim measures have been taken to protect the lands for when a decision is reached. Some areas that the Innu Nation hoped to set aside as well, such as a 20km buffer zone along the Churchill River, are under study by the Province as to whether they really need to be preserved. Participants indicated that most of the Innu Nation's members are relatively satisfied with the region's forest management plans. Nevertheless, the Province indicated that it would like to do more research to ensure that traditional values and cultural uses of the resources are indeed being respected.

While there are significant constraints on forest business operations in Labrador, the recent moves to increase Innu participation in forest management and to better define protected areas have improved the certainty of the operating environment. Outside investors and non-Aboriginal people involved in the industry are generally now aware and accepting of the need for a high degree of Aboriginal participation in the initiative. This situation represents major progress from a few years ago, when the Innu and Province were at 'loggerheads'. However, business opportunities are essentially on hold until the Innu land claim is settled.

There are considerable parallels between the forest management challenges in Labrador and other Northern 'greenfields' in the Boreal region, such as the Yukon, NWT, Northern Alberta, Saskatchewan in the Peter Ballantyne Cree Nation territory, the East Side of Lake Winnipeg, Ontario North of 51°, and Northern Québec. The commonalities between the regions include: a preponderant First Nations population; outstanding treaty or treaty land entitlements to negotiate; a lack of transportation infrastructure; marginal economic value of wood resources; a low annual

allowable cut and few areas licensed for harvest; little presence of major industry; the presence of large National Parks; and a relatively fragile and undisturbed forest ecosystem.

Many are looking to the Labrador model of forest management as an inspiration for other regions, a model that can be implemented elsewhere with the help of political efforts such as the Boreal Initiative and research work like that of the SFM Network. Interviewees did indicate, however, that the success of the model was possible in large part because of the lack of major pressures on the Labrador wood supply, and for this reason it would be difficult to achieve such strong conservation measures in more developed regions of the country. Another important factor was the lack of treaties, which required a higher consultation standard than other areas.

IV. Policy Approaches, Funding Programs and Industry Practices

Because the context for the relationships between forestry companies and First Nations varies so greatly nationwide, it is difficult to make generalizations about which policies are most effective at increasing First Nations participation, improving relationships, and creating an environment conducive to doing business. What might be helpful, however, is to summarize some of the comments made in the various provinces and territories about certain policy approaches.

The charts on the following pages outline (A) the range of policy instruments available to provinces in terms of forest management with advantages and disadvantages; and (B) the range of targets for program funding with advantages and disadvantages. These funding programs could be managed by provincial and federal governments, industry and in some cases First Nations organizations.

To round out this section we also include a third subsection (C), which lists a number of practices adopted by forest companies in their attempts to manage and improve their relationships with First Nations groups.

A. CHIEF PROVINCIAL POLICY MEASURES AVAILABLE: PROS and CONS

<u>Measure</u> (examples)	<u>Advantages</u>	<u>Disadvantages</u>
Tenure Reallocation from major licensees to First Nations (FNs) (B.C., N.B.)	<ul style="list-style-type: none"> ▪ A useful interim measure during contentious disputes over land, rights ▪ Strong symbolic gesture ▪ Can spur partnerships based on equal terms 	<ul style="list-style-type: none"> ▪ Disrupts existing commitments ▪ Politically, legally difficult ▪ May create licenses too small to be operated independently ▪ Capacity of some FN's may be inadequate to manage tenure
Preferential reallocation to First Nations under 'Use it or lose it' provisions (Ontario)	<ul style="list-style-type: none"> ▪ Less disruptive to existing commitments ▪ Can maintain economy where industry failing 	<ul style="list-style-type: none"> ▪ Where forest resources are valuable this achieves little distribution ▪ Tenures reallocated may be of limited value
Give First Nations first bid on 'greenfield' opportunities (Ontario)	<ul style="list-style-type: none"> ▪ It is less controversial to open up new 'pristine' areas to FN business than to big business ▪ As forest dwellers, FN's will emphasize sustainability ▪ Creates economic opportunities for remote communities 	<ul style="list-style-type: none"> ▪ Resources may be of limited value ▪ Can mean that if no First Nation has capacity to act on opportunity alone, a major licensee will then be able to act independently
Require companies to partner with FN's on new ventures (Saskatchewan)	<ul style="list-style-type: none"> ▪ Partnering can be effective in building FN capacity ▪ Encourages proactive company practices around FN relations 	<ul style="list-style-type: none"> ▪ May leave resource undeveloped ▪ Lessens likelihood of ecosystem-based approach to managing resource
Develop an Aboriginal class of license (possibly Labrador)	<ul style="list-style-type: none"> ▪ Good fit with self-government agenda, Aboriginal values ▪ Can ease regulatory burden on FN enterprises with limited capacity 	<ul style="list-style-type: none"> ▪ 'Protectionist' approach – FN's may not develop capacity to work within mainstream market ▪ May reduce total levels of production
Award First Nations conventional licenses (Saskatchewan)	<ul style="list-style-type: none"> ▪ Positions successful FN enterprises to expand in mainstream industry 	<ul style="list-style-type: none"> ▪ May be difficult to enter market, meet regulations from position of low capacity ▪ Can conflict with FN values
Revenue Sharing (B.C. and New Brunswick)	<ul style="list-style-type: none"> ▪ Builds FN financial capital ▪ Could address U.S. grievances? 	<ul style="list-style-type: none"> ▪ May not spur jobs, business ▪ Zero-sum approach
Require FN involvement as part of environmental assessment (Ontario)	<ul style="list-style-type: none"> ▪ Flexible, ongoing approach based on FN rights, interest, capacity ▪ Smooth fit with other elements of forest management process 	<ul style="list-style-type: none"> ▪ Vague requirement – benefits to FN's may be limited in practice ▪ Places a lot of discretion in hands of government officials
Assist FN's in gaining an ownership stake in companies or mills (Saskatchewan)	<ul style="list-style-type: none"> ▪ Best staff in existing business can be retained to build FN capacity ▪ Creates a confluence of FN - industry interests 	<ul style="list-style-type: none"> ▪ Mills that are closing or privatized by government may be risky financial ventures ▪ Too ambitious for some FN's

B. POTENTIAL TARGETS FOR PROGRAM FUNDS: PROS and CONS		
<u>Measure</u>	<u>Advantages</u>	<u>Disadvantages</u>
Training of foresters, forest technicians, business managers	<ul style="list-style-type: none"> ▪ Crucial for meaningful FN involvement in planning & long-term business development ▪ Creates basis for sharing of traditional, scientific knowledge 	<ul style="list-style-type: none"> ▪ Trainees may not stay in FN ▪ Few have required education ▪ Best training can be ‘on the job’
Training of harvesters, millwrights	<ul style="list-style-type: none"> ▪ Most well-paid opportunities for FNs are in harvesting ▪ Prepares future labour force ▪ Can create a generational effect where children follow parents into industry 	<ul style="list-style-type: none"> ▪ May be difficult to match training to jobs ▪ Few mill jobs available
Youth engagement initiatives	<ul style="list-style-type: none"> ▪ Helps ensure future labour force ▪ Empowers youth, gives them a reason to stay in school 	<ul style="list-style-type: none"> ▪ If work (like silviculture) too hard, poorly-paid, initiative may actually discourage youth
Seed money for primary sector business	<ul style="list-style-type: none"> ▪ Most well-paid opportunities for FNs are in harvesting 	<ul style="list-style-type: none"> ▪ ‘Seed’ money insufficient to acquire capital
Seed money for value-added businesses	<ul style="list-style-type: none"> ▪ Better fit with FN values ▪ Diversifies economy 	<ul style="list-style-type: none"> ▪ Value-added ventures are often seen as high-risk
Capacity funding for economic development corporations	<ul style="list-style-type: none"> ▪ Helps insulate community business from politics ▪ Helps bring on qualified staff 	<ul style="list-style-type: none"> ▪ Can create two competing ‘points of contact’ in FNs
Capacity funding for forestry units at Tribal Council level	<ul style="list-style-type: none"> ▪ Can create capacity beyond potential of each community ▪ Easy point of contact for industry 	<ul style="list-style-type: none"> ▪ Communities can feel disconnected from Tribal Council
Inventories of forest resources	<ul style="list-style-type: none"> ▪ Can be required to attract investment in FN territories 	<ul style="list-style-type: none"> ▪ Costly
Infrastructure projects in remote regions	<ul style="list-style-type: none"> ▪ Can attract investment, create economic opportunity 	<ul style="list-style-type: none"> ▪ Controversial, as ‘pristine’ areas opened up for development
Model Forests and other Research Initiatives	<ul style="list-style-type: none"> ▪ Useful sharing of best practices ▪ New knowledge of sustainable approaches meeting ecological and economic objectives ▪ Testing ground for partnerships 	<ul style="list-style-type: none"> ▪ Costly, not always action-oriented
Funding support for consultation around forest stewardship	<ul style="list-style-type: none"> ▪ Crucial to meeting legal obligations ▪ Smooths FN-industry relations 	<ul style="list-style-type: none"> ▪ Costly ▪ Difficult to consult with both community and leadership
Development of forest management plans on-reserve	<ul style="list-style-type: none"> ▪ Reserve land often poorly managed 	<ul style="list-style-type: none"> ▪ Land use concerns greater off-res ▪ Creates disincentive for FNs to

		tax, manage on-reserve activity
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C. Practices adopted by Forest Industry Firms: Some Examples

The following are illustrative of the principal practices that industry firms across Canada have adopted to better manage and improve their relationships with Aboriginal peoples. (For a more comprehensive list, see the IOG publication “Aboriginal Communities and the Canadian Forest Industry: an Inventory of Best Practices” available on the Institute web site).

Organization

- Identify a responsibility center for overseeing relations with Aboriginal peoples
- Appoint Aboriginal persons to the Board of Directors
- Establish share acquisition systems with Aboriginal communities

Policies

- Establish formal policies guidelines or principles at the corporate or operating levels encompassing such matters as forest stewardship, employment and training, contracting and community relations

Employment and Training

- Track what the company has learned from its employment and training activities
- Collect data on hiring, training and retention
- Develop pre-employment practices such as preparing primary and secondary students for the work force through presentations at career days, providing information about hiring processes and education requirements, providing scholarships for post secondary education, and organizing internships and co-op programs
- Develop hiring practices such as utilizing Aboriginal media to advertise job openings, maintaining job lists of potential employees, pro-actively seeking potential hires, and having two person hiring teams with one person being an Aboriginal person
- Undertake initiatives to make the work place more attractive to aboriginal employees by providing cultural awareness training to non-Aboriginal employees, providing special training courses, and establishing apprentice-like training on the job in keeping with Aboriginal oral traditions

Aboriginal Business Development

- Track what the company has learned from its Aboriginal contracting procedures
- Set up a tracking system for Aboriginal contracting
- Support start-up business planning by assisting with business plans and providing technical advice
- Address funding needs by working with financial agencies, providing letters of support, providing advances to contractors, lending equipment, and providing equity contributions
- Support on-going business operations by establishing training programs

- Establish contracting policies and procedures such as breaking large contracts into smaller ones, establishing set-asides, providing early notice of potential contracts and establishing community-first programs for some contracts (e.g. fire, silviculture)

Forest Stewardship

- Establish cooperative management processes with Aboriginal communities to address forest management planning, including the establishment of objectives, the creation of technical planning committees and the identification of sensitive sites
- Identify Aboriginal interests in forest management planning processes by developing First Nation background information reports, and conferring with trappers, fishers, hunters, outfitters and gatherers
- Develop methodologies for cultural inventories
- Incorporating traditional ecological knowledge systems into forest management plans
- Set aside tracks of land for Aboriginal heritage, recreational hunting and fishing
- Develop Aboriginal value maps
- Provide communities with resources to carry out their own reviews of forest management plans
- Establish an environmental hot line to provide immediate notice of incidents that may affect local residents
- Develop working relationships to notify communities when timber is being removed illegally from reserve lands
- Fund positions at Tribal Councils to build their capacity for forest stewardship activities

Relationships with Communities

- Develop corporate principles to guide relations (e.g. focus on long-term, reciprocal relationships, build trust, ensure mutual respect, focus on win-win activities, and emphasize full disclosure and transparency)
- Identify employees to manage the implementation of principles
- Create processes to measure progress
- Take steps to understand Aboriginal culture
- Establish formal mechanisms such as advisory committees and regular community meetings
- Participate with communities in mutually advantageous groups such as model forests research undertakings, and business associations
- Circumscribe the role of lawyers and consultants to simplify relationships
- Play an active role in communities by funding community cultural events, providing speakers, sponsoring athletic teams, supporting pow-wows and establishing career days

Conclusions

1. Increased participation in the forest sector can help achieve multiple objectives for First Nations:

- d. **Economic objectives:** jobs in a variety of areas of the industry, contracts for First Nations entrepreneurs, financial investments in mills and other ventures, community revenues, stimulus of value-added and non-timber forest products businesses, and a strong connection to broader economic development strategies;
- e. **Social objectives:** skills development, youth opportunities, a sense of empowerment and self-reliance, respect for First Nations spiritual values around forests, and mutual understanding between First Nations and non-Aboriginal people;
- f. **Ecological objectives:** respect for traditional ecological values and knowledge, as well as for the needs of First Nations forest users, and a more ecosystem-based approach to forestry.

2. Increasing First Nation participation in the forest sector requires concerted efforts to simultaneously build both First Nations' 'stake' and 'capacity'. Neither element is sufficient on its own.

3. There are several routes for First Nations to gain a 'stake' in the forest industry:

- Concluding treaty land entitlements or comprehensive treaty settlements and gaining title or use of lands
- Gaining forest management licenses
- Gaining a significant role in forest management planning processes
- Developing wholly-owned businesses or joint ventures with established firms.

In many cases all of these paths still need to be pursued. However, everything cannot be achieved at once and gradual approaches appear to be most beneficial, particularly to the development of businesses.

4. Having an effective 'stake' in the industry requires developing 'capacity' – this includes everything from individuals' employment skills to community financial, business, technical, and managerial capacity. Rather than gaining short-term economic benefits from royalties and employment, First Nations are increasingly attempting to ensure that their relationships with the forest industry help them build long-term capacity as part of broader economic development initiatives. Similarly, in order to concertedly build capacity, communities require assurance that they will gradually gain a 'stake' in the forest sector. Commitments by industry and government are crucial to building the sense among First Nations that they are 'in the driver's seat' as they pursue long-term initiatives.

5. The extent and form of First Nations participation in the forest sector varies widely across the country – different companies and communities make different levels of effort to build partnerships; and some jurisdictions have implemented assertive policy frameworks granting First Nations increased control over the resources, while others have relied more on the economy to naturally absorb First Nations into the sector – to greater or lesser success. In some areas First Nations people are on the Board of major companies, in others they are engaged in blockades of companies' operations.

6. **Based on qualitative analysis, there has been considerable progress in the overall relationship between the forest sector and First Nations over the past decade.** Most respondents indicated that on the whole there is somewhat less confrontation, more conversation, more mutual respect, and indeed more cooperation in business activity, yielding tangible benefits to First Nations as well as to companies' bottom lines. Although there is wide diversity in the range of opinions about the relationships, and considerable distance remains between the most polarized views, the common ground among the parties has grown considerably in the past ten years. Most interviewees were guardedly optimistic about future First Nations - industry collaboration.
7. **A number of pressures are building to improve First Nations participation:**
- **A growing First Nations land base** – the resolution of land claims and treaty settlements is greatly expanding the forest lands which First Nations own and manage.
 - **Legal rulings** like *Delgamuukw*, *Marshall*, *Haida*, and *Powley* are clarifying and in some cases expanding the scope of Aboriginal and treaty rights, and consultation and accommodation requirements. Governments and industry are making efforts to address Aboriginal rights issues as further cases make their way to the Supreme Court.
 - **International commitments** like the Rio Declaration, the Statement of Forest Principles, the Biodiversity Convention, and Kyoto put a greater onus on sustainable forest management, including on accommodation of the rights of indigenous forest dwellers.
 - **The Canadian Boreal Initiative** is gaining momentum, as conservationists and forest sector companies are forging linkages with First Nations in a bid to better conserve boreal regions across Canada.
 - **The National Forest Strategy 2003-2008** includes seven action items aimed at facilitating Aboriginal involvement in the sector.
 - **The Canadian Council of Forest Ministers' Criteria and Indicators**, which have recently been established, will help to some extent in measuring progress and setting goals around First Nations forest sector participation
 - **Certification Standards** like the Canadian Standards Association, Forest Stewardship Council and now also the Sustainable Forest Initiative standards require evidence of significant efforts to involve Aboriginal people in forest management processes.
 - **Corporate Social Responsibility** – an approach to management based on pursuing the 'triple bottom line' of social, environmental, and economic objectives, and ensuring all stakeholders benefit from company activities – is gaining acceptance throughout the forest sector and places emphasis on positive First Nations relations.
 - **First Nation Governance advances** – such as the establishment of arm's-length economic development corporations; longer election cycles; improved financial management systems; and forestry coordination units at a Tribal Council level – facilitate capacity building and more stable relationships with external partners.
8. **Some companies are beginning to see positive First Nations relations as potential competitive advantages, and are strategically positioning themselves as 'preferred partners' in the long-term.** Many companies predict increased First Nations involvement in the forest sector in the long-term, particularly through expanded tenure, and increasingly see the 'upsides' of First Nations relations – such as potential business opportunities, improved long-term access to resources, and improved company image – rather than the 'downsides' such as potential confrontations, negative publicity, and competition for tenure.

9. The principal barriers to increased First Nation involvement in forestry appear to be the following:

- Difficult market conditions – particularly with the ongoing softwood lumber dispute – have led to mill closures and layoffs. Building positive First Nations relations implies costs and is seen as a long-term investment for many companies, not all of whom are currently in a position to make concerted efforts in this area.
- Lack of skills and capacity (financial, technical, business, organizational) within the First Nation community to contribute effectively to forest sector businesses, and inadequate training opportunities;
- Lack of capacity on the part of some major forest companies to manage the unique issues around First Nations partnerships;
- Lack of infrastructure in the regions where First Nations have the most reserve lands, largest licenses, or most significant stakes in forest management planning processes;
- The highly capital-intensive nature of the industry requires strong financial positions for investment which many communities lack;
- Much of the best land is tied up in long-term renewable licenses, so that any new commitment to First Nations would require cancelling existing agreements unless innovative approaches are developed;
- Well-paid jobs in mills are often unionized and require significant training – while First Nations people can join unions, generally a critical mass of First Nations employees or part ownership of the mill are necessary for many to pursue and gain these jobs;
- First Nations sometimes lack unity of purpose and are torn between competing economic, social, and environmental objectives;
- First Nations businesses are often inadequately insulated from politics and cannot focus on financial sustainability and profit;
- There are tensions between ‘individual’ and ‘communal’ rights and entitlements with regards to forestry, so that managing the expectations of First Nations entrepreneurs vis-à-vis community members can be a major challenge for First Nations leaders;
- Due to the constitutional division of powers, limited federal capacity to fulfill province-like roles on reserve, and the growing number of First Nations operating under the First Nations Lands Management Act, a ‘regulatory gap’ around forest management – both in terms of law and enforcement – exists on First Nations lands;³⁴
- Since there are so many players that need to cooperate to achieve progress (federal, provincial, First Nations, and industry) it is rare that leaders in all camps will happen to ‘see eye-to-eye’ at any one time, so there are few real ‘windows’ for progress;
- Government support for First Nations initiatives is too short-term, is in too many pots and is spread too thinly;
- Planning for forest sector investment, building relations with industry, developing capacity and skills, incorporating ecological values into decision processes, and other key elements are long-term propositions. However, the pace of business and the instability of First Nations politics under the Indian Act make it difficult to achieve the level of long-term commitment required to see initiatives through to success.

³⁴ For more information, see comments by John Moffet in “Notes on the third TANAGA Roundtable Meeting, on Environmental Management and the Regulatory Gap”, Nov. 17, 2004, at iog.ca/TANAGA/summary_nov2004.pdf

10. Better defining Aboriginal and treaty rights and resolving land issues are of fundamental importance to the long-term vitality of the forest industry and to increasing First Nations participation in it. Unresolved land and treaty issues – particularly in British Columbia but also in areas where treaties have been signed such as New Brunswick and Nova Scotia – are a major impediment to forest sector investment as well as to partnership development between First Nations and industry. In cases where rights and land issues are unresolved, development can be retarded for a number of reasons:

- Government players are hesitant to provide funding to initiatives in the area for fear of pre-empting, compromising, or creating obstacles to negotiated agreements
- First Nation leaders are focussed on political rather than economic concerns
- First Nations can disrupt or resist companies' initiatives in order to gain leverage in negotiations
- Industry, fearful that its tenures will be reduced as part of a settlement, may resist partnering with groups they see as challenging their position

However, concluding self-government processes and other major agreements requires long periods of negotiation. Interim measures should be put in place to ensure that business relationships can progress at the same time.

11. A critical factor in overcoming these barriers is concerted political will on the part of all governments – federal, provincial/territorial and First Nations. But there are many reasons why political will is elusive. Significant commitments have been made to the established companies and their unionized workforces, and the largely non-Aboriginal communities they sustain. In addition, what is required is time, patience, political capital and creativity on the parts of federal, provincial, industry and First Nations leaders and managers – and with many other goals these elements are in short supply.

An additional problem relates to the federal - provincial division of powers. With the exception of land claims settlements, it is the Provinces that have the most potential to stimulate First Nations forest sector participation (through tenure reallocation, for example), though much of the First Nations file is seen as lying within federal jurisdiction and Provincial governments (perhaps with the exception of provinces with large Aboriginal populations like Saskatchewan and Manitoba) do not face strong pressures to make Aboriginal issues a priority, either from the public or their own bureaucracies. Finally, First Nation forestry has not been a sufficiently high priority for the federal government.

12. Aggregated First Nations organizations such as Tribal Councils can play a major role in achieving significant levels of First Nation forest sector participation, and facilitate effective long-term relationships with government and industry, if the organizations manage to keep their activities well connected to community priorities. There is considerable debate over the effectiveness of 'aggregated' approaches to First Nations governance, and a lot of communities are resistant to transferring authority to other First Nations bodies like Tribal Councils. However, many major forest sector initiatives which would have been difficult to achieve on a community-by-community basis have been built through Tribal Councils, such as Carrier-Sekani (BC), Meadow Lake (SK), West Region (MB), North Shore (ON), and the Grand Council of the Crees (QC).

- 13. First Nations are increasingly focussing not just on the *quantity* of jobs available in the forestry sector, but also on their *quality*.** First Nations participation in the forest industry has tended to be concentrated in the silviculture, harvesting, and hauling areas, but First Nations (and government officials) are increasingly trying to create jobs in mills, value-added industries, and – most importantly for the long-term – business management and forestry.
- 14. There is no agreement as to the viability and success of joint venture models or other forms of business partnerships.** While some models appear to be promising – in particular tripartite ventures between outside firms, First Nations development corporations and consortia of local investors – there have been many failed partnerships in the past. More information on best practices and lessons learned is required.
- 15. There appear to be two distinct policy contexts across Canada on First Nations forest sector participation issues – the ‘North’, and the ‘South’. Different strategies for forest development need to be developed for each, and different lessons and best practices are relevant in each context.**

In more Northern regions, such as Labrador, Northern Quebec, Ontario North of 51°, the East Side of Lake Winnipeg, the Peter Ballantyne region of Saskatchewan, Northern Alberta, Yukon and NWT, the following common factors allow for a high degree of First Nations influence over forest management, though economic opportunities are limited:

<ul style="list-style-type: none"> ▪ A preponderant First Nations population ▪ Little transportation infrastructure ▪ Marginal economic value of wood resources ▪ A relatively fragile and undisturbed forest ecosystem 	<ul style="list-style-type: none"> ▪ Concluded or ongoing land claims or self-government negotiations ▪ A low annual allowable cut and few areas licensed for harvest ▪ Little presence of major companies
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In more Southern regions across the Provinces, the following factors are constraints on First Nations participation – both in forest management or in economic opportunities:

<ul style="list-style-type: none"> ▪ A smaller First Nations proportion of the population with less political ‘clout’ ▪ Near full allocation of forest resources through long-term commitments to major licensees: few greenfield areas ▪ Historically contentious First Nations - industry relations ▪ Limited skills and capacity in First Nations communities 	<ul style="list-style-type: none"> ▪ A slumping forest industry ▪ Major disagreements over the scope of Aboriginal and treaty rights and title, major unresolved legal battles ▪ Mill jobs on decline, and mostly unionized and skill-intensive ▪ Heavy rates of utilization of forest resources – greater potential to infringe First Nations forest values
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Recommendations

In light of the above conclusions, we recommend that:

- 1. The federal government and virtually all provincial governments (the one exception is Saskatchewan) should accord a much higher priority to enhancing the participation of First Nations and other Aboriginal groups in the forest sector. For many First Nations in northern regions, forestry offers the best opportunity for sustainable economic development.** In terms of the federal government, this should mean, among other things, the development of a government-wide Aboriginal forestry strategy. Such a strategy would be based on a province by province (and north/south) analysis of opportunities for federal involvement, better coordination among its economic development programs, more resources dedicated to forestry initiatives, and above all ongoing involvement by Ministers and senior officials. Some interviewees complained of a ‘silo mentality’ between levels of government, which needs to be overcome if progress is to be made.
- 2. The key players should develop strategies to promote the capacity development of First Nations in the long-term, particularly financial, business, technical, and managerial capacity.** This may require the establishment of a multi-party process, involving both levels of government, First Nations, industry, and representatives of training institutions (and possibly also banking institutions).
- 3. First Nations should continue efforts to improve community governance structures so as not to deter business relations with outside investors and to ensure that benefits are widely shared within their communities.** A model highly regarded by most interviewees involves the setting up of an arms-length, community-owned economic development corporation. But as indicated in a past IOG survey of a number of Aboriginal communities in Canada and abroad, more than the establishment of a separate corporate entity is required. The structure should allow the company administrators to focus on business but, in addition, there must be clear and transparent means of distributing the benefits of the enterprise among the community. Further, to increase the odds of long term viability, there ought to be a strategic fit with the community’s long-term goals.
- 4. First Nations should continue efforts to achieve significant benefits from forestry through aggregation.** As noted in the conclusions, examples of really significant First Nation participation, with few exceptions, involve aggregated bodies like tribal councils, which tend to have more political clout and greater capacity to take advantage of emerging opportunities.³⁵
- 5. The federal and provincial governments should develop measures to assist First Nations to meaningfully participate in forest management planning processes.** In general, First Nations communities require government funding to ensure meaningful consultation, accommodation, and participation in planning. Provincial governments need to develop strategies – along with necessary funding – to improve First Nations communities’ capacity to work within their frameworks.

³⁵ See Institute On Governance policy brief # 18, “Aggregation and First Nation Governance”, at www.iog.ca.

6. **The key industry and governmental players should develop approaches to support small First Nations business in the value-added and non-timber forest products sectors,** perhaps through arrangements with banks such as loan guarantees or matching loans.
7. **Strategies to develop First Nations capacity to manage their growing reserve land base must also be undertaken. In particular, some First Nations operating under the First Nations Lands Management Act (FNLMA) need to develop Sustainable Forest Management codes to fill a regulatory ‘gap’ on their reserve lands.** Once these are developed, the legal text of the codes, as well as information on other management practices, experiences and insights should be other shared with other First Nations.
8. **The key players should improve data collection and conduct further research on First Nations forest sector participation – including on employment, contracting, forest inventories, business partnerships best practices, and other issues – and make the results accessible to the public.** Governments should improve their own statistical data and require or provide incentives for forest companies and First Nations to resume tracking and compiling information on First Nations employment and contracting. Research should be conducted to develop legal means to track this important information without potentially discriminating against employees. Research on joint ventures and other forms of forest sector partnerships should also be conducted in order to gather lessons learned and best practices, particularly relating to how joint ventures can help build First Nations business capacity.

To conclude, all of the issues we have discussed affirm that, like forest stewardship, building effective and cooperative relations between First Nations and the forest sector is a long-term venture. Progress requires patience, and firm commitments to building trust, respect, and mutual understanding in the face of multitudes of smaller, divisive issues. Some failures are inevitable, for that is the nature of business. There are no quick fixes, but frank communication and debate will create some modest practical steps that can grow into major advances over time.

Annex: List of Participating Organizations

The Institute On Governance and the project sponsors – the National Aboriginal Forestry Association, the Forest Products Association of Canada, and the First Nations Forestry Program gratefully acknowledge the participation of the organizations listed below in its study.

The interviews were conducted on the understanding that they would not be identified as individuals and that particular comments would not be attributed to them or their organizations in the report.

The IOG requested interviews with nearly 100 people in all provinces and territories except British Columbia and Nunavut between October and December, 2004, and some 60 interviews were eventually conducted (in some cases individuals in more than one unit of the organization listed below participated). For B.C., an additional 17 interviews had been conducted in the Spring of 2004 as part of a related, earlier project), of some 25 individuals the IOG approached.

Organization	Area of Focus
National Aboriginal Forestry Association	General
Forest Products Association of Canada	General
First Nation Forestry Program – 7 regional units	All jurisdictions
Lakehead University	General
Sustainable Forestry Management Network	General
Newfoundland and Labrador Forest Service	Newfoundland & Labrador
Innu Nation	Labrador
JD Irving	New Brunswick
New Brunswick Forest Products Association	New Brunswick
UPM Kymmene	New Brunswick
Tobique First Nation	New Brunswick
New Brunswick Ministry of Natural Resources	New Brunswick
New Brunswick Aboriginal Affairs Secretariat	New Brunswick
Lennox Island First Nation	Prince Edward Island
Nova Scotia Ministry of Natural Resources	Nova Scotia
Quebec Ministry of Natural Resources, Fauna, and Parks	Quebec
Cree-Quebec Forestry Board	Quebec
Domtar	Quebec
A retired industry expert	Quebec
Tembec	Quebec
Bowater Inc.	Ontario
Ontario Ministry of Natural Resources, Forest Management Branch	Ontario

Weyerhaeuser	Ontario, Saskatchewan
Abitibi-Consolidated	Ontario, Quebec, Nfld., BC
North Shore Tribal Council	Ontario
Louisiana-Pacific	Manitoba
Tolko	Manitoba, B.C.
Manitoba Model Forest	Manitoba
West Region Tribal Council	Manitoba
Manitoba Conservation Ministry	Manitoba
Federation of Saskatchewan Indian Nations	Saskatchewan
Saskatchewan Environment Ministry	Saskatchewan
Meadow Lake Tribal Council	Saskatchewan
West Fraser	Alberta, British Columbia
Little Red River Cree Nation	Alberta
Alberta Sustainable Resource Development Ministry	Alberta
Alberta Aboriginal Affairs and Northern Development	Alberta
Deninu K'ue First Nation	Northwest Territories
Jean-Marie River First Nation	Northwest Territories
Government of Northwest Territories Forest Management	Northwest Territories
Canfor	British Columbia
Lignum Forest	British Columbia
Slocan	British Columbia
West Chilcotin Forest Products	British Columbia
Dunne-za Ventures Ltd.	British Columbia
Ulkatcho First Nation	British Columbia
Carrier Sekani Tribal Council	British Columbia
West Moberly First Nations	British Columbia
Aboriginal Forest Industry Council	British Columbia
Council of Forest Industries	British Columbia
British Columbia Ministry of Forests	British Columbia
Lheidli T'enneh First Nation	BC, First Nations Lands Management Act (FNLMA)
First Nations Lands Advisory Board Resource Centre	BC, FNLMA
Opaskwayak Cree Nation	Manitoba, FNLMA
Nipissing First Nation	Ontario, FNLMA