

**The Legacy of Condition 77: Past Practices and Future
Directions for Aboriginal Involvement in Forestry in
Ontario**

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Abstract

The Class Environmental Assessment for Timber Management on Crown Lands in Ontario introduced Condition 77 in 1994, which mandated the Ontario Ministry of Natural Resources to negotiate with Aboriginal communities on a local level to identify and implement means of increasing economic development opportunities related to forestry. Condition 77 became Condition 34 in 2003, but throughout its term, Aboriginal communities have been unsatisfied and frustrated. Despite commitments to address Aboriginal concerns, the provincial government has not yet supported its policies in practice. Thus, Condition 34 does not promise great improvements over Condition 77.

Looking to the future, the Northern Boreal Initiative is being used to guide community-based land use planning north of the Area of Undertaking as Ontario proposes to extend commercial forestry north. Intended to be led by First Nations communities, the current planning framework has not addressed the issues of concern in the Area of Undertaking: the lack of recognition of Aboriginal and treaty rights, poor implementation, the lack of capacity to realize potential benefits, and the lack of meaningful consultation and negotiation.

This paper explores the reasons for the failure of Condition 77, the current status of Condition 34, and lessons to be learned from past practices if we intend to engage in forestry north of 51°. It concludes that future resolutions between Aboriginal communities and Ontario, and the success of Condition 34, will depend on the initiatives and efforts of Aboriginal people for change. There is immense potential as we review the northern boreal, as it is devoid of many of the constraints in the Area of Undertaking, but also an ethical responsibility to heed the decisions and direction of communities that live there.

Keywords

Aboriginal communities, Condition 77, forestry, Ontario, environmental assessment, Northern Boreal Initiative

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Introduction

On November 1st 2006, the Ontario Ministry of Natural Resources (MNR) posted an information notice on Ontario's Environmental Registry, informing the public of their intention to seek a Declaration Order for Environmental Assessment Act coverage for forest management in the Whitefeather Forest (EBR 2006). The Whitefeather Forest is located outside of the Area of Undertaking, and thus outside of the area currently regulated under the Environmental Assessment Act for commercial forestry. The MNR, in conjunction with the Pikangikum First Nation, is seeking permission to practice forest activities on the Whitefeather Forest following the same standards established in the Declaration Order MNR-71 (2003) that regulate forestry in the Area of Undertaking.

Under the Northern Boreal Initiative (NBI), a community based land-use planning approach intended to be led by First Nations, Ontario is proposing to extend forestry north to, "foster sustainable economic opportunities in forestry and conservation" (NBI 2002 p.1). There is currently no framework for commercial forestry north of the Area of Undertaking, or the area north of 51°, and the Whitefeather Forest Initiative is the first project to come out of the NBI. The MNR information notice makes the assumption that the regulations governing forestry in the Area of Undertaking are suitable to guide forestry activities in the far north, but this may be an erroneous assumption. There are many issues of contention with current forest management practices in the Area of Undertaking (see ECO 2004; Henschel and Pearce 2005; Sierra Legal Defence Fund & Earthroots 2002; Sierra Legal Defence Fund 2006), as well as land planning processes for the area north of 51° (ECO 2006). If logging is to be permitted in the northern boreal forest, the MNR will require an approval or exemption under the Environmental Assessment Act (ECO 2006 p.137).

The environmental impacts of commercial forestry in the northern boreal forest are not yet fully understood (ECO 2006) but the Wildlands League and Environmental Commissioner's Office assert that, "significant changes should be made to the way in which the Ontario government regulates and plans for the northern boreal" (ECO 2006 p.137). Furthermore, experiences with commercial forestry in the south have showed that current regimes may not be suitable to address local community concerns. In light of this, what can we learn from current forest management practices to ensure the best decision-making framework and practices in the northern boreal? Since the Class Environmental Assessment for Timber Management on Crown Lands in Ontario (Timber Class EA) and Crown Forest Sustainability Act were released in 1994, we have witnessed over a decade of forest management practices with an emphasis on sustainability, and we should review their effectiveness prior to deciding whether or not to extend their framework north.

Especially pertinent are the effects of the Timber Class EA and subsequent 2003 Declaration Order on the Aboriginal communities in the Area of Undertaking. Because the area north of 51° is inhabited primarily by Aboriginal and First Nation communities, these communities will be most affected by decisions to engage in commercial forestry in their traditional territories. By evaluating Aboriginal involvement in forestry in the Area of Undertaking we have the opportunity to learn from past mistakes and change our practices north of 51° where required.

North of 51° also represents an internationally significant tract of intact forest. Canada's boreal forest was identified by the World Resources Institute (2003) as one of the world's largest remaining tracts of intact wilderness. Ontario has a considerable proportion of Canada's boreal

forest, and there are national and international audiences concerned and scrutinizing how Ontario proceeds in this area.

In the early 1990s, the Timber Class EA Board recognized the importance of Aboriginal involvement in forestry, and wanted to ensure that, “Aboriginal communities be given access to the same opportunities that are available from timber management operations to other northern Ontario residents” (Koven and Martel 1994 p.364). It was convinced that, “Aboriginal communities have historically been and are today excluded from sharing in the social and economic benefits accruing to non-native communities from the planning and conduct of timber operations on Crown land,” (Koven and Marten 1994 p.372) and created Condition 77 to address Aboriginal participation in the activities and benefits of timber management planning. Condition 77 became Condition 34 with the 2003 Declaration Order, but its intent remains the same: to negotiate on a local level with Aboriginal communities to “identify and implement ways of achieving a more equal participation by Aboriginal people in the benefits provided through timber management planning” (Koven and Martel 1994 p.374). Thus, beginning in 1994, the Ontario Ministry of Natural Resources had a mandate to negotiate with Aboriginal people regarding forest management planning.

The Ontario government has addressed Aboriginal relations through policies promoting economic development. There have been significant commitments from the Ontario government and the Ministry of Natural Resources on a willingness to build good relationships with Aboriginal groups, leading one to hope that Aboriginal concerns and interests will be addressed and accommodated. However, there has been a lack of fulfillment of these commitments and a lack of implementation of Condition 77/34, and neither has met Aboriginal expectations.

Aboriginal groups contend that Condition 77 has been a “dismal failure” (Ferris 2003), yet the MNR asserts it has “made significant progress” (Ferris 2003).

Although Condition 77 was created as a means to begin to address historic and pervasive inequities between native and non-native communities and provide economic benefits to Aboriginal and First Nation communities, it has failed to meet its objectives and realize its potential. This paper will explore some explanations for the failure of Condition 77, the effectiveness of the current Condition 34, and discuss recommendations necessary to ensure the failures and frustrations experienced by Aboriginal communities in the Area of Undertaking are not transferred to the north. We appear to be pushing ahead for economic development in the northern boreal, and we must embrace this opportunity to do things right.

Research Questions

- 1) Why was Condition 77 ineffective?
- 2) Is Condition 34 effective?
- 3) What can we learn from our experience with Condition 77/34 when looking to practice forestry north of the Area of Undertaking?

Methods

A literature review and a document review were conducted to evaluate the effectiveness of Condition 77 and comment on the progress of Condition 34. Submissions to the Environmental Assessment Board for the 2003 MNR Declaration Order, Independent Forest Audits on Sustainable Forest Licenses in Ontario, and documentation from Aboriginal organizations were also used during the evaluation.

Study Area

Commercial forestry is currently permitted and regulated in the Area of Undertaking (Figure 1). The land is divided into Sustainable Forest Licenses which are long-term agreements with the forest industry on Crown land. The upper boundary of the Area of Undertaking roughly coincides with the 51st parallel, and so discussions of the area ‘north of 51°’, ‘north of the Area of Undertaking’ or ‘north of the cutline’ all refer to the area where commercial forestry is not permitted or regulated. The Northern Boreal Initiative (NBI) covers land just north of the Area of Undertaking (Figure 1), and is intended to be the focus of First Nations-led community-based land use planning. The red dot on Figure 1 indicates the location of Pikangikum First Nation, the first community to present a land use plan out of the NBI framework and one of the drivers of commercial forestry north of 51°.

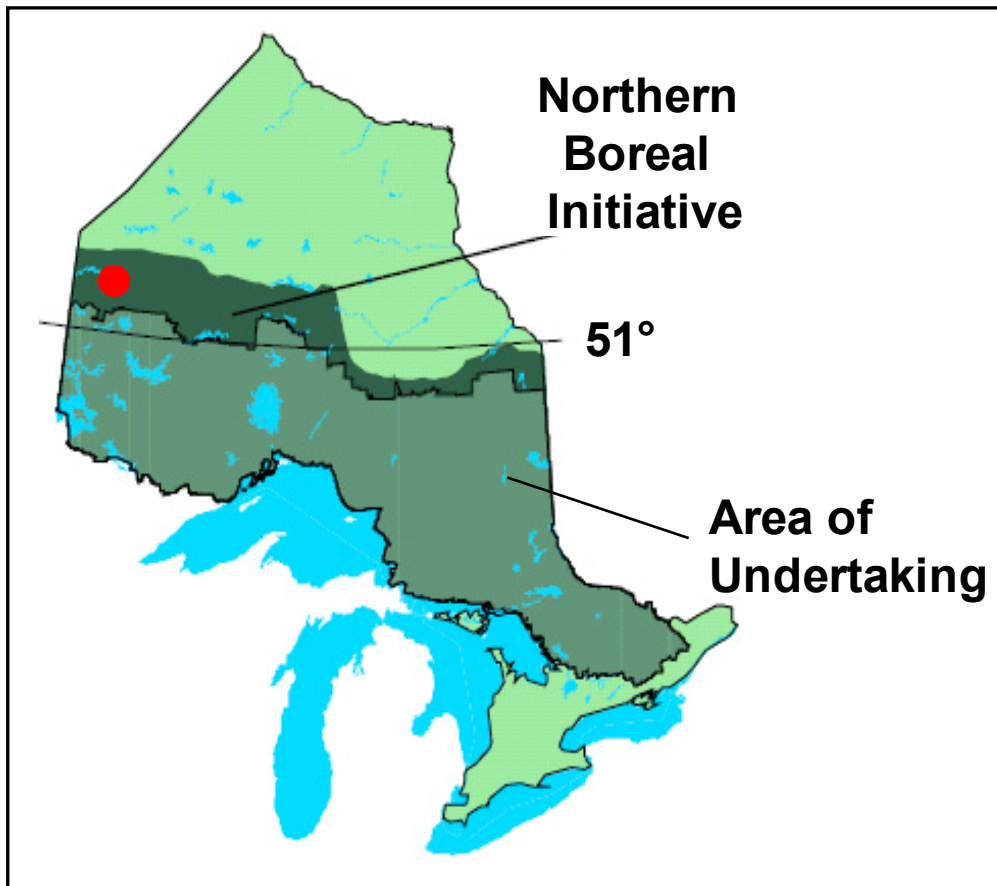


Figure 1. Major forestry divisions in Ontario

The Impetus for Aboriginal Involvement

This paper makes the assumption that Aboriginal and First Nation communities want to be involved in forest management planning in Ontario. Regardless of whether they support the current forest management framework, or commercial forestry, it is assumed that they want decision-making power over the land and resources in their treated and traditional territories. In saying this, it recognizes that forestry may not be the main priority for all Aboriginal and First Nation communities in Ontario, which often are addressing high youth suicide rates, depression, the effects of the government-imposed residential school system, land claims, the need for improved housing facilities and infrastructure, and health concerns (AFN 2006). It also acknowledges that differences exist between and within Aboriginal and First Nation communities, and what is satisfactory to one may not be acceptable to another. Thus, my paper attempts to present the concerns of Aboriginal communities as accurately as possible within this framework.

Mercredi and Turpel (1993 p.3-5) identify five key areas of conflict between First Nations communities and the Canadian government: the Indian Act; the failure of the Crown to honour and implement all treaty agreements and obligations; recurring disputes over lands and resources; the tragic social costs of the attack on First Nations cultures and languages; and the poverty and economic destruction that have been prevalent in First Nations communities for the past fifty years. Lands and resources are important to the future sovereignty and cultures of First Nation and Aboriginal communities, and gaining authority over lands and resources will strengthen collective and individual identities (Christie 2004).

The term Aboriginal is used to include individuals who are North American Indian, Métis and Inuit, and as such includes members of First Nation communities. In Ontario, the Aboriginal population numbers just over 188,000 individuals which is approximately 1.7% of Ontario's

population (Statistics Canada 2005), although at least 10% in the north and the majority in the area north of 51° (Wilson and Graham 2005). While this may seem an insignificant proportion of the population to be a strong political force, it is important to recognize that First Nation communities are spread throughout Ontario and they have legal rights devolved from the treaties they entered into with Canada. In the context of forest management, their Aboriginal and treaty rights signify that their concerns cannot be mitigated in the same manner as other forest users, such as the forest industry, environmental organizations or the tourism industry.

In addition to the many concerns and challenges facing Aboriginal and First Nation communities in Ontario, provincial policies and actions related to forestry also impact Aboriginal and treaty rights and the livelihoods of Aboriginal people (Kooses 2003; Lloyd 2005). Forestry represents an opportunity for Aboriginal people to engage in economic development initiatives, but it is prudent to recognize that Aboriginal relationships and perceived responsibilities to the forest may be very different from those of other forest users. This was demonstrated during the Timber Class EA hearings, when Aboriginal interests were represented by a number of different groups and individuals. Chief George Kakeway, of the Lac Portage Band and a member of the Executive Council of Grand Council Treaty #3, presented the concerns of his community about timber management planning and offered an insight into why Aboriginal involvement in forestry is necessary. Chief Kakeway also provided a crucial reminder of why Aboriginal communities need to lead land-use planning in the northern boreal forest as we look to develop and explore north of 51°. As he notes, his people are widely scattered with:

most living in small reserve communities on the lakes and the forests... We are the people who will be most directly affected by your decisions. Everyone else who is here can and will go elsewhere if they can't get what they want from the forests. The big corporations will invest their money in some other business, the recreationalists will find some other place to visit, the forest industry employees will move down the road if they lose their incomes. But we, the Ojibways, are not transients in the land for this is our permanent

home. If, as a result of these hearings, damage to our home is repaired, future damage is prevented and we are able to share some of the prosperities from the forest, then we will enjoy the benefits. If none of these happen, we will still stay here. That is the difference between my people and all or most of the others who will come before this hearing. (Koven and Martel 1994 p.347)

As stewards of the forest, and people who have made their homes and livelihoods in the boreal forest for generations, Aboriginal people have both the right and responsibility to be involved in decisions affecting their future. The Anishinaabe Nation in Treaty #3 declares that:

Saagima Manito gave to the Anishinaabe duties and responsibilities for their traditional lands...developments and activities are affecting the environment of Treaty #3 territory and the exercise of rights of the Anishinaabe; and...the proponents should ensure that a development is designed, constructed, operated and decommissioned with respect for the environment in Treaty #3 territory and for rights of the Anishinaabe. (Anishinaabe Nation 1997)

Aboriginal groups are not merely *stakeholders* in the forest management planning process, and their interests must be treated accordingly.

Aboriginal people have jurisdiction over lands from the inherent sovereignty of nations and from s.35 of the Constitution Act, while Ontario has jurisdiction over land and resources from s.92 of the Constitution Act (OMAA 1993). Although the federal government is afforded jurisdiction over, “Indians and land reserved for the Indians,” (Malloy 2001 p.131) provincial governments hold jurisdiction over all other lands and resources, including forest resources. Since Aboriginal and treaty rights affect lands and resources beyond reserve boundaries, the Ontario government has been compelled to address Aboriginal relations and recognize the role of Aboriginal people in land and resource management. Aboriginal relations with provincial governments have evolved from, “almost mutual isolation to increasingly complex interactions,” (Malloy 2001 p.131) during the twentieth century, and the last fifteen years have witnessed an increase in policy initiatives and commitments to address this new relationship. One half to two thirds of Ontario’s First Nations are actively involved in some form of forest sector activities, the

majority of these First Nations being located in northern Ontario (Wilson and Graham 2005 p.53). There is a significant impetus to have Aboriginal communities involved in forestry in Ontario.

The Policy Context for Aboriginal involvement in Forestry in Ontario

A. Ontario Secretariat for Aboriginal Affairs

Ontario's primary agency for addressing Aboriginal relationships is the Ontario Secretariat for Aboriginal Affairs (OSAA). It most recently released *Ontario's New Approach to Aboriginal Affairs* (ONAS 2005), which advocated, "working with Aboriginal peoples to build this relationship and through it, develop productive partnerships, collaborate on key initiatives and achieve real progress on shared goals" (ONAS 2005 p.1). This is a clear commitment from Ontario to work with Aboriginal people, and indeed OSAA states that, "Ontario is charting a new course for constructive, cooperative relationships with Aboriginal peoples of Ontario – a relationship sustained by mutual respect and that leads to improved opportunities and a better future for Aboriginal children and youth" (OSAA 2006 p.1). Despite these commitments, it is questionable what role the OSAA can play in providing access to forest resources or advocating for Aboriginal interests in forest matters. *Ontario's New Approach to Aboriginal Affairs* does not mention forestry, and reference to the MNR is limited to proposing to collaborate on an approach for First Nations in the north (ONAS 2005 p.16).

The development of provincial policies supporting Aboriginal affairs was the result of a strengthening of Aboriginal collective identities, growing non-Aboriginal support in the 1970s and 1980s for Aboriginal rights and the effect of multiple land claims on provincial natural resources (Malloy 2001). Provinces were forced to address Aboriginal affairs, and in Ontario it began with the creation of the Ontario Office of Indian Land Claims in 1976, which was

renamed the Office of Indian Resource Policy in 1978. At that time, it was under the direction of the Ministry of Natural Resources. In 1985, Premier David Peterson led the Liberal government to create the Office of Native Affairs Policy to coordinate provincial government policies affecting Aboriginal people. The creation of this new office reflected a larger strategy recognizing multiple special interest groups across the province (Malloy 2001 p.141). It was renamed the Ontario Native Affairs Directorate in 1987 and in 1988, it took over the Office of Indian Resource Policy from the MNR. When the New Democratic Party came to power in 1990, it was enlarged and became the Ontario Native Affairs Secretariat (ONAS) (Malloy 2001).

In 1996, Ontario created a new Aboriginal Policy Framework to develop a strategy to encourage Aboriginal economic development (Ontario 2001). It promoted partnerships with the corporate sector, a trend driven by increased Aboriginal economic self-sufficiency, demographic factors, a corporate commitment to social and environmental responsibility and increased Aboriginal access to resources (Ontario 2001 p.12). Aboriginal communities were gaining considerable influence over resources through environmental approval processes and permit processes, which would impact the relationship among the natural resource industry, the province and Aboriginal communities (Ontario 2001 p.13). The Aboriginal Policy Framework identified four main approaches to promoting Aboriginal economic development: increasing Aboriginal partnerships with the corporate sector; removing barriers to Aboriginal business development; improving access to government services; and creating opportunities for Aboriginal economic development to occur. This strategy was led by ONAS, and today economic development remains one of its priorities.

In June 2005, ONAS became the Ontario Secretariat for Aboriginal Affairs (OSAA) in order to be more inclusive and respectful of all Aboriginal people and reflect common usage of

the term Aboriginal (Nurming, M. OSAA 2006, pers. comm.). Today, OSAA has the role of coordinating program delivery and identifies its core priorities as land claims and self-government negotiations, Aboriginal economic development, and corporate co-ordination of Aboriginal affairs across the government (OSAA 2006).

Embedded in the OSAA priorities is an inherent contradiction: OSAA must assume the role of internal coordinator and advocate, as well as of external negotiator and manager. This makes the OSAA ineffective because of its inability to concurrently champion and defend Aboriginal interests while mitigating and managing Aboriginal discontent. Malloy (2001 p.145) notes that Aboriginal people are generally skeptical of Aboriginal policy agencies and oppose any implication that they are their ministries. Aboriginal nations want to negotiate on a government-to-government basis and, “resist being reduced to the status of “client” within a single ministerial portfolio;” they are also wary of an agency being both external negotiators and internal policy coordinators supposedly working on behalf of Aboriginal people (Malloy 2001 p.145). As the OSAA will direct inquiries regarding forestry to the MNR, this suggests they are unable to act as a champion in natural resources. Because of its inherent contradicting roles, lack of power to enact change on a government to government basis, and lack of knowledge regarding forestry, the OSAA is an ineffective means of supporting Aboriginal involvement in forestry.

B. Ontario Ministry of Natural Resources

The Ontario Ministry of Natural Resources (MNR) has an overarching policy to promote the sustainability of its forests. The goal of its Policy Framework for Sustainable Forests is, “to ensure the long-term health of our forest ecosystems for the benefit of the local and global environments, while enabling present and future generations to meet their material and social needs” (MNR 1994). Aboriginal communities are mentioned once, in that “forest policy must

strive to ensure that local communities, aboriginal (sic) communities, and businesses are fully aware of the nature of the surrounding forest and are partners in making decisions regarding their effective use and management” (MNR 1994). This policy confirms that Aboriginal communities are stakeholders in forest management, and their needs must be balanced and mitigated in the same manner as local communities and businesses. However, this policy does not reflect Aboriginal concerns. Prior to the release of the Policy Framework for Sustainable Forests in 1994, the Ontario Forest Policy Panel heard that, “Aboriginal peoples feel threatened by current forest policy, and want to be involved on a government-to-government basis in policy development” (Ontario Forest Policy Panel 1993 p.iii). The Panel recognized that the evolving relationship between Aboriginal people and the Government of Ontario would shape forest use and management, and recommended that consensus-building methods be used for forest decision making (Ontario Forest Policy Panel 1993 p.x). Even though Aboriginal communities and organizations made their concerns known, these concerns were not considered when developing the 1994 forest policy. Malloy (2001) concludes that Aboriginal affairs have always been comparatively low on the Ontario political agenda, and the MNR’s disregard of Aboriginal concerns in the creation of a strategy that will affect them supports this. The MNR continues to exert its authority on forests and sees itself as the primary decision maker; there was no mention of the consensus building advocated in 1993 apparent in 1994. There was and continues to be a dissatisfaction with MNR policy towards Aboriginal involvement in forestry in Ontario, as the MNR seemingly ignores Aboriginal concerns and requests, yet purports to be, “working to advance Aboriginal involvement in forest management” (MNR 2006).

The MNR introduced the Crown Forest Sustainability Act (CFSA) in 1994, and shifted the focus of forest management from timber production to forest health and sustainability. It

recognized that the forest must be managed for multiple values and in such a way to ensure that it can provide those same values for future generations. However, May (2005) argues that timber production remains at the heart of the new act as “sustainability” is defined as long term forest health, and forest health is “the condition of the forest ecosystem that sustains the ecosystem’s complexity while providing for the needs of the people of Ontario” (May 2005 p.221). Forests will be managed for sustainability, but the notion of sustainability extends to social and economic spheres of interest, which will be balanced against ecological goals for the forest.

The CFSA addresses Aboriginal and treaty rights with Section 6, which states: “this Act does not abrogate, derogate from or add to any aboriginal or treaty right that is recognized and affirmed by section 35 of the *Constitution Act, 1982*” (CFSA 1994, c.25, s.6). In this way, the CFSA negates the MNR from addressing Aboriginal and treaty rights directly, and ignores the link between forest management and Aboriginal and treaty rights. Section 23 states that, “the Minister may enter into agreements with First Nations for the joint exercise of any authority of the Minister under this Part” (CFSA 1994, c.25, s.23). This presents hope for co-management agreements and the devolution of power to First Nations, but the past decade has not seen Section 23 of the CFSA used to benefit First Nations (Bombay 2003).

The CFSA mandates the creation of four manuals: a forest management planning manual, a forest operations and silviculture manual, a forest information manual and a scaling manual. Forest managers must conform to the regulations established in these manuals, the CFSA, and the Terms and Conditions established by the Timber Class EA. However, the four manuals are intended to reflect the CFSA and Timber Class EA Terms and Conditions. The Forest Management Planning Manual (FMPM), first released in 1996 and updated in 2004, includes the text of Condition 77/34 but little direction on its implementation. The FMPM is the ‘bible’ for

forest management planning, and is the source of guidance for the forest industry. Despite the preponderance of public ownership of forests and Crown lands, these forests are increasingly managed by private companies or individuals (Luckert and Salkie 1998). As most of the forest management planning is undertaken by the forest industry, instead of the MNR, it is a drawback that implementation guidelines for Condition 77/34 were not included in either FMPM.

In 1999, the MNR, members of the forest industry and the Partnership for Public Lands (as represented by the World Wildlife Fund, the Federation of Ontario Naturalists and the Wildlands League) created the Ontario Forest Accord – “A Foundation for Progress” (OFA 1999). The Forest Accord represented commitments from the contributing parties to increase land allocations to parks and protected areas while considering the needs of the forest industry. It is used as a planning tool for the Area of Undertaking, and one would assume that Aboriginal groups should be involved in the creation and implementation of the Accord because it affects them and the exercise of their rights. However, the mention of Aboriginal concerns and involvement is limited to an acknowledgement that, “treaty and Aboriginal rights must be respected and honoured,” and that, “land use decisions are without prejudice to land claims recognized by Ontario and Canada” (OFA 1999 p.2). How could Aboriginal and treaty rights be respected if no one consulted Aboriginal communities? Any changes to land planning and land designations might affect their rights.

Commitment 24 of the Accord states that:

MNR, the forest industry and the Partnership for Public Lands will support initiatives directed toward the orderly development of areas north of the Area of Undertaking on a best efforts basis and as quickly as possible subject to: full agreement of affected First Nations communities; permitting commercial forest management on lands north of the area of the undertaking subject to obtaining the concurrence of the Minister of the Environment to provide coverage modeled after the coverage of the Timber Class EA terms and conditions; and recognition and regulation of parks and protected areas on these lands. (OFA 1999 p.6)

From this commitment, it appears that Aboriginal communities are to be considered as stakeholders in the process. While they may be afforded decision making power and weight within the process, they were not being consulted on the creation of the initial process, which is problematic. If the Timber Class EA is to apply to the areas north of the Area of Undertaking, Aboriginal concerns with the Timber Class EA should be addressed, and the development of a framework for the north should be a collaborative process with the communities that live there.

Despite the recognition that Aboriginal communities are affected by forestry and land-use planning in the Area of Undertaking, and although the MNR has previously stated that forest policy should strive to ensure that Aboriginal communities are partners in decision-making (MNR 1994), Aboriginal communities are conspicuously absent from the Ontario Forest Accord. This is an affront to their desire to participate in planning that will affect Aboriginal interests and livelihoods, and indicates that the MNR does not consider Aboriginal input essential to decision-making.

In 2002, the Ministry of Natural Resources released the Northern Boreal Initiative (NBI), a community-based land use planning approach to guide development in the area north of the Area of Undertaking. Established, “in response to several First Nation’s interests in commercial forestry,” its goal is to provide First Nations with, “opportunities to take a leading role in land use planning and forest management, with an important objective of fostering sustainable economic opportunities in forestry and conservation” (NBI 2002 p.1). This approach is reminiscent of co-management agreements that have been attempted in other parts of the country, which endeavor to bring multiple parties together and determine solutions acceptable to multiple interests (e.g. Kendrick 2000; Mulrennan and Scott 2005). The NBI espouses principles of sharing responsibility, applying local knowledge in decision making, and full consultation, but

there does not appear to be true power sharing between the MNR and First Nations. The NBI (2002 p.1) notes that, “public responses assisted in MNR’s evaluation and further definition of the approach which is now ready to be implemented as the First Nations associated with the NBI enter the planning stage of the process;” this does not suggest that the First Nations played an equal role in developing the framework they will work within. It is the MNR who is developing the process and determining the approach. In this way, Aboriginal groups are relegated to the role of stakeholders who must adopt the framework established by the MNR. Because the area targeted in the NBI is north of the Area of Undertaking, “a broad regional land use strategy is not available to guide community planning” and “provincial policy will be consulted for broad objectives and guiding principles” (NBI 2002 p.4). This suggests that policies guiding the Area of Undertaking will be applied in the NBI area – yet is not the NBI an opportunity to do things differently from the south? Aboriginal groups have not been satisfied with their involvement in forest management in the Area of Undertaking, and these issues must be addressed before forest management is transferred to the north.

The NBI (2002 p.7) states that, “land use planning under NBI will be carried out in a manner that is without prejudice to the Aboriginal and treaty rights of First Nations and individuals,” but does not mention how Aboriginal and treaty rights will be, if at all, addressed. This echoes the CFSA in that Aboriginal and treaty rights are mentioned, but they do not impact decisions or practices. A recurring concern for Aboriginal organizations is Ontario’s unwillingness to address Aboriginal and treaty rights, and the trend continues with the NBI.

The Ministry of Natural Resources’ most recent strategic directions aim to, “support improved Aboriginal relations through economic development opportunities and partnerships,” (MNR 2005 p.12) but Aboriginal concerns are not mentioned beyond the context of economic development. The MNR (2005 p.12) does propose to, “seek the development of a strategic approach to managing aboriginal issues” but that is a far cry from working together in a collaborative manner to develop a mutually beneficial relationship. The MNR does not recognize

the Aboriginal relationship to the land, their desire to be involved in land management and planning, or their existence as a sovereign nation. The MNR states that ‘Aboriginal issues’ need to be ‘managed’ which is evocative of a problem needing to be dealt with. Does this constitute an effort to supporting improved relations?

C. Ontario Ministry of Environment

The Ministry of Environment (MOE) is a further source of policy affecting Aboriginal involvement in forestry in Ontario. It is responsible for administering the Environmental Assessment Act (R.S.O. 1990, c.E.18) to provide for the, “protection, conservation and wise management in Ontario of the environment” (R.S.O. 1990, c. E.18, s.2). It released the Class Environmental Assessment for Timber Management on Crown Lands in Ontario (Timber Class EA) in 1994, and a follow up Declaration Order in 2003, which guide forest management on Crown Lands in Ontario. The Timber Class EA and Declaration Order establish conditions binding the MNR and address the responsibilities of the MNR to Aboriginal people.

The MOE is responsible for ensuring that the conditions established under the Timber Class EA are observed. Concerned parties can apply to the MOE to investigate whether conditions are being satisfied, and between 1994 and 2003, the implementation of Condition 77 has been the subject of several ‘bump-up requests’ received by the MOE. The MOE has denied all requests since the, “MNR has demonstrated that efforts are being made to identify and implement ways of achieving a more equal participation by Aboriginal people in the benefits provided through timber management planning” (MOE 2002, p.48). Further concerns raised by Aboriginal organizations resulted in two Environmental Bill of Rights investigations, which concluded that the, “MNR was in compliance with term and condition 77 and that MNR’s efforts to date had resulted in economic opportunities for local First Nation communities” (MOE 2002, p.48). As Aboriginal communities continue to be unhappy with Condition 77, these conclusions are questionable.

A Select History of Aboriginal Involvement in Forestry in Ontario and the Creation of Condition 77

The history of commercial forestry in Ontario has also been a history of limited engagement of Aboriginal communities, and challenges and barriers to Aboriginal participation in forestry. Bureaucratic mechanisms have hindered Aboriginal involvement, and individual and systemic discrimination and racism have often characterized relations with Aboriginal communities. In a study of Ontario bush workers, Radforth (1987) found that forest operators had preferences for certain ethnic groups and, “at the bottom of the pile were native peoples” (p.34). The *Canada Lumberman*, in 1911, stated that, “they [native peoples] will work for a time and then take a rest while spending the money they have earned” (as cited in Radforth 1987 p.34). This breeds an attitude that native people are lazy, yet does not acknowledge the imposition of European society, rules, and the importance of money on Aboriginal communities. Radforth also notes that the “Indian’s skills” led to a good reputation on river drives, and men from many northern bands sought jobs in logging camps during winters. There were recognized and admired skills from living in the forest, but also difficulty in adapting to a new employment regime. Attempts by individuals to participate in the development and resource extraction in their communities were always within a European framework, and this imposed framework served as a bureaucratic mechanism to suppress and discourage Aboriginal participation.

The following example illustrates some of the challenges to Aboriginal involvement in forestry in Ontario, and was shared during the Timber Class EA hearings to demonstrate the complexity of issues surrounding Aboriginal involvement and the bureaucratic mechanisms and policies in place that disadvantage Aboriginal communities. Despite the best intentions of Domtar Forest Products and Beardmore Bears Métis Association (BBMA), bureaucratic barriers could not be overcome and thus opportunities were denied to the BBMA. In 1986, Domtar Forest

Products and Beardmore Bear Métis Association collaborated to provide opportunities for Métis to harvest on the Domtar license. After many discussions, they decided on a third party agreement to harvest a small amount of fuel wood. The intention of the BBMA was to provide training in logging skills to Native youth and use wood harvested to heat and repair homes, addressing issues of capacity building and a lack of resources in the area. However, MNR policy requires the holder of a third party contract to provide proof of Workers Compensation coverage and the Beardmore Bears were unable to raise enough money to cover the costs of the premiums for logging. Correspondence between the two parties continued for a number of years as the BBMA tried to raise the premiums, but lacking Workers Compensation coverage, the contract has never been agreed to by Domtar. The skills training program has thus also never been implemented, and the Ontario Métis and Aboriginal Association (OMAA), “believe that this experience demonstrates, again, the total lack of economic opportunity for Aboriginal peoples in the forests which are their homeland” (OFIA 1993).

To its credit, Domtar followed up on the memorandum of understanding regarding the third party agreement, and sent inquiries to the BBMA regarding the status of their Workers Compensation documentation. Domtar also offered Beardmore fuelwood that had already been harvested. While this did not address the need to train and build the capacity of Native youth, it was a goodwill gesture. A later inquiry by the Beardmore Bears, concerning the land that they had wanted to harvest, revealed that the particular land had been rescheduled for harvest by Domtar and they would need to “go back to the drawing board” and make new plans to find another suitable plot of land. Five years after the initial proposal, they must start over. This will further strain the limited capacity of the Beardmore Bears and lead to frustration trying to work within an unaccommodating system. Aboriginal groups cannot always be treated in the same

manner as everyone else, and a history of challenges must be addressed before there can be meaningful Aboriginal participation in forestry.

Briner (2004) contends that a lack resources and appropriate policy frameworks make it difficult for Aboriginal peoples to participate in forest management and forest-based economies. These barriers are also identified by Aboriginal organizations, and recognized by the Timber Class EA Board. Aboriginal and First Nation interests were represented to the Timber Class EA Board by four intervenor groups: Grand Council Treaty #3 (GCT #3); Nishnawbe-Aski Nation/Windigo Tribal Council (NAN/Windigo); the Ontario Métis and Aboriginal Association (OMAA); and the North Shore Tribal Council, United Chiefs and Councils of Manitoulin and Union of Ontario Indians in partnership with the Northwatch Coalition. All parties presented different opinions on the Aboriginal involvement in forestry in Ontario, and offered different proposals to address the particular interests and concerns of their separate communities. Some intervenor groups argued that the Board must recognize Aboriginal and treaty rights by denying approval unless these rights were recognized and accommodated. Others supported that the rights were beyond the scope of the Board (Koven and Martel 1994 p.350). However, all agreed that Aboriginal and treaty rights, and their link to forestry, were of paramount importance.

Despite the Board's willingness to consider Aboriginal perspectives, Aboriginal involvement and participation in the Timber Class EA process was often characterized by frustration and challenges. Although the Timber Class EA Board, "saw evidence where individuals within MNR were genuinely concerned and made tremendous efforts to assist bands to develop economic activities which could be beneficial," (Koven and Martel 1994 p.360), the MNR, as the proponent in the environmental assessment, could challenge all submissions by Aboriginal intervenor groups. Through these challenges, the MNR demonstrated that it could be

uncooperative and distrustful of Aboriginal knowledge and traditions. The MNR frequently requested information that the MNR itself created and therefore would have access to, inadvertently straining the resources and capacity of Aboriginal organizations. It also requested information unrelated to the issue at hand, for instance asking about land claims when the focus is on forestry. As outlined in the following examples, further statements and inquiries by the MNR question whether it has read the initial material provided to it by the parties. This shows disrespect for the time invested in the work and a very laissez-faire and superior attitude about forest management in the province.

MNR: 12. Page 77, line 3: “Cutting of large tracts of timber affected wild plants, game, and fur-bearing animals.” Please provide all references, evidence, and sources relied upon for this statement.

GTC #3: 12. We are hesitant to provide source documentation in support of the self-evident statement, “Cutting of large tracts of timber affected wild plants, game, and fur-bearing animals.” The fact that MNR would want such evidence is probably more revealing than the evidence itself. As a general proposition, it seems self evident that if trees are cut down intentionally or are inadvertently destroyed in the process of obtaining other timber, not only are these trees affected, but the present and future state of the general plant, animal, and other biotic (i.e. fungal) communities are affected.
(GCT #3, p.14-15)

GCT #3 does go on to provide references to support the statement, but this shows the discord between the two groups and an unwillingness by the MNR to accept Aboriginal statements – even, or especially – self evident ones. It underscores the adversarial relationship between the MNR and Aboriginal groups, which is in direct conflict with the notion that the role of the Crown is to act in the best interests of Aboriginal people. The following excerpt is another example of the adversarial relationship and MNR’s disregard for the efforts of Aboriginal contributions.

MNR: 73. Page 114, last paragraph: “Traditional occupations involving off reserve forest resources, such as hunting, fishing, gathering, and craft production, were not protected

from the detrimental effects of non-Indian timber harvesting.” Please provide all references, evidence, and sources relied upon for this statement.

GCT #3: 73. This is the penultimate summarizing paragraph of a 114 page report with 147 footnotes, 14 pages of bibliography, and a 248-page supporting database. The report documents the decline of the Ojibway occupations from being the basis for a prospering economy to being marginal activities by marginalized people. With the exception of a few impotent gestures, examples of which are referred to in the text, these occupations were not protected. In fact, the most effective attacks upon these occupations were and still are by the enforcement personnel of the MNR.
(GCT #3 p.16)

It is inconsiderate and disrespectful to ask for references for the summarizing statement of a 114-page report with 147 footnotes, 14 pages of bibliography, and a 248-page supporting database. It shows that the MNR either has not read the report and determined exactly what it would like clarified, or it is attempting to draw out the Timber Class EA process by asking time-consuming irrelevant questions. The MNR did not reflect the commitments of the government at the time to respect and work together with Aboriginal groups, and attempted to discredit their testimony and strain their capacity. What became apparent during the challenges, in addition to the adversarial relationship, was the wide gulf between the MNR and Aboriginal groups in how the forest should be managed.

MNR: 7. What evidence is there of the use of specific forest management techniques by Treaty #3 Ojibway to improve wildlife habitat? If such evidence exists, what techniques were used?

GCT#3: 7. One of the most obvious management techniques employed by the Ojibway involved the demonstration of “respect” for the spirit of the plants and animals which were harvested by them. Implicit in this system of respect was the careful management and non-wastage of these resources
(GCT #3 Panel 1, p. 6).

Further submissions by the MNR challenging GCT #3 objected to information presented in GCT #3 testimony, requested information that the MNR already had access to, and showed a general

disregard of the historical circumstances, systemic discrimination and oppression, and different social societies of Aboriginal groups.

Despite MNR opposition to Aboriginal input, the Timber Class EA Board devoted Chapter 10 of the Timber Class EA to First Nations and Aboriginal Communities. The Board used Condition 77 to address the social and economic gaps they identified between native and non-native communities, and significantly it recognized that, “the desperate situation of our First Nations and Aboriginal communities cannot improve unless the Ontario and federal governments engage in serious negotiations to resolve treaty and Aboriginal rights and land claims” (Koven and Martel 1994 p.375). They made two recommendations to this end, which reflected the testimonies of Aboriginal intervenor groups but were recommendations instead of conditions because the Board felt they were beyond the scope of the Timber Class EA (Appendix A).

The consideration of Aboriginal interests represented a shift in attitudes about the involvement of Aboriginal people in forest management in Ontario; specifically, it represented the recognition that Aboriginal people should be involved in forest management planning. The Timber Class EA Board recognized that Aboriginal people in Northern Ontario, “who had lived in the forest for hundreds of years before European settlement, came to be shut out of the economic benefits of forestry enjoyed by other northern communities” (Koven and Martel 1994 p.347) and that “their communities are excluded from these benefits for historical reasons and because of today’s uncertainties about the meaning and definition of their treaty and Aboriginal rights” (Koven and Martel 1994 p.372). Condition 77 was created to address this historical exclusion. It was an attempt to involve Aboriginal communities more directly in timber management planning by giving them the opportunity to share in the social and economic benefits enjoyed by other residents of northern Ontario (Koven and Martel 1994 p.374).

Condition 77

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 by 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 license negotiations with existing licensees where opportunities exist
- d) providing forest resource 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 timber management operations through joint projects with Indian and Northern Affairs Canada;
- f) and other forest resources that may be affected by forest management or which can be addressed in the timber management planning process as provided for in Condition 23(c).

MNR shall report on the progress of these on-going negotiations district-by-district in the Annual Report on Timber Management that will be submitted to the Legislature (Condition 82 and Appendix 20)

(Koven and Martel 1994 p.374-5).

Condition 77, as part of the Timber Class EA, would be in effect until all 115 conditions came under review in 2002.

The Failure of Condition 77 and Creation of Condition 34

Condition 77 represented a shift in attitudes about the involvement of Aboriginal peoples in forest management; it heralded optimism about the future and a chance to bring economic development to communities that wanted it. It was meant to address social and economic inequities between native and non-native communities, be the responsibility of the MNR, and most importantly, it required action.

Beginning in 1994, the MNR was required to adopt Condition 77 and thus negotiate with Aboriginal communities to identify and implement ways of achieving more equal participation by Aboriginal peoples in the benefits provided through forest management. It reported on its

progress in Annual Reports on Forest Management submitted to the Government of Ontario, and when Condition 77 came up for review as part of the expiration of the Timber Class EA in 2002, the MNR again reported on its negotiations with Aboriginal peoples and the implementation of Condition 77. Over the course of the nine-year history of Condition 77, two versions of draft implementation guidelines were created but no final implementation guidelines were ever agreed upon or released to the public. In 2003, Condition 34 replaced Condition 77, and the MNR is currently working to develop implementation guidelines for Condition 34 (Blakemore, C. MNR 2001, pers. comm.). Twelve years after the condition was introduced, the MNR has not presented an implementation guide; it is obviously not a priority to address this.

Despite no clear direction on Condition 77 implementation, the MNR (2002 p.183) believes that it has achieved steady progress on Condition 77 and note they “have conducted negotiations at the local level by way of meeting, discussing, sharing information, and facilitating cooperation and dialogue with Aboriginal people and others,” and since the 1994 Timber Class EA, “Aboriginal communities have progressively benefited from increasing economic development opportunities associated with forestry.” While the MNR heralds their progress on Condition 77, Aboriginal peoples are adamant that Condition 77 has been unsuccessful. This disagreement speaks to the heart of a very adversarial relationship, and raises an important issue: if Condition 77 was created to provide improved opportunities for Aboriginal peoples, and Aboriginal peoples disagree that it was successful, how can the MNR continue to claim it has made progress? It is disrespectful of Aboriginal concerns, as it implies that the MNR knows what is best for Aboriginal peoples and is acting in their best interests. It undermines Aboriginal concerns and places the MNR in a position of superiority over Aboriginal peoples, further entrenching a paternalistic attitude and is reminiscent of colonial policies and practices.

While there have been instances of success with Condition 77 in local communities, the provincial framework and implementation of Condition 77 have been inadequate. Lertzman and Vredenburg (2005) assert that, “it is unethical to affect the lands and lives of indigenous peoples in a manner that is not consistent with their wishes and needs as *they* perceive them” (p.244). This underscores the need to recognize Aboriginal opinions and concerns, as identified by them, as valid. A number of issues are raised as to why Condition 77 has been, as the Nishnawbe-Aski Nation contends, “a dismal failure” (Ferris 2003 p.11): unsuccessful implementation of Condition 77; poor and absent consultation and negotiation with Aboriginal communities and organizations; changes in Ontario’s land tenure system putting emerging Aboriginal businesses at a comparative disadvantage; the lack of recognition of Aboriginal and treaty rights; a continuing lack of capacity in Aboriginal communities; a reluctance of the MNR to engage Aboriginal peoples in decision making processes; and no baseline measures or systematic measuring system to determine progress (Bombay 2002; Ferris 2003; Lloyd 2005). Four reasons will be explored in detail:

- 1) lack of recognition of Aboriginal and treaty rights
- 2) poor implementation of Condition 77
- 3) lack of capacity in Aboriginal communities to realize the benefits of increased opportunities in forestry
- 4) lack of meaningful consultation or negotiation with Aboriginal communities

A. Aboriginal and Treaty Rights

Aboriginal and treaty rights are of critical importance to Aboriginal and First Nation communities, and most Aboriginal people believe that respect for these rights should be paramount in any resource decisions and agreements (AVES, Boldon, Boursier et al. 2004 p.35).

Dr. Peter Poole (as cited in Koven and Martel 1994 p.351) purports that the recognition of Aboriginal rights is a pre-condition to the participation of native peoples in forestry. However, there are major differences between Ontario and Aboriginal communities regarding the scope of Aboriginal and treaty rights, which has caused strained relations and tension in communities (Wilson and Graham 2005). Aboriginal groups contend that the Ontario government takes a relatively narrow view on Aboriginal and treaty rights in the off-reserve context; a view which differs strongly from the perceptions of most First Nations (Wilson and Graham p.53). Lloyd (2005 p.iii) notes that “the failure of the Crown to recognize these rights is a persistent irritant and an identified barrier to improving Anishinabek participation in forest management activities.” A review of Anishinabek Reports and Reviews related to natural resources and forests (Lloyd 2005) supports that Aboriginal and treaty rights, and their recognition, are central to the Anishinabek’s relationship to the land and their expectations of increased access to natural resources and an equitable role in decision making around land and resources.

The MNR (2002 p.185) defends its inability to address Aboriginal and treaty rights, noting that these rights have, “sometimes complicated local negotiations between District Managers and Aboriginal peoples,” but were beyond the scope of the Timber Class EA. This response is not sufficient to satisfy the concerns of Aboriginal groups wanting to address Aboriginal and treaty rights. The MNR is part of the Government of Ontario, and as such cannot shrug out of the responsibility. In addition, the Timber Class EA Board recommended that Aboriginal and treaty rights and land claims be addressed (Appendix A), and it is not acceptable for the MNR to disregard the recommendations because it believes that the recommendations supersede their jurisdiction. As the MNR manages and gives permission for activities on lands claimed by First Nations and activities that will affect the traditional livelihoods of Aboriginal

communities, it has a duty to respect and include First Nations in negotiations and land management.

Aboriginal organizations want Aboriginal and treaty rights recognized and do not see them as separate from forest or land management. This view is opposed by the MNR, and the National Aboriginal Forestry Association (NAFA) identifies the root of the dispute as, “the province’s goal of protecting provincial interest in Crown lands may be in conflict with protecting Aboriginal interests as they are defined by Aboriginal people” (Bombay 2002 p.7). During negotiations, the province will ensure that their interests are maintained and the historical pattern of Aboriginal concerns being ignored will once again be fulfilled. This was the case in the creation of Condition 34.

Aboriginal and treaty rights are a source of great contention between Aboriginal communities and the MNR. White et al. (2004 p.76-7) note that recent court decisions, such as the case of *Chippewas of Sarnia Band v. Canada (Attorney General)*, indicate that Ontario courts are open to accommodating Aboriginal claims challenging the validity of treaties, and that Aboriginal people have rarely tried to assert resource rights under these agreements. If the MNR continues to ignore Aboriginal and treaty rights, there may be major repercussions in the future if Aboriginal communities look to the courts to solve disputes.

B. Implementation of Condition 77

A recurring theme causing dissatisfaction with Condition 77 has been its unsuccessful implementation. Since its inception in 1994, Aboriginal and First Nation communities have challenged that it has not been implemented. A 1995 decision by the Timber Class EA Board (Koven and Martel 1995) acknowledged the discord between policy and practice and ordered the MNR to work with Aboriginal organizations to develop implementation guides to help District

Managers. However, this has not been carried out, which questions the priority and importance of the condition in the first place. NAFA documents First Nation's concern about the implementation of Condition 77, as do the Union of Ontario Indians and the Nishnawbe-Aski Nation (NAFA and IOG 2000, Lloyd 2005, Ferris 2003). Frequent verbal and written correspondence noting the lack of implementation and requesting explanations for it have been generally ignored (Kooses 2003).

In most instances, a representative from the timber industry, not the MNR, leads forest management planning and without direction on Condition 77 implementation, the representative lacks guidance on how to proceed. The MNR released the Forest Management Planning Manual in 1996 to guide forest management planning, and within it, state they will develop a framework for the implementation of Condition 77 in consultation with a number of Aboriginal organizations, including the NAN, GCT #3, Union of Ontario Indians, the forest industry and other Aboriginal government bodies as appropriate (MNR 1996 p. App-71). This has not yet been completed to the satisfaction of the Aboriginal community, questioning the sincerity of the MNR commitment (Bombay 2002). As early as 1996, NAFA highlighted to the MNR that the MNR's draft implementation guidelines for Condition 77 were created without consultation with Ontario Aboriginal organizations (Bombay 1997), yet a decade later this concern remains unresolved.

The implementation of commitments to Aboriginal values has also been identified as lacking. A study by Arborvitae Environmental Services et al. (2000), reviewing the 34 forest management guidance documents issued by the MNR and comparing them with the strategic directions identified by the MNR and more broadly the Government of Ontario, identified a major discrepancy between strategic commitments to First Nation values and supporting them in

practice. They noted that the language of the guides could be a concern and potentially limiting for forest managers and people involved in forest operations, and recommended a variety of guides be published in English, French, and possibly Oji Cree (p.97). This suggests a pervasive lack of concern for Aboriginal involvement in forestry.

Condition 77 calls for the MNR to negotiate with Aboriginal Peoples, and negotiations could include such matters as providing job opportunities, supplying wood to sawmills, facilitating third-party license negotiations with existing licensees, and providing timber licenses to Aboriginal people where unalienated Crown timber exists close to reserves. These are very good intentions, but in 1996 the granting of timber licenses to Aboriginal peoples, “continued to be problematic,” (John Naysmith as quoted in IOG 1998). More significantly, in 2002, NAFA pointed out that not one Aboriginal-owned mill had opened in Ontario since Condition 77 came into effect (Bombay 2002).

The MNR reports that it has worked to implement Condition 77 and that jobs and income for Aboriginal communities have increased as a result of Condition 77 (MOE 2002). However, there was a lack of baseline data and it has been difficult to objectively measure progress. The lack of baseline data was identified by the Timber Class EA Board in 1994, and has been repeatedly brought up by Aboriginal organizations such as NAN and NAFA. Bombay (2002 p.9) concludes that, “there are no measurable results to demonstrate increased Aboriginal involvement in forest management, and because there were no tangible objectives set forth at the outset, there has been no concerted effort by MNR to achieve increased Aboriginal involvement.” NAN (Ferris 2003) believes that economic opportunities for First Nations have improved only marginally, and MNR reporting does not take into account businesses that fail. NAN also contends that the majority of opportunities achieved by First Nations are a result of

their own efforts, and the MNR, in reporting on Condition 77, has taken credit for these opportunities (Ferris 2003 p.11). As reporting is conducted on a district-by-district basis, it is difficult to assess progress.

When Aboriginal groups brought their concerns about the implementation of Condition 77 to the Ministry of Environment through ‘bump-up requests’, all requests were denied. The MOE noted that the MNR demonstrated that it was working towards more equal participation by Aboriginal peoples in the benefits accruing from timber management planning and two Environmental Bill of Rights investigations determined that the MNR was in compliance with Condition 77 (MOE 2002). However, this brings us back to a fundamental issue: if Aboriginal groups perceive that the implementation of Condition 77 is unsuccessful, and Condition 77 is meant to benefit Aboriginal groups, is it ethical and acceptable not to believe them?

C. Aboriginal Capacity

There is a lack of capacity in Aboriginal and First Nation communities that prevents involvement in the forest management planning process and participation in the forest industry (IOG 1998; Wilson and Graham 2005; AVES, Boldon, Boursier et al. 2004). Communities may lack the manpower to address all issues relevant to their community, the necessary expertise, and the required financial capital. Briner (2004 p.134) identifies this lack of technical, human, and financial resources as a major barrier to Aboriginal Peoples’ participation in forest management and forest based economies, and is one of the few authors to stress the need for the inclusion of women and youth. The lack of capacity is a major obstacle to advancement, and simply finding the people or time to participate in a very bureaucratic process is a challenge. Many Aboriginal communities are small and there are too few people to manage the administration, development and negotiation work, with the result being that communities must be very selective about what

processes they engage in (AVES, Boldon, Boursier et al. 2004). Forestry may be important to the community, yet they may also be struggling to address other pressing issues. Caldwell and Hunt (1998) found that while Aboriginal businesses are spread across a broad industrial spectrum, they are concentrated in traditional niche areas that tend to be labour intensive and less knowledge intensive. Recently there has been an emphasis on attracting Aboriginal and First Nation youth to university and college programs, yet there will be a time lapse before they gain skills and return to the community.

Why would an Aboriginal or First Nation community, already strained to capacity, want to participate in a resource management framework that many feel does not respect their rights and values (Wilson and Graham 2005)? If their concerns are repeatedly ignored in the current framework, there are no incentives to participate. Participation becomes a disincentive because of the resources expended with no corresponding benefits. It should also be acknowledged that capacity within the MNR has been strained since the inception of Condition 77, and a case study in the Abitibi region of Ontario found that the MNR appeared to lack the capacity to meet their established responsibilities (AVES, Boldon, Boursier et al. 2004 p.38). This does not absolve Ontario or the MNR of their responsibilities, but it is a compounded problem to resolve.

D. Meaningful Consultation and Negotiation

While consultation and negotiation are mandated under Condition 77 and through a legal duty to consult based on Supreme Court of Canada decisions (e.g. *Delgamuukw v. British Columbia* [1997] 3 S.C.R. 1010), Aboriginal groups contend that past efforts by the MNR are unacceptable and ineffective. Aboriginal peoples do not want to be treated as mere stakeholders in the forest management planning process, and although the MNR separates Aboriginal interests from business and community interests in statements, they fail to uphold the distinction in

practice. The MNR has established Local Citizens' Committees (LCCs) in each district to participate in forest management planning and offers Aboriginal representatives a spot on the committee; however, this relegates Aboriginal peoples to stakeholders whose concerns are weighted the same as other members of the committee, such as the local tourism industry. Aboriginal communities who lack the capacity to partake in separate meetings or in achieving economic opportunities are encouraged to join the LCCs, because the MNR provides funding to LCC members, yet this again causes them to be mere stakeholders (Ferris 2003). This demonstrates the inadequate solutions the MNR has established and shows the need for greater capacity and increased cooperation and communication between the MNR and Aboriginal communities. The Local Citizens Committees are not the appropriate venue for addressing Aboriginal concerns.

When Condition 77 meetings have been initiated by the MNR, the effectiveness of those meetings have been limited. As NAN states, they and other First Nation communities, gradually stopped attending these meetings, as it was obvious that they were becoming a waste of time... The fact that the OMNR organized such meetings and, as such, met the intent of T&C #77 (from the OMNR's view) hardly begins to qualify as a success story for TC#77. (Ferris 2003 p.12).

If Aboriginal concerns raised during consultation and negotiation are not addressed, why should they continue to participate in the process? MNR annual reports document, on a district-by-district basis, successes, but they do not document Aboriginal concerns. The MNR proposed to create consultation processes for individual communities, yet refused to use those offered by the communities themselves (Ferris 2003). This does not demonstrate a cooperative attitude, and shows a great unwillingness to work with Aboriginal communities. It also demonstrates that consultation is a one-sided process, and not a joint venture.

A further issue of contention with the negotiation process established in Condition 77 is that it is led by MNR district managers, rather than coordinated centrally. While a decentralized process would ideally empower people at the local level to enact change, and allow those who work at the operational level to make decisions, it also offers District Managers a large degree of discretion and results in extensive variation in consultation and accommodation (NAFA and IOG 2000; Wilson and Graham 2005). There are no provincially established guidelines for consultation or negotiation, and the current requirement is simply that it must be attempted.

Consultation was raised as a concern during the Timber Class EA Review as, “several commenters criticized the government for failing in its duty to effectively consult with Aboriginals” (EBR 2003). The government response was that the MNR, “provides notices about community meetings or forums to band councils, native communities and organizations, and the inclusion of Aboriginal representatives on forest management planning teams,” but in fact, providing notice does not constitute consultation (EBR 2003). Inclusion on the Local Citizens Committee also does not constitute adequate consultation (Ferris 2003). The Ontario Secretariat for Aboriginal Affairs recently released *Draft Guidelines for Ministries on Consultation with Aboriginal Peoples Related to Aboriginal Rights and Treaty Rights* to address the province’s constitutional obligation to consult (Ontario 2006). Alternately, the Anishnabek/Ontario Resource Management Council released *Reaching Effective Consultation: A Guide on How to Get There!* through the Union of Ontario Indians that details the definition and criterion required for effective consultation, as well as a consultation process and responsibilities (A/ORMC 2003). Further guidelines to consultation are available through the Anishinaabe Nation’s *Manito Aki Inakonigaawin* Unofficial Consolidation (Anishinaabe Nation 1997).

The consultation guidelines of the Anishinaabe Nation, Union of Ontario Indians, and Province of Ontario diverge on the purpose and means of consultation. The Anishinaabe Nation and Union of Ontario Indians view consultation as inherently required, and as a collaborative and open process to address activities – in the development and decision processes – that impact Aboriginal territories, rights, interests, and treaty rights (A/ORMC 2003; Anishinaabe Nation 1997). Ontario, conversely, appears to have a more limited scope of consultation and requires ministries to internally identify potential impacts on Aboriginal communities and determine if they are significant enough to warrant the obligation to consult, prior to consultation with Aboriginal groups (Ontario 2006). This undermines the spirit behind consultation as it would appear that Ontario would only engage in consultation during the final phases of a project or to mitigate impacts. It notes that the level and extent of consultation may change through the process, but the process of consultation and accommodation “does not generally provide the affected Aboriginal community with a veto over a proposed decision or action” (Ontario 2006 p.8). The majority of Ontario’s draft consultation guidelines focus on when, not how, consultation needs to take place. The province’s latest consultation guidelines demonstrate that their definition of *meaningful* consultation is very different to that desired by Aboriginal groups. On a policy level, there have been negative relations and a poor record of addressing First Nation concerns (Wilson and Graham 2005). Aboriginal groups have not been satisfied with past attempts at provincial consultation, and it does not appear that current initiatives will be meaningful.

E. Condition 34

The conditions established in the Timber Class EA expired in 2002, and in 2003, the Ministry of Environment created a Declaration Order (MNR 2003a) to replace the terms of the

Timber Class EA. The previous 115 conditions were replaced with 55 conditions, and Condition 34 replaced Condition 77. Despite a commitment to consider comments by Aboriginal peoples in the review of the Timber Class EA and creation of the Declaration Order (MNR 2003a p.2), Condition 34 is virtually identical to Condition 77 (Miklas 2005; Appendix B). The Declaration Order contains requirements for addressing Aboriginal consultation in the Forest Management Planning Manual, but there is nothing to suggest why or how Condition 34 can be effective, when Condition 77 was heavily criticized by Aboriginal communities. Retaining a condition that Aboriginal groups called a dismal failure shows little respect for Aboriginal concerns. It also does not include further specifications to ensure it is successful the second time around. Aboriginal groups, including NAFA, the Ontario Union of Indians, and the Nishnawbe-Aski Nation, commented on the creation of Condition 34 and called for it to be different than its predecessor, yet it remains the same. It is an affront to Aboriginal concerns to have Condition 34 identical to Condition 77, as it dismisses all challenges and concerns to Condition 77 since 1994. A NAFA-IOG report (2000) documented the misgivings within First Nation communities about the implementation of Condition 77. The failure to address those misgivings with Condition 34 shows the MNR's lack of commitment to implementation, in addition to their disregard of Aboriginal concerns.

Future Directions: Is a Resolution on the Horizon?

Twelve years after a condition that required MNR District Managers to negotiate with local Aboriginal communities to support and implement economic development opportunities, there is still no guide to direct the condition's implementation and Aboriginal groups continue to be frustrated with its lack of progress. Condition 34, as part of the Declaration Order, has no fixed expiration date and there is no established time when it will be reviewed and possibly

changed. Condition 34 does include an annual reporting requirement, but reporting is on a district by district level and there is no requirement to gather baseline data to determine the quantity and quality of progress in the future. This was a concern raised by NAFA and NAN with Condition 77 that did not get addressed (Bombay 2002; Ferris 2003).

The outlook for Condition 34 is mixed. The forest industry is attempting to work with Aboriginal and First Nation communities on or adjacent to their Sustainable Forest Licenses, but there is no common agreement of meaningful economic opportunities, or the role of the MNR in promoting economic opportunities for Aboriginal peoples. In the Big Pic Forest, an independent audit found that,

the First Nations representatives who were interviewed suggested that there was still a long way to go toward implementing Condition 34, and that opportunities such as tree planting and cone picking that are frequently offered, provide only short-term and seasonal employment and therefore are not at all meaningful. They would like to see more benefits derived from the Forest for their communities. (KBM 2005 p.41)

The goals of Condition 34 have not been agreed upon by Aboriginal peoples and the MNR, and so its progress will continue to be debated and Aboriginal peoples will remain unsatisfied.

As for Aboriginal involvement in forestry in Ontario, Aboriginal organizations are gaining additional commitments from the Ontario government and the MNR, and there is an increasing recognition, at provincial, federal and international levels, that Aboriginal concerns need to be addressed (Lertzman and Vredenburg 2005). McNab (1999 p.11) comments that the initiative for change in Aboriginal history has always come from the First Nations after, “encountering words with no substance and a benign, passive policy, First Nations have chosen to act.” Aboriginal organizations, including NAFA, NAN, and UOI, are increasing pressure on the MNR that their concerns be addressed and are going beyond Condition 34 in order to get Aboriginal and treaty rights discussed.

The Ontario government has committed to “working to advance Aboriginal involvement in forest management” (MNR 2006). The MNR has confirmed that they will “respect and honour treaty and Aboriginal rights when making and implementing plans,” (MNR 2003b p.8) leading one to hope that a resolution is possible. They also state that their forest management approach is consistent with Canada’s National Forest Strategy (MNR 2006), which includes an objective to “accommodate Aboriginal and treaty rights in the sustainable use of the forest recognizing the historical and legal position of Aboriginal Peoples and their fundamental connection to the ecosystem” (NFS 2003 p.3). Unfortunately, the lack of action on these commitments has bred frustration within Aboriginal organizations because they do not feel that their rights are being accommodated or even addressed, despite government commitments. Government initiatives at consultation are inadequate to address how Aboriginal peoples envision consultation (Ferris 2003; Bombay 2002), and the disjuncture in communication foreshadows the frustration that lies ahead before Aboriginal peoples can hope to have their concerns resolved. It will take the efforts and dedication of Aboriginal organizations to hold the Ontario government accountable to their commitments and keep Aboriginal affairs a priority. The past fifteen years have demonstrated that although on a very local level the MNR may engage in activities working collaboratively and proactively with Aboriginal peoples, it has not become a province-wide practice or satisfied the peoples it was intended to benefit. The MNR must admit that in Aboriginal affairs, it is Aboriginal people who know best, and begin to engage them in decision making. This may require financial and social investments in Aboriginal capacity and training, but it is necessary.

Looking to the Northern Boreal Initiative: To Shirk or Face the Challenge?

There continues to be dissatisfaction in the Area of Undertaking regarding the involvement of Aboriginal and First Nation communities in forest management planning and the

forest industry. Many of the obstacles to giving native communities access to the benefits of timber management operations identified in 1994 remain today: merchantable timber near reserves is already allocated to large licensees; there exists an insufficient quality or quantity of timber on or off reserve to support existing operations; and there are difficulties in getting access to wood through the current allocation system (Koven and Martel 1994). However, as we look north of the Area of Undertaking, many of these obstacles are nonexistent. If we are looking to engage Aboriginal and First Nation communities in forestry in this area, there is an opportunity to create a different framework and avoid the problems experienced in the south.

Wilson and Graham (2005 p.13) identify constraints to First Nations participation in forest management or economic opportunities in the Area of Undertaking: a smaller First Nation proportion of the population with less political clout; near full allocation of forest resources through long-term commitments to major licensees; historically contentious First Nations-industry relations; limited skills and capacity in First Nations communities; a slumping forest industry; major disagreements over the scope of Aboriginal and treaty rights and title; mill jobs on the decline and mostly unionized and skill-intensive; and a heavy rate of utilization of forest resources and thus greater potential to infringe upon First Nations values. Table 1 summarizes the constraints in the Area of Undertaking and evaluates whether they are applicable north of the Area of Undertaking.

Table 1. Current constraints on First Nations participation in forest management or in economic opportunities

Area of Undertaking	Area North of Undertaking
A smaller First Nation proportion of the population with less political ‘clout’	No; preponderant First Nation population
Near full allocation of forest resources through long-term commitments to major licensees	No; No current allocation through forest licenses
Historically contentious First Nations-industry relations	No; no industry presence
Limited skills and capacity in First Nations communities	Yes; same
A slumping forest industry	Yes; little transportation infrastructure and marginal economic value of wood resources
Major disagreements over the scope of Aboriginal and treaty rights and title, & major unresolved legal battles	Yes; same
Mill jobs on the decline, and mostly unionized and skill-intensive	Somewhat; no current mill infrastructure or unions
Heavy rates of utilization of forest resources – greater potential to infringe upon First Nations forest values	Somewhat; if First Nations lead management, should not infringe on values. However, fragile and undisturbed ecosystem

As Table 1 shows, not all of the constraints to Aboriginal involvement in forestry in the south are applicable north of the Area of Undertaking. This represents great potential to do things differently and to learn from past experiences. North of 51°, Aboriginal people comprise the majority of the population and have greater political clout to ensure their concerns are heard. There are no current timber allocations to consider, and the forest industry which is so prevalent in southern Ontario is completely absent. Thus, there is an opportunity to develop new relationships with the forest industry devoid of a history of contentious relations.

However, many constraints in the south remain applicable in the north, and in some cases are magnified. A slumping and cash-strapped forestry industry in southern Ontario may be reluctant to invest north of 51°, where there is little transportation infrastructure, wood of marginal and questionable economic value, and a need for capital investment. Aboriginal and treaty rights remain a source of contention and uncertainty in both the Area of Undertaking and

north, and Aboriginal capacity will also remain an issue. Capacity may be an even greater challenge as development proceeds further north because of the increased distance between First Nation communities and educational institutions. In the Area of Undertaking, mill jobs are declining and becoming increasingly unionized and this speaks to capacity challenges in the north as well as begs the question: will skilled workers from the south follow jobs north? Finally, the heavy rate of utilization of forest resources in the south is a constraint to the exercise of Aboriginal rights, and this presents a different challenge in the north. As forest resources north of 51° have not yet been commercially exploited, heavy utilization is not a constraint. North of 51° is a fragile and relatively undisturbed ecosystem, and the consequences of utilization are not well understood. In addition, conservation concerns and international scrutiny of forays into intact boreal forest may impact actions.

What does this mean? The situation north of 51° represents different challenges and opportunities, and cannot be treated in the same manner as the Area of Undertaking. As the constraints in the south cannot simply be transferred north, so too is it impractical to transfer the forest management planning framework to the north. Condition 77/34 was unsatisfactory to many Aboriginal and First Nation communities, and four reasons for this were identified above: lack of recognition of Aboriginal and treaty rights; poor implementation on Condition 77; lack of capacity in Aboriginal communities to realize the benefits of increased opportunities in forestry; and lack of meaningful consultation or negotiation with Aboriginal communities. If the NBI is to be successful, it should address these issues. The NBI was developed, in part, to address First Nation concerns and the unique challenges and opportunities in the area north of the undertaking. Individual First Nation communities can decide whether to work with the NBI, and to date, the Pikangikum First Nation is the first to undertake land planning with the NBI. Pikangikum First

Nation has created the Whitefeather Forest Reserve and is collaborating with the MNR to request permission to develop a viable commercial forestry operation.

Regrettably, the NBI does not sufficiently address the issues Aboriginal communities raised with Condition 77/34 (Table 2). If we propose to transfer the existing framework north, it is likely to create similar tensions and contentiousness.

Table 2. Issues of contention in the Area of Undertaking

Issue	Is issue addressed in Northern Boreal Initiative?
Aboriginal and treaty rights	No
Implementation of commitments	Somewhat
Capacity in Aboriginal communities	Somewhat
Meaningful consultation or negotiation	No

Aboriginal and treaty rights are not addressed within the NBI, nor are the notions of meaningful consultation or negotiation addressed. The framework for the NBI was developed by the MNR and is it not a collaborative document. Although it states that, “public responses assisted in MNR’s evaluation and further definition of the approach,” it continues to say that the approach will be implemented now that First Nations associated with the NBI enter the planning stage of the process (NBI 2002 p.1). Even though the First Nations can be involved in planning, they are not central to the development of the actual process or framework that will guide their planning. In addition, while they may be allowed to lead the process in some areas, their decisions and actions must reflect, “community level needs, broader ecological considerations, and provincial level direction” (NBI 2002 p.1). There is an emphasis that provincial direction will be pivotal to the future of land use planning, but what is to happen if community level needs and provincial level direction conflict?

One of the major issues with Condition 77 was its dismal implementation, and this may be addressed with the NBI by having First Nations lead the process. In the NBI, it is assumed

that First Nations should have greater authority and decision-making powers, and will implement actions to the benefit of their communities. However, it is important to note that they will continue to work within a MNR framework that may not support commitments to Aboriginal involvement.

A further issue with Condition 77 was the lack of capacity in Aboriginal communities, and this is somewhat addressed in the NBI. There is an expectation within the NBI that the community-based land use planning approach will be led by First Nations who will develop skills and capacity through experience. However, plans must also meet relevant policy and legal requirements and complement the MNR's provincial framework for decision-making (NBI 2002 p.3). There will need to be leaders within the planning process who have the expertise necessary to address policy and legal requirements, and this may force First Nations communities to obtain outside expertise, such as consultants and provincially certified foresters. In this case, there must be measures developed to ensure that the community's skills and capacities are increasing, and it not merely non-community members who enjoy the monetary benefits of land use planning and can leave the community when the process is over.

The NBI appears to have serious limitations with regards to Aboriginal involvement. While it attempts to address some of the concerns in the Area of Undertaking, such as First Nations capacity and desire to lead the planning process, Aboriginal and treaty rights and meaningful consultation and negotiation are not sufficiently addressed. In reflecting on the contentious issues in the Area of Undertaking, it does not appear that many lessons have been learned.

Recommendations

Action is required to address the failure of Condition 77/34 in the Area of Undertaking as well as to ensure sufficient Aboriginal involvement and satisfaction in the area north of 51°. The following recommendations speak to the need for action from the governments of Ontario and Canada and are directed separately to the Area of Undertaking and North of 51°.

A. Area of Undertaking

Recommendation 1: Develop implementation guidelines for Condition 34 in conjunction with Aboriginal organizations, including the National Aboriginal Forestry Association, Nishnawbe-Aski Nation, Grand Council Treaty #3, Union of Ontario Indians and other Aboriginal government bodies as may be appropriate.

It is essential to implement Condition 34. In 1995, the Timber Class EA Board dictated that the MNR should develop a framework for the implementation of Condition 77 in consultation with Nishnawbe-Aski Nation, Grand Council Treaty #3, Union of Ontario Indians, the forest industry and other Aboriginal government bodies as may be appropriate (Koven and Martel 1995 p.13).

This remains relevant today; there is a need to work in collaboration with Aboriginal organizations to ensure that implementation guidelines are developed to the satisfaction of Aboriginal communities and to ensure that they will be effective.

Recommendation 2: Develop consultation guidelines in collaboration with Aboriginal communities.

It is necessary to create consultation guidelines for meaningful communication and collaboration between Aboriginal communities, the MNR and the forest industry. This will guide relations and ensure that the forest management planning process respectfully incorporates all interests and concerns. Guidelines can build upon those already provided by Aboriginal organizations, but it is imperative that they are acceptable to Aboriginal communities.

Recommendation 3: Aboriginal and treaty rights must be addressed.

The forest management planning process and subsequent forest management plans affect Aboriginal and treaty rights and the exercise of these rights (Kooses 2003), thus any discussions involving forestry must also address Aboriginal and treaty rights. They cannot be ignored in discussions, and discussions must detail how, if any, Aboriginal and treaty rights may be affected and mitigation or compensation measures. It demonstrates a continuing lack of concern and respect for Aboriginal issues when Aboriginal and treaty rights are repeatedly ignored. These must be recognized and addressed to ensure progress in Aboriginal involvement in forestry and create certainty for all parties concerned with forestry.

Recommendation 4: There should be increased efforts by the provincial and federal governments to increase Aboriginal capacity.

Full engagement in the forest management planning process, and the realization of opportunities alluded to in Condition 34, will not be possible until Aboriginal communities increase their capacity. Education, poverty, health and financial resources will need to be addressed. This will require financial and social investments, and the manpower and political willpower to see change. This will also require a commitment to improve relationships between governments and Aboriginal communities, knowledge sharing, power devolution, and trust.

Recommendation 5: Empower District Managers to change the forest management planning framework to address individual First Nations needs.

If local district managers are tasked with identifying and implementing means of increasing Aboriginal participation in the benefits provided through forest management planning, they should be empowered to adapt the forest management planning process to address the needs of the local Aboriginal and First Nation communities. The Timber Class EA recognized that a province-wide approach would not be sufficient to address all of the differences between

Aboriginal communities across Ontario, and so left MNR District Managers with the responsibility of implementing Condition 77 locally. This has not worked, and MNR District Managers should be empowered to adjust the planning framework to accommodate concerns at the local level.

B. North of 51°

Recommendation 6: A class environmental assessment should be undertaken to address the unique ecosystem and challenges in this area.

The land north of the Area of Undertaking represents a significant opportunity to learn from past mistakes. The social, economic, ecological and cultural differences between the two areas must be identified and acknowledged, and actions adjusted accordingly. Despite the extensive financial and time expenditures on the Timber Class EA in the Area of Undertaking, the same encumbrances could be avoided by following the recommendations established in Chapter 12: The Hearing Process of the Timber Class EA (Koven and Martel 1994). The unique components of the area should not be disadvantaged by the denial of an environmental assessment, which will also ensure that a long term vision is developed for the northern boreal.

Recommendation 7: Undertake land use planning on a landscape level, and halt further approvals until this is carried out in an appropriate fashion, such as through an environmental assessment.

Permits and approvals are currently being applied for and approved, yet there remains no overarching land use planning for the northern boreal. It is establishing a troubling precedent if development is allowed to proceed in a piecemeal fashion.

Recommendation 8: There should be increased efforts by the provincial and federal governments to support increased Aboriginal capacity.

Recommendation 9: Aboriginal and treaty rights must be addressed.

Investments in Aboriginal capacity, and Aboriginal and treaty rights, must be addressed in the same manner across the province and as detailed in the Area of Undertaking.

Recommendation 10: A strategy or framework that is acceptable to all First Nations should be developed and supported.

Currently, the Northern Boreal Initiative exists to direct land planning in the area north of the undertaking. However, it appears to be entrenched in a provincial framework promoting development. First Nations may choose to engage in the process, but if they do not agree with it, there is no alternate process to ensure the future proceeds as they want. As inhabitants and users of the land for generations, community wishes to engage or not engage in commercial forestry on their traditional territories should be respected and honoured. A framework that is not just one of development must be created as a viable option.

Conclusions

When the Timber Class EA was released in 1994, it represented a change in attitudes and heralded optimism that Aboriginal peoples would be engaged in forest management planning and decisions affecting their lands and resources. Condition 77 was the nexus of this optimism, yet in the past twelve years it has failed to meet Aboriginal expectations. Now exercised as Condition 34, Aboriginal groups continue to be unhappy and find its implementation inadequate.

Despite the lack of progress on Condition 77/34, Aboriginal organizations are pushing Ontario to address Aboriginal and treaty rights, and the government has stated that it will. Although past commitments have not been honoured to the satisfaction of Aboriginal organizations, it remains to be seen if this represents real change or a further form of rights suppression. The MNR is guarding its superiority over forest management planning and has, of yet, been ill prepared and reluctant to allow Aboriginal interests to significantly affect decision-making.

Current policies supporting Aboriginal involvement in forestry acknowledge the role of Aboriginal interests, but it will be Aboriginal organizations that ensure that these are realized in practice. The MNR has not set a good example for Aboriginal affairs in the past, but one can only hope that it will change in the future. As we look to develop commercial forestry in the northern boreal, it is imperative to incorporate lessons from the Area of Undertaking. North of 51° is inhabited primarily by Aboriginal and First Nation communities, and Ontario should resolve the contention surrounding Condition 34 before attempting to transfer its forest management planning framework north. North of 51° represents an immense opportunity to redress past mistakes, but also a challenge to do things correctly under pressure from local, provincial, and international parties. We are walking down the road of opportunity, but are we ready to listen to the people who have lived there for hundreds of generations and call it home?

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Appendix A: Recommendations of Timber Class Environmental Assessment Board

- (1) The government of Ontario and Canada must make a serious commitment to finalize negotiations with Aboriginal peoples which have been dragging on for years. The settlement of land claims is primarily a federal government responsibility and we urge the federal government to accelerate their efforts in resolving land claims by whatever means are available including having these issues decided by the Courts. We further urge the governments of Ontario and Canada to do whatever is necessary to conclude various processes under way to define treaty and Aboriginal rights. This work must involve consultation with and the consent of Aboriginal communities.
- (2) In 1986 only nine Order-in-Council licences and 27 District Cutting licences, involving about 100,000 cubic metres of timber were issued to Aboriginal peoples. The government of Ontario should establish a committee to review its licensing policy as it pertains to Aboriginal peoples and report to the public on its findings. The community should investigate the barriers that exist to granting licences to Aboriginal peoples, to determine the number of licences granted to Aboriginal peoples as well as the size of the area licenses and the volumes of wood. This information should be obtained to provide an historical overview and to identify the types of licences, such as District Cutting licences or Third Party Agreements, that are involved.
If the committee determines that barriers do exist to providing timber licences to Aboriginal peoples, the committee should consider remedies for this inequitable policy including assistance to Aboriginal communities to obtain licensed areas of sufficient size to provide meaningful employment and income for their people.

(Koven and Martel 1994)

Appendix B: Condition 34

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 by Aboriginal peoples in the benefits provided through forest management planning. These negotiations will include but are not limited to the following matters:

- (a) providing job opportunities and income associated with forest 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 forest resource 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 Indian and Northern Affairs Canada; and

(f) other forest resources that may be affected by forest management or which can be addressed in the forest management planning process.

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

(MNR 2003a)