

First Nations Governance and Forest Management

—A Discussion Paper—

March 24, 2002

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ACKNOWLEDGEMENTS

NAFA would like to extend appreciation to all those who contributed to this project. In particular, the contribution of the following people is acknowledged:

Keith Atkinson, Forest Resources Manager, Nisga'a Lisims Government
Thomas Pierre, Tanizul Timber
Chief Paul Gull, Waswanipi Cree First Nation
Waswanipi Model Forest
Chief Alex Chingee, McLeod Lake First Nation
Guy Joly, McLeod Lake First Nation
Blanche Warrington, Director of Lands and Resources, Teslin Tlingit Council
FNLM—Lands Advisory Board, Ottawa
Peter Wyse, Lands and Trust Services, DIAND
Graham Boothroyd, DIAND, BC Region
Gordon Iron, Meadow Lake Tribal Council
Richard Opekokew, Director Self-government, Meadow Lake Tribal Council
Eric Sylvestre, Vice-Chief, Meadow Lake Tribal Council
Alexis Vanderheyden, Garden River Natural Resources Unit, Garden River
Mark Jackson, Bodie Shaw & Larry Potts of Warm Springs, Oregon

In addition, appreciation is extended to those who considered participation in this project, but who were unable to proceed due to sensitivities surrounding current negotiations or other matters of concern to their First Nations.

NAFA would also like to gratefully acknowledge the financial support of the Department of Indian Affairs and Northern Development.

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FORWARD

Significant gains in forestry have been made by First Nations in regions across Canada over the past decade. First Nations and other communities have had increasing success in influencing forest management in Canada. One result is that Aboriginal logging companies, joint venture sawmills and value-added processing operations, and, increasingly, First Nation-held forest management licenses are emerging across the landscape.

As First Nations and Aboriginal businesses make gains in the forestry sector, however, many Aboriginal people are beginning to ask what difference this will make in the ways forests are managed in Canada. Does Aboriginal ownership of a mill or a feller-buncher make life better for the trapper or hunter? Will the First Nation holding a Crown tenure better protect valued spiritual sites or medicinal plant resources than previous tenure-holders? More generally, as Aboriginal peoples increase their involvement in forestry, will the values of their communities be reflected in forest management? Will the benefits of the forest be more equitably shared?

By raising these questions, the issue of governance begins to emerge. What are the forces that guide forest management structures and practices? In the past, many Aboriginal peoples recognised ‘natural laws’, ‘earth laws’, or ‘peace codes’ as the source of direction for human activities. The values established by these codes or laws guided the development of social structures and institutions.

Today, Aboriginal involvement in forestry is leading to the development of new structures, institutions and laws. What will guide these? Will they simply arise to play the same roles as the structures and laws from White society that they replace? Or will they evolve to reflect some new values and understandings held by the Aboriginal societies that are beginning to develop these new structures?

This paper has been prepared as a first step in addressing the area of First Nations governance as it relates to forest management. It seeks to identify what areas need to be considered in order to begin asking the right questions as First Nation forest management regimes are developed. It looks at the current environment for First Nation governance of forest management and some of the experiences.

This is just a start. The rapid pace of change in First Nation forestry means that it can be difficult to stand back to assess the direction of this change, or what options might be available. While some lessons have been learned, it is too early to draw conclusions. Rather, it is hoped that this paper will provide some structure for those who are in the midst of the challenging area of First Nation forestry and who wish to reflect on what direction they hope to move in.

CHAPTER ONE: INTRODUCTION

Aboriginal interest in the land flows from a long-term relationship with the land. A formal legal interest arises from broad Aboriginal rights and more specific Treaty rights. Most successful First Nations forestry initiatives are founded on recognition of these Aboriginal and Treaty rights combined with the development of solid business capacity. These initiatives have led to increased First Nation jurisdiction or management control over forest resources. Along with jurisdiction comes a third key element that has been often overlooked — governance.

Governance gets at the heart of Aboriginal concerns over traditional knowledge and values; multiple use and wise utilisation of resources; and holistic perspectives on the management of human interaction with the land. First Nations are once again embracing their traditional role as stewards of the forest. However, this is taking place in social, political and economic contexts that may hold considerable influence over the form that First Nation governance takes in relation to the forest.

The reality of what First Nations are attempting to govern today, with regard to forested lands is a complex combination of jurisdictional landforms and authorities. This may include management of reserve lands and forest tenures, along with managing the provisions of land claims that deal with forestry and managing Aboriginal interests in forested lands of traditional territories — often in situations where the relevant Crown authority may not adequately recognise these interests.

Re-building strong governance capabilities is important not only as a means of bringing Aboriginal values back into the forest. First Nations governance will also facilitate a fourth element required to enhance First Nation forestry initiatives, that of investment. Investment leads to the generation of jobs by enabling opportunities to be realised. Investors, however, are well-known for their aversion to risk and uncertainty. Good governance can facilitate access to investment by ensuring that the public interest is clearly known and reflected in forest management and development proposals, and by providing confidence that the rule of law will protect the best long-term interests of the community.

Finally, governance responsibilities are contributing to the development of professional capacity — in forest management; in land-use planning; in law-making; and in many other dimensions associated with the administration of public lands and resources. First Nations professionals will complete the foundation for building a strong economic sector from the forest. This foundation, then, is made up of five elements: recognition of Aboriginal and Treaty rights; solid business capacity; good governance; investment; and professional development.

The purpose of this paper is to set the ground work for discussion of issues related to First Nation governance and forest management. It will begin, in Chapter Two, with a brief review of the key functions that must be carried out in the course of forest management, and an overview of important elements of First Nation governance traditions. These two

streams will be combined to create a framework that can be used to guide the assessment of First Nation forest management governance regimes.

In Chapter Three, we will begin by reviewing various legislative mechanisms that ascribe jurisdiction for forest management to First Nation communities. Jurisdiction is the basis for developing governance capacity, and so is a key element in the discussion. This is followed by profiles of First Nations that are currently involved in forest management

governance. These profiles build on the analytical framework developed in Chapter Two.

Chapter Four pulls together some of the key lessons and findings that have been suggested by the experience, while general conclusions are made in Chapter Five.

A simple toolkit is developed in Appendix A to assist First Nations that may be planning to increase their involvement in the governance of their forests.

CHAPTER TWO: A FRAMEWORK TO ASSESS FIRST NATION GOVERNANCE AND FOREST MANAGEMENT

As First Nations re-gain their traditional roles as stewards of the land, they are entering territory that is both familiar and new at the same time. Indigenous peoples have always governed their relationship with the land, often through systems of governance that assigned specific roles to specific groups or clans in the community. Management principles were effectively passed down from generation to generation through strong oral traditions and understanding of the world that held the force of law. Decision-making processes were highly developed so that the voices and interests of members who depended upon the forest could be heard and accounted for.

Today, these are functions that must continue to be carried out in relation to forest management: assignment of jurisdiction; establishment of enabling law and the regulations and codes of practice that flow from it; accountability to the public in decision-making; recognition of individual and special interests.

The context for governance has, however, significantly altered the familiar landscape of forest management. First Nations have been stripped of their traditional territories and the resources they depended upon. Economic impoverishment has resulted. Traditional institutions of First Nations governance have been denied their authority in favour of systems created by colonial governments and maintained into the present under the Indian Act. The local authority of First Nation governments has often declined as social cohesion eroded. Resource management has fallen under the jurisdiction of remote provincial and

federal government bureaucrats, who — until recently — proceeded to make decisions that would have severe local implications with no input from community members or leaders.

At the same time that traditional First Nation social, economic and governance systems were being eroded away, the standards for forest resource management also dramatically changed. First Nations resource management decisions typically reflected some version of the understanding that the Land was the boss, and that people are required under natural law to “adapt their way of life to the teachings of the land.”¹ Land use decisions were typically assessed by considering the impacts and benefits that would be felt seven generations hence.

The colonial orientation toward the land as a resource that could be converted to money for the benefit and development of societies far removed from the land itself was blasphemous to the point of incomprehension. Yet modern resource management tools have been developed based on this latter world view. In very recent time (just within the present generation) these management tools have attempted to moderate the level of exploitation to achieve “sustainable development” and the language of “local benefit” is beginning to enter into theoretic discussions. Resource law has developed under the assumption that individuals are driven by unbounded greed. Left on their

¹ Based on the teachings of a Dene elder, as reported in the Royal Commission on Aboriginal Peoples.

own, people will deplete public resources to the point where the common good is lost.

This “tragedy of the commons” theory of human relations to the land has certainly been adequately demonstrated by the capitalist corporations that have picked up the colonial torch around the world.² The need to regulate the corporate appetite is recognised, yet western societies have been built upon, and are still sustained by, the economic wealth created by this model of relating to the land. Governments are thus in a situation where they may moderate resource exploitation, but are generally not in a position to fundamentally change the rules of the game. To a large extent, as First Nations increase their involvement in modern forest management and in forest resource business activities, they find themselves dealing with the forces inherent in this corporate capitalist model.

To avoid getting side-tracked by the obvious sensitivities of this landscape, an objective framework for analysis will be useful. This framework should set out the core functions that need to be achieved through any forest management governance regime. Applying this to real experiences will, it is hoped, help to identify the important lessons that have been learned and to point the way to

² The “tragedy of the commons” is a term used by economists to describe the tendency of individuals to exploit public goods for private benefit beyond a sustainable level. Everyone has an economic incentive to exploit common property but no-one has an economic incentive to care for it. Social factors — regulation, taxation and so on — can be developed to internalise the common good into individual economic choice.

areas where productive discussion and research may be entered into.

The purpose of this chapter, therefore, is to lay a foundation for understanding how the issues and concerns of governance in First Nation communities relate to the issues and concerns around forest management. Phrased another way, this chapter intends to show how forest management issues are integrally connected to issues of governance, and why the development of forest management capacity amongst First Nations will require parallel development of capacity in the area of governance.

Three steps are needed to make this connection. First, a consideration of the main functions or areas of activity that are encompassed by the term “forest management” will be presented. This is followed by a brief look at what is meant by “governance.” Finally, a third step brings these two areas together in the form of a conceptual framework for assessing First Nation forest management and governance issues. This framework will then be used to explore, in Chapter Three, a number of Aboriginal experiences, both in Canada and internationally.

2.1 Functions of forest management

For the purposes of this paper, we can identify six key activities that need to be carried out in the course of First Nation forestry:

- Establishment of law governing people’s use of the forest
- Forest Land Management Planning and Codes of Practice

- Harvest allocation and enforcement
- Revenue generation and distribution of benefits
- Institutional and human resources development
- Compensation for losses and dispute resolution

Forest Law

A legal framework identifies the authorities, responsibilities and powers that govern people's use of the forest. It should also establish which forest uses are subject to regulation, and what enforcement mechanisms may be applied. Forest practices codes are developed to specify how certain uses, such as logging, are to be carried out.

Current legal regimes already exist for First Nation forests in Canada. Some First Nation forests fall under duplicate legal regimes — provincial forest legislation or the Indian Act, on the one hand, and traditional regimes such as that of the Gitksan which are built upon ancient Aboriginal codes of law, on the other.

The establishment of forest law includes aspects of enforcement. This may encompass both the formal legal systems now familiar in Canada, as well as natural law. In the first form, laws are enacted and enforcement officers are empowered to ensure that individuals moderate their behaviour to reflect the collective will reflected in the law. Under natural law, individuals incorporate the law into their own personal morals, validated throughout all social interactions. The need for outside enforcement tends to be limited to social pressure or teaching.

Forest Land Management Planning and Codes of Practice

Forest land management planning is intended to guide forest land operations, development and improvements.³ The plan must be consistent with law. Further, it should reflect the community's goals for its forest lands, outline how these goals are to be achieved, and identify forest values held by all segments of the community, and how these values are to be managed. If the community has a community development strategy, the forest land management plan should indicate how the community's development goals relate to the forest.

The development of a forest land management plan requires clear understanding and consensus amongst community members about who has the authority for drafting the plan, how differences are to be mediated, and how the plan gets approved. As with forest law, some forest regions find themselves under traditional management regimes as well as under modern forest management systems. As an example, traplines in Quebec Cree territory are managed by Tallymen who traditionally hold very broad management responsibilities. These same areas fall under the provincial forest management licensing system, where the authority of the Tallymen has not been recognised.

Codes of practice also need to be developed to ensure that the objectives established in land management plans can be achieved. This may involve bringing together the best knowledge — both

³ Refer to NAFA's 1995 "Aboriginal Forest Land Management Guidelines: A Community Approach" for more in-depth discussion of forest management planning.

western and Indigenous — available, as well as undertaking research to expand the knowledge base itself.

Harvest allocation and enforcement

The allocation of harvest rights should be carried out in a way that ensures harvesting activities contribute to the community's overall development objectives. Depending on what these objectives are, harvesting may include or exclude cutting of timber for commercial sales. The allocation of harvest rights must recognise pre-existing and over-lapping harvest rights. For example, in many forested regions, First Nation members exercise rights to hunt, gather and trap, and these activities may be impacted by intensive logging activities.

Allocation of harvest permits must also ensure that harvest operations respect the management plan and the applicable law. This means that the institutional capacity must be adequate to assess harvest plans to ensure they comply with forest codes and with the forest management plan. In addition, enforcement authorities must be provided, penalties must be sufficient to deter inappropriate uses, and resources to carry out monitoring and enforcement must be adequate to do the job.

Revenue generation and benefits

The forest is recognised as a “public” good — belonging to all members of the community. The benefits that arise from commercial use of the forest should, therefore, flow equitably to all members of the community. This means that due diligence needs to be applied in the awarding of contracts, in the assignment of cutting dues and/or in the marketing and sale of timber or other products derived from this common resource. In addition to

revenue generation, other benefits such as employment, business opportunities, professional development opportunities and so on should also accrue to community members.

In the modern context of global corporate activity and trade, the identity of the “community” that is to benefit from the “public” resource becomes interesting. How should benefits be divided amongst members of the nation in which the resource is found, the people living in the immediate vicinity of the resource, and the share-holders of the corporation that “develops” the resource?

Institutional and human resources development

Developing the appropriate institutional arrangements is an important part of forest management. These institutions should have the capacity to carry out all the functions related to the task of forest management assigned to them. This will mean appropriate levels of human capacity as well as levels of funding. In many situations, especially in the context of small organisations, institutional development may involve a high degree of partnership development. Links between management organisations and research institutions are a good example of these sorts of partnership arrangements.

Compensation and dispute resolution

Processes to resolve disputes related to resource use and to the allocation of the benefits flowing from this use need to be established. Basic principles that will be used to adjudicate disputes should be developed in advance.

Compensation may be needed, and appropriate forms for compensation

should also be determined in advance. For example, compensating a trapper with money for loss of equipment damaged during forestry operations may be appropriate, but how would long-term disruption of wildlife populations leading to loss of the trapping lifestyle be approached? Equally difficult may be the approach to compensation of local businesses established to carry out forest operations should commercial opportunities be cut back in favour of non-commercial forest values after investments have been made in the business.

2.2 Governance

Implementation of Aboriginal self-government is taking place across Canada. While the pace and extent of empowerment varies greatly from First Nation to First Nation and between land-based and urban-based communities, there is no question that Aboriginal peoples in Canada will achieve the benefits and responsibilities that are attached to this inherent right.

Self government will not be a new responsibility. As the term “First Nation” implies, Aboriginal peoples have governed their affairs as “peoples” through the ages. The current situation where a colonizing force has imposed its governance structures over Aboriginal peoples will, from a long-term historical perspective, soon appear as a brief anomaly in the long history of Aboriginal governance.

The interruption of Aboriginal governance and its institutions and customs, however brief in the passage of time, has been significant, however. As First Nations resume their jurisdiction over their affairs they are finding that the social, cultural, and physical landscape has changed

dramatically. Family and community customs have been torn apart by a variety of social and economic factors⁴, cultural development has been assailed through aggressive efforts by the colonizing peoples to assimilate Aboriginal peoples, followed by a softer yet perhaps more effective development of globalization of “commercial culture.” The physical landscape has largely been subjected to industrialisation, whereby forests are seen as productive units to be managed in the process of capital development and wealth creation. It is against this backdrop that Aboriginal governance is re-emerging.

In the future, as Aboriginal social historians look back at this juncture in time perhaps they will see a “discontinuity” in governance institutions. In geological terms, a discontinuity occurs when forces of erosion strip away layers upon layers of geological development, replacing them with new formations derived from both old and new sources. The resulting formation is built upon the old, but holds little in common. Or perhaps they will describe a process more akin to “metamorphosis.” In geology, metamorphosis describes a process where ancient formations are subjected to powerful forces of energy. While the underlying material is the same, the forms and characteristics of the material change considerably. Indeed, the result of metamorphosis is much stronger than the pre-existing conditions. There may be some instances where ancient forms of governance continue to function far into the future. Like bedrock that has been covered for a time by materials deposited from distant origins, but then released

⁴ The reader is referred to the reports of the Royal Commission on Aboriginal Peoples for insight into this issue.

again by forces that scrape away the overburden.

Clearly, the purpose of this discussion paper is not to predict the various forms that Aboriginal governance will take as it re-emerges across Canada. Rather the intent is to begin to develop a foundation for assessing and discussing the important aspects of First Nations governance as it relates to forest management. In the following section we will consider, first, what we mean by the term “governance.” This will be followed by a brief look at some common elements of Aboriginal governance that have survived from the past. Finally, the link between governance and economic development will be made.

*What do we mean by
“governance”?*

Governance describes how communities and societies structure the way people relate to each other:

“Governance is the process through which institutions, businesses and citizen groups articulate their interests, exercise their rights and obligations and mediate their differences.”⁵

We can say, therefore, that “governance” describes the range of functions that need to be carried out in order to ensure each member of a nation, community, and family understands their place in relation to others — their responsibilities, the expectations others may have of them and that they may have of others, the rights that arise from membership in the group.

⁵This definition is derived from a UN speech to the World Conference on Governance, as quoted in “Governance and Good Governance: International and Aboriginal Perspectives.” Institute On Governance. 1999.

The concept of governance often transcends human society to encompass sources of authority and obligation beyond people. The western view, for example, has been built on the notion that people’s rights and obligations arise from the divine will, as expressed through the Judeo-Christian traditional teachings. “God” is the boss and the source of all authority.

An equally pervasive understanding amongst many Indigenous societies is that people’s place in the world has been established by the “Great Creator.” In this tradition, people’s rights and responsibilities and the teachings about how they are to relate to each other and to other parts of creation arise from the Land itself and through the interaction between the physical world and the spiritual elements that reveal themselves.

Building upon their respective traditions, western cultures and Indigenous cultures have developed customs and institutions of governance that function to regulate their social, political, economic and cultural affairs. The force of these customs begins with the individual’s understanding and acceptance of the underlying authority — “the rule of law” —, extends into the family and out into the broader community and nation. Governance, therefore, addresses the full range of customs and institutions that influence how people live together. The family unit and the way families relate to each other is, perhaps, the start. Traditional institutions, such as clans, are another. Religious organisations, volunteer societies, business and corporate structures — all of these play important roles in public affairs, in addition to the governmental institutions that are typically

associated with the concept of “governance.”

Elements of Aboriginal governance

Commonly shared attributes of Aboriginal governance traditions have been identified by the Royal Commission On Aboriginal Peoples. These include:

- The centrality of the land
- Individual autonomy and responsibility
- The rule of law
- The role of women
- The role of elders
- The role of the family and the clan
- Leadership
- Consensus in decision-making

A brief presentation of some of the key findings of the RCAP related to each of these attributes is presented below.

The centrality of the land

“People do not have dominion over the land, rather they are subject to the land’s dominion.”

“To disrespect the spirit of the land is to disrespect life.”

Individual autonomy and responsibility

“An individual is imbued with a strong sense of personal autonomy and an equally strong sense of responsibility to the community.”

“Since the welfare of the community depends on the ingenuity, initiative and self-reliance of its individual members, individual rights and responsibilities are viewed as serving rather than opposing collective interests.”

“The understanding of the individual’s status and role has fostered a strong spirit of egalitarianism in communal life...No one can decide for another person. Everyone is involved in the discussion and the decision is made by everyone.”

The rule of law

“The law is not understood in an exclusively secular sense. [Rather] the law is grounded in instructions from the Creator or, in a body of basic principles embedded in the natural order. Thus basic law is viewed as the “law of God” or “natural law.”

“The law tells people how to conduct themselves in their relations with one another and with the rest of creation. ... Failure to live by the law is to turn one’s back on the Creator’s gifts, to abdicate responsibility and to deny a way of life. The law helps people fulfil their responsibilities as individuals and members of the community.”

“The Great Law of Peace of the Haudenosaunee Confederacy is a frequently cited example of traditional Aboriginal law. It is essentially a law based on the mind and can be discerned only through oral teachings. ... The lawmakers, in weighing any decision must consider its effects on peace. ... [They] must cast their minds seven generations ahead, to consider its effects on the coming faces. The lawmakers must consider the effects of each decision on the natural world.”

The role of women, elders, the family and the clan

“In some societies the importance of the family in political organisation ensured that women were often involved in decision making, even if normally they did not act as public spokespersons or play a

prominent role in political life beyond the family.”

“Contrary to our traditional systems, the Indian Act system provides a political voice only to the elected chiefs and councillors normally resident on reserves, and usually male. The Indian Act system silences the voice of elders, women, youth and off-reserve citizens of First Nations.”⁶

“Elders have traditionally held special roles and responsibilities in matters of governance... Elders are teachers and the keepers of a nation’s language, culture, tradition and laws. ... Their roles include making decisions on certain important matters, providing advice, vision and leadership, and resolving disputes within the community.”

“Families and clans fulfilled a number of essential governmental functions. They determined who belonged to the group, provided for the needs of members, regulated internal relations, dealt with offenders and regulated use of lands and resources. They also imbued individuals with a sense of basic identity and guided them in cultivating their special gifts and fulfilling their responsibilities.”

In some Aboriginal nations, different government functions — leadership; protection; sustenance; learning; medicine — were distributed to different clans: “By the time a child reached adult age, they would know the skills of their clan. They would know their responsibility to the

community, and that was their function.”

Leadership

“ Within families, clans and nations, positions of leadership could be earned, learned or inherited. Frequently, these methods operated in conjunction.”

“The selection of Chief [in one Aboriginal society] was hereditary through a patriarchal line: the first born descendant would not automatically enter this position, it had to be earned. From a very young age the candidate for leadership would be trained and advised by his peers to ensure that he would be ready to assume his role.”

“In many First Nations, the Indian Act system of government has eroded traditional systems of accountability, fostered divisions within communities, and encouraged what amounted to popularity contests. ...It permitted large families to gain control of the council and shut other families out of the decision-making process.”

Consensus in decision-making

“Decision-making by consensus, often referred to as ‘coming to one mind’, is gradual, and the resolution of issues is built piece by piece, without confrontation.”

“The principle of consensus is a fundamental part of many Aboriginal governance traditions. Under this principle, all community members should be involved in the process of reaching agreement on matters of common interest. Among some peoples, discussions generally begin at the level of the family. In this way, the views of women, children and all who are not spokespersons may help shape the view expressed by the

⁶ It should be noted that since the 1999 “Corbiere decision” calls for First Nation governments to ensure opportunities for off-reserve First Nation members to participate in the political life of the First Nation through elections and referenda.

family or clan. Discussions may then proceed at a broader level and involve all family spokespersons, clan leaders or chiefs. In certain cases, all members of the community meet in assembly. Through a prolonged process of formulation and reformulation, consensus gradually emerges, representing a blend of individual perspectives.”

“In many First Nation communities, the family-based consensus process has been displaced by majority-based electoral systems, which have altered the roles of women, elders and other members of the community. These electoral systems have had the effect of splintering viewpoints, alienating the community from decision making, and breeding distrust of leaders and officials. Electoral systems have also been susceptible to domination by numerically powerful families in the community.”

The traditions of governance in First Nations that have been explored by the Royal Commission, reflect a broad diversity of approaches to governance. As First Nations gain jurisdiction and governance authority related to forest resources, it will be necessary to consider the extent to which Aboriginal governance traditions come into play. Can these traditions address the current context for forest management, or will systems of governance be imported from western traditions? How can western and traditional governance systems best be blended to meet modern-day Aboriginal objectives?⁷

⁷ See Bombay. 1993. “Many things to many people.” *Cultural Survival Quarterly*, Spring 1993, pp 15 – 18.

Governance and economic development

Recognition of an important link between governance capacity and ability to make progress in achieving economic development objectives is emerging. Stephen Cornell and Joseph Kalt⁸ have carried out research to discover “what it takes for self-determined economic development to be successful.” They identified three elements that are key assets in Aboriginal development:

Sovereignty — the power to make decisions, similar to “jurisdiction”;
Institutions — the ability to effectively exercise jurisdiction i.e. “capacity”;
Development strategy — choosing the appropriate economic policies and projects.

The Institute On Governance notes that institutional factors “have an important bearing on social and economic conditions,” and that “achieving desirable conditions is dependent not only upon the technocratic capacity of government ministries, but also upon how governments relate to citizens, upon the vibrancy of civil society, and, in general, how different sectors in society interact to deal with issues of public concern.”⁹

A further link should be considered. That is the powerful driving force that economic realities can have on processes of governance. e.g. funding arrangements,

⁸ Cornell and Kalt. 1992. “Reloading the dice: improving the chances for economic development on American Indian reservations” In: *What Can Tribes Do*, The Harvard Project On American Indian Economic Development.

⁹ IOG. 1999. *Governance and Good Governance*.

systemic conflict of interest, political investment in “pet projects” and so on. These dimensions are considered further in Chapter Four.

Finally, forest management systems must typically be funded from the revenues generated by the economic development activities carried out in the forest itself. Funding mechanisms need to be established that will ensure an adequate return of revenues to the forest for purposes of management. The re-investment of these revenues will ensure sustainability for future generations.¹⁰

2.3 A Framework for assessing First Nation governance and forest management arrangements

An objective analysis of specific experiences of First Nations forest management and models of governance will be greatly aided by developing a framework that can be used to guide this analysis. Such a framework will set out the questions that should be answered through the investigation of specific cases, and will establish a perspective that reflects an Aboriginal point-of-view relating to governance and forest management.

This framework should address the key functions of forest management along with the important processes and attributes of the governance approach used to guide these functions. The framework should, therefore, address issues of authorities and jurisdiction; customs and traditional land use; consultation within the First Nation and with the general public and other stakeholders; commercial harvesting

¹⁰ See Peggy Smith’s paper on funding mechanisms for forest management, published by the First Nation Forestry Program of the Canadian Forest Service and DIAND.

practices and management of stumpage revenues; regulatory control; and, accountability.

The framework we will use begins by building on the definition of governance introduced earlier: “*Governance is the process through which institutions, businesses and citizen groups articulate their interests, exercise their rights and obligations and mediate their differences.*”

Based on this understanding, and in light of the elements of Aboriginal governance traditions already presented, we can say that governance describes how the values, preferences, rights and obligations of First Nation members and of stakeholders in the broader society become applied to the management of forests by First Nations. It also describes how the costs and benefits associated with forest management and forest utilisation are spread across different groups within the community, and how conflicts and disputes related to this allocation are resolved.

Working from this understanding, a simple framework for investigating and analysing First Nation forest management governance regimes can be constructed (see the figure below). This framework sets out the critical areas that should be addressed when considering a forest management governance regime. Each of these areas can be elaborated as follows.

Jurisdiction

Jurisdiction describes the extent and source of authority to carry out forest management functions. This includes both the geographical extent as well as the range of governance functions that may be applied. Jurisdiction may arise from legal authority or from moral authority. Generally, to be successful legal authority

should arise from an acceptance amongst the community membership that this authority also has a moral basis.

Issues of jurisdiction are addressed through the establishment of a legal regime. This regime may be based in natural law (as with some Aboriginal traditions), or it may be established through secular law, as is done through the process of legislation and regulation.

Conflicting jurisdiction may arise between First Nation authority over forested lands in traditional territories and provincial jurisdiction over Crown resources. First Nation authority arises from Aboriginal and Treaty rights which are often not recognised fully by provincial governments. First Nation participation in forest management must be based on recognition of their rights in traditional territories. Co-management arrangements may be one way to manage or balance these jurisdictional conflicts.

Values and preferences

The approach to forest management reflects some set of values of a society. These values may be those of people who live most closely connected to the forest, or they may be those of people who stand to benefit in some way from a particular management decision. Values begin to be reflected at the outset, through the way in which jurisdiction and authority for management functions are assigned. Forest management plans and their implementation are a further point at which these values are reflected.

In terms of processes of governance, the identification of values and preferences may be carried out by individual professionals, who reflect the values of

their profession, through consultation processes that attempt to determine the values or preferences of a group of stakeholders (say industry players, environmental groups), through formal or informal community consultation.

Once a range of values have been obtained, the issue of coming to agreement over how opposing values might be dealt with in the forest management approach arises. This may involve consensus development, assessment of the “greater good”, or more pragmatic considerations of the capacity to achieve the values through forest management or the economic implications of one value set over another. Conflicts of interest may arise at this point, both at the level of individuals as well as systemic conflicts of interests — such as when the governance institutions charged with forest management are expected to raise the funds for their activities from forest revenues.

Transparency in the decision-making process is another aspect of governance processes that transform values into forest management approaches. Do people understand how and why their preferences have influenced the final decisions? If community members feel decisions are being made behind closed doors, or have not considered their values subsequent acceptance of the management plan may be weak and enforcement issues may arise.

Related to the area of values and preferences is the capacity to achieve these values in the forest. Are there adequate human resources to do the planning and the implementation? Are financial resources adequate? Is it

Figure 1
A Framework for Assessing First Nation Governance and Forest Management

GOVERNANCE COMPONENTS	INDIVIDUAL, BUSINESS, INSTITUTIONAL, AND COMMUNITY INTERESTS	FOREST MANAGEMENT COMPONENTS
J u r i s d i c t i o n		
Consultation processes and information flow (transparency) Capacity (Human, institutional and financial)	Values and preferences	Forest management planning and implementation Training Research
Achievement of social agreement related to rights and obligations Law-making apparatus Permits and enforcement regimes	Rights and obligations	Legal regime Harvest limits Access for commercial and non-commercial use of the forest
Administration of revenues and liabilities Principle of equity	Sharing of costs and benefits	Marketing and sale of timber and other commercial products Contingencies for fire management, disease and other protection measures
Conflict resolution and dispute resolution processes	Resolution of conflicts and differences	Mediation of conflicting resource use needs and values

even ecologically possible to achieve what has been agreed to as desirable? It is possible to state that the forest will be managed to sustain aggressive economic growth, while at the same time providing for spiritual and traditional values, maintenance of traditional knowledge, ecotourism opportunities and so on, all of which will be sustained generations into the future. But is this possible, within the limitations of the real world? Is the level of knowledge — traditional and scientific — adequate to address this question? Training and research are functions of forest management that can help to address this capacity issue.

Rights and obligations

Forest management governance regimes are typically faced with a need to respect and accommodate two kinds of rights, inherent rights and acquired rights. Inherent rights include things such as the right of Aboriginal peoples to carry on forest uses that have been traditionally practised through the ages. Access to the forest to gather medicinal plants, to hunt and trap, to carry out spiritual and culture-based activities might be some examples that are generally accepted rights that are considered inherent. Acquired rights might relate to contract agreements — the right to harvest timber once a permit has been granted and investments in equipment have been made. Non-Aboriginal people who have carried out hunting or trapping activities in an area for certain long periods of time might also be considered to have acquired rights. Similarly, commercial operators — and the communities that grow up around such operations — sometimes

seem to be considered to have acquired rights to these uses of the forest.

Balancing competing rights can present major challenges to forest governance. For many First Nations who are gaining jurisdiction, issues of competing rights between members of the nation and those who are not members are resolved during the process of assigning jurisdiction. However, there may still arise issues related to balancing inherent rights of members with acquired rights of other members. What happens, for example, when an Aboriginal business acquires a harvest right that then infringes on the rights of trappers or those concerned about impacts on medicinal plants or wildlife species into the distant future? Is the ability to earn a living from the forest an inherent right of the same stature as rights to carry out traditional harvest activities? Once families gain employment based upon harvesting of forest resources, does this employment become an acquired right?

In terms of governance processes, it is important to ensure that social agreement can be found in relation to dealing with competing rights. Enforcement regimes and law-making should reinforce this social agreement, rather than attempting to hold up a forest management system that people feel infringes on basic rights. A successful forest management regime will aim to facilitate access to the forest in a way that can accommodate exercise of the full range of rights. This is, of course, easy to say, much harder to achieve.

Rights are not simply held by people who are before us today. Forest management regimes are obligated to also consider the rights of those who will come in the future — seven generations forward, for example. They should also respect the rights of those who came before. This is one basis for the obligation to respect burial sites and areas where there is evidence of culturally important artefacts in the forest.

Sharing of costs and benefits

Forest management practices frequently entail costs and benefits. Costs may arise in the form of permanent or temporary loss of forest values e.g. temporary disruption of access during harvesting, permanent loss of forest biodiversity, medium or long-term disruption of wildlife populations. They may also be felt in terms of disruption of social and cultural fabric, as people move away from traditional forest activities toward commercial, job-based activities. Benefits may arise in the form of new economic opportunities, greater opportunities for professional or career development, renewed sources of revenue for the support of community infrastructure, governance institutions, and services.

Arguments are sometimes made that the costs associated with a particular approach to forest management (intensive commercial harvesting, say) are more than off-set by the societal benefits achieved. This is precisely the argument that effective governance institutions need to continually assess. Typically the costs and impacts of forest management decisions are borne by individuals or groups

different from those who enjoy the greatest benefits from those decisions. This may include situations where the benefits arising today are being enjoyed at the cost of reducing the opportunities for generations to benefit in the future.

The principle of equity needs to be applied to this important issue. Benefits and costs should be distributed in a balanced way across families and communities and across generations. Leaders must be accountable to ensure that the administration of revenues and liabilities arising from forest practices reflects a commitment to this principle. In terms of the functions of forest management, an orientation toward sharing costs and benefits equitably will lead to careful marketing strategies that gain the best return for the use of a valued resource. Appropriate management of revenues raised from the forest must, as noted earlier, ensure that adequate funds are invested into the forest management system itself. This will ensure resources are available for on-going management, of the forest into the future.¹¹

Resolution of conflicts

Conflicts and differences in opinion related to forest resources are likely to arise in each of the areas of values assessment, recognition of rights, and sharing of costs and benefits. While efforts can be made to minimise these conflicts, governance regimes need to

¹¹ Some of the mechanisms suggested by Peggy Smith in her paper addressing this issue (cited earlier) include forest management trust funds, ...

include processes for conflict resolution.

Accountability

Forest management decisions affect all members of the community or nation. Some may be directly implicated through their involvement in forest-based activities, including both traditional and modern activities. Others may be indirectly affected through spin-off benefits or impacts arising from forest management approaches. For First Nations having significant urban-based membership, the creation of new economic growth may provide opportunities for future family members to consider returning to the traditional territory.

Those who are involved in making the decisions that will have such wide-ranging impacts must be accountable to their members. This is a theme that runs through all aspects of values identification, dealing with rights, sharing the costs and benefits and resolving conflicts. Each of these processes should be as transparent as possible, so that people understand how their concerns have been dealt with.

Each of these elements contribute to a framework that can assist in the assessment of actual experiences of First Nations in the governance of forest management. In the following chapter, some of these experiences will be presented, using this framework as a research tool and a presentation guide.

CHAPTER THREE: FIRST NATION FOREST MANAGEMENT AS A FUNCTION OF GOVERNANCE

This chapter explores the current experience in First Nation governance of forest management. It begins with an assessment of jurisdiction, since this is the fundamental starting point for governance. This is followed by a brief look at experience from the international stage. Profiles of First Nation experience gained in Canada completes this chapter.

3.1 Legal basis for First Nation forest management

The management of First Nation forest lands is carried out under a variety of legal regimes. These regimes establish the limits to jurisdiction that First Nation communities have over forest lands. Some degree of jurisdiction is needed in order to establish the foundation for the development of First Nations governance mechanisms geared toward forest management.

The origins of Canada's regulatory regime governing forest resources on Indian Reserve lands can be traced back to the Bagot Commission Report of 1844. At this early period in the establishment of legal protection for reserve lands, encroachment by settlers was a problem in some regions. The Bagot Commission recommended that a timber licensing system was needed in order to control illegal timber cutting.¹² Echoes of the legislation passed to protect Indian Reserve lands in the mid-1800s are evident in the Indian Act of today — including, as Giokas puts it, “the precedent that non-Indians would

henceforth determine how Indian land was to be used.”

In recent years, increasing efforts have been made by First Nations across Canada to regain jurisdiction over their forests. The following sections explore one aspect of this struggle, how jurisdiction over reserve forests is currently held under the Indian Act, along with some of the approaches that have been used to increase First Nation jurisdiction.

3.1.1 The Indian Act and Indian Timber Regulations

Jurisdiction for Indian Reserve Lands, including reserve forests, is described under the Indian Act. The Indian Act addresses many issues related to the use and management of Indian Reserve forests. Unless specifically excluded through legislative action, all reserve lands are subject to this Act. A brief review of the key sections of the Act that pertain to forest management either directly or indirectly will therefore be useful as a starting point in looking at governance mechanisms.

The most direct reference to forest management and timber utilisation issues is found in **Section 57**. This Section empowers the Governor in Council¹³ to make regulations authorising the Minister to grant licences to cut timber on reserve lands (with consent of the Band Council); to impose terms, conditions and restrictions on these licenses; to set

¹² Giokas, John.

¹³ The Governor in Council is the Federal Cabinet.

penalties not exceeding \$100 and/or three months imprisonment for contravention of the regulations; and to provide for seizure of timber taken in contravention of the regulations.

Under authority of this section, the Indian Timber Regulations have been promulgated. These are presented following discussion of some of the other Indian Act provisions.

In addition to Section 57, a number of additional sections of the Indian Act relate to forest management issues. For example, **Section 20** of the Indian Act sets out conditions for the possession of reserve lands by Band members. Under the authority of this section, the Minister may approve allotment of Certificates of Possession (CPs).

Section 32 (1). This section would seem to have implications for the ability of Bands to undertake activities in the area of non-timber forest products. It sets out that transactions of plant materials from any Reserve in Manitoba, Saskatchewan or Alberta are subject to approval in writing by the DIAND superintendent, unless an exemption is obtained from the Minister. The wording of this section is:

“A transaction of any kind whereby a band or a member thereof purports to sell, barter, exchange, give or otherwise dispose of cattle or other animals, grain or hay, whether wild or cultivated, or root crops or plants or their products from a reserve in Manitoba, Saskatchewan or Alberta, to a person other than a member of that band, is void unless the superintendent approves the transaction in writing.”

However, the section is generally seen to be archaic and is not known to have been applied to the trade of non-timber forest products.

The Indian Act prohibits a Band from leasing or granting interests in reserve lands unless the land has been designated under **Section 38 (2)**. Such a designation may be made conditional, thereby permitting the Band to maintain some control over the future of the land. The potential to use this section to lease forested reserve land to a third party under the condition that specified forest management regimes be applied appears to exist. However, because the ability to issue timber harvest licenses is identified under Section 57, this potential may not be realised in practice, in spite of flaws in the regulations established under Section 57.

Section 58 (4) empowers the Minister to “dispose of ... dead or fallen timber.” Consent of the Band council is not legally required for this.

Section 60 provides the Governor in Council with the power to grant Bands the right to exercise “such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable.” It also allows for such rights to be withdrawn from a band by the Governor in Council, at any time. However, since management of forest resources is addressed in Section 57, this section is not applied to forestry issues.

Section 62 sets out that “Indian moneys derived from the sale of ... capital assets of a band shall be deemed to be capital moneys of the band and all Indian moneys other than capital moneys shall be

deemed to be revenue moneys of the band.” This section is the basis for the treatment of some timber sale revenues as “capital moneys.” The Act does not, however, specify what “capital assets” are to include. Current DIAND policy is to treat funds generated from sustainable forest harvests as revenue moneys.

Section 93(a) (ii) addresses the issue of unauthorised removal of “trees, saplings, shrubs, underbrush, timber, cordwood or hay.” Such removal is liable to a fine not to exceed \$500 and/or imprisonment not exceeding three months. **Section 103 (1)** allows for seizure of the material taken, along with any property used in committing the offence. The application of this section to the harvest and removal of non-timber forest products such as saplings (used in the production of “artificial trees”) is not known to occur.

The Indian Timber Regulations

As indicated above, the Indian Timber Regulations (ITRs) have been established by the Governor in Council under the authority of Section 57 of the Indian Act. As prescribed in that legislation, these regulations may authorise the Minister of DIAND to:

- grant licenses to cut timber on surrendered lands, or, with the consent of the council of the band, on reserve lands;
- impose terms, conditions and restrictions with respect to the exercise of rights conferred by these licences;
- prescribe the punishment, not exceeding one hundred dollars or imprisonment for a term not exceeding three months or both, that may be imposed on summary conviction for

- contravention of any regulation made under this section (Section 57); and,
- provide for the seizure and forfeiture of any timber taken in contravention of any regulation made under this section.

The ITRs relate to a limited dimension of forest management, that of cutting timber on surrendered lands or on reserve lands. They begin with a general prohibition against cutting timber on these lands without a licence, then proceed to state the conditions under which such licences may be granted, the conditions which apply to permitted cutting, and the enforcement provisions and penalties that may apply should prohibited cutting take place.

The ITRs establish two means for legal cutting of timber on reserve lands. The first involves permits, the second involves licenses. Permits may be issued by the Minister to the band or to band members to cut timber and fuel wood for their own use. Permits may also be issued to a band or to members of a band for cutting timber for sale, but only with the consent of the Band Council. In the case of permits to cut timber for sale, dues are to be paid “at prevailing rates.” Timber cutting permits expire at the end of April of the year following the year in which the permit was granted.

Licences provide for a wider range of options than do permits. They may be awarded to non-Band members, with public tendering being used to determine who get the license. Licenses may specify a longer-term of validity than permits, and may be renewable. However, as with permits, licenses are issued by the Minister and give forest management authority to DIAND, not the First Nation Band

Council. For example, Section 22 of the regulations provide the Minister the authority to vary the terms of a license for conservation purposes. The Minister may, “for the purpose of forest management, watershed protection, fire protection or the preservation of the beauty of the landscape, game or game shelters, order the marking of such trees as are to be left standing or cut in the licensed area...”

Section 25 states that licensees must carry out their activities “in accordance with the laws of the province in which the licensee is operating under the licence regarding disposal of slash, prevention of fire hazard and the conduct of timber operations.” This effectively places reserve forest management under Provincial forest practices legislation, at least with regard to timber operations.

The remainder of the regulations, sections 26 to 30, deal with seizure and penalties.

While the ITRs do not focus on sustainable forest management practices, there is some room for conditions to be written into licenses issues under these regulations to achieve the desired results. However, a major weakness is that the authority for issuing licenses rests with the Minister of DIAND, not with any First Nation agency.

The effect of the Indian Act and the ITRs is to place authority for the harvest of timber from Indian Lands under DIAND.

Indian Act Policy

DIAND has recognised that First Nations should become more involved in the management of forestry practices on their lands¹⁴. To this end, the department has

¹⁴ Giokas, John. 1995. The Indian Act: Evolution, overview and options for

been working to develop policy that can help this to happen, within the constraints of the current regulatory framework. DIAND is also seeking alternative regulatory options.

Policy development provides a pragmatic means by which DIAND can state the way in which it plans to utilise its enforcement powers. Although policy cannot over-ride jurisdiction, it can go a certain distance toward creating an environment where Aboriginal forest governance issues can be more palatably addressed.

However, policy development cannot address the fundamental shortcomings of the Indian Act and the ITRs. As Giokas notes¹⁵, the only powers related to forest management conferred on Bands under the Indian Act are negative powers — to consent to the surrender of lands, thereby permitting DIAND to issue permits or licenses without permission from the Band, or to withhold permission for timber harvests from un-surrendered reserve lands. While Bands may impose conditions on surrender or on licenses to which they have consented, this must occur on a case-by-case basis, rather than as part of a comprehensive approach to the management of reserve forests.

A further short-coming of the ITRs is its narrow focus on the cutting of timber. While there is some vague reference to provincial laws regarding timber operations, the issue of sustainable forest management is not addressed. Nor is there any reference to the possibility that non-timber forest products may require

amendment and transition. Prepared as a research paper for the Royal Commission on Aboriginal Peoples.

¹⁵ Ibid.

management and regulation. Again, Giokas notes: “even the DIAND authority is incomplete as it does not address such related matters as sale, regeneration, access and road construction to timber harvesting areas etc. Nor does DIAND have specific authority to manage the harvesting, sale and removal of wood (but non-timber) products such as plants, cuttings, bark, seeds and cones etc.”

Some of these shortcomings may be overcome through careful design of long-term timber cutting licenses. DIAND has suggested that many of the gaps in the ITRs could be filled through contract provisions. These would be enforced through contract law. However, there is to date no clear example where such an arrangement has actually been implemented. It is not possible, therefore, to assess the extent to which First Nation management values might successfully be reflected within the current Indian Act and ITRs regime.

In the interim, the reasonable conclusion is that this regime does not adequately empower First Nations to address important issues related to First Nation governance and forest management. Ultimately, new legislation may need to be developed in order to avoid the shortcomings of the Indian Act.¹⁶

¹⁶ DIAND has made initiated development of Indian Timber Harvest Regulations (ITHRs) as an alternative to the Indian Timber Regulations, under the Indian Act. The ITHRs are specifically intended to replace the Stuart-Trembleur Lake Band (Tanizul Timber Ltd.) Timber Regulations, and only apply to First Nations who have opted in. The Tl'azt'en Nation is the only one so far. The ITHRs simply establish circumstances where a harvest license is required. They essentially remove some of the rigid provisions of the ITRs —

3.1.2 The First Nations Land Management Act

The First Nations Land Management Act (FNLMA), passed in 1998, provides designated First Nations with authority to establish their own land management regimes, under the terms of a Framework Agreement that was developed and approved by interested Chiefs and the DIAND Minister in February of 1996. The Framework Agreement allows the participating First Nations to “opt-out” of the Indian Act, and “opt-into” the FNLMA.

Of fourteen First Nation signatories to the Framework Agreement, four have ratified it by meeting the opting in conditions. Any signatory First Nation, wishing to opt into the FNLMA must adhere to the Framework Agreement, which sets out the terms and conditions under which they can establish their own land management regime. By committing to this process, the First Nation removes reserve lands from the control of the Indian Act. There are twenty other First Nations who have passed Band Council Resolutions in support of the Framework Agreement, and another nine have indicated interest.

A key element of the FNLMA is the development by the First Nation of a *land code*. The land code addresses a wide range of land-related issues, including: use, occupancy and transfer of First Nation lands; revenues generated from natural resources; accountability to members for management of land and related revenues; law-making procedures; conflict resolution procedures;

such as need for tenders, responsibility for fire protection, and annual renewals — leaving such specifics to the provisions of the harvest license itself.

expropriation and exchange of lands; and delegation of land management authority from the council.

A major impact of the FNLMA is the transfer of accountability for land management decision-making from DIAND to the First Nation. Along with this new authority comes increased accountability to the community membership. For example, under the Indian Act, the federal government is responsible for environmental degradation to Indian lands. The transfer of power through the FNLMA transfers this responsibility to the First Nation.

Other implications of the Framework Agreement include:

- *First Nation Lands*: the reserve lands will continue to be constitutionally protected and therefore can not be surrendered for sale. There are provisions for voluntary exchange with full community support. Any exchanged lands will fall under the laws of the code, and will remain protected under the constitution.
- *Land Code*: the land code will be recognised by the courts, and will have the force of law.
- *First Nation Powers*: gives First Nation full control to manage resources and receive and use land revenues for the use and benefit of the community.
- *First Nation Laws*: First Nations are given the power to develop laws under their Land Codes. These can pertain to any matter related to the reserve land.

The focus of the FNLMA is not primarily on forest management, nor has the driving force behind First Nation support been related to forestry issues. Nonetheless, the FNLMA does provide a structure for the creation of forest management codes. The

framework agreement also outlines law making structures, accountability, environmental protection, and the ability to create joint ventures with surrounding communities and development initiatives, all of which could address forest management governance issues in relation to Indian reserve lands. For example, the Framework Agreement enables First Nations to create stronger relationships with neighbouring municipalities through construction of agreements on mutual concerns regarding the management of adjacent lands.

The Framework Agreement ensures that First Nations address environmental protection on reserve lands, a major gap area under the Indian Act. Minimum standards have been established, which relate to the provincial standards in which the First Nations are situated. Any offences to the standards set by the First Nation will be prosecuted by either a First Nation's own system of prosecution, or through an agreement between the First Nation and Province. This authority to pass and enforce laws related to land use could assist in the control of unregulated timber harvesting. It could improve land management practices more generally by clearly establishing the community's authority to govern its land use through its elected council, while recognising the potential for land use conflicts and establishing procedures for resolving these.

For the four First Nations that have opted in, the FNLMA may be considered an important step toward self-government. They now have greater control over how they choose to govern themselves in relation to their lands and resources. The federal government no longer plays the role of trustee when third party interests on reserve lands come into effect. Ultimately,

First Nations have always been the landlords, now they will be able to act as the landlords without “trustee” interruptions or external red tape.

3.1.3 Special Legislation and Regulations

The FNLMA is one example of legislation that has allowed some First Nations to take a more direct role in the management of their reserve lands. Other legislation has been developed to apply to specific First Nations or groups of First Nations. These include legislation arising from the resolution of land claims, such as the Cree-Naskapi (of Quebec) Act, which provides the legislative foundation for implementing the James Bay and Northern Quebec Agreement of 1975. More recently is the enabling legislation to implement the Nisga’a Final Agreement in British Columbia. Brief reference to these instruments is made in the profiles below.

An example of special regulations is that of the Stuart-Trembleur Lake Band (Tanizul Timber Ltd.) Timber Regulations, 1982. These regulations pertain to the Tl’azt’én Nation bands, who own Tanizul Timber Ltd. This company was established to hold and manage a Tree Farm License (TFL 42) on BC Crown land. TFL 42 is a twenty-five year renewable license granted to Tanizul Timber in 1982. It provides exclusive harvest rights to timber on 54,000 ha of forest land within Tl’azt’enne traditional territory. During the course of negotiating for the TFL, the Tl’azt’enne agreed to integrate reserve forest management under the same management regime as the TFL. This caused some jurisdictional challenges, since the TFL fell under the BC forestry regulations and codes, while the reserve

lands were subject to the Indian Timber Regulations.

The Stuart-Trembleur (S-T) regulations provide DIAND the authority to grant a licence, with Band permission, to Tanizul Timber to cut timber on the band’s reserve lands. Under the Indian Timber Regulations, a licence issued to a corporation would need to go to tender. The S-T regulations also set out that the rights under the licence will be exercised in accordance with provincial laws and regulations, “as if the reserve lands in respect of which the licence was granted were private lands.” This gave authority to BC officials for the supervision of forestry operations on reserve lands.

DIAND is currently working on new regulations that will resolve some technical problems with the S-T regulations, and which could be adopted by other First Nations who choose to get on-board. These are the proposed “Indian Timber Harvesting Regulations (ITHRs).” They would replace the ITRs and would remove most of the prescriptions contained in those regulations. In their place, the ITHRs would simply establish that licences are required for the harvest of timber for sale off-reserve. Any conditions, prescriptions or prohibitions related to forest management would arise as conditions of the licence, and are not included in the regulations. This arrangement would avoid concerns over the tendering provision of the ITRs and avoids the problems that can arise over the fire protection clauses, whereby license holders have liability for fire damage.

The flexibility of the proposed ITHRs may be attractive to First Nations involved in Treaty Land Entitlement negotiations. These negotiations can get bogged down

due to the needs to consider the interests of existing licence holders. First Nations may be willing to re-issue a harvest licence to the same company, once they gain jurisdiction over the land, thereby easing the negotiation process. However, under the ITRs, the licence would have to go to tender, and that puts existing licence holders into an uncertain position.

However, the licence terms under the ITHR are subject to DIAND approval. Therefore, the flexibility of the proposed regulations has the effect of placing considerable administrative influence in the hands of DIAND. As First Nations know well, administrative approaches can change from day to day. Still, under the current regime, approval of licences is also in the hands of DIAND. The issue is not so much “are the proposed regulations better than the existing ITRs?” — rather, “are they good enough or can something better yet be achieved?”

3.1.4 NAFA proposed legislation

In a comprehensive review of forest management in Indian lands in British Columbia, the Intertribal Forestry Association of BC (IFABC), in 1990, identified three options for legislative change¹⁷. These included: repeal of forestry sections of the Indian Act and the adoption of a comprehensive Native Forest Resources Management Act; revision of Indian Act to allow for forest management bylaws; revision of Section 57 of the Indian Act and the Indian Timber Regulations.

¹⁷ IFABC. 1990. “Lands, Revenues and Trusts — Forestry Review” IFABC, Kelowna BC.

Replace Section 57 of the Indian Act

One option would be to replace Section 57 of the Indian Act. Several approaches could be taken. One way would be to provide authority for First Nations to make regulations governing the management of forest resources and sale of forest products. The revisions could also provide a framework of authority for the Minister to fulfil some of the Crown’s responsibilities to First Nations for modern forest management.

Add Forest Management to Bylaw-Making Powers of First Nations

A second alternative, requiring only a one word addition to the Indian Act, would be to amend the bylaw powers of bands. Section 81 (o) could be amended by adding the word “forests” to the existing powers of bands to make bylaws for “the preservation, protection and management of fur-bearing animals, fish and other game on the reserve.” This option would mean that forest management would remain under the Indian Act. Hence, the problems now evident with Section 57 of the Act and the Indian Timber Regulations would remain, since bylaws must be consistent with the Act and Regulations.

Another way to add to a Band’s bylaw-making authority might be to add to Section 83 of the Act dealing with the fiscal powers of bands. It would be possible to seek a broadening of Section 83 to include a subsection granting authority to Bands to create bylaws dealing with both management of forest land and the disposition of revenues derived therefrom. It might prove difficult, however, to win the government’s agreement to include forest management programs in Section 83, a section

designed primarily for fiscal matters. And again, the difficulties with Section 57 would remain.

*NAFA's Proposal for a First
Nation Forest Resources
Management Act*

The IFABC approached NAFA in 1991 — a newly formed national organisation at the time — to identify what a First Nation forestry act might look like. Significant efforts lead to the development, by 1993, of a proposed First Nation Forest Resources Management Act (FNFRM Act).¹⁸

Key features of the proposed FNFRM Act include:

- *Optional.* First Nation could choose whether or not to opt in.
- First Nations would *identify the forest lands* included in the regime.
- *The Act could apply to non-reserve forests* by agreement.
- *Sustainable forest management* through a management plan adopted by the community.
- *Law-making powers.* Power to make all laws needed to effectively manage the forest, including: issuance of permits; forest practices; environmental protection; silviculture standards; collection and use of fees; appointment of resource officers; penalties.
- *Funding.* For both the opting-in and planning process and for forest management plan implementation and forest administration.

- *Opting out.* Ability to opt out of the Act and back to the Indian Act or other regime.
- *Transitional step to self-government.* The Act does not affect Aboriginal or Treaty rights, nor prejudice any negotiations. No release of the Crown from liability for past mismanagement. First Nation responsibility for its own decisions.

As part of the proposed act, a First Nations Forestry Board was proposed. This would be an independent body funded by the federal government to deal with the following issues:

- enter agreements with bands under which the Board would provide technical or financial assistance for resource inventories, forest management plans, preparation of bylaws, education and training, supervision, evaluation and financial administration of forest resource projects, obtaining credit or other financing for projects, etc.;
- establish a First Nations Forestry Code to guide forest resource management planning and operations on First Nations forest land;
- develop forestry practices and conduct research on the management, processing and disposition of forest resources;
- establish a First Nations forest resource data bank;
- enter into agreements with federal or provincial governments and agencies for the provision of technical or financial assistance to bands;

¹⁸ NAFA. 1993. "Proposal for a First Nation Forest Resources Management Act: Draft Five" Ottawa. June 24.

- administer funds provided by the federal government;
- promote forestry awareness and education in First Nation communities.

The FNFRM Act proposal represented significant progress in identifying what an appropriate forest management legal regime might look like. There has been little progress in moving the proposal forward since the mid-1990s, however.

3.2 International experience in FNs forest management and the relevant governance regimes

In the United States “Indian tribes enjoy full equitable ownership of timber located upon tribal reservation lands unless the United States has reserved those rights to itself by treaty.”¹⁹ Under Section Six of the Indian Reorganization Act of 1934, the Secretary of the Interior is to develop regulations for the “operation and management of Indian forestry units on the principle of sustained yield management.” All timber harvesting for commercial sale must be approved by the government.

WARM SPRINGS RESERVATION

The Warm Springs Tribe located in North Central Oregon, currently manages 330,000 acres of forested land from a total land-base of 666,000 acres. Within the Tribal Forestry unit, there are a total of 18 foresters, and 20 forest technicians, of which half are Tribal members, and the other half from the Bureau of Indian Affairs (BIA). The Tribe manages 12,000 forest stands, within 14-units (based on watersheds) on a 10-year planning period with an annual allowable cut of 50 MMBF.

The planning team designates the cutting areas, which is followed up by the resource leaders meeting to plan alternatives. These cutting areas will usually take between 12 and 18 months to complete before any trees are felled. The Planning and Inventory department is responsible for surveying 5% of the total lands per year. Currently, the Tribe does not possess the technical expertise to complete the inventory, and it is therefore contracted out to non-tribal enterprises.

Included in the planning process are Forest Officer Reports (FORs), which describe the area and all attributes for each timber sale. Attached to the FOR are environmental attributes. The timber committee then approves or disapproves the FORs. There are on average two to three FORs produced per year which must add up to the AAC of 50 MMBF.

Jurisdiction

A treaty was signed between the Federal government and the Warm Springs Tribe in 1855 placing the government in a position where they held the land in trust for the Tribe. This gave the BIA full responsibility of managing the lands in the best interest of the Tribe, this however changed in 1934 with the signing of the Indian Reorganization Act. This act formed a constitution with tribal councils, and voting districts, which gave the Tribe joint decision making power with the BIA in regards to Tribal lands. The BIA is still responsible for the integrity of the land; however, the Tribe possesses decision making power on their own behalf.

Values and Preferences

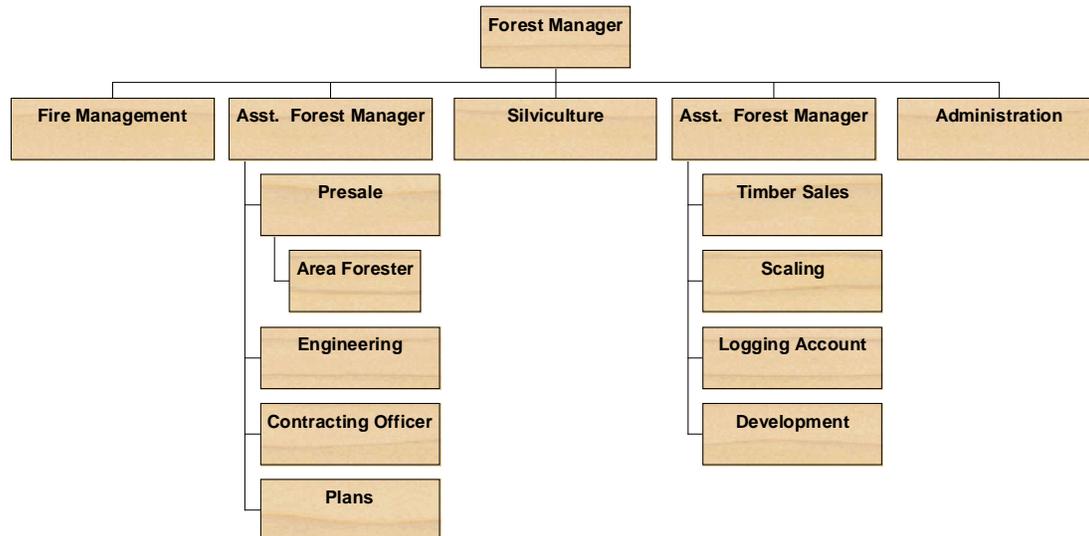
The Tribal Council’s goal is to create and implement an acceptable Integrated Resource Land Management Plan (IRLMP) for their community. The

¹⁹ Giokas p. 107 (see above for full reference)

management plan, decisions, and projects that are implemented are subject to a dual

approval process.

Figure 2
Warm Springs Forestry Organisation Chart



The Tribal Council, which acts as the legislative, judicial and executive body for the Tribe and the Bureau of Indian Affairs are required to review all processes that pertain to land management.

This dual approval process is in place due to the trust responsibility of the BIA to ensure the lands are managed in the best interest of the Tribal members. Similarly, the Tribe manages the land for their community members and for future generations, and also have to approve any plans brought forward by the BIA.

The IRLMP started in the 1980's, and in 1992 the plan was adopted by the Tribal Council. The premise of implementing this process was to assign each resource a value within the IRLMP. This was accomplished by creating committees for each of the resource values such as: recreation, timber, fish and wildlife, medicinal plants, non-timber forest

products etc. There have been conflicting interests regarding the use of the resources. One particular example is the use of huckleberries on the reservation. To ensure adequate protection of the huckleberry gathering areas, a harvesting restriction was enacted, which stated that there was to be no harvesting in the gathering sites unless there was a minimum of three feet of snow. This was however not practical for timber harvesting, as the snow accumulation was unpredictable; therefore, harvesting levels were affected. The Tribal Forestry Department then designated areas to be intensively managed for huckleberries, while managing other areas for timber production. In the end, both resource values were adequately addressed.

Rights and Obligations

There are traditional activities that occur on the tribal lands of the Warm Springs Reservation. The tribal members rights to

continue practising activities such as harvesting of plants, roots and traditional medicines are maintained through the management processes. The tribal land management leaders intensively manage the land to provide optimum conditions for the traditional lifestyle that many members still practice, to the point where harvesting of commercial timber often takes second place to traditional activities. This obligation to provide the tribal membership with non-timber resources establishes a diverse and healthy inclusive forest management approach.

The tribal members also recognise the obligation of the tribal forestry department and milling facility to provide employment opportunities. This is reflected by the milling operations push to maximize the number of shifts to increase employment. The second shift was not recommended due to the current markets; however the mill held on to the shift as long as possible, and regretfully had to recently cut the shift to maintain mill operations.

Sharing Costs and Benefits

Warm Springs Forest Products Industries operates the milling facility and also acts as the merchandising arm, selling the final product for the Tribe. The Tribal forest management department contracts out to individual Tribal logging companies who compete for contracts, with an unwritten rule that wood allocation is equally divided depending on the capacity of the contractor. These individual logging enterprises have the first right of refusal when timber sales are being allocated. They can then bid out up to 10% of their allocation to other logging companies. This process ensures equal opportunity and employment for tribal members.

The process in place to deal with stumpage and dividend procedures is called “The Gang of Three”, which consists of a Tribal Council member, a member from Warm Springs Forest Products, and a member from the BIA. The “Gang of Three” meets four times per year to discuss and set stumpage prices. They will meet outside of the structured meeting times if there are sharp market changes or other unforeseeable circumstances. They will also sort by species and grade for the stumpage prices. Warm Springs Forest Products is allowed to sell logs to off-reservation mills subject to a 10% deduction from the value payable to the Tribe. The Warm Springs mill purchases 20% of their mill logs from sources off-reserve. One quarter of the timber harvested from reserve lands is sold to off-reserve companies. This is wood that the mill cannot handle (greater than 53 inch or less than 5 inch diameter), or species not dealt with by Warm Springs Forest Products Industries.

There is currently no-fee for “other forest products” in place. The demand for these non-timber forest products is increasing, and the Tribal Council may implement fees in the future.

The Tribal Council sets the percentage of stumpage rates that are redistributed back into the forestry programme. This percent varies among the different Tribes across the United States. The Warm Spring Tribe designates 10%, while the other 90% goes back into the Tribal General Funds. This year, the stumpage collected from the Tribal lands totalled \$7 million, of which \$700,000 was funnelled back into the forestry program. Five years ago stumpage totalled \$18 million, of which the forestry department received \$1.8 million dollars. The Bureau of Indian Affairs contributes

\$1.5 million dollars annually, which has traditionally been a steady source of funding.

Accountability

The BIA is responsible for the long-term health of the Tribal lands, and will be held accountable for any environmental degradation that occurs. However, the Tribal Council has responsibility to its members, as well as the future generations to ensure long-term environmental health of the land. The state of Oregon does not possess any authority over the Warm Springs Tribe. However, the Tribe makes effort to act as a “good neighbour” to maintain a working relationship with the state. On the other hand, the Federal rules do apply to Tribal Lands, such as the *Endangered Species Act*. The Tribe prefers not to acknowledge the Federal laws, but they do recognise the need to conserve and sustain. This recognition has stimulated the creation of their own practices and laws, which is reviewed and by the Federal government for review and approval. It is also important to recognise that the Tribe still possesses some treaty rights on the ceded lands, such as gathering, hunting and fishing.

Conflict Resolution

Included in the IRLMP process are the Tribal public meetings which are held in order to gain tribal members values, issues and concerns. Discussion during the evening dinner meetings, revolve around major issues such as timber sales, prescribed burning, harvesting permits, gathering areas and other traditional activities. This process from conception to implementation can be time consuming, which has resulted in the application of a categorical exclusion process, where the Tribal Council can act in good faith on behalf of the Tribal members. This process

may be employed if there are time constraints placed on projects in which the project are needed immediately. These projects being administered will generally be smaller in size. The exclusion process adds extra flexibility to adapt to the changing circumstances within the IRLMP.

The Tribal membership is relatively small, and therefore the community is tightly knit in regards to having access to Tribal Council people to voice their opinions. This is also another input tool for the community to use to have their values, opinions and concerns reflected into the IRLMP process. There are mixed opinions to this process, but it is generally accepted with a little bit of give and take. The Tribal Council has management discretion, and because consensus cannot be 100% obtained, they have final authority over any projects. Conflicts, or projects not being implemented under terms and conditions as predefined, are subject to closure until further notice. For timber operations, Timber Sale Officers are utilised, of which both the BIA and Tribal Council have at their disposal. These officers have the authority to shut all operations down pertaining to forestry, from the implementation of roads to the production of timber, if the agreements, and laws are not being fully respected.

3.3 Canadian experience in FNs forest management and the relevant governance regimes

During the fall of 1994, NAFA held a series of eight workshops for First Nation forestry representatives from across Canada.²⁰ The purpose of these

²⁰ NAFA. 1994. Summary report of First Nations workshops on forest management programming.

workshops was to provide an opportunity for First Nations to express their views on how a national First Nations Forestry Program could best meet their needs. During the discussions, issues related to governance and forest management frequently arose. The link between the need for funding and the increased involvement of First Nations in forest management was frequently pointed out. Broad consensus was also evident that First Nations should play key roles in decisions about how public funds earmarked for First Nation forestry should be allocated.

Clearly, governance related to forest management is an issue of considerable importance to many First Nations across Canada. These issues apply to a wide range of situations. First Nations have significant rights and interests that relate to the management not only of reserve land forests, but also to forests that fall within their traditional territories. First Nation governance, therefore addresses at least four categories of land:

- Reserve forests
- Newly acquired lands (TLE, fee simple, special claim ...)
- Forest tenures
- Traditional territories

First Nations are gaining involvement in forest management decision-making in all these contexts. In Saskatchewan, for example, considerable progress is being made in gaining forest tenures. Treaty land entitlement processes will also lead to new opportunities. As previously noted, situations such as that of the Tl'azt'en in British Columbia, have emerged where provinces award tenure on the basis that reserve lands will be managed in a similar fashion. In New Brunswick, First Nations

like Eel Ground have taken bold steps toward establishing the institutions, capacity and community support to undertake good forest management on their reserve lands.

Clearly, while First Nations are gaining jurisdiction and influence, they also face restrictions in terms of what they can accomplish in the forest. They are also being influenced by strong pressures for commercial-oriented management decisions. Capacity issues, desire to access Crown tenures, economic necessity all seem to come into play to favour industrial approaches to management. The following sections explore a few examples of how specific First Nations are approaching their governance responsibilities for forest management within the jurisdictional arrangements they find themselves under.

3.3.1 Experience under the Indian Act

The experiences of two First Nations attempting to increase their governance capacity in the management of reserve forests are presented in this section. The first is the McLeod Lake First Nation. This community is located in the heart of British Columbia's commercial forest. It's members have significant experience working for the logging industry. Recent adhesion to Treaty #8 has led to a Final Agreement that will significantly increase the First Nation's forested land-base, bringing in lands that are presently under commercial logging licenses. While the principle was addressed, details about how jurisdiction over forest management will be achieved under the Indian Act were not part of the Final Agreement, and have still to be worked out.

The second example is that of Garden River First Nation, in Ontario. This First

Nation has decided to address the challenges presented by uncontrolled harvesting of existing reserve forests by band members. The First Nation has developed its own Forest Practices Code and will work within the existing regulatory environment created by the Indian Timber Regulations.

MCLEOD LAKE BAND, BRITISH COLUMBIA

The McLeod Lake Band is comprised of some 400 members, 100 of whom live on the reserve, located north of Prince George, British Columbia. Located in the heart of provincial licensee forestry operations, Band members have a long history of working in the logging industry. They have established the Duz'cho Logging company to carry out contract cutting of over 500,000 cubic metres for the licensees.

On November 17, 1999, a majority of members of the McLeod Lake Band in northern British Columbia ratified the Final McLeod Lake Adhesion to Treaty No. 8 and Settlement Agreement. The Final Agreement was subsequently ratified by British Columbia on December 17, 1999, and by Canada on March 27, 2000. Under the Final Agreement, McLeod Lake will have Reserve Lands of approximately 20,110 hectares that will be subject to the terms of the Final Agreement and the Indian Act. In addition, British Columbia will establish eight one-hectare reserves for hunting, trapping and berry picking purposes, and will offer to sell to McLeod Lake a further 99 hectares of land that would be held in fee simple and subject to provincial law (including local bylaws and zoning).

The lands identified for transfer to McLeod Lake were carefully selected by the First

Nation in order to provide a forest base that could sustain forestry activities and support the local Band economy. These include forested lands and some plantation forest. Efforts were made to include younger forests with 80 to 120 year old trees, in addition to the old growth forests typical of the area. Transfer of the first land allocation to McLeod Lake is anticipated to take place during 2001

Jurisdiction

Under the terms of the Final Agreement, jurisdiction for forest management on Reserve Lands is to be transferred from DIAND to the McLeod Lake Indian Band through reference to the Forest Practices Code that the Band will develop. Section 6.3.5 of the agreement states that the McLeod Lake Indian Band Forest Practices Code is to be implemented "through the use of the Indian Act, a new regulation pursuant to the Indian Act, or some other available means." Section 6.3.6 states that in the interim, if needed, any permit/license for timber harvests issued under the Indian Timber Regulations must comply with the McLeod Lake Indian Band Forest Practices Code, and is subject to enforcement provisions set out in that code.²¹

To date, however, there is no regulatory framework in place to actually enable these sections of the Final Agreement. While a draft of the Forest Practices Code has been prepared, timber harvests on any lands that may become McLeod Lake Indian Reserve Lands will take place through Ministerial permits or licenses

²¹ See text of the Final McLeod Lake Adhesion to Treaty No. 8, available at: <http://www.aaf.gov.bc.ca/news-releases/2000/mcleodagree.stm>

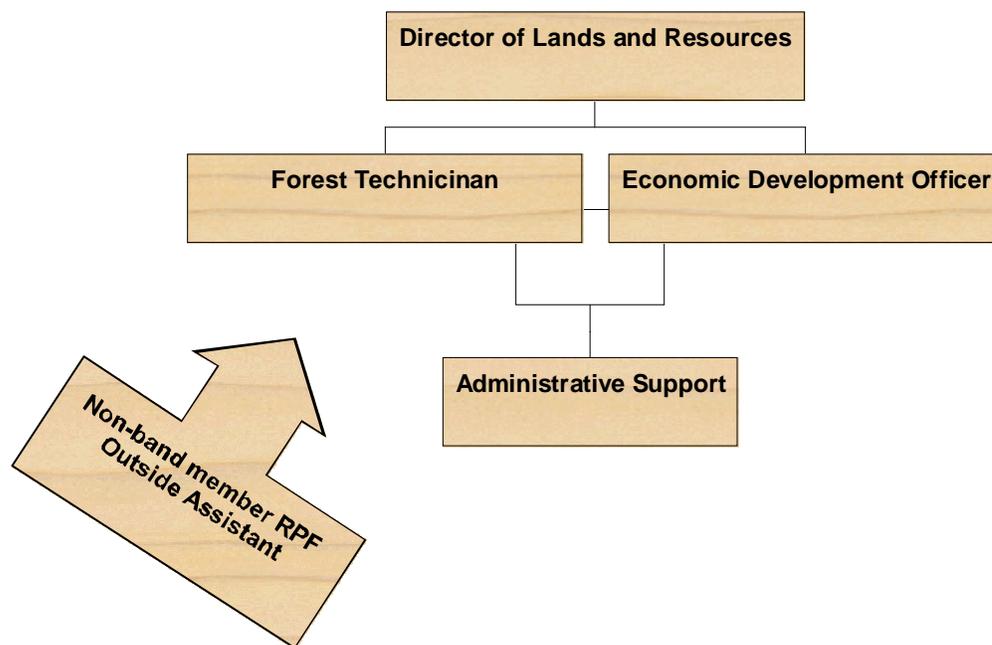
issued under the Indian Timber Regulations.

Currently, there are no provisions in the regulations for these to reflect McLeod Lake's Forest Practices Code.

McLeod Lake is pursuing a strategy that would bring it under the FNLMA, thereby

avoiding the weaknesses of the Indian Timber Regulations. The Band does not want to have to deal with DIAND every year for harvest permit approvals, and members are concerned about the ability of existing penalties to deter timber harvesting without licenses.

Figure 3
McLeod Lake First Nations' Forestry Organisation Chart



Reflecting McLeod Lake Values and Preferences

Forest management on McLeod Lake Reserve Lands is addressed under Article 6 of the Final Agreement. Section 6.2.1 of this Article states that forest management plans are to be based on sustainable forest use and sustainable long-term harvest levels, and will reflect the principles set out

in the Band's Forest Practices Code. These terms are defined in Section 6.1.10 and 6.1.11:

“Sustainable Forest Use” means:

- a) managing forests to meet present needs without compromising the needs of future generations;

- b) providing stewardship of forests based on an ethic of respect for the land;
- c) balancing productive, spiritual, ecological and recreational values of the forests to meet the economic, social and cultural needs of McLeod Lake and its members;
- d) conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources; and
- e) restoring damaged ecologies.”

“*Sustainable Long-term Harvest Level*” means a harvest level that can be maintained indefinitely given a particular forest management regime that defines the timber-harvesting land base and includes objectives and guidelines for non-timber values and estimates of timber growth and yield. This method of forest management calls for a long term approximate balance between net growth and the amount harvested.”

The McLeod Lake Indian Band Forest Practices Code must meet or exceed the BC government’s standards for harvesting, forest health, soil conservation, environmental protection, water quality, forest road engineering, construction, forest protection and silviculture. Development of the Forest Practices Code involved the Chief and Council, along with community members through consultation processes. Based on the British Columbia Code, this Code is stricter and has higher penalties. The Band membership is committed to maintaining their forest resource.

While the Forest Practices Code sets out standards for forestry operations, the

McLeod Lake First Nation still needs to develop a Land Use Policy.

Rights and obligations

Section 6.12 of the Final Agreement addresses the rights of existing forest companies that depend on timber from lands to be transferred to McLeod Lake. It sets out an agreement to maintain fibre supply from the Reserve Lands. These obligations remain in effect for a period of twenty years, and are aimed at ensuring fibre supply for outside buyers at fair market value. They include an obligation to establish annual allowable harvest levels using conventional forestry approaches.

Section 6.12.1 c), however, suggests some flexibility may be possible: “the McLeod Lake allowable annual harvest level will be based on a harvest flow option from the timber supply analysis that takes into account all of McLeod Lake’s management practices planned for the Reserve Lands and that demonstrates a Smooth Transition to a Sustainable Long-term Harvest Level” (meaning a reasonable, gradual movement from existing harvest levels to a Sustainable Long-term Harvest Level). Once established, the Band is committed to harvest within 90 to 110% of the allowable annual harvest, averaged over each five-year period.

Sharing costs and benefits

Stumpage fees that have been collected by British Columbia for several years prior to the final transfer of lands to the McLeod Lake Band will be paid into a fund and held in trust for a period of seven years. This will include stumpage paid on an annual cut of 85,000 cubic metres (expected to range between \$4 to 8 million annually), as well as revenues generated from cutting some 320,000

cubic metres of bug-killed trees. Depending on the regulatory framework that is established to oversee harvesting, future revenues may go directly into the Band's account, or they may become "Indian Monies" under the Indian Act and flow into the Band's Capital Account held by DIAND.

Employment in the forestry sector is an important part of the local economy. Approximately one-third of Band members are employed in the Band's logging company, Duz Cho Logging. Many of these are office positions or casual work. Efforts are being made to encourage members to get into the forest industry as a career, and some training is now being initiated.

The Band undertakes its forest management activities through its Lands and Resources Department. The Director splits his time between these responsibilities and his responsibilities as Chief of McLeod Lake First Nation. There is also a Forest Technician, and Economic Development Officer, and an Administrative Support person. A professional forester is available through contract arrangements with a local forestry consulting firm. Funding for forest management activities is currently accessed through the trust fund. Once revenues begin flowing from the newly acquired reserve lands, it is expected that there will be adequate resources to support the department as well as to pay 15% of revenues into the trust fund.

Accountability

The issue of how to ensure that legal jurisdiction for forest management rests with the McLeod Lake First Nation must be resolved before accountability can be determined. Clearly, until legislative

initiative is taken, it would appear that accountability will continue to rest with the Minister of DIAND, since the Minister will be the authority issuing harvest licenses.

Accountability for the eventual use of revenues derived from forestry activities may eventually rest with the Council. However, at the moment stumpage revenues from lands designated to be transferred to the McLeod Lake reserve are being paid into a trust fund. These resources will be held in trust for the next seven years.

Conflict resolution

The McLeod Lake First Nation maintains close communications with its membership. Quarterly meetings are held in cities with significant populations of Band members — Vancouver, Prince George, Kelowna, and on-reserve. In addition a monthly business affairs newsletter is prepared to keep members up-to-date on issues. This level of communication, coupled with the small population of the First Nation, is thought to ensure that issues or concerns people may have will become known to the leadership where they can be addressed in the regular course of business.

Little conflict is anticipated from overlapping use amongst McLeod Lake members. This is partly accounted for by the low participation rate in "traditional" forest-based activities, and by the fact that nearly one-third of the reserve population finds employment with the Band-owned company, Duz cho Logging.

Resolution of conflict with parties outside McLeod Lake will be the task of a Final Agreement Implementation Committee. This group has met regularly leading up to the signing of the agreement. A formal

process may be needed to maintain good on-going relationships with the province and with private interests in the adjacent forest areas, although this is not yet certain.

GARDEN RIVER FIRST NATION

The Garden River Natural Resources Unit (GRNRU) manager, Alexis Vanderheyden has been overseeing the reservation lands for nearly 10 years. Due to sporadic resources, varying Chief and Councils and their directives, Alexis has found the GRNRU working backwards. This is evident in the fact that they are only now developing the government policies to implement the forest management practices.

In the past, the Natural Resources Unit (NRU) has always played catch up, to the point where they were inventorying with the harvest crew coming in immediately after to harvest. The silviculture operations were completed without foundations. The community has also experienced their share of illegal harvesting on the reserve lands with no compliance or enforcement measures. Alexis finds herself extremely frustrated at times, but still has faith in the system, especially because she has 100% support of the Chief and Council to develop the necessary operational policy that is desperately needed.

A forest management plan was developed in 1988 and approved in 1992; however, has not been followed, due to funding, and because they did not have control of the harvesting. It is also important to identify that the plan was created by an

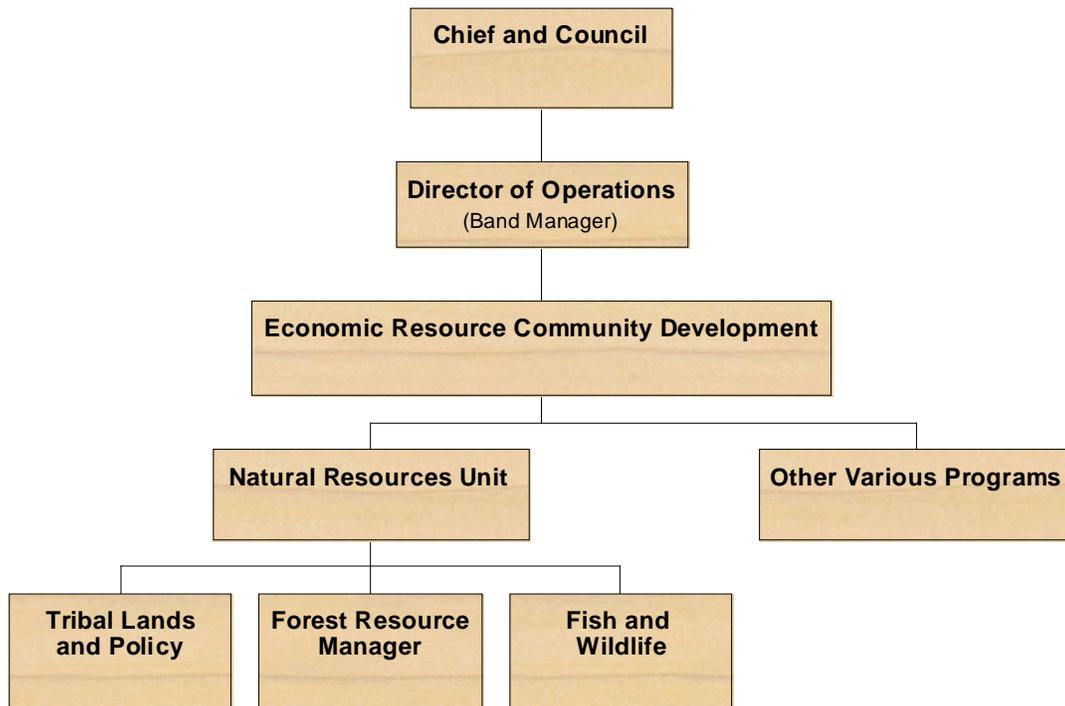
outside consultant, and did not adequately reflect fish and wildlife, traditional values or practices in the plan. Funding was required to develop forest policy to address traditional values and practices, as well as illegal harvesting; however, funding was severed because they were not following the management plan. The community found itself in a Catch-22 position, which has lead the Natural Resources Unit to develop innovative ways of creating their own finances to fund the policy development.

Under the Garden River First Nation bylaw, the Chief and Councils' responsibility to the Natural Resources Unit was to provide start up, and then to back up and let the NRU implement the values and views of the community.

Basically, the NRU was to make the plan work along with all the policies, and issues associated with it. In order to develop the policies and tools to successfully manage their forests, they devised innovative ways of creating funds to support their initiatives. Through bingo and nevada sales, the NRU is able to receive instant gratification. They also operate Ojibway Park on the reserve which brings in funds throughout the summer season. There are also fly in fish tours which brings in significant funds to the unit.

These three funding projects occupy approximately 20% of the forest managers time so that the other 80% of her time can be spent on developing the policies necessary for successful forest management.

Figure 4
Garden River First Nation Forestry Organisation Chart



The Garden River Natural Resources Unit has been developing a Forestry Code of Practices (FCP) since 1998, which was initiated by the North Shore Tribal Council of which they are a member First Nation (seven in all).

To date, a skeleton of the FCP has been completed, and is worked on sporadically on an *ad hoc* basis due to short staffing. The Forest Code of Practices has a similar flavour to NAFA's proposed forestry legislation. The document has been created to help guide the community into the future. The goal is to provide solid ground, stability and to depict

commitment to the sustainable development of their reserve lands.

Garden River's Timber Bylaws, originally a one-page document have been redeveloped and considerably expanded. The main aim of the bylaws are to address non-authorized harvesting by some community members on the reserve lands. Historically, some of the community members have been harvesting on an *ad hoc* basis, ignoring the NRU and Chief and Council. As a result, the mill that is situated within Garden River is restricted to obtaining only fibre that is harvested in conjunction with the NRU from reserve

lands. This is due to the legalities that allow them to only purchase wood that has been harvested with a permit issued under the Indian Act.

While some community harvesters have been working with the NRU to supply fibre to the mill, those undertaking unauthorised harvesting end up selling this wood off the reserve. This results in a fibre shortage, forcing the mill to limit production or buy off-reserve fibre to meet demands.

With the new bylaws in place, along with solid backing from the Chief and Council, the NRU hopes to have a solid foundation from which to confront the non-authorised harvesters. The loggers on the reserve have been contacted and the new Timber Bylaws and Forest Code of Practices have been explained. The NRU and Band have ensured that all interests have had opportunities for input through community meetings. This bottom up approach was intended to ensure that the leadership has worked with everyone to ensure that all interests are being addressed.

The Garden River NRU will be the governing body for the Timber Regulations, along for the procedures which will guide enforcement and compliance. A Policy and Procedures document clearly identifies all procedures as well as the roles and responsibilities, and was passed in December of 2000.

Forest management, renewal and infrastructure will also be included in the document. Stumpage rates, which have been fixed since 1993, are being addressed in the Timber Bylaws. These rates will now mirror the provincial system for determining stumpage rates.

The Policies & Procedures to Administer and Regulate Timber Permitting in Garden River First Nation Territories will govern the following issues:

- a) allocation of timber harvest,
- b) issuance of timber permits and harvesting agreements,
- c) stumpage fees,
- d) administration,
- e) enforcement,
- f) dispute resolution and
- g) the penalties.

For full descriptions of the aforementioned policies and procedures, the NAFA website can be visited, where a link will be provided.

Allocation of Timber Harvest: the timber allocations will mirror the forest management plan and annual work plan/schedule. These allocations will also be dependent on markets, and follow harvest prescriptions. Only Garden River First Nation members will be eligible for the permits. They must also be qualified, by having the capacity and capability to implement the harvesting operations. The allocation and timber harvesting policy also lays out the disbursement of harvest shares, by setting criteria for eligible members. The GRFN Forestry Unit has also laid out an 85% total harvest allocation to contractors to allow 15% for hold-back for various other initiatives.

Issuance of Timber Permits and Harvesting Agreements: Stipulations for issuance of timber permits under the Indian Timber Regulations by Indian Affairs will be closely tied with GRFN under predetermined conditions, as well as the harvesting rights. The GRFN Forestry Unit is responsible for preparing the timber and harvesting agreements to Indian Affairs. Chief and Council under

the advisement of GRFN Forestry Unit and an R.P.F. will be responsible for approving the allocation of timber permits as well as allocation of harvesting agreements.

Stumpage Fees: All wood is subject to stumpage fees, and based on rates determined by the GRFN, which mirrors the provincial rating system. The fees will go to three separate funds: i) forest management fees, ii) renewal fees, iii) infrastructure fees. Included in the stumpage fees is a schedule of payment, monitoring of shipments, and contingency plans for non-payments. Conditions have also been determined for sales to off-reserve mills.

Administration: GRFN will collect all stumpage revenues and issue all related accounting responsibilities. The forestry officer is given a lot of responsibility and work as she is involved in the planning, pre-operation and field meetings, as well as compliance and remedies for non-compliance. The forestry officer has full support of the Chief and Council, together with agreement, timber and harvest agreement holders can be suspended if contracts are breached.

Enforcement, Dispute Resolution and Penalties: The Forestry Officer is responsible for implementing enforcement through predetermined reporting measures. Dispute resolution is accomplished through band policy, and the penalties are minimal. Agreement holders who are at fault can face a one thousand dollar fine or a term of imprisonment for no more than thirty days or both. Agreements may also be revoked.

3.3.2 First Nations Land Management Act – SCUGOG ISLAND FIRST NATION

There is yet to be a clear demonstration of how the FNLM Act may be utilised by First Nations to undertake enhanced governance functions related to forest management. The emerging experience of several First Nations that have now ratified the agreement may, however, be worth tracking. The following brief outline sets out some how one of the four opted in First Nations has approached their adherence to the new Act.

The Scugog Island First Nation has successfully developed their Land Management Code (LMC), comprising 30 sections addressing all areas identified in the First Nation Land Management Act and its Framework Agreement.²²

This LMC illustrates the significance of the FNLM Act for the future management of reserve lands. Under the FNLM Act, Scugog Island First Nation is now responsible to meet federal and provincial environmental standards. Further, the Council is empowered to make laws respecting the development, conservation, protection, management, use and possession of their lands. Any land use plan that is developed must receive the consent of the eligible voters at duly convened meetings of the council. Land use conflicts that may arise within the First Nation are to be dealt with “in-house”. Any member of a board, committee, employee or other body of Scugog Island First Nation will have a first crack at resolving conflicts within their group. If the

²² For more information see:

<http://www.fafnlm.com/LAB.NSF/vSysAbo utDoc/English.>

conflict can not be resolved, it is then bumped up to the Council. If the Council is unable to resolve the conflict of interest, a community meeting may be held, where the voters present at the meeting may resolve dispute in a democratic manner.

At the beginning of every fiscal year, the Council will be responsible for adopting a land management budget. Scugog Council has opted to establish a Lands Advisory Committee (LAC) to advise on land management issues. This committee will be comprised of five Band members, of which one must be resident off-reserve.

Granting of permits to take resources such as timber, minerals, stone, gravel, clay, soil, or other substances, from community lands is subject to the consent of the eligible voters if the term of the interest or licence exceeds one year.

3.3.3 Experience through Land Claims Settlements and Special Legislation

Most experience in the development of forest management governance regimes amongst First Nations in Canada has arisen from land claim settlements and special legislation designed to provide specific powers to specific First Nations.

Brief profiles of the governance regimes and experience related to newly acquired jurisdiction over forest management are provided for the following three First Nations:

- Nisga'a First Nation, British Columbia
- Teslin Tlingit First Nation, Yukon
- Waswanipi Cree Band, Quebec

NISGA'A FIRST NATION, BRITISH COLUMBIA

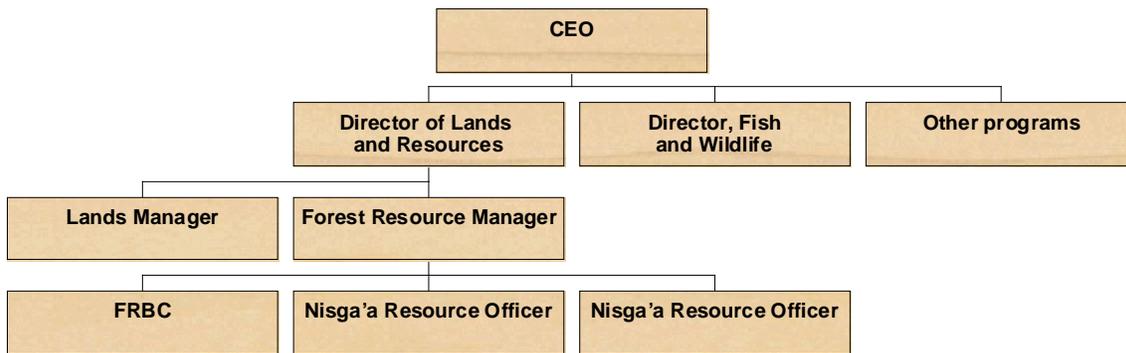
The Nisga'a live along the lower Nass River north of Prince Rupert, British Columbia. The Nisga'a Final Agreement, ratified in 2000, is the first land claim negotiated in British Columbia. Recently comprised of four Bands with reserves under the Indian Act, the Final Agreement provides the Nisga'a people with a land-base outside the Indian Act and establishes a Nisga'a Government. The Jurisdiction of the Nisga'a Government will be phased in over time.

The primary land base under the Final Agreement is comprised of Nisga'a Lands. These consist of 1992 sq. km of land comprised of former Crown lands and former Nisga'a Indian Reserves. Nisga'a Lands include the villages of New Aiyansh (Gitlakdamiks), Canyon City (Gitwinksihkw), Greenville (Lakalzap), and Kincolith (Gingolx). While there has been some commercial logging on all of these reserves through Indian Act Timber Permits, timber stocks on Canyon City and Greenville lands have been exhausted.

The Final Agreement establishes the Nisga'a Lisims Government, comprised of the elected Chiefs of the four Nisga'a villages and three councillors elected from Vancouver, Terrace, and Prince Rupert — regions with high populations of Nisga'a membership.

During the transition period, a Forestry Transition Committee comprised of one member appointed by the Nisga'a Nation and one by British Columbia becomes the authority for approving forest development plans, silviculture prescriptions and issuing permits for cutting and road use.

Figure 5: Nisga'a Forestry Organisation Chart



Jurisdiction

Ownership of Nisga'a lands includes forest resources, as well as subsurface resources. The Nisga'a Final Agreement (NFA) replaces forest practices legislation under the Forest Practices Code of British Columbia Act for new Nisga'a lands that were formerly Crown lands, and the Indian Timber Regulations under the Indian Act for lands formerly Indian Reserve Lands.

Responsibility for fish and wildlife falls to the Directorate of Fishing and Wildlife, within the Nisga'a Government That group focuses on potential revenue-earning activities. The Lands & Resources Directorate, within which falls the Forest Resources Group, has a mandate both for revenue generation as well as for habitat protection. This is because forest activities have the largest potential impact on habitat. Given the newness of the Nisga'a Government, it will take some time to establish how well these two groups will be able to integrate their activities. Existing traplines, guide outfitter and angling guide tenures on Nisga'a

Lands remain under provincial jurisdiction. Under the Final Agreement, existing timber harvest licensees will be allowed to continue harvesting over a five-year transition period. During this transition period, provincial regulations apply.

Nisga'a Forest Act

Prior to ratification of the Final Agreement, the Nisga'a Forest Act was prepared. This act establishes the legislative basis for regulation of forest practices on Nisga'a Lands, similar to the BC Forest Practices Code. The Nisga'a may establish their own forest management regulations, so long as these meet or exceed provincial standards. These Nisga'a Forest Regulations will apply to all harvesters on Nisga'a Lands following the transition period, although the Nisga'a Government may apply these regulations to Nisga'a harvesting operations during the period of transition.

The Nisga'a are adopting forest practices that are results-based, in contrast to the prescription-based practices of British

Columbia's system. For example, the management of forests along streams and rivers will not depend upon reserve or restricted zones as in the provincial system. Rather, management will be based on maintaining the integrity of the stream and avoiding negative impacts downstream. Thus, a forester cannot shirk responsibility by claiming to have "followed the book." As a result, there will be greater responsibility placed on individual foresters and on the Nisga'a Lisims Government, which is answerable to the Nisga'a people to ensure proper management of the land. The level of responsibility is likened to that of professional engineers or medical doctors who may follow guidelines or generally acceptable procedures, but are professionally and legally accountable for their decisions and the impacts of these decisions.

The advantage of Nisga'a forest management will be greater flexibility for foresters to respond to specific environmental and ecological situations. This will require a high level of knowledge of both forest vegetation as well as aquatic environments — "Where are the fish beds, what kind of vegetation is found on the slopes along the stream bank?"

The Nisga'a are at an early stage of developing this management system. Currently the forestry department is working closely with forest planning contractors to explain the Nisga'a results-based system. Until the new approach has become well-established the forest department will monitor forest management practices and will take responsibility for the outcomes.

Values and preferences

During the period of transition to full Nisga'a jurisdiction over forest management on Nisga'a Lands, the provincial timber regulations apply. Efforts are currently underway to develop regulations that will reflect the values and priorities of the Nisga'a people. It is not yet clear where the balance between commercial timber harvests and non-timber forest values will lie. Presently, there are only a handful of active trappers maintaining their traplines. However, it is thought that more people might be involved in trapping should the market for furs improve. In the long term, the Nisga'a believe they will need to support their government institutions from revenues they are able to generate, and forestry is anticipated to play a major role in revenue generation.

While debate over the level of intensity of forestry is fairly low key at this point in time, the Forest Resources Group recognises that such a discussion may arise in the future.

Rights and obligations

Even though only a few individuals use the forest intensively for trapping, the Nisga'a Lisims Government, and its Forest Resources Group, takes the rights of the trappers to maintain their activities very seriously. Further, the government recognises that changing market conditions may lead to a desire within the membership for greater participation in non-timber forest activities such as trapping. They acknowledge an obligation to manage the forest in a way that will keep options for alternative forest uses open to meet current and future needs.

The NLG also recognises an obligation to protect the economic stability of Nisga'a members who become attached to the forest sector as employees and as entrepreneurs. This obligation is not absolute — it is balanced, for example, by an obligation to sustain the forest environment for all generations and all uses, and to manage revenues from the forest and from the Final Agreement for the benefit of all members. Still, in a small community such as that of the Nisga'a, the well-being of the part of the population that becomes involved in commercial forest operations will have important implications for the well-being of the community as a whole. Recognising this obligation has led the Forest Resources division to treat revenue from stumpage differently from the way it is managed at the provincial level. In British Columbia, stumpage revenue targets are set independently of economic conditions. This means that during market downturns, companies may cease operations or even go out of business. In contrast, the NLG plans to adjust revenue targets according to economic conditions. As one senior manager put it: "We will not want to see local businesses go under just so we can hit revenue targets."

This approach reflects the integrated nature of the Nisga'a government. The consequences of increased unemployment and increased welfare demands that would result from business failures become reflected in the policy of the forestry arm of the government. The concern for stability in the forest sector is increasingly important in the context of the effort to increase business capacity within the membership. It is recognised that efforts should be made to smooth over the kinds of economic fluctuations that can typically lead to failure of small businesses,

concentration of ownership and loss of local business capacity.

The Forest Resources Group also recognises that it must support its own operations efficiently through revenues that can be generated through forestry activities. It has an obligation not to erode the financial resources made available through the Nisga'a Final Agreement for non-productive administrative functions. This leads to a tension between the resources that can be focussed on non-revenue generating activities, such as mapping important cultural sites and non-timber resources, and those spent on revenue producing timber management.

Sharing costs and benefits

Section 24 of the Nisga'a Final Agreement provides that timber harvested during the ten-year transition period by the Nisga'a Nation from Nisga'a lands formerly Crown land will be made reasonably available to local mills. The intent is to minimise the cost of the Final Agreement to existing interests in the forest lands that are being transferred to the Nisga'a, by for example, avoid loss of jobs amongst mill workers. The transition period should provide these mills with time to make arrangements for future fibre supply.

To ensure benefits to Nisga'a during the transition period, existing holders of Tree Farm Licences on settlement lands will be required to use Nisga'a contractors. In addition, stumpage fees formerly paid to the Crown will be paid to the Nisga'a during the transition period in a way that will put the Nisga'a "in the same economic position as if there were no transition."

It is anticipated that revenues from timber harvest royalties will help to support the operations of the Forest Resources Group

within the Nisga'a Lisims Government. This will ensure that monies paid to the Nisga'a under the Final Agreement are made available for development activities and not used up for the purposes of on-going forest management.

Prior to the Nisga'a Final Agreement, one of the four former Nisga'a reserves — Canon City — had a partnership with InterPac to access a 50,000 cubic metre timber allocation. Through their company Simgan (who are the shareholders: members of the former C-C reserve? All Nisga'a? How will timber cutting allocations be made on Nisga'a lands in the future?)

Conflict resolution

At this stage in the modern Nisga'a experience of governance, there is no track record of conflict arising within the Nisga'a nation related to forest management and commercial exploitation.

TESLIN TLINGIT FIRST NATION, YUKON

The Teslin Tlingit First Nation ratified its Final Agreement and Self-Government Agreement on April 19, 1993, along with the associated Implementation Agreements and a Self-Government Financial Transfer Agreement. The Governments of the Yukon and Canada have passed legislation to ratify the Umbrella Final Agreement and the individual agreements under it, thereby giving these the force of law.

The enacting legislation has the effect of dissolving the Teslin Tlingit Council Indian Band, as constituted under the Indian Act, and transferring its rights, titles, interests, assets, obligations and liabilities to the new Teslin Tlingit Council (TTC).

Self-government structure

The political structure of the TTC is based on the traditional Teslin Tlingit clan system. This is comprised of five clans: wolf; eagle; beaver; frog; and raven children. Each clan selects one member to sit at the General Council, which meets three or four times per year to establish the legislative apparatus that guides the TTC.

Regulatory functions and responsibility for the smooth operation of government departments rests with the Executive Council, which meets twice a month. This body is made up of one member from each clan on the General Council, as well as one additional member selected from the Elders Council.

The Elders Council is made up of all Teslin Tlingit who are aged fifty-five or older. Its role is to provide advice and direction to the leadership, with particular responsibility for safeguarding and promoting Teslin Tlingit culture, heritage, language and tradition. The Elders Council generally meets once a month.

A range of government departments carry out the day-to-day tasks associated with self-government. The Lands and Resources Department holds the mandate for forest management on Settlement Lands, along with responsibility for mining, environmental protection, on-going land claims with British Columbia and a range of other related areas. The Lands and Resources Department has a total of eight staff, only one of whom is involved in forestry, splitting her duties between Department Director and Forest Resources Manager. By way of comparison, the federal government's forest resources department in Whitehorse has over sixteen staff, in addition to staff

located in the regional offices. The Yukon Government, while not having jurisdiction for forest resources is gearing up for devolution of these responsibilities from the federal government. They currently have a staff of between six and ten people dedicated to forest resources.

In addition to management responsibility for forest resources on Settlement Lands, the Teslin Tlingit share responsibilities for forest management on non-Settlement Lands within their traditional territories. This is carried out through participation on the Teslin Renewable Resource Council. This co-management body is responsible for recommending forest management practises for Settlement and non-

Settlement forests to the Teslin Tlingit Council and to the other responsible governments.

Funding for the governance regime is provided through the self-government financial transfer agreement. This agreement between the Teslin Tlingit Council and the Government of Canada provides for contracts to be negotiated for funding of public services provided by the Council. The levels of resources will take into consideration the ability of the Council to generate revenues from its own sources.

Figure 6
Teslin Tlingit Forestry Organisation Chart



Jurisdiction

Under the Final Agreement, the Teslin Tlingit Council has ownership and Aboriginal title of 2,430 square kilometres of Settlement Lands that lie within the Teslin Tlingit Traditional Territory of 30,215 square kilometres. Surrender of the Traditional Territories is conditional on the Government signatories delivering on all key aspects of the Agreement, and establishes a co-management regime for managing these lands. Failure on the part of government to respect the Agreement could lead to the Teslin Tlingit regaining surrendered lands. This provides a “hook” giving the Teslin Tlingit considerable “moral persuasion” when it comes to discussions about land management issues.

In relation to Settlement Lands, the Teslin Tlingit Council has powers to enact laws. In the area of forest management, this includes jurisdiction in the following matters:

- use, management administration, control and protection of Settlement Land;
- allocation or disposition of rights and interests in Settlement Land;
- use, management, administration and protection of natural resources under the ownership, control or jurisdiction of the Teslin Tlingit Council;
- gathering, hunting, trapping or fishing and the protection of fish, wildlife and habitat.

Authority for the management of forests on Territorial Crown Lands—including the Teslin Tlingit’s non-Settlement Land Traditional Territory—rests with the federal government. As noted, however,

this authority is shared through co-management arrangements involving the Teslin Resource Council.

Values and priorities

In the mid-1990s, people were starting to recognise that harvesting of forests in the Watson Lake area of south-east Yukon had depleted the timber supply. Pressure was on to expand harvest operations into the Nisutlin Forest Management Unit, much of which is comprised of Teslin Tlingit Traditional Territory. The draft timber supply license provided for an Annual Allowable Cut of 89,000 cubic metres. Through their powers of persuasion, backed up by the Final Agreement, the Teslin Tlingit have managed to reduce this AAC to 25,000 cubic metres during the interim period while a forest management plan is prepared.

The Forest Management Plan will address management of both the traditional territory (Crown Land) as well as the Settlement Land, owned by the TTC. Preparation of this plan is just beginning, and is being carried out by a team that includes representatives from the federal, territorial and TTC governments, as well as from the Renewable Resource Council. It is expected that this planning process may take two or three years to complete.

A large part of the forest management planning process will be the gathering of Teslin Tlingit traditional knowledge, and the integration of this knowledge into forest management. Extensive consultations with the Elders Council provide opportunities for the Elders to recommend areas requiring protection—spawning beds or wildlife corridors, for example. Community consultations are also taking place, and

involve both Aboriginal and non-Aboriginal members of the community.

While it is anticipated that most timber harvests will take place outside the Settlement Lands, some limited harvests may occur on these lands. A procedure has therefore been developed for the selection of harvest areas within Settlement Lands. The establishment of Harvest Planning Areas (HPAs) will ensure that the values of First Nation members are well-reflected. The following steps are planned:

1. Selection of a potential area for a Harvest Planning Area assessment by the Lands and Resources Department.
2. Discussion of this area with the Elders Council. If the area is found unsuitable by the Elders Council, an alternative area will be sought.
3. If the proposed area is suitable, field work will assess the traditional values, resource values and environmental values within the HPA. This assessment will identify and prioritise values, determine management objectives for these values, and develop management recommendations on how to mitigate impacts of harvesting operations on the values.
4. During this field assessment, consultation with trappers, Elders, and others will identify and map these values, and develop protection measures.
5. Information will be compiled and mapped using GIS.
6. This information will be used to prepare a Harvest Planning Area Resource Report.
7. The HPA Resource Report will be used to review, approve and

manage timber harvest operations within the HPA area.

Once a HPA Resource Report has been completed, the Lands and Resources Department can accept applications for timber permits.

Rights and obligations

Teslin Tlingit Council, through its Lands and Resources Department, takes its responsibility to protect the rights of its citizens to carry on land-based activities throughout its traditional territories — including both Settlement and non-Settlement lands. Through the influence provided under the Final Agreement, they have ensured that permits for clear-cutting have not been issued on traditional territory. Through close consultation with the federal government, they are able to ensure that areas targeted for harvesting go to the Elders Council for assessment. This leads to recommendations for wildlife corridors and buffer zones to protect sensitive habitat, which are then taken back to the federal resource managers.

In the development of forest management plans, consultations have targeted both Teslin Tlingit and non-Aboriginal inhabitants of the region, in order to ensure that all interests are respected.

Sharing the costs and benefits

Currently, Yukon River Timber harvests between 5,000 and 10,000 cubic metres of timber under federal timber permits. It has a small sawmill, and also does value-added log home and furniture construction.

While the value of commercial forestry activities is relatively low, in comparison with the total economy of the region. The

importance of the forest for hunting, trapping, camping, gathering and other uses is very high. Nonetheless, in a region where opportunities for new economic development activities is limited, the potential to generate jobs and income from sustainable use of the forest is seriously considered. The TTC, therefore, recognises that it must carefully balance the commercial benefits with the non-commercial benefits that are derived from the forest.

Revenues derived from harvesting on Settlement Lands will include both stumpage fees and reforestation royalties. Such harvests have not yet occurred, so the way these funds will be used has not been finalised. Possible uses will be for reforestation royalties to be placed in trust for future reforestation work, while stumpage revenues might help to enhance the capacity of the Lands and Resources Department.

Conflict resolution

Conflict or disputes that arise in relation to forest resource issues on Settlement Lands can be dealt with first by a Land Management Committee that is made up of one member from each of the five Tlingit Clans. Should this group not succeed, they can take the matter to the Elders Council for advice, and, if needed, to the Executive Council. Major disputes or issues might eventually need to be dealt with at the General Council level.

Conflicts or concerns relating to harvesting on Crown lands are taken to the Lands and Resources Department, then to the Chief Executive Officer of the Executive Council who would take the issue up with the Regional Director General of DIAND.

WASWANAPI CREE NATION, QUEBEC

The Waswanipi Cree Nation is the southern-most Cree nation that is a party to the James Bay and Northern Quebec Agreement (JBNQA) ratified in 1975 and empowered through the Cree-Naskapi (of Quebec) Act.

Land-based activities such as hunting, fishing and trapping continue to be important contributors to the community's economy. Intensive trappers receive cash payments for their work on the land through the Income Security Program, established under the JBNQA.

Approximately equal proportions of community members are involved in full-time land-based harvesting activities as hold full-time wage jobs. A rapidly growing population has, however, placed considerable demand on community leaders to create new job opportunities.

This interplay between the need for economic development that will support the livelihoods of a growing population and the need to maintain the forest for traditional activities sets the stage for Waswanipi's approach to forest management and related governance issues. Waswanipi opened the Nabakatuk Forest Products Inc. sawmill in the summer of 1997. This mill is a joint venture between the Band-owned Mishtuk Corporation (55% share) and Domtar (45% share). The mill is supplied with timber from Waswanipi's Category I lands and from a forest management and timber supply license (CAAF) providing access to timber from provincial Crown land.

Jurisdiction

Under the James Bay and Northern Quebec Agreement (JBNQA) the Cree Nation of Waswanipi has exclusive rights

to forest resources on a "Category I" land base comprised of some 612 sq. kilometres, located in Quebec, approximately 700 km north of Ottawa. In addition, the Waswanipi Cree maintain exclusive hunting, fishing and trapping rights over a portion of their traditional territory classified as "Category II" lands.

Management authority for forest resources on both these land classifications, however, rests with the province. Even on Category I lands, the Cree must obtain provincial harvest permits for any commercial timber harvests. Sections 5.1.10 d and 5.2.5 with of the JBNQA deal with forest jurisdiction on Category I and II lands respectively.

The full text of the JBNQA can be found at http://www.gcc.ca/Political-Issues/jbnqa/jbnqa_menu.htm .

These sections include the following provisions:

Section 5.1.10 d) Forests:

The Crees will have the right to use the forest for personal and community needs within Category I lands. The respective Cree communities will likewise have the exclusive right to the commercial exploitation of forest resources within Category I lands by themselves or by third parties acting with their consent. However, in such case, the Cree community will have to obtain cutting rights or permits from the Quebec Department of Lands and Forests, but the Department shall not withhold its consent to such permit, provided that such commercial cutting is in keeping

with the development and marketing plan accepted by the Quebec Department of Lands and Forests. In the event of such commercial exploitation, the community will not be obliged to pay stumpage dues to Quebec but operations must respect Quebec standards. Subject to such permit and the requirements herein above stated, such resources shall be governed by the laws applicable to Category I lands. The general regime for forest protection, including the cost entailed, will be applicable.

Section 5.2 Category II Lands:

"... Crees shall have the exclusive right of hunting, fishing and trapping....Provincial jurisdiction shall continue over Category II lands."

5.2.5 c) Forests

"Forest operations are compatible with hunting, fishing and trapping activities. Commercial cutting programs in Category II lands will be defined according to management plans elaborated by the Quebec Department of Lands and Forests, which shall take into consideration the hunting, fishing and trapping activities. Operations must respect Quebec standards and the general regime for forest protection will be applicable."

The idea expressed in Section 5.2.5 that forest operations are compatible with hunting, fishing and trapping, is subject to a presumption that forest management will be carried out to balance with these diverse resource uses. Section 22.2.2

establishes a regime clearly intended to protect Cree environmental and social interests in both Category I and II lands. For example, part “e” notes this regime is to protect “the Cree people, their economies and the wildlife resources upon which they depend.” Further, Section 22.3.34 of the JBNQA provides a clear role for the Cree in assessing Crown Forest Management Plans:

Section 22.3.34

“The Department of Lands and Forests shall when preparing a management plan for Crown forests and forestry operations, forward such management plan to the Advisory Committee²³ for its consideration and comments before approving the said management plan.”

Although the Waswanipi Cree do not have jurisdiction for issuing timber harvest permits, they do have authority to make laws related to land use planning and environmental protection. By-laws related to wildlife harvesting must be approved by the band membership, not just the Band Council. Further, the Waswanipi Cree are currently engaged in developing a forest practices code that will achieve the goal of enabling forestry activities compatible with hunting, trapping and fishing. This process is faced with “fuzzy” jurisdictional authority, and therefore involved multiple partners.

²³ The James Bay Advisory Committee on the Environment is established by Section 22.3. It is to “review and oversee the administration and management of the environmental and social protection regime” and is made of members appointed by the Cree, Canada and Quebec.

Funding for Cree self-government is provided by DIAND, through grants that are negotiated every five-years. In addition resources are also derived from other federal programs, from funds received from the Board of Compensation set up under the JBNQA to manage moneys received in compensation for Cree lands, and by the power of the band corporations to levy taxes for local purposes.²⁴ Forest management is carried out by Mishtuk Corporation, a forest management company wholly owned by the Waswanipi First Nation. Mishtuk holds the forest management and supply license and also owns a 55% share of the Nabakatuk sawmill (with Domtar holding the other 45%).

Values and preferences

The key issues and concerns related to forest management and forest-related economic development arose during a formal social and environmental impact assessment carried out by Waswanipi prior to the development of the Nabakatuk sawmill. This formal process has been supplemented by community meetings and reports from Mishtuk Corporation. These processes have clearly identified “jobs” and the need to maintain a forest environment that supports traditional harvest activities as priorities — although different opinions exist within the community about which should take precedence.

The clear concern from the community that commercial forestry should not unduly impact on the traplines has led to innovative forest practices. Logging on Waswanipi’s Category I lands has changed from large conventional clear-cuts to smaller scale, mosaic cutting, more

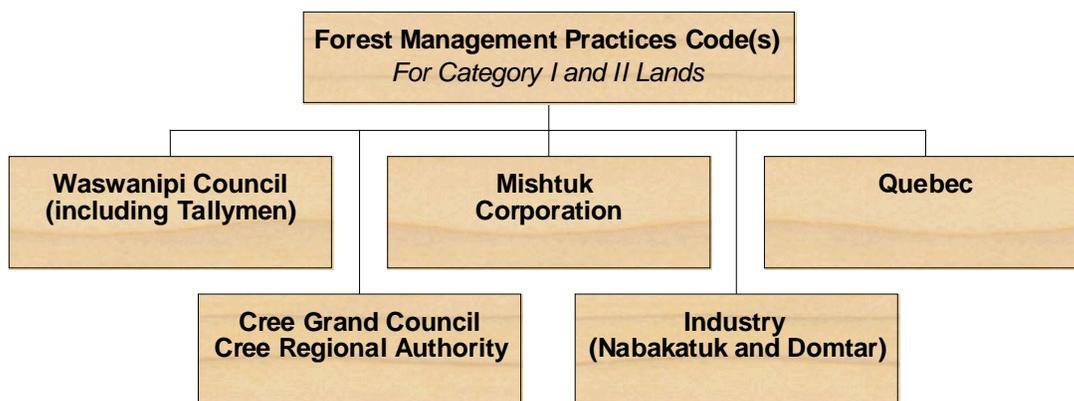
²⁴ Giokas (previously cited).

amenable to multiple use by trappers and other forest-users.

A consequence has been that the timber supply available from this land has declined from an estimated 60,000 cubic metres per year under conventional management, to 45,000 cubic metres per year under this multiple use management

regime. Even at this level, some members of the Waswanipi First Nation feel that further reduction in harvest intensity is needed in order to maintain the health of traplines. The Band is hoping to gain access to alternative timber supplies, but in the meantime continues the harvest in order to maintain the sawmill and its associated jobs.

Figure 7
Waswanipi Cree Forestry Codes Development



Efforts have also been made — with some level of success — to influence the practices of forest companies, especially Domtar, that are operating on lands outside Category I, so that the integrity of traplines in these areas is respected.

Rights and obligations

Waswanipi's forestry activities on Category I lands take place in relation to three groups of rights and obligations: the rights of hunters and trappers to maintain their forest-based activities; obligations to Mishtuk shareholders to account for revenues and major corporate decisions; and, obligations to local workers and businesses to maintain jobs and create a

stable environment in which to carry on business.

The rights of Band members to carry on harvest activities within their traditional areas is the clearest right, as it is addressed in the JBNQA. Most prominent here are the rights of the tallymen to maintain their traplines. Tallymen rights and interests are reflected in the forest management planning process. Extensive consultation with the trappers has led to the development of mosaic cutting as the overall management practice.

At a more detailed level, trappers are involved in forestry decisions by walking

through an area with the field foreman prior to harvest, in order to identify critical values related to trapline management.

A second area, is the obligation of Band leaders to ensure that the management of Mishtuk Corporation respects the ownership of that corporation by the people of Waswanipi.

As a community-owned entity, community members must have access to information about fundamental issues and directions, and influence over major decisions. In particular, community members should have a voice in decisions that may have major financial impacts or that may limit their future options. Recognising this obligation for accountability to the community, efforts are underway by the Band to develop transparent policy that will guide Mishtuk and Nabakatuk Forest Products.

Finally, the Band has an obligation to address the needs of its members to earn a living. Many people earn their living through commercial forestry-related activities. These include self-employed logging contractors as well as full-time and seasonal workers employed in forest management jobs and at the mill.

Sharing costs and benefits

The clearest beneficiaries of Waswanipi's commercial forestry activities are the individuals who have gained employment. Some 60 community members are employed full-time in the forest industry, with another 40 seasonal workers during the summer.

Waswanipi leadership feels that the greatest costs of forest operations have fallen upon the trappers. As a consequence, considerable effort has been

focussed on minimising the negative impacts of logging and compensating individuals where impacts do arise.

Potential benefits may arise in the future when and if the mill — through Mishtuk Corporation — begins to pay dividends to the community. To date, however, the operation is still working to break even and to invest in forest management and potential mill expansion. Stumpage revenues from timber cut on Waswanipi's Category I lands are to be paid by Mishtuk Corporation.

Currently, any such revenues are directed back into forest management and into a trapline project. Trappers could potentially benefit, although they also experience direct costs due to disruption of their trapline areas.

There is some concern that the full impacts and benefits of forestry activities on Category I lands, and in the Waswanipi traditional territories are not well understood, and that there is need for detailed investigation of the social, economic and cultural dimensions of these activities.

Conflict resolution

Attempts are made to minimise disruption of traplines by involving the tallymen responsible for trapline management in the development of forest operations plans. This process is carried out rather informally, through the day-to-day forest management activities.

For example, field foremen will walk through a designated cut block with the tally man in order to ensure he is aware of what is planned. This provides a good opportunity to identify any concerns prior to harvest.

Significant issues are sometimes raised during community meetings during which the Band-owned Mishtuk Corporation and the Nabakatuk sawmill make reports. The Council recognises that substantial and important issues remain to be resolved related to the impacts of commercial logging on trapline territories. Efforts are being made to address these issues.

CHAPTER FOUR: LESSONS LEARNED AND ISSUES RAISED

A striking theme that recurs throughout the experiences profiled in Chapter Three is how current the issue of First Nation governance is in relation to forest management. In nearly all cases that were looked at, institutions are just being put in place, policies are just starting to be developed, or jurisdiction is just starting to be transferred to the First Nation. In several situations, people contacted by the research team were unable to participate due to the fact that sensitive governance issues were currently under negotiation and it was felt that it would be premature to address these issues on paper. At least one contact person felt that while the topic was timely, it may be “too hot to handle” for a while, at least until more time goes by.

Clearly the area is dynamic at this point in time. The level of experience that is needed in order to gain the perspective of hindsight has not yet been acquired. Therefore, the following discussion of “lessons learned” should be considered in this light.

Jurisdiction

Until very recently, First Nations across Canada have been denied jurisdiction for the management of their forest lands. The Indian Act and the Indian Timber Regulations associated with it, have been criticised as being major barriers to First Nations wishing to manage their forest resources. Concern about the Indian Act is clearly valid. The Act does not address forest management issues, and this jurisdictional void has affected the ability of First Nations to develop forest management capacity.

Two approaches have been taken in the face of this situation. The first is to seek to achieve formal, legally-based jurisdiction through new legislation. This approach seems to be favoured in the context of land claim and self-government agreements, such as those of the Nisga’a and the Teslin Tlingit. It has also been taken by those First Nations who have entered into the FNLMA.

In these cases, authority to undertake the functions of governance in relation to specific forested areas arise from a clear legislative basis. With this clear jurisdictional responsibility comes increased accountability. Generally, clear jurisdiction also brings funding arrangements to ensure capacity exists to fulfil responsibilities. The adequacy of this funding is, however, another issue. The area of capacity is addressed later in this chapter.

A second approach is to work within the existing legislation to achieve pragmatic objectives. For example, some First Nations are going ahead to develop forest practices codes, even though these codes have no legislative basis for enforcement. However, they may gain some authority under contract law, if arrangements are made to award harvest licenses that call for adherence to the codes as a condition of the license. This is the approach taken by the Garden River First Nation.

Some progress may be made by tinkering with existing regulations. For example, the proposed Indian Timber Harvest Regulations may remove some of the most problematic elements of the existing Indian Timber Regulations. Current thinking

around DIAND seems to be that sufficient accommodation for First Nation governance over forest resources on reserves can be achieved without major legislative efforts — at least until there is sufficient demand from First Nations for something more comprehensive.

Whether jurisdiction is gained from a basis in law, or from an administrative arrangement with DIAND, it is clear that without it First Nations will have little hope of initiating comprehensive forest management systems. While several First Nations have begun to address this issue, many others have yet to begin the task. Without some level of jurisdiction, it will be difficult for these First Nations to initiate comprehensive forest management systems on their land, and to develop the governance and technical capacities that would enable them to gain management responsibility over forests within their traditional territories.

In practice, First Nations may function under a variety of jurisdictional regimes, depending upon the land base in question. The highest level of formal jurisdiction may apply on Reserve lands, but there are also issues related to other types of forested lands. These include: newly acquired lands that may be held in fee simple, falling under provincial regulations; tenures on Crown land, which tend to be managed under provincial forest codes; and, traditional territories in which First Nation members maintain distinct rights and interests.

Typically, in these latter forests, First Nations may hold considerably less influence than on Reserve lands. In some regions such as in the Teslin Tlingit traditional lands, First Nations have managed to gain influence through co-

management boards. Some experience is emerging, however, where First Nations are extending forest management governance regimes from reserve lands to Crown lands, through special arrangements. In these cases the jurisdiction changes while the management regime remains consistent. So far, however, it appears that these arrangements may have a greater tendency to transfer practices from Crown forest management on to Reserve forests than vice versa.

A further dimension of the jurisdictional issue relates to the identity of the First Nation body that actually carries out the jurisdictional responsibilities. There are situations where the entity that carries out forest management activities is regionally-based and represents several communities. The Nisga'a case is an example where a regional government must balance interests from multiple communities. In the Teslin Tlingit case, the Nation maintains a regional role — through participation in the Resource Council — in addition to its more narrowly focussed responsibilities related to the community's Settlement Lands. In the case of the Waswanipi First Nation there seem to be multiple dimensions of jurisdictional responsibility running from individual Tallymen to the First Nation Council to the regional Grand Council of the Cree. Further the degree to which this jurisdiction has a formal basis in law or a moral basis arising from traditional rights remains somewhat hazy, decades after the implementation of the land claim agreement.

Once jurisdiction responsibilities have been located at either the community or regional level of First Nation government, there may remain questions about who actually carries out the related

responsibilities. A First Nation may gain the needed jurisdictional authority to create its own forest practices code, then hand over the actual administration of the code to consultants, Band-owned corporations, or even forestry contractors. It remains to be seen how these arrangements affect accountability and transparency for the decisions that are made.

Jurisdiction over First Nation forests is in a period of rapidly evolving expectation and practice. Approaches vary from attempting to gain formal, legal responsibility for forest management, to trying to improve the environment for influencing forest management practices. None of these approaches have track records, so the alternate strategies cannot yet be compared in terms of efficacy. Further, each approach has developed in very different contexts.

Values and preferences

First Nations forestry governance is just emerging as an important part of the Aboriginal governance landscape in Canada. Many First Nations are, perhaps, more familiar with a role as advocates, arguing for protection of their values in forests than as forest managers now tasked with the responsibility to balance competing needs and values amongst their own members. Corporate needs of emerging Aboriginal businesses, the employment needs of First Nation members in the forest sector, and the wide range of non-timber values represented in the forest, must all be balanced. Further, the First Nation entities tasked with carrying out this role may themselves have a stake in if their budgets are influenced by their level of commercial success in forestry operations.

To a large extent, Aboriginal leaders in land management are now finding themselves in a position where they are playing “catch-up” in regards to forest management planning. Many First Nation forests are lacking even basic prerequisites for planning such as inventory data and mapping. In this context, core traditional values are having a hard time influencing the “status-quo” forest management plan. Further, cash-strapped forestry departments have a better shot at accessing funds for activities related to economic forestry activities than for activities related to non-commercial traditional values. As a result, traditional values frequently seem to be pushed into the background of planning processes in order to address the economics of forestry.

It is, however, unclear whether the apparent decline in prominence of traditional values in First Nation forestry management planning is a result of outside forces, budgetary constraints, internal decisions, or an actual change in the values of a First Nation. For example, many First Nations are experiencing declining involvement in traditional forest-based activities. Is the decline in trapping activities that has occurred in some communities over the past generation, for example, a short-term blip, caused by market fluctuations? Or is it a permanent change that will be reflected in reduced harvesting throughout the future? Commercial trapping itself is an activity that extends over fourteen generations back in the history of many Aboriginal communities in Canada. How should First Nation forest managers deal with trapping issues when they plan for seven generations forward?

Aboriginal communities are also discovering division amongst themselves in regards to the role of traditional values and traditional environmental knowledge in forestry and forest management. Are these seen as central values that hold equal authority in forest management planning, or are they looked at as cultural artefacts to be revered but not necessarily used on a daily, pragmatic basis? Several First Nations have taken steps toward recognising the centrality of their traditional values by formally spelling out their land values. For example, Treaty 3, in north western Ontario has developed their “Earth Law” that sets out values related to land and relationships to the land.

There is also a question as to whether there really is room in the forest for two fundamentally different views of the world. Western-based forest management builds from the understanding the “man is the boss.” Through scientific observation and experimentation, we can learn how to manage forests to achieve our objectives. Traditional Aboriginal views of the forest can be better described as “the land is the boss.” People don’t manage the forest so much as they manage their relationship to the forest. There are limits to what we should expect from the land and we need to have respect.

There are new trends in the economy focussing on traditional medicines, value-added products and First Nation ecotourism. There are new economic opportunities that may build upon strong traditional knowledge and might spawn renewed interest in traditional values. However, how far can these commercial uses of traditional knowledge really co-exist with traditional values? Can they be adequately and respectfully managed? Do

First Nation communities preserve and protect, or commercialize? Can a balance be found?

Typically, forest planners undertake consultation to identify the range of values expressed in a community. Efforts are then made to express the full range of values through various management practices. For example, in Waswanipi, large clear cuts were replaced by mosaic cutting in order to better preserve habitat needed for fur-bearers and to allow for continued access to trapline areas by the tallymen. However, after several years of experience with this new system, it is unclear how successfully the technique has actually reflected the values it was trying to achieve.

There is a clear need for on-going research into how Aboriginal values translate into forest management practices. Is the knowledge base adequate to convert values into forest management practices? If there are gaps, are these technical/ecological knowledge gaps or socio-economic knowledge gaps, or gaps in governance capacity? What commercial forestry practices can be developed? Are there some values that are simply incompatible with commercial forestry? How can communities best resolve incompatibility of competing value sets?

Rights and obligations

The emergence of First Nation governance jurisdiction over forest management is shifting the familiar equation where Aboriginal peoples must continually fight for recognition by external governments of their rights in the forest. Now, increasingly, First Nation institutions themselves are gaining responsibility to recognise and balance competing rights, at least to some

portions of First Nation traditional forest regions.

Specific rights related to forests have tended to reflect traditional Aboriginal values. These have tended to address things such as the right to harvest and hunt for subsistence use or for modest commercial purposes. Debate over whether and how Aboriginal resource rights might be translated into the context of modern corporate models of intense resource exploitation tends to move the discussion beyond recognised rights into an area closer to societal obligation or “economic fairness.”

But Aboriginal values have shifted, or at least expanded, to include ideas such as the need for jobs and economic development. Even in the area of self-government, there are emerging values that would lead to calls for economic self-reliance in the modern context. Certainly self-reliance is a strong traditional value. However, when translated into the modern context, the modern form of this value tends to lead to the need for significant economic development. It is doubtful that you can support a modern population based on a traditional economy.

As First Nations make forest management choices that reflect values of job-creation, economic development, and economic self-reliance, they find themselves creating new obligations and new rights. These may include the contractual rights of Aboriginal or non-Aboriginal harvest companies that have been provided with licenses. They may also include the less specific but equally powerful rights of community members who have gained employment in the forest industry. These people may have built their family

economies around forestry and become a strong political voice. First Nation governments bear a strong obligation to this portion of their population.

But at some point, Aboriginal rights and traditional values held by community members may be expected to bump up against contractual rights and political obligations arising from the pursuit of modern values of economic development. The profiles presented in Chapter Three suggest that Waswanipi, and to some degree the Teslin Tlingit, are clearly grappling with these issues now. Many other First Nations who have gained various degrees of forest management jurisdiction will no doubt face these issues in the future.

In approaching the rights and obligations that arise from gaining governance authority over forest management, First Nations can consider the principle of Seven-Generation Planning. Planning seven generations forward considers how decisions made today affect the options that will be available tomorrow and seven generations forward. The question is not simplistic. In addition to considering the rights of future generations to access for “traditional” activities, there is also a need to consider other factors that affect future options. For example, how does poverty today affect the rights and opportunities of future generations? What about reliance on external governments for basic needs?

There is also the school of thought that Seven-Generation Planning means understanding three generations ahead, as well as minding the previous three generations in addition to the current generation. Understanding the past is important to the management of the future. The past rests so heavily on the

elders. There are many concerns with relinquishing this knowledge to western science, however, in that the traditional knowledge will not be respected. There is also another concern that much of the body of traditional knowledge is being lost, as each elder passes on to the next world.

Sharing the costs and benefits

Increased jurisdiction over forest management decision-making can be expected to provide First Nations with greater control over how the benefits and costs associated with forest utilisation are shared amongst community members. Many of the cases profiled in Chapter Three indicate that a desire to ensure that logging activities on Reserve lands and on other areas where the First Nation holds jurisdiction or influence, is carried out as sustainably as possible. Some efforts have been made to consider how the benefits of logging operations reach members of the First Nation communities. However, the recent nature of First Nation experience in the governance of forest management means there is little track record of how “cost—benefit” allocation decisions associated with forest management are being made.

One group, the Warm Springs Reservation, has created a body to assess and implement economic processes in forest management. This body helps ensure accountability, fairness, equality and economic efficiency to the forestry programs on the reservation. In the Canadian context, the FNLMA addresses specific costs and benefits applications within the development of the land code.

Included, for example, are general rules and procedures respecting revenues generated from First Nation lands, as well as accountability to First Nation members from the management of land and money derived from the land. Waswanipi seems to be at the point where an assessment of the variable costs and benefits of close to five years experience running a local sawmill and associated logging operations may soon be undertaken.

In general, however, there have been few attempts to establish formal mechanisms to assess the impacts of forest management decisions on various groups within the community, or on future generations of forest users. This may not be surprising, since forest management jurisdiction is just beginning to emerge. Still, it is worth considering some of the dimensions of how costs and benefits may be expected to emerge from forest management decisions.

There is an emerging concept of sustainable development that considers the foundation of an economy to be built on four pillars: environment; people; social institutions; physical infrastructure. These are sometimes referred to as “natural capital”, “human capital”, “social capital”, and “physical capital”. Refer to the following figure for a brief outline of these four factors. Considering these dimensions of wealth creation may help in assessing how the costs and benefits associated with forest management decisions might arise, and how these might be distributed amongst the different individuals and generations of a particular First Nation community.

Four Ingredients for Wealth Creation

Natural capital

For many First Nations, the forest environment is the ultimate source of the goods and services needed to carry out productive economic activities, both traditional and commercial. The forest provides both goods — wildlife, medicines, food, firewood, timber — as well as services. Some of the services provided by the forest include the provision of the clean water, air and soil required for healthy living; maintenance of climatic balance; the healing effects of natural beauty and its promotion of human well-being; and the maintenance of “natural knowledge” such as the ecological relationships and genetic information that may be needed to address future challenges. The forest also provides the classroom in which Indigenous Knowledge is developed and passed along from one generation to the next.

Human capital

A strong First Nation economy needs healthy people. This includes the full range of things that contribute to the well-being of individuals and communities — literacy, education, skills and knowledge, physical, mental and spiritual health, personal motivation, discipline and values. These latter elements are particularly interesting. A strong economy needs motivated people. Motivation can lead individuals to pursue education, to find ways to build their livelihoods, and to create solutions to new challenges.

Social Capacity

A community’s social capital refers to the relationships and institutions that allow the other ingredients for wealth creation — natural, human and physical capital — to work together. Communities where families are under stress or where political crisis dominates the agenda may be unable to take advantage of opportunities for economic development. Lack of entrepreneurial organisation into appropriate business structures may similarly impede the achievement of the potential that would be otherwise predicted. Social capital, therefore, includes areas such as policy environments, social cohesion, public and domestic security, and business organisation.

Physical capital

The built environment includes the equipment and facilities needed to carry out economic activities and to turn creative ideas into productive realities. This includes fundamental infrastructure needed for healthy communities such as housing, communal meeting places, and municipal infrastructure. It also includes the facilities, tools and machinery needed to carry out productive economic activities. In the traditional economy, these might include traps, guns, pots and pans. In the commercial forest sector these may be sawmills, harvesting machinery and so on.

This model of wealth creation can be used to ask how any particular approach to forest management is going to impact the community's capacity for development. For example, jobs created by commercial logging activities may help to motivate individuals who previously felt helpless to provide for themselves or their families. New-found wealth, however, may also lead to individual behaviours that are not conducive to family well-being. Do family members benefit as much from job creation as the individual family member who actually gets the job? One may ask, therefore, what needs to be done to ensure that job creation serves to strengthen the human and social fabric of the community, rather than to harm it.

Similarly, the impact of forest sector commercialisation on the natural environment should be considered, along with its interaction with traditional knowledge. Are forestry approaches designed to provide "sustainable yield" compatible with the maintenance of natural ecosystem relationships that seem to be the source of traditional knowledge? What are the impacts on a First Nation's human and social capital if this link is broken?

A particularly interesting consideration relates to the development of the infrastructure required for commercial forestry operations. Does investment (political, personal and well as financial) in major infrastructure tie a Band into a cycle of increasing industrial development? Clearly these are not simple questions to address. It is reassuring, however, that at least some First Nation communities are beginning to recognise the issues and are establishing processes to get at them. The

experience being pioneered by the Waswanipi Cree Nation is one example.

Conflict resolution

The small size of most First Nations has seemed to support informal approaches to conflict resolution. In some First Nations, it is felt that because everyone knows everyone else, forest managers will learn about concerns or problems through direct contacts or "through the grapevine". Regular community meetings are also considered to be good opportunities for people to express their concerns. Formal conflict resolution processes seem to be reserved for conflict between the First Nation and other levels of government or stakeholders outside the First Nation. These are often related to implementation of settlement agreements or to issues of jurisdiction.

Regular public input through community meetings is essential to conflict resolution. Warm Springs hosts annual meeting to bring forward the concerns of the community, where they are dealt with through consensus. The forestry department also keeps an "open-door policy". This gives the membership on-going opportunities to address their values and concerns, where they will be brought up at the next forestry meeting. The forestry meetings occur on a regular basis throughout the year. First Nation leaders push for open and transparent discussions, it is therefore important to practice these processes in-house as well.

As First Nation forestry departments gain track-records in managing forest resources, the need to develop formal procedures to mediate between competing interests in the forest may be expected to emerge. The

problem with informal approaches is that not everyone has equal access to forest managers, even in small communities. As in any small community, it can be expected that some people will be more readily listened to than others. This may be related to family connections, force of character, respect or other reasons. Some people may simply not feel willing to express a minority opinion in a public forum.

A first important step in formalising the conflict resolution process is to develop a clear understanding within the First Nation community of which practices are acceptable and which are not acceptable under agreed-upon community standards. This understanding — translated into policy, codes of practice, by-laws, or some other format can form the starting point for resolving conflicts when they happen.

Some progress has been made in this direction. The FNLMA, for example, addresses the need for formal conflict resolution processes in Part IX of the Framework Agreement. General principles are outlined, panels and arbitrators identified, and procedures for neutral evaluation are introduced.

Some communities also appear to be on the cusp of change with regards to conflict resolution. In Garden River, for example, there were previously no processes for the forestry unit or for chief and council to address the conflicts occurring on reserve lands. The main conflicts exist between illegal harvesting by some Band members, and the “catch-up” efforts of forest planning. Until recently there were no tools in place to resolve or address conflicts that arose. With the new forest code and timber by-laws in place, the Garden River forestry unit is in a position

to deal with conflict in a reasonably objective manner, with the full support of the Council behind it.

Capacity

The above discussion has addressed the key elements of the framework for assessing First Nation governance and forest management that was developed in Chapter Two. However, the capacity to carry out the various tasks that must be accomplished merits some consideration at this point.

Historically, First Nations have developed little capacity to manage their own forests. Under the Indian Act, authority was vested in DIAND and was limited to issues related to harvesting reserve timber. Forest management planning is not addressed in the Act and subsequently DIAND has never taken it upon itself to develop forest management capacity within its own organisation. There are, therefore, no forest management programs/resources that can be transferred to First Nations from the department. As a result, First Nations have had little incentive and no resources to build the institutions and policy structures needed to carry out forest governance responsibilities.

Authority for forest management is slowly changing, as the various cases profiled have shown. Will the First Nations that are gaining this authority have adequate capacity to carry out their obligations in a manner that will allow for success? This remains to be seen, as experience is obtained. There are some indications, however, that suggest there is room for concern.

First, several groups have indicated that work to identify and integrate traditional

values tends to take a back seat to conventional commercial-oriented forest management planning. Resources are simply not adequate to carry out activities that do not link directly with revenue-producing activities, or which are not mandated in specific sections of the forest codes.

Secondly, consideration of the numbers of forestry professionals available to First Nations with forestry governance responsibilities suggests a major gap. For example, the Warm Springs Reserve manages some 200,000 ha of forested land and manages a staff of twenty forestry workers. Previous research by NAFA²⁵ has shown that the Menominee Tribe in the United States manages under 100,000 ha of land with a forestry staff of fifteen. Tembec, in central Ontario manages 500,000 ha of forest area with a staff of twenty-five professional foresters plus a number of other professional staff and technicians. It appears that ratios of forest professional to area of forest being managed falls in the range of one for every 10,000 ha to 15,000 ha. This would suggest that the Nisga'a should have a forestry staff of around fifteen to twenty professionals, instead of just three. Likewise, the Teslin Tlingit should have twenty to twenty-five, instead of one part-time position (which is also involved in forest management decisions in a traditional territory fifteen times the area of the Settlement Lands). Waswanipi should have five professionals, just for managing their Category I lands.

²⁵ Presented in the proceedings of "Conference 2000 – Training to Work in the Forest." Hosted by the FNFP, February 14-17, 2000.

The severe under-resourcing of forest management departments has two major consequences. First, First Nations lose the access to good in-house technical advice related to how and to what extent Aboriginal values can be reflected through forest management practices. In some cases, perhaps, the required level of professional attention is given to commercial dimensions of forest management on a contract basis. However, in these situations First Nation decision-makers are basically at the mercy of the technicians to tell them what can be achieved and what is not possible. For First Nation governance to have real meaning, First Nations must have access to capacity that allows for their independent assessment of forest practices.

Funding regimes for First Nation forest governance

First Nations need to ensure that negotiations provide for the adequately resourced structures and institutions required to carry out their emerging governance responsibilities and obligations in forest management. This does not simply involve the availability of a professional forester or two to develop the technical forest plans needed to carry out timber harvests under the prevailing provincial or territorial commercial practices. Rather, capacity must be adequate to fulfil the full range of governance functions — assessing community values; identifying and protecting diverse rights; distributing costs and benefits in an fair and equitable manner; preventing and mediating conflict; and, enforcing jurisdiction.

Sources for funding should allow for unbiased fulfilment of these functions. Therefore, a core level of capacity should

be maintained that is independent of the forest management decisions that are made. This may be the case where funding agreements are negotiated under land claim settlements, such as the Nisga'a and Teslin Tlingit. However, there seem to be expectations that the Nisga'a, at least, will eventually be able to support the costs of its land management governance institutions through revenues raised from the land. For example, the Nisga'a Forest Resources Group recognises that it must support its own operations efficiently through revenues that can be generated through forestry activities. It feels it has an obligation not to erode the financial resources made available through the Nisga'a Final Agreement for "non-productive" administrative functions. This leads to a tension between the resources that can be focussed on non-revenue generating activities, such as mapping important cultural sites and non-timber resources, and those spent on revenue producing timber management.

When First Nation decision-making bodies become dependant for their on-going survival upon revenues that are themselves influenced by the decisions being made, then there will be a danger of conflict of interest. Clearly pressure will be on to make decisions that support commercial forestry operations, over decisions that may reflect non-commercial traditional forest values.

The approach by Garden River of raising funds to support forest planning through local lottery and gaming instruments is a unique and pragmatic way of acquiring funds to develop their evolving forest policy. It is, though, a sad commentary on the state of Canada's commitment to Aboriginal self-governance and the protection of forest environments that First

Nation communities may have to resort to gaming to carry out basic forest management governance functions.

Funding arrangements for the Warm Springs forestry program may be another approach to allow for on-going independent forest management decision-making. Here, the Bureau of Indian Affairs contributes \$1.5 million annually to their forestry program, with additional funding — currently 10% of revenues — contributed directly from forest operations.

Human resources

Access to adequate human resources is a key capacity issue. It is relevant even when financial resources are available to support staff positions. In the past decade, significant efforts have been made — through the Aboriginal Forestry Training and Employment Review program and a wide range of follow through efforts — to promote forestry as a career option for Aboriginal students, and to improve the capacity of educational institutions in the area of Aboriginal forestry education. The number of Aboriginal RPFs is increasing encouragingly. Still, it will be many years before these numbers are sufficient to fill the rapidly increasing demand.

Ideally, the technical aspects of forest management would be carried out by community members who have a good understanding of the values they are mandated to express through their forest management plans. The ability to reflect community values in forest management may continue to push the skill set required by First Nation forestry professionals. New elements to forestry programs will continually need to be developed, as First Nations gain more and more experience in forest governance.

There will also need to develop strong links between new research and skills development for First Nation foresters. For example, continual upgrading may be required to ensure that First Nation foresters gain state of the art knowledge about impacts of harvest methodologies on populations of fur-bearing mammals, on medicinal plants, on non-timber forest product commercial potentials and so on.

In addition to cutting edge technical forest management skills, First Nations also require forestry governance professionals — people who understand the functions of governance and who can confidently link technical possibilities with the call for respecting diverse values and diverse rights. Strong governance skills need to be available and supported by the appropriate institutions and legal frameworks, to ensure accountability, transparency, good communications and effective conflict management. It is crucial, that front line forest managers have strong political support, backed up by policy. The forestry code and by-laws developed by Garden River have the full support of Chief and Council. It is hoped that these tools of regulation and enforcement, clearly supported by the First Nation government, will have the effect of minimising conflicts at the operational level.

Adequate monitoring and enforcement capacity is also required. Conflict is best managed by identifying practices that are inconsistent with accepted values and recognised rights at an early stage. Then information and communication strategies can be used, rather than enforcement and punitive measures. However, early intervention requires significant monitoring capacity. It also needs to be backed up with an effective enforcement ability,

should the offending practices continue. The Warm Springs Forestry Unit, for example, has developed timber sale officer positions that have the authority to enforce the laws created if agreements are not followed. Area foresters complete monitoring of field operations on their routine site visits. This human resource capacity is lacking in the Canadian reserve forests, and must be developed to minimise non-compliance of forest management operations.

Empowerment to create new forest legislation places significant responsibility on First Nation law-makers to ensure that the laws they pass can be implemented as they are intended. For example, the results-based approach of the Nisga'a forest code means that enforcement may need to be done after-the-fact. i.e. when damage has occurred. This approach may be workable, so long as strong accountability for environmental protection is maintained, both amongst the professionals carrying out the work, as well as amongst the political leaders and First Nation bureaucrats who will be charged with establishing harvest targets, letting contracts, and meeting economic bottom-lines.

Critical mass

For most Bands, reserve forests are too small to support a fully capable forest management unit. Yet small reserve forests still require the same range of functions to be carried out as larger forest jurisdictions. How then can First Nations ensure an adequate range of skills, knowledge, and technical capacity are focussed on their reserve forests?

In some cases, efficiency of scale may be achieved by gaining management roles over off-reserve forest tenures, or on

traditional territories. In other situations, First Nations may work together to carry out certain forest management governance functions at a regional level or at the level of a larger Nation level. The Waswanipi Cree, for example, have gained a larger forest land area through access to a forest license on Category II traditional territory. In addition, they are part of the Grand Council of the Cree and the Cree Regional Authority, which deal with larger-scale issues and issues that impact on more than one Cree community.

Research capabilities

There are many unknowns related to managing forests for multiple values. Research that has been funded in Canada has typically focussed on issues of interest to commercial forestry. Many of these areas are of concern to First Nations interested in managing for sustainable supplies of commercial timber.

However, there are a wide diversity of additional research areas that arise in the

context of Aboriginal forest values. For example, what are the relative impacts of conventional versus alternative timber harvesting regimes on commercial trapping? What are the best harvesting techniques to use in order to maintain populations of specific medicinal plants? Can results-based approaches to forest management, such as the Nisga'a are developing, better achieve First Nation forestry objectives than prescription-based management?

As First Nation attempt to address these and many other research issues there will be many opportunities to develop partnerships with research institutions. Such partnerships should help to ensure that the greatest benefits are achieved by ensuring the emerging knowledge is shared across the country — that efforts in one area build upon knowledge and experience developed in another.

CHAPTER FIVE: CONCLUSIONS

Based on the experiences of First Nations from across Canada presented in this paper, it is possible to develop some general conclusions about First Nations governance and forest management at this point in time. These are presented below.

Governance mechanisms are fragmented according to land base

First Nations have had to utilise existing management tool sets in an attempt to fulfill their forest management aspirations. As illustrated by the case profiles, there is yet to be seen in Canada a customized system of management tools that would allow First Nations to develop a truly “Aboriginal approach” to forest management across the range of land

bases that First Nations are increasingly gaining interests in.

Four main categories of forested land base can be identified. These include: 1) Reserve forests; 2) forests within land claim settlements and Treaty Land Entitlement areas; 3) forests within the traditional territories of First Nations; and, 4) forest tenures.

Some of the currently available tool sets that are being used to manage forests within these various land bases are illustrated in Figure 7, below. These include: Indian Timber Regulations; Local First Nation by-laws; land codes under the FNLMA; adoption of provincial forestry codes; and co-management.

Figure 7

Application of Management ‘Tool Sets’ to Various First Nation Land Bases

Tool set	Reserve lands	Newly acquired lands (TLE, land claim)	Traditional territory	Forest tenures
Indian Timber Regulations	X	X		
By-laws	X ¹			
FNLMA codes	X ²			
Provincial codes	X ³	X ^{4, 5}	X ^{3, 5}	X
First Nation-designed management system		X ^{4, 6}		
Co-management		X	X ⁶	

Notes: 1. Garden River is an example where a First Nation has developed by-laws in an attempt to achieve some control over forestry activities on their reserve. 2. While McLeod Lake has considered the FNLMA provision for codes as a means to manage reserve forests, there is yet to be an example of use of these codes actually in practice. 3. Under the Stuart-Trembleur regulations, the Tl'azt'en Nation bands have adopted provincial regulations on their reserve land base as a condition for accessing a provincial TFL. 4. The Nisga'a have adopted provincial regulations on their land claim area during a transitional period, after which they will implement their own forest practices. The balance between commercial and non-industrial use of the forest will only emerge over time. 5. Waswanipi is an example where commercial harvest permits are issued by the province for lands covered by the treaty. 6. The Teslin Tlingit have agreed to develop and implement a forest management plan that covers both settlement lands as well as Crown lands within their traditional territory. Authority over Crown land is shared with the federal government through a co-management arrangement.

In rare instances, provision has been made for First Nations to design their own

management systems, although sufficient time has not yet passed to assess the adequacy of these arrangements. Figure 7 illustrates how different management tool sets have applied to different land bases.

*Poor fit between the available
management tools and
Aboriginal vision*

First Nations share a common desire to implement forest management systems that will help them to achieve their vision for the forest. This is the motivating force behind each of the initiatives profiled in this paper. It is clear, however, that the available tools provide an awkward ability, at best, to undertake this management effort.

In some instances, First Nations have developed management plans, but have little ability to enforce these plans on their own reserve forest lands. Inadequate enabling legislation, coupled with severely inadequate funding mechanisms are major contributors to this enforcement challenge. This enforcement problem is further exacerbated by the degraded state of reserve forests. Past abuse of the land base by agents outside the control of the First Nations, has severely eroded the quality of the forest, putting tremendous demands on First Nations now attempting to regain control over the use of these lands. Lack of access to economic opportunities in off-reserve forests further increases the strain on reserve forests, caused by members of First Nations who seek to develop livelihoods based on harvesting forest timber resources.

In other cases, First Nations have managed to gain access to management over Crown forests within their traditional territories or treaty areas. As noted earlier, however, this access is typically provided

contingent to agreement by the First Nations to manage these areas in accordance with existing provincial guidelines. As a result, the ability to implement forest management systems that may exemplify values other than those of industrial forestry is curtailed.

In spite of this poor fit, the various non-Aboriginal models are all that have been available to First Nations. The experience suggests that some progress can be made within the constraints of these models. Much of this progress has been in the area of decision-making. First Nations have typically incorporated more inclusive decision-making processes in the development of forest management plans in order to address the political realities found within their small communities, and in respect of traditional Aboriginal understandings of the value of each member's voice.

But will these 'conventional' forest management tools ultimately be adequate for First Nations to achieve their unique forest-related aspirations. Or will the use of these systems inevitably lead to a compromise of traditional Aboriginal values in favour of more commercial and industrial-oriented values? The jury is still out on this question, although the evidence appears to support compromise over successful achievement of First Nation visions. There is little evidence to suggest that the current arrangements have the ability to allow for an appropriate focus on Aboriginal forest values, or to incorporate new institutional forms that reflect traditional Aboriginal governance models.

*Ability of traditional Aboriginal
forest governance models is
untested*

If the current arrangements appear to be inadequate, it must also be concluded that there has been little progress in developing and testing more purely Aboriginal forms of forest governance. As illustrated by the cases, there has been little experimentation allowed by governments in this area. Where First Nations have gained jurisdiction over significant forest land bases, this has typically come with obligations to follow provincial practices. Even were a transition toward more fully First Nation-developed management practices is envisioned — such as the case with the Nisga'a following their transition period — financial arrangements may continue to put on pressure toward industrial forest use. Even on reserve land bases, the prevailing regulatory environment, the Indian Act and Indian Timber Regulations, is unable to give substance to First Nation initiatives.

The implication of this lack of specifically tailored “Aboriginal” forest governance models is that it is not possible to assess what, if any, more traditional models might adequately address the complex demands of modern First Nation communities. A particular challenge that is presented in most First Nation communities is to manage an acceptable balance between economic development; revenue generation; and, promotion and maintenance of non-commercial values within the forest.

*Ability to accommodate non-
Aboriginal values will be needed*

Up to the present time, efforts by First Nations in the area of forest management governance have focussed on gaining a reasonable level of influence over how forests are currently managed. As noted already, these efforts have, at best, simply resulted in Aboriginal influence over conventional management regimes that are designed to achieve industrial forestry objectives. Much advocacy and progress is needed before more fully Aboriginal systems are implemented in areas of Crown forest.

However, when this does occur, these systems will need to be able to accommodate a power shift from Aboriginal interests as activist, to one where the Aboriginal institutions hold control over forest-based decision-making. This must entail an ability to work productively with non-Aboriginal interests in order to achieve a climate of co-existence. The historical track record of Aboriginal relations with white settlers should provide a firm foundation for such an approach. In the past, when Aboriginal peoples have been in positions of equal or greater power vis-à-vis the settler population considerable generosity has been demonstrated in a true spirit of desire for such co-existence.

Appendix A

A TOOLKIT FOR PLANNING AND NEGOTIATING FOREST MANAGEMENT GOVERNANCE

A TOOLKIT FOR PLANNING AND NEGOTIATING FOREST MANAGEMENT GOVERNANCE

This discussion paper has only begun to address the subject of First Nation governance in relation to forest management. Many of the experiences that have been profiled are very recent and are developing at a fast pace. Any conclusions about the relative merits of alternative approaches to forest management governance regimes would probably be premature at this point in time.

Nonetheless, many First Nations are currently facing situations in which they must make plans, or enter into negotiations that will influence the way in which forest management decisions will be made on their reserve lands, newly acquired lands, forest tenures, and on their traditional territories. The experiences profiled in Chapter Three, combined with the framework developed in Chapter Two, can be used to create a toolkit or checklist to assist in this process of planning and negotiation. While it may be too early to make conclusions about the best ways to do things, we can at least identify many of the important decisions that should at least be considered and addressed.

The following toolkit, therefore, is an attempt to set out a template that can be adopted by First Nations to help guide them as they establish governance regimes for the management of forests. It is the first-generation version, and is designed to evolve with use and with on-going reports of First Nations forest management governance experience.

The Forest Management Governance Toolkit — Version 1.0

Area One: Jurisdiction

First Nation forest management decisions will need to apply to some or all of the following four types of land:

- Reserve forests
- Newly acquired lands (TLE, fee simple, special claim ...)
- Forest tenures
- Traditional territories

For each of these land types, a range of jurisdictional options may exist:

- Formal authority based in law
- Moral authority based upon Aboriginal right to self-government
- Administrative authority based upon delegation, policy, etc.
- Shared authority based upon co-management regimes
- Informal influence

Administering the responsibilities that arise from jurisdiction requires careful planning. Who will carry this responsibility formally and in practice? Some or all of the following groups may become involved, and the choices could influence how accountable and transparent decisions are to the members of the First Nation:

- Band Council and its Departments
- Regional First Nation government (Tribal Council, Nation government)
- Development corporation or wholly-owned company
- Traditional or hereditary resource guardians
- Consultants
- License-holders and harvest contractors

Considerations might include:

- ❖ the level of effort and cost required to achieve the desired level of jurisdiction, for each category of land;
- ❖ willingness to take an “activist” stance;
- ❖ the point of balance between the most pragmatic decision and the most “just” decision;
- ❖ opportunities to achieve improvement today, while working for the best solution tomorrow.
- ❖ capacity and willingness to fulfil obligations resulting from jurisdiction.

Area Two: Values and preferences

There are two fundamentally distinct ways of approaching forest management:

- ❖ “Man is the boss” — forest management focuses on managing the forest ecosystem to achieve human objectives

- ❖ “The Land is the boss” — forest management focuses on managing human activities to maintain a balanced relationship with the forest

It may not be possible — or desirable — to choose one of these options to the exclusion of the other. However, recognition that there are significantly different ways of viewing forest management may help to assure that all perspectives and voices in the community are heard.

In order to carry out the responsibilities that are associated with jurisdictional power, the First Nation authority must know what values are to be reflected in their policies, decisions, and actions.

The following checklist may be useful in approaching community consultations:

- perspective of traditional knowledge-holders
- forestry professionals and technicians’ perspective
- Aboriginal forestry business perspective
- understanding of economic possibilities, limitations and alternatives
- community member preferences: youth, women, elders, employed, unemployed
- attention should be paid to the needs of future generations.

Some important things to consider include:

- ❖ There is merit in simply identifying the full range of values.
- ❖ Some tough choices may have to be made if a “community values statement” is to be realistic and useful. Not all forest values are mutually compatible. How will these choices be made in your community?
- ❖ How far can forest management achieve commercial and employment objectives, while reflecting traditional values?
- ❖ Experience in integrating Aboriginal forest values with commercial forestry is lacking. Experimentation may be needed and there should be a reasonable expectation that some trial, error and failure may occur. These risks should be managed.
- ❖ In communities where “traditional values” are not evident, it may be worth asking whether these values have been deliberately replaced by other values, or if some other forces are at work.
- ❖ What processes need to be put in place to assure that values are continuously assessed?

Area Three: Rights and obligations

As your First Nation gains jurisdiction over its forest resources your governance institutions gain new responsibility to recognise and balance competing rights.

There are three important sources of rights in the forest:

- Aboriginal inherent rights to harvest and hunt – past, present and future
- Contractual rights that arise from licenses and other agreements
- Moral/political rights of those making a living from the forest

Some considerations:

- ❖ First Nation governance institutions need to consider how they will address the various rights that exist within their areas of jurisdiction.
- ❖ Forest management choices may create new rights that may conflict with inherent rights. It is worth considering the long-term implications of forest strategies in this light.
- ❖ Future generations (and perhaps past generations, depending upon one's outlook) may also have rights that need to be considered. For example, do decisions today foreclose on opportunities to exercise future rights? This includes obvious things such as loss of forest ecosystems, but may also include decisions that maintain poverty — also known to foreclose on future options.
- ❖ Entry into business arrangements that involve high financial or political investments may place obligations on a First Nation organisation or government that make it difficult to address issues of rights in an impartial way.
- ❖ It is good for governance institutions to avoid conflict of interest positions.

Area Four: Sharing of costs and benefits

Industrial development (wage jobs and commercial logging are two examples) often carries social and economic costs as well as benefits. Benefits may be increased income, self-esteem, personal motivation. Costs may include increased stress at home, loss of domestic production (less time to look after the children, hunt, fix things around the house), decline in the health of the forest and so on, reduced access for traditional pursuits.

First Nations should consider how their forest management decisions will affect four dimensions of wealth creation:

- natural wealth** – the “state of forest health”.
- human capital** – literacy, education, skills and knowledge; physical, mental, and spiritual well-being; personal motivation, discipline and values.
- social capital** – strong institutions (starting with strong families); government policy environment; social cohesion; public and domestic security; business organisation, and entrepreneurship; capacity for forestry research and planning.
- infrastructure** – the equipment, buildings and facilities needed to carry out social and economic activity and to turn creative ideas into productive reality.

Some specific considerations include:

- ❖ Does your First Nation’s development strategy take a balanced approach to investing in each of these four areas?
- ❖ Are the individuals who pay the costs also going to reap the benefits? Or are the jobs and incomes going to a few individuals, with the costs being felt by other members of the family or community?
- ❖ Are benefits being invested for the future or simply being consumed today?
- ❖ How will future generations reap the benefits? (e.g. increased motivation today leads to stronger individuals and communities for tomorrow; decreased substance abuse related to well-being from having work). What costs might they pay? (e.g. damage to the environmental; increased stress leading to substance abuse or family break-down and related cycles of poverty or Fetal Alcohol Syndrome).
- ❖ The forest belongs to all members of the community. Who is accountable for ensuring that the benefits arising from forest management decisions are distributed equitably across families in the community and across generations?
- ❖ How transparent is the decision-making process? Are community members involved in, and able to understand, what choices are being made and why?
- ❖ Does your First Nation attempt to monitor social as well as economic benefits and impacts of its development projects?

Area Five: Resolution of conflicts

Wherever there are varying values and whenever costs and benefits of public activities are unequally distributed, there are likely to be conflicts. As First Nations gain jurisdiction over forest management, they will need to consider how to resolve these conflicts in productive ways.

There are several approaches to conflict:

- conflict avoidance
- ad hoc and informal approaches
- formal conflict resolution procedures

These may all function within a First Nation at one time or another. It is worth considering how these may best work in your situation.

- ❖ Forest management objectives, policy and enforcement strategies should be clear and based on community agreement. The best enforcement is voluntary self-enforcement.
- ❖ The forest management plan, and accepted forest practices, need to be well-communicated to community members. Regular community meetings can be helpful.
- ❖ Monitoring capacity is needed so that infractions can be detected and stopped early. This is easier than letting things get out of hand.
- ❖ Informal approaches to conflict are typical in many small communities — “We don’t need formal processes, since everyone knows everyone.” However, this may lead to *ad hoc* approaches to resolving conflicts. Transparency in decision-making may be lost and perceptions of unfairness may arise.
- ❖ Formal procedures to address grievances can help to instil trust in First Nation governance capacity and fairness. Decisions can be made on the basis of clear criteria that were agreed to before a specific situation arises.

Area Six: Capacity

Gaining jurisdiction over forests and forest management is an important step in re-establishing Aboriginal relationships to the land. During the last century, however, many of the traditional forest management governance mechanisms have been lost. The context for forest management has also changed. As a result new capacities need to be developed.

Funding for First Nation forestry governance comes from a number of sources:

- self-government funding agreements (core-capacity)
- land-claim trust funds
- stumpage revenues
- community-based fund-raising
- project-funding

Generally, First Nation forestry departments in Canada are severely under-funded and under-staffed. Many First Nation reserves may be too small to support fully developed forestry departments. Some approaches to improve the critical mass include:

- increase forest management jurisdiction through access to tenures or co-management of traditional territories.
- combine Band-level with regional-level functions (e.g. Tribal Councils)

Some things to consider include:

- ❖ Has your First Nation managed to negotiate adequate resources to complement the jurisdiction you have gained?
- ❖ Forest management is often funded from the proceeds of commercial forestry activities. Careful consideration should be given to the potential impact this may have on the forest planning process — can non-commercial values be reflected when the First Nation authority needs to make decisions that will support its on-going survival? Danger of an “administrative conflict of interest”.
- ❖ In addition to professional foresters and forestry technicians, forestry governance professionals are needed — people who understand the functions of First Nation governance and who can link technical possibilities in the forest with the need to respect diverse values and rights and who can build the institutions and legal frameworks to ensure accountability, transparency, good communications and effective conflict management.
- ❖ Do the front line managers enjoy the full support of Chief and Council?
- ❖ Critical mass. Getting the right mix between local capacity and functions versus regional functions is an important challenge. For example, some Tribal Council forestry units may focus on research and negotiation with provincial government, but avoid local enforcement. Gaining jurisdiction over larger forest areas may affect the way management is done on-reserve. Pressures may tend to push for province-like values to be transferred to the reserve forests.