

Aboriginal Forestry in British Columbia

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Abstract

Aboriginal Forestry is a recent development in the forestry industry of British Columbia. Due largely to a series of forestry-related court cases, *Aboriginal rights and title* are being increasingly recognized and defined. There have been significant forest tenure reforms and policy amendments that have enabled First Nations to play a larger role in forest land use planning. This has led to an increased inclusion of *Aboriginal Interests* – an Aboriginal right to the land recognized and affirmed in the *Constitution Act, 1982*, when the government or a private company is making decisions regarding forestry operations. Aboriginal Interests are unique. The increased participation of Aboriginal peoples in the forestry industry has led to an increase in direct, forestry-related economic benefits, protection of culturally and traditionally significant features, and growth in infrastructure to support a healthy and sustainable community.

In addition to court case rulings, forest tenures, and policy amendments, there is an increasing amount of programs, associations, and organizations devoted to aiding and promoting Aboriginal Forestry. Some of these initiatives are associated with provincial and/or federal government, while others are privately owned or non-profit organizations. There are similarly barriers that impede a complete blooming of Aboriginal Forestry in its full context. These barriers include, but are not limited to, partial recognition of Aboriginal rights and title, inadequate Non-Timber Forest Product (NTFP) policies, differing visions of land management, market conditions, and capacity issues.

Given the historical context of the relationship between First Nations and the forestry industry in British Columbia, there has been a staggering amount of progression made by the First Nations in their tireless pursuit of Aboriginal rights and title recognition, and control over their traditional land. Currently, over 15% of the provincial Annual Allowable Cut (AAC) is held by First Nations, a figure that has increased from under 8% in 2010. If these recent trends continue, there will soon be a dominance of First Nation participation in the forestry industry, aiding in enabling true *Aboriginal Forestry*.

Key Words: First Nations, resources, management, government, policy

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Introduction

British Columbia and its forests have been inhabited and utilized for millennia. The Aboriginal people of British Columbia have been using trees to create shelters, tools, canoes, and even sourcing food since inhabitation. The purpose of this paper is to provide a definition of Aboriginal Forestry, provide a background of British Columbia's forestry industry and how the forestry industry has shaped the relationship between Aboriginal communities and provincial/federal government, discuss how Aboriginal Forestry in the province came about, and discuss the initiatives for, and barriers impeding Aboriginal Forestry in British Columbia.

Aboriginal Forestry is more than just forest operations, it is an all-encompassing, Aboriginal led land stewardship, with potential to design and organize multi-use forests to enhance First Nation livelihood. Aboriginal Forestry is a form of land management centered on Aboriginal Interests, incorporating traditional values, knowledge, and culturally important features of the landscape in land use planning decisions. Aboriginal Forestry is a method for First Nations to develop capacity in infrastructure, business, education, and other vital community areas.

There has been slow, but continually increasing recognition of Aboriginal rights and title in British Columbia, largely through court case decisions. An increasing amount of private and government programs, associations, opportunities, and initiatives are promoting Aboriginal Forestry. This enables First Nation participation in forest land use planning – bridging the gap from '*Forestry for First Nations,*' to '*Forestry with/by First nations,*' and eventually to '*Aboriginal Forestry*' (Wyatt, 2008).

Background and History

Late 1700's – 1867

First contact between the Aboriginal communities of what would become British Columbia and the European settlers that first explored the area occurred in the late 1700's and early 1800's. Alexander Mackenzie explored portions of northern British Columbia on behalf of the North West Company (NWC) in 1793, encountering Aboriginal communities as he and his crew travelled along the Peace River, through part of the Fraser River, and eventually over the coastal mountains to the Pacific Ocean. His task was more of a reconnaissance mission, and the route he travelled proved too difficult to be practical for fur trade to the Pacific Ocean, he kept journals of his encounters. (UBCIC 2005)

Simon Fraser was commissioned by the NWC to follow up on Alexander Mackenzie's explorations, but rather than just reconnaissance, Fraser's mission was to establish trading posts along his route. The first permanent European settlement west of the Rocky Mountains he established was called Trout Lake Fort, located at what is currently known as McLeod Lake. This district was dubbed New Caledonia in honour of Fraser's homeland Scotland. Continued explorations lead Fraser and his assistant James McDougall to the discovery of Carrier Lake, later renamed Stuart Lake, an area that proved to be profitable for fur trading. This became the site of what would be the second permanent European

settlement west of the Rockies, Fort St. James, established in 1806. These trading posts were built entirely out of rough, hand sawn and hewn timber sourced from immediately around the building sites, the first basic form of harvesting and manufacturing timber by European settlers in the province. Prior to these Forts and trading posts being established, the only timber harvested and utilized from present day British Columbia by Europeans was to repair ships along the coast. (UBCIC 2005)

In 1821, the NWC eventually merged with the Hudson Bay Company (HBC), which ultimately took control over most of the trading posts established in British Columbia, Washington, Oregon and Alaska. From this point forward, more detailed recordings were kept of the culture, subsistence, health, trading patterns, and social interactions of the local Aboriginal people. In the decades to come, there were times of peace and times of tension between the Aboriginal communities and the European settlers that began flocking into the province, imposing their wishes, and disregarding Aboriginal Interests. (UBCIC 2005)

In 1846, the 49th parallel became the northern border of the United States and the southern border of what would soon become British Columbia and Vancouver Island, after Britain and the United States signed the *Oregon Treaty Act*. The first mechanical sawmill to be constructed in British Columbia was completed by the Hudson Bay Company (HBC) in 1848, situated near the southern tip of Vancouver Island, in Millstream. A second mechanical mill was built in 1854 in Nanaimo by the HBC. Both mills distributed lumber to Vancouver Island and the Lower Mainland of British Columbia, but also exported wood to California and Hawaii. The first private sawmill to be built in British Columbia was created in 1850, located in Sooke, and established by Captain Walter Colquhoun Grant of the Royal Scots Greys (Peers, 2009). Britain began to impose their control over what was to be deemed 'crown land' – land in which the title was held by the king or queen of Britain. In 1849, HBC leased the entirety of Vancouver Island from Britain with the stipulation that HBC encourage settlements on the island. Negotiations began the following year for eight Aboriginal territories to be permanently surrendered to the HBC in return for minor reserves to live and rights to fish and hunt. Warriors from the Saanich territory, one of the eight Aboriginal territories in negotiations with HBC on Vancouver Island, forcibly stopped logging operations carried out by the Vancouver Island Steam Saw Mill Company within the Saanich territory. By 1854 there had been 14 Douglas treaties signed, all on Vancouver Island and named after James Douglas, the Chief Factor of HBC. In addition to the Douglas treaties, the only other treaties to be signed in the province are Treaty 8 and the Nisga'a Treaty (UBCIC 2005)

In 1858, James Douglas resigned from the HBC to enroll in his new position as the first Governor of Britain's mainland territory, now known as British Columbia as a result of the 1858 *British Columbia Act*. Douglas was given exclusive power to designate parcels of land to settlers and to create Indian reserves for the Aboriginal people. Douglas resigned in 1864, and Joseph Trutch took power over power Aboriginal land and reserve allocation and reduced the reserve size to only ten acres for each family – a reduction of roughly 90%.

The demand for timber began to increase in the interior of the province as a result of the 1858 gold rush. As the coastal and interior communities began to expand, larger sawmills were established to service the domestic and export needs. It was in 1862 that the Cariboo Gold Rush peaked, sending over

thirty thousand miners into the Carrier Nation via the Fraser River and Canyon. A wagon road was soon initiated and completed by 1865 that travelled through the Carrier Nation, regardless of the intense opposition by the Tsilhqot'in people, a group of Aboriginal communities south of the Carrier, whose territories the road also travelled through. It was also in 1865 that the *Land Ordinance Act* was introduced. This act was BC's first legal forest tenure system, a way in which the land could be leased to a private company to log and process the wood on Crown land (UBCFL, 2009). (UBCIC 2005)

1867 – Early 1900's

The relationship between Aboriginal people and provincial and federal government has evolved considerably since the establishment of the Dominion of Canada under the *British North America Act* (BNA) and the inclusion of the province of British Columbia in 1867 and 1871, respectively. The BNA gave British Columbia's new European-settler government authority over Aboriginal communities and their territories within the province, which the government then used to create reserves and set boundaries around parcels of land allocated to the head of each family. (UBCIC 2005)

In 1874 BC passed the *Land Act*, which gave BC authority to negotiate control over First Nations traditional territories, and limited reserves at twenty acre parcels. Canada vetoed the *Land Act* after BC refused the recommendations and encouragement to implement an eighty acre parcel per family. After a year of continuing disputes, BC passed a revised *Land Act*, but kept reserves at twenty acre installments. Just two years after the controversial *Land Act* was implemented, the government of Canada introduced the *Indian Act 1876*, which amalgamated all existing legislation involving the First Nations communities and their traditional territories. This act was eventually modified to restrict First Nations people to reserves, and to ban traditional practices and public congress. By 1885, the *Indian Act* escalated to restrict many cultural practices, such as a ban on potlatch's, and every Aboriginal person caught participating was considered to be carrying out an offense. (UBCIC 2005)

In 1884 the *Timber Act* was introduced, which implemented the stumpage fee system, a payment to the Crown for harvesting the wood from an area. Industrial logging soon began to form, creating a globally competitive timber market and providing strong provincial economic growth. (MFLNRO 2012A)

Early 1900's – Present

In 1912, British Columbia introduced the *Forest Act*, a result of the 1909 *Royal Commission on Timber and Forestry* that produced 21 recommendations by the commissioners with regards to managing the province's forests. The *Forest Act* introduced designated forest reserves from which timber can be harvested, and also timber sale licenses, providing private companies the ability to harvest a certain stand just once, over a five-year period. This is when the concept of sustainable yield was first introduced, setting precedence for a new era in the forestry industry. In the decades to come, a competitive forestry industry quickly expanded throughout the province, building British Columbia's economy and fueling settlements. This province wide expansion of settlements, made possible and driven largely by the forestry industry, is the time when Aboriginal communities began to recover from epidemics, started fighting harder for their rights and title to the land and refuted with increased effort the inadequate reserve system. (UBCIC 2005)

Aboriginal communities and Indian chiefs pursued the ongoing battle for treaties, increased reserves, and rights to hunt and fish. They did this through several methods, signing petitions, sending Chiefs to meet with the premier, even sending a group of Indian Chiefs to Ottawa to protest the ongoing disputes. In 1909, the *Cowichan Petition* was drafted on behalf of the Quw'utsun' people, which declares Quw'utsun' ownership and control over their traditional territory since 'time immemorial.' Prime Minister Wilfrid Laurier responded to the petition by consulting Thomas Robert Edward MacInnes, who believed that Canada had a duty to seek a legal land claim on the Aboriginal people's behalf against the province of BC due to unextinguished Aboriginal Title. (UBCIC 2005)

Disputes continued for years to come, Aboriginal groups continued asserting their ownership and title to the land, whereas the provincial government continued to deny the allegations. This was based on the assumption that Aboriginal title had been extinguished at time of European settlement. Several methods of consultation and confrontation persisted between the two parties. The major issue being discussed by the government was that of reserve size, whereas the Aboriginal groups were discussing a much larger matter, title to the land and resources. The Aboriginal people of British Columbia, increasingly frustrated with the state of Indian affairs in the rapidly growing province, brought their concerns to the Premier of BC, Sir Richard McBride, who dismissed their concerns as irrelevant and continued focussing on expanding provincial settlements without regard for the Aboriginal people. Indian Chiefs and delegates raised their concerns with Sir Robert Borden, the Prime Minister of the Dominion of Canada at the time, who agreed with the concerned voices and was equally frustrated with BC's unwillingness to appropriately handle the issues raised by the Aboriginal peoples. Borden appointed Dr. James Andrew Joseph McKenna as a mediator to negotiate between the dominion and provincial governments. (UBCIC 2005)

In 1912, the *McKenna McBride Agreement* was reached, which essentially outlined the terms for a combined Provincial-Dominion Royal Commission, the *McKenna McBride Commission* (MMC). McKenna and McBride spent the next few years travelling throughout the province, recording testimonials and gathering oral "evidence" of the issues that were of concern to the Aboriginal communities: land title, reserve size, hunting/fishing/trapping rights, encroachment of settlers on their territory and agriculture production. (UBCIC 2013)

The MMC found that, regarding timber, there were three ways to provide Aboriginals with merchantable lumber to be harvested, whether or not it was what the Aboriginal people (*White et al.* 1916),

1. Providing Aboriginals with harvesting permits for small amounts of timber,
2. Temporarily provide Aboriginal people with equipment to harvest the timber, hiring Aboriginal people for the work, using excess funds to support land development
3. Sell the standing, merchantable timber to First Nations with a designated price and time for harvest.

The first two options are the first forms of semi-legitimate, Aboriginal-involved industrial forestry proposed in BC. (UBCIC 2013)

The MMC was finally published in 1916, which recommended that many existing reserves be reduced in size due to a variety of reasons, while several more reserves are increased in size due to inadequacy (White *et al.* 1916). There was nearly twice as much land added to existing reserves than there was land cut-off from other reserves, however, the total value of added reserve land was only one-third the value of the cut-off reserve land. Reserve land was to be distributed to family heads at an average amount of roughly 60 hectares, although some families were granted as much as 200 hectares, while others received less than 20. Acreage distribution was largely based on family location; interior families were allocated more because they did not have the ocean to include in their resources, so coastal families received less. The issue of land title had not been addressed by the MMC. (UBCIC 2013)

The Allied Tribes, consisting of the Nisga'a, Okanagan, Dakelh, Tsilhqot'in, Tahltan, St'ac'imc, Secwepemc, Sto:lo, Nlaka'pamux, Salish, Kootenay, Kaska-Dene, Q'uwit'sun, Tsimshian, Gitksan, Nuxalk, and Haida people, drafted a *Statement of the Allied Indian Tribes of BC for the Government of British Columbia*. This draft summarized the land title issue, stressed Aboriginal proprietorship over the land, and was given to many Aboriginal communities across BC before being submitted to the Premier, John Oliver. (UBCIC 2005)

The MMC gave way to *The Dominion Indian Affairs Settlement Act of 1919* and the *British Columbia Lands Settlement Act of 1920*. These documents gave the dominion and provincial governments the authority to adopt and alter the recommendations of the MMC (UBCIC 2013). A follow up report was produced on the two acts to review and make any further recommendations. Ultimately, the total area of reserve land was reduced by an additional roughly 4,000 hectares, and less land being allocated for new reserves, all without Indian consent, despite that this process was contrary to the existing *Indian Act*. This report aided the provincial and dominion governments, but paid no consideration to the Aboriginal communities, and still did not resolve the issue regarding land title.

The Allied Tribes denounced Canada and BC, and strengthened their push for a judicial hearing on the topic. This issue would eventually become one of the most heated topics regarding the relationship between Aboriginal people and the provincial and federal governments, and would also ultimately lead to the creation, adoption, and promotion of Aboriginal Forestry. (UBCIC 2005) The *Indian Act* was amended in 1927 to outlaw financial and legal advice for Aboriginal aid. This eliminated Aboriginal expectations at the time that their case would be heard in London's Privy Counsel. (UBCIC 2005)

In 1931, the *Native Brotherhood of British Columbia* (NBBC) was formed by the Tsimshian and the Haida. In 1943, the *North American Indian Brotherhood* (NAIB) was formed by Andrew Paul, a prominent political figure in Squamish. When World War II ended in 1946, fifty-one of the most powerful nations on the planet formed the *United Nations* (UN), whose purpose it is to endorse peace and equality around the globe. This resulted in Canada creating a special committee to review policy regarding Aboriginals in the country. Members from the NAIB, NBBC, and various other leaders from Aboriginal communities requested civil rights and equality for Aboriginal people. In 1951 the *Indian Act* was modified once again, this time reversing violations of Aboriginal civil rights, such as seeking Aboriginal Title and engaging in potlatches. However, throughout this entire time and for years to come, British

Columbia's forestry –fueled economy and settlements were rapidly expanding throughout traditional Aboriginal territories with unresolved land title issues. (UBCIC 2005)

The *Royal Commission of Forest Resources of British Columbia 1945* introduced the idea of local forest management, community forests, which gave rise to the Mission Municipal Forest. This would be the only community forest established for decades. Amendments to the *Forest Act* were made in 1947 that introduced "Public Sustained Yield Units," soon to be known as Tree Farm License Areas and Timber Supply Areas. These areas permitted long term tenures, allowing the areas to be managed for a long term sustainable supply. In 1948, amendments to the *Forestry Act* introduced Woodlots as a form of forest tenures for farmers. (FBCWA 2007)

In 1968, the Nisga'a entered a provincial court case against the province of BC recording that the Nisga'a people had never surrendered title to their traditional territory, and reiterate that title still belongs to the Nisga'a people. The courts decided against the Nisga'a, declaring that at time of Britain settlement, Aboriginals were not considered to have a civilized, organized society with proprietorship over land. From here, the case is taken to Supreme Court of Canada as *Calder v. Attorney General of BC*. The Supreme Court of Canada reached a verdict on *Calder v. Attorney General of BC* in 1973, ruling that the Nisga'a in fact held title over their territory prior to the creation of BC, but splitting decision on whether or not title had been surrendered since the creation of BC.

A year later, Prime Minister Pierre Elliot Trudeau and Jean Chretien, Minister of Indian Affairs, implement a hostile assimilation policy dubbed "The White Paper." That year, a "Red Paper" is produced in retaliation by the Indian Association of Alberta (IAA) that endorses the recommendations made in 1966 by Indian Affairs, classifying Aboriginals as Canadian citizens with unique rights centred on disadvantages, "Citizens Plus." The Union of British Columbia Indian Chiefs (UBCIC) was founded by nearly 150 chiefs and representatives from around the province as a result of the White Paper. The UBCIC produced the *Declaration of Indian Rights: The BC Indian Position Paper*, the "Brown Paper," which was built from the Red Paper, only stressing more intensely the need for acknowledgement of Aboriginal title. (UBCIC 2205)

In an effort to fulfill commitments from, and adding amendments to, the *Constitution of 1867*, Canada introduced the *Constitution Act of 1982*. Included in the new Act, section 35, is "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." There was definition or scope of aboriginal rights, and the act failed to define or outline criteria for Aboriginal Title, which would ultimately be left to be decided upon by a series of court cases. (Federal Government of Canada 1982)

Two landmark court cases were decided by the Supreme Court of Canada in 1997, *Delgamuukw v. British Columbia*, and *Haida Nation v. British Columbia*. The origins of the Haida case can be traced back to 1961, when the Provincial Government issued Tree Farm License (TFL) 39, covering a portion of Haida Gwaii. The Haida Nation has claimed title to all of Haida Gwaii and the surrounding waters, which has not been extinguished, or formally recognized by law. They also claim rights to harvest western red cedar for traditional uses, which were being impeded by the harvesting operations. In the Haida case, it

was decided that the Crown, represented by the province of British Columbia, has the sole duty to consult and accommodate First Nations where forestry operations have potential to adversely affect traditional uses of the land which the First Nation is claiming right and title to. The claim of right and title to the land does not need to be proven, however, there needs to be a strong claim that there is right and title. The breadth of consultation and accommodation required by the Government of British Columbia are proportionate to the strength of claim by the affected First Nation. This means that if the First Nation can provide a strong claim that they have right and title to the land, than the government will have to provide an equally strong consultation and potential accommodation. This can range from revenue sharing to inclusion on decision making to direct award forest tenures or some sort of combination. (SCC 2004)

The Delgamuukw case started in 1984, when the Government of British Columbia refused to partake in the dawdling Federal Land Claims Process with the Wet'suwet'en Nation and the Gitksan Nation, who claimed right and title to 5.8 million hectares of land in the north-west of the province, encompassing 133 separate territories. The Delgamuukw case was ruled in 1991 that Aboriginal Title had been extinguished in the province, which was quickly appealed and eventually ruled by the Supreme Court of Canada (SCC). The decision was ruled in 1997, recognizing Aboriginal rights and title exist, and that Aboriginal title is the right to the land itself (Sterritt 2002). It was also decided by the SCC that oral history was suitable as a form of substantiating evidence, and can in fact be more substantial than written histories of an area. This is important for First Nations to be able to prove they have inhabited an area, and therefore have held right and title to the land for centuries, if not millennia. (BCTC 1999)

The Supreme Court of Canada (SCC) ruled that Aboriginal Title was a communal right to a First Nation that is protected under the *Constitution Act of 1982*. It was also ruled that Aboriginal Title, as a unique form of land ownership, cannot permit land uses that are detrimental to the land and the connection that the Aboriginal group has to it. Finally, the SCC also ruled that Aboriginals can only surrender Title of the lands to the Federal Government. (AANDC 2010b)

In 1996, a Royal Commission on Aboriginal Peoples was created to review the relationship between the governments in Canada and the First Nations, including the Inuit and Métis. The final report produced 440 recommendations to significantly change how the government interacts with First Nations, Inuit and Métis. These recommendations included recognition of Aboriginal governance and an increase in Aboriginal land and resource base. (Institute of Governance, 1997)

In 2007, the United Nations adopted the Declaration on the Rights of Indigenous Peoples in an effort to restructure the global recognition of indigenous rights. It wasn't until November of 2010 that Canada officially signed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This was a significant movement towards equality regarding the Aboriginal people of Canada (United Nations, 2008)

The history outlined above has demonstrated there has been a trend from the governments of Canada towards recognizing Aboriginal people as having a unique form of government, traditions and culture. In

doing so, the governments have also sincerely included Aboriginal people in land and resource planning across British Columbia.

Initiatives Promoting Aboriginal Forestry

Since the birth of the forestry industry in British Columbia, there has been, until recently, somewhat of an exclusion of First Nations input regarding forest land management. This has changed over the years after a number of court cases and new legislation are requiring more consideration of First Nations interests on behalf of the provincial government, and introducing forest tenures that allow First Nations to incorporate cultural values in Land and Resource Management Plans (LRMP). This has led to more inclusion of First Nations interests in land management decisions, and has resultantly increased the amount of land allocated for First Nations to manage. Aboriginal Forestry fosters infrastructure and capacity building to enable local First Nation economic growth and stability, supporting traditional and cultural practices and institutions. (Wyatt 2008)

Consultation and Accommodation

Due primarily to significant court case decisions, there is an obligation solely on behalf of the government to adequately consult, and if necessary, accommodate First Nations interests in land use planning decisions when proposed activities in the planning area could adversely affect First Nations traditions and use of the land (*Haida* SCC 2004). There are many levels and forms of consultation that the government of British Columbia can embark upon when consulting with First Nations. This can range from notification to First Nations of a decision that was made by the government, to sincere inclusion and co-management in decision making. The consultation process must be embarked upon in good faith by both the provincial and federal government and First Nations, with the objective of successfully reaching a workable agreement. The depth of consultation should be proportionate to the strength of claim of Aboriginal rights and title, and the degree to which their asserted rights would be infringed upon. The full scope of the proposed project and all potential adverse effects should be fully understood by the First Nations; however, there is typically no ability for First Nations to completely stop a proposed project. (MNP 2009)

There can also be many forms of accommodation the government can offer to First Nations, whether its economic in the form of revenue sharing, an opportunity such as harvesting rights, or co-managerial with inclusion on decision making processes. (Province of British Columbia 2010)

Forest Tenures Held by First Nations

The First Nation Woodland License and Community Forests with First Nations are two major forms of area based forest tenure that allow for considerable input from First Nations in management decisions. Woodlot Licences are also forms of forest tenures, however, are inherently limited due to their size constraints. There is also direct award volume based forest tenures provided through Forest Tenure Opportunity Agreements (FTOs) All these forms of tenure are created by the government and offered to First Nations in a relatively unilateral approach, there was no real input from First Nations on the designing process. (MFLNRO 2011) (NAFA 2003)

Direct Award Forest Tenures and Revenue Sharing

the government of British Columbia introduced the *Forest Revitalization Act 2003*, which included revenue sharing commitments from the government to aid First Nations that have forestry activities occurring in their asserted territory, including Forest and Range Agreements (FRAs) and Forest and Range Opportunity Agreements (FROs). FRAs and FROs provided a consultation agreement and direct award forest tenure that was short term, non-renewable and volume-based to First Nations (MFLNRO 2013). Volume based tenures provide no real connection to the land, allowing only a certain volume of timber to be harvested, and no certainty where harvesting will occur between years. These tenures were also only provided in five-year terms, and were non-renewable upon completion of the term, meaning the business security and future economic benefits of the tenure was to be relatively short term compared to other forms of forest tenure. The volume for these tenures came from pine beetle killed areas, fire damaged trees, and from the AAC uplifts (MFLNRO 2013). There was also a timber-reallocation that came from the *Forest Revitalization Act 2003*, where some unlogged areas were transferred from private licenses, with compensation from the provincial government, to First Nations (MFLNRO 2004, 2011). This was based on an effort to create more jobs by redistributing roughly %20 of long term timber licenses to groups such as First Nations or Community Forests.

<http://www.for.gov.bc.ca/mof/plan/frp/summary.pdf>

FRAs and FROAs only allowed for the management of the timber resources on the land, there was no legislation to manage for NTFPs. Although managing for timber is important for the economies of many First Nations, there are a wide variety of NTFPs that are culturally important, providing a source of income and subsistence (MFLNRO 2009). There was also an inadequate formula for determining the amount of revenue to share with the affected First Nations, a population based formula that did not reflect First Nations needs and values. Although the FRAs and FROAs was a step in the right direction towards Aboriginal Forestry by providing harvesting opportunities, it was far from complete land management privileges and responsibilities.

Forest Consultation and Revenue Sharing Agreements

Forest Consultation and Revenue Sharing Agreements (FCRSAs) and Timber Opportunity Agreements (TOA) replaced part of the FRA and FROA in 2010 (MFLNRO 2013). These new interim agreements were designed by the provincial government to increase forest-derived economic benefits directly to forestry-affected First Nations, while the revenue sharing process was designed to better reflect specific First Nation community needs and values (Province of British Columbia 2008). FRAs and FROAs shared revenue on a population-based model, inadequately reflecting specific community requirements. The total amount compensated to First Nations under the new FCRSA can be no less than \$35,000/year, and is based on a number of social and economic factors (FNFC 2012). A First Nation must sign an FCRSA before they can receive a forest tenure.

Forest Tenure Opportunity Agreements

While the FRA and FRO included direct-award forest tenure opportunities, FCRSAs do not, direct-award forest tenure opportunities are now provided under a separate agreement, Forest Tenure Opportunity Agreements (FTOA) (MFLNRO 2013). The purpose of the FTOA is to provide acknowledgement of partial accommodation of Aboriginal rights, and that the First Nation community benefits from the agreement

(Parfitt 2007). FTOAs must also be signed before a First Nation can acquire a forest tenure. There are two types of FTOAs (MFLNRO 2011),

- FTOA A&B → volume based tenures with replaceable (healthy forests) and non-replaceable (salvage logging) timber
 - i.e. Forest License
- FTOA C → area based tenures with replaceable timber only
 - i.e. First Nation Woodland License, Community Forest Agreement

Community Forests with First Nations

Although the majority of community forest projects developed in the province have happened within the last decade, the idea of community forests has been since the mid 1940's. The Mission Municipal Forest was established in response to Gordon Sloan's *Royal Commission on the Forest Resources of British Columbia of 1944*. A few other community forests were established in the time leading up to the creation of the Community Forest Agreement (CFA) in 1998, which was the ultimate catalyst for widespread interest in community forestry. The CFA was created in order to provide more management control over local forests to communities and First Nations. CFA's are area based tenures granted to First Nations or community organizations, and provide exclusive rights to harvest a certain Annual Allowable Cut (AAC), in addition to harvesting and managing for Non-Timber Forest Products (NTFP's). CFA's require reforestation, inventories, and in depth management planning. (BCFAA 2013)

Seven communities and First Nations were chosen for the CFA pilot project from the twenty-seven applications received from the eighty-eight interested communities and First Nations. By 2000, there were three more community forests entered in the CFA program's pilot project. The British Columbia Community Forest Association (BCCFA) was formed in 2002, and was comprised of twelve communities and First Nations.

In 2003, the *Forest Revitalization Plan* was implemented by the Government of British Columbia to boost the struggling industry, one of the largest economic sectors in the province. One of the changes to the existing *Forest Act* included a significant increase to the community forest program. Within three years, there were a total of forty-three communities and First Nations in the application process, enrolled in the five year probationary period, or operating a CFA, including the twenty-five year tenure granted to Esketemc First Nation. *Bill 13 – Forest Amendment Act 2009* removed the five year probationary period from CFA's, allowing twenty-five year renewable tenures for communities and First Nations (Bell 2009). (BCCFA 2013)

First Nation Woodland License

The 2003 *Forest Revitalization Act* started the planning and implementation process of providing economic benefits to First Nations through revenue sharing and forest tenures. It wasn't until 2010 that the Minister of Forests and Range implemented *Bill 13 – 2010 Forests and Range (First Nation Woodland License) Statutes Amendments Act*, which introduced the First Nation Woodland License (FNWL) (Bell 2010). FNWL's are area based and long term (25 – 99 years) tenures that allow for greater flexibility in managing a variety of resources. This tenure type is typically direct award, and is issued to First Nations

that have replaceable timber volume, and can produce a Forest Stewardship Plan or Woodlot License Plan, including setting an AAC. These FNWL's can be partnered with other First Nations or organizations, but can only be transferred to another First Nation under ministry approval. (Bell 2010)

This new tenure system has increased the amount of First Nation participation in land management decisions, and is changing the way British Columbia's forests are being managed. When FNWL's were introduced in 2010, roughly 7.8% of the provincial AAC was allocated to First Nations involved in forest tenure management, 172 First Nations across the province. By mid-2012, 15.5% of the provincial AAC was held by First Nations – 10% from direct award and 5% from competitively bid (MFLNRO 2012b). This is a significant increase, which helps demonstrate the ability of First Nations to reliably manage forest resources effectively and efficiently.

In order to receive the *direct award* FNWL, a First Nation must first sign an FTOA – an agreement that describes aspects of the tenure such as size and location. The FTOA also acknowledges the tenure as a form of financial accommodation for forestry operations occurring within their traditional territory (MFLNRO 2011).

First Nations cannot sell a FNWL to a forestry company, it only be transferred to another First Nation pending ministry approval (Bell 2010). This can make owning this tenure seem less valuable to First Nations if they do not have the ability to sell it under a standard business transaction. This feature is unique to FNWLs, and was implemented as a means to ensure that the benefits of the tenure reside with the First Nation. However, it was a decision made by the government on behalf of First Nations, and does not necessarily always reflect the best option for First Nations. The situation could arise where it could seem more valuable for a First Nation to sell the rights to their forest tenure in order to gain financial security

Woodlot Licenses

Woodlot Licenses are relatively small, area-based forest tenures created in 1948, following amendments to the *Forest Act*. However, due to the extensive responsibilities of owning and managing a woodlot license, the second Sloan Royal Commission (1956) and subsequent Pearce Commission (1976) found that only thirty-seven woodlots had been established since their creation twenty-eight years prior. Alterations stemming from the Pearce Commission increased the size of Woodlots from 40 hectares to 400 hectares on the coast, and from 100 hectares to 600 hectares for the interior. Thanks to the British Columbia Forest Service, 450 additional Woodlots were introduced by 1989, expanding the program from 420,000 m³/yr to 850,000 m³/yr. The provincial government continued expanding and funding the Woodlot license program, including a \$24 million supplement through Forest Renewal BC, and an increase in Woodlot size to 800 hectares on the coast, and 1,200 hectares in the interior. As of February 2013, there are 867 Woodlots in British Columbia, covering a combined area of roughly 546,000 hectares of crown and private land, with over 80% being crown land (FBCWA 2013). First Nations account for 51 of the woodlots issued to date, or just over 6% of all the Woodlots. (FBCWA 2007)

These types of tenure are issued for a twenty year term, and are replaceable upon term completion if the conditions of the tenure are being followed. This allows for a First Nation or family to manage a

forest for a long term, and pass it down generationally. These forest tenures are usually in areas close to communities, so there is an increased desire to sustainably manage the forest for multiple uses and resources. This provides First Nations with long term, direct economic benefits from forestry operations in or around their community, creating, maintaining, or enhancing Aboriginal forestry companies. Woodlot licenses are not unique to First Nations; however, there are aspects that make it appealing and beneficial for a First Nation to own. (FBCWA 2007, 2013)

Managing for Carbon

Managing for carbon sequestration for sellable carbon credits on a land base as the primary source of revenue allows for protection of, and economic benefits from, maintaining healthy forests. This provides ample protection of wildlife habitat and supports ecosystem resiliency, two fundamental components in sustaining traditional practices and culturally significant areas. Managing for carbon sequestration can be coupled with several other objectives, such as timber harvesting, NTFP management, tourism, recreation, visual quality, and ecosystem services such as water quality. The flexibility of managing carbon with other resources on a landscape allows First Nations to continually change exactly how and what is being managed based on constant feedback system. Certain silviculture practices can increase the amount of carbon sequestration in a forest, while simultaneously increasing the quality of the forest for wildlife habitat. These activities must be proven to be additional to the status quo in order to receive carbon credit. (Carrier 2011)

The difficulty in managing for carbon in many markets is the extremely long and complicated methodology of verifying exactly how much carbon is sequestered over the certain area of land. The scope and extent of the verification process is largely dependent on the type and area of the project. The verification process ensures that all sources of greenhouse gas emissions attributed with the project are accounted for, and that there was an appropriate methodology used to calculate the amount of sequestered carbon. This aspect of the managing for carbon can make the entire process a cumbersome undertaking, requiring the dedication and patience of a team of individuals. If a First Nation has no members trained in carbon management, they must either take on the daunting task of self-teaching a rather complicated process, or contracting out the job to a carbon-management team. Either way, there will be a significant amount of time or money required to initiate a carbon management project. Although the carbon market is still relatively young and in its development phase, there are hundreds of projects occurring globally that are currently providing thousands of people with employment and income. (Carrier 2011)

Aboriginal Forestry Programs, Organizations and Associations

In addition to the availability of forest tenures for First Nations, dozens of programs, organizations and associations have been established in the recent decades to support Aboriginal Forestry. Some are associated with the provincial or federal governments, while others are started without government affiliation. These were created with the goal to increase forestry economic engagement and benefits to First Nations, build capacity, promote recognition of Aboriginal rights and title, and enable increased Aboriginal control and involvement in land use planning decisions (AANDC 2012). Some of these programs, associations, and organizations include, but are not limited to:

- Aboriginal Forestry Initiative
- National Aboriginal Forestry Association
- Union of British Columbia's Indian Chiefs
- First Nations Forestry Council
- First Nations Carbon Collaborative

There are many more Aboriginal Forestry initiatives not mentioned in this paper, and many more being created as this emerging form of forest management becomes increasingly recognized as an equal, if not superior, form of land management.

Barriers Impeding Aboriginal Forestry

Over the last few decades, there has been significant progress made in involving Aboriginals in land use planning decisions, and in providing First Nations with greater flexibility in managing forest tenures. However, there are still impediments to Aboriginal Forestry, the Provincial Government's incomplete recognition and acknowledgement of Aboriginal rights and title to the land, inadequate NTFP policies, different visions of land management, market conditions, and a need for capacity building.

Recognition of Aboriginal rights and title

If Aboriginal rights and title were fully recognized in British Columbia, there would be significantly more control over land use planning decisions by First Nations. After a series of court cases, there is still an unresolved issue over Aboriginal rights and title, however, there is an obligation for the Provincial Government to consult a First Nation that will be affected by land use decisions, regardless of whether or not the right and title is proven. There is also an obligation to accommodate the First Nation to the extent they can prove their connection to the land and the relative effects of the land use decisions on their traditional way of life.

There has been a trend exhibited by the provincial and federal government towards increased recognition of Aboriginal rights and title. The rights to use the land for cultural subsistence and community development that Aboriginals claim are based on occupancy of the land long before the arrival of European settlers, which has been substantiated by UNDRIP. This long standing occupancy, according to First Nations across the province, denotes Aboriginal Title to the land, exclusive rights to use and occupy the land. It may be that implementing Aboriginal rights and title be left to the courts, because it seems that the federal Government, Provincial government, and First nations of BC cannot reach an agreement. (AANDC 2010b)

In order for the government to recognize Aboriginal rights and title, the onus is on the First Nation to provide proof that there is existing Right and Title to the land. This can be an extremely lengthy process, and can be based on sacred archeological sites, culturally modified features, or through generational stories, which can be difficult to map and substantiate, or may not want to be shared (BCTC 1999).

Inadequate NTFP Policies

An essential element of Aboriginal Forestry is the realization that there is far more than just timber to manage on a land base. Visual quality, water quality, tourism and recreation are a few of the multi-use objectives that are now considered when creating Land and Resource Management Plans (LRMPs). However, there is still a lack of management control over NTFPs, which can include a wide variety of botanical or inanimate objects, that when combined, attest to a vast array of traditional and cultural uses, including medicine, food, tools, and clothing. FNWLs allow First Nations to manage, harvest, and charge money for certain botanical products within the management area. Not included with these tenures is the right to restrict access or public harvest of the NTFPs, a significant detraction to the entire NTFP management process. Increasing the amount and availability of NTFPs on a landscape for economic viability only works if there is not free access the NTFPs in question. (MOFR, 2010)

Free public access to traditionally harvested NTFPs has led to controversy between First Nations and the public, who both may be collecting NTFPs for subsistence and/or a source of income. The major difference here is that First Nations take considerable care in ensuring sustainability of harvesting NTFPs by carefully removing the products from the source, only taking as much as is needed and can be supported by the source of the NTFP. Public harvesters of NTFPs are typically less careful when removing products from the source, and can severely damage the plant from which they came, causing detrimental effects to the plant community and the First Nations who depend on the health and resilience of the plant communities. (Williams, 2002)

The lack of NTFP management policies exemplifies the unilateral thinking of the settler government towards timber as the underlying and ultimate resource of forested land. There have been countless forest-policy reforms and amendments, but very little progression in establishing adequate policies for NTFPs. The policies regulating rights to timber could be used as a template for creating policies for NTFPs. This could even include a system similar to the stumpage system, where, as in other countries tenure holders pay the government based on how much they harvest. This could only be applied if the tenure holder had exclusive rights to the NTFPs and could restrict access and public harvesting. (MFLNRO 2009)

Different Visions of Land Management

There has been significant progress in sustainable land management over the last two centuries. The land is being seen and valued by the provincial government for more than just the harvestable timber, although the actual values of almost everything aside from timber have not been calculated, have discrepancies, or are valued for cultural and traditional uses more so than financial. Aside from just NTFPs, there are ecosystem processes, such as clean air, clean water, terrain stability, and biodiversity that are near impossible to measure or assign a financial value. However, the gradual realization by settlers of this is reflected in the ever-changing policies and regulations that guide land management decisions.

An example of the difference in visions of land management from First Nations to government can be seen in the Haida Gwaii Strategic Land Use Agreement (SLUA) (Haida, 2007). This agreement was reached between the Council of the Haida Nation and the Government of British Columbia to provide

the Haida Nation with input in decision making regarding their land, ensuring both parties were satisfied with the methods and objectives. The SLUA allowed the Haida Nation with the ability to manage for culturally important features such as monumental or culturally modified cedar, as well as specific riparian area nesting requirements for Marbled Murrelet, a species deemed threatened by Committee on the Status of Endangered Wildlife in Canada (COSEWIC) (MELP, 1998).

Market Conditions

Current market conditions support timber harvesting as a primary source of economic revenue from land management. There are some markets that support NTFPs as a small, but viable sector of the economy, such as mushrooms, berries, and floral arrangements (MFLNRO, 2009). The NTFP market is still in its early stages of growth, but there are over 30,000 British Columbia citizens that make a portion or the entirety of their income from NTFPs (MFLNRO, 2009). The market is being recognized as a natural and sustainable source of forest derived income, and is gaining momentum in British Columbia. The timing of the NTFP market expansion is synonymous with the international movement towards sustainability, which helped in the market's establishment.

Ecosystem processes are a valuable aspect of forests that, up until recently, have not received direct financial attribution, largely due in part to the extreme complexity of mapping boundaries of ecosystem processes, and then determining the financial values of these entire processes. An example of an ecosystem process that has had a market developed for it is carbon sequestration. Due to the recent expansion of the carbon market, it is becoming more valuable to keep trees on the ground than it is to harvest them in many areas. (Parungao, 2011)

Managing for carbon is an effective way for First Nations to benefit economically and socially from their forests by maintaining the integrity of the ecosystem, providing wildlife habitat, and allowing for sustainable harvesting of NTFPs. The carbon market, however, is very complex and lengthy to enter. There are a variety of carbon verification standards to choose from, and even more methodologies depending on the nature of the project. This can make it difficult for certain First Nations to accomplish due to the lack of infrastructure and technology (Parungao, 2011). As the carbon market continues to develop both provincially and internationally, it will become increasingly easier to enter as the regulatory framework becomes streamlined, and more First Nations will be able to participate. (Dohan *et al.* 2010)

Lack of Capacity

A significant issue regarding the practicality and potential success of Aboriginal Forestry is the lack of capacity of First Nations to participate in forest management and operations, and the lack of capacity of the forestry industry to incorporate Aboriginal Interests (Parungao, 2011). Some capacity issues faced by First Nations are inadequate financing, poor business and marketing skills, and a lack of education and employment. Aboriginal Forestry initiatives aid in skill training and financing, while forest tenures provide limited control over a forest, increasing Aboriginal capacity in the forest sector (Parungao, 2011). However, there have only been two FNWLs signed since their creation, and there is still much ground to be covered to ensure First Nations have the same capacity to manage and socially, economically and environmentally benefit from the forestry industry.

A lack of infrastructure and financing the creation and enhancement of existing infrastructure can be a significant challenge to First Nations. Opening a small-scale sawmill close to forestry operations can provide a significant source of income, and can provide the flexibility to create specific, value-added wood products, filling small niche markets and utilizing only specific trees. However, a significant investment is required in order to open a sawmill, even on a small scale. Financing these endeavours can be too costly for many First Nations to embark upon, especially considering the associated costs with operating a sawmill, maintenance, labour, market research, securing customers, etc.

Recent trends indicate there is a steady increase in the amount of Aboriginal Forestry companies and Aboriginals working in the forestry industry, indicating the increase of economic, business, and management capacity building among First Nations throughout the province. However, the age of Aboriginals employed in the forestry sector has also been steadily increasing. This indicates poor progression with education and skill training capacity regarding the forestry industry. (Panugao, 2011)

Conclusion

The relationship between the Government of British Columbia and the First Nations communities in the province has been continuously developing since first contact and establishment of European settlements west of the Rockies. The evolution of this relationship has largely been shaped through land use decisions made by the Government of British Columbia that affect First Nations, historically, this has predominately been through forestry related operations. There have been several court cases that have increased the extent of Aboriginal rights and title recognition. This has led to an increase in consultation and accommodation requirements on behalf of the government when forestry operations are being planned or considered. Now, the degree of consultation and accommodation is proportional to the extent that the culture and traditions of First Nation will be adversely affected. Consultation during the planning process of forestry operations has many levels, and can lead to accommodation through the inclusion of Aboriginal Interests in forestry planning. Due to the scope and extent that Aboriginal Interests includes, the resulting ground level decisions and operations can reflect unique concerns, protecting specific or general landscape attributes and features. (Haida 2007)

Certain forest tenures held by, or jointly ventured with, First Nations – specifically the FNWL, CFA, and Woodlot License – are area based, which have allowed for increased authority and control over forest land use decisions. This includes being able to manage for culturally significant features, such as culturally modified trees or specific animal habitat requirements. It also enables First Nation communities to develop infrastructure and capacity to sustainably grow or maintain their economy, society, and environment.

There still needs to be some progression made with regards to NTFP policies and management, current legislation provides inadequate protection of NTFP resources. Similarly, there has been insufficient research into the monetary valuation of ecosystem processes. One such ecosystem process, carbon sequestration, has been capitalized upon due to the realized correlation between greenhouse gas emissions and climate change. The carbon market ranges from a local scale to an international scale,

depending on the size, type and location of the carbon management project, but can provide First Nations with revenue from, and protection of, their traditional territory.

There are still some significant, but continually fewer barriers impeding Aboriginal Forestry, and an abundance of initiatives supporting and promoting Aboriginal Forestry in British Columbia. It seems as though the Province of British Columbia is on a path towards co-managing forest resources with First Nations who have historically occupied the province.

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