

**THE BALANCE OF POWER: ASSESSING CONFLICT AND
COLLABORATION IN ABORIGINAL FOREST MANAGEMENT**

by

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ABSTRACT

The relationship between Aboriginal and Crown governments in regards to forest management in Canada is dynamic and challenging. This study describes this relationship in terms of the Aboriginal-Crown forest policy context, highlighting regional examples of Aboriginal forest management and developing a constructive framework for the analysis of the Aboriginal-Crown relationship.

The forest policy context is set by providing a case study of British Columbia's attempt to overhaul forest policy in the face of political, judicial and Aboriginal rights and title pressures. This case study provides insight into the complexities that exist within the Aboriginal-Crown relationship by utilizing a policy regime and policy cycle framework. Results of the case study highlight that Aboriginal governments must be consulted and given a rightful seat at the policy design table. Creation of exclusive provincial government-industry policy forums can lead to increased tensions between Aboriginal and Crown governments. Such tensions can result in judicial challenges by Aboriginal peoples and a distrustful environment surrounding the spirit and intent of new forest policy design.

Examples of Aboriginal forest management from British Columbia and Labrador are then reviewed to explore the concept of Aboriginal forest tenure. Analysis of these examples finds that governance mechanisms, enabled by co-management agreements, are the driving factor behind significant changes to forest management regimes.

A conceptual framework is then developed for determining the level of power-sharing in Aboriginal-Crown forest management arrangements. The framework is applied to the British Columbian Forest and Range Agreement policy initiative. Results suggest that little power-sharing exists at the strategic decision-making level, but enhanced power-sharing does occur at the tactical and operational levels.

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To Katrina,

Jonah

and my Parents.

CO-AUTHORSHIP STATEMENT

I am the primary author of all materials contained in this thesis. The manuscript Chapters (3, 4 and 5) were collaborative efforts with members of my thesis committee. With guidance from this committee, I designed the research program, conducted research activities and performed all data analysis. Co-authors for manuscript Chapters are highlighted at the start of each Chapter.

Jason Forsyth - December, 2006

Chapter 1: Introduction

When I fought to protect my land, my home, I was called a savage. When I neither understood nor welcomed this way of life, I was called lazy. When I tried to rule my people I was stripped of my authority.

Chief Dan George (1889-1981), Tseil-Waututh Nation. Exert from *Lament for a Confederation*. Vancouver, 1967.

1.1 Introduction

1.1.1 Background

Canada's Aboriginal peoples have always had an inherent link to forests. Through providing food, shelter, and clothing, Aboriginal peoples in Canada have forged an intimate and longstanding cultural relationship with forests (Council of the Haida Nation 2004). This relationship is deeply imbedded in many Aboriginal peoples' spiritual beliefs, codes of conduct and overall cultural worldview.

Contrary to this worldview, the people who colonized Canada were more focused on the value of forests realized through the fur trade, timber extraction and conversion to farmland (Wright 1992, Rude and Deiter 2004). Given the dominating force in which the

colonizers of Canada claimed jurisdiction over forest resources, Aboriginal interests, rights and title to forest resources were not considered throughout the development of the forest industry and the setting of policy and regulations (RCAP 1996b). However, increasing recognition of Aboriginal rights and title over the past thirty years through the Canadian Constitution and rulings by the Supreme Court of Canada have begun to affect forest policies across Canada. The Canadian federal, provincial and territorial (herein referred to as 'Crown') governments in Canada have begun discussing significant shifts in forest policies for Aboriginal peoples (NL DNR 2003, NB 2006, OMNR 2005, BC MOF 2003). Although some Crown governments have moved to implementing such discussions, all acknowledge the need to "consult" with Aboriginal peoples and express objectives for increasing Aboriginal "participation" in the forest sector.

These significant policy shifts have begun to demonstrate an increase in Aboriginal participation in the forest sector (NAFA 2003, Wilson and Graham 2005). Aboriginal peoples are now gaining access to forest tenures and management responsibilities for parts of their traditional territories. These opportunities have been welcomed by Aboriginal peoples, who have expressed a strong desire to implement new forms of forest management that are more consistent with their cultural worldview and values (Council of the Haida Nation 2004, Tsleil-Waututh Nation 2000, Taku River Tlingit First Nation 2003). Nevertheless, successfully incorporating cultural values into an industrial forest tenure arrangement is a formidable challenge (Booth 2000). Some studies actually suggest that the attempt could cause community conflicts and could even erode the cultural values in question (Ross and Smith 2002).

1.1.2 Research Project Description and Organization

This research project will focus on describing the forest policy context of Aboriginal-Crown relations, highlight regional examples and develop a constructive framework for the analysis of this relationship. The research project is presented in a manuscript-based thesis format, which is organized into five main Chapters. Chapter 1, the introductory Chapter, provides the background and literature review, and describes the research objectives and hypotheses.

The first manuscript, Chapter 2, serves as an in-depth case study of British Columbia's attempt to overhaul forest policy in the face of political, judicial and Aboriginal rights and title pressures. This Chapter provides insight into the complexities that exist within the Aboriginal-Crown relationship by utilizing a policy regime and policy cycle framework to analyze forest policies developed under the BC Liberal mandate of 2001-2005.

The second manuscript, Chapter 3, highlights examples of Aboriginal forest management from British Columbia (BC) and Labrador. The Chapter explores the concept of Aboriginal forest tenure and assesses proposed key directions for the tenure by examining the two examples.

The third manuscript, Chapter 4, develops a conceptual framework for determining the level of power-sharing in Aboriginal-Crown forest management arrangements. The framework is then applied to the BC Forest and Range Agreement policy initiative that was featured in Chapter 2.

Lastly, Chapter 5 provides discussion of the manuscript Chapters, highlighting common themes and results. Research methodologies strengths and weaknesses are examined and the working hypotheses identified in Chapter 1 are revisited and discussed. Chapter 5 also highlights the overall significance of the research and describes relevant applications.

1.2 Literature Review

The literature reviewed for this research project is diverse, but the scope of the review is limited to Aboriginal rights and forest policy set in purely a Canadian context. To assist with the organization of the review, the literature has been classified into five main sections: Aboriginal Forest Policy and Discussion Literature, Judicial Rulings and Analysis, Aboriginal Co-management and Governance, Forest Tenure and Property Rights, and Qualitative Research Methodologies. Each section describes the relevance of the literature to the research project.

1.2.1 Aboriginal Forest Policy

The Aboriginal forest policy literature encompasses official policy documents, policy discussion papers and the analysis of such policies by non-government researchers.

Many Canadian provincial governments have literature that relates to Aboriginal interests in forest management (NL DNR 2003, NB 2006, OMNR 2005, BC MOF 2003). This literature generally acknowledges the need to consult with Aboriginal peoples and increase Aboriginal participation in the forest sector.¹ However, since most of these documents are strategic discussion papers, not formal policy, they are non-binding and may not necessarily be translated into legislation. One jurisdiction where considerable Aboriginal forest policy and associated legislative changes has occurred is British Columbia (BC MOF 2003).

Another component of the Aboriginal policy literature is the analysis and interpretation of government documents by non-government researchers. For example, a report completed by the Institute on Governance in 2005 provides a summary of legal and policy context across Canada (Wilson and Graham 2005). The report provides a summary of every Canadian jurisdiction with an overview of the forest industry scope, land claims context, key legal rulings, current levels of Aboriginal involvement in the forest sector, market factors, provincial government policy approach and any federal government involvement (Wilson and Graham 2005). In doing so, this report gives a synopsis of how different jurisdictions, and Canada as a whole, are making 'progress' on the objective of increasing Aboriginal participation in the forest sector. Although impressive in scope, the report does not provide significant depth for every jurisdiction.

Supporting literature provides more depth for different jurisdictions. For example, Sherrie Blakney (2003) provides an analysis of New Brunswick's recent Aboriginal forest policy developments, highlighting the complexities and conflicts that stem from different epistemological views. Similarly, Monica Jaggi (1997) describes Ontario forest policy in relation to Aboriginal participation. In addition, Clogg (2003 and 2004) and Marchak and Allen (2003) provide more of a legal and systematic description of new forest policies in BC and their potential impact on Aboriginal peoples. Although these analysis and descriptions of provincial forest policies designed for Aboriginal peoples are informative and raise many valid concerns, the analysis tend to focus on highlighting environmental implications of the policies.

¹ Similar objectives are also prevalent in the Canadian National Forest Strategy, in which provinces and territories are signatories (NFSC 2003).

1.2.2 Judicial Rulings and Analysis

This section focuses on landmark judicial rulings that highlight Aboriginal rights and title and consultation/jurisdictional issues related to forest management and the literature that interpret these rulings.

1.2.2.1 Aboriginal Rights and Title

Several cases have dealt with the issue of Aboriginal rights and title over natural resources. Key cases include *Calder* (SCC 1973), *Sparrow* (SCC 1990) and *Delgamuukw* (SCC 1997). The *Calder* decision was the first to highlight that Aboriginal title and rights had not been extinguished in areas not covered by treaties. *Sparrow* highlighted that the Aboriginal right to catch 'unauthorized' fish is protected under the Constitution. Lastly, *Delgamuukw* highlighted that Aboriginal title is an interest in the land itself and that it encompasses the right to exclusively use and occupy land. Of these cases, *Delgamuukw* is most applicable to Aboriginal forest management.

Literature focusing on describing and interpreting the *Delgamuukw* decision is diverse. Aboriginal organizations celebrated the decision and called on federal and provincial governments to reform development policies (First Nations Summit 1998). Forestry and resource sector representatives provided analysis that focused to highlight the potential implications on resource development (Davis and Company 1998). Other industry analyses based on *Delgamuukw* also considers the issue of resolving land claims on industry competitiveness (COFI 2001). Although helpful in understanding how various interest groups interpret the *Delgamuukw* decision, these sources inherently have a degree of bias to them. As such, more moderate and academic literature was reviewed on the *Delgamuukw* decision.

One of the first thorough descriptions of the *Delgamuukw* decision was provided by Mary Hurley in January 1998. This paper provides a detailed account of the case and highlights its significance for future law and policy development (Hurley 1998). Mandell (1998) also provided a comprehensive review of the decision. In her analysis, Mandell examines the nature of Aboriginal title, the limitation of crown title, and the creation of federal fiduciary obligations and implications of Section 35 of the Canadian Constitution

and their influence on the power of governments to interfere with Aboriginal title (Mandell 1998). Mandell argues that the governments must assume Aboriginal title exists and should begin to prepare for its recognition (Mandell 1998).

Similarly, McNeil (2000) discusses the nature and content of Aboriginal title. McNeil analyzes six elements of the Supreme Court's definition of Aboriginal title as highlighted in the *Delgamuukw* decision. These includes that Aboriginal title is occupation of land prior to Crown assertion of sovereignty over what is now Canada, that it is proprietary, that its content includes the right to exclusive use and occupation of the land, that limits on it exist when Aboriginal peoples use land in a manner that is inconsistent with the nature of the attachment to the land that is the basis for the title, that it is not vested in individuals it is communal in nature, and that Aboriginal title is absolute and can only be alienated by surrender to the Crown or possibly transfer to another Aboriginal Nation (McNeil 2000). McNeil concludes that Aboriginal self-government is integral to the definition of Aboriginal title and, in fact, may require it (McNeil 2000).

1.2.2.2 Consultation and Jurisdiction

The two most significant cases that focus on consultation and jurisdiction surrounding natural resource development are the *Haida Nation* (SCC 2004) and *Taku River Tlingit First Nation* (SCC 2004b) cases.

The *Haida* case examined whether the Crown has a duty to consult and accommodate Aboriginal peoples on decisions that might adversely affect their Aboriginal rights and title, prior to proving such rights and title. The case also explored whether the duty to consult and accommodate applies to third party interest, such as forest tenure holders (SCC 2004). The landmark *Haida* judgment held the lower court decision that the Crown has an enforceable duty to consult in good faith and to endeavor to seek workable accommodations with respect to granting resource development tenures and the management of such tenures (SCC 2004). However, the *Haida* judgment did allow an appeal to be granted to third party interests, in this case Weyerhaeuser Company Limited. The *Haida* judgment explained that third party interests are not responsible for consultation and accommodation obligations as the "honour of the Crown cannot be delegated, and the legal responsibility for consultation and accommodation rests with the Crown" (SCC 2004).

Similar to the *Haida* decision, the *Taku River Tlingit First Nation* (TRTFN) case focused on the question of consultation and accommodation prior to proving Aboriginal rights and title. However, the *Taku* case took the question a step further by examining whether consultation and accommodation demonstrated by the province of BC, prior to the decision-making stage, was adequate to satisfy the 'honour of the Crown' (SCC 2004b). The judgment released at the same time as the *Haida* decision, overturned lower court rulings and determined that BC had met its duty to consult with and accommodate the TRTFN through engaging in an environmental assessment process that the TRTFN participated in (SCC 2004b). The Court found that "the Province was not under a duty to reach agreement with the TRTFN, and its failure to do so did not breach the obligations of good faith that it owed the TRTFN" (SCC 2004b). The Court also highlighted that future development and planning processes will require the "Crown will continue to fulfill its honourable duty to consult and, if appropriate, accommodate the TRTFN" (SCC 2004b).

As the *Haida* and *Taku* cases were heard and delivered together, the literature surrounding the cases also deals with them collectively. Shortly after the decisions were released the Pacific Business and Law Institute held a conference entitled the 'Impact of the *Haida* and *Taku River* Decisions: Consultation and Accommodation with First Nations'. Close to 10 papers on the decisions were presented, of which two are discussed in this review. The first is by John Olynyk (2005) who advises oil and gas companies on Aboriginal law issues. Olynyk provides a summary of the cases and then highlights how the cases clarify the roles and responsibilities Aboriginal consultation and accommodation. Olynyk focuses on explaining that the duty to consult and accommodate rest solely with the Crown, however he also points out that some procedural aspects of consultation may be completed by third parties (Olynyk 2005). Olynyk goes on to stress that it is in the interest of oil and gas companies to ensure provincial governments respond with adequate consultations policies to avoid further legal challenges by Aboriginal peoples that may oppose developments (Olynyk 2005).

Alternatively, Kent McNeil (2005) provides a paper that focuses on what the author sees as the unresolved issue of provincial authority to actually infringe on Aboriginal title. In the paper McNeil builds the case that if Aboriginal peoples (such as the *Haida*) are able to prove title, provinces will not be able to utilize the proprietary rights as a basis for infringement. As a result, provinces would have to rely on jurisdictional rights granted

through the Canadian Constitution (McNeil 2005). However, McNeil points out that such jurisdictional rights are only valid for Crown resources on Crown land and if Aboriginal title is proven, these rights no longer apply. McNeil concludes that provinces must proceed on the assumption that Aboriginal title will be proven and should develop agreements that adequately accommodate affected Aboriginal peoples (McNeil 2005).

Another perspective highlighted by Reynolds (2004) is that the *Haida* and *Taku* cases may have only strengthened Crown claims to Aboriginal title lands. Reynolds highlights that the Supreme Court of Canada could have considered the cases more from a competing sovereign perspective and not simply place the duty to consult in the hands of the provinces (Reynolds 2004). Reynolds highlights the short-comings and cultural barriers Aboriginal peoples have in participating in provincial consultation processes. He also argues that provincial governments do not have a track record for acting 'honourably' and questions whether a duty to consult will result in any significant change (Reynolds 2004).

1.2.3 Aboriginal Co-management and Governance

The third main body of literature reviewed focuses on Aboriginal co-management agreements and other governance mechanisms. This literature spans a variety of economic, social, institutional and governance issues that arise from Aboriginal involvement in natural resource co-management agreements and other institutional designs.

The term 'Co-management' has come to mean different things to the variety of different partners that may participate in natural resource co-management arrangements. Several authors highlight that co-management entails a sharing of power, management functions, responsibilities and/or entitlements between the Crown and local resource users (Berkes et al. 1991, Borrini-Feyerabend et al. 2000, Kant and Zhang 2002, Plummer and FrizGibbon 2004). Others have stressed that co-management involves the decentralization of decision-making authority and accountability from Crown control to local users (Singleton 1998, World Bank 1999). Regardless of the exact terminology, most authors agree that the term co-management is difficult to capture in a single definition and highlight that there are inherent complexities in both the level of power-sharing/decentralization and the number of parties who are referred to as the 'co'

partners in the arrangement (Carlson and Berkes 2005, Plummer and FrizGibbon 2004). Other authors have suggested that co-management may simply be a 'catch all' phrase that eludes definition (Pomery and Berkes 1997, Chambers 1999). For example, Chambers (1999) explains that co-management is hard to define and it could be best described as an evolving process of shared management responsibility between one or more parties.

Several studies have focused on describing the Aboriginal-Crown relationship in forest management arrangements. Some studies document and describe the arrangements (Notzke 1995, NAFA 1995, NAFA and IOG 2000), one study focus to analyze the forest tenure type employed (NAFA 2003), and others analyze co-management implementation and institutional design (Castro and Neilsen 2001, Clogg et al. 2004, Mabee and Hoberg 2006). To date few studies have developed conceptual frameworks for the classification and evaluation of Aboriginal forest management arrangements. Smith (1991), provided one of the first surveys and assessments of Aboriginal forest and natural resource arrangements in Canada. Building on Smith's work, Shuter et al. (2005) developed a comprehensive typology for classification and comparative evaluation of forest management arrangements. Related frameworks have been highlighted in other natural resource co-management contexts such as fisheries, wildlife and land management (Berkes 1994, Sen and Neilson 1996, Pomery and Berkes 1997, Plummer and Fitzgibbon 2004). For the purpose of this review only the Shuter et al. (2005) and the Plummer and Fitzgibbon (2004) frameworks will be discussed as they both build on concepts raised by other authors.

The Shuter et al. (2005) framework is designed as a two-tiered typology that combines a description of the catalyst on the first tier and an overall classification of the level of participation and outline of management scope on the second tier. Descriptive and evaluative criteria are then applied to provide greater detail for the purposes of classification and evaluation (Shuter et al. 2005). Although this typology is very comprehensive in describing and providing criteria for evaluating Aboriginal forest management arrangements, the typology has some practical limitations. Firstly, in terms of assessing Aboriginal decision-making power in the arrangement, the typology does not clearly link the described management scope with the overall level of participation. This omission means that an opportunity is missed in gaining insight into what actual decision-making power is shared in the arrangement. Secondly, the typology does not

consider any of the higher-level forest management decisions and functions, such as strategic planning, tenure administration and timber supply analysis.

The Plummer and FitzGibbon (2004) framework is not as comprehensive as the Shuter et al. typology and does not focus specifically on Aboriginal forest management. However, the design is based on the premise that power-sharing is central to co-management and the framework provides valuable perspectives on arrangement design and process. The Plummer and FitzGibbon (2004) framework consists of three main dimensions. The first dimension is power-sharing and similar to the Shuter et al. typology, the Plummer and FitzGibbon framework utilizes Berkes's (1994) power-sharing spectrum to classify the overall arrangement. The second dimension includes a checklist of potential parties involved in the arrangement. This checklist includes Aboriginal groups in the Community, Local and/or Communal category. The third dimension is institutional and process features, in particular, the timing of when the arrangement is made in the negotiation process. This dimension is depicted by a simple spectrum of formal to informal processes with more time equating to a more formal process (Plummer and FitzGibbon 2004). Although the Plummer and FitzGibbon (2004) framework is concise in application, it is vague about how the values for classification are assigned. For example, there are no criteria on which the power-sharing classification is based. One of the main strengths of this framework is the addition of the formal versus informal aspect of institutional processes and the timing of negotiations. This dimension highlights that co-management arrangements are not fixed in time, but are an evolving process. Furthermore, it highlights the reality that many co-management arrangements may have informal components that are fundamental to the relationships of the participating parties and the overall function of the arrangement.

Most of the literature reviewed in this section was supportive of the concept of Aboriginal co-management agreements as a possible way for Crown governments to effectively recognize Aboriginal interests in forest management (Berkes et al. 1991, Notzke 1995, Chambers 1999, Natcher 1999, Borrini-Feyerabend et al. 2000, Kant and Zhang 2002, Plummer and FitzGibbon 2004, Shuter et al. 2005). However, most of the literature cautions that these agreements must be carefully crafted to ensure Aboriginal communities are receiving a significant level of management authority and the necessary resources to ensure effective participation (Chambers 1999, Notzke 1995, NAFA 1995, Castro and Neilsen 2001, Shuter et al. 2005, Mabee and Hoberg 2006).

1.2.4 Forest Tenure and Property Rights

The literature reviewed in this section focuses on the specific attributes of the Canadian forest tenure system and international views on property rights associated with forest management (Ross 1995, Arnold 1998, Haley and Luckert 1998, FAO 2001). This literature highlights that forest tenures are defined by their exclusiveness, duration, comprehensiveness, rights to economic benefits, transferability, and security (Haley and Luckert 1998, FAO 2001). A trend seen with most forest tenures demonstrates that an increase in management responsibility generally translates into an increase in tenure duration and exclusiveness (FAO 2001). Simply put, forest tenure arrangements can be thought of as contracts between Crown governments and a third party interest (Haley and Luckert 1998, FAO 2001).

The other literature reviewed in this section highlight that provincial forest tenure systems can be considered a significant impediment to the recognition and protection of Aboriginal rights and title (RCAP 1996, Curran and M'Gonigle 1999, Ross and Smith 2002, NAFA 2003). Pearse (1992) highlights that most forest tenure arrangements in Canada were designed when forested regions were initially opened up for timber extraction and now cover most of Canada's commercial forest. Consequently, the existing forest tenure system is seen as a major barrier to Aboriginal communities who want to regain management authority over their traditional territories and to practice ecologically and culturally appropriate forms of forest management (Curran and M'Gonigle 1999, Ross and Smith 2002, NAFA 2003).

The NAFA (2003) report on Aboriginal-held Forest Tenures in Canada demonstrates that Aboriginal peoples only hold 1% of long-term tenures in Canada. This low representation exists despite that fact that over 80% of Aboriginal communities are located within the Canadian commercial forest (NAFA 2003). Ross and Smith (2002) highlight that this relationship is an indicator of the lack of recognition of Aboriginal and treaty rights in forest management and explain that the current forest tenure system is a major structural barrier to Aboriginal peoples participating in forest management in Canada. Ross and Smith (2002) argue that a new type of forest tenure which integrates Aboriginal land ethics, values and governance systems into forest management is required.

1.2.5 Qualitative Research Methodologies

The last body of literature that was reviewed for this research project covers works on qualitative research methodologies. The initial research methodology included conducting qualitative research in Aboriginal communities. However due to insufficient financial support to conduct qualitative research that would be respectful of the Aboriginal communities, this portion of the project was abandoned.

A primary source in the qualitative research reviewed was Creswell's (1998) 'Qualitative Inquiry and Research Design'. In the text, Creswell (1998) outlines what he sees as the five main traditions in qualitative research: biographies, phenomenological studies, grounded theory studies, ethnographies and case studies. The case study tradition provided a particular focus, as Aboriginal forest management research is often completed via case studies. St. Denis (1992) also highlighted the importance of conducting community-based participatory research. Alternatively, Henderson (1991) provided a good focus on conducting qualitative research in a parks and recreation setting.

Other literature reviewed in this section highlighted the ethical considerations arising from conducting research with Aboriginal peoples (Smith 1999, Menzies 2001, Steinhauer 2002). This literature was consistent in delivering the message that respect, reciprocity, and responsibility are cornerstones when working with Aboriginal communities in a qualitative research context (Smith 1999).

1.3 Research Objectives and Hypotheses

1.3.1 Objectives

The research objectives for this project include:

- To describe and analyze the forest policy context for Aboriginal peoples in British Columbia.
- To highlight lessons from innovative examples of Aboriginal forest management in Canada.
- To develop a conceptual framework that can effectively differentiate levels of decision-making power between Aboriginal and Crown governments.

1.3.2 Hypotheses

The working hypothesis of this research project focuses on describing the relationship dynamics between Aboriginal and Crown governments in regards to forest management. The examples that will be highlighted through this research project are expected to demonstrate varying levels of conflict and collaboration. In doing so, a key research question will assess whether power-sharing is actually occurring in Aboriginal forest management arrangements. Considering this research question, the first working hypothesis is:

H1: Aboriginal peoples in Canada have access to effective power-sharing opportunities with Crown governments in regards to forest management.

Accordingly, the second key research question will then assess whether an increase in power-sharing between Aboriginal and Crown governments results in any significant changes in demonstrated conflict or collaboration. Therefore the second working hypothesis is:

H2: By mobilizing the energy and resources required to undertake power-sharing relationships, Aboriginal and Crown governments will reduce traditional conflicts and build more collaborative working relationships.

These two hypotheses will be assessed based on the collective results of all three manuscript Chapters presented herein. Although these hypotheses are not specifically highlighted in each manuscript Chapter, they form a strong common theme that is highlighted and reflected on in the concluding Chapter.

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Chapter 2: In Search of Certainty: The 'New Era' Approach to Forest Policy for First Nations in British Columbia²

“Accommodation begins when policy gives way to Aboriginal interests”

The Honourable Madam Justice Dillion, *Huu-ay-Aht First Nation et al. v. The Minister of Forests*. 2005 BCSC 696, p.53 par [117].

2.1 Introduction

The relationship between Crown and Aboriginal governments is one of the most challenging and dynamic aspects of governance in contemporary Canada. These tensions have been particularly acute in forest policy in British Columbia. The combination of unsettled land claims over the vast majority of the province, the economic dependence of the province on the forest sector, and the importance of forests to the

² A version of this Chapter has been submitted and accepted as a Chapter in a forthcoming book entitled *First Nations Forest Lands Management*, UBC Press. Cited as; Forsyth J. and G. Hoberg. 2006. *A Bridge Not Far Enough: Interim Measures as a Strategy to Accommodate First Nations in Forest Policy, 2001-05*. A second version of this Chapter will be submitted for publication to the *Journal of Canadian Public Administration*. Cited as; Forsyth J. and G. Hoberg.

culture and economic aspirations of First Nations in the province have placed tremendous strain on the prevailing forest policy regime. Recent court decisions have significantly strengthened the position of First Nations, and the BC government has been forced to adopt policies that acknowledge its obligation to consult and accommodate (BCCA 2002a, 2002b, SCC 2004).

This paper analyses the changes in forest policy for First Nations of the BC Liberal Party in its first term of office from 2001-2005. In 2001, the BC Liberal Party achieved an overwhelming majority (77 of 79 seats in the legislature). The new Premier, Gordon Campbell, led a lawsuit challenging the constitutionality of the only modern-day treaty signed in BC, the Nisga's Final Agreement, and had committed during the campaign to a controversial referendum on the treaty process. By the end of its term, in the spring of 2005, the BC government had signed close to seventy agreements with First Nations granting them access to timber harvesting and a share of stumpage revenues. Despite these considerable changes, pressures for even more fundamental change intensified, and the Liberals' first term ended with media reports that Premier Campbell had agreed to a "new relationship" document with First Nations leaders that would, among other things, agree to a form of shared decision-making.

The paper will employ the policy regime and policy cycle framework to analyze policies developed by the Ministry of Forests (MoF) under the BC Liberal mandate of 2001-2005 (Hoberg and Morawski 1997, Cashore et al 2001). The paper is organized into five main sections. We begin with a brief historical background to lay the context of the BC Liberal's first mandate. Section three provides the details of the characteristics of the 'policy regime' regarding forest policy for First Nations. Section four represents the main body of the paper, and tracks the policy changes through the full policy cycle. Special attention is paid to measuring the magnitude of policy change and an evaluation of BC Liberal policies based on their own Crown objectives, recent BC Supreme Court rulings, and significant responses by First Nations. Finally, the concluding section summarizes the finding and offers an explanation for the amount of change that has occurred and discusses need for greater change if certainty and stability are ever to be achieved in this policy area.

2.2 Historic Background

First Nations Title and Rights issues have always been controversial in British Columbia. Up until the 1970s, the Province of British Columbia maintained the argument that Aboriginal Title in BC had been extinguished when the province joined the confederation of Canada in 1867. The 1973 *Calder* decision finally overturned this long held belief by ruling that Aboriginal Title and Rights had not been extinguished in areas not covered by treaties, as was the case for most of British Columbia (Cashore et al 2001).

One of the consequences to this long held belief was that no forest policies pertaining to First Nations existed for the first century of the province's history. The first specific forest policy aimed at First Nations was an early 1970s New Democratic Party (NDP) government policy which amended the *Forest Act* in order to provide small woodlot licenses to First Nations and/or Band Councils. First Nations communities slowly began to participate directly in the forest sector with the first long-term forest tenure (Tree Farm Licence 42) awarded to the Tl'azt'en Nation in 1983 (Pedersen 1996).

However, for many First Nations access to forest resources in their traditional territories was restricted by a forest tenure system established in the 1940s. Considering this tenure system was established during the time when it was thought that Aboriginal Title and Rights was extinguished, this system served only non-Aboriginal interests. In fact, such systems have been found to be a structural and systemic impediment to the recognition and protection of Aboriginal Title and Rights (Ross and Smith 2002). In the 1980s several First Nations turned to blockades and the courts in attempts to halt excessive resource extraction in their territories. First Nations also filed challenges in the courts, with one of the first major victories for First Nations occurring in 1985 when the Clayoquot and Ahousat First Nations obtained a court injunction that prevented logging on Meares Island (Hoberg and Morawski 1997).

In the late 1980s the Government of BC moved to implement policies to mitigate court rulings and blockades. By 1988, the Ministry of Native Affairs was established and in 1990 the BC Claims Task Force delivered recommendations for the province to begin negotiating modern treaties, establish a Treaty Commission and to enter into interim measure agreements with First Nations (Cashore et al 2001).

The NDP government of 1991 – 2001 moved the treaty process forward significantly and signed the first modern day treaty with the Nisga'a Nation in 2000. Parallel to the treaty process the NDP's Ministry of Forests formally acknowledged that First Nation rights must be considered in forest planning and mandated that Forest Development Plans must identify areas of Aboriginal significance (Cashore et al 2001). Several interim measures agreements (IMA) were signed during this period, most notably was the IMA with the Central Nuu-chah-nulth Nations that created a co-management board and a joint-venture with the current tenure holder.

As the NDP government's mandate wound down in 2000, First Nation Title and Rights issues remained as controversial as ever. Court cases such as *Delagmuukw*, provided a new dynamic optimism for First Nations and a fear of economic uncertainty for those with industrial interests. The BC Liberal party was keen to tackle this uncertainty in their spring 2001 election platform. After launching a legal appeal of the Nisga'a Treaty and promising a province-wide referendum on treaty negotiations, the BC Liberals unveiled their "New Era" campaign platform promising "a vision for hope and prosperity for the next decade and beyond" (BC Liberal Party 2001).

2.3 Policy Regime Characteristics

The policy regime framework is multicausal in orientation, and focuses on how the interaction of actors, institutions, and ideas, in the context of particular background conditions, produce particular policy outcomes through from the policy cycle (Cashore et al 2001).

2.3.1 Actors

Strategic actors, each with their own interests, resources, and strategies, are the core of the framework. The main actors of a policy regime include the individuals and organizations that play an important role in the formulation and implementation of forest policies (Cashore et al 2001).

In the case of the forest policy regime for First Nations, the main actors are First Nations, the BC government (especially the Ministry of Forests), and the forest industry. First Nations have a diverse and multi-layered set of organizations, including bands councils, First Nation governments, tribal council governments, and collective First Nation

alliances such as the First Nations Summit or the Union of BC Indian Chiefs. While First Nations across the province are very diverse, they tend to share a core interest in protecting cultural and environmental values, facilitating economic development and advancing Aboriginal Rights and Title claims. First Nations main resource has been the law, which as described below, has provided First Nations victories in critical legal cases, which has the effect of increasing leverage at the bargaining table. First Nations main strategy has been a strategic combination of bargaining with government and "venue shifting" to the courts when First Nations have not been satisfied with the results in the bargaining arena. First Nation organizations have also worked to increase their direct participation in the forest sector, gaining more resources and influence through holding land and tenure rights.

The Government of BC is also a core actor in the forest policy regime, both as politically manifested in the legislature and cabinet, but also the bureaucratic structure of provincial ministries. The government in power has the core interest of gaining reelection, and also ensuring a smooth flow of government revenues to ensure sufficient government operations. These interests create incentives for the government to promote a healthy business climate to attract investment and maintain or increase the jobs and other economic benefits conducive to the creation of a satisfied electorate. The government also has an interest in upholding the constitutional jurisdiction over public forestlands, ensuring these lands are managed to provincial law and facilitating the economic productivity of the forest sector. The government has the resource of legal authority and significant budgetary and staff resources. The organization that plays the leading role in this regime is the provincial Ministry of Forests (MoF). The MoF is generally well resourced, but has experienced a significant reduction in resources (~30%) during the BC Liberal mandate. In its approach to First Nations, the BC government has generally adopted a relatively reactive strategy of adjusting policy to meet its relatively limited legal interpretation of its obligations to First Nations. During the Liberals' term, as discussed below, the strategy focused on developing new approaches to consultation and accommodation.

The forest industry, whether represented as individual firms or trade associations, is the third core actor in this policy regime. The primary interest of the forest industry is in profitability. As a result, it has sought to promote the conditions for profitability, which include a stable institutional and policy environment where they retain control of tenure

rights and ensure the smooth flow of fiber from the forest through the mills and to market. The main resource of industry is their control over investment, and the jobs and economic benefits that flow from those investment decisions. They have adopted strategies to increase certainty in their access to resources, including lobbying government, but also strategic engagement with First Nations through economic partnerships and other relationships.

A number of other actors play important roles in the forest policy, including communities, unions, environmental groups, and the Federal government, particularly with its treaty responsibilities. Nonetheless, this analysis will focus on the three core actors of First Nations, the BC government, and the forest industry.

2.3.2 Institutions

Institutions are the rules of the game that allocate authority over policy and influence relations among policy actors. The key institutions in this case are the cabinet dominated-parliamentary system of government, the judicial system, financial institutions and the Constitution itself. As First Nations become more influential, their own governmental structures and traditions are becoming more important. First Nations have had limited influence over policy within the traditional parliamentary system, so they relied on a strategy of "venue-shifting" from these established government authorities to the judicial system (Cashore et al 2001). This strategy has proven to be extremely successful, as a series of court ruling advancing First Nations Title and Rights have been the driving factor behind most significant forest policy changes. The most important cases can be summarized as follows:

Delgamuukw v. BC 1997 – The Supreme Court of Canada held that Aboriginal Title is an interest in the land itself, including forests on that land. Aboriginal Title encompasses the right to exclusive use and occupation of the land for a variety of purposes and includes the right of a First Nation to choose the uses to which land may be put.

Taku River Tlingit First Nation v. Rinstad et al 2002. - The BC Court of Appeal held that the Crowns duties to First Nations exist before Aboriginal Title or Rights are determined in court.

Haida v. BC and Weyerhaeuser 2002 (Haida I) – The BC Court of Appeal held that the Crown and third party resource tenure holders have an enforceable duty to consult in good faith and to endeavor to seek workable accommodations with respect to granting tenures and management of the land in question.

Haida v. BC and Weyerhaeuser 2002 (Haida II) – The BC Court of Appeal held that in the case of conflicting rights, the interests of First Nations must not be subordinated by the Crown to competing (third party) interests. The Court also held that tenures granted or replaced without adequate consultation and accommodation of affected First Nations could be defective.

Haida v. BC 2004 - The Supreme Court of Canada held that the Province has a duty to consult and accommodate First Nations prior to treaty or legal proof of rights and title. Third parties do not have this duty as the "the honour of the Crown cannot be delegated".

The combined effect of these cases has been to discredit the narrow legal position of the BC government that it did not have a duty to consult prior to the establishment of Title, and a general strengthening of the bargaining position of First Nations in discussions with government and industry. They made it clear that the status quo was not sufficient to gain the certainty necessary to provide a favourable business climate.

2.3.3 Ideas

Ideas are causal and normative beliefs about the substance and process of public policy. The construction of Aboriginal Rights and Title in jurisprudence is an example of a formally constituted idea relevant to this policy regime. In more general discourse, the most powerful idea is probably the need to reconcile the relationship between the Crown, as a representative of non-aboriginal British Columbians, and First Nations. Different actors have had fundamentally different ideas of what reconciliation implies. Most would agree that treaties are desirable, but that there are incompatible standards for what is acceptable in a long term settlement. Government and industry have tended to adopt the view that it is sufficient to provide First Nations with an opportunity for informed input into operational decision-making through consultation procedures. First

Nations have demanded, as an acknowledgement of their Aboriginal Rights and Title, recognition of at least shared decision-making on resource use.

2.3.4 Background Conditions

Institutions, actors and ideas interact within the context of particular background conditions. There are two main background conditions that have had an affect on the First Nation forest policy regime. The first, and most significant, is the economic performance of the BC forest industry. The BC forest industry was in a downward economic slide in the late 1990s and early 2000s, losing over a billion dollars in 1998 (COFI 2000). As a result, restoring profitability to the forest industry was a very salient issue for the incoming government.

The second major background condition affecting the policy regime was public opinion surrounding First Nation land claims. Leading up to and during the BC Liberals first mandate, public opinion surrounding the treaty process, particularly the Nisga'a Final Agreement, was divided. Although many British Columbians supported the province concluding treaties, there was considerable concern over private property rights for non-First Nation citizens and issues around Aboriginal self-government (Blore 1998). Where public lobby groups such as the Citizen's Voice on Native Claims strongly opposed the Nisga'a Final Agreement, BC business leaders such Canadian National Railway and BC Hydro urged the business community to support the deal (Globe and Mail 1998). Overall, this background condition mainly served to polarize regime components into a position either 'for' or 'against' the Nisga'a treaty and in doing so, may have reduced public confidence in the land claims process.

Together, the regime components of institutions, actors and ideas interact with the background conditions to produce policy outcomes through the policy cycle. The analysis highlights the foundations of the conflict within the regime, but also the changing rules of the game that have forced shifts in policy. First Nations have been working to gain greater access to economic benefits and greater control over decision-making with respect to resource development on their traditional territories. Forest companies have sought to minimize costs and maintain a steady flow of fiber. The government of BC has sought to maintain its policy-making authority with respect to resource development while simultaneously promoting an investment climate that would

facilitate a thriving and prosperous forest industry. As the legal rights of First Nations were strengthened by the courts, both the industry and government have been forced to change practices and policies to better incorporate First Nations' interests. The following sections explore how forest policy for First Nations evolved through the policy cycle over the 2001-05 period, revealing both the extent of change but also the constraints to more enduring change.

2.4 Policy Cycle

2.4.1 Agenda Setting

The agenda setting phase of the policy cycle focuses on how governmental agendas are set and can be explained primarily by looking at the problems, politics and visible participants that drive the issues (Kingdon 1995). In the case of the BC Liberal's forest policy agenda for First Nations, the streams of politics and problems played a dominant role. The politics stream was dominated by private property issues surrounding the Nisga'a Final Agreement and the problems stream dominated by the need to respond to jurisprudence, such as the BC Court of Appeal's Haida decision, while treaties were still under discussion. Accordingly, leading up to the 2001 provincial election the BC Liberal "New Era" forestry agenda for First Nations set out two specific goals (BC Liberal Party 2001):

1. Protect private property rights in treaty negotiations.
2. Work to expedite interim measures with First Nations to create greater certainty.

The first commitment largely results from the politics of the Nisga'a Final Agreement. The BC Liberal's legal challenge of the Nisga'a Final Agreement and the Liberals strong advocacy of private property rights were essentially politically motivated. The non-aboriginal population's fear of losing private lands to First Nations through treaty settlements represented a significant opportunity for the BC Liberals to build voter support. The BC Liberals promised that if they were elected they would address protection of private property rights by holding a province wide referendum on treaty negotiations.

The second BC Liberal commitment represented the cornerstone of the BC Liberal forest policy for First Nations and aimed to address the impacts of the BCCA's *Haida* decision while treaties were still being negotiated. Although also a politically motivated action, this commitment stemmed more from the 'problem' that enhanced First Nations Title and Rights posed for provincial governments, particularly for natural resource management. Supreme Court cases such as *Delgamuukw* and *Haida* continued to put significant pressure on provincial governments to establish mechanisms to consult and accommodate First Nations over resource management. The BC Liberal commitment to expedite interim measures agreements aimed to mitigate such pressures. This commitment was also consistent with recommendations of the 2000 BC Forest Policy Review and the 1994 BC Claims Task Force (Wourters 2000).

Throughout the BC Liberals 2001 -2005 mandate this second commitment proved to be the most influential and tangible forest policy outcome for First Nations. As discussed in the subsequent sections however, how these interim measures were formulated and implemented had a significant impact on their effectiveness for First Nations.

2.4.2 Formulation

The policy formulation stage analyses how the ideas considered by government develop and get refined into public policy (Howlett and Ramesh 2003). As with the other new BC Liberal forest policies, the policies for First Nations developed primarily out of a few influential documents, public consultation processes and behind-the-scene discussions between the government and forest industry representatives. This section focuses on the evolution of forest policy ideas for First Nations and highlights the role of the government/forest industry forest policy discussions in formulating these new policies.

The majority of BC Liberal's forest policies developed out of three influential documents: the Council of Forest Industries (COFI) 1999: "A Blueprint for Competitiveness", the NDP's 2000: "Shaping our Future: BC Forest Policy Review" and Peter Pearse's 2001 "Ready for Change: Crisis and Opportunity in the Coast Forest Industry". Key ideas from these documents can be found through the 'New Era' commitments and the various forest policy decisions discussed in the next section. For example, one of the main BC Forest Policy Review recommendations was to establish new forms of tenure and

expand interim measure agreements to allow First Nations and forest communities a more active role in forest management (Wourters 2000).

The BC Liberals also launched two extensive public consultation processes that highlighted issues relevant to forest policies for First Nations. The first was the creation of a special committee of ten BC Liberal Members of the Legislative Assembly (MLA). The Select Standing Committee on Aboriginal Affairs was charged with examining, inquiring and making recommendations on how the government should proceed with their planned referendum on treaty negotiations. The committee held 15 public hearings across the province and received submissions from a total of 482 people and organizations (Gov BC 2002). Although the committee's recommendations did not cover forest policy per se, the proposed referendum had a profound effect on First Nation/BC government relations.

The second public consultation process that aimed to help formulate forest policy change was a three-part consultation process on the Result-Based Forest Practice Regime (Hoberg 2002). This process consisted of:

- A panel of eight BC Liberal MLAs, chaired by North Island MLA Rod Visser. The panel held 13 full day meetings across the province.
- A more technical, stakeholder process directed by George Hoberg, Head of the Department of Forest Resources Management at UBC. The stakeholder process included 58 meetings with individuals and groups, 133 written submissions.
- A web-based public comment forum, managed by Professor Hoberg that attracted 170 registered users and recorded 272 entries.

Although this consultation process focused mostly on forest practices, the participation and comments provided by 23 First Nation governments was a significant development. All the participating First Nations Crowned that they were not adequately consulted regarding the proposed code, with the majority of meetings taking place in the last week of the consultation period (Hoberg 2002). Several concerns were raised, with most First Nations highlighting that more formal consultations must be conducted before the enactment of new legislation (Hoberg 2002). To this end, the Hoberg report

recommended the government conduct additional consultations with First Nations and the MLA Panel report also concluded that:

“What is clear, however, is the desire amongst First Nations to be fully involved in the establishment of a new regulatory framework that will govern the manner in which harvest activity occurs on the land base.”
(Gov BC 2002)

However, the next phase BC Liberal forest policy formulation did no such thing. In fact, the policy formulation process went from being fairly open and transparent to the public to a behind-the-scene process organized by government and forest industry representatives.

In August 2002 the BC Liberals and forest industry representatives set up a confidential discussion process that aimed to ensure that proposed forest policy changes effectively met government's objectives and that all decisions were informed by industry input (MoF and COFI 2002). A joint steering committee and four working groups supported the discussions. These working groups included:

1. Results Based Code
2. Forest Stewardship
3. Timber Pricing and related policy
4. First Nations Issues – Defining options for First Nations economic opportunities and approaches to consultation (MoF and COFI 2002).

Based on these discussions, issues and options were identified and clear policy direction was provided from each working group. Working groups were composed of industry and government members and worked primarily to:

- Identify and clarify industry and government's perspectives with respect to the working group issue (i.e. First Nations Issues)
- Identify options for moving forward, including policy decisions required

- Identify and test attainment of both government and industry objectives for the working group policy issue (MoF and COFI 2002).

The First Nations Issues Working Group was co-chaired by Rod Willis (Weyerhaeuser) and Tim Sheldan (Assistant Deputy Minister of Forests) and was broken into two specific task teams to explore policy options for economic opportunities and consultation measures for First Nations (MoF and COFI 2002). The economic opportunities task team focused on developing options for increasing business opportunities for First Nations in the commercial forest sector. The consultation team worked to provide recommendations on government and industry's approaches for improving the First Nation consultation process and potential mechanisms for addressing the accommodation of Aboriginal interests. In addition, the working group provided information and advice on proposed policy/legislative changes stemming from the other main working groups as they relate to First Nations.

First Nation governments were not officially part of these policy discussions. One prominent First Nation forestry representative requested to be involved, but was denied access to the discussions for apparent 'conflicts of interests' (Walkem pers com 2005). Consequently, the formulation of BC Liberal forest policies for First Nations had no direct input from First Nations, despite the fact that First Nations input into the public processes expressed a clear desire to be at the decision-making table.

2.4.3 Decision Making

The BC Liberals moved quickly in making decisions and implementing new policy based on the ideas considered in the formulation stage. The Liberals overwhelming majority in the legislature ensured decisions pertaining to First Nations issues were carried through with little debate and negligible consultation with First Nations (John 2004). The major BC Liberal decisions made pertaining to First Nations and forest policy include:

- Withdrawal of the Nisga'a Treaty legal challenge
- Referendum on Treaty Negotiations
- Creation of Bill 41, Forest (First Nations Development) Amendment Act 2002.

- Development of a Provincial Policy for Consultation with First Nations and the subsequent MoF Consultation Guidelines
- 2003 Speech from the Throne
- Forest Revitalization Plan and the associated enabling legislative changes.

The decision making stage of the policy cycle can be difficult to distinguish from the implementation stage (Cashore et al 2001). As a result, this section will focus on the decisive events such as the passing of new legislation, the introduction of new policy documents and specific political announcements that pertain to First Nations. The details of how these decisions were implemented are described in the implementation stage.

The "New Era" of decision making on policies for First Nations began with rough start for the BC Liberals. The first problem the new government encountered was in regards to their appeal of the BC Supreme Court's ruling that dismissed their lawsuit against the Nisga'a Treaty. Gordon Campbell, Geoff Plant and Michael de Jong, who filed the lawsuit against the BC government, now represented its top positions: the Premier, Attorney General and Minister of Forests. Attorney General Geoff Plant explained "Now that we're in government, it's not possible to sue ourselves" (CBC 2001). Down playing the ironic nature of the situation, the BC Liberals decided to withdraw their appeal.

The second problematic decision the BC Liberals faced was following through with their election promise of holding a provincial referendum on treaty negotiations. First Nations, along with several supporting groups, such as the Anglican Church, BC Teachers Federation and Council of Senior Citizens, strongly opposed the referendum, claiming that the process was unjust and incited racism (First Nations Summit 2002, CBC 2002). Despite substantial pressure from First Nations and their supporters to scrap the controversial referendum, the BC Liberals decided to go ahead with it in the spring 2002. The referendum had a low response rate of only 35.8 % and cost just over \$3 million (Elections BC 2002). The received ballots were overwhelmingly supportive (85-95%) of the governments preferred negotiating agenda, the yes side (Elections BC 2002). The BC Liberals claimed the process was a success and gave them a clear mandate for proceeding with treaty negotiations. First Nation groups and their supporters claimed that the majority of British Columbians rejected the process and that the results were

meaningless. Despite the controversy of the referendum, both sides agreed it was time to move on with treaty negotiations and work to improve relations.

Under the shadow of the referendum controversy, the BC Liberals began to design new legislation that they hoped would indeed improve such relations. Bill 41, the *Forest (First Nations Development) Amendment Act 2002*, represents the first of several legislative changes that would have significant impact for First Nations. Bill 41 provides government the option to directly award small scale timber tenures to First Nations in exchange for the First Nation entering into a treaty-related, economic, or interim measures agreement with the province (MoF 2002). Under Sections 47.3 or 43.5 of the Forest Act, the Minister of Forests now has the discretion to invite a First Nation to apply for small to medium scale forest tenure provided that the First Nation "implement or further an agreement between the First Nation and the government" (Gov of BC 2002b). As discussed in the implementation section below, these agreements are referred to as Direct Award Agreements or Forest and Range Agreements, and are considered interim measures or economic measures under *Forest (First Nations Development) Amendment Act, 2002*. Such agreements are conditional on the First Nation submitting a business plan and committing to comply with a government led consultation process in their respected territories.

Shortly after creating the legislative tool for granting First Nations increased access to timber tenures (Bill 41), the BC Liberal government unveiled a comprehensive provincial policy for consultation with First Nations. This policy describes how provincial ministries, agencies and crown corporations must consider the 'interests' of First Nations in the allocation, management and development of Crown land and resources. The policy defines Aboriginal interests as potentially existing, but unproven Aboriginal Rights and/or Title, and recognizes that consultation must occur with First Nations prior to the province making land and resource-related decisions (Gov of BC 2002c). Individual Ministries, such as the MoF, subsequently developed their own consultation policy to be used in conjunction with the provincial policy (MoF 2003d). These consultation policies were designed in reaction to the court rulings, particularly the BC Court of Appeals Haida decision, and to support the consultation clauses in the forestry interim measure agreements.

With the *Forest (First Nations Development) Amendment Act 2002* and the Provincial Consultation Policy of First Nations in place, the 2003 Speech from the Throne spelled out the BC Liberals intention to make substantial changes to forest policy. The portion of the speech entitled "Opening Up: Recognition and Reconciliation with First Nations" talked of learning "from our mistakes" and "For too long we have been stuck in a rut of our own making, talking past each other and heading in opposite directions" (Gov of BC 2003). The Throne Speech explained that:

"Government will take another bold step to forge a new era of reconciliation with First Nations. Significant reforms will be introduced this year to ensure that more access to logging and forest opportunities is available to First Nations" (Gov of BC 2003).

More specifically the speech noted that:

"Starting this year, funding will be earmarked in the budget for revenue sharing arrangements with First Nations that wish to help revitalize the forest industry in their traditional territories. The distribution of that revenue will be negotiated with First Nations in exchange for legal certainty that allows all regions and all British Columbians to more fairly prosper from their resource industries" (Gov of BC 2003).

Such "bold steps" and "significant reforms" the BC Liberals spoke of in the Throne Speech followed a month later in the form of the Forest Revitalization Plan. The comprehensive plan aimed to "help restore the vitality of British Columbia's forest industry". Some of the key policy actions of the Forest Revitalization Plan included (MoF 2003):

- Redistributing forest tenure.
- Introducing a market-based timber pricing system.
- Removal of minimum cut controls.
- Removal of appurtenance requirements.
- Removal of barriers for licensees to transfer, trade or sell timber tenures.

- Creation of a forest workers transition trust.
- Market BC wood products abroad.

As part of the tenure redistribution, or “take-back” process, the Forest Revitalization Plan included the following specific policy actions specific to First Nations:

“A portion of the allowable annual cut that is reallocated from existing tenures will be targeted to First Nations who enter into accommodation agreements with the province. These agreements may be negotiated where there are unresolved aboriginal rights and titles issues, as an interim step towards a comprehensive treaty or other form of settlement: they will be pursued where forestry activities on Crown land could affect First Nations’ interests.

Ultimately, about eight per cent of the total provincial allowable annual cut will be made available for such arrangements. As well, the province will develop mechanisms to share a portion of forest revenues with First Nations who wish to enter into these accommodation agreements. Revenues will continue to be generated through the stumpage paid by all licensees.” (MoF 2003 p.14)

The plan highlighted that such actions would help reduce tensions and build investor confidence in the province, with an overall goal of resolving long-standing issues that have hindered economic certainty in the province (MoF 2003 p.15).

Following the release of the Forest Revitalization Plan the BC Liberal government introduced a flurry of legislative changes in order to implement the plan. In total, five *Forest Act* amendments were tabled and passed in May 2003.³

These amendments represent some of the most significant changes to BC forest policy in decades and will have far reaching effects for First Nations. However despite the significance of the changes and the government’s desire to not talk “past each other”, no consultation on these changes was ever held with First Nations. In fact, following the

³ These amendments were Bill 27, Forest Statutes Amendment Act, 2003; Bill 28, Forest Revitalization Act, 2003; Bill 29, Forest (Revitalization) Amendment Act, 2003; Bill 44, Forest Statutes Amendment Act (No. 2), 2003; Bill 45, Forest (Revitalization) Amendment Act (No. 2), 2003

release of the Forest Revitalization Plan, the First Nations Summit passed a resolution calling for the Minister to postpone the proposed legislative changes in order to meaningfully consult with First Nations (First Nations Summit 2003). Similarly, the Northwest Tribal Treaty Nations officially objected to the proposed changes as they felt no meaningful consultation had taken place and the changes would infringe on their Rights and Title (Monk 2003).

With the enabling legislation for the Forest Revitalization Plan in place, the BC Liberal government moved to try to quell the mounting dissatisfaction expressed by First Nations. In August 2003, Minister de Jong wrote to the First Nations of BC to formally introduce the government's First Nations Forestry Strategy and his intention to hold a series of regional workshops to discuss the policy changes (De Jong 2003). Based on the two workshops held to date, First Nations participating highlighted several concerns and recommendations. Some of these include:

- There is mistrust of the current government in most First Nation communities.
- It is problematic to participate in forest policy discussions since the decisions have already been made.
- First Nations were left out of forest policy developments/legislative changes.
- Per capita revenue sharing formula may not be equitable to all First Nations.
- Quality of the timber that will be made available to First Nations is unknown.
- A First Nations policy forum should be built from the ground up.
- First Nations should have the same treatment as industry and labor during policy development. (MoF 2003b)

From the fall 2003 onward, the BC Liberals moved to aggressively implement the decisions made the first part of their mandate. Although limited discussions with First Nations did occur through these workshops, the discussions did not lead to any changes in implementing the new policies.

2.4.4 Implementation

The cornerstone of the BC Liberal forest policy platform was to increase the number of interim measure agreements with First Nations. Accordingly, over the past four years a significant number of forestry related interim measure agreements have been concluded between First Nations and the Ministry of Forests. In addition to the creation of these agreements, several policies enacted through the Forest Revitalization Plan have also had impacts on First Nations once implemented.

As of April 15, 2005, the MoF has signed agreements with 93 First Nations. These agreements have provided over \$100 million of funds and 14.5 million cubic meters of timber over the term of the agreements (MoF 2005). The scope, content and implications of these agreements vary, but they can be generally classified into two main types: Direct Award Agreements and Forest and Range Agreements. A summary of the forestry agreements by type, term, volume and funding afforded is provided in Table 2.1.

Table 2.1: Summary of Forestry Agreements signed by the BC Liberals (2001 - 2005)

Agreement Type	# of Agreements Signed	Ave Term	Ave Volume/Year (cubic meters/year)	Ave Funding (\$/year)
Direct Award: IMA	16	5 years	45,000	—
Direct Award: FNWA	8	3 years	32,500	—
Forest and Range Agreement	49	5 years	32,000	\$ 378,000

2.4.4.1 Direct Award Agreements

Direct Award agreements between the MoF and select First Nations represents the implementation phase of *Bill 41 Forest (First Nations Development) Amendment Act*. To date, 24 Direct Award agreements have been signed, with 48 different First Nations.⁴ Direct Award agreements fall under two main agreement types: Interim Measure Agreements and First Nation Wildfires Agreements.

⁴ Two of these agreements were transferred to Forest and Range Agreements

The Direct Award Interim Measure Agreements provide an invitation for a First Nation to apply for a forest tenure without competition from other bidders. To date, sixteen Direct Award IMAs have been signed and in all cases but two,⁵ the tenure is a non-replaceable forest licence ranging in terms from 1 to 10 years, with an average of 5 years. The average annual timber allocation for each First Nation is approximately 45,000 cubic meters/year, with the timber made available primarily through mountain pine beetle uplifts in the interior and licensee AAC undercuts on the coast (MoF 2005). These new tenure allocations are not part of the Forest Revitalization Plan's tenure "take-back", but rather represent short-term extraction opportunities. In addition to inviting a First Nation to apply for the short-term tenure, some, but not all, Direct Award IMAs have specific language around consultation and accommodation in forestry development and planning. Some agreements commit the First Nation to participate in a 60 day government led consultation process, but others do not (MoF 2005).

Direct Award First Nation Wildfires Agreements (FNWA) are similar to the Direct Award IMAs. The defining feature is that FNWAs offer an invitation to apply for a 3 year non-replaceable salvage licence on areas subject to recent wildfires. To date, seven Direct Award FNWAs representing 18 First Nation communities have been signed with the MoF. The average volume per First Nation is 32,500 cubic meters per year. As with the Direct award IMAs, the language around consultation and accommodation is inconsistent between agreements (MoF 2005).

2.4.4.2 Forest and Range Agreements

As outlined in the 2003 Throne Speech and subsequent *Forest Revitalization Plan*, one of the key BC Liberal government commitments was to build on the Direct Award agreements by opening up new tenures for First Nations and including revenue sharing as part of the agreements. The first of these new interim measure agreements, called Forest and Range Agreements (FRAs) was signed in October 2003. Since that time 49 FRAs have been signed representing 58 First Nations and Bands (MoF 2005). The FRAs are generally for a five-year term and outline economic benefits (revenue sharing

⁵ Westbank First Nation was awarded a Probationary Community Forest Agreement and the Squamish Nation a woodlot.

and timber volume) in exchange for specific commitments to consultation and accommodation clauses.⁶

The revenue sharing component of the FRA is determined on a per capita basis, under the formula of approximately \$500 per community member per year. The agreements range from as little as \$45,000/year for smaller communities and up to \$2 million per year for larger communities. On average, the agreements provide approximately \$378,000 per year to participating First Nations and Bands (MoF 2005).

The timber volume component of the majority of FRAs invites the First Nation to apply for a 5-year non-replaceable forest licence.⁷ The volumes made available for each First Nation varies, but is also based on a fixed population formula. Internal MoF documents Crown that the volume made available to First Nations would be in the range of 30 cubic meters per person, with an upper target of 54 cubic meters per person if other 'top up' volumes were available such as undercut or beetle uplifts (BCSC 2005). To date, over 1.8 million cubic meters of provincial AAC has been reallocated to First Nations, equaling an average of 32,000 cubic meters/year for each participating First Nation (MoF 2005).

Unlike the inconsistent language around consultation and accommodation in the Direct Award agreements, FRAs have consistent clauses in each agreement. FRAs are conditional on clear commitments from the First Nation to participate in an operational and resource management consultation process and not to unduly impede forest resource developments within in their traditional territories (MoF 2005). As described below, the Minister has the discretionary authority to suspend the economic benefits when the First Nation has been found in breach such commitments. Specifically, FRAs have four main clauses that define how the First Nation must comply with the agreement:

- *Consultation and Accommodation Respecting Operational Plans* – This clause defines that the First Nation has agreed to the consultation process (60 day review period) for all Operational Plans referred by the MoF. If the First Nation

⁶ The Squamish Nation FRA is for a one year term, Cowichan Tribes FRA is for six year and does not include a forest tenure provision.

⁷ Recent agreements with the We Wai Kai and Pacheedaht First Nations included provision to also apply for a specified size of woodlot

does not respond during this time, the Operational plan may proceed. The First Nation also agrees that during the term of the agreement, the Province has fulfilled its duties to consult and seek a workable accommodation of economic interests subject to potential infringements that may result from operational decisions made in the First Nations traditional territory.

- *Consultation and Accommodation Respecting Administrative Decisions* - The clause defines the MoF as the statutory decision maker for strategic decisions such as: setting the Allowable Annual Cut (AAC), AAC apportionment and reallocation decision, replacement of Forest Tenures, issuance or subdivision of a Forest Tenures, the reallocation of harvesting rights as a result of the implementation of the Forest Revitalization Act. As with operational plans, the First Nation agrees to comply with provincially led timber supply analysis consultations and agrees that the Province has fulfilled its duties to consult and seek a workable accommodation of economic interests subject to potential infringements that may result from all administrative decisions made in the First Nations traditional territory.
- *Stability for Land and Resources* – This clause outlines that the First Nation agrees to “respond immediately” and work “co-operatively” with the province to resolve any “acts of intentional interference” by members of the First Nation pertaining to timber harvesting or other forestry economic activities.
- *Suspension or Cancellation of Economic Benefits by the Minister* – This clause outlines that the Minister or a person authorized by the Minister may suspend or cancel economic benefits of the agreement if the Minister determines the First Nation is not in compliance with the agreement. Suspension or cancellation of economic benefits can also occur if the First Nation challenges or supports a challenge, to an Operational and/or an Administrative decision by way of a legal proceeding or otherwise on the basis of the economic benefits or consultation/accommodation processes set out in the agreement.

2.4.4.3 Legislative Changes to the Forest Act

As described in the decision making section, the BC Liberals made a number of significant amendments to the *Forest Act* primarily through the Forest Revitalization Plan

in the spring of 2003. The implementation of these changes is ongoing, so it is difficult to assess the full impact of all amendments on First Nations. However, the change to the *Forest Act* that has been the source of the most discourse with some First Nations to date has been Bill 29, the *Forest (Revitalization) Amendment Act 2003*.

Bill 29 eliminates the requirement of the Minister of Forests to consent to a tenure transfer and removes the Minister's authority to insert conditions on a tenure transfer. As a result, the MoF can now claim that it does not have a duty to consult or accommodate First Nations when existing forest tenures change hands (CBC 2005).⁸ Since the inception of Bill 29, the forest industry has undergone a substantial transformation with several major tenures being transferred in corporate takeovers and sales. Most notable is the recent bid by Brascan Ltd. to purchase Weyerhaeuser's coastal forest lands, mills and forest tenures. The Brascan deal has provoked widespread civil disobedience on Haida Gwaii, where the Council of the Haida Nation maintains that the Haida must be meaningfully consulted over the tenure transfer.⁹

2.4.5 Evaluation

The evaluation stage of the policy cycle focuses on assessing the consequences of the policies employed, primarily through monitoring and analysis (Howlett and Ramesh 2003). Implementation of the BC Liberal forest policies for First Nations is ongoing and therefore comprehensive evaluations of these policies have not yet been complete. However, since the introduction of these policies in 2003, there have been challenges in the BC Supreme Court and some significant actions by BC First Nations in regards to these forest policies. Consequently, an interim evaluation of the BC Liberal policies can be conducted based on the outcomes of these developments.

2.4.5.1 BC Supreme Court Rulings

Two recent BC Supreme Court rulings pertaining to the Forest and Range Agreements provide some important insights when evaluating the BC Liberal's forest policies for First Nations.

⁸ Recently, the Minister of Forest Michael de Jong Crowned that the province doesn't have to consult over transfers such as in the Weyerhaeuser/Brascan deal, because it involves the transfer of an existing forest licence.

⁹ This is covered in more detail in the Significant Responses by First Nations section of this paper (2.4.5.2).

The first case that considered the FRA initiative was *Gitanyow First Nation v. Minister of Forests* in December of 2004. Although this case primarily centered on the Crown's ability to consult and accommodate in regards to a forest tenure transfer, the case also reviewed problems associated with negotiating a FRA (BCSC 2004). Prior to MoF establishing the FRA initiative, the province and the Gitanyow were negotiating a Memorandum of Understanding on Recognition and Consultation (MOU). The draft MOU covered topics such as funding, consultation on forest development activities and administrative decisions, communications, a workshop on sustainable resource management planning and exploring economic opportunities for the Gitanyow. Talks on the MOU stalled in the summer of 2003 over issues of revenue sharing and forest tenure. In December 2003, the MoF attempted to renew talks by suggesting the parties utilize a FRA instead of the MOU and tabled a standardized FRA for review. The Gitanyow rejected this offer as they felt the draft FRA did not incorporate critical elements which had been negotiated in the MOU; namely, (i) an acknowledgement of the Gitanyow's prima facie case of Aboriginal rights and title, and (ii) negotiations with respect to long term land use planning for Gitanyow territory (BCSC 2004). These elements in addition to the impasses on economic measures were the subject of the judicial review.

In his ruling, Justice Tysons first declared that the Minister of Forests had "failed to provide meaningful and adequate consultation and accommodation" to the Gitanyow with respect to his decision to transfer the forest tenure (BCSC 2004 p.12). Given this failure, Justice Tysons declared that the conduct of the Minister regarding the FRA negotiations "was a breach of the Crown's duty of consultation and accommodation in that the Minister made the Forest and Range Agreement conditional on the requirement that the Gitanyow agree that consultation and accommodation had been fulfilled in respect to other decisions on forestry activities within Gitanyow territory" (BCSC 2004 p.13). Clearly the take home message here is that the MoF can not 'pave over' past decisions that have infringed on a First Nations Title and Rights by simply creating a new agreement.

The second and more specific case dealing with the FRA initiative is the *Huu-Ay-Aht First Nation v. the Minister of Forests* in May 2005. Similar to the Gitanyow case, the Huu-Ay-Aht First Nation was in the process of renegotiating a broader agreement when the MoF ceased negotiations and tabled the standardized FRA. The Huu-Ay-Aht

repeatedly expressed a desire to continue with the Interim Measures Agreement framework they established with the MoF in 1998 and extended in 2001. This framework created a joint forest council to resolve forest management issues, supported joint forestry planning and contained economic and forest tenure opportunities. The MoF maintained that it no longer had the mandate or structure to renew such an agreement and in its place, the FRA framework would suffice (BCSC 2005). The HUU-Ay-Aht rejected this position and subsequently petitioned the court to address the Crown's duty to consult in good faith and to endeavor to seek workable economic accommodations. In this case the HUU-Ay-Aht also directly challenged the province's approach to applying a population-based formula when determining accommodation arrangements.

In her ruling, Madam Justice Dillon was damning of the MoF's conduct in applying the FRA policy. Justice Dillon found that "The conduct of the Crown from February 2004 through to the end of negotiations was intransigent. Although the government gave the appearance of willingness to consider the HFN's [HUU-Ay-Aht First Nation] responses, it fundamentally failed to do so" (BCSC 2005, p.58). Justice Dillon declared that the "FRA policy does not meet the Crown's constitutional obligation to consult the HFN" and that; "the Crown failed to follow its own process for consultation as set out in the Provincial Policy for Consultation with First Nations and the Ministry Policy" (BCSC 2005, p.47). Justice Dillon also ruled that the population-based formula to determine accommodation does not constitute good faith consultation and accommodation, does not fulfill the administrative obligations of the Crown to provide such accommodation, and has no rational connection with the legislative objectives of the FRA program (BCSC 2005, p.2).

These two cases suggest that the BC Liberals made some critical errors in perhaps not crafting policies for First Nations, but certainly in applying them. These decisions highlight that the BC Liberal forest policies for First Nations are not only controversial, but may be legally infeasible. The BC Liberal's attempt to buy economic certainty with a quick and easy approach has so far proven to be shortsighted and may prove to be more costly in the long run unless a new approach is taken.

2.4.5.2 Significant Responses by First Nations

As highlighted in the decision making section, First Nation organizations were not pleased with the BC Liberals lack of consultation over changes to the *Forest Act*. Over

the past five years there have been numerous First Nation led actions and demonstrations where they have voiced their opposition to various government policies and programs. In the context of the forest policies discussed in this paper, there are two significant responses by First Nations.

The first occurred when First Nations organizations mobilized thousands of supporters to voice their opposition to the BC Liberal's policies on May 20th 2004. The Title and Rights Alliance organized the rally of Elders, youth, community members and leaders from across the province. The rally was the end point of a caravan that began traveling the province a week earlier and included more than 1,000 First Nation delegates that attended a conference prior to the rally (Title and Rights Alliance 2004). The rally served as a significant indicator to the level of dissatisfaction felt by First Nations across the province.

The second significant response by First Nations was the 'Islands Spirit Rising' campaign by the Haida Nation and their supporters (Ramsay 2005). The campaign was sparked in response to the BC government's decision not to consult the Haida on the proposed tenure transfer of TFL 39 from Weyerhaeuser to Brascan Ltd (CBC 2005). The Haida maintain that this decision is counter to 2004 Supreme Court of Canada's ruling that governments must consult in good faith and to endeavor to seek workable accommodations with respect to granting tenures and management of the land in question. The Haida were also angered by the MoF's approval of logging plans in areas proposed for cultural protection under a joint land use planning process being conducted by the Haida and the province (Council of the Haida Nation 2005).

As a result, the Haida and their supporters set up two separate blockades that shut down harvesting operations on the Island and assumed control over a significant amount of recently harvested timber (Ramsay 2005). This development, in combination with a pending election, served to put a significant amount of pressure on the province to find a solution. Although the Minister of Forests maintained that he had no obligation to consult with the Haida, stating that "if they're not happy [the Haida], the solution is to go back to court" (CBC 2005). Despite the Ministers stance on the dispute the provincial government struck a deal with the Haida to end the blockades.

The new Haida/BC agreement, signed on May 11th 2005, sets forth several commitments with the aim of resolving conflicts and building a new approach to resource management on Haida Gwaii. Specifically, the new agreement provides for:

- Interim Protection Measures for areas of ecological and cultural importance to the Haida. These protection measures will be finalized through the Haida Gwaii Land Use Plan.
- An initial payment of \$ 5 million to the Haida and a commitment to develop a revenue sharing arrangement that more closely reflects historic and present economic activity on Haida Gwaii.
- Development of terms and conditions for an area based forest tenure with an annual volume of up to 120,000 cubic meters.
- Development of a new consultation protocol for ongoing forestry operations.
- Discussion related to options for developing a new approach for reaching a series of interim agreements concerning topics such as shared decision making, land revenue sharing, fishing, economic development, and consultation.
- Determination of a new Allowable Annual Cut (AAC) for Haida Gwaii.
- A commitment that commercial forestry will not be impeded on the Islands or surrounding waters outside of areas agreed for interim or permanent protection.
- An agreement that consultation and accommodation is an ongoing process arising from continued land and resource use.
- An agreement that the accommodations set out in the agreement do not include any obligations or liabilities arising from past infringements of Title and Rights that courts may in the future determine are owed to the Haida.
- A declaration that the province has met any accommodation obligations having arisen from the recent Supreme Court of Canada Haida decision and transfer of TFL 39.

In comparing this agreement to the components outlined in the Forest and Range Agreements, it is clear that this new agreement represents a completely different approach. In this case, the Haida were successful in doing what other First Nations have been able to achieve; negotiate an alternative agreement to the standard FRA. Keeping in mind that the Haida had to win decisively in the Supreme Court of Canada and stage one of the most successful logging blockades in recent history to do so.

As with the other criteria reviewed in this section, the responses by First Nations demonstrate that the BC Liberals forest policies have not been popular. Not only is there a significant level of dissatisfaction among First Nations with the BC Liberal forest policies, there is a strong and able will to force the province to change how they have approached the matter entirely. The new Haida agreement may well represent a turning point in the BC Liberal's approach.

2.5 Conclusion

This paper utilized the policy regime and policy cycle framework to analyze BC Liberal forest policies pertaining to First Nations over their 2001-2005 mandate. The changes amount to the most significant changes in First Nations-related forest policy in the history of the province. The key policy that the BC Liberals campaigned on, and then subsequently established as public policy, was to expedite the creation of forestry related interim measure agreements with First Nations. Close to seventy such agreements have been signed, granting over 60 First Nations (~25% of First Nations in BC) access to economic benefits in the form of revenue sharing and/or short-term timber tenures. In exchange for the economic benefits, the agreements (specifically Forest and Range Agreements) require that the First Nations agree to powerful clauses that aim to ensure legal 'certainty' for the province and their agents of economic development.

This policy and the ensuing agreements signal a major shift in the province's commitment in fulfilling their legal duties and obligations to First Nations. Clearly the agreements represent a step forward by providing much needed finances to First Nations and almost doubling the amount of timber their businesses can access for economic development. Similarly, for the province these agreements provide some hope of establishing some investment certainty in the forest industry.

The single most important factor in explaining these changes were the court decisions, most notably the *Haida* cases that clarified the duties of companies and especially the government towards First Nations in the current environment of unsettled land claims. These decisions were so powerful because they elevated the threat that forest operations could be halted by injunction, imposing significant losses on industry and government. These decisions have compelled the BC government to show good faith accommodation of Aboriginal interests. The policy changes during this period were significant concessions by the government. But even before the BC Liberals' began their second term, it had already become apparent that they are unlikely to be sufficient to address First Nations concerns and create a climate of certainty and stability sought by government and industry.

The process by which the BC Liberals formulated and enacted these policies was flawed. By sidestepping consultations with First Nations prior to introducing such fundamental and far-reaching changes to forest policy, the BC Liberals exasperated the feeling of mistrust growing in First Nations communities. Furthermore, the BC Liberals missed an opportunity to meaningfully discuss how the interim measure agreements could actually work for the benefit of First Nation interests. The call by First Nations for agreements that were longer-term, focused more on co-management as a logical bridge to treaty and in which revenue sharing was based on the economic activity occurring within their territory were not taken seriously. These actions have angered First Nations and, as highlighted above, sparked widespread civil disobedience in Haida Gwaii, in spite of the positive and progressive strategic planning agreements that were in place.

Although many First Nation communities have signed Forest and Range Agreements, many are not pleased with the agreements or the government's approach in negotiating them. This point was reinforced by the Supreme Court of BC who found the BC Liberal's approach to negotiating Forest and Range Agreements to be uncompromising and ultimately defective in meeting the Crowns constitutional obligations. As such, the BC Liberal's attempt to buy some economic 'certainty' for the short term through this policy has failed. New accommodation agreements that are tailored to the specific interests of each First Nation and provide more government-to-government relations, such as in the Haida agreement, will need to be renegotiated. In this regard, the BC Liberals should carefully consider the words of Madam Justice Dillon who Crowned that "Accommodation begins when policy gives way to Aboriginal interests" (BCSC 2005, p.53).

While the BC Liberal forest policies for First Nations are more progressive and far-reaching than past governments, they have thus far failed to accomplish the overriding objective of reconciliation and they have failed to keep up with the ever-changing legal field of First Nation Title and Rights. More fundamental change is required to meet the challenge to "recognize and reconcile" relationships with First Nations in British Columbia.

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Chapter 3: Innovations in Aboriginal Forest Management: Lessons for Developing an Aboriginal Tenure¹⁰

“As a government, we will have the power to determine how our lands will be used and how our resources will be developed”.

Penote Ben Michel (1954-2006), President of the Innu Nation.

3.1 Introduction

As specified in the Canadian Constitution, the management of Canada's forestland falls under the jurisdiction of provincial governments. Historically, a key objective for provincial governments in managing these forests has been to maximize economic opportunities through encouraging the extraction of timber resources and the development of an industrial forest product-processing sector (Pearse 1992). These objectives aim to ensure governments realize resource revenues, while also providing employment opportunities and regional development.

¹⁰ A version of this Chapter will be submitted for publication under the citation of: Forsyth, J. and G. Bull.

One important policy instrument to help achieve the economic development objective on public land is the creation of long-term forestland leases, or tenure arrangements. Tenure arrangements allow for an entity (usually a private company) to assume management responsibilities in exchange for access to provincial timber supplies. In a sense, forest tenures are simply a contract between government and a third party to extract and manage the forest resource on the behalf of the government. The terms and conditions of this contract will specify the roles and responsibilities for each of the parties. With most forest tenures an increase in management responsibility (costs) generally translates into an increase in tenure duration and exclusiveness (benefits) (FAO 2001). Most forest tenure arrangements in Canada were designed when forested regions were initially opened up for timber extraction and now cover most of Canada's commercial forest.

However, a fundamental problem with many forest tenures is that they have retained the same terms and conditions as when they were created (Pearse 1992). As a result, the forest tenure system is lagging behind current social and legal expectations placed on government by society (Tollefson 1998). This situation is especially evident in the recognition of Aboriginal rights and values in forest management (NAFA 2003, Ross and Smith 2002).

3.2 Aboriginal Rights and Forest Tenure

Some authors have found that provincial forest tenure systems can be considered a significant impediment to the recognition and protection of Aboriginal rights (RCAP 1996, Curran and M'Gonigle 1999, Ross and Smith 2002, NAFA 2003). Existing forest tenure arrangements are seen as the major barrier to Aboriginal communities who want to regain management authority over their traditional territories and to practice ecologically and culturally appropriate forms of forest management. For example, even though over 80% of Aboriginal communities make their home within Canada's commercial forest, only 1% of major long-term forest tenures in Canada are held by Aboriginal peoples (NAFA 2003). Furthermore, the industrial model of timber extraction has been considered an infringement on many resource-related Aboriginal rights such as hunting, trapping, fishing, gathering and spiritual reflection (Ross and Smith 2002).

Although Aboriginal and treaty rights are constitutionally protected under the Canadian Constitution Act, the exact nature of the Aboriginal and treaty rights continues to be a

subject of debate between Aboriginal and Crown governments. This debate is typically played out in the Supreme Court of Canada and various lower courts, with recent decisions demonstrating that Crown governments have a legal obligation to consult and accommodate Aboriginal peoples who may be affected by industrial activities (Supreme Court of Canada 2004).

Provincial governments have responded to these obligations by introducing a variety of initiatives. Such initiatives include the granting of small-scale forest tenures, encouraging joint ventures with industrial tenure holders or offering short-term agreements that provide timber and funding (Wilson and Graham 2005). However, examples such as these follow an "integration approach" in which Aboriginal communities are expected to operate within the existing industrial tenure framework (Ross and Smith 2002). Although several Aboriginal communities across Canada hold a variety of short-term forest tenures (NAFA 2003), there is concern that the industrial timber extraction orientation of these tenures may be incompatible with Aboriginal values and culture (Curran and M'Gonigle 1999, Ross and Smith 2002). Ross and Smith (2002) argue that a new type of forest tenure which integrates Aboriginal land ethics, values and governance systems into forest management is required to address the problems highlighted above.

To explore the concept of an Aboriginal tenure further, this paper will highlight examples of Aboriginal communities that have created forest management arrangements within the existing forest tenure system. The Nuu-chah-nulth First Nations of Coastal British Columbia and the Innu Nation of Central Labrador are unique examples because they have avoided standardized approaches required by most forest tenures and provincial management regimes in favor of forest management that focuses on maintenance and protection of cultural and ecological values.

Each example will be described in terms of the background conditions to change, implementation, and the preliminary outcomes of change in the forest management regime. Following the example descriptions, the discussion section will assess the examples based on the key directions for an Aboriginal tenure system provided by Ross and Smith (2002) and highlight any other key themes that emerge from the examples.

3.3 Example Descriptions

3.3.1 Central Nuu-chah-nulth First Nations

3.3.1.1 Background

The Nuu-chah-nulth have historically managed the natural resources on the West Coast of Vancouver Island based on the belief that their relationship with the world was a gift to be treated with respect and not wastefully depleted (CSSP 1995b). Hishuk-ish ts'awalk or "everything is one" embodies the Nuu-chah-nulth respect for all life forms and their approach to resource stewardship (Iisaak 2001). The Nuu-chah-nulth First Nations formally laid claim to the lands and resources within their traditional territory on the West Coast of Vancouver Island (including Clayoquot Sound) in 1980.

Clayoquot Sound is composed of temperate rainforest that contain some of the largest trees in Canada. This backdrop is also a home to a logging industry of significant value. Prior to 1993, the Allowable Annual Cut (AAC) in Clayoquot Sound was over 900,000 m³ of old-growth rainforest (CSSP 1995). The combination of the scale of this harvest, the use of clear-cutting as the dominant practice and degradation of fishery and scenic resources, led to mounting public opposition (both Aboriginal and non-Aboriginal) towards forestry operations in Clayoquot Sound. In 1993 a multi-stakeholder land-use planning process dissolved over the issue of protected areas. Shortly thereafter the provincial government announced their intent to unilaterally impose the 'Clayoquot Land Use Decision', which outlined a plan for protected areas as well as areas for timber harvesting (Hoberg and Morawski 1997). This announcement was met with disagreement from other stakeholders and sparked protests that led to the arrests of over 800 people for blockading logging operations. By the fall of 1993, the Government of BC was under immense provincial, national and international pressure to resolve this escalating crisis.

3.3.1.2 Implementation

To move beyond the controversy, the Government of BC introduced a new strategy to resolve the issues in Clayoquot Sound by establishing a special panel of scientists and First Nations representatives. The Clayoquot Sound Scientific Panel was charged with the mandate of making recommendations on special forest practices appropriate to the

unique ecology and culture issues of Clayoquot Sound. The Panel's recommendations were released in 1995 and were all accepted for adoption by the provincial government. These recommendations signaled a substantial shift in forest management philosophy towards a much more ecologically and culturally sensitive approach to forest management.

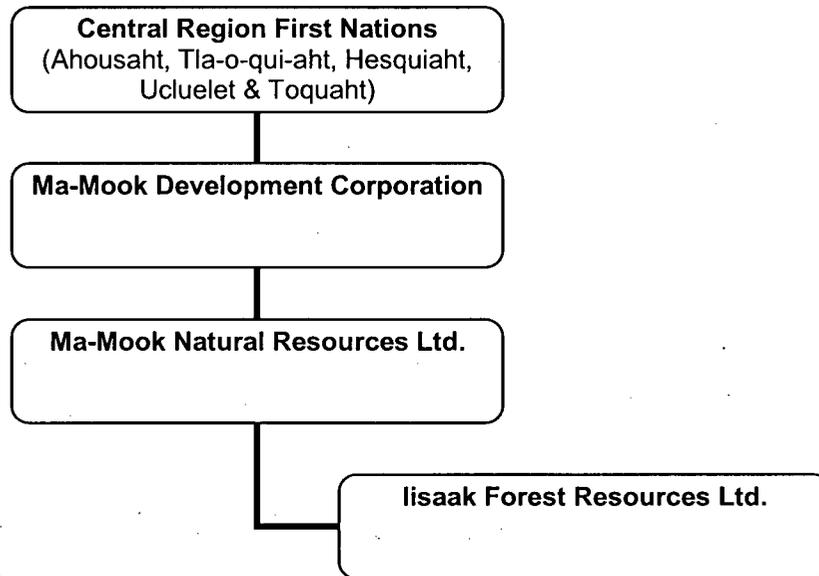
In addition to the Panel, in the spring of 1994, the Government of BC entered into a historic two-year Interim Measures Agreement (IMA) with the five First Nations of the Nuu-chah-nulth Central Region: Ahousat, Hesquiaht, Tla-o-qui-aht, Toquaht and Ucluelet. The IMA primarily established protocols for the Nuu-chah-nulth participation and decision-making in land and resource management planning in Clayoquot Sound (Province of BC and Nuu-chah-nulth First Nations 1994). The agreement also created a co-management structure entitled the Central Regional Board. The Board is made up of one member per each Nuu-chah-nulth Nation and five non-Aboriginal members appointed by the provincial government. The Board is responsible for reviewing and making recommendations on all proposed decisions of any provincial ministry dealing with natural resource management in Clayoquot Sound (Iisaak 2001).

As an extension to this agreement, the Interim Measures Extension Agreement (IMEA), was signed in April 1996 and was valid for a three-year term. The major difference in this new agreement from the original IMA was that it specified that the Nuu-chah-nulth First Nations agreed to form a joint venture company with MacMillan Bloedel Ltd. (the current forest tenure holder). The extension agreement also specified that the BC Ministry of Forests would "advertise an appropriate harvesting licence for the volume and the term made available by MacMillan Bloedel Ltd.". This licence would then be available for the joint venture company to apply for (Province of BC and Nuu-chah-nulth First Nations 1996).

Within a year, Ma-Mook Natural Resources Limited was founded to represent the collective economic interests of the five Nuu-chah-nulth Central Region First Nations. MacMillan Bloedel Ltd. and Ma-Mook Development Corporation then signed a shareholders agreement detailing their partnership in the operation of a new company to operate in Clayoquot Sound. The new company was named Iisaak Forest Resources Ltd. As a symbol of cooperation, the name Iisaak was chosen because it means,

"respect" in the Nuu-chah-nulth language (Iisaak 2001). The organizational structure of Iisaak Forest Resources Ltd. is highlighted in Figure 3.1.

Figure 3.1: Organizational structure of Iisaak Forest Resources Ltd.



To facilitate this new entity and fulfill their commitments of IMEA, the provincial government approved a new tenure arrangement that encompasses 87,600 hectares of coastal rainforest. The tenure arrangement is classified as a traditional Tree Farm Licence (TFL) 57 and was subdivided from MacMillan Bloedel's existing TFL 44. A unique feature of this tenure was that the conditions pertaining to forest practices and company operations as specified in IMEA would apply to the tenure area. These conditions are highlighted below in the outcomes section.

Following the expiry of the 1996 IMEA, a further five-year extension agreement, entitled "Interim Measures Extension Agreement: Bridge to Treaty" was signed in the spring of 2000. This agreement aims to support the Central Regional Board and other interim measure initiatives in lieu of an Agreement-In-Principle being reached between the Nuu-chah-nulth and the Governments of BC and Canada.

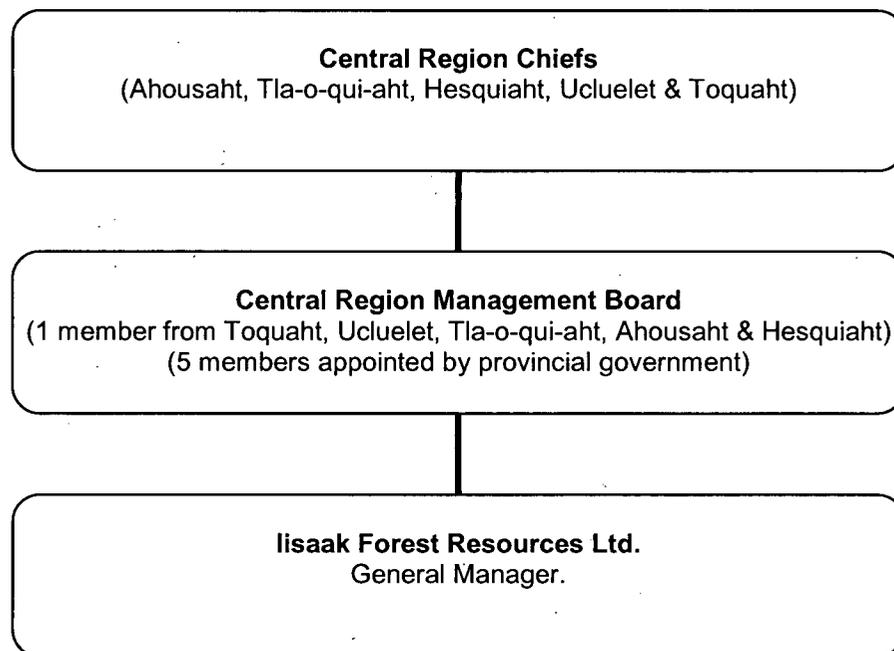
3.3.1.3 Outcomes

The changes to governance and resource management have had a profound effect on the relationship between the Nuu-chah-nulth and BC governments and on how resource management is occurring in Clayoquot Sound (Mabee and Hoberg 2006). In the context

of forest management, three significant outcomes of the changes include the creation of the Central Regional Board (CRB) as a co-management institution, Iisaak Forest Resources Ltd. as an Aboriginal led joint venture, and the awarding of the long-term forest tenure, TFL 57.

As described above, the CRB serves as a link between the Nuu-chah-nulth First Nations and the provincial government. In the context of forest management, the CRB makes recommendations to the BC Ministry of Forests to accept, modify, or reject any proposed plans or development activities in Clayoquot Sound (Hoberg and Morawski 1997). The Ministry of Forests then either approves the proposed plans or directs the affected party to make changes as recommended by the CRB. Although the CRB is technically only an advisory body, the Ministry of Forests has accepted all but one of the recommendations it has put forward to date (Mabee and Hoberg 2006). The organizational structure of the CRB in relation to the Nuu-chah-nulth First Nations and Iisaak Forest Resources is described in Figure 3.2.

Figure 3.2: Organizational structure of the CRB in relation to Iisaak.



The second significant outcome of the co-management agreements was the creation of Iisaak Forest Resources Ltd. This step was critical in ensuring the Nuu-chah-nulth First Nations could effectively participate in the planning, operations and financial success of

forest management in the region. In the first few years of operations lisaak had limited harvesting operations due to the building of operational capacity and business planning (lisaak 2001). The first harvest of 10,000 m³ took place in the summer of 2000 and by 2002 lisaak's total harvest increased to 46,000 m³ (Rowe 2003). To support forest product marketing, lisaak signed a memorandum of understanding with environmental non-government organizations and in July 2001, lisaak earned Forest Stewardship Council (FSC) certification (lisaak 2001).

Perhaps the most important outcome, from a forest tenure perspective, is the creation of TFL 57. This represents one of the only examples in Canada where a provincial government has created a new long-term tenure arrangement specifically for an Aboriginal group. Although the tenure has many of the standard terms and conditions as other Tree Farm Licences, TFL 57 is unique because the tenure is bound by conditions and clauses that were defined in the 1996 IMEA. Some of these conditions include:

- To conduct commercial forestry and logging operations in Clayoquot Sound in a manner that will incorporate the recommendations of the Scientific Panel Report on Clayoquot Sound and presentations to the March/96 Ahousaht Symposium on Alternate Harvesting Techniques.
- To conduct commercial forestry and logging operations in Clayoquot Sound in a manner that will make Clayoquot Sound the leading global example of ecologically-sensitive harvesting techniques designed to maintain old growth attributes and biodiversity.
- To create training and employment opportunities for First Nations in forest-related activities that will foster economic initiative and independence in First Nations communities in Clayoquot Sound and help provide sustainable, long term employment for both First Nations people and local communities.
- To apply traditional native environmental and cultural knowledge to forestry and logging operations in Clayoquot Sound.
- To investigate opportunities for locally-based value-added manufacturing.

- To improve community stability by better integrating and coordinating forest operations in Clayoquot Sound.

Clayoquot Sound Interim Measures Extension Agreement 1996. Schedule II: Agreement-in-Principle between MacMillan Bloedel Ltd. & Nuu-chah-nulth Central Region First Nations regarding establishment of a Joint Venture Company in Clayoquot Sound, P12

Conditions such as these clearly set TFL 57 apart from other long-term tenures in BC and the rest of Canada. Although TFL 57 is not considered an 'Aboriginal Tenure', the extension of the conditions from IMEA make it one of the most innovative tenure arrangements held by an Aboriginal group in Canada. In fact, as highlighted in the discussion section the Nuu-chah-nulth example exhibits many of the key themes recommended by Ross and Smith (2002).

3.3.2 Innu Nation Example

3.3.2.1 Background

Since the late seventies the Innu Nation has been in negotiations with the Governments of Canada and Newfoundland and Labrador (NL) for the recognition of their Aboriginal rights and title in Central Labrador. While these land claim negotiations are continuing, forest issues have been given particular priority, as the Innu believe that forests represent one of the foundations of their culture and economy. From the Innu perspective, protecting the natural composition, structure and function of forest ecosystems is one of their highest priorities (Forsyth 2002).

Unfortunately, the history of forest harvesting operations in Central Labrador has not been consistent with Innu values and has left a lasting distaste with many Innu people. As with other past industrial developments in Central Labrador, the Innu were not consulted and their concerns not accommodated when large-scale timber harvesting operations commenced in the 1970s. Due to the remote location, lack of infrastructure, and difficult terrain most of the forest industry initiatives in Central Labrador have gone bankrupt. This history had left behind a legacy of large clear-cuts, wasted timber and a distrustful environment (Innu Nation 2003).

The Innu Nation took their concerns to road blockades in the late 1980s and early 1990s to try to stop further clear-cut harvesting of their culturally important lands. At this time

the Innu Nation also began to commission scientific reports and studies on the environmental impacts of such operations. The findings highlighted several key ecological concerns and helped the Innu Nation develop an interim forest policy that was more consistent with Innu values. The Innu made it clear to the provincial government and industry that any future forestry activities in Central Labrador would have to incorporate an ecosystem-based management (EBM) planning approach, have direct employment benefits for the Innu, and ensure the Innu Nation is actively involved in all levels of forest management planning (Innu Nation 2003).

Although the forest operations in Central Labrador were only harvesting 50,000 m³/year, a draft management plan for the district had set the AAC at 400,000 m³/year. This represented a significant portion of the provincial timber supply (approximately 20%), considering that the entire provincial AAC is a little over 2 million m³ (NAFA 2003). By the mid-1990's the NL Department of Natural Resources shifted the provincial forest policy to an Ecosystem Management approach and updated the draft forest management plan for Central Labrador. Although the policy changes were progressive on paper, the Innu felt they did little to change the on-the-ground harvesting practices as large scale clear-cutting continued and the AAC remained the same. This situation created an increased level of frustration within the Innu communities and a tension between community members and forestry workers. To resolve this situation the Innu Nation and the province entered into discussions around the concept of co-management and economic opportunities for Innu Nation members (Innu Nation 2003).

3.3.2.2 Implementation

In January 2001, an interim Forest Process Agreement (FPA) was signed between the Innu Nation and the Government of Newfoundland and Labrador. The FPA served to initiate a formal process for how the Innu Nation and the province could collaboratively work together on forestry issues in Central Labrador. The agreement provided \$520,000 of funding for the Innu Nation to participate in:

1. Development of a co-authored ecosystem-based forest management plan for Forest Management District 19.
2. Resolution of interim management issues and the development of a new set of ecosystem-based forest practice regulations.

3. Negotiations for the development of a longer-term forest management agreement between the Innu Nation and the Province of Newfoundland and Labrador.
(Government of NL 2001)

The FPA was implemented by creating three main management structures to achieve the specific goals of the agreement. An EBM Planning team comprised of representatives from both the Innu Nation and the Department of Natural Resources was set up to undertake the development of a EBM forest management plan for Forest Management District (FMD) 19. This included conducting an extensive public participation process to set plan goals and objectives, development of a comprehensive protected areas network design, and re-calculating the district AAC (Forsyth et al. 2003).

An Interim Forest Management Committee (IFAC) comprised of an equal proportion of representatives from both the Innu Nation and the Department of Natural Resources was set up to resolve operational issues and develop new ecosystem-based forest management guidelines for central Labrador. IFAC worked closely with local industry to identify problems and attempt solutions at the operational level. This included activities such as developing new pre-operational planning procedures and modifying harvesting systems to increase in block retention (Innu Nation 2003).

Lastly, a negotiation team of senior Innu and Newfoundland and Labrador representatives was established to work towards creating a longer-term co-management agreement and resolve any conflicts that arose from the EBM Planning Team or IFAC (Innu Nation 2003).

By 2003 the ecosystem-based forest management plan for FMD 19 was complete and a new co-management agreement entitled the Forest Management Agreement (FMA) was signed. The FMA has a term of five years and provides \$220,000 per year to the Innu to help support implementation of the forest management activities (Pomeroy 2004). The FMA also has provisions for a forest tenure allocation of 15,000 m³/year (approximately 30% of the AAC) to be made available for Innu Nation management (Pomeroy 2004).

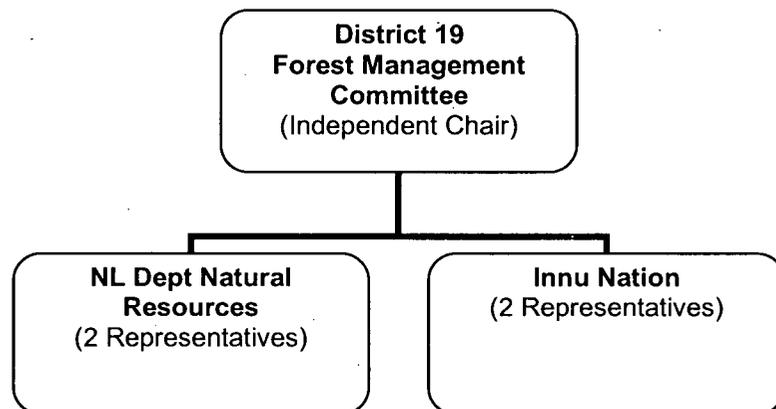
3.3.2.3 Outcomes

The co-management agreements created by the Innu Nation and the NL government have served as critical step in resolving forest management issues in Central Labrador.

In particular, these agreements have facilitated a new relationship between the Innu Nation and the Department of Natural Resources that allows them to work together in achieving sustainable forest management (Pomeroy 2004). Some of the key outcomes that have resulted from the Innu to Newfoundland and Labrador co-management agreements include:

- Creation of an Innu Nation Forest Guardian Program that assists the Innu in organizing their planning efforts and to monitor harvesting operations. The program included jobs and training for four Innu field staff and the hiring of an Innu forest planner and forest technician (Innu Nation 2003).
- Creation of a co-authored ecosystem-based management plan for FM 19 (7.1 million ha). The new plan was based on careful representation of ecological, cultural, and economic values and a public participation component representing stakeholders and local community participants. The plan identifies ecological protected area networks at three different levels of planning, as well as protected areas that ensure sensitive cultural areas and values are considered. The AAC for the district was set at 198,600 m³/year, which represents a 50% reduction from previous forest management plans for the district (Forsyth et al. 2003).
- Creation of a Forest Management Committee (FMC) that serves as the governing forest management body in Central Labrador. The FMC is comprised of two representatives from both the Innu Nation and Department of Natural Resources and is facilitated by an independent chair (Innu Nation 2003) The organizational structure of the FMC is illustrated in Figure 3.3.
- Creation of an Innu Nation timber harvest allocation that is equivalent to approximately 30% of the FMD 19 AAC. This currently translates to 15,000 m³/year and is expected to increase when new access structures are in place (Pomeroy 2004).

Figure 3.3: Organizational Structure of the District 19 FMC.



These outcomes demonstrate that a drastic shift in forest management has occurred in Central Labrador. Of particular note is the fact that the Innu representatives are now fully involved in all forest management decisions from the strategic level to on-the-ground operations.

From the perspective of modifying the NL tenure system, the Innu have not received any new form of long-term forest tenure. The Innu Nation and the NL government agreed to simply apply the new EBM management procedures and practices to an existing short-term permit structure.

3.4 Discussion

The Nuu-chah-nulth and Innu cases demonstrate that opportunities do exist for creating innovative examples of Aboriginal forest management based on ecologically and culturally appropriate standards. As highlighted in the introduction, Ross and Smith (2002) outline several key directions a new Aboriginal tenure system should consider. These key directions can be summarized into five main themes:

1. Participation in Strategic Planning - full Aboriginal participation in strategic land use planning, as well as, tactical and operational forest management plans.
2. Changes in Forest Management Practices - flexibility for Aboriginal peoples to adopt their own forest management standards.

3. Alternative Approaches to the Allowable Annual Cut (AAC) - Full Aboriginal participation in determining the rate of harvest (AAC).
4. Enhanced Tenure Administration - Aboriginal involvement and potential accommodation in the allocation, renewal, extension or transfer of forest tenures within their traditional territories.
5. Removal of Processing Requirements - exemption for Aboriginal peoples from any requirements to operate a timber processing facility associated with a forest tenure allocation.

(Adapted from Ross and Smith 2002 – Appendix – Key directions for a tenure system that accommodates Aboriginal and treaty rights. p. 47)

This discussion will assess the Nuu-chah-nulth and Innu examples against these key themes.

3.4.1 Participation in Strategic Planning

The Nuu-chah-nulth and Innu examples both introduced new strategic planning frameworks¹¹ that followed an ecosystem-based management (EBM) planning approach (CSSP 1995, Forsyth et al 2003). An EBM approach to forest planning carefully considers various ecological, cultural and socio-economic values at different spatial scales before any areas are considered for timber harvesting. For example, in Central Labrador this process included the creation of a series of ecological and cultural protected area networks that encompassed over 50% of the planning area (Forsyth et al. 2003). Strategic level plans for Clayoquot Sound are also developed, but there is an ongoing dialog on defining the concept of 'High Conservation Value Forests' and the degree of emphasis on intactness (Bull pers com 2006).

A broad-based public consultation program is a dominant feature of these new strategic planning frameworks. In Central Labrador, the EBM planning team developed a public consultation process to identify plan objectives and build community support. This process allowed the public to define the plan objectives and provided a regular forum to update the public and consult on proposed planning actions (Forsyth et al. 2003).

¹¹ Strategic planning is a sub-regional land use planning process for determining how lands will be used currently and into the future (BC ILMB 2006).

Similarly, the Clayoquot Sound Scientific Panel recommended that public participation efforts be enhanced, particularly within the Nuu-chah-nulth communities (CSSP 1995).

Forest tenure awarded to the First Nations in strategic planning has little relevance. In both examples the creation of new and enhanced strategic planning frameworks was a direct result of the negotiated co-management agreements. In the Nuu-chah-nulth example the enhanced strategic planning framework was not a planning requirement of TFL 57, but rather it was a product of the Interim Measure Agreements and the CSSP recommendations. Similarly, in the Innu example the EBM Forest Management Plan for District 19 was a direct deliverable of the Forest Process Agreement. In fact, the forest tenure held by the Innu has no strategic planning requirements whatsoever (Forsyth et al. 2003).

3.4.2 Changes in Forest Management Practices

In both the Nuu-chah-nulth and Innu examples, fundamental changes to forest management practices were involved. In Clayoquot Sound the Scientific Panel for Sustainable Forest Practices was especially created to "review current forest management standards in Clayoquot Sound and make recommendations for changes and improvements" (CSSP 1994). One of the most significant of these recommendations was to eliminate clear-cut harvesting, the dominant harvesting system, and replace it with variable retention harvesting systems (CSSP 1995). Retention levels were recommended to be at least 70% on sites with significant values (for example, visual, cultural, or wildlife resources) and at least 15% on sites without significant values (CSSP 1995). Similarly, in Central Labrador the NL Department of Natural Resources and the Innu Nation developed a regional set on ecosystem-based environmental protection guidelines. These guidelines differed from others utilized in the province by placing limits on the size and scale of harvest blocks, requiring a minimum of 30% of in block retention for stand level protected area networks, and more detailed specifications for riparian protection (Forsyth et al. 2003).

In both examples these changes in forest management practices aimed to incorporate cultural, ecological and economic values important to Aboriginal peoples and in doing so, drastically changed the way forest management occurred. It is important to note that these significant changes to forest management standards occurred through processes

independent of the forest tenures awarded, namely the CSSP in Clayoquot Sound and the Forest Process Agreement in Labrador. These new forest management standards were then linked to the forest tenures by becoming the required operating conditions for the tenures.

3.4.3 Alternative Approaches to the Allowable Annual Cut

The Allowable Annual Cut (AAC) is a key indicator of the level of forest harvesting activity that occurs in a region. The AAC is heavily influenced by the amount of forested area available for timber harvesting and the intensity of forest management practices employed. Accordingly, due to the significant changes in forest management practices and the increase in protected areas as seen with the Nuu-chah-nulth and Innu examples, the AAC in these regions was drastically reduced. In Clayoquot Sound the AAC was reduced by over 60% and in Central Labrador by over 50% (Marshak 1999, Forsyth et al. 2003). Such steep decreases in the AAC indicate that real and quantifiable changes have occurred as a result of introducing more ecologically and culturally sensitive forest management planning and practices. However, such drastic changes raise a variety of socio-economic issues such as declines in local employment and challenges in meeting timber supply commitments with existing forest tenure holders.

Regardless of the changes in the AAC, the decision-making process of determining the harvest rate is important to consider as the AAC dictates the scale and pace of forest development. In this regard the Nuu-chah-nulth and Innu examples differ. In the Nuu-chah-nulth example the AAC is determined by the BC Ministry of Forests, as required by the regulations governing TFL 57 (BC MoF 1999). Alternatively, in Central Labrador the joint Innu/NL EBM planning team calculated the AAC through a jointly managed technical committee. This marks a significant difference in the two examples since the ability to jointly participate in a timber supply analysis and in the determination of the AAC is a big step. By participating in this process Aboriginal peoples have an opportunity to build capacity around forest planning, to ensure all cultural and ecological values are incorporated, and to determine a final harvest rate is acceptable to both provincial and Aboriginal governments.

In the Nuu-chah-nulth example the regulations governing a Tree Farm Licence require that the licensee submit a recommended AAC for a five-year management period and the BC MoF will consider this in their AAC determination (BC MoF 1999). As the determination of harvest levels was not included in the Interim Measure Agreements or in the mandate of the CRB, the Nuu-chah-nulth Nations do not have the authority over this decision. Alternatively, in the Innu example the calculation of the AAC is included as a planning component under the Forest Process Agreement to be completed jointly by the Innu and the NL Department of Natural Resources. Therefore as with the first two themes discussed, it is the co-management agreements, not the forest tenures employed, which are the driving factor in participation with the AAC determination.

3.4.4 Enhanced Tenure Administration

Enhancing the participation of forest tenure administration effectively gives Aboriginal peoples more say in how forest tenures are allocated, renewed, or transferred from one party to another. This theme also includes any potential accommodation required as a result of changes or tendering of new forest tenures. Both the Nuu-chah-nulth and Innu examples demonstrate significant progress in this regard.

In the Nuu-chah-nulth example, the First Nations received significantly more decision-making authority over the administration for all natural resource tenures, including forest tenures, through the mandate of the Central Regional Board (CRB). The CRB was designed to be the local decision-making institution and, as a result, it administers all tenures in Clayoquot Sound with the final approval resting with the province.

Similarly, the Innu example also delegates the administration of forest tenures for Central Labrador to the Forest Management Committee (FMC). Like the CRB in Clayoquot Sound, the FMC makes all tenure administration decisions, but ultimately these decisions are approved by the province.

In terms of accommodation measures, although both examples do not have explicit requirements for accommodation, the robustness of the co-management agreements in place would require interest-based negotiations on any new development.

Once again, we are arguing that the forest tenures held by the First Nation has little bearing on the administration of other forest tenures. In fact it was the co-management

institutions (the CRB and FMC) that were the catalysts to enhancing the First Nations involvement in tenure administration and the co-management agreements that would serve as a logical framework for any potential accommodations due to tenure developments.

3.4.5 Removal of Processing Requirements

The last theme highlighted by Ross and Smith (2002) speaks directly to the timber processing appurtenancy clauses that several provincial governments require as a condition to holding long-term timber tenure. However, this condition does not play a role in either example. In the Nuu-chah-nulth example the clause was waived due to the joint venture with Macmillan Bleodel/Weyerhaeuser (who already operated facilities in the region). Furthermore, in BC appurtenancy clauses were removed as a requirement for Tree Farm Licenses in 2002 (BC MoF 2003). In Central Labrador this theme was not relevant as there is no such policy governing forest tenure.

Through the analysis of the Nuu-chah-nulth and Innu examples two other important themes emerged that are not highlighted by Ross and Smith (2002). The first, transfer of management authority, is touched upon in several of Ross and Smith's (2002) themes, but worth highlighting independently. The second emergent theme that is not part of Ross and Smith's (2002) recommendations is supporting the provision of financial transfer agreements.

3.4.6 Transfer of Management Authority

Management authority dictates the level of influence and decision making power that Aboriginal peoples will ultimately have in all aspect of forest management. As such, the transfer of authority is an integral aspect of effectively incorporating Aboriginal rights and values into forest tenure opportunities. This is particularly important given that provincial governments now have a legal obligation to "consult and accommodate" Aboriginal peoples affected by forest management activities (SCC 1997, 2004a, 2004b). In the examples described above, some transfer of management authority is realized through the acquisition of forest tenure, but the majority of authority transfer is enabled through the governance mechanisms derived from co-management agreements.

The Nuu-chah-nulth and Innu examples display a clear and definite shift in management authority, which is transferred from the provincial governments to the First Nations via the co-management agreements. The Clayoquot Sound Central Regional Board and the Central Labrador Forest Management Committee both have equal representation from both governments and a mandate of managing forest resources. However, in both cases the provincial governments still retain the final decision-making authority (Mabee and Hoberg 2006, Innes pers com 2005). The Clayoquot Sound CRB is only advisory, with the BC Ministry of Forests ultimately making the final decisions. Similarly in Central Labrador, the NL Minister of Natural Resources has authority over final decisions. However in both examples, representatives highlight that the co-management institutions effectively make all the regionally specific management decisions, with the province rarely overturning them (Mabee and Hoberg 2006, Innes pers com 2005).

The awarding of new forest tenures to the First Nations creates an opportunity for transfer of management control. However, in both cases the level of authority granted is far less than acquired through the establishment of the co-management boards. The Nuu-chah-nulth's control over TFL 57 certainly increased management authority over forestry activities in the region. Yet this authority is still under the power of the BC Ministry of Forests for all major strategic decisions such as timber supply analysis and AAC determination (BC MoF 1999). In the Innu Nation example, very little additional management authority is received through the acquisition of their forest tenure. As the Innu's forest tenure is an annual harvest permit with very little management responsibilities attached, the Innu clearly focused on increasing authority exclusively through the creation of co-management boards and agreements not tenure opportunities.

3.4.7 Provision of Financial Transfer Agreements

In both the Nuu-chah-nulth and Innu examples financial transfer agreements were provided by the provincial governments (BC and Nuu-chah-nulth First Nations 1994, 1996, 2000, Innu Nation 2003). This financial support was essential for the Aboriginal peoples to participate fully in the forest management planning process and enabled three important outcomes. Firstly, the funding allowed the Aboriginal peoples to start to build the necessary forest management capacity within their own governments. Secondly, the agreements allowed for employment and training opportunities to be

created for Aboriginal community members. Thirdly, the financing allowed the Aboriginal peoples to gain experience in running and managing a forest planning operation. As these Aboriginal peoples make the transition to becoming one of the dominant forestry interests in their respected regions, such critical experience is essential to success.

From these examples it is clear that adequate funding is an absolute requirement for Aboriginal peoples to not only participate in a planning process, but also to build the expertise to operate their own forest management departments. As demonstrated in all the other themes discussed, the provisions of financial transfers were a component of the co-management agreements, not the forest tenures.

3.5 Conclusion

The central Nuu-chah-nulth First Nations and Innu Nation examples were described and then assessed based on the themes for an Aboriginal tenure as highlighted by Ross and Smith (2002). Both the Nuu-chah-nulth and Innu examples exhibit almost all of the themes described by Ross and Smith (2002). The analysis demonstrates that forest tenure mechanisms were not the cause of the changes in the provincial forest management regimes; rather we have concluded that the governance mechanisms, enabled by innovative co-management agreements, were the driving factor behind the changes in forest management regime. Therefore, granting forest tenures to Aboriginal peoples in absence such co-management agreements will likely decrease the chances of success.

To test our findings, a future studies should assess other examples of Aboriginal forest management to determine if the presence of governance mechanisms is a key to success. The implications of this research would be critical to refining the concept of Aboriginal tenure, particularly if results continue to suggest that governance mechanisms, not tenure reforms, are the potential solution to ensuring Aboriginal rights and values are effectively incorporated into sustainable forest management.

Another important application of this analysis would be to develop a framework to determine the level of authority/power that is being shared by Crown and Aboriginal governments in forest management relationships. Such a framework could break levels decision-making power in terms of the key themes highlighted in this paper.

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Chapter 4: Who's got the Power: Analysis of Aboriginal Decision-Making Power in Canadian Forest Management Arrangements¹²

“It is difficult to change the established ways of doing things. It often takes the eruption of a major problem for government institutions to consider surrendering power”.

The Canadian Royal Commission on Aboriginal Peoples
(1997, p. 669)

4.1 Introduction

Historically Aboriginal peoples in Canada have been excluded from incurring benefits from the forest sector, from both an economic and social perspective. Even with advances in Aboriginal rights over the past decade, only 4% of forest licenses in Canada are held by Aboriginal peoples (NAFA 2003). The low level of Aboriginal participation the forest sector is particularly troubling considering that over 80% of Aboriginal peoples

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in Canada live within productive forest areas and many of these peoples have expressed a clear desire increase access to the sector (NAFA 2003, Wilson and Graham 2005).

In addition to increasing access to the forest resource economy, Aboriginal peoples are seeking to enhance their role as decision-makers in how forest resources are managed (Notze 1995, First Nations Leadership Council and Gov BC 2005). Increasing the level of meaningful decision-making authority over forest management is seen as a critical step in participating in the sector. For many Aboriginal peoples, gaining power and formal authority over management decisions is not just an issue of control, but of exerting cultural and political sovereignty over their traditional territories. In fact, the issue of how decisions are made in regards to allocation and development of all natural resources like forests, fish, water, oil and gas is front and center in the Canadian Supreme Court, with recent rulings specifying that affected Aboriginal peoples must be consulted and accommodated in the development process (SCC 1997, 2004a, 2004b).

In response to the direction provided by the courts, most Canadian provinces and territories have developed specific policies to enhance Aboriginal participation in various aspects of forest management (Wilson and Graham 2005). One policy instrument for enabling this participation is the availability of new tenure opportunities for Aboriginal peoples. In British Columbia alone, over 100 new tenure opportunities have been awarded to Aboriginal peoples since 2003 (BC MoF 2006). As a result of these new tenure opportunities, there are currently numerous types of Aboriginal forest management arrangements in Canada. These arrangements vary significantly in size and scope depending primarily on the type of forest tenure employed and the timber harvest volume associated with the tenure (NAFA 2003).

4.2 Purpose

The purpose of this paper is to assess whether the recent increase in Aboriginal access to forest tenures has included a corresponding increase in Aboriginal decision-making power over forest management occurring in their traditional territories. Existing literature will be reviewed and conceptual frameworks that classify and evaluate these systems will be presented. We then introduce alternative theory on co-management governance, ecosystem-based management and natural resource power-sharing spectrums to improve on these frameworks. Finally, a new conceptual framework will be described

that focuses on assessing Aboriginal decision-making power in forest management arrangements. Examples for the practical application of the new framework will illustrate the effectiveness of decision-making power shared in new forest management arrangements in British Columbia.

4.3 Co-management Literature and Existing Frameworks

4.3.1 Co-management Literature

Aboriginal forest management arrangements in Canada are best understood as a form of co-management with provincial/territorial government agencies (herein referred to as the Crown). In the literature 'co-management' has various definitions. Several authors highlight that co-management requires a sharing of power, management functions, responsibilities and or entitlements between the Crown and local resource users (Berkes et al. 1991, Borrini-Feyerabend et al. 2000, Plummer and FrizGibbon 2004). Others have stressed that co-management requires the decentralization of decision-making authority and accountability from Crown control to local users (Singleton 1998, World Bank 1999). Other authors argue that the term co-management is difficult to capture in a single definition and highlight that there are inherent complexities in both the level of power-sharing/decentralization and the number of parties who are referred to as the 'co' partners in the arrangement (Carlson and Berkes 2005, Plummer and FrizGibbon 2004).

For the purpose of this paper, we will reduce complexity by referring to co-management arrangements as the sharing of decision-making power over forest management functions between the Crown and Aboriginal governments.

4.3.2 Existing Frameworks

Several studies have focused on describing the Aboriginal-Crown relationship in forest management arrangements. These studies have approached this task by primarily documenting and describing the arrangements (Notzke 1995, NAFA 1995, NAFA and IOG 2000), by analyzing the tenure type employed (NAFA 2003), or by analyzing co-management implementation and institutional design (Castro and Neilsen 2001, Clogg et al. 2004, Mabee and Hoberg 2006).

However, to date there have been relatively few studies that have developed conceptual frameworks for the classification and evaluation of Aboriginal forest management arrangements. Smith (1991), provided one of the first surveys and assessments of Aboriginal forest and natural resource arrangements in Canada. Recently building on Smith's work, Shuter et al. (2005) developed a comprehensive typology for classification and comparative evaluation of forest management arrangements. Other related frameworks have been highlighted in other natural resource co-management contexts such as fisheries, wildlife and land management (Berkes 1994, Sen and Neilson 1996, Pomery and Berkes 1997, Plummer and Fitzgibbon 2004). For the purpose of this paper, only the Shuter et al. (2005) and the Plummer and Fitzgibbon (2004) frameworks will be discussed.

The Shuter et al. (2005) framework is designed as a two-tiered typology that combines a description of the catalyst on the first tier and an overall classification of the level of participation and outline of management scope on the second tier. Descriptive and evaluative criteria are then applied to provide greater detail for the purposes of classification and evaluation (Shuter et al. 2005).

Although the typology is very comprehensive in describing and providing criteria for evaluating Aboriginal forest management arrangements, the typology has some practical limitations. In terms of assessing Aboriginal decision-making power in the arrangement, the typology does not clearly link the described management scope with the overall level of participation. Here an opportunity is missed to gain insight into what actual decision-making power is shared in the arrangement. The typology also does not consider any of higher-level forest management decisions and functions, such as strategic planning, tenure administration and timber supply analysis.

The Plummer and FitzGibbon (2004) framework is not as comprehensive as the Shuter et al. (2005) typology and does not focus specifically on Aboriginal forest management. The framework is based on the premise that power sharing is central to co-management and it provides valued perspectives on arrangement design and process. The Plummer and FitzGibbon (2004) framework consist of three main dimensions. The first dimension is power sharing. Similar to the Shuter et al. (2005) typology, the Plummer and FitzGibbon framework utilizes Berkes's (1994) power-sharing spectrum to classify the overall arrangement. The second dimension includes a checklist of potential parties

involved in the arrangement. This checklist includes Aboriginal peoples in the Community, Local and/or Communal category. The third dimension considers co-management process features. This dimension is classified by a spectrum of formal to informal negotiations and timing, highlighting that arrangements may be highly formalized or loosely defined (Plummer and FitzGibbon 2004).

Although the Plummer and FitzGibbon (2004) framework is concise in application, it is not explicit in assigning values. For example, there are no criteria on which the power-sharing classification is based. On the other hand, the framework's primary strength is the inclusion of the formal versus informal aspect of the arrangement. This dimension highlights that co-management arrangements differ based on formal agreements that support them. Furthermore, the formal versus informal dimension highlights the reality that many co-management arrangements may have informal components that are fundamental to the relationships of the participating parties and the overall function of the arrangement.

4.4 Improving Existing Frameworks

Existing conceptual frameworks that aim to classify and evaluate co-management arrangements provide a solid foundation for assessing decision-making power in Aboriginal forest management. However, existing frameworks exhibit some limitations in providing the necessary detail to understand the exact nature of which decisions are being shared and which are not.

Four new components to enhance the concepts highlighted in existing frameworks will be reviewed. First, the specific functions of the co-management arrangement require assessment and clarification. Second, these functions must be understood in relation to the hierarchy of planning scales that are prevalent in forest management. Third, modifications of the relative power spectrum (Berkes 1994) are required to understand the context of Aboriginal-Crown co-management as a unique sphere from other types of co-management (public, Crown and private). Fourth and finally, the formal/informal nature of arrangements highlighted by Plummer and FitzGibbon (2004) requires further discussion and application.

4.4.1 Functions

As highlighted, existing typologies only consider the level of decision-making power in terms of the arrangement as a whole. Although this broad classification is useful in understanding the overall structure of the arrangement, it does not provide any insight into how the decision-making power is distributed. Carlsson and Berkes (2005) have identified this issue and highlight that co-management should be understood as a form of governance, instead of simply a formalized power sharing agreement (Carlson and Berkes 2005). The authors go on to suggest that co-management research “should preferably focus on how different management tasks are organized and distributed and thus concentrate on the *function*, rather than the formal structure of the system” (Carlsson and Berkes 2005, emphasis added, p. 66).

Focusing on the functions of co-management would provide a more detailed view of what is happening in the co-management relationship. In the case of forest management, specific functions can be drawn from studies that have considered institutional design around ecosystem-based forest management decision-making (Clogg et al. 2004), key directions for Aboriginal tenure systems (Ross and Smith 2002), and typologies that have included forest management scope (Shuter et al. 2005). Table 4.1 highlights these key forest management functions.

Table 4.1: Key Forest Management Functions, Description and Source.

Forest Management Functions	Examples/Description	Source(s)
Strategic Planning	Regional or Sub-regional Land Use Plans that highlight protected areas and areas available for industrial use.	Clogg et al. (2004) Ross and Smith (2002)
Cultural and Socio-Economic Analysis	Designing the assumptions and parameters that drive the Cultural and Socio-Economic Analysis for regional areas	NA
Timber Supply Analysis	Designing the assumptions and parameters that drive Timber Supply Analysis for regional areas.	Ross and Smith (2002)
Harvest Levels (AAC)	Interpreting the results of Cultural/Socio-Economic and Timber Supply Analysis and setting the Annual Allowable Cut (AAC).	Ross and Smith (2002)
Forest Management Standards	Establishing the legal standards to which forest management must adhere.	Clogg et al. (2004) Ross and Smith (2002)
Tenure Allocation	Creation of new forest tenures, reforms and rules around tenure transfers.	Clogg et al. (2004). Ross and Smith (2002)
Compliance and Enforcement	Setting of rules and procedures ensure compliance of established forest management standards.	Clogg et al. (2004)
Dispute Resolution	Setting of rules and procedures to resolve disputes that may arise during the implementation of the management arrangement.	Clogg et al. (2004)
Funding/Revenue Mechanisms	Determination of funds required to service the arrangement and/or rules surrounding how revenues/stumpage will be processed.	Clogg et al. (2004)
Monitoring and Adaptive Management	Implementation of compliance and enforcement rules. Creation of rules to adapt to management results.	Clogg et al. (2004)
Tactical Planning	Creation of plans such as Forest Management Plans that describe forest management objectives and activities for a given management period (usually 5 years).	Clogg et al. (2004) Ross and Smith (2002) Shuter et al. (2005)
Operational Planning	Creation of plans such as Harvest and Silviculture Plans that are required to carry out activities described in Tactical Plans.	Clogg et al. (2004) Ross and Smith (2002) Shuter et al. (2005)
Operational Activities	Activities described in Operational Plans such as harvesting, transport and silviculture.	Shuter et al. (2005)
Manufacturing and Marketing	Processing and sale of forest products.	Shuter et al. (2005)

4.4.2 Application of Planning Scales

In addition to considering the specific functions of a co-management arrangement, the decision-making context of these functions is a critical factor in evaluating any institutional arrangement (Ostrom 1990). Specifically in relation to forest management in Canada, there are distinct planning scales that must be considered. Planning at multiple scales is a practical approach from both an ecological and institutional perspective (Cardinal 2004). These scales are summarized in Table 4.2

Table 4.2: Planning Scales in Forest Management (*adapted from Cardinal 2004*)

Strategic Level	Involves the high-level decisions for large ecological units such as sub-regions and large landscapes. Strategic level decisions, such as land use plans, govern all tactical level decisions.
Tactical Level	Involves decisions for ecological units such as small landscapes and watersheds. Tactical level decisions, such as forest management plans, govern operational level activities.
Operational Level	Involves decisions for ecological units such forest stands or sites. Operational level decisions, such as site plans, specify the operational details.

In applying these planning scales to the key forest management functions identified in Table 4.1, the decision-making context of the functions is demonstrated (Table 4. 3).

Table 4.3: Application of Planning Scales to Forest Management Functions.

Strategic Level	<ul style="list-style-type: none"> • Strategic Planning • Cultural and Socio-Economic Analysis • Timber Supply Analysis • Harvest Level (AAC) • Forest Management Standards • Tenure Allocation • Compliance and Enforcement • Dispute Resolution • Funding/Revenue Mechanisms
Tactical Level	<ul style="list-style-type: none"> • Tactical Planning • Monitoring and Adaptive Management
Operational Level	<ul style="list-style-type: none"> • Operational Planning • Operational Activities • Manufacturing and Marketing

4.4.3 Applying a Relative Power Spectrum

An effective method to determine different levels of decision-making power in co-management arrangements is to apply a relative power spectrum. This concept originated with the 'Ladder of Citizen Participation', developed in the late 1960s (Arnstein 1969). Berkes et al. (1991) first made the connection that Aboriginal co-management arrangements were difficult to define and should be classified by following a decision-making spectrum similar to the ladder. Berkes (1994) later developed a seven-rung ladder that described specific levels of shared decision-making power in co-management arrangements (Berkes 1994). Subsequently, several typologies have utilized the Berkes (1994) spectrum to describe decision-making power in natural resource co-management (Notzke 1995, Sen and Neilson 1996, Pomerny and Berkes 1997, Plummer and Fitzgibbon 2004, Shuter et al. 2005).

Keeping with the literature, the framework proposed in this paper will utilize the Berkes (1994) spectrum with some adaptations (Figure 4.1). The revised relative power spectrum clarifies that the 'levels' or 'rungs on the ladder' are best seen as different options for institutional design. Each institutional design option can then be described in terms of the frequency and context of Aboriginal input, the level of consultation and accommodation that has occurred, and the overall level of Aboriginal decision-making power based on general obligations of the Crown. The adapted spectrum also refines the focus of the institutional design options to reflect the uniqueness of the Aboriginal-Crown relationship. The adapted spectrum is presented in Figure 4.1 and described more fully in Table 4.4.

Figure 4.1: Aboriginal-Crown Relative Power Spectrum

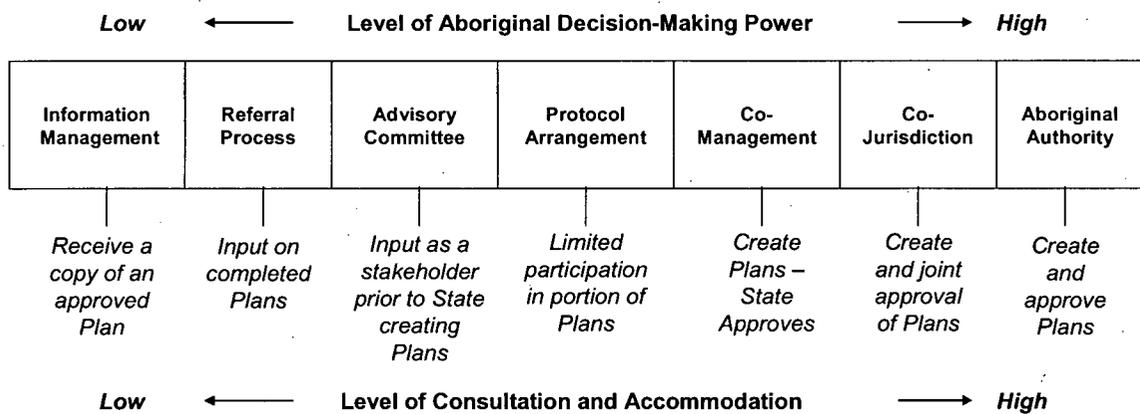


Table 4.4: Institutional Design and Role of Aboriginal Group in Decision-Making

Institutional Design	Context of Input	Consultation and Accommodation	Level of Aboriginal Decision-Making Power
Aboriginal Authority	Aboriginal group determines rules for decision-making with other parties.	N/A	Highest - Aboriginal group has primary authority to make decisions.
Co-Jurisdictional Body	Aboriginal group participates with Crown representatives in a government-to-government relationship, providing frequent input and making decisions. (e.g. creation and approval of planning documents)	High levels of consultation and accommodation. Process is funded	High - Crown has an obligation to recognize joint decisions.
Co-Management Board	Aboriginal group participates with Crown representatives in a government-to-government relationship, providing frequent input and preliminary approval of decisions. (e.g. creation of planning documents)	High level of consultation, moderate level of accommodation. Process is funded.	Medium to High - Crown has an obligation to recognize joint decisions, but retains the authority to overturn them.
Protocol Arrangement	Aboriginal group provides moderately frequent input into proposed decision process, potential input into the negotiation of accommodation measures. (e.g. limited participation in creation of planning documents)	Moderate level of consultation, low level of accommodation. Limited funding.	Medium - Crown has an obligation to justify decisions based on input and potentially offer accommodation measures.
Advisory Committee	Aboriginal group participates as one of many stakeholders to provide input on proposed decisions and to provide alternatives. (e.g. providing input prior to Crown creation of planning documents)	Low level of consultation, no accommodation. Limited to no funding.	Low - Crown has an obligation to justify decisions based on input.
Referral Process	Aboriginal group is provided limited input to a proposed decisions. (e.g. providing input on completed planning documents)	No consultation and accommodation. No funding	Very Low - Crown may, or may not, justify decisions based on input.
Information Management	Aboriginal group is informed of decisions made. (e.g. receiving a copy of an approved planning document)	No consultation and accommodation. No funding	None - Aboriginal group, along with public is informed of decisions made by the Crown authority.

4.4.4 Formal – Versus – Informal Arrangements

The formal/informal dimension of arrangements highlighted by Plummer and FitzGibbon (2004) requires further discussion and application to the new framework. This concept is particularly important considering that an arrangement may have both formal and informal components occurring simultaneously. For example, a formal forest management arrangement may specify that the Crown has the decision-making authority to make a particular decision. However, the Aboriginal group may *informally* play a major role in making that decision and therefore, will have a higher level of decision-making power than the arrangement formally acknowledges.

To overcome this limitation, the formal versus informal nature of arrangements requires the new framework to be applied twice. A first application of the new framework is needed to consider the formal specifications of Aboriginal forest management arrangements, such as the terms and conditions in actual agreements. Then a second application is required to assess the informal power sharing that is occurring during agreement implementation. Such an assessment will require the use of interviews to ascertain whether there is more or less decision-making power being shared than specified in the formal agreement.

4.5 Functional Power Framework

By applying the concepts in Tables 4.1 through 4.4, a new conceptual framework emerges for analyzing Aboriginal decision-making power in forest management. The Functional Power Framework, illustrated in Figure 4.2, consists of two main axis. The vertical axis highlights the full range of forest management functions, grouped in the three decision-making scales of forest management planning (Strategic, Tactical and Operational). The vertical axis highlights the adapted decision-making power spectrum of institutional designs described in Figure 4.1.

The resulting Functional Power Framework provides an effective tool for examining the relationship between decision-making power and the functions that make up the arrangement. Where other typologies have only classified the arrangement structure as a whole, the proposed Framework aims to probe the functional nature of the Aboriginal-Crown power sharing relationship for forest management. In doing so, a clearer

relationship of the amount of decision-making power afforded over different decision-making levels will emerge.

Figure 4.2: Functional Power Framework Layout

Forest Management Functions		Levels of Aboriginal Decision-Making Power						
		Information	Referral	Advisory	Protocol	Co-Management	Co-Jurisdiction	Aboriginal Authority
Strategic	Strategic Planning							
	Cultural and Socio-Economic Analysis							
	Timber Supply Analysis							
	Harvest Level (AAC)							
	Forest Management Standards							
	Tenure Allocation							
	Compliance and Enforcement							
	Funding/Revenue Mechanisms							
	Dispute Resolution							
Tactical	Tactical Planning							
	Monitoring and Adaptive Management							
Operational	Operational Planning							
	Operational Activities							
	Manufacturing and Marketing							

4.6. Framework Applications

The effectiveness of the proposed Functional Power Framework is best demonstrated through application. In doing so, the Forest and Range Agreement forest policy initiative from British Columbia will be assessed.¹³

The provincial government of British Columbia recently completed an overhaul of forest policy and has redefined relationships with First Nations and other Aboriginal peoples. A

¹³ The framework applied to the Innu and Nuu-chah-nulth examples is provided in Appendix A.

key initiative under the *Forest Revitalization Act* (2003) was to greatly increase the forest management opportunities for First Nations (BC MoF 2003). In order to implement the new policy, over 100 Interim Measure Agreements, know as Forest and Range Agreements (FRA) have been reached between different First Nations and the BC Ministry of Forests (BC MoF 2006). The FRAs provide financial transfers and short-term harvest allocations in exchange for the First Nations' commitment not to impede other forest developments in their respected territories. To date, over \$ 120 million and 17 million cubic meters of timber have been allocated through the FRA program (BC MOF 2006).

Another significant new development in BC is the 'New Relationship' policy initiative. The initiative was developed jointly by senior provincial government officials and leaders from the First Nations Summit, Union of BC Indian Chiefs, and BC Assembly of First Nations (First Nations Leadership Council and Gov BC 2006). The policy aims to take the initial steps in creating a new government-to-government relationship based on respect, recognition and accommodation of aboriginal title and rights (First Nations Leadership Council and Gov BC 2005). A key concept in the new policy is shared decision-making over land and natural resources. The first legislative support for this policy was passed in March 2006 in the form of the New Relationship Trust Act. This act provides for a \$100-million fund to help First Nations build institutional and community capacity to participate in the management of lands and resources and to take advantage of economic, cultural and social opportunities in the province (BC MARR 2006).

The combination of the significant increase in First Nations' access to forest resources with the clear commitments by the province to increase the level of Aboriginal decision-making power over management, provides a good case for the application of the Functional Power Framework. From the formal dimension, the Framework can be utilized to assess the degree of shared decision-making by analyzing the terms and conditions of the Forest and Range Agreement template. Due to the scope of this paper, interviews with representatives of provincial and First Nation governments to highlight any informal directions resulting from the implementation of the agreements were not completed. Results from the formal Framework application are highlighted in Table 4.5. The corresponding completed Functional Power Framework depicting the formal dimension is displayed in Figure 4.3.

Table 4.5: Summary of application of the Functional Power Framework to FRA arrangements

Forest Management Functions	Level of Aboriginal Power - Institutional Design	Rationale Summary
Strategic Planning	Low – Referral to Advisory	No status in agreement. Default status is the strategic planning process where most First Nations did not participate.
Cultural and Socio-Economic Analysis	None - Information	No status in agreement. The Ministry of Forests commissions analysis.
Timber Supply Analysis	None – Information	No status in agreement. The Ministry of Forests conducts process internally.
Harvest Level (AAC)	Low – Referral to Advisory	Agreements specify this is a provincial decision. Process has a public consultation phase.
Forest Management Standards	Low – Referral to Advisory	No status in agreement. Default status is public consultations that occur regarding forest practices regulations.
Tenure Allocation	Low – Referral to Advisory	Agreements specify that all tenure transfers, amendments or conversions are a provincial decision. However, the allocation of forest licence for the agreement is a jointly negotiated process.
Compliance and Enforcement	None – Information	No status in agreement. The Ministry of Forests conducts process internally.
Funding/Revenue Mechanisms	None – Information	Agreements specify that the Ministry of Forests conduct the process internally.
Dispute Resolution	Low to Medium – Advisory to Protocol.	Agreement highlights that the parties will work to resolve disputes resulting from the agreement. However, other clauses grant the Ministry of Forests discretion to limit agreement benefits.
Tactical Planning	Medium to High – Co-management	No status in agreement. Forest Stewardship Plans are created by the First Nation and approved by the Ministry of Forests.
Monitoring and Adaptive Management	Medium – Protocol	No status in agreement. Process is clarified during tactical planning processes led by the First Nation.
Operational Planning	Medium to High – Co-management	No status in agreement. Site Plans are created by the First Nation and retained by the Ministry of Forests.
Operational Activities	High – Co-management to co-jurisdiction	No status in agreement. First Nation has a high amount of operational discretion in carrying out activities.
Manufacturing and Marketing	Highest - Aboriginal Authority	No status in agreement. First Nation has authority to carrying out activities as required.

Figure 4.3: Formal Functional Power Framework for Existing Forest and Range Agreements

Forest Management Functions		Levels of Aboriginal Decision-Making Power						
		Information	Referral	Advisory	Protocol	Co-Management	Co-Jurisdiction	Aboriginal Authority
Strategic	Strategic Planning							
	Cultural and Socio-Economic Analysis							
	Timber Supply Analysis							
	Harvest Level (AAC)							
	Forest Management Standards							
	Tenure Allocation							
	Compliance and Enforcement							
	Funding/Revenue Mechanisms							
	Dispute Resolution							
Tactical	Tactical Planning							
	Monitoring and Adaptive Management							
Operational	Operational Planning							
	Operational Activities							
	Manufacturing and Marketing							

The results of the Framework application to formal FRA arrangements demonstrate a variation in decision-making power. Results suggest that there is a relatively low level of decision-making power shared in strategic level functions, a mid to high level over tactical functions, and a fairly high level over operational level functions.

We have not explored the underlying reasons behind these variations. However, the fact that the FRA program is the first of its kind in Canada may explain why the provincial government is wary of devolving too much control too quickly. This phenomenon is highlighted by Castro and Nielsen (2001), who suggest that co-management arrangements do not always result in power sharing, but may simply strengthen the Crowns' control over resource policy, management and allocation (Castro and Neilson 2001).

First Nations leaders in BC have been aware of the deficiencies in the FRA program as the New Relationship policy document specifically highlights actions to review the FRA program and create new institutions to negotiate government-to-government agreements for shared decision-making regarding land use planning, management, tenure administration and resource benefit sharing (First Nations Leadership Council and Gov BC 2005). In this context, the FRAs signed to date could be considered a first step on the path to shared decision-making in forest management, not as the final destination.

In fact, during the spring of 2006 the FRA template was revised to reflect the provinces' commitment to the New Relationship. The new template, entitled *Interim Agreement on Forest and Range Opportunities* (FRO) provides modest improvements on the FRA template and provides specific intentions for further refinement, with the aim of being more consistent with the New Relationship policy over time (Donovan and Company 2006).

4.7 Conclusions

The review of literature surrounding natural resource co-management and existing multi-level typologies has provided a foundation for understanding decision-making power in Aboriginal forest management arrangements. By applying alternative theories on co-management governance, ecosystem-based management, institutional analysis, and natural resource power-sharing spectrums, a new framework was identified.

The resulting Functional Power Framework provides an effective tool for examining the relationship between decision-making power and the functions that make up forest management arrangements. In doing so, a clearer relationship of the amount of decision-making power afforded over different decision-making levels has been demonstrated.

Initial application of the Framework to a new policy example from British Columbia suggest that an increase in Aboriginal access to forest resources has not included a corresponding increase in Aboriginal decision-making power at all decision-making levels. Although shared-decision-making is evident at the tactical and operational levels, little power is turned over by the Crown in strategic level functions. However, new revisions to the Forest and Range Agreement template suggest that slightly more decision-making power may be shared in the near future.

Further applications of this framework could explore variations in forest tenure type and the role of governance mechanisms in tenure reform. It could also assist in developing effective institutions to support shared decision-making at all levels. In addition, the Functional Power Framework could be adapted to reflect specific functions of other natural resource co-management contexts, such as fisheries, mining, oil/gas, parks, and wildlife management to gain insight into levels of decision-making power and arrangement effectiveness.

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Chapter 5: Discussion and Conclusion

"We are all here to stay."

New Relationship Document; p. 1. BC First Nations Leadership Council and the Province of British Columbia.

5.1 Discussion of Manuscript Chapters

5.1.1 Manuscript Chapter Summaries

This research project has focused on describing the forest policy context of Aboriginal-Crown relations and developing constructive tools for the analysis of this relationship. The first manuscript in Chapter 2, *In Search of Certainty*, served as an in-depth case study of British Columbia's attempt to overhaul forest policy in the face of political, judicial and Aboriginal rights and title pressures. The manuscript provides insight and understanding into the complexities that exist within the Aboriginal-Crown relationship by employing a policy regime and policy cycle framework to analyze forest policies developed under the BC Liberal mandate of 2001-2005. A key conclusion of the manuscript is that Aboriginal governments must be consulted and given a rightful seat at the policy design table. The creation of an exclusive provincial government-industry policy forum led to increased tensions between Aboriginal and BC governments. These tensions resulted in several judicial challenges by Aboriginal peoples and a distrustful

environment surrounding the spirit and intent of new forest policy design. The manuscript recommendations highlight that the BC government needs to work for more fundamental changes that can live up to the intentions of meaningful recognition and reconciliation.

The second manuscript Chapter, *Innovations in Aboriginal Forest Management*, served to highlight two innovative examples of Aboriginal forest management in Canada. Specifically, the manuscript explored the concept of Aboriginal forest tenure and assessed key directions for the tenure by comparing the examples in BC and Labrador. The manuscript demonstrates that both innovative examples exhibit almost all of the proposed directions for an Aboriginal forest tenure. However, the analysis also determines that forest tenure mechanisms are not the main cause of innovation. Rather, the analysis identified governance mechanisms, enabled by co-management agreements, as the main factor behind the innovations. The manuscript is concluded with recommendations highlighting that future research should examine the power-sharing relationship of co-management arrangements in more detail.

Lastly, the third manuscript Chapter, *Who's got the Power*, develops a conceptual framework for determining the level of power-sharing in Aboriginal-Crown forest management arrangements. The framework was then applied to the BC Forest and Range Agreement policy initiative that was described in Chapter 2. Results suggest that the conceptual framework is an effective tool for assessing the level of power-sharing in forest management arrangements. Application to the BC forest policy initiative suggests that little power-sharing exists at the strategic decision-making level, but enhanced power-sharing does occur at the tactical and operational levels.

5.1.2 Common Manuscript Themes and Conclusions

In relating and comparing the manuscript Chapters to each other three central themes are evident: increasing certainty, conflict mitigation through consultation, and collaboration through power-sharing.

5.1.2.1 Increasing Certainty

The first theme involves the concept of certainty. The concept of certainty highlighted throughout this research project refers primarily to limiting Aboriginal peoples impact on

forest sector profitability. This concept was first put forward by the forest industry and later utilized heavily by some provincial governments (COFI 2001, BC Liberal Party 2001). This concept refers to creating a sense of economic stability in the forest sector and removing the ever-present threat of Aboriginal interference to forestry operations. However, the concept of certainty can equally be applied from an Aboriginal perspective. Such a perspective could include the desire to gain certainty over how forest management will occur in Aboriginal traditional territories, how to increase access to economic benefits, and how to secure a rightful place at the decision-making table.

All three manuscript Chapters highlight that there has been an increase in the level of certainty for all parties involved. From a Provincial government and industry perspective there has been a distinctive increase in the stability of forestry operations in Aboriginal traditional territories. This was primarily achieved through the creation of interim measures such as the FRAs and forest co-management agreements. As highlighted in the different manuscripts, the various Aboriginal-Crown relationships that are discussed are far from perfect, but represent a step in the right direction. In addition, the Aboriginal peoples that are participating in forest management arrangements are seeing some increase in economic benefits and small shifts in decision-making power.

5.1.2.2 Consultation to Mitigate Conflict

Prevalent in both the *In Search for Certainty* and *Innovations in Aboriginal Forest Management* manuscripts is the theme of reduced conflict through consultation. In the first manuscript Chapter, tensions around forest policy changes were aggravated by a lack of consultation between Provincial and Aboriginal governments. The manuscript also highlighted the direct action that the Haida Nation initiated following the implementation of a new forest policy that allowed companies to transfer and dissolve forest tenures. This was also the case in both the Innu and Nuu-chah-nulth examples, where adversarial positions existed surrounding the scale and intensity of forest management. In all of these cases an increase in consultation efforts by the Provincial governments involved reduced tensions and potential conflicts. A key component to these consultations was the negotiation of agreements that aimed to accommodate the Aboriginal peoples concerns and to provide direction for a long-term strategy for working together.

5.1.2.3 Collaboration through Power-Sharing

The third main theme that is present in all of the manuscript Chapters is the concept of increased collaboration through power-sharing in forest management. Each manuscript highlights examples where effective collaboration between Crown and Aboriginal governments is made through a power-sharing arrangement. Co-management boards were identified as an effective institution to support power-sharing. However, the design of institutions should be reflective of the mutual capacity of both the Crown and Aboriginal governments on a case-by-case basis. Typically, 'limited capacity' is a term related to the Aboriginal peoples' ability to implement activities. However the term is also applicable to Crown governments that may have a policy direction to share power, but do not have the capacity to do so because of bureaucratic institutions and procedures within the Crown government. For example, a Ministry of Forests District Manager who is responsible for implementing a co-management agreement may not have the capacity to recognize the Aboriginal representative as a co-manager, and continue to operate as if the Aboriginal group is just another stakeholder. Similarly, the Aboriginal group may not have the capacity, expertise, infrastructure or desire to take on additional management responsibilities.

5.2 Research Strengths and Weaknesses

This research project primarily utilized a document analysis method to develop and structure research findings. The associated strengths and weakness to this approach and the results achieved are summarized below.

5.2.1 Strengths

There are several main strengths that can be associated with the methods and results of this research project. The first involves the thoroughness of describing the Aboriginal forest policy context. Derived through the application of the policy regime and policy cycle analyses, this research project provides an excellent and detailed context for Aboriginal forest policy in British Columbia and Newfoundland and Labrador. Particularly for the BC example, this context is enriched by the thorough review of new provincial legislation, public speeches, press releases, announcements, publications, academic literature, judicial reviews and Reasons for Judgment.

A second related strength is the systematic review and analysis of all agreements made between the BC Ministry of Forests and Aboriginal peoples. Each agreement was reviewed codified and entered into a database for organization and statistical analysis. The database has been proven to be very useful in summarizing agreement statistics and identifying trends.

A third strength of this research approach was the use of informal interviews to assist in gaining knowledge of community case studies and acquiring research materials. The informal interviews were possible because of existing contacts and ensured that the research efforts were effective and efficient.

A fourth strength in this research approach was the process of developing the functional power Framework highlighted in Chapter 3, *Who's got the Power*. Several versions of the Framework were developed and tested on different cases. Different versions of the framework were also work-shopped with the research advisors, academic colleagues, and presented at two international conferences to help ground the framework's efficiency and functionality.

Lastly, but perhaps the most important strength of the research approach was the careful thought into the opportunities and constraints of conducting in-depth qualitative research with Aboriginal communities. Original plans to conduct this style of research were abandoned when it became apparent that support (financial and institutional) was insufficient to warrant research that would be respectful and beneficial to the participating Aboriginal communities.

5.2.2 Weaknesses

Although this research project considers it a strength not to conduct qualitative research in Aboriginal communities unless sufficiently supported, the absence of conducting such research to ground the analysis is a key weakness. This research project could be greatly enhanced by conducting qualitative research in the case study communities (central Nuu-Chah-Nulth and Innu Nations). A qualitative analysis could have provided greater insight into the case backgrounds, negotiation strategies and realities of agreement implementation. Similarly, conducting interviews with Provincial and Aboriginal government representatives in regards to the implementation dynamics of the Forest and Range Agreements could have also enriched the research findings.

Specifically the interviews could have allowed for a user test case for the functional power Framework and captured data to apply to the informal dimension of the framework.

A second main weakness of this research approach involves limiting the scope to mainly a Canadian context. The research could be greatly enhanced by utilizing case studies and information from international examples. Nations such as Australia, New Zealand, United Crowns of America and several African countries have comprehensive approaches in developing natural resource policies that focus on co-management arrangements with Aboriginal peoples (Stevens 1997). That being said, there is strength in only focusing on the Canadian context. Such a focus provides for less confusion that arises in attempting to compare different jurisdiction that have significant variation in social, geo-political and economic circumstances.

Lastly, a third weakness in the research is that only 'successful' examples of Aboriginal forest management were considered for the case study. The research project could have been more robust if it incorporated examples of co-management arrangements that failed as part of the study. Although trends and themes identified in successful arrangements are of value, causes for failure can be as important and can serve as relevant lessons for highlighting criteria for successes.

5.3 Status of Working Hypothesis

As highlighted in the introductory Chapter, the working hypotheses of this research project consider the Crown-Aboriginal government relationship in regards to conflicts and collaboration. Specifically, the first hypothesis suggests that Aboriginal people in Canada have access to effective power-sharing in forest management opportunities with Crown governments. Based on the research findings, particularly those of Chapter 4 *Who's got the Power*, this hypothesis is not valid. Although some effective power-sharing is occurring between Aboriginal and Crown governments for operational functions, tactical and strategic power-sharing is not occurring. It is important to note that although this hypothesis is currently considered invalid, the increase in power-sharing by Crown governments is significant. As such, this hypothesis may yet become true as the Aboriginal-Crown relationship evolves.

The second hypothesis suggests that an increase in power-sharing between Crown and Aboriginal governments will result in decreased levels of conflict and higher levels of collaboration. Based on the research findings expressed by the manuscript Chapters it is apparent that this hypothesis is valid. The intense conflicts that were highlighted in the *In Search for Certainty* and *Innovations in Aboriginal Forest Management* manuscripts were all a direct result of Aboriginal peoples being either excluded from the policy development table, or the strategic planning stages of forest management. In both cases, an increase in power-sharing by the Crown paved the way for reduced conflicts and centered energies on collaborative planning exercises.

It is important to note that the findings of this research project do not suggest that power-sharing is the ultimate solution and that if it occurs no conflicts will ever exist between the two governments. Although the research found a decrease in conflicts and publicly demonstrated collaboration, continued tensions between the parties is typical as representatives on both sides must get over past prejudices and learn to work together. As highlighted in the future research section, a good extension to this research would be to look at examples where co-management arrangements have not succeeded, drawing lessons from problems as well as the solutions.

5.4 Research Significance

The work completed through this research project is significant for three main reasons. Firstly, this research provides the first detailed account of one of the most substantial changes to British Columbian forest policy in recent decades. Prior to the commencement of this research project there was no comprehensive documentation and analysis of the numerous forest policy and legislative changes affecting First Nations in BC. Through the *In Search for Certainty* manuscript, this gap in the literature has been filled.

The second significant feature of this research project is the demonstration that the creation of Aboriginal forest tenure opportunities does not necessarily require systematic tenure reform. Based on the case studies highlighted in the *Innovations in Aboriginal Forest Management* manuscript, it was found that governance mechanisms provided through co-management agreements were the motivators for innovations, not the type of forest tenure employed. This research finding suggests that although systematic tenure reform could be beneficial in the long term, interim solutions exist for creating conditions

for Aboriginal communities to practice forms of forest management that are consistent with their socio-economic and cultural objectives.

A third significant feature of this research is the creation of the functional power Framework. As highlighted in the *Who's got the Power* manuscript, this new conceptual framework builds on existing frameworks by focusing on the power-sharing with individual functions of forest management, instead of ranking the arrangement as a whole. For the first time there is now a conceptual framework that can break down power-sharing by specific functions and in doing so, create a clearer picture of the arrangement in question.

5.5 Research Applications

Due to the manuscript-based nature of this research project there are already several concrete applications. Chapter 2, *In Search for Certainty*, was distributed to a chief negotiators meeting of the First Nations Summit in August 2005. Although this was only an early draft of the manuscript, the inclusion of it at the conference highlights the paper's value as a resource document for First Nations negotiating and implementing Forest and Range Agreements. Furthermore, a version of this manuscript has also been accepted as a Chapter in the upcoming book entitled *First Nations Forest Land Management*, to be published by UBC Press and has been utilized in both graduate and undergraduate courses readings at the UBC Faculty of Forestry.

Another application of this research was the presentation and publication of the *Innovations in Forest Management* manuscript at the Sustainable Forest Management Network (SFMN) conference in June 2006. The paper has been distributed in the workshop proceedings and incorporated into a larger SFMN research project that is examining forest tenure redesign, competitiveness and sustainability. It is anticipated that research findings from this project will have associated extension materials targeting government policy makers, industry leaders and other interested stakeholders.

Perhaps the most important application of this research project is the functional power Framework. This new approach to analyzing power-sharing relationships will allow academic researchers to get a clearer view of where power-sharing is occurring in Aboriginal-Crown relationships. As highlighted in the *Who's got the Power* manuscript, the framework could also be adapted to reflect functions from other natural resource

fields such as: parks, fisheries, and wildlife management. In addition to the academic applications, the Framework could also assist both Crown and Aboriginal governments in negotiating arrangements that suit their needs, aspirations and mutual capacities.

5.6 Future Research Directions

One of the most challenging aspects of completing this research project was limiting the scope in order to ensure that the project reached completion within expected time frames and budgets. Consequently, there are several ideas for future research based on the work achieved through this project. Four of the key directions include: conducting qualitative interviews in Aboriginal communities, creating a quantitative survey for Provincial and Aboriginal government representatives, conducting another policy regime and policy cycle analysis on the BC government's second term in office, and expanding the co-management case study to include a variety of international examples.

Qualitative research set in the Aboriginal communities would be an excellent future direction of this research project. As highlighted in the research strengths and weaknesses section, this kind of research is very culturally sensitive and must be completed to the highest standard. Meeting such a standard usually involves taking a long period of time for the researcher to integrate into the community, employing community members as part of the research team, ensuring the community has input into setting the research objectives, and ensuring mechanisms are in place for communicating research results and findings (Smith 1999). A key research question that could be explored through this research would be: Do Aboriginal communities that participate in forest management agreements have an increase in community well-being? In addition to the qualitative data, this research could also be assessed against current socio-economic data such as employment generated through forest management.

Another future direction for research would be to utilize a quantitative research approach by creating a mail out survey that would base questions around the forest management functions highlighted in the functional power Framework. This survey could then be designed in a Likert scale format to rank answers corresponding to the classifications in the relative power spectrum. The survey would then be targeted to both Provincial and Aboriginal government representatives involved in forest management arrangements.

Another longer-term future direction would be to follow up on the results highlighted in the *In Search for Certainty* manuscript by applying the policy regime and policy cycle framework to the second term of the BC liberal government. The second term (2005 to 2009) continues to develop significant policies for Aboriginal peoples in BC and would make an excellent comparison to the actions highlighted on the first mandate.

Finally, it would be an interesting exercise to develop a comprehensive examination of Aboriginal-Crown co-management arrangements in both a Canadian and international context. This study should ensure that cases in which co-management has run into problems or had some kind of failure are included.

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Appendix A

Conceptual Framework Applied to the Innu Nation Example

Forest Management Functions		Levels of Aboriginal Decision-Making Power					
		Information	Referral	Advisory	Protocol	Co-Management	Co-Jurisdiction
Strategic	Strategic Planning					■	
	Cultural and Socio-Economic Analysis					■	
	Timber Supply Analysis					■	
	Harvest Level (AAC)					■	
	Forest Management Standards					■	
	Tenure Allocation					■	
	Compliance and Enforcement					■	
	Funding/Revenue Mechanisms				■		
	Dispute Resolution					■	
Tactical	Tactical Planning					■	
	Monitoring and Adaptive Management					■	
Operational	Operational Planning					■	
	Operational Activities						■
	Manufacturing and Marketing						■

Conceptual Framework Applied to the Nuu-chah-nulth First Nations (Iisaak) Example

Forest Management Functions		Levels of Aboriginal Decision-Making Power						
		Information	Referral	Advisory	Protocol	Co-Management	Co-Jurisdiction	Aboriginal Authority
Strategic	Strategic Planning							
	Cultural and Socio-Economic Analysis							
	Timber Supply Analysis							
	Harvest Level (AAC)							
	Forest Management Standards							
	Tenure Allocation							
	Compliance and Enforcement							
	Funding/Revenue Mechanisms							
	Dispute Resolution							
Tactical	Tactical Planning							
	Monitoring and Adaptive Management							
Operational	Operational Planning							
	Operational Activities							
	Manufacturing and Marketing							