

# **First Nation and Forest Industry Relationships: Some Perspectives from British Columbia**

**A report for:  
the National Aboriginal Forestry Association,  
the Forest Products Association of Canada, and  
the First Nations Forestry Program**

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May 2004**



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*The National Aboriginal Forestry Association (NAFA), the Forest Products Association of Canada (FPAC), and the First Nations Forestry Program (FNFP) gratefully acknowledge the work of the Institute On Governance in the preparation of this report. The sponsors also gratefully acknowledge the First Nations Forestry Program (a joint program of Natural Resources Canada – NRCan, and Indian and Northern Affairs Canada – INAC) and the Forest Products Association of Canada for providing the funding to make this work possible.*

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## Executive Summary

The forest sector, a mainstay of the Canadian economy, is worth about \$74 billion annually – including \$43 billion in forest products exports – and is the source of 361,400 direct employment opportunities.<sup>1</sup> While Aboriginal Peoples make up a significant portion of the population living in and around the forest, studies indicate that they remain underrepresented in the forest sector in terms of both employment and business activity – a significant lost opportunity not only for First Nations’ socio-economic development, but also for smooth growth in the forestry industry, as well as for sustainable forest stewardship in general. But still, forestry companies and First Nations have established a range of business relationships in recent years – experiences that highlight the potential, as well as some of the difficulties, in achieving increased Aboriginal participation in the sector.

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

In this context three sponsoring organizations – the National Aboriginal Forestry Association, the Forest Products Association of Canada, and the First Nations Forestry Program (a joint program of Natural Resources Canada, and Indian and Northern Affairs Canada) – commissioned the Institute On Governance to examine the current state of relationships between First Nations and the forestry industry. Because time and resources were limited, the partners agreed to initiate the first phase of this work with a study based in British Columbia. The study focuses on First Nations, although some reflections are also relevant in the Métis context.

This phase of the study builds on earlier work conducted by the Institute in 1998<sup>2</sup> and 2000,<sup>3</sup> and is based on general research as well as 17 confidential interviews, with B.C. First Nations, forestry companies, officials in the provincial and federal governments, and representatives of B.C. industry and First Nation forestry associations, who were suggested by our sponsors.

### Organization

The study is divided into four major sections. The first section considers available statistics on the present situation; the second section describes a number of developments in the external factors influencing the relationships, such as: legal developments; international commitments; national initiatives; changes in the market environment; provincial policy; industry trends; and trends in First Nation governance. The third section considers the dynamics of the relationships, including the chief motivations, deterrents and negotiating levers on both sides. On this basis the fourth section details the relationships’ key components – the actual ‘nuts and bolts’, including: corporate organization and corporate policy; agreements between First Nations and forestry companies; Forest Stewardship Plans and consultation processes; employment and training issues; contracting issues; and the structures of business partnerships and joint ventures. A case study, an inventory of best practices on various issues, and a participant list are also annexed.

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

<sup>2</sup> Institute On Governance, *Exploring the Relationship between Aboriginal Peoples and the Canadian Forestry Industry: Some Industry Perspectives*, March 1998, [www.iog.ca](http://www.iog.ca) (funded under contract to the Canadian Forestry Service).

<sup>3</sup> National Aboriginal Forestry Association and Institute On Governance, *Aboriginal – Forest Sector Partnerships: Lessons for Future Collaboration*, June 2000, [www.iog.ca](http://www.iog.ca) (funded under contract to the Government of Canada).

## **Conclusions**

- 1. There has been considerable progress in the overall relationship between the forest sector and First Nations in British Columbia in the past five years.** *All* respondents indicated that on the whole there is somewhat less confrontation, more conversation, more mutual respect, and indeed more cooperation in business activity, yielding tangible benefits to First Nations as well as to companies' bottom lines.
- 2. Although there is wide diversity in the range of opinions about the relationships, and considerable distance remains between the most polarized views, there is also growing common ground.** The interviews identified a number of issues on which there was substantial agreement on all sides, and found that a critical mass of individuals now understand and respect each others' positions, are working cooperatively and moving forward on the basis of shared fundamental assumptions. In the past five years this common ground has advanced considerably.
- 3. Most participants were guardedly optimistic about future Aboriginal – forest sector collaboration** – while some were skeptical about specific issues, none were overtly pessimistic about the situation as a whole.
- 4. “Uncertainty Reigns”** – Pending court decisions, ongoing trade disputes, and legislative transformations underway are causing considerable uncertainty for all parties. The situation is very dynamic both for industry and First Nations.
- 5. There is a great deal of controversy over recent legislative changes by the provincial government** – Some measures, such as the permitting of direct tenure awards to First Nations, are generally seen as positive, necessary steps. But there is also considerable debate around the following key issues:
  - a. Tenure Reallocation** – how to achieve fairness in the distribution of tenure to First Nations while still allowing for economies of scale
  - b. Revenue Sharing** – how to ensure that revenue sharing meets legal requirements while moving First Nations along to a position of increased economic autonomy
  - c. Industry Deregulation** – how to ensure long-term industry profitability and growth while minimizing the socio-economic costs to communities of transition
  - d. Results-Based Forest Management** – how to help First Nations adapt to the new system and to ensure that sustainability in forest management is achieved
  - e. The B.C. Treaty Process** – how to ensure that forestry policy is consistent with longer-term treaty and land claims agreement goals
- 6. Some companies are beginning to see positive Aboriginal relations as potential competitive advantages, and are strategically positioning themselves as ‘preferred partners’ in the long-term.** Many companies predict increased Aboriginal involvement in the forest sector in the long-term, particularly through expanded tenure, and increasingly see the ‘upsides’ of Aboriginal relations – such as potential business opportunities, improved long-term access to resources, and improved company image – rather than the ‘downsides’ such as potential confrontations, negative publicity, and competition for tenure.

- 7. There was strong agreement among Aboriginal, industry, and government interviewees of the need to manage Aboriginal businesses separately from the political administration of the community.** Arms-length economic development corporations have been established in many communities to handle partnerships with outside companies.
- 8. First Nations are increasingly focussing not just on the quantity of jobs available in the forestry sector, but also on their *quality*.** Aboriginal participation in the forest industry has tended to be concentrated in the silviculture, harvesting, and hauling areas, but First Nations (and government officials) are increasingly trying to create jobs in mills, value-added industries, and – most importantly for the long-term – business management and forestry.
- 9. First Nations are also focussing more and more on long-term capacity development – financial, business, technical, managerial, etc. – in addition to short-term benefits such as employment and royalties.** Revenues from the forest industry are more often being directed to business purposes such as paying off capital equipment loans; and many communities are assuming a greater role in managing their forest licenses – generally through partnerships with established firms – rather than handing over control to outside firms in return for short-term dividends.
- 10. As participants from all sides commented, First Nations will only be able to reap significant economic benefits from forest sector activity if they are granted long-term, replaceable forest tenures that are large enough to warrant major capital investments.** Many of the tenures currently being awarded to First Nations are non-replaceable, of very short term, small in size, or focussed on areas affected by wildfires or beetle infestations, and as such are of limited economic value. But a fundamental problem in the tenure allocation process – one unlikely to be resolved easily – is that the 8% portion destined for First Nations simply cannot be divided up equally among all of B.C.'s 198 First Nations while maintaining economies of scale necessary for business profits.
- 11. Resolving land issues – in particular through the Treaty Process – is of fundamental importance to the long-term viability of the B.C. forest industry and to increasing Aboriginal participation in the forest industry.** In addition, the resolution of land claims issues may allow B.C. to shift to area-based tenure (or even ownership) arrangements, which are necessary to create incentives for sustainable forest management in the long-term.
- 12. There is no agreement as to the viability and success of joint ventures and other forms of business partnerships.** While some models appear to be promising – in particular tripartite ventures between outside firms, Aboriginal development corporations and consortia of local investors – there have been many failed partnerships in the past. More information on best practices and lessons learned is required.

## **Recommendations:**

- 1. Improve data collection on Aboriginal – forest sector relationships and conduct research into lessons from business partnerships.** Governments should require or provide incentives for forest companies to resume tracking and compiling information on Aboriginal employment and contracting with Aboriginal communities, as well as improving their own statistical data. Research on joint ventures and other forms of forest sector partnerships should also be conducted in order to gather lessons learned and best practices, particularly relating to how joint ventures can help build Aboriginal business capacity.
- 2. Federal and provincial governments should work more cooperatively in developing long-term strategies to increase Aboriginal participation in the forest sector.** Some participants complained of a ‘silo mentality’ between levels of government which needs to be overcome.
- 3. Develop measures to assist Aboriginal Communities in adapting to Forest Stewardship Plan processes.** In general, Aboriginal communities require government funding to ensure meaningful consultation, accommodation, and participation in planning. The provincial government should develop a strategy – along with necessary funding – to improve Aboriginal communities’ capacity to work within the new results-based approach.
- 4. Reinstate government funding for forest-related training programs.** Programs like the Aboriginal forest technician program at the Nicola Valley Institute of Technology have proven popular in the past. New programs should focus to a greater extent on forestry and business management skills.
- 5. Develop strategies to promote the capacity development of Aboriginal communities in the long-term, particularly financial, business, technical, and managerial capacity.** This may require the establishment of a multi-party process, involving both levels of government, Aboriginal communities, industry, and representatives of training institutions (and possibly also investment institutions).
- 6. First Nations should make efforts to improve community governance structures so as not to deter business relations with outside investors.** Because First Nations administrators are torn between a myriad of government and industry relations activities, decision-making and governance processes could be streamlined in some cases so as to achieve a better fit with the pace at which business decisions must be made in competitive markets.
- 7. First Nations should take appropriate steps to insulate business decisions from short-term political considerations but in a manner that assures community benefits and ‘fits’ with the long term direction of the community.** A model highly regarded by most interviewees involves the setting up of an arms-length, community-owned economic development corporation. But as indicated in a past IOG survey of a number of Aboriginal communities in Canada and abroad, more than the establishment of a separate corporate entity is required. The structure should allow the company administrators to focus on business but, in addition, there must be clear and transparent means of distributing the benefits of the enterprise among the community. Further, to increase the odds of long term viability there ought to be a strategic fit with the community’s long-term goals.

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

# Aboriginal and Forest Industry Relationships: Some Perspectives in British Columbia

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## Introduction

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

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

## Methodology

In this context three sponsoring organizations – the National Aboriginal Forestry Association, the Forest Products Association of Canada, and the First Nations Forestry Program – commissioned the Institute on Governance to examine the current state of relationships between First Nations and the forestry industry. Understanding that time and resources are limited, the partners agreed to initiate the first phase of this work with a study based in British Columbia.

This phase of the study builds on earlier work conducted by the Institute in 1998<sup>5</sup> and 2000,<sup>6</sup> and is based on general research as well as 17 confidential interviews, with B.C. First Nations, forestry companies, officials in the provincial and federal governments, and representatives of industry and First Nation forestry associations. The list of organizations to be interviewed (see Annex 2) was provided by one or more of the project sponsors, with the aim of achieving a diversity of perspectives within each category, and combining the breadth of the perspective of the associations and government officials with the depth of the particular experience of each First Nation and company.

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<sup>4</sup> The State of Canada’s Forests 2002-2003, at [http://www.nrcan-rncan.gc.ca/cfs-scf/national/what-quoi/sof/latest\\_e.html](http://www.nrcan-rncan.gc.ca/cfs-scf/national/what-quoi/sof/latest_e.html).

<sup>5</sup> Institute On Governance, *Exploring the Relationship between Aboriginal Peoples and the Canadian Forestry Industry: Some Industry Perspectives*, March 1998, at [www.iog.ca](http://www.iog.ca) (funded under contract to the Canadian Forestry Service).

<sup>6</sup> National Aboriginal Forestry Association and the Institute On Governance, *Aboriginal – Forest Sector Partnerships: Lessons for Future Collaboration*, June 2000, at [www.iog.ca](http://www.iog.ca) (funded under contract to the Government of Canada).

## **Objectives**

As set out in the project's terms of reference, the goals of this study are to provide:

1. A comparison to trends identified for British Columbia in the 1998 study;
2. An overview of Aboriginal Peoples' relationships with the forest industry in British Columbia by describing (a) the nature and scope of relationships with primary forest industries in the province, and (b) the factors which may influence these relationships: such as corporate Aboriginal policies and corporate mechanisms for protection of identified traditional values;
3. A description of how provincial legislative frameworks, market trends, environmental commitments and Aboriginal policies adopted by forestry firms influence (foster or impede) these relationships;
4. Insight into why forest industries choose not to enter into relationships with Aboriginal peoples, and why Aboriginal peoples choose not to enter into relationships with industry;
5. Insight into what institutional and policy changes might be considered to improve relationships between Aboriginal Peoples and the forest industry.

## **Organization**

The study is divided into four major sections. A brief first section considers available statistics on the present situation; the second section describes a number of developments in the external factors influencing the relationships, including:

1. Legal Developments
2. International Commitments
3. National Initiatives
4. Changes in the Market Environment
5. Provincial Policy
6. Industry Trends
7. Trends in First Nation Governance.

The third section considers the dynamics of the relationships, including the chief motivations, deterrents and negotiating levers on both sides. On this basis the fourth section details the relationships' key components – the actual 'nuts and bolts' – relating to the following issues:

1. Corporate Organization and Corporate Policy
2. Agreements between First Nations and Forestry Companies
3. Forest Stewardship Plans and Consultation Processes
4. Employment and Training Issues
5. Contracting Issues
6. Structures of Business Partnerships and Joint Ventures

The key conclusions and recommendations are detailed in the final section, which is mirrored in the preceding executive summary. The various issues at play are also illustrated with case studies from three B.C. First Nations (Annex 1). An inventory of best practices, identified in a 1999 IOG report on the topic, is also provided on the following topics: community relations (Annex 2); forest management and consultation (Annex 3); employment and training (Annex 4); building Aboriginal business capacity (Annex 5). A participant list follows in Annex 6.

# I. The Current Situation: Overview of Available Statistics

There is currently no one national mechanism or set of indicators available to measure the level of Aboriginal involvement in the forest sector nationwide (let alone in B.C.), which makes it difficult to identify trends in quantitative terms. As a result, we must rely on information from a number of different sources to show certain parts of the picture.

## *The Forest Industry in Canada*

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

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

## *The B.C. Forest Industry*

In British Columbia, there are 51.74 million hectares of timber-productive lands, 95% of which is owned by the province, 4% privately, and the remainder by the federal government. Home to some of Canada's most productive forests, B.C.'s total timber allocation constitutes more than 30% of the total nationwide. The 2001 B.C. timber harvest amounted to 73.64 million cubic metres.<sup>10</sup> In B.C., 90% of forest products are exported outside the province, with a value of \$14 billion, more than half of B.C.'s annual exports.<sup>11</sup>

Since 1997, the B.C. forestry industry has been in a serious crunch: total B.C. forest revenues in 2002-2003 shrunk by a third, from \$1.85 to \$1.12 billion; resulting in the closure of more than 27 mills and the loss of 13,000 forest jobs. Furthermore, the return on capital in the industry over 1996-2000 was a mere 3.3%, less than half the Canadian average of 7.1%, and well below the level required to attract reinvestment and maintain industry competitiveness.<sup>12</sup> (Recently, however, lumber sector profits, spurred by a booming U.S. housing market, have rebounded somewhat).

## *Aboriginal Land and Tenure – Nationwide and in B.C.*

Only 0.25% of Canada's total forested area is considered Aboriginal land.<sup>13</sup> In addition Aboriginal groups and individuals hold a total annual allocation of some 7.0 million m<sup>3</sup> of Canada's Crown timber – 4.1% of the 169.5 million m<sup>3</sup> allocation nationwide (for purposes of comparison, some of Canada's largest forest companies each cut more than 10 million m<sup>3</sup>).

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<sup>7</sup> The State of Canada's Forests 2001-2002 at [http://www.nrcan-rncan.gc.ca/cfs-scf/national/what-quoi/sof/latest\\_e.html](http://www.nrcan-rncan.gc.ca/cfs-scf/national/what-quoi/sof/latest_e.html)

<sup>8</sup> The State of Canada's Forests 2002-2003.

<sup>9</sup> The State of Canada's Forests 1997-1998.

<sup>10</sup> Derived from the National Forestry Database Program (NFDP), Compendium of Canadian Forestry Statistics, 1991 inventory data. See <http://nfdp.ccfm.org>.

<sup>11</sup> Government of British Columbia, *the Forestry Revitalization Plan*, at [www.for.gov.B.C..ca/mof/plan/frp/pdf.htm](http://www.for.gov.B.C..ca/mof/plan/frp/pdf.htm)

<sup>12</sup> Ibid.

<sup>13</sup> National Forestry Database Program (NFDP), cited above.

In B.C., Aboriginal forest lands cover some 198,000 hectares, 0.38% of the province's timber productive lands.<sup>14</sup> In addition, the annual allocation of Crown timber to First Nations groups totalled some 3.7 million m<sup>3</sup> as of October, 2003, 6.1% of the provincial total, a figure which is currently in flux with a tenure reallocation process and temporary increases in the Annual Allowable Cut.<sup>15</sup> At this point Aboriginal allocation was divided among B.C.'s 198 communities into no less than 141 tenures – most of which are woodlots and other small tenures of less than 20,000 m<sup>3</sup>; 30 of which are between 20,000 and 100,000 m<sup>3</sup>; only 11 are more than 100,000 m<sup>3</sup>.<sup>16</sup> These allocations are also disproportionately short-term, non-replaceable tenures. These figures are changing significantly at the moment, however, because under the B.C. government's Forestry Revitalization Plan, 20% of existing tenures held by major companies are being reallocated, including 8% to First Nations (more information on this initiative follows).

### *Aboriginal employment and businesses in the forest sector<sup>17</sup>*

According to the 2001 Census, unemployment among Aboriginal people in Canada is disproportionately high: 19.1% compared to the national average of 7.1%. The situation is particularly severe on-reserve, where unemployment is on average 27.6% (compared with the national average of 7.4%) while participation rates in the labour force are low, 52.1% (compared with 66.4% nationally).

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

<b>Chart 1: Forest-Related businesses and employment on-reserve, Canada-wide, June 2002</b>				
<i>NB: Survey results cover 60.3% of First Nations, comprising 70.4% of the total on-reserve population</i>				
	# of businesses	% of businesses	'minimum' employment	% of employment
Logging & contract logging	804	55.2%	5185	30.6%
Support activities for forestry	221	14.8	1073	6.3
Forest products trucking	233	15.6	925	5.5
Mills (sawmills, pulp and paper, other forest products)	159	10.0	9007	48.0
Value-added activities (wood & paper manufacturing, etc.)	40	2.7	384	2.3
<b>Total</b>	<b>1493</b>	<b>100%</b>	<b>16,927</b>	<b>100%</b>

<sup>14-16</sup> National Aboriginal Forestry Association, *Aboriginal-held Forest Tenures in Canada*, October 2003, pp. 60-70.

<sup>17</sup> INAC Economic Development Programs Directorate (EDPD), 2003, “Economic Development On Reserves: Profile from the 2001 Census”; INAC EDPD, 2003, “Reserve Establishments and Minimum Employment”.

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

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

The rest of this report expands on these conclusions in greater detail, and focuses in on the situation in British Columbia.

## II. The Changing Context for the Relationships

Before we consider in-depth the nuts and bolts of partnerships and other relationships between forest companies and First Nations communities in B.C., we can develop the context further. A number of external factors affect the relationships, and many of these have transformed significantly since last reported in 1998. Key contextual factors to consider include:

1. Legal Developments – the *Delgamuukw*, *Haida*, *Taku River Tlingit*, *Skeena Celulose*, *Omega Salmon*, and *Powley* cases
2. International Commitments – the Rio Declaration, the Biodiversity Convention, Kyoto
3. National Initiatives – the National Forest Strategy 2003-2008
4. Market Factors – Softwood lumber, pine beetle, wildfires
5. Provincial Policy – treaties, new legislation, tenure reallocation, revenue sharing, industry deregulation, results-based forest management, government reorganization
6. Industry Trends – Corporate Social Responsibility, Certification
7. Advances in Aboriginal Governance – separation of business and politics, improved accountability and transparency

### 1. Legal Developments

Aboriginal interest in the forest is based on a unique historical and legal perspective which is acknowledged by the Canadian Constitution. As a result, forest management practices in Canada must reflect the constitutional protection afforded Aboriginal and treaty rights. Recent legal decisions – *Delgamuukw* in particular – demonstrate that the legal scope of Aboriginal and treaty rights is continuing to expand. These legal decisions translate, among other things, into responsibilities on governments and industries to honour a legal duty to consult with Aboriginal Peoples and accommodate their interests on natural resource developments which may infringe

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

on Aboriginal and treaty rights. The manner in which provinces or their agents incorporate these legal responsibilities to accommodate Aboriginal and treaty rights in provincial frameworks or corporate policy is a central factor in the relationship between Aboriginal communities and forest sector firms.

Supreme Court rulings are currently pending on appeals of two important cases originating in B.C., both of which appear to expand on the logic of the groundbreaking *Delgamuukw* case. In the *Taku River Tlingit* case of 2002, concerning a Redfern mine, the B.C. Court of Appeal held that the province was obligated to consult with an Aboriginal group about a proposed road, as it was *likely* that the group had at least some Aboriginal rights or title in the affected region, even though no court decision establishing those rights had yet been made. If upheld, this ruling will likely mean that forestry companies will need to proactively consider, consult, and accommodate First Nations interests in areas that may be subject to Aboriginal rights and title, rather than reactively responding only when there are court determinations of where these exactly exist.

The *Haida v. Weyerhaeuser* case is even more significant for industry. Here, the B.C. Court of Appeal ruled that the Crown and resource developers *shared* the duty to consult and accommodate, in this case over the renewal and transfer of a forest tenure to Weyerhaeuser from its predecessor MacMillan Bloedel, even though no change to the tenure's terms and conditions had been made. A Supreme Court joint ruling on this case and the *Taku River Tlingit* case is expected in the near future, the consequences of which may be significant for industry. Some forestry industry officials, however, state that they do not expect their role to change substantially as they are already engaged in thorough consultation with Aboriginal groups, because "it makes good business sense" rather than for legal reasons. Other companies may indeed be impelled to make greater efforts in this regard, and are concerned that they may not be best positioned to accommodate Aboriginal interests – a function they see as best left up to government. On the part of government, meanwhile, there is some concern that consultation will be required even on basic administrative decisions, and that government will find itself conflicted between its duty to consult with Aboriginal communities, and its contractual obligations to major license holders. There is great uncertainty as to what this ruling will signify for all players involved.

In the *Skeena Cellulose* ruling, meanwhile, the B.C. Supreme Court upheld the principle that the Minister of Forests' power to consent to a change in control of a forest license triggered consultation requirements on the part of the Province, obligations which had not been met in this particular case. How this reaffirmation of Provincial consultation duties will play out in practice in light of the increasing industry roles portended in *Haida v. Weyerhaeuser*, however, remains to be determined.

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

Finally, the groundbreaking *Powley* decision may affect forestry companies' consultation activities, in relation to Métis Peoples. This Supreme Court ruling not only reaffirmed the Aboriginal rights of the Métis, including to be consulted and accommodated as with First Nations, but also defined Métis people on the basis of criteria of self-identification, community acceptance, and ancestral connection. While acknowledging the difficulty in delineating Métis communities, the ruling stated that these challenges should not detract from the protection of Métis Peoples' full constitutional rights. This may create the additional challenge for forestry companies of considering case-by-case whether there are local Métis communities in their area of operations, who the members are, and whether there are site-specific Aboriginal rights that may be affected.

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

## **2. International Commitments**

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

- **The Rio Declaration, 1992** - To which Canada was a signatory and which stated among other things that “Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”
- **United Nations Convention on Biological Diversity, 1992** - Article 8 of the Convention commits the parties to “...as far as possible and as appropriate... (j) subject to national legislation, respect, preserve and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biodiversity and promote their wider application...”.

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

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

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

### **3. National Initiatives**

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

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

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



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

#### **4. Market factors**

##### **The Softwood Lumber Dispute**

The U.S.- Canada softwood lumber dispute has been a central cause of concern for the forestry industry in recent years, and particularly in B.C., where some 15,000 forestry workers have lost their jobs.<sup>19</sup> Much of this impact has been felt in the B.C. interior region. While the dispute is subject to bilateral negotiation and processes at NAFTA, the WTO, as well as national courts, the B.C. government is taking steps to address U.S. concerns, particularly by moving towards a more market-based timber pricing system. (More on provincial legislative measures follows.)

Some B.C. First Nations have added an interesting twist to this complex dispute, by filing amicus briefs to NAFTA, the WTO, and the U.S. Department of Commerce in support of the U.S. government's argument that Canadian pricing systems constitute an unfair subsidy, on the grounds that current stumpage fees ignore unresolved land issues and Aboriginal rights to a share of royalties.

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

##### **Mountain Pine Beetle Infestation, Wildfire Epidemic**

While the softwood lumber dispute has put pressure on the B.C. government to reduce its Annual Allowable Cut (AAC), the province has run up against another important concern: the need to cut and salvage wood affected by the recent mountain pine beetle infestation and wildfire epidemic, which has required an increase in the AAC and may thus exacerbate trade issues.

If issues relating to the preservation of areas of cultural importance to Aboriginal communities were not difficult enough, they have become further complicated in situations where these very areas have been burnt or infested, and need to be salvaged or otherwise dealt with. Some industry interviewees expressed concern, however, that the state of relations between Aboriginal communities, forestry companies, and governments does not allow for expeditious decisions to be made on these time-sensitive issues – and neither does the pace of decision-making within current First Nations governance structures. The beetle and wildfire issues have also affected the process of reallocating forest tenures to First Nations communities, as we explain below.

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<sup>19</sup> Amina Ali et al. "Softwood lumber dispute", CBC News Online, December 8, 2003, at [http://www.cbc.ca/news/background/softwood\\_lumber/](http://www.cbc.ca/news/background/softwood_lumber/)

## 5. Provincial Policy

### B.C. Treaty Process

In 1990, the B.C. government declared it would proceed to negotiate and settle Aboriginal land claims, but progress has been slow. In 2002, progress was affected somewhat with the Campbell government's controversial treaty referendum. There have been achievements over the years all the same, as there are now some 45 negotiating tables open, with some 55 of B.C.'s 198 First Nation communities represented (some communities are negotiating at common tables). These communities represent about two-thirds of B.C.'s total First Nations population. Five First Nations have signed Agreements in Principle – the blueprints for a final treaty – and are currently engaged in negotiations on the final stage.

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

### Legislative Developments

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

### Tenure Reallocation

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

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

The great majority of these First Nation tenure allocations are short-term (generally 5 years), and relatively small in size (on the order of 50 - 100,000 m<sup>3</sup> per year or less), because of the large number of communities involved. The rationale for the 8% figure is that it is roughly proportionate to the First Nations share of the rural B.C. population, based on INAC figures.

This tenure is also intended to be comparable on average to what remains in major companies' control in terms of quality, profile and potential profitability.

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

The 8% portion of the tenure is still in the process of reallocation, as Interim Accommodation Agreements are signed. But in addition to this 'core' reallocation, the provincial Annual Allowable Cut has been temporarily inflated to handle beetle- and fire-affected wood which needs to be salvaged, and some other 'under-cut' positions have been made available to First Nations, so the total current tenure allocation to B.C. First Nations is now in the 5 to 5.5 million m<sup>3</sup> range, according to the B.C. Ministry of Forests. Much of this 'additional' allocation is of lesser economic value than the 'core' reallocation. The most recent hard figures available are from a National Aboriginal Forestry Association (NAFA) study in October of 2003, which estimated that at that point, the allocation of Crown timber to First Nations groups totalled some 3.7 million m<sup>3</sup>, 6.1% of the provincial total.<sup>20</sup> The NAFA study also indicated that the First Nations allocation was divided among B.C.'s 198 communities into no less than 141 tenures – most of which are woodlots and other small tenures of less than 20,000 m<sup>3</sup>; 30 of which are between 20,000 and 100,000 m<sup>3</sup>; only 11 are more than 100,000 m<sup>3</sup>.<sup>21</sup>

A number of interviewees expressed concerns over the formula the government is using for the tenure awards, as the stated assumption was that the tenures would be distributed to non-Urban First Nations on a largely per-capita basis. In practice, however, as much as 80% of the total allocated to-date has been awarded to just 19 or 20 of the province's 198 First Nations. The B.C. government pointed out by way of explanation that the availability of timber varies widely across the province (there is more forest per capita in the North than in the South), as does the willingness of First Nations to take on the tenures (the tenures are often too small and uneconomical to justify operating independently). The Ministry of Forests indicated that it has avoided taking the issue of the strength of a First Nations' claim to the land into account in the allocation process, as it sees this as an issue best left to the treaty process or the courts. All the same, a degree of unevenness in the distribution of First Nation tenures may be necessary to ensure that at least some are large enough to stimulate viable First Nation forestry economies.

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

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<sup>20</sup> National Aboriginal Forestry Association, *Aboriginal-held Forest Tenures in Canada*, October 2003, p. 65.

<sup>21</sup> *Ibid.*, pp. 66-70.

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

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

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

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

## Revenue Sharing

With tenure reallocation, the other principal element of the Interim Accommodation Agreements are provisions for the sharing of forestry revenues. The Ministry of Forests’ budget includes \$15 million for this purpose in 2003-04, rising to \$30 million in 2004-05 and \$50 million the following year, a level expected to continue or to rise in the future. Between September 2002 and April 2004, the Minister of Forests signed 32 Interim Accommodation Agreements with First Nations, committing over \$41 million in forestry revenues in addition to the tenure awards discussed above. Some respondents stated that while revenue sharing is a positive step,

particularly from a legal perspective, a situation where First Nations gain such revenues by actually controlling, managing, and developing the forest resources themselves might be a preferable long-term goal.

## Industry Deregulation

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

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

These regulatory and legislative changes have facilitated a major process of consolidation and rationalization of the BC forestry industry. At least 27 mostly smaller mills have closed across B.C., due to a variety of pressures including the softwood lumber dispute.<sup>22</sup> Some have been replaced by capital and technology-intensive ‘supermills’. Several mergers have occurred, spurred by the need to secure larger tenures to compete in global markets, thus tenures are concentrating somewhat in the hands of a few major tenure holders, particularly in Northern B.C. Some interviewees expressed concerns that First Nations will be adversely affected by this process, particularly through the closing of local mills in small communities, in which many First Nations people had found work (though these worries may not be borne out for the time being as a recent surge has many companies recalling former employees<sup>23</sup>). There are also concerns that industry consolidation will strengthen the hand of large milling companies vis-à-vis the independent harvesting and hauling contractors, an area in which Aboriginal business is concentrated, and where there are already very low margins.

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

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<sup>22</sup> Government of British Columbia, *the Forestry Revitalization Plan*, at [www.for.gov.B.C..ca/mof/plan/frp/pdf.htm](http://www.for.gov.B.C..ca/mof/plan/frp/pdf.htm)

<sup>23</sup> Peter Kennedy, “Lumber sector thrives despite trade war”, *Globe and Mail*, April 19, 2004.

## Results-based Forest Management

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

## Government reorganization

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

## **6. Industry Trends**

### Corporate Social Responsibility

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

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

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

According to some of our interviewees, notions of CSR appear to have guided a shift in thinking in many forest sector firms, where they have moved away from the traditional view that partnerships with Aboriginal communities must be justified by strong, short-term business cases, and that companies should be wary of – and even actively oppose – any shifts in government

Aboriginal policy that might affect industry's control over forest resources. For many companies, Aboriginal relations were seen as 'downside' business concerns – the key goals were to avoid confrontation with Aboriginal communities that might interrupt the timber supply, and at the same time to resist attempts to transfer control over forest resources from industry to these communities. Over time, this approach has proven somewhat counter-productive for industry (not to mention the effects on Aboriginal communities), as confrontations were not always successfully avoided, companies' public reputations were endangered, and real opportunities for cooperative business dealings with Aboriginal communities were neglected.

Today it appears that many forest sector firms in Canada have integrated notions of CSR into company policy – and have thus made commitments to building effective working relationships with the Aboriginal communities that the firms count among their stakeholders. Now, some companies see merit in a strategy of building long-term trust with Aboriginal communities in order to position themselves as a preferred partner down the road, as First Nations conclude treaties, gain increasing control over forest resources, and build forest-related business capacity. Some indeed see positive Aboriginal relations as part of their competitive advantage in the market. Part of this has been enabled by increasing cultural sensitivity among company managers – which leads to fewer misunderstandings in Aboriginal relations. There is still a debate within industry as to which approach is most profitable; trends seem to indicate that the balance is tipping towards increased cooperation and relationship-building.

## Certification

One concrete means by which companies are being rewarded economically for their CSR activities is through a variety of certification schemes – increasingly in demand by buyers and retailers of forest products who would like assurances that the products they purchase are derived from well-managed, third-party certified forests. In the BC forest sector, firms are dealing with three established standards that deal specifically with forest management certification:

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

As of December 31, 2003, the status of certification in B.C. was as follows:

- CSA: 10.1 million hectares
- FSC: 0.1 million hectares
- SFI: 11.8 million hectares

### *Canadian Standards Association (CSA)*

The CSA's Sustainable Forest Management standard was first introduced in 1998 and revised in 2002 to incorporate new approaches. Many companies endorsed the standard and have gained

certification for particular forest areas. For each forest area that the company seeks to certify, the standard requires companies to demonstrate that they have taken the following steps:<sup>24</sup>

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

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

#### *Forest Stewardship Council (FSC)*

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

#### *Sustainable Forest Initiative (SFI)*

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

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

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<sup>24</sup> CSA, *CAN/CSA-Z809-02 Sustainable Forest Management: Requirements and Guidance*, at: [www.csa-international.org/product\\_areas/forest\\_products\\_marking/program\\_documents/Z809-02\\_revised\\_1030.pdf](http://www.csa-international.org/product_areas/forest_products_marking/program_documents/Z809-02_revised_1030.pdf)



## *International Standardization Organization (ISO)*

In addition, many companies have applied the ISO 14001 Environmental Management System Standard to their forestry operations and have been successfully certified. Some 46 million hectares are certified to ISO 14001 in B.C. Many forestry companies are pursuing or have gained ISO 14001 series certification, as a stepping stone to one of the three forestry-specific standards. By implementing an environmental management system, companies can ensure they have the policies, resources, procedures, programs, and training in place to identify environmental risks and manage for them. As a generic environmental management system, ISO 14001 is silent on Aboriginal issues *per se*, but may help companies organize themselves to better address these concerns.

## *Developing an 'Aboriginal' Brand or Standard*

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

## **7. Trends in First Nation Governance**

Finally, to round out our analysis of the context for the relationship between First Nations and forest sector firms, a number of developments internal to First Nations communities are of note. While there was great debate over the federal government's failed First Nations Governance Act and the transformations it hoped to achieve through legislative means, many communities have recently taken a number of steps of their own accord to making their political and administrative structures more effective, accountable, and culturally legitimate.

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

### **III. The Dynamics of the Relationships: Motivations, Deterrents, Levers of Negotiation**

Having considered this set of contextual factors in B.C., we can lay out more clearly the principal motivations and drivers for First Nations and forest-sector firms to engage in cooperative relationships, as well as some of the chief deterrents. It is also useful to point out some of the key levers the two sides have in their negotiations. As with the rest of the report, this section is based on feedback from a sample of key individuals in forest companies, First Nation communities, and the federal and provincial governments.

#### ***Motivations for First Nations***

According to feedback from not only Aboriginal but also industry as well as government participants, the chief motivations for First Nations to get involved in the forest sector have changed significantly in recent years. Previously, the focus was generally on the one hand on gaining short-term jobs – most of which turned out to be in harvesting, hauling, and silviculture; and on the other on royalties, which were often directed to social services or distributed among the community members. Little attention was paid to long-term economic or capacity development. Now, jobs and revenue are still very important, but the focus is increasingly on gaining *quality* employment – especially in mills and value-added activities, but also in management. Many First Nations are also determined to ensure that revenues are directed to generating new economic activity – such as paying off loans for capital equipment and creating sources of employment and wealth independent of the outside forest companies.

Other motivations include:

- Ensuring the sustainable stewardship of the area's ecology
- Exercising Aboriginal rights
- Getting involved in company decision-making processes to ensure the protection of:
  - sites and features of cultural importance
  - the sources of marketable non-timber forest products
  - potential tourism or ecotourism attractions
- Taking advantage of government economic development incentives
- Gaining increased economic autonomy
- Building business, technical, and managerial capacity applicable to a wide range of activities
- Improving the financial situation of the community and building positive credit history
- Accessing training opportunities and scholarships for community members
- Avoiding litigation and confrontation
- Improving relations with local non-Aboriginal communities
- Moving towards comprehensive land claims settlements and treaties
- Building a viable local economy to keep community members – especially youth – from moving elsewhere

Our survey discovered that perceptions of officials in government and industry regarding the drivers for First Nations to enter into relationships were not far off from the reasons Aboriginal people themselves provided – an indication that mutual understanding and communication have progressed significantly in recent years. A decade ago this might not have been the case. Some major *deterrents* for First Nations to get involved in forestry are also worth noting.

### ***Deterrents for First Nations***

- Despite a number of successes, some partnership experiences in the forest sector in the past have left First Nations frustrated, as promised benefits failed to materialize and outside companies remained the dominant operators of the business ventures, while Aboriginal participation – particularly in management – remained circumscribed. In some communities ‘joint ventures’ have thus become a bad word – true ‘co-management’ agreements are preferred.
- In the context of the tenure reallocation process in BC, many First Nations are concerned that the forest tenures awarded are of insufficient size and duration – in addition to being non-replaceable – to justify taking on loans and developing businesses
- In some cases where forestry companies insist on a significant equity position on the part of First Nations in the business venture, which can deter First Nations that are in poor financial circumstances or cannot handle the risk implied
- Some First Nations are hesitant to be ‘co-opted’ or to help ‘white-wash’ outside corporations. They suspect that, while they may be consulted and accommodated during the process of concluding an agreement, once they have signed on little will occur in practice. On the other hand, the company will be able to trumpet their ‘Aboriginal partnerships’ as part of public relations exercises
- There is serious concern that entering into partnerships or formal relationships with outside forest companies will legitimate the companies’ use of traditional territory or compromise Aboriginal title to it
- There can be fear that taking on tenures or accepting shared revenues will create dependency and tie the community’s hands in its dealings with government
- Even where companies commit to consultation and accommodation, First Nations often doubt that they will receive adequate funding to participate in a meaningful way
- Sometimes First Nation communities simply do not believe that the companies have offered enough in the way of tangible benefits to the community
- Communities may have other priorities or interests – often community administrators are already too busy with a host of other administrative concerns relating to government programming, treaty negotiations, or other businesses
- For some Aboriginal people, resource exploitation – particularly practices such as clear-cutting – are fundamentally at odds with their approach to the ecosystem

## ***Motivations for Industry***

From our interviews with forest sector firms, the principal motivation for them to engage in partnerships with First Nations is to *guarantee long-term, stable access to timber*. Positive relations are essential both in avoiding confrontations that might interrupt operations, and in gaining access to the increasing proportion of tenures that are in Aboriginal hands. In addition to these obvious drivers, there are a number of secondary motivations:

- Implementing Corporate Social Responsibility – achieving an improved company image and reputation in the market and among potential business partners
- Meeting certification requirements
- Tapping into the considerable Aboriginal labour force
- Bringing on Aboriginal investment capital and infrastructure support
- Employing traditional Aboriginal ecological knowledge and knowledge of the land base in managing the forests
- Taking advantage of government incentives
- Meeting legal requirements and avoiding litigation
- Building partnerships and institutions that can endure swings in Aboriginal government
- Fostering improved relations between local Aboriginal and non-Aboriginal communities
- Generally helping to move towards comprehensive treaty settlements – which are of fundamental importance for economic prosperity in the long-term
- Generally trying to achieve ‘Peace in the Valley’

These benefits are valuable not only in and of themselves, but also build on one another. In a general sense, the overall greatest benefit of Aboriginal partnerships is the stability brought about through shared long-term goals for forestry operations and economic development.

## ***Deterrents for Industry***

While many of these motivations discussed above are strong, industry officials have also expressed a number of concerns about relationships with First Nations, which can be powerful deterrents if not properly addressed:

- First and foremost, many companies insist on a strong business case to invest time and resources into any relationship, and into cooperative business ventures in particular. The company must furthermore be sure that the business case from the Aboriginal perspective is also sound. If relationships and partnerships are not structured properly, company officials warn that they risk “setting the communities up for failure” or “contributing to a cycle of dependency”. Such outcomes could leave communities worse off and cause frustrations and potentially poisoned relations in the long-term. Many industry officials pointed out, however, that they know that most First Nations are also looking for viable and sustainable business opportunities, rather than ‘hand-outs’.

- In considering collaborative business ventures, companies do not always see ‘what First Nations can bring to the table’ in terms of concrete capital investments or technical inputs, particularly if they do not hold substantial forest tenures. Some company managers also express concern that if First Nations simply borrow resources from the company rather than risking their own capital, they will not have sufficiently strong motivations to make sure that the business succeeds.
- Some companies worry that if they sign definitive agreements or contracts that they will become ‘locked in’ to relationships, and that First Nations will make demands at every twist and turn in business operations.
- Many First Nations communities are beset by inappropriate governance structures, particularly the 2-year election cycle, that cause considerable political instability – a key deterrent to business. For this reason many companies prefer to deal with arms-length development corporations rather than communities’ political administrations.
- While non-Aboriginal people can cause offence through a lack of cultural sensitivity or other negative attitudes, industry officials are themselves occasionally deterred by sharp political rhetoric, particularly relating to tough issues such as rights to land. This challenge is in addition to the efforts that must be made to overcome basic cultural and linguistic barriers on both sides, such as understanding historical grievances and respecting ongoing concerns.
- While many companies have come around to accepting responsibility for Aboriginal consultation and accommodation, many still see this as a duty of government and resist getting overly involved. Continuing court rulings and advances in government policy will over time clarify the respective roles of government and industry, but the experience in many parts of the country suggest that government involvement is not always required for communities and companies to achieve impressive results of their own accord.
- While government incentives can motivate companies to engage in partnerships with First Nations, the possibility of such support not being available in the long-term can constitute a deterring risk factor.
- Some companies operating on very tight margins can define Aboriginal relations as ‘non-core’ business activities and thus do not make investments in building relationships, even though neglecting these activities can result in far costlier problems down the road.
- Although in the past there was some demand (particularly from provincial politicians) for figures on companies’ levels of Aboriginal employment and contracting, this demand has fallen off in recent years and so is no longer an incentive for companies to make efforts in this regard. Many companies also indicate that they are legally prohibited from collecting such information.
- Some labour unions can be resistant to changes that would potentially affect company staffing.

Once there is sufficient motivation for First Nations and forestry companies to form partnerships, and once the various deterrents have been dealt with or minimized, how can the partners ensure that the arrangements achieve their full promise? The lists of motivations and deterrents above point to some of the **positive** negotiating levers First Nations and forestry companies could employ in this regard.

### ***Positive Levers for First Nations in Negotiations with Industry***

- Offering access to community-controlled forest tenures; or making joint applications with the forest companies for new tenures
- Mobilizing the community's own financial capital – from revenue sharing agreements, federal economic development funds, profits from other businesses, or elsewhere – and accessing bank or government loans and bringing them to the table
- Helping to access government program funds in general
- Offering traditional ecological knowledge and familiarity with the land base in forest stewardship planning
- Helping companies gain certification and improved company image
- Facilitating access to the Aboriginal labour force, by:
  - Encouraging band members to take advantage of apprenticeship, training, and educational opportunities
  - Helping form work teams to work in silviculture, harvesting, and hauling
  - Attracting community members back to the reserve area to take advantage of employment opportunities
  - Helping establish positive relations with millworker's unions to help integrate Aboriginal employees into operations
  - Providing support through a variety of means to community members dealing with various social issues that affect their employability
- Helping companies meet legal requirements – particularly in terms of consultation, accommodation, and employment equity
- Creating arms-length economic development corporations for outside companies to partner with that are insulated from short-term political considerations
- Generally helping to move towards comprehensive treaty settlements – which are critically important for investment stability and economic prosperity in the long-term
- Achieving community buy-in to the economic activity
- Improving relations with local non-Aboriginal communities and convincing local non-Aboriginal investors to get involved in forestry ventures
- Growing economically and creating new markets for the company's products

### ***Positive Levers for Industry in Negotiations with First Nations***

- Creating jobs – in harvesting, hauling, silviculture, mills, value-added industries, management, etc. – as well as revenues, loans, contracting opportunities, scholarships, training and apprenticeship programs, etc.
- Building First Nation technical, managerial, business and financial capacity
- Helping First Nations market other forest products
- Supporting First Nations in their moves to comprehensive treaty and land claims settlements
- Improving relations with non-Aboriginal communities
- Ensuring that the forest is managed in a manner consistent with Aboriginal land use values
- Respecting sacred sites or areas of special importance to Aboriginal people
- Improving community economic and financial autonomy

Interviewees also mentioned a few **negative** levers they fear could potentially be employed if relations turn sour – and it is worth including a few of these in this analysis, to better underline exactly what is at stake in building trusting and mutually beneficial relationships. These negative levers may well actually constitute more *perceptions* and *fears* than real negotiation tools, because they are generally double-edged swords, however, with potentially significant consequences for the wielder as well. None of the interviewees expressed any willingness to consider these options – which affirms the observation that confrontational approaches are gradually giving way to collaboration.

### ***Perceived or Potential Negative Levers for First Nations***

- Getting involved in consumer boycotts – through environmental organizations in particular – and other actions that affect various stages of the production process
- Working through municipal, provincial, or federal politicians to create legislative and regulatory change adverse to industry interests
- Delay tactics: companies' investments can be jeopardized to some extent by drawn-out partnership processes
- Building partnerships and otherwise supporting competitor firms
- Backing out of partnerships and putting tenures into jeopardy
- Threatening litigation
- Direct confrontation – road blockades, etc.
- Discouraging other First Nations from partnering with the company
- Challenging a company's certification, or otherwise damaging its reputation and image

## ***Perceived or Potential Negative Levers for Industry***

- Delay tactics: if industry drags out the process of partnering to jointly acquire a forest tenure, government may remove the tenure offer, at which point the same company might be best positioned to take up the tenure on its own
- Limiting the practical opportunities for First Nations to meaningfully participate in forest management plans so that Aboriginal land use values are not respected as fully as they would otherwise be
- Offering political resistance to treaty and land claims settlement efforts

In sum, a great deal is at stake in negotiations over forest sector partnerships for all involved. A clear understanding of the interests and concerns of both sides is critical for relations to move ahead smoothly and for trust to be built in the long-term.

## **IV. Elements of the Relationships**

Having considered in this study sections outlining the current situation from a statistical perspective; analysing the various external factors providing the context for the relationships; and setting out some of the motivations, deterrents and negotiating levers of industry and First Nations in dealing with one another, we can now finally proceed to consider in more detail the key elements – the actual ‘nuts and bolts’ – of the relationships that have been established. There are several areas to explore here:

1. Corporate Organization and Corporate Policy
2. Framework Agreements between First Nations and Forestry Companies
3. Forest Stewardship Plans and Consultation Processes
4. Employment and Training Issues
5. Contracting Issues
6. Structure of Business Partnerships and Joint Ventures

Some of these issues are illustrated in a brief case study the Institute has assembled (appended in Annex 1), based on the experience of West Moberly First Nations in forest sector partnerships.

### ***1. Corporate Organization and Policy***

Based on our sample, there appear to be a variety of ways in which companies organize themselves to deal with Aboriginal issues – the approach taken of course depends on the company’s size and the nature of its operations. Most major B.C. forest companies leave the bulk of Aboriginal relations to the particular mills, and little is coordinated out of headquarters, save perhaps for the setting of a corporate policy or the striking of ad hoc committees on Aboriginal affairs. Some companies do however have designated Aboriginal Affairs ‘go-to’ people at headquarters, which deal with the regional units as required.



Our study found that few companies participate regularly in forums to discuss best practices, and generally tend to rely on industry media or on new employees with experience working in other areas of the forest industry to bring in new ideas.

Beyond corporate *organization*, B.C. firms deal with Aboriginal *policy* issues in a variety of different ways. In general, they vary among the following general approaches:

- Some companies establish company-wide policies, guidelines or principles on dealing with Aboriginal issues; or
- Some firms that operate through relatively autonomous operating units (as may occur, for example, in multinational operations), set corporate policies that encourage the operating units to develop policies, guidelines and principles dealing with Aboriginal issues;
- In firms where the individual operating units have to deal with various, diverse First Nations, headquarters encourages the units to enter into ‘protocol agreements’ or Memoranda of Understanding or Agreement (MOU/As) with local communities on an individual basis in which various policy issues will be determined cooperatively; or
- Other companies choose not to have specific policies, guidelines or principles for dealing with Aboriginal issues at all, or address Aboriginal issues through corporate policies, guidelines and principles in areas such as forest management, labor relations, contracting, community relationships, etc.

Some companies, particularly those seeking certification of one kind or another, draw links between their environmental, social and Aboriginal policies. This approach can help ensure that a company remembers the ‘upside’ of Aboriginal relations – in enhancing a company’s image, for example – and does not see Aboriginal relations solely as an issue of avoiding ‘downside’ disputes.

B.C. firms also vary in the ways in which they address tough questions about the treatment of Aboriginal vis-à-vis other groups in areas such as forest management, company employment and training, contracting, and community relations. The approaches range from adopting no special measures, special measures based on creating fair and equitable opportunities, to special measures aimed at favoring Aboriginal interests:

- “No special measures” begins from the perspective that (a) Aboriginal employees or potential hires should be treated like non-Aboriginal employees or potential hires, (b) Aboriginal businesses should be treated just like non-Aboriginal businesses, and (c) Aboriginal communities should be treated like other communities.
- “Special measures to create fair and equitable opportunities” begins with the premise that Aboriginal people do not get a fair and equitable opportunity to participate in the forest sector because current corporate policies and practices that contain systemic biases. Examples of such inadvertent biases include posting job advertisements in media not commonly read or seen by potential Aboriginal employees, setting job qualifications higher than necessary to perform the job, not valuing or respecting traditional ecological knowledge or community decision-making processes, and so on.
- “Special measures to favor Aboriginal communities” typically are based on premises such as special Aboriginal and treaty rights, proximity to forest resource, significant impacts of changes on ecosystem to communities, provincial policies, fear about consequences, long-history of use, acceptance of legitimacy of interests even when not recognized in law.

Thus in the B.C. industry there is a range of approaches to Aboriginal relations – some companies are highly centralized; others give their regional units considerable sway. Some companies have highly prescriptive policies to apply across the board; others have general statements and encourage their various units to enter into MOU/As specific to the community at hand that are more detailed; still others avoid prescriptive policies in general and entrust their various officials to make appropriate decisions on an ongoing basis. Some companies are of the view that MOU/As are too comprehensive and attempt to settle too many issues all at once, and believe progress can often better be achieved by continual, small, practical steps taken by individual managers on particular projects outside of an overarching policy framework.

However and wherever these activities are coordinated in the company, there are a number of key policy issues that nearly all companies must address at some point or another. The major issue areas that company-wide Aboriginal policies or community-specific MOU/As should consider are outlined in the box below. In the sections that follow (2 through 5), we proceed to consider how BC companies actually do address these questions in practice.

### ***Key Policy Issues in Aboriginal Relations***

#### **Community Relations (see section 2)**

- whether and how to take special measures to ensure Aboriginal communities are given same opportunity to provide input into decisions as other communities or stakeholders, whether and how to take measures favoring Aboriginal communities in view of special rights.

#### **Forest Stewardship (see section 3)**

- whether to take special measures to identify Aboriginal concerns;
- whether to take special measures to incorporate traditional ecological knowledge techniques in data gathering;
- whether to take special measures to incorporate Aboriginal values in decision-making systems;
- whether to modify decision-making structures to give weight to Aboriginal values in decision-making processes; and
- whether to recognize Aboriginal values as an explicit component of the forest environment.

#### **Employment and Training (see section 4)**

- whether and how to take special measures to ensure hiring, training and promoting practices are fair and equitable, whether and how to favor Aboriginal groups in such practices

#### **Contracting (see section 5)**

- whether and how to take special measures to ensure contracting practices for logging and silviculture and other services are fair and equitable, whether and how to favor Aboriginal businesses in contracting.

## **2. Forestry Company – First Nation Framework Agreements**

Generally companies make greater efforts in their dealings with Aboriginal communities than they do with non-Aboriginal communities because of the range of political and legal issues involved. Some companies have explicit company-wide policies of entering into Memoranda of Understanding or Agreement with all Aboriginal communities in their areas of operations, others do so where convenient or possible.

Such agreements may complement or substitute for other more formal business partnerships and, like company-wide policies, can touch on a range of issues including employment, resource management, environmental concerns, harvesting and silviculture contracts, scholarships, training, retention, etc. Other MOU/As, are short on specifics and instead contain fairly vague guiding principles and the like.

As one participant suggested, an effective way of administering more detailed agreements is through the establishment of joint management advisory committees, consisting of industry and Aboriginal representatives, which cooperatively carry out ongoing tasks such as the development of Forest Stewardship Plans or training strategies.

It is important to note however, that in many cases long-term business relationships have been established without an MOU/A framework. Some participants argued that simply taking practical actions and building on successes can be a more effective long-term strategy than attempting to resolve a host of difficult issues once and for all, and making broad promises that may not be practically achievable. In addition to structuring the relationship with formal agreements, the 1999 IOG study outlined a number of practical steps for building effective relations with Aboriginal communities, which are outlined in Annex 2.

## **3. Forest Stewardship Plans and Consultation**

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

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

Issues of cultural importance to Aboriginal communities are not, however, limited to site-specific matters. Many First Nations, for example, object to the use of chemical pesticides and defoliants that are widely used in forestry operations – an issue which they may be able to bring to the international arena through environmental campaigns. Another issue relates to the preservation of culturally-modified trees (trees which had been historically stripped to demonstrate a

particular Aboriginal Nation's territory), which cannot all be identified during consultation processes and at a certain point must simply be left in the hands of loggers, who may or may not leave them standing. The cutting of culturally-modified trees is a particular hot-button issue for First Nations, particularly in the context of treaty negotiations where such markings can help identify Aboriginal title.

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

At some point consultation will always be difficult. Many communities are small and they often have only one person dealing with all government and industry relations issues. Sometimes language issues can complicate things further as well. As one participant explained, First Nations officials are forced to be generalists – as they cannot afford specialized staff, and do not have the time or technical expertise to look through complex planning documents. Community officials often have to handle land use, forestry, and business management functions, as well as sometimes serving as councilors in their communities. The form and extent of consultation – and particularly funding arrangements – will likely continue to be an important issue in forest sector partnerships, even as courts and governments provide increasingly detailed policy guidance for the parties involved.

A number of ‘best practices’ identified in the earlier study relating to forest management and consultation are instructive in this context, and are outlined in Annex 3.

#### **4. Employment, Retention and Training Issues**

Although interviewees did provide some information on company-wide or unit-specific *policy* on employment, retention, and training of Aboriginal people, few hard figures on *results* are available in this area. In the early 1990s, many companies used to track Aboriginal employment figures, but have stopped doing so on a company-wide basis – many cite legal reasons not to ‘discriminate’ on the basis of race. Many individual mills do keep such data, however, particularly in joint ventures or in the context of MOU/As that prescribe specific levels of Aboriginal employment. Thus based on anecdotal evidence from a variety of sources, the pattern appears to be as follows:

- As all respondents indicated, Aboriginal employment in the forestry sector remains concentrated in silviculture, harvesting and hauling (generally through contracting companies – only a few companies have substantial numbers of direct employees in this area)
- Very few Aboriginal people are employed in the management of forestry companies – particularly the major ones.
- While First Nations play a vital role in the development of Forest Stewardship Plans, there are very few trained, professional foresters who are Aboriginal. One respondent claimed that only 12 of B.C.'s 3500 professional foresters are Aboriginal.

- While there are indeed a number of mills that have as much as 50% Aboriginal workforces – and one major mill was estimated to be ‘nearly 100% Aboriginal’ – generally Aboriginal employment in mills is limited. This is unfortunate as mill jobs tend to be better paid and more secure than jobs in silviculture, harvesting, and hauling; and there are also roughly two mill jobs for every primary job, according to one respondent. Increasing Aboriginal employment in this area remains a primary goal of many communities. Reasons offered by some industry respondents for the lack of Aboriginal participation were as follows:
  - The mill environment has become increasingly high-tech and specialized, and thus high school diplomas – at a minimum – are required. Many First Nations communities have relatively low levels of educational attainment, which presents barriers in this regard.
  - Relations between millworkers’ unions and Aboriginal communities are often strained
  - Many First Nations communities suffer from a variety of serious social problems – which can be reflected in the ‘employment skills’ of their members – punctuality in particular. In other more prosperous communities, on the other hand, this is often not an issue at all.
  - Some Aboriginal people, for cultural reasons, prefer the flexibility of silviculture, harvesting and hauling work to the rigorous industrial pace of shift-work in mills.

In general, our survey discovered that there has been a sea change in thinking in recent years, mostly among government officials and some First Nations businesspeople, but also among industry officials, towards growing agreement on the following two points: in order for First Nations to seize on the promise of the forest industry, they should focus not only on the *quantity* but also on the *quality* of the jobs in the sector. Furthermore, all parties should cooperate in increasing Aboriginal participation in the areas of *forestry* and *business management*. Without these elements, the long-term capacity for First Nations to benefit from the industry and increase their control and stake will be limited.

In trying to increase Aboriginal employment in the forest sector and diversify it towards more advanced functions, a number of policy issues are significant in forest companies’ dealings with Aboriginal communities:

- **whether and how to take special measures to ensure hiring and promoting practices are fair and equitable, whether and how to favor Aboriginal groups in hiring and promoting** – most companies do not discriminate between Aboriginal or non-Aboriginal employees, and are committed to hire and promote “all qualified persons” regardless of race. Some particular joint ventures or other partnerships have written or unwritten policies of promoting Aboriginal participation – speaking of equal or more than equal opportunities for employment – while others have explicit quotas. While such measures may ensure significant employment levels in harvesting, hauling, and silviculture operations, there are greater challenges in staffing in jobs requiring higher levels of education such as millwork or management.
- **whether and how to promote Aboriginal skills development** – many companies offer apprenticeships, scholarships, or sponsorships, particularly for forest technician programs such as that offered at the Nicola Valley Institute of Technology, some offer pre-employment training along the lines of Alberta’s successful WOLF model.<sup>25</sup> Others see pre-employment

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<sup>25</sup> For more information, see <http://w-o-l-f.ca/about.html>

training more as a task for government. Some companies develop joint training plans with local Aboriginal communities, as part of their MOU/As.

- **how to enhance Aboriginal and non-Aboriginal employee relations** – a small number of companies offer Aboriginal awareness training to their non-Aboriginal employees, which generally consist of an orientation in the history and culture of local First Nations, designed to put the student “in the shoes of Aboriginal people”. Such programs often have highly positive feedback after the fact, though skepticism over the value of such initiatives reigns in most companies.

The IOG best practices study also identified a number of possible activities for companies to consider in this regard, attached in Annex 4.

## **5. Contracting Issues**

Forest services contracting can be considered to be a limited form of partnership in which one company contracts another to provide a specific service. In some cases, the industry party may provide formal (as in a contract) or informal (non-contractual) technical assistance to the Aboriginal party providing the contract service. Generally, however, this partnership form is a straightforward business arrangement without the added complexity of explicit capacity-building elements.

The significance of contract arrangements, according to many interviewees, should not be underestimated, in spite of their narrow scope and limited depth of commitment. In many cases, these arrangements have been the proving ground for the later development of higher-level cooperative business arrangements or joint ventures.

Forest services contracting can function with an Aboriginal company providing a service to an established industry firm, as well as in the opposite direction. In this latter case, First Nations may contract out specific forestry tasks to non-Aboriginal firms in situations where they have not yet developed adequate capacity to carry out the task internally. For example, in some regions, First Nations are gaining access to timber resources faster than they have been able to gear up for the management and harvesting of these resources. Contracting allows them to meet their licence-related responsibilities in the short-term, while building capacity over the longer-term.

Key contracting-related policy issues to consider include:

- **whether and how to take special measures to ensure contracting practices for logging and silviculture and other services are fair and equitable, whether and how to favor First Nation businesses in contracting** – Some companies in B.C. provide Aboriginal businesses advance notice of contracting opportunities, or commit in MOUs to providing a ‘substantial’ portion of business to such companies. Other companies have policies of not partnering with businesses that are subsidized, for ‘fairness’ reasons, so various government incentives or initiatives by the First Nation itself to develop business can actually inhibit partnerships in this regard. The extent to which Aboriginal businesses can be given special consideration depends on the activity at hand – there is often less flexibility in time sensitive areas like road-building but more in harvesting, for example. Some companies review their contracting policies regularly to make sure that processes are neither too stringent nor too lax for Aboriginal companies.

- **whether and how to help develop Aboriginal business capacity** – few B.C. companies in our sample take special measures to build Aboriginal business capacity, but some do provide start-up loans to get the businesses running, particularly in harvesting, hauling, and silviculture.
- **whether and how to track information on Aboriginal contracting** – though in the past this was done more systematically, only one of the companies interviewed kept comprehensive data on company-wide contracting arrangements, even though many of the companies’ individual units use such information in their management decision-making.

A number of best practices related to assisting Aboriginal contractors in developing business capacity are listed in the box in Annex 5. In addition, some statistics on Aboriginal businesses in the forest sector are available in the statistical overview on page 5.

## **6. Joint Ventures and other Partnerships**

As the Institute On Governance concluded in a 2000 joint study with the National Aboriginal Forestry Association on the topic,<sup>26</sup> the definition of ‘joint ventures’ compared with other business partnerships in the forest sector such as ‘co-management agreements’, ‘limited partnerships’, is quite flexible. These various arrangements represent a spectrum from true ‘co-management’ agreements where the financial and technical contributions, administrative power, and revenues are shared equally, to other such situations where First Nations play a very circumscribed role in management and receive few concrete benefits, although their nominal participation is important for the company to access forest tenures, government incentives, or to meet legal requirements. Some joint ventures have been concluded with the largest firms, others with companies quite modest in size; some have involved primary extraction, others processing facilities, still others value-added plants.

Some of the issues around joint ventures are illustrated in a brief case study provided in Annex 1, based on the experiences of West Moberly First Nations. From this and other cases our survey found that there is wide variance among B.C. First Nation – forest sector partnerships on how the following key issues are handled:

- **Balance of ownership** – many joint ventures are set up with equal, 50-50 shares for the First Nation and the forest sector firm; some give one partner nominal control with a 51% share; others give the community a minority share of perhaps 20%. One interesting model (see the Ulkatcho First Nation case study in Annex 1) is a tripartite arrangement where a First Nation development corporation, a consortium of local non-Aboriginal investors, and an outside lumber company own equal shares.
- **Source of Aboriginal Portion of Start-up Capital** – while a small number of First Nations have sufficient home-grown capital which they can bring to a new venture, most rely on bank loans, government funding, or loans from their partner company to meet their required capital contribution for the venture. In a number of B.C. joint ventures, firms have lent their Aboriginal partners their share of the capital, which they have succeeded in paying back sometimes in very short time-spans. Conversely, the forest companies also often help the First Nation access bank loans or government funding.

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<sup>26</sup> Available at [www.iog.ca](http://www.iog.ca)

- **Level of Aboriginal Involvement in Day-to-Day Company Management** – this is one of the central issues around joint venture agreements. Some respondents indicated that in many cases in the past, the outside forestry company retained most management functions in practice, and so opportunities for Aboriginal capacity development are limited. In other cases, the agreements have provided for a relatively high degree of ongoing, cooperative decision making.
- **Structure of the Aboriginal Partner Company** – as our discussion of advances in Aboriginal governance indicated, a key issue in joint ventures is whether the Aboriginal side of the business is run through an arms-length development corporation, or if it is managed directly by Chief and Council. Increasingly, both First Nation members and outside firms are advocating formal mechanisms to insulate of ‘business’ from ‘politics’ (a compelling set of arguments for this approach follows on page 35).

Because of the wide range of experiences in such ventures, there is considerable debate as to the viability and successes of different models. Many of the respondents see joint venture business relationships as a principal vehicle through which First Nations can develop business capacity and expand their economic base, while building positive relations with outside firms that are based on concrete achievements. Some indicated that when these ventures work out, they offer a “fast track” to First Nation economic development.

On the other hand, many other respondents on both sides expressed skepticism about joint ventures, explaining that the arrangements can sometimes imply provide a means for First Nations in control of a forest tenure to “rent smarts from their partners”, rather than building capacity themselves. Often even in situations where the ventures were 51% owned by the First Nation, the minority partner company hired outside managers and paid their wages, thus limiting the financial benefits and long-term improvements in capacity to the community. Others have pointed out that some companies, out of a need to somehow accommodate First Nations, have allowed themselves to enter into risky and economically questionable ventures, which when they fail can leave the community worse off than before. Thus in some communities, the term ‘joint venture’ has apparently become a bad word.

The preferred term, increasingly, seems to be ‘co-management agreement’. Under this model, First Nations benefit from jobs and training opportunities, gain some revenues for the community, and can potentially finance the purchase of capital equipment; while companies get exclusive rights to forest tenures.

While our survey sample generated interesting feedback and allowed us to make some preliminary reflections on joint ventures and other business partnership arrangements, further research into the various successes and failures that have occurred in recent years would be useful.



## V. Conclusions and Recommendations

Our study into the relationship between First Nations and forest sector firms has brought us through a statistical overview, a contextual analysis, a discussion of dynamics, as well as consideration of the main elements of existing partnerships. One case study is also annexed to provide illustration. So at this point we can proceed to the following general conclusions about the progress of relationships in British Columbia based on our survey.

1. **There has been considerable progress in the overall relationship between the forest sector and First Nations in British Columbia in the past five years.** *All* respondents indicated that on the whole there is somewhat less confrontation, more conversation, more mutual respect, and indeed more cooperation in business activity, yielding tangible benefits to First Nations as well as to companies' bottom lines.
2. **Although there is wide diversity in the range of opinions about the relationships, and considerable distance remains between the most polarized views, there is also growing common ground.** The interviews identified a number of issues on which there was substantial agreement on all sides, and found that a critical mass of individuals now understand and respect each others' positions, are working cooperatively and moving forward on the basis of shared fundamental assumptions. In the past five years this common ground has advanced considerably.
3. **Most participants were guardedly optimistic about future Aboriginal – forest sector collaboration** – while some were skeptical about specific issues, none were overtly pessimistic about the situation as a whole.
4. **“Uncertainty Reigns”** – Pending court decisions, ongoing trade disputes, and legislative transformations underway are causing considerable uncertainty for all parties. The situation is very dynamic both for industry and First Nations.
5. **There is a great deal of controversy over recent legislative changes by the provincial government** – Some measures, such as the permitting of direct tenure awards to First Nations, are generally seen as positive, necessary steps. But there is also considerable debate around the following key issues:
  - a. **Tenure Reallocation** – how to achieve fairness in the distribution of tenure to First Nations while still allowing for economies of scale
  - b. **Revenue Sharing** – how to ensure that revenue sharing meets legal requirements while moving First Nations along to a position of increased economic autonomy
  - c. **Industry Deregulation** – how to ensure long-term industry profitability and growth while minimizing the socio-economic costs to communities of transition
  - d. **Results-Based Forest Management** – how to help First Nations adapt to the new system and to ensure that sustainability forest management is achieved
  - e. **The B.C. Treaty Process** – how to ensure that forestry policy is consistent with longer-term treaty and land claims agreement goals

6. **Some companies are beginning to see positive Aboriginal relations as potential competitive advantages, and are strategically positioning themselves as ‘preferred partners’ in the long-term.** Many companies predict increased Aboriginal involvement in the forest sector in the long-term, particularly through expanded tenure, and increasingly see the ‘upsides’ of Aboriginal relations – such as potential business opportunities, improved long-term access to resources, and improved company image – rather than the ‘downsides’ such as potential confrontations, negative publicity, and competition for tenure.
7. **There was strong agreement among Aboriginal, industry, and government interviewees of the need to manage Aboriginal businesses separately from the political administration of the community.** Arms-length economic development corporations have been established in many communities to handle partnerships with outside companies.
8. **First Nations are increasingly focussing not just on the quantity of jobs available in the forestry sector, but also on their *quality*.** Aboriginal participation in the forest industry has tended to be concentrated in the silviculture, harvesting, and hauling areas, but First Nations (and government officials) are increasingly trying to create jobs in mills, value-added industries, and – most importantly for the long-term – business management and forestry.
9. **First Nations are also focussing more and more on long-term capacity development – financial, business, technical, managerial, etc. – in addition to short-term benefits such as employment and royalties.** Revenues from the forest industry are more often being directed to business purposes such as paying off capital equipment loans; and many communities are assuming a greater role in managing their forest licenses – generally through partnerships with established firms – rather than handing over control to outside firms in return for short-term dividends.
10. **As participants from all sides commented, First Nations will only be able to reap significant economic benefits from forest sector activity if they are granted long-term, replaceable forest tenures that are large enough to warrant major capital investments.** Many of the tenures currently being awarded to First Nations are non-replaceable, of very short term, small in size, or focussed on areas affected by wildfires or beetle infestations, and as such are of limited economic value. But an fundamental problem in the tenure allocation process – one unlikely to be resolved easily – is that the 8% portion destined for First Nations simply cannot be divided up equally among all of B.C.’s 198 First Nations while maintaining economies of scale necessary for business profits.
11. **Resolving land issues – in particular through the Treaty Process – is of fundamental importance to the long-term viability of the B.C. forest industry and to increasing Aboriginal participation in the forest industry.** In addition, the resolution of land claims issues may allow B.C. to shift to area-based tenure (or even ownership) arrangements, which are necessary to create incentives for sustainable forest management in the long-term.
12. **There is no agreement as to the viability and success of joint ventures and other forms of business partnerships.** While some models appear to be promising – in particular tripartite ventures between outside firms, Aboriginal development corporations and consortia of local investors – there have been many failed partnerships in the past. More information on best practices and lessons learned is required.

Given the major trends and issues of concern identified by our participants, we believe we can make the following general recommendations as well:

- 1. Improve data collection on Aboriginal – forest sector relationships and conduct research into lessons from business partnerships.** Governments should require or provide incentives for forest companies to resume tracking and compiling information on Aboriginal employment and contracting with Aboriginal communities, as well as improving their own statistical data. Research on joint ventures and other forms of forest sector partnerships should also be conducted in order to gather lessons learned and best practices, particularly relating to how joint ventures can help build Aboriginal business capacity.
- 2. Federal and provincial governments should work more cooperatively in developing long-term strategies to increase Aboriginal participation in the forest sector.** Some participants complained of a ‘silo mentality’ between levels of government which needs to be overcome.
- 3. Develop measures to assist Aboriginal Communities in adapting to Forest Stewardship Plan processes.** In general, Aboriginal communities require government funding to ensure meaningful consultation, accommodation, and participation in planning. The provincial government should develop a strategy – along with necessary funding – to improve Aboriginal communities’ capacity to work within the new results-based approach.
- 4. Reinstate government funding for forest-related training programs.** Programs like the Aboriginal forest technician program at the Nicola Valley Institute of Technology have proven popular in the past. New programs should focus to a greater extent on forestry and business management skills.
- 5. Develop strategies to promote the capacity development of Aboriginal communities in the long-term, particularly financial, business, technical, and managerial capacity.** This may require the establishment of a multi-party process, involving both levels of government, Aboriginal communities, industry, and representatives of training institutions (and possibly also investment institutions).
- 6. First Nations should make efforts to improve community governance structures so as not to deter business relations with outside investors.** Because First Nations administrators are torn between a myriad of government and industry relations activities, decision-making and governance processes could be streamlined in some cases so as to achieve a better fit with the pace at which business decisions must be made in competitive markets.
- 7. First Nations should take appropriate steps to insulate business decisions from short-term political considerations but in a manner that assures community benefits and ‘fits’ with the long term direction of the community.** A model highly regarded by most interviewees involves the setting up of an arms-length, community-owned economic development corporation. But as indicated in a past IOG survey of a number of Aboriginal communities in Canada and abroad, more than the establishment of a separate corporate entity is required. The structure should allow the company administrators to focus on business but, in addition, there must be clear and transparent means of distributing the benefits of the enterprise among the community. Further, to increase the odds of long term

viability there ought to be a strategic fit with the community's long-term goals. (Some arguments in favour of this model, based on earlier IOG research efforts, are expanded upon in the box below).<sup>27</sup>

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

### ***Managing the Relationship between Business and Politics***

Setting up arms-length development corporations enables managers to run the commercial enterprises in a hard-nosed, business-like manner. In practice this means, among other things, having long term profitability as the principal goal, hiring competent managers and other staff – if necessary from the ‘outside’ – and developing a governing board structure with expertise from both within and outside the First Nation. That said, this ‘business’ commitment does not mean complete separation from the influence of political leaders. Rather it translates into a buffering of the enterprise from shorter term political considerations and is critical to achieving effective business performance.

In order for these enterprises to maintain community support and thus achieve long-term sustainability, however, they must also establish a clear and transparent ‘quid pro quo’ with the community – this allows them to operate in a business-like manner but ensure that the community benefits as a whole from the distribution of a portion of the profits. This can occur in a variety of ways – through dividends paid directly to community members; through contributing to governments or other community organizations with cultural, social or educational mandates; or through establishing a community foundation to allocate business dividends for socio-cultural purposes. Revenues can also be used to capitalize other businesses and spur a cycle of growth. This quid pro quo is at the heart of the accountability relationship between the enterprise and the community, and ensures that benefits of the venture are shared equitably, and that community members ‘buy in’ to the venture.

Finally, successful commercial enterprises tend to be part of a larger strategy to ‘nation-build’ or realize some higher level of community self-determination. In other words they achieve a significant degree of legitimacy and direction because they mesh with a broader set of political goals that have wide community support. Community referenda or substantive consultations surrounding a major investment decision are some of the devices employed to verify that this ‘meshing’ is indeed occurring.

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<sup>27</sup> See also IOG Policy Brief #17, “Business and Politics in Aboriginal Communities”, at [www.iog.ca](http://www.iog.ca)

## **Annex 1: Case Study**

As part of the project, we compiled a great deal of interesting information on forest sector activity in several First Nations, and we are grateful for permission to include a case study on forest sector activity in West Moberly First Nations, which is useful in illustrating some of the issues discussed above.

### ***CASE STUDY: West Moberly First Nations***

In 2001, West Moberly First Nations (WMFN) and Canfor entered into an agreement to jointly hold and manage two 20-year non-replaceable forest licences totaling 250,000 m<sup>3</sup>/year – one in the Fort St. John TSA and the other in the Dawson Creek TSA. A key condition of the agreement was that WMFN would form a new company to deal with all matters pertaining to the forest tenures. This action was preferred by both parties in order to separate band politics out of decisions on business administration and tenure management concerns. The corporate entity – Dunne-za Economic Development Corporation (DEDC) is wholly owned by WMFN. The actual final operating entity involves a limited partnership that is owned in partnership by WMFN and DEDC.

As part of the new restructuring, WMFN brought in a variety of new bylaws intended to improve the trust, accountability and transparency of their Chief and council. WMFN simultaneously drafted and instituted a bylaw restricting Chief and/or council from any personal involvement in any business activities while holding positions as Chief or councilor. This bylaw includes any business options in all resource sectors. The new governance document included a community ratification process that requires all that all agreements entered in to by the band be approved by each and every band member. This is a lengthy process, but one which maximizes community buy-in and helps guarantee equitable distribution of the benefits from the venture. The bylaws dictate that the amount and use of any revenues derived from the various agreements, as well as the new corporation be publicly disclosed, so as to ensure that they are of direct benefit to the community as a whole.

The development corporation was originally set up as a not for profit, although the company moved away from that status on the advice of an external consultant so as to focus itself better on business performance. In addition, a government ‘appurtenancy requirement’ of one of the licenses was the establishment of a value-added processing facility, and after successful piloting by Canfor, a small manufacturing plant is being set up with the involvement of Dunne-za.

Key benefits to the First Nation from the arrangement have included capacity building, particularly in the area of forestry, and through the establishment of logging and trucking entities. The company has purchased three new logging trucks and will continue to utilize the joint venture to build capacity and capitalize the fledgling company.

## Annex 2: Best Practices for Community Relations

The following lists of best practices (annexes 2-5) were identified in a 1999 Institute On Governance report on the topic. The first set relate to community relations:

- Develop sensitization programs for application in non-Aboriginal communities.
- Develop corporate principles to guide relations (e.g. focus on long-term and reciprocal relationships; build trust; ensure mutual respect; focus on win-win activities; adopt openness, transparency, full disclosure, etc. as working norms), identify people and operations within the company to manage implementation of the principles, create processes to measure progress.
- Take steps to understand Aboriginal culture.
- Establish formal mechanisms for including communities in decisions, including:
  - Including Aboriginal communities in advisory groups;
  - Participating with communities in mutually advantageous groups e.g. model forests, research, business associations;
  - Establishing agreements, protocols, memorandums of understanding with Aboriginal communities focusing on relationships and agenda issues; and
  - Holding regular meetings with communities, outside formal agreements.
- Develop an agenda of issues to deal with, including:
  - employment and training;
  - business development;
  - forest stewardship;
  - provide early warning of upcoming decisions to allow communities time to develop positions on issues ; and
  - past grievances.
- Circumscribe the role of lawyers and consultants to simplify relationships.
- Play an active, voluntary role in the communities by:
  - funding community cultural events, schools, curriculum development, Aboriginal history projects;
  - providing speakers to community schools and other groups about forestry, etc.;
  - sponsoring extracurricular activities such as teams for Aboriginal games;
  - supporting pow-wows; and
  - establishing career days.

## Annex 3: Best Practices for Forest Management

- Establish co-operative management processes with Aboriginal communities to address forest management planning, including setting out long-term objectives, establishing a technical planning committee on employment, management and business opportunities, guarantee continued access to wood.
- Comply with legal requirements imposed by provinces.
- Identify Aboriginal interests in forest management planning processes by:
  - developing First Nation Background Information reports as part of forest management plans, to include past resource use (forestry, hunting, fishing, trapping, gathering), native values map, recent forest related problems, summary of negotiations or failure of negotiations to achieve more equitable participation of Aboriginal peoples in the benefits of forest management (job opportunities, wood supply opportunities, negotiations with third party licensees, unused or unallocated timber resources) and using the background report as the basis for public consultations on forest management plans;
  - conferring with hunters, trappers, fishers, outfitters, gatherers to identify impacts of logging on their livelihoods, mitigate impacts and compensate for damages;
  - developing methodologies for cultural inventories;
  - conferring with elders to identify location of burial grounds and cultural sites, mitigate adverse impacts, and compensate for damages;
  - conferring with communities regarding claims; and
  - incorporating traditional ecological knowledge systems into forest management planning processes.
- Incorporate identified concerns in forest management plans by:
  - setting aside tracks of land for Aboriginal heritage, recreational hunting and fishing;
  - studying issues of specific concern Aboriginal peoples;
  - developing land use plans; and
  - developing Aboriginal values maps (trap lines, heritage, cultural and religious sites, areas required for reserves and claims).
- Provide communities with resources to carry out their own reviews of forest management plans, as part of the plan approval process.
- Implement forest management plans by:
  - providing Aboriginal awareness training for non-Aboriginal employees to cover respect for traditional practices, need to address multiple uses of forests, Aboriginal and treaty rights;
  - training non-Aboriginal workers to identify historical and traditional sites;
  - providing advance notice of activities that may impact on communities e.g. road building, road decommissioning, provision of maps;
  - providing planning documents on an ongoing basis;

- establishing an environmental hotline to provide immediate notification of incidents which may affect local residents; and
- notifying communities when burial sites are found.
- support community reserve forest management concerns by:
  - paying stumpage to communities on timber delivered to mills when timber is harvested legally from reserve lands; and
  - developing working arrangements to notify communities when timber is being taken illegally from reserve lands.



## Annex 4: Best Practices for Employment and Training

### General

- Develop policies, guidelines and procedures.
- Track what the company has learned from its employment and training activities.
- Set up tracking systems related to hiring, retaining and promoting. Pre-employment preparation
- Prepare primary and secondary students for the work force by:
  - familiarizing them about education requirements to work in companies, as an encouragement to stay in school;
  - making presentations on career days;
  - providing information about post-secondary training courses;
  - providing summer employment programs;
  - providing information about hiring processes;
  - providing information about job opportunities;
  - conducting hiring through secondary institutions; and
  - assisting students and communities to locate appropriate post-secondary training programs.
- Prepare post-secondary students for the work force by:
  - providing scholarships for post-secondary education;
  - providing internship and co-op programs, with the prospect of hiring after completion;
  - providing information about hiring processes;
  - providing information about job opportunities;
  - conducting hiring through post-secondary institutions;
  - carrying out pre-employment training directly; and
  - operating apprenticeship programs for students.
- Support post-secondary institutions with support for Aboriginal training programs by:
  - providing access to forests to allow delivery of forestry-related courses on site;
  - providing technical information on forestry, forest opportunities, etc.;
  - providing funding;
  - providing use of equipment;
  - providing use of staff for training; and
  - providing use of staff to set up appropriate training programs.

## **Hiring**

- Develop hiring standards and qualifications based on the needs of the job, rather than:
  - arbitrarily setting a high educational standard as a mechanism to weed out employees, or
  - responding to union pressures to hire based on union seniority.
- Utilize job notification processes which:
  - utilize media typically read by potential Aboriginal employees;
  - provide advance notice of pending opportunities;
  - maintain job lists of potential employees, and promote Aboriginal hires to be on the lists; and
  - pro-actively seek out potential hires.
- Utilize job selection processes which:
  - Establish demographic hiring targets;
  - Have two person hiring teams, with one person being an Aboriginal person; and
  - Deal with union hiring practices.

## **Retention**

- Undertake initiatives to make the work place more attractive to Aboriginal employees by:
  - Providing training to non-Aboriginal employees on Aboriginal issues, including values, treaty and Aboriginal rights.
- Establish programs to put Aboriginal employees in a position to compete for promotions by:
  - setting up shifts so employees can attend courses;
  - providing special training courses; and
  - establish apprenticeship-like training on the job, in keeping with Aboriginal oral traditions.
- Establish fair and equitable promotion and job advancement processes by:
  - addressing union concerns that promotions be based on seniority; and
  - have two person interviews, with one person being an Aboriginal person.
- Develop special training for Aboriginal workforce.

## **Out-of-Company Hiring**

- Establish Aboriginal hiring requirements in contracts not issued to Aboriginal contractors.
- Recognize that Aboriginal entrepreneurs may tend to hire non-Aboriginal employees to ensure stability and that they need continuing training which tends to make them uncompetitive.

## Annex 5: Aboriginal Business Development – Best Practices

- Develop policies, guidelines and procedures.
- Track what the company has learned from its Aboriginal contracting activities.
- Set up tracking systems related to Aboriginal contracting.
- Develop business relationships based on Aboriginal cutting rights and access to logs e.g. company gets logs and Aboriginal groups get other things.
- Facilitate the identification of business opportunities.
- Support start-up business planning processes by:
  - approaching communities about business possibilities, rather than waiting for communities to approach the company;
  - assisting with business plans and start-up planning;
  - providing technical advice on staff training; and
  - providing funding for the training of Aboriginal contractors.
- Address funding needs of Aboriginal businesses by:
  - working with financial agencies to put together financial packages and providing letters in support of applications to lending institutions;
  - establishing an entrepreneurial development fund to promote Aboriginal entrepreneurs, to be matched by federal or provincial funds and to be repaid with interest if the entrepreneur is successful and not to be repaid if feasibility study shows the project is not viable;
  - providing advances to Aboriginal contractors to deal with working capital requirements or lending them equipment;
  - issuing multi-year contracts to facilitate commercial contracting;
  - providing equity contributions; and providing loans to contractors.
- Support on-going business operations by:
  - establishing training programs for contractor companies in areas such as cutting and skidding, road construction.
- Co-operate on business development initiatives, including:
  - pooling cutting rights; and collaborating on bids for provincial contracts, especially where Aboriginal components are a bid requirement.
- Establish contracting policies and procedures, including:
  - providing early notice of potential contracts;
  - developing inventories of Aboriginal contractors to assist in awarding contracts;
  - breaking large contracts into smaller ones to accommodate small scale enterprises;
  - establishing set-asides for local communities;
  - establishing First Nation-first programs for some contracts (e.g. fire, silviculture); and
  - establishing contract standards that account for the special circumstances of small businesses.

## **Annex 6: Organizations Participating in the Survey**

The Institute On Governance gratefully acknowledges the participation of the following organizations in its interviews:

### ***Forestry Companies***

- Canfor
- Lignum Forest
- Slocan
- Tolko
- West Fraser
- Weyerhaeuser

### ***First Nations / Industry Partnership Companies***

- West Chilcotin Forest Products
- Dunne-za Ventures Ltd.

### ***First Nations Organizations***

- Ulkatcho First Nation
- Carrier Sekani Tribal Council
- West Moberly First Nations

### ***Other Participants***

- Aboriginal Forest Industry Council
- Council of Forest Industries
- B.C. Ministry of Forests
- Natural Resources Canada (Canadian Forest Service)