

Briefing Document
First Nations Forestry Council

BC Forestry Roundtable

First Nations Forestry Tenure In British Columbia

September 5, 2008

Introduction

Most First Nations do not have long-term access to forest resources on defined areas of land that they can manage on their own. This is the crux of the problem. Without such access, we lack the ability to attract investment capital and face an uphill climb in trying to develop viable forestry-related business plans.

To solve the problem, the existing distribution of forest tenures must be changed in order to bring greater benefits to our communities. In this briefing document we present some ideas on what we believe is a workable interim solution to changing the provincial forest tenure system to better address First Nations needs.

British Columbia's forest tenure system was developed nearly 100 years ago, and persists today close to its original form. The system was designed to cater to big business and to encourage investment by vertically integrated forest companies. In return for companies being assigned large areas of Crown land or large volumes of Crown timber investments were to be made in milling facilities in numerous communities. The wheels were also set in motion for "sustained yield management" of forest resources, which essentially meant that old-growth forests would be cleared of their trees and replaced by younger forests or tree plantations that would effectively be cropped on regular and predictable timeframes.

Historically, these assignments of large areas of forestland and large volumes of timber did not go to our people. We were effectively locked out of timber assignments, even though all of the logging activities took place on lands claimed by First Nations.

In 2003, significant changes to provincial forest policy began to open up new opportunities for First Nations. But our experience has been that the solutions, while well intended, created as many problems as they solved.

The Issue

In 2003, the Province embarked upon significant timber tenure reforms, in large part to address allegations from the US that BC's timber-pricing policies constituted a form of economic subsidy. The provincial government took back 20 per cent of the Crown timber allocated to forest companies under long-term tenures. The same companies were then compensated by the province, which paid out approximately \$200 million for the so-called "timber take-back". From the take-back, the Province began to provide greater opportunity for our nations to become more significant players in the forest industry. Much of this came in the form of offers to one-time, limited volumes of timber under what became known as Direct Awards, Forest and Range Agreements (FRA's) and Forest and Range Opportunities Agreements (FRO's). FRAs and FROs also had a cash component to them (see other First Nations briefing document *Temporary Forest Tenures and Sharing of Revenues with First Nations*).

The Province also began to allocate some Crown timber under new agreements known as Community Forest Agreements or CFAs. CFAs differ from FRA/FRO's and Direct Awards as they are area-based forest tenures, in other words they apply to defined areas of land. CFAs also are generally much longer in duration (25 to 99 years) than Direct Awards, FRAs and FROs, which tend to run only three to five years. The first two CFA's went to the District of Saint James and to the Bamfield and Huu-ay-aht communities in 2001. Today, there are 28 CFA's and a further 22 awaiting approval. Of these CFAs, our nations have been assigned four. A further five of our nations hold CFAs in partnership with non First Nation communities. We are informed of numerous problems with these partnerships as they tend to be managed by the municipal partners.

First Nations welcome the opportunity to be much more actively involved in forest management and are encouraged by the provincial government's initial steps to improve conditions for us. However, we remain opposed to the general thrust of the province's forestry reforms, which sees our nations being offered largely time-limited, non-area-specific, forest tenures. Such offers fail to provide us economically viable opportunities to invest in the human and economic capital required to make a sincere go of forest harvesting and wood processing ventures. We strongly believe that our nations deserve the same opportunities that the province has routinely provided to forest companies – long-term access to defined areas of forestland.

The Concern

Despite the spate of recent agreements reached between the Province and various First Nations (71 Direct Awards, 118 FRAs and FROs, and a handful of CFAs), realistic opportunities for our nations to prosper from forest resources remain scarce. The primary reason for this is the Province's approach to allocating forest resources.

Our concerns are as follows:

1. The Province appears to believe that its limited forest tenure reforms represent a reasonable interim accommodation with us. In fact, it routinely boasts of the large number of Direct Awards and FRAs and FROs that it has signed with our nations. In most cases, our nations signed the agreements because we saw nothing else being offered. Our leadership and our members felt in many cases that it was better to get something than nothing at all. But we were consistent in telling the Province that we felt the template for the offers (time-limited and volume-based) was wholly inadequate to meet our social and economic needs. The Huu-ay-aht First Nation challenged this per capita formula in the Supreme Court of BC and won but British Columbia still ignores this decision.

2. Eight percent Volume is not enough

The province has set a target of eight percent of the AAC (Allowable Annual Cut of timber) to be available to our nations through new tenure allocations. This is expected to come from AAC uplifts, one time volumes from cut control decisions, or additional temporary AAC uplifts from section 61 of the Forest Act. The target of eight percent in itself is of concern. This number is based upon a 'heads based count' of BC's rural First Nations population. The big problem with the formula is that it does not reflect how our individual nations and their territories are impacted by logging activities. The offers don't take into account the amount of logging happening on our lands, the value of the trees taken from our lands, or the size of our territories. Furthermore, the so-called eight-per-cent-solution, is in the form of one time, volume based timber offers. Many of our nations report that these offers are not economically viable. With no security of tenure or long term supply of fibre, many of our nations do not have the capital to invest, nor do they have a solid enough foundation of tenure (collateral) to attract investment partners or secure adequate loans from banks and other financial institutions.

3. Other forms of forest tenure do exist and they would provide more benefits on an interim basis to First Nations than do FRAs, FROs and Direct Awards.

The Province has allocated approximately six million cubic meters of timber per year to our nations over the course of five years. Unfortunately, these allocations are to defined and relatively small volumes of timber and they have proven to be economically difficult for many First Nations to pursue due to higher administrative and operational costs, lack of access to capital and poor market conditions. Consequently, less than one fifth (17 per cent) of the available AAC under these temporary licences has actually been harvested each year.

However, another form of tenure has been developed over the past few years that we think holds some promise as an interim step for First Nations. That licence is the Community Forest Agreement or CFA.

CFA's have provided both First Nations and non First Nations communities with area based tenure, starting with a five year probation period which can be extended to a long term CFA, lasting from 25-99 years. As of May 2008, six long term CFAs have been issued, 22 probationary tenures issued, 2 applications are pending and 22 additional communities have been invited to apply for CFAs. Within these CFA's, First Nations have about one third (35 per cent) of the agreements. And we have been invited to apply for seven of the 22 invitations for application. In total there is almost 700,000 cubic meters of timber available annually in all of the CFA's, with First Nations CFA's making up 195,634 cubic meters of the total.

CFA's are a new form of tenure that create opportunities for local communities to manage Crown forest land with increasing flexibility to diversify the use and benefits provided by the forest. CFA's can provide social, environmental and economic benefits, as well as increasing community participation, involvement and communication over the long term.

It is instructive, we believe, to look at what various provincial cabinet members have said about the benefits such forest tenures provide First Nation and non-First Nation communities alike.

Former Forests Minister Rich Coleman, speaking on the awarding of a CFA to the Nuxalk Nation in February 2007 said, the new forest tenure would *“provide new economic opportunities and a greater role in stewardship of local forests...opening up new forest and land management opportunities that benefit the entire community.”*

In July 2007 on the awarding of a CFA to the community of Williams Lake, Minister Coleman said: *The provincial government is committed to increasing the involvement of communities in the forest sector across British Columbia. This opportunity will provide the people of Williams Lake with continued benefits in the years ahead.”*

Similarly, in December 2004, Minister Coleman’s predecessor Mike de Jong, said that a new CFA provided to the North Thompson Band demonstrated *“this government’s commitment to providing communities and First Nations with real opportunities in the forest economy.”*

Clearly, the government recognizes that CFA’s are a socially, economically and environmentally viable form of forest tenure. So the question remains, why is so little (comparatively) being offered in this form of forest tenure versus the large number of temporary FRAs, FROs and Direct Awards that the province routinely offers to our nations?

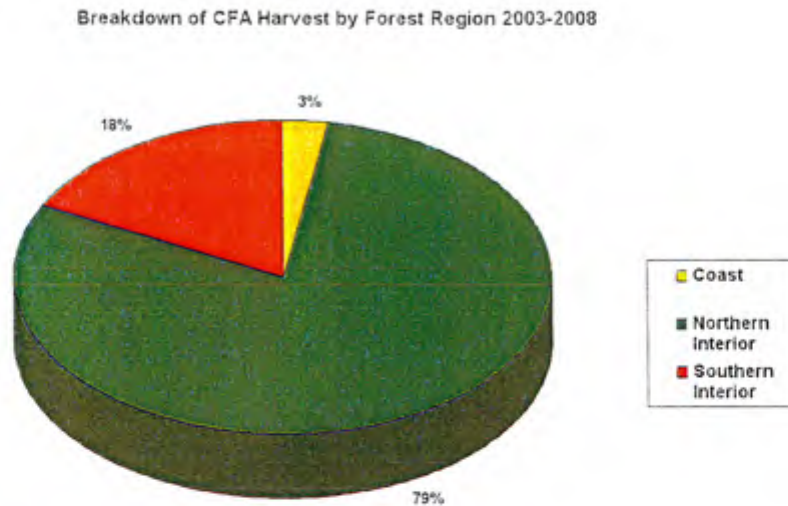
According to the Ministry of Forests Harvest Billing System, since 2003 more than three million cubic meters of timber has been harvested through CFA tenures, worth over \$11 million to the province. Table 1 shows the average annual stumpage paid in CFA’s. Figure 1 shows the percentage breakdown of CFA harvest by forest region.

Table 1: Average Stumpage Paid by Region for CFA’s

Region	Average Stumpage (\$/m3)
Coastal Forest Region*	\$5.25
Northern Interior Region	\$2.85
Southern Interior Region	\$6.92
Overall Average Stumpage	\$4.77

*Note Coastal Forest Region only has CFA’s from 2006-2008, Northern region from 2003-2008 and Southern Region from 2003-2007.

Figure 1: CFA Harvest by Region 2003-2008
Source Data: Provincial Harvest Billing System



4. There is wood available.

BC Timber Sales is an independent organization within the Ministry of Forests which commenced operations in 2003. It was created to develop Crown timber for auction, which in turn would establish a market pricing system that captured the value of the asset for the public. Also in 2003, a one time take back of 20 percent from major licensees occurred, giving BCTS access to another 8.3 million cubic meters of timber, of which 2.4 million cubic meters was meant to go to First Nations. As of Nov 2007, nowhere near all of the tenure controlled by BC Timber Sales had actually been awarded. We believe that it is from the BC Timber Sales “bundle” that the Province can most immediately and cost-effectively begin to allocate timber tenures to First Nations as an interim step towards more lasting resolution of outstanding rights and title issues.

BCTS is the largest tenure holder in the province, with approximately 16 million cubic meters of the AAC, as of 2006/07 fiscal year. In other words, the provincial government has a lot of latitude with which to address our outstanding concerns with regard to allocation of forest resources. The current AAC in the Province is about 85 million cubic meters. As can be seen in Table 2, BCTS currently has rights to almost 20 percent of that volume, an amount far higher than the largest forest company in the province, Canadian Forest Products Ltd, which has 11.6 percent of the AAC within 24 licenses. As can also be seen in Table 2, despite the amount of timber offered by BCTS, approximately 4.4 million cubic meters per year are not actually harvested and utilized. This unutilized volume provides an immediate opportunity to begin to address our needs, but is far from the only avenue open to the provincial government.

Table 2: Total Volume offered and harvested under BCTS

	2003/04	2004/05	2005/06	2006/07	2007/08	Average (m3/yr)
Volume Offered (m3)	11.2	12.8	16.3	17.1	16.6	14.8
Volume Harvested (m3)	7.9	8.6	12.4	11.2	11.9	10.4
Volume not Harvested	3.3	4.2	3.9	5.9	4.7	4.4

By comparison, within FRA/FRO's and Direct Awards, only 17 percent of the timber that has been made available to or nations is actually utilized, which begs the question as to how economically viable these opportunities in fact are. CFA's on the other hand, have a relatively small amount of timber allocation, with 700,000 cubic meters under CFA's as of May, 2008 and an additional 533,000 cubic meters that have been applied for by local communities and First Nations. According to Minister Rich Coleman himself and many communities, CFAs are potentially a more economically viable and locally controlled way in which to expand and revitalize the forest economy and increase local stewardship of forest resources.

Table 3: Total Timber Volume Offered per year

Total Timber Volume Offered (m3) Per year (AAC) by Tenure Type		
Tenure Holder	Amount Available	Percent Harvested
BC Timber Sales	14.8 million	70%
FRA/FRO/Direct Awards	6.4 million	17%
CFA's	700,000	100% *

* This number is difficult to determine based upon the harvest billing system. But in 2006/07 1.4 million was harvested, but this was likely due to increases due to pine beetle (1.1 million cubic meters in the northern region alone)

Once again, BCTS is the largest tenure holder in BC. It is owned and operated by the Crown, but often at odds with the interests of First Nations. Through BCTS, a significant amount of timber is allocated and logged. But there is also a significant amount of timber that remains allocated and not logged or simply unallocated. If even a portion of this timber was put into CFA's and then allocated to our nations in the form of secure, area-based forest tenures, we would be better off economically than we are today. Given the precedent already set by 'compensating' forest companies for the timber taken from them to expand BCTS, BCTS is a logical vehicle through which to provide further forest resources to our nations as an interim step towards resolution of rights and title disputes.

The Solution

Though BC is lagging far behind all other provinces in terms of resolving the land question, dramatic forest tenure changes in BC could be considered an interim step towards more lasting resolution of First Nations rights and title issues in the province. As a starting point toward forest tenure reforms, First Nations believe the province should:

- Abandon allocating one-time timber volumes to First Nations in favour of area-based tenures using eight per cent of the land base as a starting point for new tenure assignments. If the province believes it can assign eight per cent of the current AAC to First Nations, then it should be able to assign eight per cent of the land base. To date, the volume of timber First Nations have received from the Province in the form of FRAs, FROs and Direct Awards is 6.4 million cubic meters annually. By comparison, the amount of timber available to First Nations through far more secure area-based CFAs is 195, 635 cubic meters. The fundamental benefit of CFAs is the security they provide, with some such agreements lasting 99 years, versus the five-year timeframe of the typical FRA/FRO. The interim assignment of eight per cent of the land base in new, long-term, area-based forest tenures to First Nations should be in the form of either fee-simple lands or long-term leases. In either case, trees logged in the new tenures should not be subject to stumpage and annual rent charges, as is currently the case on the limited amount of land that has been designated “treaty settlement lands”.
- The longer term objective after assigning eight per cent of forestlands to First Nations should be co-management and revenue sharing on the remainder of the land base, with each of our nations having the option to opt out of such arrangements should they reach treaty settlements with BC and Ottawa.
- Given that BCTS is the largest tenure holder in the Province and compensation has already been paid for the timber taken from forest companies in order to create BC’s expanded timber auction program, BCTS timber holdings are the logical vehicle for making new forest tenure offers to First Nations.
- Under the Softwood Lumber Agreement, forest tenure assigned to First Nations is exempt from the agreement’s provisions, including export taxes. This provides for enhanced economic opportunities for our people as well as a powerful incentive for companies to joint-venture with us on new forestry-related projects. The Jay Treaty (1794) may also provide an avenue for free trade among First Nations and US Tribes.
- Government should recognize in making such reforms that many First Nations will, even with new area-based forest tenures, be unable or unwilling to start their own wood-processing facilities and may elect to auction their new timber resources to other parties. This means that timber auctions will likely remain integral to the BC forest scene, helping to undercut any arguments by the US softwood lumber lobby that BC underwrites the costs of forest companies here by shielding timber from market forces.

In conclusion, we believe that longer-term, area-based forest tenures are vital to First Nations moving forward. The provincial government, having made the commendable first step of finally beginning to assign forest resources to our nations on an interim basis through FRAs, FROs and Direct Awards, must now embark on a new direction that brings more lasting benefits to our communities and the provincial economy as a whole.