

British Columbia First Nations Forest Policy Forum

DISCUSSION PAPER

March 31, 2003

Garry Merkel, Earl Smith, and Dave Walkem prepared this document based on their personal views plus discussions with various First Nations individuals and organizations. While the authors believe that this accurately represents their discussions it is important to note that this is the authors interpretation, the authors did not discuss this with all First Nations, and this was not the result of any formal consultation process.

EXECUTIVE SUMMARY:

This document explores organizations, events and associated processes (Forum) that will result in more effective ongoing forest policy discussions between the British Columbia Minister of Forests (Minister) and the collective of British Columbia First Nations (First Nations). The two key questions were:

- a. Do First Nations agree with the need to establish some type of Forum?**
- b. If there is general agreement on the need for a Forum then what form might that Forum take?**

The author's found that First Nations were generally interested in creating better ways for First Nations to discuss forest policy issues with the Minister, however there was a great deal of variation on what form the Forum might take. There are also a number of issues that need to be acknowledged and addressed including: mistrust from First Nations towards the government; lack of understanding, consistency and coordination within government; and the need to meet both First Nations and the Province's needs.

The Forum must adhere to guiding principles and must: be built from a foundation that recognizes that the primary legal and working relationship is between individual First Nations and the crown; serve the interests and needs of both First Nations and the Minister; not make decisions on behalf of First Nations; not be used as a substitute for direct consultation and accommodation with individual First Nations; not be communicated as the mechanism for consultation with First Nations (at the expense of individual First Nations); foster an improved relationship between the Minister and First Nations; demonstrate to all parties that the Forum is able to achieve results and fulfill its purpose; have clear guidelines on its authority and scope for each topic area that the Forum may deal with; directly involve as many First Nations as practically possible, preferably as close as possible to their respective territories; have the necessary resources and organizational support to achieve its mandate; and move from a less structured to a more structured process over time (as trust and experience builds).

The proposed Forum would contain 3 components: (1) Formalize individual "political" relationships with First Nations; (2) Regional and provincial discussion sessions; and (3) focus group(s). The recommendation is to begin with components 1 and 2, then to build towards component 3 as experience and trust grow over time. Focus group(s) may address specific topics or may be one group addressing all topics depending on agreement between First Nations and the Minister. Most First Nations feel that one of the priority items that must be addressed is the current provincial consultation policy.

The proposed Forum would be supported by a semi-independent secretariat that would coordinate all logistics of the Forum, produce summaries (including action plans) of all discussion sessions, and coordinate an annual review and evaluation of the Forum. Modifications or elimination of the Forum would be based on the results of the annual review and evaluation and discussions between the Minister and First Nations.

PURPOSE:

This document explores organizations, events and associated processes that will result in more effective ongoing forest policy discussions between the British Columbia Minister of Forests (referred to as the Minister in this document) and the collective of British Columbia First Nations (referred to as First Nations in this document). This collective of organizations, events and processes is referred to as the Forum in this document.

BACKGROUND:

The Minister hosted a workshop with First Nations in October 2002 to discuss various forest policy issues as they relate to First Nations. During this workshop the Minister mentioned a number of times his need to establish an effective way to discuss forest policy issues with First Nations. The Minister acknowledged that the best way would be for him to personally meet with every First Nation on every policy issue, however this is not practical or feasible given the Minister's many other obligations. While this need was identified at the workshop, no suggestions were provided on how to establish this discussion forum.

The Minister subsequently asked Garry Merkel, Earl Smith, and Dave Walkem if they would discuss this need with First Nations to determine:

- a. **Do First Nations agree with the need to establish some type of Forum?**
- b. **If there is general agreement on the need for a Forum then what form might that Forum take?**

Garry Merkel, Earl Smith, and Dave Walkem agreed to take on this task then produced this document based on discussions with various First Nations organizations and individuals. It is important to note that this document is not the result of any formal consultation process. It represents the author's interpretation of what they heard from the select groups interviewed and may not necessarily represent a consensus of all First Nations.

ISSUES:

First Nations identified the following key issues that must be considered when creating this Forum.

- a. There is a general atmosphere of mistrust from First Nations towards the current government and the Minister. Some reasons for this mistrust include:
 - First Nations are often excluded or marginalized from significant policy discussions that have significant direct impacts to them. Examples of this included the Province's First Nations Consultation Policy and the Working Forest Policy. First Nations were not involved in creating these documents and even the most senior First Nations representatives who work closely with the Province were surprised when they were released. This pattern has happened since early days of creation of Forest Act.
 - There have been a number of policy announcements to increase First Nations involvement in BC's forest sector, however many First Nations have been unable to capitalize on these opportunities. Many First Nations feel that it is business as usual. However it is important to note that these directives are relatively new and this feeling may shift as the policies unfold – this should be monitored closely over the next few months.
 - This government has the reputation of being “Indian Fighters”. The Attorney General was one of the key drivers and signatories on the Delgam Uukw court case, and the Premier was the key supporter and signatory on the appeal of the Nisga'a treaty. As well most First Nations' perception is that this government forced the recent referendum to try to “kill the treaty process”.
 - The Attorney General recently put the First Nations Summit Executive on notice that, “everything the province does from this point forward is with prejudice.” This statement raises substantial concern in the context of the government’s drive to increase economic opportunities for First Nations in the BC forest sector.

This mistrust leads many First Nations to wonder if there is some hidden agenda in creating the proposed Forum, or if a Forum will be “honoured” if it were created.

- b. There is a cynical belief that all the major changes to forest policy have already been made by this government. Those discussions occurred over the past 9 months between industry and government. First Nations representatives that attempted to participate were denied access. If we are not important enough to be a part of “...the most significant changes in forest policy in the past 50 years...” as per the announcement this week from the forest minister, what possible influence could we have from now on?
- c. First Nations are concerned that the current consultation process does not adequately accommodate First Nations interests or concerns. One factor that

contributes to the lack of ability to provide informed input is a general lack of education to develop community members' understanding of forestry language, map reading and processes.

- d. There is a general lack of common understanding among First Nations and provincial employees around: evolving law with respect to First Nations and forestry; provincial policy to increase First Nations involvement in BC forestry; and how to accommodate First Nations interests and concerns.
- e. There is a lack of consistency in the application of provincial policy by MoF staff. Differences in understanding of provincial policy, differing personal biases and the wide ranges of local relationships were cited as factors contributing to this inconsistency. Some First Nations reported to be doing relatively well while others were still very frustrated with their ability to participate in the local forest sector and their relationships with local MoF staff. Particularly First Nations in the more rural areas are frustrated with gaining access to MoF personnel and getting their membership trained in forestry language and processes.
- f. There is a lack of coordination between MoF and the Ministry of Sustainable Resource Management (MSRM). MSLRM is responsible for coordinating provincial policy in a number of key areas, e.g., First Nations Consultation, Working Forest. However there appears to be very little coordination between MSLRM and MoF and it is not clear if and how this proposed Forum will provide input on these other key policy directives.
- g. First Nations have been required to meet an impossible (and unrealistic) hurdle in our attempts to discuss forest policy changes. All First Nation representatives that have attempted to participate have been asked, "Whom do you represent? If they did not represent 100% of the First Nations in BC they were denied access. It is an unrealistic hurdle/barrier as it is not required of forest industry representatives as they do not represent unanimity within the industry but are still given access.
- h. Many First Nations are concerned that the proposed Forum is being created to only meet the needs of the Minister and will not be used to meet their needs.
- i. There are a number of First Nations who have already begun to respond to the need for common forest policy forums, a couple examples include the Northwest Tribal Treaty Forum and the Shuswap Natural Resources Board. However this trend is not widespread and not all First Nations are willing to participate in a common forum. Most existing forums are also concerned that they may be marginalized if they become part of a larger Forum.

These issues must be addressed in the creation and operation of the proposed Forum.

GUIDING PRINCIPLES:

First Nations generally agreed that some type of Forum is required; the question is how it would be structured and how it would be built. The following is a checklist of principles that First Nations feel should be followed when developing the Forum. The Forum must:

- a. Recognize that aboriginal title exists and First Nations have aboriginal title to all lands in BC although local specifics are still being formalized.
- b. Be built from a foundation that recognizes that the primary legal and working relationship is between individual First Nations and the crown.
- c. Serve the interests and needs of both First Nations and the Minister.
- d. Not make decisions on behalf of First Nations.
- e. Not be used as a substitute for direct consultation and accommodation with individual First Nations (a pre-requisite for effective and productive communication to occur on any of these issues is a compete overhaul of the consultation process to one that is mutually agreeable).
- f. Not be communicated as the mechanism for consultation with First Nations (at the expense of individual First Nations).
- g. Foster an improved relationship between the Minister and First Nations.
- h. Demonstrate to all parties that the Forum is able to achieve results and fulfill its purpose.
- i. Have clear guidelines on its authority and scope for each topic area that the Forum may deal with.
- j. Directly involve as many First Nations as practically possible, preferably as close as possible to their respective territories.
- k. Have the necessary resources and organizational support to achieve its mandate.
- l. Move from a less structured to a more structured process over time (as trust and experience builds).

As mentioned earlier, these principles must be accommodated in the design of any Forum.

PROPOSED STRUCTURE:

The Forum must meet the guiding principles outlined earlier, particularly the one that states, “Be built from a foundation that recognizes that the primary legal and working relationship is between individual First Nations and the crown.” As also stated the Forum must “Move from a less structured to a more structured process over time (as trust and experience builds).”

In order to meet these guiding principles the Forum must have three separate but inter-related components as shown in Figure 1. Components 1 and 2 should be done first with component 3 being created as experience and trust grows between First Nations and the Minister. The components, in order of priority, include:

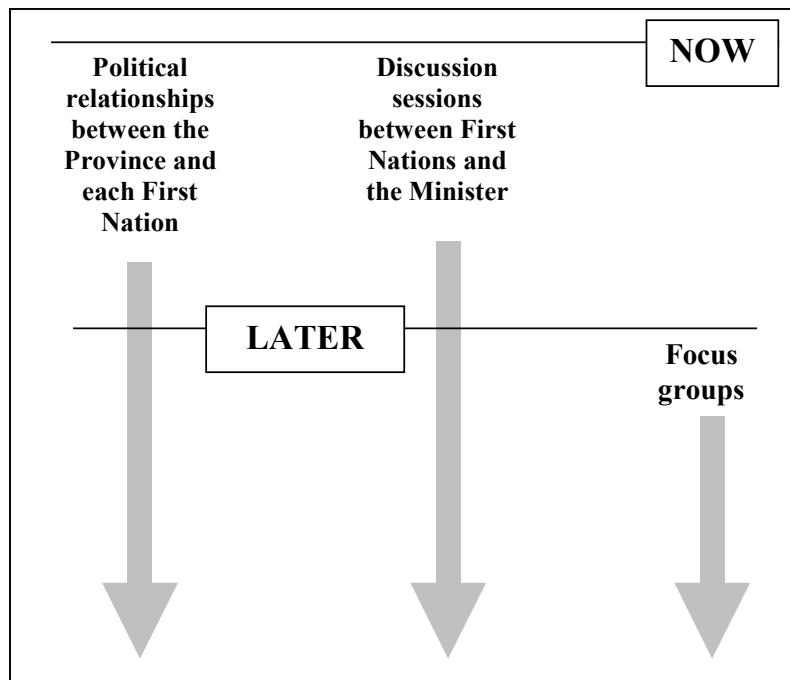


Figure 1: Forest Policy Forum Components

1. Clearly defined “political” relationships with each First Nation. These could be in the form of Consultation and Accommodation Protocols, Memorandum of Understandings or ultimately treaties.
2. Regional and provincial discussion sessions between First Nations, and between First Nations and the Minister on emerging forest policy issues.
3. A more structured and partially centralized focus group that discusses approaches to improving First Nations input on key forest policy issues and proposes approaches to those issues for discussion.

The Forum should also have a semi-independent Secretariat who will organize logistics for “political” relationship discussions, regional and provincial discussion sessions, and support the focus group if and when it is established.

Component 1 (individual First Nations “political” relationships) is the highest priority and must be a focus of attention for the Minister. Discussions between First Nations and the Province (MoF) must:

- a. Follow the divisions that First Nations identify among themselves.

- b. Involve senior MoF personnel, preferably the Minister and/or Deputy Minister in each discussion.

These relationships are not intended to resolve all outstanding aboriginal rights and title issues. They are intended to create a more formal working relationship to consult with and accommodate the interests and concerns of First Nations. These relationships also form the basis of a potential more centralized focus group at some point in the future. However it must be made clear that this could be a long and lengthy process and that it should not be used as a reason for not getting broader input from First Nations on key policy initiatives. The Secretariat will be responsible for organizing all logistics for these discussions.

Component 2 (regional/provincial) discussion sessions are a high priority and can be done concurrently with component 1 (“political” relationships). Discussion session agendas must:

- a. Allow time for a First Nations only discussion plus a First Nations – MoF discussion.
- b. Ensure the Minister is present.
- c. Deal with the most current large forest policy issues of the day.
- d. Discuss progress on component 1 (“political” relationships).
- e. Discuss if a more formal focus group is appropriate yet.
- f. Develop a specific action plan to deal with forest policy issues and prepare for the next meeting(s).
- g. Report on action plans from previous meetings.

There should be a minimum of 5 sessions per year. Four sessions should follow the forest region boundaries inviting First Nations from those regions. First Nations near the regional boundaries should have the option to choose which session works best for them. One provincial session should be held at a central location inviting representatives from the regional sessions. The Secretariat will be responsible for organizing all meeting logistics and producing summaries (including an action plan) of these sessions.

Component 3 (focus group) may be developed as experience and trust grows between First Nations and the Minister. Each discussion session under component 2 will determine if First Nations and the Minister are ready for this type of central focus group. It may be that individual focus groups are created for specific topics or the focus group(s) may evolve to one central entity. This will be determined on the basis of ongoing discussions between First Nations and the Minister.

The Forum would have an established annual operating budget provided by the MoF for supporting First Nations participation; the Secretariat; and professional assistance where required. Additional funds may be required for special projects.

One of the first priorities that many First Nations believe should be addressed in the province’s consultation policy. First Nations feel that there needs to be a mutually agreed upon consultation policy adopted by the province and First Nations. The province unilaterally imposed the current policy and First Nations believe that it will lead to legal

confrontations. A new consultation policy can lead to a more certain working environment for all if it is structured loosely as follows:

1. An initial “WITHOUT PREJUDICE” stage that allows for identification/recognition of interest, negotiations regarding accommodations of those interests, and creative solutions.
2. A second stage would be invoked in the case where stage one failed to reach a mutually agreed upon accommodation. This second stage would be WITH PREJUDICE and would have more formalized discussions and legal arguments.

This process may also offer a model for approaching the individual relationships outlined in component 1 of the forum.

REVIEW & EVALUATION:

The Secretariat should conduct a formal review of the Forum every February based on an objective outside analysis plus input from First Nations, the Minister and MoF. Specific questions that should address in the review and evaluation include:

- a. What is the progress on individual “political” relationships?
- b. Has the Forum respected individual First Nations ability to participate fully in their unique consultation and accommodation processes with the province?
- c. Has the Forum fostered an improved relationship between First Nations and the Minister?
- d. Are First Nations and the Minister’s concerns being addressed, and if not, why not?
- e. Are the range of First Nations involved, and if not, why not?

Results of these reviews and evaluations will be summarized in recommendations to First Nations and the Minister in the form of:

- a. How to improve the Forum’s effectiveness (including how to add more structure if appropriate), or
- b. Terminating the Forum.

The hope is to continually improve the Forum however First Nations and the Minister may find that the Forum is not serving their needs and may chose to terminate this initiative.

CONCLUSION:

This document summarized the author’s understanding of input from First Nations towards creating a means for ongoing forest policy discussions between the BC Minister of Forests and BC First Nations. While there are a number of issues, including a significant mistrust towards government on the part of First Nations, the authors are optimistic that a long-term positive relationship can be fostered if the recommendations in this report are followed.

The alternative is to continue with the status quo. This generally includes random and unstructured discussions between MoF policy makers and First Nations, inadequate understanding within and between MoF and First Nations and often inadequate forest policy. This results in frustration and tension between MoF and First Nations. Frustration and tension that could very likely be minimized and possibly eliminated with an effective forest policy forum.