

**RESHAPING CROWN-FIRST NATION RELATIONSHIPS AMID CHANGING
CONTEXTS:**

**An examination of the intersection between the Crown's promise of a New
Relationship and the implementations of the *Forest and Range Agreement***

by

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Abstract

As of June 2006, despite court rulings and sustained political opposition, one-hundred and six First Nations had signed *Forest and Range Agreements/Opportunities*, providing access to seventeen million cubic meters of timber and sharing more than one-hundred and twenty million dollars in revenue. The legality and ‘fairness’ of these policies has been analyzed and discussed, however *FRA*s continue to be ratified with little research on how they are actually working on the ground.

Using anthropological and political-science research and analytic tools, the thesis examines the state of the implementation of the Gitxaala Nation’s *Forest and Range Agreement* in the era of the *New Relationship*’s commitment to work towards the reconciliation of Aboriginal and Crown titles and jurisdictions.

The examination demonstrates that the *New Relationship*’s vision is ambiguous and has resulted in a lack of a shared understanding concerning objectives and successful implementation. The findings indicate that this lack of mutual understanding is impeding the establishment of a truly new relationship in which the Crown and the Gitxaala Nation can work together to successfully implement the *FRA*. Furthermore the case study demonstrates that Provincial policy without clear directives allows for interpretation by local policy implementers which is resulting in discrepancies in policy outcomes.

In the case of Gitxaala, until clear policies and directives are developed that respond to a mutually understood vision, the *New Relationship* and the *FRA* simply represent a ‘new’ Provincial tactic for the Province to maintain a hold on resources and create certainty for industry in an era of strengthened Aboriginal claims.

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Introduction

In Canada in general and British Columbia in particular, First Nations traditional territories cover some of the most productive and economically viable forested lands. Claim to these resource rich areas has pitted First Nations and non First Nations against each other. The claim to these lands in British Columbia has been further complicated by the fact that with the exception of areas of Vancouver Island¹ and Treaty 8 First Nations² in the Northeastern corner of the Province, no treaties were signed upon colonization. First Nations assert that their rights and title were never extinguished and therefore they continue to be the proprietors of their traditional territories.

In order to resolve the land dispute that has polarized the province and stunted economic growth, the Federal and Provincial government with support from some First Nations³, started the modern day tri-partite Treaty Process in the early 1990's. The modern day Treaty Process has proven to be extremely slow and inefficient, failing to produce a single finalized treaty within the fifteen years since its inception⁴. First Nations are frustrated because industrial activity, which they feel is unsustainable and for which they are not being fairly economically compensated, is still occurring within the borders of their traditional territory. The Provincial government is frustrated because the

¹ Between 1850 and 1854 fourteen land purchases were made. Known as the Douglas Treaties, they cover approximately 358 square miles of land around Victoria, Saanich, Sooke, Nanaimo and Port Hardy. See Ministry of Aboriginal Relations and Reconciliation, Douglas Treaties: 1850-1854, <http://www.gov.bc.ca/arr/treaty/landmark/douglas/default.html>

² See http://www.gov.bc.ca/arr/firstnation/treaty_8/default.html and <http://www.treaty8.bc.ca/> for further information on Treaty 8

³ Some First Nation's do not support the Treaty Process. The Union of BC Indian Chief's, as an organization, does not support the Treaty Process.

⁴ The Nisga'a Treaty was finalized in 2000, however negotiation started prior to and remained outside the modern day tri-partite treaty process.

Treaty Process, which has proven to be financially costly, has failed to create ‘certainty’ over jurisdiction and therefore a stable climate for economic investment. The inefficiency of the Treaty Process to resolve the land question has created a movement towards interim measures. Interim measures were originally conceived to address First Nations concern that their land not be further degraded while their claims are pending (BCCTF 1991). However they appear to now be utilized as a political tool to create short term economic advantages for First Nations and increased certainty for government and industry. An example of this is The *Forest and Range Agreement*, which was conceived as an interim measure to provide accommodation prior to treaty for industrial forestry taking place within First Nations territory. Using a per capita formula First Nations receive revenue and a direct award of timber tenure. According to the Ministry of Forests and Range website, “These agreements provide the Ministry with operational stability and assist First Nations to achieve their economic objectives by providing revenue and direct award of timber tenure”⁵. Stability is achieved for the duration of the Agreement because by signing an *FRA* First Nations agree “that they have been accommodated for the economic component of administrative and operational decisions made during the term of the Agreement.” Furthermore the First Nation agrees “to not support unlawful interference with forestry operations nor engage in litigation with respect to adequacy of accommodation, as set out in the Agreement.”⁶

Not all First Nations have been satisfied with the *FRA*, yet no other options are available for provincial forestry accommodation. Dissatisfaction has resulted in court

⁵ See Government of BC Ministry of Forests and Range. Forest and Range Agreements Frequently Asked Questions Available at: http://www.for.gov.bc.ca/haa/Docs/Public_Q&A_Oct27_2004.htm#general

⁶ Ibid

and political action which has threatened the ‘certainty’ and ‘stability’ that the *FRA*’s were expressly intended to create (*Huu-Ay-Aht First Nation et al v. The Minister of Forests et al.*, [2005] BCSC 697, UBCIC 2006).

In March of 2005, one month after the Huu-Ay-Aht First Nation (HFN) ruling denouncing the *FRA*’s ability to meet the Crown’s constitutional duty to consult, the Provincial government announced that a document setting out a *New Relationship* with Aboriginal people had been signed by the First Nations Summit, the Union of British Columbia Indian Chiefs, the British Columbia Assembly of First Nations and the premier of British Columbia. The overriding principle of *The New Relationship* is a commitment by all parties to work towards the reconciliation of Aboriginal and Crown titles and jurisdictions⁷. The document was heralded as a departure from previous Provincial First Nation policy and seen by many as a positive step forward. It appeared that the Provincial government was committed to changing its interactions with First Nations from adversarial to collaborative⁸. However, despite some optimism that *The New Relationship* will bring about positive change, there is plenty of skepticism.

This skepticism likely stems from a long history and experience with government policies where despite some sounding positive, they have only contributed to the continuation of the ‘old’ relationship between the Crown and First Nations. At its foundation this relationship has been defined and structured by the Crown’s attempt to secure access to resources; or, in terms recognizable to the current Provincial government, create ‘certainty’ over access to resources. As the context and conditions of

⁷ See Province of BC, Ministry of Aboriginal Relations and Reconciliation. *The New Relationship*. Available at: <http://www.gov.bc.ca/arr/newrelationship/default.html>

⁸ See Letter from the Chief Commissioner in the BC Treaty Commission Annual Report 2005 http://www.bctreaty.net/files_3/pdf_documents/2005_annual_report.pdf

Crown-First Nation relationships have changed the Crown has had to adapt and use different tactics. This changing context is exemplified by the HFN v. BC 2005 ruling and recent Supreme Court of Canada rulings. In 1997, the Supreme Court of Canada (SCC) held that under Section 35 of the *Constitution Act, 1982*, Aboriginal Rights and Title are recognized and affirmed and that Title is an interest in the land itself (*Delgamuukw v. British Columbia* [1997] SCC 1010). Moreover in 2004, the SCC ruled that from this Title flows the Crown's duty to consult with First Nations and accommodate their interests when making land-use management decisions within their claimed territories (*Haida Nation v. British Columbia (Ministry of Forests)* [2004] 511 SCC 73).

It remains to be seen how *The New Relationship* document will impact the lives of First Nations in the Province. *The New Relationship* has created a degree of optimism that looks past short term economic gain to a future that allows First Nations to participate in decision-making over their traditional land, benefit from its resources and build a sustainable future for their people. However, given the colonial history of assimilative and destructive policies that have defined the interactions between the Crown and First Nations, an examination of the claim of the arrival of a new relationship must be examined.

By researching the state of the implementation of the Gitxaala Nation's *FRA* in the era of a *New Relationship* and examining the results through the lens of their past relationship with the Crown, this thesis explores the argument that the *New Relationship* simply represents a 'new' Provincial tactic to maintain control of resources in the context of strengthened Aboriginal claims. Moreover this thesis will contend that the new tactic used by the Province is 'ambiguity'. It is recognized that in some circumstances this

tactic may be deemed constructive in that it allows all parties to claim victory and move forward. However research surrounding the implementation of Gitxaala's *FRA* will demonstrate that a lack of shared understanding of policy objectives has resulted from this ambiguity. The findings indicate that it is this lack of mutual understanding that lies in the path of the establishment of a truly new relationship in which the Crown and the Gitxaala Nation can work together to reconcile their title and jurisdiction. In particular the case study will demonstrate that Provincial policy without clear directives allows for interpretation by the local policy implementers. The result is that the process of implementation is subject to the personalities and politics of individual bureaucrats which can create discrepancies in policy outcomes that do not necessarily work towards a common Provincial vision such as that found in the *New Relationship*⁹.

It is recognized that the template for the *FRA* and Gitxaala's signing of the agreement predates *The New Relationship*. However the *FRAs* implementation is occurring amid the Provincial promise that all policies and Crown - First Nation interactions will work towards *The New Relationship*'s vision and principles.

Given the case study methodology employed it is fully acknowledged that the findings that will be used to substantiate the argument are not statistically 'significant' and cannot be extrapolated into a generalized statement concerning all Crown-First Nation interactions. However, this methodology has been deliberately chosen because it allows for the required level of analysis central to the argument of the continuation of a

⁹ The issue of a lack of consistency in the application of provincial policy by MoF staff due to differences in understanding of provincial policy and differing personal biases, was raised in a report commissioned by the Minister of Forests in 2003 (prior to *FRAs* and *The New Relationship*) in order to investigate whether First Nations saw the need to establish a Forest Policy Forum with the Province. See Merkel et al 2003

historical relationship, political ambiguity and a lack of shared understanding. This claim cannot be examined without making an in depth attempt to understand the positions of each party. The case study method allows for the potential that each Nation and each local government understandings are individualized. When the findings are used in conjunction with other future case studies they can contribute to a greater understanding of the current state of First Nation-Crown relationships throughout the province.

Thesis Organization

The thesis begins with a report on the implementation, as of June 2006, of the Gitxaala Nation's *Forest and Range Agreement*. The subsequent section attempts to contextualize and provide insight into the findings. The examination begins with a discussion of the *New Relationship*'s challenges in meeting its commitment to the reconciliation of Aboriginal and Crown titles and jurisdictions and the potential it provides for positive change if the challenges are addressed and overcome. The merits of anthropology, one of the thesis's disciplinary perspectives, will be discussed in terms of its contribution to resolving ambiguity and reconciling First Nations rights and titles with those of non-First Nations. The following chapter will examine the impact of imposed systems of economics and exchange on Tsimshian culture. This analysis will help examine the concept of continuity in the relationship between the Crown and First Nations, and contribute to an understanding of the colonial effect on Tsimshian culture and its influence on present circumstances.

The third section is a policy analysis of the *Forest and Range Agreement* that will allow for a comparison of policy alternatives and a constitutional level change in meeting

the vision of the *New Relationship* and effectively including First Nations in the forestry sector.

Section 1: Primary Research

1.1 The Forest and Range Agreement: Expectations versus realities

Introduction

In 2002 in order to accommodate First Nation interests, the provincial government enacted the *Provincial Policy for Consultation with First Nations* to be used in conjunction with the Ministry of Forests (MoF) *Strategic Policy Approaches to Accommodation (2003)*¹⁰. The MoF *Strategic Policy* outlined criteria for accommodation in order to develop further policy surrounding timber and revenue sharing. From this document emerged the template for the *Forest and Range Agreement (FRA)*. The *FRA* was conceived as a negotiated interim measure between the Ministry of Forests and First Nations in order to accommodate the economic component of Title interests through revenue sharing and access to timber volumes.

This policy approach to accommodation and consultation has been met with opposition from First Nations in the form of refusal to sign, official statements made to the Province by First Nations organizations and court action. On February 11 2005 in *Huu-Ay-Aht First Nation v. Ministry of Forests* the court ruled in favour of the HFN, stating that *FRA*s do not represent meaningful consultation and accommodation as it does not give consideration to the strength of the First Nations claim or degree of potential

¹⁰ Government of British Columbia, *Strategic Policy Approaches to Accommodation*. Ministry of Forests 31 July 2003, 15 June 2006
<http://www.for.gov.bc.ca/haa/Docs/Accomodation_Policy_final_draft_10.pdf>

infringement and therefore does not satisfy the Crown's constitutional duty. (*Huu-Ay-Aht First Nation et al v. The Minister of Forests et al.*, [2005] BCSC 697).

One month after the ruling the *New Relationship* was signed by the First Nations Summit, the Union of British Columbia Indian Chiefs, the British Columbia Assembly of First Nations and the British Columbia Premier. The *New Relationship* is a Provincial initiative that recognizes the detrimental relationship the Province has had with First Nations and seeks to achieve a mutually beneficial new relationship by involving First Nations as partners in the creation of public policy that affects their communities. The overriding principle of *The New Relationship* is a commitment by all parties to work towards the reconciliation of Aboriginal and Crown titles and jurisdictions. One of the commitments made by the Province of British Columbia in the *The New Relationship* was to revisit and rethink *Forest and Range Agreements* with the vision of *The New Relationship* in mind. This exercise produced a revision of the policy that the Province entitled *Forest and Range Opportunities*. In an open letter to the Premier dated February 6, 2006 the Union of BC Indian Chiefs stated:

The Union of B.C. Indian Chiefs' Chiefs Council has reviewed the Interim Agreement on Forest and Range Opportunities (the "FRO") proposed by the Province as a template from which to build agreements between B.C. and different First Nations communities. Regrettably, the UBCIC is not able to support the FRO in its present form. In several significant respects, the FRO falls short of fulfilling the promise represented by the New Relationship based on respect, recognition and accommodation of aboriginal title and rights. The FRO retains features of the previous Forest Range Agreements that were unacceptable to our membership (UBCIC, 2006).

Despite the controversy, the *Forest and Range Agreement, or Opportunities* as the agreements post revision are called, continues to be the sole interim policy for First Nation accommodation and inclusion in forestry. In the midst of the court rulings, policy

formulations and reformulations, at the time of this research in June 2006, one-hundred and six First Nations have signed *Forest and Range Agreements/Opportunities*, providing access to seventeen million cubic meters of timber and sharing more than one-hundred and twenty million dollars in revenue¹¹. The wording and legal content of these policies have been debated and analyzed, however they continue to be ratified and there has been little research on how they are actually working on the ground. In recognition of this gap the purpose of my research was to assess the current state of the implementation of a *FRA* and the challenges and obstacles faced by the Gitxaala Nation, Industry and the North Coast District Ministry of Forests and Range¹² during this process. Three research questions were used to guide the assessment:

- 1) Is there a shared understanding of the *FRA*s objectives and goals among the First Nation, local industry and District Ministry of Forests and Range?
- 2) Are these objectives and goals being achieved?
- 3) If these objectives and goals have not been achieved, what are the identified challenges?

The following chapter will introduce the research and the research process; present the general findings through a comparison of the issues for implementation identified by the District Ministry of Forests and Range and Non-Aboriginal Industry members versus the Gitxaala First Nation; discuss the emergent findings concerning the

¹¹ See “Kwantlen Sign First New Forest and Range Agreement”. News Release: Ministry of Forests and Range 31 July 2006, 15 June 2006 < http://www2.news.gov.bc.ca/news_releases_2005-2009/2006FOR0057-000705.htm>

¹² The Ministry of Forests has been renamed the Ministry of Forests *and Range* since the drafting of the *FRA* template, however for the purpose of simplicity and consistency this thesis will hereafter refer to the Ministry of Forests or MOF.

obstacles for implementation not explicitly identified by the participants; and then conclude and provide recommendations.

The Research Process

The Gitxaala Nation signed a *Forest and Range Agreement* with the Ministry of Forests in 2004. Gitxaala has received the revenue sharing component of the agreement but they have yet to be designated an operational area to access their timber volume and commence their forestry operations. Initially the focus of this research was solely on Gitxaala and the parties associated and/or impacted by their *FRA*. However, the need to expand the scope in order to contextualize the issues that Gitxaala is facing emerged at the beginning of the study. The project expanded to include representatives of First Nations, government and industry from both the North Coast and Kalum Forest Districts. Gitxaala's inclusion in forestry remains the focus of the research; however other cases are included in order to better understand, contextualize and analyze the Gitxaala experience.

Initial research participants were identified based on their role and position relative to the North Coast and Kalum District's *Forest and Range Agreements*, these participants then made referrals to other key stakeholders. Through this process of identification and referral over twenty-five people were interviewed. Interviewees included MoF staff from both the North Coast and Kalum District; forestry consultants, contractors and tenure holders based out of Prince Rupert and Terrace; Gitxaala Nation Council members, and representatives of the Gitxaala First Nation's, Kitsumkalum First Nation's and Kitselas First Nation's forestry ventures. The interviews were structured around the following questions:

- o What was your initial understanding of the objectives of the *FRA* and expectations for implementation?
- o What experience and/or involvement with the actual implementation process do you have?
- o What are the challenges/obstacles that you perceive with implementation?
- o Why has or has not the *FRA*s implementation been consistent with your initial expectations?
- o Has the *FRA* had a positive or negative impact on the forestry industry?

Findings

In the North Coast Forest District the process of implementing *Forest and Range Agreements* has been slow, and there is frustration being expressed by all those affected by the Agreement.

Everyone involved in the study, tenure holders, consultants, contractors, government officials and First Nations themselves, recognized the need to include First Nations in forestry and expressed the desire for this to be done successfully. Aside from the legal necessity, the basis for this consensus was the belief that First Nation inclusion would benefit everyone. The majority of the participants in the study, regardless of their position in the industry, said that they were very optimistic that the inclusion of First Nations would have a positive impact on the larger community. The most consistently cited reason was it had the potential to put the control of the forests back into the hands of those who have a vested interest in the future of the region.

So then what is the problem? Why is implementation of the *FRA* proving slow and frustrating in the North Coast District? In order to answer this question the issues and challenges identified with the *FRA* by the District MoF and non-Aboriginal industry

members will be contrasted with those identified by Gitxaala. This will be followed by an analysis of emergent issues unidentified by the stakeholders and a brief look at implementation of the *FRA* in the Kalum Forest District

Issues for Implementation Identified by the North Coast District Ministry of Forests and Range and Non-Aboriginal Industry Members

Economic and Structural Issues

There appears to be consensus that some of the problems with implementing the *FRAs* are due to larger forest industry problems. Research participants currently involved in the industry, including MoF employees, tenure holders and contractors expressed the general opinion that the concept of the *FRA* in terms of revenue sharing and providing tenure is good but due to current market and volume constraints successfully entering the industry at this time was not possible.

Economic Realities

Tenure holders feel that the inventory of the Annual Allowable Cut (ACC) is based on phantom numbers as only a portion of the AAC is actually viable in today's market. Hemlock and balsam were cited as being useless due to the loss of the Japanese hemlock market, and low pulp values relative to high extraction prices. They stressed that even though First Nations have been awarded tenure it does not mean that there exists viable operating areas. Consultants and tenure holders see this as especially

problematic because they feel First Nations have a false and misguided expectation that there are large quantities of money to be made in the industry.

Sustainability

A common statement made by consultants and tenure holders was that the *FRA* does not look to the long term sustainability of the North Coast forest industry. The *FRA* timber volumes were to be made available through the reallocation that occurred as part of the *Forestry Revitalization Plan*¹³ that was introduced in 2003 to restructure the ailing industry; however many argue that that AAC never existed in a viable or sustainable form to begin with.

There was much discussion around the ability, or lack there of, of the region to support *FRA* timber allocations. The MoF spoke more in terms of the possible lack of AAC to sustain and/or accommodate future allocations given that a large portion of the allocated timber volumes are utilizing past undercut. While it was widely stated by those working in the forests that the current AAC is too high and a disproportionate amount of cedar and spruce is being removed from the timber profile as it is the only viable timber to harvest. It was believed by industry workers that under these conditions the future of forestry in the area is bleak.

¹³ Government of British Columbia, *The Forestry Revitalization Plan*. Ministry of Forests and Range. March 2003, 15 June 2006 < <http://www.for.gov.bc.ca/mof/plan/>>

The Land and Resource Management Plan (LRMP) Process

The LRMP process and the resulting establishment of protected areas occurred around the same time as the announcement of forest allocation to First Nations through the *FRA*. Every interest group interviewed mentioned the North Coast LRMP process as having a large impact on the available timber in the North Coast. The increased protected areas have resulted in a shrinking land base expected to support new timber allocations.

Political Issues

Governmental hierarchy

Agreement emerged among many of the participating contractors, consultants, tenure holders and District MoF staff that implementation is challenged by the fact that a higher level of government is driving and structuring the changes while the District MoF is left to implement the promises on the ground. This disconnect is felt to have created difficulties in implementation because the current realities of the industry, such as the previously mentioned economic and structural issues, were not properly planned for during policy formation. This is also perceived to have created a problem of accountability. Consultants working with First Nations voiced frustration with the lack of clarity over the responsibilities of each level of government. It was felt that the District MoF was paralyzed by their inability to act until a higher level of government either forced them into action or set clearly defined precedence for each action. Even among the MoF employees involved in the study there was a reticence to formally acknowledge their powers over the implementation of the *FRA* or the powers of their senior colleagues such as those in the Regional Offices. The observation was made by

one contractor that the disconnect between Branch headquarters in Victoria, the Regions and the Districts and the parsing of roles in implementation has created a situation where no single person or entity sees a policy all the way through from formulation to implementation. As a result there is no one on the ground making sure that implementation happens in the spirit of the Provincial government's stated intentions. The result is that the *FRA* lacks a strong provincial policy directive and it is felt that its implementation is greatly influenced by leadership and strategic direction at the District level.

Well I think there's a pretty significant disconnect between the theoretical offer of the *FRA* and the actual practical application or support on the local level. It's been my experience....that there is very little support on the local level for MoF to deliver these agreements.

*Consultant working in the North Coast*¹⁴

Conflicting mandates

British Columbia Timber Sales' mandate poses a problem for dealing with the *FRA*. As an "independent organization within the B.C. Ministry of Forests"¹⁵ the office is struggling to reconcile the *FRA*'s objectives with the directives they have been given from higher levels of government. One BCTS employee explained that even though they are in the same building and part of the same Ministry there is a split between the District's and BCTS mandates. The District has a mandate to manage the forest for various objectives; while BCTS main objective is to put Crown timber on the market and sell it using a competitive bid auction system.

¹⁴ Personal communication June 8, 2006

¹⁵ See BC Timber Sales Website: <http://www.for.gov.bc.ca/bcts/>

For some people in government, objectives may be to provide First Nations with money and support, to establish their own business whether it's in forestry or whatever. But then in another part of the government, BCTS as an example our objective maybe to harvest blocks of timber within the traditional use areas of those same First Nations.

*BCTS employee*¹⁶

Those inside and outside BCTS appear to be aware of the problem. As a result of their strict business mandate BCTS staff feel they are challenged in their ability to build meaningful productive relationships with First Nations. Consultants in the Kalum and North Coast District have observed the problem, stating that BCTS is known for having poor consultation strategies that are driven by their mandate around revenue, and setting stumpage. BCTS's approach, according to tenure holders and consultants working in the same territories, has not promoted relationship building but instead has been confrontational as it has been about protecting and defending what is felt to be their entitlement. Consultants working in close proximity to BCTS operational areas expressed the opinion that in order to accommodate the *FRA*'s and First Nations inclusion in forestry a shift in the culture and organization of BCTS is required.

Political instability among and between First Nations

The MoF and tenure holders in particular, cited the political instability of First Nations governments as an obstacle to implementation. They said it was difficult to keep progressing forward when the individuals they were negotiating with, and had begun to reach an understanding, changed before an agreement came to fruition.

¹⁶ Personal communication June 12, 2006

The MoF and tenure holders said it was also difficult to deal with inter-community conflicts over territorial boundaries. This has posed a problem for the MoF in terms of establishing operational areas and has further complicated industry's consultative duties and attempts at building relationships.

Issues of Implementation Identified by the Gitxaala First Nation

Economic and Structural

Sustainability

Members of the Gitxaala First Nation elected Council identified sustainability as the primary concern and issue for their forestry venture and the implementation of the *FRA*. Representatives of Gitxaala's Council are concerned that their territory is being harvested at unsustainable levels. Although industry also identified this as an issue it was embedded in the factors affecting the economic viability of the district. Gitxaala sees sustainability as a pressing issue that goes beyond the economic viability of the area; the community wants sustainability to be achieved in order to protect their interests and values, and those of generations to come. At the current level of harvest Gitxaala estimates that they would have a maximum lifespan of 15 to 20 years in the industry. Gitxaala's Council has identified this as an unacceptable environment in which to enter forestry and therefore a breach in the Agreement made by the Government as the timber allotted is unrealistic. They have expressed the desire for a voluntary reduction in the volume of cut by the other licensees in their territory in order to rectify the situation and allow the Province to fulfill their promised allocation to the community

Lack of access to capital

Gitxaala Council members expressed the opinion that economic development in the village has been challenged by a lack of access to start up capital. It was explained that banks were not willing to provide the initial financing required for development projects and that there was a limited amount of government funding available. Furthermore all of the First Nations that have signed a *FRA* are now competitors for what little government funding is available. Council expressed frustration that the Nations that were going to succeed were those who were first to sign because they were also the first to request financial support

Gitxaala has not put their revenue sharing component of the *FRA* into their business venture and it is felt that such an investment would not increase the likelihood of the ventures profitability:

...even if we did we still wouldn't make a profit. It would just soak it up, it would be gone.

*Gitxaala Member of Council*¹⁷

The revenue sharing monies realized from the *FRA* are for each Band to use as they see fit. It was felt by all members of Council interviewed that the *FRA* funds belong to the community. Once the forestry venture starts generating funds, then Gitxaala can reinvest in forestry.

High cost of development

One of the biggest challenges cited by Council to the Gitxaala forestry venture is the cost of development. During negotiations of the *FRA*, Council says they were led to believe that the timber allocation component of their *FRA* would generate eight million

¹⁷ Personal communication June 28, 2006

dollars a year; therefore over five years it would have the potential to make them forty million dollars. Members of Council said this number was misleading and unrealistic because it does not take into consideration the cost of development such as road construction and other engineering expenditures. One Council member was worried about what would happen once the venture started logging and they were unable to show their community forty million dollars. He speculated that this was going to lead to distrust in the Council. Frustration on the part of members of Gitxaala's Council that their timber license will not be as profitable as they initially expected is further compounded by the belief that no matter what happens their industry partners will realize a profit because they have already invested in logging and will be collecting money off the use of their equipment and materials.

Lack of knowledge and capacity

Gitxaala has little prior experience with or knowledge of the forest industry.

Gitxaala has never been a logging community; they have far greater experience in the market economy as fishermen and cannery workers.

So recognizing that we are fish out of water when it comes to forestry. None of our people have any academic training at all in forestry. All of our people are water people. And so they can tell you anything or everything about the water but they can't tell you about the forest and specifics. They know about the cedar, they've used the cedar, they know what cedar to cut for housing, canoes and that sort of things, for baskets and other medicinal purposes, so they know where to go and get all that stuff. But as far as the logging industry itself we don't have any qualified people to actually do that.

Gitxaala Member of Council¹⁸

Due to a lack of prior knowledge in forestry Gitxaala leaders feel they were not fully aware of all the implications of entering into the *FRA* and that they negotiated and

¹⁸ Personal communication June 20, 2006

signed an agreement for an industry for which they have very little technical expertise. The elected Chief claims that Gitxaala has been very up front with the Ministry about their lack of understanding and knowledge in the area of forestry. He told the District MoF that any accommodation received was being interpreted as the floor not the ceiling; they see the Agreement as merely getting their foot in the door. The elected Chief expressed frustration that the MoF has asserted ignorance of the situation by claiming that Gitxaala signatories understood everything pertaining to the *FRA* and that it represents a full accommodation agreement.

Members of Council explained that the lack of knowledge is further frustrated by a lack of capacity to build knowledge and deal with the sudden need to become professional foresters. It was mentioned by Council that the Ministry has put out invitations for training workshops and that those were a great idea; however the problem is that those who are willing and able to attend from the community are over-booked with demands on their time. Gitxaala Council members said that they are limited by the people they have available to take advantage of opportunities such as the workshops to build their knowledge. Chief and Council are inundated with work and demands on their time, making it difficult to have the people available to familiarize themselves with the protocols, procedures and enormous amount of new information required to operate in the forest industry.

Social and Political Issues

Political instability

Given that Council has the potential to change every two years, Gitxaala acknowledged that not separating business from Council could potentially pose a problem for the success of their forest venture. Some Councilors felt that the only way a business venture would succeed was if it was completely separated from politics; however it was felt that they did not have the resources in terms of knowledgeable people to make that separation.

Tension between cultural values and economic development

It was stressed that all of their challenges are not with the outside world; they are also from within their Nation. Current and former Gitxaala Council members expressed the difficulty of developing a stable business strategy in the midst of tension between cultural values and economic development. When a member of Council was asked how he felt about Captains Cove being logged given its cultural significance, he said that all of their land has a cultural connection. He explained that their house leaders lived in all the different territories, “so where do you begin and how do you begin?”¹⁹. He further explained that many of the obstacles that Gitxaala faced in economic development were rooted in the community as they stemmed from Gitxaala elders and their beliefs that ran counter to the commercialization of resources.

¹⁹ Personal communication June 28, 2006

There are no areas that have been set aside for us from our elders to say this is the area you could commercialize and make it sustainable, there hasn't been any.

*Gitxaala member of Council*²⁰

It was mentioned that the community has talked about trying to identify some of those areas, but due to Gitxaala laws and customs it is difficult for elected Council to broach the subject of harvesting trees within house territories.

Gitxaala community members and councilor's expressed frustration with the state of their economic ventures. The need for a solid business plan and strategy for forestry and all other economic development was recognized. They said that in order to deal with their internal issues and create the changes needed to move forward, the initiative of very "business minded" individuals backed by a solid support team was required.

Good vision and a good support team. Too often the committees that they have structured, there's too many negatives in there.

*Gitxaala community leader*²¹

Among those that identified the need for a more business-oriented approach it was still agreed that cultural values had to be respected. However, there was no consensus over the values themselves and how they should be protected. One community member said that he was frustrated that they could not seem to create and implement a comprehensive business strategy; however he also stated that Captains Cove should have been made a park. He was worried that by logging Captains Cove, Gitxaala was going against their principles. He suggested there were other areas where they could start small and then develop further once they were successfully established. He thought that Captains Cove was a prime area, and it posed a high risk situation to the Nation.

²⁰ Ibid

²¹ Personal communication June 27, 2006

The other problem cited with economic development and dealing with community desires and values was that they tended to shift. When a member of Council was asked about the community's reaction to the *FRA* he said that he had heard some of their elders speak in support of it one day and the next day totally against it. He said that this has been a common reaction to many development plans and that Council has dealt with fluctuating opinions by moving forward on the community's initial reaction. It was acknowledged that this was a very stressful situation but that Council had to be decisive when making a decision or projects would never be realized.

It's too hard for us to keep changing back and forth, someone needs to take the ball and take the heat for some of the decisions that were made.

*Gitxaala member of Council*²²

Issues of Trust and Information Sharing

There was concern expressed among members of Gitxaala's Council and community about their business partnership. There appeared to be a general feeling of unease that their partners were not necessarily looking out for Gitxaala's best interest because of their primary focus on the venture's economic bottom line. There is uncertainty amongst Council and Community over how this will impact Gitxaala's future.

He's a good guy but he's there for business you know. And whatever it takes for business to succeed is what he'll do and we don't have people that understand that clearly here. And I'm just afraid he may lead us down the path to self destruct.

*Gitxaala community leader*²³

²² Personal communication June 28, 2006

²³ Personal communication June 27, 2006

There is also distrust by Gitxaala of the sincerity of promises made by their industry partner, especially over employment opportunities. There is a fear that the company will fulfill their agreement by training and allowing members of their community to work but as soon as a Gitxaala employee makes a mistake they will be fired. One member of the community told me that he had been warned by a member of another Nation who had experience with forestry partnerships that before long all Gitxaala workers would be gone and a whole new team of more experienced workers would replace them.

Gitxaala's Council also feels that people from the Ministry are not there to help them succeed; they are only there to look after their own interests. The same sentiments were expressed towards BCTS and others working in the industry. Gitxaala feels that they have had to push the District and forest companies in order to get enough information to negotiate. They feel inundated by information but that the pertinent information has not been provided. Council does not feel that the MoF and industry have been completely up front and honest and as a result they feel that they have not been negotiating in good faith. Gitxaala's Council has been told that they just have to ask the right questions to get the information they desire, but Council feels access to the information is obstructed as they do not know what the right questions are to ask as they have never participated in the industry.

You wouldn't believe the amount of road blocks that are put in when we ask for information and it takes awhile for us to pull out the information, it's like pulling teeth from a tiger...

*Gitxaala's Elected Chief*²⁴

²⁴ Personal communication June 20, 2006

When asked why industry and government were not providing them access to all the information they required, Gitxaala representatives suggested that industry and government is on the defense because they do not understand the Nation's aspirations. Gitxaala feels that there are guards being put up by BCTS, industry and MoF to protect their own interests because there is a fear that Gitxaala is trying to take over the industry. Members of Council said that they were not trying to take over; they are trying to make sure that there is a viable industry for them to work in for years to come.

Members of Council explained that forestry is a complicated business and in order to bring their venture forward they need people that they can trust, who are not in it solely for themselves but for the community and the people. Council has not felt any support from the government or industry and as a consequence they feel that they can only rely on people from inside their community to look out for their best interests.

Discussion

The North Coast District MoF, those currently participating in the forest industry and Gitxaala members of Council were quick to identify economic, structural, social and political factors that were challenging the implementation of the *FRA* and Gitxaala's ability to successfully enter the forest industry. However it became clear that other factors existed that were challenging the implementation of the *FRA* that none of the groups explicitly identified. These issues emerged through analyzing the responses to the questions surrounding the stakeholders' understanding of the objectives of the Agreement.

Lack of a Shared Understanding of the Objectives of the FRA

Although each *FRA* signed, including Gitxaala's, uses a template which states the purpose of the Agreement the research revealed a lack of shared understanding and interpretation for the objectives. Through the findings that have emerged one can argue that there is a lack of shared understanding of the goals and objectives of the *FRA* and it is this absence of a common interpretation which forms the basis of many of the challenges of implementing the *FRA*. Much of the frustration being experienced in the North Coast District seems to stem from the fact that the parties are working towards different objectives and therefore have different ideas of successful implementation. Although the parties are making an attempt to communicate, they are not communicating from a common understanding; this is confounding communication and creating further problems.

When asked whether the other signatories shared their understanding of the objectives of the *FRA* and its successful implementation, all those involved felt that a common understanding existed. The Ministry cited the presence of lawyers and consultants at the negotiation table along with First Nations as proof of this understanding. First Nations cited court cases asserting their Title and Rights as proof that the Ministry understood their objectives. However, a survey of objectives reveals that despite these assertions there is an absence of a common understanding. Industry is not a signatory party to the *FRA* and as such they are not included in discussion of objectives but their perspectives will be reintroduced with the examination of expectations for successful implementation.

The Objectives

The Ministry of Forests and Range

Employees from both the North Coast and Kalum District's MoF were adamant that the *FRA* is purely an economic opportunity as its sole objective is to accommodate the economic component of First Nations Title interests.

Gitxaala Nation

It is important to note before discussing the objectives conveyed by representatives of Gitxaala's elected Council that they expressed hesitancy in signing the *FRA* and continue to be concerned over the impact that it might have on their community and environment. In some ways they did not even feel signing was a choice as the Agreement was the sole opportunity to involve themselves in the forest industry; however there is still a general sense that the benefits of signing outweigh the negatives. The signing of the Agreement has created a situation where Council feels conflicted in an attempt to reconcile community values with what they feel is best for the economic prosperity of Gitxaala.

The environment is number one and sustainability we know is not possible within forestry then why are we doing it? If we know that we're going 15 -20 years then there is no more forest, why did we get into it? Well your kinda damned if you do, damned if you don't.

*Gitxaala's Elected Chief*²⁵

Although members of Gitxaala's Council mentioned economic opportunity as one of their objectives in signing, it was not their only one and they did not judge success solely in terms of profit margins. It was explained that the *FRA* was first and foremost an opportunity, something that has been in short supply over the years. The *FRA* provided Gitxaala with an opportunity that could potentially fulfill their vision of becoming

²⁵ Personal communication June 20, 2006

independent and self governing. It would allow their people to take responsibility for themselves, to take on responsibility for their family and their community. Those are the Nation's motivations for signing the Agreement; their resulting objectives are as follows:

i) Gain control over management of their territory

One of Gitxaala's main objectives in signing the *FRA* was to gain official government recognition of their claim in relation to forestry operations. Gitxaala signed the *FRA* so that the government would be bound to listen to them. Gitxaala has never signed an agreement pertaining to forestry or land use and Council feels that the government has taken that to mean that they do not have a problem with the harvesting happening within their territory. The message Gitxaala felt they received from the government was that if they did not log their territory somebody else would. The *FRA* was seen as a way to protect at least a small portion of their territory by having direct management control. They felt that to officially participate in the industry provided a starting point from which to build and eventually manage their territory themselves.

ii) Provide discretionary income for the community

Members of Gitxaala's Council stated that the community has been in a depressed economic situation for many years. Every penny that has entered the community has been through social programs that come with criteria attached outlining how the money can be spent. This has resulted in very little discretionary funding available to the community. The *FRA* presented an opportunity to bring money into the community that the Gitxaala Nation can decide how to spend and use to benefit the community.

iii) *Build community capacity*

Gitxaala has approximately an 80-90% on-reserve unemployment rate. There was optimism on the part of Council that logging would provide their people with entry into the job market. However, the opportunities that the joint venture will bring to their people are seen to be much greater than just income. Council hopes that the experience will build capacity within the community by creating the chance for their people to become responsible for themselves, and gain pride from being able to support their families.

Some community leaders felt that this change has to be initiated by the younger generation so as to break the cycle of dependency that the government has created. It was suggested that the government never pushed for economic development in Gitxaala; instead they pushed social programming which has resulted in their people becoming satisfied in receiving monthly payments from the government in order to subsist. As a result many of their members are not aggressive enough to compete in the outside world and do not know how to retain employment. One of the objectives in signing the *FRA* was to give Gitxaala members a vehicle to build the necessary skills and tools to enter and be competitive in the market economy.

Lack of a Shared Definition of the Successful Implementation of the FRA

Given that the objectives of Gitxaala and the District Ministry of Forests and Range are different it should not be surprising to learn that their definitions of successful implementation also vary. However, due to the structure of the industry, implementation

does not only involve a First Nation and the District MoF; it also involves consultants, contractors and tenure holders, thus adding an entire new set of expectations.

Differing definitions among the stakeholders for the successful inclusion of First Nations in forestry emerged through the interview process. This is potentially quite problematic as the stakeholders' definition of success appears to form the basis for how they expect *Forest and Range Agreements* to be implemented and therefore their contribution and involvement in the process. The interviews revealed that First Nations see the successful implementation of the *FRA* as contributing towards the process of sovereignty and the creation of a community that is self reliant and able to make decisions concerning their future. The District Ministry of Forests and Range see the *FRA* as a vehicle to create 'certainty' over land use and thus contributing to a profitable and viable forest industry. Consultants and business envisioned *FRA*'s as the catalyst for the formation of stable business partnerships, while tenure holders see the policies in terms of creating certainty of their position in the industry and that this industry is going to be viable in the long-term.

The impact of the absence of a shared understanding of success has been felt by all parties. However, there seems to be no recognition that the challenges being experienced are a manifestation of a fundamental difference in understanding. Instead they have been labeled as trust and cultural issues between First Nations and their business partners and/or the Ministry.

Lack of a shared understanding of the purpose and potential for the revenue sharing component of the FRA

Another area of misunderstanding pertaining to the *FRA* concerns the use of the revenue sharing component of the *FRA*.

Gitxaala's industry partners do not understand why the First Nation is not using the revenue sharing component to train their members and build a workforce. They expressed surprise by the Gitxaala Council's unwillingness to invest in capacity building. The partners feel that Gitxaala's eight-hundred thousand dollars a year would multiply rapidly if they trained and placed their members in full time positions. The partners are perplexed by what they see as a lack of initiative on Gitxaala's part by placing the revenue sharing money in trust and counting on industry to provide successful job training. The industry partners explained that they had resources to do training but not the amount necessary to support the infrastructure, such as daycare and other services to facilitate working parents, which they feel the community requires for building long term capacity. They feel that Council has to participate and it is a reasonable demand given the money made available through revenue sharing.

The District Ministry of Forests and Range however, fully acknowledges that the revenue sharing money is there for First Nations to use at their discretion, however it was mentioned that it could be used by Gitxaala to further their control of management in their territory by bidding on volume like any other licensee. In recognition of Gitxaala's frustrations, a Ministry employee suggested that Gitxaala could bid on Timber Sales just like any other entity if they were so determined to gain more control over harvesting in their territory. When asked if he felt Gitxaala had the capacity to do that, he said

Gitxaala had the resources because they had received the revenue sharing component of the *FRA*, which has “no strings attached” concerning how it can be spent. He was correct in his observation that the Provincial government did not place restrictions on how the money could be used. As a result it is completely up to the First Nation and therefore important that their aspirations for the revenue sharing component of the *FRA* are understood and respected.

Elected Chief Cliff White stated that the per capita accommodation package was deliberately left with the community to decide on its use. He further explained that the money is part of an accommodation package provided by the province to the communities that sign on to the *FRA*; as such Council has put the money in the hands of the community and given them the opportunity to decide how to spend it. Members of Council recognize that to most of the community it is an unimaginable amount of money and as such it has been difficult explaining to them the industrial world’s economic value attached to the dollar amount. However the elected Chief thinks that it is important that the community be given ownership over it and the resulting responsibility to make decisions concerning its use. Council has put the money on the table and asked the community to break it down in terms of how they should use it to address social issues, elders, youth, alcohol and drugs, policing, etc. It provides their people with the opportunity to create an economic formula that will work for the community. Council is trying to get the community to develop a plan to make sure that the fund is not spent solely for the people of today but also for their children’s children.

Differing understandings of the impact of lack of knowledge and experience concerning the forest industry among First Nations

This lack of knowledge and experience is widely identified, however, it appears to be affecting each party in different ways, which is creating challenges; while beneficial to some it is detrimental to others. Consultants see it as huge employment opportunity because First Nations require their services in order to navigate the industry and comply with Provincial policies. In contrast, First Nations see it as a source of frustration because they feel forced to depend on help from outside the community, which creates issues of trust as they attempt to find people who will look out for their best interests. Non –Aboriginal licensees see the resultant reliance on consultants as ‘business as usual’ instead of First Nation inclusion being used to create the larger scale changes in management that they feel are needed to make the whole industry sustainable and viable. The District Ministry of Forests and Range see First Nations inexperience and lack of knowledge as a challenge to the success of their operations. Each district is responding differently to this challenge which is also thought to be a factor in successful implementation.

During the interviews, the difference in progress achieved in the implementation of *FRA*s in the North Coast and Kalum Forest Districts became a topic of discussion and inquiry given their proximity and overlapping industry workers. It is quite a striking comparison and warrants examination in order to help understand the situation in the North Coast District and perhaps glean insight into potential ways to mitigate some of the impediments.

Lessons from the Kalum Forest District

Both the Kitselas First Nation and Kitsumkalum First Nation have been allocated timber as part of an *FRA* and have forestry ventures that are successfully operating and generating a profit²⁶. Representatives from Kalum Ventures (Kitsumkalum) and Kitselas Forest Products were pleased with the way their *FRA* was implemented and looked forward to continued participation in the forestry industry.

The interviews revealed many factors that have contributed to the ability of the Kalum District to successfully implement the *FRA*. It was acknowledged by MoF employees, consultants and contractors that the North Coast is facing a unique set of structural and economic challenges. For instance, the LRMP process has not affected the AAC in the Kalum District and as such has been one of the reasons cited for the relative success of the First Nations in the Kalum District to receive their allocations and get their forestry operations up and running. A complete inventory of the structural and economic differences and their effect on implementation is not within the scope of this study. However, in order to provide perspective to the discussion, the basic structure of the two Forest Districts warrants mention.

The MoF states that only six percent of the total land base of the North Coast Forest District is suitable to harvest. Furthermore the harvestable six percent is found in difficult to access, rugged terrain where road construction is expensive and the majority of harvesting is done with helicopter or cable yarding systems. According to the MoF North Coast Forest District website, the AAC is 546,524 m³ and divided into five Forest

²⁶ Kitselas and Kitsumkalum jointly negotiated an *FRA*. See http://www.for.gov.bc.ca/haa/Docs/kitselas_kitsumkalum_forest_agreement.pdf

Licenses²⁷. BC Timber Sales, International Forest Products (Interfor) and Triumph Timber hold the majority of the AAC, however, recently Interfor dramatically diminished its presence in the North Coast through the Forest Revitalization take back, which has provided the source for *FRA* timber allocations.

Comparatively the Kalum Forest District is comprised of the Kalum and Nass Timber Supply Areas and Tree Farm Licenses (TFL) 1 and 41. The District has a combined AAC of 2,312,884 cubic meters²⁸. TFL 1 has been plagued with mismanagement that has brought with it financial crises to the entire region²⁹. After the demise of New Skeena Forest Products the Lax' Kw'alaams Band made a successful bid and TFL 1 is now licensed by Coast Tsimshian Resources Limited Partnership with an AAC of 611,000 cubic meters. The years of financial difficulties and bankruptcy created a large undercut, which was used to supply the *FRAs* in the District, including Kitsalas/Kitsumkalum's.

Regardless of external variables the reality of the situation is that both Districts have the same powers and authority over the implementation of the *FRA*. What became clear throughout the interviews with both District Managers and their staff was that the Districts have very different interpretations of their roles and consequently very different strategies towards the implementation of the *FRAs*. It should be noted at the outset that the intent of the following discussion is not to place all of the blame for the problems in the North Coast on the District MoF. The following is a reporting of the views expressed during the research and serves to illustrate how, without strong policy directives, local policy can impact the delivery and outcome of Provincial policy. From the previous

²⁷ Available at: <http://www.for.gov.bc.ca/dnc/>. Accessed February 25, 2007.

²⁸ Available at: <http://www.for.gov.bc.ca/dkm/>. Accessed February 25, 2007.

²⁹ See Stirling 2005 for a detailed discussion of the history of TFL 1

discussion of the challenges to implementation it is evident that there are many factors contributing to the North Coast's difficulties, including the political and structural organization of First Nation communities. Notably this is also mentioned in the following discussion of the three key factors to the successful implementation of FRAs in the Kalum District. However this does not negate the importance of the finding that when there is an absence of strong policy directives individuals and their politics and personalities have a large impact on whether or not implementation is successful³⁰.

In the North Coast the lack of strong policy directives was mentioned as an issue that challenged implementation. In the Kalum Forest District, instead of this being detrimental to success, the District MoF stated that it had actually given his office the latitude to create success. The difference in attitude was felt by First Nations and industry workers. The DM in the North Coast was cited by First Nations, contractors and consultants working in the area as being a major impediment to implementation of the *FRA*. It was felt that it was under his authority and therefore within his capacity to get the timber allocated and First Nations forestry operations running. The DM in the Kalum District in contrast was thought to be very progressive in the way he was handling implementation and that he was personally a major catalyst for successfully integrating First Nations into the industry.

This difference in the District Manager's understanding and attitude towards First Nation inclusion in the industry was epitomized in their differing responses to questions posed about *The New Relationship* and how it was affecting the way they conducted their

³⁰ See Parfitt 2007 for an in depth discussion on how policies vary across Districts through the use of ten case studies.

job. The North Coast DM said that *The New Relationship* had not affected his work with First Nations.

No changes. The New Relationship is very interesting. It's more a philosophy than anything else. I work in the legislated, legal world that isn't affected by the New Relationship. The NR is a very high level way of thinking. I wasn't advised about it before it was signed; it's strictly a Provincial higher level document. I have an understanding of what it looks like, but I was given no directives concerning it. I've been granted statutory authority, and because of that I would expect to be immune from it.

*North Coast District Manager*³¹

The DM from the Kalum District was also asked if *The New Relationship* had changed his role and relationship with First Nations and if his office had been given any directives, or indications about what it meant.

Well ya I was, but they're very broad. And that's the best message that I could have been delivered. The one I really wanted was that this is going to mean what it means for every community of every First Nation.....And so I met with all the relevant three [First Nations] within my borders.....And I just asked them what does it mean to you? And I asked all of them, had meetings with them. It's now part of our strategic plan for the district this year...

*Kalum District Manager*³²

When told that another DM had referred to *The New Relationship* as a philosophy the Kalum DM replied:

Well it is a philosophy you can look at it that way, but there are expectations there, there is no doubt about that. I can show you our strategic plan and that's what's driving it this year. And [the implementation/application of the New Relationship] is an open question, we'll have to find out what it is. I've started doing my own work as a DM so I can provide direction.

*Kalum District Manager*³³

³¹ Personal communication June 9, 2006

³² Personal communication June 19, 2006

³³ Ibid

The research revealed three key factors contributing to the success of implementation of the *FRA* in the Kalum District. These factors were repeatedly cited by the Kalum District MoF, consultants, tenure holder and First Nations. Interestingly aspects of these factors played a role in either identified or emergent issues impeding implementation in the North Coast Forest District.

i) Presence of a strong implementation strategy

In the Kalum District it was expected that First Nations would not have the capacity or knowledge to deal with the *FRA* and therefore this issue was factored in and planned for during implementation. The Kalum District Manager felt it was his office's responsibility to help First Nations understand their options and that it was their duty to help them successfully navigate the industry. At the outset the DM, as well as his Stewardship Officer and Operational Manager, spent time with the First Nation leaders as they attempted to ascertain each Nation's objectives concerning community employment and guide them in achieving those goals. This involved the District helping First Nations licensees understand the consulting expertise they needed and where to access them. Furthermore the DM personally walked the cut blocks in order to make sure that the Nations first opportunities were good ones, stating that the best strategy in a changing environment is to "map out early wins". A District employee said that these were measures that they would take with any industry start up; it was their job to make a licensee successful, "We don't just issue tenure, we have to issue tenure with the hope that they're going to succeed. You have to take into consideration the experience they don't have versus other licensees and try to get them up to speed on what it means." The

story encountered in the North Coast was very different. When the DM was asked about his office's role in the implementation of the *FRA* he responded that the District was responsible for implementation only to a degree, that First Nations also played a large role in implementation. While the Kalum District saw it as their responsibility to make First Nations in their area successful licensees, the North Coast stressed First Nations responsibility in making the *FRAs* work and the Nation's responsibility to make wise business choices.

In the North Coast District determining operating areas has been a major stumbling block in the implementation of the *FRA*, especially in the case of Gitxaala. This issue was anticipated by the Kalum District as being potentially problematic and therefore their implementation strategy included "rules of the game" for determining operating areas that were transparent. The goal was to get everyone to understand that working together to determine operating areas was in their collective interest. That being said it was acknowledged that it was still a difficult process.

Quite difficult, it's a very constrained land base.... So it was very difficult so it just had to be directly managed and most of that involved brokering memorandum's of understanding around operating areas, who had the rights, who didn't, what those rights were and what they could and couldn't do. Sort of what I call the rules of the game, rules of fair play in my management units and you know there have been rubs for sure. A long long history of exclusive access on TFL's and then you go in and drop another licensee who happens to be a First Nations who happens to have a long history with another band, so complex relationships. But appealing to the chiefs to leave the politics up here and let me do business down here in the collective interests of everyone.

*Kalum District MoF employee*³⁴

The lack of directives from the Province concerning the implementation of the *FRA*'s was cited as a challenge to implementation in the North Coast. However in the

³⁴ Personal communication June 19, 2006

Kalum District the lack of strong directives from the Province was seen as having a positive effect on their ability to successfully implement the *FRA*. Through a direct working relationship involving frequent contact, the District felt they had a better understanding of the First Nations within their District than the Province and were therefore better positioned to provide directives.

We know our clients, and I just gave them [the Ministry staff] really strong direction, I want these things to succeed, period. And if you have good folks that's all you need to do, other than being a little more specific and saying by this date I want this, they'll find their way.

*Kalum Forest District Manager*³⁵

The Kalum District also recognized trust as an issue and consequently identified transparent and honest interactions and communications as critical components to their strategy.

The implementation strategy of the Kalum District has been positively received by First Nations. Representatives from Kitselas's and Kitsumkalum's forestry operations were very complimentary of the Kalum District MoF and even stated that the MoF has gone out of their way to help them get started. Consultants working with Kitselas and Kitsumkalum were also very impressed with the way the District has handled implementation. This is in contrast to Gitxaala and consultants and contractors working in the North Coast, who stated that the North Coast District have not facilitated successful implementation and have actually been an impediment to implementation.

³⁵ Personal communication June 19, 2006

ii) *First Nations attitude and business structure*

The attitude of the Kitselas and Kitsumkalum Bands and the way they structured their business was cited by the MoF, consultants and the First Nations themselves as contributing greatly to the success of the *FRA* in the Kalum District.

A lot of it is their internal structure. They've structured themselves with an idea and an attitude that they're going to go forward and they're going to be successful. They've been open to just doing what it takes, they've also made a distinction in their minds, Kalum Ventures specifically, that Kalum Ventures is a company, yes it is a Kitsumkalum people's company, but it's a company that has to be profitable and has to be viable. They originally structured it so they were going to do a lot of different things, so they were going to use the forestry as their seed money.

*Consultant working in the Kalum District*³⁶

Kitselas and Kitsumkalum First Nations have had what has been interpreted as a "can do" attitude and much of their success is attributed to it. A representative of Kalum Ventures said they did not wait to be told what the Agreement could or could not do for them; instead they pushed ahead and made it work under their terms. Granted this attitude also required a progressive implementation strategy such as that found in the Kalum District, but it cannot be overlooked as an integral part of their success. A consultant stated that a large part of this attitude is derived from the First Nations knowing what they want to get out of the *FRA*. The MoF must have a plan and so must the First Nation. It was acknowledged by stakeholders that the *FRA* might not be the perfect solution for including First Nations in forestry but as Kitsumkalum and Kitselas have demonstrated there is the potential to make them work in a manner that benefits a Nation.

Well in the case of Kalum Ventures and the Kitsumkalum people for sure it's been positive, they're up they're running, they're profitable. It's been nothing but benefit from their perspective. Kitselas has also benefited, there up there running

³⁶ Personal communication June 19, 2006

there logging, so that makes a big part of it as well, and as far as I know they're profitable as well.

*Consultant working in the Kalum District*³⁷

iii) *The presence of a shared understanding*

This research cites a lack of a shared definition for the successful implementation of the *FRA* as an impediment to its implementation in the North Coast Forest District. It could be argued that part of the success of getting the *FRA*s working successfully in the Kalum Forest District was the District MoF's ability to create an understanding among the affected parties that the *FRA* had to be separated from other issues, such as treaty and overlapping lands - that it was solely about good business, not "higher level" issues. This approach has worked very well by all accounts, including those from First Nations in the district. However it must be cautioned that this particular shared understanding may not be achievable and/or appropriate for other Districts. A shared understanding is required, but each District should work with First Nations to create one that they find mutually acceptable.

Although there are lessons to be learned from the Kalum District it is not suggested that they be used as a template, if anything this research has demonstrated the complexity of the situation and the inability of a 'cookie cutter' approach to the inclusion of First Nations in forestry. However, the Kalum District does provide some examples of how some of the issues that have arisen in the North Coast might be mitigated.

³⁷ Personal communication June 19, 2006

The Current Outlook and Possible Future for Gitxaala

Presence of optimism despite challenges

Despite the challenges and concerns with the *Forest and Range Agreement* in the North Coast there is still optimism that the timber allocation will provide an opportunity for Gitxaala to create jobs and build capacity within their community. Members of Gitxaala's Council felt that once their people learned how to be entrepreneurs and how to work hard, that they would succeed. Despite the frustrations, consultants and contractors are also optimistic that *FRA*s have the potential to create economic and social stability for both First Nations and their business partners. They are aware of economic and social issues in the communities and say that when they entered the partnerships they felt a sense of responsibility towards the community and despite the obstacles they are still committed to their promises and goals of helping the community benefit.

Gitxaala's Council acknowledges that there has been, and continues to be, conflict between them and forest operators in their territory. However it was felt by members of Council that in spite of it, or perhaps even as a consequence of it, a foundation for relationships was being built and they were moving forward. Members of Gitxaala's Council feel that communication is improving. In the past the Nation tried to block everything that an operator tried to do in their territory. They explained this was in response to the fact that they were not given an avenue to assert their opinion over where and how industry could operate. Council feels that the *FRA* has met one of their main objectives because it has given them a voice in operations occurring in their territory which is helping communications and consequently relationship building. However Gitxaala made it clear that there are still issues that need to be rectified in order for the

parties to be able to continuously work together in a productive fashion. They suggested that in order to accomplish this, all the licensees need to come together and develop a process to decide where they are going to cut blocks, rather than the current practice of waiting to announce their location once it had already been decided.

Industry members of the North Coast still maintain that it is vital that First Nations become a part of the industry. They feel that the *FRA* has been a vehicle to create understanding between industry and First Nations and like Gitxaala, they also believe that understanding and relationship building is gradually moving forward in a positive direction.

In terms of the North Coast Ministry of Forests; progressive, forward looking people are needed on all fronts if the *FRAs* or any other policy for the inclusion of First Nations in forestry is to be successful. Industry workers stated repeatedly that the culture of the MoF needs to change in order to properly deal with the changing industry. Consultants and tenure holders suggested that these changes were slow in occurring due to the presence of long-term employees who were reticent to apply changes, and there is a consequent need for employee turnover in order to revitalize the Ministry.

Relationships between the industry and First Nations appear to be moving forward in the North Coast District, in order for their potential to be realized they need be fostered by the governing institution.

The Obstacle

Gitxaala has identified a lack of planning for sustainability as the major issue of the *FRA*, and therefore sustainability needs to be directly addressed in order for implementation to be successful. This is a major hurdle as it requires a large shift in the

way the industry is currently operating, and has been operating since its inception. This does not preclude the change from happening, however it is probable that it will take longer than the duration of the agreement. There may be an option for the interim that will allow Gitxaala to operate without compromising their values or the environment. It must be made clear that this is in no way a solution as it does not address the larger issue of what other operators are doing in Gitxaala's territory; however it may provide Gitxaala with an acceptable short term and viable opportunity while larger changes are being processed.

Members of Gitxaala's Council and community have expressed interested in a value-added venture because they feel it has the potential to be more environmentally sustainable and create greater employment opportunities. Their concern with sustainability has made them adverse to clear cutting and their mistrust of employment promises has made the idea of only finished products leaving their territory more appealing. Gitxaala feels that the market will be there if they take the time to produce quality items. In general it was suggested that value-added production would let them gain more from the forest and its resource. It is therefore recommended that the resources be put in place in order to help them set up a value added enterprise.

THE BIG QUESTION: What happens at the end of the five year term of the FRA?

None of the participants felt that First Nations would be left without another offer to continue working in the forests at the end of the five year term, however there was great uncertainty over what the offer would entail.

Consultants and contractors expect that the *FRAs* will be renewed or replaced by another form of tenure, they see these Agreements as a step towards treaty, and as such they feel that First Nation control will only increase in the future.

In the North Coast the DM felt it was too soon to start thinking past the current five year term of the *FRA* as none of the First Nations in his territory had begun their logging operations. The Kalum District DM expressed concerned about the situation because expiry is fast approaching for the Agreements in their District as First Nations in their District were among the first to sign *FRAs*. Furthermore Kalum District employees said the current allocations in the District are based primarily on undercut not on AAC allocation; there is currently no outstanding available AAC so they do not know where the next round of allocations will come from. They stressed that they have no input over what will happen; for them it is merely a waiting game to see what policy will require a strategy to implement next. Forest venture representatives from the Kitselas and Kitsumkalum First Nations are quite keen to continue in forestry and have raised the question of future licenses and allocations with the District. A representative from Kitselas said that despite the uncertainty they were moving forward with a plan so they would be ready for when the next opportunities were announced. The Ministry and First Nations in the Kalum said that the uncertainty about what is going to happen after the five year term makes long term planning difficult.

Conclusions and Recommendations

A mechanism to include First Nations in forestry which satisfies all parties and that is realistically achievable within the constraints of the industry has been elusive and

has resulted in conflict and uncertainty over land-use. It was the intent of this research to contribute to the much needed creation of a general understanding of the obstacles faced by First Nations, the District MoF and Industry during the inclusion of First Nations in the forestry sector through the *Forest and Range Agreement*. None of the participants in the study suggested that the *Forest and Range Agreement* is the perfect solution.

Gitxaala's Council explained that timber allocations may not be ideal, but not having any stake in the industry will not give them any advantages. Gitxaala and other First Nations are in a difficult position; they must carve out their own niche and attempt to meet their diverse objectives using a 'cookie cutter' policy within an industry that is politically, legislatively and bureaucratically rigid. In contrast, industry and the District MoF are faced with a rapidly changing context in which they must conduct their business and mandate. Although the necessity of this change is recognized they are struggling to find a way make it work that does not compromise their livelihood and success amid volume, market and economic realities.

By all accounts the *Forest and Range Agreement* is flawed; however it remains the Provincial policy for the First Nations interim accommodation and as such must be implemented in good faith and in the spirit of *The New Relationship*. Some preliminary recommendations were made in the previous section concerning the successful directions for the future implementation of Gitxaala's *FRA*. Aside from specific recommendations for Gitxaala this study points to a general need to link policy formulation with implementation in order for the *FRA* to meet the promises of a new relationship by the Premier. There must be an understanding by those who are creating the policies of the unique situations that the policy will encounter across the Province during

implementation. This requires direct First Nation participation throughout the process, in true spirit of *The New Relationship's* promise of shared decision-making. Based on the findings of this research it is recommended that there be an integration and collaboration of First Nations and *all levels* of the District Ministry of Forests and Range in order to produce the following:

- i) *The establishment of a forum for the open discussion of stakeholder interpretation of policy objectives*

Interviews conducted with the stakeholders explored whether the *FRA*s were seen to be meeting their objectives and if these objectives were commonly understood.

Through this process differences in understanding emerged concerning the objectives of the *FRA* and the successful implementation of the *FRA*. None of the stakeholders seemed aware that their understandings were not shared by the other parties. This research has demonstrated that many of the issues and challenges emerging with implementation in the North Coast Forest District are the result of a lack of understanding between the stakeholders of each other's objectives and goals concerning the Agreement.

Accordingly, the objectives that each stakeholder has and how they fit within the framework of the policy must be clarified and understood if implementation is to be successful by all standards and definitions. This is not a straightforward recommendation and will take work to realize because as the Gitxaala Nation demonstrates each stakeholder is not a homogenous unit with unified objectives nor, as in the case of BCTS, do stakeholders necessarily have control over the objectives their organization is trying to achieve.

ii) *The development of a comprehensive implementation strategy for each District*

The interviewees identified economic, structural, social and political factors that were challenging implementation in the North Coast District. A comparison to the Kalum District suggested that many of these challenges have the potential to be mitigated if properly addressed and planned for using a comprehensive implementation strategy that accommodates the current realities of the District.

iii) *Further examination of the factors influencing successful implementation*

Throughout the study it became apparent that there are many variables affecting the implementation of *Forest and Range Agreements* in the North Coast and the Kalum Districts. These variables include but are not limited to: timber profile of the Districts, the level of AAC in the Districts, the business approach and attitude towards First Nations of the licensees, the structure and business approach of the First Nation, the level of prior experience a First Nation has in forestry, the initial start-up capacity of the First Nation and the initiatives and implementation strategies of the District offices. Further research and analysis must be done in order to isolate and understand the variables so that they can be accounted for in policy formation. It is recommended that the research be expanded on a Provincial scale as it is hypothesized that similar and unique challenges are currently affecting other Districts.

iv) *The creation of a chain of accountability for the delivery of Provincial promises*

It was repeatedly mentioned that the Premier was taking the correct approach concerning relationship building with First Nations but that it had not yet filtered down to

lower level government employees. The result has been governmental-induced road blocks throughout the implementation process despite Provincial promises. For example, this research has revealed that BCTS' mandate and structure make relationship building difficult. Their mandate and structure should be revamped in order to be able to deal with First Nations in a manner consistent with the spirit of *The New Relationship* and the Provincial promises of the *FRA*. It is unacceptable that a Provincial entity is currently one of the most universally identified road blocks for the successful inclusion of First Nations in forestry. The entire administration of the Ministry of Forests and Range must be streamlined in order to make it consistent with Provincial policies and initiatives.

How did Crown and Gitxaala relations arrive at this point? Why is there so much misunderstanding and animosity present in the implementation of a policy which is deemed necessary and fundamentally positive by all those involved? What follows is an attempt to contextualization and understand how Gitxaala and the Province have found themselves in this predicament.

Section 2: Contextualization and Examination of the Research Results

2.1: Towards A Shared Understanding

“We agree to establish processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing, recognizing, as has been determined in court decisions, that the right to aboriginal title “in its full form”, including the inherent right for the community to make decisions as to the use of the land and therefore the right to have a political structure for making those decisions, is constitutionally guaranteed by Section 35. These inherent rights flow from First Nations’ historical and sacred relationship with their territories” (The New Relationship 2005: 1).

Introduction

The overriding principle of *The New Relationship* is a commitment by all parties to work towards the reconciliation of Aboriginal and Crown titles and jurisdictions. One of the main goals expressed by the document is to achieve First Nation self-determination by allowing First Nations to exercise their jurisdiction over land and resources with structures that act in accordance with their laws, knowledge and values (The New Relationship 2005: 2). *The New Relationship* lacks any attempt to clarify the boundaries and content of First Nation ‘self determination’ and therefore there is ambiguity as to the level of autonomy these First Nation structures will have, and their power and authority relative to pre-existing Federal and Provincial decision-making institutions. The document does however explicitly assert the collaborative nature of the *New Relationship* by stating that the relationship will be centered on shared decision-making at the level of content, process and implementation. It is therefore presumed that these new structures will occur within Nation to Nation shared-decision making institutions. However as of June no “new institutions or structures to negotiate Government-to-Government Agreements for shared decision-making regarding land use planning, management, tenuring and resource

revenue and benefit sharing”, as stated in The New Relationships first Action Plan, were developed³⁸ (NR 2005: 4). This appears to be resulting in Provincial discrepancies in terms of First Nations access to resources and revenue sharing, instead of resulting in the overall goal of reconciling First Nation and Crown jurisdiction.

The ambiguity of the *New Relationship* was probably what enabled First Nations and the Province to reach an agreement; however the evidence from the Gitxaala *FRA* implementation study contends that it is now what threatens to create a crisis of legitimacy and trust and disrupt what appeared to mark a positive change in a historically difficult relationship. In order for the Provincial government and First Nations to create successful shared-decision making structures they must first reach a shared meaning for the *New Relationship* in general and shared decision-making in particular.

This process necessitates the creation of a shared understanding of the history of First Nations and Crown relationships in order to contextualize current negotiations and clarify the position and experience from which each party is speaking. From this context a full hearing of both the provincial and First Nations aspirations and expectations is then required. By contributing to the development of a shared understanding of the First Nation and Crown relationship and aiding in the elucidation of current aspirations, I hope that this thesis can play a critical role in the challenge faced by the *New Relationship* of reconciling First Nation rights concerning land and resources with the existing rights of non-First Nations in the pre-treaty environment. This requires direct consultation and communication with each individual Nation as their expectations, like their histories and past relationship with the Province, are unique.

³⁸ Since June an inclusive shared decision making structure was realized in the Gitanyow Forest Agreement, however so far it is unique and not present province-wide (MoF 2006).

Towards a Shared Understanding

A Shared History: Historization of First Nations and Government Relations

“Our shared vision includes a celebration of our diversity, and an appreciation of what we have in common.” (NR 2005: 2)

In order for there to be a successful creation of a governing body capable of reconciling First Nation’s rights concerning land and resources with the existing rights of non-First Nations, there must be recognition, understanding and incorporation of the impacts of colonization on indigenous culture, knowledge and practice (Butler ND: 123). The *New Relationship* is not the ‘First Relationship’, as its name implicitly implies. The agreement signed in March 2005 is an attempt to change the course of a historically destructive relationship defined by dominant society’s attempt to assimilate First Nations into their paradigms. The recognition that the way in which First Nations were/are treated by the State must undergo a fundamental change is a positive step; however this admission alone does not negate past injustices or their reverberating effects.

Although the colonial legacy must be acknowledged, recognized and understood in order to inform a shared understanding of past relationships from which to move forward; this historization must not deny that First Nations have used novel and creative ways to adapt instead of assimilate to Euro-Canadian culture. There is a misguided notion amongst non-native Canadians that First Nations culture can be summarized through the use of prefixes; everything *pre* contact represents ‘traditional’ aboriginal society, while everything *post* contact is a reflection of a colonized society. This has proven to be a damaging myth as it obfuscates the reality that First Nations continue to use their ‘traditional’ values, cultural meanings and practices to interpret and interact with their

environment in general, and with Canadian society and institutions in particular. As First Nations have gained increased recognition of their title and rights, the term 'tradition' has been used to reject the notion that First Nations have any valuable insights into industries such as mining and forestry that did not exist pre contact. In effect it has been used to counteract their authority and legitimacy in resource management by denying the adaptability and dynamism of First Nation culture (Nadasdy 1999: 4). This is a gross misuse of the word by dominant society and it must be confronted in order for First Nations contribution at the decision-making table to be properly understood and given the credibility that it deserves.

All parties have to look forward but in looking forward an awareness of their combined history and its differing impacts and interpretation is required, as this forms the foundation for their expectations and outlook heading into this new relationship. Through the historization of this relationship and the demystification of First Nations as a static culture, anthropological tools can help create a broader awareness of the diverse perspectives of the past in hopes of creating greater understanding amongst all Canadians in the present. Anthropological insight may seem to be an odd choice for this role, given its much criticized complicity in colonization. However, I contend that anthropology's past (albeit detrimental) involvement gives it the perspective required to fully appreciate the historical relationship between First Nations and the Crown; hopefully imparting the necessary ethical responsibility to make sure that this is done in a way that does not further past injustices. In addition, Anthropology and its practitioners have long documented the persistence of culture and therefore already possess the information

critically important to First Nations at a time when the very existence of ‘traditional’ knowledge is being questioned.

A Shared Understanding of Aspirations: What is co-management?

“We agree to establish processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing...” (NR 2005: 1)

New shared decision-making bodies need to be created in an environment that simultaneously understands and openly acknowledges past impacts of colonization with the persistence of First Nations culture. However, the process of creating shared decision-making structures must also identify and confront the underlying goals of past regimes such as co-management, in order to gain the legitimacy, trust and cooperation required for new forms of shared-decisions making to be successful. As Nadasdy (2003: 9) argues, the inability to settle land claims or find a suitable structure for co-management is not due to a lack of expertise, technical capacity or the fault of individuals in the process; it is a problem inherent in the underlying assumptions driving these processes. This issue can be exemplified through recent attempts at co-management and must serve as a warning to remove ambiguity and confront underlying assumptions and aspirations of both the province and First Nations in order to prevent the recurrence of similar scenario in shared decision-making.

Since its inception co-management has come to be associated with a multitude of definitions and incarnations, in its broadest form it is simply conceived as “any form of cooperation among resource users and managers in natural resource management” (Smith 2005: 409). It has become a catch all term used to describe various arrangements between local communities, private companies and government agencies. Like the *New*

Relationship, due to its ambiguity the province and First Nations were able to reach consensus on its implementation, however this ambiguity has had catastrophic implications for relationship building as divergent understandings have created damaging expectations and further compounded issues of trust.

For the most part co-management has been born out of conflict, and as a consequence the BC provincial government has come to view co-management as a politically expedient tool to create stability through the incorporation of First Nation knowledge and values *into* a western framework of resource management. This has been problematic as many First Nations see it as a vehicle to gain authority to decide the uses and management of the land and resources within their asserted territory (Mabee and Hoberg 2006: 3). In effect many First Nations see co-management as being born out of a “political claim to the right to share management power and responsibility with the state....an attempt to formalize a *de facto* situation of mutual dependence and interaction in resource management” (McCay and Acheson 1987: 31-32 *in* Smith 2005: 411). These different views of co-management are arguably products of differences in the underlying tactics of First Nations and the State described by Woolford and Ratner (2003); Aboriginal rationalism vs. governmentalist prudentialism. An understanding and acknowledgement of these tactics is essential before the successful creation of new ‘shared decision-making bodies’ as it will help clarify the difference in how each party interprets ‘self determination’.

Woolford *et al* (2003: 4) describe Aboriginal rationalism as an attempt towards moving all negotiations in the direction of sovereignty, while government prudentialism refers to an attempt to confine Aboriginal control to forms of self-governance that

demand their integration into the global market. In practical terms the government sees treaty negotiations in general and interim measures specifically, as vehicles to create economic and political ‘certainty’ within the province in order to attract and maintain investment. The federal and provincial governments do not foresee this ‘certainty’ being reached through aboriginal sovereignty, but rather through aboriginal ‘self governance’ which they see as a distinct term. Aboriginal ‘self governance’ will allow aboriginals the autonomy to control their affairs, however this will only occur *within* the regulatory framework and already established operations of the provincial government. Ideally this would occur without governmental intervention but be driven by the necessity for First Nations to position themselves to compete for capital investment in order to enter the globalized economy and sustain their communities (Woolford and Ratner 2003: 13). With this notion of governmental goals and strategies clarified, the oft cited empowerment of First Nations through co-management becomes a questionable means to a First Nation’s end goal of ‘self-determination’ through structures which allow them to interact with their environment according to their own values and beliefs (Nadasdy 2003: 9).

When the term ‘co-management’ entered the management lexicon, many First Nations were optimistic because they had the expectation that it would lead to meaningful participation and empowerment (Smith 2005: 414). Some First Nations have since become disillusioned with the term as it has not resulted in the recognition of their rights as they had anticipated. The use of the term ‘shared-decision making’ may be seen as an attempt by the government to distance itself from the stigma that now surrounds the term. Switching the term is not sufficient. The research in Gitxaala demonstrated that Chief and Council had deep seated issues of trust concerning their industry partners and

the District MoF. Chief and Council were skeptical about their intentions given past encounters that had negatively impacted their communities. The understanding and acknowledgement of underlying goals and tactics is vital and must be reconciled before there can be a creation of true shared decision-making. First Nations and Government are coming to these negotiations with a historically difficult relationship that has been propagated through conflicting agendas, goals, visions and definitions. We have reached a place where there is a common agenda to implement the agreed upon terms of the *New Relationship*, however, the same ambiguity and miscommunication over goals, visions and definitions that marred past attempts at reconciliation are still present. There must be a sharing of the aspirations of each party with regards to the *New Relationship* in order to remove ambiguity and prevent a scenario similar to that which has occurred with co-management. If solutions are to be found this problem must be addressed.

How Does One Share?

Confronting power imbalances

In order to avoid further misunderstandings, a shared vision for decision-making is needed and therefore a full hearing of both Crown and First Nation aspirations and expectations is required. However, the ability for First Nation's aspirations to be heard, understood and properly incorporated alongside those of the Province presents a problem due to the history of inequality previously discussed as well as other political, personal and institutional challenges. Somehow these difficulties must be addressed and overcome to ensure that First Nations are given all the opportunities and tools necessary for the creation of bodies that are representative of their knowledge and management systems.

Through their juxtaposition of being insiders/outsideers of both Crown and First Nation communities anthropologists have the potential to facilitate meaningful communication between First Nations and government and its varying institutions (Sillitoe 1998: 230). Salisbury (1976) is an advocate of the anthropologist as societal ombudsmen. Although I find flaws in Salisbury's methods of 'scientific impartiality and openness' and 'neither agreeing with nor opposing an informant' (260 – 261), due to issues of alignment discussed later, the concept has merit and is applicable to the formation of the shared-decision making structures under the *New Relationship*. The framework of the *New Relationship* is a unique situation in which the required conditions for the application of anthropologist as societal ombudsmen are met: there is an enlightened central bureaucracy who is aware that First Nations views differ from their own and *must* be listened to and understood (Salisbury 1976: 263). In this scenario anthropologists could serve as a mediator for these two conflicted groups by translating the different perspectives and viewpoints of each group (Salisbury 1976: 257). *However*, the idea of the anthropologist as ombudsmen is not to negate or diminish the role of First Nations self assertion. Salisbury (1976: 261) is quick to point out that the ombudsman is not a replacement for local expression of opinion. The ombudsman is merely a catalyst for open discussion as they may be in a position to phrase locally significant issues in terms understandable to provincial institutions and visa versa. Regardless, the affected First Nations people must be the ultimate voice in the discussion with the Province.

The government must know how First Nations *themselves* react to, and conceive of, the changing forms and configurations of power that accompany a *New Relationship* with the Provincial government. Since initial contact many government policies have

been intentionally discriminatory and assimilative. The *New Relationship* has brought hope of a new awareness of social responsibility, justice and equity in Crown interactions with First Nations. The approach taken by the Kalum District Manager shows promise, in that his office is consulting with each First Nation within the District in order to find out what the *New Relationship* means to them and how they want it implemented. The District Manager is using this information to tailor the Kalum District's strategic plan to meet each Nations' individualized understandings and objectives. This could provide a real world model on which to build and operationalize the *New Relationship* and shared decision-making. Whether intentional or not, policies affecting First Nations made without directly consulting First Nations have resulted in a more insidious form of discrimination as they have born the false moniker of being 'just' and contrived in First Nations 'best interests' (Nadasdy 2003: 1). Neither anthropologists nor any other academic or professional affiliated group have the right to speak for First Nations, only with them. This requires recognition of the paradigms inherent to social science and their contribution to the maintenance of social inequality (Menzies 2001: 31) There must be a transformation in the traditional role of the informants to that of 'co-intellectual' instead of merely consultant in the production of knowledge (Lassiter 2005: 21). This requires collaboration in an ongoing negotiated process between the anthropologist and community 'partner', as the anthropologists' role will develop in response to expressed needs by individual First Nations communities. In this way First Nations will be given control over what, when and how information is communicated to the Provincial government and this will result in collaborative ethnographies, which Lassiter (2005: 16) espouses as texts capable of empowering communities by being relevant and responsive

to their needs. This approach is necessary given the structural power imbalance that First Nations must overcome to become 'equal' partners. This addresses head on the power and politics of representation by removing the anthropologists as the top of a hierarchy which decides the voices and issues that are privileged (Lassiter 2005:12). As well the process of close collaboration has the potential to empower communities by training local people with skill sets and techniques to enable them to conduct research independent of the anthropologist (Salisbury 1976: 259).

The anthropological conundrum

Up until this point in the discussion it has been assumed that anthropologists are willing participants in the effort to create shared decision-making bodies; it has been assumed that the discipline would become involved in overt empowerment initiatives. This presents problems from an anthropological perspective because of its social engineering implications. It clashes with the anthropological tenet of cultural relativism – not judging others' practices even if they offend their moral code. Anthropologists tend to see themselves as 'knowledge brokers', who allow members of a society to maintain control over their own lives, instead of having social solutions imposed on them by outsiders (Sillitoe 1998: 231). I agree that anthropologists should be wary of playing a top-down role. However, since anthropologists did not play a passive part in the history of the relationship between the Canadian-State and First Nations, they cannot now try to hide behind the guise of cultural relativism. Whether or not we acknowledge it, we are all enmeshed in a political web and all of our actions have repercussions. As Menzies (2001: 26, 22) argues, research with First Nations is a political act irrespective of the

researchers intentions and due to this anthropologists must become politically engaged and self-consciously align themselves or risk contributing to the further expansion of power and knowledge of the dominant society at the expense of the oppressed.

Anthropologists have relied on the good will of their informants for years; they have taken knowledge and brought it back to the academy without leaving anything in return. This is a chance to give back. Instead of interpreting it as social engineering it should be understood as a social responsibility. As Dyck and Waldram (1993) argue, “anthropologists who have undertaken research among Native Canadians, and who in many cases have built their careers on such research, must recognize their moral obligation to assist these peoples to achieve their goals (28).”

Conclusion

First Nations and Provincial relations are fragile and the context and cause of this fragility must be understood and openly discussed to create a solid foundation from which to build. The creation of shared decision-making structures requires a shared understanding of history and the aspirations and assumption of both the Province and First Nation peoples. It is not easy to achieve a sympathetic awareness of others' views, but the elucidation of the colonial legacy, the demystification of the past and the confrontation of power imbalances that has previously marginalized First Nations aspirations, can greatly contribute to the process. Although the wording of the *New Relationship* might be seen as ‘constructive’ ambiguity, as the research in Gitxaala demonstrated, it will quickly become destructive if the expectation of any signatory fails to be met during its implementation. Reconciliation must begin from a foundation of shared meaning and mutual understanding. The next chapter attempts to contribute to

this process for the Gitxaala Nation through the examination of the impact of economic change from pre to post contact on Tsimshian values.

2.2: Assimilation or Adaptive Innovation? An Examination of the Impact of Economic Change from Pre to Post Contact on Tsimshian Values

Introduction

“In creating relationships in which First Nations and industry are ‘partners in development’, First Nations cultures internalize capitalist values. Greater incorporation obviously fulfills a need – that of improving the everyday lives of First Nations people – but it is accompanied by the risks of a new form of colonization. Whereas colonization in the old economy employed physical and legal force to control First Nations and exploit their traditional lands, in this new colonization First Nations are disciplined by the need to compete in the economy in order to ensure continued benefits” (Ratner et al. 2003: 231).

The underlying assumption of using economic mechanisms to transform values hinges on Walt W. Rostow’s Modernization Theory that was originally developed to explain the impact of Western capitalism on the Third World (Hosmer 1997: 7). The Modernization Theory hypothesizes, “a growing similarity between developing and developed nations as an inevitable outcome of economic advancement”. Accordingly, “as lesser developed societies expand and diversify their economies, they will increasingly resemble more highly industrialized nations in other facets of their social organization.” (Hosmer 1997: 8).

Ratner et al speak to two eras of colonization, colonization in the old economy which “employed physical and legal force to control First Nations and exploit their traditional lands” and the new form of colonization where “First Nations are disciplined by the need to compete in the economy in order to ensure continued benefits”. Since the first era used physical and legal force Ratner *et al* seem to suggest economic determinism as a new form of colonization. However, historical reports indicate that in the nineteenth century British missionary William Duncan and his contemporaries worked under the premise that with the introduction of industry a work ethic would be created that would

naturally evolve into the desire for the acquisition of material wealth and thus further propagate western ideals (Hosmer 1997: 136). Ratner *et al*'s distinction between a mercantile and capitalist economy is important as their mechanism for incorporation differ; however the concept of a 'new colonization' where First Nations are disciplined by the need to compete in the economy in order to ensure continued benefits, appears to be in fact one of the oldest and most enduring forms of colonization. Therefore, Ratner *et al*'s assertion and the applicability of the Modernization Theory to the colonization of Canadian First Nations people can be examined in the 'old economy', which may help to understand some of the challenges faced by Gitxaala in the 'new economy' where *Forest and Range Agreements* are located.

In order to test Ratner *et al* and the Modernization Theory prediction that changing First Nations traditional patterns of economic exchange would result in a fundamental change in ideology to reflect the values of the dominant society imposing the change; the five category comparative framework of ontology, ethics, epistemology, power and economics and exchange developed by Trosper (2006), will be applied to pre and post contact Tsimshian society of north coastal British Columbia.

Exploring if the Tsimshian underwent evident changes in their ontology, ethics, knowledge and power structure from pre to post contact is not the aim of this chapter. Unquestionably the sheer arrival and presence of European settlers brought about changes in the Tsimshian way of life. Therefore, in order to properly test the hypotheses one must ask at what level the changes occurred. Was it a fundamental or surface level change? For the purpose of this analysis, a fundamental change refers to the alteration of an essential component of an axiom that informs how the Tsimshian perceive the world

and/or their place within the world. A surface change, on the other hand, occurs at the superficial level and therefore does not result in axiomatic changes. The research question therefore becomes restated as: Did the changes in Tsimshian economic exchange from pre to post contact result in the fundamental alteration of their core principles to more closely resemble those of their colonizers?

Not only is this an important question in terms of understanding the historical impact and aim of historic Crown policies and the potential for the *FRA* to act simply as a continuation of this legacy; it is also an important question given that one of the stated goals of the *New Relationship* is “to achieve First Nations self-determination through the exercise of their aboriginal title including realizing the economic component of aboriginal title, and exercising their jurisdiction over the use of the land and resources through their own structures” (The New Relationship 2005: 2). One then asks, what constitutes ‘their own structures’? Are such structures still in existence? These questions directly address the notion discussed in the previous chapter that First Nations culture can be summarized through the use of prefixes; everything *pre* contact represents ‘traditional’ aboriginal society, while everything *post* contact is a reflection of a colonized society. As the Province and First Nations try to grapple with the creation of shared-decision-making for resource management this notion must be directly addressed as a step toward shared understanding

The Five Part Framework

It will become evident throughout this discussion that the categories of ontology, ethics, epistemology, power and economics and exchange overlap and therefore make it

nearly impossible, and definitely counter productive, to discuss them in isolation. Economics and exchange will be used as the umbrella category given that it is the variable in the hypothesis whose effect on the other ‘constants’ is being examined. The other categories will be weaved in as they relate to the discussion hopefully allowing the integrity of Tsimshian culture and identity to be preserved. It should be stated that this chapter makes no attempt to draw conclusions as to the state of current Tsimshian beliefs and values, but instead focuses on the changes that occurred between pre and post contact.

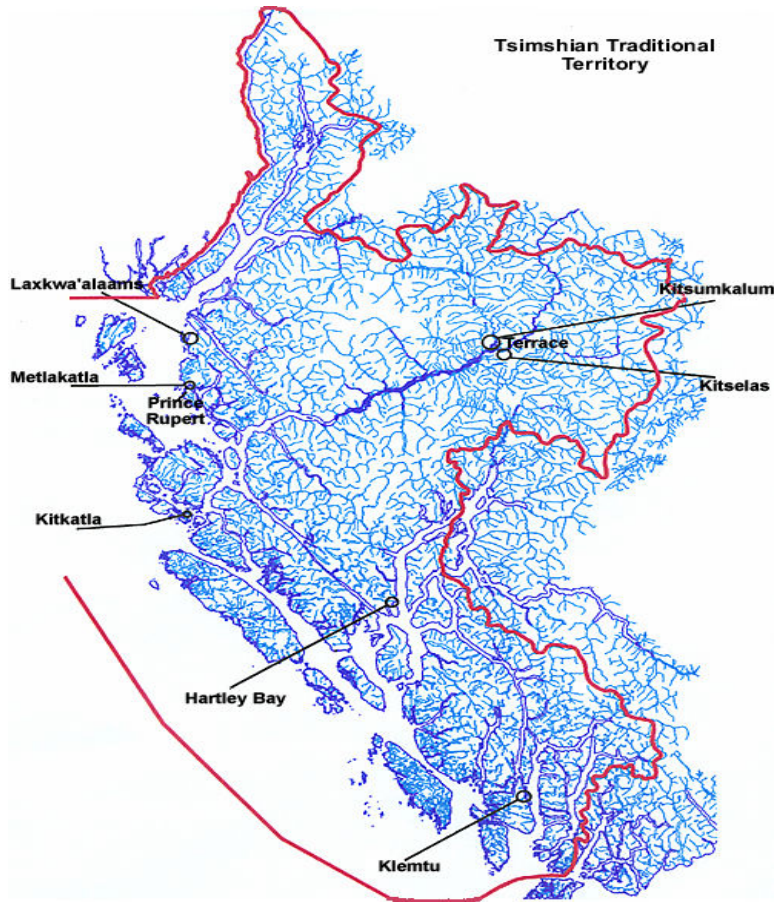
In order to understand the basis for Tsimshian traditional economy, and thus have a baseline for comparison, one must first examine the categories of ontology and ethics, since these categories are at the core of their culture and identity and thus critically inform their institutions of economics and exchange. Subsequently the chapter will compare pre and post contact power and economic exchange. Then the changes that occurred between pre and post contact will be analyzed for evidence of surface and core level changes.

The Tsimshian

Archeological evidence suggests that the Tsimshian (*those inside the Skeena*) have continually occupied their region for at least 10,000 years. The Tsimshian trace their cultural origins much farther back to a place called Temlaxham (Hosmer 1999: 110). The Tsimshian lay claim to 90,000km² of British Columbian coastal terrain. This claimed territory stretches from the mouth of the Nass River in the north to Milbank Sound in the south and east 150km up the Skeena River to Kitselas Canyon (Butler and

Menzies nd: 3). There are six contemporary Tsimshian communities Kitselas, Gitxaala, Lax Kw'Alaams, Metlakatla, Kitasoo, Gita'ata. Two thousand people live in these communities, while five thousand live off reserve (Butler and Menzies nd: 3).

Illustration 1: Tsimshian Traditional Territory



Source: <http://www.kitsumkalum.bc.ca/tsimshian-map.htm>

Ontology

Tsimshian do not have a story of initial creation or origin; rather they have a series of sacred stories which provide them with explanation for the manner in which their cultural world was conceived (Miller 1997: 30). These stories are owned and

protected by the houses of the ancestors who are central to the narratives. Instead of tracing the origin of the beginning of people, these stories locate the beginning of their culture – the beginning of which being the empowering burst of brightness brought from Heaven by Raven (Miller 1997: 36). The blinding flash of brightness that Raven unleashed on the world created Tsimshian culture through the establishment of the rules and routines of the modern world (Miller 1997: 8). The ultimate source of this illumination was Heaven, and in Tsimshian belief, the foremost of the *naxnox* (power) spirits (Miller 1997:8). Raven did not bring with him the design of the Tsimshian world; but rather a higher order of qualities and characteristics. These higher order qualities imbued the Tsimshian world with duties towards all creation and hence greater meaning (Miller 1997: 9). With this light came the beginning of an eternal reality strung together by successive generations of named humans. The birth of a child was believed to represent an ancestor returning to the mother's house and thus fostered a belief in reincarnation and its intrinsic responsibilities (Miller 1997: 126).

Ethics

The Tsimshian believed in the existence of a tangible relationship between human beings and the natural and supernatural realm (Hosmer 1997: 112). These relationships informed their values, social norms and gave meaning and order to their universe (Hosmer 1997: 112). Tsimshian identity was derived from this belief that all creations are linked and united in reciprocal relationships and that it was their role to maintain the balance of the natural and supernatural (Hosmer 1997: 115). This guiding principle provided the cultural basis for the hierarchy, reciprocity and ownership of physical and

spiritual property that governed their daily lives (Hosmer 1997: 112). The belief in the connectivity of all creations allows one to comprehend why the Tsimshians did not make rigid distinctions between the human and animal world. They envisioned salmon as salmon-people who lived with social organizations like villages and chiefs very similar to their own. According to Tsimshian lore it is only upon contact with humans that salmon assumed their fish form; physical forms were mutable and not defining characteristics (Hosmer 1997: 115). These values and ethical norms were propagated and confirmed through ceremonial rituals, most notably the potlatch (Hosmer 1997: 121).

Pre-Contact

Power: Tsimshian Ranking

All Tsimshian belonged to at least one of four matrilineal clans (there has been conflicting information concerning the presence of multiple clan affiliation): Blackfish (Orca)-Grizzly, Wolf, Raven and Eagle (Hosmer 1997: 115). Each clan was associated with particular spirits and represented by unique totems or crests. These clans were present in all Tsimshian towns and therefore provided a link between distant communities. The clans also provided cross regional structure for the Tsimshian and gave each member a distinct identity and relationship with the spirit world. The level at which basic social, political, ceremonial and economic decisions occurred was however at the house group (Hosmer 1997: 116).

The fundamental unit of the Tsimshian was the matrilineally based house group or *walp*. These, externally as well as internally ranked *walps* were the center for customary power and authority (Butler and Menzies nd: 4). Each *walp* had a leader, *s'moygiyet*, who

was then ranked among the other *s'moygiets* based on the comparative ranked status of their housegroup. The highest ranked *s'moygiyet* was the head/chief of the community (Butler and Menzies nd: 4). The chief was generally someone from a well esteemed lineage who possessed the ability to organize and unite the town into a coherent system (Miller 1997: 19). The tasks necessary for the running this system were delegated to an advisory council; however it was the chief who was charged with the maintenance of Tsimshian cultural traditions and history, as well as overseeing that house trade routes and territories were respected (Miller 1997:19). It was through the chief that each *walp* was integrated into the greater socio-economic structure of the Tsimshian (Hosmer 1997: 16).

The *walp*'s trade routes were rigorously defended, with alliances being formed through marriage between border households (Miller 1997: 19). These trade and resource alliances were also confirmed and negotiated through potlatches and feasts whereby names and privilege were distributed and exchanged. Designated territories predicted economies and therefore trade was necessary for the dispersal of required goods (Miller 1997: 20).

Title holding and thus naming also served as a visible sign of hierarchy. Names were considered to be *walp* property. Each name carried with it a history and associated power and authority. Thus more status was derived from some names than others and that status was imbued on the holder (Halpin 1993: 59). Names could be inherited however they also had to be merited; one had to be deserving of their inherited name (Halpin 1993: 63).

The preserved evidence of these traditional ranking systems demonstrates the presence and importance of ranked power well before the arrival of Europeans. Although a complex system of hierarchy existed, positions were not rigid and were constantly redefined and confirmed as social contexts required the integration and accommodation of individuals and/or groups. They were used as a marking stick and therefore basis of comparison of each individual's role in the larger social realm (Hosmer 1997: 117). Thus the Tsimshian demonstrated a system of determining hierarchy that was not immutable, but instead allowed them to adapt to changing situations and contexts.

There are fundamental differences between the ranked power found in Tsimshian and Euro-Canadian society. A significant distinction between Tsimshian and Euro-Canadian hierarchy is that the former occurs at the group level while the latter occurs at the individual level. Although there is evidence of Tsimshian stratification at the level of the individual, the fundamental unit of stratification was the *walp*. This collective rather than individual structure emerges from Tsimshian ontological and ethical duties towards each other, the natural and the supernatural world. *Walps* lived communally and shared kinship, economy and religion (Miller 1997: 53). This communal identity was exhibited by the contributions of material and labor of all kin members to build and finance their houses. This cooperative process legitimized the collective ownership of the houses by all members of the *walp* (Miller 1997: 47). The chief of some of the *walps* had separate houses to demarcate rank; however the building of the house was also done cooperatively by the members of the *walp*. This cooperation served as a way to show support and unity for the leader (Miller 1997: 47). House property and ownership extended beyond the physical structure. It was to the house that the previously mentioned trade routes

belonged; each *walp* had communally owned territorial domains where subsistence and trade economies occurred (Miller 1997: 52).

Economy and Exchange

Oral and archeological evidence suggests that about 4,000 years ago, Tsimshian dietary consumption began to focus on staples such as shellfish and salmon (Miller 1997: 5). The system of ranking previously discussed provided an efficient tool to manage access and production of these resources. It resulted in an organized system of economy and exchange with a utilitarian outcome that was consistent with cultural values and norms; it was beneficial not only to the individual but more importantly to the house, town and community (Miller 1997: 5). It was a means to utilize resources communally so that the group rather than individual benefited. As the level of production and specialization grew each house group became in some sense a corporate entity; thus further enhancing the role of trade relations. These relations were essential in making up for resources that were not intensely produced as a consequence of such specialization (Miller 1997: 5). Regardless of a *walp*'s primary source of economic production, their economy operated on a seasonal cycle. In general the spring, summer and early fall months activities produced the resources necessary for survival during the winter months (Butler and Menzies nd: 14). The economic cycle culminated in the late fall in a feast which allowed *walp* members to share in each others bounty (Miller 1997: 23). Women were important laborers and organizers in the seasonal cycle. They collected a large portion of the foodstuff and sorted, rationed and preserved it in order to survive the winters and supply the feasting cycle (Hosmer 1997: 120). Women derived political

influence through their contribution to the feasting cycle which was a critical determinant of *walp* rank and status (Hosmer 1997: 120).

The Potlatch: The Convergence of Power, Economy, Ontology, Ethics and Epistemology

It was through the Potlatch system that ideas, people, and agents gained legitimacy in Tsimshian culture. Potlatches bound Tsimshian society in an encompassing network, by providing an integrative social, political, economic and religious forum (Miller 1988: 27). These events were public acknowledgments of changes occurring among the Tsimshian such as: naming, house dedication, bestowal of supernatural power, marriage, competitive inter group challenges and death (Miller 1988: 28).

The central component of food sharing was symbolic of the cultural solidarity vital to Tsimshian identity (Miller 1988: 28). The food was communally collected from the territory of the hosting group, and therefore its consumption was also a way of asserting their rights over the land and resources. Those accepting the food were bearing witness and acceptance of this claim (Miller 1997: 83). These events were validated by the presence of elite name-title holders who received compensation in food and gifts for providing their legitimizing authority to the event (Miller 1993: 28). The validating of events was a reciprocal relationship among elites. Former hosts would become guests when the kin of their former guest required the validation of status. In this way there was mutual recognition of changes among the elite and status was distributed accordingly. This helped to dissipate the culmination of unbalanced rank and power in one house group (Miller 1993: 31). The Potlatch, however, was not a perfect system of distribution

due to the ability of elites to misuse their power. The elites could manipulate these ceremonies and bring themselves undue prestige in order to secure their familiar and house group status and power (Miller 1997: 82).

The donation of the wealth necessary for a potlatch to occur was derived through economic proportionality based on authority ranking. These events were sometimes planned years in advance, depending on the significance of the occasion. Within this time each member of the town was expected to make a donation according to their name and house. The adherence to this custom was enforced and regulated by the public way in which each donation was announced (Miller 1997: 84). Under this regime the chief gave the most and was followed in decreasing order from high to low status title holders (Miller 1997: 84). Chiefs and elites from other house groups who attended the potlatch were rewarded according to the same scheme – the number of gifts one received was dependent on rank with the highest ranks receiving the most. This may seem counter intuitive to wealth distribution. However the chiefs would later redistribute these gifts among the members of their house group and town (Miller 1997: 85). Chiefs therefore exhibited and derived power by being the means through which redistribution occurred. They were charged with creating equity or conversely inequity within their dominion (Hosmer 1997: 116). Potlatches can therefore be seen as a mechanism to keep individual wealth in check and maintain a universal standard of living among a group. On the surface it may be interpreted as a system of communal sharing or possible equality matching between *walps*, however it was used in a fashion that also asserted and maintained authority ranking.

To recapitulate in order for clarity and comparison, pre-contact Tsimshian society was informed and structured by the belief in a reciprocal relationship between human beings and the natural and supernatural realms. Knowledge of their world and other realms was imbued in stories, titles and names which were owned and protected by *walps* who could trace their ancestors to the ontological source. Knowledge therefore manifested itself in title holders who, because of their title, were charged with maintaining the link that united all creations in a reciprocal relationship. Their lives were structured by communal resource ownership by territory but ranked distribution by houses. The legitimacy of ranked distribution was founded on the power derived from title holders and the hereditary system. Power was therefore not conferred on an individual but upon the *walp* and/or name that was associated with the individual – both of which were pre-existing institution outside of the control of the individual. Inter *walp* and community power was confirmed through potlatches which invoked communal recognition of changes in authority through reciprocity.

Post Contact

Economy and Power

The arrival of Europeans introduced the Tsimshian to a vastly different system of economics and exchange. Initially these differences were absorbed through the use of pre-existing trade relationships (Hosmer 1997: 123). Continuity of traditional social and economic traditions could be maintained due to pre established *walp* owned resource territories (Hosmer 1997: 125). The Tsimshian were able to employ their expertise and well established links to drive a hard bargain and define overall trade relations (Hosmer

1997: 123). However the increased flow and abundance of trade resulted in novel levels of wealth accumulation and the resultant emergence of more powerful territorial leaders. This is exemplified by the 19th C coastal domination of the name holder Ligeex (Hosmer 1997: 126). The trade domination of Ligeex demonstrated a dramatic shift in regional power. Through cultural means, although by the use of arguably manipulative and forceful tactics, a clan was able to expand their territory and harness a disproportionate amount of the trade economy entering the coast (Hosmer 1997: 127). The system of using traditional trade routes was later impeded by the mainland establishment of the Hudson Bay Company near present day Fort Simpson, which made using indigenous middle men unnecessary for resource access. After the Tsimshian lost control over their traditional trade routes, they started integrating traditional and industrial resource use and extraction. The Tsimshian were able to continue this integration until the middle of the 20th C at which point it was no longer possible under the demands of wage labour (Butler and Menzies n.d.: 19). The shift from trade, to integration of wage labour to dependence on wage labour is easily observed in Tsimshian participation in the forestry industry.

During early colonization the fledgling forestry industry, beginning in 1834 with the Hudson's Bay Company (HBC), depended on indigenous supply of raw timber and processing labour (Butler and Menzies n.d.: 6). For the most part, this involved inland Tsimshian along the Skeena rather than coastal Tsimshian who were more involved in the fishing industry; however forestry workers were represented in all Tsimshian towns. The Tsimshians used small scale hand logging as their primary means of extraction, an ideal method for the difficult to access and rugged terrain of the coast. This form of small scale logging was easily integrated into subsistence rounds during the mid 19th C; lumber even

arose in traditional markets by being traded for other commodities (Butler and Menzies n.d.: 19, 8). The integration of wage and subsistence economy gave rise to social change in the creation of Tribal Chiefs. In order to participate in wage labour there was a mass movement to trading posts and Tribal Chiefs were required to provide authority for economic activity outside of town boundaries (Miller 1997: 6).

The integration of wage and subsistent economies ceased in the mid 20th C with the advent of industrial logging which was heavily dependent on capital and able to operate on a large scale. This shift was fully realized in Tsimshian territory in the Nass and Kalum valleys with the granting of the first Tree Farm License (TFL) to Columbia Cellulose in the early 1950s (Butler and Menzies n.d.: 22). Tsimshian who had previously hand logged as part of their seasonal round were driven out as primary producers and forced into wage labour on their traditional territory for large scale TFL holders (Butler and Menzies n.d.: 24). The increasing amount of required capital and forestry regulations further distanced the Tsimshian from access to their ancestral lands and resources (Butler and Menzies n.d.: 22). This was the intended culmination of governmental policies that began with the creation of the reserve system 1852 (Butler and Menzies n.d.: 14). Instead of being primary producers house groups became wage labourers exploiting their own resources for industrial benefit (Butler and Menzies n.d.: 14).

Although their traditional system of economic exchange was fractured the Tsimshian found novel ways to retain aspects. Throughout this period of economic upheaval canneries were used as a communal area where traditional economic exchange could occur. They allowed a summertime common meeting place where networks and

trade relations could be maintained despite their temporal location in the evolving industrial economy (Butler and Menzies n.d.: 14).

Missionaries

A concurrent event playing a significant role in shifting economic patterns and exchanges of the Tsimshian was the arrival in 1857 of William Duncan and missionary enclaves. The ideological conversion of the Tsimshian was Duncan's intent, and the creation of a new industrial economy was his chosen mechanism (McDonald 1993: 44).

Duncan and other missionaries who followed mounted a vigorous campaign to alter the social and economic lives of the Tsimshian from one of communal working and living to a European model of nuclear families and individualism (Butler and Menzies n.d: 8). They endeavored to do this by ending Tsimshian reliance on seasonal rounds through the creation of industry and wage labour (Butler and Menzies n.d: 8). The missionaries and their industries worked to undermine the function of the *walp* and as a result destabilize Tsimshian social and economic order (McDonald 1993: 44). Missionaries succeeded in ending seasonal migration which in turn catalyzed the establishment of single family homes and gender role division (Butler and Menzies n.d.: 9).

Traditionally, individual economic prosperity was tied to house groups and therefore the shift to European style single dwelling buildings posed problems for both the economic and social structure of Tsimshian society. The building of single family homes by elites created an ownership and succession dilemma among a group of people who operated under matrilineal inheritance. Matrilineal inheritance was inconsistent with

Canadian property laws that operated under Euro-Canadian next of kin tradition of wife and child inheritance (Miller 1997: 49). As well, Tsimshian traditional houses were built on collectively owned land. Under Tsimshian laws land was divided among house groups and therefore conflict arose over the ownership of the land under single family homes (Miller 1997: 49).

The attempt at Tsimshian conversion to Christianity and European society culminated in 1862 with the establishment of Metlakatla; an economically self sufficient industrial Christian colony (Butler and Menzies nd: 9). Metlakatla was Duncan's vision realized; a society of First Nations who possessed the work ethic highly valued in European cultures that would in turn promote the materialism that he felt was critical in full assimilation (Hosmer 1997: 165). Metlakatla was not an anomaly, missionary built sawmills sprang up in Hartley Bay, Kincolith and Kispiox as well. These mills were supplied by native loggers and produced the lumber necessary for building native homes as well as non-native homes in the area (Butler and Menzies n.d.: 9).

Table 1: Power and Economy - Pre vs. Post Contact

	Pre Contact	Post Contact
Power Structure	<ul style="list-style-type: none"> - power not conferred on an individual but upon the <i>walp</i> and/or title -<i>walp</i> communal resource ownership -contribution to <i>walp</i> economy determined through economic proportionality based on hierarchical ranking -chiefly power to redistribute wealth -hierarchical ranking maintained through distribution of resources through communal sharing among <i>walps</i> and equality matching between <i>walps</i> -legitimacy of ranked distribution founded on the potlatch and hereditary system 	<ul style="list-style-type: none"> -single family houses de-centralize <i>walp</i> power -emergence of rank of Tribal Chief due to resettlement near industry -disintegration of inter group hierarchy due to loss of control over land
Economic Structure	<ul style="list-style-type: none"> -seasonal round -<i>walp</i> ‘corporations’ with established trade routes 	<ul style="list-style-type: none"> -expropriation of resources by colonizers and forced dependence on wage labour -small scale trade still present however not necessarily <i>walp</i> based

Analysis of Change

Tsimshian economics and exchange underwent unmistakable changes with the arrival of European traders and missionaries. The preceding discussion illustrated how these changes were initially absorbed within power structures already present pre-contact. Later changes to the economic system such as those associated with missionaries and

capitalism brought changes that ruptured these systems and created cultural dissonance that required the development of novel coping mechanisms. This demonstrates the adaptability of the Tsimshian; however it does not inform us as to the effect of these changes on their core values. Did these changes fundamentally alter Tsimshian identity, or did they only occur as surface level economic structural changes?

Metlakatla

Metlakatla provides a microcosm from which to analyze changes in Tsimshian ontology, ethics and epistemology.

There is a historical tendency to place First Nations as passive participants in colonization. Missionary William Duncan relied on this passivity when structuring Metlakatla to mimic traditional economic exchange in a novel way that allowed for the integration of western work ethics and Tsimshian resource use. Metlakatla was not an attempt by Duncan to achieve the integration of Euro-Christian and Tsimshian values; he was using Metlakatla as a means to an end whereby Tsimshian values were replaced with Christian beliefs and social values (Hosmer 1997: 152). He thus denied the possibility that instead of bending to the forces of colonization and assimilation, the Tsimshian could/would use Metlakatla and other missionary run industries as a means to an economic end while maintaining their core traditional values (Hosmer 1997: 178). This conceptual juxtaposition illuminates the underlying question that this chapter has been examining. Did Duncan and the other missionaries convert Tsimshian ideology or did the Tsimshian use and incorporate industry into their tradition on their own terms?

Metlakatla's economy was structured by a system of local government which had a similar social organization to that of traditional collective *walp* action derived from internal social hierarchy (Hosmer 1997: 153). Duncan introduced a Euro social hierarchy of constables and councils that the Tsimshian could identify as an altered form of *walp* and clan organization (Hosmer 1997: 154). Duncan imposed this hierarchy to bring a sense of community to Metlakatla in order to further economic production and assimilation; however the Tsimshian were able to use it to sustain the reciprocal relationships at the core of their ontological and ethical beliefs (Hosmer 1997: 157).

History assumes the conversion of the Tsimshian of Metlakatla and other missionary run towns to Christianity; thus implicitly implying that Christian-ethos replaced traditional Tsimshian beliefs. However evidence of the Tsimshian using Christian festivities, such as Christmas, New Year's and Queen Victoria's birthday, as venues for the continuation of their traditional beliefs contradicts this assumption. These Euro-Christian celebrations provided opportunities for feasting, gift giving and thus served the function of traditional potlatches. Although counter intuitive, these "Christian" events allowed the continuation of Tsimshian ethical and ontological duties (Hosmer 1997: 157). To an outside observer these events appeared to be mechanisms to reinforce Christian ethos. To the Tsimshian however, they provided an acceptable venue to continue their social duties and maintain their knowledge and link with the spiritual world in the face of assimilative pressures. There is further evidence in Metlakatla, and in other Tsimshian settlements, for the persistence of traditional ontological beliefs in Tsimshian Christian 'converts'. Light and its branching beams remained the conduit for all Tsimshian institutions of culture (Miller 1997: 9). This fundamental belief persisted

within the framework of Christianity because the Tsimshian creatively shifted the ultimate source of illumination from Heaven to God (Miller 1997: 12). Furthermore, while not publicly recognized and acknowledged after the ascension of Christianity, the belief in reincarnation is reflected in Metlakatlan ceremonies by the continued importance of the ceremonial and institutional aspects of naming and title holding (Miller 1997: 126). The persistence of naming also indicates the survival of Tsimshian ontology and the power and hence knowledge intrinsically linked to title holders.

Evidence from Metlakatla therefore supports the maintenance of traditional Tsimshian ontology, ethics, epistemology and power. The Tsimshian were able to use their traditional methods of power distribution and legitimization to understand the changing economy while preserving the reciprocal nature of their ontology and ethics. This feat was accomplished through innovative means which could be deemed by an outsider to be proof of assimilation. Viewed from this perspective it becomes apparent that Metlakatla was not simply, as history tends to view it, a successful colonization of Tsimshian into a Euro-centric working community based on Christian ethos. Metlakatla demonstrates how the Tsimshian were able to use surface change as a tool to maintain their ontological, ethical and epistemological foundation.

Potlatches/Feasts

Although Potlatches were banned in the 19th C their social and legitimizing aspects persisted in altered forms, such as the Christian festivities previously mentioned. The mere continuity of potlatches in varied and adaptive states suggests the preservation of core ontological and ethical values as they provided the foundation for the rules (i.e.

reciprocity) and norms (i.e. respect of the supernatural) which governed the ceremonial process. However during the analysis of Metakatla, evidence emerged concerning the critical role these communal festivities played in actively combating assimilative forces. Therefore the potlatches' active function of resisting change and not simply its passive function of static evidence of ontological, ethical and epistemological continuity must be examined.

Tsimshian society cannot be separated into solely economic concepts and therefore the economically driven re-assortment of power in Tsimshian society had to be dealt with in a holistic way (Hosmer 1997: 21). The Tsimshian recognized the changes that were occurring, some of them beyond their control, but attempted to incorporate them in a way that maintained their cultural values and social integrity (Hosmer 1997: 21). The potlatch and its altered forms may be credited with providing the mechanism through which the Tsimshian were able to maintain stable leadership and identity in the midst of widespread social upheaval. Potlatches were a public way to validate and confirm change. Potlatches were resistant to change in that they were the Tsimshian way of adapting to change. This is perhaps why during early contact they took on a competitive and brutal atmosphere. Potlatches were given the difficult task of developing a new social hierarchy to deal with a new economic force. Although they may have appeared mean spirited and outright destructive to an outsider, they actually provided a safe and legitimate way to reestablish territorial and resource rights within the post-contact economy (Miller 1993: 30). This was an essential tool in the prevention of warfare and market exclusion that could have been the likely result of a growing

commercial economy. It was a creative way for a collective non-market society to deal with the imposition of an exclusive market system.

The potlatch also had the ability to facilitate the maintenance of core values in the event of a surface change. For instance, economic upheaval resulted in changing traditional *walp* based Tsimshian social units into nuclear units headed by men. This resulted in the alteration of women's political and economic position by not recognizing their political and property rights tied to matrilineal kinship networks (Hosmer 1997: 155). This seems to indicate a clear change in female derived power; however evidence suggests that although Tsimshian became more nuclear with regard to their living arrangement the potlatch continued to center on matrilineal relationships and thus maintained traditional sources of matrilineal power.

Conclusion

I return to the research question: Did the changes in Tsimshian economic exchange from pre to post contact result in the fundamental alteration of their core principles to more closely resemble those of their colonizers?

The analysis in this chapter suggests the fundamental persistence of Tsimshian culture as it has adapted and changed with colonial contact. Instead of assimilating economic and social structures, there is evidence of accommodating them in a constructive and innovative way which allowed the preservation of their unique identity and core beliefs. Contrary to Ratner *et al* and the Modernization Theory, the evidence indicates that the introduction of a colonial economic system did not result in the immediate and complete assimilation of Tsimshian. Their core values embedded in a

complex and integrative framework of ontology, ethics, epistemology and power did not come to solely reflect those of the dominant European society. Instead evidence suggests that changes were made at the surface level which allowed the Tsimshian the ability to work within the system that was being imposed on them, while maintaining their core principles.

It was not the purpose of this chapter to discuss the positive or negative repercussions of colonization. Nor was the emergent argument that the Tsimshian used novel and creative ways to adapt instead of assimilate to European culture meant to deny the devastating impact that colonization has had on their lives or the fight that they have waged against colonization. History tends to give a passive account of First Nations role in colonization and it was one of the intentions of this chapter to displace this myth by exploring the possibility of the existence of over one hundred and fifty years of indigenous innovation in the face of powerful forces aimed at destroying their identity. The analysis in this chapter suggests that tradition is not static. Although industrial forestry may not have been a 'traditional' component of Tsimshian culture, this argument cannot be used in order to limit their entry or as denial of knowledge or practices that they deem relevant and important to bring to a shared decision-making table.

In terms of the future, it is difficult to extrapolate what influence "First Nations and industry becoming partners in development" will have on Tsimshian values. However, an understanding of the use of economic determinism and Tsimshian persistence in the 'old economy' can contribute to understanding the complex situation currently unfolding in the North Coast. Part of the lack of shared understanding of the

FRA emerged from issues of trust. Although Gitxaala identified trust as an issue to implementation the North Coast District MoF did not seem aware of the effect it was having on successful implementation – much to the detriment of the process. As noted in the research in the North Coast, Gitxaala council members openly expressed distrust of their industry partners and the fear that their values would be ignored by their partners’ focus on the economic bottom-line. Generally, Gitxaala councilors were skeptical about the promises of the *New Relationship*, the District MoF and their industry partners. Although unable to draw conclusions, a contributing factor to Gitxaala’s concern that their values will be undermined might be a reaction to the knowledge of past economic policies that threatened their cultural survival. Is the *FRA* assimilative? There is no way to affirm such a question. However it can be stated that the Gitxaala are discovering there is no room within an *FRA* to accommodate their cultural values which is creating tension within their community.

Undoubtedly Gitxaala will be confronted with new challenges to their values in the ‘new economy’. However, due to the legacy of past Crown-First Nation relationships, the Province and the forest industry will be equally challenged to gain Gitxaala’s trust in order for the *FRA*, and other policies intended to reconcile rights and jurisdictions, to be successfully implemented.

Section 3: Where do we go from here?

3.1 A Policy Analysis of BC Forestry Interim Agreements with First Nations

Introduction

The research has demonstrated that the *FRA* as a means to include First Nations in forestry is flawed as it does not meet legal requirements for consultation or all First Nation's vision of *the New Relationship*. As a result it has failed to create the 'certainty' desired by government and industry. Therefore the purpose of this analysis is to consider the *FRA* and some alternatives ability to meet the vision of the *New Relationship* and effectively include First Nations in the forestry sector. Ultimately the problem that this policy analysis must address is the challenge of reconciling First Nation's rights concerning land and resources with the existing rights of non-First Nations in the pre-treaty environment. Three alternatives along with the status quo will be analyzed through the application of the concepts of Bardach's Eightfold Policy Analysis framework (Bardach, 2005). Given the emergent issue of personalities and bureaucratic politics effecting the implementation of a Provincial policy, this examination will focus on a comparison of potential outcomes of different policy level changes and a change made at the constitutional level.

Assembling the Evidence: The Context for the Development of Appropriate Goals and Criteria

The New Relationship

The principles and visions set forth in the *New Relationship* are intended to characterize all interactions and agreements between First Nations and the provincial government. Therefore these principles and visions should be included when developing appropriate alternatives to incorporate First Nations in forestry. As a result all policy alternatives are required to be based on respect, recognition and accommodation of aboriginal title and rights. They must also respect each Nation's laws and responsibilities and be committed to the reconciliation of Aboriginal and Crown titles and jurisdictions. These are the general visions the alternatives must adhere to, however the *New Relationship* also sets out explicit goals and action plans which are directly applicable to First Nation's inclusion in the forestry sector.

Forestry policies must be consistent with the signatories agreement to ensure that: lands and resources are managed in accordance with First Nations laws, knowledge and values; that resource development is carried out in a sustainable manner; First Nations economic self-sufficiency is achieved and First Nations become a strong economic partner in the province; processes and institutions for shared decision-making about the land and resources and for revenue and benefit sharing are established; and funding and distribution structures/institutions to support First Nation capacity development and effective participation in the processes is established (*The New Relationship*, 2005).

Also of special note is number seven of the *New Relationships* action plan as it relates directly to *Forest and Range Agreements* and therefore should be included in the alternatives in order to maintain the validity of the analysis. Number seven of the action plan states: “appoint a joint working group to review *Forest and Range Agreements* and make recommendations to the parties on options for amending those agreements in order to make them consistent with the Vision and Principles.” As well, the persistent theme of shared decision-making must be directly addressed and operationalized and/or accommodated in the alternatives.

The Forest and Range Agreement – The Status Quo

In order to conduct the policy analysis it is necessary to understand the baseline to which these alternatives are being compared. Therefore we must examine the current policy which defines First Nation’s participation in the forestry sector and the identified problems in the policy framework. Put simply, in order to create a policy that works we must identify the aspects of the current policy that do not work. The legality of the *FRA* was briefly touched on in terms of the BC Supreme Court’s ruling that it does not meet the government’s duty to consult and accommodate, however the problem with the policy is more complex than solely failing to meet legal consultation.

In May of 2004 the Title and Rights Alliance presented a background paper on the *Forest and Range Agreement*. The paper highlights the general issues that First Nations have with the way in which the government has addressed their asserted and court-upheld rights and title over their traditional territories, as well as formalizing specific risks and concerns with the *Forest and Range Agreement*. If a workable and universally acceptable

policy that fits within the framework of shared decision-making of the *New Relationship* is to be realized, it follows that these risks and concerns should be addressed by the Province. The concerns and risks over the *Forest and Range Agreement* are as follows: it places serious limitations on the ability of Aboriginal Peoples to exercise and defend Aboriginal Title and Rights during the term of the agreement; uses unreasonable per capita formulas to limit economic benefits; contains consultation processes that fail to meet minimum legal requirements for consultation; could lead to negative impacts on cultural values; and it may not provide viable business opportunities (Title and Rights Alliance 2004).

The government has acknowledged First Nations discontent with *FRA*s by specifically including a promise to form a joint working group to revisit and rethink the *FRA* in the *New Relationship*. The provincial government kept its promise to revise the *Forest and Range Agreement*; however the resulting document maintains many of the features of the original *FRA* including those with which the Title and Rights Alliance expressed concern. The Ministry of Forests press release for the signing of the first *Forest and Range Opportunity* states, “the new Forest and Range Opportunities Agreement is based on the same principles as previous forest and range agreements, and formally acknowledges the New Relationship between government and First Nations” (BC MoF, 2006). It appears the government did not feel that the formal acknowledgement of the *New Relationship* required that it address all of the concerns forwarded by First Nations interests. Early this year, before the first *FRO* was signed, the Province presented the new template to the Union of BC Indian Chiefs. The UBCIC responded on February 6th through an open letter to the Premier explaining that they are

not happy with the newly reconfigured *FRA* – the *Interim Agreement on Forest and Range Opportunities 'FRO'*. In the letter the UBCIC stated that they do not support the new template because it does not fulfill the promise represented by the *New Relationship* of a relationship based on respect, recognition and accommodation of aboriginal rights and title (UBCIC 2006). The UBCIC contends that the *FRO* retains the unacceptable features of the *FRA*. Specifically they stated that they are unhappy that the *FRO* still requires that First Nations agree that the benefits provided under the *FRO* constitute interim accommodation of the economic component of the potential infringements of their aboriginal title and rights; excludes First Nations from strategic, administrative and operational decisions by setting out a consultative process which does not provide for any collaborative or co-operative assessment and planning and therefore does not provide for the incorporation and reflection of their own laws and values into land and forest use decisions; and that the benefits provided under the *FRO* do not constitute an acceptable standard for economic accommodation for the infringement of aboriginal rights and title in the forestry sector generally (UBCIC 2006).

Clearly the *FRA* and its newest incarnation the '*FRO*' do not provide all First Nations with a means that they find acceptable of entering the forest industry, which is problematic as there are currently no other options. Nor does the *FRO* meet at least one of the signatory's vision of the *New Relationship* and consequently the promise to revisit the *FRA* and make it consistent with the vision and principles of the *New Relationship* – possibly a reflection of the ambiguity of the vision and principles.

The Development of Appropriate Goals and Criteria

This is a complex problem and therefore requires a solid set of criteria to aid in developing realistic alternatives. The challenge/goal of the policy is to reconcile First Nation rights concerning land and resources with the existing rights of non-First Nations in the pre-treaty environment. Therefore the criteria must be responsive to the objectives and goals of both First Nations and non-First Nations, as universal acceptability is paramount to meeting the policy goals given the historically rooted and seemingly intractable nature of the problem. However in order to receive consideration, these objectives and goals cannot be in conflict with court decisions regarding Aboriginal rights and title and consultation and accommodation. The selection of the criteria must also ensure that the vision and goals of the *New Relationship* are met, which due to the explicit theme of shared-decision making must also be responsive to the previously discussed critics of the *FRA*. The following are the objectives of the three key actors based on information received through the preceding case study in Gitxaala. It is recognized that these represent ‘generalized’ objectives and that they may vary among particular cases.

Provincial Objective: To create a stable climate for investment in order to promote economic development – the creation of ‘certainty’ in forest management.

First Nations Objective: The recognition of title and rights through an increased role in land use management decision-making, a fair return from resource development in their homelands and the creation of capacity for economic development.

Forest Industry Objective: Attain assurance that current investments will not be lost and that they will continue to be profitable.

The complexity of the problem risks the development of an impenetrable web of criteria capable of paralyzing action. The purpose of this analysis is not to provide a technically complex analysis; a cost benefit analysis will be left to economists. Instead the focus will be the ‘solutions’ ability to address the issues central to the stakeholders objectives and maximize social acceptability. The land question has become a politically and emotionally charged issue; when combined with the legal necessity to recognize First Nations rights, it cannot be solved simply by finding the most economically efficient policy. This does not mean that the economics of the policy must not be examined, but it is important to examine it in the context of ‘acceptability’ as opposed to ‘efficiency’. Accordingly, instead of using rigid criteria and indicators, the alternatives will be examined based on how they address the three issues consistently raised in the objectives of the stakeholders and public opinion surrounding First Nations rights and title in BC. It is recognized that an analysis of the *Forest and Range Agreement* could be done using different criteria, resulting in different findings. However this thesis has been examining issues of implementation and stakeholder’s involvement in the process. The impact of personalities and politics on policy effectiveness has emerged as a central finding. The difference in success of implementation of the *FRA* in the North Coast and Kalum Forest Districts was greatly affected by whether it was thought to be a generally acceptable by all those involved; as it determined whether they were all willing to work together to maximize potential benefits.

In order to be acceptable and create long term solutions the alternative to include First Nations in forestry must address: economic impacts; issues of fairness; and legal and political requirement, from the perspective of all stakeholders. The following indicators will be used to assess the alternatives ability to achieve this target and provide an acceptable and thus implementable strategy for the inclusion of First Nations.

Economic Impact

Impact on the provincial economy

- Minimize revenue loss
- Minimize net provincial job loss

Impact on First Nation's economic viability

- Maximize economic short term gains as well as long term viability for First Nations

Issues of Fairness

Fairness to First Nations

- Aboriginal rights and title are recognized and accommodated
- Acts in accordance with First Nations laws, knowledge and values
- Provides meaningful consultation

Fairness to taxpayers

- Promotes the well-being of all British Columbians by the ensuring environmental, social and economic benefits for present and future generations

Fairness to current license holder

- Compensates forest companies for any loss of tenure incurred

Legal and Political Requirements

- Meets Court upheld duty to consult and accommodate First Nations interests.
- Meets commitment to the *New Relationship*
- Meets the objectives of *all* three key actors

Alternatives for the Inclusion of First Nations in the Forestry Sector

I. Modify the Existing FRA/FRO in Direct Consultation with First Nations

This alternative is in direct response to number seven of the *New Relationship* Action Plan – “appoint a joint working group to review Forest and Range Agreements and make recommendations to the parties on options for amending those agreements in order to make them consistent with the Vision and Principles” (The NR 2005). Although the Province might argue that this has already been done, there are clearly outstanding issues pertaining to the policy and this alternative works under the assumption that these issues would be addressed from a First Nation’s perspective.

It is assumed that in order to mitigate the risks and concerns expressed in the Title and Rights Alliance Forest Range Agreement Background paper and the UBCIC open letter to the Premier, First Nations will seek to reform the *FRA* in the following ways:

- i. Abolish the per capita formulas that limit economic benefits and establish a mechanism that can take the strength of a First Nations claim and degree of potential infringement into consideration when calculating revenue sharing and timber allocation.
- ii. Provide First Nations with the capacity to build viable business opportunities.
- iii. Ensure that the agreement will not lead to negative impacts on cultural values through the incorporation and reflection of First Nation laws and values into land and forest use decisions.
- iv. Create a new consultation process/institution that promotes the inclusion of First Nations in the strategic, administrative and operational decisions.
- v. Abolish requirement for First Nations to lay aside any court asserted rights in exchange for benefits.

In a recent policy analysis conducted for the Canadian Center of Policy Alternatives, Ben Parfitt analyzed whether the Province's current interim forestry measures are enough to provide viable social, economic and environmental benefits to First Nations. His conclusions are similar to those expressed by the UBCIC and the Title and Rights Alliance; the present formula used in the *FRA/FRO* is flawed and unable to provide the necessary long-term benefits to First Nation communities in the absence of treaties (Parfitt 2007:4). Furthermore he concludes that the Province should base its forestry agreements with First Nations on the amount of logging activities occurring on their traditional lands; instead of using a per capita formula that treats First Nations 'equally' and in so doing ignores differing on-the-ground realities (Parfitt 2007:5). His

analysis yields five policy changes the Province could implement in order to provide First Nations with an equitable and viable entry into the forest industry while strengthening the Provincial promise of a *New Relationship* and working towards achieving lasting ‘peace in the woods’. Although published six months after the research conducted for this thesis, and in the advent of forestry agreements that depart from the *FRA/FRO* model³⁹ the analysis bolsters the alternative’s recommended changes by providing concrete ideas and analysis of how action i. and ii. can be operationalized. Furthermore, Parfitt’s fourth recommendation expands on the alternative’s fourth recommendation, and his fifth recommendations reflects the argument emerging throughout the thesis - the need to structure agreements so that they are flexible to respond to on-the-ground realities of the forest industry. Due to these linkages, Parfitt’s analysis will aid in predicting the outcome of implementing alternative I. The analysis’s five Provincial policy recommendations are as follows (Parfitt 2007:6):

1. Share Stumpage Revenues 50/50:

- Half of every dollar BC collects in timber-cutting or stumpage fees from forest companies should be shared with First Nations. Payments to individual First Nations would vary depending on logging activities.

2. Establish Area Based First Nation Tenures:

- BC should immediately turn defined areas of forestland over to First Nations under longterm, renewable forest tenures.

³⁹ See Province of BC, 2006. Gitanyow Forestry Agreement

3. Reduce First Nation Stumpage Charges:

- BC should immediately reduce stumpage charges to First Nations receiving new forest tenures.

4. Implement Co-management:

- BC's Ministry of Forests should work directly with First Nations to develop mutually acceptable land-use plans. The objective should be co-management, in which the Ministry of Forests and individual First Nations share management responsibility as 50/50 partners, similar to the 50/50 sharing of revenues.

5. Plan for Today's Windfall and Tomorrow's Downfall:

- The province should immediately devise a plan for how it will equitably share forest revenues and resources associated with today's record logging rates in the Interior, and how it will assist First Nations when the present logging boom of beetle-infested trees leads to the inevitable bust.

II. Legislate the Organizational Aspects of the Merritt IFPA Model

In 1997 the Provincial government adopted legislation to implement Section 59.1 of the *Forest Act*. The Innovative Forest Practices Regulation legislation enabled the formation of six pilot projects aimed at the development and implementation of innovative forest practices capable of lowering cost and increasing output while maintaining a balance with ecological and social issues.⁴⁰ In effect the IFPA was

⁴⁰ See www.ifpacentral.com. Accessed March 13, 2006.

designed to encourage replaceable forest licensees to increase their long-term investments in forest resources in return for possible increases in AAC.

The only IFPA Pilot awarded to incorporate First Nations in all management aspects was the Merritt TSA IFPA. The concept was to have all licensees, local provincial agencies, and First Nations work together to develop and implement the IFPA. In November of 2001 the five licensees, eight Indian bands, and the Ministry of Forests BC Timber Sales formed the Nicola Similkameen Innovative Forestry Society (NSIFS)⁴¹. Under the NSIFS the entire Merritt TSA has become managed as one land base through a hundred-percent consensus decision rule. The organizational aspects of the Merritt TSA IFPA include direct First Nation participation on the NSIFS Board of Directors, Technical Committee, Stakeholders Advisory group and indirect FN participation on the Merritt TSA Planning Committee, District Operational Implementation Team (DOIT), Forestry Referral Coordination and the Forest Practices Certification process (Walkem 2006).

In the fall of 2001 Ardeu Wood Products transferred over a replaceable forest license with an AAC of 950m³ to the eight First Nations communities who were then able to form Stuwix Resources Ltd. (Stuwix). As a result, Stuwix became the only First Nation company in the BC Interior to hold a replaceable forest license. This license then enabled them apply for and obtain an IFPA, granting them the ability to share in potential AAC uplifts. In April 2001, Stuwix reached a 'Share Agreement' with the other licensees, giving them access to fifty-percent of any newly awarded AAC, fifty-percent of the jobs/contracts resulting from new AAC and fifty-percent of the opportunities in the

⁴¹ See The Nicola-Similkameen Innovative Forest Society. <http://www.nsifs.bc.ca>

NSIFS Forestry Plan. Two AAC uplifts, one in 2004 of 330,700 m³/yr and one in 2005 of 500,000 m³/yr, have resulted in the awarding of increased AAC of 454, 405 m³/yr to Stuwix (Walkem 2006).

Based on the Merritt TSA model, this policy alternative would see the enactment of legislation to formally require the co-management of Timber Supply Area's between license holders and First Nations with traditional territory in the TSA. In order to give them a stake in the potential uplifts and realize the same benefits as their management partners, legislation would be enacted to allow the direct award of replaceable forest licenses to First Nations so they could apply for their own IFPA. There would also be a requirement placed on the licensees to develop a Share Agreement, similar to the one found in Merritt, which would give First Nations the financial and social capacity needed to become full partners in the management of the TSA.

III. Constitutionally Enabled Shared – Decision Making

Aside from the status quo, all of the alternatives incorporate aspects of shared-decision making. However the shared-decision making is isolated to particular policies, not to the overall design of Provincial land-use management. This alternative provides the framework to implement the commitment of the *New Relationship* to develop processes and institutions for shared decision-making over land and resources between First Nations and the provincial government.

There have been attempts at higher level shared decision making in BC. The two prominent examples of 'co-management' models are Clayoquot Sound and Gwaii

Haanas/South Moresby. Clayoquot Sound is seen by many to represent an environmental success story and a victory for First Nations in their quest for interim rights over land-use decisions. However, Mabee and Hoberg (2006) found that nearly a decade after its implementation the original goals and ideals of those involved in the co-management of Clayoquot have been hampered by administrative and institutional challenges. The Central Region Board (CRB) is the co-management body of the region's natural resources. It is composed of fifty percent government appointed representatives and fifty-percent First Nations who are represented by a member of each of the central regions Nuu-chah-nulth Nations. Within the current legislation structure, statutory authority remains solely in the government's domain, therefore the CRB decisions only act as recommendations to the District Manager of the Ministry of Forests who represents the Provincial government and retains statutory decision-making authority (Mabee and Hoberg 2006).

A similar situation of co-management exists in Gwaii Haanas with the exception that for the purpose of agreement the Haida and the Government of Canada agreed to disagree over the ownership of the land. Through the agreement the Archipelago Management Board (AMB) was created with the purpose and authority to examine all initiatives and undertakings relating to the planning, operation and management of the Archipelago. The AMB is composed of two representatives from the Haida Nation and two representatives of Parks Canada. Decisions must be reached by consensus and if there is a disagreement, the issues will be referred to the Chief of the Haida Nation and the Government of Canada. If resolution cannot be achieved at this higher level there is the further agreed upon option of involving a third party arbitrator. This strategy shows promise in that in order to create a plan to protect an area, two historically hostile groups

were able move past intractable viewpoints (i.e. the ownership of the land) in order to focus on shared common ground (Hawkes 1996). However, technically the same legislative impediments of Clayoquot Sound co-management exist. Even though the government has agreed to co-manage in practice, legally it does retain sole statutory decision-making authority. In effect, under current provincial legislation, co-management boards cannot fulfill more than an advisory role in decision-making. As a result, in order for the vision of ‘shared-decision making’ of the *New Relationship* to be attained in Canada there must be a restructuring of decision making authority.

According to Smith (2005), the change that is required is the recognition of Aboriginal rights at the constitutional level. Smith argues that this recognition must be enabled at the constitutional level as it is constitutional level rules that decide who gets to make collective choice decisions which inform the operational level of who gets what, when and how (Smith 2005: 408). In practice, legislated inclusion at the collective choice level would give First Nations the power and authority to decide who makes the operational on-the-ground decisions but I contend that it is at the constitutional level that Aboriginal rights are protected so it is at the constitutional level that they must be enabled. First Nations have struggled for recognition of their rights through government-to-government negotiations, and the *New Relationship* promises to create government-to-government shared decision making – these visions can only be realized at the constitutional level.

In 1996 the Royal Commission on Aboriginal Peoples coined the term co-existence to imply a shift to an arrangement which recognized the diversity in cultural, social, economic and political systems of First Nations and the Canadian government, but

with a conscious choice made to share and peacefully live side by side. The rights-based approach forms the foundation of the co-existence model, because constitutional level agreements negotiated between Aboriginal peoples and the state (both provincial and federal governments) will allow management based on the understandings and aspirations of both the state and aboriginal peoples (Smith 2005: 214). In practice it would look similar to the Haida agreement but it would be a constitutional enshrined commitment to ‘exist in mutual tolerance through professing different ideologies’, instead of a lower level decision to ‘agree to disagree’ because of the absence of an enabling framework.

A Comparison of the Alternatives through Projected Outcomes

The projected outcomes of the four alternatives will be compared based on how they well they address, economic impacts, fairness and legal and political requirements. Aside from the status quo where results already exist, these are *projected* outcomes. They are predictions using the best available insight and data in relation to the goal of producing a universal acceptable solution for the inclusion of First Nations in forestry. The projected outcomes used to evaluate the alternative ‘*Legislation of the Organizational Aspects of the Merritt IFPA Model*’ are derived from the actual experience in the Merritt TSA. It is understood that as this is only one case study different outcomes are possible for all the alternatives. In order for consistency of analysis, the best possible scenarios of all the projected outcomes of the alternatives are used as the basis for comparison.

The Status Quo - *The Forest and Range Agreement*

Economic Impact

The status quo has a negative impact on First Nations economic viability as the short term non-replaceable timber allocations and per capita revenue sharing result in little initial revenue and limited investment opportunities, and no means to obtain and/or build capacity. The impact on the provincial economy has been neutral, but has the potential to become negative as conflict escalates and stability for investment further declines.

Fairness

With the exception of fairness to current license holders, the *FRA* performs very poorly in terms of stakeholder definitions of fairness. Any loss that the industry incurred due the transfer of land to First Nations under the Forest Revitalization Act (Bill 28, 2003) was fully compensated either through access to other tenures or monetary compensation. Aboriginal rights and title however are not recognized and/or accommodated. The policy does not take First Nations laws, knowledge and values into account and the courts have ruled that it does not provide meaningful consultation. The *FRA* does not promote the well-being of all British Columbians because it only serves to generate further conflict over Provincial resources and thus promote economic, environmental and social instability.

Legal and Political Requirements

The *FRA* does not meet the objectives of First Nations and has been publicly criticized for its failure to meet the commitments of the *New Relationship*. These failures have resulted in greater ‘uncertainty’, which has also resulted in Provincial objectives not being met and the forest industry’s objectives to also be impeded. .

I. Modify the Existing FRA/FRO in Direct Consultation with First Nations

Economic Impact

The economic impact is probably the most challenging impact of the modification of the *FRA* to predict. It is assumed that under this alternative there would be the abolition of per capita formulas and the establishment of a mechanism to take the strength of a First Nations claim and degree of potential infringement into consideration when calculating revenue sharing and timber allocation. Parfitt recommends that this mechanism be a funding formula based on both the volume and value of forest resources coming off of First Nations territories. According to Parfitt’s analysis this would provide an equitable and fair arrangement that reflects the ongoing impact of forest industry activities on individual territories. Furthermore a 50/50 division of cutting and stumpage fees is recommended with First Nations receiving half of the stumpage collected by the province on their territory (Parfitt 2007:43-46)

Indisputably this will result in larger timber allocations and greater revenue for First Nations and therefore immediate short term economic gains for First Nations. However, the long term impacts on the provincial economy and First Nations economic

viability are harder to project. If we assume Parfitt's second recommendation of First Nations timber allocation being in the form of a longterm renewable area based forest tenure is also implemented, then we could assume an opportunity to manage forestlands in a sustainable manner and the ability to attract investment capital would be created.⁴² The projected result would be : the creation of more jobs in First Nation communities; the generations of further jobs in nearby communities, and the underwriting of the costs of long-term, sustainable land-use plans (Parfitt 2007:46). This would provide positive economic impacts for First Nations, the government and the general public.

However there is a caveat to this rosy picture; since the land they stand to receive will be in the form of timber allocation, First Nations will be faced with complying with the rules and regulations of the *Forest and Range Practices Act (FRPA)*. However the modification of the *FRA* would also seek to ensure that the agreement will not lead to negative impacts on cultural values by incorporating First Nation laws and values into land and forest use decisions. This might result in the crafting of a new set of policies or the incorporation of First Nation laws and values into *FRPA*. Either way, in a province financially dependent on the extraction of timber, one can reason that this would not result in an immediate or significant reduction in extraction. Therefore the inclusion of First Nation values would most likely result in First Nation input into *how* not *if*, large scale timber extraction will be done. This will pose an immediate challenge for First Nations as the majority of communities do not have the infrastructure or capacity required to meet the demands of large scale industrial forest management. The lack of people with this specific knowledge and skill set will either result in 'mismanagement' and government imposed penalties or the employment of workers beyond the community.

⁴² See Parfitt 2007 for the supporting research and analysis

Therefore the economic outcome is unclear as it is contingent on how this policy is implemented as well as how willing First Nations are to work with current licensees and forest sector employees.

Parfitt raises another issue to consider for the implementation of 50/50 revenue sharing; by tying revenues to volumes logged, an impetus for unsustainable logging rates is created. Like current and past Provincial governments First Nations might find themselves dealing with the temptation to keep logging rates high to maximize economic benefits, with the possibility of disastrous environmental and social outcomes (Parfitt 2007:45). However Parfitt takes the optimistic stance that a balance would be achieved by First Nations not willing to compromise environmental sustainability at the expense of an economic windfall, and his proposed co-management scheme where both Provincial government *and* First Nations are accountable for actions taken (Parfitt 2007: 46) Perhaps, however I think his analysis fails to make a realistic examination of First Nations and the Province becoming equal partners in management given the previously outlined imbalances in this thesis. Furthermore an argument that First Nations would exploit the economic situation is mute, as this argument could be applied to any management entity – and in fact has to both the government and industry.

Fairness

By taking the strength of individual land claims into consideration, this alternative would provide the court definition of meaningful consultation and accommodation.

However assuming that First Nation management of the timber allocation falls under *FRPA* or even a modified version, I argue that this alternative does not necessarily

recognize and accommodate Aboriginal rights and title in their 'full form'. *FRPA*'s rules and regulations were designed for industrial forestry, and therefore they might constrain the full incorporation of First Nations laws, knowledge and values. If this alternative were to be fair to First Nations it would require tenure restructuring to allow First Nations the ability to manage their lands using separate policies from those applied to the mainstream provincial forestry sector⁴³.

In terms of fairness to taxpayers it could be argued that by not requiring First Nations to lay down any court asserted rights in exchange for benefits, it would perpetuate the 'uncertain' climate that the current administration blames for decreased investment and return on provincial resources. However, it is just as, if not more, likely that this alternative would lead to greater certainty by finally providing an agreed upon means to reconcile First Nation and provincial jurisdictions over forested land. The government would not need written assurance that First Nations would not take them to court because First Nations would no longer require this option as they would feel fairly consulted and compensated. This could result in a climate capable of balancing the economic, social and environmental components of provincial resources and therefore perform quite well in terms of fairness to taxpayers.

In regard to fairness to the current license holders, based on past precedence there is no reason to believe that they would not receive compensation for any loss incurred. How the government will do this in a fair and equitable manner so that it not result in increased pressure on tax payers, is difficult to predict. The issue of compensation is a definite weakness of this alternative.

⁴³ See Curan and M'Gonigle, 1997 for an in depth analysis of how the regulatory framework of forest management impedes the incorporation of First Nations values and traditional practices

Legal and Political Requirements

In responding to action number seven of the *New Relationship* this alternative is consistent with its commitments, however it does not fully realize the overriding visions of a structure for government-to-government shared decision making as it is policy specific. The alternative meets legal requirements and the objectives of First Nations, and in doing so is likely to create the certainty desired by the Province. However it is unclear whether the forest industry's objectives will be met and, as a result the economic development component of Provincial objectives.

It has been argued by some First Nations that the government failed to fulfill the promise of action plan seven upon the revision of the *FRA*; this could suggest that the government is hesitant to implement this alternative. This may be primarily due to the economic uncertainty previously discussed. I therefore conclude that its potential effectiveness is good but that since this is unproven its social acceptability is currently quite low and therefore it will be difficult to seek universal support of its implementation. In order to navigate this uncertainty there must be an in depth analysis performed on the potential economic outcomes of this alternative.

II. Legislation of the Organizational Aspects of the Merritt IFPA Model

Economic Impact

This alternative's strength is its ability to address the concerns over the economic impact of a increased role for First Nations in forestry. By making First Nations full partners in the provincial forestry sector they will see an increase in jobs, long-term

investment and economic opportunities. Due to the potential for an increase in the AAC under IFPA legislation there will also be an increase in Provincial revenue and job availability in the forestry sector. As well, as a result of the development of innovative strategies developed in participation with First Nations there will be an increase in management efficiency and therefore decreased cost of forest management for licensees and government. This is difficult to quantify as it comes not only from more efficient management but also from the elimination of the cost of conflict with First Nations (Walkem, 2006). This is a rosy picture from an economic standpoint but it would be irresponsible not to question its sustainability.

Fairness

Through First Nations direct participation in all aspects of management they will be provided with meaningful consultation. Aboriginal rights and title are accommodated through First Nation inclusion in management and a fair return from resource development; however title is not necessarily recognized in its full form. The IFPA is premised on the notion that AAC should be increased if/ when possible. This may be inconsistent with the laws, knowledge and values held by First Nations and therefore hinder their right to manage accordingly. However it could be argued that this alternative acts in accordance with First Nation's laws, knowledge and values through the development of First Nation land use inventories and modeling databases to incorporate their interests and values at the strategic and stand levels. The level of fairness to First Nations of this alternative will probably vary along with the difference in values and how they are expressed by distinct First Nations.

The fairness to taxpayers is unclear as it is contingent on the Province's commitment to high standards of environmental sustainability. The well-being of all British Columbian is maintained and enhanced through this alternative *if* the AAC uplifts are derived from truly innovative practices that are sustainable in all senses of the word. However if the maintenance of environmental values are sacrificed at the expense of profits, this is not an example of the optimal use of Provincial resources and is therefore unfair to taxpayers. I believe the sustainability of this alternative must be questioned and properly investigated before it is widely implemented.

This alternative does not require current licensees to relinquish their tenure and it allows them to maintain and/or increase their harvest levels. Therefore this alternative is fair by the indicator standards as no compensation is required.

Legal and Political Requirements

This alternative meets the objectives of all three key actors, thus predicting acceptability and ease of implementation. Since decision making is now shared at the management level of the TSA it allows First Nations the authority to make operational decisions. It therefore appears that this alternative goes farther than the alternative of modifying the *FRA* in recognizing Aboriginal rights and title. However in placing the focus on managing for an increased AAC, it may still constrain the full expression of title. Therefore although consistent with the *New Relationship*, the alternative does not represent the full realization of its vision and goals.

IV. Constitutionally enabled Shared – Decision Making

Economic Impact

The economic impacts of this alternative are difficult to predict. However it can be assumed that since both the Province and First Nations have equal authority over decisions, on-going negotiation and consensus building will lead to the consideration of the economic impact on all stakeholders. Therefore assuming agreement can be reached, the negative impact on the provincial forestry sector and taxpayers should be minimized while incorporation First Nations aspirations of becoming strong economic partners.

Fairness

This alternative directly responds to the visions and goals of the *New Relationship*. The recognition of Aboriginal rights and title forms the fundamental basis of this approach to co-management. First Nations laws, knowledge and values are protected at the constitutional level and are therefore including in all processes of decision-making, planning and implementation. Meaningful consultation ceases to be an issue as no decisions can be legally made without First Nation authorization.

The well-being of all British Columbians is protected as this will lead to provincial economic stability by creating the elusive ‘certainty’ over jurisdiction. Furthermore the potential is created to promote optimal use of the resource through the ‘checks and balances’ of government-to-government decisions. This is not assured, however it encourages accountability by limiting the ability for ‘back room negotiations’

between government and industry, by legally requiring the inclusion of third party interests.

For this reason, it is more difficult to predict the impacts this alternative will have on current license holders. By limiting closed door negotiations between government and industry this alternative will displace the power and control of current license holders over management. It is difficult to predict how this loss of power will translate into loss of money or how/if the government will compensate the license holders. Under a new process of shared-decision making the government will first require consensus to be reached with First Nations before being able to compensate license holders through the transfer of less contentious land. Since direct compensation has been one of their strategies in the past it is unclear how/if compensation will occur in this new decision-making environment.

Legal and Political Requirements

This alternative's strength is that it provides a framework for shared decision-making that enables the reconciliation of Aboriginal and Crown titles and jurisdictions. As such it is the only alternative with the ability to fully meet the commitment of the *New Relationship* and the objectives of First Nations. As result it has the greatest potential to create the stability and certainty that the current Provincial government has sought since election. Although the forest industry's objectives may seem to be ignored by this alternative, it can be argued that they are in fact more securely protected than in previous interim 'policies'. First, their interest in maintaining a profitable industry will be represented in negotiation due to the Provincial government's dependency on a resource

based economy and any decisions made will be with the full consent of First Nations, which will provide unprecedented security. Secondly, industry are lessees of Crown land, it could potential make no difference to their operation whether they are leasing from the Crown or First Nations; however leasing from First Nations would give them the security of their investment by eliminating the threat of court action. However these arguments are difficult to make without precedence so it can be expected that industry will initially balk at this alternative. The same will be true of the Province as it requires the shuffling of power and new concept of governance, which will require radical upheavals in the way BC's does business. The potential for this alternative to meet all the indicators is excellent however barriers exist to the realization of this potential.

Table 2: Summary of Projected Outcomes

Criteria	Indicators	<i>Status Quo</i>	Alternatives <i>Modify FRA</i>	<i>Legislation</i> <i>Organizational</i> <i>Aspects of the</i> <i>Merritt IFPA</i> <i>Model</i>	<i>Constitutionally</i> <i>Enabled Shared</i> <i>Decision-Making</i>
<i>Economic</i> <i>Impact</i> (<i>Negative –</i> <i>Excellent</i>)	<i>Impact on</i> <i>Provincial</i> <i>economy</i>	Unclear – Appears neutral but likely to result in costly conflict	Unclear- dependent on implementation and First Nation capacity building	Good	Unclear
	<i>Impact on First</i> <i>Nation’s</i> <i>economic</i> <i>viability</i>	Negative	Unclear- dependent on FN ability to build necessary infrastructure	Good	Excellent
<i>Fairness</i> (<i>Poor - Excellent</i>)	<i>Fairness to First</i> <i>Nations</i>	Poor	Good	Good	Excellent
	<i>Fairness to</i> <i>taxpayers</i>	Neutral	Unclear	Good	Good
	<i>Fairness to</i> <i>current license</i> <i>holders</i>	Neutral	Unclear	Good	Unclear
<i>Legal and Political</i> <i>Requirements</i> (<i>Yes/No</i>)	<i>Meets Court</i> <i>upheld duty to</i> <i>consult and</i> <i>accommodate</i> <i>First Nations</i> <i>interests.</i>	No	Yes	Yes	Yes
	<i>Meets</i> <i>commitment to</i> <i>the New</i> <i>Relationship</i>	No	Yes	Unclear	Yes
	<i>Meets the</i> <i>objectives of all</i> <i>three key actors</i>	No	Unclear	Unclear	High potential

Conclusions

The purpose of this analysis was to consider mechanisms to include First Nations in the forestry sector and their consistency with the *New Relationship* and its commitment to reconciling First Nation's rights concerning land and resources with the existing rights of non-First Nations in the pre-treaty environment.

Using a set of criteria and indicators the alternatives were evaluated according to their ability to address the impact on the economy, perceptions of fairness, and legal and political requirements from the perspective of First Nations, industry, government and the public. Based on the results from this analysis it is concluded that enabling shared decision-making at the constitutional level is the alternative with the most potential to produce long lasting solutions that satisfactorily meet the concerns of all stakeholders. Modifications to the *FRA* and amendments to the *IFPA* may provide the starting point to begin the process of successfully including First Nations into the forestry sector, but they are stand alone policies and need to be embedded within a broader institutional structure capable of reconciling the larger issue of Aboriginal rights and title. It is constitutional level changes that will create the stability and legitimacy of initiatives undertaken at lower levels. This appears to be the only way to create the 'certainty' that the government and industry feel is required while fully recognizing the rights of First Nations. Smith (2005: 408) argued that until a constitutional level change is made that recognizes Aboriginal people's rights in resource management, interim agreements aimed at creating this stability will be structured to curtail or narrow Aboriginal and treaty rights. Although a seemingly uncompromising statement, the case study of the implementation of Gitxaala's *FRA* lends some support to this argument. The research

demonstrated that Provincial policy was implemented according to the interpretation of local bureaucrats. This allowed for District Ministry of Forests personalities and politics to direct and determine the process and possible outcomes. This is not to say that Gitxaala's Chief and Council did not contribute to the difficulties of implementation. However as a delegated statutory decision-maker, it allowed the North Coast District Manager to set the parameters for implementation instead of a universally defined and entrenched right.

The signing of the *New Relationship* marked a positive development in a historically difficult relationship between First Nation's and the Provincial government. Central to the entire agreement is a promise of shared decision-making and recognition of aboriginal rights and title. This is the time to act; not keeping this promise will re-open and amplify crises of legitimacy and trust. Clearly some First Nation's are not happy with the current means for their inclusion in the forestry sector and want change. However, just as significant is that neither the Province nor Industry are happy with the status quo. The future of British Columbia's forests is in a precarious position. The time is ripe; the momentum from the agreement marks the perfect time for the required change in BC's decision-making culture.

Section 4: Final Discussion and Recommendations

On the surface the *New Relationship* appears to depart from previous Provincial policies by openly recognizing the strength of Aboriginal claims and the government's duty to help First Nations achieve their constitutional protected and court asserted rights to their traditional land and resources. The Provincial recognition for the need to establish a new relationship based on respect, recognition and accommodation of aboriginal title and rights, which reconciles aboriginal and Crown titles and jurisdictions, is unquestionable positive. However without a clear understanding of the substantive content of that statement, directives or policies which actualize this vision to the satisfaction of all parties are difficult if not impossible to achieve. The examination of the implementation of Gitxaala's *Forest and Range Agreement* demonstrated that the *New Relationship's* ambiguous vision and resulting lack of a shared understanding has the potential to impede progress and disrupt the establishment of a truly new relationship. Until clear policies and directives are developed that respond to a mutually understood vision, the *New Relationship* simply represents a 'new' Provincial tactic for the Province to maintain a hold on resources and create certainty for industry in an era of strengthened Aboriginal claims.

Once the fundamental problem of this tactic is recognized, then the problem becomes what can be done about it? How can the Province successfully address the problem before optimism is lost? Although this thesis lacks the scope necessary to articulate a clear answer to such a large multi-dimensional question, the primary recommendation that comes from this research is that the promise of shared decision-making be fulfilled. The province and First Nations must work together in order to

develop an *all encompassing integrated strategy* for shared decision-making over land-use, instead of focusing on a piece-meal, sector-by-sector approach. However, progress in building a new institution for shared decision-making requires trust between First Nations and the government. Currently that trust is non-existent or in limited supply. Gitxaala demonstrated that transparency and information sharing is interpreted as negotiating in ‘good faith’ and is a precursor to the development of trust. Shared decision-making requires transparency and open communication throughout the entire process, and it is through this process not merely the attainment of the end goal, that a truly new relationship will be developed based on respect, recognition and accommodation of aboriginal title and rights.

In the absence of constitutional level change where First Nation’s are guaranteed an equal voice in negotiations, First Nations must be proactive in instilling their values and visions into decision-making. Instead of waiting for the province to unroll policies which define how they will participate in decision-making they must work to produce their own ‘policies’ which define how the province will work with *them*. Lip service has been paid to the concept of incorporating traditional management practices into the current western framework of science-based resource management. However the on-the-ground reality is that there is no room for it in the *Forest and Range Agreement*. First Nations are expected to manage their timber allocation using western principles. There is frustration on both sides as First Nations struggle to achieve the required knowledge and capacity without sacrificing the values of their community; while the Province waits for First Nations to successfully navigate the industry and turn a profit like other licensees.

The difficulty of developing a Provincial structure that fully addresses the issues and attempts to respect both Crown and First Nations knowledge, politics, and philosophical beliefs is an obstacle to reconciliation. However the research in Gitxaala showed that the problem is not only at the visionary or policy formulation level but within the administrative bureaucracy and political quagmire responsible for implementing a Provincial vision. This is a sobering realization as the implication is that the battle cannot be fought and won merely in the Premier's Office. Agreements between First Nations and the Province, such as the *New Relationship*, require the necessary force to be operationalized at a local level. This will allow change to truly occur by countering the 'business as usual' mentality that exists despite high level promises.

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Appendix A UBC Research Ethics Board's Certificate of Approval