

**FOREST DEVELOPMENT, FIRST NATIONS AND  
DISTRIBUTIVE JUSTICE IN MACKENZIE FOREST DISTRICT**

by

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## ABSTRACT

This thesis examines the emotionally charged relationship between First Nation representatives and the licensee and government stewards of forest development. It provides an overview of the Mackenzie Forest District, its communities, its First Nations, and its stewards. It then discusses the institutional arrangements that constitute the planning and decision-making milieu. Next it provides an historical and a local overview of issues and events that concern First Nation representatives. Turning to principles of distributive justice (elements of political theory that prescribe how resources, opportunity, and power should be distributed among persons) it explains Ronald Dworkin's (1978 & 1985) principle of equal concern and respect, and Joseph Raz's (1986) principle of autonomy. Those principles are then used to support the issues and concerns raised by First Nation representatives and suggest recommendations that could help to mitigate them.

The approach taken differs from most forestry theses. Principles of distributive justice, not environmental or ecological principles, are used as a basis for its recommendations, and its focus is on the validity of normative, as opposed to empirical, claims. As I am convinced that many are not aware that good forest stewardship requires the application of rigorous principles of distributive justice, this thesis was written to demonstrate the utility of this approach.

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For the rest of my extended family, thank you for the encouragement, support, and understanding that you have shown me and my immediate family over these many years.

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To the many First Nation representatives who shared their concerns, I owe a special debt. Although your lifestyles differ from mine, you have helped me to see the similarities behind those differences. More importantly, you have helped me to understand what it takes to treat someone from a different culture with equal concern and respect.

To the Ministry of Forests, and particularly to Mackenzie Forest District, I am grateful for the opportunity to complete this case study, and the understanding extended to help me complete my M.Sc. program. Despite my association, the views presented herein do not necessarily reflect those of Mackenzie Forest District, the Ministry of Forests, or the Government of British Columbia.

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## CHAPTER 1: INTRODUCTION

This chapter has two basic tasks. First I introduce my focus, which is the application of principles of distributive justice<sup>1</sup> to examples of conflict between First Nations<sup>2</sup> and proponents of forest development in British Columbia. Then, I explain the organization of my thesis, so readers will find it easier to follow.

### I FOREST DEVELOPMENT, FIRST NATIONS, AND DISTRIBUTIVE JUSTICE

Since the 1970s the popular media have highlighted many conflicts over the appropriate use and management of forested land in British Columbia. Almost continuous controversy, occasionally punctuated by carefully orchestrated and widely broadcast protests and/or acts of civil disobedience, eventually prompted the Government of BC to introduce the *Forest Practices Code of British Columbia Act* (hereafter referred to as the Code) in 1995.

This move institutionalized forest practices and regulations deemed necessary to ensure the sustainable use of British Columbia's forest resources. The preamble to the Code, which cites a common desire for the sustainable use of British Columbia's forest resources, leads one to believe that this move was intended to silence the critics. It endorses the concept of sustainability, which it describes as:

managing forests to meet present needs without compromising the needs of future generations;

providing stewardship of forests based on an ethic of respect for the land;

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<sup>1</sup> In this thesis, distributive justice refers to the subset of political theory that provides normative prescriptions as to how resources, opportunity, and power **should** be distributed among people.

<sup>2</sup> In this thesis, I use substitutes for some of the terms used in the *Indian Act*. Hence, I use aboriginal instead of "Indian," First Nation instead of "Band."

balancing productive, spiritual, ecological and recreational values of forests to meet the economic and cultural needs of peoples and communities, including First Nations;

conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources; and

restoring damaged ecologies.

However, the Code has not addressed many of the concerns voiced by representatives of British Columbia's First Nations. Tired of belonging to "have not societies," disillusioned with progress made on treaties and interim measures,<sup>3</sup> and buoyed by recent court decisions supporting their cause,<sup>4</sup> some First Nation representatives are contending that forest development should only be allowed within their traditional territories if they consent to it. They suggest that doing otherwise constitutes an unjustifiable infringement upon their aboriginal rights and/or title, and may prompt legal and other types of action to protect those rights and/or title.<sup>5</sup>

Meanwhile, non-aboriginal people who live in isolated communities, often in close proximity to a First Nation that is negotiating a treaty, sometimes wonder why First Nations

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<sup>3</sup> Recognizing that many of the First Nations in British Columbia were unjustly disassociated from their lands and resources, the Prime Minister of Canada, the Premier of British Columbia, and the leaders of the First Nations Summit signed the British Columbia Treaty Commission Agreement on September 21, 1992. This agreement established the British Columbia Treaty Commission, and charged it with facilitating the negotiation of treaties and other related agreements, such as interim measures. Interim measures are negotiated agreements that establish working arrangements between government agencies and First Nations. They are intended to smooth the transition to the conditions expected upon negotiated settlement of aboriginal land claims.

<sup>4</sup> Since 1969, when the Nisga'a First Nation was finally able to take their land claim to court, legal opinion has seen a gradual shift from assertions that "Indian title never existed" to recent decisions establishing that: a) aboriginal rights and/or title exist and were not extinguished in most of British Columbia; b) government has a fiduciary responsibility to ensure that development activities do not constitute an unjustifiable infringement of aboriginal rights; c) some of the consultation processes that government has employed to meet its fiduciary responsibilities are inadequate, and d) the federal and provincial government should negotiate directly with the various First Nations of British Columbia to resolve their concerns (interested readers will find more detail in my Chronology of Significant Events).

<sup>5</sup> Although I have couched my research in terms of forest development, a permanent legal and moral resolution to the question of aboriginal rights and title must transcend issues and concerns related to forest development and address all issues of concern to: the Government of Canada; the Government of British Columbia; the First Nations of British

are getting so much attention. As they see it, they are also left to face tremendous changes in their lifestyle brought on by forest development. Members from these communities ask why First Nations should receive special attention; should developers and/or the government not pay equal attention to everyone's concerns?

While the Code may have gone a long way in addressing environmental and ecological issues, it appears that the equitable distribution of benefits and burdens pertaining to forest development is still a problem. Although the Code has endorsed balancing the productive, spiritual, ecological, and recreational values of forests to meet the economic and cultural needs of peoples and communities, including First Nations, it has not provided a clear understanding of what this entails.

This ambiguity leaves room for different interpretations and conflict. For example, a First Nation could challenge a District Manager's determination (reasoned decision) to approve a plan required by the Code, if they feel it perpetuates an unjust distribution of the benefits and burdens associated with forest development. In so doing, the spotlight of the investigation could depart from administrative law and the exercise of due diligence, to focus upon the concept of distributive justice - a subset of political theory providing normative ideals as to how resources, opportunity, and power should be distributed among people.

While I am not aware of a First Nation (or anyone else) mounting a legal challenge of a District Manager's determination to approve an operational plan because they felt that the plan failed to meet the spirit and/or intent outlined in the preamble to the Code, I believe it is an option. Therefore, it seems prudent to examine forest development planning and decision-

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Columbia and the rest of Canada; individuals and organizations that have legal claims to British Columbia's land and resources, and all present and future generations of British Columbia and Canada.

making processes with respect to contemporary theories of distributive justice to make recommendations that could reduce the likelihood of this happening.<sup>6</sup>

## **II THESIS ORGANIZATION**

Since this thesis is aimed at a varied audience, and since it relates to a particular geographic area, it contains descriptive detail that may not interest all readers. To enable readers to refer to areas that interest them the most, I have divided my thesis in chapters that describe:

1. the methods I used to compile this thesis;
2. a description of the geographic area to which it applies, i.e., to Mackenzie Forest District, and the communities, First Nations, and stewards of forest development within its boundaries;
3. the forest development planning and decision-making milieu within Mackenzie Forest District. This includes the institutional arrangements (legislation, regulations, policy, court decisions, and planning and decision-making tools) guiding the integration of forest developers interests with those of the First Nations and isolated communities within Mackenzie Forest District;
4. an historical account of issues and events that have shaped the relationships between First Nations and the government in British Columbia, and an account of concerns raised by First Nation representatives in 1997 and 1998 that were related to forest development proposals in Mackenzie Forest District;

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<sup>6</sup> As I explain in Chapters 2 and 6, I refer extensively to two contemporary theorists - Ronald Dworkin and Joseph Raz.

5. some contemporary principles of distributive justice that apply to the concerns of the First Nations in British Columbia and Mackenzie Forest District;
6. some recommendations that could provide enhanced integration of First Nation's interests in the planning and decision-making processes and procedures, thereby reducing the probability of injustices; and
7. the conclusions of this thesis.

## **CHAPTER 2: RESEARCH METHODS**

In this chapter, I elaborate upon the methods I used to compile this thesis. I explain the research objective, its benefits, the research hypotheses, the limits of my research, the different nature of my inquiry, and the processes I used to identify issues and/or concerns.

### **I RESEARCH OBJECTIVE**

Although, planners and decision-makers might benefit from an understanding of proactive measures to mitigate the possibility that First Nations will want to take legal action against proponents of forest development, many would probably wonder why they should bother. They would not expect a quick and simple fix, since the extent of aboriginal rights and/or title is uncertain. Furthermore, they would likely fear that new measures might very well add expense and delay to a forest industry that is already challenged by recent events.<sup>7</sup> With these possible objections in mind, this research was undertaken to identify a rigorous foundation for recommending pragmatic, proactive, and adaptive measures to address First Nations' concerns related to their share of benefits and burdens, which are distributed by forest development planning and decision-making processes in Mackenzie Forest District.<sup>8</sup>

### **II RESEARCH BENEFITS**

If implemented, the recommendations contained herein should provide First Nations with a fairer distribution of the costs and benefits related to forest develop. This should help

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<sup>7</sup> The forest industry and the Ministry of Forests are currently facing reduced revenues due to: weak markets for forest products, restrictions on softwood lumber exports created by the United States' and Canada's *Softwood Lumber Agreement*, more stringent operational measures created by the Code, confusion dealing with the Code, and uncertainties created by recent failures in the Asian market.

<sup>8</sup> This thesis is intended to inform First Nations, academics, government, and industry.



them develop more favorable opinions of the Ministry of Forests and the forest industry and reduce the likelihood of conflict, including the probability that a First Nation would appeal one of the District Manager's determinations on the basis that it failed to implement the spirit and intent outlined in the preamble to the Code.

### **III RESEARCH ASSUMPTION**

This research was based on the author's assumption that it is important to balance "the productive, spiritual, ecological and recreational values of forests to meet the economic and cultural needs of peoples and communities, including First Nations" as stated by the third principle of sustainability outlined in the preamble to the Code.

### **IV RESEARCH HYPOTHESES**

This research is based on two hypotheses:

1. that First Nations have concerns that are related to the distribution of the benefits and burdens of forest development in Mackenzie Forest District, and
2. that contemporary principles of distributive justice can be used to validate those concerns and suggest mitigative strategies to address them.

### **V RESEARCH LIMITS**

This research does not provide an exhaustive list of concerns held by the First Nations in Mackenzie Forest District. Neither does it claim to understand the proportion of individuals within a First Nation who share these concerns. However, since the concerns identified herein were expressed by well respected representatives of the First Nations in Mackenzie Forest District, their significance is assumed.

Furthermore, since the author is aware of many confounding circumstances that could not be taken into account, this thesis does not provide a definitive statement of what distributive justice would entail in a particular circumstance. Instead, it is limited to making generalized suggestions, that if invoked, should help provide a just distribution of the costs and benefits associated with forest development. Since the measures suggested herein are directed primarily towards First Nations, it should be understood that in some situations it may be appropriate to extend similar measures to others who are affected by forest development.

## **VI NATURE OF INQUIRY**

Unlike many, if not most, forestry theses, this is not primarily an exercise in theoretical reasoning. In other words, no scientific claims about the temporal relationships between biological, geological, climatic (biogeoclimatic) and anthropological factors, and the morphological and/or ecological character of forests are made herein. Instead, I use practical reasoning to recommend principles of distributive justice that can enhance planning and decision-making processes and enable First Nations to receive a just distribution of the benefits and burdens associated with forest development.

As some readers may not distinguish between these two types of reasoning, I will elaborate on each below.

Theoretical reasoning, which Runes (1983: 333) describes as “reflective thought dealing with cognition, knowledge and science,” relies on reliable and accurate scientific observation as a reason for believing in something. The emphasis is on the accuracy of one’s

information (facts). The primary product of such reason is an empirical statement (a scientific claim or belief that includes description, explanation, and prediction).

On the other hand, practical reasoning helps us choose goals, the most appropriate means to reach those goals, and whether or not to implement those means (Walton 1990). Therefore, it is more like “ordinary reasoning leading to such a conclusion as: ‘I ought to do such-and-such’ ” (Anscombe 1978: 33). Practical reasoning is a normative process (Angeles 1981) that differs from theoretical reasoning because it is used to develop normative “rules, recommendations, or proposals, as contrasted with mere description or the statement of matters of fact” (Bullock et al. 1988: 589).

In practical reasoning, values and norms (not facts) are the focal point, because one’s values and norms (not scientific claims or beliefs) dictate what one should (or ought) do (Raz 1975). Perhaps a simple example will help to illustrate this point. Most people who become aware of a hazard will reduce the danger to themselves by abating the hazard or removing themselves from harm’s way. They do this because they value an injury-free life, not because their knowledge of science tells them to. Their scientific understanding may make them aware of how they may be injured, but their values are what tells them to do something to avoid the injury.

With a better understanding of the differences between theoretical and practical reasoning behind us, I wish to conclude this section by pointing out that my emphasis is decidedly normative. I focus more on identifying principles that should be incorporated in the planning and decision-making processes associated with forest development, than I do on describing those that are. Although I use empirical methods (observation and literature review) to identify issues and events of concern to First Nations, I do not claim that all the

aboriginal people in Mackenzie Forest District hold these concerns. Neither do I make any assertions as to how well these concerns are being addressed. Instead, I concentrate on identifying normative principles that should be applied to address concerns such as these. Therefore, this thesis is primarily an exercise in practical reasoning.

## **VII PROCESSES FOR IDENTIFYING ISSUES OR CONCERNS**

As suggested above, two separate processes were used to identify the issues and events of concern to First Nations that are discussed in Chapter 5.

The first process involved a literature review of important issues and events that have transpired with respect to First Nations' drive for recognition of aboriginal rights and title in BC. The results of this search are presented in the section on Colonial Politics. The issues raised in this section are revisited in Chapter 7, with respect to the principles of distributive justice revealed in Chapter 6, to demonstrate why First Nations in British Columbia need special consideration in planning and decision-making processes related to forest development.

The second process involved personal observations made between July 1996 and January 1999. They all occurred during meetings and open-house planning functions with First Nation representatives that I attended as a matter of course during my employment as a Planning Forester for Mackenzie Forest District, British Columbia Ministry of Forests.<sup>9</sup>

Since I do not wish to draw attention to specific situations, persons, or First Nations, and since issues rather than verbatim minutes were recorded, I do not use specific quotations,

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<sup>9</sup> Despite this association, the observations and conclusions presented herein are mine alone. They do not necessarily represent the policies of the Mackenzie Forest District, the Ministry of Forests, nor the Provincial Government of British Columbia.

nor do I identify the source or discussion date, for any of the 'local concerns' presented in Chapter 5. Instead, I paraphrased the issues and concerns in general as opposed to specific terms, and attributed them to 'the First Nations in Mackenzie Forest District.' Although I tried to pass on only those concerns that were widely held, I used my personal judgment to make these choices. While I realize some credibility is lost through this means, it seemed to be the best compromise, particularly in light of my dual role as a representative of the Ministry of Forests, and the University of British Columbia.

Therefore, in keeping with my data collection and presentation methods, I do not make any claims as to the validity of any particular local concerns, nor do I profess to know what proportion of the members of each First Nation actually share a particular concern. Instead, I only profess that the 'local concerns' I present in Chapter 5 are my best interpretation of concerns that I believe are widely held among representatives of the First Nations in Mackenzie Forest District, and as such, deserve consideration.

### VIII A BASIS FOR EVALUATION

Since this thesis is largely concerned with normative matters, and since the discussion of normative matters is not often the focus in forestry theses, this section provides a general discussion on procedures for validating normative claims - a process that Rawl's (1971: 20) calls "reflective equilibrium."

Although some would disagree,<sup>10</sup> the validation of normative claims is not much different than the validation of empirical claims (Wenz 1988). Neither can be proven to be

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<sup>10</sup> Some may believe that normative claims are beyond the scope of rational analysis. For example, logical positivists (a school of thought popular in the 1930s, but largely discounted today) believed normative claims are based on emotions, not reason, so they cannot be analyzed (Wood: 1994).

true (Raphael 1990, Popper 1934). Instead, normative or empirical claims can only be subjected to a critical evaluation, i.e., they can be subjected to a reasoned analysis, which attempts to establish whether or not there are reasons for discounting them. Where critical evaluation does not reveal inconsistencies between the claim and our beliefs and/or perceptions of fact, we feel justified in validating the claim (Raphael 1990, Wood 1994).

Since the concept of justice is at the heart of my critical evaluation, it warrants further discussion here.

Reaching back to the days of Plato and Aristotle,(approximately 350 B.C.) the concept of justice is based on “the general principle that individuals should receive what they deserve” (Jary & Jary 1991: 257). Since opinions on just desserts vary, people often want more than they are allotted. Therefore, principles of justice are needed to regulate society’s structures and policies, including political, legal, economic, and social institutions (Arthur & Shaw 1991). In essence, principles of justice prevent a “free for all” where people get what they can “by hook or by crook.”

In an attempt to use the concept of justice to guide our political institutions and everyday behaviour, political philosophers have proposed a plethora of competing theories and principles of justice over the years.<sup>11</sup> However, there has been no unification behind any single theory of justice, despite the proliferation of ideas. Consequently, there is no objective means for selecting and prioritizing principles of justice that will meet everyone’s satisfaction (Arthur & Shaw 1991, Kymlicka 1990, Wenz 1988, Dworkin 1985).

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<sup>11</sup> For example, see Wenz 1988, Arthur & Shaw 1991, and Kymlicka 1990.

Nevertheless, I am not suggesting that we abandon the concept of justice and resort to a free for all. Although we cannot defer to some ultimate value to resolve questions of justice, we can employ practical reasoning to defend whatever principles of justice are employed. However, with the plethora of ideas on justice, a detailed defense of any particular principle of justice would exceed the scope of a forestry thesis such as this

Therefore, although I use Chapter 6 to present principles of distributive justice, which I use in Chapter 7 to critically evaluate the concerns raised by First Nations in Chapter 5, I do not provide a lengthy defense of those principles. Instead, I only point out that the principles I selected are defended by Ronald Dworkin (1978 & 1985) and Joseph Raz, (1986) whose ideas are very contemporary, well respected, and especially suitable for examining issues of distribution in a liberal democracy such as we have in Canada.

## **CHAPTER 3: MACKENZIE FOREST DISTRICT**

This chapter provides a brief introduction to Mackenzie Forest District. This includes overviews that describe its: physical attributes, communities, First Nations at first contact and today, and the stewards proposing forest development activities.

### **I PHYSICAL ATTRIBUTES**

Mackenzie Forest District (the District) lies in the north-central part of British Columbia (Figure 1). It consists of more than 6.1 million hectares and includes significant portions of the Rocky Mountains to the east, the Rocky Mountain trench through the center of the District, and the Omineca Mountains to the west. It is located north of the Arctic-Pacific Divide, so all its watercourses eventually find their way to the Arctic Ocean. Currently undeveloped, the Frog, Gataiga, and Kechica Rivers flow north to the Liard River, while the rest of the District's watercourses flow into Williston Lake. The District's eastern boundary crosses an arm of Williston Lake (Peace Reach) just upstream of the WAC Bennett Dam - the terminus of the Peace River.<sup>12</sup>

Mackenzie Forest District has a diverse ecological structure spanning five biogeoclimatic zones: Alpine Tundra - 33%, Boreal White and Black Spruce - 24%, Engelmann Spruce-Subalpine Fir - 18%, Sub-Boreal Spruce - 12%, and Spruce-Willow-Birch - 11% (MOF 1995).

In the latest Timber Supply Analysis (MOF 1995) it was estimated that only half the District could be considered productive land (i.e., capable of sustained production of timber

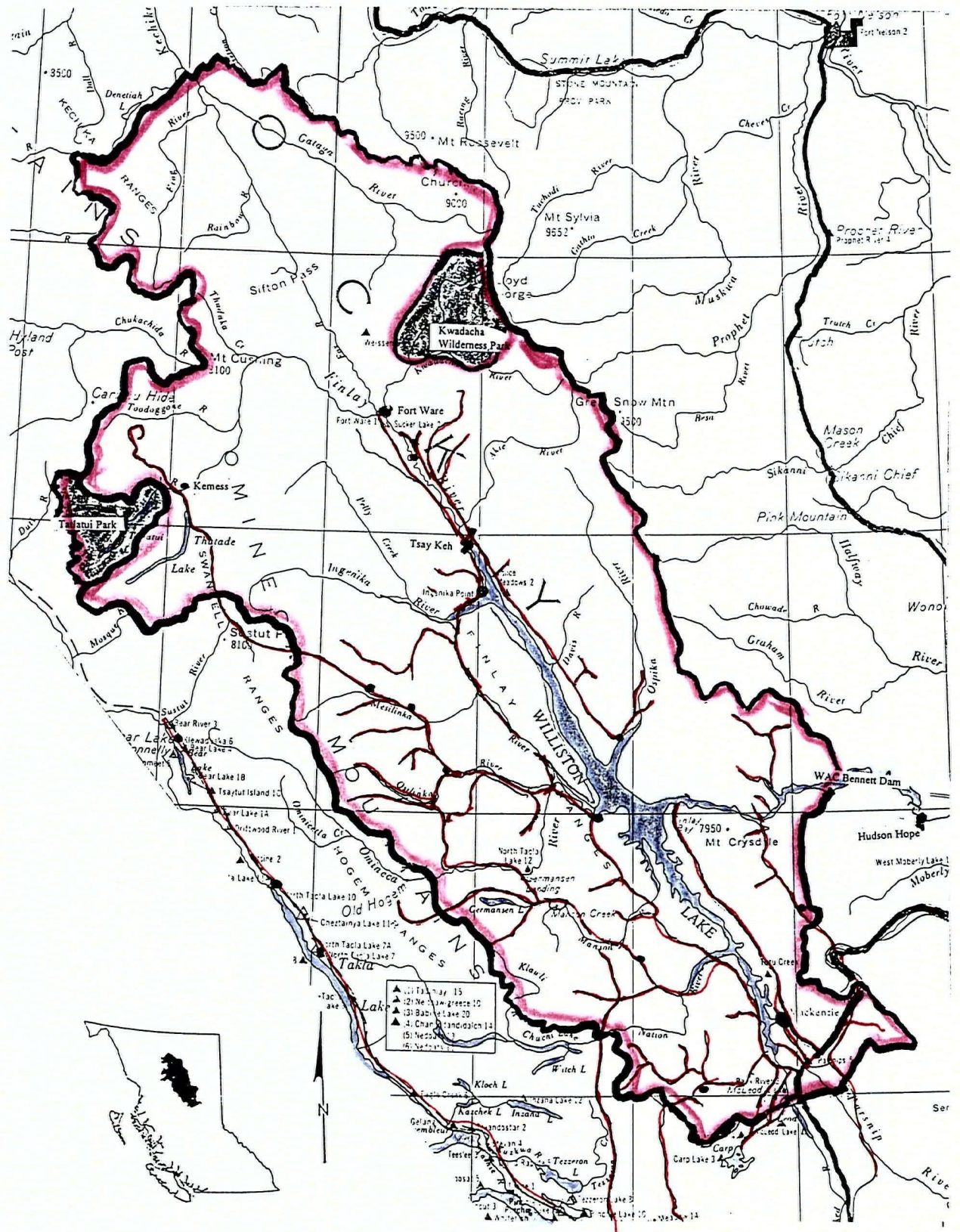


for harvesting). Of that, nearly two thirds is not suitable for sustained harvesting due to various social, environmental, economic, and technological constraints. In 1996 the Ministry of Forest's Chief Forester established a coniferous annual allowable cut (AAC) of 2,951,121 m<sup>3</sup>, and a deciduous AAC of 50,000 m<sup>3</sup>. This cut was to be harvested from the 1.1 million hectare, long-term harvesting land base in Mackenzie Forest District (Peterson 1996).

Mackenzie Forest District currently has two protected areas within its boundaries: Kwadacha Wilderness Park in the northeast, and Tatlatui Park in the northwest (figure 1). These two areas comprise nearly 3% of the District. However, as part of BC's Protected Area Strategy (PAS) the regional protected area team (RPAT) identified additional areas and recommended that up to 9% of the District should be designated as protected areas. RPAT's suggestions are currently being debated as part of the ongoing land and resource management plan (LRMP) planning process for the District. As must the Chief Forester, I will not speculate as to what the final outcome of this process will be.

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<sup>12</sup> With over 1200 kilometres of shoreline, Williston Lake is arguably the most significant geographical feature in the District.



**FIGURE 1: MACKENZIE FOREST DISTRICT**  
 Source of Base Map: Canada (1984)

## **II THE COMMUNITIES**

This section is included to give the reader a better perspective of how stakeholders in the District's planning and decision-making processes are geographically distributed, and therefore tend to focus their interests upon portions of the District, rather than its entirety.

### **1) Fort Ware**

The community of Fort Ware is located approximately 70 kilometres north of Williston Lake near where the Fox and Kwadacha Rivers join the Finlay River. Approximately 250 residents live in Fort Ware, most of whom are members of the Kwadacha Band, which is headquartered there. Community amenities include a store and adjacent airstrip, a modern school, a day care, the Kwadacha Band Office, approximately 50 dwellings of varying ages and construction styles, a small gymnasium, and an outdoor rink. Buffalo Head logging camp is located nearby, but is only easily accessed in the winter, when an ice bridge is constructed across the Kwadacha River.

Relatively isolated, Fort Ware was without road access until 1982. Until then, one had to travel by river and trail, or by plane. Even with road access, Fort Ware was still considered very isolated, because there was no permanent bridge across the Ingenika River until the winter of 1997. Prior to that, if one wanted to take a vehicle to Fort Ware it was necessary to arrange for a barge across Ingenika arm, or else one had to travel in the winter when the logging companies put in an ice-bridge.

## **2) Tsay Keh**

The town of Tsay Keh is a relatively new feature at the head of Williston Lake. It is the main headquarters of the Tsay Keh Dene First Nation, following their relocation after the flooding of Williston Lake. It is home to approximately 250 people, and features modern housing, a new school, a store, Band and Forestry Offices, and a modern RCMP station. A nearby airstrip serves Tsay Keh and Ted Browne's Logging Camp, which is located approximately two kilometres north. On the main route to Fort Ware, Tsay Keh was also without permanent road access, until the permanent bridge was placed across the Ingenika River in 1997.

## **3) Germansen Landing and Manson Creek**

Germansen Landing and Manson Creek are isolated rural communities situated about 20 kilometres apart in the west - central part of the District. The communities as they exist today, developed gradually as a consequence of the Omineca gold rush in 1871, and a resurgence of interest in mining following the development of new technologies (including an elaborate flume system that is still visible in places) in the 1930's (Hall 1978). Still active mining communities, their population will vary from summer to winter, although I estimate their combined permanent population to be less than 200 people. Each community has a small store, and a mix of old and new dwellings. There are limited agricultural opportunities in the area, and most of the residents are quite independent. Consequently, while development is centered around Germansen Landing and Manson Creek, both settlements are really little more than a strip or corridor development along the main access routes.

Largely independent of big business and modern conveniences, residents of these communities enjoy a fiercely independent lifestyle, and are often against the intrusion of big business into "their" area. Since the 1970s, many of the residents in this area have been quite outspoken and influential as to what course forest development should take in the Omineca area.

The Omineca area is considered the heart of the Noostal Keyoh, the asserted traditional territory of an aboriginal family group affiliated with both the Takla Lake Band, and the Nak'azdli Band. Although the Noostal Keyoh has relatively few members living in the area, they claim to have over 200 relations who would like to return to the area.

#### **4) Mackenzie**

Mackenzie is a modern community of approximately 6000 people. An "instant town," it was created in 1965 - 1966 to help fulfill terms imposed by the creation of British Columbia's first two Timber Sale Harvesting Licenses. These licenses were issued in 1965 to British Columbia Forest Products Limited, and to Cattermole Timber Company. They enabled these companies to harvest the total annual allowable cut (100 million cubic feet/year) of the Finlay Public Sustainable Yield Unit, which was the precursor of Mackenzie Forest District (Baptie 1975).

Today, two pulpmills, one paper mill, and 4 sawmill complexes are the major employers in Mackenzie. A significant retail and service sector has also been established around this base, although many residents still make the 200 kilometer trek to Prince George for an outing and "serious shopping." Mackenzie has 3 elementary schools, one high school, a college, hospital, and a recreation centre.

Significantly, Mackenzie is the only community in the District where the concept of sustainability has legal connotations. In keeping with the original granting of the TSHLs, the entire annual allowable cut for Mackenzie Timber Supply Area (nearly three million m<sup>3</sup>) is intended for local mills. Since the only milling facilities in the TSA are in Mackenzie, it is the destination of choice for all the timber harvested in the District. From Mackenzie's viewpoint this is excellent. However, for the surrounding communities, there is no guarantee that the wood in their immediate vicinity will be harvested at a sustainable rate.<sup>13</sup>

### **5) McLeod Lake**

McLeod Lake is a small community located on highway 97 just south of the Mackenzie Forest District Boundary. Although the old post is no longer in existence, McLeod Lake was once the site of the first Hudson Bay Post in British Columbia.<sup>14</sup> The present community is a mixture of private residences, roadside services, and the main reserve that was established for the McLeod Lake Indian Band. Approximately 300 people live in the area. West Coast Transmission Limited, has a compressor station with approximately ten residences located just south of the community. An elementary school and a fire hall are also located there.

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<sup>13</sup> Companies based in Mackenzie could concentrate their harvest near these communities for short periods of time, and then move on to other areas until the logged areas have reached an age where a second pass is permitted. Thus, the more isolated communities could see very intense development, followed by substantial periods with no development. This is not a very good scenario, if one is trying to build a stable economy in the isolated communities.

<sup>14</sup> Simon Fraser established Fort McLeod in 1905 (Akrigg & Akrigg 1975).

### III THE FIRST NATIONS

This section provides an introduction to the First Nations in Mackenzie Forest District. To provide a better understanding of their traditional ties to the area, I begin by describing the political relationships between First Nations as they are thought to have existed in the area near the time of European contact. I then go on to describe the political relationships as they exist today. In so doing, I trust that readers will be aware that these are both non-aboriginal accounts, which try to describe aboriginal politics. As such, they can only be considered as models of their respective political realities, and it is very probable that important details were overlooked in their compilation. Nevertheless, they do provide a glimpse into political processes that are neither commonly understood, nor extensively studied. Therefore, they are valuable.

#### 1) At First Contact

This section provides a brief description of aboriginal cultures as they are thought to have existed (within the boundaries of what is now known as the Mackenzie Forest District) at the time of the first contact with Europeans (near the end of the 18<sup>th</sup> century). It draws heavily on descriptions provided in *The Sekani Indians Of British Columbia* (Jenness 1937).<sup>15</sup>

Jenness contended that the watersheds of the Parsnip and Finlay Rivers, and the section of the Peace River down to what was known as the Rocky Mountain Canyon, were all within the domain of the Sekani Indians.<sup>16</sup> He described the Sekanis as a relatively small

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<sup>15</sup> Anthropological accounts like this are written from a non-aboriginal perspective and may reflect dominant paradigms of the time.

<sup>16</sup> By Jenness' description, the bulk of Mackenzie Forest District was Sekani territory.

population of nomadic hunters and gatherers that usually subsisted in isolated family groups to enhance their chances of survival in a harsh environment. Jenness noted that although conditions were harsh, the Sekanis had good reasons for inhabiting these lands. He said that if they traveled to the Eastern part of their traditional territory, they ran the risk of meeting hostile Beaver Indians. He believed that the Beaver Indians pushed the Sekani into their mountain hideout in the first place. If they traveled to the south and west, Jenness said they would likely contact the Carriers,<sup>17</sup> who although more inclined to trade than raid, were a much stronger society due to the relatively predictable abundance of salmon. To the northwest, (near Bear or Connolly Lake at the headwaters of the Skeena River ) the Sekani were bounded by another hostile tribe, the Gitksan.<sup>18</sup> Also able to count on salmon, the Gitksan's numbers and organization was superior to anything the Sekani could muster. The north was occupied by the Kaska, a tribe which Jenness describes as even more disadvantaged than the Sekani.

Although the Sekani were not very numerous, they were widely dispersed throughout their traditional territory. Given the difficulty in traveling throughout the territory, it was possible to identify distinct groups, which frequented particular sections within the larger Sekani territory. Hence Jenness, with the assistance of natives at Fort Grahame and Fort McLeod, identified and described four independent groups: the Tseloni, the Sasuchan, the Yutuwichan, and the Tsekani (FIGURE 2).

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<sup>17</sup> Carrier is the English name that was given to the Dakelh (Tennant 1990). However, I will use Carrier, as it is in common use today (even their tribal association calls itself the Carrier Sekani Tribal Association).

<sup>18</sup> The Gitksan are sometimes referred to as the Gitxan.



The Tseloni were known as the people of the end of the rock or mountain. They occupied the headwaters of the Finlay and Liard Rivers at the Northern end of the District and beyond, but many moved to the vicinity of Fort Grahame when it opened.

The Sasuchan, or people of the black bear, occupied a large oval from Bear Lake to Thudade Lake and on down the Finlay River to the Omineca and back to Bear Lake again. When Fort Connolly opened, it became a major centre for the Sasuchan. However, when it closed, many of the Sasuchan moved to Fort Grahame, others joined the T'lotona and Tahltans.

The Yutuwichan's or Lake People's territory started at the north end of McLeod Lake. It took in the Parsnip River system, the south side of the Peace River to Rocky Mountain Canyon, and the Finlay River to about the confluence of Manson River. It included all of the Manson and Nation Rivers, but only the headwaters of the Salmon River (including Carp Lake). However, with the advent of Fort McLeod in 1906, many of the more isolated areas went relatively unused, allowing some Carrier influx from the West.

The Tsekani, also known as the rock or mountain people, occupied the area from McLeod Lake south to the Arctic Divide and east to the prairies, including the upper reaches of the Parsnip River. When Fort McLeod was built, many of them settled in the immediate area with their Sekani rivals, the Yutuwichan, to form the McLeod Lake Indian Band.

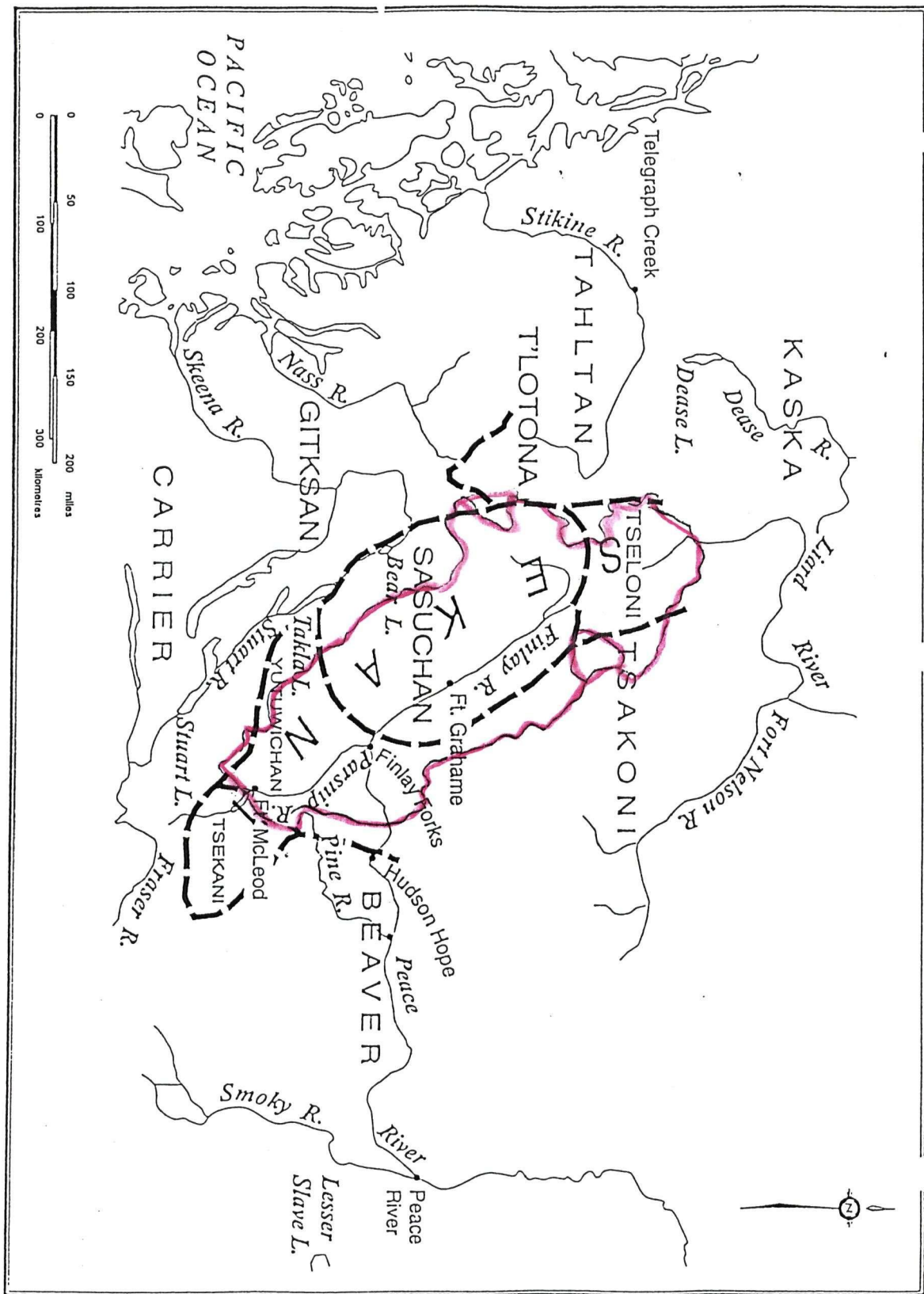


FIGURE 2: FIRST NATIONS AT FIRST CONTACT

Source: Jenness (1937).

Jenness also noted the creation of some new groups that occurred not long after contact. The T'lotona or Long Grass aboriginal people, a blend of Gitksan and Sekani, moved into a grassy area, or "groundhog country," north of Fort Connolly shortly after it closed, and "Davies' Band," who preferred the isolated and disease-free lands of the Fox and Kechika to life around the posts, was created by a merger between the Sasuchans and the Tselonis around the time Fort Grahame was established.

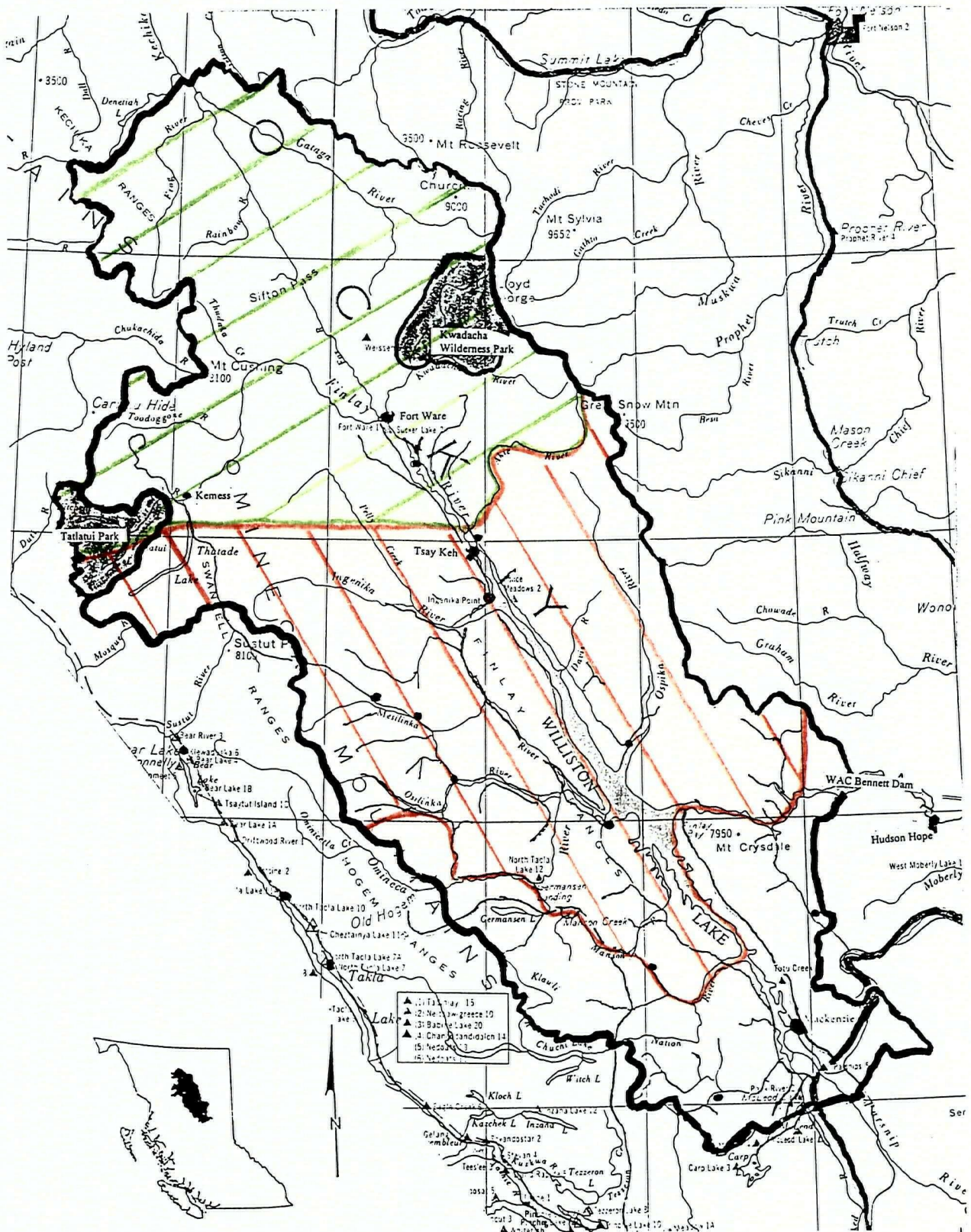
In summary, the First Nations in Mackenzie Forest District, before and shortly after European contact, consisted of adaptive people who were able to make substantial changes to: 1) find sanctuary from hostile forces, 2) find more suitable environments - apart from the traditional moves from area to area in the search of game, this included those who moved to accommodate a growing dependence upon the goods (including alcohol and firearms) that could only be acquired through commercial ventures and trade with the European colonists, and 3) address the consequences of diseases that were introduced by European colonists.

## **2) Today**

Partly as a result of forces that will be discussed in Chapter 5, and partly as a natural tendency to ensure their survival, the aboriginal peoples within Mackenzie Forest District are now organized in political organizations that are only partly reflective of the groups recognized by Jenness. This includes eight distinct groups, each of whom claims (often overlapping) portions of Mackenzie Forest District as part of their traditional territories. In the sections below, I will describe each in turn.

**a) Kwadacha (Fort Ware)**

Part of the Sekani linguistic group of Athapaskan Indians, the original Fort Ware Band was founded by "Old Davie" a highly regarded prophet who could understand and translate the European's language. It claims an expansive territory north of an east west line that bisects the District near the Akai River (Figure 3). The band is headquartered between the confluence of the Fox and Finlay Rivers, and the confluence of the Kwadacha and Finlay Rivers, at what is now known as Fort Ware. Originally called Kwada Hi or Whitewater due to large amounts of glacial silt in the Kwadacha River, Fort Ware is the site of a Hudson Bay Post that was established by a trader named Ware in 1927 (Patterson 1968). In 1959, the Fort Ware Band amalgamated with the Fort Grahame Band to become the Finlay River Band. In 1971 the Finlay River Band split into the Fort Ware Band and the Ingenika Band. In 1997, the Fort Ware Band changed its name to the Kwadacha Band.



**FIGURE 3: Kwadacha and Tsay Keh Dene First Nations' Traditional Territories**

(As estimated by Steve Dodds)

Source of Base Map: Canada 1984

Today, Kwadacha Band claims to have nearly 300 members, over 200 of whom live at Fort Ware. They are affiliated with the Kaska Dena Tribal Council of Lower Post, who has submitted a land claim and is involved in the treaty process on their behalf. Their area of interest includes all of the District north of the confluence of the Akie and Finlay Rivers.

Kwadacha Band is an active partner in Tsay Tay Forestry Limited, the major licensee's (Slocan Forest Products Limited and Finlay Forest Industries Inc.) primary logging contractor within the traditional territories of the Tsay Keh Dene and the Kwadacha First Nations. In addition, Kwadacha First Nation has their own logging company, AGF Forestry Limited, which subcontracts for Tsay Tay Forestry Limited. Kwadacha First Nation is actively pursuing its own forest tenure, including a Woodlot, and a nonrenewable forest license. Many of their members are also seasonally employed by licensees' silvicultural programs.

Many band members have traplines, and some are convinced that their future lies in tourism. They have recently completed a Forest Renewal British Columbia (FRBC) contract to upgrade several major trail systems in the area, including the construction of several small cabins that they hope will serve to diversify their income by attracting tourists to the area.

#### **b) Tsay Keh Dene**

The Tsay Keh Dene are Athapaskan Indians of the Sekani dialect. Big game hunting, and gathering were their primary sustenance activities. Formerly known as the Fort Grahame Band, and later part of the Finlay River Band before splitting again to become the Ingenika Band, they became known as the Tsay Keh Dene First Nation in 1994, in conjunction with the establishment of their new reserve and headquarters at Tsay Keh. Their current population is nearly 300, approximately 200 of whom live within the Mackenzie Forest District.

It is arguable that the Tsay Keh Dene have been affected the most by changes induced by European colonists. First, they were induced to move to the Fort Grahame area to trade their furs and purchase manufactured goods. Then when Fort Grahame closed, many of them took up residence at nearby Finlay Forks. However, with the creation of Williston Lake both communities were flooded and they had to move again.<sup>19</sup> In 1971, they rejected the modern conveniences of a brand new reserve created outside their traditional territory near Mackenzie. Instead, they chose to live (unrecognized by the government) in relatively squalid conditions at Ingenika Point, which was closer to what they considered home. In 1987, Chief Gordon Pierre filed a specific claim on behalf of his band, demanding compensation for the lost reserve at Fort Grahame. More than twenty years after they were flooded out, their claim was finally addressed in an agreement signed in 1989. The "Ingenika Settlement Agreement" as it has become known, enabled them to build a modern little community at Tsay Keh.

Although once a part of the Carrier Sekani Tribal council, and later the Sekani Tribal Council, the Tsay Keh Dene have entered into the treaty process on their own. They have filed a statement of intent that indicates their traditional territory as extending from the Peace Arm and Nation River north to the boundary with Kwadacha Band (Figure 3).

Also partners in Tsay Tay Forestry Limited, the Tsay Keh Dene can boast ownership of two logging companies - the Band-owned Ingenika Logging Ltd., and Finlay Contracting, which is owned by their Grand Chief (Gordon Pierre). In addition, they are currently pursuing a non-renewable forest license of their own. Many of their members also benefit from silviculture contracts in the area. The Tsay Keh Dene have initiated a concerted effort to

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<sup>19</sup> For more information on the effects of this development, see Cultural Chasm: A 1960s Hydro Development and the Tsay Keh Dene Native Community of Northern British Columbia (Koyl 1992).

repatriate the traplines within their territory. They are also hopeful that they will be able to benefit from tourism in the near future.

**c) Nak'azdli**

The Nak'azdli Band is part of the Carrier linguistic group, and their main village is located on I.R. #1, adjacent to Fort St. James, B.C. (see figure 4 for the portion of their traditional territory that lies within Mackenzie Forest District). Formerly known as Necoslie, in 1989 they changed their name to Nak'azdli (which means "when arrows were flying") to honour a great battle fought in their area (CSTC 1998).

The Nak'azdli are Athapaskan Indians, most of whom speak the Carrier dialect, although some speak Sekani and other dialects. Their traditional sustenance activity was fishing, with secondary emphasis on hunting and gathering.

They have entered the treaty process as one of the affiliates with the Carrier Sekani Tribal Council. Like the Takla Lake First Nation, their stated traditional territory extends along the western portion of the District up to the Thutade Lake and Kemess mine area, and some still trap and hunt in these areas. The Nak'azdli Band has had some success in acquiring forest tenures and establishing business relationships with the major licensees in Fort St. James District.



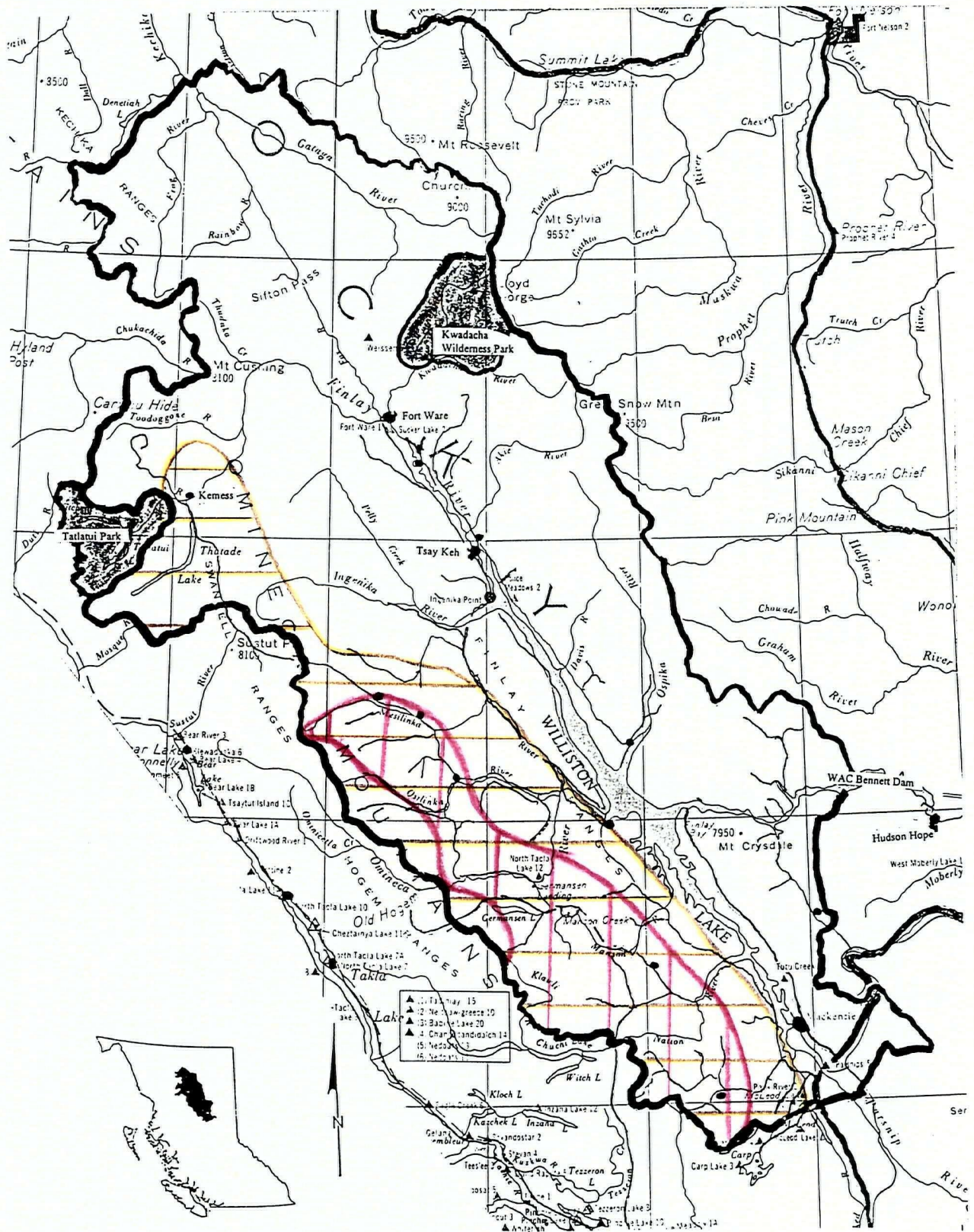


FIGURE 4: Nak'azdli and Takla Lake First Nations' Traditional Territories  
 (As estimated by Steve Dodds)

Source of Base Map: Canada 1984

In 1994 Nak'al Koh Timber Ltd., which is a partnership between Nak'azdli First Nation and Apollo Forest Products Ltd., was awarded a 7 year Timber Sale License for 477,700 m<sup>3</sup>. In 1998 Fort St. James Forest Products Ltd. received an extension on their 5000,000 m<sup>3</sup> Timber Sale License in which they have made a commitment to employ members of the Nak'azdli First Nation. Nak'azdli Development Corporation also has a Woodlot License in Fort St. James District.

#### **d) Takla Lake**

Part of the Carrier linguistic group of Athapaskan Indians, (although some also speak the Sekani and other dialects) the majority of Takla Lake First Nation members live outside Mackenzie Forest District at Takla Landing, a remote location on the eastern shore of Takla Lake (see figure 4 for the portion of their traditional territory that lies within Mackenzie Forest District). Their traditional sustenance activity was fishing, with secondary emphasis on hunting and gathering. "Takla," which means "at the end of the lake" is an approximation of the Carrier name that was given to a trading post that used to be near the northern end of Takla Lake. Takla Lake First Nation is the result of a 1959 merger between the North Takla Lake and Fort Connolly Bands (the latter from the Bear Lake area).

The Takla Lake First Nation is also affiliated with the Carrier Sekani Tribal Council, and its stated territory is similar to that of the Nak'azdli First Nation. As a point of interest, members of the matriarchal Wolverine clan profess allegiance to the Takla Lake and the Nak'azdli First Nations. They call themselves and their traditional homeland and trapping area (which incorporates much of the Omineca area) the Noostal Keyoh. The Noostal Keyoh, supported by Takla Lake First Nation, has been actively seeking a forest tenure with Mackenzie District. Takla Lake First Nation has already acquired tenure with Fort St. James

District. They are sole owners of Takla Development Corporation, which in 1996 was awarded an 8 year non-replaceable forest license for 80,000 m<sup>3</sup>/year in Fort St. James Forest District. Furthermore, they are part owners (1/9 partners) in Takla Track and Timber Ltd., which was awarded a 20 year, 200,000 m<sup>3</sup>/year, non-replaceable forest license within Prince George TSA in 1989.

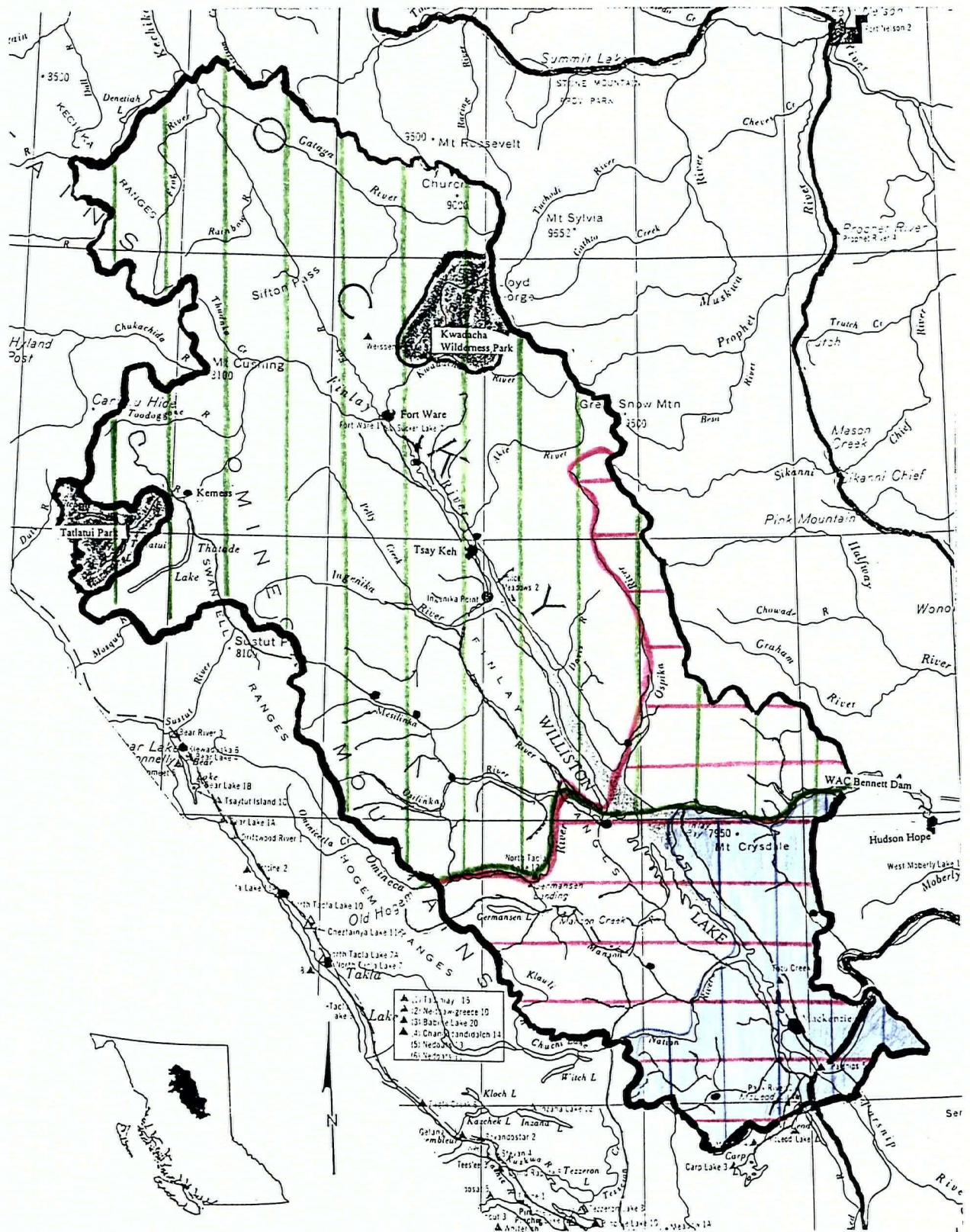
#### **e) McLeod Lake**

The McLeod Lake Band is a group of approximately 300 Athapaskan Indians of the Sekani dialect, nearly 200 of whom live at McLeod Lake (see Figure 5 for a description of the portion of their traditional territory that lies within Mackenzie Forest District). Rather than pursuing a new treaty, they have recently been seeking an adhesion to Treaty 8.<sup>20</sup> It is my understanding that they are close to an agreement, which would provide them with a large area, which has not seen much development, just south of Mackenzie Forest District.

McLeod Lake First Nation has their own logging company, Duz Cho Logging. McLeod Lake First Nation and some of its members have been quite successful in obtaining logging and silviculture contracts within Prince George and Mackenzie Forest Districts.

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<sup>20</sup> Signed in 1899, Treaty 8 covered much of the north-eastern portion of British Columbia and northern Alberta. It provided substantially more land per person than the Douglas Treaties. For example, Treaty 8 allotted 640 acres (~291 hectares) per family of five, or 160 acres (~73 hectares) per person instead of the much smaller portions (usually less than 10 acres (~4 hectares) per family) that were allotted most reserves in BC). The McLeod Lake First Nation is able to adhere to Treaty 8 because it was originally intended to be a signatory.



**FIGURE 5: McLeod Lake, West Moberly, and Halfway River First Nations' Traditional Territories**

(As estimated by Steve Dodds)

Source of Base Map: Canada 1984

#### **f) West Moberly**

The West Moberly First Nation are also Athapaskan people, but they speak the Beaver dialect. Historically, they were mostly nomadic big game hunters. They are headquartered out of the District, on the shores of Moberly Lake between Chetwynd and Hudson Hope. They are recognized as signatory to Treaty 8, and have asserted treaty rights to a substantial part of the District east of the Continental divide (see Figure 5 for the portion of their traditional territory that lies within Mackenzie Forest District). In conjunction with the Halfway River First Nation, they were formerly known as the Hudson Hope Band. It is not certain how much of the District is still used by West Moberly First Nation, although this should become more clear after they complete a traditional use study.

#### **g) Halfway River**

The Halfway River First Nation is also comprised of Athapaskan people who speak the Beaver dialect. They are headquartered outside of Mackenzie Forest District, approximately eighty kilometres north of Fort St. John (on the Alaska Highway) at Wonowon, BC. At this time, it is not clear how much of the District the Halfway River First Nation considers as their traditional territory. However, I expect them to assert traditional use to the portion of the north of an east west line through the Peace Reach (see figure 5). As with West Moberly, it is not certain how much (if any) of the District is still used by Halfway River First Nation.

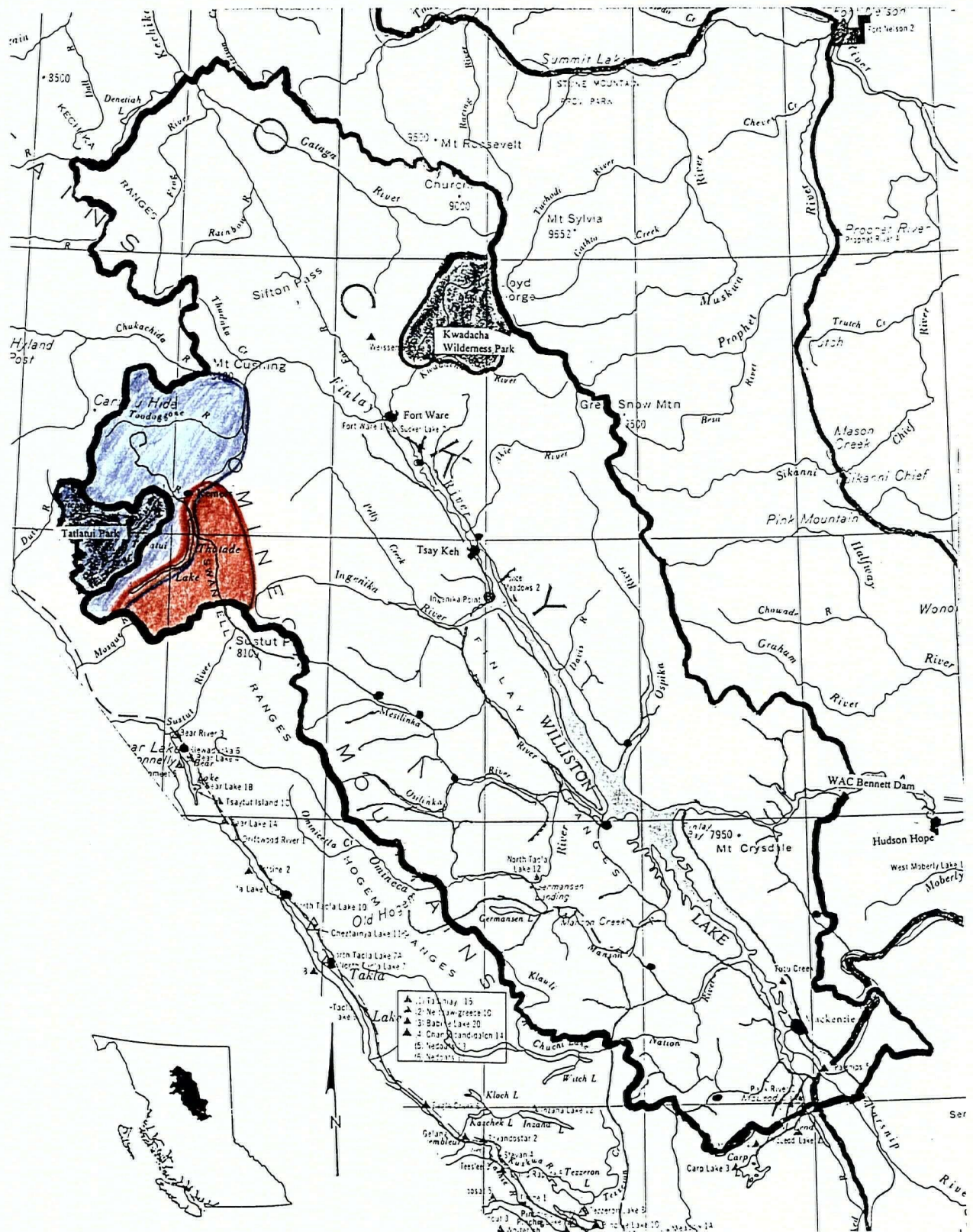
#### **h) Tahltan**

The Tahltans belong to the Dene, or northern Athapaskan people (MAA, 1992). They were traditionally nomadic, big game hunters with far ranging territories. They are

headquartered at Dease Lake, BC and have approximately 1100 members. Their traditional territory extends into Mackenzie Forest District in the area adjacent to Thutade Lake. It includes the Firesteel River valley and the Finlay River valley from Thutade down to the confluence of Thudaka Creek (see figure 6). I am uncertain if the Tahltans still use the portion of their traditional territory that lies within Mackenzie Forest District.

**i) Gitksan Wet'suwet'en**

The Gitksan are Tsimshian-speaking, while the Wet'suwet'en are the westernmost branch of the Athapaskan speaking Carriers (MAA 1992). Headquartered at Hazelton, BC, they have over 5000 members. Their primary sustenance activity was fishing, with hunting and gathering playing a secondary role. Their asserted territory includes the Thutade Lake area in Mackenzie Forest District (see figure 6). In the Delgamuukw court case, Chief Justice McEachern rejected the Gitksan Wet'suwet'en claim to areas east of the Skeena River and north of the Sustut River. However, not all the bands represented by the Gitksan Wet'suwet'en Tribal Council were party to that case. In any event, it is not certain if any Gitksan or Wet'suwet'en still use portions of Mackenzie Forest District.



**FIGURE 6: Tahltan and Gitskan-Wet'suwet'en First Nations' Traditional Territories**  
 (As estimated by Steve Dodds)

Source of Base Map: Canada 1984

#### IV THE STEWARDS OF FOREST DEVELOPMENT

Perhaps a quick review of the Mackenzie Timber Supply Area (TSA) apportionment (Figure 7) is the simplest way to understand who the stewards of forest development are in Mackenzie Forest District, and the scope and scale of their operations. This apportionment is as of October 16, 1997, and it reflects a 5% "take-back" due to the sale of Timber West Forest Ltd., to Slocan Forest Products Ltd. in the summer of 1997. The table does not include the 3,758 cubic metres that have been apportioned to woodlots in Mackenzie Forest District.<sup>21</sup>

Figure 7: TSA Apportionment (As of October 1997)		
Type of Apportionment	Volume (m <sup>3</sup> )	% of AAC
Replaceable Forest Licenses	2,586,862	87.7
Slocan Forest Products Ltd. (FL A15384)	1,412,520	50.4
Finlay Forest Industries Inc. (FL A15385)	1,174,342	39.8
Small Business Forest Enterprise Program	183,597	6.2
Forest Service Reserve	29,511	1.0
Unallocated (Reserved For Woodlots)	16,242	0.6
Unallocated	131,151	4.4
<b>Total Coniferous</b>	<b>2,951,121</b>	<b>100.0</b>
<b>Total Deciduous (currently SBFEP)</b>	<b>50,000</b>	<b>100.0</b>
<b>Total Apportionment</b>	<b>2,997,363</b>	<b>100.0</b>

From Figure 4, it should be clear that the major licensees, Slocan Forest Products Ltd., and Finlay Forest Industries Inc., - each of whom holds a long-term replaceable forest license, have a tremendous influence on forest planning in Mackenzie Forest District. Together they account for 87.7% of the total coniferous cut.

<sup>21</sup> Woodlots are area based tenures. Therefore, they do not contribute to the timber supply area. The volume indicated for woodlots does not reflect the woodlots that have been issued since 1986, nor those that are expected to be issued in the near future, since the TSA apportionment has not been adjusted to reflect those changes.



The Small Business Forest Enterprise Program (SBFEP) is the other significant player in the District, with 6.2% of the coniferous cut. Most of this cut is sold in relatively small Timber Sale Licenses after the SBFEP has done all the planning. However, they are currently pursuing plans to make more of their wood available through longer term, non replaceable Timber Sale Licenses, where the successful bidder would be responsible for their own planning.

Currently no timber tenures in Mackenzie Forest District are awarded to First Nations or their members. Needless to say, this is a sore point among the First Nations. However, with approximately 5% of the coniferous cut in the District unallocated, a rarity today, First Nations are actively pursuing this cut, and there are strong indications that a minor tenure will be issued to one or more First Nations soon.

## **CHAPTER 4: THE PLANNING AND DECISION-MAKING MILIEU**

In this chapter, I hope to give the reader a basic understanding of the forest development planning and decision-making milieu in Mackenzie Forest District. By that I mean the institutional arrangements that dictate the type of forest development planning and decision-making processes used in the District. I provide a brief description of some important provincial legislation and explain the supportive role played by regulations, policy, and court decisions, before moving on to describe some of the important strategic and operational processes and plans used in the District.

### **I PROVINCIAL LEGISLATION**

Five BC Statutes have a broad impact on the forest planning and decision-making processes in this province. They are: The *Forest Act* (R.S.B.C. 1996, c. 157), the *Ministry of Forests Act* (R.S.B.C. 1996, c. 300), the *Foresters Act* (R.S.B.C. 1996, c. 162), the *Forest Practices Code of British Columbia Act* (R.S.B.C. 1996, c. 159), and the *Heritage Conservation Act* (R.S.B.C. 1996, c. 187). Like all statutes, they were debated and approved by the BC Legislature and can only be changed or repealed by a similar process. Each of these acts established legal requirements that must be followed explicitly, in their respective areas. I have included a separate section on each below.

#### **1) The *Forest Act***

The *Forest Act* is significant because it provides for the overall administration of British Columbia's forests. Of particular interest to this thesis, it provides criteria for the classification and management of forests and forest lands, and for the regulation of cutting

rates (establishing the Annual Allowable Cut or AAC and apportioning it among the different types of tenure). It enables the government to dispose of timber, through the different forms of tenure, and provides specific terms and conditions related to the acquisition and maintenance of those tenure agreements. Significantly, it does not require any special procedures for dealing with First Nations.

## 2) *The Ministry of Forests Act*

The *Ministry of Forests Act* is significant because it establishes the bureaucracy (the Ministry of Forests, also called the Forest Service, under the direction of the Minister of Forests) responsible for the administration of "all matters relating to forest and range resources in British Columbia that are not [otherwise assigned]" (sec 3). The ministry's purpose and functions are to:

- a) encourage maximum productivity of the forest and range resources in British Columbia;
- b) manage, protect and conserve the forest resources of the government, so that the production of timber and forage, the harvesting of timber, the grazing of livestock and the realization of fisheries, wildlife, water, outdoor recreation and other natural resource values are coordinated and integrated, in consultation and cooperation with other ministries and agencies of the government and with the private sector;
- c) encourage a vigorous, efficient and world competitive timber processing industry in British Columbia; and
- d) assert the financial interest of the government in its forest and range resources in a systematic and equitable manner (*Sec. 4*).

The *Ministry of Forest Act* also provides for different levels of staff, from those employed at the Forest Districts to the Chief Forester and Deputy Minister, all of whom are accountable to British Columbia's Cabinet through the Minister of Forests (currently David Zirnhelt). It does not require any special relationship between First Nations and the Ministry of Forests.

### **3) The *Foresters Act***

This section is included because the *Forest Practices Code of British Columbia Act* requires that all operational plans submitted to the forest service have the prior approval of a registered professional forester (RPF). As such, RPFs are accountable for those plans, and The *Foresters Act* is one of the means for holding them accountable.

First instituted in 1947, the *Foresters Act* established a professional organization (the Association of British Columbia Professional Foresters [ABC PF]) whose purpose is to ensure “the competence, independence and integrity of its members, and [to ensure] that every person practicing professional forestry is accountable to the association and to the public” (Sec. 2.1). To that end, only those who meet the ABC PF’s standards are entitled to call themselves “professional forester” or “registered professional forester” (RPF) in British Columbia.<sup>22</sup> In addition, the *Foresters Act* establishes a discipline committee to “inquire into a member’s or former member’s competence or conduct” and the ABC PF has developed policies on ethics and continued education for its members. In keeping with most of the other Statutes of British Columbia, the *Foresters Act* does not distinguish between First Nations and other members of the “public.”

### **4) The *Forest Practices Code of British Columbia Act***

First enacted in 1994, the *Forest Practices Code of British Columbia Act* is ‘the new kid on the block.’ It legislates what is considered to be appropriate forest practices in BC by dictating measures for: setting objectives and standards for a variety of strategic plans;

developing, reviewing and approving a variety of operational plans - forest development plans, silviculture prescriptions, stand management prescriptions, logging plans, and range use plans; protecting the environment and forest resources; ensuring compliance and enforcement; monitoring performance - the forest practices board; settling disputes - the forest appeals commission; and even establishing regulations and standards. In essence, the Code makes everyone more accountable for the forest practices they engage in. It sets the standards, and if a person performs an activity occurs does not measure up, that person has committed an offense, and may be subject to a severe penalty (fines and rehabilitation if required are the norm, but there is the possibility of incarceration as well). While the preamble to the Code does seem to place some special recognition on First Nations, the Code itself does not include any special measures for dealing with First Nations and their concerns.

### **5) *The Heritage Conservation Act***

I have included this section on the *Heritage Conservation Act* (HCA) because it was enacted "to encourage and facilitate the protection and conservation of heritage property in British Columbia" (Section 2). Therefore, the HCA is the authority by which cultural and archaeological resources can be protected. It is enforced by the Minister of Small Business, Tourism, and Culture (MSBT&C) which is required to keep a record of heritage sites and objects in the Provincial Heritage Registry.

Significantly, Section 4 of the HCA establishes a special provision that enables the Province to enter into a formal agreement with a First Nation "with respect to the

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<sup>22</sup> The ABCPF has five classes of membership: registered members or RPF's, enrolled members - foresters in training and forestry pupils, professional foresters from outside BC who have a special permit, non-professional foresters who are granted special permits for limited purposes, and honorary members.

conservation and protection of heritage sites and heritage objects that represent the cultural heritage of the aboriginal people who are represented by that First Nation.”

Section 13 of the HCA requires a person to acquire a permit from the MSBT&C if they will damage, excavate, dig in or alter, or remove any heritage object from, a site that contains artifacts, features, material or other physical evidence of a) human habitation or use before 1846, or b) of unknown origin but otherwise protected by this section (i.e., aboriginal rock painting or rock carvings, burial places with historical or archaeological value, or archaeological sites for which identification standards have been established by regulation). Hence, culturally modified trees and other heritage objects that predate 1846 (the date when the Oregon treaty was signed, effectively giving Britain undisputed colonial title to British Columbia) are automatically protected. The HCA also establishes procedures for protecting more recent artifacts, and it details procedures that must be followed if one is anticipating work that might impact upon protected sites.

Since the HCA takes precedence over conflicting legislation, it is a powerful tool for protecting First Nations' cultural resources. However, the MSBT&C has a very small field presence, so it seems only too likely that their emphasis would have to shift from protecting culturally significant features, which they may not have the staff to deal with, to the protection of cultural features of provincial significance. In other words, they would naturally tend to focus on the protection of the types of sites that would appeal to the masses, rather than the sites that may have more appeal to their “owners” (a particular First Nation that may only have a very small population). Therefore, it may seem an overwhelming task to institute any of the protection measures envisioned by the HCA, particularly if you are an isolated First Nation with a relatively small population.

## II REGULATIONS

Like legislation, provincial regulations are also considered part of the law. Once established through an Order in Council (by Cabinet) they are considered binding. Generally speaking, they provide further refinement of legislation. For example, the operational planning regulation stipulates additional requirements intended to ensure that operational planning involves appropriate preparation, review, and approval processes. Regulations can only supplement (not replace, modify, or amend) legislation. They can be changed through legislation, or through another Order in Council. To truly understand the law, one must know the legislation, any accompanying regulations, and any amendments to either since they were established.

## III POLICIES

Ministry of Forests' policies establish performance standards. However, they are not law. They provide interpretation or direction that is intended to fulfill a legislated or regulated mandate, i.e., they help describe what is considered a reasonable course of action to achieve a particular result when legislation or regulation is vague or ambiguous. In essence, policies are a governmental bureaucracy's best estimate of what due diligence requires in a particular situation. However, since there may be other ways to achieve the mandate in question, policies are not generally enforceable by the courts.<sup>23</sup> Policy, no matter how reasonable, cannot over-rule a regulation or an act.

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<sup>23</sup> Some policies become legally enforceable when they are stipulated in legislation or regulation.

#### **IV COURT DECISIONS**

I have included this section because court decisions are often sought when legislation or regulations are vague or ambiguous, and policy is controversial, absent, or inconsistently applied. They are very important, because unlike policy, they establish a case specific legal interpretation of legislation and regulation. Since a detailed rationale is usually available for these judgments, court decisions can help determine courses of action that should be followed in similar circumstances to either avoid another challenge, or to increase one's chances of winning.

Since court decisions establish a precedent, i.e., in similar circumstances one can expect a similar ruling, they establish the standard that the law will enforce. Therefore, even though they do not actually change legislation or regulation, they do provide an interpretation that will be used over and over again until new information is provided that enables a new interpretation, or the legislation or regulation is changed. For example, a number of the court decisions I discuss in Chapter 5 advanced the legal definition of "aboriginal rights and title" in a direction that is decidedly more favourable towards First Nations.<sup>24</sup> As a result, Forest Service policy has been amended several times in this area, although as discussed in Chapters 6 and 7, not enough to satisfy the concerns of First Nations in Mackenzie Forest District.

#### **V PLANNING AND DECISION MAKING TOOLS**

In this section I describe some of the more important forest development planning and decision-making processes and plans used in Mackenzie Forest District. I recognize two broad classes: the strategic processes and plans that provide more general applicable



direction, and the operation processes and plans, which provide more site specific information on what will be done at specific locations and times.

Although there is much more to each of these types of processes and plans than I can describe herein, my brief description may give First Nation representatives a better perspective of what they entail. Since there is no mandated First Nation involvement in these processes, but there are opportunities for public review and comment, a better understanding may help them find effective ways to have their interests incorporated in these processes.

### **1) Strategic Planning and Decision Making Processes**

In this section I wish to outline the strategic planning and decision-making processes currently used in the District. In particular, I will discuss timber supply review and apportionment, land and resource management planning, and landscape unit planning.

#### **a) Timber Supply Review and Apportionment**

Every five years, the Ministry of Forests' Chief Forester must do a timber supply review in each timber supply area.<sup>25</sup> Using the best information available, and considering current management objectives and practices, the Chief Forester must determine the appropriate allowable annual cut (AAC). The Chief Forester first strives to identify the total harvestable land base (THLB) - i.e. that area of land from which it is physically, environmentally, and economically feasible to harvest timber. As maximization of the economic return to British Columbia is an obvious objective, the Chief Forester begins his

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<sup>24</sup> Some of the significant ones are mentioned in my chronology in Chapter 6.

<sup>25</sup> The last timber supply review for Mackenzie Timber Supply Area was completed in 1996. Therefore, another one is expected by 2001.

determination by estimating the economic rotation<sup>26</sup> for each stand in the THLB and using it to calculate the highest possible long run sustainable yield (LRSY).<sup>27</sup>

This enables the Chief Forester to calculate a LRSY that would maximize the economic return from timber harvesting at the expense of any competing values. Since maximizing LRSY does not account for ecological and social values, such as biodiversity, old growth retention, and visual quality to name a few, the Chief Forester estimates how much to constrain the economic maximum LRSY to accommodate these other values. To do this, he uses current applications of these values to develop models that estimate their impact on LRSY. As an added precaution, before setting an AAC, the Chief Forester completes several sensitivity analyses, which reveal the implications to LRSY if his assumptions are wrong. For example, he could analyze the difference that would result if the protected area in the District was to increase from 3% to 9%. Similarly, he might want to test what the implications of a perceived treaty settlement would be, or on the other side, what would happen if inventories were underestimating timber volumes. These factors might be considered as downward or upward pressures on the AAC.

Those who would challenge the Chief Forester's AAC determination must either refute the accuracy of his information, or the validity of the models he employs in his analyses. To that end, the public is invited to review and comment on the data package, and the

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<sup>26</sup> The economic rotation period is the number of years between harvesting dates that maximizes the average net annual earnings from a particular stand. It is derived from a complicated formula that estimates: a) how much will be invested at various stages in the harvesting and regeneration of the stand, b) how a new stand will grow, and c) how much each stand is worth at various stages in its development.

<sup>27</sup> The Long Run Sustainable Yield (LRSY) represents the actual volume of timber that, given a specific set of management objectives and silvicultural and ecological expectations/assumptions, can be harvested each year in perpetuity. Since timber is the only forest commodity that is marketed to any extent, it goes without saying that maximizing LRSY will maximize the economic return to the Province. LRSY may be higher or lower than the AAC, depending on the age class distribution of the THLB and the amount of consideration given to competing objectives.

rationale behind the Chief Forester's determination is made available through the Queen's Printer, but the details of his analyses are not readily available. Once the AAC determination is made, the Minister of Forests apportions this cut among the different tenure forms (a step that may not be necessary if the AAC has not changed).

#### **b) Land and Resource Management Plans**

Land and resource management plans (LRMPs) are very important because they can be used to establish resource management zones and objectives, which are considered higher level plans by the Code and its regulations.<sup>28</sup> LRMPs can provide direction that influences the AAC and subsequent planning processes. LRMPs are the end result of a multi-stakeholder, consensus building process guided by the provincial government's Land Use Coordination Office (LUCO). These processes are the preferred route for finalizing recommendations to complete the Protected Area Strategy, a provincial initiative intended to give approximately 12% of British Columbia's land base some type of protected designation by the year 2000.

The Mackenzie LRMP process started as a regional planning advisory team three years ago, and is hoping to have a final product in 1999. Although the Mackenzie planning table has a good representation of tenure holders and special interest groups, most of the First Nations have limited their participation.

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<sup>28</sup> The Code and its regulations detail the process, including public involvement, for legally establishing resource management zones and objectives.

### **c) Landscape Unit Objectives**

Landscape unit objectives are another type of higher level plan that government can use to provide spatially explicit direction for operational plans.<sup>29</sup> They enable government to divide Forest Districts into relatively large, yet homogenous landscape units where different management objectives can be applied, thereby enabling human endeavors to better mimic natural diversity. Without landscape unit objectives, strict guidelines in the Code, which limit the size of clear-cut, would make it virtually impossible to mimic the patterns established by the large fires (200 - 50,000 hectares) that have such an important role in boreal ecosystems.

To date, Mackenzie Forest District has not formally declared any landscape units or objectives. However, the District Manager has implemented interim landscape units and biodiversity emphasis options that set seral stage and patch size targets for most of the District. Hence, forest planners in the District have been able to do more comprehensive operational planning that better mimics natural biodiversity. Although the analysis was initially quite confusing, obstacles were quickly dealt with, and operators soon found that the variety of patch sizes gave them much needed flexibility.

## **2) Operational Planning and Decision Making Processes**

In this section, I will outline the operational planning and decision-making processes currently used in Mackenzie Forest District. I am specifically referring to the legislated processes that enable harvesting timber. These include the forest development plans, (FDPs)

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<sup>29</sup> The Code and its regulations detail the process, including public involvement, for legally establishing landscape units and objectives.

Silviculture Prescriptions, (SPs) and Logging Plans, (LPs) called for by the Forest Practices Code.

**a) Forest Development Plans**

Forest development plans (FDPs) depict and schedule five years of the proponent's harvesting, road construction, road deactivation and road maintenance.<sup>30</sup> They also explain what assessments they have undertaken in compiling their plans, and any measures taken to protect forest resources. Although most FDPs are written in a technical manner to fulfill legal obligations, they contain much information that can be extracted by a non-technical person. These plans are made available for public review and comment, and are sent to those First Nations in Mackenzie Forest District that have expressed an interest in seeing them.<sup>31</sup>

When reviewing FDPs, it is important to understand that most of the operations depicted on the plans will appear on several different plans before they are logged. This is important, because once blocks have been approved on a plan, they are given a degree of protection. Therefore, anyone with a conflicting interest is expected to make their concerns known the first time blocks appear. This gives the plan proponent the maximum amount of time to consider public concerns and take action to mitigate them. It also gives the forest service an opportunity to consider whether the concerns warrant changes to the plan.

District Managers will approve FDPs for up to two years, if they are satisfied that they meet the requirements of the Forest Practices Code, and that they adequately manage and

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<sup>30</sup> In Mackenzie Forest District, since landscape level planning is an important component of the FDP, plan proponents also show competitors' cut-blocks that are proposed within the same landscape unit.

<sup>31</sup> To date, no plans have been sent to the Gitksan-Wet'suwet'en or Tahltan Tribal Councils (they have not requested plans and there are no active forestry operations within their asserted traditional territories). The West Moberly and Halfway River First Nations have only recently requested plans in Mackenzie Forest District.

conserve forest resources. Proponents with an approved FDP will complete additional assessments, and submit silviculture prescriptions, logging plans, and cutting permit applications, as warranted. They will submit amendments to the FDP as required, and a new FDP before the end of the term approved by the District Manager.

Staff at Mackenzie Forest District consider the planning processes leading up to and including these plans to be the most effective vehicle for identifying and addressing concerns held by First Nation representatives. This approach assumes an effective exchange of information that will enable an early identification of site specific issues or concerns that can be addressed in subsequent operational plans.

#### **b) Silviculture Prescriptions**

Silviculture prescriptions (SPs) contain detailed information of the measures that will be taken to adequately manage and conserve the forest resources from pre-harvest until a new stand is deemed free to grow.<sup>32</sup> The person who signs a SP is essentially verifying that in his/her professional opinion, all necessary assessments have been completed, and the SP adequately addresses any concerns (including First Nation and public concerns) that have been identified. Each cutblock (where more than 500m<sup>3</sup> of timber will be removed, or where a contiguous clear-cut greater than one hectare will be created) is required to have its own SP. There is no mandated public review of SPs, but if a person had a particular interest, arrangements can be made to view them. For most operations, the SP is the most detailed plan required by the Code.

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<sup>32</sup> Although there is much technical debate over precisely when trees should be considered free to grow, the basic concept is that they are large and vigorous enough to withstand competition and expected outbreaks of pests, diseases, or other natural events that could hinder growth and prevent the trees from maturing.

### **c) Logging Plans**

Logging plans are no longer a mandatory requirement, although the District Manager can require them in certain instances where the SP does not provide needed detail. They provide detailed information on how the harvesting operation will occur. This includes the location of all roads, landings, and skid-trails. It also contains detailed information such as the direction of yarding, the location of wildlife trees, and any other information that may require extra care and attention to protect sensitive resources.

## **VI SUMMARY**

There is a great deal of legislation, regulation, and policy behind the planning and decision-making processes used in Mackenzie Forest District. Although a full explanation of relevant law and policy is beyond the scope of this thesis, the brief overview provided herein should help one understand how different interests are addressed in the various strategic and operational processes and plans used in the District.

Since law and policy is not without controversy, a good understanding of relevant court decisions, and the issues behind them can help one understand and anticipate how different interests view them. For instance, I mentioned that First Nations are not given special consideration in most of the provincial legislation. The number of legal challenges that First Nations make with respect to decisions made under the authority of these laws speaks volumes as to their suitability. As processes and plans are constantly adapting, one must constantly up-date reference material to stay current.

## **CHAPTER 5: ISSUES OF CONCERN FOR FIRST NATIONS**

In the previous chapter, I discussed many of the laws and policies that enable forest development in British Columbia. In this chapter, I demonstrate some concerns that forest development has raised among First Nation representatives in Mackenzie Forest District. I set the stage with an historical overview of the colonial politics<sup>33</sup> that have strongly influenced how First Nations and aboriginal people are treated in British Columbia and Mackenzie Forest District. Then, I move on to identify some local concerns that have been raised by the First Nations in Mackenzie Forest District.

### **I A CHRONOLOGY OF COLONIAL POLITICS**

To illustrate the underlying tension associated with land and resources management, I have prepared a chronological overview that reveals some of the colonial politics behind the ongoing conflict over aboriginal rights, titles, and treaties in British Columbia. This chronology is a synthesis of materials presented elsewhere by several knowledgeable sources. Although not cited throughout, I want readers to understand that the bulk of the information on First Nations' pursuit of aboriginal title and rights is drafted from the work of Dr. Paul Tennant (1990 and 1994). His work is supplemented in places by material from the CSTC (1998), McKee (1996), Hanuse (1996), MAA (1998), Hamilton (1995), and BCTC (1998). The majority of the local items were gleaned from Patterson (1978), Father Morice (1978), and Bowes (1963). Other accounts included: Hall (1978), CSTC (1998), Moodie (1897),

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<sup>33</sup> I use the term colonial politics in reference to political measures that enable colonial powers to exploit lands and/or resources with very little, if any deference to the indigenous or aboriginal peoples dependent upon those lands and/or resources.



Swannel (1914), Black (1824), Koyl (1992), Pierre (1987), Vanden Berg (1997), and INAC (1994). Information pertinent to forest development in the area was obtain from Baptie (1975), Veemes (1985), MOF (1995), Peterson (1996) and Bull and Williams (1995).<sup>34</sup>

1670 Long before Europeans arrived in what is now British Columbia, (BC) was home to either approximately one hundred thousand people (MAA 1992) or three to four hundred thousand people (Tennant 1990) who lived in distinct, self-sufficient tribal nations, each with its own language, culture, collective history, economy, territory, and system of law and government.<sup>35</sup>

The Hudson Bay Company (HBC) was incorporated, marking the beginning of an illustrious private enterprise to explore Canadian lands and establish trading posts, thereby creating a fur trading empire and forever altering many First Nations' and aboriginal people's relationships with the land, resources, and each other.

1763 Sometimes referred to as the "Indian Bill of Rights" (Plant 1993: 2.4) the *Royal Proclamation of 1763*, issued by Britain's King George III, states:

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<sup>34</sup> Although my synthesis captures a great deal of information in a concise form, it is not an exhaustive account. However, it is a start, which others can build on. In particular, future accounts should capture more local history from the First Nations in the area. Hopefully, future traditional use studies and ethnographic surveys will capture more of that type of information.

<sup>35</sup> Tennant (1986) explains the discrepancy in accounts as a deceptive attempt to justify colonial extension into "apparently uninhabited areas."

Whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds. ... And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the limits of Our Said Three New Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and the North West ...

In essence, the *Royal Proclamation of 1763* established that aboriginal "Nations or Tribes" had the right to use "all the Lands and Territories lying to the Westward" of the Atlantic watershed under British sovereignty, until they were "ceded to or purchased by" the Crown.

- 1774 Although oral history indicates that some First Nations in BC had prior contact with Europeans, the first recorded contact occurred when Spanish Explorer Juan Perez Hernandez met with representatives of the Haida First Nations near Haida Gwaii (The Queen Charlotte Islands) and claimed the Northwestern coast of North America for Spain.
- 1778 Captain Cook lands on the coast of British Columbia and claims the land for Britain.
- 1783 The NorthWest Fur Trading Company (NWC) is founded, prompting an intense and openly hostile rivalry with HBC.

1793 Captain George Vancouver sails into Observatory Inlet (Ts'im Gits'oohl) to make the first contact between the Nisga'a and British explorers.

Alexander Mackenzie, an explorer with the NWC, became the first European to travel through what is now Mackenzie Forest District.<sup>36</sup> He was looking for new fur-trading areas and a passage to the Pacific Ocean. After finding his way up the Peace and Parsnip Rivers, Mackenzie was nearly ready to give up his quest when he met some Sekanis with an iron axe. Since they had received the axe from a First Nation member residing closer to "the stinking lake" (the ocean) Mackenzie was encouraged to continue and eventually reached the Pacific Ocean near what is now Bella Coola.

1797 James Finlay, another NWC trader, follows Mackenzie's route and becomes the first European to explore the southern reaches of the river that bears his name, Finlay River.

1805-07 Simon Fraser, also with the NWC, in his historic quest for the Pacific Ocean, established forts and trading posts at Rocky Mountain Portage (Hudson Hope) in 1805, McLeod Lake (Fort McLeod) in 1806, Stuart Lake (Fort St. James) and Fort Fraser (Fraser Lake) in 1806, and Fort George (Prince George) in 1807. Fort St. James quickly became the centre of government and commerce in British Columbia

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<sup>36</sup> Quite likely Mackenzie was preceded by Iroquois Indians and others seeking fur and trade items, as these Eastern natives had become quite knowledgeable of the "whiteman's ways," and found the free-ranging hunting lifestyle quite to their liking.

(then called New Caledonia). It claims to be the oldest established colonial settlement on the B.C. Mainland.

- 1807 Before embarking on his historic trip down the Fraser River, Simon Fraser built an 83 mile road from Ft. St. James to Ft. McLeod, the first colonial developed road in the territories.
- 1811 D. William Harmon became the first recorded farmer west of the Rocky Mountains, in the Fort St. James area.
- 1821 NWC and HBC merge. Victoria becomes the new centre of government.
- 1823 Angered by the HBC's decision to close its post at Fort St. John in favour of one at Rocky Mountain Portage that was often frequented by members of the Sekani First Nations, some members of the Beaver First Nations murdered the Chief Factor and his traders at Fort St. John. In a separate incident, two traders at Fort George are also murdered by an aboriginal man. In retaliation, the HBC closes its posts at Fort Dunevagan, Fort St. John, Rocky Mountain Portage, and Fort George.
- The original McLeod Lake Fort is carried away by flood waters. It was never rebuilt, but the trading post stayed (Veemes 1985).
- 1824 Inspired by Iroquois accounts, and accompanied by Sekani guides, Samuel Black, in a quest to establish more trading routes and posts for the HBC, becomes the first whiteman to explore the Finlay River to its source at Thutade Lake. Deserter's

Canyon on the Finlay River acquired this name because two members of his party deserted rather than continuing on their quest through this treacherous passage.

1826 James Douglas of the HBC establishes a trading post at Bear Lake (Fort Connolly).

1828 Chief Kwah of the Stuart Lake Carriers captures James Douglas after his men shoot and kill the Fort George Murderer, a member of a neighbouring tribe that was visiting the Stuart Lake Carriers. Although Douglas' release is eventually negotiated, the Stuart Lake Band said they would have to reimburse the other tribe for allowing one of their members to be harmed while he was visiting. The incident lead to conflict between the tribes.

In *A Report on the Fur Trade*, Sir George Simpson (1928) notes the impact of the fur trade by remarking how amicably aboriginal people share hunting grounds, except beaver habitat, where encroachment is an invitation to hostility or death.

1830 First civilian Department of Indian Affairs established. Previously, Indian Affairs was a military responsibility.

1833 Traveling from the Peace River to Fort McLeod, John McLean (1833) noted that the Sekanis "are reputed honest, industrious, and faithful" (1833: 51).

1842 Father Demers, the first Catholic missionary, arrived in New Caledonia.

1843 Fort Victoria was established by James Douglas, Chief Factor for the HBC.

1846 The *Treaty of Oregon* established British sovereignty over British Columbia.

1849 Vancouver Island became a British colony. James Blanshard was appointed as first governor. The British Crown gave the HBC trading rights on Vancouver Island. Immigration and settlement was placed under the direction of James Douglas who was instructed to purchase First Nation lands.

A measles epidemic ravaged the aboriginal population of New Caledonia.

1850-54 James Douglas, under instructions to purchase First Nations lands, made a series of fourteen land purchases. Known as “the Douglas Treaties” these purchases cover approximately 358 square miles of land around Victoria, Saanich, Sooke, Nanaimo and Port Hardy. Natives were paid in blankets and promised the rights to hunt on unsettled lands and to carry on fisheries “as formerly.”

1851 James Douglas was appointed governor of the Vancouver Island colony, while retaining his Hudson’s Bay Company position.

1856-64 The Island Assembly urged Douglas to purchase the remaining First Nations’ lands and allocated money for the purpose.

1858 The Mainland became the Colony of British Columbia. James Douglas resigned his Hudson’s Bay Company position to accept an appointment as governor of the new colony with the understanding that he would arrange more treaties. However, London and the Colonial government disputed who should pay for them. Even though colonial newspapers suggested that unextinguished aboriginal title was an impediment to colonial settlement, neither government altered their positions.

- 1859 New Westminster became the first capital of British Columbia.
- 1860-64 Short of funds to arrange additional purchases, Douglas implemented his “system” which “sought aboriginal assimilation, but with dignity and equality” (Tennant 1994). However, Douglas’ policy ignored the cultural reality and wishes of the First Nations. It disregarded aboriginal title and inherent rights, in the face of aggressive land acquisition by settlers. Instead, First Nations were provided with small reserves in the assumption that they would soon abandon them and their traditional lifestyle to merge with the new society and take up homesteading (they were accorded equal pre-emption rights).
- 1861 Douglas instructed R.C. Moody, the Chief Commissioner of Lands and Works on the mainland colony, to ensure that “the extent of the Indian Reserves . . . be defined as they may be severally pointed out by the Natives themselves.”
- Edward Carey and Bill Cust struck gold on the Parsnip River. Pete Toy made a strike on the Finlay River. To keep busy through the long winters, Bill Cust later opened a trading post at the west end of Rocky Mountain Portage, while Pete Toy opened one in Manson Creek.
- 1862 A devastating smallpox epidemic killed approximately one of every three aboriginal people south of Fort St. James (CSTC 1998).
- 1864 Douglas retired and A.E. Kennedy was appointed in his place. Joseph Trutch was appointed Chief Commissioner of Lands and Works, and he assumed control of First Nation and aboriginal policy. Trutch treated First Nations as if they consisted

of uncivilized savages and as if they were a problem preventing the smooth development of the colony.

The HBC company was forced to compete with private traders like Henry Moberly who opened his own post at Fraser Lake (Moberly (1865).

Angry over abuses from gold seekers during the Cariboo gold rush, representatives of the Chilcotin First Nations resorted to violence in an attempt to protect their territory.

1865 Henry Moberly moved to what is now known as Moberly Lake and set up a trading post and homestead.

1866 The Colony of Vancouver Island and the Colony of British Columbia were united into a single colony, British Columbia. It is estimated that the population of the colony consisted of 63,000 aboriginal people and only 400 colonists at that time. Nevertheless, aboriginal people were not accorded a role in political decision-making and BC passed new legislation prohibiting land pre-emption by aboriginal people. Trutch proposed legislation to reduce the size of existing reserves and limit new reserves to a maximum of 10 acres per aboriginal family. First Nations protest passage of new laws incorporating Trutch's recommendations.

1867 Canada became a country when confederation joined Nova Scotia, New Brunswick, Quebec and Ontario. First Nations were not involved.



The federal government was given authority under Section 91(24) of the *British North America Act 1867* (in effect, Canada's first constitution) "to make laws for the Peace, Order, and good Government of Canada" including laws about "Indians and lands reserved for Indians."

1868 *An Act providing for the organization of the department of the Secretary of State of Canada, and for the management of Indian and Ordinance Lands* granted the Secretary of State "control and management of the lands and property of the Indians in Canada (SC 1868 C42 S5).

"Twelve Foot Davis" a miner who became famous because he found 12 feet of unclaimed ground between two very prosperous claims near Barkerville, started the Omineca Gold Rush when he made a rich strike on a tributary to the Omineca River.

1870 "Trutch became the first official to deny existence of aboriginal land title in BC; [he also attempted to] revise BC history [by explaining that] the Douglas treaties were mere friendship pacts [with primitive nomads. He argued that BC was] mostly empty land until discovered [by Europeans, to establish BC's position that] unencumbered crown title was created with British sovereignty" (Tennant 1994).

1870s Major prairie treaties acknowledged aboriginal title and provided reserves of 640 acres per aboriginal family. "Indian land claims" demanding recognition of original tribal ownership of lands, treaties to transfer title, and adequate reserves, became commonplace in BC.

1871 The Colony of British Columbia became the sixth province to join the Dominion of Canada. *The Terms of Union, 1871* stipulated that the federal government would assume responsibility for Indians and British Columbia would retain authority over land and resources. Federal officials mistakenly assumed that *the Royal Proclamation of 1763* had been followed in BC. They assumed treaties with large reserves (80 acres per family) had already been created, so there was no mention of aboriginal title in *The Terms of Union, 1871*. Instead it guaranteed a reserve policy “as liberal as that hitherto pursued,” which reinforced the 10 acre per family rule previously applied. Trutch was named as BC’s first Lieutenant-Governor.

Robert Howel made a rich strike on Manson Creek, sparking thousands of gold-seekers to travel there, including the Honourable Peter O’Reilly - Gold Commissioner. O’Reilly expected big things for the area, so he established the Omineca Townsite three miles up the Germansen River and had the “Dewdney Trail” cut to enable supplies and travelers to easily move from Stuart Lake to the Omineca (O’Reilly 1871).

1872 The right to vote in BC elections was withdrawn from aboriginal people (Tenant 1994).

Hundreds of Coast Salish rallied outside the Provincial Land Registry in New Westminster. They were seeking settlement of their land claims.

Charles Horetzky and John MaCoun surveyed the Peace and Parsnip Rivers as a possible route for the Canadian Pacific Railway (Horetzky 1872).

1873 W.F. Butler explored the Peace, Finlay, and Omineca Rivers. He later wrote about his adventure in The Wild North Land (1924).

1874 The *Land Act 1874* allowed any male British Subject to pre-empt 320 acres as a settler, but required aboriginal people who were non British Subjects, to acquire the permission of the Lieutenant Governor (permission that Trutch would not grant).

56 Chiefs approved a petition to federal Indian Commissioner Israel Powell asking him to implement a federal proposal that called for reserves of 80 acres per family. Powell agreed and urged BC to implement reserves of 80 acres a family, but BC refused to comply.

Pete Toy drowned when his canoe overturned in the Omineca River's Black Canyon.

1875 Private entrepreneurs established trading posts at Lower Post and McDames Creek (North of Mackenzie District in the lands of the Kaska Dena).

An Opposition motion compelling publication of *Papers Connected with the Indian Land Question, 1850-1875* was passed in the BC legislature, but Trutch was able to prevent legislative debate on a committee report that proposed larger reserves (Tennant 1994).

Alfred Selwyn, who was with the Geological Survey of Canada, traveled up the Peace to the Finlay River in search of a remarkable conical mountain described by

an earlier explorer. He climbed to the peak of what was later called Mount Selwyn on July 11<sup>th</sup> as he conducted the first Geological Survey in the area.

1876 “Governor General Dufferin [urged BC] to acknowledge [aboriginal] title” (Tennant 1994).

The federal government passes the *Indian Act 1876*, thereby making the reserve system, and aboriginal peoples a federal responsibility. The act focused on three main areas: land, membership, and local government. It consolidated all previous Indian legislation; defined Indian status; and gave the Superintendent General administrative powers over Indian affairs. Indian Agents were appointed to manage the lives of aboriginal people and their reserves. Indians were not allowed to leave their reserve without a written pass from the Indian Agent.

1877 The Pine Pass, a route through the Rockies that was reported by the Sekani at McLeod Lake, was “discovered” by Joseph Hunter, a location engineer with the Canadian Pacific Railway (Hunter 1877). A trail utilizing this pass was established between Hudson Hope and McLeod Lake (Veemes 1985).

1878 The Canadian government began interfering with aboriginal fishing rights by prohibiting the use of nets in freshwater and by making a distinction between food and commercial fishing (CSTC 1998).

1880s The European population surpassed the aboriginal population, which was estimated at only 28,000 (MAA 1992).

Christian missions, Protestant on the central and north coasts, Roman Catholic on the south coast and in the interior, were widely established in BC. Removal of aboriginal children from home and family for “education and civilization” at residential schools became standard policy in Canada.

1884 The *Indian Act* was amended to outlaw cultural and religious ceremonies such as the potlatch.

1885 Three Tsimshian Chiefs traveled to Ottawa to meet with Prime Minister MacDonald and discuss their difficulty resolving land claims.

Father Morice, began missionary work with the Carrier and Sekani peoples out of Fort St. James. A very energetic and dedicated man, he created a Carrier Syllabury and even published a newspaper that used it. He traveled extensively through the lands of New Caledonia and recorded much of what he saw and learned. As a result of his travels, he created the first official map of the region, which the Provincial Government printed in 1907. He also wrote, The History of the Northern Interior of British Columbia: Formerly New Caledonia in 1905, which was republished in 1978 as The History of the Northern Interior of British Columbia.

The Canadian Pacific Railway was completed.

1886 The Nisga’a in the Upper Nass protested against surveyors in their area and began organized pursuit of land claims.

1887 Nisga'a and Tsimshian Chiefs go to Victoria to demand recognition of aboriginal title, treaties, and self-government, but Premier William Smithe responds by saying "when the whites first came among you, you were little better than the wild beasts of the field." The government did agree to an inquiry, but the Inquiry Commissioners dismissed "Indians as disloyal and simple-minded tools of white agitators" (Tennant 1994).

Dawson and McConnell, on behalf of the Geological Survey of Canada, explored a considerable portion of the territory now claimed by the Kaska Dena.

1888 Due to frequent conflicts between the Gitksan and Sekani First Nations at Fort Connolly, the HBC dispatches a party to establish a new outpost (Fort Grahame) on the Finlay River. They build "Collin's house" and use it as a temporary trading post until Fort Grahame is completed in 1890.

1889 The federal fishing permit system was introduced.

1890 Fort Grahame (commonly referred to as Bear Lake Outpost, or just BLO) opened and many of the Tseloni and Sasuchan Sekanis who used Fort Connolly moved to the area. McDames Creek and Lower Post were sold to the HBC.

Warburton Pike (1890) and four others nearly starved to death after they took a wrong turn and became lost while attempting to travel from Hudson Hope to McLeod Lake at the onset of winter.

- 1891 N.B. Gauvreau completed a railroad "track survey" to Fort Grahame on behalf of the BC government.
- 1892 Fort Connolly was closed.
- 1893 R.G. McConnell surveyed the Crooked, Peace, Parsnip, Omineca, and Finlay Rivers (to Fishing Lakes) for the Geological Survey of Canada.

Father A.G. Morice made an overland trek from Fort St. James to Fort Grahame, much to the astonishment of the locals who had been advised of his intentions, but never expected him to carry them out. He was the first missionary to reach that area (Morice 1893).

- 1894 The *Fisheries Act* curtailed aboriginal fishing rights by introducing restricted seasons, and methods of fishing.
- 1897 Concerned for the safety of prospectors traveling to the Yukon after gold was discovered there in 1896, Inspector Moodie of the North West Mounted Police was ordered to establish a route suitable for horses between Edmonton and the Klondike. Moodie foresaw hardship and dissent and remarked that:

there is little doubt that the influx of whites will materially increase the difficulties of hunting by the Indians, and these people, who, even before the rush, were often starving from their inability to procure game, will in future be in a much worse condition; and unless some assistance is given them by the Indian Department, they are very likely to take what they consider a just revenge on the white men who have come, contrary to their wishes, and scattered themselves over their country (*Moodie 1897: 201*).

1898 In what may have been BC's first protest blockade, an armed aboriginal group demanding a treaty settlement blocked the flow of miners to the Yukon near Fort St. John.

In January, after a difficult trip through the mountains from the Halfway River, Moodie arrived at Fort Grahame. In July he traveled what is known as the Davie Trail through Sifton Pass between the Fox and Kechika Rivers, and followed the Kechika on to the Liard River. He estimated that there were 300 aboriginal people living in the area.

1899 Treaty No. 8, allocated 5,500 square miles (640 acres per family) of federal lands to reserves in northeastern BC. The Government of British Columbia continued to reject the concept of aboriginal title but it did not object to the treaty.

1901 The Provincial Government asked "for a reduction in size of the already existing reserves."

1903 Rumours of a railroad from Winnipeg to Prince Rupert started the first rush of European settlers and land speculators to the Prince George area.

1906 Even though the Yukon Gold Rush was ending, the North West Mounted Police were ordered to cut out Moodie's Trail in a manner that would render it useful for horse packing from Fort St. John to Fort Grahame.<sup>37</sup>

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<sup>37</sup> Despite significant effort (the trail averaged 2.4 metres in width, had many corduroy sections, and featured rest cabins every 48 kilometres) it was seldom if ever used.



The “Barricade Treaty” with the Babine Nation required salmon fishermen to abandon traditional weir systems and use gillnets, in exchange for largely unfulfilled promises. Similar agreements were negotiated with the Stelat’ en, Nadleh Whut’ en, Stoney Creek, Tl’azt’ en and Nak’azdli members in 1909-1910 (CSTC 1998).

1907 Instead of following Moodie’s route up the Finlay, the Police Trail was extended from Fort Grahame to the Yukon Telegraph Trail approximately 100 miles north of Hazelton. Once again, this trail was seldom if ever used.

The Nisga’a Land Committee was formed (Tennant 1990).

1908 Gold is discovered at McConnell Creek sparking the Ingenika gold rush, which lasted to 1909, when the prospects were deemed too difficult. Fleet Robertson, while conducting his duties as the Provincial Mineralogist, made his way on horseback from Hazelton to the Upper Ingenika River, then up McConnell’s Creek through the Pass and down to Thutade Lake. From there he went down the Finlay to Delta Creek, up and over to Bower Creek, before making the difficult descent to the Finlay again. At the Finlay, he left his horses with the outfitter to return to Lake Babine, while he boated and canoed down to Fort McLeod. His guide for the trip was L.M. Bower, a prominent prospector, trapper, and outfitter in the area, who later homesteaded at Finlay Forks.

1909 The first sternwheeler steamboat landed at South Fort George and the first sawmill was built in South Fort George (CSTC 1998).

The Nisga'a Land Committee joined other north-coast tribes to form the Native Tribes of B.C. The Interior Salish formed the Interior Tribes of BC. Coastal First Nations formed the Indian Rights Association. Treaties and reserves were the issues prompting formation of these groups.

A delegation, representing 20 British Columbia First Nations, traveled to England to make a presentation regarding their land claims.

1910 Prime Minister Laurier, while in Prince Rupert, promised to settle land claims.

1912 The *Forest Act 1912* was passed, creating the BC Forest Branch (as the Forest Service was called then) and eleven Forest Districts.

The McKenna-McBride agreement authorized a Royal Commission to re-examine the size of every reserve in the province. However, the Commission was not mandated to consider aboriginal title or treaties.

1913 With broad endorsement by BC First Nations, the Nisga'a land committee petitioned the British Privy Council to follow the *Royal Proclamation of 1763* and resolve aboriginal land claims in BC. However, the petition was referred back to Canada for resolution.

The first Forest Service office opened in what was then called Prince George Forest District. It included 42% of BC's forest lands. The first timber sale was executed in 1914 for 1,152,000 board feet from the Prince George Forest District alone.

This exceeded the volume harvested in all of Quebec that year. Eighteen mills were operating in the District by 1927.

F.C. Swannel, a BC Land Surveyor conducted a triangulation survey (linked by mountain peaks) of the area from Takla Lake to Fort Grahame.

Jack and Lucill Adems homesteaded at Finlay Forks near Maggie and William Fox's trading post. Lucill was the first white woman to settle in what is now Mackenzie Forest District (Adems 1913 -1914).

1913-16 The McKenna-McBride Commission heard many demands for treaties and larger reserves. They tried to reduce fears that reserves would be made smaller by pointing out that the *Indian Act* prevented reserves reduction without First Nation consent.

1914 The Grand Trunk Pacific Railway was completed from Prince George to the mouth of the Skeena River. The "last spike" was driven between Fort Fraser and Vanderhoof (the Grand Trunk Pacific Railway amalgamated with the Canadian National Railway in 1923).

The Federal government offered land claims support, if the Department of Indian Affairs was able to select and pay the lawyers. This offer was refused by BC's First Nations.

Swannel extends his survey up the Finlay River almost to Thutade Lake.

- 1915 The first residential schools for aboriginal children open in BC.
- 1916 The McKenna-McBride Royal Commission recommends adding 136 square miles of inexpensive land to BC reserves (including reserves at Police Meadows and Finlay River) but also recommends cutting off 74 square miles of more valuable lands. “Arthur Meighen, Minister of Indian Affairs, reaffirms that First Nation consent is required for any cut-offs” (Tennant 1994).

Paul Leland Haworth, author of On the Headwaters of the Peace River (1917) visited the Finlay River. He was the last explorer of note to travel the area unassisted by power (outboard engines were invented in 1916, forever changing the mode of travel on most waterways). He noted that the Sekanis in the vicinity of Fort Grahame had dwindled from about 200 in 1893 to about 70. He also makes note that the Sekanis consider the Ospika River valley to be an excellent hunting area that is forbidden to the “white man.”

- 1916-20 The Allied Tribes of British Columbia formed to represent the majority of tribal groups in BC. It was mandated to seek treaties, adequate reserves, and recognition of aboriginal rights. Protest meetings and potlatches were held openly.
- 1917 “Davies’ Band,” a mixed group possibly of Tseloni origin, move from Lower Post to the vicinity of the Fox and Kechika Rivers.
- 1918 The last devastating colonial disease outbreak, the Spanish Flu, occurred. The Nak’azdli First Nation was reduced to less than 100 people, down from around

2,000 at the turn of the century. BC's aboriginal population reached a low of 22,000 (MAA 1992).

Mennonite farmers began settling in Vanderhoof area.

1919 The Allied Tribes of British Columbia filed a comprehensive presentation of their land claims to the federal and provincial governments.

1920 Bill 13: the *British Columbia Indian Lands Settlement Act* was passed by the federal government. It implements the McKenna-McBride recommendations and allows reductions or "cut-offs" of existing reserves without the consent of aboriginal people, contrary to the *Indian Act*. The government cracked down on potlatches some Chiefs were convicted and jailed.

The Ditchburn-Clark team was asked to review the *Report of the McKenna-McBride Royal Commission*. Their review was completed in 1923. It found inaccuracies in the descriptions and areas attributed to some reserves.

1921 In London the Judicial Committee of the Privy Council, the final appellate court for Canada until 1949, ruled in a Nigerian case that aboriginal title is a pre-existing right until proven otherwise.<sup>38</sup>

1922 The Lejac Residential School, opened at Fort Fraser, thereby marking the beginning of a formal attempt to acculturate the Carrier and Sekani children in the area.

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<sup>38</sup> As documented further on, this case prompted many policies aimed at preventing First Nations from getting their claims heard by any court, lest they should lead to an appeal to the Judicial Committee of the Privy Council.

- 1923 Aboriginal people were allowed commercial saltwater fishing licenses for the first time.
- 1924 BC implements the reserve cut-offs recommended by the McKenna-McBride Commission, and enabled by Bill 13. Many aboriginal people still consider this action “a symbol of white deceit and immorality” (Tennant 1994).
- 1925 The Allied Tribes of British Columbia petitioned Parliament for an inquiry into BC’s handling of land claims issues.
- 1926 Three Chiefs traveled to London, England to petition the British government regarding land claims. However, they are intercepted by the High Commissioner of Canada who persuades the Chiefs to return to Canada.
- The Provincial Government requires aboriginal and non-aboriginal people to register traplines. This shifted the focus of title from First Nations to individuals and their families.
- Father Allard established a Catholic Church at Lower Post.
- 1927 To keep land claims from the courts, Parliament appointed a special joint committee of the Senate and House of Commons of Canada to inquire into the claims of the Allied Tribes of British Columbia. The committee rejected land claims and the need for treaties. Furthermore, it blamed the unrest among First Nations on European advisors and recommended the introduction of measures to curb those advisors. In response, parliament amended the *Indian Act* to include section 141,

which made it illegal to “receive, obtain, solicit or request from any Indian, any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim” without obtaining the consent of the Superintendent General of Indian Affairs. This extraordinary measure made it illegal for First Nations to take steps necessary to get their claims to court.

HBC opened a post (Fort Ware - known locally as Ware or Whitewater) where the Fox and Kwadacha Rivers join the Finlay River. This prompted the Fort Grahame Band to split into the Fort Grahame and the Fort Ware Bands.

- 1928 In response to section 141, the Allied Tribes of British Columbia dissolved, prompting some to think that BC’s “Indian problem” was resolved.
- 1931 The Native Brotherhood of B.C. secretly resumed the ideals of the Allied Tribes of British Columbia.
- 1936 The HBC opened a store at Manson Creek.
- 1938 British Columbia Order-in-Council 1036 conveyed title to Indian reserves in British Columbia to the federal government.
- 1939-45 Although more than 70 Carrier and Sekani people served in Canada’s armed forces, most were denied standard military service entitlements upon their return (CSTC 1998).

1945 The Department of Lands and Forests was created, with a Deputy Minister of Lands and a Deputy Minister of Forests. The Forest Branch became the Forest Service.

1947 School District No. 57 was established. However, due to their isolation, most aboriginal students in the area now known as Mackenzie Forest District were sent to Lejac Residential School until it closed in 1976.

The First Crown Lands office opened in Prince George, covering all Carrier and Sekani territories.

BC's aboriginal people were able to vote for the first time in provincial elections "as a by-product of post-war enfranchisement of other racial minorities" (Tennant 1990).

1948 The United Nations General Assembly adopts the *Universal Declaration of Human Rights*. Intended to provide a common standard of achievement for all peoples and all nations, this declaration recognized

"the inherent dignity and equal and inalienable rights of all members of the human family [... and that]. no one shall be arbitrarily deprived of his property [... and that] everyone has the right to take part in the government of his country, directly or through freely chosen representatives[...and that] in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."



1949 Fort Connolly Indian Band moved to Takla Landing and merged with North Takla Lake Indian Band, calling themselves the Takla Lake Band.

R.M. Patterson took a nostalgic trip up the Finlay River (which he described in his book Finlay's River in 1978). Just before Finlay's trip, the HBC closed its post at Fort Grahame. Subsequently, many Sekanis left for Ingenika, Finlay Forks, or Fort Ware. A few, who were originally from the Fort Connolly, area moved to Takla Landing.

Frank Calder (Nisga'a Chief) became the first native elected to the BC legislature.

Appeals from Canada to Britain's Judicial Committee of the Privy Council were abolished, thereby preventing First Nations from taking their land claims to that court.

1950 The Hart Highway became passable to the Parsnip River, providing a new means of access to the District (Veemes 1985).

1951 Residential schooling (at Lejac School in Fort Fraser) was encouraged for aboriginal students at Fort Graham (nearly 30 years after Lejac opened, and nearly 70 years after the residential schooling policy was initiated in Canada).

With Britain's Judicial Committee no longer a concern, and convinced that political action by BC's First Nations was a thing of the past, the federal government amended the *Indian Act* to remove the claims prohibition and anti-potlatch

provision to deflect international criticism pertaining to Canada's application of the *Universal Declaration of Human Rights* (Tennant 1994).

1952 Frank Calder and other north coast Chiefs renewed discussions to identify ways to proceed on land claims (Tennant 1994).

The Kenny Dam stopped the Nechako River. Cheslatta territories were flooded and the entire nation was relocated. Water systems and chinook and sockeye runs were degraded throughout the Carrier territories.

The Hart Highway was completed and the Pacific Great Eastern Railway (now BC Rail) reached Prince George (Veemes 1985).

1953 The HBC closed its post at Fort Ware.

1955 The Nisga'a Chiefs re-established the Nisga'a Land Committee as the Nisga'a Tribal Council. "Settling their land claim [was their] major objective" (Tennant 1994).

Westcoast Transmission began construction of its gas pipeline from Taylor, through the Pine Pass, and on to Vancouver (Veemes 1985).

1957 The *Werner-Gren BC Development Project Proposal* outlined an ambitious project to develop Northern BC. The project envisioned the Bennett Dam, a northern railway, and a pulpmill complex (Veemes 1985).

- 1958 The Pacific Great Eastern Railway was extended to link Dawson Creek and Fort St. John with southern BC (Veemes 1985).
- 1959 Fort Grahame Band and Fort Ware Band amalgamated into the Finlay River Band, with their headquarters at Fort Ware.
- 1960 Aboriginal people were finally granted the right to vote in federal elections. Aboriginal residential schooling was discouraged to achieve faster assimilation.
- 1961 The *Forest Act* was amended to allow Pulpwood Harvesting Areas east of the Cascades and encourage new development. Alexandra Forest Industries Limited was formed to develop forest resources in what is now known as Mackenzie Forest District (AFIL 1964).
- 1962 BC Hydro began construction of the W.A.C. Bennett Dam at Rocky Mountain Canyon (Hudson Hope).
- 1963 A forest service road was built from the Parsnip River on the Hart Highway, to Finlay Forks. Until this time, the only other access into the District was a mining access summer road that went from Fort St. James to Manson Creek, through Germansen Landing and on to Osilinka Lake via Discovery Creek (Baptie 1975). Cattermole Timber (later bought out by Finlay Forest Industries Inc.) was awarded a timber sale to begin clearing the Williston Reservoir. They bought out Pack Lake

Sawmills, a small outfit operating near the Mackenzie junction and moved a portable sawmill to Finlay Forks (Baptie 1975).

1964 The huge Le Tourneau Tree Crusher was used to speed clearing of navigational channels within the expected boundaries of Williston Reservoir (Baptie 1975).

The Finlay PSYU/Pulp Harvesting Forest (the precursor to Mackenzie Forest District) was created. The Annual Allowable Cut (AAC) was set at 100,000,000 ft<sup>3</sup>/year (2.83 million m<sup>3</sup>/year).

1965 Members of the Nanaimo First Nation were arrested for hunting on unoccupied treaty area. To counter their defense, BC argues that the “Douglas agreements were not treaties and devises a new argument—that the Proclamation of 1763 did not extend to then ‘undiscovered’ BC. [However, the] Supreme Court of Canada [disagreed and upheld] the treaty, triggering emergence of aboriginal rights as a serious issue in Canadian courts” (Tennant 1994).

Finlay public sustained yield unit awarded the Province’s first Timber Sale Harvesting Licenses, (TSHL) thereby allowing industry to play a larger role in the management of public sustained yield units. Cattermole Timber Limited was awarded 40,000,000 ft<sup>3</sup>/year (1.13 million m<sup>3</sup>/year) TSHL, while Alexandra Forest Industries Limited was awarded 60,000,000 ft<sup>3</sup>/year (1.70 million m<sup>3</sup>/year). Both were expected to remove as much timber as possible from the reservoir, and construct a pulpmill and other mills as appropriate. Cattermole installed a planer mill and temporary sawmill at their Mackenzie site, and both companies started

construction on their other mills. Construction was also started on the Mackenzie townsite (Baptie 1975).

1966 The federal Department of Indian Affairs and Northern Development (DIAND) was formed.

The Forest Service adopted a close utilization policy, the first pulp mill opened in Prince George, and British Columbia Forest Products (BCFP) opened their first sawmill in Mackenzie.

1967 The bypass gates at the W.A.C. Bennett Dam were closed to start the formation of Williston Reservoir (Baptie 1985).

The Parsnip River and Tutu Indian Reserves are created to replace the Indian Reserve at Finlay Forks, (IR # 1) which was expected to be flooded.

1968 Williston reservoir, the largest man-made reservoir in the world, formed behind W.A.C. Bennett Dam and flooded highly productive portions of the Tsay Keh Dene and McLeod Lake First Nations' traditional territories. Fort Grahame was covered with nearly 50 metres of water. Finlay Forks, IR #1, and a nearby sawmill that employed 33 aboriginal people was lost forever. Aboriginal residents at Finlay Forks, many of whom were "squatting" on Crown Land, were moved at the last minute.

The District of Mackenzie was officially opened. The Hudson Bay Company sold its interest in the McLeod Lake Store.

The Nisga'a take their land claim to court (Calder vs. the Attorney General of British Columbia) seeking a declaration that they had held aboriginal title to the land prior to colonization, and that their title had never been extinguished.

1969 In the Calder case, BC Supreme Court Chief Justice Davey ruled that aboriginal title never existed, and supported this decision by stating that "the Nisga'a 'were undoubtedly at the time of settlement a very primitive people with few of the institutions of civilized society, and none at all of our notions of private property'" (Tennant 1994).

Indian Affairs Minister Jean Chretien released a "white paper" that outlined an assimilation plan that would have terminated "Indian status and rights" in Canada.

Opposed to the "white paper," aboriginal people resumed political activity across the nation. In BC, the Union of BC Indian Chiefs is formed to proceed with a land claim on behalf of all B.C. status Indians, and the B.C. Association of Non-Status Indians is formed to look to the interests of non-status aboriginal people.

Five houses were built at Parsnip Reserve, but most of the aboriginal people displaced by flooding of the Williston Reservoir found the location unsuitable.

Only four families moved to Parsnip Reserve. The rest dispersed to various other locations in their traditional territory.

1970 Senator Gladstone and other aboriginal elders in full traditional dress, ceremoniously presented a "red paper" rejecting the governments "white paper" at the house of commons. Embarrassed by the unexpected opposition, the Liberal

Government subsequently withdrew the “white paper” and indicated an openness to discussions on policy change.

Carrier Lumber’s planer mill and kiln was moved from Finlay Forks to Mackenzie and Cattermole’s pulpmill began production in Mackenzie (Veemes 1985).

1971 Williston reservoir reached its final height and BCFP opened its studmill in Mackenzie (Veemes 1985).

Finlay River Band splits into the Fort Ware Band and the Ingenika Band and 52 members moved to Ingenika Point to once again “squat” on provincial land. Since they were living off reserve, INAC asserted that they were not eligible for federal funds.

1972 BCFP opened its pulpmill in Mackenzie.

1972-75 The first “NDP provincial government [agreed] to consider return of cut-off lands, but [it asserted] that settling land claims is a federal matter” (Tennant 1994).

1973 On an appeal of the Calder case, the Supreme Court of Canada ruled that the Nisga’a did hold title to their land before BC was created. However, it was evenly split as to whether the Nisga’a still had title. The appeal itself was dismissed on a technicality.

The Federal Government reversed its stand on aboriginal title to enable negotiation of comprehensive land claim agreements. Soon after, the federal government began negotiations with the Nisga’a Tribal Council.

- 1974 “Quebec [signed] the James Bay Agreement, a modern treaty that recognized aboriginal title. Similar agreements [were] later reached in [the] Yukon and NWT. All embodied the principles demanded [by First Nations in BC]” (Tennant 1990).
- An association known as the Lakes District Chiefs, a predecessor of the Carrier Sekani Tribal Council, was formed.
- 1975 The Tl’azt’en Nation blockaded BC Rail between Lillooet and Pemberton. As a type of protest, the Union of BC Chiefs rejected all government funding.
- 1976 The Lejac Residential School was closed.
- The federal government adopted a comprehensive land claims policy, which stipulated that only six land claims could be negotiated in Canada at any one time, and only one per province.
- The Federal government started to negotiate with the Nisga’a, but BC refused.
- The Department of Forests was separated from the Department of Lands.
- 1976-81 The Social Credit government proceeded on the NDP promise to reassess the cut-off lands issue. Negotiations started in 1981 and cut-off lands were later returned or paid for at present value (Tennant 1994).
- 1978 The *Ministry of Forest Act 1978*, the *Forest Act 1978*, and the *Range Act 1978*, replaced the *Forest Act 1912* and the *Grazing Act 1919*. The six Forest Districts became Forest Regions, and 98 Ranger Districts were amalgamated into 46 Forest



Districts (including Mackenzie Forest District). The 88 Public Sustained Yield Units became 33 Timber Supply Areas (TSA). The Finlay Public Sustained Yield Unit became the Mackenzie TSA, it had the same boundary as Mackenzie Forest District. (Parminter 1994).

- 1979 The Carrier Sekani Tribal Council assumed the roles and responsibilities of the Lakes District Chiefs' organization.
- 1980 The McLeod, Ingenika, and Fort Ware Bands left the CSTC to form the Sekani Tribal Council.
- 1980s The BC government continued its denial of "Indian title," but foists responsibility to the federal government by claiming that *The Terms of The Union 1871* would require federal payment for any subsequent surrender or transfer of title.
- 1982 The United Nations established the Working Group on Indigenous Populations. The National Indian Brotherhood became the Assembly of First Nations.
- Section 35 (1) of the *Constitution Act, 1982*, stated that "[t]he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed" but left the question of unextinguished title open for courts to decide.
- A CSTC Declaration and Statement of Claim was filed April 15, 1982 with the federal claims commission.

- 1983 The CSTC Declaration and Claim was accepted for negotiation under federal comprehensive claims policy.
- 1984 The Assembly of First Nations, Indian and Northern Affairs Canada (INAC) and Forestry Canada collaborated to define a comprehensive program to enhance aboriginal participation in forestry. However, the program was not implemented by the government (Hopwood et. al. 1993).

In *Guerin* (the Musqueam Indian Band's 1975 lawsuit against federal government over the lease of 162 acres of reserve land to the Shaughnessy Golf Club in the late 1950s) the Supreme Court of Canada reaffirmed "a 'pre-existing legal right' derived from aboriginal practice and not from any British or Canadian action" (Tennant 1994). In other words, aboriginal title was recognized, not created, by the Royal Proclamation. This case was the first legal notice of the fiduciary relationship between First Nations and the federal government. This legally binding relationship exists because First Nations are prohibited from surrendering their interests to a third party, and it requires the federal government to act (in good conscience and with loyalty) for the benefit and interests of First Nations.

In what became known as *Delgamuukw I*, the Gitksan and Wet'suwet'en First Nations file suit against the province in the BC Supreme Court. They claimed ownership of 57,000 square kilometres of traditional territories near Hazelton, as well as the right to self-government and compensation for lost land and resources.

1985 Parliament passed *Bill C-31, an Act to Amend the Indian Act*. Bill C-31 brought the *Indian Act* into line with the provisions of the Canadian Charter of Rights and Freedoms by enabling women (and their children) who lost their aboriginal status upon marriage to a non-aboriginal to apply for reinstatement.<sup>39</sup>

In the Martin case, the BC Court of appeal halted logging on Meares Island pending resolution of a court case on the Nu'chah'nulth land claim. In their rationale, although they noted that land claims had been largely ignored by government, the judges implied that negotiations were more appropriate than court to settle these type of differences. This decision suspended BC's ability to authorize resource extraction pending land claim settlement and prompted a recurring pattern of protests and injunctions.

In the case of Ronald Sparrow, a Musqueam aboriginal charged with violating federal fishing regulations while fishing off-reserve in the lower Fraser River, the British Columbia Court of Appeal ruled that aboriginal rights to fish for food continue to exist in non-treaty areas of BC (the case was appealed).

The Federal government introduced the *Sechelt Indian Band Government Act*, which grants title to lands in traditional Sechelt territory and provides for self-government through legislation.

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<sup>39</sup> From 1985 to 1991, 23,789 applications were received in BC. As of 1991, 13,452 applicants were qualified to register as Indians, prompting numerous requests for Indian Reserve expansion (Nicola Valley Institute of Technology [NVIT] undated and unnumbered teaching aid).

A public opinion poll by The Vancouver Sun indicated 75% support for land claim negotiations (Tennant 1994).

“A federal task force (Coolican report) recommended that the federal government alter its policy of negotiating only one claim per province. The government ignored the report” (Tennant 1994).

1987 Chief Gordon Pierre, of the Ingenika Band, submitted a claim for compensation to INAC (*A Specific Claim for damages resulting from the flooding of Williston Lake*). An INAC committee was struck to examine those claims.

The Kemano II Project was approved by a “secret” federal/provincial/Alcan Settlement Agreement (CSTC 1998).

The Intertribal Forestry Association of British Columbia (IFABC) - a non-political, voluntary association dedicated to improving the management of aboriginal forest resources, was formed (Hopwood et. al. 1993: 22).

The Native Affairs Secretariat was created by the Government of British Columbia.

1988 The BC First Nations Congress was formed.

The Native Affairs Secretariat becomes the Ministry of Native Affairs.

1989 The “*Ingenika Settlement Agreement*” was signed by the Ingenika Band, the federal and provincial governments, and BC Hydro. It enabled the band to select 1000 acres of land at Blackpine Lake on the Mesilinka River, 2000 acres where Tsay Keh

Village is now located, and 5 acres to protect a cemetery at Ingenika point. It also provided funding to enable construction of housing, and several other benefits for the Ingenika Band.

A four way venture in forestry between the Tsay Keh Dene and Fort Ware Bands, and Finlay Forest Industries Inc. and Fletcher Challenge Canada Ltd. began with the incorporation of Tsay Tay Forestry Ltd. Its purpose was to provide training opportunities that would enable the Bands to become independent contractors in logging, silviculture and construction.

The inaugural "Industry/First Nations Conference" was held at Whistler. Industry leaders discuss land claims with tribal leaders.

In the Gitksan-Wet'suwet'en court case (later known as Delgamuukw I) BC government lawyers asserted that BC First Nations have been treated fairly.

Premier Vander Zalm and Jack Weisgerber, Minister of Native Affairs, met with tribal nations.

The Intertribal Forestry Association of BC (IFABC) requested that the Lands, Revenues and Trusts (LRT) Steering Committee of Indian and Northern Affairs Canada (INAC) make specific reference to forests and the practice of forestry on reserves in their review process. As a result IFABC was contracted to provide a "review of INAC's LRT functions and responsibilities as they relate to forest and forest land management on B.C. reserves" (Hopwood et. al. 1993: 12).

The IFABC organizes a National Native Forestry Symposium in Vancouver that lead to the creation of the National Aboriginal Forestry Association (NAFA). Primarily working at the national policy level, NAFA's overall goal "is to promote and support increased aboriginal involvement in forest management and related commercial opportunities" (Hopwood et. al. 1993: 22).

1990 The IFABC drafted an 83 page report (Lands, Revenues and Trusts Forestry Review) that contained recommendations to improve aboriginal forestry education and training. It was based on a province wide aboriginal consultation process. IFABC also commissioned Price Waterhouse to document the forest industry outlook by sector and identify strategies to increase aboriginal participation in industry ownership and management (Hopwood et al, 1993).

In Sparrow v. The Queen (the Sparrow decision) the Supreme Court of Canada ruled that Section 35 of the Constitution Act protects aboriginal and treaty rights, which are capable of evolving over time and must be interpreted in a generous and liberal manner. The Court also ruled that after conservation goals are met, aboriginal people must be given priority to fish for food over other user groups. This case also established the legal duty of the federal government to consult with First Nations with respect to conservation measures being implemented. This decision pointed out that the fiduciary relationship is meant to be "trust-like, rather than adversarial."

“To demonstrate solidarity with Mohawks in Quebec, but also to pressure BC to recognize title and to negotiate, a number of BC bands mount road and rail blockades” (Tennant 1994).

In August of 1990, BC announced its intention to join the First Nations and Government of Canada in negotiations, but without any acknowledgment of pre-existing title, and entered the negotiations underway between the Nisga'a and the Government of Canada. The federal government agreed to drop its one-at-a-time negotiation policy.

In September, the Task Force on Native Forestry was commissioned by the Ministries of Forests and Native Affairs to recommend ways to increase aboriginal participation in the forest sector. The task force consisted of four First Nations representatives, two registered professional foresters, and one government representative.

In October, the First Nations Summit (the BC First Nations Congress with a new name and role) met with the Prime Minister of Canada, and then with BC's Premier and Cabinet, to encourage formation of a tripartite (Federal, Provincial, and First Nation) task force to develop a process for negotiations (Tennant 1994).

In December the tripartite BC land Claims Task Force was established and asked to make recommendations related to the scope of negotiations, the organizations and process of negotiations, interim measures, and public education measures.

1991 In what was known as the Delgamuukw I decision, Chief Justice Allan McEachern of the B.C. Supreme Court, depicted the claimants (Gitksan and Wet'suwet'en people) "as descendants of primitive peoples who had neither law nor government" (Tennant 1994). He rejected their claim for present day aboriginal title and a right to self-government. However, he affirmed "unextinguished non-exclusive aboriginal rights, other than right of ownership" to much of their traditional territory and urged the parties to negotiate the scope and content of those rights. He also affirmed that the Provincial Government has fiduciary responsibilities. This includes a responsibility to consult when legislative or other governmental action would affect First Nation interests, but noted that consultation does not infer a veto, or any requirement for consent or agreement, although he noted that such an accommodation would be desirable.

The Ministry of Native Affairs was renamed the Ministry of Aboriginal Affairs and given expanded responsibilities to reflect the NDP's new direction.

The BC Claims Task Force presented a unanimous report recommending that "the First Nations, Canada, and British Columbia establish a new relationship based on mutual trust, respect, and understanding." This was to include tripartite negotiations, coordinated by a tripartite Claims Commission, on a claimant by claimant basis. The First Nations Summit, provincial government, and federal government all endorsed these recommendations.



The CSTC and Save the Bulkley Society obtained a court judgment requiring an environmental assessment of Kemano II. However, the decision was reversed on appeal and not heard by the Supreme Court of Canada.

The Task Force on Native Forestry submitted its final report, Native Forestry in British Columbia: A New Approach, in November. It contained 20 recommendations that identified specific strategies (including education and training initiatives) to increase aboriginal participation in the forest sector.

1992 BC announced its intention to establish a First Nations Forestry Council to follow up on the Task Force on Native Forestry recommendations.

The National Aboriginal Forestry Association (NAFA) submitted an Aboriginal Forest Strategy Draft Discussion Paper, 1992 to promote interest in measures to enhance aboriginal training and education in forestry (Hopwood et. al. 1993).

The Canadian Council of Forest Ministers, in Sustainable Forests: A Canadian Commitment, commented that

“Aboriginal forestry organizations and the federal government will complete a strategy to address the training and employment needs of aboriginal people, in accordance with their forest values [and] Post-secondary and professional forestry educational institutions will broaden their programs to reflect the aboriginal land ethic as well as the constitutional status and positions of the aboriginal people of Canada (Hopwood et. al. 1993: 15).

The government of British Columbia officially recognized the inherent rights of First Nations to aboriginal title and to self-government, and pledged to negotiate

just and honourable treaties. For the first time, BC was ahead of the federal government in responding to aboriginal demands (Tennant 1994).

Federal, Provincial, and First Nations Summit representatives signed the B.C. Treaty Commission Agreement to establish a negotiation process and the five-member BC Treaty Commission.

The Department of Fisheries and Oceans, Canada, developed and implemented the Aboriginal Fishery Strategy with B.C. First Nations.

A national referendum rejected Charlottetown Constitutional Accord including provisions for aboriginal self-government.

1993 A MOF News Release (January 21, 1993) announced the formation of the First Nations Forestry Council, which was charged with examining opportunities for enhancing aboriginal involvement in the forest sector through: tenure where opportunity exists; silviculture; education; training; forestry employment in companies and government; increased involvement in planning; protection of cultural sites; and creation of a capital pool.

The United Nations welcomed in “The International Year of the World’s Indigenous People” with a commitment to ensure their enjoyment of all human rights and fundamental freedoms and to respect the value and diversity of their cultures and identities.

The Vienna Declaration and Programme of Action was signed off at the World Conference on Human Rights. It recognized and/or reaffirmed

*that all human rights derive from the dignity and worth inherent in the human person,*

*the equal rights of men and women and of nations large and small,*

*the determination to practice tolerance and good neighbourliness,*

*that all peoples have the right of self-determination - to freely determine their political status, and pursue economic, social, and cultural development,*

*that extreme poverty and social exclusion constitutes a violation of human dignity, and*

*that it is essential for States to foster participation by the poorest people in the decision-making processes of the community in which they live.*

In February the Aboriginal Forestry Training and Employment Review (AFTER) released their Final Report: Phase 1. It identified strategies to increase aboriginal participation in the ownership and management of four different sectors (resource management, forest harvesting, wood products, and pulp and paper) of the Canadian forest industry (Hopwood et al, 1993).

In March, an agreement outlining the role of local governments in aboriginal treaty negotiations was signed by the Government of British Columbia and the Union of British Columbia Municipalities.

On April 15<sup>th</sup>, the six member tripartite British Columbia Treaty Commission was appointed to facilitate the negotiation of treaties.

The *BC Treaty Commission Act* was passed by the BC legislature in May. The Federal and Provincial governments signed a memorandum of understanding on sharing costs related to negotiations and settlements. It was generally accepted (by those involved in this issue) that BC treaties would include aboriginal self-government and land claims settlements.

The Union of B.C. Indian Chiefs continued its rejection of the treaty negotiation process agreed to by the First Nations Summit. Instead they signed an agreement to deal separately with the BC on a “government to government” basis.

In June, the BC Court of Appeal (Delgamuukw II ruling) partially reversed the McEachern judgment. It established that a limited form of aboriginal title (that of non-exclusive use and occupancy) continues to exist in non-treaty areas. This was the first time that any court in Canada recognized present-day aboriginal title (Tennant 1994). The Court denied any aboriginal right to self-government.

Significantly for forest planners, this case also established that

“licenses and permits, if granted, may still be challenged on the ground that they constitute an unjustifiable interference with aboriginal rights. Thus, in appropriate cases tenures may be declared invalid, or perhaps “read down” so as to minimize interference with the exercise of aboriginal rights. In other cases, damages may be awarded. ... In still others, if the interference can be justified, the tenure holder will be allowed to carry on its activities”  
(*Plant 1993: 2.24*).

Upon opening on December 15<sup>th</sup>, the Treaty Commission accepted Statements of Intent from First Nations, the first stage of the six-stage negotiation process. Some 29 Statements of Intent were filed by year end, including the CSTC.

The CSTC boycotted B.C. Utilities Commission “review” of Kemano II project. All first Nations in B.C. supported the boycott.

1994 The “Ingenika Settlement Agreement” was amended to more accurately represent the Tsay Keh Dene’s choices.

The United Nations Working Group on Indigenous Populations released their draft Declaration on the Rights of Indigenous Peoples.

The federal government decided that the Aboriginal rights referred to in Section 35 of the *Constitution Act 1982* included the aboriginal right to self-government.

The Supreme Court of Canada agreed to hear an appeal put forward by the Gitksan-Wet’suwet’en with respect to the Delgamuukw II decision.

On September 19<sup>th</sup>, an agreement ensuring local government participation in treaty negotiations was signed by the Government of British Columbia and the Union of British Columbia Municipalities.

1995 The *BC Treaty Commission Act* was passed by federal parliament. The Kemano II Project was rejected by Premier Harcourt.

In August, the federal government releases a policy paper titled: Aboriginal Self-Government: The Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government. This paper recognized that ...

Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and their resources.

1996 The CSTC and the Governments of British Columbia and Canada began their negotiations.

On February 15<sup>th</sup>, negotiators for Canada, British Columbia and the Nisga'a Tribal Council initialed an agreement-in-principle.

On March 22<sup>nd</sup>, Indian and Northern Affairs Minister Ronald A. Irwin, BC Aboriginal Affairs Minister John Cashore, and Nisga'a Tribal Council President Joseph Gosnell Sr. signed the Nisga'a agreement-in-principle at an historic ceremony in New Aiyansh.

1997 The CSTC signed its Framework Agreement with BC and Canada on April 25<sup>th</sup>. This agreement set the agenda for their treaty negotiations.

BC and Alcan reached an agreement over the Kemano II cancellation, still leaving Alcan to control 87% of the Nechako River, against the wishes of the CSTC First Nations.

On December 11<sup>th</sup>, the Supreme Court of Canada hands down the Delgamuukw III decision on the Gitksan and Wet'suwet'en First Nations' claim to their traditional territories. It recognized that both aboriginal rights and title still exist in British

Columbia, but it could not affirm the extent of aboriginal rights and title. The Court urged a negotiated settlement in place of new trial to resolve those issues.

1998 Indian Affairs Minister Jane Stewart, says Canada is “deeply sorry” for those who suffered abuse at federally-run residential schools, but there is no general apology to aboriginal people for its role in this assimilation process, other than a “profound regret for past actions” (CSTC 1998).

In March, a tripartite (First Nations Summit, BC, and Canada) review of the BC treaty process was initiated.

In June, Canada and the United Church of Canada were both found liable, in the Supreme Court of British Columbia, for their historic role in the operation of a Port Alberni Residential School where many aboriginal children suffered sexual abuse. This decision opened the door for those victims and others to seek compensation.

In June, the BC Treaty Commission published their Annual Report 1998, which noted that they have accepted 51 Statements of Intent, of which 3 were in stage 2, 12 in stage 3, and 36 in stage 4 of the 6 stage treaty process.

In August the Nisga’a Treaty agreement was reached, and an emotional ceremony was held to mark the occasion. Shortly thereafter, rumblings of dissent began to surface around the province, and the provincial government began an advertising campaign to sell the deal.

In November, the Nisga'a people ratified the Nisga'a Treaty, but the public debate continued.

## **II LOCAL ISSUES - OPTIONS FOREGONE**

To some extent, this section revisits issues raised in the previous section. However, the focus is local concerns related to the distribution of benefits and costs of forest development that were raised during meetings I had with First Nation representatives in 1997 and 1998 while employed as a planning forester for Mackenzie Forest District. As I detail below, many members of the First Nations in Mackenzie Forest District<sup>40</sup> find themselves lost between traditional values and the new order. They feel they are alienated from forest development planning and decision-making processes. Hence, they are not satisfied that either option can sustain their future generations.

### **1) Traditional Values Denied**

Many representatives from the First Nations in Mackenzie Forest District contend that the Forest Service is not adequately managing traditional values. The cumulative erosion of the spiritual quality of their traditional territory, and of the quantity and quality of traditional hunting, trapping, fishing, and gathering opportunities, seems to be their greatest concern. They claim that logging practices are not in harmony with nature. Furthermore, they express concerns centered around the long term effects of:

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<sup>40</sup> As pointed out in Chapter 2, unless otherwise noted the issues raised in this section are presented as generalized concerns. They are repeated herein to identify issues of concern, not to attest to their validity or to their universality to all First Nations in Mackenzie District. A much more in depth study would be needed to draw such conclusions.



- environmental degradation resulting from “poor forest practices” that they feel is often not detected and/or properly mitigated;
- changes in the quantities and distributions of wildlife habitat. These changes affect wildlife populations in their traditional hunting and trapping areas, which in turn result in real costs to First Nations (including an increased dependence upon motorized travel to sustain their needs). Since some of their elders may not be able to adapt to changes like these, they may be forced to abandon traditional activities without recourse to compensation or a substitute activity;
- increased pressure on fish and wildlife populations from recreational users eager to exploit newly developed areas that were formerly used primarily by First Nations. Not only is development encroaching upon their wilderness, but it is bringing in others who compete with them for increasingly scarce opportunities to enjoy traditional values that were once plentiful; and
- pesticide use in their traditional territories. The use of chemicals to control pest species (vegetative and animated) seems to be feared by almost all First Nations. For example, Tsay Keh residents cite cases where they have been forced to discard entire moose carcasses, which they claim were covered with sores from eating sprayed brush (Crampton 1992). Since their claims have not been scientifically assessed, they are seeking “scientific proof” that they, or the plants and animals they depend on, will not be adversely affected by direct or indirect contact with these chemicals. Generally speaking, they are not reassured if proponents of chemical applications cite studies done in other areas.

## **2) Sustainability For Future Generations**

Many representatives from the First Nations in Mackenzie Forest District fear that development in their immediate area is proceeding at a non-sustainable rate. They expect periods when there will be little if any meaningful work unless they are prepared to move to other areas within the District. They fear that future generations of their First Nations may not be able to enjoy a meaningful and autonomous life within their traditional territory, whether they choose the new order, or the traditional life.

This concern has led to repeated calls for a development moratorium on certain areas considered to be “the heart” of treaty settlement areas.<sup>41</sup> Without ruling out the possibility of future development, many First Nation representatives believe that it is very important to protect these areas now, as “seed areas” for large game, as a preferred location for traditional activities, and as a source of spiritual inspiration and healing. With the concerns outlined above unanswered, they consider proposals to harvest in these areas especially offensive, and will not provide government or development proponents with site specific information in these areas, since this may be considered a concession to development.<sup>42</sup>

## **3) The New Order Denied**

Many representatives from the First Nations in Mackenzie Forest District decry their current situation as wards of a “foreign government.” Even though most enjoy many modern conveniences, as “wards,” they feel that they are relegated to living on Indian Reserves,

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<sup>41</sup> In Mackenzie Forest District, this is currently a very important issue with the Tsay Keh Dene, and Kwadacha First Nations. However, it may become more of a concern for other First Nations as they progress in their treaty negotiations.

<sup>42</sup> Unfortunately, this practice may result in further damage to First Nation values, as development proponents may not recognize the values and take appropriate steps to protect them.

governed by the *Indian Act*, and usually only able to watch from the sidelines while others amass incredible riches from the exploitation of their traditional territories.

For many, there is no option. Often poorly equipped with the skills needed to compete in the employment marketplace, their calls for employment seem to fall on deaf ears. Isolated in their communities, most training programs never reach them, or the barriers to entry and/or successful completion preclude most from trying. Therefore, they see no opportunities for themselves, now or in the foreseeable future.

#### **4) Planning and Decision Making Processes**

This section provides a brief description of the four main processes that are used to bring issues regarding forest development that concern representatives of the First Nations in Mackenzie Forest District (and potential solutions) to the attention of the District Manager.

##### **a) First Nations Working Group**

The First Nations Working Group was initiated in August, 1998 to address a growing need for communication between proponents of development and the Ministry of Forest's decision makers in Mackenzie Forest District. Although the meetings to date have been mostly concerned with establishing terms of reference, the working group (which consists of representatives from each licensee, the Small Business Forest Enterprise Program, and Mackenzie Forest District) was struck to address areas of mutual concern that stem from the need to plan and consult with First Nations. It provides an opportunity to share experiences and better ways of relating to the First Nations and aboriginal people in the District. It also will provide an opportunity to discuss new policies, and other measures that might be needed

to address new and emerging issues. It is expected that from time to time this group will work very closely with the Forest Resources Councils, discussed below.

#### **b) Forest Resources Councils**

First Nation Forest Resources Councils are another new concept that is being tried with the Tsay Keh Dene and Kwadacha First Nations. These councils were formed in an attempt to improve relations and communications on a "Chief to Chief" level. They involve quarterly meetings that provide opportunities for the District Manager and/or 1 or 2 senior staff to meet directly with the Chief and his/her senior staff, to discuss issues pertaining to the management of forest.

Some Forest Resources Council meetings have also been tied into a follow-up meeting where industry representatives were invited. This approach, is considered essential, because industry are the main proponents. If they willingly "buy into" the process, as opposed to being forced or directed, it is believed that much more will be accomplished. However, as with government, industry is faced with very difficult economic times right now, and they are loathe to start anything that will cost them more, unless they are able to see some future compensation.

Envisioned as a means to develop meaningful interim measures, the meetings to date have been awkward. First Nation representatives are eager to establish measures that will improve their situation, especially when faced with Ministry staff who appear sympathetic to their concerns. However, with less resources than ever to maintain current programs, and no indication of funding support for any new programs, Ministry staff feel that they cannot make any promises to First Nation representatives. Although they listen to First Nation concerns, Ministry staff's inability to make funds available to resolve First Nation issues or concerns

leaves them vulnerable to speculation that the Ministry is engaging in “talk and log strategies,” i.e., First Nation representatives suspect the Ministry keeps them talking, so they will be too busy (or reluctant) to take legal or other actions that might stop logging.

**c) FDP Reviews and Open Houses**

Forest development plan (FDP) reviews and open houses are meant to be the primary means of assessing the impact forest development may have on First Nations. They are conceived as a way of collecting cultural information, and of ensuring that site specific concerns are addressed. At the start of the mandated review period, the proponent provides a copy of their development plan to the First Nation’s Chief and Council. From two weeks to two months from that date, a follow up open house (at a facility convenient to the First Nation) is arranged. The entire First Nation, is invited to discuss any concerns they might have. The plan proponents send several senior representatives of their planning staff, and the Ministry sends its review staff (usually 1-3 foresters and a person who functions as an aboriginal liaison. Any cultural information is noted, and whenever possible, concerns are addressed on the spot. If further discussion is needed in the field, arrangements are made. Records of the concerns, and any mitigative actions are submitted when the FDP is submitted to the District Manager for approval (approximately 3 months from the first submission).

Representatives from the First Nations in Mackenzie Forest District have voiced many concerns about the open-house planning and consultation processes used here. They view open houses as a poor substitute for participatory planning. They feel that more work is needed in their communities to ensure that their people understand how the material presented affects them, and how to articulate any concerns they might have. They point out the following barriers that need to be overcome:

- Some First Nation representatives are shy and or intimidated by the process and the strangers who show up en masse for open houses and consultation meetings.
- Others feel that their views do not matter, to paraphrase their comments: “the companies have already decided what they will do, so if you have a concern they will just try to show that you are wrong and do what they want anyhow.”
- Others complain that the plans provide no insight into the sustainability of traditional values. Rather, they contend that they are little more than an omnibus of doom, i.e., sooner or later development will create havoc and instill costs upon those practicing traditional activities. Consequently, although some still attend these meetings and attempt to protect their values, many have given up.
- Many are not able to clearly communicate their concerns with respect to the maps provided. They feel their concerns are trivialized, because the areas where they spend a significant portion (if not all) of their lives appear insignificant on a 1:50,000 or 1:100,000 mapsheet. Important cultural and/or biophysical features are usually absent or indistinguishable. Consequently, they find it very hard to communicate with the foresters at the meetings. The one is thinking in terms of distance from a cutblock, or road junction which is clearly marked on the map, while the other is thinking in terms of the distance from the best martin set, or where the fox crosses his trail, none of which is on the map.

In general many First Nation representatives do not believe that there is an adequate forum for resolving their concerns. They ask “where are the plans and planning processes that will give us a meaningful place in the new order, thereby replacing what we are losing?”

Instead, of plans showing promising futures, they see forest development plans that seem to

ignore their hopes and aspirations. Instead of inquiring about their interests, developers ask where their plans impact upon traditional practices, to determine if they have an unjustifiable impact on aboriginal rights and/or title. Many First Nation representatives believe that they do. However, they are thinking in terms of lost autonomy, while developers are thinking in terms of the right to hunt and fish, for which it is often possible to suggest alternate locations.

#### **d) One on One Meetings**

One on one meetings are arguably the most inconsistently used planning and consultation tool. They involve formal or informal meetings where issues and concerns can be discussed in a non-political environment. They may consist of the District Manager stopping in to speak with the Chief and Council (or anybody else). Similarly, they might involve one of the field staff stopping to talk to trappers, hunters, or anyone else, who has an issue, concern, or just an interest in what the person is doing.

The First Nation representatives have expressed concerns that they only see Ministry staff at the open-houses. This reflects the District's size, rapid turnover and a relative shortage of staff, a shortage of funds for traveling, the fact that field accommodations and inspections are usually industry related, and the absence of a formal program to induce staff to overcome these obstacles and interact more with First Nation representatives.

#### **5) Cultural Information Management**

The First Nation representatives in Mackenzie Forest District believe their First Nations need extra capacity to ensure a mutually beneficial planning and consultation process. Despite government expectations, Chiefs and other First Nation council members are often too busy with other tasks to provide information needed to prevent unjustifiable infringements

upon aboriginal and/or treaty rights and/or title. Furthermore, the knowledge of cultural resources and practices is often a matter of individual concern. With no one responsible for gathering and collating cultural information, there is a great deal of uncertainty around potential infringements.

First Nation representatives profess that their First Nation would like to develop an inventory of cultural resources and traditional activities, and work with proponents of forest development to minimize adverse impacts and maximize favourable impacts. However, they believe the government has a fiduciary responsibility to work with them to find a mutually acceptable way to resolve their concerns, which include:

1. fear that an inventory documenting the location and use of cultural resources and features would be used to discount their land claims;
2. fear that if this information is freely given, they will lose the political leverage to get their claims heard;
3. a lack of administrative or technical capacity to realize this objective, i.e., they lack the operating capital, office space, equipment, and trained and dedicated staff needed to develop and utilize the inventory;
4. a lack of resources to put together a proposal that would enable such a project (this is confounded by fears that if they hire a contractor, they may not actually get the project approved, and therefore would have wasted time, effort, and scarce capital);
5. and a concern that the inventory will become someone else's property, and not generate future work or income for First Nation representatives. In a similar vein, they are



concerned that the information will become public knowledge, and their resources and features will be adversely affected.

### **6) Financial Support**

A perceived lack of financial support seems to be the strongest concern of many First Nation representatives. They assert that their First Nations are not provided enough funds to resolve many of their concerns. Therefore, they find it extremely frustrating when government and industry ask them to consult, plan, or even to just discuss forest mitigative measures concerning forest development, without first providing support to enable the process. For example, they need office space, equipment, and staff for consultation and planning. They are no longer willing to place blind trust in government or industry, and they lack local expertise, so they must rely on consultants and other experts. As a result, the cost of discussion escalates, often to the point that very little else gets done. First Nation representatives feel that government spends all its money on salaries, so there is always someone who can “talk the talk,” but when it comes down to meaningful projects, there never seems to be any funds to get the job done. This is causing some of them to think that government just wants to “talk and log.”

### **III SUMMARY**

Apparently government, industry, non-aboriginal peoples, and even some aboriginal peoples who have become forestry contractors and workers, have benefited from the development of resources in Mackenzie Forest District. However, the colonial politics used

to promote those development activities have resulted in a situation where the First Nations in Mackenzie Forest District:

1. are no longer isolated in their wilderness - with the rapid incursion of roads, cutblocks, people and equipment into formerly isolated areas, much of the natural quality of their traditional territories is gone or going fast;
2. have been subjected to governance by European colonists. Since these colonists did not value the traditional ways of First Nations, they were denied a meaningful role in planning and decision-making processes. Consequently, First nations were forced to give up their autonomy, settle on reserves, and accept government incomes and subsidies to survive;
3. must deal with serious social problems, such as extreme violence, suicide, depression, drug and/or alcohol abuse, and chronic unemployment.

As a result, many of their members have given up hope and all have relatively little reason to trust proponents of development.

Although recent court decisions and progress made during treaty talks are indications of better times in the future, it is not yet possible to relegate colonial politics to years gone by. Many First Nation representatives clearly believe that development in Mackenzie Forest District is foreclosing their options, while government does little to help them. They feel that they are denied benefits from either their traditional lifestyle or the new order. To paraphrase sentiments heard many times in the past two years:

“we are caught in a ludicrous situation where a foreign government and its industry is making a fortune by developing our resources, while our people are given token benefits. It is particularly aggravating to find ourselves in a situation where we are denied either a meaningful existence in the new order or the enjoyment of our traditional lifestyle, while our options are slowly being foreclosed one by one.”

Neither are they happy with government attempts to resolve these problems. Many First Nation representatives believe that government can always find money to talk, but it can never seem to find the money needed to actually resolve problems. Hence, they are prone to make assertions that government and developers “talk and log,” but fail to address their concerns. It seems this festering colonial legacy could erupt at any time.

## **CHAPTER 6: PRINCIPLES OF DISTRIBUTIVE JUSTICE**

In this chapter, I identify principles of distributive justice that **can** be used to make recommendations with respect to the equity of forest development planning and decision-making processes and the issues raised in the previous chapter. Although distributive justice is still a controversial topic, and perhaps there never will be a unified theory of justice that all can agree on, it is still possible to identify principles of distributive justice that provide direction for government planning and decision-making processes. In western liberal democracies like ours, such principles are expected to: embrace the primacy of the individual, treat everyone as equals, recognize no moral distinctions among individuals (i.e. some people are not fundamentally “better” than others), and introduce meliorist measures, i.e., measures that recognize the “corrigibility and improvability of all social institutions and political arrangements” (Gray 1986: x).

With those fundamentals in mind, I draw extensively upon the ideas of two political theorists, Ronald Dworkin (1978 & 1985) and Joseph Raz (1986). I chose these authors because their ideas are very contemporary, well respected, and especially suitable for examining issues of distribution in a liberal democracy such as we have in Canada. They offer rigorous principles of distributive justice that I use as the theoretical foundation for my recommendations in Chapter 7.

### **I RONALD DWORKIN’S PRINCIPLE OF EQUAL CONCERN AND RESPECT**

In this section, I examine the principle of equal concern and respect, which Ronald Dworkin suggests should be considered the most fundamental principle of distributive justice

in western liberal democracies such as ours. The principle is: Government must treat those whom it governs with equal concern and respect. To elaborate slightly, he explains that:

Government must treat those whom it governs with concern, that is, as human beings who are capable of suffering and frustration, and with respect, that is, as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived (Dworkin 1978: 272).

In so doing, Dworkin establishes values such as individual well being, self determination, liberty, and autonomy as some of the most important values that government must promote for its citizens. Dworkin goes on to describe **how** these values must be promoted. He asserts that government must not only treat people with concern and respect, but with **equal** concern and respect.

It is important to understand that Dworkin recommends treating people as equals; he does not recommend treating them equally. He suggests that treating people equally would imply a “right to equal treatment, that is, to the same distribution of goods or opportunities as anyone else has or is given” (Dworkin 1978: 273). However, he suggests that treatment as an equal implies a “right to equal concern and respect in the political decision about how these goods and opportunities are to be distributed,” not the right to an equal distribution (Dworkin 1978: 273).

For Dworkin, distributive justice is not about whether political decisions (i.e. laws, government policies, and government decisions) result in an equal distribution of goods and opportunities among its citizens. Rather, it is about ensuring individuals are accorded an equal distribution of concern and respect in the political decision-making processes where goods and opportunities are distributed. By focusing on the means, not the ends, Dworkin’s

principle of equal concern and respect defines just political decisions in terms of just political decision-making processes.

By insisting that political decision-making processes must adhere to the principle of equal concern and respect, he ensures that differences in individual circumstances, not conceptions of individual worthiness, are the basis for differences in distribution. For example, emergency relief is meant for those who really need it; not for everyone within a disaster zone. For Dworkin, treating people as equals requires the recognition of differences in individual circumstances to ensure individual well-being and autonomy, while treating people equally requires maintaining their status or enrichment through equal distribution.

### **1) Equal Concern and Respect and Constraints to Liberty**

Although Dworkin contends that “there exists no general right to liberty as such,” (Dworkin 1978:269) he places a high value on certain specific individual liberties. He defines *liberty* as “the absence of constraints placed by a government upon what a man [sic] might do if he wants to” (Dworkin 1978: 267). He argues that the most distinctive point of the liberal tradition

is that interfering with a man’s [sic] free choice to do what he might want to do is in and of itself an insult to humanity, a wrong that may be justified but can never be wiped away by competing considerations. For a true liberal, any constraint upon freedom is something that a decent government must regret, and keep to the minimum necessary to accommodate the other rights of its constituents (Dworkin 1978: 268).

In recognition of the value of specific liberties in western liberal democracies, Dworkin identifies two basic types of arguments that governments can use to justify constraints on individual liberties. In so doing, he distinguishes between arguments of policy, and arguments

of principle. Dworkin's concept of a political right is based on his distinction between these two types of argument.

### **a) Arguments of Policy**

Dworkin defines arguments of policy as arguments that justify a constraint on liberty "to realize some state of affairs in which the community as a whole, and not just certain individuals, [is] better off by virtue of the constraint" (Dworkin 1978: 274). In other words, arguments of policy "try to show that the community would be better off, on the whole, if a particular program were pursued" (Dworkin 1985: 2). He identifies two different types, ideal or perfectionist arguments,<sup>43</sup> and utilitarian type arguments,<sup>44</sup> which I discuss below.

#### **(i) Ideal or Perfectionist Arguments**

Proponents argue that ideal or perfectionist policies should be instituted, because they offer improvements that will help bring the community closer to their perception of the ideal community. However, Dworkin makes it very clear that this is not a valid reason for implementing any policy, unless the community as a whole is unanimous in wanting those improvements. Since treating everyone with equal concern and respect negates any claim based on the assertion that one person's lifestyle has more inherent value than another person's, ideal or perfectionist policies should only be instituted if everyone affected by them

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<sup>43</sup> Ideal or perfectionist policies or arguments prescribe an action on the assertion that it is morally superior.

<sup>44</sup> Utilitarian arguments can be used to prescribe actions on the assertion that they maximize utility, i.e., when everyone is considered, they will result in the most satisfaction, happiness, well-being, or some other similar measure. Kymlicka (1990: pp. 12-18) identifies four distinct types of utility: a) welfare hedonism which attempts to maximize pleasure, b) non-hedonistic mental-state utility, which attempts to maximize "all valuable experiences, whatever form they take," c) preference satisfaction, and d) informed preference satisfaction, which differs from c) in that it only considers those preferences that a person would choose if they knew the consequences of exercising those preferences.

agrees on their value. Unanimous consensus, therefore, is a necessary element if ideal or perfectionist arguments are used.

### (ii) Utilitarian Arguments

Since utilitarian calculations<sup>45</sup> are purported to consider everyone equally, and since maximizing utility or well-being is easily perceived as a prime objective of government, it seems difficult to argue against utilitarian policies (Kymlicka 1990). However, Dworkin argues that this is not always the case. He points out that some utilitarian calculations are flawed because they actually do not treat people as equals. He explains how this situation can arise by making a distinction between a person's personal preferences and his/her external preferences. Personal preferences are preferences people have about what **they themselves** shall do or have, whereas external preferences are "preferences people have about what **others** shall do or have" (Dworkin 1985: 196 **emphasis added**).<sup>46</sup>

A simple example should help to illustrate Dworkin's point. In a utilitarian calculation, if two people's preferences for a cookie were equal, their preferences would counteract each other; there would be no difference in utility, no matter who got the cookie. However, if one of those people, in addition to his/her personal preference for the cookie, also did not want the other to have it, his/her external preference could tip the utilitarian calculation in his/her favour. If the external preference is sufficiently strong, utility would be maximized if the person with the external preference received the cookie. Dworkin argues that a utilitarian

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<sup>45</sup> A utilitarian calculation is a way of choosing among competing options. It does this by choosing the one that maximizes utility, when everyone's utility is given equal consideration. Therefore, regardless of how utility is measured, the utilitarian will choose the option that creates the most utility.

<sup>46</sup> Dworkin also describes personal and external preferences in relation to "the assignment of goods or opportunities" (Dworkin 1978: 275).



calculation, which allows external preferences to tip the balance, “invades rather than enforces the right of citizens to be treated as equals” (Dworkin 1985: 196).

### **b) Arguments of Principle**

Dworkin defines arguments of principle as arguments that justify a constraint on citizens’ individual liberties “to protect the distinct right of some individual who will be injured by the exercise of the liberty” (Dworkin 1978: 274). He explains that arguments of principle are used to claim “that particular programs must be carried out or abandoned because of their impact on particular people, **even** if the community as a whole is in some way worse off in consequence” (Dworkin 1985: 2ff **emphasis added**). In other words, arguments of principle justify restrictions on policies, including those preferred by the majority of citizens, by arguing that such a restriction is necessary to protect an individual’s distinct right.

### **c) Dworkin’s concept of an individual political right**

Dworkin argues that utilitarianism, democracy, or any majoritarian political institution can be inappropriately influenced by external preferences, thereby transgressing the fundamental tenet of liberal democracies: to treat their citizens as equals.<sup>47</sup> To overcome the deficiency “of a utilitarianism that counts external preferences and the practical impossibility of a utilitarianism that does not,” (Dworkin 1978: 277) he introduces the concept of individual political rights. He points out that “if someone has a right to something, then it is wrong for the government [and presumably anyone else] to deny it to [him/her] even though it would be

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<sup>47</sup> With this approach, Dworkin passes up other avenues for criticizing utilitarianism, including inequities stemming from the incommensurability of utility. For a good review of issues pertaining to utilitarianism and similar values such as economic efficiency and Cost-Benefit Analysis, refer to Kymlicka 1990, Murphy & Coleman 1990, Wenz 1990, Arthur & Shaw 1991, Williams 1973, VanDeVeer and Pierce 1986 & 1994, and Schrier 1990).

in the general interest to do so” (Dworkin 1978: 269). He labels this “an anti-utilitarian concept of a right” (Dworkin 1978: 269). To elaborate further, he likens these rights to

trump cards held by individuals ... [that] enable individuals to resist particular decisions in spite of the fact that these decisions are or would be reached through the normal workings of general institutions that are not themselves challenged (Dworkin 1985: 198).

In keeping with the rest of his arguments, Dworkin poses a “general theory of rights” (Dworkin 1978: 277) in which he asserts that citizens have a “fundamental right” to equal concern and respect. Clearly, this right is to be equally distributed; i.e., **everyone** has the right to equal concern and respect. In addition, it is a fundamental right; i.e., it supersedes appeals to utilitarianism or other forms of majoritarian rule by “prohibiting decisions that seem, antecedently, likely to have been reached by virtue of the external components of the preferences democracy reveals” (Dworkin 1978: 277).

Dworkin’s concept of an individual political right “allows us to enjoy the institutions of political democracy, which enforce overall or unrefined utilitarianism” (Dworkin 1978: 277) by prohibiting political decisions likely to have been reached because of the inclusion of external preferences. In other words, even though Dworkin contends that a democratic government can use arguments of policy to justify constraining individual liberties to benefit the public in general, he asserts that **arguments of principle “trump” arguments of policy**. In so doing, he precludes the possibility of a “tyranny of the majority”<sup>48</sup> by giving individual rights priority over utilitarian policies. As an example of how he might implement this rule, Dworkin wrote:

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<sup>48</sup> According to Wood (1994: 236) “the phrase ‘tyranny of the majority’ was coined by Alexis de Tocqueville in *De la démocratie en Amérique* (1835).”

If our government can provide an attractive future only through present injustice - only by forcing some citizens to sacrifice in the name of a community from which they are in every sense excluded [because they suffer the costs and receive no benefits] - then the rest of us should disown that future, however attractive (Dworkin 1978: 213).

## II JOSEPH RAZ ON AUTONOMY AND FREEDOM

Raz's portrayal of autonomy and his doctrine of freedom (Raz 1986) add depth to Dworkin's views. At the heart of Raz's argument, is the understanding that individual genetic differences, a plurality of values, and individual autonomy are all valued for their contribution to social diversity. Without social diversity, just meeting our own needs would occupy most of our time. However, social diversity allows increased productivity, through a division of labour, thereby enabling time to enjoy non-essential pursuits, many of which enhance people's lives.

Raz contends that individual (or personal) autonomy is a fundamental value in our society. He argues that

the value of personal autonomy is a fact of life. Since we live in a society whose social forms are to a considerable extent based on individual choice, and since our options are limited by what is available in our society, we can prosper in it only if we can be successfully autonomous. [In other words] those who live in an autonomy enhancing culture can prosper only by being autonomous (Raz 1986: 394).

He also points out that apart from its social value, (as a contributor to social diversity) autonomy has personal value because it allows individuals to benefit from their decisions. However, since autonomy has three distinct components "appropriate mental abilities, an adequate range of options, and independence," (Raz 1986: 372) Raz notes that "one cannot make another person autonomous (Raz 1986: 407). In essence, "one is autonomous [**only**] if one determines the course of one's life by oneself" (Raz 1986: 407). Since, the realization of

autonomy's benefits is dependent upon the individual's ability and opportunity to exercise autonomy, it is a personal capacity that needs nurturing.

### **1) The Principle of Autonomy**

As a way to ensure that society promotes the development of individual capacity for autonomy, Raz poses the principle of autonomy, which he describes as a "principle requiring people to secure the conditions of autonomy for all people (Raz 1986: 408). He contends that implementation of the principle of autonomy will help to secure valuable conditions of autonomy by requiring governments to:

1. refrain from coercing or manipulating others,
2. help people develop skills needed to support an autonomous life, and
3. help create an adequate range of options from which autonomous agents can choose.

Raz expands upon the first requirement by noting that coercion "violates the condition of independence and expresses a relation of domination and an attitude of disrespect for the coerced individual" (Raz 1986: 418). In other words, coercion diminishes autonomy, so it is unacceptable. However, Raz contends that autonomy is so valuable that it is necessary to enable governments to use coercion to stop actions that would diminish autonomy and to encourage actions that would enhance autonomy. In other words, the first requirement should include the caveat 'except to enforce the principle of autonomy.'

In arguing for the second requirement, Raz notes that not everyone is well equipped for leading an autonomous life. He also recognizes that there are options that could actually decrease individual satisfaction and/or autonomy if chosen. Therefore, people need to develop decision-making skills that will enable them to make better choices.

In a similar approach Raz clarifies the third requirement by pointing out that “autonomy is valuable only if it is directed at the good, it supplies no reason to provide, nor any reason to protect, worthless let alone bad options” (Raz 1986: 411). However, Raz cautions that this does not allow any subjective determination of good or bad options. Unless government, or anyone else can “judge such matters correctly, then it has no authority to judge them at all” (Raz 1986: 412). Therefore, requirement three should have a sub-clause stating that ‘there is no obligation to provide or protect options that can be objectively shown to be bad or worthless.’

As a second caveat to the third requirement, Raz cautions that while an adequate range of options does not require the presence of any particular option, if government had a hand in shaping an option, subsequent governmental interference must not prevent those who chose that option from carrying it through. In other words governments cannot arbitrarily foreclose options they helped to create, if there are persons already committed to those options. Clearly, Raz would expect government to introduce measures to prevent adverse effects on those already committed to an option, if in light of changing circumstances, it was deemed advisable to foreclose that option.

### III SUMMARY

Dworkin’s principle of equal concern and respect meets Gray’s criteria by insisting that all persons are treated as equals. Noting that democratic and utilitarian processes do not necessarily achieve this goal, Dworkin introduces the concept of an individual right. This simple, but powerful right, prohibits political decisions likely to have been reached because of the inclusion of external preferences.

Raz's principle of autonomy also seems to meet Gray's criteria. However, Raz focuses on autonomy, rather than equality, to insist that governments must:

1. not coerce or manipulate, except to secure autonomy for all,
2. not foreclose options, to the detriment of persons committed to those options;
3. help individuals develop the skills needed to support an autonomous life; and
4. help create an adequate range of options from which autonomous agents can choose. This does not imply an obligation to provide or protect particular options, or to provide or protect options that can be objectively shown to be bad or worthless.

Before leaving this section, I wish to point out that I have not argued that the principles I have presented are the only principles one should consider. Instead, I suggest that they are useful because they are consistent with the principles of distributive justice one would expect in a western liberal democracy such as ours, and because they give direction in a broad range of situations. As such, they are valuable, and should be considered.

## **CHAPTER 7: DISTRIBUTIVE JUSTICE APPLIED**

In this chapter, I use the principle of equal concern and respect and the principle of autonomy, which I explained in the previous chapter, to review issues raised in Chapter 5. Since I only provided an overview of those issues, I can only apply the principles in a general way. Nevertheless, there is sufficient evidence to draw some conclusions about injustices that have been perpetuated by colonial politics, and there seems to be sufficient information to recommend some interim measures that may help to address some of the more local issues.

### **I THE ISSUES REVISITED**

It seems that those who developed Canada and British Columbia, would not have considered Dworkin's principle of equal concern and respect, or Raz's principle of autonomy applicable to First Nations or their members. Consequently, the British Imperial government, and the colonial governments of Canada and British Columbia, asserted jurisdiction over First Nations' lands and resources, i.e., the traditional territories of First Nations that were occupied, and to some degree managed, long before any European colonists arrived.

Perhaps misguided by notions of moral superiority, and no doubt coveting bountiful natural resources, our colonial governments seemed all too eager to discount First Nations' claims of title, and have it all. And have it they did. In so doing, they treated First Nation representatives as something less than equals; various acts of parliament and legislation were used to enable colonial rule, ignore aboriginal rights and title, and coerce and manipulate First Nations and their members. Hence, even though the Royal Proclamation of 1763, and other laws that assumed sovereignty over First Nations' land and resources, may seem to have accorded First Nations and aboriginal people a semblance of equal concern and respect, and of

autonomy, they actually constituted a tyranny of the majority. Unfortunately that tyranny continues to this day in British Columbia, and in Mackenzie Forest District.

While this approach may have been deemed necessary to secure well-being and autonomy, it should be obvious that the well being and autonomy of European colonists, not First Nations and aboriginal people, was the focus. In fact, it seems like many laws were passed solely to prevent First Nations and aboriginal people from having their way or gaining or keeping some advantage. Hence, aboriginal people were not allowed to vote for many years, when they became politically organized they were banned from engaging in political and legal activity to pursue their land claims, and they were denied a meaningful role in decision-making processes concerning the management of their traditional lands and resources. The ideal/perfectionist overtones in laws such as the *Indian Act*, and in the policies around residential schooling and alcohol prohibition that they embraced, makes it painfully obvious that early colonists thought it best to isolate aboriginal people on reserves away from their land and resources, send them to residential schools away from their families, and prevent them from using colonial justice processes to intervene in the decisions and processes colonists were using to exploit what they considered to be their lands and resources.

The democratic processes and utilitarian type of calculations used to justify forest development tenures in Mackenzie Forest District, and the creation of Williston reservoir, in deciding how and where aboriginal people would be able to practice their traditional lifestyle, obviously placed more importance on the external preferences of the non-aboriginal majority, than the First Nations minority. The permanent changes thus instituted, foreclosed traditional opportunities, to the detriment of First Nation representatives committed to them, without providing meaningful replacements or compensation. Although the government has policies



against discrimination and programs to help First Nations and aboriginal people, social and cultural barriers still prevent many First Nations and aboriginal people from exercising their options. To provide an adequate range of options, those barriers must be removed.

Although, treaties will likely increase future options, many First Nation representatives believe that First Nation and aboriginal well being and autonomy should be a bigger factor in current forest development planning and decision-making processes. They believe that interim measures are needed to promote change now.

For example, Many representatives from the First Nations in Mackenzie Forest District believe forest development forecloses many of their traditional opportunities. They also believe that forestry and other developmental activity is here to stay. Therefore, they think it is past time for developers to provide incentives that will help present and future generations find honourable ways to exchange traditional practices for a meaningful involvement in the new order. They are calling for broad-based programs to develop training, and sustainable employment and business opportunities for aboriginal people in all aspects of natural resources management. They see this as a win/win solution. It would provide government and industry with a dedicated work force, while First Nation representatives would get more stable communities, and a boost on the road to autonomy and self reliance.

However, the First Nation representatives point out that they are seeking local solutions for local problems. They contend that their needs are not easily met by programs such as the Canadian Forest Service's First Nations Forestry Program (FNFP) launched in 1996, whose objectives are:

1. [to] enhance First Nations capacity to develop and participate in forest based businesses,

2. [to] increase First Nations partnerships and joint ventures,
3. [to] investigate the feasibility of national trust funds, capital pools, and other similar funding mechanisms, [and]
4. [to] enhance First Nations capacity to sustainably manage reserve forests (FNFP 1998: 3).

Many of the representatives of the First Nations in Mackenzie Forest District believe that they need additional support just to develop a proposal that would meet program requirements.

Without such support readily available, neither First Nations nor aboriginal people are not able to take advantage of these programs. Exactly where the barriers lie is undetermined, but they need to be removed so programs such as these can fit local needs.

## **II INTERIM MEASURES FOR FIRST NATION AUTONOMY AND WELL-BEING**

It is now appropriate to switch from the discussion of problems, to the discussion of solutions. However, I must point out that it exceeds the scope of this study to make recommendations that would resolve the problems discussed herein. There are too many variables that have not been considered in this study.

Nevertheless, I have made some preliminary recommendations that, if implemented, could promote First Nation and aboriginal autonomy and well-being. Whether the "interim measures" itemized below reach that goal, may well depend upon the establishment and support of local groups to endorse these recommendations and/or develop adaptations to allow for localized differences in preferences, and yet recognize personal and institutional (First Nation, Government, and Industry) limitations. Those who would embark on such a process may need considerable patience, understanding, and flexibility, because their success will likely depend on their ability to: adapt to localized circumstances, build confidence in the approach taken, and build trust among the different parties.

## **1) Funding Autonomy and Well-Being**

If any meaningful work is to be done, government needs to apportion funds to address existing concerns and promote First Nation and aboriginal autonomy and well-being. While treaties may resolve many concerns that have surfaced as a result of development in First Nations' traditional territories, anticipated delays in finalizing these agreements, and growing dissatisfaction on the part of First Nation representatives, means that it would not be wise to await resolution before taking action. Without funding the recommendations made herein would have no real value, and government would be open to allegations of "talk and log."

However, creating a pool (or pools) of funds to promote First Nation and aboriginal autonomy and well-being is unrealistic unless government also establishes the purpose for which those funds are intended, and reasonable processes to enable their disbursement. In other words, First Nations, aboriginal individuals, and others who would act for them, should be able to easily understand the circumstances that qualify for funding and the process that must be followed to access the funds. Furthermore, the process must be adaptable to local circumstances, and user friendly so First Nations, aboriginal individuals, and others who would act for them, who may have a difficult time working with bureaucracies, can communicate with individuals who are sensitive to their concerns and any cultural differences, and who will work with them to ensure their concerns are given the consideration they deserve. Care should be taken to ensure the funds are not used up creating two more bureaucracies - one to administer the funds, and one to apply for them.

## 2) Local Planning Groups

Perhaps one of the most obvious recommendations is to establish local planning groups to:

1. promote First Nation and aboriginal autonomy and well-being;
2. establish more participatory planning procedures; and
3. develop mutually beneficial processes to meet current and future information needs vis-à-vis cultural resources and features.

While it should be obvious that a working group with these objectives would be much more effective if it included representatives from local First Nations, industry, and the provincial and federal governments, the reality is that this is almost impossible at the local scale, without some major reorganization. There simply are not enough empowered government representatives for "Chief to Chief" negotiations. Instead governments send negotiators who must have many of their statements ratified, a time consuming and condescending procedure. Therefore, it is important that these sectors get together at the regional and/or provincial level to develop programs that will ensure everyone's interest is given full consideration at the local level. Since there will be costs associated with such a venture, some sectors may require incentives to participate.

Government should also encourage more participatory planning processes, where planners and First Nation representatives work together to realize each other's interests. For some planners this would entail broadening their vision of sustainability to include the use of non-timber resources, not just their continued availability. This may require changing the area of focus from the timber supply area (TSA) to the traditional territory, Keyoh, trapline,

hunting area, or whatever unit bounds the interest in question. To make discussion more feasible, these boundaries need to be mapped. Potential problems would need on site discussion to verify conflicts and identify mitigative measures to reduce impacts. Clearly, this represents a dedication of time and resources that far exceeds open house consultation meetings. In addition, it would need close coordination and support from all parties.

As a final note, development proponents should see the value in supplementing their planning staff with First Nation representatives to expand their knowledge base and improve communications on local issues. With this view, it should be easier to develop innovative training, employment, and fee for service programs that would bring meaningful and rewarding employment to one of the sectors of our society that needs it the most.

### **3) Cultural Resources Management**

Government, industry, and local First Nations should work together to establish local working groups that will:

1. build a common understanding of the different types of cultural and archaeological resources and features in the District, and District Policies to manage them; and
2. develop agreements regarding the development, ownership, and use of an inventory to document the location and use of cultural and archaeological sites (e.g., trails; cabins; campsites; food curing and caching sites; hunting, fishing, and gathering sites; culturally modified trees,<sup>49</sup> and spiritual sites, etc.). To be useful, these agreements

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<sup>49</sup> In Mackenzie Forest District culturally modified trees (CMTs) would include trees: blazed to mark trails or strip off firewood, with the bark-stripped (primarily pine) to provide access to the sweet outer cambium layer that was an important food source for travelers in the spring, used as a message post, and used as a set for a trap.

should contract the provision of traditional use information, including First Nation verification of its accuracy and completeness.

3. ensure that these inventories:
  - a) meet the treaty, strategic, and operational planning needs of local First Nations, resource developers, and government,
  - b) employ local First Nation representatives and help them develop valuable skills, and
  - c) meet provincial standards, including compatibility with geographic information systems.

#### **4) Natural Resources Education**

This study suggested that some First Nation representatives in Mackenzie Forest District see increased educational opportunities in natural resources management as the road to personal well-being and autonomy. To promote their interest, government should encourage the development of:

1. information that promotes the natural resources sector as a possible career path for aboriginal students. It should establish the linkages between potential jobs and education or training, so it can be presented at "Career Days" and other school and/or community venues;
2. meaningful opportunities (youth camps, junior forest wardens, etc.) for aboriginal youths to explore and develop their interest in natural resources and their management;

3. natural resources curricula that would be suitable for grade schools with a high enrollment of aboriginal students, and
4. post secondary natural resources curricula, scholarships, and living conditions that would appeal to aboriginal students that have spent most of their lives in isolated First Nation communities.

### **5) Applied Training in the Natural Resources Sectors**

Closely related to education, this study also suggested that some of the First Nation representatives in Mackenzie Forest District see specialized training in natural resources management as the route to First Nation and aboriginal well-being and autonomy. Not everyone has the interest or ability to pursue higher education, yet some aboriginal people have inherent skills and abilities that applied training could easily turn into a highly valued commodity in today's economy. Therefore, government should be encouraging:

1. customized workshops for First Nation communities that offer information and ongoing support for the development of viable businesses in the natural resources sector, including new ventures in specialty products - particularly those that may complement more traditional lifestyles,
2. customized workshops for the natural resources sector that promote orientation to, and integration of, First Nation culture and aboriginal people. These workshops should cover traditional and contemporary aboriginal practices, and ways to identify and protect culturally significant biological and physical features and artifacts; and
3. internships, apprenticeships, co-op work terms; and other on-the-job training ventures experience for First Nations in the natural resources sectors. This should include programs

for professional and management trainees, such as those associated with the Canadian Council for Aboriginal Business.

### **6) Employment and Investment Opportunities**

Government could increase aboriginal employment and investment opportunities by:

1. cooperating with industry to contract knowledgeable aboriginal people as Natural Resource Advisors. These advisors would work closely with their First Nation and with planning personnel in industry and government to avoid or mitigate the adverse impacts of resource development on traditional activities, while promoting development activities with a positive impact. Part of the contract may entail training and other needs;
2. providing funding and other support to help each First Nation establish realistic short and long term occupational participation targets. To be realistic these targets must:
  - a) be occupation, sector and location specific,
  - b) reflect individual and aggregate skill levels and long term aspirations,
  - c) address training requirements, and
  - d) they must be sensitive to geographical variations in economic and political feasibility;
3. providing funding and other support for workshops where government, industry and First Nations can explore alternatives for removing barriers to aboriginal employment and/or advancement. Such workshops should seek innovative ways to address problems created by the seasonal nature of many of the employment opportunities available to aboriginal people. For example, they could explore ways to:



- i) provide off-season employment for aboriginal people,
  - ii) provide multi-year and/or multi-phase employment and/or service contracts for First Nation members, and
  - iii) develop equitable seniority policies for seasonal employees;
4. developing and implementing tenure reforms to achieve equitable First Nation and/or aboriginal participation targets. For example, it has been suggested that:
- a) government should introduce new tenure application and renewal criteria that will encourage proponents to detail commitments to:
    - i) incorporate First Nation representatives and/or interests in the planning and decision-making processes;
    - ii) increase employment and investment opportunities for aboriginal people; and/or
    - iii) work with First Nation representatives to set local targets; and
  - b) the Ministry of Forests should introduce (a) First Nation forest tenure(s) that provide First Nations with local opportunities to increase their experience in all aspects of the forest sector.<sup>50</sup> These tenures could be awarded from take-backs due to business takeovers, or from take-backs from existing licensees who opt not to propose measures under 4(a) above;
5. providing incentives, such as temporary tax concessions and continuation of annual allowable cut to:

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<sup>50</sup> The First Nations Forestry Council Strategic Plan recommends revisions to enable First Nations to own larger or multiple woodlots.

- a) encourage capital investment in First Nations' natural resources sector businesses;
- b) encourage industry to enter into joint ventures with First Nations in natural resources sector businesses; and
- c) reward natural resources sector businesses that implement innovative measures to increase employment among local First Nations.

### **7) Monitoring**

As steps are taken to promote First Nation and aboriginal autonomy and well-being, government should make it clear that they will monitor performance in this direction. For instance, the District Manager will evaluate commitments and monitor performance to determine if operational plans "adequately manage and conserve." To facilitate this process, a District-wide database should be created that documents beneficial programs, projects, and ventures for each First Nation. This database would track the costs and benefits accrued to the sponsoring agent and the recipient First Nation over time. Local planning groups, community open houses, and inspections should be used to verify results.

## CHAPTER 8: CONCLUSION

This research has identified two principles of distributive justice that provide a rigorous foundation for recommending pragmatic, proactive, and adaptive measures to address First Nations' concerns with forest development planning and decision-making in Mackenzie Forest District.

Ronald Dworkin's (1978 & 1985) principle of equal concern and respect insists that all persons should be treated as equals and introduces the concept of an individual right that prohibits democratic and/or utilitarian political decisions likely to have been reached because of the inclusion of external preferences.

Joseph Raz's (1986) principle of autonomy suggests that government should:

1. not coerce or manipulate, except to secure autonomy for all,
2. not foreclose options, to the detriment of persons committed to those options;
3. help individuals develop the skills needed to support an autonomous life; and
4. help create an adequate range of options from which autonomous agents can choose. This does not imply an obligation to provide or protect particular options, or to provide or protect options that can be objectively shown to be bad or worthless.

Each of these principles support the author's assumption that it is important to balance "the productive, spiritual, ecological and recreational values of forests to meet the economic and cultural needs of peoples and communities, including First Nations" as stated by the third principle of sustainability outlined in the preamble to the Code. In fact, they help to explain how this balance can be achieved.

This research also established that First Nation representatives have concerns about the distribution of forest development's benefits and burdens in Mackenzie Forest District. Colonial politics, which Britain and other European Countries started, and which Canada and British Columbia still maintain, have denied First Nations and aboriginal people equal concern and respect in political matters. Most of the development in Mackenzie Forest District has occurred as a result of a tyranny of the majority, i.e., the external preferences of the majority in British Columbia have overwhelmed the personal preferences of the few First Nations who live in Mackenzie Forest District. Consequently, many First Nations are unable to continue their traditional practices, and since they lack training needed to find a meaningful role in the new order, they have no assurance of a meaningful future.

Both Dworkin's principle of equal concern and respect and Raz's principle of autonomy, can be used to validate the concerns raised by First Nation representatives and suggest strategies to mitigate them. However, such a process must recognize and deal with a plethora of individual circumstances to be most useful. Therefore, although I have provided a list of recommendations that **could** help First Nation representatives lead more rewarding lifestyles, its successful implementation may well depend upon the establishment and support of local groups to endorse these recommendations and/or develop adaptations to allow for localized differences in preferences, and yet recognize personal and institutional (First Nation, Government, and Industry) limitations. Those who would participate in these groups may need considerable patience, understanding, and flexibility, because their success will likely depend on their ability to: adapt to localized circumstances, build confidence in the approach taken, and build trust among the different parties.

In conclusion, the recommendations contained herein represent a conscientious effort to incorporate Dworkin's principle of equal concern and respect, and Raz's principle of autonomy. If implemented, they should lend credibility to the Ministry of Forests, and the forest industry, in Mackenzie Forest District. Furthermore, they should reduce the probability of a First Nation asserting that a plan or decision failed to implement the spirit and intent outlined in the preamble to the Code.

## REFERENCES

- AFIL (1964) Alexander Forest Industries Limited. A submission to the honourable RG Williston, Minister of Lands, Forests and Water Resources of the Province of BC: Concerning an Application for a Tree Farm License in the Upper Peace River Drainage System of the Prince George Forest District. Victoria: Unpublished, Alexander Forest Industries Limited, 1964.
- Adems, Lucill K (1913-14). "The Homestead at Finlay Forks." Peace River Chronicles. Ed. Gordon E. Bowes. Vancouver: Prescott Publishing Company, 1963. 316-22.
- Akrigg, G.P.V. and Helen B. British Columbia Chronicles, 1778-1846: Adventurers by sea and land. Vancouver, BC: Discovery Press, 1975
- Angeles, P.A. Dictionary of Philosophy. New York: Harper and Row, 1981.
- Anscombe, G.E.M. "On Practical Reasoning." Practical Reasoning. ed. Joseph Raz, London: Oxford University Press, 1978.
- Arthur, John & Shaw, William H. Justice and Economic Distribution (Second Edition). New Jersey: Prentice Hall, 1991.
- BCTC - British Columbia Treaty Commission. Annual Reports of the BC Treaty Commission. Internet: <http://bctreaty.net/files/annuals.html> 1998.
- Baptie, Sue (coordinator). First Growth: The story of British Columbia Forest Products Limited. Vancouver, BC: J.J. Douglas Ltd., 1975.
- Bower, L.M. (1912). "A Prospector Reports." Peace River Chronicles. Ed. Gordon E. Bowes. Vancouver: Prescott Publishing Company, 1963. 271-279.
- Bowes, Gordon E. ed. Peace River Chronicles. Vancouver: Prescott Publishing Company, 1963.
- Bull, Gary & Williams, Jeremy. Mackenzie Timber Supply Area: Socio-Economic Analysis. Victoria: BC Ministry of Forests - Economics and Trade Branch, 1995.
- Bullock, A.; Stallybrass, O.; and Trombley, S. eds. The Fontana Dictionary of Modern Thought. London: Fontana Press, 1988.
- CORE (1995) Commission On Resources and Environment. "Public Participation." in The Provincial Land Use Strategy - Volume 3. Victoria, BC: Commission On Resources and Environment, 1995.
- CSTC (1998) Carrier Sekani Tribal Council Web Site. Chronology. On-line: Sept. 1998.
- Canada. Aboriginal Self-Government: The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government. Ottawa, Ont. 1995.
- Canada. Canada - Indian and Inuit Communities: British Columbia. Ottawa Ont.: Energy Mines and Resources Canada, 1984.

- Canadian Council of Forest Ministers. Sustainable Forests: A Canadian Commitment. Ottawa, Ont.: 1992.
- Crampton, Colin. Changing Life On the Land For The Sekani Ingenika Band In Northern British Columbia. Burnaby, BC: Simon Fraser University (unpublished) 1992.
- Dorcey, Anthony H. J. and Riek, Christine L. "Negotiation-based approaches to the settlement of environmental disputes in Canada." In: The Place of Negotiation in Environmental Assessments, Workshop Proceedings: Canadian Environmental Assessment Research Council. Toronto: 19-20 February 1987, pp. 7 - 23.
- Dworkin, Ronald. Taking Rights Seriously. Cambridge, Massachusetts: Harvard University Press, 1978.
- Dworkin, Ronald. A Matter of Principle. Cambridge, Massachusetts: Harvard University Press, 1985.
- EIC (1990). Employment and Immigration Canada. Pathways to Success: Aboriginal Employment and Training Strategy: A Background Paper. Ottawa: 1990
- EIC. Pathways to Success: Aboriginal Employment and Training Strategy: A Policy and Implementation Paper. Ottawa: 1990
- Fisher, R. and Ury, W. Getting To Yes: Negotiating Agreement Without Giving In. Boston: Houghton, Mifflin, 1981.
- FNFP (1998). First Nation Forestry Program. Forestry Business Planning Guide. Victoria, BC, Sponsored by: Canadian Forest Service, Natural Resources Canada, 1998.
- Gray, J. Liberalism. Minneapolis: University of Minnesota Press, 1986.
- Hall, Ralph. Goldseekers. Victoria: Sono Nis Press, 1978.
- Hamilton, Hon. A.C. Canada and Aboriginal Peoples: A New Partnership. Ottawa: Minister of Public Works and Government Services Canada, 1995.
- Hopwood et. al. Hopwood Allen; Mactavish, John; Moar, Andrew; Scott, Grant; Smith, Peggy. Aboriginal Forestry Training And Employment Review (AFTER) Final Report Phase 1. Unpublished report prepared for the AFTER Committee and the National Aboriginal Forestry Association, 1993.
- Horetzky, Charles (1872). "The First Railway Survey." Peace River Chronicles. Ed. Gordon E. Bowes. Vancouver: Prescott Publishing Company, 1963. 81-85.
- Hunter, Joseph (1877). "The Discovery of Pine Pass." Peace River Chronicles. Ed. Gordon E. Bowes. Vancouver: Prescott Publishing Company, 1963. 119-124.
- IFABC (1990). Intertribal Forestry Association of British Columbia. Lands, Revenues and Trusts Forestry Review. Kelowna, BC: unpublished, 1990.
- Isaac, Jean (Elder and Council Member - Tsay Keh Dene). Personal Communication: May 1998.

- Jenness, Diamond. The Sekani Indians Of British Columbia. Department of Mines and Resources, National Museum of Canada, Bulletin #84, Anthropological Series #20. Ottawa, Ont.: 1937
- Koyl, Mary Christina. Cultural Chasm: A 1960s Hydro Development and the Tsay Keh Dene Native Community of Northern British Columbia. M.A. Thesis. Victoria: University of Victoria, 1992.
- Kymlicka, Will. Contemporary Political Philosophy: An Introduction. Oxford: Clarendon Press, 1990.
- MAA (1992). British Columbia Ministry of Aboriginal Affairs. The Aboriginal People of British Columbia: A Profile. Victoria, BC: MAA, 1992.
- MOF (1991). British Columbia, Ministry of Forests Recreation Branch. Outdoor Recreation Survey 1989/90: How British Columbians Use and Value their Public Forest Lands for Recreation. Recreation Branch Technical Report 1991-1. Victoria, BC: British Columbia, Ministry of Forests Recreation Branch, 1991.
- MOF (1993). British Columbia, Ministry of Forests. News Release. Victoria, BC: BC Message Center, January 21, 1993.
- MOF (1993). Timber Supply Review: Mackenzie TSA Timber Supply Analysis. Victoria: Ministry of Forests, 1995.
- McKee, Dr. Christopher. Treaty-Making in British Columbia: Legal and Historical Factors, and Some Implications of the Current Treaty-Making Process. Unpublished Document: University of BC. 1996.
- McLean, John (1833). "Up the Peace to Fort McLeod." Peace River Chronicles. Ed. Gordon E. Bowes. Vancouver: Prescott Publishing Company, 1963. 48-51.
- McLeod, Malcolm ed. Peace River: A canoe voyage from Hudson's Bay to Pacific by Sir George Simpson in 1828: Journal of the late Chief Factor, Archibald McDonald. Edmonton: M.G. Hurtig Ltd., 1971.
- Moberly, H.J. (1865). "The Monopoly is Broken." Peace River Chronicles. Ed. Gordon E. Bowes. Vancouver: Prescott Publishing Company, 1963. 67-71.
- Moodie, Inspector J.D. (1897). Peace River Chronicles. Ed. Gordon E. Bowes. Vancouver: Prescott Publishing Company, 1963. 198-201.
- Morice, A.G. The History Of The Northern Interior Of British Columbia. Smithers: Interior Stationery (1979) Ltd., 1978.
- Morice, Rev. A.G., OMI (1893). "Through the Wilderness to Fort Grahame." Peace River Chronicles. Ed. Gordon E. Bowes. Vancouver: Prescott Publishing Company, 1963. 193-197.
- Muckle, Robert J. The First Nations of British Columbia: An Anthropological Survey. Vancouver: UBC Press, 1998.
- Murphy, Jeffrie, G. and Coleman, Jules, L. Philosophy of Law: An Introduction to Jurisprudence. Boulder, San Francisco: Westview Press, 1990.



- NAFA (1992). National Aboriginal Forestry Association. An Aboriginal Forestry Strategy Draft Discussion Paper. Ottawa: NAFA, 1992
- NVIT (undated). Nicola Valley Institute of Technology. Cross Cultural Training Manual. unpublished, undated, and unnumbered teaching materials.
- Parminter, John. "History of the BCFS from 1912 - 1994." Unpublished research paper. 1994.
- Peterson. Timber Supply Review: Mackenzie Timber Supply Area AAC Determination: Reasons For Decision. Victoria, BC Ministry of Forests, 1996.
- Patterson, R.M. Finlay's River. Toronto: MacMillan of Canada, 1968.
- Pierre, Gordon. A Specific Claim By The Ingenika Indian Band. Victoria: Ingenika Band (now the Tsay Keh Dene) unpublished statement of claim, July 17, 1987.
- Pike, Warburton (1890). "A Winter Ordeal." Peace River Chronicles. Ed. Gordon E. Bowes. Vancouver: Prescott Publishing Company, 1963. 154-174.
- Plant, P. Geoffrey. Aboriginal Land Rights In British Columbia After Delgamuukw. Vancouver, BC: Unpublished document prepared for the Pacific Business and Law Institute, September 10, 1993.
- Popper, K. The Logic of Scientific Discovery. (English Translation 1959). 1934
- Raphael, D. D. Problems of Political Philosophy. Hong Kong: MacMillan Education Ltd., 1990.
- Rawls, J. A Theory Of Justice. Cambridge: The Belknap Press of Harvard University Press, 1971.
- Raz, J. Practical Reason And Norms. Princeton: Princeton University Press, 1975.
- Raz, J. The Morality Of Freedom. Oxford: Clarendon Press, 1986.
- Resnik, Michael, D. Choices: An Introduction To Decision Theory. Minneapolis: University of Minnesota Press, 1987.
- Round Table (1991) British Columbia Round Table On The Environment And The Economy. Reaching Agreement: Volume 1 - Consensus Processes in British Columbia. Victoria, BC: British Columbia Round Table On The Environment And The Economy, 1991.
- Runes, D.D. (ed.). Dictionary of Philosophy. New York: Philosophical Library, 1983.
- Sample, Alaric V. "A Framework for public participation in natural resource decision-making." Journal of Forestry. July 1993, pp. 22 - 27.
- Sanders, Douglas. Pre-Existing Rights: The Aboriginal Peoples of Canada. Unpublished: Vancouver, University of British Columbia, 1995.
- Shrader-Frechette, K. S. Risk and Rationality: Philosophical Foundations for Populist Reforms. Berkeley, California: University of California Press, 1991.
- Simpson, Sir George (1828). "A Report on the Fur Trade." Peace River Chronicles. Ed. Gordon E. Bowes. Vancouver: Prescott Publishing Company, 1963. 44-47.

- Smart, J.J.C. and Williams, Bernard. Utilitarianism: for and against. New York: Cambridge University Press, 1973.
- Susskind, Lawrence and Cruikshank, Jeffrey. Breaking the Impasse: Consensual Approaches to Resolving Public Disputes. New York: Basic Books Inc., 1987.
- Tennant, Paul. Aboriginal Peoples And Politics: The Indian Land Question In British Columbia, 1849 - 1989. Vancouver: UBC Press, 1990.
- Tennant, Paul. The Indian Land Question In BC: A Chronology. Vancouver, UBC: Unpublished Class Notes, January 1994.
- Vanden Berg, Linda. Sworn Affidavit In the Supreme Court of British Columbia Between: Kemess Mines Inc. and The Tsay Keh Dene Indian Band. Vancouver: Vancouver Registry Number C973645, 1997.
- VanDeVeer, Donald and Pierce, Christine. The Environmental Ethics and Policy Book: Philosophy, Ecology, Economics. Belmont, California: Wadsworth Publishing Company, 1994.
- Veemes, Mai. Mackenzie BC Turns Twenty. Victoria, BC: BC Heritage Trust, 1985.
- Walton, Douglas N. Practical Reasoning: Goal-Driven, Knowledge-Based Action-Guiding Argumentation. Maryland: Rowman & Littlefield Publishers Inc., 1990.
- Wenz, Peter, S. Environmental Justice. Albany, New York: State University of New York Press, 1988.
- Wood, Paul Malcolm. The Priority of Biological Diversity Conservation in Forest Land-Use Decision-Making. Vancouver: The University of British Columbia, 1994.