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# TENURE BACKGROUND PAPER

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## INTRODUCTION

The forest industry in British Columbia is at a turning point. People from diverse sectors of society are calling for change to the way we allocate and use our forests. Perspectives on the direction for change, however, are varied. Tenure reform could mean many things, including: addressing aboriginal title to forest lands; greater security over the land base for large forest companies; greater community control of forests; diversifying control over the forest; privatisation of public forest land; encouraging investment in more intensive fibre production; and/or creating incentives for more ecologically-oriented forest use.

Existing patterns of forest management are based on the legal structures through which private parties acquire access to and rights over public forest lands in BC. Changing these legal structures requires us to think creatively about how and to whom rights, responsibilities, and obligations to use and manage the forest should be allocated and for how long. Understanding the existing tenure system, the history of its development, and how it has served us provides an important foundation for this discussion.

## WHAT IS TENURE?

In Canada, resource allocation systems through which private parties gain rights to use public resources are generally referred to as tenure systems. The use of the word “tenure” is an allusion to the English tenurial system of landholding, whereby a subject had to render certain services to the Crown in order to have the right to work and occupy the land. Although the concept that access to land also involves societal responsibilities has mostly disappeared from our systems of property ownership, the notion survives in the context of resource tenures. Thus, as part of the tenure system, licensees may also have obligations to operate processing facilities, comply with forest practices regulation, and comply with cut control provisions.

More than 95% of British Columbia is public or Crown land, and most of the province, 83%, has been classified as forest land and designated as part of the “Provincial forest.”<sup>1</sup> The BC government allocates rights to harvest or manage these forest lands to private parties through a system of licences, or “timber tenures.” There are two principle types of tenure in BC: “volume-based” tenures, which give licensees the right to harvest a specified volume of wood, usually on an annual basis, and “area-based” tenures, which give licensees harvesting rights for a specified area of land.

Two forms of licences, area-based tree farm licences (“TFLs”) and volume-based forest licences (“FLs”), account for over 80% of the volume of timber cut on Crown lands in BC.<sup>2</sup> These licences give their holders the right to harvest timber but grant no rights to other forest values, and the Crown retains title to the land. They are almost always “evergreen” licences, or perpetually replaceable, provided the licensee lives up to its obligations under the licence agreement, the *Forest Act*,<sup>3</sup> and the *Forest Practices Code of British Columbia Act* (the “*Forest Practices Code*”).<sup>4</sup> In addition, there are numerous other forms of area and volume-based tenures, including timber sale licences, pulpwood agreements, woodlot licences, and community forest agreements. These are described in Table 1.

**TABLE 1: SUMMARY OF TIMBER TENURES IN BRITISH COLUMBIA<sup>5</sup>**

Tenure	Rights	Responsibilities	Term and Scale
Tree Farm Licence (TFL)	<ul style="list-style-type: none"> <li>• Almost exclusive right to harvest an AAC from the licence area, under cutting permits</li> <li>• Right to carry out forest management on a specific area of Crown land</li> <li>• Area-based tenure</li> </ul>	<p>Licensee is responsible for:</p> <ul style="list-style-type: none"> <li>• Resource inventories</li> <li>• Strategic and operational planning</li> <li>• Road building and reforestation</li> </ul>	<ul style="list-style-type: none"> <li>• 25-year term; replaceable every five years</li> <li>• Approximately 24% of the AAC in BC occurs under TFLs</li> <li>• Large-scale operations</li> </ul>
Forest Licence (FL)	<ul style="list-style-type: none"> <li>• Right to harvest an annual volume of timber within a timber supply area, under cutting permits</li> <li>• Volume-based tenure</li> </ul>	<p>Licensee is responsible for:</p> <ul style="list-style-type: none"> <li>• Operational planning</li> <li>• Road building and reforestation</li> </ul>	<ul style="list-style-type: none"> <li>• Typically 15-year term; replaceable every 5 years</li> <li>• Approximately 56% of the AAC in BC occurs under FLs</li> <li>• Medium to large-scale operations</li> </ul>
Timber Sale Licence (TSL)	<ul style="list-style-type: none"> <li>• Right to harvest timber from a specified area of Crown land within a timber supply area or TFL area</li> <li>• Applies primarily to Small Business Forest Enterprise Program</li> <li>• Volume-based tenure</li> </ul>	<p>Ministry of Forests is responsible for:</p> <ul style="list-style-type: none"> <li>• operational planning</li> <li>• road building and reforestation</li> </ul> <p>Licensee is responsible for:</p> <ul style="list-style-type: none"> <li>• logging according to licence specifications</li> </ul>	<ul style="list-style-type: none"> <li>• Generally 6 months to 5-10 years; most are not replaceable</li> <li>• Approximately 14% of the AAC in BC occurs under TSLs</li> <li>• Small to medium-scale operations</li> </ul>
Woodlot Licence (WL)	<ul style="list-style-type: none"> <li>• Exclusive right to harvest an annual volume of timber from the licence area, under cutting permits</li> <li>• Right to carry out forest management on a specific area of Crown land. (maximum 400 ha. on the Coast, 600 ha. in the Interior)</li> <li>• Area-based tenure</li> </ul>	<p>Licensee responsible for:</p> <ul style="list-style-type: none"> <li>• strategic and operational planning</li> <li>• road building and reforestation</li> </ul>	<ul style="list-style-type: none"> <li>• 20-year term; replaceable every 10 years</li> <li>• Small-scale operations</li> <li>• Approximately 1% of the AAC in BC occurs under WLS</li> </ul>
Pulpwood Agreement (PA)	<ul style="list-style-type: none"> <li>• Right to harvest up to a maximum annual volume within a TSA or TFL in the event that its holder cannot meet its fibre requirements privately</li> </ul>	<ul style="list-style-type: none"> <li>• Licence requires a management plan. If harvesting occurs, responsibilities are similar to a FL</li> </ul>	<ul style="list-style-type: none"> <li>• Up to 25 years; new contracts may or may not be replaceable</li> </ul>
Timber Licence	<ul style="list-style-type: none"> <li>• Exclusive right to harvest merchantable timber from a defined area of Crown land, under cutting permits</li> <li>• Area-based tenure</li> </ul>	<p>Licensee responsible for:</p> <ul style="list-style-type: none"> <li>• operational planning</li> <li>• road building and reforestation</li> </ul>	<ul style="list-style-type: none"> <li>• Variable term; licence is not replaceable. Once forest is re-established, the area reverts to Crown and becomes part of a TSA or TFL</li> <li>• Individual licences are relatively small</li> </ul>
Free Use Permit, Licence to Cut, Road Permit, Christmas Tree Permit	<ul style="list-style-type: none"> <li>• The various rights associated with each of these tenures are described in <i>Forest Act</i>, ss. 48-51 &amp; 115-119</li> </ul>	<ul style="list-style-type: none"> <li>• Limited responsibilities</li> </ul>	<ul style="list-style-type: none"> <li>• Short term, non-replaceable licences</li> <li>• Very small scale</li> </ul>

**TABLE 1: SUMMARY OF TIMBER TENURES IN BRITISH COLUMBIA**

Tenure	Rights	Responsibilities	Term and Scale
Community Forest Agreement	<ul style="list-style-type: none"> <li>• Exclusive right to harvest timber from Crown land in a specific area</li> <li>• May grant exclusive rights to harvest, manage and charge fees for botanical forest products and other prescribed products</li> <li>• Area-based tenure</li> </ul>	Licensee responsible for: <ul style="list-style-type: none"> <li>• submission of a management plan for the area specified under the agreement</li> <li>• audits to assess performance</li> </ul>	<ul style="list-style-type: none"> <li>• 5-year probationary agreement</li> <li>• 25-99 year long term agreement</li> <li>• 5 year community forest pilot project agreements</li> <li>• pilot project will be in effect until January 1, 2004</li> </ul>

Commercial forest management also occurs on private land in BC. TFL and woodlot licensees manage some or all of their private forest land as part of their licence area. Their licence agreement describes the area of private land that is part of the timber tenure. In addition, there are forested lands outside the timber tenure system. These private forest lands are classified as either managed or unmanaged under the *Assessment Act*.<sup>6</sup> If private landowners commit to managing their forest land they receive special tax treatment. Managed forest land must be part of the Forest Land Reserve or the Agricultural Land Reserve. It was originally contemplated that the *Forest Practices Code* would apply to untenured managed forest lands; however, recent amendments to the *Forest Land Reserve Act* and its regulations created different forest practices standards that will apply to untenured private managed forest land in the Forest Land Reserve and the Agricultural Land Reserve.<sup>7</sup> According to the BC Assessment Authority, in May 1999 there were close to 907,000 hectares of managed private forest land in BC. Over 80% of this private forest land is owned by major forest companies, including MacMillan Bloedel, TimberWest, Crestbrook Forest Industries and Western Forest Products.<sup>8</sup>

Forestry law and policy in British Columbia have evolved over time to achieve particular social and economic goals, and the forest tenure system has been a primary tool for achieving these goals. Tenure arrangements are the primary means of allocating forest land among users and the basis of many management level decisions; as such, they are closely intertwined with forest land use decision making and planning. Table 2 sets out a chronology of tenure events in BC.

**TABLE 2: CHRONOLOGY OF BC TENURE EVENTS**

Pre-European Contact	For centuries prior to the arrival of Europeans, First Nations people govern the land and resources of British Columbia.
1838	Crown grant to Hudson’s Bay Company of exclusive trading rights in BC.
1846	British sovereignty over BC asserted through the Oregon Boundary Treaty with the USA.
1849	Crown colony of Vancouver Island created.
1858	Grant to Hudson’s Bay Company revoked. Crown colony of British Columbia created.
1865	The <i>Land Ordinance, 1865</i> provides for the earliest timber tenure, the “timber lease.” Any rent, terms or provisions of these leases are at the discretion of the Governor. <sup>9</sup>
1883-84	1.9 million acres on Vancouver Island granted to the Esquimalt & Nanaimo Railway Co.

## TABLE 2: CHRONOLOGY OF BC TENURE EVENTS

1888	Timber licences (“TLs”) with a 1 year term are introduced. <sup>10</sup> TLs are limited to 1000 acres.
1905	All TLs are made fully transferable and renewable yearly. <sup>11</sup> Over the next three years the number of TLs rises from 1500 to more than 15,000 in a “frenzy of ‘timber staking’.” <sup>12</sup>
1907	Granting of TLs suspended by Order in Council <sup>13</sup> (670 TLs remain today).
1909	Royal Commission of Inquiry headed by F.J. Fulton is mandated to explore how BC’s forests could best be managed. The Commission’s 1910 report <sup>14</sup> recommends retaining Crown ownership of forest lands, and makes other recommendations that are incorporated in the 1912 <i>Forest Act</i> .
1912	BC’s first <i>Forest Act</i> is passed. <sup>15</sup> It creates a Forest Branch of the Department of Lands that has jurisdiction over all matters connected to forestry, and provides for the creation of forest reserves where it is desirable to reserve lands for the perpetual growing of timber. From 1912 until 1948 the <i>Forest Act</i> authorises new access to timber only through the purchase of short-term licences to cut timber involving the auction of timber on a defined area of Crown land.
1942	Chief Forester C.D. Orchard sends confidential memo to A. Wells Gray, Minister of Lands called: “Forest Working Circles: An Analysis of Forest Legislation in British Columbia as it Relates to Disposal of Crown Timber, and Proposed Legislation to Institute Managed Harvesting on the Basis of Perpetual Yield.”
1943	Concerns about increasing industrial demand for secure timber supplies and inadequate reforestation lead to the appointment of a Royal Commission, headed by Chief Justice Gordon Sloan.
1945	The Sloan Royal Commission report <sup>16</sup> recommends tenure arrangements that would support “sustained yield forestry”, defined by Sloan as “a perpetual yield of wood of commercially usable quality from regional areas in yearly or periodic quantities of equal or increasing volume.” Sloan’s recommendations closely parallel Chief Forester Orchard’s earlier memo.
1947	The <i>Forest Act</i> <sup>17</sup> incorporates many of the recommendations of the Sloan Royal Commission by introducing two tools to facilitate sustained yield management. First, Forest Management Licences (today referred to as TFLs) – long-term, secure, area-based tenures to be granted to large private companies. Second, Public Working Circles (later called Public Sustained Yield Units or PSYUs) to be managed by the province, in which volume-based licences are to be granted.
1956	A second Royal Commission headed by Sloan evaluates implementation of the policy direction embodied in the 1947 legislation, and recommends its continuation and expansion. <sup>18</sup>
1975	Royal Commission on Forest Resources is appointed. Commissioner Peter Pearce’s report in 1976 recommends simplifying the existing tenure system, shifting responsibility for reforestation and silviculture to industry and increasing opportunities for small operators.
1978	PSYUs are converted into a third as many Timber Supply Areas (“TSAs”). Amendments to the <i>Forest Act</i> retain the TFL as a primary form of tenure, and a new volume-based tenure, the FL, is created for granting rights to harvest timber in the TSAs. Woodlot licences are also introduced.
1981	Small Business Forest Enterprise Program (“SBFEP”) introduced.
1988	SBFEP is expanded by a 5% “take-back” of allowable annual cut (“AAC”) from all major tenure holders.
1989	Ministry of Forests proposes “rolling over” volume-based FLs into TFLs, but does not do so after public hearings indicate widespread public opposition. <sup>19</sup>
1991	Report of the Forest Resources Commission, the <i>Future of our Forests</i> , makes recommendations for tenure reform, including reducing the AAC held under tenure by companies with manufacturing facilities by “not more than 50

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	per cent of the lesser of either their processing capacity or their present cut allocation, and that the wood freed up be used to create a greater diversity of tenures." <sup>20</sup>
1998	<i>Forest Act</i> is amended to provide for granting community forest agreements and community forest pilot agreements. <sup>21</sup>

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## IMPLICATIONS OF THE BC TENURE SYSTEM

### Implications for Communities

Many areas of the province are now facing the threat of wood shortages and mill closures. In addition, employment per unit of wood harvested has declined significantly over the past 30 to 40 years. The resulting decline in forest industry employment has tremendous impacts on these communities. What role has the tenure system played in bringing us to this point?

The tenure system introduced in the 1940s was designed, in part, to insulate forest based communities from the boom and bust cycles of the forest sector by introducing sustained yield forestry and encouraging investment by large “integrated” companies (i.e., companies controlling many phases of production, manufacturing and sales). The tenure system was based on a “philosophical framework that rested on a neat equation: sustained yield ensures community stability.”<sup>22</sup> In 1957, Royal Commissioner Gordon Sloan stated:

An assured continuity of supply of raw material results in the construction, maintenance, and uninterrupted operation of costly integrated conversion plants, ensuring the highest utilization return for the logs cut with attendant competitive advantages in world markets. This in turn should result in a maximum continuity of employment in all phases of the industry—logging, transportation, and conversion into the end product.

Continuity of employment has, as its sequel stable, settled, and prosperous communities . . . .The forest management licence [later, TFL] system was devised as a vehicle of policy to effectuate this concept of sustained yield with all these and other consequential benefits.<sup>23</sup>

However, neither legislative action in the 1940s, nor subsequent amendments, were based on thorough economic analysis of the impact of a sustained yield management policy on forest based communities.<sup>24</sup>

Implementing sustained yield management meant converting BC’s first growth forests into “normal” forests to be harvested on periodic, predictable rotations. “Sustainable” yields were thus calculated based on the growth rate of immature stands and on the “orderly liquidation of the timber beyond rotation age.”<sup>25</sup> In other words, BC’s first growth forests were to be replaced by managed timber crops.

For several decades after the introduction of the TFL in the 1940s, the operation of large processing facilities, the harvesting of increasing volumes of timber, and favourable market conditions, generated high wage employment and a good standard of living for families and communities in many areas of BC.

However, providing large companies with a steady or increasing supply of wood has been insufficient to avoid the boom and bust cycles in the industry. For example, since 1970, the industry has been through four major downturns, including the present one. As fluctuations in demand for and price of

exported lumber may be a primary cause of such downturns, it follows that they cannot be fully moderated by ensuring wood supply.<sup>26</sup> While industry has recovered from each periodic downswing with increased production and greater profits, employment in the industry has not. A recent study demonstrated that the profits of seven major forestry companies fully recovered from the lowest point of “bust” periods in 1975, 1982 and 1991 to hit peaks in 1979, 1987 and 1995, while their number of employees declined by 22% between 1979 and 1988, and by a further 17% between 1988 and 1995.<sup>27</sup> Profits of these companies were higher in 1995 than any time in the last 25 years; however, forest employment was close to its lowest in the same time period. The technological changes prompted by industry efforts to remain efficient and competitive in global markets have also significantly reduced forest employment.

In addition, the BC tenure system and the sustained yield policy underlying it encouraged the development of mill capacities that “were designed for the massive and rapid cutting of first-growth forests.”<sup>28</sup> However, sustained yield theory never promised continuity between the “conversion period” and subsequent rotations, and communities now face the economic uncertainties associated with mill overcapacity in relation to wood supply. This is one of the impacts of the so-called “falldown” effect that occurs when first growth forests are depleted and cut levels must be reduced to reflect the actual volume and quality of wood available primarily from second growth forests. The falldown effect is further exacerbated by removal of areas of old growth from the timber harvesting land base to create protected areas and to maintain fish and wildlife habitat.

## Implications for First Nations

The tenure system has unique implications for First Nations. The tenure system implemented in the 1940s paved the way for massive allocations of forest lands to non-aboriginal parties. Most forestry activities in BC have occurred on First Nations’ traditional territories without their input or consent, and with little economic benefit to First Nations people.<sup>29</sup> At the same time, the Supreme Court of Canada has affirmed that aboriginal title and rights may continue to exist over much of BC. As an example of the uncertainty that this situation creates, the Council of the Haida Nation is currently in the process of challenging the authority of the provincial government to grant a TFL on land that is part of their traditional territory and encumbered by aboriginal title.<sup>30</sup> In the *Delgamuukw* decision,<sup>31</sup> the Supreme Court encouraged the parties to reach a negotiated solution, yet virtually all Crown lands under negotiation through the treaty process are already allocated to forest companies through timber tenures. First Nations’ aboriginal title and rights cannot be ignored in future discussions of forest tenure. As Mr. Justice Seaton stated in the Meares Island court case:

[A] decision favourable to the Indians will cast doubt on the tenure that is the basis for the huge investment that has been and is being made. . . . There is a problem about tenure that has not been attended to in the past. We are being asked to ignore the problem as others have ignored it. I am not willing to do that.<sup>32</sup>

Where aboriginal title exists, the Supreme Court of Canada has stated that it is a “right to the land itself”;<sup>33</sup> this includes the trees on the land. The Westbank and other First Nations have recently asserted this right by carrying out logging in their traditional territories without government authorisation. This unauthorised logging further demonstrates the conflict and uncertainty created by unresolved aboriginal title issues.

## Implications for Corporations

The tenure system established by the 1947 *Forest Act* and refined by the 1978 *Forest Act* favoured large companies; for example, tree farm licensees were expected to incorporate large tracts of private land into their licences,<sup>34</sup> and the major licences required tenure holders to operate processing facilities

(these facilities are said to be “appurtenant” to the harvesting rights granted in the licence agreement).<sup>35</sup>

The huge capital investments needed to construct and maintain appurtenant mills were thought to justify providing corporations with a continuous supply of non-competitive wood. In Sloan’s view: “In award of management licences, first priority must be given therefore, in my opinion, to the pulp and paper industries and other large conversion units, especially the great integrated organizations...”<sup>36</sup> In turn, access to a secure wood supply through long-term licences allowed companies to borrow the money necessary to construct processing facilities.

Access to wood, however, is not necessarily what attracts investment in BC: “It is quite a departure from conventional economics to argue that industry is attracted by the available supply of a resource. Rather, industry is attracted by the opportunity to make profits from the utilization of the resource over the life of the investment.”<sup>37</sup>

Investors in the forest industry, as in other sectors, benefited from the long post-war boom period between the 1950s and the late 1970s. If one looks more closely at the last twenty years, it is clear that both profits and the after-tax return on shareholder equity in BC forest companies have closely followed the cyclical ups and downs of the forest sector. As Schwindt and Heaps note in a recent study: “when times are good, they are very good, and when they are bad, they are very bad.”<sup>38</sup>

Although high profits are made by forest companies during boom periods, the current tenure system, as well as forest practices regulation, constrains industry profits by reducing management flexibility and increasing management costs in order to achieve other public policy objectives, such as job creation and environmental protection. Some of these constraints include requirements that government must consent to licence transfers; that licensees maintain processing facilities; that licensees abide by cut control provisions that require meeting a pre-set 5-year harvest volume within plus or minus 10%; and that licensees fulfil planning requirements under the *Forest Act* and the *Forest Practices Code*. Furthermore, uncertainty is created by the continued existence of First Nations’ aboriginal title. While there is a *Forest Act* provision that, in theory, authorises the government to reduce a licensee’s AAC for failure to meet its obligation to operate a processing facility, this section has never been used.<sup>39</sup>

Although the tenure system was effective in encouraging investment by large integrated companies, it may have realised only part of the sustained yield picture. Specifically, it has been relatively more successful in facilitating the liquidation of old growth, than it has been in encouraging investment in the future crop of second growth trees. Some analysts attribute this failure to lack of security in the tenure system;<sup>40</sup> however, in reviewing TFLs, the 1976 Royal Commission reported that “the present incentives for silviculture appear to be equally effective for 21 year licences as for those with perpetual terms.”<sup>41</sup> In addition, even the most secure form of access to land, fee simple title or private ownership of land, does not guarantee a particular type of management. In fact, “Full ownership by one entity conveys the right to destroy biological diversity, as well as the capability to enhance it.”<sup>42</sup> This is illustrated by the wide range in quality of private forest management in BC. On the basis of maximisation of profits, a corporate landowner might reforest and invest in silviculture, or it might liquidate existing forests in the most efficient way possible and invest its money elsewhere - depending on where it could get a greater return on its investment.<sup>43</sup> Furthermore, to the extent that security does enhance investment, in the absence of regulatory requirements, one would expect profit-maximising forest corporations to invest in increased fibre production, but not in protecting water, soils or wildlife habitat, as these values do not generate economic benefits for them under current tenure and market arrangements. There is considerable consensus, however, that management of a defined area of land is more conducive to long-term forest management decision-making than volume-based tenures, which

provide little opportunity to move away from a timber extraction approach to forest management.

The other side of the policy choice to favour large operators in developing the tenure system was a negative view of small forestry operations. Sloan referred to these operators as “the small man,” casting them as short sighted, unstable and wasteful in comparison to the large integrated companies.<sup>44</sup> As a result of the forest tenure system that was established, most small to medium-sized logging operations lost access to the forest resource,<sup>45</sup> or lost their independence as they were forced to work as contractors for the large companies.<sup>46</sup> At the same time, major companies continued to grow and consolidate their holdings, although their names and owners have changed over time.

In 1998, ten companies each controlled over two million cubic metres of AAC...Their share represents nearly 68 per cent of the total commitments to commercial licensees. The top six companies alone control nearly 50 per cent of the total commitments to licensees. Seventeen companies together control over 80 per cent of the volume committed to licensees and nearly 70 per cent of the provincial AAC.<sup>47</sup>

The highly integrated industry today limits opportunities for small untenured companies to obtain wood. In particular, access to wood is a major problem for the value-added sector.<sup>48</sup>

## Implications for Government

Government plays a number of roles in relation to forest use in British Columbia. The provincial Crown is the “owner, and thus the supplier, of the commercial forest sector’s principal raw material – wood fibre.”<sup>49</sup> Because of public ownership of the forest, the operations of the forest industry generate revenue for government. On the other hand, our elected representatives are entrusted with the responsibility of developing forest law and policy that reflects a broad spectrum of public values and preferences.

What are the benefits that government derives from the existing system? The *Forest Act* specifies that each of the main types of tenure agreements must include a requirement that the tenure holder pay stumpage (a fee approximating the value of trees cut, minus the costs of logging with a profit allowance) to the Crown. The latest Ministry of Forests’ Annual Report indicates that in 1996/97 the Ministry of Forests collected \$1.85 billion in revenue, \$1.45 billion of which was in stumpage fees from major licensees and woodlot licensees.<sup>50</sup>

During the post-war boom there was general congruence between the role of government in encouraging timber harvesting as a source of revenue, and its role in achieving other public policy goals. The policy makers of the 1940s and 1950s were confident that a tenure system designed to encourage sustained yield and industrial use of the forest by large integrated companies would lead to a stable and profitable industry, stable communities, and stable government revenue. Subsequently, government has faced new pressures, as the public has become more aware of the long term implications of “sustained yield” policies (e.g., loss of old growth, reduced biodiversity), and perspectives about the values that should be reflected in forest management have become more diverse.

Patricia Marchak suggests that BC is not alone in this situation. Globally, unless small woodlots were well-established when the forest industry expanded, governments have tended to allocate resource rights to large corporations with manufacturing capacities. Marchak stresses, “These corporations have subsequently held enormous power to influence government action because their bargaining position is so strong.”<sup>51</sup> This strength is based on public and government fears that the corporation may simply exit the economy, with devastating impacts on forest-dependent communities, forest workers, and government revenue.

Once captured in this way, governments are rarely able to extricate themselves from the long-term obligations they have incurred through the

granting of land or harvesting rights. They provide further subsidies, reduce tax obligations, and create new incentives to keep the industry operating in their territories. They system becomes self-perpetuating. We see this process in British Columbia, and in the Pacific northwestern United States over the past century; it is just beginning in many tropical countries.<sup>52</sup>

In theory, BC's high percentage of public forest ownership gives us greater flexibility to redistribute resource rights to reflect changing public values. Provided that government explicitly does so through legislation, this can be done without compensating existing licensees of public resources. However, in the interests of promoting a positive investment climate and providing security to industry, the *Forest Act* currently provides for compensation when more than 5% of Crown timber land or volume is deleted from timber tenures. In addition, the duration of existing TFLs and FLs is secured by the "evergreen" provisions of the *Forest Act*, which specify that the Minister of Forests **must** replace them every 5 years if the licensee desires, and has met legislative and licence obligations.

Diverse groups in BC are calling for change to the tenure system. Despite the growing consensus that change is needed, government faces the challenge of dealing with concerns that change could result in large compensation payments to existing licensees, reduced stumpage revenues if land is privatised, local economic disruptions, temporarily displacement of forest workers, possible negative impacts on the investment climate, and unknown side-effects arising from any particular changes.

## INDICATORS OF COSTS AND BENEFITS: HOW HAS THE TENURE SYSTEM SERVED COMMUNITIES?

How do we judge how well the tenure system has served us? What indicators will tell us whether the tenure system has assisted communities in developing the long-term capacity to be economically, socially and environmentally sustainable? Such indicators are most meaningful if they are locally generated and context specific; however, it is possible to reflect on how well the tenure system has advanced key principles such as sustainability, diversity and self-determination.

### Economic and Ecological Sustainability

Our economies are ultimately linked to the integrity of ecological systems. It is generally accepted that, at a minimum, a tenure system should allow communities to meet the needs of the present without sacrificing the well being of future generations. Herman Daly and John Cobb have suggested further that, in its "strong" version, the concept of sustainability means treating human-created capital and "natural capital" as complements rather than substitutes. In other words, it should not be assumed that human well being can be maintained by the continual substitution of technology and financial capital for natural resources. Strong sustainability means that both our human-created and natural capital should remain intact.<sup>53</sup> In other words, we should only be living off the interest, not the capital of our forests.

Based on indicators discussed above, such as wood shortages, mill overcapacity in relation to supply, and declining employment per unit of wood cut, it is apparent that the old growth liquidation and large processing facilities encouraged by the current tenure system are no longer sustaining many forest based communities. Consolidation of cutting rights and concentration of milling facilities have also been particularly hard on isolated rural communities.

From an ecological perspective, a tenure system designed to facilitate the exploitation of one part of the forest ecosystem, namely commercially valuable trees, through sustained yield management, has not fostered ecological sustainability and the maintenance of fully functioning forest ecosystems. The

values prioritised by BC forestry law are one indicator of this. Although regulation of forest practices has increased in recent years, there has been little change to the timber extraction focus of the underlying legal framework through which rights to harvest or manage forest lands are allocated.

A new tenure system should foster both economic and ecological sustainability.

## Diversity

Diversity and balance provide stability to humans and ecosystems in an unpredictable world. Using the indicators of diversity in ownership, and in the size and type of business enterprises that control forest land, it is clear that the current tenure system has not fostered diversity in the forest economy.

From the perspective of ownership, BC has one of the highest proportions of publicly owned land in the world. Only 5.3% of BC is privately owned. Over 80% of the province is under the primary jurisdiction of the Ministry of Forests, whose purposes include the encouragement of a “vigorous, efficient and world competitive timber processing industry in British Columbia,” and management of resources for “the immediate and long term economic and social benefits they may confer on British Columbia.”<sup>54</sup> However, from a licensee control perspective, less than 20 integrated forest products companies control almost 70% of what is cut from BC’s public lands.

The tenure system has been very effective in achieving its objective of privileging large operators; however, lack of competition in the industry and high cut levels have meant that companies have not been “pushed to diversify [their product], to add volume, to log in the most sustainable manner, or utilize the wood in the most efficient way.”<sup>55</sup> One indicator that the tenure system does not encourage diversity in business forms and the type of products produced is the fact that smaller untenured companies and value-added manufacturers face difficulties in securing wood supply.

The expansion of the SBFEP, the woodlot program and the introduction of community forest tenures are important steps towards diversification, but these changes have not yet fundamentally altered the large corporation oriented tenure system.

From a broader perspective, diversification is about creating communities that are less dependent on a single industry. In 1995, 141 BC communities were considered “highly dependent” on the commercial forest sector.<sup>56</sup> The current tenure system has not assisted, and may well have hindered, some other industries based on forest use and natural landscapes, such as tourism and guide-outfitting.

Stability of forest ecosystems and diversity of human uses in those ecosystems also requires ecological diversity. From an ecological perspective, the tenure system has encouraged the simplification of many forest ecosystems, by encouraging the conversion of natural forests into managed forests. For example, in many cases older age classes of forest have been systematically removed by licensees.

A new tenure system should foster economic and ecological diversity.

## Self-Determination

Self-determination refers to the capacity of human beings to chart their own course, and to take part in decisions that will affect their lives. In the 141 BC communities that are dependent on the forest industry, it has been suggested that: “The primary decisions affecting these towns are not made in municipal council chambers. They are made in N.Y., Toronto or Tokyo, or wherever the parent company is situated, and they are made without reference to the needs of workers in these communities.”<sup>57</sup>

And what are the decisions that have been made? At public hearings over the proposed rollover of FLs into TFLs in the late 1980’s, one clear message that emerged was concern that existing concentration of forest tenures in the hands of large multinational corporations placed the interests of local employees,

communities and sustainability “a distant second to the extraction of short term profits from the early liquidation of old growth forests.”<sup>58</sup> Highly dependent on international commodity markets, some companies are primarily concerned with increasing efficiency and productivity, and reducing costs, not with the fate of the communities where they operate. As forests are depleted in a particular area of BC, mills close and the companies move on.

While multi-stakeholder land use planning processes such as Land and Resource Management Planning (LRMPs) have increased opportunities for public involvement in land use zoning, the existing pattern of tenure allocation is not on the table in these processes.

A new tenure system should foster increased opportunities for community self-determination. New opportunities for local control and management of forests would be a key indicator of success in achieving this goal.

## CONCLUSION

It is time for change in the way we allocate rights to manage and use the forest. The existing tenure system is no longer supporting many forest based communities.

This background paper has proposed that tenure reform should foster sustainability and diversity, both economic and ecological, as well as community self-determination. However, we need measurable indicators to facilitate meaningful evaluation of proposed and ongoing tenure arrangements. One of the lessons from the past is that policy instruments such as timber tenures do not always achieve the objectives they were designed for. Furthermore, the nature of forest ecosystems is such that the impacts of today’s actions will only be fully recognized in the long term. These factors point towards the need to create greater diversity in the forest tenure system, and to maintain options and flexibility, rather than imposing a standard “one size fits all” package across the landscape.

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## ENDNOTES

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- <sup>1</sup> Ministry of Environment, Lands and Parks (MELP), *British Columbia Land Statistics 1996* (Victoria: MELP, Tenure Management Branch, 1996), 4. Forest land is land the Chief Forester considers “will provide the greatest contribution to the social and economic welfare of British Columbians if predominately maintained in successive crops of trees or forage, or both, or maintained as wilderness”: *Forest Act*, R.S.B.C. 1996, c. 157, s. 4.
- <sup>2</sup> Ministry of Forests, *Annual Report 1997/97* (Victoria: Ministry of Forests, 1998), 25, 30.
- <sup>3</sup> R.S.B.C. 1996, c. 157, ss. 15, 36, and 76.
- <sup>4</sup> R.S.B.C. 1996, c.159. Failure to comply with the Forest Practices Code is only relevant to replacement of TFLs and FLs to the extent set out in sections 15, 36 and 76 of the *Forest Act*.
- <sup>5</sup> Adapted from Ministry of Forests, *Timber Tenure System in BC* (MOF website, last updated July 22, 1997) and Mark Haddock, *West Coast Environmental Law’s Guide to Forest Land Use Planning* (Vancouver: West Coast Environmental Law, 1999), A6-2.
- <sup>6</sup> R.S.B.C. 1996, c. 20, s. 1. See also *Assessment Act (Forest Land) Regulation*, B.C. Reg 349/87, s. 2.
- <sup>7</sup> See *Forest Land Reserve Amendment Act, 1999*, S.B.C. 1999, c. 11. These amendments will come into force on April 1, 2000.
- <sup>8</sup> Calculated from list of all managed forest land owners in BC provided by BC Assessment Authority.
- <sup>9</sup> *Land Ordinance, 1865*, Ordinance No. 27, April 11, 1865.
- <sup>10</sup> *Land Act*, C.S.B.C. 1888, c. 66, s.65.
- <sup>11</sup> *Land Act Amendment Act, 1905*, S.B.C. 1905, c. 33, s. 3.
- <sup>12</sup> Peter Pearse, *Timber Rights and Forest Policy in British Columbia Volume 2: Report of the Royal Commission on Forest Resources* (Victoria: Queens Printer, 1976), A5.
- <sup>13</sup> Task Force on Crown Timber Disposal, *Forest Tenures in British Columbia* (Victoria: Task Force on Crown Timber Disposal, 1974), 10-11.
- <sup>14</sup> F.J. Fulton, *Royal Commission of Inquiry on Timber and Forestry, 1909-1910* (Ottawa, 1910), 43.
- <sup>15</sup> *Forest Act*, S.B.C. 1912, c. 16.
- <sup>16</sup> Gordon Sloan, *Report of the Honourable Gordon McG. Sloan, Chief Justice of British Columbia relating to the Forest Resources of British Columbia* (Victoria: C.F. Banfield Kings Printer, 1945).
- <sup>17</sup> *An Act to Provide for Better Forest Management, 1947*, S.B.C. 1947, c. 38.
- <sup>18</sup> Gordon Sloan, *Report of the Honourable Gordon McG. Sloan, Chief Justice of British Columbia relating to the Forest Resources of British Columbia* (Victoria: Queens Printer, 1957).
- <sup>19</sup> Bruce Fraser, *Summary of Public Input at Public Information Sessions on the proposed policy and procedures for the replacement of major volume-based tenures with tree farm licences* (Victoria: Ministry of Forests, 1989), 4.
- <sup>20</sup> Sandy Peel, *The Future of Our Forests* (Victoria: Forest Resources Commission, 1991), 40.
- <sup>21</sup> *Forest Amendment Act*, S.B.C. 1998, c. 29.
- <sup>22</sup> Con H. Schallau, “Sustained Yield versus Community Stability: An Unfortunate Wedding?” *Journal of Forestry* 87 (1989): 19.
- <sup>23</sup> Sloan 1957, 43.
- <sup>24</sup> Con H. Schallau, “Can Regulation Contribute to Economic Stability?” *Journal of Forestry* 72 (1974): 215.
- <sup>25</sup> Thomas Parry, Henry J. Vaux and Nicholas Dennis, “Changing Conceptions of Sustained-Yield Policy on the National Forests” *Journal of Forestry* 81 (1983): 151.
- <sup>26</sup> R.N. Byron “Community Stability and Forest Policy in British Columbia, ” *Canadian Journal of Forest Research* 8 (1977): 63.
- <sup>27</sup> Sierra Legal Defence Fund, *Profits or Plunder* (Vancouver: Sierra Legal Defence Fund, 1998), 24-25.
- <sup>28</sup> Patricia Marchak, “Global Markets in Forest Products: Sociological Impacts on Kyoto Prefecture and British Columbia Interior Forest Regions” in *Emerging Issues in Forest Policy*, ed. P. Nemetz (Vancouver: U.B.C. Press, 1992), 361.
- <sup>29</sup> Task Force on Native Forestry, *Native Forestry in British Columbia A New Approach* (Victoria: Task Force on Native Forestry, 1991).
- <sup>30</sup> *Haida Nation v. B.C. (MOF)* (1997), 25 C.E.L.R. (N.S.) 103.
- <sup>31</sup> *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.
- <sup>32</sup> *MacMillan Bloedel v. Mullen*, [1985] 2 C.N.L.R. 58 at 73.

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- <sup>33</sup> *Delgamuukw v. British Columbia* at para 138.
- <sup>34</sup> Sloan, 1957, 48-53.
- <sup>35</sup> *Ibid.*, 55-58.
- <sup>36</sup> *Ibid.*, 94
- <sup>37</sup> Byron, 62.
- <sup>38</sup> Dr. Richard Schwindt and Dr. Terry Heaps, *Chopping Up the Money Tree: Distributing the Wealth from British Columbia's Forests* (Vancouver: David Suzuki Foundation, 1996), 83.
- <sup>39</sup> *Forest Act*, s. 71.
- <sup>40</sup> See eg: D. Zhang, "Implications for tenure for forest land value and management in BC, " unpublished PhD. thesis, Faculty of Forestry, UBC, Vancouver, 1994.
- <sup>41</sup> Pearse, 89.
- <sup>42</sup> Elinor Ostrom, "Designing Complexity to Govern Complexity," in *Property Rights and the Environment*, ed. Susan Hanna and Mohan Munasinghe (Washington, D.C.: Beijer Institute of Ecological Economics and World Bank, 1995), 34.
- <sup>43</sup> Colin W. Clark, "The Economics of Overexploitation: Severe Depletion of Renewable Resources May Result from High Discount Rates Used by Private Exploiters," *Science* 181 (1973): 181.
- <sup>44</sup> Sloan, 1957, 14.
- <sup>45</sup> Joe Garner, *Never Under the Table: A Story of British Columbia's Forests and Government Mismanagement* (Nanaimo, BC: Cinnabar Press, 1991), 251.
- <sup>46</sup> Sloan, 1957, 99-100.
- <sup>47</sup> Patricia Marchak, *Falldown: Forest Policy in British Columbia* (Vancouver: David Suzuki Foundation, 1999), 81.
- <sup>48</sup> Corky Evans, *Lumber Remanufacturing in British Columbia: First Report* (Select Standing Committee on Forest Energy, Mines and Petroleum Resources, 1993); Cheri Burda et al., *Forests in Trust* (Victoria: Eco-Research Chair of Environmental Law and Policy, University of Victoria, 1997), 36.
- <sup>49</sup> Schwindt and Heaps, 24.
- <sup>50</sup> Ministry of Forests, *Annual Report 1997/97* (Victoria: Ministry of Forests, 1998), 14.
- <sup>51</sup> Patricia Marchak, *Logging the Globe* (Montreal: McGill-Queen's University Press, 1995), 12-13.
- <sup>52</sup> *Ibid.*
- <sup>53</sup> Herman E. Daly and John B. Cobb, *For the Common Good* (Boston: Beacon Press, 1989), 72.
- <sup>54</sup> *Ministry of Forests Act*, R.S.B.C. 1996, c. 300, s. 4.
- <sup>55</sup> Marchak, 1999, 88.
- <sup>56</sup> Schwindt and Heaps, 52.
- <sup>57</sup> Patricia Marchak, "Forest Industry Towns in British Columbia" in *Community and Forestry*, Lee, Field and Burch, eds., (San Francisco: Westview Press, 1990), 99.
- <sup>58</sup> Fraser, 4.