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NAFA NATIONAL FORESTRY CONFERENCE 2007

Looking Back, Looking Forward: RCAP In Review **Assessing progress on land and resources recommendations made by the Royal Commission on Aboriginal Peoples as they pertain to First Nations**



The logo for the Royal Commission Aboriginal Peoples (RCAP) was designed by Joseph Sagutch, an Ojibway artist. His submission was selected in 1991. The design was a circular conception of an early Iroquoian wampum belt. The figure represents elders, women, children of different generations and different races. The circular shape was meant to represent harmony, a continuous journey and the earth. In the center is the bear paw, which symbolizes a healing energy. The symbol was to portray the dawn of a new day or a rekindled relationship. It was a symbol of a new era. The logo was a gift of hope from the Aboriginal Peoples to the people of Canada.

Royal Commissions in Canada date back to a time when it was the Crown of England who influenced the affairs of government. In 1868 the new Government of Canada enacted the Inquiries Act, a law used to establish Commissions of Inquiry. The first Royal Commission to be set up after Confederation was in 1870, to inquire into the *Improvement of Water Communications and the Development of Trade with the Northeastern United States*. The purpose of the commission is to examine problems that could not be resolved through the usual means of recourse. The broad mandate of the Commission is to examine any matter connected to the good government of Canada or the conduct of the public business thereof.

The mandate to hold the commission was announced by the Right Honourable Brian Dickson, former Chief Justice of Canada at the time that the Progressive Conservative government was in power under Brian Mulroney. Mulroney hoped the Commission would help him to reach his objective of settling all Aboriginal land claims by the year 2000.

Dickson suggested that the commission undertake a dialogue in Aboriginal communities with Aboriginal Peoples who wanted their stories heard. The mandate of the Commission was to investigate the evolution of the relationship among Aboriginal Peoples, the Canadian government, and Canadian society as a whole. The Commission was to propose specific solutions to problems, which have plagued that relationship and problems, which confront Aboriginal Peoples. This Commission was to advise the government on a course of action to correct the problems that were found.

Co-chair, Rene Dussault, said at the time, “Even for a Royal Commission, there’s no royal road to success... full success will be attained only if our proposals are implemented. In order to achieve this we will have not only to state principles, sound principles, but show how they are going to work.”

1992 was the 125th, birthday of Canada, as well as a year acknowledging the 500 years since contact on Turtle Island in 1492. It was a year of troubled times in Canada. The Oka Crisis of 1990 was still fresh in the minds of many Canadians. The crisis was a land dispute between the Mohawk nation and the town of Oka, Quebec which began on March 11, 1990, and lasted until September 26, 1990. It resulted in three deaths, and would be the first of a number of violent conflicts between Indigenous Peoples and the Canadian Government in the late 20th century.

1992 was also the year Canada witnessed the failure of the Meech Lake Accord. Because the accord would have changed the constitution's amending formula and modified the Supreme Court, it needed to obtain the consent of all provincial and federal legislatures within three years. Arguments against the Accord focused on the devolution of federal powers and control to the provincial governments. Former Canadian Prime Minister and arch-federalist Pierre Trudeau spoke out against the Accord, claiming Mulroney "sold out" to the provinces. Trudeau argued that Quebec, while distinct, was no more distinct than many other places in the nation. He also stated his belief that the federal government should oppose many provincial initiatives to keep the balance of powers within Confederation. In a newspaper opinion piece, Trudeau wrote: "The federation was set to last a thousand years. Alas, only one eventuality hadn't been foreseen: that one day the government of Canada would fall into the hands of a weakling. It has now happened." Some Liberal MPs called on Trudeau to be their "spiritual leader" against the Accord, further undermining John Turner's already fragile leadership.

Many First Nations protested outside the Legislative assembly which was convened to approve the Accord. Unanimous support was needed to bypass the necessary public consultation, and MLA Elijah Harper raised an eagle feather to mark his dissension. Harper opposed bypassing consultation because he did not believe First Nations had been adequately involved in the Accord's process. It was against this backdrop of a country struggling for balance that in 1992, the RCAP Commissioners started out for a series of public hearings that lasted until June 1993. The Commissioners appointed to RCAP held close to one hundred meetings between 1991 and 1995. Most of those meetings lasted several days.

In October 1996, the Royal Commission on Aboriginal Peoples released its report in five volumes. The five volumes included, *Looking Forward, Looking Back, Restructuring the Relationship, Gathering Strength, Perspectives and Realities, and Renewal: A Twenty Year-Commitment*.

It was then the Liberal government, under Jean Chretien that issued the federal response in 1998. They introduced, Canada's Aboriginal Action Plan *Gathering Strength*. It was intended as a long-term policy approach designed to improve the quality of life and self-sufficiency of Aboriginal people. The Foreword to the Plan describes the objectives of the policy as the renewal 'of the relationship with the Aboriginal people of Canada...[which] builds on the principles of mutual respect, mutual recognition, mutual responsibility and sharing'. The Plan's key objectives include:

- Renewing partnerships to bring about meaningful and lasting change in relationships with Aboriginal people;

- Supporting arrangements for self-government, affirming treaty relationships and negotiating fair solutions to Aboriginal land claims;
- Developing new fiscal relationships which are stable and which foster self-reliance; and
- Supporting strong communities, people and economies by focusing on improving health and public safety, investing in people, and strengthening Aboriginal economic development.

The Plan affirms that treaties will continue to be the basis for the ongoing relationship between Aboriginal people and the Crown.

Gathering Strength was touted as Canada's Aboriginal Action Plan. It called for Federal-Provincial-Territorial-Aboriginal partnership and co-ordination. The plan states that the distribution of responsibilities and powers in Canada's federation means that shared objectives for addressing Aboriginal issues can only be achieved if all levels of government work co-operatively with each other and with Aboriginal Peoples. The plan called for negotiations with provincial and territorial governments on resource-revenue sharing with Aboriginal communities. The government committed to working with the provinces and territories to provide increased access to land and resources. They also committed to increase funding for resource development projects and to building capacity for lands and resource management in First Nation communities. The last public progress report on Gathering Strength was published by DIAND in 2000. Initially, the government announced the Gathering Strength fund, which has now become the Professional and Institutional Development Program which funds initiatives that address needs in the areas of human and institutional development at the local level and at the level of emerging regional and national First Nations and Inuit organizations. This program also supports activities previously funded by the Indian and Inuit Management Development program.

Ten Years Later

Assembly of First Nations Review

In the fall of 2006, the Assembly of First Nations (AFN) released a 10-year report card on RCAP. The AFN summary analysis on progress pointed to a clear lack of action on the key foundational recommendations of RCAP and a lack of progress on key socio-economic indicators. AFN said, "Based on our assessment, Canada has failed in terms of its action to date." AFN issued Canada an "F" on recommendation 2.4.48 and 2.4.77, which dealt with Canada implementing a new approach to lands and resources and interim measures to improve Aboriginal Peoples access to resource based economies, including forestry. AFN also issued Canada an "F" on recommendations 2.5.12 and 2.5.13, which dealt with establishing Aboriginal institutions for the management and development of Aboriginal lands and resources.

RCAP contained 440 recommendations, including a call for the creation of what would essentially be a third order of government: an Aboriginal parliament; an independent tribunal to decide on land claims and more money to be spent to improve housing, health, education and employment. Out of 66 recommendations, AFN graded in terms of federal government response, Ottawa received 37 Fs. The report card said despite the commission, First Nations

continue to face ongoing poverty and an increasing gap in living conditions with other Canadians. The federal response to RCAP has been "limited in scope to a narrow range of recommendations," the report card said. Because of government inaction, the report card estimated there has been a shortfall of nearly \$8 billion in funding to communities since 1997. The National Chief expressed his disappointment with the lack of progress and said that the report contained many achievable recommendations.

Indigenous Bar Association Review

Also, in the fall of 2006, the Indigenous Bar Association (IBA) hosted a ten-year review at a conference on RCAP, in Saskatoon. The conference was an effort to assess progress. The conference was entitled, "Making Aboriginal Policy: A Conference Ten Years after the Final Report of the Royal Commission on Aboriginal Peoples."

The former RCAP Commissioner, Paul Chartrand, in his address to the IBA, stated that one of the challenges has been that RCAP with its 20-year mandate has been the victim of short-term partisan governments who are unwilling to address the issues because there is no political imperative. In addition, specific problems with federalism make it difficult to implement the recommendations and ensure compliance with section 35 of the Constitution regarding Aboriginal and treaty rights because provincial powers interfere. "The imperative for governments to act is usually crisis. If there is no political imperative then, government does nothing," he said. He said RCAP is essentially evidence that the public wants peace in Canada, but at the cheapest price. Chartrand said that the Liberals came to power when the RCAP Commission was under way and Ron Irwin, Minister of Indian Affairs and Northern Development said the \$58-million spent on RCAP could have paid for all First Nation housing.

National Aboriginal Forestry Conference

In the fall of 2006, the National Aboriginal Forestry Association (NAFA) began planning for a ten-year review of the recommendations within RCAP and committed to examining the progress made on specific recommendations that were related to lands and resources. In an attempt to provide an assessment on progress, NAFA undertook to host a national conference fashioned around 17 recommendations that were contained in Volume 2.

NAFA intervened in the Royal Commission and made both an oral and a written submission to RCAP in 1993. The submission was entitled Forest Lands and Resources for Aboriginal Peoples, and dealt with issues vital to Aboriginal Peoples across Canada. NAFA stated that access to resources was essential, "if they are to escape their dependence on well-meaning but demeaning programs and stand tall as self-sufficient communities ready to take on the challenges of self government." NAFA told the Commissioners that the forest sector was the most natural avenue for many communities attempting to develop their economies while maintaining their traditional values and ties to the land. NAFA told the Commission that the quest of Aboriginal Peoples for an adequate land base to support the pillars of viable self-governing communities-economic self-sufficiency, traditional lifestyle potential and spiritual fulfillment-underlies the demand for the just settlement of land claims, the recognition of Aboriginal and treaty rights and measures to address the Federal Crown's fiduciary obligations.

The objective of NAFA's submission to RCAP was to provide analyses and options to overcome the inaccessibility to land and resources. Access to forest-land resources could be achievable in several forms ranging through outright ownership, special long-term Aboriginal tenures, resource harvesting leases under existing provincial tenure systems, cooperative or joint management agreements and decision-making or advisory roles in resource management and environment assessment processes on traditional use territories. Not only should it be possible to increase the effective land base of many communities but it should be possible to minimize the negative effects of industrial development on Aboriginal Peoples and their traditional use areas.

NAFA hosted this conference in an attempt to honour the work that was done and honour the people who contributed to RCAP. This conference was an exercise of NAFA's responsibility and commitment to this report and an effort to reclaim this important work in order to move forward. The intention of the conference was to reaffirm the significance of RCAP and the importance of working together towards progress on closing the gap between Aboriginal Peoples and Canadians. The conference was the continuation of an important dialogue on key recommendations that were made ten years ago. It is now halfway into the twenty-year commitment. NAFA entitled the conference, *Looking Back: Looking Forward* in reference to RCAP's first volume. The conference title is also intended to reflect our hope that we can look forward to reconciliation.

In this two-day conference NAFA examined a number of RCAP recommendations to assess progress on resolving land and resource issues in Canada. What we found was disheartening. In short, not much has changed in the past ten years. In light of the RCAP findings and recommendations, and in light of a number of legal decisions handed down since 1996, there has been little to call progress in Canada.

The Federal government seems disturbingly unclear about its roles and responsibilities with respect to improving Aboriginal access to forest resources on Crown lands and seems equally unaware of its responsibilities with respect to forest management on reserve lands. Canada was unable to demonstrate any significant progress on the commitment to establish Provincial-Territorial-Aboriginal partnerships and co-ordination as they had promised in *Gathering Strength*. The Federal government has not demonstrated any action on the commitment to initiate resource-revenue sharing negotiations with the provinces and territories and has also been unable to demonstrate progress on capacity building for lands and resource management in First Nations communities.

Any developments evident in the forest sector can typically be traced to circumstantial occurrences in Canada. For example, the issuance of Forest and Range Agreements in British Columbia is largely a result of governmental responses to the issue of Aboriginal title and the need to negotiate treaties and the need to address the Mountain Pine Beetle infestation. Short-term forest tenures are issued to serve as interim arrangements while treaty talks are underway. There is no consistency across the various jurisdictions in terms of approaches to Aboriginal participation in land and resource activities. There have been no institutional changes to support progress. In New Brunswick, largely as a result of legal challenges and court decisions, the province has implemented revenue sharing arrangements with First Nations. Ontario was able to

demonstrate significant achievements through its support of a First Nation-led land use planning initiative, however the province still appears to lag behind the rest of the country in terms of not actually being able to accurately report on the state of affairs with respect to Aboriginal involvement in forest management on a province-wide basis.

The range of the scope of the discussion was broad at this conference as may be noted by the agenda. What follows in the next few pages is a record of that dialogue and a sense of the level of frustration that participants had with the lack of progress on many issues. At the end of this report, you will find a number of key recommendations and principles that were introduced through the World Café roundtable discussions.

**LOOKING BACK,
LOOKING FORWARD:
RCAP IN REVIEW**

**Ottawa, Ontario
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Commissioner's Vision for Implementing Recommendations

Speaker: Viola Robinson, former RCAP Commissioner, Legal Consultant, Acadian First Nation

Lorraine Rekmans, Executive Director, NAFA, welcomed everyone to the national conference to mark the tenth anniversary of the Royal Commission on Aboriginal Peoples (RCAP), “Looking Back, Looking Forward: RCAP in Review.” Finding an appropriate title for the conference had been a challenge, she said, adding that “a decade of dust” had seemed “a little too cynical.” She stated NAFA’s belief that it was time to bring light to an important exercise and to demonstrate respect and commitment to the work of those who had come before.

Rekmans introduced keynote speaker Viola Robinson, one of the members of the Royal Commission. Robinson is a Mi’kmaq woman from Nova Scotia, who spent the early years of her marriage at home raising six children with her husband. In 1975 she entered Native politics, serving first as President to the Native Council of Nova Scotia and in 1990 assuming the position of President of the Native Council of Canada. Ten months after her election, she was appointed an RCAP Commissioner. When that assignment ended in 1995, she attended Dalhousie Law School, graduating in 1998. She is currently a full-time consultant and advisor on many issues for her Band.

Robinson said she was honoured to speak to the conference. As she and the other Commissioners visited many communities across the country in the five years they spent developing the recommendations, she was struck by the hope in some areas and the skepticism in others. She indicated that the Commissioners had wanted the report to have a positive impact—to be an instrument of change. During their private deliberations, she remembered one of the Commissioners saying, “We have to make this report dustproof.” She said that she herself refers to the document whenever possible.

Being asked to give the keynote address gave her the opportunity to share some of her thoughts about RCAP, Robinson said. Although it is difficult to believe that so much time has passed, one indication of time passing is climate change, which has been closely linked to forests. Aboriginal people respect Mother Earth and want to take measures to ensure a stable, sustainable future. Their ancestors had a special, interdependent relationship with the forest. The Elders remind them of the need to respect the forest in their efforts to provide a sound “economic base for the country, Aboriginal peoples, and future generations.” Aboriginal people appreciate, however, that with rights come responsibilities.

The recommendations of RCAP were formulated based upon the situation in Canada between 1990 and 1995. They offer commonsense solutions grounded in the recognition of Aboriginal treaty rights. Recent negotiations and court decisions have led to changes, some of which have forced the hands of governments, which now have a legal obligation to deal with the rights of Aboriginal peoples.

During the course of the RCAP hearings, Commissioners were told that the socio-economic problems of Aboriginal peoples could only be resolved through self-governing strategies that would promote independence, leading to employment and the restoration of a fair share of the land and resources. These views were reflected in the Commission's recommendations, which are at various stages of implementation throughout the country.

Robinson shifted the focus of her presentation to recent developments in Nova Scotia. Through a negotiation process, the Mi'kmaq signed a framework agreement with Canada and Nova Scotia to begin self-government and "rights implementation discussions." A recent Supreme Court decision reinforces their right to harvest wood for domestic use. The Marshall case on fishing "recognized that the Mi'kmaq have existing rights to use and manage these resources."

Court decisions and commissions will only take the situation so far, she said; it is up to the people to sit down at the table and ensure that these rights are enforced. Negotiations are in place for the right to fish for livelihood, which means more than just access. It may take more than 20 years to reach an agreement, but Aboriginal people will ensure the rights for future generations.

The Mi'kmaq Rights Initiative and recent jurisprudence have increased the opportunity to enter into meaningful discussions for implementing many of the RCAP recommendations, said Robinson. Aboriginal peoples can remain silent no longer and have an obligation to take the lead in any implementation process.

Robinson concluded her address with some words of advice that she used during the RCAP sessions: remember the four Rs—recognition of rights; respect for the rights of all people and levels of government; responsibility; and reconciliation or living together. She said that she was "deeply moved" by NAFA's invitation and by the work the organization has done.

In response to a question regarding the publication of the Commission's report and the lack of availability of copies, Robinson said that the report had had only one printing and was distributed to a set group of people. Given the document's thorough research and substantive recommendations, she said, the government should have continued to publish it and ensured that it was part of the school curriculum of every province.

When a participant asked why the report's recommendations had not been implemented, Robinson responded that some of the easier ones had been, but that the government would not touch the ones with more political implications.

One participant commented that she often refers to the report, but that when she mentioned it during a meeting with her doctoral committee, a member had told her that it was out of date. Robinson replied that the report is only 10 years old, while Aboriginal people have been here for thousands of years and are still here. People will continue, she said, to work for the report's implementation.

Opening Prayer

Annie St-George, Elder, Algonquin Nation

St-George offered some words of wisdom from her father, who was a trapper and forester: “Here in Canada, we opened up our arms to the newcomers who came to us. In those days, the Algonquin Nation were nomads. We respected Mother Earth. Now, we are negotiating for land that was my home.”

Her grandfather told St-George that every tree had its job. Trees were the lungs, the cleansers of the air; if we destroy them, future generations will suffer with great pollution and illnesses.

St-George thanked Grandmother Moon for reflecting on the water and providing clean drinking water. She thanked the Creator for the trees and pure air, for the food that nourishes people every day, and for bringing the participants to the conference to help resolve the destruction of Mother Earth. She asked the Creator especially to “touch every one of your hearts as you speak, reflect, and discuss.”

Welcoming Address and Board Introductions

Speakers: **Jim Meness, Algonquins of Pikwakanagan**
 Dave Nordquist, Chair, Board of Directors, NAFA

Meness gave the official welcome to Algonquin territory. His community has been involved in a comprehensive land claim for 8.9 million acres—an area that covers Ottawa—since 1991. Currently, the only parcel that is recognized is the reserve, which makes up less than 1% of the territory. The Algonquin Community Development Corporation, said Meness, was launched in 1990 to improve the involvement of First Nations people living around forests. It is now a driving force of forestry in Algonquin Park. Allocations for harvesting natural resources have been contracted out and are increasing in volume.

Nordquist offered a welcome on behalf of NAFA. He thanked the Algonquin Nation for their welcome and briefly introduced the two other board members present.

Looking Back—NAFA’s Recommendations to RCAP

Speaker: Harry Bombay, Director, Strategic Initiatives, NAFA

Bombay summarized recent First Nations history in the context of NAFA’s involvement with RCAP.

The early 1990s, he said, were characterized by civil disobedience and protests by First Nations. Although there is no official connection between NAFA and the Oka crisis, both were born out of frustration, marginalization, and distrust. The concept of sustainable development emerged at around that time. Many conferences on forestry and the environment gave people the impression that significant changes were ahead. The Canadian government discussed incorporating ecology instead of just economics into the National Forest Strategy. Aboriginal self-government almost became a reality with the Charlottetown Accord. The RCAP report was released in a period of optimism amid widespread belief that things would change.

Since then, the federal government has placed less importance on sustainable forests and Aboriginal people. There have, however, been legal victories relating to Aboriginal treaty rights, such as the Delgamuukw decision, that hold promise for better use of traditional territory.

NAFA made several interventions to RCAP: two consultations as an association and one written report, *Forest Lands and Resources for Aboriginal People*, 1993. The RCAP committee responded with some suggestions for modifications, improvements or increased flexibility in areas such as licensing, harmonization of timber use, and traditional land use. It also suggested that First Nations develop a collective voice at the regional level.

The RCAP report also addressed, but did not necessarily make recommendations on, several other areas relating to NAFA, including tax incentives, First Nations involvement in managing protected areas, a national Aboriginal forest strategy, self government, the need for an adequate land base, the challenge of honouring international commitments, and the concept that Aboriginal people should share in the economic benefits of forest resources.

Although RCAP welcomed NAFA’s suggestions and overwhelmingly supported them, those issues are still around. Today, however, said Bombay, Aboriginal people have greater leverage with which to negotiate: “Today, we have to resurrect these issues but we must thank the RCAP for bringing all this together.”

Access to Resources

Workshop A—Recommendation 2.4.48

Federal Role in Improving Aboriginal Access to Forest Resources on Crown Lands

Speaker: Garry Merkel, R.P.F.

Moderator: Dennis Simon, Director, NAFA

Recommendation 2.4.48 dealt with the issue of improving Aboriginal access to natural resources on Crown Land.

Since the RCAP recommendations were released in 1996, said Merkel, many changes have occurred. Merkel drew attention to recommendation 2.4.29 (see below).

Recommendation 2.4.29 called for establishing an independent administrative tribunal to ensure all treaty and land provisions within the Royal Commission are implemented. This proposed body—the Aboriginal Lands and Treaties Tribunal—was never created.

First of all, several defining court cases have brought changes to the law:

- The Delgamuukw decision (1997) resulted in the recognition that Aboriginal title (right of use and occupancy) exists, and stipulated that the Crown has a duty to consult regarding impacts to Aboriginal title and cannot unjustifiably infringe on this title.
- Heiltsuk (2003) established the provision that the Crown has a duty to consult, but that a group choosing not to participate does not in itself provide a reason for the Crown not to proceed with development. In Haida (2004), the law was further defined to stipulate that the duty to consult lies with the Crown and that this inherent responsibility cannot be delegated to a third party. Moreover, the honour of the Crown is at stake.
- Sappier & Gray (2006) confirmed that Aboriginal rights extended to forest (timber) resources.

Second, international scrutiny has increased. After the RCAP concluded, huge strides were made at the UN and other forums in recognizing Indigenous rights and providing for Indigenous peoples' participation in decision making. Merkel singled out Forest Stewardship Council (FSC) certification as a particularly good program, because it is a market-driven push in the direction of sustainable forestry, taking into account economic, social, and environmental concerns.

A third important change has occurred in the area of land claims. A new understanding has come about that these negotiations are treaty arrangements between two governments rather than simply a settlement of land and cash. The focus has shifted to meeting internal challenges—finding ways to build a responsible government that can handle the new powers and new relationships.

The fourth change is an increase in partnerships. Many new working relationships have been created, including management agreements, service arrangements, and partnerships that give

increased access to forest tenure. There is a greater focus on capacity and governance, practical discussion, targeted relationships, and collaboration with municipal and regional governments.

Merkel explained that federal statutory responsibilities include Indians (registered or eligible to be registered), Indian reserves, fish, international affairs, territories, federal lands, consultation and accommodation on federal lands, and Aboriginal treaties.

Further, he said, the “constitutional division of powers” means that only two governments are recognized to have constitutional land management jurisdiction—the power to make law. Adding another level of government would require a constitutional amendment, which needs the consent of all the provinces and territories. One alternative that would allow Aboriginal governments to create their own laws, Merkel said, is for them to become federal or provincial agencies exercising jurisdiction over their own areas.

Merkel explained that fiduciary responsibilities refer to responsibilities of a moral or personal nature in which one party places complete confidence in another, either for a particular transaction or for one’s general affairs, based on to the other party’s superior knowledge in that area.

The Guerin case established that the federal government has a fiduciary responsibility to Indians with respect to the administration and management of Indian reserves. First Nations assert that this fiduciary responsibility also extends to ensuring that the lands are managed according to widely recognized standards of care. However, this issue has not been resolved.

The federal government also has responsibilities stipulated by the National Forest Strategy (2003–2008) to accommodate Aboriginal and treaty rights in the sustainable use of the forest.

Merkel listed a number of accomplishments: on- and off-reserve programs and initiatives, as well as arrangements with institutions such as NAFA.

However, he said, needs remain in many areas, including the land base, internal capacity, tools and methodologies, strong partnerships, and community engagement. The challenge, he said, is in Aboriginal people’s own ability to meet these needs. Moreover, it takes time to achieve cooperative government. It also takes partnerships with people outside the Aboriginal community.

What is possible, said Merkel, is for federal and provincial/territorial partnerships to adopt Aboriginal forest management principles and deliver programs that foster centres of excellence in Aboriginal forestry and the technical transfer of Aboriginal forestry experience. Canada can also provide tax incentives for provinces and companies to partner with Aboriginal groups, engage Aboriginal groups in international forestry affairs, and formalize cooperative management relationships on federal lands.

In conclusion, Merkel emphasized the themes of partnership, professionalism, goodwill, joint celebration of success, hard work, and change on all sides. “Building a new paradigm does not

instantly create a new reality,” he cautioned, warning those in the gathering, “Avoid setting yourself up for failure,” such as by giving ultimatums. Success, he reminded them, is equivalent to one’s own ability.

Questions and Discussion

Participants discussed the meaning of the wording in the Constitution that refers to “Indians and lands reserved for Indians.” Merkel said in theory it may refer to more than reserve land. Moreover, the law refers to the “Crown” and to “Crown land” without specifying “federal” or “provincial.” This uncertainty is subject to interpretation. One option is to challenge the uncertainty in court. However, uncertainty can be advantageous sometimes, he said.

On the subject of co-management, Merkel outlined some positive developments. There are Aboriginal groups cooperating with government bodies to develop forestry management plans and regulations, and these partnerships are jointly submitting their proposals for approval through the legal process. However, he said, co-management takes time.

Workshop B—Recommendation 2.4.49 Forest Resources on Reserves

Speaker: Paul Fauteux, Director General, Lands Branch, Indian and Northern Affairs Canada (INAC)

Moderator: Mark Kepkay, National Forest Strategy Theme 3 Coordinator, NAFA

Recommendation 2.4.49 deals with the federal government's responsibilities with respect to forest resources on reserve lands.

Fauteux began by describing the priorities of INAC's Lands Branch. This is one of four branches that form the Land Trust Sector, which has the responsibility of implementing the Indian Act. The Lands Branch implements the Land Management Provisions of the Indian Act, and supports First Nations peoples in taking control of their own reserve lands in the time, and at the pace, of their own choosing.

Fauteux explained that while the agenda indicated that a case study of Saskatchewan forestry was to be presented, he was not a forestry expert, and did not have this case study to present. Instead, he offered to provide an overview of land management, provide information on opportunities available to First Nations to develop their own land codes, and explain the process for taking control of land through First Nations land management. If this was not the information that participants wanted or needed, he offered participants the option of having an open discussion instead.

Questions and Discussion

Fauteux explained that he was not in a position to provide the answers to some questions as the Branch was experiencing a shortage of human resources. Specifically, the person who had the technical expertise was currently on sick leave. He offered to take notes of the questions he could not answer, and get back to NAFA.

A participant said it would be helpful if the Department could address regional variations that are reflected in the different needs of communities. For example, if the communities comprising a First Nation are very small, then there is difficulty with the sectoral sub-government. There are not enough transactions, and not enough resources to produce. The management plans, logging plans, and environmental assessments needed to create a forestry plan. The cost, the participant said, would be approximately \$15,000–\$20,000.

Fauteux responded that there is a priority list for admission to the Reserve Land and Environmental Management Program (RLEMP) and the Delegated Lands Management Program (53/60). First Nations already participating in RLEMP and the First Nations Land Management Act (FNLMA) are a priority for training. Fauteux encouraged the participant to ask the appropriate Region when it will be able to provide training.

Regarding the costs required, Fauteux said that he was “saddened and embarrassed, but not surprised” to see that inadequate attention and resources were focused on forestry. He said, “You

clearly and correctly point to the lack of both.” Fauteux said the Department recognizes the need to update regulations and get the necessary resources to implement new regulations.

Another participant pointed out that in talking about resource-based economic development, it is important to distinguish between what is sustainable and what is not. Forestry is renewable and has the potential for sustainability. Therefore, she said, the focus now should be more on forestry than on gas and oil. In addition, she said that consultation, resources, support, and building community capital are vital areas to focus on. “We are completely burdened with challenges. Capacity at the First Nations level does not exist. ”

Fauteux responded, “I share your pain and your hopes. We need to do a much better job with resources.” He said that forestry is not the number one issue on INAC’s agenda. However, economic development *is* a top priority, so the link can be made between economic development and forestry.

Participants pointed out difficulties with obtaining timber permits on reserves. Getting a timber permit automatically triggers an environmental assessment process and the costs associated with that. One participant pointed out the difficulties in trying to answer the report requirements for forestry on a larger land base. It was designed for small-scale projects, and is not geared towards all the activity that will take place on a larger land base. In addition, in Nova Scotia, when crown land is leased to forestry companies, an environmental assessment is not required, but it is for First Nations.

Fauteux responded that this situation is totally against INAC policy intent, which is clearly to eliminate any disincentive. He said that he would “drill down” to see why it might be easier to get a permit off reserve than on reserve.

Fauteux also talked about the need to build forestry expertise capacity in INAC as well as within First Nations.

A participant pointed out that there is good synergy between INAC’s unique expertise and relationships with communities and National Resource Canada’s (NRCan’s) forestry expertise.

Fauteux said that INAC would make the link between economic development and lands and forestry development with the new Assistant Deputy Minister that is taking over. As this is the fifth and final year of current policy and financial authority, a new submission is being prepared, and there are some impressive success stories to present. Fauteux said that his Branch feels that they can present a persuasive case to get the needed resources to extend this sectoral self-government opportunity to more First Nations in 2008–2009.

Workshop C—Recommendation 2.4.50

Aboriginal Access to Forest Resources on Crown Lands

Speaker: Doug Brubacher, Brubacher Development Strategies Inc.

Moderator: Lorraine Rekmans, Executive Director, NAFA

Recommendation 2.4.50 called for provincial and federal governments to work together to provide Aboriginal peoples with increased access to forest resources on Crown lands.

In 2003, the speaker published a study (*Aboriginal-held Forest Tenure in Canada*) that examined forest tenure among First Nations organizations across the country. He presented his findings, including an update with data from 2006.

The RCAP report, said Brubacher, gave several definitions of forest “access,” which served as starting points: protecting traditional activities, participating in forest management, having access to fibre and to Crown forest tenures, and partnering with timber licensees and mills.

Brubacher used as measures of success the level of satisfaction First Nations people felt with their access to Crown forests to carry out traditional activities, the degree of participation in the commercial forestry sector, and the number of First Nation-held tenures.

As possible indicators of access, he considered harvest contracts held by First Nation businesses (in cubic metres); the level of First Nations participation in planning (such as hours spent in consultation); and First Nations ownership of forests (in British Columbia, for instance, First Nations own substantial tracts of land).

He decided to use tenure as an indicator, however, for two reasons. First, the data was easily available, since provincial governments keep records on locations, holders, and amounts, so he only had to communicate with 12 jurisdictions instead of a multitude of First Nation bands. Second, in most cases, he was able to distinguish First Nations-held tenures from others.

To begin, Brubacher developed a classification system (NAFA’s Unified Classification System) to harmonize the different systems being used across the country. In British Columbia, for instance, there are nearly a dozen ways of allocating tenure; there are two or three in Ontario. The tenures were mapped into five groups, ranging from major, long-term areas where the holder has responsibilities to minor tenures and special permits where holder is not involved in planning or management, and also including some alternative, conservation-based tenures.

Although the data came from only 12 sources, there were challenges with its consistency. Collecting information only on First Nation as opposed to on all Aboriginal peoples affected the integrity of the statistics. Differentiating Crown tenures from contract harvests also proved challenging; there is a clear difference theory but not always in practice. Another issue was the fact that some jurisdictions only kept records of the major tenure awards, not of those made to First Nations individuals. Also, recording the data on joint ventures presented a puzzle, since the

percentage of the First Nations participation varied. Ultimately, Brubacher converted all the data into cubic metres of harvest per year.

Generally, the results of the study found that First Nations–held tenures have increased all over the country. The numbers from British Columbia (6 million cubic metres in 2006, up from just under 4 million in 2002) dwarf those from the rest of the country. Elsewhere in Canada, growth was more moderate, with the exception of Saskatchewan (2 million cubic metres in 2006, up from 1 million in 2003). The data from Ontario turned out to be unusable and has not been included. Only in Nova Scotia and the Yukon did the percentage of First Nations tenures drop.

Brubacher drew several conclusions:

- The form of tenure is important—the largest number is for small volumes held by businesses.
- Increased tenure shows that *maybe* First Nations have better access to forest resource, especially fibre; *maybe* they have more say over management; and *probably* they are more economically involved.
- Tenure *does not* show that economic opportunities are maximized (harvest contracts, or a combination of both contracts and tenure, may work better); that the values of First Nations are reflected in forest management practices; or that forestry practices have changed.
- Tenure *may* show that the capacity of First Nations to participate has increased; that the economic foundation has improved; and that forest management is being aligned with First Nations values.

Questions and Discussion

A participant asked how co-management agreements were handled. Brubacher replied that they were not included in the presentation.

A participant commented that a really valuable report would provide information on non-standard tenures, such as those that accommodate First Nations rights. Brubacher replied that such a project would be on an entirely different scale because many bands across Canada would be involved instead of 12 jurisdictions.

Another participant asked what tenure is supposed to provide: “Is it the mechanism to provide influence over decisions? This is a very traditional system that was not designed to deliver anything except money, which it does very successfully.” Brubacher agreed, and said that tenure only provides a sliver of insight into access. Before, there was no quantifiable insight at all into First Nations access. Other indicators could be used, but they would have to be easy to collect so that updates could be done regularly. Tenure is not the ultimate tool, but it opens the door.

Somebody asked if there had been any discussion about re-addressing the whole system. Brubacher replied that he was not party to those discussions but that he knew that NAFA had, from time to time, examined what First Nations tenure might look like.

Workshop D—Recommendation 2.4.55 Aboriginal Consultation in Land Use Planning

Speaker: Alex Peters, Pikangikum First Nation

Moderator: Dave Nordquist, Director, NAFA

Recommendation 2.4.55 calls for land use plans to be developed in consultation with affected communities.

Peters discussed the Pikangikum First Nation's land use plan as a case study of a community-led plan. He began by describing some of the challenges faced by Pikangikum (population 2400), and said that the Chief went to the federal government in 1996 to discuss the possibility of a community forestry operation. The Chief was told that there was already a plan for that area and that industry would be leading the process. However, the Ministry of Natural Resources also said that if the community made its own land use plan, it might be able to have more control over development in its area.

Pikangikum began land use planning in 1996, with the Elders of the community at the forefront of the planning process. The community has now identified 11,000 points of interest in its region, including 1.3 million hectares of prime timber.

The land use plan was completed in 2006, and the community has instituted a land-based community economic renewal strategy, known as the Whitefeather Forest Initiative. Along the way, the Pikangikum Nation signed agreements with NRCan and environmental groups stating that these organizations endorsed its land use plan. The planning process included a consensus-building process with NRCan, which was successful because of the strategic communication skills of the Elders.

The land use planning process has been an economic initiative for the community, with a focus on forestry. The Elders commissioned an inventory of the whole area, including satellite maps and a complete inventory of the forest. They are very happy with the results of the planning, and NRCan is also very satisfied. The community has now started the environmental assessment process, which is also going well. Pikangikum has asked if that process could be fast-tracked, and the Minister of Natural Resources has said that he would try to facilitate this.

Peters said that the Elders, through the young people, did the planning. Community members have been to other communities to share information about this community-led planning process. Pikangikum now has a website and will work with anyone interested in a cooperative, non-confrontational process—although the community will fight for its land if it has to do so, Peters said.

As part of its economic renewal process, the community hopes to obtain a Sustainable Forestry License by the end of 2007. Pikangikum has two First Nations partners and an international partner (a group from Finland that manufactures beams for the Japanese market).

Questions and Discussion

During the discussion, several participants shared experiences with their communities being under third-party management. Peters said that Pikangikum had been under third-party management but now manages its own finances. A Chief said his community had been under third-party management longer than any other community in Canada. Its debt now exceeds \$5 million; about \$250,000 a year pays for chartered accountants who are supposed to be helping the community out of third-party management. He expressed frustration with the situation: “We don’t have the right resources to engage industry in meaningful consultation. Even our economic development dollars are handled by third-party managers.”

Another key issue discussed was the relationship with environmental groups. One participant said that there is a national campaign to set aside the northern boreal area, creating parks and protected areas. She asked how that campaign affects the Whitefeather Forest Initiative, and what the Elders say about protected areas and conservation. Peters responded that several environmental groups came to Pikangikum in 2002 and signed an agreement with the Elders saying they supported the community’s planning process. A meeting was held recently to address some of these issues, he said, adding, “we move forward in spite of what is going on.” The community has set aside areas for conservation, including a river system, certain sacred sites and a possible world heritage site in the western part of the lake areas.

Another speaker explained that environmental groups such as the David Suzuki Foundation have said they will exempt the Whitefeather Forest Initiative from their campaigns to establish protected areas in the Northern boreal region before any development occurs.

A participant asked if Pikangikum’s land use plan was specific to forests or included other potential resource development in the area. Peters said the Elders’ original plan was focused on forestry, but the plan expanded to include other resources, such as mining. There were some problems, he said, with a mining company that did not notify the community before staking the area, but now a company is working with the community. Pikangikum is exploring a variety of resources, including mining, a hydro corridor, road development, and tourism and recreation.

Peters described an Elders’ prophesy that the land would become like a “checkerboard”—divided up and licensed, with all the animals disappearing. The people in the community were told to fight to prevent this from happening. When Aboriginal communities engage in forestry, he said, teachings and practices guide them in caring for the land. Rather than setting aside “protected” areas, the practices are focused on “keeping the land.”

Organizing and Presenting Lands and Resource Issues from World Café

Facilitator: Chris Corrigan

Corrigan explored an economic parallel between fishing and cedars. He pointed out that the fishing industry includes not only commercial fishing but also sport fishing, which generates revenue from sports fishermen who may come from as far as overseas. There may be similar opportunity, said Corrigan, to “market to Japanese businessmen to cut trees,” as well as other parallels between the two resources.

Main Themes

Corrigan presented a “mind map” summarizing in diagram from the morning’s conversations among the delegates. It showed six main themes: relationships, community, government, networks, education, and common goals. He discussed each one in turn.

- The quality of *relationships* was discussed as an important theme. Participants identified three key elements to obtaining strategic leverage through good relationships:
 - The first was “silo busting”—breaking out of isolation and removing barriers thrown up by bureaucracy.
 - The second was recognition: First Nations need to work toward being recognized as a government, a goal that goes hand in hand with recognition of First Nations history and current realities on the land.
 - The third was values—developing openness, honesty, trustworthiness, and learning.
- *Community* was noted as a valuable asset. The principles of co-management have the power of leveraging networks to improve governance and control at the community level. The group agreed that a great deal more research and planning are needed, and that holistic development and capacity building should be emphasized.
- Opportunities relating to *government*, and the importance of clarity, were highlighted next. Defining who has authority—the federal, provincial, or First Nations government—is an ongoing issue in light of Aboriginal title claims and the shifting of land titles. Opportunities for cooperation and applying common ground are always increasing. The stakes put on government are diminishing, however, as partnerships with industry become more important and efficient.
- Creating *connections* among First Nations people and leveraging relationships with forestry companies, delegates said, can create networks of common thought and action. Networks are needed to facilitate direct action, such as advocacy and protests. By organizing Aboriginal forestry interest groups and acting in the role of government on the land, Aboriginal peoples can move the strategy forward. Gandhi’s name was raised, as was the concept of “living in truth” as a strategy.
- The group also said that public *education* and information are key to combating the stereotypes, myths and misconceptions about First Nations. It is important to spread awareness about the Aboriginal reality, and sustaining such awareness requires grassroots action. This involves making connections with the education community—both educators

and youth—and creating a “feedback loop” for traditional and cultural knowledge. Greater learning and awareness about Aboriginal perspectives on forestry and on land and resource use will help reinforce that perspective.

- Finally, the importance of *common goals* and a common vision was emphasized. Aboriginal people must pursue learning, share perspectives, and develop opportunities *together*: If two people are looking at a forest standing before them, do they see the same thing? Do they have the same ideas about the needs and opportunities presented there? It takes work, participants said, to converse and learn with one another, to understand shared perspectives, and to develop shared opportunities.

Peripheral Themes

Some peripheral themes were raised in addition to the six main ones. One was opportunity and development. There are many opportunities for First Nations people arising from changes in the forest sector and from the consultations and accommodations taking place in the current discussions about climate change and sustainability. Opportunities exist to develop entrepreneurship, identify barriers, and build solutions to overcome barriers.

Another theme was diversity—bringing together stakeholders with diverse views, including those with thoughts based on different historical and cultural backgrounds.

Incentives for partnerships formed a third peripheral theme. Some ideas were generated relating to certification, financial incentives, shared risk and payoffs, and the use of time and resources.

Worldviews, philosophy, mindset, and ideology were concepts that did not form discrete threads but were included in all conversations. Questions included how to reconcile different perspectives around forest use and community, as well as how to reconcile the roles and responsibilities of governments, communities, and forest companies. Cultural perspectives, global diversity, partnerships, communication, generations—these ideas and realities form the basis of future actions, and offer ways to find opportunities and deal with relationships.

Discussion

Corrigan invited the delegates to share ideas on how the themes can be translated into strategy, actions, and relationship building. In particular, what are the barriers? How can Aboriginal people create opportunities from shifts in the forestry sector and from climate change? How can they promote education together?

A participant noted the importance of starting education efforts early, pointing out that sparking curiosity and enthusiasm about forestry and land-based science in school-age children can help encourage them to later pursue study in these areas in college and university.

Another delegate spoke on the need for continuing work toward having governments relinquish power and recognize Aboriginal self-government. He said there is currently no real effort to change or accommodate systems to incorporate the rights and meet the interests of Aboriginal people. He encouraged Aboriginal people to find catalysts to advance the process, such as by building an economic case or pursuing land claims settlements and court cases.

Shifting demographics and a changing workforce present opportunities, said one participant. The Aboriginal population is rising, while the non-Aboriginal population is aging. This opportunity should be highlighted to Aboriginal communities, especially those in Canada's north. Corrigan said that this is an important new theme that should be added to the list.

A delegate said it is important to motivate Aboriginal people to buy into the model of creating new partnerships, relationships, and ways of doing things. He also suggested creating frontline incentive programs for companies and others, such as cash breaks and rebates, to encourage investment. "There is lots of work to get the creative side of the system working with and for you," he said. As an example, he described how successful partnerships were created with the forestry and technology sector in British Columbia through a government-funded program. Aboriginal workers who signed onto a forestry program received a technology diploma as part of their work. The partnership involved government, environmental groups, and tribal groups, as well as groups concerned with resource sustainability. "Lots of people want to do it," he remarked, but "it comes down to the money issue." He suggested moving beyond forestry practices and looking into forming relationships from the perspective of community development. The broader community needs to be engaged in solving economic problems and advancing economic development.

Co-jurisdiction and Co-management

Workshop E—Recommendation 2.4.63 Redistribution of Forestry Tenures in BC

Speaker: Mickey Werstuik, Councillor, Westbank First Nation

Moderator: Lorraine Rekmans, Executive Director, NAFA

Recommendation 2.4.63 dealt with the reallocation of commercial fishing quotas to Aboriginal people.

Hoping to draw parallels between fish and forest resources, NAFA is discussing the impact of redistributing forest tenures in British Columbia.

Mickey Werstuik spoke about Westbank's forest tenures and the situation in the B.C. logging industry.

In 1999, he said, the B.C. government informed the Westbank First Nation that no more forest tenures were being allocated because there was no more room. Unwilling to accept such a decision about land that was their traditional territory, Westbank began an unauthorized cut. The government changed its policy and, in 2003, negotiated tenure agreements and various other agreements and opportunities relating to forests, ranges, and such issues as the mountain pine beetle to involve First Nations in forestry. It also legislated the Forest Revitalization Act.

The Act, said Werstuik, reallocated 20% of current tenures from licensees to First Nations and community forests. The forest and range agreements gave "full accommodation" and 30 to 35 cubic metres of harvest to each individual.

The Act infuriated First Nations for several reasons: they were not consulted; the 20% claw-back on current tenures that was to be reallocated to First Nations only applied to larger tenures; and licensees were compensated for the claw-back.

The forest and range agreements also angered the First Nations, Werstuik explained. The promise of "full accommodation" was not fulfilled; the harvest quota for each individual was based on data from the 2001 census, which had become outdated; the government's "take it or leave it" attitude was offensive; and tenures were limited to a five-year term—insufficient time to pay for the expensive machinery needed to work the tenure.

There were, of course, other factors to consider. A major question, said Werstuik, is "Is tenure an opportunity or a liability?"

Once a tenure is allocated, the individual holding it has to find the area, consult with industry, and go find the wood. Westbank estimated it could take as long as 18 months for a tenure to be operational—in which time the market might change, for better or for worse. Then there is the

problem of the mountain pine beetle, which has ravaged 9.2 million hectares—or 582 million cubic feet—of B.C.’s forests to date. “If you cut as fast as you can, you can’t catch up!” Werstuik said. The market, flooded with “beetle” wood, has taken a nosedive. The beetle is dictating the species being logged (pine, to slow the spread), yet the financial return on inferior timber is low. Once a tenure has been allocated, it must be developed and maintained for 15 years, which means replanting two years after logging. Unfortunately, the beetle is not sympathetic to the vulnerability of saplings and has devastated replantations.

The B.C. government is eager to obtain as much revenue as possible from stumpage fees, said Werstuik, so it has offered little relief. It is happy as long as the timber keeps coming in.

All in all, “It’s not as rosy as people would like to paint it,” Werstuik said. “For me, there are only two people I can market to, so they pretty much dictate the price.”

Since 2002, there have been 120 agreements with First Nations. Revenue sharing has returned \$158 million to First Nations (although with its own share standing at \$470 million, the government is proving that tenure is an opportunity, not a loss, at least from its own perspective). Altogether, 23.5 million cubic metres of harvest over five years is in the hands of First Nations, though Werstuik could not confirm whether it was all operational.

What are the solutions? Werstuik outlined several possibilities:

- Instead of negotiating individually, unite the 200 bands in BC to form an organization like the Council of Forest Industries would create a formidable force.
- Apply economies of scale, for example, amalgamating tenures.
- Look at the possibilities of the US market for some creative ideas.
- Consider a revenue-sharing arrangement. The B.C. government is collecting a fortune in stumpage fees; sharing revenue with First Nations would better distribute the wealth.
- Prepare an exit strategy. Werstuik advised against planning to still be an industrial logger in five years. There will be forest work all over British Columbia because of the pine beetle. He suggested learning and adapting to future needs.
- Examine the possibilities of non-timber forest products and niche markets, such as medicinal plants.
- Explore silviculture. Werstuik said he believes that 40% of the Westbank tenure will be affected by the pine beetle. If the tenure cannot be used for timber production, it must be used for something else.

Questions and Discussion

A participant whose band found itself in a similar position asked how Westbank had marketed its unauthorized cut. Werstuik replied that the wood had been left on the ground until a solution was found. Any buyer would have been penalized because it was considered stolen wood, so there was no market for it. It sat on the ground for almost a year.

Somebody asked if tenures are based on volume. Werstuik replied that most are but Westbank’s is not.

Another participant asked what Westbank's plan is for after its five-year tenure expires. Werstuik replied that Westbank is in a different situation than most because it was first out of the block. Its tenure is based on area (46,000 hectares), and while it does have a five-year term, with a reassessment the licence can be extended for up to 99 years. Westbank's main objective is to get that extension. So far, the indications from the Province are that it will be forthcoming.

A participant asked whether Westbank obtained its tenure because of the pine beetle or the RCAP. Werstuik said that if the Province does not make an agreement, the wood stands there and no stumpage fee is paid. He stressed that agreements have to benefit everyone.

A participant asked about Werstuik's position on accommodation. He answered that in British Columbia, accommodation will not be achieved until all land claims and similar issues are settled. Westbank, he said, has adopted a strategy of "picking off" each Ministry, saying, "If you want to accommodate, this is what we expect. Just because you have given us a partial accommodation on forestry does not mean you are off the hook." The forest and range agreements are considered to be partial accommodation.

Somebody asked if Westbank had a revenue-sharing formula on its area-based tenure. Werstuik said no, because the tenure had been negotiated very early on. Another member asked for Werstuik's opinion on revenue sharing. He replied that it would be more sustainable and more certain than volume-based revenue because it is possible to estimate population. Instead of searching for volume, which involves banking on the timber itself, he advised pushing for more of those opportunities.

Somebody asked if both on- and off-reserve individuals were taken into consideration in revenue sharing. Werstuik answered that the 2001 Census considers both on- and off-reserve individuals. However, he pointed out, since Westbank has had a 10% increase in population since that date, the data is now seriously flawed.

Workshop F—Recommendation 2.4.72 Devolution of Trapline Management

Speaker: Allan Dokis, Intergovernmental Affairs Director, Union of Ontario Indians (UOI)
Moderator: Dennis Simon, Director NAFA

Recommendation 2.4.72 deals with the devolution of trapline management.

Dokis provided a brief overview of the Anishinabek Nation Trapping Agreement. He spoke of it in the context of larger objectives, with a focus on the operation of the program.

In 1994, the Anishinabek Nation passed a resolution to pursue an agenda of re-assuming responsibility for trapline management. Although theirs was a relatively simple arrangement, it took 11 years of discussion and negotiation until an agreement was signed in 2005. This timeline shows, said Dokis, that it is important for Aboriginal people “to start working on the ground and learning from on-the-ground examples” to facilitate future natural resource management agreements.

The guiding principles of the discussions, said Dokis, were respect for culture and the harmonization of the UOI and the Ministry systems of furbearer management. Because the arrangement is essentially one of co-management, there is a need for respect and for blending different perspectives.

The agreement addresses the administration and management of furbearing resources, with the goal of allowing Aboriginal peoples to reclaim some trapping activities that have been closed to them.

In response to a question concerning what happens when tourism involving hunting or fishing overlaps the Aboriginal area, Dokis said that such a situation is one of competing interests. The agreement itself deals primarily with the issue of transferring a line back to a family.

The agreement sets the stage for collaborative work, respecting Aboriginal rights and values and a shared interest in ecological sustainability and the conservation of resources. It is really a blending of realities, recognizing the need to consider different perspectives. The Chief is responsive to the direction that has been taken, Dokis said

It is the responsibility of the UOI to issue licences to the trappers in its communities. It also sends information to trappers reflecting the shared views of the union members. The member groups share access to information management systems, with separate agreements regarding respect and privacy. This sharing has created a need to develop internal protocols around personal information.

Questions and Discussion

In response to a question about the potential for different interpretations in different offices, Dokis said that these occur less frequently with trapping than with fishing. The questioner

described a problem that had arisen in White Sands; Dokis said he was aware of that issue, but noted the excellent work that is coming from the Peterborough office. Because the intent of the agreement is to promote trapping as a cultural activity, he is against imposing many restrictions. Discussion ensued around the Peterborough office and the need for efficient practices.

Regarding whether the quota system will be a problem, Dokis said that, since the quota system exists, it will be necessary to work with trappers to address quotas, and there is a mechanism in place to deal with these issues.

Several participants commented that the condition of proving “significant traditional family connection with the trapline” is extremely difficult to satisfy, given that Aboriginal peoples have trapped all over the country. They said the wording was subject to broad interpretation and effectively dissolved the rights of Aboriginal peoples. While recognizing this, Dokis commented that the agreement recognizes Aboriginal rights by allowing those who satisfy the requirement the right of first refusal when a trapline becomes available. He said that when disagreements arise, it was his organization’s responsibility to resolve them.

Among the issues still to be resolved are a transfer policy involving the allocation of registered Crown land, a data-sharing protocol, and guidelines for establishing fair market price.

The UOI can issue licences to a member of the Anishinabek Nation trapping in Ontario on a Ministry of Natural Resources registered trapline, or to one who is trapping on First Nations reserve land (with the permission of the First Nation).

To participate fully in the formation of an agreement, First Nations often need support for the negotiation process. This led to discussion of the importance of capacity building; communities should plan for the future and increase their experience and expertise in small steps, so, for example, at the end of a five-year agreement they will be ready for the next step, or so they will eventually be ready for co-management.

One participant commented that, by their actions, INAC “helped us to death;” he expressed a wish for governments to “do the right thing” for Aboriginal trappers. He maintained that if people in government and industry “don’t want to talk about trapping,” they have “no damn business talking about forestry.” The “white people have taken over” through the Fur Institute of Canada, he said, and have implemented the International Agreement on Humane Trapping, into which Aboriginal people had no input. He described problems with the trapping agreements discussed, and asked if they could be re-opened before the projected termination date. Dokis replied that these agreements could be the mechanism Aboriginal peoples use to ensure their involvement in international agreements.

Dokis said that the Anishinabek Nation Trapping Agreement is not perfect, but is an example of why Aboriginal people need “to get out and start doing things.” He emphasized the importance of learning and of asking the tough questions, stressing that people learn through involvement.

Co-jurisdiction, Co-management and Economic Development

Workshop G—Recommendation 2.4.78 Co-management Arrangements

Speaker: Rose Kushniruk, Champagne and Aishihik First Nations (CAFN)

Moderator: Chad Kicknosway, NAFA

Rose Kushniruk explained that the Yukon contains 14 traditional territories. About 1,100 people live in Kushniruk's traditional territory.

The concept of co-management goes back to long ago when the Native people of the Yukon worked together to manage the land, said Kushniruk. Co-management is an ongoing process, she emphasized, saying that the "glue" holding it together is "trust, spirit, intent, and the wish to work together."

Forest management planning in the Yukon began in 1996, arising from community concerns about the spruce beetle. However, the establishment of jurisdictions and co-management began with the land claim agreements. Negotiations on these claims started in 1973 and lasted 20 years. The final agreements, which are constitutionally entrenched, comprise three parts: a final land claim agreement, a self-government agreement, and an implementation plan.

The CAFN has about 1,400 members throughout the Yukon and Alaska. In 1993 it signed a final agreement, which came into effect in 1995. It protects and recognizes the right of Aboriginal people to harvest, trap, and use the land and its resources. It also recognizes their right to self-government, and guarantees their participation in the management of land and resources.

Self-government enables self-sufficiency and "enables us to make our own laws on our own land," said Kushniruk. The implementation agreement sets out how the work will be done. The claim settlement was about \$28 million. The opportunities arising from the agreements are key, Kushniruk explained: "It's been 12 years and we are really just beginning."

There are three governing bodies in the Yukon: Yukon First Nations (YFN), the Yukon territorial government (YTG), and the federal government. Federal jurisdiction is minimal, as the management of forestry, land, and minerals were devolved to the YTG in the final agreements.

In the CAFN traditional territory, Kushniruk explained, both the YTG and CAFN govern over forest management. In addition, many boards, committees, and councils have been established for joint management, such as the Yukon Fish and Wildlife Management Board, the Salmon Subcommittee, and the Alsek Renewable Resource Council (ARRC).

Although the CAFN Final Agreement mandates that CAFN and the YTG may develop forest resources management plans independently for their respective lands, the two chose to carry out planning jointly and to use the ARRC to coordinate the process.

The ARRC is made up of CAFN and YTG members who are local people. It makes recommendations to both governing bodies on issues relating to fish, wildlife, and forestry within the traditional territory. Most important, it represents local people and ensures they understand and are a part of the fish, wildlife, and forestry processes.

In 1998, CAFN, the YTG, and the Department of Indian Affairs and Northern Development, signed a letter of understanding agreeing to cooperate on an integrated plan. (ARRC was also a signatory.) In 2004, the CAFN, YTG, and ARRC signed the first Strategic Forest Management Plan in the Yukon Territory. The Plan envisioned a “model forest” that included bio-energy and carbon management, and featured Aboriginal participation as well as partnerships and activities with the forestry industry.

Kushniruk said that co-management requires educating everyone and reaching the common ground amid many different views. It requires incorporating diverse beliefs and values as well as traditional, scientific, and local knowledge into one plan. “Buy-in by all” is necessary, since every part of the co-management process complements every other part. In the CAFN traditional territory, success came from holding many community meetings, both “in the bush and in the boardroom”; from engaging the youth; and from ensuring local people felt empowered.

Before deciding to embark on a co-management project, said Kushniruk, First Nations people must be prepared to be the “champions” of the process—otherwise, “someone else will be.” They must also educate themselves as well as the YTG staff. “You have to carry your traditional teachings and ways, yet advance and understand modern ways,” advised Kushniruk, adding that trust, spirit, and intent are key.

Kushniruk said planning partners in the Yukon have developed a strong, positive working relationship and a cooperative, community-driven approach. The co-management experience has been shown to be positive.

Questions and Discussion

Kushniruk said co-management is a must for the future, since people cannot go back to the past. However, she emphasized embracing the knowledge of the Elders and respecting traditional knowledge as the backbone of the process. All First Nations groups in the Yukon have ratified their land claim agreements, she noted. Rather than reinventing the wheel, different groups share their experiences and help each other in their forest management planning.

To deal with the stress that management can place on capacity in a community, she made several suggestions: defining the scope of what is being managed, prioritizing tasks, improving the structuring of working groups, ensuring a core group of individuals to oversee the plan, and keeping everyone informed.

She stressed that the most important aspects are the people, and the trust, empowerment, and relationships that are developed over time. Making people aware of forestry and the positive changes taking place also requires a great deal of education, many community meetings, and the

elimination of false beliefs. The opportunities are there, Kushniruk concluded, for forestry management as well as for broader economic development; the challenge is to help the community accept change and focus on maximizing these opportunities.

Workshop H—Recommendation 2.4.60 National Park Management

Speaker: Rob Prosper, Director Aboriginal Affairs Secretariat, Parks Canada

Moderator: Harry Bombay, Director, Strategic Initiatives, NAFA

Recommendation 2.4.60 dealt with amending the National Parks Act to permit traditional Aboriginal activity in national parks.

The moderator, Harry Bombay, commented that the government agenda appears to provide for a significant growth in the quantity of protected lands, resulting in more contentious relations between it and Aboriginal peoples. This is, therefore, an area that needs to be focussed on. He introduced the speaker for the workshop, Rob Prosper, Director, Aboriginal Affairs Secretariat, Parks Canada.

Parks Canada, said Prosper, will be truly representative of Canada when national parks are established in each of the country's 39 natural regions and marine conservation areas. The Department will be relevant to Canadians when it offers them an opportunity to "enjoy heritage experiences," and demonstrates that it has maintained or improved the ecological integrity of the parks.

The first Canadian national park, at Banff, was established in 1885, and parks are still being established today, Prosper said. The mentality behind how and why parks are created has changed, however. Initially, they were established to provide development in an area of wilderness; now, they are managed, protected areas in a sea of development. Using slides, Prosper presented examples of Canada's wide range of parks.

Parks Canada is a decentralized government agency, he explained, with the executive level in the parks themselves—therefore accountability is at the field-unit level. Most negotiations with First Nations occur with the Chief and Council. Parks Canada has a different orientation from other government departments, in that the work within the community is done first, then the Minister of the Environment signs agreements.

One aspect of Parks Canada's management plan is "to add an Aboriginal voice to the management of the parks," said Prosper. In 2003, it established the goals of enhancing relationships with Aboriginal communities, encouraging economic partnerships, and enhancing employment opportunities for Aboriginal peoples. It also sought to increase the presentation and interpretation of Aboriginal heritage and to commemorate new National Historic sites focused on Aboriginal history. This last item is significant because very few of the approximately 180 historic sites currently identified in Canada are concerned with Aboriginal history.

In 2005, among the recommendations that came from the Parks Canada Minister's Roundtable were five that dealt with issues directly related to Aboriginal people:

- Recommendation 7—Holistic and Traditional Approach
- Recommendation 8—Traditional Language and Knowledge

- Recommendation 9—Indigenous Leadership
- Recommendation 14—Spirituality
- Recommendation 15—Enriching the Visitor Experience

The Parks Canada Corporate Plan (2005–2006), which is the instrument that guides the agency, recognizes the same items identified at the Roundtable: “The inextricable link between National Parks and Aboriginal peoples is now woven into the fabric of the Agency.”

Prosper outlined four types of relationships between Parks Canada and Aboriginal peoples:

- Parks that have been established through a claims process have the most formal relationship.
- Areas where a claim is pending operate in the spirit of the claim.
- Some parks that were created many years ago have voluntary, interest-based Aboriginal advisory groups.
- Some parks have relationships based around particular issues.

Prosper provided examples of each of these different relationships, and discussed the Cultural Advisory Committee, which represents a wide variety of Aboriginal groups and focuses on the ceremonial and spiritual nature of the parks.

A participant asked whether Aboriginal peoples had lost interest in working with Parks Canada because of difficulties encountered with the Parks group in Jasper. Prosper responded that Jasper is in the process of developing a relationship with Aboriginal peoples in its area.

Prosper provided several examples of working relationships: Over the course of a three-year project, Aboriginal peoples have assumed a greater role in the culling of hyper-abundant species. In the Fire Management Program, parks are using fire to bring the ecosystem back into proportion. In Jasper, a project is underway to work on forestry management by reinstating fire ceremonies.

Prosper described the Aboriginal Consultation Committee, which consists of twelve Elders from across Canada and meets directly with the Minister four times a year. The committee advises the Chief Executive Officer on Aboriginal issues of national concern, such as the development of a Parks Canada Traditional Knowledge strategy and the Harvest for Traditional and Ceremonial Purposes.

Questions and Discussion

In response to a question concerning the selection of members of the Cultural Advisory Committee, Prosper said that it is an advisory body that serves on a voluntary basis in some parks. In more formal settings, the First Nations community identifies individuals. The Aboriginal Consultation Committee, he added, consists of Elders recommended by field managers. They do not actually represent a particular group, but an area of the country.

One participant asked whether Parks Canada *really* consulted, and why she might be interested in becoming involved. Prosper replied that the definition of consultation varied even among federal departments, and that currently a government-wide strategy is being developed. Parks Canada is probably among the more advanced federal government areas in terms of the consultation process and co-management.

Another participant told of a successful community hunt that takes place every two years. Staff closes off an area of the park to accommodate this event. Last year, the media became aware of it and there was a great hue and cry. He said that the community's right to this hunt is enshrined in the Constitution, and he hoped that it would be able to continue.

A participant said that despite repeated questions, he has been given no answer as to why hunting in parks is no longer allowed. Prosper replied that established rights were protected, while "unestablished" ones were not.

Referring to his experience with consultation, a participant said that it was still a rocky road, but that Parks Canada appears to be beginning a better process. Prosper commented that this was true, as well, in the development of a traditional knowledge strategy.

One participant said Parks Canada is using land claims as a barrier to accessing land. He said that Parks Canada must address the ecological and social issues of Aboriginal peoples. Prosper responded that this was an excellent observation. Parks Canada wants to provide an ecological opportunity, he said, but is not very good at it. He said that these are exactly the types of areas that it wants to explore—that it is important to create traditional cultural experiences involving Aboriginal peoples. Currently there is not enough capacity to do this effectively, but discussions can occur.

To a question as to why Parks Canada is slow in developing projects on species at risk, Prosper responded that it was not his area. He commented that traditional knowledge strategies would be developed in consultation with Aboriginal peoples and that these will come to bear on the operation of parks.

Referring to the National Maritime Conservation Area in Lake Superior where Aboriginal peoples would be able to carry on traditional activities, one participant asked why Parks Canada was so reluctant to enter into co-management. He questioned why Canada could not have the same sort of partnership that Australia has with its indigenous people. Prosper responded that there are statutory barriers in Canada. However, he said, Canada is serious about developing co-operative management.

Workshop I—Recommendation 2.5.12 Promoting Aboriginal Resource Based Economic Development

Speaker: David Henley, Acting Director General, Economic Development, Indian and Northern Affairs Canada (INAC)

Moderator: Lorraine Rekmans, Executive Director, NAFA

Recommendation 2.5.12 dealt with federal and provincial roles in promoting economic development by recognizing that lands and resources are a major factor in enabling communities to become self-reliant.

Rekmans welcomed David Henley, Acting Director General for Economic Development at INAC. Henley said the administrative and technical skills required to work with lands and resources are becoming increasingly complex; in this context, skills development is becoming more important. A community that wants control of its resources cannot rely exclusively on outside resources to achieve its goals. The key is mastering the skills needed to manage resources. It is also important to engage the private sector, and to be willing to employ a strategy of engagement. Economic markets indicate that Canada's resource sector is going to have explosive growth; Aboriginal engagement in the opportunities this growth will create is critically important.

The Government of Canada has recently reaffirmed its commitment to First Nations economic development through land and resources by making more lands available to more First Nations. In addition, funding has been provided to a variety of First Nations through partnership agreements and business development through economic development programs at INAC.

Henley provided several examples of forestry-specific First Nations business development success stories from British Columbia, Ontario, and Quebec. The economic development projects he described have generated millions of dollars a year in economic activity. In the case of the Quebec project, for example, 65 full-time jobs were created.

Henley said that one challenge INAC faces with economic development for First Nations is that it is very "leadership-centric," or dependent on minister and deputy minister commitments. Henley pointed out, however, that the current minister and deputy minister are committed to economic development.

Since the release of the RCAP report, progress has been made on the recommendations. However, there is still a lot of work to be done; Henley commented, "The progress made would have been better received if it had occurred at a better pace."

Henley said that tough decisions must be made about how people are going to position themselves in the economy: "People must be prepared to invest their human potential to obtain the skills necessary to participate meaningfully in the economy, and learn about the industry and market at play. Economic engagement is not a passive activity. It requires an infrastructure of committed individuals. We cannot sit back quietly and expect it to happen; it can only happen

when communities can see the opportunity and take action. The private sector is coming to the table.”

Questions and Discussion

A participant asked whether programming is being adjusted to adapt to changes in the industrial climate that have occurred over the past 10 years. Henley responded that there is not enough contribution money available to change economic development. Things need to be done differently, he said. For example, INAC is talking with banks and venture capital lenders, recognizing that if more capital could be freed up through different avenues, there could be ten or twenty times what is available now. Historically, focus has been on programs; now, other possibilities must be opened up, private capital must become interested in ethical investing in First Nations communities.

Participants asked if leveraging smaller amounts of INAC dollars is the way of the future, and how government could provide seed money for industries and First Nations to develop co-ownership arrangements and resource-sharing opportunities. Henley responded that INAC dollars need to be married with private capital. He said it was necessary to bring the right tools to the table so that the private sector could have somewhat of an ownership role, and advised listening to CEOs involved in economic development to gain an understanding of where they see the demand. Henley pointed out that a program developed today might not be effective five years from now; it is a challenge for government to be responsive and nimble.

Several participants mentioned that the government is being left out of community negotiations with industry. Concern was expressed over potential pitfalls, and the question was asked as to what the government’s responsibility is in facilitating and enabling First Nations interests.

Henley responded that when it comes to economic development, he was “not certain that we always have to be concerned about what First Nations are going to decide. First Nations are moving ahead faster with this than bureaucrats may think.”

A participant pointed out that INAC could be a partner in helping First Nations with the process of business development beyond the Community Economic Development Officer (CEDO) program. The participant said that the CEDO program provisions are very basic, providing no money to work with or even to pay the cost of a person in the office, adding that loan guarantees and interest-free loans would help resource-based businesses.

Henley said that INAC intends to obtain more money for skill development. He agreed that when it comes to big projects, the department cannot respond. INAC needs to go back to find resources in the federal system or see what it can lever with the private sector, where investors may want 50% or 30% ownership. INAC is also examining the possibility of loan guarantees.

Other incentives available to industry include tax breaks and capital appreciation. The task is to create something on First Nations land, owned by First Nations, and to make it a hot commodity that stimulates industry interest.

Regarding ethical investing and green technology, Henley cited the example of a wind farm project in Saskatchewan that is being developed by a First Nations community, working directly with the turbine manufacturers. He also mentioned that there is a Green fund managed by NRCan.

Henley said analysis is needed to show how investments in specific First Nations economic activities have resulted in an economic return for Canada. He suggested that this type of analysis, which is the kind Ministers are looking for, could be done well by the Conference Board of Canada, for example. With international aid, analysts examine how the funds invested leverage opportunities and affect the economy across Canada; a similar approach could be taken with First Nations economic development: “It’s really about investment versus costs; and we tend to look at the costs rather than the impact and payback. It sells better to talk about investments.”

A participant recommended that reporting back should be based on projects *as well as* on activities. For example, an inventory of “programs in progress” would provide a better picture on “outcomes,” than simply reporting on “activities.”

Another participant raised the issue of procurement for minority suppliers. He said that First Nations are not positioned to respond well to this issue, and that more of an effort needs to be made to ensure that departments are required to purchase from minority suppliers.

Henley pointed out that the United States has a legislated procurement policy that is very active, and suggested that this approach is something Canada needs to look at. Nonetheless, he remarked, approximately 10% of \$350 million worth of business was set aside for Aboriginal business last year, and there are also huge opportunities for Aboriginal businesses to supply goods and services to the private sector.

Lorraine Rekmans thanked Henley very much for his contribution to the conference, and thanked the participants for their dialogue.

Workshop J—Recommendation 2.5.9 Benefit Agreements

Speaker: Robert Stanton, Department of Natural Resources, New Brunswick

Moderator: Mark Kepkay, National Forest Strategy Theme 3 Coordinator, NAFA

Recommendation 2.5.9 suggests that governments enter into arrangements that will provide preferential training and employment opportunities and preferred access to supply contracts.

Stanton discussed the benefit-sharing model being used in New Brunswick, in which the province has entered into harvesting agreements with First Nations communities. Through these agreements, the Province collects about \$3 million in Crown royalties and distributes them to First Nations.

At present, there are 10 timber licenses in New Brunswick. From 1980 to 1998, the total annual cut has been allocated to these 10 licensees and their sub-licensees. In 1998, the province withdrew some of that allocation and used it to develop the First Nations harvest agreements.

The harvesting agreements were a response to the Thomas Peter Paul case in 1997, which resulted in the right to commercial harvest for First Nations. Ultimately, this ruling was overturned; but during the months before that final decision, the provincial government tried to work out an agreement with the 15 First Nations in New Brunswick. Once the decision was overturned and the Supreme Court had denied an appeal, the government offered economic development agreements to those 15 First Nations. In 1998, a one-year agreement with the Maliseet Nation at Tobique was the first of the harvesting agreements. Over the next four years, agreements were made with various communities.

In 2002, all 15 communities signed on to five-year agreements that would run to March 2007. (Licensees in New Brunswick have a 25-year license, but must update their licenses every five years. At each five-year renewal, the licenses become 25-year licenses again, for a perpetual agreement.)

Stanton said that it is not mandatory to take First Nations knowledge into account when establishing the licenses, but that the Province is hoping to enter into a new relationship with First Nations that includes a process for more First Nations input into harvesting agreements, allocations, cutting blocks, and other management issues.

Stanton discussed the following issues in relation to the agreements:

- *Preferred training and employment opportunities*—This element is included in the agreements as recommended under RCAP.
- *Preferred access to supply contracts*—Licensees manage Crown land under contract with the Province, which oversees the process.
- *Respect for traditional uses of territories*—The Province has tried to uphold this principle but is finding it challenging to get First Nations involved in bringing traditional knowledge into the planning process.

- *Acceptance of Aboriginal environmental standards*—The Province is “just starting down this road”; currently, the harvesting management plans are not subject to environmental impact assessments.
- *Better block selection*—The Province hopes to improve First Nations block selection with the five-year planning cycle.
- *Opportunity for involvement in planning*—Not many communities are taking this opportunity yet, but the province must find a way to address this issue as part of capacity-building efforts.
- *Agreements without prejudice*—The agreements currently in place are without prejudice.

Stanton explained that First Nations currently receive 4.4% of the annual allocation cut (235,000 cubic metres out of a total 5.37 million cubic metres). This includes 5.3% of the softwood annual allocation cut and 2.7% of the hardwood annual allocation cut. The calculation of this amount was based on population, taking into consideration what would be needed to provide meaningful employment, opportunities and royalties for the communities. Allocations are prorated among communities based on their population.

The group discussed the problems some communities have in cutting their allocations by the end of the five-year term because they do not have the necessary capacity (uncut allocations may not be carried over to the next term). Stanton explained that the government is trying to ensure a consistent balance of supply and demand: this is why allocations cannot be carried over. He added that some communities cut their allocations very quickly. If communities cooperated, they could increase Aboriginal employment overall.

He concluded with a summary of the strengths of these agreements, which provide \$17 million in economic spin-offs and \$2.9 million in revenue for the communities. They also provide employment for community members and help build positive relationships between the Province and the First Nations.

He also listed some improvements needed in the agreements:

- A planning process that incorporates traditional ecological knowledge
- Better block selection (access and quality)
- Employment for more community members
- More training for coordinators
- Training and opportunities in silviculture
- Certification and training
- A management plan for domestic-use wood

Questions and Discussion

Asked about solutions to the challenges he had listed, Stanton agreed that a provincial Aboriginal forestry commission could help with forest allocation issues—but said that it is up to First Nations to decide how they want to handle this issue. The funding for such an organization could potentially be found, but the question remains of how it would organize itself: Would it report to one person representing all 15 First Nations, or to one representative for each community?

Another participant asked if it would be worthwhile to have a sawmill just for Aboriginal timber in New Brunswick. Stanton said that at least two communities are looking at the prospect of buying a sawmill and encouraging First Nations to send their allocations to it. This could work if enough communities agreed to ship their wood to that mill.

A participant commented that the benefit-sharing model in New Brunswick is interesting, but it has locked communities into the industry model: they are small contractors for larger industry players. He asked about the possibility of moving to an area-based agreement rather than a volume-based agreement. Stanton said that this idea had been raised and the government had expressed interest. It is a question of ensuring that all communities want it, and then finding a block of land that is sufficient, centrally located, and able to provide employment for all 15 communities.

Asked about the long-term supply of wood for harvesting, Stanton said it was predicted in 1980 that New Brunswick would be “tight for wood” until 2020 or 2025. It is hoped that with reforestation and silviculture work, the allocation will be sustainable until then.

One issue discussed by the group was the practice of subcontracting the harvest of wood for domestic use. Currently, the requirement is that all the services must be provided by Aboriginal people. But some communities do not have the capacity to meet this requirement themselves and have to recruit Aboriginal services from far away. Stanton said that the government would need to discuss this issue carefully with communities to determine how to accommodate this right without allowing it to be sold.

Asked if there were any other ways that communities could have a say in the planning process, Stanton said that they could bring issues to the Ministry of Natural Resources, which would take the issues forward.

DAY TWO

Trends and Transitions in the Forest Sector

Moderator: Harry Bombay, Director, Strategic Initiatives, NAFA

**Panellists: Dr. David Natcher, Memorial University
Marta Morgan, Forest Products Association of Canada
Jim Farrell, Canadian Forest Service
Augusta Molnar, Rights and Resources Initiative**

Devolution or Decentralization? Some Emerging Trends in Aboriginal Resource Management

Dr. David Natcher

Natcher began by defining devolution as the transfer of decision-making authority to lower levels of government, communities, or organizations. It is taking place in more than 60 countries. Nearly 80% of developing and transition countries in Eastern Europe and the former USSR are devolving their natural resources, he said.

In 24 developing countries, 246 million hectares are owned by indigenous and non-indigenous communities, and 131 million hectares of public forests are officially administered by indigenous and non-indigenous communities. That amounts to 22% of the forests in developing countries.

In Canada, 20 comprehensive land claim settlements have been signed since 1975. The James Bay and Northern Quebec agreement gave 81.5 square kilometres in settlement. The Nunatsiavut agreement in 2005 covers nearly 16,000 square kilometres of land. Comprehensive land claims now cover nearly 40% of Canada's landmass, excluding British Columbia.

Among the benefits of devolution, Natcher said, are efficient management that is cheaper than government administration; the alleviation of rural poverty; a reduction in the potential conflicts connected with exploitation; and a restructuring of Aboriginal and state relations.

However, government power and control is embedded in agreements. Authority is rarely transferred, and government bureaucratic procedures take precedence. Aboriginal people are not really empowered by devolution, and historical inequities are perpetuated. Also, although responsibility is devolved, that responsibility is often not accompanied by financial resources.

Natcher recommended that devolution agreements acknowledge and respect Aboriginal systems of management, support new forms of government, enhance Aboriginal rights to forest resources, and provide a clear environment for devolution to take place.

Natcher concluded by asking: Are advances in devolution creating empowerment and autonomy, or perpetuating the decentralization of a status quo?

Outlook for the Forest Products Industry

Marta Morgan

The forestry sector, said Morgan, employs more Aboriginal people—17,000—than any other industrial employer in Canada. Forest Products Association of Canada makes an effort to provide scholarship and training opportunities for young people, especially young Aboriginal people, since that is a growing demographic.

The industry is under pressure from tough new competition. In a short time, Canada has gone from being a low-cost producer to a high-cost producer. The market is changing and Canada, said Morgan, needs to change along with it. Exports to the United States from Canada have fallen, while those from Brazil, Russia, India, and China have increased. The industry, which was once comprised essentially of “islands” in North America, Asia, and Europe, is more global now. The flow across those regions is also increasing. Canadian wood and paper products, most of which are exported, have also been strongly affected by the rise of the Canadian dollar, which has gone up 40% in five years.

Pulp continues to be a strong product in Canada because demand from China has single-handedly kept prices reasonable. A steady decline in newspaper readership has resulted declining newsprint sales. Electronic technologies are beginning to affect other grades of paper in North America, so these may decline, too.

Canada has seen a 12% reduction in pulp and paper capacity since 2000. Nearly 8% of Canadian lumber capacity has closed, resulting in 16,000 direct job losses. However, the outlook remains generally strong for the market in pulp, paper and paperboard, and lumber.

Canada needs to bring down the cost of fibre, transport and energy, concluded Morgan. It must invest in capital stock. Companies must merge to create larger entities that can be competitive globally, and they must look at new products and technologies and new approaches to the labour force.

Canada's Forest Sector: A Canadian Council of Forest Ministers' View

Jim Farrell

The forest sector is in transition because of rising production costs, global demand and increasing competition, Farrell explained. The issues vary across the country—in British Columbia, for instance, the pine beetle is the main issue; in Alberta, the oil patch is creating competition for jobs.

The Canadian Council of Forest Ministers (CCFM) undertook a study of competitive issues in the industry. Among the key issues identified were human capital, research and development, new opportunities, and the management of public timberlands as an asset class.

Most employees in the forestry sector are aging, said Farrell. Although it was originally thought that job losses would counterbalance this trend, a significant gap is looming. Aboriginal people

play an important role in the current workforce; however, their jobs tend to be seasonal or at the lower end of the skill range. A sector council is being created to analyze the situation, forecast the skill sets needed for the future, and make recommendations to address those gaps.

Many of Canada's key forest products are in the mature or declining stage. Value added is not necessarily the solution. Some \$70 million are being invested in the next two years in a Canadian Wood Fibre Centre and in pre-competitive R&D to discover more products.

There is little growth in the market for traditional forest products. Canada must look at new markets, such as non-residential construction, especially in the States.

Under tenure agreements, Farrell suggested, holders should have more flexibility to get the right wood to the right mill at the right time.

Significant challenges and opportunities lie ahead. The forest products sector will be very different in the future, so work must be done now to ensure a sustainable, innovative, and prosperous future.

Global Trends in Forest Tenure: New Opportunities for Forest Livelihoods

Augusta Molnar

Molnar identified several trends, including the recognition of indigenous rights, the devolution of management to indigenous people, and privatization of public ownership, which involves restitution, sales, privatization, and leasing.

Tenure and trends are converging to give more space and a competitive advantage to small-scale enterprises that concentrate their growth in domestic markets, especially for culturally distinct products.

Worldwide, it is difficult to quantify the portion of GDP that comes from the forest sector, said Molnar, since most jobs are informal and are in small or medium-sized enterprises. Many workers are women, such as the thousands of carvers in Bali and India.

Where reform has taken place, enterprises and communities have rapidly organized around forests and markets. Bolivia, Brazil, China, and Mexico have experienced rapid change. In Mexico, production originally declined because enterprises were not prepared for the market. Now, they are producing more than before. Brazil and Bolivia implemented reforms in the 1990s. Their production has risen to 20% from almost zero. In China, industry has adapted such that millions of households now manage forests in collectives: fibreboard is supplied from 130,000 suppliers and farmers, each of whom has an individual buying contract.

Questions and Discussion

A participant asked about fair-trade markets. Molnar replied that fair-trade markets will expand because awareness among consumers is increasing, especially in Europe and in urban areas. The challenge is that a different set of investors, who are not as interested in and aware of fair-trade

issues, is entering the market, so its expansion, which has been fuelled in North America by awareness of fair-trade issues, will not work the same way across the world.

National Crisis Expert Panel

Moderator: Lorraine Rekmans, Executive Director, NAFA

**Panellists: Peggy Smith, Lakehead University
Harry Bombay, NAFA
Garry Merkel, Registered Professional Forester
Russell Diabo, Independent Consultant**

The panel members responded to as many questions and comments as time permitted.

Does NAFA have a community model for communities to follow?

Smith replied that it would be a mistake to promote only one model. NAFA highlights and promotes what individual communities have done, and NAFA reports contain case studies.

Merkel said that there could not be one model because each situation involves government, land, policy, building systems, and businesses, and each one is unique. It would be worthwhile, however, to cite examples of the successes that communities have had on certain aspects and that are worth sharing.

Diabo commented that most of the useful forests in Canada have been given up to forestry companies that do not take into account Aboriginal values or treaty rights. Until tenure is reformed, he said community models would be very restricted.

How much forest is owned by foreign investors?

Bombay said he thought the percentage is fairly small, because 90% of forests are publicly owned. However, those public lands are leased to companies for exploitation—so, while the *land* is not being privatized, the *resource* is. Most of the forestry companies operating in Canada are foreign-owned. There are no longer rules that limit foreign investment. “NAFTA guarantees foreign access to our resources,” he said. “I think under that agreement, we lost control of our resource.”

The link between transformers and management is typical of forestry in Canada. How can these community models be developed?

Smith said that forest companies see management as a cost; profits are made in production. She said she was concerned that if First Nations are involved in management but not production, they will end up absorbing all the costs but none of the ability to make money—that is the issue with devolution. First Nations should, therefore, develop production even though it involves obtaining capital and expertise to get mills running.

Merkel replied that First Nations are in a market in which they do not belong. They are losing money, liquidating resources, destroying the environment, and displacing communities—all to stay in it. “If we do not get out of this game, the world will do it for us,” he said. The sector has been transformed many times over the past years, and it needs to be transformed again.

Bombay commented that he would like to see a separation of the process because of international trade rules. One way of increasing the value of the product is by looking at timber sales. Tribes in the United States, for example, do not harvest a tree until it is actually sold.

Diabo mentioned that a Wisconsin tribe has been logging for over 100 years—it has control. However, in Canada, First Nations bump up against public and Crown lands. Communities have to take a fact-based approach, he said. Most communities have not looked at taking on governments using their historical rights.

Is NAFTA unconstitutional in the way it affects Aboriginal treaty rights?

Smith said that almost every piece of legislation, including NAFTA, could be deemed unconstitutional because governments have not consulted the way they should have.

Diabo said that such litigation would be very expensive. The Assembly of First Nations did not conduct a study for NAFTA—and if a national organization cannot, local ones certainly cannot.

Smith mentioned a quote that surfaced when NAFTA was on the table: “If you want to know what will happen to this country under free trade, look at what happened to First Nations when the Europeans arrived.”

NAFTA does violate treaty rights but the cost of litigation is so high, the issue should be kept as small as possible—one Nation with specific infringements. The Supreme Court of Canada is out of step with international law but there are other avenues that First Nations can explore for getting rights to their own land.

Bombay replied that NAFTA contains a mechanism for specialty groups to be heard and that First Nations should try to use it.

How can First Nations draw up their own land use and management plans so that governments can include them in theirs? Is there a way of obtaining funds to develop land plans for each community?

Diabo said that the Barrier Lake community had to create a blockade and cut off supply to the company to get government attention. Fifteen years later, the matter is still in litigation. Before going to the negotiating table, he suggested, bands should be prepared for what the other side can throw at them. He stressed that governments *are* vulnerable to pressure, citing the example of the Grand Council of the Crees and the Great Whale project.

Many communities are in similar situations to Barrier Lake, he added. Litigation is expensive and takes sustained, fact-based pressure.

Merkel said that building a land use plan is not a simple exercise. Political action, he added, works, although people are afraid of it. His band drew up a land use plan; two years later, the government is incorporating it into its plan. He said that the band is now in the same situation as if it had gone through litigation, but without having spent the money.

British Columbia took its land use plan for the Sea-to-Sky highway project to Cabinet. Cabinet refused to handle it because First Nations were not involved. Then one First Nation offered its land use plan, and over the past four months, the plans have been harmonized. It is a good news story.

Consultation is a big problem. Governments do not know how to do it, and First Nations have more than one way of consulting. Until consultation is standardized, there can be no forward movement.

Merkel agreed, but said there was more than just one process. His band was successful because it had done its homework. The government cannot do anything if a system is already in place. But in his experience, he said, it is very difficult to standardize processes across communities.

Smith replied that one nation in Ontario standardized a consultation process. The provincial government sent the process to its Justice department and it refused to go along. Governments do not want to lose control of negotiations, she said.

Participation in Forest Management

Workshop K—Recommendation 2.4.62 Policy Responses to Sparrow Decision (Supreme Court Decisions Impacting on Aboriginal Forestry)

**Speaker: David C. Nahwegahbow, LL.B., IPC Partner Nahwegahbow, Corbiere, Barristers
and Solicitors**

Moderator: Chad Kicknosway, NAFA

Recommendation 2.4.62 dealt specifically with the principles enunciated by Supreme Court of Canada in the Sparrow decision.

The workshop included discussion of a number of key legal decisions related to forestry that have been handed down since RCAP was released.

Nahwegahbow gave an assessment of the progress that has been made on RCAP land recommendations as they pertain to First Nations. He expressed ambivalence about the results of RCAP in this area, saying that while it has had an impact, it has not been as effective as it could have been. Policy-makers did not react directly to the recommendations by making policy changes—and they could have.

The RCAP study was thorough, reasoned, extensive, and logical; it stands on its own merit, which goes beyond its political profile. It has provided legitimacy and validated the concerns and arguments of Aboriginal peoples. One drawback is its complexity, which has prevented its message from getting out to the majority of non-Aboriginal people. “The majority of people will support you if they can understand your situation,” said Nahwegahbow. Other factors that have contributed to muting its impact include the complexity of the problems it addressed, the high cost of fixing those problems, an underlying colonial mentality and resistance to change in Canadian society at large, and a lack of political power and discipline on the part of Aboriginal people.

Focusing specifically on policy responses to the Sparrow decision, Nahwegahbow highlighted the challenge of the status quo and resistance to change. Canada’s natural resources are, for the most part, fully allocated, and it is very hard for Aboriginal people to get any share of those resources.

The Sparrow case was one of the most important decisions in the history of Aboriginal law. It was the first case to test the meaning of Section 35 of the Constitution Act, which gives constitutional recognition to “existing Aboriginal Treaty Rights.” One argument in Sparrow had to do with the term “existing.” The government claimed that “existing Aboriginal treaty rights” referred to the rights as they existed in 1982; the Court ruled that rights could only be extinguished if there was clear intent to do so. Thus, laws contravening Aboriginal treaty rights

could potentially be found to be unconstitutional. In addition, Aboriginal treaty rights have a constitutional status that gives them supremacy over federal and provincial law.

With regard to land rights, the Court said that Aboriginal rights have priority over legislation, ranking just after conservation. To justify any infringement on Aboriginal rights, the government would have to prove that there was a valid legislative objective to support that conduct or legislation. In addition, the conduct or legislation has to be in accord with Crown fiduciary duty. The Crown must prove that there was some consultation and possibly some compensation, and that Aboriginal rights were accorded priority.

The Court also said in the Sparrow decision that Section 35 was a sound constitutional basis for negotiations. But rather than negotiate, the government chose to respond to Sparrow in a very limited way. Overall, federal and provincial governments have not engaged in a purposeful policy renewal in response to either RCAP or Sparrow. Evidence of this can be seen in two recent New Brunswick decisions. In both the Sappier & Polchies case and the Gray case, Aboriginal people were prosecuted for the possession and cutting of wood for subsistence use without permits. In both cases, the Court agreed unanimously that the Aboriginal people did have the right to harvest for subsistence. The Crown argued about the specific way in which the wood was collected; but the Court said the harvesters did not have to justify every aspect of how they collected and used the wood.

Nahwegahbow suggested that the government would likely limit the application of these cases to the Atlantic Provinces, because it tends to try to restrict the interpretation of such decisions.

Proof of both the lack of government action and the way progress is made in response to court decisions can be found in the Haida decision. In this case, the B.C. government attempted to transfer forestry licenses without properly consulting the Haida. The Crown argued that there was no duty to consult because there was no proven fiduciary duty or Aboriginal title. (The Haida had launched an Aboriginal title action and were in the process of negotiations with the government.) The Court, said Nahwegahbow, found that there was a duty to consult and accommodate, even before Aboriginal title and right had been proven or settlement concluded. All that was required was “notice of a claim.” In addition, the Court said that Aboriginal people should be involved at the strategic planning level, not just the operational (annual) planning level.

The government responded to this decision much as it had responded to Sparrow: by developing disjointed, haphazard, unilateral policies. The most disturbing issue, said Nahwegahbow, is the government’s refusal to respect the highest law of the land—the Constitution—and the rule of law.

RCAP has not had a significant impact on government, he concluded; but it has had an impact on academics, lawyers, and judges. Aboriginal people are winning many cases, and are generally making progress in the courts.

Questions and Discussion

In response to a question about whether Aboriginal treaty rights would one day be interpreted to include commercial activity, Nahwegahbow said that the Court is reluctant to acknowledge commercial rights because it is difficult to regulate and set limits on these rights. Subsistence is a concept with built-in limitations, while commercial harvesting is potentially unlimited. First Nations, he suggested, must establish some limits through the management side of Aboriginal and/or treaty rights—they must establish not just the right to use, but the right to manage and set limits.

A participant asked about strategies to prevent the government from sticking to a narrow interpretation of court decisions. Nahwegahbow said that the Supreme Court is starting to fashion a structural injunction whereby the court (at the trial level) retains jurisdiction over a case until it is satisfied that the conditions of the ruling have been honoured.

Workshop L—Recommendation 2.5.13 Building Resource Management Capacity in Aboriginal Communities

Speaker: Mark Kepkay, National Forest Strategy Theme 3 Coordinator, NAFA

Recommendation 2.5.13 suggests that federal, provincial, and territorial governments provide financial and technical support to strengthen the capacity for Aboriginal institutions to manage Aboriginal lands and resources.

Mark Kepkay, National Forest Strategy Theme 3 Co-ordinator at NAFA, spoke about a joint project to develop a discussion paper on capacity building.

The RCAP recommendation, said Kepkay, was to put Aboriginal governments in the primary role and give them support to help build capacity. In 2005, Recommendation 7 from the National Round Table on the Environment and the Economy had a similar flavour. Yet, nine years later, major challenges in this area remain.

Theme 3 of the National Forest Strategy is the Rights and Participation of Aboriginal People. NAFA's response to the strategy focused in particular on Action Item 3.4, which focuses on consultation and funding toward capacity building, since NAFA was already involved in similar activities.

As champion of the theme, NAFA convened a consensus-based, multi-party working group. The group was made up of representatives from seven provinces, Indian and Northern Affairs Canada, the Canadian Forest Service, industry, academia, and Aboriginal organizations. Its objective was to discuss ways to promote capacity building.

Once the group had established a shared vision, Kepkay said, it had to define "capacity." The following definition was established: "*Capacity includes the broad abilities to design communal responses to environmental and natural resource management issues, seize the opportunity to improve community socio-economic conditions and develop strategies to protect and enhance the communities' traditional or contemporary interests at the Aboriginal community level.*"

From this base, individual resource components to draw on were identified: human, institutional, social, and natural capital, knowledge systems, culture, infrastructure, technology, and financial resources.

The working group decided to focus on capacity building at the community level, said Kepkay. He quoted Matthew Coon Come's statement about how the government felt that the people of Burnt Church were not "ready" to harvest lobster or manage the fisheries. In his eyes, "capacity building" is a politically correct way of saying "if you do things our way, register in our programs, do what we tell you, we'll consider a partnership with you." Capacity building must take a holistic approach, said Kepkay. At the same time that resources are being built and space made for institutional development, human resources, the role of

individuals, rental capacity (hiring consultants) and the brain drain from the community must also be considered.

The process works from the bottom up. First, the community must build on existing capacity, take responsibility, and lead the project. Capacity building is a community-specific, mutual learning process. Programs must be well designed, multi-year, flexible in their funding, culturally appropriate, and both transparent and accountable.

Kepkey outline the working group's recommendations:

- Establish funding for Aboriginal capacity building in the forest sector.
- Support community-level capacity building plans.
- Increase access to forest resources (create new types of tenure).
- Develop a framework to measure progress on efforts.

Three other recommendations are corollaries of the ones above:

- Develop education and training that responds to real opportunities.
- Clarify the roles and responsibilities of all the parties.
- Establish an advisory committee to champion these recommendations when they are finalized.

In the next months, the group will finalize its discussion papers and recommendations, and bring them to policy-makers.

In summary, said Kepkey, progress has been made on capacity since the RCAP report; the issue has grown in profile, and work is being done at the national level.

Questions and Discussion

A participant asked if communities should have a common goal or vision for a capacity- building plan. Kepkey agreed with this suggestion, saying that communities often do not know where to start.

Another participant suggested that the decision-making process should be structured so that there is an interface with external people. For instance, forest engineers are not necessarily culturally aware. For capacity building to be effective, *everybody* has to be educated.

Someone replied that while this is very important, the issue comes down to money, resources, and access. The tenure system is not going to be changed overnight and there is no new money to inject. What can communities do at their level to increase capacity?

A participant replied that part of his job was to develop the cultural aspect of a 20-year management plan for his organization. He realized that it was an opportunity for capacity building with the Algonquin, Mohawk, and work communities. His organization is now trying to bring summer employment to high school students. "It opens the door for a lot more funding opportunities when people see Aboriginals and non-Aboriginals working together," he remarked.

There are thousands of people out there who could be working on capacity. “The community must be willing to tear down that wall and run into bumps. It’s a learning curve.”

Somebody asked about in-kind support—whether the forest sector could exchange its knowledge for Aboriginal traditional knowledge. Kepkey said that the working group had seen an obvious link in this area but that there was some fear associated with the fact that it had been tried unsuccessfully. He described “goal displacement,” whereby if an individual or organization does not have its own clear goals it can easily get caught up in its sponsor’s goals.

One member said that this project was so much larger than a development plan that sits in a binder on a shelf. It must tie in with other planning as well as with a vision for the band so that people do not make the error of thinking the project is simply a binder.

Workshop M—Recommendation 2.5.20 International Trade and Aboriginal Producers

Speaker: Charles M. Gastle, of the law firm Bennet Gastle

Moderator: Bryan Brooks, Confederacy of Mainland Mi'kmaq

Recommendation 2.5.20 suggests that “international trade promotion agencies of the federal and provincial governments, in co-operation with Aboriginal producers and economic development institutions, actively seek out markets for Aboriginal goods and services abroad.”

The moderator quoted the recommendation under discussion, then introduced Gastle, as someone very involved with trade negotiations and who has experience with Aboriginal trade issues.

Gastle said the term “promotion” could be interpreted narrowly, meaning subsidies, or broadly, meaning something like “everything associated with the regulation of international trade.” For the purposes of his presentation, he used the broader interpretation. With respect to free trade agreements, he said that they did little to promote Aboriginal goods and services or to promote the integration of Aboriginal suppliers into the supply chain. He posed the question of whether the recommendation could be achieved through protecting Aboriginal Intellectual Property, and whether the issue was international trade or integration into Canadian business and society.

Before addressing these issues, said Gastle, it is important to understand Canada’s trade situation. Unlike the European Community, whose agreements are positive, Canadian trade agreements are based on “negative integration.” They seek to promote trade by removing barriers. Under the World Trade Organization, Canada has two basic obligations: “Favoured Nation Status” (FNS) means that if Canada gives a special deal to one country with FNS, it must give it to all. “National treatment” means that Canada must treat imports from nations with FNS as though they had been produced locally. Trade agreements deal with Aboriginal issues, Gastle explained, only through the protection of Aboriginal programs, such as government procurement and the agreement on services.

Under the North American Free Trade Agreement (NAFTA), Canada is obligated to provide the United States and Mexico with access to its government procurement activity. The only exceptions are “set-asides” for small minority businesses. Without these exclusions, minority businesses would have to compete on the same playing field as the two other trade partners and would eventually be overcome.

Chapter 11 of NAFTA protects foreign investment. If Canada were to expropriate a foreign business, that investor could sue the Canadian government for damages. A domestic investor has no such recourse. Annex 2 provides the right to deny foreign investors any rights or preferences provided to Aboriginal peoples. Under Chapter 12, Canada could adopt or maintain measures to deny service providers any rights provided to Aboriginal groups, such as local presence. Aboriginal programs would be protected.

Gastle expressed his view that Canada's Aboriginal people should be consulted on any trade agreements that can affect them.

The Canadian government maintains domestic policies that protect its Aboriginal peoples, such as the Protective Strategy for Aboriginal Business (PSAB). A drawback to this initiative is that Canadian Aboriginal products are excluded from the American "minority spend" programs. It would be possible to access these programs, however, through a joint venture with the American partner holding 51% or a U.S. presence through Jay Treaty rights. Canadian trade agreements protect Aboriginal programs yet do not integrate them into the American programs. Some people contend, said Gastle, that if Canadian Aboriginal programs were integrated, the U.S. ones would likely overwhelm them—and that it is more important to protect PSAB than to integrate Aboriginal products into the American market.

Although it would be possible to expand Aboriginal trade in renewable natural resources, provisions from the Convention on International Trade and Endangered Species (CITES) would serve as barriers. Further, exports of natural products to the United States are subject to a flat fee for an examination at the border. Because Aboriginal shipments are usually small, this cost could be prohibitive.

By protecting certain species without considering how abundant a particular category within a species could be, the American Marine Mammal Protection Act (MMPA) has a potential to prevent diversification in value-added products. There is, of course, an exemption for Alaskan Inuit, said Gastle, but not for Canadian Inuit. It is unlikely that the Canadian Inuit would support a legal complaint against this unprincipled impact, however, because there is a huge possibility that the American Inuit would lose access rather than the Canadian Inuit gain it.

Another area is the protection of Aboriginal knowledge and intellectual property, such as designs and music. Within the Aboriginal community, there are customary intellectual property laws regarding the use of songs in certain circumstances. Aboriginal peoples possess knowledge regarding natural resources in an area, and there is a question about whether this information should be available to everyone. Domestic protection is difficult because Aboriginal knowledge is intergenerational and collectively owned, but the World Intellectual Property Organization (WIPO) provides some assistance.

In summary, Gastle said that under NAFTA, Aboriginal products are excluded from U.S. "minority spend" programs while being protected by PSAB. The question is whether Canada's Aboriginal peoples would be able to find American partners to access the U.S. market. Similarly, would the Aboriginal peoples be overwhelmed by competition if the protections afforded under NAFTA and elsewhere were removed? Another issue is whether or not "international trade" in this context refers to trade with the United States, Canada's biggest trading partner. Regarding implementing the RCAP recommendation, Gastle said that Aboriginal peoples could look to Europe for promotional opportunities. He observed that perhaps the first step would be to integrate Aboriginal business into the Canadian economy.

Questions & Discussion

In response to a question about free trade agreements, Gastle recommended that an Aboriginal committee become involved in free trade discussions.

Asked whether the U.S. partner in a joint venture such as he described would have to be an American company, Gastle replied that it did.

One participant asked if there was anything in the area of softwood lumber for the Province to work with. Gastle said that U.S. groups are going after both Ontario and Quebec.

Workshop N—Recommendation 2.2.6 New Federal Treaty Process

Speaker: Russ Jones, Assistant Auditor General, Financial Audit, Provincial Auditor's Office, British Columbia

Moderator: Harry Bombay, NAFA

Recommendation 2.2.6 called for a new process for making new treaties to replace the existing comprehensive claims policy.

Jones first explained that treaties are needed because unreconciled Aboriginal rights and titles and assertion of the province's sovereignty have created great uncertainty surrounding the ownership and management of land and resources in British Columbia.

He presented a brief history of treaty negotiations in the province. The British Crown first recognized Aboriginal title in the east with the Royal Proclamation of 1763. Europeans began arriving in British Columbia in 1778, starting with Captain Cook. British Columbia joined Confederation in 1871, but ignored Aboriginal rights.

In 1973, First Nations used direct action to assert their rights in the Nisga'a court case (Calder vs. British Columbia). This was a major turning point. Uncertainty created by unsettled land claims was affecting the B.C. economy. Constitutional reform, court decisions, and continuing protests brought the Province to join the federal government at the Nisga'a negotiations. The B.C. Claims Force formed to develop a claims negotiation process, and in 1992 the B.C. Treaty Commission was established to facilitate widespread treaty negotiations.

Jones introduced the recent provincial audit conducted by the B.C. Auditor General's office to determine whether the Province has effective administrative and management processes and resources in place to negotiate treaties successfully—with success defined as having clear guidance for negotiation teams, strategies to identify and deal with barriers, sufficient resources, and good relationship with both Canada and First Nations.

The audit found that overall, using treaties to resolve land and resource claims has been expensive and time-consuming for all three parties, Jones said. The treaty process raises more questions than it answers. Moreover, it identified large gaps in negotiating positions. Although it provided a way for some First Nations to achieve recognition of their rights and title, some of the treaties may be at a stalemate.

Of the 54 groups in the province, 40% chose not to participate. Their reasons were political, said Jones; they felt they should not have to negotiate for something they have always had. Another challenge is that large loans have been given to First Nations, which will need to be repaid.

Jones reviewed the key findings of the audit.

First, treaty negotiations are progressing more slowly than expected. They have evolved over time as legal, political, and economic contexts have changed. Options have been developed to provide temporary solutions—for example, accommodation agreements surrounding revenue sharing, tenure, and licenses. However, long-term certainty cannot be provided without treaties.

Another development is that resources have been focused on a few treaty tables that are most likely to succeed. These “breakthrough tables” involve less complex negotiations and represent only a small number of First Nations. Self-governance is finally being addressed at the three breakthrough tables that are close to ratifying, Jones said. (Each one requires approval from a different percentage of the band.) However, the majority of tables are making little progress and have limited provincial presence, and the parties have become disheartened.

The second key finding, said Jones, is that business occurring outside the treaty process could potentially hamper interest in the process. A New Relationship policy has been established, intending to foster social and economic opportunities. However, it is unclear how this policy affects treaty negotiations. The audit recommended that the Province review and revise its policy goals and approaches to the treaty negotiation process and, in particular, harmonize them with the New Relationship policy.

Third, negotiation mandates need better management. These mandates are not always up to date or backed up by rationales, and the expertise to deliver mandates is focused on only a few lead tables. This situation is creating barriers and bottlenecks, and leaving some negotiations without guidance. The audit recommended expediting the mandating processes and reassessing the strategy of focusing on a few lead tables.

The fourth finding is a shortage of negotiation staff. The existing staff are confident and experienced, indicating they have had good on-the-job training. However, they are devoted mainly to a few treaty tables that are close to signing, and there is a shortage of staff from the supporting ministries. Moreover, the audit identified a future shortage of staff at the Ministry of Aboriginal Relations and Reconciliation (MARR) and supporting ministries. Over 30% of the chief negotiators will be retiring over the next five years, Jones said. The audit recommended that MARR, in conjunction with other ministries, put a plan in place to ensure they have adequate resources to support the treaty negotiation and implementation process.

The fifth finding is incomplete reporting to the Legislative Assembly. There is currently no simple measure for assessing success. Meanwhile, relevant information is provided, but it is incomplete. The audit recommended that MARR report annually on the status of negotiations, the barriers to success, and the efforts being made to overcome these barriers.

Questions and Discussion

Asked to elaborate on the federal loans to First Nations groups he had mentioned, Jones said that the loans come due if the groups leave the negotiation process. It’s uncertain whether collection will be enforced. For some of the small negotiation tables, the loans of \$300,000 to \$500,000 approximate what the groups were trying to obtain in the first place. The plan is for the loans to the groups at the three lead tables to be offset against other payments.

A participant said the problem of overlapping territory has hindered the negotiation process for some of the groups. Jones agreed, noting that the landmass currently being claimed in British Columbia totals over 110% of the province, although some claims are not in a treaty process. Moreover, some well-off bands are in a treaty process but doing fine without a treaty in place.

Jones concluded by saying that there are “no safeguards in politics.” British Columbia will have another election in two years, and the new government may change the legislation around treaty negotiations. However, there is general acceptance in B.C. that “this is good for everyone.”

Traditional Knowledge and Intellectual Property Rights

Workshop O—Recommendations 3.6.7, 4.6.9, and 4.6.22

Speaker: Russell Diabo, Policy Consultant (presentation prepared jointly with INET Advisor Nicole Schab)

Moderator: Lorraine Rekmans, Executive Director, NAFA

Recommendation 3.6.7 asks the federal government to collaborate with Aboriginal people to review legislation on the protection of IPRs and ensure protection of Aboriginal interests and perspectives. This recommendation has not been implemented to date.

Recommendation 4.6.9 requests that the Canadian government make provisions for the participation of Aboriginal governments and organizations in future international agreements concerning environmental stewardship. The government has given some support in this area.

Recommendation 4.6.2 asks that traditional knowledge be incorporated in all appropriate institutions, including cultural and research institutes, regulatory boards and the education and training system. The government has made no movement on this recommendation.

Diabo began by emphasizing the importance of traditional knowledge on the ground in land use planning. It encompasses ecological knowledge as well as knowledge about current and historic land use and occupancy, toponymy, social customs, harvest, and household domestic production.

Various international forums deal with traditional knowledge, including the Convention on Biological Diversity (CBD), the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), the United Nations Forum on Forests (UNFF), and United Nations indigenous rights bodies such as the UN Permanent Forum on Indigenous Issues (UNPFII) and the UN Working Group on Indigenous Populations.

Diabo reported that traditional knowledge is being debated at the international level on a number of issues. Indigenous people want systems for the protection of traditional knowledge developed under the CBD, which has a working group that deals with this issue. Some countries want the matter dealt with by this working group. Many countries, however, feel it is best addressed through international property rights under the WIPO. Meanwhile, some industrialized countries want only the WTO to deal with the issue.

In the CBD working group, indigenous peoples can take the floor on equal footing with states, and funding is provided for indigenous participation. However, indigenous peoples do not have equal participatory rights in other CBD groups.

The working group has a mandate to develop *sui generis* approaches for the protection of traditional knowledge. Yet substantive challenges remain, as many governments lack an understanding of indigenous peoples' approaches to protecting their knowledge and revert to Western intellectual property instruments, such as databases and registers, in their debate.

Diabo presented some of the latest developments on these issues. The CBD working group discussed *sui generis* systems for the protection of traditional knowledge in January 2006, but made with little progress. The WIPO established a Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), which met for the first time in 2001. However, WIPO is limited in its range of instruments.

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) centres on patents and corporate control over intellectual property. Many countries see the WTO's involvement in intellectual property rights as going beyond its mandate, while Canada, the United States and some other industrialized countries are pushing for a WTO monopoly with very limited provisions on prior informed consent.

Forestry-related bodies such as the UNFF and World Forestry Congress have discussed traditional forest-related knowledge, and the Wendake Action Plan formulated in 2003 mandated UN bodies to promote and protect traditional forest-related knowledge and cultural rights. However, greater progress needs to be made.

In conclusion, Diabo said the federal government never really responded to the RCAP's report and recommendations. Regardless, he suggested that Canadian Aboriginal representatives pursue all opportunities in upcoming international forums to protect traditional knowledge from biopiracy and biocolonialism. He called for vigilance in the face of threats emerging from bioengineering and the introduction of new genetically modified organisms to forests. Upcoming meetings include a UNFF session in April, a UNPFII session in May, a WIPO session in July, and CBD meetings in October.

Questions and Discussion

Diabo said that countries send mainstream forestry and agricultural ministries to UNFF sessions. These ministries typically regard forest-related traditional knowledge as a biodiversity or environmental issue rather than a forestry issue. Moreover, there is great resistance from countries in the south. Therefore, it is important to maintain an Aboriginal presence at these meetings.

Participants discussed information sharing. Diabo said that arrangements for such sharing must be developed somehow if Indigenous peoples want to reconcile forestry measures and traditional protection of sites. Agreements need to be formulated so that forestry companies will not disclose protected information.

A participant commented that it is important to be part of the influence in the writing of the law around intellectual property. He recounted the experience in his region, where information sharing is working well with a few companies. The companies demonstrate that they have security and assign only one person to have access. He added that the government has not been able to guarantee the same level of security. Diabo responded that discussions with Ottawa on information sharing have not reached the final stage. A more watertight agreement is needed that is closer to a legislative framework, he said.

A delegate spoke about a bioprospecting program in Costa Rica, in which indigenous people made side agreements with the pharmaceutical company funding the surveys, saying it was unclear how traditional rights are being upheld there. Diabo described a similar program in Brazil, where medicines are being derived from plants in traditional territories. He recommended being cautious with research protocols so that indigenous people know what outsiders would do with the knowledge.

A participant said that in South Africa, although it is not perfect, there is a contractual arrangement between tribal groups and a university to enter into agreements surrounding the manufacture of pharmaceutical products based on bioproducts.

Another participant spoke about a partnership with the University of British Columbia, which is associated with a federal agricultural research centre. He said there is some anxiety over which group will take precedence regarding the knowledge.

Revisit Issues from the World Café

Facilitator: Chris Corrigan

Corrigan reminded the group of the reason for the conference. The RCAP has basically gathered dust for 10 years, he said; he asked participants how they would ensure that this conference doesn't suffer the same fate. He stressed the importance of coming away from the gathering with positive actions.

In his conversations with Lorraine Rekmans, NAFA's Executive Director, Corrigan had asked her how to ensure that the valuable insights and recommendations coming from this conference were not lost. She had replied that NAFA is very active in some areas and that these would be good places to "pitch some of the ideas and some of the questions" that had emerged during the conference.

Small-Group Discussions: Questions for Action

Corrigan commented that the first session of the conference had dealt with the potential of the networks that existed in the room. He instructed everyone to gather into groups of five or six and spend some 20 minutes answering these questions:

- "Knowing everything that we know now, how do we get this out of the room?"
- "How can we use this opportunity?"
- "What do we need to do?"

At the end of the time period, Corrigan asked everyone to change groups, share ideas, and perhaps get another set of views.

Discussion at the tables concerned various issues. There were suggestions to use the Internet to link NAFA with other organizations for the purpose of sharing ideas. Using satellites to link institutions such as colleges and universities to encourage Aboriginal culture and the place of Aboriginal peoples in society was also mentioned. There were discussions about intellectual property and possible certification.

Participants also spoke about willingness to listen, to be open-minded, and to establish partnerships. Rather than looking at the global picture, some suggested determining what could be done around the neighbourhood and how individuals could be encouraged to co-operate.

Participants indicated that they could determine whether the focus would be short-term or long-term. Comments were made about Trudeau's "just society" and Harper's "ethnic cleansing" approach. People talked about the use of videoconferencing to see successes in other areas. One participant stressed the importance of voting, saying, "You get the government you deserve."

Reports Back

When the larger group reconvened, Corrigan asked participants to share thoughts and insights.

One participant outlined her group's discussion. NAFA has a very useful, broad ranging and informative website. The site's content should be further expanded, so that users can access a variety of information and link up with other groups across Canada. The website should also be linked with resource-based programs in schools to enhance their curriculum through tools such as workshops, ensuring the maximum use of the best people to provide information. More activities should take place, with tents on the ground in the community to share valuable information. This would increase partnership opportunities. Efforts should be made to enhance Aboriginal forestry research initiatives and find better ways to communicate with Chiefs to develop more political will.

Another participant reaffirmed the need to get the information out about the conference and the fact that RCAP is still here, and expressed the desire to ensure more action than another conference on the same issues had produced. NAFA needs to increase "its capacity for sophistication of its strategy for communicating" with society. The website should be streamlined for better usability, for example, summarizing the content into easily digestible packages for someone who has only 10 minutes to spend reading. NAFA produces reports, but it needs to develop a more strategic approach to getting information out. As far as action is concerned, he said, communities should get out there and start doing what should be done. He commented that if even a little bit of effort were expended, the partners and money would follow. By doing the work, it will be easier to set actual goals and to avoid "goal displacement." With respect to internal governance, he added, it is imperative that the community speak with one voice.

Rekmans described several suggestions, such as developing "a national Aboriginal log home strategy." She said her groups had discussed leverage and "the vast network we have." They recommended the establishment of a national professional forestry association. With respect to the Commission, the groups were mindful of the framework and the creation of a Chiefs' Boards commission. They suggested encouraging and promoting the creation of regional forestry councils. NAFA should find champions for the organization and Aboriginal forestry. It "should network and link with the BC First Nations Forestry Council." Further, NAFA should seek out non-governmental organizations (NGOs) for free French translation so it can make linkages in Quebec. She said the Chiefs and band councils should pass resolutions stating that everyone is accountable for RCAP.

Concluding Words

In her concluding comments, Rekmans thanked the delegates for their participation and their stamina in staying with the conference to the end. She referred to the gathering as an "exercise in accountability," looking at RCAP and "NAFA's commitment to that intervention that we made years ago." It is heartening, she said, to know that after 10 years, NAFA could mount a conference and attract people to speak to those items. There was talk of networks, leveraging, establishing partnerships, and looking at how processes can be influenced. Rekmans indicated that she was "encouraged by the level of interest" that had been shown by this, "Friends of NAFA" group. The government is working on innovation strategies, even though NAFA has not been invited, "and we have to make sure that our voice is carried forward into those discussions."

Closing Prayer

Annie St-George, Elder, Algonquin Nation

St-George invited everyone into the circle to close the conference as it had begun. She thanked the Creator that it had been a good meeting exchange. Two days ago, she said, the conference had started out with a circle of strength, a voice to share what the Aboriginal people are doing. She stressed the importance of nature, saying that the ancestors always took care of the land; when they took something, they always replaced it. “This is how we must continue,” she said, to share throughout the world the lessons that have been learned. She asked the Creator to help and guide everyone, so that they would have the words to say from their hearts.

In the circle, said St-George, all directions and all colours are brought together, so it is important for all to come into the circle to share. She asked the Creator to guide everyone, those present and those who had already left, safely home in whichever direction that may be. She spoke of the importance of family. Then she asked everyone, in the custom of her people, to go around the circle to greet each other with a hug, and then to re-greet them, “because we will meet again. We never say ‘good-bye,’ we say ‘We’ll see you again in our travels.’”

SUMMARY OF ROUND TABLE DIALOGUE

The following recommendations were proposed to Aboriginal Peoples, Federal Government, Provincial government and all sectors of Canada. These recommendations were derived from a series of roundtable dialogue at the two-day conference. They are organized as they emerged.

RECOMMENDATIONS

1. Develop community capacity
2. Develop community plans
3. Encourage and promote sustainable relationships between Aboriginal Peoples, governments and industry
4. Develop a common goal and vision
5. Encourage government to renew its commitment to RCAP
6. Develop alternative Tenure systems (Community ecosystem trust tenures, Community Sustainable Forestry Councils or Boards)
7. Enhance forestry programs by incorporating information on traditional knowledge and traditional Aboriginal uses of lands
8. Educate youth
9. Promote cross-cultural awareness training and programs
10. Develop a national Aboriginal forest certification system (standards)
11. Develop a system for sharing factual information on Aboriginal forestry
12. Have NAFA develop an interactive website to share information and models
13. Promote Aboriginal culturally appropriate business models (triple bottom line)
14. Develop First Nation/Métis relationships
15. Develop First Nation-led relationships with industry
16. Promote Aboriginal co-management
17. Promote “green approaches” as being inclusive of respect for cultural values
18. Governments must increase capacity to work with First Nations
19. Promote and support Aboriginal professional development
20. Support forest management education for band members
21. Define and implement federal jurisdictional and fiduciary obligations
22. Define and implement provincial jurisdictional and fiduciary obligations
23. Define and implement Aboriginal jurisdiction over crown lands and resources
24. Work with other countries and create Indigenous Peoples Partnerships
25. Work with international organizations (inter-American Human Rights Commission)
26. Support First Nation NGOs
27. Build capacity to interpret legal decisions
28. Deal directly with the federal government on federal fiduciary responsibility requirements
29. Manage First Nation forest lands
30. Develop Aboriginal specific sustainable development models
31. Abolish the *Indian Act*
32. Promote conservation partnerships

33. Eliminate colonialist practices and racism
34. Develop networks
35. Promote community based forest development
36. Assign control of forests to local communities
37. Implement revenue sharing arrangements
38. Undertake Aboriginal led comprehensive inventories of biodiversity (foods, medicinal plants)
39. Ensure decision makers participate in negotiations
40. Implement a compliance monitoring system for Consultations
41. Implement Aboriginal self government
42. Undertake unified First Nation approaches to dealing with the Crown

PRINCIPLES

Working together is essential

Unified community based action is required

Work with all stakeholders including those not involved in forestry

Have respect for future generations

Involve youth

Value Aboriginal Peoples relationships to the land

Aboriginal culture and traditions can be used to effect change

Aboriginal rights are collective and can be used collectively to leverage change

Grass roots approaches must be used in consultation and negotiations

Use non-violent actions to bring attention to issues