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PRESS RELEASE

CANADA FOREST POLICY INCONSISTENT WITH LEGAL REQUIREMENTS FOR ADDRESSING ABORIGINAL ISSUES

Quebec City, September 2003 – Forest policies in Canada are not recognizing legal decisions across the country that require governments and industry to place a greater emphasis on the legal status of Aboriginal and treaty rights and Aboriginal title, says Harry Bombay, Executive Director of the National Aboriginal Forestry Association.

Forest policy has not kept pace with the courts in recognizing Aboriginal and treaty rights and section 35 of the Constitution Act, 1982. For the most part, legislative and discretionary powers at the ministerial and administrative levels have not yet operationalized the legal obligations of the Crown to consult and accommodate Aboriginal and treaty rights.

Supreme Court decisions arising from cases such as Delgamuukw v. The Queen (1997), place a requirement on governments and industry to consult with Aboriginal peoples in cases where Aboriginal rights may be infringed before land use decisions arise. NAFA believes this applies specifically in the case of forest management, planning and forest policy development.

“However, the federal and provincial governments for the most part have no policy to address the issue of Aboriginal consultation,” says Bombay.

“For example, the province of Ontario just completed an entire Forest Management Environmental Assessment without an Aboriginal consultation process. Forestry in Ontario will continue without Aboriginal input, even though these decisions impact them directly, and even though the courts were clear.”

“The National Forest Strategy is another example of a national policy development process that excluded Aboriginal people. The Canadian Council of Forest Ministers did not respond to calls for a parallel Aboriginal consultation process that was heard from right across the country. Aboriginal people were required to sit at the table with other stakeholders, even though Aboriginal people have unique legal and constitutional forest rights.”

"Not only are governments not honouring their legal fiduciary duty to consult Aboriginal people now, it appears they have no intention to do so any time soon. The most recent framework for measuring indicators of sustainable forestry development in Canada, doesn't even contain an indicator that speaks to the issue of Aboriginal and treaty rights."

"We have no way of determining if we are making genuine progress when it comes to accommodating Aboriginal and treaty rights in forest policy."

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Background on Legal Decisions in Canada

Delgamuukw v. The Queen (1997) – The supreme court of Canada's ruling confirmed that the Crown held a duty to consult about potential infringement of section 35(1) rights.

Haida Nation v. B.C. and Weyerhaeuser (2002) –The B.C Court of Appeal unanimously agreed that the Provincial Crown and Weyerhaeuser have a fiduciary duty to consult about potential infringements of rights before those rights have been proven in court or confirmed in a treaty. The province and forest company were responsible to accommodate the Aboriginal interests of the Haida. The court held that the constitutional and fiduciary duty to consult applies regardless of whether or not a consultation process is mandated by the legislation.

Joshua Bernard v. The Queen (2003) - The Joshua Bernard case deals with the issue of interpreting the scope of the 1760- 61 Treaties. These Treaties were the basis of the Supreme Court of Canada decision on the Donald Marshall case coming out of Nova Scotia which dealt with fisheries issues mostly at the time. The New Brunswick Court of Appeal confirmed that there is a treaty right to harvest trees from Crown land to earn a moderate livelihood. In addition the case also discusses the issue of Aboriginal title but makes no decision on that issue. The case makes a link between treaty and economic rights.