In Search of Certainty: A Decade of Shifting Strategies for Accommodating First Nations in Forest Policy, 2001-11

Jason Forsyth, George Hoberg, and Laura Bird
October 21, 2011 version

Introduction

This chapter examines how the Government of British Columbia has sought to use forest policy to accommodate First Nations since the BC Liberal Party took office in 2001. Dramatic changes in policy have occurred in their two and half consecutive terms in office, despite the Premiership remaining constant under Gordon Campbell until 2011. Before entering office, the new Premier Gordon Campbell, Attorney General Geoff Plant, and Forest Minister Mike de Jong, were plaintiffs in a lawsuit challenging the constitutionality of the only modern-day treaty signed in BC, the Nisga’a Final Agreement. Once in office, Liberal Party acted on their campaign promise to initiate what became an exceptionally controversial referendum on the treaty process.

The first shift in policy away from their antagonistic approach to First Nations came in the form of Forest and Range Agreements with First Nations, which granted access to timber harvesting and a share of stumpage revenues. Despite over 200 of these agreements being signed, the focus on using economic tools to accommodate First Nations did not provide a durable solution to the challenge of reconciling the Crown-First Nation relationship. In their second term in office, the BC Liberals entered into a “New Relationship” with First Nations, pledging to establish a form of shared decision-making and revenue-sharing throughout the Province. Since then, the Province has concluded unprecedented strategic agreements in the North and Central Coast and Haida Gwaii. These represent a fundamental and conceptual shift from using economic tools to accommodate First Nations, toward using governance tools, including shared decision-making. This chapter reviews how both approaches to accommodation have been implemented by the Province.

Origins

The origins of the Campbell government approach to First Nations was strongly influenced by its 2001 election platform.1 The “New Era” forestry agenda for First Nations set out two specific goals (BC Liberal Party 2001). The First was to

1 The forest policy components of the platform were, in turn, influenced by Council of Forest Industries (COFI) 1999: “A Blueprint for Competitiveness”, and the previous (New Democratic Party) government’s 2000 “Shaping our Future: BC Forest Policy Review.” Both spoke to the need to utilize interim measures agreements.
protect private property rights in treaty negotiations relating to the politics of the Nisga’a Final Agreement, and will not be discussed further here. The second was to work to expedite interim measures with First Nations in order to create greater certainty in the forestry sector. Interim measures agreements had previously been recommended by the BC Claims Task Force in 1990 to provide opportunities to advance First Nations’ interests pending treaty settlement. This represented the cornerstone of the BC Liberals’ forest policy for First Nations, and aimed to address the impacts of the BC Court of Appeal’s Haida decision while treaties were still being negotiated. Although also a politically motivated action, this commitment stemmed more from the challenge that enhanced First Nations Title and Rights posed for provincial governments, particularly for natural resource management. Supreme Court cases such as Delgamuukw and Haida continued to put significant pressure on provincial governments to establish mechanisms to consult and accommodate First Nations over resource management. The BC Liberal commitment to expedite interim measures agreements aimed to mitigate such pressures.

**The Changes in Policy**

The BC Liberals moved quickly in making decisions and implementing new policy. Their overwhelming majority in the legislature (77 of 79 seats) allowed decisions pertaining to First Nations issues to be carried through with little debate and negligible consultation with First Nations (John 2004). Primary of these early policies were the creation of the *Forest (First Nations Development) Amendment Act 2002* (Bill 41), development of the Provincial Policy for Consultation with First Nations, Ministry of Forests Consultation Guidelines, and the Forest Revitalization Plan.

The *Forest (First Nations Development) Amendment Act 2002* represented the first of several legislative changes that would have significant impact for First Nations. It provides government the option to directly award small scale timber tenures to First Nations in exchange for the First Nation entering into a treaty-related economic or interim measures agreement with the Province. Under Sections 47.3 or 43.5 of the *Forest Act*, the Minister of Forests now has the discretion to invite a First Nation to apply for small- to medium-scale forest tenure provided that the First Nation “implement or further an agreement between the First Nation and the government” (Gov of BC 2002b). These agreements are referred to as Direct Award Agreements or Forest and Range Agreements (FRA), and are considered interim measures or economic measures under the amended Act.

Shortly after creating the legislative tool for granting First Nations increased access to timber tenures (Bill 41), the BC Liberal government unveiled a comprehensive provincial policy for consultation with First Nations. This policy describes how provincial ministries, agencies and crown corporations must consider the ‘interests’ of First Nations in the allocation, management and development of Crown land and resources. The policy defines Aboriginal interests as potentially existing, and recognizes that consultation must occur with First Nations prior to the Province making land and resource decisions (Gov of BC 2002c). Individual Ministries, such as the Ministry of Forests (MoF), subsequently developed their own consultation policies to be used in conjunction with the
provincial policy (MoF 2003d). These consultation policies were developed in response to court rulings, particularly the BC Court of Appeal’s *Haida* decision, and instruct the consultation clauses in the forestry interim measures agreements.

With the *Forest (First Nations Development) Amendment Act 2002* and the provincial consultation policy for First Nations in place, the 2003 Speech from the Throne spelled out the BC Liberals’ intention to make substantial changes to forest policy. The portion of the speech entitled “Opening Up: Recognition and Reconciliation with First Nations” talked of learning “from our mistakes” and declared that “For too long we have been stuck in a rut of our own making, talking past each other and heading in opposite directions” (Gov of BC 2003). The Throne Speech explained that:

“Government will take another bold step to forge a new era of reconciliation with First Nations. Significant reforms will be introduced this year to ensure that more access to logging and forest opportunities is available to First Nations” (Gov of BC 2003).

More specifically, the speech noted that:

“Starting this year, funding will be earmarked in the budget for revenue sharing arrangements with First Nations that wish to help revitalize the forest industry in their traditional territories. The distribution of that revenue will be negotiated with First Nations in exchange for legal certainty that allows all regions and all British Columbians to more fairly prosper from their resource industries” (Gov of BC 2003).

Such “bold steps” and “significant reforms” the BC Liberals spoke of in the Throne Speech followed a month later in the form of the Forest Revitalization Plan. The comprehensive plan included economic policy actions aimed to help restore the vitality of British Columbia’s struggling forest industry. A central feature of the plan was the redistribution of existing forest tenures, totally approximately 20 percent of the province’s allowable annual cut (AAC). The “take-back” process earmarked about eight percent of the AAC for First Nations who enter into accommodation agreements with the Province and promised that those First Nations would receive a further portion of forest revenues using a per capita formula (MoF 2003: 14).

Following the release of the Forest Revitalization Plan, the BC Liberal government introduced a flurry of legislative changes in order to implement the plan. In total, five *Forest Act* amendments were tabled and passed in May 2003. These amendments represent some of the most significant changes to BC forest policy in decades, with far reaching implications for First Nations (see Clogg 2003 for a full review of the changes and implications for First Nations). However,

---

2 These amendments were Bill 27, Forest Statutes Amendment Act, 2003; Bill 28, Forest Revitalization Act, 2003; Bill 29, Forest (Revitalization) Amendment Act, 2003; Bill 44, Forest Statutes Amendment Act (No. 2), 2003; Bill 45, Forest (Revitalization) Amendment Act (No. 2), 2003.
despite the significance of the changes and the government’s desire not to talk “past each other”, no formal consultation on these changes was ever held with First Nations. Following the release of the Forest Revitalization Plan, First Nations across BC, including the Union of BC Indian Chiefs, the First Nations Summit, and the Northwest Tribal Treaty Nations, released formal objections, citing infringements on their Rights and Title. They called on the Minister to postpone the proposed legislative changes in order to meaningfully consult with First Nations (Clogg 2003; First Nations Summit 2003).

With the enabling legislation for the Forest Revitalization Plan in place, the BC Liberal government tried to quell the mounting dissatisfaction expressed by First Nations by hosting a series of regional workshops to discuss the policy changes. Participating First Nations cited a mistrust with the provincial government, and questioned the rationale in having First Nations participate in forest policy discussions only after the decisions had been made. This was a particularly sensitive point, considering much of the Forest Revitalization Plan was completed in a collaborative behind-the-scenes process organized by provincial government and forest industry representatives (MoF and COFI 2002).

First Nations also had further concerns about the equity of a per capita revenue sharing formula in the Forest and Range Agreements (this will be elaborated on later), and the quality of the timber to be made available to First Nations (MoF 2003b). Although limited discussions with First Nations did occur through these workshops, the discussions did not lead to any changes in implementing the new policies.

Implementing the New Approach

Despite outstanding opposition from First Nations, the BC Liberals moved forward with conducting interim measures forestry agreements with individual First Nations. The scope, content and implications of these agreements vary, but they can generally be classified into two main types: Direct Award Agreements and Forest and Range Agreements (FRAs, later amended to Forest and Range Opportunity Agreements, FROs). While there are challenges associated with both agreements, it is the Forest and Range Agreements that essentially represented the Province’s attempt at accommodation, and provoked larger backlash from First Nations.

Direct Award Agreements

The Direct Award agreements issued to date have almost exclusively fallen under three main agreement types: Interim Measures Agreements, First Nation Wildfires Agreements, and Mountain Pine Beetle Agreements. Direct Award Agreements provide an invitation for a First Nation to apply for a forest tenure without competition from other bidders. Although the policy allows for long-term, large volume, replaceable tenures (MoF 2002), the agreements have provided non-replaceable forest licenses ranging in terms from 1 to 10 years, with an average of 5 years. The average annual timber allocation for each First Nations has been approximately 43,500 - 48,500 cubic metres/year, with the timber made available primarily through mountain pine beetle uplifts in the interior and licensee AAC
undercuts on the coast (MoF 2005). Forest Nation Wildfire Agreements (FNWA) offer an invitation to apply for a 3 year non-replaceable salvage licence on areas subject to recent wildfires, although there has not been an FNWA signed since 2003. These new tenure allocations are not part of the Forest Revitalization Plan's tenure “take-back” and are dependent upon timber volume being available (MoF 2002).

Forest and Range Agreements/Opportunities

As outlined in the 2003 Throne Speech and subsequent Forest Revitalization Plan, one of the key BC Liberal government commitments was to build on the Direct Award Agreements by opening up new tenures for First Nations and including revenue sharing as part of the agreements. The first of these new interim measures, called Forest and Range Agreements (FRAs, later revised to Forest and Range Opportunities, FROs), was signed in October 2003. 129 FRA/FROs have been signed under the program, with the last one completed in March 2009.

The first iteration of these agreements were the FRAs, which were generally for a five-year term and outlined economic benefits (revenue sharing and timber volume) in exchange for specific commitments to consultation and accommodation. The revenue sharing component of the FRA was determined on a per capita basis, under the formula of approximately $500 per registered First Nation member per year. The timber volume component of the majority of the FRAs invites the First Nation to apply for a 5-year non-replaceable forest licence. The volumes made available for each First Nation varies, but was also based on a fixed population formula. The volume made available to First Nations was in the range of 30 cubic meters per person, with an upper target of 54 cubic meters per person if other ‘top-up’ volumes were available such as undercut or beetle uplifts (BCSC 2005).

The early FRAs included consistent clauses in each agreement citing that these were conditional upon clear commitments from the First Nation to participate in an operational and resource management consultation process and not to unduly impede forest resource developments within their traditional territories (MoF 2005). In other words, being granted an FRA was conditional upon the First Nation agreeing that the government had met its duty to consult and accommodate, and upon them forfeiting their rights to challenge the activities otherwise taking place in their traditional territories.

It is not surprising that the challenges to the Province’s unilateral legislative changes and approaches to accommodation continued and grew more visible. The conditions attached to the FRA agreements were proving contentious and unable to quell the dissatisfaction about adequate consultation and accommodation throughout the province. First Nations across British Columbia continued to challenge the Province’s direction through multiple channels and newly formed coalitions. Two First Nations-led demonstrations were among the most significant responses of that time. In May 2004, the First Nation organizers mobilized thousands of Elders, youth, community members and leaders in a week-long caravan through the province, culminating in a rally in Victoria. It was a direct response to the state of consultation and accommodation, including the provisions of the forestry agreements (UBCIC 2004). The rally was one of the first and largest
demonstrations to be initiated by First Nations, and served as a significant indicator of the level of dissatisfaction felt across the province.

A second significant response by First Nations was the ‘Islands Spirit Rising’ campaign by the Haida Nation and their supporters. The campaign was sparked in response to the BC government’s decision not to consult the Haida on the proposed tenure transfer of TFL 39 from Weyerhaeuser to Brascan Ltd. The Haida maintained that this decision was counter to the 2004 Supreme Court of Canada’s ruling that governments must consult in good faith and endeavour to seek workable accommodations with respect to granting tenures and management of the land in question. The Haida were also angered by the MoF’s approval of logging plans in areas proposed for cultural protection under a joint land use planning process being conducted by the Haida and the Province (CHN 2005a). As a result, the Haida and their supporters set up two separate blockades that shut down harvesting operations on the island and assumed control over a significant amount of recently harvested timber (Ramsay 2005). This development, in combination with a pending provincial election, served to put a significant amount of pressure on the Province to find a solution. The Minister of Forests, at the same time, maintained that he had no obligation to consult with the Haida, stating that “if they’re not happy [the Haida], the solution is to go back to the court” (CBC 2005). Despite the Minister’s stance on the dispute, the government did strike a deal with the Haida on protected and forestry operating areas, and were able to bring an end to the blockades (CHN 2005b).

Indeed, the Province’s outward intention in establishing the Direct Awards and FRAs was the creation of investor confidence and appeasement of court-directed obligations surrounding consultation and accommodation (MoF 2003c; Parfitt 2007). One of the most objectionable components of the early FRA documents, however, was their requirement that the signing First Nation forfeit the right to challenge activities in their traditional territories on penalty of having the agreement suspended or cancelled by the Minister. Through subsequent rounds of negotiations with First Nations leaders and the provincial government, those provisions were removed from the agreements by early 2006 (Parfitt 2007).

Apart from the texts surrounding consultation and accommodation and the right to challenge future activities occurring in the traditional territories, First Nations challenged the underlying approach to establishing the Forest and Range Agreements, namely through a per capita formula. As introduced earlier, both the revenue-sharing and volume components of these agreements are established based on the number of registered members in each First Nation. Such a formula indicates a perception by the provincial government of First Nations as largely generic, forgetting, amongst other things, that the impacts of timber harvesting occurring in each First Nation’s traditional territory vary greatly across the province. This formula attempts to accommodate First Nations equally, without accounting at all for the scale of impact actually occurring in a given territory (Parfitt 2007).

The Huu-ay-aht First Nation successfully challenged the FRA framework and the per capita formula in a BC Supreme Court case against the Minister of Forests et al.. The Huu-ay-aht were in the process of renegotiating a broader agreement in
2003 when the MoF ceased negotiations and tabled the standardized FRA template. The Huu-ay-aht repeatedly expressed a desire to continue with the Interim Measures Agreement framework they established with the MoF in 1998 and extended in 2001. This framework created a joint forest council to resolve forest management issues, supported joint forestry planning, and contained economic and forest tenure opportunities. The MoF maintained that it no longer had the mandate or structure to renew such an agreement and that in its place, the FRA framework would suffice (BCSC 2005). The Huu-ay-aht rejected this position and subsequently petitioned the court to address the Crown’s duty to consult in good faith and endeavour to seek workable economic accommodations. The Huu-ay-aht also directly challenged the Province’s approached to applying a population-based formula when determining accommodation arrangement.

In her ruling, Madam Justice Dillon was damming of the MoF’s conduct in applying the FRA policy. Justice Dillon found that “The conduct of the Crown from February 2004 through to the end of negotiations was intransigent. Although the government gave the appearance of willingness to consider the [Huu-ay-aht’s] responses, it fundamentally failed to do so” (BCSC 2005: 58). Justice Dillon declared that the “FRA policy does not meet the Crown’s constitutional obligation to consult the [Huu-ay-aht First Nation]” and that “the Crown failed to follow its own process for consultation as set out in the Provincial Policy for Consultation with First Nations and the Ministry Policy” (BCSC 2005: 47). Just Dillon also ruled that the population-based formula to determine accommodation does not constitute good faith consultation and accommodation, does not fulfil the administrative obligations of the Crown to provide such accommodation, and has no rational connection with the legislative objectives of the FRA program (BCSC 2005: 2). Despite the ruling, the Province continued to use the per capita formula to calculate subsequent FRAs, and later, FROs (Parfitt 2007).

**The New Relationship**

The forest policies of the BC Liberals pertaining to First Nations over their 2001-2005 mandate amounted to the most significant changes in First Nations-related forest policy in the history of the province. These new policies signalled a major shift in the Province’s commitment to fulfilling its legal obligations to First Nations by providing revenue and access to forest tenure for economic development. For the Province, these agreements provided hope of establishing some investment certainty in the forest industry. But even before the BC Liberal’s were elected to a second term in 2005, it had already become apparent that the degree of change was not sufficient to address First Nations’ concerns and create a climate of certainty and stability sought by the provincial government and industry. The BC Liberals had aggravated the mistrust growing in First Nations communities through its narrow economic conception of accommodation, and by sidestepping consultations with First Nations prior to introducing such far-reaching changes to forest policy.
A marked breakthrough was made in 2005 when the Government of British Columbia and the First Nations Leadership Council\(^3\) announced that they were entering into a ‘New Relationship’ based on respect, recognition and accommodation of aboriginal title and rights, respect for each other’s respective laws and responsibilities, and the reconciliation of Aboriginal and Crown titles and jurisdictions (Gov of BC 2005: 1). In stark contrast to its earlier policies, the Province pledged with First Nations to establish processes and institutions for shared decision-making regarding land use, consultation and accommodation, conflict resolution, and for revenue and benefit sharing. As a whole, the Province was formally agreeing to recognize First Nations as governments, and to engage in a government-to-government relationship from that point forward.

The vision of the New Relationship represents a fundamental departure from the narrow economic-based approach to accommodation taken under the BC Liberal’s first term, to one that delivers First Nations a role in governance of their traditional territories. It specifically recognizes that the Province will be unable to meet its strategic objectives unless First Nations are able to meet their own goals related to self determination and social and economic status.

The application of the New Relationship has so far come with mixed results. In the years following the announcement there has been little obvious advancement of the action plans on a provincial scale, and the BC business community has vocalized frustration at a lack of clarity provided in terms of undertaking consultation and accommodation in conducting business (BCBC et al. 2007). In the 2009 Speech from the Throne, the Government of British Columbia pledged to implement the principles of the New Relationship through a Recognition and Reconciliation Act that would inform shared decision-making frameworks across British Columbia, and would “take priority over all other provincial statues” (Gov of BC 2009: 1). But First Nations were not satisfied that the Act would ensure acceptable accommodation of their Indigenous Rights and Title and declared it “dead” only months later (FNS et al. 2009).

On the other hand, reconciliation efforts have been made in two regions of the province that house the traditional territories of more than two dozen First Nations. In response to local and international pressure to implement an ecologically-based management approach to British Columbia’s North and Central Coast and Haida Gwaii, the Province announced as early as 2001 that it would develop the region’s land use plans on a government-to-government basis. In December 2009 unprecedented reconciliation protocols for both regions were announced that formalized Crown-First Nation shared decision-making processes.

**Crown - First Nation Collaborative Governance**

**North and Central Coast (Great Bear Rainforest)**

\(^3\) The First Nations Leadership Council represents the First Nations Summit, the Union of BC Indian Chiefs, and the BC Assembly of First Nations. Under the structure of the Leadership Council, sits several industry-specific Councils, including the First Nations Forestry Council.
The province’s North and Central Coast is now commonly known as the Great Bear Rainforest. It is a 6.4 million hectare region of coastal temperate rainforest that became the centre of a successful international market campaign by environmental groups in the late 1990s that were seeking its protection from logging. As a result, the Government of British Columbia and the recently formed Coastal First Nations (CFN) announced in 2001 that they were entering into a General Protocol Agreement on Land Use Planning and Interim Measures (Gov of BC and CFN 2001). With the support of environmental and industry groups, the agreement pledged that the Province and First Nations would develop a land use plan for the North and Central Coast through government-to-government (G2G) negotiations with individual First Nations. A central feature of the agreement was the establishment of ecosystem-based management (EBM), the guiding principles of which include collaborative processes, and the accommodation of Aboriginal rights and title (CCLRMP Table 2004).

The reconciled land use plan for the region was announced in 2006, which included a Land and Resource Protocol Agreement between the Province and CFN, and a Land Use Planning Agreement-in-Principle between the Province and KNT First Nations, as well as Strategic Land Use Planning Agreements between the Province and many of the individual First Nations. Together with the Province’s Central Coast and North Coast Land and Resource Management Plans, these agreements spell out the Crown and First Nations management, social and economic objectives, as agreed to through the G2G negotiations. The negotiations also concluded land use zones for the region that provide for protection of culturally and ecologically significant areas, while allowing the rest to be available for resource extraction in line with EBM. The Protocol Agreement also established Land and Resource Forums through which the Province and First Nations cooperatively manage the region’s land and resources, and implement cooperative economic initiatives and policies (Gov of BC and CFN 2006).

To further define the shape of the collaborative governance arrangement, the Province and CFN finalized a Reconciliation Protocol in December 2009. The agreement is moreover intended as “a bridging step to further reconciliation of...aboriginal title, rights and interests with provincial title, rights and interests” (Gov of BC and CFN 2009: Preamble). The protocol includes an engagement framework that outlines a shared decision-making process for land and resources. The spirit of the agreements are to operate by consensus, but it is important to

---

4 CFN (originally Turning Point) had been formed by First Nations of the coast and Haida Gwaii with the intention of mutual support in engagement with the Province. The traditional territories of the Coastal First Nations span almost the entirety of the planning region. To facilitate the involvement of other First Nations in the region, the Province also entered into separate agreements with the First Nations whose traditional territories cover the remaining lands and Haida Gwaii.

5 The KNT First Nations are members of the Kwakiutl District Council, Musgamagw Tsawataineuk Tribal Council and Tlowitsis Nation, whose traditional territories cover the most southern portion of the planning area, extending onto Vancouver Island.
recognize that in neither the Reconciliation Protocol, nor the informing agreements, is a final arbitrator distinguished in the dispute resolution processes. Ultimately, the North and Central Coast management decisions have been established, and are to continue, on a government-to-government basis – a considerable advancement from the economic-based approach to accommodation under the FRA process.

**Haida Gwaii**

The Council of the Haida Nation has been a member of the Coastal First Nations since the inception of Turning Point in 2000 and a signatory to the 2001 General Protocol Agreement, but has since developed independent agreements for their traditional territory of Haida Gwaii. The 2001 agreement put in place a strategic land use planning process involving a community planning forum that was jointly chaired by the Province and Haida Nation (Gov of BC and CHN 2007), but the relationship between the Province and the Haida Nation has been contentious this decade, as already covered in this chapter.

The agreement made in 2005 to end the blockades set forth several commitments with the aim of resolving conflicts and building a new approaches to resource management on Haida Gwaii. By 2007, the Province and the Haida Nation had developed a Strategic Land Use Agreement that, much like on the North and Central Coast, designated protected, special value and operating land use zones, and EBM objectives for the remainder of the archipelago (Gov of BC and CHN 2007). The agreement also designated a co-governance structure for its implementation that pledges collaborative planning and management for all land use zones. As on the coast, the governance structure was developed into a Reconciliation Protocol in December 2009 that specifically spells out a framework for consensus-based decision-making over lands and resources (Gov of BC and CHN 2009). In May 2010, the Haida Reconciliation Protocol was passed into law through Bill 18 – The Haida Gwaii Reconciliation Act. The Act takes a further step toward co-management by giving the five-member Haida Gwaii Management Council, the management body established under the Reconciliation Protocol, ascendency over some Ministerial decisions, and even the calculation of the allowable annual cut. The Act also formally drops the name Queen Charlotte Islands, the colonial moniker given to the archipelago, returning it formally to its original name, Haida Gwaii. It is a step that is rich in the symbolism of a new relationship.

**Second Round of Forestry Agreements**

In addition to the advances in collaborative land use planning and natural resource governance in the northwest, the provincial government also began working to redesign the successor to the FRA program. With several of the original five-year term FRA’s expiring, the provincial government began to make public the next generation of forestry-specific interim measure agreements in 2010. The new agreement framework considered the legal context of the Huu-ay-aht ruling and documented recommendations by First Nations and a provincial government led Forestry Roundtable Report (MoF 2009, MoF 2010)

The new agreement structure includes two stand alone agreements: a Forest Consultation and Revenue Sharing Agreement (FCRSA) and a Tenure Opportunity
Agreement. The FCRSA outlines new consultation and revenue sharing procedures, while the Tenure Opportunity Agreement provides access to a new area-based tenure designed specifically for First Nations.

The major change in the FCRSA was the incorporation of a transition from the population-based accommodation model under the FRA, to an activity-based revenue sharing formula based on a percentage of the forestry-related provincial revenues derived in a First Nations asserted territory. Although this change speaks to revenue sharing part of the Huu-ay-aht ruling, it fails to address the degree of infringement a particular forestry activity is having within the territory (Mandell Pinder 2010). Furthermore, this approach does not consider parts of the territory that have already been harvested. Another major change in the FCRSA is the approach to conducting consultation and acknowledgement of accommodation. Consultation is based on a matrix format, siting different levels of consultation for different decisions. The acknowledgement of accommodation section has also been modified to provide the province with an agreement that the First Nation has been adequately consulted and accommodated for any forestry related infringement, despite the results of the consultation process (Mandell Pinder 2010).

Although some aspects of the FSCRSA are considered a “step backwards” from an acknowledgement of accommodation aboriginal rights and title perspective, the new Tenure Opportunity Agreement is seen as a very positive development for First Nations (Mandell Pinder 2010). The new forest tenure that will be available through the agreement was brought in to force through Bill 13 – Forest and Range (First Nations Woodland Licence) Statutes Amendment Act in June 2010 (Gov BC 2010). The new tenure addresses most of the recommendations made by First Nations and the Forestry Roundtable Report (MoF 2009). Specifically the new tenure is area-based, long-term, includes expanded stewardship responsibilities such as management planning and determination of the annual allowable cut (AAC). Additionally the tenure waives annual rent charges and provides flexibility on payments of silviculture security deposits (MoF 2010).

**Conclusion**

As this chapter has shown, the provincial conception of accommodation has shifted considerably over the past decade. From narrow economic concessions under forestry-specific interim measure agreements, to the inclusion of First Nations in governance measures and new forms of aboriginal forest tenure, the province has employed a variety of policy tools and fundamentally shifted the forest economy of the province.

Despite the high participation of First Nations in the interim measure agreements, the province has a long way to go to build confidence in how First Nations forest policy is developed. Without meaningful consultation with First Nations in the policy formulation stage, it is unlikely there will be genuine support during implementation. Furthermore, the positive governance tools employed in the northwest of the province have yet to be considered in other regions. Leaving the question open to whether or not these positive steps are a sincere evolution of policy or simply a reaction to legal challenges and pressure applied by market campaigns led by environmental organizations?
Overall the BC Liberal government’s search for certainty in the forest sector has had a mixed success. While placing First Nations interests front and centre in the New Relationship, the broader aspects of the agreement have yet to materialize and there is an impasse on the larger structural issue of providing a legislative basis for Aboriginal Rights and Title, as indicated by the failure of the Recognition and Reconciliation Act. Progress remains slow. But there has been progress. In several key areas of the province, the BC Liberal government have moved from a position of explicit legal challenges of Aboriginal Rights and Title to legal agreements that share decision-making authority with First Nations on a government to government basis.
References


British Columbia Court of Appeal. 2002b. Haida First Nation v. B.C. (Ministry of Forests) and Weyerhaeuser. BCCA 147.


