

ARTICLE

TOURISM AND FORESTRY TENURE ON CROWN LAND: A TIME FOR CHANGE

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INTRODUCTION

This paper examines the forestry and tourism industries' uses of British Columbia's Crown lands, investigates the kinds of conflicts that arise between forestry and tourism tenure holders, and identifies how these problems might best be remedied through the use of legal tools. A *Forest Act*¹ tenure holder² (Licensee) is a business that holds an approved Forest Stewardship Plan (FSP) under the *Forest and Range Practices Act* ("FRPA").³ An adventure tourism operator is an operator who provides outdoor recreation activities such as guide services, transportation, lodging, feeding, or entertainment to visitors.⁴ This paper argues that industry relations would best be served by using a process that strongly facilitates, if not actually requires, the direct participation of both the adventure tourism and the forestry industries in shared decision-making processes with regard to forest management planning. In the course of making that argument, this paper will provide background information, consider the legislative and policy regimes involved, identify what rights and responsibilities each party has with respect to the other, examine conflicts between Licensees and adventure tourism operators through the use of a specific case study, explore strategies to address issues facing regulation of competing tenures on Crown lands, and survey some of the difficulties specific to British Columbia arising from its unique legal landscape.

I. BACKGROUND

British Columbia (BC) is a province rich in natural resources. As a result, the province's Crown lands⁵ support several primary resource sectors, including: forestry, mining, agriculture, energy, and more recently, adventure tourism. Extraction of timber

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1 *Forest Act*, RSBC 1996, c 157.

2 *Forest Act* tenure holders include those agencies that hold a major licence (e.g., forest, tree farm, and timber licences), timber sale licence, or community salvage licence. *Forest Range and Practices Act*, *infra* note 3 at s 3.

3 *Forest and Range Practices Act*, SBC 2002, c 69 [FRPA].

4 British Columbia, Ministry of Forests, Lands and Natural Resource Operations, *Land Use Operational Policy: Adventure Tourism* (May 26, 2011), at 1 [MFLNRO, *Adventure Tourism Policy*].

5 Lands owned and managed by the provincial government.

resources, BC's "green gold,"⁶ has been, and continues to be, a major driver of the province's economic engine. BC's economy is also increasingly supported by a growing and prosperous tourism economy. This support is largely based on the province's 'Super, Natural BC™' "reputation for unmatched scenic beauty, clean air and water, abundant fish and wildlife, and the world-class tourism products that capitalise on these natural endowments."⁷

Both the forestry and adventure tourism sectors contribute significantly to the provincial economy but the levels of those contributions have shifted over time. It is clear that BC's primary resource economies all play an important role in the province's future health.

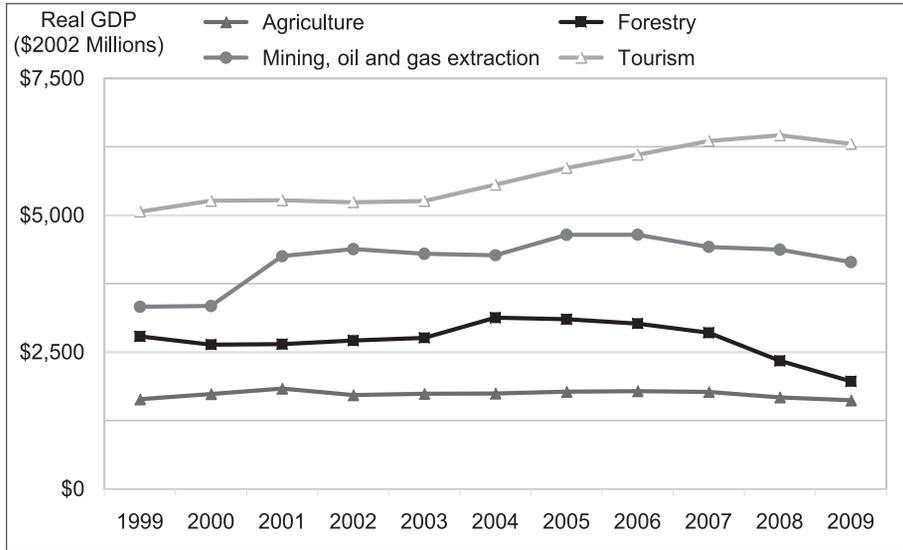


Figure 1 Real GDP of BC's Primary Resource Industries (1999 to 2009)⁸

As figures 1 and 2 illustrate, the Real Gross Domestic Product (GDP) and Real GDP Index of tourism increased between 2003 and 2009 while at the same time those measures showed a steady decline for the forestry industry.⁹ The forestry industry has faced many challenges in recent years, namely the weakening housing market in the US, low timber prices, and softwood lumber duties,¹⁰ but has regained some market share since 2009 through emerging Chinese markets.¹¹

6 Roger Haytor & Trevor J Barnes, "Troubles in the Rainforest: British Columbia's Forest Economy in Transition" in Trevor J Barnes & Roger Hayter, eds, *Canadian Western Geographical Series 33: Troubles in the Rainforest: British Columbia's Forest Economy in Transitions* (Victoria, BC: Western Geographical Press, 1997) 1 at 1-3.

7 Council of Tourism Associations of BC, *A tourism industry strategy for forests* (Council of Tourism Associations: April 2007) at 6 [COTA, *Strategy*]. I note that COTA is now known as the Tourism Industry Association of BC.

8 British Columbia, Ministry of Jobs, Tourism and Innovation, *Measuring the value of tourism in British Columbia: Trends from 1999 to 2009* (British Columbia: April 2011) at 15 [MJTI, *Measuring the value*].

9 *Ibid.*

10 British Columbia, Ministry of Advanced Education and Labour Market Development and BC Stats, *A Guide to the BC Economy and Labour Market 2010* (British Columbia: BC Stats, 2010) at 63.

11 CBC News, "BC lumber exports to China soar" *CBC News* (17 July 2011), online: CBC <<http://www.cbc.ca/news/canada/british-columbia/story/2011/07/17/bc-china-lumber.html>>.

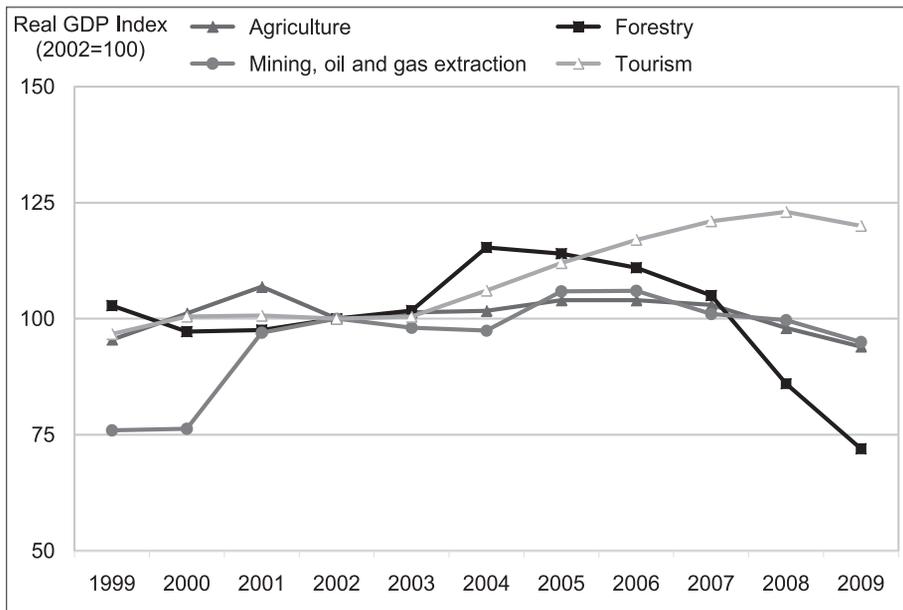


Figure 2 Comparing Real GDP Index by Primary Resource Industry (1999 to 2009)¹²

Coupled with these market stressors, the forest industry has been challenged by the Mountain Pine Beetle (MPB) epidemic—an “unprecedented forest-altering event”¹³—which has killed approximately 726 million cubic metres of timber in the province since the 1990s.¹⁴ In response, the BC government increased the Annual Allowable Cut (AAC) to “recover the greatest value from dead timber before it burns or decays, while respecting other forest values.”¹⁵ Herein lies the challenge for adventure tourism operators, particularly in MPB impacted areas, as they struggle to cope with changes to their immediate surrounding forest environment due to fibre extraction activities.¹⁶

Forestry and adventure tourism industries each seek different values from the same Crown land base. Licensees focus on gaining value from the land by extracting wood fibre while adventure tourism operators focus instead on providing visitors with high quality experiences in the spaces between the trees. As evidenced by several reports to the Wilderness Tourism Association¹⁷ and reports from the Forest Practices Board, “other forest values” are not always respected by the Licensees. Adventure tourism operators

¹² MJTI, *Measuring the value*, *supra* note 8 at 15.

¹³ British Columbia, Ministry of Forests, Lands and Natural Resource Operations, *A History of the Battle Against the Mountain Pine Beetle 2000 to 2012* (British Columbia) at 2.

¹⁴ British Columbia, Ministry of Forests, Lands and Natural Resource Operations, *Facts About BC's Mountain Pine Beetle* (British Columbia: April 2011) at 1.

¹⁵ British Columbia, Ministry of Forests, *British Columbia's Mountain Pine Beetle Action Plan 2006-2011* at 11, online: Ministry of Forests <http://www.for.gov.bc.ca/hfp/mountain_pine_beetle/actionplan/2006/Beetle_Action_Plan.pdf>. For an industry perspective on this report, please see COTA, *Strategy*, *supra* note 7 at 20.

¹⁶ *The Vancouver Sun* has extensively explored the Crown land issues exacerbated by the Mountain Pine Beetle. See Stephen Hume, “BC resources need support,” *The Vancouver Sun* (16 February 2012) (ProQuest) and Larry Pynn, “Pine beetle series part 4: ‘It looks like Armageddon,’” *The Vancouver Sun* (7 December 2011) (ProQuest). Hume references Ralph Archibald et al, *Trends in Renewable Resource Management in BC* (February 2012), online: Healthy Forests – Healthy Communities <<http://bcforestconversation.com/wp-content/uploads/TrendsInRR.pdf>>.

¹⁷ Personal Communication, 21 November 2011, Evan Loveless, Executive Director, Wilderness Tourism Association.

believe that their land use interests continue to be overshadowed by forestry’s “as a result of government’s fixation on Forestry’s traditional contribution to GDP.”¹⁸ If the adventure tourism sector is to gain a larger market share, this antiquated approach by government must be addressed.

The province’s traditional and continued reliance on economic returns from the timber harvest is grounded in the *Government Actions Regulation* (“*Regulation*”).¹⁹ Section 2(1) requires that orders and objectives that deal with non-timber resource values do not “unduly reduce” the province’s timber supply and that any benefit to the public from such orders must outweigh the impact on a Licensee’s wood rights and costs.²⁰ Although the regulation also covers topics important to tourism, such as scenic areas and visual quality objectives, the leading statement to not “unduly reduce” timber supply strongly indicates that government continues to focus on traditional economies, such as forestry, over emerging opportunities, such as adventure tourism.

In the *2012-2016 Strategy for Tourism* (Strategy), the BC government stated a goal of achieving tourism sector²¹ revenue worth \$18 billion by 2016.²² One Strategy goal focuses specifically on rural tourism with the goal to market “tourism uses of provincial infrastructure and Crown assets, consistent with the focus on key products such as touring and outdoor adventure/eco-tourism.”²³ Clearly, the intent is to see adventure tourism continue its upward contributions to the province’s economy, although it is unclear how this will be achieved under the current focus of the *Regulation*. Adventure tourism’s interests, values, and requirements of the forested Crown lands are different than those of forestry and these differences need to be considered through effective consultation by government and Licensees.

II. REGULATORY FRAMEWORK

BC’s *Land Act* allows the responsible Minister to establish objectives for the use and management of Crown land.²⁴ The *Land Use Objectives Regulation* under that Act shows that the government chooses to prioritize the forestry industry’s interests over those of others when creating or amending these legal objectives. The regulation states that the Minister must be satisfied that “the importance of the land use objective or amendment outweighs any adverse impact on opportunities for timber harvesting or forage use within or adjacent to the area that will be affected.”²⁵ The primacy of the government’s concern for forestry values must be addressed if relations between the industries are to become more cooperative, which would enable BC to more effectively navigate future economic challenges and to benefit fully from its forest resources.

18 Robert Hood & Sydney Johnsen, *Report on Rural Tourism Conference Session: Tourism’s Use of Crown Lands in BC* (2011) [unpublished] at 6. A version of this paper is now published: Robert Hood et al, *Beyond the Tourism Plan: Bringing life to tourism in your rural locale* (2011), online: LinkBC <<http://linkbc.ca/siteFiles/85/files/BeyondtheTourismPlan.pdf>>.

19 *Government Actions Regulation*, BC Reg 582/2004.

20 *Ibid*, s 2(1).

21 This goal applies to the broader tourism industry, not just the adventure tourism sector.

22 British Columbia, Ministry of Jobs, Tourism and Innovation, *Gaining the Edge: A Five-year Strategy for Tourism in British Columbia 2012-2016* (2011) at 3 [MJTI, Strategy].

23 *Ibid* at 25.

24 *Land Act*, RSBC 1996, c 245, s 93.4.

25 *Land Use Objectives Regulation*, BC Reg 357/2005, s 2(2)(b).

A. Forestry and Adventure Tourism on BC's Crown Lands

This section will provide more detail on the operating environment of both Licensees and adventure tourism operators and will conclude with a comparison of tenure documents.

i. Forestry

The forestry industry in BC is governed under several provincial statutes. In order to carry out any timber harvesting, proponents must first seek a forest licence from the Ministry of Forests, Lands and Natural Resource Operations (MFLNRO). The *Forest Act* allows the Minister of the current MFLNRO to enter into tenure agreements that grant rights to harvest Crown timber by way of a variety of licence forms.²⁶ These tenures are volume-based or area-based. Volume-based tenures grant multiple licensees the right to harvest a certain amount of timber within a specified Timber Supply Area, while area-based tenures grant exclusive rights to one licensee to harvest timber within a specified area.²⁷ The *Forest Act* also allows the province's Chief Forester to set and adjust the AAC for the province's Licensees.²⁸ Once proponents have applied for, and received, licences under the *Forest Act*, they must meet the requirements under the *Forest and Range Practices Act* ("FRPA").²⁹ Essentially, the *FRPA* is the governing Act for the forestry industry's practices; it outlines several legal objectives for the management of forests and range in the province including concerns about soils, visual quality, timber, forage and associated plant communities, water, fish, wildlife, biodiversity, recreation resources, resource features, and cultural heritage resources.³⁰ More localized objectives may also exist for certain areas of the province, generally through Land Use Plans and Land and Resource Management Plans (LRMP) developed throughout the province. These plans were originally enacted as law under the old *Forest Practices Code of British Columbia Act* ("Code").³¹ As many of the goals reached through these planning processes were not transferred to the *FRPA* from the *Code*, they are not necessarily legally binding under the *FRPA*. However, these plans do provide an agreed upon framework for development of a certain region and are capable of representing a wide variety of stakeholder values.

The *FRPA* requires Licensees to create a Forest Stewardship Plan (FSP)³² that specifies strategies to meet the government's forest objectives.³³ Areas under these FSPs may be very large and many of the plans submitted cover areas over 300,000 hectares.³⁴ Before submitting a draft FSP to the Minister for approval, the *FRPA* provides a mandatory period for public review and comment.³⁵ Publishing a notice in a newspaper satisfies the requirement for public notice³⁶ and the review and comment period generally runs for

26 *Forest Act*, *supra* note 1, s 12.

27 British Columbia, Ministry of Forests, Lands and Natural Resource Operations, *Timber Tenures in British Columbia: Managing Public Forests in the Public Interest* (British Columbia: June 2012) at 4.

28 *Forest Act*, *supra* note 1, ss 8 & 8.1.

29 *FRPA*, *supra* note 3.

30 *Ibid*, s 149.

31 *Forest Practices Code of British Columbia Act*, RSBC 1996, c 159. I note that the Code has been substantively replaced by the *Forest and Range Practices Act*, SBC 2002, c 69 by way of BC Reg 7/04.

32 *FRPA*, *supra* note 3, s 3(1).

33 *Ibid*, s 5(1)(b).

34 Forest Practices Board, "Board Bulletin Volume, 7 – Forest Stewardship Plan Review: A Public Responsibility" at 1, online: Forest Practices Board <<http://www.fpb.gov.bc.ca/WorkArea/DownloadAsset.aspx?id=1350>>.

35 *FRPA*, *supra* note 3, s 18.

36 *Ibid*, s 20(1).

sixty days following publication of that notice.³⁷ However, adventure tourism operators may not know about the opportunity to review and comment on the FSP if they miss the ad in the paper given the remote nature of their operations and their intense seasonal operating period. Also, in certain cases, the comment period can be reduced to just ten days, such as when the timber has been infested with MPB, which exacerbates the difficulties with the existing review and comment system.³⁸

Licensees must provide other Crown land lessees (e.g., tourism operators) with the opportunity to review the FSP in a “manner that is commensurate with the nature and extent to which the person’s rights may be affected.”³⁹ However an administrative guide to FSPs prepared by the Resource Tenures and Engineering Branch of the Ministry of Forests and Range states that “[t]here is no clear direction in legislation to measure what constitutes adequate consultation ‘commensurate with rights.’”⁴⁰ These review and comment periods are to be made available to the public as a whole; there is currently *no legislated requirement* for Licensees to seek out or notify specific parties such as tenured adventure tourism operators. A 2010 *FRPA* Administration Bulletin states that

[o]nce a forest agreement holder who is required to prepare a FSP has identified which tenured commercial recreational operators are located within its plan area, forest agreement holder staff preparing FSPs for submission are *encouraged* to share information with tenured commercial recreational operators early on in the FSP development process to determine what level of information sharing is warranted.⁴¹

Additionally, since FSPs only refer to the boundary of the planned forest development, commenters are required to raise any and all concerns about the entire area despite not knowing the specific plans for an area in which they may or may not be affected. This requirement puts much of the burden on third parties, such as adventure tourism operators, to make guesses or assumptions about what might happen on the land in an FSP and whether or not they believe it will affect their operations. The lack of detail in an FSP could result in adventure tourism operators needlessly spending time commenting on one area of land while neglecting another area. The time required to make exhaustive comments could significantly impact the operating budgets of small adventure tourism operators.

Once granted, FSPs are valid for a term of five years but can be extended up to five additional years upon application to the Minister.⁴² Before road construction or timber harvesting commences, a Licensee must prepare a site plan that contains a more detailed identification and description of the application of an FSP to a particular area within the FSP boundary.⁴³ Like the FSP, this site plan must be made available for the public to view; unlike the FSP, a Licensee is not required to consider public comment at this point.⁴⁴ Adventure tourism operators may therefore refrain from commenting, especially

37 *Ibid*, s 20(2)(a).

38 *Ibid*, s 20(2)(d).

39 *Ibid*, s 21(1)(c).

40 BC Ministry of Forests and Range, Resource Tenures and Engineering Branch, *Administrative Guide for Forest Stewardship Plans (FSPs): Volume I Preparation and Approval of an FSP* version 2.1 (August 2009) at 116.

41 British Columbia, Ministry of Forests, Lands and Natural Resource Operations, *FRPA Administration Bulletin Number #14 “FSP Review and Comment Requirements Relative to Tenured Commercial Recreational Operations on Crown Land”* (4 March 2010) at 2 [MFLNRO, FRPA Bulletin] [emphasis added].

42 *FRPA*, *supra* note 3, s 6.

43 *Ibid*, s 10.

44 *Ibid*, s 11.

if budgetary constraints mean that taking the administrative time to comment will negatively affect the immediate interests of the business. Lack of commentary may be interpreted incorrectly by the Licensees. Even where adventure tourism operators do take the time to comment at this stage, they may experience a sense of powerlessness because their comments may not even be considered. This power imbalance is one of the key problems creating discord between the forestry and adventure tourism industries.

ii. Adventure Tourism

Adventure tourism operators' rights and responsibilities are authorized under the *Land Act* by BC's "Land Use Operational Policy: Adventure Tourism" (Adventure Tourism Policy), which is administered by MFLNRO's Division Coordination Branch.⁴⁵ To apply for tenure, the Adventure Tourism Policy requires operators to prepare Tenure Management Plans (TMPs), which specify and justify the proposed area or areas as to their purpose, terms, and conditions.⁴⁶ The TMP must address three requirements: one, establish an estimated level of use including the number of clients on a daily and monthly basis; two, specify measures to eliminate or minimize conflicts with existing interests in the area; and three, identify "as precisely as possible" the areas of concentrated use, the nature of those uses, and the land areas required for the use.⁴⁷ The adventure tourism tenure applicant is required to also demonstrate how they plan to minimize potential conflict with all other users of the Crown land, including the public.⁴⁸ Once the TMP is accepted, the Authorizing Agency⁴⁹ will process the application and review the status of the land under application, solicit comments from "recognized agencies and groups," inform the applicant of advertising requirements, consult with First Nations, and finally, may conduct field inspections.⁵⁰ The comment period provided by the Authorizing Agency is thirty days.⁵¹ Any notification or advertising that is required by the applicant adventure tourism operator must "clearly describe the Tenure location, types of activity proposed, and the type of tenure under application" and must be consistent with the scale of the proposal.⁵² The Authorizing Agency assesses the application with respect to the general ability of the land to support the use specified in the TMP by considering such issues as whether there are sensitive areas within the boundaries, other overlapping adventure tourism tenures, any archaeological impacts, and any land use plans or regional growth strategies for the area.⁵³ These TMPs range between a few and several thousand hectares but typically cover a much smaller geographic area than FSPs.⁵⁴

Before the Authorizing Agency will issue the tenure documents to an applicant, a final TMP addressing any issues raised during the assessment of the application must be prepared and must also identify how the operating conditions, standards, and criteria that had been previously identified will be met.⁵⁵ Once tenure is granted, the TMP is "typically reviewed every five years by the Authorizing Agency."⁵⁶ Adventure tourism

45 MFLNRO, *Adventure Tourism Policy*, *supra* note 4.

46 *Ibid*, s 8.1.

47 *Ibid*, s 8.2.1.

48 *Ibid*.

49 The *Adventure Tourism Policy* defines Authorizing Agency as the provincial government body responsible for the policy's delivery. MFLNRO, *Adventure Tourism Policy*, *supra* note 4 at 2.

50 *Ibid*, s 8.4.

51 *Ibid*, s 8.6.

52 *Ibid*, s 8.6.2.

53 *Ibid*, s 8.8.

54 Personal Communication, 30 November 2011, Kate Greskiw, Land and Resource Specialist, Ministry of Forests, Lands, and Natural Resource Operations.

55 MFLNRO, *Adventure Tourism Policy*, *supra* note 4, s 8.9.3.

56 *Ibid*, s 9.7.1.

operators are required to provide annual reports related to the “diligent use” of the land which refers to the “responsible use of Crown land for activities carried out by an Adventure Tourism Tenure holder that meet the requirements identified in the approved [TMP] associated with an existing Tenure.”⁵⁷ Final tenure documents include the Licence of Occupation Agreement, which is an agreement setting out the rights, responsibilities, and requirements of the adventure tourism operator and the province, as represented by the Minister responsible for the *Land Act*.

B. Comparison of Forestry and Tourism Crown Land Tenure Documents

In a brief comparison of the two strategies for tenure management on Crown land, it is apparent that the Adventure Tourism Policy shows greater concern for ensuring minimal conflict and encroachment on the enjoyment of other land users than the *FRPA* framework, which gives forestry values top priority. The lack of specific reference to adventure tourism values in the *FRPA* framework reinforces forestry’s primacy in BC. Additionally, adventure tourism operators are concerned about the security of their interests in the land as they do not enjoy the same level of tenure renewal security as Licensees.⁵⁸ To this end, a 2005 report prepared for several adventure tourism associations in BC calls for increased tenure security for adventure tourism operators and states that “central to such security is clear and fair property rights.”⁵⁹ As will be discussed below, tenure security could also be positively affected if adventure tourism operators are able to engage more fully during the forest management planning process in a way that allows them to express their concerns and values in a cooperative and cohesive process.

III. CONFLICT ON THE LAND

Since the public has an opportunity to comment on and review Licensees’ FSPs, any potential land use conflicts between the Licensees and the adventure tourism operators would be dealt with proactively at this early stage. However, as will be discussed in this part of the paper, not all issues are necessarily addressed during the FSP review stage. These outstanding issues may be either due to the fact that FSPs cover large geographic areas and do not provide detailed information, or because the public notice published in a local newspaper may not be received by an operator whose access to this information is restricted by distance or time.

The only dispute resolution mechanism available to complainants about a Licensee’s activities is through the Forest Practices Board (the Board). The Board, which was originally established under the *Code* and continued under the *FRPA*,⁶⁰ is a non-governmental agency that “conducts audits and investigations and issues public reports on how well industry and government are meeting the intent of British Columbia’s forest practices legislation.”⁶¹ The Board characterizes the hallmarks of “effective consultation” as interaction that involves the following elements: early and meaningful; adequately resourced; inclusive; informative and accessible; responsive and genuine; verifiable;

57 *Ibid*, s 3.

58 Aaron Heidt & Peter Williams, *Towards Greater Tenure Security for Commercial Recreation Operators*, prepared for Association of Canadian Mountain Guides, Back Country Lodges Association of BC, BC Helicopter and Snowcat Skiing Operators Association, BC River Outfitters Association, Commercial Bear Viewing Association of BC, Guide Outfitters Association of BC, Sea Kayak Guides Alliance of BC, and Wilderness Tourism Association of BC (15 November 2005) at 14, online: Wilderness Tourism Association <<http://www.wilderness-tourism.bc.ca/docs/tenureSecurity.pdf>>.

59 *Ibid* at 4.

60 *FRPA*, *supra* note 3, s 136.

61 Forest Practices Board, online: Forest Practices Board <<http://www.fpb.gov.bc.ca>>.

continuous; and provides for sufficient time.⁶² Although the Board has no legal power to demand legislative reform, this “independent watchdog” of BC’s public forests has actively expressed disfavour with the *FRPA* structure when warranted.⁶³ The Board has criticized the *FRPA*’s required level of consultation because it fails to live up to the principles of “effective public consultation” and has further stated that in most cases, effective consultation will not be achieved if only the minimum requirements of the *FRPA* are followed.⁶⁴

The powers of the Board are limited to investigations, reports, and recommendations, and cannot direct parties to carry out any actions. However, in part because of these limited powers, it has been determined by the BC Court of Appeal that the Board is entitled to “a considerable degree of deference to the views of the Board itself about [its authority].”⁶⁵ Complaints directed to the Board generally must involve only public land and can reference issues of “planning, including forest stewardship plans, site plans and woodlot licence plans; forest practices; range plans and practices; protection of resources including recreation; and industry compliance and government enforcement of the legislation.”⁶⁶ This narrow jurisdiction stifles the Board’s ability to make meaningful decisions addressing conflict between adventure tourism operators and Licensees.

A recent Board decision relating to a conflict between an adventure tourism representative and a Licensee illustrates the kinds of challenges facing Licensees and adventure tourism operators.⁶⁷ In this case, the complainant, Upper Nechako Wilderness Council, submitted a complaint stating that the Licensee, Canadian Forest Products Ltd., had “harvested timber within a lakeshore management reserve used by the complainant’s member business for guided-wilderness moose hunts and hike-in fishing.”⁶⁸ Essentially, the complainant argued that the Licensee made a unilateral decision to abandon certain objectives of a publicly-developed LRMP for the area. This decision was problematic for the complainant and its member tenure holders because the harvested area was closer to the lakeshore than the LRMP would have allowed, and, as such, there were concerns that the remaining live trees and MPB killed trees would blow down “further diminishing the wilderness value of the lake, as the view to and from the lakeshore and cutblock is exposed.”⁶⁹ However, the Board found that there was no legal requirement for the Licensee to apply the lakeshore objectives under the LRMP to its forest activities.⁷⁰ This decision was based on the fact that the lakeshore management zones had not been transferred into legal objectives under the *FRPA*, and because the *FRPA* does not require strategies for lakeshore management to be addressed within an FSP. Additionally, while the adventure tourism operator expected the Licensee’s FSP to address the riparian values included in the initial draft of the FSP made available to the public for review, they were not included in the final FSP and thus were not legally enforceable.⁷¹

62 Forest Practices Board, “Board Bulletin Volume, 3 – Opportunity for Public Consultation under the Forest and Range Practices Act,” online: Forest Practices Board <<http://www.fpb.gov.bc.ca/WorkArea/DownloadAsset.aspx?id=1342>> [FPB, Bulletin].

63 Forest Practices Board, *supra* note 61.

64 FPB, Bulletin, *supra* note 62.

65 *Northwood Inc v BC (FPB)*, 2001 BCCA 141 at para 41, [2001] BCJ No 365 (QL).

66 Forest Practices Board, *supra* note 61.

67 Forest Practices Board, “Logging and Lakeshore Management near Vanderhoof” (March 2010) FPB/IRC/163 [FPB, Logging].

68 *Ibid* at 1.

69 *Ibid*.

70 *Ibid* at 2.

71 This facet of the case raises the problematic issue of Licensees removing important content included in the draft FSP after the public review period. While it is beyond the scope of this paper to address the issue, this ‘dropping’ of content arguably negates the comment period if those parties making comments are not able to rely on the values presented in a draft FSP.

Despite this finding, the Board went on to consider the effectiveness of the consultation between the Licensee and the complainant. In this case, the Licensee and the complainant previously had a “cooperative and productive relationship that met their respective interests,”⁷² but in this instance some of the parties’ specific interests and concerns were not effectively communicated and the complainant felt “powerless to affect the cutblock design.”⁷³ The Board identified the fact that the discussions had only taken place via email as another possible reason for ineffective consultation between the parties.⁷⁴ Future parties wishing to engage in effective consultation might see this comment as a suggestion from the Board to use in-person meetings or telephone meetings in the place of email because important nuance and tone can be lost in written communication.

The Board’s decision also discusses the *FRPA*’s approach to competing business values. Specifically, the Board mentions that because of the results-based approach of the legislation, rather than a process-based approach, the “details of where and how the Licensee might harvest timber are left largely up to the Licensee [...and] whether public concerns about specific forest activities are resolved is a matter of negotiation between the public and the Licensee.”⁷⁵ Because of the Board’s limited powers under the *FRPA*, it may only help to facilitate these types of negotiations and relationship building rather than being able to adjudicate such a matter when parties are unable or unwilling to do so themselves. This approach by government to the competing business values leaves tenured adventure tourism operators in a position of significantly lower negotiating power since the final decision essentially rests with the Licensee. Even where consultation is generally positive and cooperative, being in a position of lower power can leave tenured adventure tourism operators with a decreased sense of business security as they are reliant on the goodwill of the Licensees.

As a result of this decision, the Board made a recommendation under section 131(2) of the *FRPA* for the development of

a means to deal with direct overlapping interests of tenured land and forest resource users by a process of mediation in which the interests of the parties are effectively identified and a reasonable balance between all interests is struck, consistent with the law, but also responsive to locally specific circumstances.⁷⁶

In making the recommendation, the Board acknowledged that simply creating more restrictive legislative requirements would be an ineffective solution. This would be especially true where, as is the case between Licensees and adventure tourism operators, business interests in the land are competing and where one party would likely continue to hold more power in a negotiation situation than the other party. In response to the Board’s recommendation, the government simply stated that “the *FRPA* framework adequately addresses the interests of competing tenure holders and that a mediation process is not necessary.”⁷⁷ The government response further states that while the *FRPA* does not require Licensees to consult with affected tenure holders beyond the draft FSP stage, they are “expected to take reasonable steps to ensure site-level plans would

72 FPB, Logging, *supra* note 67 at 3.

73 *Ibid* at 4.

74 *Ibid*.

75 *Ibid*.

76 *Ibid* at 8.

77 Forest Practices Board, 2010/2011 Annual Report (31 March 2011) at 6, online: Forest Practices Board <<http://www.fpb.gov.bc.ca>>.

not adversely affect the rights of other tenure holders.”⁷⁸ This response then goes on to describe the many voluntary measures that exist to help address competing interests between the various tenure holders. Essentially, this response letter suggests that because there are voluntary measures to promote consultation and cooperation early through the higher level multi-party development of land use plans and a later requirement for a review and comment period during FSP development, conflicts will not arise at a later date.⁷⁹

However, in a Board response to the government’s position, the Chair of the Board makes it clear that these voluntary measures are not adequate and that a “perception of unfair process with no recourse” for a non-forest license tenure holder still exists.⁸⁰ While the Board explicitly recognizes the proactive steps that the government has taken to address the issues facing tenure holders with regard to their competing interests, it is clear that the current approach still does not help non-forest license tenure holders who, despite the voluntary measures, still find themselves in a situation of conflict over operational decisions made by the Licensees. Therefore, it appears that the Board has exhausted its options for creating change in the approach to competing tenure holders as it does not have the power under the *FRPA* to require a party to take action. For this reason, it is important to explore other approaches to dealing with competing interests and conflict on Crown land in order to either bolster the recommendations made by the Board, in the hopes that further appeals to the government will help to affect change, or to suggest a different approach that the government might be more willing to adopt moving forward. This step is particularly important if the provincial government wants to achieve its goal to increase tourism revenues by five percent for each of the next five years through a focus on the “provincial infrastructure and Crown assets” in the adventure tourism market.⁸¹

IV. OTHER MODELS FOR SUCCESS

This section explores Ontario’s management of tourism on forested lands and compares that approach with BC’s management regime. The section also introduces the use of Memoranda of Understanding as they are used in both Ontario and BC.

A. Navigating Competing Values: the Ontario Model

Ontario’s provincial government has explicitly recognized that “[m]anaging the resource-based tourism/forestry interface is a *critical* part of forest management planning.”⁸² In that province, the government regulates the forestry industry through the *Crown Forest Sustainability Act* (“*CFSA*”).⁸³ Under the *CFSA*, Registered Professional Foresters, in conjunction with a multi-disciplinary planning team, prepare Forest Management Plans

78 Letter from Office of the Deputy Minister of Ministry of Forests and Range to Chair, Forest Practices Board (25 October 2010) at 2, online: Forest Practices Board <http://www.fpb.gov.bc.ca/IRC163_Government_response.pdf>.

79 *Ibid.*

80 Letter from Chair of Forest Practices Board to Deputy Ministers, Ministry of Forest, Mines and Lands; Ministry of Natural Resource Operations; Ministry of Agriculture; and Ministry of the Environment (1 December 2010) at 2, online: Forest Practices Board <http://www.fpb.gov.bc.ca/IRC163_Board_response.pdf>.

81 MTJI, Strategy, *supra* note 22 at 25.

82 Ontario, Ministry of Natural Resources, Forest Management Branch, *Management Guidelines for Forestry and Resource-based Tourism* (Toronto: Queen’s Printer for Ontario, July 2001) at 23 [OMNR, Guidelines] [emphasis added].

83 *Crown Forest Sustainability Act*, SO 1994, c 25, s 8 [CFSA].

(FMP) for management units designated under section 7 of the *CFSA*.⁸⁴ For guidance, the Ontario Ministry of Natural Resources (OMNR) enacted the *Forest Management Planning Manual*,⁸⁵ which “provides direction for all aspects of forest management planning for management units designated under the *CFSA*”⁸⁶ and requires FMPs to be consistent with provincial laws and policies related to forest management.⁸⁷ The Ministry’s *Management Guidelines for Forestry and Resource-Based Tourism* (Ontario Guidelines) “assist with planning forestry operations in those parts of Ontario’s forest being used for both forestry and tourism.”⁸⁸ The Ontario Guidelines are intended to provide the developers of FMPs with a range of practices, tools, and techniques that can be used to protect resource-based tourism values.⁸⁹ The Ontario Guidelines require Licensees⁹⁰ to comply with the FMPs in the course of their forestry activities in the management unit in which they hold a licence.⁹¹ Originally developed through a cooperative process between both industries and their respective Ministries, the OMNR reviewed the Ontario Guidelines in 2006 and found them to be effective.⁹²

Beyond the Ontario Guidelines, the resource-based tourism⁹³ and forestry industries in Ontario have also entered into a Memorandum of Understanding (MOU) intended to “allow the Resource-Based Tourism and Forestry industries in Ontario to co-exist and prosper.”⁹⁴ Under the MOU, resource-based tourism tenure holders and Licensees agree to voluntarily enter into negotiated Resource Stewardship Agreements (RSA) that contain a map of projected road corridors in the area, the tourism values to be protected, a restatement of the MOU principles, and any other agreed upon provisions that are not already part of an FMP.⁹⁵ Additionally, the MOU has specific provisions for both mediation and arbitration, but “before recourse to the Forest Management Planning dispute resolution process [...] is available” the MOU requires parties to first undertake the entire RSA development process.⁹⁶

84 Ontario, Ministry of Natural Resources, “Documents required under the Crown Forest Sustainability Act (CFSA),” online: Ontario Ministry of Natural Resources <http://www.mnr.gov.on.ca/en/Business/Forests/2ColumnSubPage/STEL02_164322.html>.

85 *Forest Management Planning Manual*, Ont Reg 159/04.

86 Ontario, Ministry of Natural Resources, “Operational and Administrative Policy,” online: Ontario Ministry of Natural Resources <http://www.mnr.gov.on.ca/en/Business/Forests/2ColumnSubPage/STEL02_164306.html>.

87 Ontario, Ministry of Natural Resources, *Forest Management Planning Manual for Ontario’s Crown Forests* (Toronto: Queen’s Printer for Ontario, November 2009), online: Ontario Ministry of Natural Resources <<http://www.mnr.gov.on.ca/en/Business/Forests/2ColumnSubPage/286583.html>> [OMNR, Planning Manual].

88 OMNR, Guidelines, *supra* note 82 at 1.

89 *Ibid.*

90 “Licensee” is used in this section to refer to the group that exists under the Ontario legislation, which is essentially the same type of Licensees as found in BC.

91 CFSA, *supra* note 83, ss 25 & 26.

92 OMNR, Guidelines, *supra* note 82 at 1.

93 Resource-based tourism is referred to as adventure tourism in BC.

94 Ontario, Ministry of Natural Resources, *Tourism and Forestry Industry Memorandum of Understanding* (July 2000) at 1, online: Ontario Ministry of Natural Resources <http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@forests/documents/document/mnr_e000278.pdf>.

95 *Ibid* at 2.

96 *Ibid* at 3.

i. Assessing the Ontario Model: Key Lessons for BC

Like the Ontario Guidelines, Ontario's RSA process was reviewed by Sarah Browne, Murray Rutherford, and Thomas Gunton from the School of Resource and Environmental Management at Simon Fraser University, and was found "to be a positive move in forest management" with many strengths.⁹⁷ Specifically, the review identified the following strengths: inclusion of tourism; increased dialogue and reduced conflict; commitment to process and implementation; principled negotiation, respect and trust; balanced distribution of power; and the participants' perception that the benefits of the process outweigh the costs.⁹⁸ The review also highlighted a few areas for improvement within the process, however, and listed a need for the following: more inclusive representation; greater transparency of the process; increased equality between forestry and tourism industries to be achieved through shifting negotiating power away from the forestry industry; use of an independent third party to conduct the RSA process; and, finally, consideration of whether the OMNR should continue to have the power to reject RSA recommendations that are not "consistent with the OMNR's mandate of conserving and managing Ontario's public lands and resources for all citizens."⁹⁹ Perhaps the most relevant and pressing consideration highlighted by this review is the perceived and real power imbalance between the two industries in forest management decisions. While Ontario's approach may not fully level the playing field, it does help by redistributing some of the power.

The *Forest Management Planning Manual* provides for an "Issue Resolution Process," which is essentially an extension of the period of public review during the FMP process.¹⁰⁰ However, it is important to recognize that Ontario's FMP process provides for more opportunities to provide input into the FMP than BC's framework for FSPs; public input is actively sought and addressed at four stages throughout the process.¹⁰¹ The FMP process is lengthy and generally requires two and a half years of preparation before submission of a final draft and approval under the *CFSA*.¹⁰² Additionally, the FMP process includes a greater level of detailed information available for comment with specific attention to proposed planned road construction that has been identified as a key issue for resource-based tourism operators where continued remoteness is valued as a top priority for those operators.¹⁰³

While the framework under Ontario's *CFSA* does not provide for an explicit dispute resolution process for conflicts arising after the approval and granting of a forest licence, the FMP process is significantly more detailed and requires active consultation on the part of the forestry industry with other affected tenure holders, and specifically with resource-based tourism operators. By providing for greater depth of consultation and outwardly recognizing the importance of addressing competing interests, both at an early stage and throughout the process, the approach in Ontario may help to ensure fewer conflicts arise once forest licences have been granted and forest management and harvesting activities have begun. This approach also demonstrates "effective consultation" as defined by BC's Forest Practices Board.¹⁰⁴

97 Sarah A Browne, Murray B Rutherford & Thomas I Gunton, "Incorporating Shared Decision Making in Forest Management Planning: An Evaluation of Ontario's Resource Stewardship Agreement Process" (2006/2007) 34:3 *Environments* 39 at 53.

98 *Ibid.*

99 *Ibid* at 53–54.

100 OMNR, *Planning Manual*, *supra* note 87, Part A, s 3.4.1.

101 OMNR, *Guidelines*, *supra* note 82 at 10–11.

102 *Ibid* at 10.

103 *Ibid* at 24.

104 Forest Practices Board, *supra* note 61.

ii. Translating the Ontario Model: The Unique Landscape of Land Claims in BC

However, it is important to note that a framework such as the one used in Ontario could not simply be adopted in BC given BC's unique situation as it pertains to Aboriginal land claims on Crown land. This context requires any regulatory changes to consider the challenges of the current model as well as the Crown's obligations to First Nations in BC.

While almost the entire land base in Ontario is covered by treaty agreements,¹⁰⁵ much Crown land in BC remains untreated and therefore is involved in ongoing adjudication of Aboriginal rights and land claims.¹⁰⁶ These unsettled claims create a more complex legal landscape in BC that is intimately tied to the duty of the Crown to consult and accommodate Aboriginal peoples in the course of state decision-making. This duty arises by way of section 35 of the *Constitution Act, 1982*, which constitutionalises Aboriginal rights, including treaty rights and land claims that have been acquired or that may be acquired in the future (section 35 rights).¹⁰⁷

While it is beyond the scope of this paper to present a full discussion of the land claims issues in BC, this section highlights some of the difficulties that government might face in an attempt to update or renew approaches related to the use and enjoyment of Crown land by Licensees and adventure tourism operators.

The duty to consult was expressed by the Supreme Court of Canada in *Delgamuukw v British Columbia* ("Delgamuukw") in 1997 and it has been further considered and shaped by the courts since that time.¹⁰⁸ The federal and provincial governments' duty to consult and accommodate is "grounded in the honour of the Crown."¹⁰⁹ The duty is triggered when the Crown has knowledge of a claim; the Crown is making a decision or contemplating an action that engages Aboriginal rights; and when the decision or action could have a negative impact on section 35 rights.¹¹⁰ Accommodation involves "notifying and consulting aboriginal peoples with respect to the development of the affected territory," and may include fair compensation.¹¹¹

The duty to consult and accommodate will have different requirements depending on whether or not the Aboriginal rights in question are treaty rights, proven section 35 rights, or asserted but unproven section 35 rights.¹¹² The extent of those requirements will also vary, running along a spectrum from shallow to deep consultation and accommodation. Deep consultation and accommodation will be required where, for instance, the section

105 "Aboriginal Land Claims and the Federal and Provincial Governments," *The Outfitters* (July/August 2000) at 14, online: Nature and Outdoor Tourism Ontario <http://noto.ca/theoutfitterarchives/aboriginal_land_claims_and_government>.

106 BC Treaty Commission, *The First Annual Report of the British Columbia Treaty Commission for the Year 1993-1994* at 3, online: BC Treaty Commission <http://www.bctreaty.net/files/pdf_documents/1994_Annual-Report.pdf>. For example, there are currently 60 First Nations, including 104 *Indian Act* bands, involved in the BC treaty process. See BC Treaty Commission, *Learning from our Success: BC Treaty Commission Annual Report 2012* at 13, online: BC Treaty Commission <http://www.bctreaty.net/files/pdf_documents/2012_Annual-Report.pdf> [BC Treaty Commission, *Learning*].

107 *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11, s 35.

108 *Delgamuukw v British Columbia*, [1997] 3 SCR 1010, [1997] SCJ No 108 (QL) (cited to QL) [*Delgamuukw*].

109 *Haida Nation v British Columbia and Weyerhaeuser*, 2004 SCC 73 at para 16, [2004] SCJ No 70 (QL).

110 *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, 2010 SCC 43 at para 31, [2010] SCJ No 43 (QL).

111 *Delgamuukw*, *supra* note 108 at para 203.

112 Environmental Law Centre, "Consultation and Accommodation: ELC Associates April 18.2011 Teleconference Backgrounder" (April 2011) at 3, online: Environmental Law Centre <<http://www.elc.uvic.ca/associates/documents/2011Apr18-Consultation-and-Accommodation-Backgrounder.pdf>> [ELC, *Accommodation Backgrounder*].

35 rights are “proven or extensive and easily proven and the potential harm will virtually extinguish the right.”¹¹³ However, it should be noted that there is no duty to agree and that the Crown is only required to act reasonably.¹¹⁴

The duty to consult and accommodate brings with it a degree of uncertainty for all parties involved and affected by land claims. The parties to those claims, namely the First Nations making the claims and the federal and provincial governments, must await judicial rulings in many cases. Each claim brings with it the “unique circumstance of every First Nation.”¹¹⁵ Therefore, the courts will be required to consider the unique factual scenarios placed before it each time a land claim arises, and cannot simply make a ruling that would apply to a wide range of claims. Likewise, industry operators such as adventure tourism operators and Licensees will be affected by the outcomes of the decisions as they generally operate on land that is wholly or partially implicated in land claims.

The first modern-day land claims agreement was made in BC in 2000 between the Nisga’a Nation, the Government of BC, and the Government of Canada.¹¹⁶ The negotiation of the Nisga’a Treaty was an extensive process; the federal government originally began treaty negotiations with the Nisga’a in 1976 while the province joined the negotiations in 1990.¹¹⁷ Several other treaties have been signed since 2000, yet many more claims remain in ongoing negotiation or litigation.¹¹⁸ Each claim is accompanied by a unique factual scenario and therefore each claim requires a consideration of its strength before a determination of the level of consultation and accommodation can be made. This determination must be made on a case-by-case basis. The level of uncertainty and complication arising from these claims means that decision-making processes related to the use and enjoyment of Crown lands in BC is substantially more complex than similar processes in Ontario.

This brief introduction to Aboriginal land claims issues on Crown land in BC is meant to bring attention to the unique legal climate of BC. If the land used by forestry and adventure tourism industries is involved in Aboriginal land claims, then the Crown is under a requirement to consider the level of consultation and accommodation required depending on what and where the various claims are. Therefore, the BC provincial government is unable to simply enter into negotiations and agreements with the forestry and adventure tourism industries to create a legislative approach such as the one found in Ontario because the government must also consider its consultation and accommodation obligations. Additionally, the First Nations involved in a claim may come to the negotiation table with varying degrees of interest given that some First Nations are operators of either forestry or adventure tourism businesses. Like the differences in the values sought on the land between adventure tourism operators and Licensees, First Nations, whether or not they are operators themselves, also hold different values on the same land.

113 *Ibid.*

114 *Ibid* at 3.

115 *Ibid* at 4.

116 *Nisga’a Final Agreement* (27 April 2000), online: Nisga’a Nation Knowledge Network <<http://www.nkn.ca/files/u28/nis-eng.pdf>>.

117 Aboriginal Affairs and Northern Development Canada, “Fact Sheet: The Nisga’a Treaty” (September 2010), online: Aboriginal Affairs and Northern Development Canada <<http://www.aadnc-aandc.gc.ca/eng/1100100016428/1100100016429>>.

118 According to the BC Treaty Commission, the Tsawwassen First Nation and Maa-nulth First Nations implemented final agreements in 2009 and 2011 respectively. Three other First Nations have completed final agreements: Lheidli T’enneh First Nation; Tla’amin Nation; and Yale Nation. See BC Treaty Commission, *Learning*, *supra* note 106 at 13–14.

As the foregoing illustrates, adopting a process that encourages harmony between forestry Licensees and adventure tourism operators is advisable when not faced with BC's unique context. However, despite the significant differences and the complexities that the land claims in BC bring to the table, the government is no stranger to consultation and accommodation at this point in time. By bringing all of the stakeholders into the discussion and negotiation process—not just industry and government as is the case in Ontario—it is likely that some of the key successes of the Ontario method could be incorporated into a 'made in BC' approach. That approach could, for example, include processes similar to Ontario's RSA, which would offer more detailed information to adventure tourism operators about the forestry activities planned for the land. Additionally, BC could look to the Ontario Guidelines as an example of how to provide greater guidance to tenure holders on Crown land and how those tenure holders can best navigate their competing interests. Finally, requiring tenure holders to actively seek public input on their plans for Crown land at several junctures would reflect a key element of the Ontario FMP process, and could support Crown consultation when the duty to consult and accommodate First Nations with interests in the land applies.

B. Existing Tools in BC: Memoranda of Understanding

Another important tool, as demonstrated by the Ontario approach, is the MOU. MOUs are a way for parties to identify and express mutual values and interests. In 1996, the Council of Tourism Associations of BC (COTA)¹¹⁹ entered into an MOU with the Council of Forest Industries and the Forest Alliance of BC to “help foster ongoing dialogue and proactive relations between the two industries.”¹²⁰ However, the agreement lacks substantive content and is essentially a statement of mutual support from both industries. Perhaps in recognition of these shortcomings, COTA entered into another MOU in 2004 with the Mining Association of BC and the BC and Yukon Chamber of Mines. Along with mutual statements of support between the industries, the MOU sets out the purpose, principles, and interests of all the parties—both mutual and individual—as well as the protocols that would be followed “to support a beneficial ongoing business relationship” between the parties.¹²¹ More importantly, the MOU includes a specific provision for a conflict resolution process that the parties agreed to encourage their members to use in instances of unresolved disputes.¹²² An Appendix to the MOU details specific approaches for conflict resolution available to members, including reference to the Mediation and Arbitration Board of BC where necessary. By specifically implementing a process to resolve disputes, the parties made a commitment to an ongoing relationship rather than propagating unilateral decisions by the more powerful party in the instance of disagreement. This type of agreement is the kind that the Board has advocated for previously, and could be considered for integration into the legislation managing the forestry and adventure tourism industries' relationship.

CONCLUSION AND RECOMMENDATIONS

Licensees and adventure tourism operators cannot rely on government agencies to create the 'perfect solution' for planning processes or conflict resolution, and should take responsibility to be 'good neighbours.' As evidenced throughout this paper, several

119 COTA has since changed names to the Tourism Industry Association of BC, see note 7.

120 COTA, *Strategy*, *supra* note 7 at 8.

121 “Memorandum of Understanding: BC & Yukon Chamber of Mines, Council of Tourism Associations of BC, Mining Association of BC” (22 January 2004), s 6, online: COTA BC <<http://www.cotabc.com/documents/publications/Mining-Tourism%20MOU.pdf>>.

122 *Ibid*, s 7.

recommendations for proactive participation by both the forestry and tourism industries have already been called for.¹²³ However, a number of recommendations based on this paper's review of the BC and Ontario processes are provided below:

1. Make existing objectives in Land Use Plans and Land and Resource Management Plans legally enforceable under *FRPA* as they previously were under the old *Forest Practices Code*. These objectives were developed with broad stakeholder engagement and local stakeholder's input should be respected.
2. Re-engage local stakeholders in local forest land planning processes. Plans are 'living' documents that should be modified to respond to changed circumstances (e.g., MPB). Incorporate cross-sectoral strategies to better ensure that *all* forest values are respected and interests are best met.
3. Protect fibre and non-fibre forest values to ensure availability of a wide range of economic opportunities. Communities with a range of diverse economic opportunities are healthier and more resilient.
4. Manage the critical adventure tourism/forestry interface in those parts of BC's forests used for both forestry and tourism. Facilitate the development of agreements between the adventure tourism and forestry tenure holders that use key elements of Ontario's Resource Stewardship Agreements and which provide for the development of a voluntarily negotiated regional strategic development plan inclusive of a wide range of values from both industries as well as First Nations with Aboriginal rights and land claims. Ensure that First Nations are also involved in the negotiation processes. While there is a legal duty to consult and accommodate on the part of the Crown, it is important to recognize that the inclusion of First Nations at all levels of planning and negotiation is key to success in any industry operating on Crown land.
5. Require Licensees to engage in a forest planning process that provides detailed operational plans (e.g., site plans, road plans) and undertakes "effective consultation" processes in order to protect a wider range of opportunities and reduce conflicts.

These suggestions to reform the current levels of "effective consultation" between tenure holders are provided with the hope that they might facilitate better neighbourly relationships and allow both industries to prosper and flourish on BC's Crown lands. In those situations where "effective consultation" does not work, the author also suggests that:

6. A better dispute resolution system should be established to deal with those conflicts. This could be achieved by developing local resolution boards to investigate, report, and recommend specific remedies.
7. The Forest Practices Board, or a re-mandated version of the Board that includes jurisdiction reaching beyond forest practices and including other industries situated within the forest (such as adventure tourism), be provided with more powers to:

123 See MFLNRO, "FRPA Bulletin", *supra* note 41.

- a. Facilitate negotiations between Licensees and adventure tourism operators where agreements are being developed (similar to Ontario's RSAs); and
- b. Investigate, intervene, and provide remedies when stakeholder disputes cannot be resolved at the local level. The Board has a clear understanding of the issues but has thus far not been able to provide much in the way of substantial remedies to the parties before them.

The long-held focus on the extractive resource industries, particularly the forestry industry, has given rise to a traditional mindset that has made it difficult for the province to seize and protect newer, emerging opportunities on BC's forested Crown lands. The BC government needs to challenge and reconsider the historical and current focus on the forestry industry as the province's primary economic driver. A new, more current approach that addresses the myriad of issues on Crown land in BC could benefit industry, government, and First Nations. This change would encourage a policy and legislative framework that supports a broader range of compatible and beneficial relationships among tenure holders on Crown land, but only if Aboriginal land claims are effectively considered and addressed. Such a framework at the strategic level would encourage substantive changes at the operational levels of government and forest-based industries.

These suggestions are provided in the hope that BC can more effectively navigate future economic challenges and benefit fully from the province's forest resources on Crown land.