

Aboriginal Forest Tenures As Interim Measures To Rights Accomodation



NAFA

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Directions from the courts on Aboriginal and Treaty Rights

- Delgamuukw (1997)
 - Aboriginal title is a legal interest, a right to the land itself, importance of consultation when potential of infringement, economic component of Aboriginal rights, compensation.
 - 3 part test to establish Aboriginal title.
 - oral testimony accepted
- Haida (2004) – government duty to consult and accommodate, honour of the Crown
- Mikisew (2005) – a treaty area, direct consultation engagement with Mikisew, to substantially address issues – reciprocal onus
- Sappier/Gray (2006) – right to harvest timber for shelter, transportation, tools and fuel (domestic)
- BC cases on the adequacy of consultation and accommodation (2002-2007) and the need to negotiate leading to the New Relationship

•First Nation access to forest tenure allocations across Canada

Jurisdiction	FN held (m ³ /y)		Total (m ³ /y)		Percent First Nation	
	2003	2006	2003	2006	2003	2006
YK	28,000	15,000	266,500	465,000	10.5%	3.2%
NWT	-	-	235,000	35,000	0.0%	0.0%
BC	3,716,232	6,006,805	61,309,245	82,586,149	6.1%	7.3%
AB	975,941	1,145,963	24,070,000	24,570,880	4.1%	4.7%
SK	1,143,690	1,971,690	6,814,758	8,105,350	16.8%	24.3%
MB	132,605	153,887	3,494,426	3,450,634	3.8%	4.5%
ON	~1,100,341	~1,281,380	30,481,503	22,606,885	Not available	Not available
QC	652,381	858,652	35,727,362	31,763,257	1.8%	2.7%
NB	233,800	237,097	5,152,310	5,429,992	4.5%	4.4%
NS	-	-	1,028,400	1,063,876	0.0%	0.0%
PEI	-	-	42,900	42,900	0.0%	0.0%
NFL	-	15,000	2,004,800	2,643,680	0.0%	0.6%
Total	7,983,991	11,686,477	170,628,206	182,764,606	4.7%	6.4%

Note: Ontario provided aggregated data that combines both tenure allocations with private sector harvest contract arrangements with First Nations or First Nation harvesters. The data presented for Ontario tenure is therefore an estimate based on anecdotal assessment provided by the MNR staff that half of this combined amount may be tenure arrangements. This estimate has been applied to the equivalent “tenure + contract” data for the previous period as well. However, given the uncertainty inherent in this rough estimate, no estimate of the percentage of tenure held by First Nations in Ontario can be generated.



Aboriginal Forest Tenures would encompass:

- area-based covering an area of the traditional territory,
- reliant on a combination traditional knowledge and western science,
- balanced between consumptive and non-consumptive use
- holistic and ecosystem-based and reflective of social, economic and cultural values
- explicit objectives with respect to rights accommodation,
- respectful of non-Aboriginal interests, and
- consistent with First Nation governance models