Introduction

On March 29 and 30, 2011, the National Aboriginal Forestry Association (NAFA) and the Assembly of First Nations (AFN) jointly hosted a National Forum on First Nations Forest Land Stewardship, themed “Our Forests, Our Future: Advancing Our Stewardship Role.” Over 100 people attended the forum, including a special appearance and address by National Chief Shawn A-in-chut Atleo. Participants and speakers represented a diversity of First Nations across Canada, provincial and territorial organizations (PTO’s), as well as First Nation natural resource councils and other forest practitioners. Keynote addresses by Chief Ovide Mercredi of Misipawistik Cree Nation, Don Roberts of CIBC World Markets, and Peter Lee of Global Forest Watch covered a broad range of global forest issues and the challenges they will represent for First Nations.

The meeting’s main purpose was to facilitate discussion on policy recommendations and future direction for First Nations in the forest sector, with a specific focus on AFN Resolution 37/2010, concerning the development of a First Nations carbon financing regime, and Resolution 65/2010, regarding the future of the Boreal Forest and rejection of the Canadian Boreal Forest Agreement (CBFA). As such, presentations and panel discussions centered on the changing direction of the forest sector at international, national and provincial levels and consideration of the emerging bio-economy, forest conservation, forest research and forest tenure reform, among other related matters.

Key Issues and Points of Contention

(1) First Nations Rights and Provincial Forestry Regimes

A key issue focused on the intersection of Aboriginal treaty rights and provincial forest management regimes. A shared concern is that most often forestry policy and legislation do not reflect First Nations values, nor do they incorporate customary laws and practices. In addition, policies and legislation generally do not support First Nations self-determination and jurisdiction, meaningful decision-making, shared management of resources, and the equitable sharing of economic opportunities and benefits. In fact, some provincial forestry regimes, such as Quebec’s Sustainable Forest Development Act, disregard constitutionally protected Aboriginal title and treaty rights and are therefore inconsistent with Canada’s Constitution, recent case law, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which Canada recently endorsed. There are also concerns related to forest tenure and First
Nations jurisdiction of their territories, specifically with regards to how each province defines “ownership” of the lands being reformed.

At the same time, presenters expounded on some of the barriers encountered by First Nation forest practitioners. Many obstacles were discussed, including: the difficulty in accessing markets; the lack of skills and capacity; the lack of start-up capital; and various regulatory and jurisdictional issues.

(2) First Nations Forest Policy and the Need for Increased Capacity and Support

The above analyses were complemented by discussions of the various elements that must be incorporated into forestry policy, legislation, and management regimes to ensure that they reflect First Nations title and treaty rights. Foremost, policy and legislation need to consider the values, customs, traditions and practices of First Nations. In addition, they must be developed in a way that supports partnerships between First Nations and non-native organizations and governments, prioritizes First Nations stewardship efforts, and seriously considers the effects of climate change on forest management. Again, forestry policy and legislation must not only be founded on economic sustainability, but also on environmental, social and cultural sustainability (hence, the relevance of corporate social responsibility for First Nations) because the boreal forest has sustained the cultures, environment and economies of hundreds of First Nation communities for thousands of years. It follows that development projects on ancestral lands should only be permitted if developers obtain the free, prior and informed consent of the First Nations whose lands are at stake. And, it is important that these communities benefit from proposed developments through the equitable sharing of economic opportunities and benefits associated with projects. Finally, communities need more First Nations specific programs to implement sustainable forest management practices. Together, these elements will help ensure that First Nations continue to assert (or reassert) jurisdiction over their traditional lands and resources.

This last point was articulated throughout the meeting. Accordingly, participants discussed what capacity First Nations require to ensure jurisdiction. As a general rule, all areas of First Nations capacity should be supported, yet there are some specific areas which deserve immediate attention, such as: a consultation tracking system to keep track of provincial government consultation processes and communications with First Nation communities; an internal consultation process and procedures to contest government interpretations of the duty to consult and accommodate; and an information management system equipped with GIS mapping that provides data to inform decision-making about land use or forest plans. It was argued that it is the First Nation communities who are best able to meet these needs who will be most successful in advancing their Aboriginal title and treaty rights and secure governments’ duty to consult and accommodate. Governments will not go out of their way to accommodate First
Nations. It is for this reason that First Nations have to organize themselves and exert jurisdiction, not only in forestry, but in multiple resource sectors. Lastly, participants emphasized that First Nations must cultivate relationships between each other because building an alliance is key to protecting First Nations rights across Canada.

(3) The Canadian Boreal Forest Agreement (CBFA)

The above discussions were closely connected to AFN Resolution 65/2010, concerning the future of the Boreal Forest and rejection of the CBFA. On May 14, 2010, twenty two Canadian forest companies belonging to the Forest Products Association of Canada (FPAC) and nine environmental non-governmental organizations (ENGO’s) signed the CBFA, a non-binding, three year agreement to work together towards improving sustainable forest management practices, advancing forest conservation, improving economic prosperity for forest-dependent communities, and increasing market recognition for participating companies.

The major issue is that ENGO’s and forestry companies negotiated the CBFA without the prior consultation or meaningful participation of First Nations who have jurisdiction over the boreal forest that is located on their ancestral territories. Since the agreement was made public it has remained a source of great concern for First Nations as expressed in Resolution 65/2010 which stipulates that it is the responsibility of First Nations to decide how to conserve, manage and develop their forests. Many participants believe that the CBFA is about maintaining peace between ENGO’s and forestry companies, and not about respecting First Nations jurisdiction and sovereignty over their lands and natural resources. Ultimately, the CBFA is a rights-based issue, and it is for this reason that many participants maintain that Aboriginal treaty rights must be the basis for First Nations engagement in forest sector activity, and that this has to be reflected in national and provincial forest policy and forest management regimes.

(4) Building Relationships with ENGO’s

Another point of contention concerned the extent to which First Nations should work with ENGO’s, especially those that endorsed the CBFA. Conservation organizations have specific agendas and receive funding (i.e. “dirty money”) from industries and organizations which historically have disregarded Aboriginal rights and title. Another problem is that most ENGO’s operate under the false assumption that the public owns the forests, the trees and the carbon, and therefore falsely presume that they have the right to use, manage and benefit from the growing value of these lands. Lastly, many ENGO’s favour protected
areas as the best conservation strategy without due consideration to their consequences for First Nations rights.

Although opinions diverged and sometimes conflicted, there was a general consensus that ENGO’s have a role to play to the extent that they share stewardship values with First Nations. However, it was emphasized that their role should be to support First Nations interests and decisions, rather than make decisions for them. In other words, they must respect First Nations authority and governance of their lands and resources.

That being said, this issue is contentious and remains potentially divisive since some Chiefs will continue to refuse to negotiate with ENGO’s unless they rescind their support of the CBFA (hence, an apology is not sufficient). Others, however, are committed to engaging in dialogue with ENGO’s so long as their rights are recognized and respected (indeed, some First Nations also support the creation of protected areas because they halt the exploitation of resources on their lands). In the end, an agreement was not reached on this issue, although it was agreed that it should be revisited at the upcoming AGA in Moncton in July 2011.

(5) The Forest Sector in Transformation

On a different note, some presenters described how the forestry sector is undergoing transformation in response to a fluctuating global economy, international, national and provincial public policy, and emerging technologies. At the same time, the bio-energy sector and renewable energy sector (e.g. wind and solar) have expanded significantly, and these present important opportunities for First Nation forest practitioners.

Although there are some uncertainties, it was recommended that First Nation forest practitioners consider tapping into these growing markets. Yet, they should do so by complementing bio-energy and renewable energy with existing forms of energy production. For instance, an existing sawmill could add a small-scale bio-energy complex (e.g. a pyrolosis, gasification or pellet plant) to its infrastructure. Such an approach is economically feasible because in general bio-energy has a lighter capital footprint and is compatible with decentralized and small-scale installations.

(6) The UN Declaration on the Rights of Indigenous Peoples

Other presentations centered on indigenous rights issues at an international scale. Numerous mentions were made of the fact that in 2007 the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This Declaration is the most comprehensive document outlining the rights that are necessary for the survival of indigenous peoples
worldwide (encompassing social, cultural, economical and political aspects). Canada has recently endorsed the Declaration, although it has not done so willingly since it voiced various objections throughout the negotiations.

This Declaration is important since it explicitly states that indigenous peoples have the right to self-determination and therefore the right to make decisions regarding their respective territories and resources therein. This is especially relevant to forestry considering that approximately 80% of the world’s forests are located on indigenous lands (which represent 90% of the world’s cultural diversity).

(7) First Nations Forestry Institution

Throughout the meeting it was asserted that First Nations must find a unity of resolve and find a way to work together towards developing a unified and strong forestry position. To this end, it was proposed that First Nations create a national natural resources institution of some sort whose mandate would be to assist First Nations in protecting their rights as they relate to their ancestral territories and resources. This institution would have oversight of natural resources management and forest conservation initiatives to ensure appropriate First Nations engagement and expand First Nations jurisdiction. It would also provide support and capacity to help First Nations deal with the pressures being exerted by industry and public governments to exploit the resources on their lands. Regional representation would be an indispensable element of this body’s organizational structure, and therefore it would not have the authority to speak on behalf of First Nations. Furthermore, it was suggested that such a council might be comprised of a technical support team, an administrative support staff, researchers and policy analysts, and sub-committees that focus on specific areas (e.g. mining, fisheries, forestry, etc.). In this way a national council would help build a unity amongst First Nations, while also cultivating working relationships with non-native groups (e.g. social action groups, unions, ENGO’s, etc.) who are committed to supporting First Nations land stewardship interests and rights. Through these functions a national institution would help ensure that First Nations have a unified voice on forestry and allow them to set their own agenda rather than having one forced upon them as it is feared with the CBFA.

Although the idea was certainly welcomed, some notable concerns were expressed. Foremost, might a First Nations national council potentially jeopardize the rights and title of some communities regarding the control of natural resources on their territories? Different communities have different interests, and in the quest for a unified position some interests could be supported to the detriment of others. Again, how would this institution be governed? Who would have the authority to make decisions? And, how would decisions be made? (e.g. by general consensus or absolute consensus?). In the end, no agreement could
be reached, although it was agreed that this proposal should be discussed in more depth at the upcoming AGA in Moncton.

(8) Future Discussion Paper

Finally, it was agreed that AFN and NAFA work together to produce a discussion paper that discusses pertinent First Nation forestry issues and outlines recommendations for increasing support for effective First Nations jurisdiction of their lands and resources. This paper will subsequently be distributed to First Nations for review and ongoing discussion.

Conclusion

As a whole, the National Forum on First Nations Forest Land Stewardship was a success as there were many accomplishments. Foremost, the meeting provided a forum for leaders of First Nations, representatives of PTO’s and various forest practitioners to engage in dialogue on current First Nations needs and concerns, policy recommendations, and the future direction for First Nations in the forest sector. This last point is key! Although there were conflicting views with regards to the CBFA and partnering with ENGO’s, in general participants agreed that they must commit to working together in the goal of developing a foundation upon which to move forward. The global forestry sector is in transformation, and First Nations must likewise adapt. Of particular promise is the proposal to create a network-based National First Nations Natural Resources council, organization or institute that would provide capacity and assist First Nations in developing the tools needed to excel in all aspects of forestry, including energy, mining, environmental health, food security, etc. In this idea germinates the seed for First Nations economic growth and land stewardship, and to this end AFN and NAFA are jointly committed to producing a discussion paper on precisely this topic for further discussion at the upcoming AGA in Moncton in July 2011.