

BILL 13 - FORESTS AND RANGE (FIRST NATIONS WOODLAND LICENCE) STATUTES AMENDMENT ACT

On April 26, 2010, the provincial government introduced *Bill 13 - Forests and Range (First Nations Woodland Licence) Statutes Amendment Act, 2010* to the legislature (the “Bill”). The Bill once passed (the “Act”), will amend forestry legislation to create a new area-based tenure for First Nations who have an Interim Measures Agreement with the Province. As indicated in the title of the Bill, the tenure will be called a **First Nations Woodland Licence** (“FNWL”).

What is the Intention?

The intention of the amendments is to expand First Nations participation in the forest sector and provide economic opportunities to First Nations communities. The changes will implement one of the recommendations set out under Priority 6 of the Working Roundtable on Forestry report, which is premised on bringing existing opportunities in line with the New Relationship and Transformative Change Accord:

“Recommendation 25: We should create more long term, area-based forest tenures that are of an economically viable size, and create legislation for a First Nations forest tenure.”

However, given that First Nations will require an Interim Measures Agreement (“IMA”) and there will be no new volume available under FNWLs outside the Forest and Range Opportunities/Agreements (“FRA/Os”) program, it



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The intention is to expand First Nations participation in the forest sector.

<p>FNWLs will be issued by direct award.</p> <p>Existing licence may be converted to FNWLs.</p>	<p>appears that the Amendments are meant to fit within the Province’s current First Nation Forestry Strategy framework.</p> <p>The following are some highlights of the Amendments coming to the <i>Forest Act</i>, <i>Forest and Range Practices Act</i>, <i>Park Act</i> and <i>Range Act</i> and associated regulations.</p> <p><i>Amendment Highlights - Similar to CFAs</i></p> <p>Amendments to the <i>Forest Act</i> will include:</p> <ul style="list-style-type: none"> • provisions for the disposition, content, term and regulation of FNWLs similar to Community Forest Agreements (“CFAs”). For example: <ul style="list-style-type: none"> ▪ an agreement may be entered into with BCTS or a third party; ▪ applications will require a management plan and can provide for the opportunity to manage and charge fees for botanical forest products and, opportunities to manage recreation, wildlife, watersheds, viewscales and cultural heritage resources; ▪ tenures will be made by direct award and grant exclusive harvesting rights over a fixed area (which may include private or reserve land, or both); ▪ tenures will be for a term of not less than 25 years and not greater than 99 years; ▪ the AAC will be determined by the Chief Forester; ▪ waste assessments and annual rents will be required, as will stumpage (paid on market pricing bases); ▪ certain “existing licenses,” as amended, may be converted into a FNWL by regulation, which may include non-replaceable forest licenses made under section 12 of the Act; and, ▪ FNWL areas will be subject to the deletions and reductions for access and other purposes, at the discretion of the Crown. <p>Generally, FNWLs will be subject to the same provincial forest and range planning and practices standards and regulations as CFAs under the <i>Forest Practices and Range Act</i>, subject to regulations under the Act. Amendments to FRPA will include the following requirements:</p> <ul style="list-style-type: none"> • to prepare an operational plan (either a Forest Stewardship Plan or a Woodlot Licence Plan) that includes stocking requirements; • to design and meet results and strategies in those plans according to
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<p>Stumpage may be offset by revenue sharing.</p>	<p>government objectives;</p> <ul style="list-style-type: none"> • to apply for operational permits; • to address road and forest health issues and, protect resources (from invasive plants, unauthorized uses, etc.); and • to carry out audits and, comply with provincial environmental standards. <p>First Nations licensees will have the option to enter into agreements for grazing and hay cutting licenses under the <i>Range Act</i>. Finally, as with CFAs, FNWL areas will be subject to reductions or deletions for parks, conservancies, or recreation areas under the <i>Park Act</i>.</p> <p><i>Amendment Highlights - Differences from CFAs</i></p> <p>Despite these similarities, there are some unique differences in the disposition, management and regulation of FNWLs. As above, an IMA is a precondition to applying for a FNWL and the terms and conditions of the IMA must be strictly adhered to, including completing any surrender of a prior agreement before the tenure will be awarded. Also:</p> <ul style="list-style-type: none"> (a) FNWLs will not be subject to the competitive bid process; (b) FNWLs can only be held by a First Nation or their representative, as defined in the Act, including a BC corporation controlled by that First Nation; (c) FNWLs can only be transferred to a BC corporation controlled by a First Nation; (d) subject to the terms of an IMA, a portion of the stumpage paid will be offset by revenue sharing; (e) FNWL holders will not be required to pay a tenure deposit (as for a CFA harvesting timber to which a FSP applies); and, (f) licensees are not required to prepare a FSP (however, an operational plan is required before cutting permits will be issued; and may be in the form of either an FSP or WLL Plan). <p><i>Potential Implications</i></p> <p>Interestingly, while FNWLs require a First Nation to have entered into an IMA, it is unclear whether these agreements will provide any greater certainty or opportunities to forest resources than FRA/Os. Arguably, the flexibility under FNWLs, stumpage offsets, and the potential for innovative management over botanicals and other resources (eg. by applying ecosystem based management standards) make these tenures look more attractive. Also, there may be potential to</p>
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make existing opportunities more economically viable.

However, the Amendments were largely drafted without First Nations consultation and may not, without proper consultation and accommodation (eg. increased volume, revenue sharing and shared-decision making in higher level plans and determining objectives), adequately compensate for infringing Aboriginal rights and title interests outside FNWL areas. At this point, one can only speculate what or how regulations, expected to be brought in at a later date, may either hinder or assist in resolving these issues. Also, it remains to be seen how some of the other issues affecting First Nation participation in the forest sector (e.g. replaceable volumes, bioenergy and other business opportunities, including access to markets) will be addressed.

The Bill has passed first Reading and is scheduled to begin a second Reading on May 5th, 2010.

Forestry Law Practice Group

The Davis LLP Forestry Law Practice Group is one of our longest standing practice groups. We advise and represent clients throughout Canada and abroad on virtually all issues affecting the forest sector, and advise on developing policy for legislative initiatives and education programs.

The group includes lawyers with varied backgrounds:

- A professional forester and former in-house counsel for a major forest products company in B.C., and a professional forester and former forester/lawyer with the Government of Alberta
- Lawyers experienced in forestry, First Nations legal issues, arbitration, environmental law and administrative procedures and corporate/commercial transactions
- Lawyers who have participated in major, complex transactions

Two of our Group's lawyers teach the Forestry Law course at the University of British Columbia Law School and edit *British Columbia Forestry Law (Canada Law Book)*, a leading source of legal materials relating to forestry law in British Columbia and published by Davis.

In Alberta, one of our Group's lawyers lectures from time to time on forestry law matters at the University of Alberta, Faculty of Forestry; the Northern Alberta Institute of Technology; the College of Alberta Professional Foresters; and the College of Alberta Professional Forest Technologists and also serves on the Council of the College of Alberta Professional Foresters.

Aboriginal Law Practice Group

The Davis LLP Aboriginal Law Practice Group has provided legal advice to First Nations people, and those wishing to conduct business with them, for over 35 years. We represent First Nations, Tribal Councils and Aboriginal non-profit organizations, businesses and individuals in British Columbia, the Yukon, the Northwest Territories, Nunavut and Alberta.

We provide service to Aboriginal people from our offices in Vancouver, Edmonton, Whitehorse, Yellowknife and Toronto. Our Edmonton, Whitehorse and Yellowknife lawyers live in the cities where they work, and travel to outlying communities across the North.

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