

Native voice in forests scares industry

Coastal association expresses concern over 'done deal' with First Nations

The coastal forest industry appears to be quietly seething over the "new relationship" agreement that the B.C. government is just as quietly putting together with First Nations leaders.

Coast Forest Products Association president Rick Jeffery wrote a brief outline of the group's position in its most recent newsletter.

The new relationship has been kept extraordinarily quiet, considering it was put to paper and signed at the outset of the election campaign, and has potentially major implications.

So Coast Forest is one of the few groups watching the deal take shape to go public with any comments. And Jeffery's critique appears to have been written with gritted teeth.

"This spring Premier Campbell took the initiative to move forward with a new vision for the relationship between the provincial government and First Nations," he wrote.

(That accords with my understanding that this is entirely Campbell's doing. He held a summit with First Nations leaders last November and — like other premiers before him — had an epiphany of sorts about the urgent need to make progress.)

Jeffery notes that the new relationship document has been endorsed by the Union of B.C. Indian Chiefs, the First Nations Summit and the B.C. branch of the Assembly of First Nations.

"We believe that this historic coming together bodes well for achieving both reconciliation of title and rights as well as business certainty," said Jeffery.

(The unity on the native side has been recognized and hailed by others

as well, including Attorney General Geoff Plant, who said it is very significant and may be the first time ever all the disparate First Nations leaders have sat down at a table and come to terms.)

But that's as far as the forest industry's unqualified support of the fledgling deal goes.

"While Coast Forest endorsed moving forward and lauds the premier's initiative, we have advised government of substantive concerns and issues in the document," Jeffery wrote.

Here are the concerns the forest industry group has:

- "Constitutionally the Crown is sovereign over the broader political, social and economic community, and as such has the right and obligation to manage land and resources by balancing the interests of all..."

- That used to be just a motherhood issue. But now it isn't. Jeffery points it out because the fundamental agreement in the new relationship document is to establish new process and institutions for shared decision-making between the government and First Nations.

- And it relies on the Constitution as much as Coast Forest's statement does: Natives' section 35 rights flow from "First Nations' historical and sacred relationship with their territories," says the document.

- Jeffery acknowledges the Crown has a duty to consult with aboriginal groups, in keeping with the honour of the Crown and in furtherance of reconciliation.

- "But this does not mean the Crown can or should enter into shared decision making processes that elevate aboriginal rights contrary to law."

- The idea that the new relationship document is contrary to law will likely gain some ground once it becomes more public. But it will take a few more expensive court cases to decide that, and litigants will be fighting a trend running in the opposite direction.

- In four cases post-Haida the courts

have upheld the Crown's duty to consult and accommodate because the Crown failed in this regard, "but they have not held or suggested that the Crown be required to make decisions jointly with aboriginal groups."

That view is common in resource industries, where the thinking is Campbell has simply gone too far in reacting to the November court decisions, and the subsequent pivotal summit meeting with First Nations.

- In Taku River, the Supreme Court ruled consultation and accommodation by the Crown was adequate even though the First Nation did not agree, Jeffery noted. That was the companion decision to the Haida case, and one in which the government actually won the day. But it was notable how little attention that got.

- Even when governments win native rights cases, they get overtaken by other events.

- "Commercial contractual rights and the investment made on the basis of those rights cannot be subjected to veto by parties other than the province," Jeffery wrote, in what is probably the key objection to the whole new arrangement. It's that "veto power" that industry is worried about.

- Shared decision-making is meant to bring First Nations into the picture and create certainty about the consequences of decisions made through the unspecified new processes and institutions. But if a decision is supposed to be shared and First Nations refuse to buy into it, does that become a veto? It's the key concern.

- Coast Forest is looking to be an integral part of future work on the deal and is looking forward to meaningful negotiations on building the new relationship.

- But its concerns are fundamental, and its objections are to the framework of a deal that already looks to be done.



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