



Forest Legislation and Policy Reference Guide 2009

Chapter One

Introduction to Forest Policy in British Columbia

Chapter One

Introduction to Forest Policy in British Columbia

Table of Contents

- 1.0 Introduction to Forest Policy in British Columbia..... 1 – 1**
- 1.1 Who Sets Forest Policy..... 1 – 1
- 1.2 How Forest Policy is Implemented 1 – 2
- 1.3 Evolution of Policy and Enactments 1 – 4
- 1.4 Looking Ahead..... 1 – 11
- 1.5 References..... 1 – 11
- 1.6 Apply the Knowledge 1 – 12
- Some Key Dates on BC's Forest Policy Timeline 1 – 4 → 1 – 7

Introduction to Forest Policy in British Columbia

This publication is a reference guide to BC forest policy.

Forest policy can be defined as the course or principles of action adopted by government to guide the management and use of forest resources and the development and operation of the forest sector.

Forest policy is important in British Columbia because it has a significant impact on the ability of our society to meet its social, economic and environmental goals and objectives.

Apart from understanding what forest policy is and why it is important, forest professionals must also understand:

- how forest policy is established, including who sets it and how it is implemented;
- the evolution of forest policy;
- the current status of forest policy; and
- the implications of the foregoing for the practice of forest professionals.

Additionally, forest professionals must understand the policy framework to properly evaluate the effectiveness of specific policies. Those implementing policy are often best positioned to assess its results relative to its objectives. Evaluating policy requires an understanding of the administrative mechanisms for implementing management practices as well as the principles or ideas that underlie the policy.

This chapter addresses how forest policy is established and, in a general sense, how it has evolved. Subsequent chapters provide additional information on the evolution of particular policies, explain their current status and outline their implications for professional foresters.

1.1 Who Sets Forest Policy

Forest policy can be established by government at four levels:

- international;
- federal;
- provincial; and
- local government (regional or municipal).

Under Canada's constitution, jurisdiction over forest management rests primarily with provincial governments.

However, the federal government can have a significant role in forestry through its jurisdiction over matters such as:

- fisheries (e.g. protection of fish habitat);
- aboriginal peoples (e.g. forest management over reserves and the negotiation and settlement of land claims);
- trade and commerce (e.g. addressing tariff and non-tariff trade barriers such as softwood lumber trade arrangements between Canada and the United States);
- international treaties (e.g. treaties on biodiversity and climate change); and
- wildlife (jurisdiction shared with provinces) (e.g. *Species at Risk Act*).

The authority of international "government" to set forest policy derives from international treaties or instruments such as those described above. Presently, this source has limited influence over BC forest policy, but this influence may grow as the climate change and biodiversity treaties are implemented and as work proceeds on a proposed forest treaty.

The authority of regional and municipal governments to set forest policy derives from authority granted by the provincial government through the *Local Government Act* and the Community Charter (e.g. municipal forests). This authority is very limited.

This reference guide focuses on provincial (and, to a lesser extent, federal) forest policy.

1.2 How Forest Policy is Implemented

Typically, forest policy is implemented through one, or a combination, of four instruments:

- Acts;
- regulations and other subordinate legislation;
- contracts; or
- administration documents.

The term "enactments" describes Acts, regulations and other subordinate legislation. Acts are passed by Parliament (federal) or the Legislature (Provincial), and regulations established by Cabinet. Other subordinate legislation (i.e. legislation that derives its authority from an Act) can be established in a variety of ways. The two most important cases from a forestry perspective are the coast and interior appraisal manuals and the Chief Forester Standards. The appraisal manuals are established under **section 105** of the *Forest Act*, which enables the Minister responsible for the *Forest Act* to make policies and procedures respecting determination of stumpage rates. Chief Foresters Standards are authorized by the *Forest and Range Practices Act* and its regulations (e.g. the Chief Forester Standards for seed use).

The instrument chosen to implement any particular policy depends on who is implementing the policy, the nature of the policy and the limitations of the instrument.

For each kind of instrument, these considerations are summarized as follows:

Acts

- Who:**
- Federal Parliament; or
 - Provincial Legislature.

- Why:**
- broadest expression of overall government policy; and
 - necessary to create foundation for establishing other types of instruments (regulations and other subordinate legislation, contracts and administration documents).

- Limitations:**
- subject to debate and vote;
 - Parliament or Legislature not always available to make changes; and
 - not conducive to detail.

Regulations and other subordinate legislation

- Who:**
- Cabinet (technically, Governor General in Council [federal] or Lieutenant Governor in Council [provincial]) for regulations. Other means specified in the applicable Act for other subordinate legislation.

- Why:**
- easier to create than Acts; and
 - good way to cover off detail and rules that may change frequently.

- Limitations:**
- still may not be overly specific; and
 - for regulations, Minister must have Cabinet approval.

Contracts

- Who:**
- by government delegated level, such as:
 - Minister for issuing tree farm licence (TFL);
 - Chief Forester for approving management plan;
 - regional manager for issuing forest licence; and
 - district manager for cutting permits.

- Why:**
- flexibility - within some constraints, can tailor contract to site and licensee;
 - generally do not require approval outside Ministry (although referral to other ministries or agencies may be involved); and
 - gives government contractual remedy in addition to statutory remedies.

- Limitations:**
- administrative burden of thousands of documents; and
 - some groups complain about lack of input or right to approve.

Administration Documents

Who: • typically, Ministry executive or other Ministry employees.

Why: • fills in gaps left by Acts, regulations and contracts.

Limitations: • may not have the force of law [exceptions include contracts that adopt Ministry of Forests and Range (MFR) policy or legislation as a term of the contract or incorporated into the regulations (e.g. licence documents refer to the *Forest Act* and MFR manuals such as cruising and waste)].

Kinds: • Administrative Policies contained in the Ministry Policy Manual (e.g. aboriginal rights and title or evaluation and award of licences).
• Procedures: how policy will be carried out (e.g. cruising, engineering, inventory and scaling manuals).

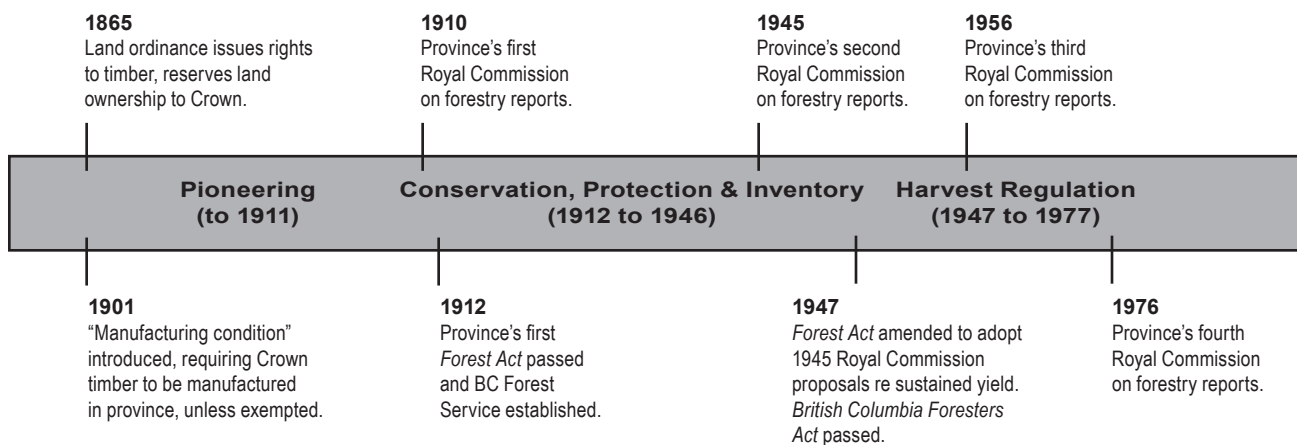
1.3 Evolution of Policy and Enactments

As society's social, environmental and economic goals and objectives pertaining to our forests and their values and uses are constantly changing, so too is the forest policy that is established to achieve these goals and objectives. It would be much easier to study forest policy if it were static. However, at any given time, the policy framework contains aspects that have stood the test of time, ideas that are being evaluated and concepts that are being phased-out. To understand our current framework it is important to review how forest policy has evolved.

Not surprisingly, the evolution of forestry enactments in BC has tracked the evolution of forest policy.

Several distinct stages are evident.

Some Key Dates on BC's Forest Policy Timeline



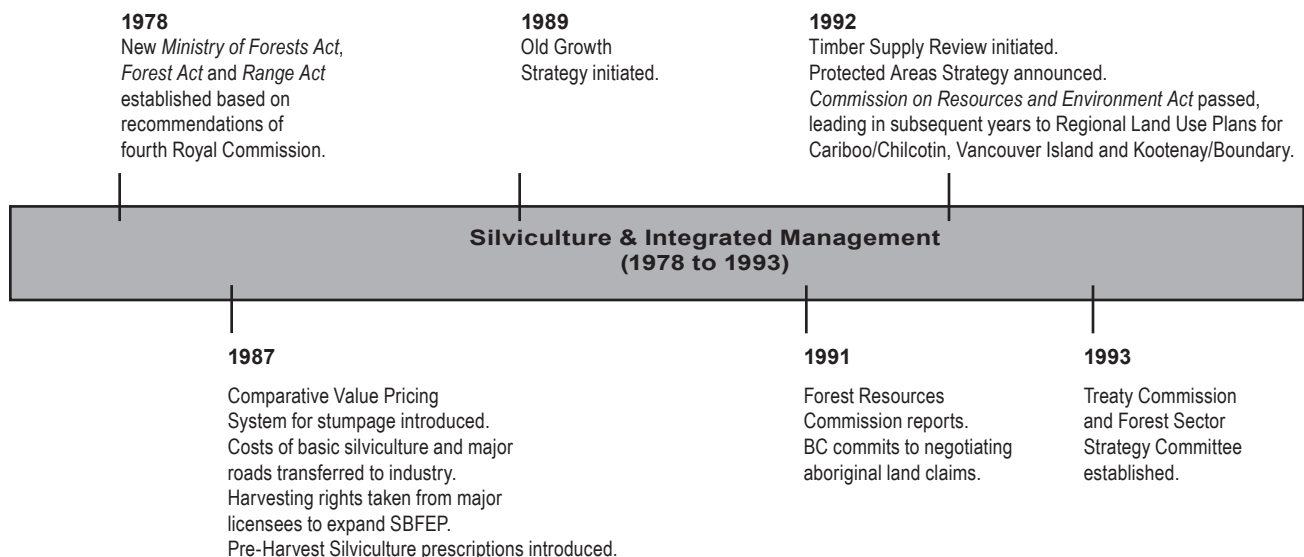
Stage 1 - Pioneering (up to 1911)

Development of British Columbia's forest resources and industry began in the mid - 1800s as the Gold Rush tapered out and limits to agricultural development were realized.

Although the pioneering period did not produce any forestry enactment of general application, three fundamental policies were established that remain cornerstones of today's forest policies:

- **Crown Ownership Retained:** a Land Ordinance in 1865 initiated a government policy of retaining Crown ownership of the land while allocating rights to harvest the timber. This remains a fundamental principle of modern forest policy in the province. As a result, today, 95% of all forest land in the province is Crown owned. Harvesting rights are allocated under forms of agreements known as "tenure". The early forms of tenure issued between 1865 and 1907 collectively came to be known as "Old Temporary Tenures" (OTTs), many of which endure to this day as Timber Licences (TLs).
- **Revenue Rights Reserved:** the significance of Crown timber as a source of revenue was not lost on the pioneering governments. Royalties were reserved on Crown tenures and on some fee simple property.
- **Manufacturing in the Province Required:** in 1901, a "Manufacturing Condition" was imposed, requiring all timber harvested from Crown land to be manufactured in the province unless exempted. In 1906, this condition was extended to fee simple land Crown-granted after March 12, 1906.

Some Key Dates on BC's Forest Policy Timeline *(continued)*



Stage 2 - Conservation, Protection and Inventory (1912 - 1946)

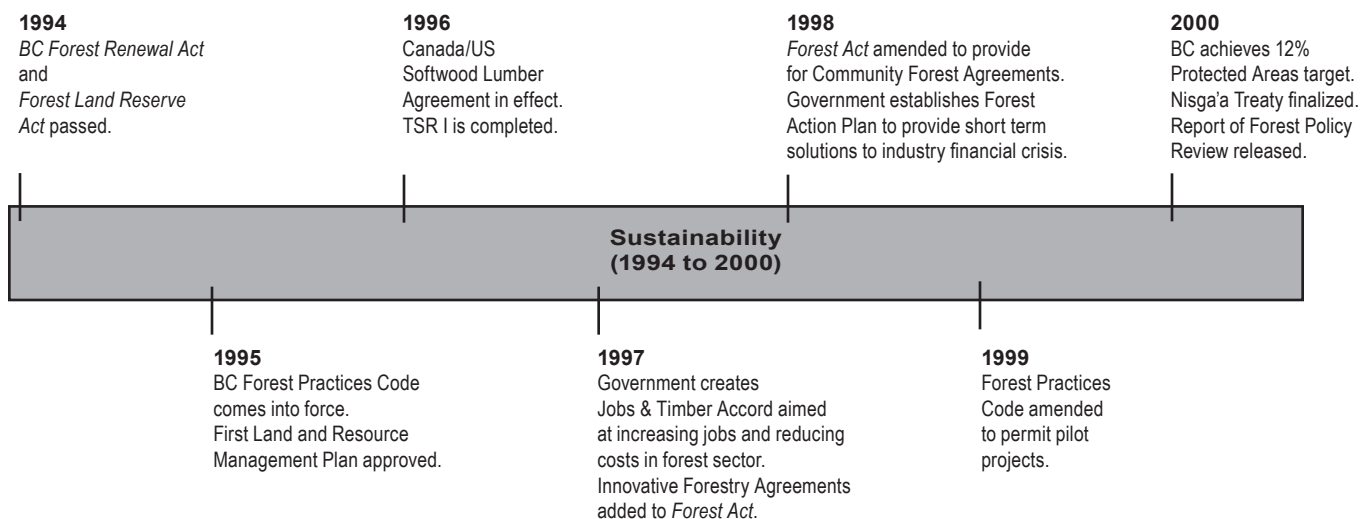
While the early colonial and provincial governments of British Columbia developed their formative forest policies, a conservation movement was gaining strength in North America.

Governments were creating forest reserves, establishing fire patrols and paying closer attention to the inventory of timber versus rates of timber harvesting. In British Columbia, timber speculation led the government in 1907, to suspend issuance of any new OTTs and, then, to establish the province's first royal commission on forestry, the Fulton Royal Commission of Inquiry on Timber and Forestry, which reported out in 1910. In response to concerns about timber shortages, the Commission recommended that all unalienated timber be indefinitely transferred into reserves to be allocated only in special circumstances and then by competition, with stumpage payable.

In 1912, the province's first *Forest Act* was passed which included recommendations of the Fulton Royal Commission. The Act established a provincial Department of Forestry, and contained conservation measures in addition to the creation of forest reserves. The Act also introduced a new form of tenure called a timber sale licence (TSL) that was a short-term, nonreplicable licence on a small plot of land.

During this period there were not any policies for harvest regulation, so timber sale licences were processed in response to demand. Existing licences were not sufficient to meet the demand of growing industry and insufficient reforestation led to creation of (Sloan) Royal Commission (see below).

Some Key Dates on BC's Forest Policy Timeline *(continued)*



Stage 3 - Harvest Regulation (1947-1977)

By the early 1940s, the forest industry was looking for greater security of tenure than was offered by the short-term TSLs. At the same time, timber development was highly concentrated in small areas of the province where there were growing concerns of timber shortages, while a large part of the province's forests remained undeveloped. In response, in 1943 the government appointed the province's second royal commission on forestry, the Commission on Forest Resources of British Columbia (also known as the Sloan Commission).

The Commission's 1945 report recommended a tenure system establishing a sustained yield forest policy to be implemented through public working circles (now timber supply areas) and private working circles (now tree farm licences). In 1947, the *Forest Act* was amended to incorporate these ideas.

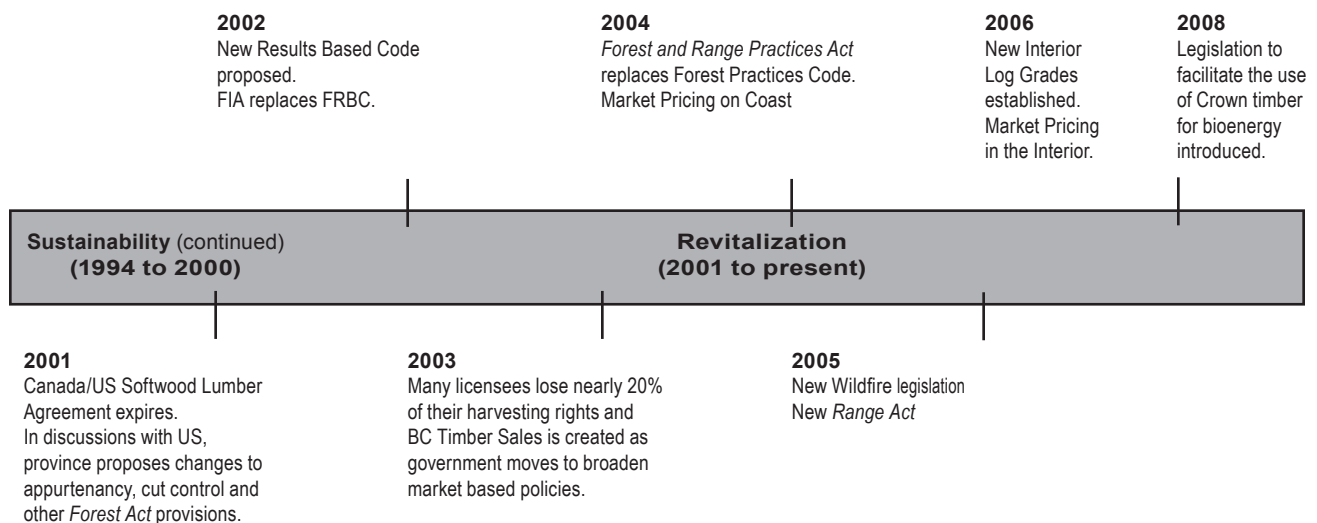
The Commission also concluded a clear need to recognize the profession of forestry, which led to the *British Columbia Foresters Act* in 1947.

Stage 4 - Silviculture and Integrated Management (1978 to 1993)

By the early 1970s, it was becoming apparent that protection, inventory and harvest regulation did not constitute a comprehensive forest policy reflecting all the current values of society. Significant questions were being raised about the establishment and growth of new forests and the need to take into account other values of the forest. In 1975, the government appointed the province's fourth royal commission on forestry, the Royal Commission on Forest Resource – Timber Rights and Forest Policy in British Columbia (Pearse) to address the conflict between security of tenures (economic growth, stability) and changing public demands (demand for non-timber forest values).

The Commission's 1976 report led to a new *Ministry of Forests Act*, *Forest Act* and *Range Act* in 1978. Through these enactments, the Ministry was charged with the duty of managing the forests for integrated use, a strategic approach to forest policy was legislated, allowable annual cuts for timber supply areas were to be determined according to statutory criteria and the forest tenure system was overhauled.

Some Key Dates on BC's Forest Policy Timeline (continued)



Stage 5 - Sustainability (1994 to 2000)

While Stage 1 of forest policy development in the province lasted about 50 years, Stages 2 and 3 were reduced to about 30 years each and Stage 4 lasted only about 15 years.

By the early 1990s, the policy of multiple or integrated use was being superseded by a policy that emphasized two ideas:

- the need for more protected areas, where commercial forestry would not be practiced; and
- on the remaining commercial forest land base, a view that forest management should be driven less by issues of use and more by issues pertaining to the concept of sustainable use (which involves balancing diverse values to meet present and future needs).

Further, there was a growing desire that forest management responsibilities be set less through contractual arrangements and more through legislative framework (i.e. Acts and regulations).

These ideas spawned the Protected Areas Strategy and the *Forest Practices Code of British Columbia Act*. The Code Act was passed by the Legislature in 1994 and, for the most part, came into effect on June 15, 1995.

Three other significant ideas in this period also triggered important enactments:

- **Land Use Planning:** a desire to see a more formal land use planning process and a land use strategy led to the *Commissioner on Resources and Environment Act* in 1992;
- **Forest Renewal:** a desire by government to raise more revenue from industry, and the wishes of many British Columbians that more government forest revenue be reinvested in the forest, led to the *BC Forest Renewal Act* in 1994; and
- **Private Lands:** concern about the use and long-term management of privately managed forest land led to the *Forest Land Reserve Act* in 1994 as well as to a provision under that Act authorizing regulation of forest practices on such land.

This policy framework can be described as being designed to conserve visual quality, biodiversity (including old growth, threatened and endangered species and riparian values), recreation and range opportunities, while providing sustainable timber harvesting opportunities.

By November 1993, the provincial government estimated that forest and range management activities in the province were governed by six federal and twenty provincial Acts, over 700 provincial or federal regulations and 3,000 guidelines.

Between 1993 and 2001 about 15 Bills were introduced in the Legislature to amend the *Forest Act*.

By 2001, the *Forest Practices Code of British Columbia Act* had been amended every year since its introduction in 1994. In the first six months of 1998, five of 17 Code regulations were repealed and replaced in their entirety. The frequency and volume of amendments to the Act and its regulations decreased substantially after 1998.

Major institutions created in the 1990s were also subject to significant change. The Commission on Resources and Environment was disbanded. Forest Renewal BC was also disbanded and its activities are now funded through the Forest Investment Account. The Forest Land Commission was merged first with the Land Reserve Commission and then with the Provincial Agricultural Land Commission.

In 2001, the government launched a deregulation initiative requiring each ministry to review its existing regulatory burden and to eliminate unnecessary requirements or reform unnecessary requirements. The Ministry of Forests reported that the Acts, regulations and related policies for which it was responsible, imposed 17,057 requirements. Of those, 10,616 were under the *Forest Practices Code* (largely related to the Code guidebooks). In 2004, the Code was replaced by the results-based *Forest and Range Practices Act* resulting in a 50 per cent decrease in the Ministry's regulatory requirements.

Stage 6 - Revitalization (2001 to 2007)

Forest policy reform was a key plank in the provincial government's New Era forestry-related commitments made in 2001.

Included in the government's vision was:

"A leading edge forest industry that is globally recognized for its productivity and environmental stewardship."

The government's specific commitments related to a New Era of Sustainable Forestry, included:

- establish a working forest land base, to provide greater stability for working families and to enhance long-term forestry management and planning;
- streamline the Forest Practices Code to establish a workable, results-based Code, with tough penalties for non-compliance;
- apply 1% of all direct forest revenues, not including "super stumpage," to global marketing of BC's forest practices and products;
- create a market-based stumpage system that reflects global market realities and local harvesting costs and eliminate "waterbedding";
- either fix or scrap Forest Renewal BC, starting by removing the political appointees on the Board;
- invest in research to promote forest stewardship;
- cut the forestry regulatory burden by one-third within three years, without compromising environmental standards; and
- increase the Allowable Annual Cut (AAC) over time through scientific forest management, proper planning, and incentives to promote enhanced silviculture.

Beginning with the summer 2001 legislative session, and since then, the government has introduced 30 Bills amending or creating new forestry legislation.

Among the changes are:

- ***Forest Practices Code of British Columbia Act***: The Code was significantly amended as of December 17, 2002, through what was known as "Bill 75" and related regulations. The amended Code still has application to forest operations as described below.
- ***Forest and Range Practices Act***: This Act, replaced the Forest Practices Code and was brought into force on January 31, 2004. At the same time, 11 regulations under the Act were made, and three more since have been added. The Act established a transition period, to allow licensees to change over from the Code to the *Forest and Range Practices Act*. Under these transition provisions, for the most part, operations that begun under the Code are governed by the Code provisions until their conclusion.

- **Land Use Planning:** Amendments to the *Land Act* consolidate strategic land use planning into that Act and give Cabinet broad powers to make land use designations, specify objectives related to those designations and require other decisions in government to be consistent with such objectives (some of these changes have not yet been brought into force).
- **Market Based Tenure Changes:** To provide the industry with greater flexibility to respond to market and other competitive issues, changes have been made to cut control and timber processing obligations and to constraints on tenure transfers, changes of control of licensees, and consolidation and subdivision of tenure rights. Under the *Forestry Revitalization Act* of 2003, about 20 per cent of timber held by major licensees is being taken, with provision for compensation. Government re-allocated this timber to create opportunities for new entrants to the forest sector, including small business, value-added entrepreneurs, community forests, woodlots and First Nations. Significant changes were also made to the terms of cutting permits.
- **Market Based Timber Pricing Changes:** In 2004, government introduced a new method for pricing Crown timber from major licences on the Coast. This method determines stumpage rates for these tenures based on bids for rights under other tenures, adjusted to reflect differences in tenure obligations. On April 1, 2006 new log grades were established for the Interior. On July 1, 2006, a market based pricing system for the Interior came into force.
- **Tenure Administration:** The government has made substantial changes to the tenure administration provisions of the *Forest Act* to support the government's Forestry Revitalization Plan and other initiatives. Changes included adjustments to the cut control system that eliminated minimum cut controls that required logging during poor markets and simplification of subdivision and transfers of tenures to allow licensees greater flexibility.
- **BC Timber Sales:** The government has converted its Small Business Forest Enterprise Program into BC Timber Sales (BCTS), reorganized the delivery structure within the Ministry of Forests and Range, and has more narrowly focused its mandate to support the forestry revitalization and market pricing initiatives. The ultimate goal is to have 20% of the Crown AAC sold by auction through BCTS.
- **First Nations:** Court decisions and the government's new relationship policy have further defined responsibilities for consultation and accommodation of aboriginal rights and title. Between September 2006 and June 2008 the Provincial government passed two treaties with Tsawwassen and Maa-nulth First Nations and have forestry agreements with 144 First Nations, providing nearly \$196 million in revenue and access to almost 32 million cubic metres of timber.

Stage 7 - Post-Revitalization (2008 to present)

Although some may say it is premature to suggest British Columbia has moved to a new stage in forest policy development, particularly given that revitalization of the forest sector remains a key objective for government, the diversity of initiatives and the increasing impact of climate change on forest policy seem to justify such a conclusion. Some of the new initiatives that are changing forest policy are:

- **BC Bioenergy Strategy:** The aim of this Strategy is to reduce greenhouse gas emissions, strengthen long-term competitiveness and promote electricity self-sufficiency. A key element of the strategy is to promote the use of mountain pine beetle killed timber and wood waste into renewable energy. To support BC Hydro’s Bioenergy Call for Power, new bioenergy tenures were introduced in 2008 in the Forest Act that provide access to waste wood and to fibre supplies.
- **New Silviculture Strategy:** A new silviculture strategy is being developed “to build on this success at reforestation and expand silviculture’s focus and resulting benefits throughout the broader life cycle of forest stands.” Currently a discussion paper, Growing Opportunities: A New Vision for Silviculture in British Columbia has recently been released starting the public discussion on the future of silviculture.
- **“Wood First” Policy:** The domestic market demand for forests projects will be increased by requiring wood to be used whenever possible in the construction of new public buildings. The demand for wood will be furthered through a national “Wood First” policy that promotes renewable “carbon-neutral” wood products as well as through the continued promotion of wood products abroad. These changes aim to create a “culture of wood” that looks to wood first.
- **“Zero Net Deforestation”:** Deforestation is defined as human-induced land use change from forest to non-forest uses and is a source of greenhouse gases as it results in the loss of forests that absorb and store carbon. The government set a target of having “net-zero deforestation” by 2015, this policy target will ensure that whenever forest land is converted to another use (e.g. urban development) there will the loss will be offset.

1.4 Looking Ahead

Settling aboriginal land claims, progress toward an international treaty on forests, the trend to certification, the Canada/US softwood lumber issue, demands from the bioenergy sector and other influential factors, are likely to drive ongoing change in BC forest policy.

1.5 References

- BC Climate Action Plan: www.livesmartbc.ca/government/plan.html
- BC Bioenergy Strategy: www.energyplan.gov.bc.ca/bioenergy/
- BC’s Softwood Lumber Dispute: www.for.gov.bc.ca/HET/Softwood/index.htm
- Changes to the Forest Land Reserve: www.pmflc.ca
- Evolution of Policy: see Our First 50 Years under Publications: www.abccfp.ca/about_us/abccfp_overview/our_history.asp
- Forest Investment Account: www.bcfii.ca/
- Forestry Revitalization Plan: www.for.gov.bc.ca/mof/plan/
- Silviculture Discussion Paper: www.for.gov.bc.ca/HFP/silviculture/Discussion_Paper/
- Forestry Acronyms and Initialisms: www.for.gov.bc.ca/hfd/library/documents/acronyms/
- Glossary and Definitions for Forestry Acronyms and Initialisms: www.for.gov.bc.ca/hfd/library/documents/glossary/

1.6 Apply the Knowledge

1. **Local vs. International Forest Policy:** currently, legislative jurisdiction over forest policy in BC rests primarily with the provincial government. However, Canada is considering an International Forests Treaty that, if accepted, would be binding in British Columbia as well as in other jurisdictions. What might be the advantages and disadvantages of an international treaty compared with provincially based forest policy?

At times during the softwood lumber negotiations, the United States has proposed changes to provincial forest policies that, if implemented, could reduce the current Countervailing Duty on softwood lumber exports from Canada to the US. Is this a legitimate role for trade policy among countries?

2. **Public vs. Private Ownership:** about 5% of British Columbia's forest land is privately owned. What would be some of the advantages and disadvantages of expanding private ownership? If the province decided to expand private ownership, how might criteria established to determine eligibility for ownership differ from current *Forest Act* criteria for eligibility for tenure?
3. **Certification vs. Public Policy:** currently, most certification initiatives are being driven by non-governmental organizations. Should government be involved? If not, why? If so, how? Will certification replace some aspects of public forest policy, result in revisions to some aspects of this policy or simply be in addition to this policy?
4. **Three Key Features:** list what you consider to be the three most significant features or aspects of BC forest policy and give reasons for your selection.
5. **The End Result:** It was also said that the Forest Practices Code focused too heavily on methods and not enough on results. In your view, what, if anything, has the *Forest and Range Practices Act* done to change this?
6. **Impact of Policy Changes on Profession:** Considering issues such as the settlement of aboriginal land claims, certification and the new *Forest and Range Practices Act*, how, if at all, might the roles and responsibilities of professional foresters change from what they are today?
7. **Impact of Climate Change:** Climate change presents probably the greatest challenge, and perhaps the greatest opportunity that the forest sector has seen in decades. It will impact our forests – as we have seen with the Mountain Pine Beetle infestation – but also increase the value of forests for carbon sequestration and the development of products that reduce our carbon footprint. Changing societal expectations around forests and the forest industry will influence the use of, access to, and benefits derived from our forests. Increasing First Nations business partnerships and role in forest management and use will alter current relationships. In your view how would you develop policy to meet these challenges?