

Dialogue on the Aboriginal View of Tenure Reform - Interview with Chief Keeter Corston, Chairman, Northeast Superior Regional Chiefs' Forum (NSRCF)

As the authors of the “Foundations” document, we were well aware of our lack of an Aboriginal perspective. The following dialogue came from several submitted comments, and conversations with Chief Keeter Corston of Chapleau Cree First Nation and Chairman to the newly created Northeast Superior Regional Chiefs' Forum (NSRCF). We have attempted to bring the NSRCF ideas into our document, but we felt that a stand- alone annex may bring a better understanding. Our thanks to Chief Corston and the NSRCF.

TC: What is the goal of tenure reform from an Aboriginal perspective?

KC: In short, reconciliation. The Ontario government should take advantage of tenure reform as an opportunity to move towards reconciling historical land issues with Aboriginal communities by fully embracing the spirit, intent and wording of evolving court rulings in a number of related areas including royalty sharing, resource co-management, meaningful consultation and accommodation. Special consideration must be given to the cultural significance of Aboriginal peoples as stewards of the land and the related need to advance a purposeful traditional ecological knowledge (TEK) agenda. The need to consider TEK is referenced in numerous court rulings as well as the forest management planning process. A significant information collection investment needs to be made in this regard. Consideration must also be given to the development of an aggressive non-timber forest product agenda and a related need for protocols with Aboriginal communities, particularly when it comes to the harvesting of traditional medicines. This agenda will generate more wealth from the land as well as help rebuild our traditional Aboriginal relationship with the land.

TC: How are the recent court decisions related to the tenure discussion?

KC: Tenure and jurisprudence are directly related, tied together through treaty and Aboriginal rights. The bad news is that the Government of Ontario has fallen behind the jurisprudence curve when it comes to respecting these rights. The courts are becoming more forceful in advocating the need to reconcile historical land issues with Aboriginal peoples. Neglecting this trend would merely compound related risk and liability – at a time when greater certainty is required. The good news is that the Supreme Court of Canada has made crisp rulings that establish a blueprint for reconciliation built on the need for meaningful consultation and accommodation. A significant increase in the level of meaningful dialogue between the Crown and Aboriginal groups is therefore required. The courts are also starting to drift into the area of Aboriginal consent, so it is only a matter of time before Ontario runs out of room to manoeuvre on this issue, and a growing number of Aboriginal communities and organizations know this. At the heart of these legal issues is the question of land tenure, and this means that the forest tenure reform process needs to tackle the thorny historical Aboriginal rights issue head-on. Simply put, Ontario needs to fully embrace the concept of Aboriginal reconciliation within the forest tenure review process as a means of avoiding costly conflicts such as at Oka, Ipperwash, Caledonia and Big Trout Lake (KI).

Failure to do so would breed further uncertainty and likely unrest within the current Area of the Undertaking and would undermine any chance of expanding forestry activities north of the Area of the Undertaking further into Nishnawbe Aski Nation (NAN) territory.

The jurisprudence curve also embraces the need for the Crown to respect Aboriginal oral history and traditional knowledge within its decision-making processes. Major changes to the Native Values Mapping and Aboriginal Background Information Report (ABIR) requirements of the Ontario Forest Management Planning process are therefore required. Decision-makers need to learn to properly respect the wisdom behind this traditional knowledge given that it advocates the need for better balance between our economic, environmental and social needs, consistent with the emerging trend of triple bottom line planning. Traditional knowledge also reinforces the need for us to embrace cultural diversity and be cognizant of our spiritual essence and responsibilities as human beings, consistent with our traditional teachings. In other words, traditional knowledge is as much a futuristic decision-making tool as it is a representation of an historical worldview.

TC: We identified one of the shortcomings of the current tenure system to be outstanding constitutionally based Aboriginal issues including the need for fair access to wood fibre. What are your thoughts?

KC: Aboriginal communities have a right under the egalitarianism principle of the constitution to be as prosperous as any other sector of society. We know that this has never been the case. The Royal Commission of Aboriginal Peoples (RCAP) speaks openly of the Doctrine of Assimilation and the overt efforts of both church and state to oppress and assimilate our people, as do a number of court rulings. Aboriginal people also have unique hunting, fishing, trapping and other traditional rights that are protected by section 35 of the *Constitution Act* that are clearly affected by forest tenure and forest management planning activities. If the moose population is in trouble for example, the need to protect the numbers, the health and the habitat of these important animals trumps the resource harvesting agenda.

Furthermore, central to the Aboriginal worldview and the court supported position that Aboriginal people have a right to advance community objectives in a culturally appropriate manner is the spiritual tenet that Aboriginal people have been placed on Mother Earth to be the stewards of the land. Aboriginal people are shareholders, not stakeholders in the land. This means that Ontario needs to be particularly vigilant in allowing Aboriginal communities and the traditional values they hold dear, to play a meaningful role in advancing the shift in forest stewardship responsibilities.

TC: Do you have comments on the “for-profit” or “not-for-profit” business approach that is discussed in our paper as it relates to Aboriginal communities?

KC: From a traditional Aboriginal perspective, there is no intrinsic reason why a for-profit approach would be unsuitable in the role that many non-Aboriginal communities would likely see for themselves within the forest tenure regime - as long as there are the appropriate environmental and social equity safeguards. Resource decision-making processes continue to place emphasis on economic growth, with environmental stewardship being viewed as a threat to this imperative. A for-profit framework is

acceptable as long as the profits pay more attention to the environmental and social challenges of the people. This is currently not the case. Tied to this is the recognized illogical notion of perpetual economic growth. It is clear that we are already harvesting too many resources for it to be sustainable, so additional growth only contributes to the problem. Either we agree to correct this myth so that balanced is restored from a sustainable development perspective, or perhaps embrace a not-for-profit economic approach as an alternative. Human nature being what it is, if profit-making is the goal then optimizing profits becomes the objective. A tenure model that stops at the economic break-even point acts as a built-in governor, conceivably allowing for greater attention to be paid to environmental and social circumstances.

TC: What are your thoughts on balancing profitability and sustainability?

KC: The point made earlier is that we are too pre-occupied with profits. Maybe we should be more focussed on quality of life. We can have it all as a society, if we can just find a better balance between our economic, environmental, social and cultural/spiritual needs. Arguments can be made that we can increase the economic wealth generated from the forest, rebuild ecological integrity, bring about meaningful social equity and resolve outstanding Aboriginal issues all at the same time. A detailed assessment of this notion was recently undertaken by the NSRCF at a regional workshop hosted by Pic Mobert First Nation, and the results were literally astounding. We just need to change the forestry equation, starting with tenure of course. Our assessment concluded that value added forestry + cluster industry economies of scale+ non-timber forest products + ecotourism/cultural tourism and other non-harvesting economic activities+ potentially carbon credits – all driven from a regional cooperative approach – would achieve the stated objective of better balance.

TC: In short, in this framework we do not propose a special Aboriginal model of tenure, rather the IFME will bring Aboriginal people into the Board rooms of forest management companies. Can the IFME be shaped in a way that is suitable for the local Aboriginal aspirations?

KC: Yes, depending on the nature of local Aboriginal aspirations. First, it must be recognized that each First Nation in Canada is sovereign and therefore has the right to advance community objectives in its own way. So, if a First Nation chooses to become a meaningful player within a generic tenure model, section 35 of the *Constitution Act* (including principles of egalitarianism and proportional representation) and existing Court rulings would help them receive fair treatment. The level of Aboriginal involvement in a particular IFME could in part reflect the percentage of the population in a region that is of Aboriginal heritage, consistent with the concept of proportional representation. This opens the door to a potential solution-based approach to the ongoing resource access, management and stewardship challenges that lie north of the current Area of the Undertaking, where the percentage of people who are Aboriginal are the highest in the province.

The door however must always be left open for First Nations to advance a special Aboriginal model of tenure from rights-based or culturally appropriate perspectives, should they choose. It is their right given that the existence of treaties reaffirms the sovereignty of each First Nation community. This, too, need not be problematic given that the courts provide all of the tools necessary for Aboriginal

communities and government to meet in the middle with respect to a government-to-government relationship. If Canada's constitution is sufficiently flexible to allow French and British law to co-exist within a single legal framework, there is sufficient flexibility to allow First Nations to advance their own traditionally based governance instruments should they chose.

TC: How do we get from where we are now to where we need to be?

KC: Good question. Mankind has a notorious habit of wanting to resist change even though such an exercise has always proven futile. There is much wisdom in the saying that the apple never seems to fall far from the tree. After over one hundred years of Aboriginal oppression, and over one hundred years with a flawed forest tenure framework, the apple needs to be thrown as far as humanly possible for reform to catch up to the court rulings. It is clearly time to substantially change the Ontario forest tenure process - but in ways that do not upset the apple cart. A smooth transition is required. This objective can be met in a number of ways starting with a firm commitment from Ontario that they are ready to meet First Nations in the middle. The development of a vision statement would also be helpful. The NSRCF process recognizes that without a vision, there can be no development. If we do not know where we want to be as a society in 20 years, then don't be surprised that after 20 years, we are not where we want to be.

We also need to capitalize on opportunities to shift relationships between First Nations and the Crown within other policy arena as they present themselves. The Northern Ontario Growth Plan, Mining Act review, Green Energy Act development process and the Biofibre competitive process have each provided great and squandered opportunities to stake middle ground between First Nations and the Crown.

With a well defined vision and action plan, big changes can be advanced in chewable chunks, thereby properly managing risk and fear. A phased implementation of a revised tenure process across the board may be best, perhaps in 5 year increments, fuelled by the advancement of specific pilot projects that encourage existing innovation that will generate local results that can then be fed into the larger review process with demonstrated proof that they work. Pilot projects are important because they allow decision-makers to see change in action in concrete rather than conceptual terms, making it easier to overcome the fear that is always an impediment to meaningful change. As Albert Schweitzer once said, example is not the main thing to influence others, it is the only thing.

There is also a need to find a better balance between competitive and cooperative approaches to resource development, as well as better balance between command-and-control and grassroots-based approaches. The NSRCF model takes these factors into consideration and it is for this reason that our 6 Chiefs are poised to sign a relationship-building agreement with the 6 neighbouring mayors who are Northeast Superior Forest Community (NSFC) board members. It is a known fact that better resource development decisions are made when left in the hands of those who are closest to the land. This would imply that the forest tenure review process needs to balance between the provincial role of supporting overall economic, environmental and social objectives with the need to support community based innovation.

TC: What are the main risks right now?

KC: The main risk from a traditional Aboriginal perspective is fear of change. The Government of Ontario needs to fully recognize the legal and political risk that is mounting as it falls increasingly behind the jurisprudence curve with respect to the reconciliation agenda with Aboriginal peoples. A pro-active and transparent strategy is required that embraces the spirit and intent of RCAP, the ongoing work of various Standing Senate Committees, the courts and other change agents. One report produced by the Standing Senate Committee on Aboriginal Affairs concludes that Aboriginal communities need a hand up, not a hand out. Clearly, forest tenure reform is critical to this objective given the size and ongoing wealth being generated from the boreal forest as well as the sacred relationship that Aboriginal people have with the forest. Many of the tools necessary to scope the parameters of this thorny issue have already been provided (as documented in the Ivey Foundation document), along with graphic examples of the consequences of dealing or not dealing meaningfully with these issues. Many of the raw ingredients required for positive change have therefore been identified. It would appear as though the only thing missing is political will.

TC: Any closing comments?

KC: There are many people in a position to influence change who are in denial with respect to the tragic history of the Aboriginal people in Canada, the environmental state of the planet including Canada's Boreal Forest, and the binding nature of various court rulings. The legacy of ignored recommendations within a suite of royal commissions on forestry since the turn of the century that are now staring us all in the face is a testament to the fact that government has a bad habit of not acting in the best interests of the people, often siding with interests that pay the best political dividends. First Nations, of course, continue to be the biggest losers in such a process even with court decisions urging the Crown to shift its approach. This leads to the conclusion that government is itself a mere stakeholder in the equation. We therefore need a tenure model that provides better balance and this means that the province needs to relinquish part of its current control over the resources and to support more community-based decision making. This is the main reason why the 6 Chiefs of the NSRCF and the 6 mayors of the NSFC have been working together for the last three years.