

## **Term and Condition 77: Origins, Implementation and Future Prospects**

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**1) Introduction:**

The Environmental Assessment Board's Term and Condition 77 addresses the sharing of forest management social and economic benefits with First Nations. Term and Condition 77 was one of 115 conditions the Environmental Assessment Board applied to its approval of the Ministry of Natural Resources's Class Environmental Assessment for Timber Management.

During the Timber Management Class Environmental Assessment Hearing held from 1988 to 1992, the Ministry of Natural Resources sought Environmental Assessment Act approval for its timber management program. The current Provincial forest management regime originated, in part, from the Board's decisions on the Ministry's forest management undertaking.

During this hearing, I helped prepare and present evidence for Nishnawbe-Aski Nation and Windigo First Nations Council. I also assisted in negotiating an agreement between the Ontario Forest Industries Association, the Ministry of Natural Resources and Nishnawbe-Aski Nation/Windigo First Nations Council on principles to be used to draft terms and conditions for the approval of the Class Environmental Assessment.

Subsequently I reviewed the Ministry of Natural Resources' Timber Management Native Consultation Program. This program was developed to implement the principles. Later the program was adapted and included within the Forest Management Planning Manual. In recent years, I have reviewed 7 draft and approved Forest Management Plans and provided advice to First Nations and their Treaty organizations on the implementation of Term and Condition 77 within these plans.

In addition to approving a Timber Management Native Consultation Program intended to enhance First Nation participation in forest management planning, the Environmental Assessment Board was moved by concerns they heard from many community members. First Nations were not benefiting from the commercial use of forests on their traditional lands. The Board responded by approving Term and Condition 77 because native intervenors had identified

*"a deficiency in the Ministry of Natural Resources' proposals and have convinced us that our approval should address their participation in the activities and benefits of timber management. We are persuaded that Aboriginal peoples in the Area of the Undertaking will continue to suffer adverse environmental impacts of a social and economic nature if our approval of the undertaking does not provide a means of mitigating these effects. We are ordering the Ministry of Natural Resources to negotiate with these communities in order to involve them more directly in timber management planning by giving them the opportunity to share in the social and economic benefits enjoyed by other residents of northern Ontario."*<sup>1</sup>

Term and Condition 77 is both a remedy and a prophetic statement at the same time. It is a remedy in the sense that the Board saw its implementation as essential to First Nations participation in the activities and benefits of forest management. The Board's decision is also prophetic, in the sense that it predicts Aboriginal peoples will continue to suffer adverse social and economic impacts if Term and Condition 77 is not implemented.

In this paper, I examine in detail the origins of Term and Condition 77 in the two Environmental Assessment Board decisions on timber management. Subsequently, the implementation of Term and Condition 77 within the framework of the Crown Forest Sustainability Act is described. Some related Provincial approvals are also referred to such as Ontario's Living Legacy. Last, I forecast some future prospects for Term and Condition 77.

## 2) The Origins of Term and Condition 77:

### a) The Environmental Assessment Board Decision of April 20, 1994

The Environmental Assessment Board heard evidence and argument on the Ministry of Natural Resources' Class Environmental Assessment for Timber Management on Crown Lands in Ontario from May of 1988 to November of 1992. During this time, the Board held 411 hearing days and compiled a record of over 70,000 pages and 2,300 exhibits. It took more than 1 year for the Board to review the evidence and draft a decision. Their decision was issued on April 20, 1994 almost 6 years after the hearing began. The hearing was the longest and most comprehensive Environmental Assessment Board hearing ever held in the Province of Ontario. It was also the first time, a Ministry of Natural Resources program was reviewed in a legislated public decision making process before a tribunal which had the jurisdiction to make decisions.

Four First Nation organizations were parties to the hearing and presented evidence. These included Grand Council Treaty #3, Nishnawbe-Aski Nation/Windigo First Nations Council, the Ontario Metis and Aboriginal Association and the North Shore Tribal Council, United Chiefs and Councils of Manitoulin and Union of Ontario Indians in partnership with the Northwatch Coalition. Many other individuals, Bands and Treaty organizations were participants.

Chapter 10 of the "Decision and Reasons for Decision" sets out the Board's understanding of the evidence and its decision. It is a substantial and remarkable chapter. Term and Condition 77 cannot be properly understood and the subsequent implementation of this condition cannot be assessed without reviewing Chapter 10 in detail. The following quotations set out the Board's findings that led to apply Term and Condition 77.

*"Timber management operations unquestionably affect First Nations and Aboriginal communities, and the timber management planning process offers a chance to better their economic condition."*<sup>2</sup>

*"We are persuaded that by the evidence we heard that it is incorrect to characterize the interests of First Nations and Aboriginal peoples as being the same as other stakeholders. In this chapter, we consider the impacts of timber management planning, both those experienced by other forest users and those unique to reserve communities. We discuss our findings that First Nations and Aboriginal peoples should, but do not, have the same access to the benefits of timber management planning as do other northern communities and forest users in the area of the undertaking. The exclusion has developed as a result of historical circumstances and ongoing uncertainty about the*

*meaning and definition of Treaty and Aboriginal Rights. We disagree with the Ministry of Natural Resources that access to the social and economic benefits of timber management planning, which was called the "allocation" issue at the hearing, is entirely outside our consideration."*<sup>3</sup>

*"We believe that if treaties were honoured and fulfilled, Aboriginal peoples could have the land and resources necessary to support their governments. Sharing of resource rents through royalties and an expanded land base could be the basis for economic self-sufficiency. The timber management process by itself will do relatively little to overcome the problems facing First Nations and Aboriginal communities in the area of the undertaking, however some opportunities do exist in it."*<sup>4</sup>

*"As a starting point, the small reserves to which Aboriginal native people were eventually confined preclude on-reserve forestry as an economic activity that can support these communities."*<sup>5</sup>

*"We are convinced by the evidence on the contemporary social and economic conditions of First Nations and Aboriginal communities that they face particular problems different from those of other northern Ontario residents."*<sup>6</sup>

*"Native communities were not even mentioned or identified as stakeholders with an interest in timber management planning in earlier drafts of the Class Environmental Assessment document. When the Environmental Assessment Branch of the Ministry of the Environment prepared the government review of the Class Environmental Assessment, response were solicited from provincial and federal agencies. It is hard to believe that the Ontario Native Affairs Directorate offered no specific comments or concerns about the Class Environmental Assessment when it was originally circulated."*<sup>7</sup>

*"Nishnawbe-Aski Nation brought to our attention the fact when the Ministry of Natural Resources introduced the Class Environmental Assessment for review in 1985, the Area of the Undertaking included forest management units in Nishnawbe-Aski Nation territory north of the 52nd parallel. When the Ministry of Natural Resources introduced the Class Environmental Assessment in 1987, it excluded the area between the present Area of the Undertaking and the 52nd parallel. Nishnawbe-Aski Nation was concerned that the Ministry of Natural Resources might later seek to extend the terms and conditions of the Class Environmental Assessment to those lands. This issue was resolved when the Ministry of Natural Resources satisfied Nishnawbe-Aski Nation with an agreement that it would co-operate in developing a proposed exemption order for certain timber management activities north of the 50th parallel."*<sup>8</sup>

*"It will not be easy for the Ministry of Natural Resources to resolve the cutting license issue. The reality is that most of the Area of the Undertaking is fully licensed to non-Indians. The Ministry of Natural Resources has two choices. It could remove the*

*existing licenses from the present holders, which would create social and economic problems in the white community with attendant political unrest and hostility. The Ministry of Natural Resources submitted that if changes to existing licensing obligations were required, "consideration of such things as restitution and alternative employment mechanisms would likely be required". Or the Ministry of Natural Resources could give preferential treatment to Aboriginal applicants when licenses become available for re-assignment. This action would also likely meet with resistance from the non-native community. Nonetheless, we strongly believe that off-reserve timber must be made available for harvesting to the Aboriginal communities, or they cannot begin to improve their economic situation."*<sup>9</sup>

*"The Ministry of Natural Resources took the position that Aboriginal communities can be specifically affected by timber management operations and that because of their history and culture, Aboriginal people, especially those living in remote areas, have particular concerns."*<sup>10</sup>

*"The ruling Nishnawbe-Aski Nation/Windigo Tribal Council asks the Board to make is contained in an agreement negotiated by Nishnawbe-Aski Nation/Windigo Tribal Council, the Ministry of Natural Resources and the Ontario Forest Industries Association and presented to us by their counsel.... The agreement described a process for giving the Aboriginal communities the opportunity to be part of the timber management planning process, for making sure that the special social and cultural concerns of these communities are considered in timber management planning and that timber management planning is a workable process for First Nations, the forest industry and the Ministry of Natural Resources. The principles in the agreement formed the basis of the Ministry of Natural Resources's proposed timber management native consultation program,..."*<sup>11</sup>

*"Nishnawbe-Aski Nation/Windigo Tribal Council chose to pursue the issue of its communities' access to the economic benefits of timber management planning, or the "allocation" issue as we called it at the hearing, through separate negotiations with the Ministry of Natural Resources. Nishnawbe-Aski Nation was satisfied with their correspondence in 1991 with the Minister of Natural Resources as a commitment to engage in negotiations on allocations and, therefore, this matter was not pursued by Nishnawbe-Aski Nation/Windigo Tribal Council at the hearing. It can be seen from the correspondence that the negotiations contemplate timber allocation issues on a community-by-community basis and adequate wood allocations for domestic and commercial use."*

### **Findings**

*"The interests of First Nations and Aboriginal communities in timber management planning can be described in two categories. First is the need to identify and protect their unique values such as traditional lifestyle and cultural sites and concerns they share*

*with the non-native communities for protection of angling, hunting, trapping and the overall forest environment. The second category pertains to the opportunity to share in the social and economic benefits of the timber management planning undertaking.*"<sup>12</sup>

#### **Identification and Protection of Native Values**

*"The Ministry of Natural Resources is responsible for promoting involvement of Aboriginal communities early in timber management planning and for collecting information on values of concern to native people. Their traditional lifestyles, the values placed on medicinal plants and religious and cultural sites and the status of treaty and Aboriginal rights are concerns unique to these communities. They share with all Ontarians concerns about a healthy forest environment and jobs. For these reasons, the Ministry of Natural Resources has proposed a special Timber Management Native Consultation Program that parallels the standard public consultation program with variations on the first three of the four stages."*<sup>13</sup>

*"We are persuaded that the Timber Management Native Consultation Program can offer the same protection against the adverse impacts of timber management operations for the values of Aboriginal communities as the overall planning process we are approving serves the interests of other northern Ontario communities."*<sup>14</sup>

#### **The Opportunity to Share in the Benefits of Timber Management Planning**

*"We are convinced by the evidence we have discussed in this chapter that Aboriginal communities have historically been and are today excluded from sharing in the social and economic benefits accruing to non-native communities from the planning and conduct of timber operations on Crown land."*<sup>15</sup>

*"We believe that greater access to forest resources could solve some of the enormous social and economic problems facing Aboriginal peoples in northern Ontario. Our mandate under the Environmental Assessment Act is to ensure that our approval of the undertaking meets the purpose of the Act: "the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the Environment". In chapters 2 and 9, we concluded that the social and economic benefits of the timber management planning undertaking are clearly demonstrated for non-natives, northern Ontario communities and the provincial economy. The evidence we heard from First Nations and Aboriginal intervenors convinces us that their communities are excluded from these benefits for historical reasons and because of today's uncertainties about the meaning and definition of their treaty and Aboriginal rights."*<sup>16</sup>

*"We do not know what the interface is between treaty and Aboriginal rights and the opportunities for these communities to participate fully in timber management planning, including the benefits from timber operations. Our concern is with the latter and it is confined to the application before us."*<sup>17</sup>

“Therefore in Condition 77, we are ordering:

**77. During the term of this approval, MNR district managers shall conduct negotiations at the local level with Aboriginal peoples whose communities are situated in a management unit, in order to identify and implement ways of achieving a more equal participation by Aboriginal peoples in the benefits provided through timber management planning. These negotiations will include but are not limited to the following matters:**

- a) Providing job opportunities and income associated with bush and mill operations in the vicinity of Aboriginal communities.**
- b) Supplying wood to wood processing facilities such as sawmills in Aboriginal communities.**
- c) Facilitation of Aboriginal third-party license negotiations with existing licensees where opportunities exist.**
- d) Providing timber licenses to Aboriginal people where unalienated Crown timber exists close to reserves.**
- e) Development of programs to provide jobs, training and income for Aboriginal people in timber management operations through joint projects with the Department of Indian and Northern Affairs.**
- f) Other forest resources that may be affected by timber management or which can be addressed in the timber management planning process as provided for in Condition 23c.**

**MNR shall report on the progress of these on-going negotiations district-by-district in the Annual report on Timber Management that will be submitted to the legislature.<sup>18</sup>**

*“The subjects identified above as matters for these negotiations do not comprise an exhaustive list, but indicate the kind of progress we believe the Ministry of Natural Resources can accomplish and accelerate in negotiations with First Nations and Aboriginal people. The Ministry of Natural resources submits that it is already undertaking most of these initiatives.”<sup>19</sup>*

In addition the Board made two recommendations which were intended to address other matters the Board considered important to address outside the timber management planning process. The first recommendation asked Ontario and Canada to make *“a serious commitment to finalize negotiations with Aboriginal peoples which have been dragging on for years.”<sup>20</sup>*

Second, the Board said Ontario *"should establish a committee to review its licensing policy as it pertains to Aboriginal peoples and report to the public on its findings. The committee should investigate the barriers that exist to granting licenses to Aboriginal peoples as well as the size of the area licensed and the volumes of wood.... If the committee determines that barriers do exist to providing timber licenses to Aboriginal peoples, the committee should consider remedies for this inequitable policy including assistance to Aboriginal communities to obtain licensed areas of sufficient size to provide meaningful employment and income for their people."*<sup>21</sup>

The Board's decision remains in effect for nine years beginning on April 20, 1994. On April 20, 2003, Environmental Assessment Act approval of forest management will lapse unless the Ministry reviews its Class Environmental Assessment and seeks another approval. In the eighth year of the approval, (2002) a review is to be undertaken of the implementation of the approved assessment and the review is to be submitted to the Minister of the Environment. The results of this review will be used in subsequent forest management Environmental Assessment Act approvals.

**b) The Environmental Assessment Board Decision of October 10, 1995:**  
Condition 90 of the Environmental Assessment Board's decision required *"the Environmental Assessment Board to reconvene and receive submissions from the parties to the Timber Management hearing about whether the conditions of approval are properly described in the Ministry of Natural Resources' revised draft planning manual."*<sup>22</sup> The hearing commenced in May and concluded in August. The Board released its decision in October. Grand Council treaty # 3, the Union of Ontario Indians, Nishnawbe-Aski Nation and Windigo Tribal Council attended and made their views known concerning the implementation of Term and Condition 77.

The Board reiterated its concerns about negotiations with Aboriginal communities.

*"Based on the evidence the panel received at the hearing from First Nations and aboriginal communities about unemployment, poverty and lack of access to off-reserve timber, we were convinced of the historical and present day exclusion of native communities from sharing in the social and economic benefits enjoyed by non-native communities from timber operations on Crown Land. For these reasons, Condition 77 of the Class Environmental Assessment approval requires the Ministry of Natural resources to negotiate with aboriginal communities."*<sup>23</sup>

First Nations representatives argued the Ministry of Natural resources wasn't in compliance with Condition 77 because little *"has been done to implement its terms."*<sup>24</sup> The Board summarized the concerns in the following issues:

*"(1) The Ministry of Natural Resources' description of Term and Condition No. 77 as calling for separate negotiations will not receive the same scrutiny as it would if contained as a direction in the planning manual; (2) no consultation has been proposed for implementing Term and Condition No. 77; (3) the planning manual is the only*



*comprehensive document used in forest management and the only one, therefore, that can provide consistency in implementing Condition No. 77; and (4) the objective of Condition 77 is to deliver accessibility to the benefits of forestry, not to be an endless process of only consulting or planning.*"<sup>25</sup>

The planning manual referred to in these concerns is the Forest Management Planning Manual which is discussed in the next section. This manual was developed to implement the Board's decision and the newly approved Crown Forest Sustainability Act.

The Board responded to these concerns by approving the following wording changes in the Forest Management Planning Manual.

*"(1) In the Forest Management Planning Manual at page 8, section 1.4.1, after line 31, add "(1) The results of ongoing negotiation that have been conducted with the aboriginal peoples whose communities are situated in the management unit in accordance with the framework for negotiations which is discussed in Appendix VI.*

*"(2) In the Forest Management Planning Manual at page 11, section 1.4.6, after line 31, add: (e) A summary of the success or failure of negotiations at the local level with aboriginal peoples whose communities are situated in the management unit, in order to identify and implement ways of achieving a more equal participation by aboriginal peoples in benefits provided through forest management.*

*"(3) In the Forest Management Planning Manual at page 131, section 3.1, replace lines 15 - 18 with the following: In addition to the consultation opportunities for native communities in the preparation of the forest management plan, the Ministry of Natural Resources' district managers will also conduct negotiations with native communities at the local level, in order to identify and implement ways of achieving a more equal participation by aboriginal people in the benefits provided by forest management.*

*"(4) In the Forest Management Planning Manual at page 382, replace the fifth paragraph (MNR is currently....) With MNR will develop a framework for the implementation of Term and Condition No. 77 in consultation with:*

- (I) Nishnawbe-Aski Nation*
- (ii) Grand Council Treaty #3*
- (iii) Union of Ontario Indians*
- (iv) The forest industry (e.g., Ontario Forest Industries Association)*
- (v) Other aboriginal government bodies as may be appropriate.*"<sup>26</sup>

These changes incorporate the implementation of Term and Condition 77 into the provisions of the Forest Management Planning Manual. The specific administrative framework the Ministry proposed to develop became the Draft Implementation Guidelines for Term and Condition #77 of

the Timber Class Environmental Assessment.

The Board amended the proposed wording by *adding the words "success or failure"* to item 2. The amendment allows *"a clearer understanding by the public of what has happened with negotiations."*<sup>27</sup> The Board was satisfied these changes expressed more clearly the intent of Term and Condition 77.

The Board also addressed one other point.

*"At the hearing, an issue was resolved when the Ministry of Natural Resources satisfied Nishnawbe-Aski Nation with an agreement that it would cooperate in developing a proposed exemption order for certain timber management activities north of the 50<sup>th</sup> parallel, which involved Nishnawbe-Aski Nation territory. In the light of this concern, Mr. Hunter submitted that the wording in the planning manual is unsatisfactory, because it does not define its application as being restricted to the area of the undertaking described in the Class Environmental Assessment approval.*

*"The amended wording proposed by Nishnawbe-Aski Nation to page one of the planning manual is:*

*"At lines 4-5 add as an addition to the first sentence, "only within the Area of the Undertaking as defined by Appendix -- being that area of Ontario portrayed in map 1 at Chapter 1, page 30 in the Environmental Assessment Board's Reasons for Decision and Decision, Class Environmental Assessment by the Ministry of Natural Resources for Timber Management on Crown Lands in Ontario EA-87-02, and as defined as the Area of the Undertaking at page 35 of the decision.*

*"At the August 31 meeting, Mr. Frank Kennedy submitted revised wording, which the panel thinks is similar to the Nishnawbe-Aski Nation proposal, but the representatives of Nishnawbe-Aski Nation were not in attendance and, therefore, the panel will not assume Nishnawbe-Aski Nation's agreement. If the Ministry of Natural resources and Nishnawbe-Aski Nation can negotiate mutually acceptable wording, the panel finds this acceptable; otherwise the Nishnawbe-Aski Nation proposal is to be used in the wording in the planning manual."<sup>28</sup>*

## 2) Implementation:

### a) The Crown Forest Sustainability Act

The purpose of the Crown Forest Sustainability Act is *"to provide for the sustainability of Crown forests and, in accordance with that objective, to manage Crown forests to meet social, economic and environmental needs of present and future generation"*.<sup>29</sup> The Act goes on to state:

*"2. (1) In this Act, "sustainability" means long term Crown forest health.*

*“(2) For the purpose of this Act and the regulations, the sustainability of a Crown forest shall be determined in accordance with the Forest Management Planning Manual.*

*“(3) The Forest Management Planning Manual shall provide for determinations of the sustainability of Crown forests in a manner consistent with the*

*“1. Large, healthy, diverse, and productive Crown forests and their associated ecological processes and biological diversity should be conserved.*

*“2. The long term health and vigour of Crown forests should be provided for by using forest practices that, within the limits of silvicultural requirements, emulate natural disturbances and landscape patterns while minimizing adverse effects on plant life, animal life, water soil, air and social and economic values, including recreations values.”<sup>30</sup>*

The Timber Management Native Consultation Program and Term and Condition 77 are implemented by the provisions of the Forest Management Planning Manual. A sustainable crown forest management is a forest within which the economic benefits associated with forestry are shared with First Nations in a manner consistent with the provisions of Term and Condition 77.

In a decision of the Ontario Court of Justice (General Division), Divisional Court on Temagami forest management issues, the relationship between sustainable forests and the Crown Forest Sustainability Act and the Forest Management Planning Manual is set out clearly.

*“The whole point of the Manual (Forest Management Planning Manual), and the whole point of the new statute (Crown Forest Sustainability Act), is that sustainability will no longer be determined exclusively by the judgement of Ministry officials on the basis of vague statutory principles. Sustainability must now be determined by the application of a public and concrete measurement standards based on the Manual. Accountability is achieved by the public nature of the manual which contains objectively measurable yardsticks, in the shape of the “words and forms” dismissed as irrelevant by the Ministry. The words and forms of the Manual are crucial because they set the indicators and parameters that are the concrete yardsticks against which the sustainability of the forest and the performance of the Ministry may be publicly measures and against which the Ministry may be held publicly accountable for its stewardship.”<sup>31</sup>*

The implementation of Term and Condition 77 is imbedded within the Forest Management Planning Manual. There is, I believe, an obligation on the Ministry to report on its implementation and effectiveness. To date, however, annual reporting on the Ministry’s forest management programs is behind. The annual report for the years 1995 and 1996 has been introduced in the legislature. However, annual reports for subsequent years have not been released. In the absence of these reports, there is no published information which can be used to understand and evaluate the Ministry and forest industry’s implementation of Term and Condition

77.

In the seven draft and approved forest management plans I have reviewed since 1994, I do not believe the Timber Management Native Consultation Program and Term and Condition 77 were given the attention these should have been given in the development of forest management plans.

**b) Implementation Guidelines**

In addition to the Forest Management Planning Manual, the Ministry of Natural Resources developed Draft Implementation Guidelines for Term and Condition #77 of the Timber Class Environmental Assessment. This Manual was to have been the framework for the implementation of Term and Condition No. 77 the Board ordered the Ministry of Natural Resources to develop in consultation with:

- (i) Nishnawbe-Aski Nation*
- (ii) Grand Council Treaty #3*
- (iii) Union of Ontario Indians*
- (iv) the forest industry (e.g., Ontario Forests Industries Association)*
- (v) Other aboriginal government bodies as may be appropriate.*<sup>32</sup>

To my knowledge, this consultation did not occur. Nevertheless Ministry of Natural Resources District Managers apparently use the Draft Guidelines.

The purpose of the guidelines is to:

*“to provide MNR District Managers with a consistent framework for the implementation of Term and Condition #77 both by building upon existing initiatives and by facilitating the development of new initiatives; and*

*to provide Aboriginal communities and forest industry companies with the information District Managers will be using in the implementation of Term and Condition 77.”*<sup>33</sup>

The Guidelines address many forest management activities generally without providing much procedural direction. Recently, I understand the Guidelines have been reviewed and updated internally by Ministry of Natural Resources staff. To my knowledge no consultation on this review and update occurred with the parties referred to in the Environmental Assessment Board's October 10, 1995 decision. The updated guideline was revised to address the experiences District Managers have had to date and to provide clearer direction. I have not seen the revised Guidelines as of the date on which this paper was written. Therefore, I cannot comment on whether the revised Guidelines represent a substantial departure from the original draft or not..

In contrast to the internal review of these Guidelines, the Ministry of Natural Resources implementation of Ontario's Living Legacy involves a public review of the other guidelines used to implement the Forest Management Planning Manual. This review is being conducted presently.

**c) Ontario's Living Legacy**

The Lands for Life/Ontario's Living Legacy programs have components which address Term and Condition 77. The three Round Tables established under the Lands for Life Program to make recommendations to the Minister of Natural Resources ended their work in the summer of 1998. Each issued a separate draft report.

In the fall of 1998, Ministry staff and a consultant released the "Consolidated Recommendations of the Boreal West, Boreal East and Great Lakes - St. Lawrence Round Tables". A total of 242 recommendations were made by the three round tables. Of these, 24 recommendations address First Nations. These recommendations and their background analysis and conclusions bear a profound resemblance to the findings and the decisions made by the Environmental Assessment Board in 1994 and 1995.

Term and Condition 77 is addressed specifically in recommendations 87 and 88.

<b>Consolidated Recommendations of the Boreal West, Boreal east and Great Lakes - St. Lawrence Round Tables<sup>34</sup></b>	<b>Ontario's Living Legacy, Government Response to the Consolidated Recommendations of the Boreal West, Boreal East and Great lakes - St. Lawrence Round Tables.<sup>35</sup></b>
Recommendation 87. MNR should increase its efforts to ensure that the economic benefits of the forest are shared with the Aboriginal communities, as required by the Class Environmental Assessment for Timber Management on Crown Lands. Wood supply reallocation and changes in forestry operations should be considered if necessary.	MNR will continue to implement term and condition 77 of the Class Environmental Assessment for Timber Management on Crown Lands.
Recommendation 88. The Ontario Government should work with the forest industry to encourage the involvement of Aboriginal people in the economic benefits of forest management.	Accept.

I understand no special measures are being taken within Ontario's Living Legacy Program to implement Recommendations 87 and 88. Presently, activity is focussed on establishing new park and conservation reserve boundaries and enacting the necessary regulations to implement these changes. However, in time, this attention may shift towards the recommendations 87 and 88 because international and national forest certification systems require a higher standard of treatment of First Nation concerns than that which is being given to the implementation of Term and Condition 77.

**d) Forest Certification:**

On November 25, 1999, the Globe and Mail reported the Swedish home furnishings retailer IKEA AB announced "*the only time ancient forest wood will be used is if it is from operations certified by the Forest Stewardship Council.*"<sup>36</sup>

The Forest Stewardship Council is an international organization which administers a forest certification program<sup>37</sup> intended to achieve sustainable forest management. Forest companies can have their forests certified if the management of these forests meet a number of environmental standards. Many of these principles and criteria address First Nations and their concerns.

The Canadian Standards Association is a national organization which also maintains a certification program<sup>38</sup> which potentially competes with the international Forest Stewardship Council's standards. The Canadian Standards Association standards also apply rigorous requirements with respect to First Nations and their concerns.

These certification requirements address concerns similar to those intended to be addressed by Term and Condition 77 and the Timber Management Native Consultation Program. Many forestry companies are actively investigating certification programs and their requirements. Some have begun work designing management systems to achieve certification. As this work proceeds, there needs to be greater attention paid to Term and Condition 77 because it will be important to demonstrate that forest management conforms with the requirements of this condition and that First Nations are sharing in the benefits of the forest management. If this cannot be demonstrated and/or affected First Nations dispute the background work produced in support of certification, forest certification may be withheld or withdrawn and markets may be limited as a result.

Presently, the certification movement is nicely underway. This activity may culminate at the same time the Environmental Assessment Act approval of the Ministry's forest management program lapses on 2003. Successful improvements in the implementation of Term and Condition 77 will be required in order to ensure certification can proceed. The successful implementation of Term and Condition 77 is in everyone's best interest.

**4. Future Prospects:**

In the future, First Nations may be joined by wood product consumers who share a common interest in the implementation of Term and Condition 77 albeit for different reasons. Presently the Ministry of Natural Resources has not generated sufficient information which could be objectively used to measure whether Term and Condition 77 is being implemented or whether the First Nations are sharing forest management economic and social benefits. We will be unprepared for forest certification and the review of the implementation of Term and Condition 77 if this information is not produced.

There may be some efforts which have been more successful. These projects should be documented through research and interviews with key personnel. Useful information to be gathered will include the factors which helped the effort be successful and pitfalls which

threatened the projects. This information should be compiled by all parties and used to develop guidelines to be applied elsewhere. Furthermore, the Ministry needs to allocate financial resources and use its licensing authority to promote useful projects.

The Draft Ministry of Natural Resources Guidelines for the Implementation of Term and Condition #77 were too focussed on Ministry programs and reporting structures. Hopefully the revised Guidelines will broaden the scope for joint implementation with industry, local communities, other Provincial Ministries and Federal Departments. Successful resource development projects which have benefited and involved First Nations exist in Ontario and in other Provinces. The Guidelines need to adapt, with the appropriate modifications, successful strategies and procedures from these experiences and apply these to the implementation of Term and Condition 77.

A sustainable forest is a forest within which First Nations share in the social and economic benefits of forest management.

**End Notes:**

1. Page 374, Reasons for Decision and Decision, Class Environmental Assessment by the Ministry of Natural Resources for Timber Management on Crown Lands in Northern Ontario, Environmental Assessment Board, April 20, 1994.
2. Page 346, Introduction, Reasons for Decision and Decision, April 20, 1994.
3. Page 346, Introduction, Reasons for Decision and Decision, April 20, 1994.
4. Page 352, Treaty and Aboriginal Rights, Reasons for Decision and Decision, April 20, 1994.
5. Page 353, Government Involvement in Native Communities' Use of Forest Resources, Reasons for Decision and Decision, April 20, 1994.
6. Page 358, The Present, Reasons for Decision and Decision, April 20, 1994.
7. Page 360, Mistrust of the Timber Class Environmental Assessment process, Reasons for Decision and Decisions, April 20, 1994.
8. Pages 360 and 361, Mistrust of the Timber Class Environmental Assessment Process, reasons for Decision and Decision, April 20, 1994.
9. Pages 261 and 362, Timber Licenses, Reasons for Decision and Decision, April 20, 1994.
10. Page 364, Effects on Native Values and Activities, Reasons for Decision and Decision, April 20, 1994.
11. Page 367, Intervenors' Proposals, Reasons for Decision and Decision, April 20, 1994.
12. Page 370, Findings, Reasons for Decision and Decision, April 20, 1994.
13. Page 370, Identification and Protection of Native Values, Decision and Reasons for Decision, April 20, 1994.
14. Page 371, Identification and Protection of Native Values, Decision and reasons for Decision, April 20, 1994.
15. Page 372, The Opportunity to Share in the Benefits of Timber Management Planning, Decision and Reasons for Decision, April 20, 1994.
16. Page 372, The Opportunity to Share in the Benefits of Timber Management Planning, Decision and Reasons for Decision, April 20, 1994.
17. Page 373, The Opportunity to Share in the Benefits of Timber Management Planning, Decision and reasons for Decision, April 20, 1994.



18. Pages 374 and 375, Decision and Reasons for Decision, April 20, 1994.
19. Page 375, Decision and reasons for Decision, April 20, 1994.
20. Page 375, Decision and reasons for Decision, April 20, 1994.
21. Pages 375 and 376, Decision and reasons for Decision, April 20, 1994.
22. Page 1, Report on the Approval of the Class Environmental Assessment for Timber Management on Crown Lands in Ontario, Environmental Assessment Board, October 10, 1995.
23. Page 9, Report on the Approval of the Class Environmental Assessment for Timber Management on Crown Lands in Ontario, October 10, 1995.
24. Page 10, Report on the Approval of the Class Environmental Assessment for Timber Management on Crown Lands in Ontario, October 10, 1995.
25. Page 11, Report on the Approval of the Class Environmental Assessment for Timber Management on Crown Lands in Ontario, October 10, 1995.
26. Page 13, Report on the Approval of the Class Environmental Assessment for Timber Management on Crown Lands in Ontario, October 10, 1995.
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