

**CITIZENS FOR PUBLIC JUSTICE  
BRITISH COLUMBIA AFFILIATE**

PRESENTATION TO THE HONOURABLE MR. DAVE PARKER  
PUBLIC INFORMATION SESSION ON TREE FARM LICENCE POLICY

WEDNESDAY, MARCH 8, 1989

Introduction

Citizens for Public Justice (CPJ) is a nation-wide non-partisan advocacy organization. Its concern for social justice is grounded in the Christian tradition.

The policy to convert Forest Licences to Tree Farm Licences (TFLs) contemplates a trade-off: the companies obtain security, in the form of a proprietary interest approaching a "private land situation", in exchange for uncertain promises of future investment.

CPJ is opposed to the present TFL policy for the following reasons:

1. CPJ believes that the TFL policy is a poor bargain for British Columbians. The policy constrains our flexibility. The policy will force us to buy out TFL proprietary interests to create parks, preserve wildlife, and settle land claims.
2. The policy's hearing and review process is defective: there are no effective checks and balances when it come to defining TFL terms and conditions.
3. The entrenchment of TFL-holders monopolizes the forests and precludes smaller long-term tenures.
4. The TFL policy is one more obstacle to settling land claims in British Columbia.

All in all, the TFL policy would set us on a course of action which is reversible only at a very high cost.

### 1. TFLs are a Poor Bargain for British Columbians.

Mr. Parker, in your words "we are getting as close as possible to providing almost the private land situation for the major licensees." The plan apparently is to provide a "proprietary interest" to TFL-holders. Your policy's central assumption is that the "secure right to harvest the future timber crops in the licence is an incentive to enhance the timber growth and productivity of the lands in the province." (MFFL, 1986)

We generally support the value of private property. But, in this case, providing a "secure right" to companies has too high a cost. One cost is the loss of flexibility. Let me give some examples:

- the Forest Act prevents government from withdrawing more than 10% of the allowable cut in any 25-year period;
- the Act delimits the area which can be removed from a TFL; and
- the policy does not provide any scope for either new entrants or the reallocation of the available timber supply.

In addition, the government is severely constrained in the degree to which it can regulate a proprietary interest. A TFL-holder may successfully argue in court that government regulation is 'expropriating' the company's rights and hence should be compensated. Exercising the regulatory power to, say, create wildlife reserves, establish parks, or settle land claims would exact a high price. It is therefore misleading to suggest that you have a veto power over TFL-holders.

What commitments can we expect from the TFL holders? Some indication is found in the Mackenzie Group<sup>1</sup> application, which merely says that the TFL will "enable" it to commit, and only subject to favourable world market conditions. The application contains no guarantee that the applicants will invest. Based merely on this 'intention', the government intends to grant the applicant a proprietary right to 15,000,000 acres. All the risk is absorbed by the taxpayer.

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<sup>1</sup> The Mackenzie Group consists of Fletcher Challenge Canada Limited and Finlay Forest Industries. Fletcher Challenge owns 50% of Finlay Forest Industries. The group applied for a TFL which would cover 6,000,000 hectares (15,000,000 acres) of northcentral British Columbia and would have a renewable tenure of 25 years.

## 2. TFLs Lack an Effective Public Review Mechanism

The policy has failed to correct the current deficiency in the Act which does not permit the public to have an effective say in drawing up the terms and conditions of a TFL.

The problem is this: the TFL applicant's forestry plans are revealed only after it has received approval of the application (i.e. after the public hearing). The Forest Act states that once the TFL application is approved, the applicant must prepare a Management and Working Plan (MWP). It is the MWP, and not the TFL application, which sets out the operational plans. Significantly, the MWP is not subject to a public hearing. The Chief Forester of the B.C. Forest Service has the sole responsibility for approving the MWP. He is obligated to make a copy of the proposed MWP available to the public but is not bound to call a public hearing.

Another serious flaw in the TFL process is that there is no legislated requirement for a public hearing when the TFL comes up for a 25 year renewal during its ninth year. (After the ninth year the TFL holder may apply for another 25 year term.)

These flaws in the public review system are shown in the Mackenzie Group application. The application is ready to go to public hearing. But it does not spell out key details about reforestation and silviculture measures, sequence and grade of harvesting, and the method of coordinating the management of timber and non-timber users. There are not even adequate timber and wildlife studies in the TFL area. These studies will be undertaken in the coming years. The public will not have a chance to review these key studies at a public hearing. Suggestions as to future infra-structure investments are predicated on apparently very optimistic world demand factors (the assumptions are not really disclosed). We do not have a clear, or even a fuzzy, picture of what our forest will look like in 10, 20, 50 years from now. How can the public provide any intelligent comment at a public hearing? The bizarre consequence is that there will be a single public hearing on granting a TFL covering land that is twice the size of Vancouver Island to a single foreign-owned multinational corporation.

Why are we so concerned about 'public participation'? It is our belief that justice and stewardship can only be achieved by a public and politicians who remain responsible and accountable. The public must go through a process of determining the effects of a TFL, identifying the risks associated with a TFL commitment, and assessing who benefits and loses. This process cannot be abdicated to a select few politicians, company officials and professional foresters. The public has not just the right, but also the responsibility, to ensure a just decision is made. The public needs to give its informed consent.

### 3. TFLs monopolize the forest.

The conversion of Forest Licences to long-term TFLs will tend to give TFL-holders a monopoly in the forests. Typically, it is the large Forest License holders who are seeking the TFLs. These TFLs, of course, have longer terms. The TFL excludes individuals or companies from obtaining tenure. This keeps small operators out, excluding the possibility of community-based woodlots for Indian Bands and small business. The small business program within a TFL is intended, but fails, to offset the monopolistic effect of a TFL.

The monopolistic effect is illustrated in the way the Mackenzie Group proposes to manage the small business program. If the TFL holder refuses to buy the timber allocated under the small business program then this program becomes totally ineffective.<sup>2</sup> It will also be difficult to lure new processing facilities into the area because of the susceptibility of the small business program to the TFL-holder's buying policies.

### 4. The TFL Policy is a Pre-Emptive Strike to Land Claims.

Perhaps the most distressing aspect of the TFL policy is that it reflects B.C.'s callous disregard for our First Nations. B.C.'s First Nations have, for the past 150 years, urged governments to address the fundamental questions of ownership and shared jurisdiction and to postpone the disposition of interests to resource companies until the claims are settled.

The provincial government refuses to negotiate land claims. Instead, it pushes a TFL policy which arguably is one of the largest dispositions of Crownland interests.

It is important to emphasize that TFL rights are compensable. To create the South Moresby 'park reserve', governments compensated Western Forest Products, which held only a Forest Licence, some \$100 million. The costs would be much higher for TFLs.

The TFL policy gives both the government and the forest industry a vested financial interest in opposing the settlement of Native land claims. The federal government is watching this TFL policy, and its deficit, and will "negotiate" to buy out TFL holders, but say they will stop short of expropriating these interests.

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<sup>2</sup> The Group's sawmills are the only ones within an economic distance. The costs of delivering timber beyond Mackenzie becomes totally prohibitive.

## Conclusions

TFLs are not the answer to the crisis in forestry. Indeed, TFLs are only an extension of the very forestry tenure and management system which has created the crisis.

If your government is looking for solutions, it should also recognize another crisis. This is the crisis of trust and public confidence. There is a widespread mistrust in the ability of experts - professional foresters, companies, and governments - to manage the forest.

Minister Parker, you have pointed out that a TFL is not substantially different from a forest license. We agree that there is some truth in this, but therein lies the problem. The litany of woes afflicting our forest industry--log exports, mill closures, falldown effects, clear-cutting, the backlog in reforestation and unacceptable environmental damage--is well-documented. The TFL policy does not reform the abuses in the forests and seems most likely to entrench the abuses of the existing system. For these reasons, CPJ recommends that the provincial government:

- 1) establish a royal inquiry on forestry;
- 2) establish a moratorium on TFLs pending the royal inquiry and substantial progress in land claim negotiations;
- 3) immediately enter into land claim negotiations to sort out jurisdiction and ownership issues with our First Nations; and
- 4) seek an electoral mandate for any TFL policy, whether in the present or amended form.

Above all, we urge you to listen to the people who pay the cost of resource development. Some of the people who have paid the most are the Ingenika and Mesilinka Indian Bands. These people are still reeling from another resource policy blunder - the creation of Williston Reservoir. These people, and their neighbouring bands, now face the Mackenzie Group application. They, rightfully, fear that Fletcher Challenge will strip-harvest the areas around their communities, areas used for trapping, and areas which the bands themselves would want for an economic base for their communities. Their experience will tell you that this policy is too costly. We, and many other British Columbians, agree with them.

Citizens for Public Justice is concerned that in the present debate on resource policy the only factors that seem to command respect are those that encourage economic growth, divorced from any other factors. CPJ believes that stewardship, not economic growth, must be the touchstone of resource development in British Columbia.