



TOWARDS A NEW FORESTRY POLICY

BACKGROUND

In February of 2023, the Provincial Government initiated a Forestry Commission. In January of 2024, the Commission released a discussion paper designed to encourage public input into the development of a new forest policy for the province. The Commission has 12 members and a Chair. The membership includes sector experts, industry, government and a representative of the Mi'kmaq Confederacy. The Commission is expected to deliver its final report in March 2025.

In brief, the Commission's mandate is:

- Recommend changes that may be required to the *Public Forest Council Act*, the *Forest Management Act* and associated Regulations
- Identify key indicators of progress to be used in the next State of the Forest Report
- Assist the Department to develop a new Forest Policy for Prince Edward Island.

Among the principles followed by the Commission in its work is to:

Recognize the importance of the Mi'kmaq-Prince Edward Island-Canada Framework Agreement:

“The Commission will become familiar with work taking place under the Agreement, and its deliberations and decisions will respect the principles of the 2019 Framework Agreement.”

In keeping with that mandate, the Commission is expected to make recommendations surrounding the following point by March of 2025 (emphasis added):

Identify potential areas of collaboration between the Department and groups actively involved in forest management, including but not limited to, the Watershed Alliance, the Nature Trust, MacPhail Woods Ecological Forestry Project, PEI First Nations, and the Nature Conservancy of Canada.

MI'KMAQ INTEREST IN LAND POLICY

In the most general terms, Epekwitnewaq Mi'kmaq have three overriding concerns when it comes to land and land use:

- Mi'kmaq rights to the land
- Resource sustainability relating to land and land use practices
- The need for inclusion in land management

Of course, these interests are partly derived from Section 35 of the *Constitution Act, 1982*:

The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Mi'kmaq Aboriginal and Treaty Rights were acknowledged by the federal and provincial government with the signing of the Framework Agreement to address Mi'kmaq rights and title in 2019. These provide Epekwitnewaq Mi'kmaq with the right to benefit from the land and how the land is used.

FORESTED LAND IN EPEKWITK

From a province-wide perspective, roughly 43 per cent of the Island is forested. Broken down further, 85 per cent of that total is natural forest – with the remainder divided between plantations and ‘regenerating’ areas. Forested areas are declining at a significant pace: In 1990, forest covered 280,000 hectares; in 2020, the total was 246,000 hectares. Of that total, a relatively small amount is managed by the Forests, Fish and Wildlife Division of the Provincial Department of Environment, Energy and Climate Action. In fact, only about 13.6 per cent of forested land (33,600 hectares) is managed by the Division.

THE EPEKWITNEWAQ MI'KMAQ POSITION RELATIVE TO CROWN LAND

- The Mi'kmaq have among the smallest reserves of any Indigenous group in Canada
- The province of PEI has the smallest percentage of Crown land of any provincial government in Canada
- As part of ongoing rights negotiations, the Mi'kmaq will be looking to increase their land holding to support current and future needs, including the ability to develop an economy to support the people and their continuing way of life
- This increase will be through acquisition of Crown land or on a willing-seller and willing-buyer basis
- It is critical that the Province of PEI maintains Crown land inventory toward Mi'kmaq land acquisition as part of future agreements.

Furthermore, because of existing Aboriginal and Treaty rights, Epekwitnewaq Mi'kmaq are not mere stakeholders. Rather, they have an interest in the land which is constitutional in nature – and therefore, must be given a say in land use in their traditional territories.

Therefore, there is a great deal of interest in any potential changes to the provincial *Forest Management Act* and any attendant policy changes.

In essence then, the long-held position of Epekwitnewaq Mi'kmaq remains the same. We are seeking:

- A role in land policy development and management
- Exploration of a model, currently used by some federal departments, for joint mandate development
- An opportunity for Mi'kmaq organization to play a substantive role in the development of government policies and legislation on issues that affect them

Taken together, achievement of these three points could help ensure an appropriate level of Mi'kmaq inclusion in decision-making in acknowledgement of their rights and interests in the land.

A MI'KMAQ FIRST PRINCIPLE - NETUKULIMK

As a matter of history, culture, tradition and language, the Mi'kmaq practice and adhere to the concept of Netukulimk.

Netukulimk is a cultural concept that is based on achieving adequate standards of community nutrition and economic well-being. An important proviso attached to the concept is that actions may not jeopardize the integrity, diversity, or productivity of our environment to honour sustainability for all generations.

THE PROVINCIAL DISCUSSION PAPER - RESPONDING TO SPECIFIC POINTS

1. First, the Forestry Commission Paper makes the following observation in its section on the Legislative Framework:

The *Forest Management Act*, as currently written, does not contain a preamble, a statement defining its general purpose and aspirations in plain language. **The Act also fails to consider the rights of First Nations or the impact of climate change.** It has a very narrow definition of how forests contribute to societal values, it lacks clarity on the process for developing and producing regular updates of the Forest Policy and the State of the Forest Report, and it contains an outdated model of how the Forests, Fish and Wildlife Division should be structured to deliver on its obligations.

From a positive perspective, it is encouraging to see the Commission note the failure of existing legislation to embrace the Mi'kmaq reality. At one level, the inclusion of such language in a new Act will be seen as an important contribution to the wider reconciliation effort. More specifically, a clause that clearly articulates aboriginal and treaty rights would be entirely appropriate in this Act. Additionally, a preamble that cited the importance of Netukulimk will help to drive principled decision-making relative to environmentally sensitive questions and discussions.

As a recommendation, the Mi'kmaq element of the Commission's observation could be included in a preamble with the following language:

In the spirit of Reconciliation, this Act recognizes the 13,000 year history of the Mi'kmaq as the original stewards of the land, forests and water surrounding Epekwitk (Prince Edward Island), and the deep and abiding interests of the Epekwitnewaq Mi'kmaq (the Mi'kmaq of Prince Edward Island) in the need to responsibly preserve and sustain forests as part of our shared heritage and economic resource.

2. Second, the Paper notes the following:

The Commission has considered whether government should lease or transfer individual parcels or blocks of forest land to non-profit groups and First Nations but has not reached a conclusion in this regard.

As noted above, the Mi'kmaq have consistently advocated for a model of co-management. In effect, such a model builds on the duty to consult – and will ensure a high-level of Mi'kmaq participation and agreement in land use.

In response to the questions raised by the Commission:

- Arrangements should be devised that permit Mi'kmaq-Provincial co-management of public forests, and
- In partial exchange for an agreement to co-manage these lands, the Province should assist with management costs (including road building and maintenance) and contribute funding to cover liability issues.

Of course, there are two excellent examples of this effort. The recent Establishment Agreement for the Pituamkek National Park, formalized by the Mi'kmaq Epekwitnewaq Kapmntemuow and the Government of Canada, lays out key elements of the future park reserve – such as a co-management governance model. This model - like the agreement to co-manage the larger entity of the Prince Edward Island National Park - could serve as the foundation for future agreements, as well as assist Epekwitnewaq Mi'kmaq to further develop the capacity and expertise to deliver on future partnerships.

3. Third, the Paper raises the following point:

In other provinces, there is a long history of private companies leasing public forest for the purpose of active management and revenue generation. Such has not been the case here.

Therefore, there are models available across Canada which could be followed by the Province – that relies on land leasing as a foundational tool for co-management.

That said, it may be appropriate to include a provision that offers Epekwitnewaq Mi'kmaq the right of first refusal on all potential leasing arrangements embarked upon by the Province.

Consistent with the practice of the Federal Government, the terms and conditions of any lease should allow for the early termination of the lease in the advent of a rights-based agreement or settlement.

CONCLUSION

The efforts of the Forestry Commission are greatly appreciated – and both Commission members and the Provincial Government deserve congratulations for the scope and timeliness of their work. In an era of climate change, it is essential for the Province to fully understand the ecological weave of the Island – and respond to challenges accordingly.

Epekwitnewaq Mi'kmaq are more than willing to do their part – and offer their dedication to the physical tasks required, as well as providing the lens of Netukulimk to decision-making processes.

As noted above, co-management of resources can be achieved through the simple device of leases – and with appropriate partnership and collaboration, there can be real progress to protect and enhance the forestry resource.