

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

B E T W E E N:

CHIEF MARY ANN SIMON ON BEHALF OF HERSELF AND THE MEMBERS OF THE **BUCTOUCHE FIRST NATION**, **CHIEF GEORGE GINNISH** ON BEHALF OF HIMSELF AND THE MEMBERS OF THE **EEL GROUND FIRST NATION**, **CHIEF ARREN SOCK** ON BEHALF OF HIMSELF AND THE MEMBERS OF THE **ELSIPOGTOG FIRST NATION**, **CHIEF ALVERY PAUL** ON BEHALF OF HIMSELF AND THE MEMBERS OF THE **ESGENOOPETITJ FIRST NATION**, **CHIEF REBECCA KNOCKWOOD** ON BEHALF OF HERSELF AND THE MEMBERS OF THE **FORT FOLLY FIRST NATION**, **CHIEF KENNETH BARLOW** ON BEHALF OF HIMSELF AND THE MEMBERS OF THE **INDIAN ISLAND FIRST NATION**, **CHIEF JOSEPH WARD** ON BEHALF OF HIMSELF AND THE MEMBERS OF THE **METEPENAGIAG MI'KMAQ NATION**, **CHIEF JOE SACOBIE** ON BEHALF OF HIMSELF AND THE MEMBERS OF THE **OROMOCTO FIRST NATION**, **CHIEF DAVID PETER-PAUL** ON BEHALF OF HIMSELF AND THE MEMBERS OF THE **PABINEAU FIRST NATION**, **CHIEF BRENDA PERLEY** ON BEHALF OF HERSELF AND THE MEMBERS OF THE **TOBIQUE FIRST NATION**, **ASSEMBLY OF FIRST NATIONS' CHIEFS IN NEW BRUNSWICK INC.**

APPLICANTS

AND

THE PROVINCE OF NEW BRUNSWICK, AV CELL INC., FORNEBU LUMBER COMPANY INC., J.D. IRVING LTD., AV NACKAWIC INC., TWIN RIVERS PAPER COMPANY

RESPONDENTS

AFFIDAVIT

I, STEPHANIE MERRILL, of the City of Fredericton in the County of York and Province of New Brunswick, AFFIRM AND SAY AS FOLLOWS:

1. I am the Freshwater Protection Program Director with the Conservation Council of New Brunswick. I have personal knowledge of the facts and matters hereinafter deposed to except where stated to be based on information and belief and where so stated I verily believe the same to be true.

My Background

2. I graduated from University of New Brunswick with a Bachelors of Science in Biology with a focus in Aquatic Ecology in 2004 and a Masters of Science in Forestry with a focus on environmental management in 2009.
3. The focus of my Masters thesis was research on human impact in riparian zones, and the development of a riparian health assessment protocol which included indicators of stability for riparian zones.

Riparian Zones

4. A riparian zone or riparian area is the interface between land and a river or stream. Riparian zones dissipate stream energy, which results in the protection of the soil, reducing erosion and flood damage. Sediment is trapped, reducing suspended solids to create less turbid water, replenish soils, and build stream banks. Pollutants are filtered from surface runoff via biofiltration, which enhances water quality.
5. The riparian zones also provide wildlife habitat, increased biodiversity, and provide wildlife corridors, enabling aquatic and riparian organisms to move along river systems avoiding isolated communities. They can provide forage for wildlife.
6. They provide native landscape irrigation by extending seasonal or perennial flows of water. Nutrients from terrestrial vegetation is transferred to aquatic food webs. The vegetation surrounding the stream helps to shade the water, mitigating water temperature changes. The vegetation also contributes wood debris to streams which is important to maintaining geomorphology and food sources.
7. New Brunswick's *Clean Water Act* and its regulations protect riparian zones by placing restrictions on the disturbance of the ground within thirty metres of a wetland or the bank of a watercourse.
8. In addition, riparian zones in New Brunswick's Crown Forest are protected from timber harvesting as part of the conservation forest as stream and wetland buffers. These areas comprise around 12% of the Crown Forest. The area protected as riparian buffer zones as part of the conservation forest frequently exceeds the 30 metre minimum in the *Clean Water Act*, often for sound ecological reasons, such as areas with steeper slopes or wider flood

plains.

2014 Forest Strategy

9. In March 2014, the Government announced its most recent forest strategy, entitled *Putting our Resources to Work: A Strategy for Crown Lands Forest Management* ("2014 Strategy"). I have read and reviewed this document, a copy of which is attached hereto as **Exhibit "A"**.
10. The 2014 Strategy departs from the earlier strategies by stating that the Government will make more Crown wood available to industry. It provides for a 20 percent increase in the AAC of softwood timber, bringing the total softwood timber objective on Crown lands to 3.9 million cubic metres. The 2014 strategy appears to reduce the amount of conservation forest protected to 23%. It reduces the portion of the Crown Forest protected as riparian buffers to 8%.
11. Reducing the area protected as riparian buffers will have negative effects on both the health of the forest, and the health of streams and wetlands, and the species that rely on them.
12. Reducing riparian buffers results in increased exposed soils, erosion and increased siltation. It also increases water temperature due to the decrease in the forest canopy and decreased shade. Siltation also increases the water temperature and warmer water holds less oxygen. This negatively impacts fish species such as salmon and trout, who need cooler, highly oxygenated water.
13. Increased siltation suffocates sensitive spawning habitats, fish eggs and fish gills. Excessive and sustained turbidity may also impede fish navigation and feeding.
14. The degradation of proper water flows temperature and quality is particularly problematic for migratory spawning species such as salmon.
15. I am deeply concerned that the reduction of riparian buffers that is contemplated under the 2014 Strategy will have a negative impact on the health of forest, streams, and aquatic species, particularly fish such as salmon and trout.
16. I make this affidavit in support of a motion for an interim and interlocutory order.

AFFIRMED BEFORE ME at the City of _____)
_____, in the County of _____)
and Province of _____, this _____)
day of _____, 2014.)
_____)

A Commissioner of Oaths
Being a Solicitor

) Stephanie Merrill

2014 Cause No. F/C/____/14

This is Exhibit "A" referred to
in the affidavit of Stephanie Merrill
sworn before me _____
on _____, 2014.

Signature



A Strategy for Crown Lands Forest Management



PUTTING our
RESOURCES
to **WORK**

New Brunswick
Brunswick

PUTTING our RESOURCES to WORK

INTRODUCTION

Resources for Growth

Two years ago, in its landmark economic development policy Growing Together, the Government of New Brunswick identified the forestry sector as a mainstay of the provincial economy.

Indeed, New Brunswickers know that our forest resources have been a source of our prosperity and success for four centuries now, dating back to the first European settlements in the province.

In Growing Together, the Government of New Brunswick recognized this fundamental fact, pledging to strategically manage forest land to ensure that "both Crown and private woodlands can support economic development opportunities".

Today, we are moving forward on this commitment by mapping out a path to greater prosperity in this report, Putting Our Resources To Work: A Strategy For Crown Lands Forest Management. The next steps include the development of a detailed Forest Management Plan to implement this strategy.

In summary, this strategy is intended to take advantage of the renewable resources New Brunswickers own by encouraging investment, putting hundreds of additional people to work in a vital industry, and sustainably managing our Crown forests.

Forest sector decline over past decade

	10 Years Ago	Today	
Mills	77	40	-47%
Forestry Jobs			
Direct	17,000	13,000	-24%
Indirect	11,000	9,000	-18%
Total	28,000	22,000	-21.5%
Labour Income	\$1.32 billion	\$1.035 billion	-22%
GDP Contribution	\$2.1 billion	\$1.45 billion	-31%
% of provincial economy	11%	5%	

WHY NOW?

The Urgency is Real

Our forest sector remains vital to the economic wellbeing of New Brunswick, a province where 22,000 workers depend on this great resource for their livelihood.

Forestry is New Brunswick's largest industry, contributing more than \$1.45 billion to the New Brunswick economy annually. It has the potential to make a greater, more positive impact.

That's the good news.

The challenge is that this sector has been in serious decline. Its competitive position has deteriorated. Our mills must compete in the global market place and in order to do so they must invest now or risk further decline and more significant losses in this important industry.

Since 2004, the number of mills operating in New Brunswick has been reduced to half the number it used to be. Even more troubling is the fact that four of these were significant pulp mills that provided a market anchor for sawmill byproducts and low-grade forest products. Sadly, there are 6,000 fewer New Brunswickers working in the sector now than 10 years ago.

A key goal of this strategy, then, is to put the New Brunswick forestry sector in a stronger position to thrive and compete—a sector that is able to sustain itself through the down periods in this historically cyclical industry.

Our mills need to invest in themselves in order for this to happen and Government needs to provide the atmosphere necessary for companies to attract and secure investment dollars.

That's exactly what this strategy aims to do.

HOW TO SUCCEED

Encouraging Investment

This strategy will make more Crown wood available to industry.

Government will allocate additional fibre to support companies who have committed to make substantial investments in mill modernization and equipment. Such investments will create new jobs and secure existing jobs for New Brunswickers.



THE OUTCOMES OF THIS UPDATED FORESTRY STRATEGY ARE EXPECTED TO INCLUDE:

- A \$600-million increase in private sector investment.
- More than 500 new, well-paid private sector jobs.
- As many as 1,200 construction jobs as mills modernize.
- More than \$22 million in additional annual wages.
- Increased annual royalties to the province.
- Greater demand for fibre from private woodlots as mills modernize and the industry grows. It is expected the need for private wood will increase by 250,000 cubic metres annually.

The Department of Natural Resources is confident that our forests can and will sustain a greater annual harvest of fibre, through better forest management and continued silviculture activity.

BUILDING BLOCKS

The Details of the Strategy

For more than a decade, the forest industry has made the call for a strong timber objective as the driver of Crown forest management. Today, the Government is putting that policy into place. This new timber objective creates the certainty of supply needed for industry to invest in its long term future. It sends a clear signal that Crown forests will be managed as a highly productive source of high quality forest products. Our vision is for the long-term. With this in mind, our Government is increasing the sustainable harvest of softwood by 660,000 cubic metres to match our overall timber objective of approximately 3.9 million cubic metres. Furthermore, we've identified a timber objective for hardwood species at 1.8 million cubic metres.

Highlights include:

- Total softwood timber objective on Crown lands of 3.9 million cubic metres.
- Hardwood objective will remain at the current level of 1.8 million cubic metres.
- Past silviculture activity on Crown lands will begin to pay off. Over the last 35 years, New Brunswick has invested over \$400 million in silviculture. These investments are paying off as trees are starting to be harvested and will form a greater proportion of total wood harvest in the future. Increasing our efforts in commercial thinning of these sites will provide additional volume today and support improved quality from these stands in the future.
- Under this strategy more than 30,000 cubic metres of additional softwood fibre will support increased opportunities within our First Nation communities and continue to ensure five per cent of the timber harvest is used to support ongoing commercial harvest agreements with each First Nation community.
- The proportion of clear cutting is not expected to increase. In the next decade we will see more of the harvest generated in light thinnings as our dependency on clear cutting is reduced.

Expected impacts of new strategy at a glance

Industry Investment	\$600 million
New Forestry Jobs	500
GDP	Increase
Royalty Revenues	Increase
Government Expenditures	-\$10 million

FINDING MORE FIBRE

Looking Harder, Working Smarter

Our forest industry is up to the tough challenge of harvesting more wood in sustainable Crown forests, though the task will involve innovation and forward-thinking.

First and foremost, our industry will have to employ modern harvesting techniques for difficult to access fibre available on Crown land. For instance, the industry will need to harvest more fibre from tough environments, including the steep slopes of hills.

Government will also embark on a transitional, long-term plan to reduce the area of land that will be set aside as exclusive habitat areas. This will be achieved gradually, over a 10-to 15-year period, by responsibly reducing exclusive habitat areas in a way that respects the integrity and principles of habitat protection.

During this same period of time, forests will continue to mature in buffer zones, other un-harvested sites and in Protected Natural Areas.

This increased Crown softwood supply will be generated through the following initiatives:

- Harvest planning will be streamlined and will continue to operate under the best practices developed locally and over many years.
- Better utilization on existing harvest sites (safely accessing some of the steep slopes and the currently available portions of some buffers).
- Increasing the amount of area harvested in difficult to access sites (rocky areas or some isolated or low volume harvest sites).
- Increasing the amount of volume generated through commercial thinning of previously treated silviculture areas (old plantations and thinnings).
- Some areas previously managed to provide habitat will be re-arranged and overall objective levels will be reduced. This will provide industry the flexibility it needs to make its operations efficient when harvesting in new areas.



ACOMMITMENTTOAHEALTHYFOREST

The strategy is also balanced.

The Government of New Brunswick maintains its commitment to a healthy, vibrant forest with trees at various stages of maturity and respects the principles of conservation and biodiversity.

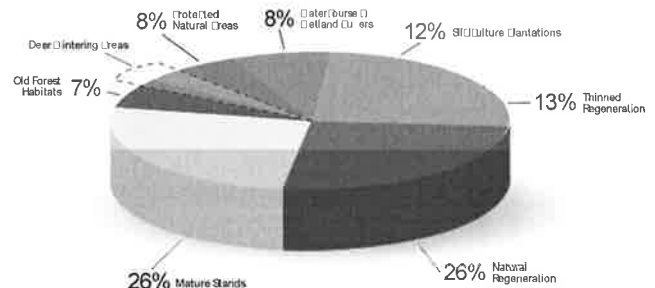
It will almost double the amount of Crown land designated as Protected Natural Areas (PNAs) in the province – legal protection for forest lands in which no forestry activity can ever take place. This will bring the total amount of land in New Brunswick under PNA designation to over 270,000 hectares (667,000 acres). In addition to the PNA area, New Brunswick has several significant Provincial and National Park areas that provide an additional 65,000 hectares (160,000 acres) of protected lands and wilderness area. We also know that environmental protection isn't only happening on Crown lands. Private landowners have designated thousands of hectares for conservation through the work of champion organizations such as the Nature Trust of New Brunswick and the Nature Conservancy of Canada.

Other highlights include:

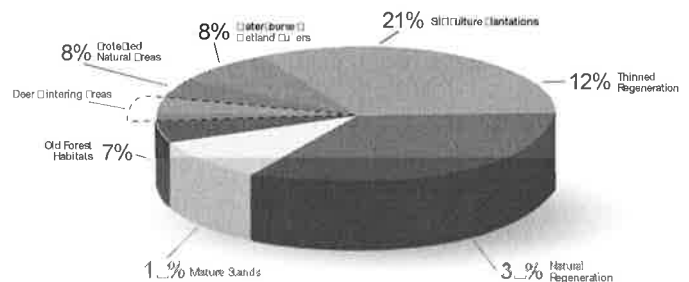
- Maintaining at least 30 per cent across all Crown land as old forest.
- All active deer wintering areas (DWAs) will be maintained. Deer populations will continue to be monitored to determine if further changes are required.
- Continued protection of lakes, rivers and streams with buffers as per the current legislation.
- Increased protection to ecologically significant sites through the increased area under PNA legislation.

As illustrated in the adjacent figures, this strategy maintains a diverse forest through time that provides old forest, deer habitat, clean water, untouched and protected areas while putting the remainder of our forest to work today and into the future.

Forest Protection under New Strategy



Forest Protection in Years



ANew Approach

Results-Based Forestry

Our government will pursue a more efficient and less costly approach to managing Crown land by adopting a “results-based framework” with Crown Licensees. Such an approach will significantly reduce management costs and save taxpayers and the province several millions of dollars annually.

A “results-based” approach will ensure our Licensees continue to follow best practices in their operations while being held more accountable for achieving specified outcomes from their harvest and management activities. Government will define clear forest-wide goals that are in line with the social, environmental and economic principles of our strategy. Licensees will be held accountable for achieving those goals through clear and appropriate consequences.

Implementing such an approach will save taxpayers money by way of a less costly management system, which will also allow industry to be more efficient in conducting its operations.

One of the repeated concerns expressed by New Brunswickers over the past few years dealt with the transparency of management practices of the Crown forests. Our government also intends to make improvements in this area, by implementing a “results-based” management approach under which performance will be measured and results will be publicly reported annually.

Our License holders must be accountable for achieving required outcomes and for the management of our forests. Our government intends to implement a system that ensures actions achieve the intended objectives in an appropriate, sustainable and transparent manner. Under this approach, our forest will remain healthy and our industries will remain viable.

Government will begin working immediately with Licensees to develop and implement a more cost effective and transparent approach to managing our Crown lands.

CONCLUSION

Consultation to Leadership

The Government of New Brunswick would like to thank the stakeholder groups who made such a vital contribution to this report through consultative processes conducted over the past decade or more.

Department of Natural Resources officials communicate on a regular basis with environmental, industry and community groups. Their views are well understood and appreciated.

In addition, formal consultations over the past few years have included the Forestry Summit convened under former DNR Minister Bruce Northrup, and several other consultative initiatives – at least a dozen dating back to 2002.

These extensive consultations played an integral role in helping to shape this strategy.

Today, New Brunswickers face both a crisis and an opportunity in the forestry sector.

Leadership is required both to recover from the crisis in which thousands of jobs were lost in rural New Brunswick, and to seize the opportunity for creating new jobs and capturing hundreds of millions of dollars of additional investment.

Our forestry strategy will achieve those goals and strike the right balance between social, environmental and economic objectives in order to sustain our forest resource for future generations.

It will help deliver on the promise of Growing Together, our economic strategy for rebuilding New Brunswick, by putting our most important resources to work – our forest and our people.