

WHOSE PINE-CLAD HILLS

Forest Rights and Access in Newfoundland and Labrador's History

BY RAINER BAEHRE

THE TWENTY-SECOND IN A SERIES OF ARTICLES DEVELOPED FROM REGULAR PUBLIC FORUMS SPONSORED BY THE LESLIE HARRIS CENTRE OF REGIONAL POLICY AND DEVELOPMENT. MEMORIAL PRESENTS FEATURES SPEAKERS FROM MEMORIAL UNIVERSITY WHO ADDRESS ISSUES OF PUBLIC CONCERN IN THE PROVINCE.

Introduction

Recent interest in the future of Newfoundland and Labrador's forests stems in part over concerns about the decade-long decline in provincial sawmill production but mostly the closure of the AbitibiBowater (formerly Abitibi Consolidated) mills in Stephenville and Grand Falls. In particular, the closing of the mill at Grand Falls has clearly pushed the question of land and forest tenure into the forefront, especially after the provincial government under Premier Danny Williams passed legislation in 2008 to expropriate the company's forestry, water and energy assets. These assets, inherited from a 1905 agreement with the Newfoundland Pine and Pulp Company, which had been passed along to various owners of the Grand Falls mill, largely took the form of long-term timber leases.

The government viewed the company's rights to these natural resources as contingent upon the continuing operation of the mill. When Abitibi-Consolidated decided to close the Grand Falls mill, yet hang on to these valuable resources, it passed "An act to return to the crown certain rights relating to timber and water use vested in Abitibi Consolidated, and to expropriate assets and lands associated with the generation of electricity enabled by those water rights" (Statutes of Newfoundland and Labrador, Chapter A-1.01) to cancel the existing agreement without compensation. Consequently, the former rights long enjoyed by this multinational forest company reverted to the Crown.

Williams defended his government's action on the grounds that it had an obligation "to ensure these valuable natural resources are returned to their rightful owners - the people of Newfoundland and Labrador." In turn, AbitibiBowater launched a \$500-million suit against what it considered an illegal expropriation of its assets, contending that the province's action was counter to Chapter 11 of the North American Free Trade Agreement (NAFTA) agreement. Before these

proceedings reached the courts, the federal government intervened, avoided a hearing by NAFTA, and settled with the company by handing over \$130-million of taxpayers' money. Meanwhile, the provincial government has appointed officials to look into what should be done with these holdings.

The matter of AbitibiBowater's perceived corporate role and contractual obligations has not, however, ended there. The province has also attempted to recover the anticipated costs of a major environmental clean-up associated with the mill, and appealed a ruling of a Quebec court, which refused to hear a case brought by against the then bankrupt company to pay for its cost, potentially representing hundreds of millions of dollars.

These important developments have obviously raised significant political and legal questions of who owns the forest, who has the right to use it, and how. In other words, in what way does the forest "belong" to the people of Newfoundland and Labrador, as Premier Williams contended? While the following overview is not intended to provide answers to these thorny and complex questions, it offers some historical context about how these issues of forest lands tenure and management began.

Who owns the forest?

Technically, most of the province's land is owned by the province. Basically, 95% of Newfoundland is made up of "Crown Land," representing the highest percentage of provincial ownership in Canada, with British Columbia close behind. When it comes to the province's forests located on Crown land, there are today two basic types: first, those located on area-based tenures and land grants requiring timber licences, short-term timber licenses, timber leases, and freehold grants; and secondly, those defined by volume-based tenures involving timber-sale agreements, commercial cutting agreements, and domestic cutting agreements.

In the bigger picture, the most significant holdings are those lands associated with timber licences. These were negotiated with the large companies beginning with the early years of railway construction and pulp-and-paper development. In return for agreeing to complete and then operate the transinsular railway project, the Newfoundland government in 1890 awarded the Reid Newfoundland Company of Montreal a freehold grant of 5,000 acres per mile. Upon agreeing to operate the railway for 50 years, R.G. Reid was given an additional 2,500,000 acres of land, 151 fee simple lots, and roughly 4,000 square miles of Newfoundland - land which was eventually acquired by the Bowater Newfoundland Company when it purchased these holdings from the International Pulp and Paper Company of New York. In addition, Bowater received cutting rights for 7.36 million acres under a 99-year contract, which extends to 2037. The Anglo-Newfoundland Development Company (later the Price Company, then Abitibi-Price Company, and then

AbitibiBowaters) gained control of a leasehold area consisting of 1.48 million acres, in addition to 97,000 acres of freehold land, and timber licenses for 3.28 million acres remaining valid for 99 years, or 2027. The latter upon signing the initial agreement was required to pay only an annual rental fee of \$2.00 per square mile and an additional \$0.50 per thousand feet of lumber; these were the same land holdings which the province reverted to Crown lands when the mill shut down. In addition, there were some other lands on the island sold freehold and, in more recent years, the federal government purchased lands to create Gros Morne and Terra Nova National Parks. But most of the forest has been historically handed over to large corporate interests. Together, these two early multinational companies and their successors came to control most of the productive forest of Newfoundland. Yet the Crown lands remain legally vested in the province under the mandate of Department of Environment and Conservation. While there may be many stakeholders in the forest, ultimately government largely determines how the forest is to be used, and by whom. How this came to be the case is presented below.

Historical Antecedents

The importance of Newfoundland and Labrador forests in supporting human activity has been longstanding and predominately rooted in economic considerations, even during the pre-European period.

The exploitation of wood was essential to aboriginal society and culture. Beothuk and later Mi'kmaq peoples constructed mamateeks, or winter dwellings "made of firre trees," and used birchbark to build canoes. In Labrador, the Innu (Naskapi and Montagnais) incorporated wood into their wigwams, sweatlodges, sledges, snowshoes, weapons, and tools. While the Inuit lived in snowhouses, or igloos, during the winter months, other times of the year were spent in tents constructed of seal or caribou skins strung over wooden frames. As well, when traveling on land, they used planked or framed sledges (komatiks) driven by dog teams made from either of wood or whalebone and leather, and while at sea, kayaks or the larger umiak built of wooden frames and covered with seal or caribou skin. Everyone used wood for fuel, and trees and other botanical plants were also used for medicines. The sparse population, different attitudes towards nature and the use of natural resources, and limited need for wood left these forests relatively unaffected.

Despite some characterizations of the island as rocky and barren, the supply of wood was abundant at the time of European arrival. The Alberto Cantino map of 1502, likely reflecting the Portuguese voyages of 1500 and 1501 of Gaspar Corte-Real who explored the region, includes a bit of text on the "great store of wood" observed on the island, including pine trees for ship masts." Richard Clarke, who accompanied Sir Humphrey Gilbert in the expedition of 1583, described Newfoundland's south coast "as goodley a Countrey as ever I saw...by the Sea side was here and there a little wood with goodly trees as good as ever I saw any in Norway, able to mast any shippe, of pyne trees, spruse trees, firre, and very great birch trees." In the 200 years which followed, Newfoundland's forest was used by the thousands of temporary migrants of the French and English migratory fishery and by a small but growing number of permanent residents who soon placed considerable pressure on this initially abundant resource, and their consistent demand for wood had begun to deforest some of the fishing harbours of eastern Newfoundland.

How the Newfoundland forest was used did not rest locally but reflected the extended power of the British empire. Legal strictures on forest use in England extend back to the late Middle Ages, though the government's agenda still focused on clearing and creating arable land and providing wood for the country's iron mills. By the 17th century, little forest remained. The problem of

diminishing forests in England and Scotland extended to New England and indirectly to the colony of Newfoundland. One of the earliest forest conservation measures can be found in the Western Charter of 1634: "Seventhly That noe person set fire in any of the woodes of the Country or worke any detriment or destruction to the same, by Ryndings of the Trees, either for the seeling of Shippes, houldes, or for Roomes on Shoare, or for any other vses, Except for the coverings of the Roofes for Cookeroomes to dresse their meate in, and those Roomes not to extend above sixteene foote in length at the most." As this clause suggests, wood was essential to the execution of the fishery, and its continuing supply was an early concern. In fact, complaints to government were made as early as 1684 that migratory fishers in Newfoundland were destroying fishing stages, turning them into timber, and sending them home.

Deforestation following the English civil war and renewed international conflict with France, resulted in a shortage of structural and masting timbers for the Royal Navy, and the country looked to its colonies for fresh supplies. It first became illegal in 1691 to cut large pine trees, except by license. In Newfoundland, the earlier restrictions on the cutting of wood were further refined under King William's Act of 1694, "That no Person or Persons whatsoever shall, at any Time after the said twenty-fifth day of March, rind any of the Trees there standing or growing upon any Occasion whatsoever, nor shall by any Ways or Means whatsoever set on Fire any of the Woods or the said Country or do or cause to be done any Damage, Detriment or Destruction to the same, for any Use or Uses whatsoever, except only for necessary Fuel for the Ships and Inhabitants, and for the building and necessary repairs of Houses; Ships, Boats, and Train-fats, and of the Stages, Cook-rooms, Beeches and other Places for taking Bait and Fishing, and for drying, curing and husbanding Fish there." In 1711 the British government also passed "An Act for the Preservation of White and other Pine Trees growing in Her Majesty's Colonies," a statute applied later to Nova Scotia," and probably meant to extend to Newfoundland. Nevertheless, according to Peter Pope, "significant cargoes" of timber continued to be shipped from Newfoundland to the Westcountry. As these documents indicate, regulation and management in Newfoundland and Labrador's forests, was operative from abroad, though difficult to enforce, well before the 20th century.

Beginning in the 17th century, Newfoundland residents were permitted to use timber from Crown lands to supply necessities for the execution of the fishery and to survive, but this was not a laissez-faire system. When it came to protecting the Newfoundland forest, the British government took on early the role of an interventionist state which has lasted in different forms until the present day. Until the late-18th century, these lands remained the preserve of the British monarch, as part of the Crown estate, after which their control was given to Parliament. Consequently, lands in Newfoundland came under the authority of the House of Commons, the Colonial Secretary, and appointed colonial governors. Technically, these lands still belong to the Queen in Right of Canada, though their control has long since moved over to the provincial government.

Access to the Newfoundland lands and forest was determined not only by the needs of the migratory fishery but also by imperial agendas. Much of northern and western Newfoundland, providing access to the largest concentrations of forest, was affected by the establishment of the French Shore, beginning with the Treaty of Utrecht in 1713. Despite France's defeat and removal from North America in 1763, it negotiated virtually exclusive access to large sections of the Newfoundland coastline until 1904. Ironically, although in the 18th century France led other European countries in conserving its forests, the same restrictions did not apply to its migratory fishery in Newfoundland, which had the right to fish unmolested, though not to settle; this put pressure on forest resources, especially along the Petit Nord.

Continuing pressures on the forest occurred wherever Anglo-Newfoundlanders settled - a growing population reaching an estimated 75,000 in the early 19th century - and virtually all living on Crown land. Not surprisingly, by 1800 wood along the east coast had become so scarce that imports were required from New England. The forest was also exploited for export timber during Napoleonic wars, when supplies reached a critical point in England. A British-sponsored survey of the island was carried out in 1809, and Newfoundland's trade in forest products from 1815 to 1818, admittedly modest in comparison to British North American mainland colonies, saw boards, planks, staves, some casks, handspikes, lathewood, knees of spruce, oars, poles, shook hogsheads, spars, treenails, and timber sent to England.

Incidentally, Newfoundland's forests were used not

only by the British and resident fishers. While Britain and France were at war and for some time afterwards, the issue of finding wood supplies led to desperate French appeals to allow fishers and settlers on St. Pierre and Miquelon to secure them from the island - a privilege that the British government remained reluctant to allow. When the Treaty of Paris was finally signed the second time, Britain once more returned the French Shore to France, despite protests from British fishing merchants and Newfoundlanders. Its decision again inhibited settlement on the west coast and Northern peninsula. Meanwhile, French fishers, with or without permission, made annual use of whatever trees they could find along the French Shore for fuel, fish stages, and other necessities, though they were still not allowed to settle permanently.

Newfoundland underwent a fundamental change beginning in 1824 when it became a formal colony and Britain authorized its governor to dispose of all lands, whether by granting or leasing them, and the Judicature Act established a land registration system. In 1844, under representative government, the first Crown Lands Act, and then the Crown Grants Registration Act, transferred power over land tenure to the island's elected officials, but many residents remained without land title. During these formative years, the existence of forest reserves in central and western Newfoundland were brought to the attention of the British Colonial Secretary by William Cormack following his famous inland trek across the island. Likewise in 1839 Joseph B. Jukes, the first Geological Surveyor of Newfoundland, undertook the first formal geodetic survey using Cormack's map of the interior and, while his primary objective was to establish coal and mineral reserves, he could not help but note "the rich sea of wood" which extended into the interiors of St. George's Bay, Placentia Bay, and elsewhere. Further impetus to exploit the Newfoundland forest came in the wake of a limited free trade agreement between the United States and the Province of Canada of 1854, which the Newfoundland government signed in 1855. Under this agreement, for the first time American fishers were given the right to use for securing crews, transshipping supplies and acquiring bait, along the American Shore, in effect giving them access to port privileges and rights to the inshore fishery.

Despite the presence of the French shore, these developments promoted settlement in the interior where the forest was heaviest. The existence of abundant natural resources and a political desire to diversify the

Newfoundland economy led to an influx of settlers and a steadily growing population in central and western regions of the province. In the 1860s, the island's geological surveyor, Alexander Murray, working in conjunction with the Geological Survey of Canada, was particularly impressed by the enormous forests around Botwood and the Gander basin, as well as in western Newfoundland where some sawmills had gone into operation, especially around Bay St. George's, the Humber Arm, and Bonne Bay, where they were harvesting trees 60 feet high and 3 feet wide, as fine as any to be found in the Maritimes.

The comparatively large Corner Brook sawmill employed 70 people and used the nearby Humber River to float incoming logs and the Corner Brook stream to power its machinery, a 40-inch turbine engine supplied by a 40-foot head of water driving 19 saws and cutting 25,000-30,000 planks daily - "almost all of this of the finest possible description, much of it being sold for the manufacture of pianos" in the American market, selling at \$80-100 per 1000 linear feet. This development in the region served to boost resident fishing in the west coast, particularly the Bay of Islands, which in the late-19th century experienced a herring and lobster boom, and substantial trade with Gloucester, Massachusetts. In turn, the growth of the fishery in this region led to more activity in the woods. For example, in the 1860s, 50,000 barrels were needed annually to ship the product from Bay of Islands alone to New England markets.

Such lumbering activity was island-wide. Prior to the coming of the railway in the 1890s, the number of sawmills on the island had grown to 200 with a workforce of 2,400. The construction of the railway and interconnecting roads in the 1890s proved a direct

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benefit to the sawmilling industry, leading to new ones, in part fuelled by the demand for railway ties and related structures of the construction process. Most of these sawmills were small, many still water-powered, but by this time there were also large, steam-powered mills in Botwood, Gambo, Terra Nova, Soulis Brook, and Gander Crossing. All mills relied heavily on white-pine, a resource which quickly became overexploited and had by the early 20th century virtually disappeared in terms of commercial quantities. Apart from contributing to substantial deforestation, these mills also contributed to the province's first complaints of industrial pollution - their sawdust tainted the waters and even affected nearby fisheries. Companies were also accused of wasteful practices, for taking only the best trees and leaving others behind to rot.

In an effort to regulate the industry in the interests of progress, the Newfoundland government began in 1875 a system of issuing large-scale timber licenses on Crown lands under the Crown Lands Act, beginning with terms of 21 years in 1884 and introducing 99-year licenses in 1890. Their purpose was to initiate forest management by disposing of old-growth and encouraging reforestation. In this sense, though spurred by local considerations, Newfoundland was also following suit with changing forest management practices, likely influenced by British empire forestry and German scientific forestry approaches seeking to stabilize the unending exploitation of forests. In part, these concerns with reforestation reflected an early but growing awareness that forests and climate change were interlinked.

The Newfoundland government also attempted to regulate the industry and increase its economic value to the province by restricting the export of unprocessed wood under the Crown Lands Act of 1903. This ban was relaxed during World War I to facilitate the export of needed pit props for mines, but then not reinstated. Unprocessed round timber for pitprops and pulpwood continued into the 1920s and 1930s. Somewhat typically, strategic ideals of government policy caved in when facing economic conundrums.

The boom and bust cycles of fishing and lumbering of the late-19th century contributed to a growing need by outport fishermen for access to wood supplies and led to the establishment of a three-mile commons along the coast. It had been a custom for fishers to meet their needs along the coast, and in the early 20th century the

Newfoundland government refused to issue licences for timber within three miles of the water. However, in the 1920s, wood supply pressures resulted in the granting of timber licenses to sawmills and then pulp and paper companies, resulting in protests, particularly from small sawmill owners. There was also criticism that this open-access "common property" led to overcutting and deforestation. While the rights to a three-mile commons were under the Crown Lands Act of 1930, they were discontinued when government revised land-tenure practices in the late 1970s.

Recent Developments in Forest Management Strategies

Forest ownership and land tenure prior to the modern era help to explain the roots of what happened to the Crown Lands of this province at the time of the arrival of the railway and the pulp-and-paper giants that subsequently defined forest use in this province throughout the 20th century. In that time, Newfoundland and Labrador has weathered the Depression, World War II, and Confederation. The years since have also seen an ongoing review of the role of the forest in Newfoundland's economy and society. In this sense, the province has followed a national and international trend in redefining who owns the forest and how to manage it. Key investigations into what should be done with the Newfoundland forest have included among others the Royal Commission on Forestry, 1955, the Federal-Provincial Task Force on Forestry, 1973, and the Royal Commission on Forest Protection and Management, 1981.

Over the past 50 years, there has occurred a major shift in public perceptions. The question of "what is a forest," who owns it, and who uses it has evolved beyond seeing it primarily as source of economic development to include a broader ecological perspective. Perhaps there has been a growing recognition that there were limits to growth, and that wood supply needs to be ensured, fostering a growing interest in conservation and sustainability. In this shift, the influence of the modern environmental movement is palpable.

"Who owns the forest" must be considered today as a series of interrelated questions - all of which require answers. For example, how is a forest owned, and by whom? How is the forest used, and by whom? In conflicts over forest use, who are the parties who own and use the forest, who decides, and how are the

conflicts to be resolved? To what extent is the forest “a commons” or lands belong to the public? How is forest use to be regulated in order to preserve the public interest? How do different social or ethnic groups (i.e., aboriginal peoples) use the forest differently? How do men and women use the forest differently? Do gendered perspectives need to be reflected in forest ownership and management? What stories, myths, beliefs, or symbols are projected onto the forests by the people who live in or around them? Do they matter? How do different forest cultures understand the concept of “sustainability”? Does sustainability mean the same thing to everyone? How have different forest-owning cultures responded to the global appetite for forest models? What obligations and responsibilities do Newfoundlanders and Labradorians have in joining in the global campaign against deforestation and global warming?

The Royal Commission of 1981, in its section on Changing Strategies, Legislation and Implementation, called upon forest managers “to develop plans alongside ‘all stakeholders,’ to establish planning teams and public input, become more knowledgeable about forest systems, and assume an ecosystem approach for the long term to sustain natural system integrity and health.” More recently, the Forestry Act (1990) called for an approach to timber cutting “consistent with other resource management objectives, sound environmental practices, and the principle of sustainable development.” Forest companies responded accordingly to this legislation, and contributed their own detailed strategic plans for meeting both theirs and the public agendas.

It has become increasingly clear that the issues of forest sustainability and economic growth cannot be solved by corporate and government interests alone. To effect change, public input and cooperation are necessary to preserve and effectively use the forest. The importance of research and education in forest-related matters is also now considered essential in seeking out new insights and possible solutions in the quest to better understand what constitutes a forest and its natural and human ecology. The problems of sustainability are related to the questions of disease, habitat, insect infestation, and the impact of past and ongoing forestry practices on the environment. This approach towards better natural resource management and alternative approaches to forest use and the ongoing concern about climate change is well illustrated by current research conducted through

Memorial University of Newfoundland, The Model Forest of Newfoundland, Environment Canada, and the Canadian Forestry Service.

Conclusion

In light of the struggle of the province’s remaining pulp-and-paper mill to survive in the competitive world market, a rising Canadian dollar, and a steady decline in demand for newsprint hastened by the digital revolution, one must again ask, “What is to be done with the forests of Newfoundland?”

If the past is any indication, the fate of these forests has been regulated by government in some form for centuries. Regardless, the pattern has been one of consistent overexploitation, initially designed to protect the traditional fishery and later to diversify the economy. The result was the decline of old and the emergence of new ways to utilize wood products. The shortcomings of policies governing forest tenure and regulation can be explained in large measure by various governments’ attempts to maximize economic development when few economic options or capital existed. Consequently, well intended regulation and control failed to achieve their ends because they were compromised for short-term economic and political gain. Happily, today Newfoundland and Labrador enjoys the prospect of long-term economic prosperity and budget surpluses making it less likely that the province will be coerced into compromising the stated objectives of the Department of Environment and Conservation in representing “the people.”

In deciding what now to do with the former AbitibiBowater forest lands returned to the province, it would do well to heed former advice offered to the provincial government. In 1973 the Report of the Newfoundland Federal-Provincial Task Force on Forestry (p. 36) warned, “Most of the forest resource on the Island is controlled by private corporations with headquarters outside the Province. Their goals may not be compatible with those of the people of Newfoundland. There is also a danger that because the objectives of industry are profit-oriented, they may be relatively short-run. Government goals should be long-term and attuned to deriving maximum social and economic [and, might now add, environmental] benefits from the resource.” **NQ**

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