# Taking the Minister to Court: Changes in Public Opinion About Forest Management and Their Expression in Haida Land Claims*

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They mutilate and wreak havoc in the place of the Great Spirit and they destroy his creation which is the great forest. Theirs is the cruelest abortion of all because they destroy not a few weeks of growth but a hundred, five hundred, a thousand years of growth. And they do it with greed and wantonness and they leave the forest a broken, humiliated, mutilated thing, and they do it for their God Mammon. (Chief Dan George, 1972)

These existing aboriginal rights are limited only by the capacity of what the land and sea can produce, and defined again by the laws of nature and common sense which ensures we sustain those rights through successive generations. Degeneration of the land and sea will further reduce our rights; therefore we have a moral obligation to defend our resources and determine the fate of our tribal territories. (Percy Williams, Grand Chief of the Haida Nation, 1981)

Under what conditions does change in public opinion about forest management occur in an area of British Columbia dependent on timber harvesting? Under what conditions does an Indian Nation come to demand better forest management as part of its land claims? In this study I examine the conditions affecting such changes among the people of the Queen Charlotte Islands between 1971 and 1981.[1] There, legal

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[1] The information used in this study was collected during thirty months of fieldwork between 1972 and 1979 for my doctoral dissertation, during part of which I served on the local Public Advisory Committee to the Forest Service. In 1977 I interviewed a representative sample of local residents in Queen Charlotte City as part of my research; those whom I identified as key opinion leaders were re-interviewed after the court case. As a particular source of information and evidence I use the local weekly Queen Charlotte Islands *Observer*. It is the only Islands newspaper and is a sensitive indicator of public opinion, as writing letters to the editor is a serious pastime among Islanders and as the paper publishes all letters except those considered excessively libellous.

action taken by a Haida trapper, Nathan Young, and a Haida food-gatherer, Gary Edenshaw, played the major part in bringing about the changes. As a result of their legal efforts, these two men and the other local environmentalists who financed the first stages of the efforts became more knowledgeable critics of forest policy and were able to mobilize Islands opinion towards the need for excellence in forest management. Also as a result of their efforts, the British Columbia Ministry of Forests learned more about the limits to its ability to make crucial management decisions behind closed doors.

Until recently in this province it would have been unthinkable that a Minister of the Crown be taken to court by a trapper and a food-gatherer on the grounds that the Minister had not considered their common-law rights in his making of ministerial decisions.[2] The *Judicial Review Procedure Act*,[3] however, passed by the provincial legislature in 1976, opened the way for the court challenge. While the decision in the case may not itself have had great consequence, as the rights of a trapper and a food-gatherer were held to be quite minor, the action in and around the court hearing did arouse the local public to a sense of its rights to sound and accountable management of Crown forest land.

In the early seventies the question of the Haidas' aboriginal right to the land was discussed only in general terms. The possibility that the Haida themselves might obtain a tree-farm licence was much debated but not pursued. The Haida, like their non-Indian fellow Islanders, had no official position on forest management policy. In 1981, however, when the Haida announced the registration of their formal land claim with the federal government, they introduced a new argument: they based their claim not only on the fact that they are the original occupants of the Islands, but also on the assertion that they have a moral obligation to manage the resources of the Islands more responsibly than the provincial government and the lease-holding companies have done. The change in the Haidas' perception of forest management between 1971

[2] Although Ministers had been taken to court on matters relating to the routine business of their Ministries, this was the first case in which the grounds for the petition involved a Minister's statutory power of decision, i.e., the exercise of a decision according to guidelines laid down in a statute (in this case, the 1978 *Forest Act*).

[3] The *Judicial Review Procedure Act* is essentially a codification of the old prerogative writs and common law rights into a statute which modernizes the jurisdiction the courts can exercise and broadens the basis on which the courts can review decision-making. It provides generally for an easier and quicker procedure for a citizen to review an official's decision.

and 1981 is a particularly clear-cut example of opinion change among the Islanders.

Opinion change was more dramatic among the Skidegate Haida Band members and their non-Indian neighbours in Queen Charlotte City than it was among residents of the other local communities on the Islands. That this should be so is not surprising, for the two communities are more dependent on logging than are the Masset Haida band or the non-Indian residents of Masset; yet neither Skidegate nor Queen Charlotte City are company towns, as are Sandspit and Port Clements. Among the Skidegate population of 350 some 80 percent of the work force is normally employed in logging, while among the Queen Charlotte City population of 800 about one-third of the work force is employed in logging. Because the political action which residents of the two communities became willing to take involved alienating or attacking the two major logging company employers,[4] a study of opinion change in the two communities is especially significant.

The evolution of public opinion in the two communities may be traced through three periods: an early period of unawareness or silence; a middle period of philosophical debate; and a final period of substantive criticism and legal action. In tracing this evolution I shall identify four conditions which set the stage for the final criticism and legal action. These conditions, which may also be regarded as aspects of the change in opinion, rested upon the residents' (1) understanding the contractual obligations of forest companies as holders of tree-farm licences; (2) abandoning certain commonly believed myths about forest management; (3) coming to believe that they had a right to demand sound management of Crown forests; and (4) learning that they could exercise this right through both legal pressure and political lobbying.[5] Before examining the evolution of local public opinion and the conditions which affected it, it is necessary to say something about both the tree-farm licence system in British Columbia and the myths which arise about the system.

[4] Most Skidegate and Queen Charlotte City loggers are employed by two companies, MacMillan Bloedel and Crown Zellerbach, rather than the one involved in the court case (then Rayonier Canada, now Western Forest Products), which operates two logging camps in the isolated southern islands. However, all three companies were involved in the public controversy at some time.

[5] For a discussion of the importance of public opinion or consciousness in social change, see E. P. Thompson, *The Making of the English Working Class* (Penguin, 1963) and *The Poverty of Theory* (New York, 1978), Monthly Review Press.

*The Tree-Farm Licence System*

Tree-farm licences (TFLs) came to provide a major form of tenure on Crown land after 1945.[6] A TFL provides a long-term or perpetual timber lease in return for which the licence holder, usually a large company, normally agrees to build a processing plant in the province and to take responsibility for managing the forest to achieve optimum value and to minimize waste. Such an arrangement was considered desirable in the climate of economic development of the 1940s because the major companies could be expected to provide jobs, construction capital and management skills — as well as ready access to foreign markets. As part of their responsibilities they were expected to practise sustained yield — that is, to ensure that the average annual cut would match the average annual forest growth in perpetuity. The lease agreement through which TFL 24 was granted on the Queen Charlotte Islands, for example, required that the company would manage the lands "for the purpose of growing continuously successive crops of forest products to be harvested in approximately equal annual or periodic cuts equalling the sustained yield capacity of the said lands."

The principle of sustained yield stood in sharp contrast to the cut-and-run and "high-grade" logging practices of the past and thus seemed to promise long-term job stability in the forest industry and, by implication, long-term economic stability for communities such as Skidegate and Queen Charlotte City. A further management principle, that the lands should be managed to optimize additional resource values, became widely accepted by the late 1950s. Under the "multiple use" principle, the management of forest lands was expected to be concerned not merely with timber production but also with such activities as fish and wildlife management. Activities maximizing timber production, such as clear-cutting of entire watersheds, would thus have to be judged as well in terms of their effects on fish and wildlife. Multiple use was in fact critical on the Charlottes, since logging practices such as clear-cutting can quickly impair salmon spawning streams[7] and the fishing industry is a major

[6] A tree-farm licence area could include lands other than Crown land. Amendments to the *Forest Act* in 1946 required that formerly Crown-granted lands and other short-term tenures be managed on a sustained-yield basis. In order to induce the companies to practise sustained yield on their privately owned lands, and to create large enough units to make this possible, they were granted additional Crown land to be managed as a unit with the rest. TFLs were thus an amalgamation and a rationalization of two or more forms of tenure.

[7] D. Toews and D. Wilford, *Watershed Management Considerations for Operational Planning on TFL 39 (Block 6A, Graham Island)* (Fisheries and Marine Service,

source of employment (providing jobs for about one-fifth of the work force in the two communities). Similarly, as local trappers and government studies have noted, commonly trapped fur-bearing animals may disappear from logged-off areas.[8] In short, application of the principles of sustained yield and multiple use could be the key to long-term community stability on the Islands.

In practice, sustained yield and multiple use may in fact not be carried out. In the short term (defined even in terms of decades) putting the two principles into practice is not in the interests of the companies. However, it plainly is in their short-term interests to have the public believe that the principles are being followed. Thus whatever the actual circumstances (and, of course, perception of these circumstances may change as new information or concepts become available) it is in the interests of both the companies and the provincial government to have it publicly believed that sustained yield and multiple use are being practised.

An equally resilient myth concerns levels of development costs and economic risk in the forest industry. It is often stated or implied that the public should be grateful that the companies are willing to undertake high development costs and great economic risk. In fact the stumpage system (through which the tax or rent for use of Crown forests is determined) allows companies to subtract their development and operating costs from the selling price of timber and then to allow themselves a 13 to 20 percent (depending on location and variable risk factors) profit and risk deduction before paying any tax. Costs which may be deducted before stumpage is paid include those of development, harvesting (including wage costs), transportation, marketing, silviculture and reforestation, research and management. Although the actual amounts allowed under the last three categories, together with amounts for logging access road construction, must be approved by the British Columbia Ministry of Forests, the ministry does not have access to company data used to calculate the costs, or sufficient staff to make independent assessments. Almost all data on which stumpage credit is calculated are supplied by the companies, and then stumpage payments are negotiated with

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DFO, 1978), MS 1473, and M. K. Moore, *A Decision-Making Procedure for Streamside Management on Vancouver Island* (Victoria: B.C. Ministry of Forests, 1978).

[8] Letters of Nathan Young (Chief of Tanu) and Glenn Naylor to Prince Rupert District Forester in response to "TFL 24 Management and Working Plan No. 6," August 1981.

the Ministry. In some cases companies pay no stumpage for years, because operating and development costs of one year may be credited against future stumpage.[9] The stumpage system thus removes most of the incentives which normally induce a business to keep operating costs low — because a constant profit margin is guaranteed, whatever the operating costs. At the same time the system may result in the general provincial taxpayer having to subsidize inefficient operations while the province obtains an inadequate return for use of Crown resources.[10]

Company investment in mill construction does not appear to involve high risk either. Accounting practices appear in some cases to allow for depreciating the cost of mills in eight to ten years, even though mills last much longer. The major actual risk faced by the companies is short- or long-term poor markets. In such conditions, however, stumpage is automatically lowered because it is based on selling price. Moreover, the TFL system already provides a measure of long-term economic security by guaranteeing large and stable timber supplies and allowing flexibility in the timing of harvesting.[11]

### *The 1971-1973 Period*

In small, isolated logging towns the people are most aware of their dependence on the forest industry not only for jobs but also for the presence of much of the local infrastructure of transportation, small business and government services. Their knowledge of the power of the forest companies to affect their lives and their community may easily induce a respectful, non-interfering attitude rather than a critical

[9] See *Alternatives for Crown Timber Pricing, a White Paper for Discussion Purposes,* Ministry of Forests, July 1980, and the 1978 *Forest Act,* sec. 88. Figures on the range of profit and risk allowance over the last twenty years were supplied by the Valuation Section of the Vancouver Forest District, which estimated that 18 percent is the average profit and risk deduction.

[10] The testimony of Julius Juhasz, Director of Valuation, B.C. Forest Service, to the Public Accounts Committee of the B.C. Legislature, in May 1980, lends support to this view. Juhasz stated: "This society of ours, qualitatively, has decided that it is better for us, for socio-economic reasons, I trust, not to sell by competition but to have a different system to provide security of tenure at a price that bureaucrats establish.... There is little doubt in my mind that one of the prices we pay for it is efficiency in production." (Vancouver *Province,* 18 May 1980).

[11] The standard TFL contract allows for a 50 percent reduction or increase in harvesting in any one year, as long as it is averaged out to the annual allowable cut over a five-year period. In addition, according to a Ministry of Forests publication, the stumpage system "yields itself to be used as a tool to support public policies, allowing incentive or discriminatory pricing if, and where, social or political realities or economic policies so require." See *Alternatives for Crown Timber Pricing, op. cit.,* p. 7.

appraisal of the quality of forest management. In this early period few people in Skidegate and Queen Charlotte City considered that the companies' timber rights might be open to question. These rights had been awarded two decades previously with little public involvement, and the details of the lease agreement were thus little known to the public. There was apparently almost no public awareness that the companies were obligated by the TFL contracts to practise sustained yield. Indeed, there was apparently no awareness that TFLs were contracts imposing obligations on the companies. Forest regeneration was seen as something which would inevitably occur. "It all comes back in thirty years," was a phrase used often in response to questions about the need for forest management. The companies might be resented for their power, but the local people kept themselves at a respectful distance, showing no inclination to challenge the aura of sophisticated expertise, even mystery, which surrounded the making of company decisions. The companies, for their part, looked upon the timber and the right to manage it as belonging exclusively to them.

There were, of course, exceptions to this state of unawareness, particularly among those Skidegates who had not held long-term logging jobs or who kept alive the discussion of aboriginal title. The point is, however, that this minority did not dare voice their feelings publicly at this juncture because the general climate of local opinion was so unreceptive. For these people, as well as for others less aware, criticism would replace silence only when the necessary conditions had developed.

The Queen Charlotte Islands *Observer* contained little mention of forestry-related issues during the period. Two government press releases praising the high quality of forest management were published in 1971; and in the next two years there were a few letters and references referring to forestry issues. The paper did mention the attendance of a Skidegate Haida at a land claims conference in Alaska, and it covered the formation of the Council of the Haida Nation, in which the two Haida Bands, the Skidegate and the Masset, united to press their land claim to the Islands and the surrounding waters. The attack by a Masset Haida on the forest companies for their "rip-off" of wealth from the Islands was also given mention. During this early period neither militant attacks on the forest industry nor public statements that all the land belonged rightfully to the Haidas were heard from the Skidegates, but they were to a minor degree from the Massets. In this early period, in both local conversation and in the newspaper, attention to forestry management

issues was sparse and undeveloped. Haida land claims were only vaguely related to the forest industry. The period thus provides the baseline from which change may be measured.

*The 1974-1976 Period*

During this period there was a notable increase in attention to forest management and land claims in both local conversation and in newspaper coverage.[12] Significantly enough, however, the first local political action towards modifying timber harvesting never made the paper and was little discussed publicly. The Skidegate Band, in an attempt to prevent Rayonier from logging a particularly cherished traditional food-gathering area within TFL 24, hosted a feast for the provincial Premier and later met with Ministry of Forests and company officials. The Premier gave an oral commitment to the Skidegates that the area would be put under a logging moratorium. The company did not publicly acknowledge the moratorium, but it did announce that it had decided, for economic reasons, to proceed to log a different area. Band members concluded, wrongly it later turned out, that an official moratorium rather than a mere deferral of logging had been achieved.[13]

Later in 1974 a group composed mostly of younger Haidas and younger newcomers to the Islands formed an environmental group called "Islands Protection." Those who formed Islands Protection were activists who had little faith in negotiations involving a few spokesmen meeting in private. These activists began to lobby for the permanent protection of a wilderness area on Moresby Island. The area included the southern portion of TFL 24 and adjoining areas. The group was aware in 1974 that this TFL's 21-year term expired in 1979. (In fact TFL 24 had been the first 21-year lease, as opposed to a perpetual lease, in the province and would thus be the first to come up for renewal.) In order to implement their wilderness concept, the group hoped to be able to change the terms of the lease, or even to replace the company with a new licence holder, at the time of the renewal. But in 1974 the group had no idea of how feasible its hopes were.

[12] "Coverage" is here used to include all articles, editorials, press releases and letters to the editor.

[13] Although the newly elected NDP government could have removed the area from cutting calculations by reworking some of the terms of the contract or by using the allowable removals from the cut, Forests Minister Bob Williams was pursuing a slow, cautious strategy with the forest companies, so the moratorium was never imposed.

During this period there was no official Haida support for the wilderness proposal, and a number of non-Indian residents wrote letters opposing the proposal and criticizing the members of Islands Protection, who were often dismissed as "hippies." But starting in 1974, through publication of their magazine and through their letters in the *Observer*, Islands Protection spearheaded a debate on problems of forest regeneration and erosion associated with clear-cutting on steep slopes. They argued that such clear-cutting violated the principle of multiple use.

During 1975 the logging companies began to react to the criticism. They held the occasional public meeting and made statements through the *Observer*. Even though the criticisms to this point had not progressed to the core question of contractual obligations, the companies were perhaps showing a certain awareness of vulnerability by reacting at all. However, by usually subtle references to their rights and expert knowledge, they showed no willingness to open their decisions to public scrutiny. They implied that sharing information with the public would be a voluntary gesture rather than an obligation. After all, their own studies demonstrated that the resource was being well managed. Stronger challenges elicited references to their investments and expenditures without which, it was implied, the local economy would collapse. For example, when the Haida Nation's land claims lawyer stated to the 1976 Royal Commission on Timber Rights and Forest Policy that the Skidegate Band should be allowed to apply to take over any local TFL as it expired, one company responded that its "huge investments in an uncertain climate" should guarantee the renewal of its TFL. At this time the companies seemed to be successful in invoking the myth of high risk investments.

Four major accusations were levelled at the companies and the provincial government by the activists during the period. These were: (1) that multinational logging and processing companies had been permitted to acquire most of the timber rights on the Islands while local handloggers and small Island companies were running out of timber; (2) that management of TFLs by municipalities or locally owned companies was a better alternative than development by foreign companies; (3) that $11 million in stumpage taxes left the Islands annually, but that Islanders had no access to this revenue; and (4) that fish habitat was being destroyed by logging-induced slides and the government was not prosecuting the companies for causing this destruction. The companies responded only to the last accusation, stating through the *Observer* that

most soil erosion was a thing of the past, as the best available expert advice was now being used, that destruction of fish and wildlife habitat was at an "acceptable" level since government ministries had approved the cutting plans, and that the companies should be relied upon to assess the value of non-forest resource use, since the government did not have the funds to carry out such assessment.

The critics now pointed out that the new "folio system" (in which all potential resource uses of Crown land were to be identified by inter-ministerial consultation) was not being used on the Islands. The companies responded only with a press release to the *Observer* dealing with the level of unemployment among skilled workers. The Ministry of Forests submitted two press releases praising the excellence of reforestation efforts then underway.

In sum, by responding at all during this period to the accusations of poor management, the companies indicated that they felt some degree of threat, but in their responses they continued to rely on references to their expertise, authority and high capital investment. Significantly, the critics were coming increasingly to focus on the provincial government's roles as grantor of timber rights and as enforcer of management standards. In so doing the critics were taking the position that if the companies were not managing the forests properly, it was the government's responsibility to ensure that management be improved.

Compared to the preceding period, there was a five-fold increase in number of mentions of forest management issues in the *Observer* during the 1974-1976 period, and an eleven-fold increase concerning Haida land claims. The majority of letters dealing with forest management were critical of existing practices and policy. Letters and press releases criticizing the critics made up about 30 percent of the items dealing with forest management. In the beginning most of this criticism of the critics came from local residents; but by the end of the period less than half was coming from local residents. The companies and the provincial government were assuming an ever greater role in responding to the critics.

Haida land claims were much discussed by local residents during this period and frequently mentioned in the *Observer*. Few non-Indians, however, appeared to have more than a vague notion of what the Haida intended. The land claims came into play mainly as an issue which the Haida wished settled before other land-use decisions were made. For example, when a proposal emerged locally that the Islands should be made a separate regional district, the Haida Nation sent objections to the

provincial government on the grounds that it was not clear how the proposal would affect their land claims. Similarly, a group of activist Masset Haida mounted a public demonstration against leasing Crown land before land claims were settled. In response to disagreement over tactics and the confusion of non-Indians, the issue of land claims was dropped from public discussion for several years.

All in all the middle period was a time of agitation and philosophical debate which served to raise doubts in the minds of a growing number of local residents about the appropriateness of forest management practices and to indicate to the provincial Ministry of Forests that there was significant support for the idea of local public involvement in forest management.

*The 1977-1980 Period*

In 1977 the Ministry of Forests created a Public Advisory Committee to the Forest Service (PAC) composed of logging company officials and residents representing a range of local interest groups. It eventually became clear, however, that the Ministry had no real intention of educating the committee into any position of responsibility or of taking its recommendations seriously. This circumstance was made most evident when the PAC, after being repeatedly assured that it would have ample time to have input into the proposed new Forest Act once it had been introduced in the legislature, could not obtain copies of the bill from the Ministry itself until after it had been passed by the legislature. (The bill was passed by the legislature only seven weeks after its introduction.) PAC members, of course, were able to obtain copies of the bill from other sources, and to hold an emergency subcommittee meeting, but the incident revealed the attitude of the Ministry.

Nevertheless, the PAC did not die. It relied upon leaks from sympathetic government officials, on the knowledge of some of its members, and on material obtained by a writer preparing a book on the proposed wilderness area. Ministerial restrictions[14] on information that could be provided to the PAC usually created embarrassment for the Ministry. Confronted with information they had not supplied, or with questions they were not allowed to answer, Ministry officials sought to react to the

[14] Forests Ministry policy on information remained a mystery to PAC members during this period, as they waited for their requests for information to be processed at a higher level. According to one source, there is still no official policy on what can be made public, although the oral instructions of the Chief Forester are to give out information as long as it is not likely to produce embarrassment for the Ministry.

bad publicity by making small concessions to public demands. Often the PAC was able to demonstrate that the Ministry was not acting in accord with its own policy.

PAC meetings were characterized by constant offensives by the activists and defensive reactions by the Ministry officials and company representatives. A major case in point was provided by the PAC discussion of "operability" and "environment protection area mapping," both new notions pioneered by innovative Ministry officials, but not yet reflected in actual ministry practice. The new environmental protection area mapping of the forests outside the TFLs indicated areas which required special attention or protection because of such factors as soil instability or steepness of slope, and also indicated areas of potential resource conflict. The PAC learned that about half the forests on the Islands outside the TFLs were "inoperable" — that is, they could not be harvested with current methods because either the terrain was too difficult or the quality of the timber was too low.

The new information clearly indicated that current harvesting rates outside the TFLs were far too high to maintain sustained yield. In light of this information, and insisting that the same standards should apply to TFLs as to other forests, committee members demanded that Rayonier provide the committee with its operability studies and maps for TFL 24. Eventually the activists accumulated enough information about TFL 24 to conclude that it was being overharvested by at least 30 percent and therefore not being managed for sustained yield. Armed with this evidence of breach of contract, the activists intensified their campaign to raise widespread demand for a public hearing before TFL 24 was renewed.

The Public Advisory Committee stimulated debate and education on forest management issues, in part because its meetings were publicized in the *Observer*, whose editor served for some time on the Committee. Islanders obtained a three-year course in forest management, during which the Forest Service and the major TFL holders emerged with rather tattered images. The critiques of management practices, formerly only general attacks on logging methods or institutional arrangements for which there were no well-known alternatives, became substantive and detailed analyses of standards and internal inconsistencies in bureaucratic procedure. Debates in the newspaper between company foresters and their critics, especially on the overcut issue, now focused on technical details, thus leaving the public in a better position to make an informed

judgment. The critics began to look less like misguided radicals and more like knowledgeable citizens concerned with the long-term welfare of job-holders and the environment.

A tactic which the companies attempted at first was to attack the credentials of the activists' main researcher and to challenge his conclusions as unprofessional. Since this tactic only raised more questions and doubts about company data, the companies shifted to relying upon pointed references to their own expertise and capital expenditure, and to announcing new silvicultural experiments, new methods of promoting faster tree growth, and grandiose expenditure plans to improve forestry and logging. The companies' behaviour was reminiscent of the response of the Wizard of Oz when Toto exposes him by pulling the curtain. The Wizard frantically pushes more buttons and shouts more fiercely, "I am the great and powerful Oz . . . pay no attention to that man behind the curtain!" To be seen as an ordinary mortal constitutes a considerable loss of power for the Wizard.

*Observer* coverage of forest management, in letters, editorials and articles, increased from a middle period high of 35 mentions a year, in 1975, to 126 mentions in 1979. The mentions were now longer and more detailed, often in the form of an entire article. The percentage of mentions criticizing the companies or the government exceeded 40 percent in 1977 and exceeded 50 percent in each of the remaining years. The percentage of mentions which were hostile reactions to the criticism remained at about 30 percent of the total. By 1980, however, none of this hostile reaction was coming from local residents. All of it was now coming from the companies or the government, and the government was assuming an increasing share in reacting to the criticism. The progressively higher authorities who were being called in to answer criticisms may be considered a measure of how seriously these were taken: as the attacks came closer to the mark, the power level of the respondents rose. As the Ministry of Forests took an increasing part in defending forest policy it also began to publicly threaten the companies, often in ways it could not legally carry out under the new Forest Act.

By the time the activists took the Minister of Forests to court in 1979, they had made three crucial steps toward changing public opinion. They had identified the contractual obligations of the companies, produced affidavits swearing that one or more of the companies was in breach of contract, and convinced many local groups and individuals that they had a right to review important forest management decisions.

*Establishment and Exercise of Rights*

In English common law a person making use of Crown land was recognized as having the right to a fair hearing when an officer of the Crown made decisions affecting the land in question. The nature of the "fair hearing" depended on how important the petitioner's interests were compared to the interests of other affected parties. In the case brought under the *Judicial Review Procedures Act* relating to the renewal of TFL 24 the two most important questions were: Do trapping and food-gathering qualify the petitions for "standing" or the right to a fair hearing to present their concerns? And, if so, what degree of consideration should be given to the petitioners, given that the other interested party is a major logging company with an existing tree-farm licence on the same land?

The original intent of the petitioners was to have the judge order the Minister to hold a full public hearing before deciding whether to renew the TFL. When it became evident that this was too ambitious an intent, the petitioners asked that at least a minimal fair treatment of the interests of trappers and food-gatherers be granted. In the legal strategy of the petitioners the Haida land claims issue was deliberately avoided, as the court would have been unlikely to hear a petition based explicitly on a land claim. The court accepted Edenshaw and Young together with a non-Indian trapper as having standing sufficient to be heard by the court.[15]

The drama surrounding the challenge to the Goliaths by these Davids appealed to the local people. They quite evidently saw the court case as a test of their rights to influence the management of Crown land. Sixteen separate calls for public hearings on the renewal of the TFL, including those from the MLA and the MP for the Islands, were published in the *Observer*. Benefit dances to raise legal fees were well attended by prominent residents of Skidegate and Queen Charlotte City. The management and environmental issues were of prime concern to some contributors; others were equally concerned with providing personal support to the petitioners. Eight on-Islands organizations and ten off-Island organizations submitted affidavits to the court in support of the petitioners. During the actual court hearing Andrew Thompson, the former Commis-

[15] Glenn Naylor, the non-Indian trapper, was added to the petitioners after the case was in progress to assure "standing," because non-Indian trappers had to register their traplines every year and thus Naylor, unlike the Haida, could provide formal evidence of continuous use.

sioner in charge of the West Coast Oil Ports Inquiry, was present in court with the counsel for the petitioners. All this support indicated that the petitioners and Islands Protection, which financed the case, were in fact champions of a public cause much larger than their own interests.

The three-day court hearing of the petition itself became a de facto public hearing; for the petitioners tabled all the affidavits detailing poor management that would have been submitted at an actual public hearing. During the court hearing the Ministry of Forests sought to discredit the Public Advisory Committee as a legitimately constituted public interest group. The Ministry's regional manager declared that the Forest Service had never had an official representative on the PAC and implied that the Forest Service had not set up the PAC in the first place. The PAC refuted the regional manager's statement, thus underscoring the issue of the public's right to influence forest policy.

After the court hearing the judge ruled that the Minister was not required to hold public hearings before renewing the TFL, but he strongly suggested that the petitioners ought to be consulted concerning the renewal. The "duty of fairness" which the judge noted the Minister had towards the petitioners was subsequently translated into at least three gains for the petitioners and their supporters. First, they were now taken much more seriously by the Ministry and were able to meet directly with senior officials, including the province's Chief Forester, who tried to head off a second court action by consulting them. In this meeting the admission was extracted that TFL holders were no longer required to practise sustained yield management. Second, the petitioners gained access to Forest Service files on renewal considerations. And third, the public was now allowed to view and comment upon the Management and Working plans of the companies before they were finalized.

These gains allowed much more informed criticism and questioning by Islands Protection and others on the Islands. Nevertheless, little evidence materialized that the Forest Service was placing more meaningful constraints upon the companies. The Public Advisory Committee, which had gained increased local support and attention prior to the court case, dissolved itself in September 1979, with its activist members declaring that public participation was a sham.[16]

But the actions of this committee, together with the court case it supported, had by this time made the local public aware of (1) the con-

[16] The dissolution vote occurred at a meeting in which industry representatives outnumbered other citizens; however, the industry representatives for the most part abstained from voting on the question.

tractual obligations of forest companies, (2) actual forest management practices, (3) the public's right to demand sound management of Crown lands, and access to information on that management, (4) the public's ability to exercise these rights through a combination of lobbying and legal pressure. Observing earlier failures, one suspects that these might be necessary preconditions to any long-term opinion change.

### *The Haida Land Claim, 1981-1982*

The Haida land claim issue was little mentioned in public during the 1977-1980 period except by younger Haida environmentalists. In 1981 the Haida Nation elected a new Grand Chief, Percy Williams, a Skidegate fisherman long respected for his diplomacy in public relations and his awareness of resource conflicts. In the same year the Haida announced that they had submitted their formal land claim to the federal government. It was soon clear that the Haida were now willing to take a far more critical stance on forest management than they had been previously. Several significant policy statements were made in 1981. Each reflected the strength of the new leadership and a developing Haida resource policy building upon the experience of the previous seven years. The statements included a pronouncement on the necessity of reducing by one-half the rate of forest harvest on the entire Islands, a submission on the Management and Working plan for TFL 24, and a policy paper on the management of all resources. The Haida Nation also appealed the court case all the way to the Supreme Court of Canada.[17]

Crucially important is the phrasing of the mandate claimed by the Haida. Of the fishery it is stated, "We believe that a greater role in the

[17] The second petition in the B.C. Supreme Court Chambers was summarily dismissed on the grounds that the minister still had two days in which to act fairly before the TFL was renewed. The third petition was an application in Chambers to elevate the proceedings to a full trial hearing on its merits. Chief Justice McEachern dismissed this petition without considering its merits or commenting on the earlier extensively argued judgment of Justice Murray. Later, the Haida application for a full trial was dismissed by the B.C. Court of Appeal, and a leave to appeal was refused by the Supreme Court of Canada on 20 December 1982. The petitioners' goal was to obtain a court order forcing the minister to renegotiate the terms of the TFL contract in order to represent the interests of the petitioners. They had hoped to demonstrate that the Ministry of Forests consulted them in bad faith, since clauses in the contract which the Ministry told the court would be added were subsequently withdrawn. For a discussion of this case from a legal perspective, see M. Rankin and M. Horne, 1979, Procedural Fairness— Standing — Statutory Power of Decision — Judicial Review Procedure Act — Islands Protection Society et al. v. the Queen in Right of British Columbia et al., *University of British Columbia Law Review*, vol. 14, pp. 205-23.

management of this life source will be to the benefit of the resource and all of society." Of forestry,

> Presently the Forests Ministry, in conjunction with the large companies, has nearly exclusive use over most of the prime lands on the Islands. The management practices are unacceptable to our people. The concept of multiple use has been mocked by the forest industry, making public input useless.

And, as indicated at the beginning of this paper, Grand Chief Williams stated on behalf of the Haida that "existing aboriginal rights" are limited not by government or by the new Constitution of Canada (in which the phrase appears) but only by laws of nature and by common sense. He stated as well that the Haida have a moral obligation to protect their resources from the degeneration which is taking place in the hands of government and the forest companies. This same point had been expressed earlier, when a Masset elder had scathingly denounced the extraction of resources belonging to the Haida by government and industry "without the slightest inclination to obey the laws of their own peoples." The significant implication of these statements is that if the Haida did not take better care of the resources they would have less right to them. While the implication is a moral rather than a legal one, law and judicial opinion need not evolve in isolation from public opinion. The moral commitment made by the Haida may play a role in their political struggle, both on the Islands and with federal and provincial governments.

Both non-Indian Islanders and government may perceive that the Haidas have a long-term interest in husbanding the resources for multiple use and in protecting important food-gathering and recreation areas. The implications of the new Haida stance for local government are already becoming apparent. In January 1982 Haidas rejected the terms of reference of an Islands task force which was then commencing a study of the county system of local government proposed for the Islands by the provincial government. The Haida then persuaded the task force, composed of representatives from each community and area on the Islands, to join them in exploring other forms of local government. Although many non-Indian Islanders feel threatened by the Haida land claim and by the Haida actions on the task force, the Haida initiatives open the door to a more meaningful consideration of the "local control" aspirations of all Islanders.

In time both Haidas and non-Haidas may be able to negotiate their joint participation in resource management and local government on the

Islands. As one Haida has said, "We're not going to wait for Ottawa to work out our land claims. We've already started doing it!" This outlook contrasts sharply with the Haida policy in 1974, when every recommendation for local control of the Islands forwarded to the provincial government by local bodies was rejected by the Haida, who demanded that local control be delayed until the effect of their land claim could be made clear. Now local control has become part of the land claim, and it is already being negotiated with non-Haida Islanders. The Haida feel that if resources are not better managed now there will be little left to claim. They are ready to assume all possible responsibility within the present system, regardless of the federal government's response to their land claim.

The uniqueness of the Haida claim can be credited to the resourcefulness of the Haida people, who are no strangers to adaptive and innovative policy making. At the same time, the claim has taken its present form chiefly because of the eight years of social change which preceded it.