Outcomes and Prospects for Collaboration in Two Aboriginal and Non-Aboriginal Forest Management Negotiations in Ontario

by

Giuliana Casimirri

A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy

Faculty of Forestry
University of Toronto

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Abstract

Successful intercultural natural resource management collaboration is challenged by divergent worldviews and power disparities. Studies of non-intercultural collaboration efforts demonstrate that good outcomes emerge when procedural conditions are met, such as fostering open and high-quality deliberations, use of interest-based bargaining techniques and collective definition of the scope of the process. The applicability of these procedural conditions to intercultural collaboration efforts, such as negotiations between Aboriginal people, government resource managers and sustainable forest license holders, has not been explored.

The aim of this thesis is to examine the outcomes and factors influencing two intercultural collaborations in the northeast region of Ontario. Semi-structured interviews with collaboration participants, negotiation meeting minutes and draft agreements are used as data sources. Following a general inductive coding approach and using QSR NVivo 2, the analysis of outcomes in both cases highlights improvements in relationships, increased understanding among the parties and the gradual definition of the scope of the negotiation. The findings also demonstrate that several barriers, including a lack of clear policy and legislative framework for collaboration and different definitions of the problem discourage intercultural collaboration. In
one negotiation process, frequent and high quality deliberations, using an interest-based negotiation approach, and efforts to mutually define the scope of the negotiation prior to substantive negotiation do not overcome these systemic barriers to collaboration. However, in another negotiation process, the social and relational characteristics of the community and participants do contribute to the parties recognizing their interdependence, focusing on shared goals and undertaking joint action. This research demonstrates that the development of shared goals and acknowledgement of divergent problem definitions are more important to intercultural collaboration success than the development of improved relationships and establishing a mutually acceptable scope prior to collaboration. In the absence of a supportive legislative basis for the distribution of forest decision-making authority and responsibilities, this understanding of how Aboriginal, government and forest industry participants can collaborate is useful for developing more effective and equitable intercultural collaboration.
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I would never advise a student or colleague to take such a long time to complete a doctoral thesis but this extended incubation period did provide me with the small benefit of witnessing the enduring nature of the Aboriginal and non-Aboriginal collaboration difficulties, which were the setting for this study. Such a long time between field research and study writing had the unfortunate effect of reducing the connection I had with the region and the people. I hope that with the completion of this thesis some small value will be derived from it for the individuals who participated in it. As I write this in 2012, it is likely that some or many of the industry, OMNR and Aboriginal leaders that I spoke with have retired or moved on to other positions. My hope is that this thesis serves to preserve some of their collective institutional memory and that their experiences are used to improve new collaborative efforts.
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1
Introduction

1.1 Defining the Research Problem and Context

For about the last 100 years, the provincial government has set forest policy and foresters, employed by the government or forest license holding corporations, have followed sustained yield principles to make decisions about when and where to harvest timber on ‘Crown lands’ in Northern Ontario. The forest has been managed in order to ensure the renewal of the timber crop. The sustained yield frame has contributed to the development of our current forest license system, forestry schools, forest-dependent towns and a profitable forest industry. Sustainable forest management, with its focus on sustaining multiple forest values and its emphasis on public participation, has supplanted sustained yield in the last 20 years, but state management institutions, including the forest licensing system, have remained largely unchanged.

For a much longer time, the same forestlands have been the ‘homelands’ and traditional territory of Anishnaabe (Ojibway) and Mushkegowuk (Cree) people, who guided by their own worldviews and knowledge and their own systems of governance, regulated their use and responsibilities to these forests. Today, Aboriginal people in Northern Ontario continue to seek recognition and accommodation of their constitutionally protected Aboriginal and treaty rights, an increased role in decision-making about forestlands and resources and a share of the benefits derived from those resources, in keeping with their interpretation of the spirit and intent of the treaty relationship (NAN 2001; NAN 2012b).

National and provincial governments, forest license holders, and Aboriginal peoples have on the surface developed a shared and broad goal: increasing Aboriginal peoples’ involvement in sustainable forest management (CCFM 2006; FPSC 2011). However, in practice there is little shared understanding of what increasing Aboriginal involvement means and how it is to be carried out and evaluated (McGregor 2011). In boardrooms, in community gyms and sometimes

1 The loss of traditional markets, coupled with recession have in recent years contributed to significant economic losses for the forest industry in Canada and concomitant job losses and mill closures for forest-dependent towns, taken by some as evidence of the economic unsustainability of the current forest licensing system.
over blockade lines these three parties are attempting to talk about their relationships and forest
management but each party has very different interpretations of appropriate uses of forests, their
relative rights and responsibilities codified in treaties and state law, and how benefits derived
from forests should be distributed. As a result, uncertainty and conflict and what the Ipperwash
Inquiry described as, a “deep sense of frustration” (Linden 2007, 43) built up in the Aboriginal
community, permeate discussions about forestlands. Most Aboriginal and non-Aboriginal forest-
related discussions, whether they are about improving Aboriginal peoples’ access to the
economic benefits of timber harvesting or about addressing Aboriginal peoples’ grievances about
the impacts of forest harvesting on Aboriginal and treaty rights to hunt, fish, trap and gather, are
characterized by some degree of uncertainty, frustration and conflict. There is some progress, but
change is incremental and there is little by way of guidance for how these parties are to improve
their relationships.

Examining the outcomes of intercultural natural resource management collaborations and the
factors that contribute to success or act as barriers to developing mutually acceptable
collaborative outcomes has only just begun. Previous research suggests that “different world
(Natcher, Davis and Hickey 2005), and “conflicting interests” (Wyatt et al. 2010) are important
barriers to equitable and successful intercultural collaboration. Research also proposes that the
ultimate success of intercultural collaboration depends on participants’ ability to form a group
identity and manage group interactions effectively (Natcher, Davis and Hickey 2005) and
cultivate common frames (Ebbin 2011). Similarly, researchers recommend that Aboriginal and
non-Aboriginal peoples should focus on building relationships as a first step to meaningful
participation of Aboriginal people in forest management (McGregor 2000). However, how to
build a group identity and common frames and create good relationships in an intercultural
context confronting divergent worldviews and power disparities, has received little attention. We
do not yet have a theoretical understanding of the conditions that facilitate or discourage
intercultural collaboration.

Research related to negotiation and consensus building processes may offer some guidance to
understanding how intercultural collaborations can be designed and managed to attend to the
relational considerations that help groups manage worldview differences. Underpinning much of
this research is the assumption that even seemingly intractable conflicts can be transformed
through well-designed negotiations (Fisher, Ury and Patton 1991) or collaborative processes (Gray 1989; Innes 1999). Similarly, central to this research is the notion that good collaborative outcomes, like social learning and the building of trust, are more likely to emerge from collaboration processes, if the conditions of “authentic dialogue” (Innes 2004) are met. For example, good outcomes emerge if the collaboration fosters open and high-quality deliberation, if participants set their own ground rules for agenda setting, making decisions, and a variety of topics, and if the collaboration employs interest-based bargaining to develop integrative goals (Innes 1999; Innes and Booher 1999; Connick and Innes 2003; Margerum 2002; Rowe and Frewer 2000). The role of these procedural aspects has received considerable attention in research aimed at uncovering what makes collaboration work when parties share underlying ideological frames but we do not know if they also apply when collaboration is intercultural. Critiques of conflict resolution theory suggest that the internal conditions of the process and the dialogue are always influenced by participants’ cultural and worldview constructions and that the success of collaboration is more likely to be determined by how participants manage their frame or worldview differences related to their identities, the problem, and what to do about it (Bell and Kahane 2004; Docherty 2001; Gray 2003).

Despite the recognition that developing intercultural collaboration and satisfactory collaborative outcomes “ultimately rests upon human actors and their relationships” (Pinkerton 1989, 125) and that “collaboration has more to do with managing relationships than resources” (Natcher, Davis and Hickey 2005, 241) a critical gap exists in our understanding of the factors which contribute to improving relationships, communication and cooperation. Specifically, no study has determined if the difficulties encountered by Aboriginal people, government resource managers and forest industry representatives, related to their underlying worldview differences, can be overcome by attending to the procedural aspects of the collaboration. This thesis describes a qualitative research project, which sought to understand the outcomes of intercultural collaboration processes and the factors that facilitate or discourage collaboration, in particular, how process characteristics influence outcomes.

This research project examines two cases of intercultural collaboration within the Northeast region of Ontario – the Constance Lake First Nation Coexistence negotiation and the Missanabie Cree Umbrella Agreement negotiation process. Both negotiation processes consisted of sustained, face-to-face discussions held among Aboriginal, government, and forest industry
representatives in the Area of the Undertaking (AOU) (roughly south of the 51st parallel and encompassing the area where forestry activities were authorized to occur in the province of Ontario) focused on a variety of issues related to forestlands. They are prime examples of parties holding different worldviews attempting to collaborate. The Constance Lake First Nation (CLFN) negotiation process began in 1997 after the CLFN blocked a mill access road. The fieldwork for this study was conducted in 2003 and 2004, and at that time the parties to the CLFN process were no longer meeting formally to discuss the draft coexistence agreement they had developed but not formally signed, but they had several collaborative projects they were working on. The Missanabie Cree First Nation (MCFN) negotiation process began in 2001. At the time of this study, negotiations had stalled and the parties were awaiting a return to formal negotiation meetings, pending a re-draft of the agreement, by the Ontario Ministry of Natural Resources (OMNR) – the Ministry responsible for the management of forests on Crown land in Ontario.

Recognizing that collaboration is an evolving social process (Borrini-Feyerabend et al. 2004) embedded in a particular institutional, cultural and ecological context and due to of the paucity of empirical research in the area of intercultural collaboration, this study was out of necessity, exploratory. In contrast to other studies of collaboration, this study did not seek to ‘evaluate’ or ‘assess’ the specific institutional arrangements or their outcomes (e.g., Beierle 1999; Leach, Pelkey and Sabatier 2002). Rather this study sought to understand, from the participants themselves, what outcomes emerged from their collaboration efforts and what elements facilitated and discouraged collaborative outcomes. Qualitative interviews were conducted with participants from each case study location and interview transcripts were coded using an inductive approach. Because the cases shared many similarities but differed in some important procedural ways, cross-case analysis was used to determine how procedural differences influenced the outcomes identified by participants.

1.2 Assumptions and Approach

This research is guided by a number of theoretical and practical assumptions, which also influenced the research approach. I begin with the assumption that natural resource collaboration efforts involving Aboriginal people in Canada and their drivers are unique in many ways from other collaborations involving the public or other stakeholders. Worldview differences and a
complex social, historical and legal context contribute to contested problem definitions and foundational disagreements about basic rights and responsibilities in Aboriginal and non-Aboriginal collaboration. Previous research examining formal co-management arrangements has largely been critical of the suitability of co-management for meeting Aboriginal peoples’ aspirations, especially the inclusion of traditional ecological knowledge (Nadasdy 2003; Natcher, Davis and Hickey 2005; Spak 2001; Stevenson 2006). These critiques of co-management demonstrate that collaboration in an Aboriginal and non-Aboriginal context is not necessarily culturally benign or universally acceptable. Cooperative action in these cases faces unique problems and involves different potential risks and benefits and thus raises different questions. Investigations of intercultural collaborations require unique approaches and theoretical frameworks that attend to the complexities created by the underlying dissensual sources of conflict and the myriad of different cultural/economic/ ecological/political characteristics of the parties shaping the structure, function and outcomes of collaboration.

However, there is very little literature specifically examining intercultural collaboration. Thus, this study assumes that, as a starting point, it is necessary to determine if elements of the process (for example, how negotiations are conducted, or if deliberations are ‘authentic’), which have been found to influence the attainment of good collaborative outcomes in other collaboration situations, apply to Aboriginal and non-Aboriginal natural resource collaboration efforts. This is necessary because, while conventional negotiation theory (Fisher, Ury and Patton 1991) and related consensus building research (Innes 1999; Innes 2004) has not been informed by intercultural collaboration experience, this theory is increasingly being applied in these settings. The use of interest-based negotiation in the MCFN case examined in this study demonstrates that consensus building criteria and approaches are informing Aboriginal and non-Aboriginal natural resource collaboration efforts.

Negotiation literature has long recognized that the nature of the conflict influences its resolution or tractability. When parties to a natural resource conflict have a common understanding of who has legitimate authority and responsibilities related to the land and whose access and which uses are valid, the conflict is considered consensual (or distributional) (Susskind and Cruikshank 1987). In consensual environmental conflicts, the parties are focused on distributing something – gains or losses or scarce resources or benefits or costs (Susskind and Cruikshank 1987). Conflict resolution approaches such as interest-based negotiation and consensus building were developed for consensual conflicts. In contrast, conflict rooted in ideological and worldview differences and definitions of basic rights is considered dissensual (or constitutional) and less amenable to resolution. Intercultural natural resource management collaborations are likely to involve dissensual conflict rooted in underlying ideological and worldview differences and definitions of basic rights.
collaboration efforts without much critical examination. To this end, I used critiques of conventional negotiation theory, which have tried to make it more relevant to cross-cultural settings (Bell and Kahane 2004) or to frame-based conflicts (Gray 2003) or worldview conflicts (Docherty 2001), to inform this analysis of the application of consensus building theory to intercultural collaboration.

In conducting this study, I also had to make assumptions about the place of constitutionally protected Aboriginal and treaty rights in Aboriginal and non-Aboriginal negotiations related to forestlands. For many Aboriginal people, “good faith negotiations” (Beardy 2006), based on the principle that Aboriginal and treaty rights exist, are the preferred approach to resolving issues related to infringements and accommodation of Aboriginal and treaty rights. Negotiation with Aboriginal people to reconcile the parties’ respective rights has also been supported by the Courts (i.e., Sparrow, Delgamuukw, Platinex), and by legal scholars (Lawrence and Macklem 2000; Coyle 2005), as a component of the ‘duty to consult’, identified by the Courts since 1990. The OMNR officially maintained that the forestry negotiations examined in this study were not negotiations to determine Aboriginal or treaty rights relative to forest harvesting and the forestry industry (OMNR 2002a; OMNR 2005; see Appendix F). Nevertheless, the recognition and accommodation of Aboriginal and treaty rights is a primary concern for Aboriginal peoples and as such it enters into dialogue and negotiations, even if other parties expressly try to avoid it. This rights-based talk and its pivotal role in collaboration outcomes are described in the findings of this thesis, but here it is important to state my assumptions on the issue. For this study, I assume that how Aboriginal and treaty rights are (or are not) attended to are valid determinants of outcomes in the negotiations I investigated because they are important and valid criteria for the Aboriginal participants. This study would look very different if I assumed, as other investigations have, that Aboriginal and treaty rights are not legitimate issues to address in forestry negotiations and Aboriginal peoples’ business dealings with forest industry (Transitions 2003).

I also based this research on the assumption that Aboriginal worldviews, which have not previously informed natural resource management, will likely contribute a great deal to what Stevenson and Natcher (2009) call our “mutual quest to develop a sustainable relationship with our natural world” (5). My approach to a study about intercultural natural resource collaboration would likely be quite different if I thought that Aboriginal worldviews were historical, irrelevant,
or merely amalgamations of discrete ‘values’, which could be integrated into state forest management to achieve sustainability. Rather my approach was shaped by the assumption that forest management systems capable of handling 21st-century challenges will need to include Aboriginal peoples defining and carrying out forest management compatible with their goals and based on their knowledge and worldviews.

Finally, this study assumed, following a social constructivist perspective, that the opinions and recollections of the participants about the outcomes of the processes provided a rich source of qualitative data with which to identify the multiple realities and experiences of participants in the negotiations. Following this assumption, I did not seek to make a judgment on the success of the collaboration efforts or evaluate the substantive outcomes of the negotiations, but rather to understand how the participants perceived the goals, outcomes, and determinants of the negotiation processes. My approach was to understand the reasons why the negotiations ‘failed’ or ‘stalled’, only in so much as the participants themselves identified their experiences in these terms.

### 1.3 Justification and Rationale

The justification and rationale for this thesis comes from three key factors. First, as a biologist with a Masters in Forest Conservation, I am primarily interested in progressing towards sustainable forest management (SFM). The three-legged stool of sustainability falls over if either of the social, ecological or economic aspects is not addressed. In the Canadian context, the necessity of including Aboriginal peoples in SFM cuts across all of these areas, as it contributes to improving social and community health, environmental knowledge and decision-making, and economic resilience and self-sufficiency. However, recognizing that defining sustainability and conservation is a normative task, any discussion or action related to sustainability requires the elucidation and communication of worldviews and ultimately, the negotiation and management of worldviews. Managing worldviews, with an eye to defining sustainability, while a seemingly monumental task, begins with a better understanding of how parties can better communicate about their worldviews, especially in the context of language, capacity, financial, political and power differences. Thus this investigation is necessary because it will contribute to our understanding of how Aboriginal and non-Aboriginal people can begin to approach SFM collaboratively.
Second, this research provides further elucidation of how the ideal framework proposed by other authors – “co-existence” based on Aboriginal and treaty rights and the principles of autonomy and non-interference symbolized in the Two Row Wampum\(^3\) (Chapeskie 1995; McGregor 2000; RCAP 1996; Stevenson 2006; Smith 2007) can be achieved. This research examines what can be accomplished in intercultural collaboration efforts which are far from this ideal, in terms of accommodating and respecting Aboriginal and treaty rights and providing for ‘meaningful consultation’ and parallel institutions. However, these daily interactions and negotiations are likely the source and staging ground for more wholesale changes required to bring ‘co-existence’ into existence. In the interim, research that provides some concrete guidance on how to facilitate cooperative action despite divergent worldviews in these current processes (no matter how flawed they may be from an Aboriginal perspective) is sorely needed.

Thirdly, the questions of this study were a direct response to the concerns voiced by several First Nation leaders in Northern Ontario over a new enabling policy introduced in 2000, which would see the previously unlogged boreal forest opened up for some form of forest harvesting (NAN 2002). The Northern Boreal Initiative (NBI), as it was called at the time, had the goal of providing “First Nations with opportunities to take a leading role in land use planning and forest management, with an important objective of fostering sustainable economic opportunities and conservation” (OMNR 2001a). First Nation communities were sceptical and distrustful of another new process, developed without their input, and its implications but they also embraced the potential for more meaningful collaboration and partnership development. Specifically, First Nation leaders wanted the lessons learned from communities located in the AOU to guide future partnerships or collaboration efforts north of the AOU. This study sought to identify what precisely these ‘lessons learned’ included.

\(^3\) Wampum belts were belts of beads exchanged to signify and preserve the meaning of agreements made between Aboriginal nations. The Two Row Wampum was a belt describing the first relationships between the Haudenosaunee and the British Crown. The belt consisted of two parallel lines of coloured beads separated by three lines of white beads, which signified two separate vessels, the Aboriginal canoe and the British ship, travelling down the river of life, each one not interfering with the other (Stevenson 2004).
1.4 Thesis Statement

Through an examination of the perspectives of Aboriginal community, provincial government, and forest license holder representatives in two forest-related negotiation processes in Ontario’s boreal forest, outcomes of intercultural collaboration and factors affecting the outcomes will be investigated to develop an understanding of how to improve these processes.

1.5 Research Objectives

The objectives of this thesis are to:

• determine how participants perceived the outcomes of the intercultural collaboration process they were involved in and how satisfied they were with those outcomes

• determine the factors participants perceived as affecting the intercultural collaboration outcomes

• compare the outcomes and factors affecting the intercultural collaboration processes across the two case study locations, and to determine how internal conditions of the process influenced the outcomes identified

1.6 Terms and Concepts

1.6.1 Aboriginal Peoples

I use the term, ‘Aboriginal peoples’, when I am speaking collectively of the original peoples of North America and their descendants. Section 35(2) of the Constitution Act (1982) also uses the term ‘Aboriginal’ defined as “Indian, Inuit and Métis peoples of Canada”. There are actually many distinct cultural groups of peoples in these groups. In Canada, the term ‘Indian’, enshrined in the British North America Act, 1867 (Canada’s original constitution) and the original Indian Act (1876) up to the present-day Indian Act (1985), refers to any person who is registered as an ‘Indian’ under the Indian Act and belongs to a particular ‘band’. ‘First Nation’ is often used as a substitute for ‘Indian’, which while still used by both Aboriginal and non-Aboriginal people, reflects colonial attitudes and may have pejorative connotations. Although, ‘First Nation’ has no official definition, I follow the communities’ own usage of the terms ‘Constance Lake First Nation’ and ‘Missanabie Cree First Nation’.
Thus, while I use the terms, ‘Aboriginal’ or ‘First Nation’ to describe the communities involved in this research, in Canadian law these communities are ‘Indian bands’ administered under the *Indian Act*, composed of registered ‘Indians’. It is important to recognize that even though I use the term ‘Aboriginal’ I am not referring to the other groups of Aboriginal peoples defined in the *Constitution Act*, including Inuit or Métis peoples. The plural ‘First Nations’ is used as a substitute for ‘Indian bands’ but I use the term ‘band’ when I am speaking specifically about a First Nation’s band council (the governing body of a band), or band office. ‘Native’ is used occasionally, but only following its use by the provincial government. For example, the Forest Management Planning Manual (OMNR 1996) required the preparation of a ‘Native Background Information Report’ and the collection of ‘Native’ values. Likewise, prior to 2007, the Ontario Native Affairs Secretariat (ONAS) was the provincial body mandated with coordinating the province’s development of Aboriginal policy.

### 1.6.2 Intercultural Natural Resource Management Collaboration

I use the term intercultural natural resource management collaboration or just intercultural collaboration for brevity (following Natcher, Davis and Hickey 2005) to describe the processes examined in this thesis. These processes include state (federal or provincial) and forest industry and Aboriginal community representatives with cultural differences (or more accurately worldview differences, as I describe below). These three parties are collaborating; in so much as they are participating in negotiation processes aimed at ‘pooling’ their understanding and resources to solve complex and uncertain problems related to natural resources. Other commonly used (but not necessarily clearly defined) terms, like co-management or community-based natural resource management do not make it explicit that the parties involved likely have worldview differences. Likewise, ‘intercultural collaboration’ is preferred because it does not specify a particular institutional form, or the degree to which decision-making authority is devolved but just that, following Gray (1985, 912), some “pooling of appreciations and/or tangible resources, e.g., information, money, labor, etc.” is involved and the parties seek to “constructively explore their differences and search for solutions” (Gray 1989, 5). Both the ‘natural resource’ and the ‘management’ component of this term may not be appropriate or relevant for how Aboriginal people themselves see their relationships to the land. But, in the absence of more appropriate or Aboriginal-defined terms, and for analyses purposes, they must suffice.
1.6.3 **Worldview**

In this thesis, I use ‘worldview’ to describe the way an individual or a group thinks about the world and their place in it, or their perception of reality. I use worldview, as it has been employed in the field of conflict resolution, for example, by Belchman et al. (2000, 9), to describe:

> the deep cognitive structures that comprise socially constructed models of reality of the world…[which] give meaning to our interactions with the world and provide the largely unconscious and unarticulated foundation for acting in the world.

This definition makes it explicit that worldviews are socially constructed, meaning that they develop and change through social interactions, and thus they are emergent and dynamic, rather than fixed and frozen. I also follow Docherty’s (2001) use of the verb ‘worldviewing’, to describe the process of socially constructing worldviews. Docherty sees worldviewing as “not a conscious, rational, intellectual activity, but a largely unconscious process of ordering the world and giving it meaning” (2004, 718). In this way, it may not be possible to “know” someone else’s (or our own) worldview fully, but Docherty (2001, 51) notes that a useful way to think about and delineate what constitutes any worldview is to think of a person unconsciously answering the following five questions (related to the elements of a worldview listed in brackets below) as they move through their daily lives:

- What is real or true? (Ontology)
- How is ‘the real’ organized? (Logic)
- What is valuable about those things (or people or institutions or traditions etc.) that are real? (Axiology)
- How do we know about what is real? (Epistemology)
- How should I (or we) act (or not act)? (Ethic)

In previous work exploring the different ways Aboriginal and non-Aboriginal people view the Earth and their relationship to it and each other, the terms ‘world view’ or ‘paradigm’ or ‘values’ or ‘culture’ have been used. Neither ‘values’, nor ‘paradigm’ are suitable to encompass the totality of what is included in the concept of worldview. Likewise, I have not seen ‘worldview’ clearly defined previously, nor unpacked into its constitute parts as the definition above allows. Finally, while an individual’s or a group’s worldview are clearly related to their culture, I focus...
on worldviews instead of culture. An analytical focus on worldview avoids some of the potential problems associated with narrow or homogeneous conceptions of culture, and recognizes the change and development possible in worldviews. The literature review demonstrates that ‘worldviews’ and ‘frames’ can be considered conceptually analogous.

1.7 Organization of Thesis

This thesis has 8 chapters. In chapter 1, I provide a general context for the research and describe the research problem and the case study focus. I outline my main assumptions and the approach taken in this study, as well as the primary strands of theoretical research I draw upon. Finally, I describe the justification for this study and describe the main purpose, objectives and define the concepts of the study.

Chapter 2 reviews the literature relevant to this research following four themes. The foundational negotiation and collaboration theories, particularly related to consensus building for environmental disputes are reviewed as the first theme. The second theme describes various approaches to the evaluation of collaboration, which guided by these foundational works and other theoretical concepts, emphasize process characteristics, social and ecological outcomes, context or multiple-criteria frameworks. The third theme describes several critiques of these approaches to collaboration analysis, which expand theoretical explanations of negotiation and collaboration to address issues relevant to cross-cultural, frame-based and worldview conflicts. The fourth theme presents the limited research examining intercultural collaboration in Canada and internationally. Finally, I describe how these various approaches to collaboration evaluation inform the identification and refinement of the research questions and the research design used in this study.

Chapter 3 presents the research design. I describe the research as embracing a social constructivist perspective and taking an inductive approach to understand intercultural collaboration from the perspective of participants. I provide a rationale for a multiple case study design and the selection of the case study locations and describe the methods used for data collection and analysis.
Chapter 4 describes the two case study locations. I describe each of the First Nation communities and their history and previous relationships with the other parties. I also provide descriptions of the negotiation processes and a timeline of activities.

Chapter 5 describes the findings related to the outcomes of the negotiation processes. For each case study location, I describe the themes and categories related to outcomes emerging from the coding process and I identify several core outcomes.

Chapter 6 describes the factors found to facilitate and discourage collaboration in each case study location.

Chapter 7 provides a cross-case comparison of the negotiation processes, the core outcomes and the factors influencing collaborative outcomes, as identified by participants. The discussion highlights similar outcomes, outcomes identified in only one case and the role of process and other factors in the development of outcomes. I discuss these findings within the context of previous work.

In the final chapter (8), I summarize the main findings related to the research questions identified in the literature review. I highlight several implications for theory and practice, study limitations and recommendations for the parties and for further research.
2 Literature Review

2.1 Overview of Chapter

Considerable effort has been directed to understanding ‘what makes collaboration work’ in natural resource management settings. Very little of this literature is derived from intercultural collaboration experiences. It is unclear if the approaches, frameworks and criteria used to understand other kinds of natural resource management collaboration apply to Aboriginal and non-Aboriginal collaboration efforts. This chapter provides an overview of the literature informing this study and describes how this study addresses this challenge.

The literature is organized into five sections. First, I review foundational literature on negotiation and consensus building for environmental conflicts, upon which much collaborative natural resource management theory and practice is based. Second, I review literature related to common approaches used for assessing the results and determinants of collaboration, using either the characteristics of the process, the outcomes of collaboration, context variables or multiple-criteria frameworks. I describe some of the limitations of these approaches, specifically for their application to understanding the variables involved in intercultural collaboration. In the third section, cultural critiques of conflict resolution and framing and worldview analysis theory for intractable conflicts are reviewed. I demonstrate how these approaches all point to the necessity of reconciling different perspectives on the nature of the problem(s) and underlying worldviews of the parties. The fourth section presents literature about other co-management and intercultural collaboration experiences which confirms the critical role of managing worldview differences but also demonstrates that a gap exists in our understanding of how in practice the development of shared meaning is fostered in intercultural collaboration. Finally, I describe the approach used in this study. I explain how this study seeks to understand if the often-cited characteristics of good collaboration processes contribute to the development of shared meaning and the management of worldview differences in Aboriginal and non-Aboriginal collaboration.

2.2 Natural Resource Management Collaboration Foundations

For the last 30 years, natural resource management (NRM) collaboration and environmental dispute resolution processes have been informed by interest-based negotiation (IBN) (Fisher, Ury
and Patton 1991) and related alternative dispute resolution (ADR) (Bingham 1986; Carpenter and Kennedy 1988; Susskind and Cruikshank 1987; Wondolleck 1988) and consensus building theory (Innes 2004; Susskind, McKearnan and Thomas-Larmer 1999). These approaches are based on the notion that behind participants’ opposed positions are shared and compatible interests, which can produce opportunities for mutual gain. Finding common understanding among stakeholders with divergent interests, through dialogue, deliberation, and negotiation, is expected to produce better management decisions, positive social-relational outcomes, and collective action (Connick and Innes 2003; Daniels and Walker 1996; Gray 1989; Innes and Booher 1999; Schusler, Decker and Pfeffer 2003; Selin and Chavez 1995).

To this end, collaborative NRM researchers have largely focused on identifying the internal conditions of collaborative processes that foster common understanding and collective action (Gray 1989; Booher and Innes 2002; Innes 2004; Muro and Jeffrey 2008). For example, in Gray’s (1989) influential work she suggests that for successful collaboration or “building collective appreciations and sharing resources” (29) there are “a fundamental set of issues that must be addressed in the course of collaboration” (56) for all complex ‘problem domains’. Gray’s (1985) three-step process model of collaboration implies that the “domain level dynamics” (916) or the interactions of a set of actors (individuals, groups, and/or organization) that are interdependent because of a joint problem or interest can be managed at each step to facilitate successful collaboration. Similarly, the work of Innes and others (Booher and Innes 2002; Innes 2004), focuses on identifying the critical conditions of “authentic dialogue” (Booher and Innes 2002). These works have been informed by IBN and ADR and have in turn influenced the design of successive collaborative natural resource management efforts and process-based evaluations of collaboration (e.g., Conley and Moote 2003; Frame, Gunton and Day 2004; Leach, Pelkey and Sabatier 2002; Plummer, Kulczycki and Stacey 2006).

Collaborative NRM researchers have acknowledged that the capacity of those affected by a decision to deliberate in the production of that decision is influenced by both the nature of the conflict (i.e., the presence of deeply held value differences) and external conditions, such as legislative and institutional limitations and power asymmetries (e.g. Daniels and Walker 1996; Innes 1999; Innes and Booher 2004; Selin and Chavez 1995; Susskind and Cruikshank 1987; Wondolleck 1988). IBN and ADR critiques have also questioned the universality of focusing on ‘interests’ and ‘inventing options for maximizing gain’ were culture, gender and power
differences exist (Avruch 2000; Menkel-Meadow 2009). However, contemporary investigations of collaboration continue to operate under the assumption that while parties may still have fundamental value differences they can, through well-designed collaborative processes, develop successful outcomes and resolve even long-standing seemingly intractable conflicts.

Questions about whether ‘good’ collaboration processes can transform power disparities, overcome worldview differences and facilitate authentic dialogue and understanding have been largely overlooked. Mediators or facilitators encountering ideological or value-based issues continue to follow advice to reframe value disputes as interest disputes, seek to identify superordinate goals or simply avoid value-based issues and focus on the components of the dispute that can be addressed through interest-based bargaining in the hopes that “the importance of value differences may fade” (Moore 1996, 220). Most collaborative NRM processes employ what researchers consider “generally consistent statements on best practices” (Emerson, O’Leary and Bingham 2004, 222) or “principles of good practice” (Marshall, Blackstock and Dunglinson 2010), but there is little critical examination of whether a collaborative process can actually be designed to overcome social inequities (Castro and Nielsen 2001; Coombes and Hill 2005; Edmunds and Wollenberg 2001; Lane 2003; Tipa and Welch 2006). Similarly, the implications of worldview or frame differences for conflict resolution process success are largely unexamined (Belchman et al. 2000; Goldberg 2009; Walker 2004). However, there is a recognition that researchers need to develop “complex, deeply textured and contextually specific” (Menkel-Meadow 2009, 424) approaches to evaluating collaboration and that the variety and complexity of what has been labelled collaboration limits specificity of theories about the determinants and outcomes of collaboration in different contexts (Ansell and Gash 2008, 549). Researchers are increasingly recognizing that “using a single, inflexible set of criteria” (Marshall, Blackstock and Dunglinson 2010, 85) to assess NRM collaboration is inappropriate.

In the following section, I describe how other authors have structured their efforts to understand why and how collaboration works or does not work. I review the literature related to how other collaboration processes have been evaluated because it provides insight into how to analyze the intercultural collaboration efforts that are the subject of this study.
2.3 Evaluating Collaboration and Identifying Important Variables

Consensus building processes and other forms of collaboration for environmental and natural resource conflicts have increased greatly and with this “bubbling up” (Ansell and Gash 2008, 2) of local experience have come efforts to understand variables and causal relationships. In this section, I have divided the extensive literature related generally to the ‘evaluation’ of collaboration into four common approaches, including: 1) understanding the process characteristics (or conditions) under which stakeholders act collaboratively, 2) understanding the social, or ecological outcomes of collaboration, 3) understanding how the context influences both collaborative process and outcomes, and 4) developing and applying multi-criteria frameworks with some combination of the above components. ‘Evaluation’ here is used as a blanket term to refer to studies that are preoccupied with how collaborations function, what the effects of collaboration are, and what variables are involved. A clear distinction between these four approaches is not always possible and there is considerable overlap and variation depending on researcher motivations, collaboration definitions and theoretical underpinnings.

Nevertheless, this organization scheme provides a meaningful way to move through and assess a complex and proliferating literature focused on ‘what makes collaboration work’. This review demonstrates that while each approach may offer some guidance to this study and that multi-criteria frameworks may incorporate a great number of the most salient considerations for collaboration evaluation, very little guidance exists for explaining what occurs in intercultural collaboration. For Aboriginal and non-Aboriginal collaboration, where worldview differences exist, and a complex context contributes to contested problem definitions and foundational disagreements about basic rights and responsibilities, the evaluation approaches and findings of other collaboration efforts may not be relevant, appropriate or sufficient. This is the rationale for the exploratory, qualitative, and cross-case analysis approach employed in this study, which is articulated in the last section of this review.

2.3.1 Process Evaluation

Most of the literature related to measuring the results and outcomes of collaboration processes has primarily focused on the process itself and understanding the process conditions that facilitate and impede collaborative action. The theoretical framework underlying this research, derived from the ‘foundational’ negotiation theories described previously, holds that when a
collaborative process has certain attributes, or certain process criteria are present, collaboration participants are more likely to develop successful outcomes. Stated simply, a ‘good’ process produces ‘good’ outcomes. Margerum (2011, 278), summarizing over 30 years of collaborative NRM theory, identifies the main reasons that a good process is still hypothesized to lead to good outcomes: 1) the parties produce shared data and understand different information; 2) the parties are exposed to improved data and new information and change their attitudes and views, 3) the parties are more likely to support implementation efforts, and finally; 4) the parties build trust, social capital and collective action beliefs. Table 2-1 summarizes some of the common ‘good’ process-related elements, which have been considered factors influencing the establishment and outcomes of collaboration in consensus building, ADR and public participation literature. In developing Table 2-1, I have grouped process characteristics into several broad elements for organization purposes but in practice, these elements are overlapping and often contingent or even contradictory and some authors include all or only some of these elements.
Table 2-1 Common collaborative natural resource management process-related criteria

<table>
<thead>
<tr>
<th>Process Elements</th>
<th>Literature Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Representation</strong></td>
<td>Abelson et al. 2003; Beckley, Parkins and Sheppard 2005; Gunton and Day 2003;</td>
</tr>
<tr>
<td></td>
<td>Gray 1989; Innes 2004; Leach and Pelkey 2001; McCool and Guthrie 2001; Moote,</td>
</tr>
<tr>
<td></td>
<td>McClaran and Chickering 1997; Rowe and Frewer 2000; Schuett and Selin 2002;</td>
</tr>
<tr>
<td></td>
<td>Susskind and Cruikshank 1987; Webler and Tuler 2001</td>
</tr>
<tr>
<td><strong>Scope and Objectives</strong></td>
<td>Beierle and Konisky 2000; Chess and Purcell 1999; Innes 2004; Mattessich, Murray-</td>
</tr>
<tr>
<td></td>
<td>Close and Monsey 2004; Reed 2008; Rowe and Frewer 2000; Sheppard 2005; Susskind</td>
</tr>
<tr>
<td></td>
<td>and Cruikshank 1987</td>
</tr>
<tr>
<td><strong>Deliberation and Dialogue</strong></td>
<td>Beckley, Parkins and Sheppard 2005; Beierle and Konisky 2000; Gunton and Day 2003;</td>
</tr>
<tr>
<td></td>
<td>Gray 1989; Innes 2004; Moore 1996; Margerum 2011; Selin, Schuett and Carr 2000;</td>
</tr>
<tr>
<td></td>
<td>Susskind and Cruikshank 1987; Webler and Tuler 2000</td>
</tr>
<tr>
<td><strong>Facilitation, Information and Resources</strong></td>
<td>Ansell and Gash 2007; Beierle and Konisky 2000; Dukes 2005; Gray 1989; Innes 2004;</td>
</tr>
<tr>
<td></td>
<td>Margerum 2011; Reed 2008; Rowe and Frewer 2000;</td>
</tr>
</tbody>
</table>

- a full range of interests should be represented
- the inclusion of all relevant stakeholders
- stakeholders are involved as early as possible
- substantial constituent outreach efforts and public involvement

- meaningful and achievable task for participants
- conflict/problem/scope is mutually defined by participants
- clear goals and objectives developed by the participants

- mutually agreed upon ground rules for behavior, agenda setting, and decision-making method
- two-way flow of information
- communication with constituencies
- open communication which permits all assumptions to be questioned
- constructive conflict management
- focus on joint gains, exploring interests and reframing positions and value differences into superordinate goals

- skilled facilitator (preferably a neutral third party)
- full information sharing
- accessible and high-quality information
- joint fact-finding and development of shared
While internal process characteristics have been used to evaluate Aboriginal and non-Aboriginal collaboration efforts (Cullen et al. 2010; Shepperd 2005), as I describe below, it is important to recognize that the criteria of a ‘good’ process identified in the literature are normative and context dependent. In the final section of this literature review, I describe why process elements are not used as a priori criteria to evaluate intercultural collaboration in this study.

Other authors have identified a number of limitations for process-related criteria and evaluations. For example, Margerum (2011) has noted that a preoccupation with process “may ignore the larger societal and political forces that are affecting how a system operates” (279). Other studies point to problems with the underlying, normative assumptions that the characteristics of good collaboration processes are universally accepted and not contentious (McCool and Guthrie 2001; Tuler and Webler 1999; Webler and Tuler 2001) and that the presence of these ‘good’ process criteria will necessarily produce good outcomes (Abelson et al. 2003; Chess and Purcell 1999; Holzinger 2001). As a result, several authors have attempted to understand what participants themselves define as a ‘good’ process (Tuler and Webler 1999; McCool and Guthrie 2001; Jackson 2002) and more recently, whether criteria based on normative theory matches criteria defined by participants (Blackstock et al. 2012; Santos and Chess 2003). Researchers recognize that even where collaborations are not intercultural, the context and characteristics of most collaboration processes vary so greatly it is difficult to identify elements of a good process that are universally desirable (Ansell and Gash 2008; Leach and Pelkey 2001; Webler and Tuler 2001).

It is important to note that the process criteria identified in the literature have not been developed from empirical studies of Aboriginal and non-Aboriginal collaborations but rather from negotiation and collaboration efforts where parties largely share basic assumptions about the world. For example, in consensus building efforts the parties generally share similar
understandings of their respective roles and responsibilities. Bryan (2004) notes that in consensus building, “participants may challenge the decisions authorities ultimately make, [but] they do not challenge their authority to make those decisions” (882). It is likely that for collaborations involving Aboriginal communities and non-Aboriginal resource managers, where the parties do indeed challenge each other’s authority to make decisions, the elements which constitute a ‘good’ process may differ from those established by other kinds of collaboration experiences. Criteria of ‘success’ in these cases may not be shared and selecting criteria necessarily privileges some understandings over others. I do not contend that process is not important to intercultural collaboration outcomes but rather that the process criteria derived from the literature may not be appropriate or sufficient to explain how collaboration efforts in intercultural settings function and what their outcomes are.

It may also be inappropriate to assume that the process alone is responsible for the outcomes in intercultural collaborations involving worldview sources of conflict. Focusing on process as a cause of collaboration success or failure may mistakenly attribute outcomes (or lack of outcomes) to the characteristics of the process when other factors are more likely involved. Good process conditions are based on the assumption that the parties share what Docherty calls “an uncontested, given reality” (2001, 55). Process evaluations assume that participants share similar perceptions of the problem. Murray (1999), Docherty (2001) and Ebbin (2011) confirm that in worldview conflicts, negotiations do not proceed neatly thru the requisite stages of negotiation but that the processes of problem identification and agenda setting are especially contentious because the parties interpret the problem differently. In intercultural collaboration, an understanding of what is to be managed, by whom, for whom and under what system is not shared. Where other researchers have used the absence of common process criteria, such as the lack of a mutually agreed upon scope for negotiations, to explain the cause of intercultural collaboration failures, at best these analyses provide only a partial explanation of complex and multi-layered affairs (e.g., Darling 1991; Friesen 1991) In the next section, I describe another common approach to collaboration evaluation: assessing whether the quality of the process influences the achievement of social and ecological goals.
2.3.2 Social or Ecological Outcome Evaluation

Another approach to collaboration evaluation has been to evaluate collaboration processes based on their outputs (agreements, plans, programs, or policies) and outcomes (social or ecological changes), either coupled with process criteria or on their own (Beierle 1999; Brody 2003; Koontz and Thomas 2006). Early collaboration evaluation efforts used the criteria of whether an agreement was reached and implemented to evaluate collaboration success (Bingham 1986; Gray 1989). Researchers sought to determine if the outcomes in terms of substantive decisions or agreements were “cheaper, faster, fairer, more innovative or longer lasting” (Conley and Moote 2003) than those achieved through non-collaborative planning approaches or litigation. However, there was also recognition that even processes that fail to reach agreement can have positive outcomes (Buckle and Thomas-Buckle 1986) such as “the building of social and political capital, the learning and change, the development of high-quality information, new and innovative ideas, new institutions and practices that are adaptive and flexible and [a] cascade of other changes.” (Connick and Innes 2003). Most authors agree that while agreements may be important as symbolic events indicating a change in the adversaries’ beliefs (Kreisberg 1998) or as markers (Connick and Innes 2003), focusing on tangible outputs or agreements alone often misses important but often less tangible organizational and social outcomes. Innes (1999) and Connick and Innes (2003) identify several outcomes that should be used to evaluate collaborative processes including:

- Social and political capital
- Agreed-on information and shared understanding
- End to stalemate
- High-quality agreements
- Learning and change beyond the original stakeholders
- Innovation
- A cascade of changes in attitudes, behaviors and actions
- Institutions and practices that involve flexibility and networks

Similarly, Beierle and Konisky (2000) find that incorporating public values into decision-making, resolving conflict among competing interests and restoring a degree of trust in public
agencies are social outcomes which collaboration success can be measured by. In their assessment of collaborative planning processes in British Columbia, Cullen et al. (2010) and Frame, Gunton and Day (2004) employ eleven outcome criteria, which define broad outcome objectives, including, reaching an agreement that meets the interests of stakeholders, using a planning process that is considered superior to alternative methods and generating social capital benefits such as improved relationships. Few evaluations of collaboration now do not assess social outcomes beyond agreements but like process criteria, identifying important social outcomes, is inherently normative. Perceptions of which social outcomes should be achieved may not be shared among collaborating parties, especially when the conflict is dissensual.

Other authors argue that collaboration should also be evaluated based on whether it has achieved certain predetermined ecological outcomes (Beierle and Konisky 2000; Kenney 2000; Koontz and Thomas 2006; Muñoz-Erickson et al. 2007). For example, Kenney (2000), summarizing the literature on this perspective notes, “a collaborative group is successful if it contributes (or can be reasonably expected to eventually contribute), in whole or in part, to the achievement of current or future on-the-ground natural resource objectives”. Moseley (1999) cautions that seemingly objective environmental outcomes (e.g., more salmon in the stream, a return to natural forest conditions, more biodiversity) are “highly contested” (Moseley 1999, 4) and collaboration efforts exist precisely because parties do not share conceptions of what the problem is and what should be done before deliberating. Attempting to evaluate a collaboration based on predetermined ecological outcomes would privilege one person or group’s perceptions of the problem and appropriate actions above others.

2.3.3 Context Criteria Evaluation

A third approach to understanding the determinants of collaboration success has been to focus on the role of the context and its effect on both the process and the outcomes. No previous research has investigated how context affects collaboration, to the degree that the work of Innes and others has paid attention to process and social outcomes. However, some authors have explicitly noted the shortcomings of the current procedural focus, namely that it “ignores, or at least tries to neutralize, the role of power” (Abelson et al. 2003, 244) and that it overlooks constraints and contextual considerations (Brinkerhoff 2002). Others have recognized that the history and context of the case influence collaboration efforts (Davis 2008). Likewise, authors have also
questioned the assumption that process characteristics determine process or outcome success (Chess and Purcell 1999; Holzinger 2001). Rather, many factors are beyond the control of participants in collaborations and these can “co-determine the bargaining space and the bargaining power of the parties” (Holzinger 2001, 73). This section reviews research that identifies how context variables, or exogenous factors, influence collaboration.

There are some important caveats to this review of the literature related to the role of the context in collaboration. First, it is important to note that the literature often does not make a clear distinction between what constitutes the characteristics of the process and what constitutes context, or the distinction is blurred or complicated by semantic differences. Authors generally use the term “context” (Landre and Knuth 1993) or “exogenous factors” (Holzinger 2001; Plummer 2009) to refer to “attributes…largely outside of the control of agencies or participants” (Beierle and Konisky 2000, 590) but other researchers may consider these elements components of the process (e.g., Margerum (2002) considers power disparities among participants part of the process). Second, empirical studies of collaboration focused on the contextual factors that influence collaboration are few and the findings about context are often vague. Third, similar to studies focused on process and social or ecological outcomes, the studies reviewed in this section also differ significantly in their methodological approach and the kinds of collaboration examined and thus the comparability of findings. For example, Landre and Knuth’s (1993) study left out perceptions of participants other than government coordinators and Wondolleck and Yaffee’s (1994) broad focus on ‘bridging’ included arrangements ranging from management partnerships to public outreach activities and thus involved varying degrees of collaboration. The point here is not to identify everything that constitutes context because obviously this is highly variable, but to review the literature, which describes some of these other factors and how they affect collaboration processes and outcomes. The most common contextual factors highlighted in the literature are summarized in Table 2-2.
Table 2-2: Common collaborative natural resource management context-related criteria

<table>
<thead>
<tr>
<th>Context Elements</th>
<th>Literature Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site and Resource Factors</td>
<td>Andrew 2001; Beierle and Konisky 2000; Landre and Knuth 1993; Leach and Pelky 2001;</td>
</tr>
<tr>
<td></td>
<td>Shindler, Cheek and Stankey 1999</td>
</tr>
<tr>
<td>resource characteristics</td>
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<tr>
<td>management setting and community</td>
<td></td>
</tr>
<tr>
<td>characteristics</td>
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<tr>
<td>geographic scale/complexity</td>
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<tr>
<td>public awareness of the problem</td>
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<tr>
<td>degree of shared jurisdiction</td>
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<tr>
<td>adequate scientific and technological</td>
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<tr>
<td>information</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bidwell and Ryan 2006; Landre and Knuth 1993; Leach and Pelky 2001; Holzinger 2001;</td>
</tr>
<tr>
<td>Institutional Factors</td>
<td>Margerum 2002; Marshall, Blackstock and Dunglinson 2010; Plummer 2009; Selin and</td>
</tr>
<tr>
<td></td>
<td>Chavez 1995; Shindler, Cheek and Stankey 1999; Wondolleck and Yaffee 1994</td>
</tr>
<tr>
<td>characteristics of the sponsoring agency or institutions</td>
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<tr>
<td>legislative, budgetary, administrative and policy constraints/support</td>
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<tr>
<td>lack of authority and flexibility at local level</td>
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<tr>
<td>scope of collaboration limited by political directives of the respective organizations</td>
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<tr>
<td>short term political culture</td>
<td></td>
</tr>
<tr>
<td>Social and Relational Factors</td>
<td>Ansell and Gash 2008; Beierle and Konisky 2000; Beierle and Crawford 2002; Leach and</td>
</tr>
<tr>
<td></td>
<td>Pelkey 2001; Margerum 2002; Marshall, Blackstock and Dunglinson 2010; Robson and</td>
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<tr>
<td></td>
<td>Kant 2009; Selin and Chavez 1995; Shindler, Cheek and Stankey 1999; Tuler and Webler</td>
</tr>
<tr>
<td></td>
<td>1999; Wondolleck and Yaffee 1994; Yaffee, Wondolleck and Lippman 1997</td>
</tr>
<tr>
<td>attitudes and skills of participants</td>
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<tr>
<td>participants’ resistance to change</td>
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<tr>
<td>prior relations/perceived interdependence of participants</td>
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<tr>
<td>level of trust among participants</td>
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<tr>
<td>level of community social capital</td>
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<tr>
<td>ideological/value differences</td>
<td></td>
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<tr>
<td>power differences</td>
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The breadth of these elements demonstrates that context considerations are likely critical variables in addition to procedural considerations. This literature also demonstrates that context can influence both process and outcomes (Andrew 2001; Beierle 1999; Davis 2008; McCool and
As Davis (2008) concludes a “fair and effective collaborative process is not obtained wholly through the planning method’s design and structure alone” (873). Unfortunately, methods to differentiate process components from context components and research to understand the actual mechanisms by which contextual considerations influence collaboration are not well developed. As an exception, for example, the work of Bidwell and Ryan (2006) specified that the organizational culture and preexisting relationships of the participants served to dictate the definition of the problem and the range of preferred alternatives in agency-affiliated partnerships. Researchers attempting to understand collaboration have turned to developing and adapting frameworks that incorporate multiple elements including process characteristics, outcomes, context considerations and the relationships between them.

### 2.3.4 Multi-Criteria Evaluation Frameworks for Collaboration

Recognizing that the success of partnerships and collaboration efforts is likely dependent on multiple elements, several researchers have attempted to develop frameworks for conceptualizing and evaluating collaboration. It is important to recognize that how collaboration has been defined has evolved along with how collaboration has been evaluated. More comprehensive definitions of collaboration have produced more complex frameworks and systematic ways to describe and assess collaboration (Berkes 2007; Carlsson and Berkes 2005; Plummer and FitzGibbon 2004a). In this section, I describe several evolving multi-criteria frameworks for collaboration evaluation.

Based on the literature, Plummer and FitzGibbon (2004b), present a conceptual framework for collaborative NRM (what they call co-management). The framework consists of the context for co-management, including characteristics of the resource, claims of property rights and potential regimes, and three main components of co-management, including antecedents, characteristics and outcomes, and finally the linking mechanisms of collaboration. In describing their framework, Plummer and FitzGibbon, note that their framework is an “organizational device” (2004b, 878) and not predictive. However, they synthesize the literature on critical preconditions and characteristics of co-management that contribute to better collaboration outcomes. The critical characteristics of co-management in their model are: pluralism, communication and negotiation, transactive decision-making, social learning, and shared action/commitment (Plummer and FitzGibbon 2004b). Finally, Plummer and FitzGibbon (2004b) identify outcomes
often associated with co-management, including equity and efficiency of decision-making, legitimization of actions, and increased capacity. The Plummer and FitzGibbon (2004b) model is significant because the authors attempt to bring together multiple interrelated elements, which influence and are influenced by collaboration. Additionally, what they call ‘co-management’ is clearly recognized as a complex and emergent social process, as opposed to a particular institutional form or power-sharing arrangement. As such, their framework begins to address some of the research agenda articulated by Carlsson and Berkes (2005) to develop less “blunt” tools for conceptualizing and analyzing collaboration.

Building on the above framework, Plummer, Kulczycki and Stacey (2006) develop and apply an assessment framework for collaboration in nature-based tourism. Their assessment framework consists of five elements including: context, conditions, representation, power, and process (Plummer, Kulczycki and Stacey 2006). In this assessment framework, six components of institutional arrangements from Mitchell (1989) that were considered part of the ‘process’ of co-management in Plummer and FitzGibbon (2004a; 2004b) are now considered part of the element of ‘power’, including: “1) legislation and regulation, 2) policies and guidelines, 3) administrative structures, 4) economic and financial arrangements, 5) political structures and processes, 6) historical and traditional customs and values, and 7) key participants or actors” (Plummer and FitzGibbon 2004a, citing Mitchell, 1989, 245). Other considerations are also included in the element of ‘power’, derived from Brinkerhoff (2002) including, democratic procedures (specifically, transparency in decision making and access to information) and costs and benefits (specifically, perception of fairness and equitable distribution). In the previous work, ‘power’ referred to the actual degree of power-sharing, following Arnstein’s (1969) ladder of participation adapted by Berkes (1994) (Plummer and FitzGibbon 2004a; 2004b). Thus, Plummer and others, in attempting to incorporate fundamental issues of power and equity (or what they consider fairness), use the six components of institutional arrangements identified by Mitchell (1989) in their frameworks, considering these first critical to the ‘process’ of negotiation in Plummer and FitzGibbon (2004a; 2004b) and later as clarifying the nature of ‘power’ in the collaboration (Plummer, Kulczycki and Stacey 2006). The evolution of this framework and the authors’ exchanging of components of power and process demonstrate that these factors are interrelated and difficult to differentiate into their constituent parts.
Plummer and FitzGibbon (2006) also initiated co-management among diverse stakeholders with shared interests in three river corridors in order to assess the degree to which the three cases developed co-management based on the characteristics of pluralism, communication and negotiation, social learning, transactive decision-making, and shared action/commitment (derived from Plummer and FitzGibbon 2004b). Linking this previous co-management empirical work to adaptive management, Plummer and Armitage (2007) recommend the same framework used by Plummer, Kulczycki and Stacey (2006) be used to assess the structure of adaptive natural resource co-management. Here the authors place evaluation in a complex adaptive systems worldview and focus attention on three broad components for evaluation: an ecological component, an economic (or sustainable livelihoods) component and a process component (Plummer and Armitage 2007). Plummer and Armitage (2007) note, however, that these elements in their assessment framework are not useful to evaluate the function of adaptive co-management. Following Innes and Booher’s (1999) emphasis on process and echoing many of the process characteristics listed in Table 2-1, Plummer and Armitage (2007, 70) propose that the four co-management characteristics described previously (pluralism, communication and negotiation, social learning, transactive decision-making, and shared action/commitment) and associated parameters should be used to evaluate how adaptive co-management actually functions. For example, the authors contend that for the characteristics of communication and negotiation, several parameters should be evaluated, including whether shared understanding develops, whether dialogue builds consideration and appreciation, and whether perspectives are exchanged and modified using discursive communication (Plummer and Armitage 2007). The authors note “these example parameters of concern detail functional aspects for which coincidence is positively correlated” (Plummer and Armitage 2007, 71). In other words, if for example, information is reciprocally exchanged and shared understanding or agreement develops, then the communication and negotiation characteristics of co-management were satisfied and the co-management effort can be evaluated as more successful. These same parameters have also been suggested as a way to evaluate how and what kinds of learning outcomes emerge from collaboration by Armitage, Marschke and Plummer (2008, 91). There are several challenges with applying the preceding frameworks and the characteristics of collaboration (or adaptive co-management) and key parameters to understanding the outcomes of intercultural collaboration.
The Plummer, Kulczycki and Stacey (2006) assessment framework and the Plummer and Armitage (2007) collaboration characteristics and evaluation parameters are useful to understand the broad structural determinants (conditions, context, process, and power) of collaboration. However, neither provides a complete picture of how the structure of a collaboration process influences the collaboration process’ function. The characteristics of co-management and evaluation parameters may be useful to indicate if a collaboration effort is more or less collaborative but they do not illuminate why this might be so. The worldview differences of the parties and the influence of context, process and power on participants’ abilities to communicate and negotiate or undertake transactive decision-making are overlooked. Likewise, using Mitchell’s (1989) components of the institutional arrangement to describe ‘power’ does not explain how and which forms and sources of power affect the parties’ ability to exert influence in collaboration efforts. When Plummer, Kulczycki and Stacey (2006) apply their framework in the examination of a nature-based tourism collaboration effort, the authors do not expand on either the role of power disparities or the impact of contested institutional rules-in-use, but it is not clear if these were not salient or if the framework failed to elucidate them. The Plummer, Kulczycki and Stacey (2006) framework also does not consider the differing worldviews of the parties or the nature of the underlying conflict within the ‘context’ component. The authors do note that their assessment framework “is a synthetic device to bring together literature and identify salient considerations…(which) does not speculate as to specific outcomes or potential consequences” (Plummer, Kulczycki and Stacey 2006, 512). Similarly, the authors note that collaboration will be influenced by participants’ different perceptions, power imbalances and/or conflicting values and that their framework may serve to reveal these specific points of conflict (Plummer, Kulczycki and Stacey 2006).

In developing the frameworks described above and specifying evaluation parameters these authors have attempted to overcome some of the challenges encountered by previous evaluation efforts using normative notions of success or conventional measures, such as agreements signed, or environmental outcomes achieved. They have also begun to identify the components of power, process and context and how these affect collaboration. However, aside from the application of this framework for nature-based tourism (Plummer, Kulczycki and Stacey 2006) little research has determined if the components identified in these frameworks sufficiently represent collaboration in practice. More importantly, it is unclear if the components specified in these
frameworks are useful for the assessment of intercultural collaboration efforts and how the various components of process, context, power and outcomes are likely to be linked to specific collaborative functions in these cases. Armitage, Marschke and Plummer’s (2008) discussion of various forms of learning in adaptive co-management does recognize that collaboration and learning goals are normative and power differentials and competing worldviews challenge learning outcomes, but these authors present the same process-based evaluation parameters identified in Plummer and Armitage (2007). These previously specified parameters for collaboration, including elements related to pluralism and linkages, communication and negotiation and transactive decision making are derived from consensus building process criteria (e.g., Gray 1989; Innes and Booher 1999) and reflect assumptions that have not been critically examined about ‘good’ collaboration processes being able to transform power disparities, negative historical relationships and facilitate authentic dialogue and understanding in intercultural settings.

Two other frameworks, one developed from a meta-analysis of collaboration literature in various policy sectors (Ansell and Gash 2008) and one derived from a combination of literature review and empirical evidence from integrated catchment management (Marshall, Blackstock and Dunglinson 2010), provide some insight into the interactions between conditions, process, context and outcomes. Ansell and Gash (2008, 550) note that their framework is represented as a cycle to highlight the iterative and nonlinear nature of collaboration processes. The Ansell and Gash (2008) framework consists of conditions and context (e.g., institutional design, facilitative leadership) influencing the collaborative process. The process component consists of trust-building and face-to-face dialogue (good faith negotiation) which contributes to commitment to the process (mutual recognition of interdependence), shared understanding and intermediate outcomes, and all of these in turn lead to other outcomes (Ansell and Gash 2008).

The Marshall, Blackstock and Dunglinson (2010, 77) framework consists of four elements: conditions (called precursors), external factors and enabling and core principles. In this framework, the actual process of collaboration consists of a number of enabling principles, such as institutional structure and communication and information flow, and also core principles, including, adaptive management, appropriate decision-making process and roles and responsibilities clearly defined. Again the authors include context, what they call external factors (e.g., the policy environment, funding availability, and willingness or capacity of stakeholders),
outside but influencing the process. The Marshall, Blackstock and Dunglinson (2010) framework is also not linear and attempts to reflect the complex nature of collaboration. This framework is noteworthy because it depicts the various elements including the process characteristics (or process elements that enable collaboration), core principles (outcomes of collaboration) and the setting and context, as “co-dependent or synergistic” (Marshall, Blackstock and Dunglinson 2010, 82).

According to these frameworks, good process principles, identified from previous studies, are always tempered or influenced by the broader context. This conceptualization is relevant to this study because it demonstrates that the context within which a collaboration process is operating matters a great deal. Any attempt to evaluate collaboration or understand causal relationships and variables must recognize that the collaboration context, process, and outcomes are interrelated. However, these frameworks overlook the values or worldviews of participants as components of context and do not identify how these differences influence conditions, process or outcomes or the function of collaboration. It is clear that accounting for specific contexts, conflict types and social/political and ecological realities in collaborative frameworks is still evolving (Weber 2008, 91).

2.4 Approaches to the Evaluation of Intercultural Collaboration

All of these approaches to collaboration evaluation offer some guidance for intercultural collaboration efforts. However, none of the approaches provide a suitable framework for understanding how process, context and outcomes are likely to interact when collaboration efforts are intercultural and thus likely to involve significant worldview differences. Previous research has clearly established that procedural considerations (the means) of collaboration matter to the development of outcomes. Likewise, contextual considerations, while they have not received as much systematic attention, are clearly influential to both collaborative process characteristics and their outcomes. Recent efforts to understand contextual variables and to incorporate process and outcomes into multi-criteria frameworks described above are more likely to reflect the complexities inherent in intercultural collaboration efforts. Understanding how differing social, economic, political and ecological realities and worldviews of the participants influence collaboration process and outcomes is still required.
In this section, I describe three other approaches to the evaluation of collaboration experiences, each of which attempt to incorporate what the proponent authors have called, cultural differences (Avruch 2000; Bell and Kahane 2004), frame differences (Gray 2004) or underlying worldviews (Docherty 2001). Each of these approaches supports a convergent theoretical understanding of collaboration where ‘what makes collaboration work’ is seen as primarily determined by how well the parties involved can reconcile their different perceptions of reality or ‘meanings’. In other words, these approaches all support the notion that a collaboration or negotiation effort is more likely to either transform the underlying conflict or to produce other tangible and intangible outcomes, if the participants understand, acknowledge, and then manage their different understandings, identities and worldviews. I review these approaches below because they offer some guidance for how to investigate intercultural collaboration outcomes.

The work of Avruch (2000) and others and several chapters in Bell and Kahane’s (2004) volume (including LeBaron (2004) and Kahane (2004)) describe a lack of awareness in the field of conflict resolution of the implications of cultural differences. For example, according to Avruch (2000), negotiation theory ignores the importance of cultural differences among parties (including mediators) as factors that influence the sources or outcomes of a conflict. Following this understanding, the recommendation which has emerged is that when parties to a conflict have different cultural backgrounds or are embedded in different social systems, before considering interests, values or even needs, conflict analysis and resolution should consider how the participants’ ‘deep culture’ or their ‘common sense’ shapes their actions, perceptions and expectations (Avruch and Black 1991, 28). Making a similar argument, Kahane (2004) suggests that acknowledging culture in conflict resolution and collaboration requires an analysis of social power and the power relations between groups. Kahane (2004) demonstrates that restricting emotion in negotiation and the promotion of active listening in conflict resolution (or back and forth communication and interjection) are two examples of how asymmetries of power shape the relations between parties to a dispute and can support forms of domination or have oppressive effects. In both examples, “power forces one party to set aside its culturally specific ways, while the other party has the luxury not only of having its style of conflict prevail but of believing that its style is culturally unmarked and universally applicable” (Kahane 2004, 42). LeBaron (2004, 15) also describes how an emphasis on timeliness and efficiency in conflict resolution processes often precludes expression of other values, such as relationship building, trust, and learning.
When conflict resolution and collaboration are seen from this cultural and power perspective, conventional definitions and approaches to evaluation are called into question. According to Kahane (2004) “what counts as just outcome, or a just process...(and) the terms of the conflict and its resolution” (42) cannot be taken for granted. If, as LeBaron (2004) posits, it is difficult to ignore the truism that “conflict resolution processes reflect the cultural assumptions of those who design them” (14) than conflict resolution process evaluation becomes equally marked by cultural assumptions and understandings. Essentially, these cultural critiques of conflict resolution suggest that a much more nuanced and complex understanding is required of the underlying cultural constructs that people use to understand, interpret, and affect conflicts and resulting negotiation efforts. Additionally, these critiques demonstrate that conflict resolution approaches and assumptions tend to favor dominant groups and their worldviews and thus culture and power are linked. Any evaluation approach needs to consider that one-size-fits-all approaches to process design and evaluation privilege dominate cultural understandings at the expense of the perspectives and interests of marginalized groups.

The work of Gray and others (Gray 2003; Gray 2004; Lewicki, Gray and Elliott 2003) focused on the frame differences of parties attempting to collaborate is also useful for understanding intercultural collaboration efforts. Departing from previous process-based explanations of collaboration (e.g., Gray 1989), these authors have developed a framework and methodology for identifying and analyzing participants’ frames in environmental conflicts and how those frames impact collaboration efforts. Drawing from frame analysis theory in anthropology and sociology, Gray (2003) describes a frame as a cognitive shortcut that individuals use to help understand and respond to events. In contrast to rational-choice theory, framing theory suggests that the way something is framed influences peoples’ choices and actions. In other words, individuals construct and reconstruct frames to determine “what exists, what happens, and what matters” (Gitlin 1980, 6). Because individuals have different beliefs, values and experiences they also construct and employ different frames to perceive and represent reality. When groups of individuals share the same frame(s) about an issue or situation they are said to be socially constructing reality (Gray 2003). According to Gray, when parties’ to a conflict have divergent frames, collaboration is difficult and conflicts become intractable (Gray 2003; Gray 2004). There are many examples of Aboriginal and non-Aboriginal groups with different frames or social constructions looking at the same problem differently and assessing the situation and what to do...
about it very differently (e.g., Ebbin 2011; Riemer 2004; Schreiber and Newel 2006) and thus framing theory seems particularly useful for understanding intercultural collaboration difficulties.

The central premise of ADR and consensus building theory is that parties to a dispute can, with a good process, for example, one featuring authentic dialogue, leave behind their entrenched positions to discover shared interests. In essence, they can reframe the conflict. Mediators may try to help the parties reframe negative characterizations of each other, or reframe parties stated positions into interests (Fisher, Ury and Patton 1991; Moore 1996). In contrast, framing analysis suggests that reframing is not easy for parties when conflicts are based on marked frame differences. Gray (2003), summarizing the literature, contends that conflicts rooted in moral or value differences (e.g., abortion or nuclear power), high-stakes distributional issues (e.g., resource-related disputes) or threats to health and human safety (e.g., pollution) are more likely to resist reframing. Similarly, Elliott, Gray and Lewicki (2003) note that if “parties believe that their own view is the only legitimate way to understand the issue in dispute, they cannot reframe” (424). Thus “perspective-taking” (Elliott, Gray and Lewicki 2003, 424) or standing back, observing and learning from those who hold different frames, which is required for reframing, may be difficult in intercultural contexts.

In particular, framing theory suggests that reframing divergent identity and characterization frames (common in intercultural collaboration efforts) is difficult. Reframing in these cases requires that stakeholders go beyond understanding why each stakeholder frames the dispute the way they do and requires acknowledgement; or the “recognition that other disputants’ views are valid and credible, especially in light of their vantage point and felt experience in the conflict” (Elliott, Gray and Lewicki 2003, 428). Thus reframing requires that parties acknowledge and appreciate the frames of their adversaries (Gray 2004). In many ways, the reframing that Gray and others are describing resembles what other authors have called social learning (e.g. Muro and Jeffrey 2008; Walker, Daniels and Emborg 2008). Specifically, transformative learning that changes routines, alters underlying values and leads to the development of innovative governance norms and protocols, or what social learning theorists describe as double-loop and triple-loop learning (Armitage, Marschke and Plummer 2008). This enhanced view of reframing as ‘perspective-taking’ and ‘acknowledgement’ is important for intercultural collaboration evaluation as it suggests that conventional approaches that focus on subverting rather than
exploring frame differences or deep value differences (e.g., avoiding defining the problem in terms of values (Moore 1996)) may not be suitable approaches for intercultural collaboration efforts.

Frame analysis research also contributes to the recognition of the role of power in conflict resolution and collaboration. Gray (2003) identifies a series of power frames used in collaboration efforts (e.g., authority or positional, resources (time, staff, money), expertise, personal, coalitional or relational, sympathy, force or coercive, moral or righteous and voice at the table). These power frames may be a useful starting point for looking at how various forms of power advance some frames over others in intercultural collaboration. However, researchers have not explored how the possibility and equity of reframing is influenced by participants’ power relative to other participants. There is some recognition that where power is not evenly distributed, where norms for communication may not be shared and where mediators’ own frames shape negotiation approaches (especially in intercultural contexts) reframing itself is subjective (Goldberg 2009).

Framing theory and the elicitation of frames to understand environmental conflict and its intractability dovetails with Docherty’s (2001) theory of worldview conflict analysis. Docherty’s (2001) analysis of the negotiations between the Branch Davidians and FBI agents in Waco, Texas highlights the necessity of understanding deeply held beliefs and underlying worldviews in conflict resolution. Docherty (2001; 2004) uses the term worldviewing to describe the active process of socially constructing reality and to emphasize that worldviews are emergent and continually being constructed and reconstructed by the social actors that hold them and as alternative worldviews collide, or contradict with one another.

When negotiating parties’ worldviews are in conflict, taking the conventional conflict resolution approach of reframing these conflicts as interest disputes or simply avoiding the parties’ underlying worldviews, values or perceptions (Fisher, Ury and Patton 1991; Moore 1996), privileges dominant or more power-wielding participants’ worldviews. By ignoring the symbolic (Docherty 2001) or worldview sources of conflicts, the conventional approach also results in participants continually “negotiating reality” (Docherty 2001, 107) or participants trying to convince other participants that their way of naming the world, ‘themselves’ and ‘others’ and their framing of the conflict is the only correct or true reality. Negotiating reality impedes
authentic dialogue and precludes substantive issue negotiation between the parties, which further contributes to the intractability of worldview conflicts.

In any conflict Docherty (2001) proposes that there are material (e.g., physical environment or objects), social (e.g., relationships) and symbolic (e.g., worldviews) sources of conflict. Most often, the symbolic sources of conflict are not acknowledged and negotiations proceed without participants, mediators or facilitators recognizing that the negotiations are occurring within a contested reality. Using Docherty’s conceptualization of conflict, success does not just depend on the parties’ reaching agreement on substantive issues and procedural aspects of the conflict but the parties’ ability to negotiate a reality (or socially construct a reality) that allows them to jointly problem solve. For joint problem solving and collaboration to occur, worldview differences must be addressed. This means that parties in a negotiation need to agree about what the conflict is about, how it should be addressed, and what their respective roles are and they also need to address their epistemological and ontological differences. Docherty (2001) suggests that the process of managing worldview differences in a conflict, or what she calls “negotiating reality” is distinct from “issue-specific negotiation” (53) and that issue-specific negotiation can only occur within a negotiated reality. In other words, parties must acknowledge and manage symbolic or worldview differences before they can reach agreement on specific material issues. If worldview differences are not significant or the parties have successfully managed their worldview differences they can engage in interest-based negotiation. If worldview differences are significant and parties fail to manage their worldview differences they are continually negotiating reality rather than focusing attention on joint problem solving. Parties often move back and forth between negotiating reality and issue-specific negotiation without being aware of the distinction (Docherty 2001). Likewise, parties in a conflict do not need to convert one another to their worldview but it is necessary for the parties to recognize and acknowledge their worldview differences.

Docherty’s (2001) conceptualization of worldview conflicts establishes that everyone involved in a conflict resolution process, including disputing parties, conveners, mediators and facilitators, needs to recognize that their own reality, is just that, one version of reality. Dominant worldview holders (those holding overlapping worldviews which are more common or shared by people who hold more power) – government or industry representatives in intercultural natural resource management collaborations – often fail to recognize that how they do their work and how they
attempt to resolve conflicts are shaped by their worldviewing. Dominate worldviews control how conflicts are approached, how problems are identified, as well as, what is communicated, what knowledge is considered valid and what responses are appropriate. Correspondingly, less dominant worldviews are ignored or marginalized in conflict resolution processes, because these worldviews are poorly or not at all understood or recognized as valid.

The three approaches discussed above, which focus on cultural considerations, frames and worldviews differences in collaboration efforts, all highlight the necessity of reconciling different problem perspectives or the underlying values, cultural understandings, frames and worldviews of participants for collaborative outcomes to emerge. For brevity, I group these different but conceptually analogous considerations under the term “managing worldview differences” following Docherty (2001). How to manage worldview differences in the context of Aboriginal and non-Aboriginal natural resource management collaboration efforts remains unclear. As a first step, I propose that it is important to determine if the process criteria derived and espoused by conflict resolution theory and practice can help participants to hear and understand each other’s worldviewing differences, when conflicts are intercultural.

2.5 Previous Intercultural Natural Resource Management Collaboration Research

This section reviews empirical examinations of intercultural natural resource collaboration efforts. These studies have begun fill in the puzzle of what other issues beyond the characteristics of the process are likely to be more salient in cases of intercultural collaboration. These studies demonstrate that if collaboration efforts do not address and accommodate cultural differences, as well as differences in power and status between Aboriginal and non-Aboriginal participants, both their equity and effectiveness are questioned. Similarly, collaborations are more likely to lead to a shared understanding of the problem and joint problem solving when worldview differences are acknowledged and reconciled. I also review related literature questioning the equitability of collaboration approaches, which provides insight into a suitable approach for intercultural collaboration evaluation.

Studies investigating dispute resolution processes between indigenous communities, natural resource industry representatives, government managers or other stakeholders confirm that, in general, cultural differences have not been accounted for in dispute resolution processes (Darling
Likewise, different worldviews, negative historical relationships, and a “legacy of distrust” (Gibson, Higgs and Hrudey 1998, 30) have been obstacles to cross-cultural conflict resolution.

Empirical investigations of intercultural collaboration efforts in Canada and elsewhere (e.g., Aboriginal and industry partnerships, co-management agreements arising from comprehensive land claims, environmental review processes, or collaborative management committees) also confirm that differences in how indigenous and non-indigenous collaboration participants perceive the environment and their relationship to it limit successful intercultural collaboration and that indigenous knowledge and perspectives are often marginalized by the interaction of political, economic, and cultural factors including dominant conceptions of ‘natural resources’ and their ‘management’ (Coombes and Hill 2005; Cronin 2005; Donoghue, Thompson and Bliss 2010; Ebben 2011; Kendrick 2000; Lane 2003; Luig 2011; Natcher, Davis and Hickey 2005; O’Faircheallaigh 2008; Pinkerton 1992; Riemer 2004; Tipa and Welch 2006). For example, examining a co-management arrangement involving equal representation from Aboriginal and non-Aboriginal community members, Natcher, Davis and Hickey (2005) find that the structure and formal organization of the co-management board results in differences in power and status between the Aboriginal and non-Aboriginal representatives and this in turn manifests in non-Aboriginal knowledge being considered of most value to the management process and Aboriginal representatives’ knowledge and experience related to their cultural identity being dismissed “or treated as anecdotal accounts… (which) have little relevance to the contemporary management process” (246). The authors conclude that the success of co-management depends on the “participants’ abilities to engage rather than subvert differences in knowledge and cultural experiences” (Natcher, Davis and Hickey 2005, 241).

Experiences with Aboriginal co-management in Canada have demonstrated that collaboration which continues to operate within state management institutions and use non-Aboriginal constructs to determine what is managed and for what purposes, does not achieve the parallelism that Aboriginal people seek. It is also clear that the delegation of some management tasks to Aboriginal people or the allocation of access to resources for Aboriginal people without addressing the underlying relationship, power and value differences of the parties continues to challenge the equity and effectiveness of these processes (Chapeskie 1995; Mabee and Hoberg 2005; Nadasdy 2003; Passelac-Ross 2008; Spak 2001; Stevenson 2004; Stevenson 2006; Tresder
and Krogman 2002; White 2006). Collaboration based on predetermined notions of how Aboriginal ‘values’ are to be defined and preserved does not approximate the ideals of co-existence, nor does it provide a suitable scope for Aboriginal and treaty rights or Aboriginal knowledge (McGregor 2000; Smith 2007). Co-management has been even described as potentially the most “insidious form of colonization” (Stevenson 2004) because it may actually serve to further marginalize Aboriginal participants by requiring that they filter their worldviews and values through the dominant resource management discourse or because it reinforces the asymmetrical power relationships that it purports to address (Stevenson and Natcher 2009, 10).

Other authors have found that intercultural collaboration success is positively correlated to a number of factors. Collaboration and the development of collective action are possible when parties develop a shared ideology (Waage 2001), construct a place-based identity frame (Docherty 2004), and include ‘cultural mediators’ who can communicate across worldviews (Ebbin 2011). Researcher also suggests that when participants commit to adaptive management and monitoring past efforts (i.e., social learning) (Diduck et al. 2005) and where collaboration is sustained for long time periods and supported by an enabling policy context it contributes to positive social and ecological outcomes (Armitage et al. 2011).

Taken together this literature on intercultural collaboration experiences demonstrates that qualitative studies of real world intercultural collaboration efforts are sorely needed and that qualitative interviews and ethnographic methods are particularly suited to reveal complexities related to different participants’ perceptions of collaboration processes, outcomes and their determinants. In particular, Aboriginal peoples’ perspectives on their experiences with collaboration have received little attention. Second, these studies confirm that context, in the form of the socio-political setting, cultural differences, underlying worldviews about nature and human and nature relationships influences how and which problems are identified, whose understanding and knowledge are considered valid, and ultimately how participants perceive intercultural collaboration processes and their outcomes. Finally, these studies demonstrate that we still do not have a good understanding of how the characteristics of the process affect the expression and acceptance of worldview differences or how process and context factors interact to influence how participants ‘manage their worldview differences’.
2.6 Approach Taken in this Study

The literature demonstrates that intercultural collaboration processes need to be understood in their social, political and cultural context. Following Docherty’s (2001) conceptualization of worldview conflicts, the collaboration processes examined in this study are responses to forest and resource access and use conflicts (material). They are between Aboriginal people and non-Aboriginal government and industry actors which each see themselves as the most appropriate and legitimate forest decision-makers based on their interpretations of their sovereign and legal rights, with the former having experienced a colonial relationship based upon dispossession and oppression resulting in mutual lack of understanding and distrust (social). Finally, these groups possess very different worldviews, including diverse views of nature, and their roles and responsibilities relative to other parts of nature (symbolic).

In Ontario, Aboriginal communities are treaty partners with governments and thus collaboration efforts are inherently political. There is little shared understanding about what ‘collaboration’ means, what it should entail and what it should accomplish. Collaboration is one strategy among many employed by Aboriginal communities for asserting their sovereignty, regaining decision-making authority and developing community-based capacities. For the Provincial government and resource industries, collaboration with Aboriginal people is not necessarily premised on the notion of the validity or authority of Aboriginal knowledge or decision-making but rather on the pragmatic need to meet their legal obligations related to constitutionally protected Aboriginal and treaty rights and to resolve conflict and incorporate Aboriginal ‘values’ to achieve management direction consensus. When formal collaboration efforts do occur, as in the case of the negotiation processes that are the subject of this study, they often begin with no formal mandate, no clear terms of reference, and uncertainty about each party’s scope, rights and responsibilities. Very little can be taken for granted and few shared criteria exist. Even seemingly neutral procedural expectations, for example, that a collaboration process should strive to be time-efficient, may not be shared in these cases. The processes examined in this study are thus best understood as examples of “iterative problem-solving” (Carlsson and Berkes 2005, 73) and not specific power sharing arrangements or particular institutional forms. Seen this way, the goal of collaboration is to create shared meaning of the problem from which to collectively act to address the problem.
Previous studies of non-intercultural collaboration efforts have considered the process characteristics (the means) of the collaboration and the context of the collaboration important to determining collaboration outcomes. This literature review has demonstrated that the variables involved in collaboration are complex but intercultural collaboration processes remain largely unexamined and thus variables here are still unspecified. Insights from culture, frame and worldview considerations in conflict resolution and collaboration demonstrate that collaboration success may depend on how well participants manage their different and often competing understandings (of nature, of their identities, of their rights and responsibilities, of the problem and appropriate responses) and acknowledge and address their often unequal resources (sources and forms of power, capacity and authority). The limited literature on intercultural collaboration also emphasizes that the ways in which worldview differences are acknowledged and reconciled are likely important determinants of intercultural collaboration outcomes. Following from these conclusions, it is not possible then to simply look at the end products of collaboration or the criteria of good collaboration processes established in the literature to understand intercultural collaboration outcomes and factors influencing outcomes. Rather, it is important to look at the actual practice of collaborating and the conditions that diverse collaboration participants consider facilitated or discouraged collaborative outcomes, particularly the development of shared understanding of the problem, or mutual understanding of each other’s perceptions.

In this study, the specific exploratory research questions developed were: how do participants perceive the outcomes of the intercultural collaboration processes that they were involved in and what factors do participants perceive as affecting the intercultural collaboration outcomes. It is important to note that the outcomes identified by collaboration participants are described in this thesis using similar terms as the characteristics used to evaluate collaboration (e.g., Plummer and Armitage 2007). However, the research questions above are not concerned with ‘evaluating’ the collaboration cases but rather with explaining how the characteristics and parameters of collaboration develop and how participants perceive these outcomes.

The processes I examine in this study were responses to Aboriginal forest-related protest and a condition arising from the 1994 Class Environmental Assessment of timber harvesting on Crown lands (known as Condition 77 of the Timber EA), which required OMNR District Managers to facilitate forestry-related economic development opportunities for First Nations. As such, they both involved District-level representatives of the OMNR, the forest industry and a First Nation
sitting down at a table to attempt to find some common ground from which to address joint problems. However, the structure and approach to the negotiations varied between the cases.

The 1997 CLFN negotiation process was one of the first formal collaborative processes established between local District OMNR staff, industry representatives and a First Nation following the new *Crown Forest Sustainability Act* (1994) (CFSA) legislation and Timber EA requirements (EAB 1994). It was not possible to determine definitively if the CLFN case employed some or all of the criteria of ‘good’ collaboration processes identified in the literature because too much time had passed since the CLFN collaboration process had occurred. CLFN participants were not able to recall the details of the negotiation process and I was not able to observe the previous five years of negotiation meetings or interaction directly or review the early negotiation minutes. The picture that emerged of this negotiation process from CLFN participants was that they may have employed some ‘good’ collaboration process criteria, for example, they jointly selected an independent facilitator, and they ensured representation of all relevant parties (including Indian and Northern Affairs Canada (INAC), the federal agency responsible for Aboriginal policy). It was not possible to establish whether other ‘good’ process criteria were met in the CLFN case and participants offered different perceptions of whether the discussion could be characterized as meeting the conditions of ‘authentic dialogue’ identified in the literature, such as whether assumptions could be questioned, whether full information was shared and whether participants discussed the scope.

However, in the more recent MCFN case, negotiation preparation documents, negotiation updates and participant interviews confirm that the parties did make explicit efforts to focus on interests and not positions, to understand each parties’ values that motivate decision-making, to find ways to maximize joint gains, to establish a mutually agreed upon scope, and to employ good interactive discussion techniques including frequent formal and informal dialogue, questioning of assumptions and communication with constituencies. Thus I asked a final explanatory question to begin to understand whether the ‘good’ process characteristics employed in this case explained the variable outcomes identified in the two cases. Specifically, I asked: how do the process characteristics found in the MCFN case contribute to the outcomes identified by participants. In the following section, I review the methodological approach and research design employed in this study to answer the three research questions described above.
3 Research Methodology

3.1 Overview of Chapter

This chapter describes the methodology chosen including a justification of the research design and an explanation of the data collection procedures and approaches to ensure verification. A discussion of the concerns related to role of the researcher and confidentiality is followed by a description of the data analysis.

A qualitative case study approach was used to examine the outcomes and the factors affecting the outcomes of two forest-related negotiation processes involving Aboriginal peoples, the OMNR and representatives of the forest industry. The primary source of data was 27 semi-structured interviews conducted during 2003 in the two case study settings and associated negotiation preparation documents and draft agreements.

3.2 Justification of Research Approach

The methodological approach is shaped by my philosophical assumptions, the nature of the research questions, and the social context. I began the inquiry with a naturalist worldview (in contrast to a positivist worldview) and several related assumptions, which are articulated below to provide a rationale for the methodological choices in this study.

1. Reality is subjective and continuously re-constructed, or created, by social actors based on their interpretations and perceptions of it (Berger and Luckmann 1966). Thus, there is no uncontested reality and groups will compete over the interpretation of social problems (Spector and Kitsuse 2009) as they try to manage their meaning differences.

2. Reality, because it is constructed, is also contextual. Humans ascribe meanings to things by engaging in social interactions, or symbolic interaction, and they act towards people or things based on the meanings those things have for them (Blumer 1969). For example, a ‘forest’ can mean a clump of “logs standing vertically” (Hammond 1992, 9) or an “interconnected web of producers, consumers and recyclers, connected in time and space” (Hammond 1992, 77). The meaning an individual holds for the ‘forest’ arises from social interaction experiences such as culture, institutions and language. Accordingly, an individual will act depending on the meaning
they hold or their version of reality. To understand the full complexity of social interactions and constructed realities they must be interpreted within their real-life contexts.

3. Likewise, ‘how’ and ‘why’ questions, which seek to explain the causal links in real-life events, benefit from being examined inductively rather than by beginning with a theory and deducing testable hypotheses (Yin 1994, 15). The social world should be viewed as a complex system rather than as a set of predefined discrete variables that can be measured and manipulated following a positivist model.

4. Finally, the researcher cannot assume objectivity because their own frame or constructed version of reality shapes the research topic, methods and interpretations. Examining the social world requires an interactive and reflexive approach in which the researcher’s position is explicit (Rossmann and Rallis 2003).

As a consequence of these assumptions, I sought to understand the empirical world through interviews, documents and observations and understand the events through interpreting the meanings people ascribe to them. I assumed that the phenomenon under investigation – the experiences and interactions of Aboriginal, government and industry representatives in forest-related collaborations and how and under what conditions these complex social processes produce collaborative outcomes – was most meaningfully and appropriately examined using the rich, textual data provided by qualitative research. Additionally, the social context required a methodology that would not ignore Aboriginal ways of knowing and relating to the world but rather ensure that these perspectives were acknowledged and explored. Following an inductive approach, no formal hypothesis was developed prior to the study but the research did rely on the literature to guide the research questions, data collection and analysis (Yin 1994).

3.3 Development of the Research Design

The research project began with my interest in understanding why ‘meaningful’ inclusion of Aboriginal peoples in forest management in Ontario had been so elusive. Despite some emerging business relationships, on-the-ground progress fell short of Aboriginal peoples’ expectations and their interpretation of Crown responsibilities. Aboriginal communities and government and forest industry representatives all expressed feelings of frustration and resentment with the situation and towards each other. I began looking for examples of ‘collaboration’ between First Nation
communities, forest industry and OMNR that could serve as case studies to illuminate collaboration challenges and lessons.

Initially, I developed an understanding of the number and types of collaboration efforts between First Nation communities in Ontario, the OMNR and forest companies holding SFLs in the Area of the Undertaking. No study had examined previous or on-going collaboration efforts in detail, so it was difficult to determine if any partnerships identified from informal discussions could serve as case studies or if collaborations reported in the available literature (Graham 1999; NAFA 1995; NAFA 1996; NAFA/IOG 2000; OMNR 2002a) were suitable for this research study. In particular, I was interested in collaboration efforts with the following characteristics: 1) involving government, forest industry and First Nation communities, 2) comprehensive in scope (including issues of specific interest to the Aboriginal communities, such as access to forest resources, Aboriginal and treaty rights, involvement in planning and management, and training and employment), and 3) interactions and discussion were sustained for at least one year in order to provide suitable depth for examination.

I undertook a preliminary phone survey in April 2003 to identify collaborations that met these criteria. To ensure a manageable study area I focused only on the 18 First Nation communities in Northeastern Ontario, specifically those which were within the Treaty No. 9 area and whose traditional territory also overlaps with the AOU. This area was also selected because Nishnawbe Aski Nation (NAN), the provincial territorial organization representing Treaty No. 9 Aboriginal communities, was interested in understanding the outcomes of previous collaboration and partnership experiences in the AOU to guide community approaches in the Northern Boreal. From this survey, it was determined that many communities had been involved only minimally in discussions with OMNR or forest industry and only a few held third-party licenses or had other contracts and joint ventures with forest industry. However, four multi-party, comprehensive collaborations, which had been going on for more than one year, were identified. Only CLFN, MCFN, Taykwa Tagamou First Nation (formerly New Post) and Wahgoshig First Nation were in negotiations or had recently developed agreements to address cultural and economic concerns with the forest companies holding the SFLs overlapping their traditional territories and with the
District Manager of the associated OMNR District. OMNR staff later confirmed these four cases to be the only collaborations of their kind in which the OMNR was involved in Ontario⁴.

3.4 Justification of Case Study and Selection of Locations

Case study research offers a framework for developing a broad contextual understanding of a particular phenomenon. A case study was suited to my purpose because I was seeking to answer questions about how each participant experienced the collaboration process and how participants understood the outcomes and which factors the participants perceived as having influenced the outcomes of specific collaboration efforts. As Yin (1994) explains a case study has a distinct advantage when “a ‘how’ or ‘why’ question is being asked about a contemporary set of events over which the investigator has little or no control” (9). In these situations a survey approach would be inappropriate because the number of variables will be far greater than can be controlled for.

The research design selected was a holistic (single unit of analysis) multiple-case study design (Yin 1994). With multiple-case study designs Yin (1994) cautions that the cases should be carefully selected following replication logic. Therefore, a case should be selected because it either predicts similar results (literal replication) or produces contrasting results but for predictable reasons (theoretical replication) (Yin 1994). In this way compelling support for the propositions or theories will be provided if the cases turn out as predicted. If the cases are contradictory and not for predicted reasons then the initial propositions must be modified and retested using other cases. However, real-life conditions constrained the ideal research design described above in this study because few cases of the phenomenon existed and those that did exist were contextually variable or not available for investigation.

Initially, I was interested in drawing from all four collaboration processes and investigating more specific questions, possibly using some other qualitative methods, such as a survey administered

⁴ Multi-year, tri-partite facilitated negotiations aimed at developing a collaborative agreement, in response to Condition 77 and later Condition 34, have for various reasons, including the economic downturn in the forest industry, largely fallen out of use. The MCFN process represents one of the last of these kinds of negotiations. Since 2003 there have been no new collaboration efforts meeting the characteristics of the cases examined in this study.
to all participants. I approached the band council and Chief of the First Nation communities involved in the four potential cases to seek their endorsement of the research. For each community I prepared a draft research protocol that attempted to predict possible research concerns, as well as a brief outline of the research purpose and procedures for the community membership. The draft research protocol was modeled after those used by other qualitative researchers engaged in research with Aboriginal communities (Appendix A for example). I was invited to attend a weeklong series of events focused on the community’s involvement in various forestry partnerships in Constance Lake in May 2003. During my stay in the community, I spoke with community members, forest industry managers and OMNR District staff that had been involved in the coexistence agreement negotiations and various aspects of forest management planning and the community’s forest harvesting business and established contacts for future data collection. I made brief presentations to the Chief and councilors and was invited to return and continue my exploration of the collaboration efforts in the area. The draft research protocol remained unsigned but was discussed with the Chief who did not have any concerns about the research, except that the Chief, council and community be given copies of any final research products. I received a written letter of support from the CLFN for a project funding application in the spring of 2003.

I provided a draft research protocol and research outline to the councilor responsible for lands and resources for MCFN. I was invited to visit the band council offices to conduct the research in October 2003. At the MCFN administrative office I gave a brief presentation to the council and received their support to proceed with interviews and other aspects of the data collection. These initial meetings with the leadership of both CLFN and MCFN demonstrated that the endorsement of the community leadership was critical for the research project as it provided easier access to First Nation participant interviewees, access to negotiation meeting minutes and draft agreements and opportunities for direct observation of meetings and contextual information on the community’s perspectives on what the real ‘problems’ related to the collaboration were. Despite several attempts, I was not able to obtain research endorsement from the Chief and council of the two other potential case study communities. In February 2004, I abandoned my attempt to draw on these collaborations as potential case studies and modified my research design accordingly.

The research design was developed so that the two exploratory questions were asked across both the CLFN and MCFN cases with the goal of developing theory rather than testing it. Conversely,
the more explanatory question, related to the process characteristics found in MCFN, was
developed from existing theories about good process criteria in non-intercultural collaboration
and was asked of this case only. Given the real-life design constraints described above, the cases
examined here are not ‘samples’ of a larger population (Yin 1994). Statistical generalizations in
case study research are not possible but reasoning by analogy allows the researcher to claim
replication if two or more cases are shown to support the same theory and likewise the
application of lessons learned in one case to apply to similar cases (Rossman and Rallis 2003).
The two cases are also justified because they can be considered ‘critical cases’ (Miles and
Huberman 1994) as they were among only four instances of multi-party, comprehensive,
sustained collaboration efforts that have occurred and can illuminate the larger phenomenon of
intercultural natural resource collaboration (Creswell 1998).

The unit of analysis for each case was the collaboration process. I defined this as a temporal
event involving Aboriginal, industry and OMNR partners in sustained, comprehensive discussion
regarding forest-related issues with identifiable steps and an anticipated outcome. I also bound
the two cases by time (Yin 1994) and defined the beginning of each case the first formal
negotiation meeting between the parties. Because discussions were still ongoing to various
degrees in both cases at the time of the fieldwork, the end of each case was defined as the time
when the fieldwork was completed in early 2004. Thus participants’ perceptions of outcomes
thus only relate to those outcomes that had emerged during this time; other collaboration
outcomes or interactions occurring after the fieldwork was conducted were not expressly
investigated. There were other discussions between these parties going on before these specific
processes occurred and concurrently that were related to similar issues (e.g., formal consultation
requirements for forest management planning) but these were not considered as part of this case
but as part of the context.

Case study research often faces several criticisms, including that conclusions are not
generalizable to theory or other cases, that replication is not possible, and that they are biased or
otherwise not reliable approaches. These criticisms often arise because the researcher has not
been explicit in identifying their methodological procedure and reasons for those choices, or
because critics wrongly apply quantitative constructs, like a sampling logic to case studies. Thus
it was important to outline the reasons a case study design was selected for this investigation as
well as to describe the reasons for selecting the particular case study locations in this study.
3.5 Data Collection Procedures

3.5.1 Interviews

The major source of data for this study was semi-structured or “focused” (Merton et al. 1990, cited in Yin 1994, 84) interviews with collaboration participants from the First Nation, OMNR, and forest industry, as well as the negotiation facilitators and consultants. An interview guide organized the interviews (Appendix B for Interview Guide) with questions developed to understand the participants’ role in the collaboration process, the structure of the process, their expectations and satisfaction with the process, the presence or absence of collaboration characteristics identified from the consensus building and intercultural collaboration literature (Chapter 2). I also asked participants about their perceptions of the outcomes of the collaboration and the factors participants felt facilitated or discouraged the process and its outcomes. While the interview guide served as a template for the interviews, each interview was different and the structure and order of the questions were tailored to the interviewee. Several open-ended questions were asked so it was quite common for the participants to raise other issues, which were also explored by further questioning. Throughout the interviews I tried not to overlook issues that were most important to the participants by maintaining a more conversational atmosphere, explaining why I was asking certain questions when the questions did not seem relevant to them and by encouraging participants to tell their own version of the events.

Following the procedures of the University’s Ethics Review Committee for the Social Sciences and Humanities the interview guide used in this study was approved prior to commencing research in April 2003.

The sampling strategy for participants was also purposeful and I attempted to speak with all individuals who had been involved in the collaboration process. I obtained the names and contact information for 34 potential interviewees for both cases. Seven of these individuals could either not be contacted or declined to participate. In CLFN, the 2 INAC representatives that were involved at various times, 1 industry participant and 1 facilitator were not interviewed. In MCFN, 1 industry participant, and 2 OMNR participants were not interviewed. All of the interviews were conducted in locations convenient for the participants, for example, their offices, or homes. All interviews were tape-recorded and later transcribed. A total of 27 interviews were conducted and this produced over 400 pages of transcribed text.
Interviews with CLFN collaboration participants were conducted between June 2003 and November 2003 while I resided in the community and when I visited for shorter trips. Most interviews were conducted on the Constance Lake reserve, near the town of Calstock or in the town of Hearst and one was conducted in Thunder Bay. Interviews with MCFN collaboration participants were conducted during a series of visits to Sault Ste. Marie, Wawa, and Chapleau in Ontario and Royun-Noranda, Quebec in October 2003 and November 2003. Table 3-1 summarizes the number of interview participants by sub-group and additional sources of data by case study location.

### Table 3-1: Summary of data sources

<table>
<thead>
<tr>
<th>Sources of Data</th>
<th>CLFN</th>
<th>MCFN</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Semi-structured interviews:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First Nation participants</td>
<td>8</td>
<td>5 (including one facilitator)</td>
</tr>
<tr>
<td>Industry participants</td>
<td>6 (two together)</td>
<td>1</td>
</tr>
<tr>
<td>OMNR participants</td>
<td>3 (including one facilitator)</td>
<td>4</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>17</td>
<td>10</td>
</tr>
<tr>
<td><strong>Observation of meetings:</strong></td>
<td>Yes (7 in total)</td>
<td>No (meetings stalled)</td>
</tr>
<tr>
<td>- 1 workshop related to forest management planning (June 26)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- several meetings related to Mammamattawa and coexistence agreement (May 1 BOD meeting, May 1 presentation to employees, May 1 presentation to BOD, May 3 community forestry meeting, July 14 BOD meeting)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- 1 meeting related to Eagles Earth (July 15)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Review of negotiation documents and meeting minutes:</strong></td>
<td>Yes (only minutes from December 2000 onwards, draft agreement 8, 9 and 10, Mammamattawa shareholders agreement and BOD meeting minutes from 2002-2003).</td>
<td>Yes (MCFN ‘forestry newsletters’ from March 2001; First Nation negotiation strategic plan; model draft 12 and 19; OMNR mandate letter; OMNR forestry agreement negotiation strategy, 2002)</td>
</tr>
</tbody>
</table>

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5 All participants of Aboriginal descent were labeled as ‘First Nation’ regardless of where they worked.
3.5.2 Triangulation and Other Sources of Data

This study used other sources of information or triangulation of information (Stake 1995) for the verification of research findings. The triangulation of data sources is often prescribed as a tactic to address problems of validity and reliability in qualitative research (Yin 1994; Stake 1995). Validity relates to whether the methods of measurement are accurate and whether they are measuring what they are intended or claiming to measure. Reliability relates to whether procedures of a study are replicable. The concepts of validity and reliability are grounded in a positivistic philosophy of research and thus these concepts and the usual procedures for establishing validity and reliability are contested in qualitative research. Some qualitative researchers reject validity as a criterion for judging research, arguing that “understanding” rather than convincing is the purpose of qualitative research (Wolcott 1990) and that the “trustworthiness” of a study is a more appropriate concern (Creswell 1998; Lincoln and Guba 1985) Nevertheless there is a recognition that using multiple sources of evidence is a useful procedure for verification because “multiple sources of evidence essentially provide multiple measures of the same phenomenon” (Yin 1994). During the course of the fieldwork, informal interviews and direct observation were conducted at various meetings and collaboration documents were reviewed as additional sources of evidence. Data from these sources took the form of field and document notes and were combined with interview transcriptions in the analysis.

During my research with CLFN, I spent time at the band office and school and was invited to observe meetings between the community, the forest industry and the OMNR (Table 3-1). I observed several meetings of the Board of Directors of Mammamattawa Inc. (the joint venture forestry company), an industry-organized certification workshop with local stakeholders and an elders’ planning workshop for the Eagles Earth Cree and Ojibway Historical Centre (hereinafter Eagles Earth). I also had dinners and went fishing with community members, attended the community’s 60th anniversary festivities and helped clear brush for the community pow-wow. This time spent in the community was important to helping to learn more about the community’s

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6 Eagles Earth planning was underway at the time of this study. The $12 million dollar tourism facility, operated by CLFN, officially opened in 2007. Eagles Earth is located approximately 20 minutes west of CLFN on the Shekak River.
history and the factors contributing to the natural resource related disagreements. I visited forest harvesting locations and I also toured local mills with industry representatives from Calstock and Hearst. I also spent time in Hearst speaking informally with individuals responsible for writing the Hearst forest management plan. These visits helped to illuminate the local context for the collaboration effort.

In Sault St. Marie, I spent several days in the MCFN band council administrative office chatting, reading relevant documents and discussing the community’s history and the collaboration informally with community members and band councilors. There was no opportunity in the MCFN case to view the collaboration parties’ interactions because the parties were awaiting an OMNR re-draft of the document they had developed during the negotiation process and it was uncertain when this would happen.

I was able to review several MCFN confidential and non-confidential primary source documents including, collaboration strategy preparation documents, collaboration agreement drafts, and other documents produced by the collaboration parties related to the collaboration’s history, process, or outcomes. These provided valuable information about the participants’ intentions, the procedures followed and the progress of the negotiation. At CLFN, I was only granted access to the most recent formal negotiation meetings minutes and draft agreements because these were the only records that the community possessed at the time. I was informed that all community records related to the blockade and negotiation process in ‘the forestry file’ were destroyed in a fire in a storage trailer on the reserve. I also examined other documents relevant to both cases, including forest management plans, public consultation letters, independent forest audit reports, certification reports, and other relevant public documents. Data from this document review took the form of document notes and was coded along with interview data as another source of evidence and to corroborate findings from interview data and field notes.

3.5.3 Role of Researcher and Confidentiality

Qualitative research recognizes that pure objectivity is impossible and that the researcher’s actions, values and opinions affect what questions are asked, how they are asked and how data are collected and interpreted. In many ways a researcher also influences the events, responses and actions of the individuals and cases they are studying. Therefore it is critical to recognize that my position and perceptions likely influenced how people related to me, what information
they provided and how I interpreted it. During my time in Constance Lake, and the band offices of Missanabie Cree, and while visiting OMNR and forest industry offices I was often asked why a ‘young, white, girl from southern Ontario’ was interested in research in this area. In response to these questions I attempted to explain my own assumptions about the critical role of Aboriginal peoples in forest decision-making. However, because I was not involved in either negotiation process, or a forester, or of Aboriginal descent, nor a northerner, I epitomized an outsider perspective. I think my ‘outside-ness’ had several distinct advantages for data collection. As an outsider interested in Aboriginal and non-Aboriginal forest collaboration progress my conversations with participants invariably began with a statement such as, “let me tell you how it is…” or “here is what happened…”. In this way, in almost every interview I was given rich, complex interpretations of ‘the whole story’ from various perspectives. Being an academic with no ties to the profession of forestry, the region, the First Nation, or the outcomes of the process also allowed me access to participants who may have otherwise been reluctant to speak openly. Of course, having little connection with the people and region was also a disadvantage. It is likely that interviewees modified their responses because of their perceptions about my affiliations or my lack of affiliation to any one of these groups. Likewise, it is likely that a more participatory approach to the research or my direct involvement in either case would have provided additional insights or opened up different research questions. Almost all of the participants in both cases viewed themselves as being part of a much bigger and grander national (or international) dispute about how to structure Aboriginal and non-Aboriginal relationships. Their interest in local solutions for how to interact on the ‘frontlines’ of this dispute would likely have spurred more locally applicable research.

All participants were informed of the risks of participating, and their written informed consent was obtained following the University’s ethics approval procedure (Appendix C for informed consent form). All participants consented to taking a digital recording of the interview. Participants were informed that they could skip any questions they did not wish to answer or choose to stop the interview at any time. On two occasions in one interview the interviewee requested that I stop the recording because they wished to communicate sensitive information. I did not include this information in the data to be analyzed. All interviewees were assured confidentiality and that their names and interview data would not be made available to anyone other than the project investigators. Asking transcribers to sign confidentiality agreements as a
condition of their work contract and assigning each interviewee a number code to replace their name maintained anonymity. I and two other transcribers later transcribed all interviews. Despite these formal procedures, obtaining informed consent in all aspects of the study was difficult. For example, while I had obtained consent from each interviewee and had been endorsed by the band leadership, I spoke with many other individuals informally while visiting and working in the communities. I dealt with this by being up front about my purpose at all times when I did not already have an individual’s written consent and maintaining the same confidentiality procedures for these informal discussions.

3.6 Data Analysis

Interview data were transcribed and each interviewee was assigned a number and identified by their sub-group (e.g., First Nation 01). For some interviewees, I had a hard time assigning them to any one sub-group because the individual may have had various affiliations. I also faced the potential problem of revealing an individual’s identity by revealing their sub-group coupled with their interview comments. For example, a First Nation member who was employed by the OMNR or a previous (non-Aboriginal) industry employee who was working for the First Nation would both have been identified by their comments if I had labeled them as representatives of the OMNR or the industry, respectively. I solved both of these problems by labeling First Nation members as ‘First Nation’ regardless of where they worked and labeling consultants by whom they worked for at the time (First Nation, OMNR or industry). This resulted in one individual who was not a First Nation members being grouped with the First Nation representatives and while this may have presented some problems for developing sub-group themes it seemed the only way to get around the issue of revealing interviewee’s identities. The interview transcripts and document notes were organized by case into two main project databases in the qualitative data analysis program QSR NVivo 2. NVivo 2 was used to store, search, annotate and write memos from the data (interviews, field notes and document review) and to code this text under different labels and organize these labels into hierarchical structures to represent the ideas discovered through interpretive coding. Below I describe the iterative coding process used in this study.

Step 1: Initial Coding
I began by reading all of the transcripts several times. Next I carried out line-by-line open coding by assigning labels to text (datum segments) that exhibited similarities. As I generated labels (called nodes in NVivo 2) and coded text into these specific nodes, I also organized the nodes hierarchically, creating labels for main categories of nodes. Only two levels of nodes were created in the coding process, except in one instance where a four level node hierarchy was created (e.g., text related to the development of a forest-harvesting company in the CLFN case was organized hierarchically under ‘outcomes of negotiation’/‘economic development’/‘forest business’/‘structure and management problems’). The main categories of nodes for example, ‘outcomes of negotiation’ were essentially organizational place markers related to the main objectives of the study (Chapter 1) because no text was coded directly at these nodes but rather to a more specific node. As I coded more transcripts, the number of nodes and categories grew. Eventually the number of nodes and categories leveled-off and as I coded the last interview transcripts for each case no new nodes were needed and all the text could be assigned to existing nodes.

I coded all participants’ (First Nation, government, industry) transcripts together (for each case) and I also included both supportive and negative statements and reactions under the same nodes. For example, for the CLFN case, text about the community’s involvement in forest management planning after the negotiation process, including “the plan was already there by the province and the industry without any input from the Aboriginal community” from a First Nation participant and “we do send Constance Lake representatives to forest management planning courses and we pay for them to be there” from an OMNR participant, were both coded under the main node ‘outcomes of negotiation’ and then the specific node ‘community participation in forest management planning’.

At the same time I tracked evolving category grouping justification and node descriptions by creating ‘journal’ documents in both case databases in NVivo 2. As I coded I also made memos regarding the relationship between nodes and noted patterns in the coding. For example, which nodes were repeatedly coded together and if there were similarities or differences emerging between sub-groups of respondents.

Step 2: Generating Initial Categories in NVivo 2
When all the text was coded, I developed more detailed descriptions of the meaning of each node, and refined the node names to ensure these reflected the text coded there. I attempted to clean-up the initial coding system in several ways. I expanded overly general nodes to reflect distinctions between data coded there (e.g., the node ‘power/relationship/communication’ was separated into distinct node categories, including ‘power changes’ and ‘changes in relationships’). I also eliminated overlap and outliers by merging very similar nodes or if nodes contained very few data points (less than 5 passages of text coded at this node) I tried to code this text using another appropriate node or merged this node into another node, which still captured the meaning of the text. For example, the node called ‘feelings of community members outside of the process’ in the MCFN case contained only a few data points and this node was deleted and the text was merged into the node ‘changes in relationships’. For the CLFN case an initial coding system of 5 main categories and 51 specific nodes was developed. For the MCFN case an initial coding system of 4 main categories and 45 specific nodes was developed. In general, the main node categories reflected the research aims, for example, in the CLFN case the main categories were: ‘blockade explanations’, ‘negotiation expectations’, ‘outcomes of negotiation’, ‘barriers to collaboration’ and ‘process considerations’. Appendix D describes the evolution of the coding scheme.

Step 3: Reduction and Revision of Categories

Following a general inductive approach adapted from Creswell (2002) I sought to reduce the number of nodes in each case to reflect the most important themes given the research objectives. From NVivo 2, I printed out documents with all the text coded at each node and the list of nodes for each case to get a broad picture of the categories and to identify redundancies and overlap. Because I was trying to reduce the number of nodes in each case in keeping with my research objectives I focused on node coding reports related to the themes, ‘outcomes of negotiation’ and ‘barriers to collaboration’ and those nodes in other themes where memos and previous journal notes described a connection to these themes. I continued the process of “winnowing the data” (Creswell 1998, 144) by reviewing each node coding report. First, I summarized text coded for each node in the margins with short phrases. Next, because I coded text which mentioned both supportive and negative statements and reactions under the same nodes, I went through the coding report for each node and highlighted positive and negative statements in different colors and made margin notes about which sub-group of respondents (First Nation, government,
industry) made which statements. For each node I continued to summarize the coding report first into a few pages of hand-written notes and then into a table with a few bullet points. For example, for the node ‘community participation in forest management planning’ in the CLFN case, I reduced 14 pages of coded text to 3 pages of key quotes organized by sub-group of respondents and then into a table identifying what each group said about all the nodes under the category ‘outcomes of negotiation’ with a few summarizing bullet points.

After I produced summary tables for each node, I referred back and forth between these summary tables, the original list of nodes and the text coded for each node. At this point I found I needed to revise the categories and their organization because I found that my attempts to cluster nodes and develop themes were frustrated by the generalness of my initial coding scheme. Qualitative methodologists confirm that data analysis should “spiral” between a data reading and summarizing loop and a data describing, classifying and interpreting loop (Creswell 1998, 143) and that researchers often need to “redefine or discard codes when they look inapplicable, overbuilt, empirically ill-fitting or overly abstract” (Miles and Huberman 1994, 65) and pay special attention to the overall structure of the coding scheme.

Because my initial coding scheme was based on the research questions and reflected the questions I asked during the interviews, I had great difficulty moving from my initial coding scheme to clustering nodes and generating themes. I use the example of comments related to the sub-node ‘trust’ in the CLFN case to illustrate this problem. In the interviews I asked participants directly, “What do you see as the social and economic outcomes of the negotiation process?” and then more specifically, “Did your trust in other participants increase or decrease?” When I coded the varied but predominantly negative responses to the question about trust, for example, that “we can’t trust companies or government” and “forest industry is never, ever true to what they say” and “I think we are years maybe even generations away from the possibility of having trustful relationships”, I placed them into the specific node ‘trust’ under the main node ‘outcomes of negotiation’. But a closer reading of the text coded at ‘trust’ (previously carried out in Step 3) demonstrated that the respondents were not talking about trust as an ‘outcome of the negotiation’ at all. More appropriately the text coded at ‘trust’ referred to a determining factor in the parties’ relationships or something that was required for achieving agreement, or that the lack of trust was a barrier. Thus in my initial coding scheme I had created a hierarchical relationship between ‘outcomes of negotiation’ and ‘trust’ when the data did not support this. It would not serve the
analysis to simply say respondents did not consider ‘trust’ as an outcome and thus it could be deleted because the node about ‘trust’ contained significant information about the interactions among the parties and the conditions for collaboration. In the example above I rationalized that the ‘trust’ node could be grouped under the category of ‘relationship/communication’ changes and the link with ‘barriers to collaboration’ should be explored in the analysis of main themes. I continued to adjust the coding scheme in each case with this approach. For every node, I asked, does the text coded here relate to the node label, can this node be grouped with other similar nodes and how does this node relate to other nodes?

Step 4: Level I Analysis and Generating Main Categories

As I refined the coding scheme I also began to refer to the groups of nodes as ‘categories’. I captured all of the initial nodes into a few broad categories, which fit the research objectives. For example, related to the outcomes of the negotiation in the Constance Lake case I identified three categories that encompassed all the major outcomes identified and issues involved. Throughout this stage I had to make various judgment calls about how I thought nodes should be grouped but I always tried to ensure that these interpretations were based on the original data. For example, I determined that the node ‘community empowerment’, in the CLFN case, originally a separate node under the theme ‘outcomes of negotiation’ could be grouped into the category ‘power’ because the emphasis in the First Nation participants’ discussion of community empowerment was on the historical power disparities between the groups and changes to the community’s perception of their power relative to other groups following the negotiation. This could also have been grouped under ‘relationships/communication’ because participants also noted that empowerment of First Nation community members was concomitant with improved communication and relationship building and also resulted in increased participation in forestry management planning but based on the data it seemed less appropriate to do so.

Step 5: Level II Analysis and Development of Core Findings

For each case I completed a second level of analysis to develop the core findings related to the themes of ‘outcomes of negotiation’ and ‘factors influencing collaborative outcomes’. The Level I analysis had developed useful categories to group the major themes from the data, for example, in CLFN the categories developed were power, relationships/communication and economic development and in MCFN they were relationships and learning. However, these main themes
did not describe what specific outcomes the collaboration participants actually developed, only the nature of those outcomes. Thus I undertook a second interpretive process to consolidate the core outcomes. Appendix D summarizes the development of nodes, sub-categories, and core outcomes for CLFN and MCFN.

I worked backwards from the categories to the nodes and made notes about the relationships between the categories and the nodes. I consolidated core outcomes based on a number of factors. I considered outcomes that participants from all groups had described as important, outcomes described as contributing to participants modifying future actions, and those that were evident from the overlap of the various categories. For example, in CLFN I searched the categories and nodes and referred back to the original text to identify outcomes that emerged from the relationship/communication improvements, ongoing power changes and realizations about power and the development and management of Mammamattawa. To illustrate this process further, in the MCFN case, the categories describing personal relationships, the shared understanding of interests of the parties and the learning about other participants’ frames were all considered to be related and contributory to the consolidated outcome of increased understanding among the participants. I consolidated several other core outcomes in each case following this process. I used terminology and theory from the collaboration literature described in Chapter 2 to describe and further define the core outcomes, including collaboration process characteristics (described in Table 2-1) and the characteristics of adaptive co-management described in the Plummer and Armitage (2007) framework. These integrated core findings are thus either directly traceable to the participants’ responses or clearly emerge from the categories summarizing the participants’ responses. This two-stage process of inductive coding and analysis was useful because it allowed me to determine the outcomes identified by participants themselves and not whether those defined in the literature were present/absent. I made interpretive judgments to identify the ‘core’ (most important and integrated) outcomes but this analysis reflected the outcomes identified by participants as important and contributing to their future actions. I used terminology and theory related to ideal collaboration outcomes or characteristics in the literature to explain the outcomes described by participants but I did not use these as indicators or characteristics of ‘successful’ collaboration by which to evaluate the case study.

It also became apparent at this point in the data analysis that the main categories emerging from the participants’ description of factors that influenced collaboration outcomes had few nodes
involved in each category in both cases. Likewise, the categories about factors influencing collaboration had less overlap than the categories describing outcomes. Level II analysis of the factors influencing collaboration was not undertaken because the codes emerging from the participants’ descriptions produced a set of nodes about factors influencing collaboration, which were considered the core findings. Appendix E provides an example of the original nodes and categories created for factors influencing collaboration in CLFN.

Finally, the core findings related to outcomes and factors affecting outcomes from the two cases were compared across the cases. The categories developed in the Level I analysis were not directly compared but these were used in the comparison of core outcomes to explain differences between the cases. For example, in the discussion I describe the differences between the shared understanding described by MCFN participants where outcome categories related to economic development and power were not found and the shared understanding of goals or problem definitions described by the CLFN participants where these categories were found. Similarities and differences across the two cases were identified in table format. These findings, including the core findings, the factors identified by participants and the cross-case comparison of the context of each case are presented in subsequent chapters. In the following chapter, I describe the case study locations and negotiation process characteristics in greater detail.
4 Description of the Case Studies

4.1 Overview of Chapter

The following chapter provides a description of the specific details of the CLFN negotiation process and the MCFN negotiation process case studies. I begin with a general history of the Aboriginal peoples comprising the CLFN and MCFN communities. Next, I describe the CLFN community and other negotiation parties involved in this case and describe the CLFN negotiation process. Finally, I describe the MCFN community and other negotiation parties involved in this case and describe the MCFN negotiation process. The location of the case study communities and approximate boundaries of the SFL’s, the Treaty No. 9 area and the area of forest management in Ontario are identified in Figure 4-1. Table 4-1 provides an overview of the CLFN and MCFN case study settings, including community attributes, the participants involved, previous relationships between the negotiation participants, relationships emerging during the negotiation processes, characteristics of the negotiation processes used and status of the draft agreement in 2004.

Readers are directed to Appendix F for a description of the broader ecological, political and Aboriginal rights context influencing the initiation and progress of forest management collaborations between the OMNR, Aboriginal peoples and the forest industry at the time of this study. In particular, three salient elements related to the context are described in further detail, including: 1) the characteristics of the forestlands and dominant forestry practices in the Northeast region, 2) the provincial forest policy, legislation and the tenure system governing forest management in the province of Ontario and provisions for Aboriginal involvement, and 3) Treaty No.9 and the role of Aboriginal and treaty rights in forestry in Ontario. This description of the setting for the negotiation processes demonstrates that while there were provisions to address Aboriginal ‘values’ in forest management planning at the time of this study, these were largely considered inappropriate or insufficient by Aboriginal peoples. Similarly, different understandings of what constituted ‘meaningful’ consultation were the source of conflict and frustration. OMNR’s haphazard response to the Timber EA requirement for undertaking negotiations with Aboriginal communities and disagreements about the scope of these discussions also created frustration. Ontario’s tenure system also limited Aboriginal peoples’ participation in forest economic development and planning. Moreover, a recently completed land
use planning process was contentious and relationships were strained because Aboriginal peoples were not included in new protected area establishment and their role in future Northern Boreal resource expansion decision-making processes was unclear. At the time of this study, much of the relationship challenges and conflict among the parties could be traced to divergent interpretations of Aboriginal and treaty rights and a lack of clear provincial-level policies or processes to identify, define or recognize Aboriginal and treaty rights. As I describe in Appendix F, divergent interpretations of Aboriginal and treaty rights continue today and thus the questions and findings of this thesis continue to be pertinent.
Figure 4-1: Location of the case study communities and approximate boundaries of the SFL’s, the Treaty No. 9 area and the area of the undertaking.
Table 4-1: Community attributes and negotiation process characteristics of CLFN and MCFN case studies

<table>
<thead>
<tr>
<th>Negotiation Process Characteristics</th>
<th>Case Studies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Constance Lake Coexistence Agreement Negotiation</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Missonabie Cree Umbrella Agreement Negotiation</strong></td>
</tr>
<tr>
<td>Community attributes and connections</td>
<td>Population: 1419; on-reserve 702; Cree/Oji-Cree; Treaty No. 9 (1906)</td>
</tr>
<tr>
<td></td>
<td>Reserves: (3,100 ha; 3,108 ha)</td>
</tr>
<tr>
<td></td>
<td>Traditional territory includes Hearst District and north of AOU</td>
</tr>
<tr>
<td></td>
<td>Existing relationships between CLFN, the town of Hearst, the Hearst District OMNR office and the collective forest industry operating on the Hearst SFL (related to history, proximity, continuity of CLFN residence, structure of Hearst forest industry, previous CLFN involvement in forestry, CLFN trapper’s council and role of trapping in CLFN livelihood and identity).</td>
</tr>
<tr>
<td></td>
<td>Hornpayne First Nation (a non-status Ojibway community) also has an interest in Hearst SFL.</td>
</tr>
<tr>
<td></td>
<td><strong>Population: 346; no reserve; Cree; Treaty No. 9 (1906)</strong></td>
</tr>
<tr>
<td></td>
<td>No reserve. Ongoing TLE claim.</td>
</tr>
<tr>
<td></td>
<td>Traditional territory includes Wawa, Chapleau and Sault Ste. Marie Districts</td>
</tr>
<tr>
<td></td>
<td>No discernible relationship between MCFN and the Chapleau or Wawa District OMNR office, the SFL holder, or between the towns in Superior Forest (e.g., Chapleau, Missanabie) and the MCFN.</td>
</tr>
<tr>
<td></td>
<td>Seven other First Nations have territorial claims and modern interests in forestry opportunities in Superior SFL.</td>
</tr>
<tr>
<td>Negotiation initiation</td>
<td>January 1997 (5 years from first meeting to last formal meeting)</td>
</tr>
<tr>
<td></td>
<td>February 2001 (2.5 years from first meeting to last formal meeting)</td>
</tr>
<tr>
<td>Motivation/Catalyst</td>
<td>CLFN blockade/crisis response</td>
</tr>
<tr>
<td></td>
<td>MCFN initiated</td>
</tr>
<tr>
<td>Representatives</td>
<td><strong>Forest Industry</strong>: HFMI (Hearst SFL holder), Lecours, Malette Inc. (later Tembec), Levesque (later Columbia). Included company executives and forestland and human resource managers.</td>
</tr>
<tr>
<td></td>
<td><strong>OMNR</strong>: District Manager for Hearst and staff (including forester and area supervisor)</td>
</tr>
<tr>
<td></td>
<td><strong>INAC</strong> (representatives from Thunder</td>
</tr>
<tr>
<td></td>
<td><strong>Forest Industry</strong>: Weyco (Superior SFL holder). Included 2 forestland managers and temporary consultant.</td>
</tr>
<tr>
<td></td>
<td><strong>OMNR</strong>: District Managers for Wawa and Chapleau (representatives changed twice); OMNR lead negotiator (representative changed once); OMNR Northeast Regional Liaison staff (only involved in face-to-face negotiation initially); Advisory team including OMNR legal services and OMNR</td>
</tr>
<tr>
<td>Facilitator/Mediator Role</td>
<td>Chief and council representatives (also community members, Mattawa Tribal Council, NAN forester, lawyer hired by First Nation)</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>All parties selected an independent mediator. Mediator established rules of conduct and facilitated approx. 6 meetings (until summer 1997). Developed draft agreement in consultation with CLFN lawyer. OMNR District Manager facilitated subsequent meetings. Consultant hired by OMNR to reconvene parties and revise draft agreement (2000).</td>
<td>Consultant hired by First Nation acted as main facilitator, proposed negotiation approach, established initial agreement headings and maintained evolving model draft (until March 2003).</td>
</tr>
<tr>
<td>Previous Relationships</td>
<td>CLFN members harvested pulpwood and worked in bush/area sawmills at turn of the last century. In 1995, 65 CLFN members employed at Lecours (following a condition of a land lease agreement). Small silvicultural contracts to CLFN members (tree planting, brush removal). OMNR Hearst District office provided CLFN band an allocation of 13,030 m$^3$ on Hearst SFL (since 1989). Trapper’s council at CLFN since 1950s and CLFN members hold approx. half of trapping licenses in SFL. OMNR funding of CLFN values data collection study for 1997 FMP (considered inadequate by CLFN and no report produced).</td>
</tr>
<tr>
<td>Contemporary Relationships (arising)</td>
<td>Joint–venture forest harvesting company (Mammamattawa Inc.</td>
</tr>
</tbody>
</table>
During and subsequent to formal negotiations:

- Formally incorporated in 2000; additional allocation of 85,000 m$^3$ from Hearst SFL; 75,000 m$^3$ from Kenogami SFL subject to union collective agreements.

- OMNR Hearst District and HFMI engage with CLFN following FMPM (CFLN representatives on planning team paid per diems, 2002).

- HFMI developed trapper’s communication protocol and forestry education scholarship fund (2000).


- OMNR engaging CLFN in Nagagamisis Central Plateau Signature Site planning consultation (2001).

- OMNR and industry support joint economic development field trips (Menominee 2000/Waswanipi).


- Negotiation process (community decided to consider it at a later time).

- Weyco provided MCFN with a pinecone collection contract (2003).

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<p>| Negotiation Strategy and Procedures | No written strategy developed by CLFN. Initial blockade resulted in CLFN bringing forward a list of demands with Aboriginal and treaty rights as foundation. CLFN seeking Lecours land lease re-negotiation, trappers compensation, water quality issues, Condition 77 opportunities, revenue sharing, establishment of a government-to-government negotiation table. INAC expected to address fiduciary duty responsibilities and CLFN Aboriginal and treaty rights. Early meetings described as broad in scope and opportunity for ‘venting’. Draft agreement developed within 6 months. | MCFN developed an internal negotiation strategy. Tabled a negotiation proposal outlining goals and substantive interests. Consultant for First Nation proposed developing a framework agreement and subsequent business-to-business and tri-partite agreements using an interest-based negotiation process. Began with each party identifying their ‘interests’. Jointly carried out brainstorming to develop mutually beneficial ways to address interests. OMNR tabled a ‘mandate letter’ to clarify their role and the scope of the negotiation (August 2001). Several intensive sessions to negotiate agreement structure, wording and commitments. |</p>
<table>
<thead>
<tr>
<th>Draft Agreement Details</th>
<th>Draft 10 headings:</th>
<th>Model draft 19 headings:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>forest management planning cooperation (changed from consultation), conflict resolution mechanisms for issues arising from forest management planning and the coexistence agreement, training, scholarships, employment, economic and business development opportunities, joint ventures, heritage site protection, and management and implementation of the agreement</td>
<td>definitions, guiding principles, term and timing, skills development and training, economic development, values and enhanced dialogue, consultation and participation, community infrastructure, implementation, success recognition and dispute resolution</td>
</tr>
<tr>
<td></td>
<td>No quantification in agreement.</td>
<td>Model draft 19 specified numbers related to harvest allocation, and community infrastructure but these numbers were contested. Side notes contained various parties’ objections or suggested changes.</td>
</tr>
</tbody>
</table>
4.2 Brief History of the Constance Lake First Nation and Missanabie Cree First Nation

Aboriginal peoples have inhabited Northeastern Ontario for many thousands of years. Archeological and anthropological research related to Aboriginal occupation of the Albany River and Missinaibi-Moose River basins supports that Ojibway and Cree people of the region travelled extensively in small kin-based groups spending winters in hunting territories and then gathering together in extended family groups during warmer months in strategic areas (Hamilton et al. 2008; Pollock 2004; Shchepanek 1971). Aboriginal peoples of the region had a “well-established system of land access and inheritance rights (that) existed over at least the last several hundred years, and likely had a pre-contact expression” (Hamilton et al. 2008, 114).

The Ojibway and Cree people in Northeastern Ontario also played important roles in the fur trade from the 16th century. The first Hudson’s Bay Company (HBC) inland post from Fort Albany on the James Bay coast was established at the junction of the Albany and Kenogami Rivers in 1743 (Hamilton et al. 2008). Routes between the St. Lawrence valley, James Bay and Lake Superior, including an important route along the Missinaibi-Moose River were established by Aboriginal middle-men and traders (Lytwyn 2002). The HBC maintained various posts in the region over the next century and eventually in 1875, the English River post was built further south at the junction of the Kenogami and Kabinakagami Rivers, at an Aboriginal gathering place known to CLFN members as, Mamamattawa, or ‘meeting of waters’ (Hamilton et al. 2008; Pollock 2004).

The fur trade and other points of contact between Aboriginal peoples and European immigrants also influenced the land use patterns, social organization and traditional economy of the Aboriginal peoples of the region. As early as 1899, the Aboriginal people at Missinaibi Lake were petitioning Department of Indian Affairs officials for protection of their rights from incursions by non-Aboriginal trappers, settlers and prospectors, and that a treaty be made with them (Morrison 1986). CLFN ancestors were admitted to Treaty No. 9 in 1906, as a subset of the Fort Albany band. The lands of the Aboriginal people at Missinaibi Lake were considered to fall under Treaty No. 9 cessation in 1906, but the ancestors of MCFN never met with Treaty commissioners (Morrison 1986).

Following the signing of the treaty, a reserve was set-aside for CLFN (at the time known as the English River band) called English River Indian Reserve No. 66 (3,108 hectares). This reserve
was never settled because it consisted largely of muskeg and was considered “uninhabitable” (CLFN 2012). Rather a small settlement continued to develop along the high riverbank at the English River post (or Mammamattawa) (Hamilton et al. 2008). By the early 1920s, the majority of English River people and several Fort Albany and Moose Factory families had settled in nearby Pagwa River to follow employment opportunities. Many of the elders at CLFN grew up in Pagwa River (Stephens 2000) but they continued to “engage in traditional harvest activities throughout the territories used by their parents and grandparents” (Hamilton et al. 2008, v), including the Mammamattawa area. In 1943, a new reserve at Calstock was established to provide access to the railroad and employment opportunities in the emerging forest industry. The CLFN community is “an amalgamation of Aboriginal people residing at Pagwa, that included Moose Factory and Albany Factory Cree people, and also Ojibwa people (i.e., from Hornepayne, Long Lac, etc.)” (Hamilton et al. 2008, 111).

A reserve was never established for the Cree people who originally resided in the area around Missinaibi Lake, Dog Lake, and Wabatongushi Lake. Requests in 1915 and 1929 for land to be used for farming to the Department of Indian Affairs were denied (Lovisek 2003). According to Lovisek (2003), the Deputy Secretary of Indian Affairs, wrote at the time, “it is not considered advisable to establish an Indian reserve for the Cree band at present”. The establishment in 1925 of the Chapleau Crown Game Preserve further disrupted Missanabie Cree people. Elders describe how overnight it became illegal to carry out hunting and fishing activities in a large part of their traditional territory and how members were jailed for trying to provide food for their families (Lovisek 2003). Without a reserve set apart, the Missanabie Cree community members were displaced and out of necessity many moved out of the area. The MCFN was not formally recognized as an Indian band until 1951. In 1992, the community elected a Chief and council and received band support funding.

4.3 The Constance Lake First Nation Negotiation Process Case Study

4.3.1 The Constance Lake First Nation

At the time of this study, CLFN had a registered membership of 1,419 individuals and approximately 702 members lived on the reserve (Statistics Canada 2007). The CLFN main reserve (No. 92) is on the Kabinakagami River system, approximately 32 km west of the town of
Hearst and 8 km north of Highway 11, adjacent to Calstock, Ontario. The reserve land-base is approximately 3,110 hectares and includes Constance Lake itself. The community also retains the original English River reserve. CLFN traditional territory includes the area north of the current reserve and the area between the Pagwachuan River to the west and Missinaibi River to the east (Mattawa First Nations, n.d.). The CLFN traditional territory overlaps primarily with the OMNR District of Hearst, and the Hearst SFL, held by Hearst Forest Management Inc. (HFMI), and to a lesser extent, the Gorden Cosens SFL (held at the time by Spruce Falls Inc.). HFMI is a shareholder company owned jointly by Lecours Lumber Co. (hereinafter Lecours) and Tembec Industries Inc. (hereinafter Tembec) to carry out forest management responsibilities related to the Hearst SFL. CLFN is affiliated with NAN and Mattawa Tribal Council.

CLFN members continue to be involved in year-round traditional harvest or more commonly seasonal hunting, fishing and trapping to supplement wage labour, including winter trapping as a primary activity (Hamilton et al. 2008). These activities continue to be important to CLFN members’ livelihood and identity. Since trapline regulation in the 1950s, trappers in CLFN have been involved in a trapper’s council that has historically advised government managers on trapping issues but the province has always retained decision-making authority on these matters (Hamilton et al. 2008). CLFN also holds two registered community traplines near the reserve and 70 members hold registered traplines (approximately half of the licenses in the Hearst SFL) (Hamilton et al. 2008). Trappers’ concerns about logging occurring on traplines contributed to the 1997 blockade.

4.3.2 The Other Negotiation Parties

Approximately a 50-minute drive east of the CLFN reserve, on Highway 11, is the town of Hearst. The town of Hearst was incorporated in 1922 after the first settlers arrived from Quebec following the construction of the National Transcontinental Railway (Hearst 2012). Hearst is a predominantly Francophone community, with close to 85% of its approximately 6000 residents having French as their first language (Hearst 2012). In addition, to its unique cultural heritage, Hearst is also set apart physically, with the nearest large center, Kapuskasing, being 97 km away.

\[\text{Calstock consists of a small store and post office.}\]
Hearst has always been and continues to be primarily dependent on forestry. In 2003, there were three large wood manufacturing facilities in the immediate Hearst area. Tembec operated a sawmill in Hearst, Lecours operated a sawmill on the CLFN reserve and Columbia manufactured hardwood veneer and particleboard in Hearst. Approximately 41% of the local labor force was employed by these principal operators and a variety of supporting businesses, including harvesting, reforestation, and industrial support (Corporation of the Town of Hearst 2003).

The forest industry in Hearst is unique in a number of ways from other areas of Ontario. Forest harvesting in Hearst developed from a few entrepreneurial families succeeding in lumber manufacturing, when the majority of forest resources had only been available to large pulp and paper mills (Hearst Public Library 2006). From the 1930s, these Hearst sawmill-owning families often worked cooperatively, merging over the years, forming a prominent association and lobbying provincial governments to make additional logging concessions on Crown land available (Hearst Public Library 2006). Forest industry shareholders have also moved between executive positions within the forest industry and influential local and provincial political positions. Because the forest is an integral part of Hearst’s economy, forest industry shareholders have always had a strong influence on what happened in the forest and what happened in the town of Hearst. Likewise, forest industry shareholders and HFMI staff and the Hearst District OMNR staff also have close personal relationships and collaborate often.

CLFN people were also involved in the development of the emerging forest industry around Hearst, although there has been little written about this role. CLFN elders describe being employed first by the Arrow Timber Company cutting 4 foot long pulpwood that was shipped using the railway at Calstock and later working for the Lecours family sawmills at Carey Lake and eventually in Calstock (Stephens 2000). The Lecours family established the sawmill at Calstock, on reserve land leased from CLFN, in approximately 1960. At the time of this research,

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8 The Hearst Lumbermen Association, which later evolved into the Ontario Lumber Manufacturers Association (OLMA), was originally established to represent the interests of independent sawmill owners in Hearst. OMNR and Lecours and United Sawmill Ltd. (which operated the Hearst sawmill until it was sold to Malette Inc. and later Tembec) negotiated a Forest Management Agreement (FMA) in 1986, on the condition that additional townships were added to the Hearst forest (Hearst Public Library 2006). In 1992, the Hearst OMNR District established one of the first stakeholder advisory committees in Ontario, to engage stakeholders in the forest management planning process and to resolve conflicts. Forest industry and HFMI representatives and representatives from the town of Hearst have played a prominent role in this Committee and the LCC that succeeded it (LAO 1994).
the Lecours sawmill was one of Ontario’s largest and one of the last independently owned sawmills and held an allocation of 480,000 cubic meters. (Hearst Public Library 2006). The lease agreement between Lecours and CLFN was not publically available but community members noted that the band leases the land to Lecours for $47,000 per year (although previously it was $1) and a condition requires that at least 50% of the employees in the sawmill must be from CLFN (First Nation 01, 03). In 1995, 65 CLFN members were employed at the Lecours sawmill (NAFA 1995). Finally, since 1989, CLFN had also been provided with a licence from OMNR to harvest a target volume of up to 13,030 cubic meters of conifer timber for sale to either Tembec or Lecours (OMNR 2006b).

The Hearst SFL has several Ministerial wood supply commitments (also called OMNR directives), which influence relationships between CLFN and the forest industry. Lecours and Tembec divided the conifer allocation from the Hearst SFL with 55% going to Lecours and 45% going to Tembec (OMNR 2006b). Poplar and birch logs suitable for veneer or oriented strandboard were provided to Columbia and three other smaller companies used other timber species. This meant that Lecours, Tembec, and Columbia, and the other operators all maintained their own woodlands division with permanent and contract employees to carry out their harvest operations. In 2002, these six companies employed 514 people in their harvesting operations alone (excluding mill employees, administration and owner/operator contractors) (HFMI 2002a). Aside from the First Nation members employed at the Lecours mill, and the 13,030 cubic meter allocation for the community on the Hearst Forest, CLFN members were not employed consistently in any of the other mills or for bush and harvesting work as permanent employees or contract owner/operators.

4.3.3 Negotiation Process Description

Figure 4-2 summarizes the CLFN coexistence agreement negotiation process meetings (highlighted in boxes) and related events that occurred between January 1997 and the time this research was conducted in 2003. Interactions between the parties from before this time were summarized previously in Table 4-1.
<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLFN blockade and crisis mediation</td>
<td>01/1997</td>
</tr>
<tr>
<td>Draft coexistence agreement developed</td>
<td>06/1997</td>
</tr>
<tr>
<td>OMNR supports Native Liaison Position</td>
<td>2000</td>
</tr>
<tr>
<td>HFMI develops trapper’s communication protocol &amp; scholarship fund</td>
<td>2000</td>
</tr>
<tr>
<td>Mammamattawa shareholders agreement signed</td>
<td>09/2000</td>
</tr>
<tr>
<td>Coexistence agreement meeting (discussing CLFN proposed changes to</td>
<td>09/2001</td>
</tr>
<tr>
<td>Draft 8, OMNR summary of economic/employment initiatives)</td>
<td></td>
</tr>
<tr>
<td>Facilitator produces revised Draft 9</td>
<td></td>
</tr>
<tr>
<td>Industry and CLFN meetings re: Mammamattawa ‘crisis’</td>
<td>08/2002-2003</td>
</tr>
<tr>
<td>Formal negotiation process (&gt;6 meetings)</td>
<td>01-06/1997</td>
</tr>
<tr>
<td>Chief-appointed representative on 2002-2022 FMP planning team</td>
<td>1999</td>
</tr>
<tr>
<td>CLFN Chief changes (R. Ferris becomes NAN Deputy Grand Chief, A. Moore becomes Chief of CLFN)</td>
<td>08/2000</td>
</tr>
<tr>
<td>Menominee Field Trip 2000</td>
<td></td>
</tr>
<tr>
<td>Coexistence agreement meeting (discussing CLFN)</td>
<td>12/2000</td>
</tr>
<tr>
<td>Facilitator circulates Draft 10, including addendum related to</td>
<td></td>
</tr>
<tr>
<td>resolution of CLFN quantification issues.</td>
<td></td>
</tr>
<tr>
<td>OMNR, CLFN, HFMI, FMP team meetings re: NBI/Nagagamisis</td>
<td></td>
</tr>
<tr>
<td>Signature Site/Eagles Earth</td>
<td>2001-2003</td>
</tr>
</tbody>
</table>

Figure 4-2: Timeline of the CLFN coexistence agreement negotiation process and forestry-related collaboration activities
In January 1997, the CLFN blocked the only access road to the Lecours mill located on the CLFN reserve. The blockade only lasted a few days. Lecours sought an injunction against the protesters and non-Aboriginal Lecours employees carried out their own ‘counter-blockade protest’ in the OMNR Hearst District office. In response to non-Aboriginal Lecours employees’ requests, the federal Member of Parliament arranged for an INAC representative to be involved.

During the first day of the blockade, the OMNR District Manager acted as the primary mediator between the parties and attempted to manage forest industry representatives’ frustration and understand the motivation for the blockade. The CLFN’s ‘list of grievances’ included 115 items (ranging from the conditions and implementation of the existing land lease and the impacts of timber harvesting on traplines, to water quality, and lack of First Nation employment in forestry. Participants recognized that this range of issues required the involvement of OMNR, INAC, and all of the main industry operators from Hearst. OMNR established a formal negotiation process two weeks after the blockade. A lawyer and mediator with experience in Aboriginal negotiations was selected by the participants and funded by the OMNR. The negotiation process involved the OMNR District Manager and several staff, INAC representatives from Thunder Bay, executives from the main forest industries operating on the Hearst SFL, representatives from HFMI and the Chief and council. The Chief and council hired a Vancouver-based lawyer with Aboriginal and treaty rights experience to assist them. The parties met formally with the mediator during the early part of 1997.

By June of 1997, the mediator, with input from the CLFN lawyer, had crafted a draft coexistence agreement. Participants noted that the coexistence agreement negotiation process involved only 6-8 “meetings of the minds” (Industry 08). Because meeting minutes from these early meetings were not available, it was not possible to determine how the parties came to a decide what would be included in the initial draft agreement or if the parties had sought to delineate in advance what was up for negotiation and what was not. Forest industry participants confirmed that in 1997 it was not clear what ‘treaty rights’ conferred on the Aboriginal community and whether SFL holders were responsible for providing individual compensation to trappers for logging on traplines (Industry 08). The inclusion of the INAC representative and the OMNR and industry participants’ desire for direction from the federal government indicates that these parties began the negotiation with a level of uncertainty about what was within their respective mandates. Participants did note that the mediator was a “good facilitator…who understood the law,
understood negotiation processes, and understood people and gave everybody an equal opportunity” (First Nation 02). Participants also described that the early negotiation discussions were broad and “every party had an opportunity to explain what they were willing to talk about, what they were willing to do, what their needs were, what their concerns were” (OMNR 09).

While there were few ‘formal’ coexistence agreement negotiation meetings in the CLFN case and the multi-party meetings trailed off after the draft agreement was developed. Figure 4-2 demonstrates that the OMNR, CLFN and forest industry representatives initiated a variety of other related forestry planning and economic development discussions and actions during this time. Much of this activity (including the development of Mammamattawa) was inspired by the draft agreement.

In December 2000, the parties met again formally to renew discussions on the draft agreement (Draft 8). At this meeting the new Chief described several concerns with the draft agreement. The need for government-to-government negotiations to define a consultation process was identified as a “real issue which needs to be dealt with” (Coexistence Negotiation Meeting Minutes December 19, 2000, 7). OMNR and forest industry participants were very eager to get a signing date for the draft agreement. In response to the question of “where do we go from here?” the parties agreed to review a revised draft agreement and determine what was required for each party to sign. The Chief was willing to discuss signing the agreement but indicated that the community had “changed some of its views” (Coexistence Negotiation Meeting Minutes December 19, 2000, 3), they still required legal council to review the draft and that “arrangements may be able to be made outside of this agreement more satisfactorily” (6) and, at the very least, a community meeting and presentation was required before any commitment to signing could be made.

In September 2001, participants met again with a facilitator hired by OMNR (Coexistence Negotiation Meeting Minutes September 13, 2001, 1). At this meeting, the CLFN proposed significant changes to Draft 8, including a dispute resolution mechanism (for forest planning issues and issues arising from the agreement itself), substituting references to ‘consultation’ with ‘cooperation’ because of the evolving legal meaning of this word, and importantly, a commitment from the parties to establish a duly mandated rights-based government-to-government negotiation process (Coexistence Negotiation Meeting Minutes September 13, 2001,
2). CLFN representatives also stated that they would not be prepared to sign the agreement until “the issue of quantification had been addressed in some suitable manner” (4). Draft 8 contained no actual numbers, for example, no wood volume amount for harvesting purposes, and no dollar amounts for training, planning, or financial compensation for the First Nation. This lack of quantification was particularly contentious; forest industry representatives stated that they were “not prepared to sign any agreement that quantified dollar expenditures to be made by the company that would subsequently be available for scrutiny by the general public” (Coexistence Negotiation Meeting Minutes September 13, 2001, 5). OMNR and industry representatives attempted to dissuade the community from requiring quantification of commitments in the draft agreement by describing their good track record of commitments, suggesting they would have incentive to do more with a signed agreement, and suggesting that quantification could serve to limit achievements (Coexistence Negotiation Meeting Minutes September 13, 2001, 5). To this end, the OMNR tabled a summary of economic and employment ‘investments’ initiated on behalf of the First Nation by industry, HFMI and OMNR between 1994 and 2001 totaling $643,000 (Coexistence Negotiation Meeting Minutes September 13, 2001, 10) and both industry and OMNR considered that specific commitments could be addressed by the implementation committee or directly between the individual companies and CLFN.

In an effort to resolve the quantification issues of the CLFN, the parties had agreed to include an addendum to the agreement, in which the Hearst Forest Agreement Committee (established in the agreement) would resolve the issues below before December 31, 2002 (the proposed date on which the first iteration of the agreement was due to terminate):

- The cost of various administrative functions associated with managing the agreement, including funding for CLFN’s representation on the Hearst Forest Agreement Committee
- The cost of CLFN’s representation on the Hearst Forest planning team
- The volume of Crown wood to eventually be assigned for harvesting purposes to Mammamattawa Inc. or other potential CLFN corporate entities
- The issue of the amount and approach to direct financial support to the Constance Lake community by the Industry
- The size and nature of the commitment both to the community as well as to Mammamattawa Inc. by Canada/Ontario and the Industry in respect of training and capacity building
- The size and nature of the scholarship fund for worthy CLFN candidates (Coexistence Negotiation Meeting Minutes September 13, 2001, 5).

In October 2001, the facilitator provided a revised draft agreement (Draft 10), including this addendum, to the parties but no formal response from any of the parties to this draft was ever
received. Draft 10 included commitments related to the following sub-sections: forest management planning ‘cooperation’, conflict resolution mechanisms for issues arising from forest management planning and the coexistence agreement, training, scholarships, employment, economic and business development opportunities, joint ventures, heritage site protection, and management and implementation of the agreement (Draft 10).

At the time of this study, First Nation participants described that the draft agreement outlined a satisfactory partnership approach but that because the industry did not want to quantify specific commitments, the First Nation was not motivated to sign it (First Nation 02, 03, 04). The other parties had largely “given up” (OMNR 08, Industry 10) on trying to actually sign the draft agreement but both the First Nation and the other parties considered that the draft was a suitable guiding document. Industry representatives and CLFN members where focused on restructuring and improving Mammamattawa operations and management. OMNR, industry and CLFN members were also collaborating to undertake negotiations with labor union representatives related to harvesting commitments on the Kenogami SFL that were allocated to Mammamattawa but not accessible due to collective agreement restrictions. Finally, OMNR and CLFN were collaborating for Nagagamisisis Signature Site consultation, Eagles Earth development and Northern Boreal Initiative (NBI) planning.

4.4 The Missanabie Cree First Nation Negotiation Process Case Study

4.4.1 The Missanabie Cree First Nation and Other Negotiation Parties

The approximately 346 registered members of MCFN reside across the country, while the band administration maintains an office in Sault Ste. Marie (Bateson 2009). The MCFN’s main goal since they have been recognized formally as an Indian band has been to reestablish a community on their traditional territory. To this end, the community submitted a specific claim for an outstanding treaty land entitlement (TLE) in 1993 and was still engaged in these negotiations with the federal and provincial governments at the time of this study. MCFN is part of NAN and the Mushkegowuk Tribal Council.

At the time of this study, MCFN traditional territory overlapped primarily with the Superior and J.E. Martel SFLs and the OMNR Districts of Chapleau and Wawa. Weyerhaeuser Co. (Weyco)
held the SFL for the Superior FMU and Domtar held the SFL for the J.E. Martel FMU. Most of the conifer from the Superior FMU went to a large sawmill owned by Weyco in Chapleau and most hardwood went to Weyco’s oriented-strand board (OBS) facility in Wawa (Tembec 2011). These small ‘forest company’ towns were particularly dependent on these two wood processing facilities. Seven other Aboriginal communities had reserves or a territorial interest in the Districts of Chapleau and Wawa including: Brunswick House, Chapleau Cree, Chapleau Ojibwe, Hornepayne, Michipicoten, Pic Mobert and Pic River.

MCFN had not been involved previously in any FMP processes or forest harvesting activities. They had asked for and obtained a harvesting set-aside from 1996 to 1998 on a portion of the Superior FMU when the SFL was held by by MacMillan Bloedel (ForEvergreen 2000). Weyco acquired all of MacMillan Bloedel’s operations in 1999.

4.4.2 Negotiation Process Description

Figure 4-3 describes the MCFN Umbrella Agreement negotiation process initiated by the MCFN in February 2001. Following the signing of a forestry agreement between the Taykwa Tagamou First Nation, OMNR and Tembec in 2000, the MCFN band council retained the same consultant who had worked with the Taykwa Tagamou First Nation. The band council and consultant undertook a negotiation planning exercise to identify priorities and assess possibilities and community desires and interests. Community members were canvassed for their interests through a mailed-out survey. The consultant produced a Forestry Negotiating Strategic Plan for the MCFN that outlined the community’s collective vision, general goals and strategic goals and proposed an 11-step process for reaching the goals (ForEvergreen 2000). The consultant also suggested using an interest-based negotiation approach in their discussions with OMNR or industry and this resonated with the First Nation participants who were experiencing frustration with their TLE negotiation process.

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9 The Superior FMU no longer exists. In 2004, Tembec acquired all of Weyco’s Chapleau operations including the Superior SFL. Tembec also acquired the J.E. Martel SFL from Domtar in 2005 and these units were formally amalgamated into the Martel FMU in 2006. In 2008, a single SFL, reflecting the new management unit boundaries, was issued to Tembec for the renamed and expanded Martel FMU (Tembec 2011).
<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>MCFN initiates negotiation process</td>
<td>02/2001</td>
</tr>
<tr>
<td>OMNR proposes MCFN allocation of ‘All Tree Reserve’ area</td>
<td>2001</td>
</tr>
<tr>
<td>OMNR provides other parties with ‘mandate letter’</td>
<td>08/2001</td>
</tr>
<tr>
<td>Development of draft agreement (using an ‘articling’ and ‘cross-fertilizing’ process each party alternated to develop content and commitments from initial list of 37 interests) (&gt;15 meetings)</td>
<td>12/2001 - 06/2002</td>
</tr>
<tr>
<td>OMNR notifies that legal opinion required</td>
<td>01/2003</td>
</tr>
<tr>
<td>Chief terminates consultant funding</td>
<td>04/2003</td>
</tr>
<tr>
<td>OMNR redrafting agreement</td>
<td>04/2003</td>
</tr>
<tr>
<td>Mushkegowuk Tribal Council files ‘Rupert’s Land Claim’ lawsuit</td>
<td>05/2003</td>
</tr>
<tr>
<td>Weyco provides MCFN small silvicultural contract</td>
<td>09/2003</td>
</tr>
<tr>
<td>OMNR supports MCFN youth summer employment</td>
<td>07/2002</td>
</tr>
<tr>
<td>MCFN initiates meetings with other First Nations re: forming an alliance</td>
<td>11/2001</td>
</tr>
<tr>
<td>Letter of intent from Weyco to engage in negotiation process</td>
<td>06/2001</td>
</tr>
<tr>
<td>Interest identification process (&gt;10 meetings)</td>
<td>02/2001-06/2001</td>
</tr>
<tr>
<td>OMNR employee strike</td>
<td>03-05/2002</td>
</tr>
<tr>
<td>MCFN participates in Weyco CSA forest certification approval process</td>
<td>2002</td>
</tr>
<tr>
<td>OMNR produces ‘Northeast Region Forestry Agreement Negotiations Strategy’</td>
<td>10/2002</td>
</tr>
<tr>
<td>Three day ‘negotiation’ session</td>
<td>12/2002</td>
</tr>
<tr>
<td>Chief established agreement deadline</td>
<td>03/2003</td>
</tr>
<tr>
<td>Model Draft 19 revised</td>
<td>03/18/2003</td>
</tr>
</tbody>
</table>

**Figure 4-3: Timeline of the MCFN umbrella agreement negotiation process and forestry-related collaboration activities**
For the MCFN, interest-based negotiation was considered a favorable alternative to an adversarial approach where participants take and then give up a series of ‘positions’ until they come to a compromise that may not serve their underlying interests. Rather, using an interest-based negotiation approach, MCFN participants expected that the interests of all parties would be disclosed and explored and then efforts could be made to achieve these interests through brainstorming, joint problem solving and coming to agreement based on objective criteria. Importantly, adopting interest-based negotiation does not specify the substantive topics or issues of the negotiation, which are for the participants to determine depending on their interests. MCFN felt that by pursuing a reasonable, planned, interest-based approach they would accomplish more toward their nation-building goals and retain a positive relationship with the other participants afterwards to ensure implementation success.

In February 2001, the community negotiation team (consisting of the Chief, 3 councilors and the consultant) held an initial meeting with District Managers from three districts, (Wawa, Chapleau and Sault Ste. Marie) and two SFL holders (Weyco and Domtar), which overlap the MCFN’s traditional territory, and the OMNR Regional Native Liaison Officer. The community presented their interest-based approach to negotiate a framework agreement between all three parties to identify the broad parameters of how they would work together. Subsequent tri-partite and business-to-business agreements related to specific arrangements or partnerships were envisioned to follow this framework agreement.

Following that initial meeting, the District Managers for Chapleau and Wawa agreed to participate in the negotiation process because they expected the MCFN would eventually receive a land transfer in the Wawa District near the western boundary of the Chapleau District (OMNR 2001b). Limiting the negotiation geographically to the Superior Forest Management Unit (held by Weyco), which straddles both the Wawa and Chapleau OMNR districts, was proposed to make the negotiation “more manageable” (OMNR 19). OMNR also considered that the MCFN’s proposed area overlapped with several other First Nation’s territorial claims and thus should be narrowed down. The First Nation participants supported this administrative definition of the geographical scope. The OMNR and industry participants noted that the scope was conveniently narrowed to the Superior Forest because only Weyco was interested in pursuing negotiations after the first meeting (OMNR 19). Domtar was open to discussions but did not commit to
undertaking an interest-based negotiation approach (First Nation 15). In June 2001, Weyco signed a letter of intent to engage in the negotiations with MCFN (MCFN 2001a). The band council received $96,600 from INAC’s Resource Acquisition Negotiations Program (RAN) to help fund the negotiations (INAC 2005). During the course of the negotiations the federal First Nation Forestry Program contributed an additional $60,500 with total funding for the negotiations estimated at $280,900 (NRCAN 2005). The OMNR and Weyco shared the costs of the minute taker wages, meeting rooms and meals during the negotiations (MCFN 2002).

Beginning in February 2001, the First Nation representatives, including the Chief and three councilors and their consultant, met monthly and sometimes weekly, with Weyco representatives and District Managers from Wawa and Chapleau District and the OMNR-appointed lead negotiator. The objective was “to build a relationship of trust, sincerity and understanding” (MCFN 2001b) while taking turns to identify each parties’ respective interests. During this time, the First Nation was involved in “introducing our culture, smudging, explanation of our customs, how we see the land different from business ventures, what we believe in, and telling our history” (MCFN 2001b).

In the summer of 2001, the parties began an extensive and time-consuming (more than 12 meetings over 6 months) brainstorming process where they collectively attempted to identify solutions for each of the interests previously identified. Participants identified “1500 or so ideas to solve 37 issues” (First Nation 24). The interest-based procedures identified by Fisher, Ury and Patton (1991, 60) including, separating inventing options from judging them, broadening the options on the table, searching for mutual gains and inventing ways to make the other parties decisions easy, were all employed by the First Nation participants. The parties also adopted ground rules during this time, including a no-criticism rule, rules about talking to the press and a rule that no one would be held to any suggested commitments or ideas. The consultant employed by the First Nation undertook the majority of the facilitation for the brainstorming process, but other participants also took turns to facilitate meetings.

OMNR participants sought to delimit the scope of the negotiations and their role by providing the other parties with a ‘mandate letter’ after the initial brainstorming process in August 2001 (OMNR 2001b). The mandate letter was intended to formalize in writing the OMNR’s official stance on the scope of the negotiation. It identified the parties to be represented, the geographical
area to be considered, and the focus on timber harvesting-related issues only (i.e., no discussion of trapping, fishing or wildlife management); all items that the parties had previously agreed to. It was also intended to clearly identify to the other parties the OMNR’s list of negotiable issues and non-negotiable items. Treaty or Aboriginal rights were at the top of the list of non-negotiable items in bold print (OMNR 2001b). OMNR participants noted that no formal acknowledgement of the terms of the mandate letter was obtained from the First Nation but they assumed that the First Nation understood and accepted it (OMNR 21).

According to most participants, through dialogue, the parties eventually grouped similar initial interests together under a suitable category name, which later became the headings of the draft agreement. Some participants noted that this process of determining what ‘interests’ would exist in the final agreement was controversial. OMNR participants described the process and criteria by which the sections of the agreement were selecting as ambiguous (OMNR 23). Likewise, some OMNR participants explained that interests which they felt should never have been included in the draft agreement, either because they exceeded the limits of what they thought was the scope of the negotiation, or because they were repetitive, unclear and too general (OMNR 21, 23), continued to resurface in the discussion and the draft agreement despite their protestations.

The brainstorming process was complete and the parties were “ready to start negotiations” in December 2001 (MCFN 2001c). The participants described how they moved from the initial list of interests and ideas developed during brainstorming to developing sections in a draft agreement. Each party was involved in “articling” or developing wording for each interest and then they passed their version to another party to be “cross-fertilized” (MCFN 2002). For example, one participant explained the process:

we didn’t pass drafts back and forth…we built each article together…we had our headings all established, those were the interests that we were trying to solve… Now what we were doing was putting context to these headings of the agreement (First Nation 24).

The consultant developed and maintained the growing draft agreement; although some participants suggested that there were several versions of the draft agreement and that this confused the negotiation process (OMNR 22). By August 2002, the parties had developed a draft agreement with several key sections including: definitions, guiding principles, term and timing, skills development and training, economic development, values and enhanced dialogue,
consultation and participation, community infrastructure, implementation, success recognition and dispute resolution. When the parties sat down to ‘negotiate’ the terms of the final agreement (in December 2002) most felt that given the length of time they had already spent on collaboratively developing the components they would only need a short, intense negotiation session. They earmarked a three-day meeting at a local lodge, to minimize outside interruptions. First Nation participants noted that it was at this point that the other participants’ unwillingness to compromise became pronounced and most participants agreed that the negotiation switched to a more position-based activity.

In total, twenty-two versions of the agreement were drafted to attempt to ratify a final agreement. In January of 2003, the OMNR informed the community that the agreement as it currently stood was not acceptable and they required time away from the negotiation table to get a legal opinion on its contents. The Chief placed a deadline for the development of the final draft agreement of March 2003. Finally, in April 2003, with the budget for negotiations almost gone and because the community faced threats of third-party management, the Chief decided to terminate the consultant for the negotiations and the formal meetings among the parties ended.

At that time, the OMNR lead negotiator, in consultation with the District Managers and OMNR legal staff set out to re-write the agreement, to make it acceptable to the OMNR. The community, in the meantime, was included as a claimant in a lawsuit filed by the Mushkegowuk Tribal Council against the Canadian and Ontario governments, referred to as the Rupert’s Land Claim. The lawsuit asked the court to rule that a number of federal and provincial laws, including the *Crown Forest Sustainability Act* violated the Aboriginal and treaty rights of the Aboriginal peoples in the region (Mushkegowuk 2010). All parties expected to return to the negotiation table to review the OMNR’s re-draft and determine how to proceed but it was unclear when this would happen. It was also not clear if the participants would return to interest-based negotiation or to another form of negotiation and what affect the lawsuit would have on the negotiation process.

Several disturbances to the negotiations are noteworthy. Between March and May 2002, OMNR employees were on strike and therefore no meetings occurred. Similarly, due to staffing changes within OMNR, only one of the OMNR participants remained consistent during the entire negotiation process. A total of nine OMNR participants were involved at various times (e.g.,
there were two different people in the role of Wawa District Manager and the lead negotiator changed once). The First Nation participants remained consistent throughout the negotiation, even after a new Chief and several new councilors were elected in 2001.

In 2005, the MCFN did sign a forestry partnership agreement with the OMNR and Tembec (the new Superior SFL holder). The details of the signed forestry partnership agreement were not available but in 2011 the community reported that, similar to a Model Draft 19 commitment, a provision in the agreement “provides $135,000.00 annually in cash or in-kind contributions to the community over the first five years of the agreement” from the forest industry (MCFN 2011).

In 2008, MCFN also became involved in the Northeast Superior Regional Chiefs’ Forum (NSRCF), a regional resource sector alliance of First Nation communities (NSFC n.d.).
5 Findings: The Outcomes of Collaboration

5.1 Overview of Chapter

This chapter presents the findings related to the first research objective, presented in chapter 1, aimed at identifying the participants’ perceptions of the outcomes of collaboration. For each case, the main categories of outcomes identified by participants are presented first. However, participants considered that the outcomes identified were interdependent and not discrete. Thus for each case, the core outcomes that emerged as a result of the confluence of the main categories are also described. The CLFN Coexistence Agreement Negotiation process outcomes are described first and those related to the MCFN Umbrella Agreement negotiation process are presented in subsequent sub-sections.

5.2 The Outcomes of the CLFN Coexistence Agreement Negotiation

In 2004, when I interviewed participants, there were varied responses to the question of outcomes. However, each group of participants described how they held little hope that a signed agreement was possible, desirable or even necessary. Participants described their feelings about the draft agreement:

I would just as soon scrap that agreement. … I found it exasperating, and I thought (with) an unsigned agreement, we’ve wasted our money (OMNR 09).

I think the Chief and the council …and the legal people too, were having problems with (the agreement because) things were not quantified in there. They (industry and OMNR) said, we’ll increase your wood fiber, but they wouldn’t quantify it (First Nation 02).

I don’t care if we even ever get back to developing the coexistence agreement … why push trying to sign the agreement, spending a lot of time and energy trying to sign an agreement. Let’s just get on with some of those other initiatives (Industry 10).

Even without a signed agreement, the participants identified several other significant ‘outcomes’. It is important to note that it was difficult for most participants in the CLFN negotiation to delimit the outcomes arising from the 8 or so formal negotiation meetings with those arising from other previous, concurrent and subsequent interactions, for example, those related to forest
management planning or Mammamattawa Inc. The blockade and resulting negotiation process were viewed by participants as a “turning point” (First Nation 05), “an awakening” (Industry 08) and “eye-opening” (Industry 11) but were considered only one part of a series of ongoing interactions, relationship-building activities and collaborative efforts.

The data analysis revealed that the participants in the CLFN coexistence agreement negotiations emphasized three major categories of outcomes: 1) power, 2) relationship and communication, and 3) forest-related economic development. Within each of these categories, several sub-categories of findings are provided that repeatedly emerged as patterns or common characterizations. There were also five core outcomes consolidated from the categories and sub-categories developed by the parties in the CLFN case. The CLFN findings related to outcomes are presented pictorially in Figure 5-1.
Figure 5.1: The outcomes of the CLFN negotiation process, including the main categories, their component categories and the consolidated core outcomes.
5.2.1 Outcomes Related to Power

Power, including who held various sources of power and if and how this power was affected was a dominant theme related to outcomes. Participants described subtle but important changes to the parties’ relative power, the community empowerment that resulted from the blockade and negotiation and the recognition of the role of power in limiting the scope of the negotiation, as the main categories related to the broad theme of power.

5.2.1.1 Changes in Power

The participants identified several nuanced ways that the negotiation had begun to shift some sources of power, while leaving issues of jurisdiction and authority untouched. Participants agreed that the act of bringing everyone to the table to talk was novel, transformative and significant as it was “one of the first times a community leader came to town, and said this is what I have in terms of issues that I have to solve in my community, and how are we going to do that with you guys” (Industry 08). In this way the negotiation served to establish the First Nation’s place in an “ongoing dialogue” (First Nation 03) and created a “forum to put issues forward” (Industry 08). Essentially, the negotiation created a table where none existed before and established the First Nation as a legitimate voice at the table.

Participants identified a change in the willingness of the industry and the OMNR to discuss and attempt to resolve broader issues of importance to the community as an important outcome. For example, the industry representatives committed to collaboratively finding a mechanism to provide compensation for logging on traplines (Industry 08) and the OMNR committed to “helping the community with its economic development planning and economic opportunities” (OMNR 09). In subsequent sections, I describe how problems arose because these commitments were either not matched with the CLFN community’s conceptualization of the issues and appropriate solutions or because they were not adequately addressed or operationalized by the other parties. Despite these problems, the willingness and commitment of the industry and the OMNR to determine how they would get along and develop, especially economically, signaled a change in the relative power of the First Nation. For instance, First Nation participants felt that the other participants “would not abandon them in the future” (First Nation 03) and despite their
different views about whether Aboriginal and treaty rights-based claims, such as revenue sharing and compensation, were valid subjects to consider at the table, they had established a place where they could at least bring up those views (First Nation 01, 02). The OMNR’s commitment to “work and help make improvements working with Constance Lake’s vision of where they need to go” (emphasis added by participant, OMNR 09) was further evidence of a change in the power ascribed to the First Nation.

Participants noted that the negotiation did not change the existing power of OMNR, derived from their legislative authority to regulate forest harvesting (established through the CFSA) or the forest license holder’s power to make decisions concerning forest management (following the FMPM and guidelines). However, throughout the negotiation, the First Nation maintained a consistent ‘rights-based’ approach to collaboration and hoped to “educate” (First Nation 02, 07) the other parties about their interpretation of Aboriginal and treaty rights and responsibilities. First Nation participants noted that this approach to the negotiation coupled with favourable interpretations of constitutionally protected Aboriginal and treaty rights in court cases, including the duty of provinces to consult, the OMNR’s obligations resulting from Condition 77 and the recognition that the Aboriginal population would likely surpass the non-Aboriginal population in the region in the next generation served to increase the First Nation’s power in the negotiation. Participants used metaphors like “we have our foot in the door” (First Nation 05) and “we are in the ball game” (First Nation 02) to describe this change. Specific evidence of this change cited by participants included, Tembec (not necessarily the other forest industry participants) advocating for revenue sharing (paying a portion of stumpage fees to First Nations), despite the provincial government’s avoidance of the subject. Likewise, the OMNR intervened to facilitate discussions with IWA Local 2693 and Local 2995 to let Mammamattawa access fiber already allocated as a condition of the Kenogami SFL, and when the First Nation voiced their frustration with the delay and threatened to go ahead and cut without an agreement with the unions, the District Manager’s decision to “keep the peace in the forest” (First Nation 05) by granting a 100 hectare license directly to the First Nation was considered a concession given to the First Nation because of changes in their power.

This section identified several changes in power resulting from the negotiation process. These changes in power are nuanced, but contrasted with the situation previous to 1997, the participants considered them to be significant.
5.2.1.2 Community Empowerment

First Nation participants expressed that the negotiation empowered the community members and leadership of CLFN in several ways. The negotiation was described as a good educational process for the community and part of an ongoing effort to improve community well-being. Participants noted that the blockade and negotiation served to coalesce a vision within the community and encouraged community members to work in the same direction. It also alerted the leadership to the need to establish a community plan and alliances with other First Nations and with territorial and regional Aboriginal organizations. To this end, the negotiation promoted an empowered position. This was expressed by a participant’s advice to other First Nations:

(you) should not be afraid, that’s your land, you have every right to protect it…sometimes you may have to protest and sit down with governments and companies there and tell them what you want and the reason why you are doing it (First Nation 07).

The negotiation process reflected and strengthened the First Nation identity as treaty right holders and partners in a treaty relationship with the provincial government. First Nation participants explained the importance of developing solutions to current inequalities based on this treaty relationship. They noted that their current exclusion from forestry existed because treaties were signed and then ignored and “the signatories including the provincial and federal governments were supposed to share the resources and that hasn’t happened at all” (First Nation 03). The blockade and negotiation were considered significant because the community was no longer willing to accept anything less than a treaty-based approach. One First Nation participant noted that the phrase “this is our land, these are our resources” (First Nation 05) reflected this empowered identity and was used in the negotiation like a mantra to demonstrate to the other parties that the community was united and committed.

Participants also described how the CLFN blockade and the threat of future protests served to increase the First Nation’s power throughout the negotiation. First Nation participants noted that they continued to use threats of disruptions to established forest operations, boycotts of Hearst businesses and feigning conflict between the Chief and councilors as techniques for advancing their goals in the negotiation (First Nation 05, 06, 07). The blockade and threat of coercive
action also had negative consequences for the relationship of the parties and the development of trust as discussed in a subsequent section.

Finally, the negotiation empowered the community because for the first time industry partners were forthcoming with information about the forest industry that had previously not been available to the community. The “industry had to show its hand” (First Nation 02) and the community gained knowledge about the local economic potential of forestry, forest policy and their rights relative to forest industry, and “it made us stronger gaining that knowledge, (and realizing) how everything relates, native organizations, the government, the industry, even the unions” (First Nation 01). The community empowerment and strengthened identity that emerged from the blockade and negotiation are reflected in the following statement: “we are not just the Indian back in the bush anymore; we are here to tell you guys about our views and to tell (you) that our treaty rights are not recognized (here) according to the courts” (First Nation 07). This outcome was considered a core outcome of the negotiation process and is described further below.

5.2.1.3 Recognition of Power

Another outcome of the negotiation process was the realization that the scope of the negotiation was limited by the power and control exerted by other parties. In other words, a product of the negotiation process was that what was and was not ‘on the table’ was defined by the parties. This recognition of power can be described as the First Nation participants gradually learning how existing sources of power limited the achievement of their expectations regarding the full recognition and integration of their Aboriginal and treaty rights. Consequently, they recognized where their efforts were best directed in the future given these limitations.

First Nation participants noted that they learned that their ability to make fundamental change through the negotiation process was limited by the geographic boundaries established (defined along administrative lines not traditional territory boundaries), the scale they were working at (local District-level verses Ministerial-level OMNR) and by the scope (Condition 77 requirements and forest management planning verses Aboriginal jurisdiction) which were determined and maintained by the other parties.
Initially, the First Nation participants had hoped that their questions regarding fundamental authority, like whose land is it, and who has jurisdiction, would frame the discussion. The First Nation participants noted that their participation in the early stages of the negotiation revealed that the reimagining of the system that was required for the conversation to even be framed in this way was much more complicated than they anticipated and they were constrained by the power and control of the other parties (First Nation 01, 06, 26). For example, First Nation participants recognized that,

they didn’t want to recognize our feelings and we are always willing participants in any negotiation but when it comes down to recognizing our rights and recognizing our traditional land, our land entitlement, you know they always try to get us to accept what they want us to accept (First Nation 06).

In the latter stages of the negotiation, First Nation participants recognized the limitations in the scope of the negotiation, namely only negotiating economic development opportunities as required by Condition 77 “because that’s what the communities are left with” (First Nation 01) and improving existing forest management planning processes to increase Aboriginal involvement. First Nation participants also realized that they needed to strengthen their own networks and alliances with other First Nation communities and organizations because “we cannot stop logging (on traplines) ourselves or change the way the province runs things because there’s just too much (involved), it’ll have to be done by everybody (all First Nations)” (First Nation 01). Moreover, they recognized that the organizational change that they were after required engaging at a higher level than local District OMNR and “we should have been negotiating government-to-government” (First Nation 06). A First Nation participant summarized these realizations: “you know, you do a blockade and everyone gets interested and then they just negotiate one small part of it because they (the parties) are not really at the provincial level, we are working below this all the time” (First Nation 05). Importantly, for CLFN participants, the realization that the negotiation process would not be able to address their ‘rights-based’ claims only emerged after considerable time.

Industry participants also developed a new understanding of the scope of the negotiation, particularly regarding the role (or lack of a role) of the federal government. Industry participants noted that they learned that the ‘jurisdictional issues’ regarding Aboriginal and treaty rights and compensation were not addressed by having an INAC representative at the table, as they had
hoped they would have been. Significantly, these realizations only emerged after considerable years at the table, as described below. When the negotiation was established in 1997, representatives from INAC were specifically included because the forest industry representatives were looking for guidance on revenue sharing, stumpages, and logging on traplines. An industry participant noted that, throughout the negotiation, INAC maintained more of an observer role and could not or “would not address specifically whether in fact compensation should be paid to trappers because trees were being harvested” (Industry 08). This participant concluded that as a result “the industry (which) is trying to carry out business in a very narrow sector of the economy is being expected almost to fill a gap that the federal government and provincial governments together should be in” (Industry 08). Industry participants felt that all levels of governments’ lack of direction on “jurisdictional issues between the First Nation and the government” (Industry 10) had created many of the problems they were trying to address through the negotiation process. Industry managers on the ‘front lines’ with trappers felt that the federal government’s continued inaction forced them to continually reinforce what they saw as the limit of their legal requirements to the detriment of their relationship with community members and their core business.

OMNR participants may have also entered the negotiation with some uncertainty about their role in meeting the requirements of Condition 77 and ensuring that Aboriginal consultation was meaningful. One OMNR participant considered local negotiations to be lacking “Ontario’s interpretation of treaty rights” (OMNR 25) and personally they felt that District OMNR staff required clarity that could come, for example, from a court case that “tested treaty rights” (OMNR 25). Nevertheless, the OMNR’s province-wide policy of not ‘negotiating’ Aboriginal and treaty rights issues related to forest management informed the District staff members’ approach during the negotiation process. OMNR participants noted that expanding the scope outside of this mandate was beyond their control even if they recognized that this limited scope was not satisfactory to the First Nation.

Both industry and OMNR participants explained that they had not limited the scope of the negotiation themselves or precluded any of the First Nation’s issues from being brought forward. Rather they had merely developed the negotiation within the only acceptable scope that was predetermined by the existing policies and structures. If they felt that the scope should be expanded or greater clarity provided regarding the First Nation’s ‘rights-based’ claims and forest
management, they felt this had to come from the federal government or other provincial ministries, but could not be the subject of the local negotiation. According to OMNR and industry participants, the scope of the negotiation had been discussed and accepted in the initial negotiation meetings by all the parties. For example, an OMNR participant explained that the community’s displeasure with the terms of the lease agreement between the First Nation and Lecours Lumber Co. was definitely an issue which was discussed at the table, but ultimately, it was not considered to be within the scope of the negotiation or valid because the Lecours representative maintained the “view that we are not talking about the lease … (because) I have a lease and I am going to live up to it …(but) it wasn’t (excluded from the negotiation) because of lack of talking about it” (OMNR 09).

Conversely, First Nation participants noted that the other parties’ power and control over the resources served to limit the way the issues were defined and the range of options discussed. For the First Nation, the scope of the negotiation had reflected the ‘status quo’ of forestry in Northern Ontario. As they explained, the provincial government and forest corporations had, through forest legislation and the forest tenure system, established an entrenched system for forest decision-making and economic development in which the primary benefits went to the province in the form of Crown dues and to forest corporations in the form of profits and the secondary benefits accrued to non-First Nation communities in the form of employment and economic spin-offs. This system, they argued was created, perpetuated and defended to support the social and economic goals of the province, forest industry and non-First Nation communities and forestry workers to the determent of the forest itself and Aboriginal communities and their rights (First Nation 01, 05, 26). First Nation participants expected the negotiation to allow them to change this status quo, for example, one participant noted,

we have to start looking at how the land can sustain development not looking at everything in terms of jobs or the economy… instead of putting up arguments every time we want to say something, well the competition says we can’t do it, world market says we can’t do it,…even if you are a company man, you still need to listen to our views and let’s talk about those views and do these things on a without prejudice basis …don’t just put up barriers to it as soon as it comes on the table (First Nation 01).

Different interpretations of the appropriate scope of the negotiation ultimately culminated in the community deciding not to ratify the agreement in 2002.
The community’s refusal to ratify the agreement created frustration for the industry and OMNR participants and reflects the difficulty encountered by the parties in trying to define a suitable scope for negotiations. OMNR and industry participants described not understanding why the community was fixed on ‘numbers in the agreement’ and that their disappointment and frustration resulted in misunderstandings and negative interactions in the final meetings discussing the most recent draft number 8 (OMNR 09, OMNR 25, Industry 08, 10). In September 2001 (four years after the blockade), the CFLN participants continued to push for the agreement to include “a commitment to government-to-government negotiations” (Coexistence Negotiation Meeting Minutes September 13, 2001, 2). The OMNR maintained this was not within their mandate and beyond scope of the agreement. In the same meeting, the First Nation participants emphasized the need for quantification. It is possible that the First Nation’s preoccupation with quantification indicated that they had recognized the limitations on the scope of the negotiation and were adjusting their approach to working to get the best possible economic and financial commitments given this narrow scope (i.e., no ‘right-based’ claims). This realization about what was currently possibly within provincial law and the delimitation of the scope of the negotiation that emerged is considered a core outcome of the process and is described further below.

5.2.2 Outcomes Related to Relationships and Communication

Participants described three categories pertaining to relationships and communication outcomes, including changes in the relationships among the parties, the status of trust, and improvements in the community’s participation in forest management planning.

5.2.2.1 Changes in Relationships

All participants agreed that as a result of the negotiation, more respectful and collaborative relationships among the parties had been built. For example, participants stated that the blockade and negotiations “helped develop personal relationships and a common understanding… we know many of the trappers individually, there is a relationship established” (Industry 08) and “at least people know we are here, before if you see them on the street, they didn’t even talk to you, it was never a relationship before” (First Nation 01). However, while participants felt that personal relationships were enhanced, and the general relationship between the OMNR and the forest industry and CLFN had improved, some OMNR and industry participants considered that
both personal and formal relationships were fragile and continued to be difficult. The reluctance of CLFN to sign the draft agreement and repeated ‘rights-based’ claims from the community, for example referring to trapper compensation during forest management planning consultation meetings, contributed to some OMNR and industry participants considering that more conflict was likely (OMNR 25, Industry 08, 10).

The OMNR and industry participants emphasized that in particular, the community’s reluctance to sign the agreement had negatively affected the relationship. For these participants, the First Nation participants’ failure to respond to the draft agreement was interpreted as showing a lack of recognition for their efforts and the time and resources invested (OMNR 09, Industry 08). Likewise, the First Nation participants’ desire for quantification in the draft agreement and the inclusion of additional rights-based items was seen as contrary to the initial consensus of the parties at the table, namely that a coexistence agreement would not simply provide monetary compensation but would put responsibilities on all parties to work together to bring about integration of the First Nation into the forest industry and long-term economic solutions (Industry 08, OMNR 25). An OMNR participant recalled one incident where the First Nation participants’ desire for quantification and the INAC participant’s assessment that the “agreement was meaningless” (OMNR 09) lead to an intense exchange, which likely negatively affected the relationship with the First Nation. According to one OMNR participant:

I did blow up at one meeting that we had subsequent to (the community changing the draft agreement). I gave Constance Lake the view that I wanted to trash the agreement, and they got mad at me and so fine, everybody is mad at each other, doesn’t do anybody any good. …I was so frustrated … what I was hearing from the INAC guy was that Mammamattawa Inc. doesn’t count, so what you employ 30 people, what are you going to do now. So this negotiation hasn’t credited anybody for doing any good work (OMNR 09).

Industry participants also described their disappointment and a feeling a lack of recognition from the First Nation. For example, stating that “we made a hell of an effort to try and give some life to that agreement” (Industry 08) but:

when you look today at the results of all of the work that has been done there seems to be very little recognition, even for Mammamattawa where industry has pumped, I think we could say now at least a million dollars in there. Lots of energy. I am convinced that the community doesn’t recognize all the effort that has been put in
around Mammamattawa. The efforts we’ve made for improving participation in the planning process … I don’t think that has been recognized (Industry 08).

Regarding the status of the relationship, the OMNR and industry participants both noted that the parties were “too distant, we are further apart now than we were in 1997 (OMNR 09) and that “we are even more mired today then we were” (Industry 08) and “we feel that we’ve been quite creative and that we spent quite a bit of energy, money, time, but it’s not always evident that we accomplished anything (Industry 08). They noted that they were no longer sure where the relationship stood or whether the community had any measure of trust in the industry or OMNR. Without a signed agreement, industry participants also felt that the relationship that was built was not formalized and that specific details could not be addressed, for example, regarding trapper compensation:

   it is frustrating for the trappers because we’ve been telling people for a few years now that we are not dealing with compensation, (the agreement would have provided) a forum to discuss that, so I don’t know, are we heading for another blockade? Some days we are convinced of that (Industry 08).

Industry participants also noted that a signed agreement would have provided a forum for continuing their efforts and a mechanism to evaluate progress (Industry 08, 10). Thus, while a more collaborative relationship was developed, industry and OMNR participants felt that the relationship was still fragile because of the lack of ratification of the agreement.

OMNR and industry participants attributed the community’s reluctance to sign the agreement to a change of leadership at Constance Lake in 2001, and the influence of Aboriginal organizations and legal advisors, who had recommended that the First Nation not sign the draft agreement because it contained no commitments regarding financial resources or fiber allocation. Some participants saw the community’s reluctance to sign the agreement as a mechanism to maintain some leverage or control. For example, an OMNR participant described the draft agreement as “a horse that the First Nation can jump on and ride almost anytime they seem to need to jump on and ride” (OMNR 13).

The First Nation participants were ambivalent about the draft agreement. They noted that the lack of quantification in the agreement was unacceptable. But they also noted that even if the agreement identified the fiber allocation or contained financial commitments, the community
“never wanted to sign an agreement” (First Nation 26). It was noted that the former Chief, who initiated the blockade and participated in the early negotiation meetings also,

wouldn’t sign any agreement because there was no talk about treaty relationships and those kind of things and sure some companies were going to give us some money but that wasn’t going to settle it for us. The issues were more about the regulations that this province has, I mean sure you could have signed something just to maintain some kind of agreement but it would be just with the local district…and it would have really meant nothing for us. Jobs, why do we have to sign agreements for jobs anyway? Everybody else is getting jobs, we need to agree to get jobs, I don’t think so (First Nation 01).

Thus, participants described that neither the former Chief, nor the new Chief, was satisfied with the draft agreement, but potentially for different reasons. Politically, indifference to the draft agreement also allowed the former Chief and the new Chief (who were both candidates for the position of Chief in the 2003 election) to remain on the same side of the issue. Whether the draft agreement was unacceptable because it did not provide any quantification of commitments or because it did not address the treaty rights of the First Nation in relation to forestry or for a combination of both reasons, the other participants perceived the reluctance on the part of the First Nation as reflecting the communities’ social and political divisions, and/or pressure from political organizations or interests and negatively affecting their working relationship with the community.

For the First Nation participants who wanted to redefine how forests were used, ratifying an agreement that was not based on their treaty rights became less important, because “the bigger picture was still there” (First Nation 01). A First Nation participant explained that:

there was sort of a non-understanding of what we wanted in (the negotiation) and the District Manager was all up in arms at the end of a meeting. He was saying, “I gave you this.” He showed us a piece of paper listing the scholarship program, student employment, forestry company etc. “I gave you this, I gave you that” but that’s really…that’s nothing to do with what we want, you know what I mean? (First Nation 06)

All First Nation participants supported the view that fundamentally, “they (the other participants) just don’t want to recognize our Aboriginal title and our treaty rights…so how are we going to build a relationship if people don’t want to recognize these” (First Nation 06). Likewise, ratifying an agreement, which “didn’t address the fiber allocation (or) financial resources or any other resources to help the First Nation” (First Nation 03) became “pointless”
(First Nation 04). Another First Nation participant noted that the relationship was “evolving… and (an agreement) becomes a constraint after it is signed” (First Nation 26).

This negative characterization of the relationship resulting from the community’s refusal to sign the draft agreement was not evident in industry and First Nation interactions related to Mamamattawa. Both First Nation and non-First Nation Mamamattawa board members demonstrated a commitment to restructuring the company based on better communication and sound business planning principles, while directing ‘compensation and trapping issues’ to more appropriate forums (i.e., Chief and council and coexistence negotiation process-inspired field trips, like the one already planned to Waswanipi, Quebec) (Field notes). These individuals described other BOD members as “committed to being more professional” (Industry 12), “a team of people working together” (First Nation 12), and “has the interests of the First Nation at heart” (First Nation 07). This suggests that participants directly involved in joint action on the shared goals that emerged from the coexistence agreement negotiation process had more favorable perceptions of their relationships.

Non-First Nation participants did describe several ways they hoped to develop and enhance relationships with the First Nation, including spending more time in the community simply to learn and talk, spending more time working on small projects that built community capacity and increased trust, and finding mutually acceptable goals to focus on. Representatives from all the parties had come to realize that improving economic development opportunities for the First Nation from the forest, was for the time being, a goal that they all seemed to agree on. This focus on economic development became a common goal that permitted the parties to continue to work together without a formal agreement. The development of this common goal regarding economic development is considered a core outcome and is described in greater detail below.

5.2.2.2 Status of Trust

Several participants noted that the blockade had negatively affected the status of trust between the First Nation and other parties. Participants described how the blockade intensified negative attitudes towards the First Nation from the community of Hearst (where most of the Lecours employees lived) and had engendered a lack of trust from the managers of Lecours towards the First Nation (Industry 11, First Nation 14). However, industry and OMNR participants also noted that the venting process that was part of the first few negotiation meetings seemed to bring
participants together and initially the discussions with First Nation participants served to give them much greater insight into the community’s feelings of deprivation that motivated the blockade, their history and their interests (Industry 08, OMNR 09). Many noted that early in the negotiation there was great hope for increasing trust and developing new relationships.

Participants noted that in general the parties were no more trusting of one another after the negotiation and many cited examples of ways that trust had decreased following the negotiation. For instance, First Nation participants maintained that problems with Mammamattawa’s management and structure were deliberate because the industry partners were either hoping or assuming that the company would not succeed in the long term. Participants came to realize that trust was impacted by many years of historical injustice beyond their control. As an OMNR participant recognized,

> it is an untrustworthy relationship that any First Nation member has from the government, so I’m not above that, I’m part of that. I think we are years maybe even generations away from the possibility of having trusting relationships, this negotiation was just that, it was an attempt to try and document some ways to coexist, it generated some improvements but when we talk about the trust word we are generations away from the capability of that because there is such a gap (OMNR 09).

Participants also noted that projects and initiatives which occurred outside of the formal negotiation process, including a joint trip to see the Menominee Indian Tribe of Wisconsin sawmill and forest operations, the development of the Nagagamisis Central Plateau Signature Site and Eagles Earth, and OMNR and industry support of community events and gatherings had built trust between the parties, “whereas I don’t think the negotiation got us there” (OMNR 09).

5.2.2.3 Changes in Community Participation in Forest Management Planning

First Nation, OMNR and industry participants agreed that the negotiation resulted in improving both the quantity and quality of communication among the parties. First Nation participants mentioned that the industry and OMNR’s efforts to consult individual trappers prior to harvesting, find culturally appropriate ways to solicit community input and support for an Aboriginal liaison position were positive steps. However, different perceptions of ‘meaningful consultation’ and how and whether the current tenure structure and forest management planning (FMP) consultation procedures appropriately accommodated the community’s ‘rights-based’
claims remained. Ultimately these differences contributed to very different assessments of whether this ‘outcome’ was sufficient or legitimate.

First Nation participants noted that the negotiation contributed to a fundamental shift. Whereas, “meetings in the past with forest industry were “this is what we are gonna do” now it is “what do you guys want?”” (First Nation 05) The negotiation improved communication and this in turn contributed to an increased understanding of each other, particularly, non-First Nation participants learning about First Nation perspectives and their current social and economic challenges. For example, First Nation participants described an “increased understanding of what our needs are from the industry and province” (First Nation 03). The negotiation process also began a discussion among the parties to try to define ‘meaningful consultation’ but this remained an ongoing issue among the parties. In July 2001, NAN released a consultation protocol while the former chief of Constance Lake held the position of Deputy Chief at NAN. First Nation participants noted the government never accepted this protocol (First Nation 01, 02). Despite improvements in communication, the First Nation participants described still being “outside” (First Nation 14) the FMP process. For many First Nation members, the reaction to FMP requests for input was indifference and apathy because in their view “forest policy is already in place and planning is already done… (so) what is the sense?” (First Nation 04)

Several First Nation participants noted that there were fundamental differences in how community members viewed the forest, and how forests should be used or cared for, which were not easily communicated to forest industry or accommodated by FMP consultation. For example, First Nation participants noted that in the negotiation they tried to explain that:

the whole forest industry needed to change… trapping is related to the First Nation way of life and the whole living off the land…people hunted and trapped and fished on a specific area for years and now that whole way of life is being changed because of the forest industry moving in and affecting the whole ecosystem…but there was not enough good communication (to explain this) (First Nation 02).

Likewise, they noted that while they were “following government policies the industry has taken a lot of trees out of this area already, you now our rivers, you don’t catch the speckled trout like you used to, there is nothing there. Roads, aerial spraying has an impact on all those creeks” (First Nation 01). Other First Nation participants noted that no shared understanding of ‘sustainability’ existed and approaches which were aimed at achieving sustainability by OMNR,
such as emulating natural forest disturbances (OMNR 2001b) were not appropriate. One participant called OMNR’s approach, a “bunch of nonsense, they cannot cut the same as what the fire can do” (First Nation 04). Likewise, one participant recounted a story of an elder who walked through an area where fire had burnt through on one side of the road and the other side had been clear-cut and as he stopped to listen, no animal sounds were heard from the side that had been clear-cut (First Nation 26). This participant noted that communicating this story to OMNR and industry participants “didn’t ring any alarm bells” (First Nation 26) and that they did not understand that the impact of harvesting was not just on the community members ability to hunt, trap and fish but on their “right to live” (First Nation 26). One First Nation participant summarized some of the differences between Aboriginal and non-Aboriginal perspectives which the parties encountered:

because forestry was around for a long, long time I guess we just got used to it, the way things were, were the way things should be, meant to be. People said, no, it’s not the way it’s meant to be. The elders say they have to talk to us before they do anything and our communities have to benefit and all of that, we have to be decision makers on the land (First Nation 01).

Industry and OMNR participants also described improved communication as an important outcome. One industry participant noted that “a trapper that is unhappy with what is planned can easily end up in a meeting with someone at (Industry name) that is senior, so the contact, the communication, the relationship have extended greatly” (Industry 08). More specifically, following the negotiation, HFMI had developed a ‘trappers’ protocol’:

The commitment is there, trapper by trapper, and trapline, by trapline, we sit down and talk to them before operations commence...we deal with the trapper first, then we bring it to the trappers council, and at that meeting the Ministry attends, HFMI, the companies and the trapper (Industry 08).

However, the industry participants noted that the trappers’ protocol was not developed collaboratively and no feedback was received from the community, which raised doubts about the effectiveness of the communication (Industry 08).

Participants described other examples of improvements in communication. OMNR and industry participants described innovative approaches to solicit First Nation members input for planning, such as hosting Bingo nights on the reserve in conjunction with forest management open houses. The development of an OMNR Aboriginal Liaison position held by a First Nation member was
considered a sign and source of improved communication. The purpose of this position was “to fill gap that was missing, get the right parties together and talk on the concerns that the membership at large has (because)… before industry and the province and other organizations could not communicate with the First Nation” (First Nation 04). An Aboriginal Liaison position was considered important because it is otherwise “difficult to build a relationship with a First Nation community when the leadership can change every two years” (First Nation 04). For OMNR it represented a better way to “share information with the community” (OMNR 09) than putting the chief on the planning team or having the chief appoint a representative to the planning team. Likewise, industry participants mentioned cultural awareness training for the employees and one company’s development of a First Nation policy as examples of improved communication (Industry 12). The OMNR participants noted that as a result of improved communication they understood First Nation values better, for example that traditional activities do not include just trapping (OMNR 09) and there is “a broader appreciation by the industry of the First Nation’s position and needs” (OMNR 13).

Generally, the OMNR and industry participants continued to support the notion that First Nation ‘values’ were something that could be addressed within the current FMP process through modifications to the prescriptions, or setting aside areas of concern. An OMNR participant noted that FMP was not as limited as the community may perceive it to be. For example,

> as we encourage more public participation we are continually making better decisions (and) the planning process is pretty open to identifying areas of concerns, negotiating correct silvicultural strategy, protection strategies, all that kind of business (OMNR 09).

This participant noted that the key for improving CLFN participation in FMP was not in making any changes to the planning process but rather in understanding the community’s vision and how this fits with what the forest offers.

Industry participants noted that while they thought communication had improved, First Nation participation in FMP in 2003 was still minimal. They noted that,

> it still largely comes down to most trappers seeing the plans for logging a few weeks or few months before things are actually going to go ahead. The plans are basically in place and their influence in the process usually amounts to protecting certain features like trails, cabins, caches of traps things like that, the bigger questions around like, if you cut this area I can’t trap for marten, so should I get this much money for it, we
can’t go there, we don’t have a mandate to go there, but the involvement, the discussion at least is much better (Industry 08).

The industry and OMNR participants developed what they and other observers considered “best practices” (Bioforest 2003) regarding FMP consultation following the negotiation process. Forest Stewardship Certification (FSC) was being pursued on the Hearst SFL and the nearby Gordon Cosens Forest, for which Tembec held the SFL, had already been certified according to the FSC standard (Smartwood 2003). Most participants considered supporting an Aboriginal Liaison position and holding more culturally appropriate community and trapper meetings improvements in FMP communication. However, these changes were seen by the First Nation as merely tweaking how they there informed of planning decisions and not reflective of their desire for real change to what constitutes consultation and how or when it is required. The First Nation’s issues related to meaningful consultation and compensation remained outstanding issues. First Nation participants described that FMP improvements failed to address their concerns about the environmental impacts of forest harvesting. The industry and OMNR participants recognized that the communication improvements did not meet the expectations of at least some of the community members but they felt that the negotiation had contributed to refinements of the current processes that made them more suitable to protect First Nation values.

5.2.3 Outcomes Related to Forestry Economic Development

The participants in the CLFN case identified two main outcomes related to economic development from the negotiation process: 1) the development of Mammamattawa Inc. (the community and industry joint venture harvesting company, hereinafter Mammamattawa), and 2) the discussion surrounding compensation of the First Nation community and/or individual trappers for harvesting on traditional territory and on traplines. These outcomes were related because Mammamattawa was considered a form of compensation by the forest industry and First Nation participants. From these economic development outcomes the First Nation participants developed business expertise and all partners developed partnership experience. Participants also described the lessons learned from their involvement with Mammamattawa as it struggled financially as important outcomes. Mammamattawa also contributed to the First Nation being considered a partner with forest industry. In the following section, I describe the development of Mammamattawa, several reasons for Mammamattawa’s financial difficulties and the lessons
participants learned from the experience. Finally, I discuss the compensation discussion, which occurred as part of the negotiation process.

5.2.3.1  The Development of Mammamattawa Inc.

Mammamattawa was seen as a tangible outcome of the negotiation process and a significant outward sign of commitment from the industry partners and a step forward for the partners’ relationship. Mammamattawa grew out of a license to harvest approximately 13,000 cubic metres of wood annually that had been issued to the CLFN by the OMNR, since 1988. Previously, the Band Council made arrangements with logging contractors from CLFN to harvest the wood and it was sent to local mills for processing. Despite some success in developing forest harvesting experience among members of the community, the contractors who undertook the logging never seemed to return revenue to the community, nor keep up with the crown stumpage fees. By 1997 there was $180,000 of crown fees outstanding and this small allocation was considered by many to be inadequate to support a successful logging business. Following the blockade, OMNR waived the crown fees which the previous CLFN logging contractors owed and committed 12,035 cubic meters annually for four years (from April 1998 - March 2002) as an overlapping license on the Hearst SFL (Perras et al. 2000).

Mammamattawa was formally established as a corporation in 2000. The three forest companies operating on the Hearst SFL at the time, Lecours, Tembec and Levesque Plywood Ltd. (later purchased by Columbia), contributed financially to the corporation start up, a general manager from CLFN was hired, equipment was leased and harvesting started. The CLFN (represented by the Band Council), Amik Development Corporation (a non-profit development corporation established by the CLFN, hereinafter Amik), seven forestry workers from the CLFN, and the three forest companies operating on the Hearst Forest at the time were shareholders (Figure 5-2). CLFN represented by Amik, the workers and the Band Council held the majority of shares, with all three forest companies supporting Mammamattawa as ‘investors’ but holding less than 1% of shares collectively. It is likely that the intention behind establishing Amik, a corporation that could operate separately from the elected leadership, as the largest shareholder of Mammamattawa, was to avoid conflicts between the political and economic goals of the community and frequent turnover of elected leadership. But throughout most of the operation of
Mammamattawa, the seat for Amik on the BOD sat vacant and the corporation existed on paper but did no real work because there was a lack of qualified community members to operate it.

The Mammamattawa Board of Directors (BOD) consisted of five directors, with one representative coming from each group of shareholders, except the investors, which nominated two directors. Initially, each forest company invested $25,000 to establish Mammamattawa. The forest companies continued to provide additional capital, and contributed other resources to Mammamattawa, for example, a consultant to guide operations, support staff, training courses, and machine repairs.
Mammamattawa Inc. (est. October 2000)

Classes of Shares

A
Amik Devp’t Corp. 199,500 shares

B
7 workers (300 shares x 7) = 2100 shares

C
Constance Lake Band Council 500 shares

D
Tembec Industries Ltd. Lecours Lumber Co. Ltd. Levesque Plywood Ltd. (later sold to Columbia Forest Products) 75 shares

Mammamattawa Board of Directors:
1 director from A
1 director from B
1 director from C
2 directors from D

Consultant (funded by Tembec)

1st General Manager

2nd General Manager (non-First Nation)

Figure 5-2: Mammamattawa Inc.'s corporate structure

5.2.3.2 Mammamattawa Inc. Financial Problems

Mammamattawa grew to employ up to 25 First Nation members operating feller bunchers, skidders and delimiters (Mammamattawa Board Meeting Minutes, December 16, 2002) and had commitments for up to 97,000 m³/year of mostly winter harvesting on the Hearst SFL (additional commitments on the Kenogami SFL were constrained by collective agreements). However, as
early as the fall of 2002 Mammamattawa board members, the Chief and council and forest industry representatives were engaged in addressing what had become a financial and management “crisis” for the company (Mammamattawa Board Meeting Minutes, September 24, 2002). Issues identified included: no cash flow, lack of accounting or questionable accounting, high cost of production, high cost of equipment maintenance, only five months of work, and human resource problems (Mammamattawa Board Meeting Minutes, September 24, 2002). In a report the following year, management consultants noted that Mammamattawa was experiencing over 30% down time due to equipment breakdowns and had an accumulated deficit of over 1 million dollars (BDO Dunwoody and Assoc. Ltd., 2003).

Participants identified a variety of reasons for these financial problems, summarized in Table 5-1. First Nation participants noted that the financial problems of Mammamattawa resulted from the inexperience of the general manager, the control exerted by an industry-funded ‘consultant’ who was an influential retired politician and local forest industry leader, and fundamental problems with how the company was structured. They noted that having the forest industry on the board of directors (influencing the price offered to Mammamattawa per cubic meter) and employees as shareholders (leading to a lack of accountability and human resource problems) and the low initial volume allocation and unfair quality, location and timing of the harvesting (including limitations associated with IWA 2995/2693 collective agreement commitments regarding harvesting by non-unionized workers) combined to create Mammamattawa’s financial problems. Figure 5-3 describes Mammamattawa’s harvest allocation commitments in 2003, and the various partners, other SFL holders and unions involved.
Figure 5-3: Mammamattawa Inc. allocation commitments in 2003

The industry participants also described the difficulties associated with being Mammamattawa board members, trying to obtain the highest price for the harvested wood and at the same time, as managers for their respective companies, trying to keep their harvesting costs low and managing their own harvesting employees (Industry 11, 12). They noted the inherent conflict in their roles as board members and industry managers and how they had difficulties trying to increase harvest opportunities for Mammamattawa workers because they came at the cost of harvesting opportunities for their own employees (Industry 11). Industry participants also held the view that there were characteristics and issues unique to First Nation members that contributed to the financial problems of Mammamattawa. Specifically, they also attributed Mammamattawa’s financial problems to a poor work ethic of First Nation members, the cost of training First Nation employees, the perceived instability of the community’s political leadership and the First Nation members’ inexperience with forest harvesting and related lack of understanding of the economic challenges of developing a successful harvesting business. These differences between the perceptions of the industry participants and the First Nation participants revealed negative characterizations between the parties, which the negotiation failed to address.
Table 5-1: Reasons for Mammamattawa's financial problems identified by participants

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Example</th>
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<tbody>
<tr>
<td>Inexperienced general manager</td>
<td>“[1st] general manager] was pretty green and all he knew was how to run a jobber operation, even though he graduated in business admin, he was unable to make decisions... he was kind of like afraid” (First Nation 03)</td>
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<td>“here is this guy straight from school and he is thrown to the wolves... being dictated by forest industry how they wanted him to run the show” (First Nation 06)</td>
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<td>“But definitely [1st] general manager was not a business individual.” (Industry 11)</td>
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<tr>
<td>Involvement of industry-funded consultant</td>
<td>(consultant’s name) was very domineering... the boys (employees) would say (he) will make the decisions...the employees had a lot of trust in (him)” (First Nation 05)</td>
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<td>“the flexibility and leniency of (consultant) (regarding employees) was too much” (First Nation 04)</td>
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<td></td>
<td>“when we negotiated our fiber allocation there were certain key players involved that wanted to control Mammamattawa...his interest was not for the community, although it may have looked like it was” (First Nation 03)</td>
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<td>“we had a fellow that had been hired by one of the local companies as a consultant and it became unmanageable with this fellow because he had no accountability, no responsibility, but wanted to run the whole show...” (First Nation 14)</td>
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<td>“he over-went his boundaries as a consultant, because he made direct decisions...he was able to control money... he had so much influence over the business itself that we weren’t able to control it” (First Nation 05)</td>
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<td>Employees as shareholders</td>
<td>“because they (employees) say it is our company... We had a big human resource problem. ... No respect for authority or supervision. You know, they went to work when they felt like it, and they didn’t check in or out” (First Nation 04)</td>
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<td>“even our own people were playing the company because they had the impression it was theirs, (they thought) we don’t have to listen to nobody and we can come and go as we please, but how can business work if you have a $500,000,000 machine sitting in the bush and nobody running that” (First Nation 06)</td>
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<td></td>
<td>“the employees were the shareholders so they were cheque signers... a guy would come out from the bush and sign about 10-15 blank cheques...so they were able to do whatever they wanted and spend money here and there” (First Nation 05)</td>
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<tr>
<td>Financial management off-reserve and potential accounting mismanagement</td>
<td>“obviously somehow those revenues, profits, went somewhere else and it was difficult to ascertain where during the interim audit” (First Nation 03)</td>
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<td></td>
<td>“the industry consultant chose (accountants name) to look after our books...I was trying to fight to have our books done here on the reserve (First Nation 05)</td>
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<td></td>
<td>“our intention was when we made profits we would be able to give back to the community but (industry consultant’s name) and (accountant’s name) knew that once we made profits we would have to pay the taxes, so they would keep them under a certain level (First Nation 05)</td>
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<td></td>
<td>“they (consultant and accountants) didn’t allow the chief or council to look at the books (First Nation 05)</td>
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<tr>
<td>Industry involvement on Board of Directors</td>
<td>“to me it would be nice not to have the industry on the board, because they know our affairs, they know if we make money so they can keep a tab or control on how much they pay us” (First Nation 14)</td>
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<td></td>
<td>“I just didn’t feel at ease with that position, because being on the board, then you need to fight for the board which almost means fight against your own beliefs and company’s vision” (Industry 11)</td>
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<tr>
<td>Price paid to Mammamattawa for wood harvested</td>
<td>“when the company started back in 1998...they (industry) were only paying $18 (per cubic meter) to Mammamattawa, no wonder we went belly up...other operators are getting about $30, up to $33” (First Nation 03)</td>
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<td>“we would pay them comparable to what we paid our other contractors” (Industry 10)</td>
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<td></td>
<td>“I want Mammamattawa to get as much money per cubic meter as they can but as a company we need to keep our costs down as much as possible.” (Industry 12)</td>
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<td>Location and quantity of wood to harvest and timing of harvest</td>
<td>“the forest industry gives us wood that is not feasible for us to cut, they give us wood that is small” (First Nation 06)</td>
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<td></td>
<td>“right now it feels as if we are picking crumbs” (First Nation 14)</td>
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<td>“the allocation they were given, it wasn’t fair wood, the price didn’t reflect the type of allocation they were given and we’ve lived that (too)...we are given blocks and prices (by the other company) that we know are not always fair” (Industry 12)</td>
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<td>“right now the wood the industry has committed is winter wood only. You need to get in there in January” (Industry 12)</td>
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<tr>
<td>Lack of INAC funding and support</td>
<td>“INAC said when you started you should have come to us at the beginning” (First Nation 06)</td>
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<td></td>
<td>“if INAC got involved they would want to know where every penny is being spent and they would be in control, so that is the reason why (the consultant) didn’t do it like that three years ago” (First Nation 05)</td>
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<tr>
<td>Mammamattawa harvesting limitations imposed by union</td>
<td>“We can’t give wood to a contractor (to Mammamattawa) in the summer because we don’t employ all of our own employees in the summer...our collective agreement says that when all the people on the seniority list are working you can bring in other contractors.” (Industry 12)</td>
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<td></td>
<td>“any location on Kenogami SFL is considered a ‘worksite’ and anyone entering to work there has to make peace with IWA”</td>
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Ultimately, Mammamattawa as an outcome is significant not because of its role in increasing First Nation employment or increasing First Nation members’ harvesting skills and management capacity (although it did accomplish these things) but because Mammamattawa’s financial and management challenges were instructive for the community and industry partners and led to the
development of business and partnership expertise. For example, it was only after Mammamattawa’s financial and management problems surfaced in 2002 that the Chief and council became more involved in making key decisions to restructure the company. Important changes included, Mammamattawa’s accounting was transferred to another company selected by the Chief and council, appeals were made to INAC for funding, and business management consultants were retained to examine the future options for the company. Chief and council were also considering establishing a new 100% community-owned forestry company but suggested that this needed to be accompanied by clearer allocation commitments or some control over the SFL. As a temporary measure, the Chief and council (with the support of the industry partners), had also established a co-management arrangement with a non-license holding and non-mill owning construction company in Hearst to address equipment maintenance and management concerns. The Mammamattawa BOD was also operating more efficiently and with a common direction. For example, BOD members agreed that Mammamattawa should proceed like a company and that exceptions to the newly established seniority list could not be made for individual employees, even those who felt they were “on the frontline in the blockade but now could not work for Mammamattawa because they fell to the bottom of the seniority list” (Field Notes, July 13, 2003). All BOD members agreed they did not want to go back to the previous management approach where there were no policies in place and employee rules were flexible. Likewise, members agreed that the BOD should not get involved in ‘trapping issues’ because these issues were for Chief and council to address (Field Notes, July 13, 2003).

Industry participants explained that initially, “we didn’t realize what we were doing in developing partnerships, we weren’t aware of First Nations cultures” (Industry 10) but that after their experiences with Mammamattawa they had a better understanding of how to make their business arrangements with First Nations more successful. For example, based on their experiences with Mammamattawa, industry participants wanted to ensure that restructuring of the company included previously missing elements such as, capacity and training for community members. Industry participants felt that they had not set up Mammamattawa to fail because “the companies have gone to the well financially much too often. We put more volume available to these guys than they have to most other contractors” (Industry 10). However, they felt they had erred in not communicating well, not sharing the books with the community and not recognizing
the importance of developing First Nation leadership and business management expertise (Industry 10).

5.2.3.3 Mammamattawa Inc. Lessons Learned

Participants noted that establishing Mammamattawa and working together for three years on its management taught them several lessons about how they should structure forestry enterprises and work in partnership with each other in the future. Participants also explained several paradoxes, which became apparent with the community’s involvement in Mammamattawa. These lessons and insights are summarized in Table 5-2.
Table 5-2: Summary of lessons learned by Mammamattawa partners

<table>
<thead>
<tr>
<th>Lessons Learned</th>
<th>Description</th>
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<tr>
<td>Profitability should guide enterprise management decisions not employment creation.</td>
<td>While one of the primary goals for Mammamattawa was to increase forest harvesting employment opportunities for First Nation members, the partners realized that employment creation does not equal business success nor necessarily contribute to community economic development.</td>
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<td>Necessity and challenges to 'separating business from politics'</td>
<td>First Nation Chief and council recognized that they should not interfere with business decisions. However, Mammamattawa was inherently political because its establishment and its ‘product’ were tied to First Nation compensation efforts. Chief and council felt they had a dual role to act as advocates for their members’ Aboriginal and treaty rights and advocates for the community’s business development efforts. Industry considered that the elected leadership interfering with business operations created management challenges and reduced company success.</td>
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<td>First Nation forest harvesting, which is not accompanied by decision-making authority, does not address First Nation concerns regarding forest stewardship.</td>
<td>Mammamattawa was seen as a form of compensation for harvesting on trawlines and negatively affecting Aboriginal and treaty rights. However, these rights were never recognized or accommodated beyond the measures provided for in the forest management plan. Partners recognized that some community members continued to perceive Mammamattawa’s own harvesting, using the same machinery and methods and carried out according to the existing forest management plan established by HFMI, as continuing to impact Aboriginal and treaty rights, in much the same way that non-First Nation harvesting did.</td>
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<td>A First Nation community’s entry into forest harvesting displaces non-First Nation employees and consequently affects broader First Nation and non-First Nation relationships.</td>
<td>Because harvesting by Mammamattawa employees essentially took harvesting work away from other non-First Nation operators, partners recognized that there was a reluctance to support the First Nation enterprise and potential negative repercussions for the relationship between First Nation members and the town of Hearst.</td>
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<td>Joint ventures require attention to mechanisms for establishing product/service prices that are perceived as fair.</td>
<td>Forest industry partners were involved in Mammamattawa as shareholders because they were the forest harvest license holders and they possessed management expertise. Their dual roles as license holders and shareholders made them both partners in the enterprise and purchasers of the enterprise’s product. Essentially, the industry partners sitting on the board of directors of Mammamattawa negotiated their respective company’s purchase price ($/m³) and both First Nation and industry partners recognized this situation was not fair.</td>
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From this list of lessons learned, three in particular were salient to all participants. Both First Nation and non-First Nation participants considered that pursuing employment creation verses corporate profit had negatively impacted Mammamattawa. Several participants expressed the
belief that running a profitable company in the future required “running the company like a business, not a make-work project” (Industry 11). Participants noted that employment creation as the primary goal of the company had limited the company’s overall profitability and this needed to be adjusted. For example, the “(1st general manager) was flexible to have everybody work, you know it looked good but it was costing them mega money …and now if it’s not good for the business the answer is no, if it’s good for the business then its yes” (Industry 12). To this end the new general manager, who had resigned because of the intervention of an industry consultant, was later asked to stay on as an advisor by the Chief and council (First Nation 14, 26). This advisor and the BOD were establishing a seniority list for employees, and various human resource and health and safety-related policies and procedures so that they could operate more efficiently and avoid what they called ‘nepotism’ (Field Notes, July 14, 2003).

Participants also described that developing Mammamattawa, as a form of compensation from the industry partners was problematic. Industry participants described the need to ‘separate business from politics’ in the future. In particular, they emphasized that the community should not invoke rights-based claims to increase harvesting opportunities or allocations. Industry partners in Mammamattawa considered that when the Chief and council members threatened direct action at a meeting between Mammamattawa and union representatives, because of their view that Aboriginal and treaty rights should supersede the union’s collective agreements, they had crossed the line between politics and business (Industry 08, 10). The Mammamattawa industry board members and the general manager were frustrated and embarrassed because in their view invoking this kind of “Oka-type resistance” (First Nation 14) made them appear to be unreliable business partners. For the First Nation the operation and success of Mammamattawa was inherently political because it was the only form of ‘compensation’ forest industry was willing to consider. First Nation participants noted that the role of the Chief and council should be “protectors of treaty rights” (First Nation 06) and setting broad policy for business enterprises to support this. Following the growing awareness of Mammamattawa’s financial problems, the Chief and council agreed not to interfere with Mammamattawa BOD decisions (First Nation 03, 04). However, Chief and council did feel it was their responsibility, on the basis of community members Aboriginal and treaty rights, to put pressure on OMNR, forest industry and union representatives, so that Mammamattawa could access more and higher quality timber, including the timber already allocated to them on the Kenogami Forest (First Nation 03, 04, 06).
Finally, participants agreed that having industry participants on the BOD and as license holders was a challenge. Participants disagreed on whether the industry shareholders offered Mammamattawa fair prices and suitable harvest locations. Industry participants described that they were asked by the First Nation to become shareholders and sit on the BOD because the community wanted them to share responsibility for its success (Industry 10). Some industry participants conceded that the creation of Mammamattawa was ‘forced’ and that industry did not allocate prime harvesting locations to Mammamattawa or provide them with comparable prices for wood cut (Industry 11,12). Other industry participants described making ample wood available, paying for training, machine repairs, providing staff resources and paying comparable rates (Industry 10). First Nation participants (and current and former Mammamattawa managers) were unequivocal that the industry had paid them less per cubic meter than other contractors and that they were still ‘picking crumbs’ or allocated poorer harvesting locations even though employees had proven themselves as good forest operators (First Nation 03, 05, 06, 14, 26).

5.2.3.4 Compensation Discussion

Several participants noted that the discussions surrounding the issue of compensation of First Nation members for harvesting on registered traplines (and to a lesser extent over the traditional territory) was an outcome of the coexistence agreement negotiations. It was noted that this discussion was not happening in many other locations and would not have happened without the impetus of the blockade and negotiations. It was noted that the approach to compensation taken by the industry in Hearst was different than the approach taken with other First Nations (for example, with Taykwa Tagamou (formerly New Post First Nation)) where industry had signed agreements that included payments of sums of money (Industry 10).

In Hearst, the industry was reluctant to offer compensation to individual trappers but rather wanted to support economic development of the community as a whole. For the industry, supporting Mammamattawa was seen as a form of compensation. The industry participants noted that the purpose of Mammamattawa was to “promote employment (and)... generate some profits which could then be transferred to the community and help employment and give scholarships, address capacity building” (Industry 12). However, industry participants also noted that their “initial goal was to provide some security to our wood supply” (Industry 10) and Mammamattawa was seen as a means to “solve some of the social issues in the community (so
that) people are happy and content and trust the company, (because) until then you don’t have security of wood supply” (Industry 10). In this regard,

if Mammamattawa shuts down, well the guys that were working there, that was the compensation, they got jobs, so they will no longer have anything, so they’re not getting anything out of this, somebody else is going to cut my wood, blah, blah, blah, so you just go back to a vicious circle, backwards (Industry 10)

First Nation participants felt that Mammamattawa was positive but it alone was not considered an appropriate or adequate form of ‘compensation’.

There was never any consensus on whether and how compensation should be provided as a remedy for harvesting on First Nation traplines. The approach envisioned in the draft agreement was that a Hearst Forest Agreement Committee would be established, and this committee would determine trapper compensation (Industry 08; HFMI 2002b). It is not clear how the participants expected that this committee would negotiate this contentious and likely costly decision and because the agreement was never signed the committee was never initiated.

Industry participants maintained a commitment throughout the negotiation to apply whatever compensation was agreed to by this committee retroactively to trappers to the date of the blockade in 1997. In FMP consultation meetings with Constance Lake trappers in 2002, industry representatives were still confirming this commitment and that “all trappers whose traplines had been logged since the start of negotiations would benefit” (HFMI 2002b). Some industry participants noted that without signing the agreement and establishing this committee, this commitment seemed superficial seven years after it was made (Industry 08). The 1997-2002 Hearst FMP Summary of First Nations Issues and Concerns (HFMI, n.d.) reveals that the issue of compensation to trappers whose traplines had been altered by forest harvesting was still outstanding. Industry representatives maintained they would only consider “providing compensation to the council to be distributed at their discretion… (and) it is in the hands of the Trappers Council to make a formal demand for compensation to the SFL (holder)” (HFMI n.d., 1). The participants viewed the compensation discussion as a valuable first step but the parties did not share an understanding of what form or quantity of compensation was required. Industry and OMNR considered the approach to determining compensation through a collaborative committee arising out of the coexistence agreement was a good idea and a significant commitment to the First Nation but the First Nation participants never sanctioned this approach.
5.3 Core Outcomes of Collaboration for CLFN

From the sub-categories described above and the outcomes related to power, relationship/communication and economic development five consolidated outcomes emerged. This section describes these five outcomes from the Level II analysis. Some of the core outcomes can be traced directly to participants’ statements about what they perceived as the main ‘outcomes’. For example, participants from all groups described the significance of the development of business expertise and partnership experience. Other core outcomes were not clearly articulated by the participants themselves but rather emerged as patterns in the data coding and analysis. The parties’ recognition of their interdependence is an example of a core outcome that emerged from the data but was not necessarily one that participants described using these terms. The core outcomes are listed here as distinct items but they are interrelated and progressive. For instance, First Nation participants’ realizations about the scope of the negotiations coupled with changes in relationships enabled parties to recognize their interdependence and consequently focus on a shared vision regarding economic development.

5.3.1 Core Outcome 1: Recognition of interdependence

The negotiation process and ongoing interaction between the parties contributed to the realization that the forest industry, the local Hearst community and the First Nation were interdependent. All parties primarily framed this place-based interdependence in economic terms. For example, participants emphasized that the culmination of their discussions was the emergence of a recognition that they needed to work together for the benefit and prosperity of both the First Nation and non-First Nation community. A First Nation participant noted that they had support from the industry for developing a new vision based on the fact that:

we are 700 people here living in Constance Lake and you know we are going to be here for a long time, we are not just going to go away, so maybe we should start working together, business to business, and negotiate and look at us as business partners (First Nation 05).

This recognition of interdependence is also evident in the following statements:

So if we’re going to be a part of (industry) here, if we’re going to be a stakeholder that actually works beside (industry), I mean we’re not going to want to destroy everything because we know they have needs to, they have to live, we have to live. If we could come up with a good way of doing that and working together I think that everyone will be happy with that (First Nation 02).
We need to get them (First Nation members) involved in our community. …We need to be sharing some of the benefits from harvesting and merchandising and converting fiber with them, whatever that may be. We need to get them involved in our workforce. Our workforce needs to be representative of the First Nation communities in the area. So we need to be educating, we need to be building capacity. It’s our future workforce. We need to have economic opportunities for them. They need to have a stake in the resource business (Industry 10).

This recognition of interdependence is also evident in the proactive role that the Chief and council took to restructure Mammamattawa as a true ‘partnership’ and the resulting commitment by industry partners and OMNR to the community’s plans for the joint venture. As I describe below the “development of a sustainable economy” (OMNR 09) became a shared goal among the parties emerging from their recognition of interdependence. Some industry and OMNR participants also advocated for a sharing of power given the parties’ interdependence. For example, an OMNR participant supported the vision that “in 20 years I would like to see the SFL held by the community (of Constance Lake)” (OMNR 25). Likewise, a First Nation participant noted that his vision that CLFN have control over their fiber allocation was shared with the local District Manager (First Nation 03).

Generally, the First Nation participants were happy with their increased role in dialogue and regional economic development planning because they were “starting to become part of the future, and we are actually doing it with good communication and good negotiating and so it’s become really more meaningful” (First Nation 05). Participants felt that the negotiation process, the relationships developed, and their experiences with the forest harvesting company, Mammamattawa, had contributed to the community of Constance Lake being considered an important partner in the development of a regional economic strategy. However, not all First Nation participants were content that this interdependence only recognized the community’s interests and role in economic development terms.

5.3.2 Core Outcome 2: Focus on shared goals

Building on their recognition of interdependence, the participants in the negotiation process described focusing on shared goals, in particular developing mutually beneficial economic opportunities and improving the capacity of the First Nation to contribute to the local economy.
The Hearst community realized that they need to get together to make sure there is a community here for their grandchildren and the mayor and the chief are starting to plan together (First Nation 26).

As a result of the negotiation we are trying to take on a mandate to help that community with its economic planning and economic opportunities (OMNR 09).

The strategy taken by the OMNR and industry participants following the last formal negotiation meetings was to focus on what they perceived to be areas of common purpose, arising from the negotiation process and within their scope, especially economic development opportunities for the First Nation and forest management planning consultation improvements. For example, the OMNR focused on supporting the community in developing a business plan for Eagles Earth. The OMNR and forest industry participants also developed a forestry education bursary for Constance Lake community members, organized field trips with resource managers and First Nation members to learn about other collaborative forest enterprises. Industry and OMNR were focused on developing and revitalizing Mammamattawa and facilitating negotiations with union representatives to access the Kenogami SFL harvesting allocation. They noted that these initiatives were desirous for the First Nation and existed as commitments in the draft agreement (Draft 10 agreement, Oct 19, 2001). The forest industry participants noted that the two focus areas to “improve their participation in the planning process (and) find(ing) ways to work with them to find better job opportunities and business opportunities” (Industry 08) were things that “we share at heart” (Industry 08). In a community meeting, Mammamattawa’s financial difficulties were described as a “collective problem” (Field Notes, May 1, 2003) and the community framed their efforts to revitalize Mammamattawa as “working together for a better future” (Field Notes, May 3, 2003).

Whether these objectives were actually shared ‘at heart’ among the parties or if the First Nation embraced these priorities only after their attempts to have more meaningful priorities addressed were excluded, was unclear. Either way, the First Nation was also largely focused on developing and strengthening forest-related enterprises and improving their community’s involvement in economic development. One participant summarized his vision for Mammamattawa, which exemplifies the way many First Nation participants viewed their future in the forest economy:

I’ve got a vision for this company. I see us grow to be a company that will bring money to reserve, make a contribution to the reserve, and make boys that work there proud and to see our heritage grow, because this land is ours. We cut, we respect and
develop, and we develop a love for this country. We take care of it, so that’s what the boys hopefully will do - develop a sense of direction in nature with other forest companies, with other industries and other First Nations that are doing it and we can grow the community. No handouts anymore (First Nation 06).

Participants felt that because of the negotiation, and the increased communication, the relationship had been developed and enough trust had been built so that the community leadership embraced mutually beneficial economic development opportunities. For example, the Chief and council’s endorsement of the Eagles Earth project was considered evidence of their commitment to building mutually beneficial economic development opportunities. Eagles Earth was to be located adjacent to the Nagamisis Central Plateau Signature site, an expanded protected area established out of the controversial Lands for Life process and the Living Legacy Land Use Strategy, which were both opposed by First Nation communities. As one OMNR participant noted, “the Chief (of Constance Lake) could have taken the same view that Hornepayne First Nation takes, you didn’t communicate, you didn’t do consultation in 1955 when you made the park, so I’m not going to talk to you now” (OMNR 09). Rather First Nation participants felt that more projects like Eagles Earth, which were “win/win” (First Nation 03), were required. It is likely that for the First Nation, focusing on shared economic goals was related to realizations about the other parties’ recognition of the First Nation community’s potential contribution to economic development (described previously) and their own realizations about limitations on the scope of the negotiation (described below).

5.3.3 Core Outcome 3: Definition of the scope of the negotiation

The negotiation also revealed to the parties the limitations in terms of the scope of this negotiation process. The participants developed a mutual understanding regarding what could and could not be addressed by the negotiation process at the time. While this definition of the scope was not necessarily acceptable to the First Nation participants, it was clear to them what the boundaries of the other parties’ ‘mandates’ were and thus where they should direct their energy if they wished to influence the broader framework. For example, participants noted that the negotiation demonstrated that there was no provincial government frameworks to determine what treaty rights exist on Crown land or how and when Aboriginal peoples should be consulted if provincial activities interfere with treaty rights. It also revealed that local District OMNR was not authorized or capable of addressing these issues. First Nation participants noted that they
became involved in NAN-level politics and Ministerial-level lobbying as a result of this realization (First Nation 01, 02, 03).

OMNR and industry participants also recognized that the community’s refusal to ratify the draft agreement reflected the limits of the First Nation participants’ willingness to compromise on their interpretation of their Aboriginal and treaty rights. Some OMNR and industry participants noted that they wanted guidance, either in the form of a policy or Court decision, regarding how Aboriginal constitutional rights, provincial Crown authority to manage lands on behalf of all Ontario residents and forest industry CFSA-conferred harvesting rights should all operate on the same land base. However, without this guidance all they felt they should (or could be expected to) accomplish were improvements to the current system in keeping with the requirements of the FMPM and Condition 77.

The First Nation, OMNR and industry participants agreed that their dialogue and efforts to develop a draft agreement since the blockade had determined and confirmed the boundaries of each party’s interpretation of the negotiable items. They also agreed that the negotiation failed to meet their varied expectations, for example, for recognition and accommodation of Aboriginal and treaty rights, for stability of the wood supply and peace in the woods, and for understanding how to achieve “a better life” (OMNR 25) for the First Nation through FMP and economic development. However, the participants also agreed that the negotiation had at least produced an understanding of what the desires of the parties were, what the parties were not willing to compromise and what the parties could develop as mutual goals.

5.3.4 Core Outcome 4: Strengthening of First Nation identity and power

First Nation participants described how the blockade and the negotiation process contributed to strengthening their identity as an independent nation with Aboriginal and treaty rights and responsibilities. Their experience with negotiation supported their perspective that meaningful change in their relationship with the OMNR and forest industries that recognized and accommodated their Aboriginal and treaty rights was required. First Nation members maintained that their constitutional rights were at stake in various forums and Aboriginal and treaty rights were “the first thing we put on the table as First Nations people” (First Nation 06). CLFN’s vision of building a self-governed and self-sufficient community based on this identity was strengthened. Participants noted that subsequent blockades carried out by the community against
the development of a proposed pipeline and other developments came about because the community held and had maintained this strong identity. The community’s efforts to build and manage their own holistic school system, developing a community plan, and finding an appropriate role for territorial organizations that supported their self-governance, were also presented as evidence of the community’s empowerment and strengthened identity. As one First Nation participant noted, the negotiation and all of these efforts were seen as incremental but positive contributions to “changing the social fiber of the reserve” (First Nation 06).

5.3.5 Core Outcome 5: Development of business expertise and partnership experience

First Nation participants’ involvement in the forest-harvesting company developed business expertise, increased individual members’ capacity and increased employment. The forest-harvesting company’s various successes and failures contributed to industry and First Nation partners learning how to work together and as a result increasing their ‘partnership’ expertise. The industry participants identified a number of lessons learned about how to structure and manage a joint venture in the future and how to work more effectively with the First Nation. Likewise, First Nation participants described how the Chief and council and First Nation BOD members were now involved in proactively defining the future of the company and addressing some of the structural and management issues that had contributed to Mammamattawa’s financial difficulties.

5.4 The Outcomes of the MCFN Umbrella Agreement negotiation

When I interviewed MCFN negotiation participants in the fall of 2003, eight months after their last formal meeting, the participants were very focused on the reasons they had not completed an agreement. The negotiation had ended abruptly when the incoming Chief, facing threats of third party management, and seeing little indication that an agreement was coming to fruition anytime soon, ended the negotiation consultants’ funding. The OMNR participants had identified serious concerns they had with the agreement as it stood during the last few negotiation meetings. When the formal negotiation ceased, the OMNR lead negotiator (with OMNR legal staff) began to rewrite a draft that would be acceptable for them. The parties expected to return to the negotiation table when OMNR finished developing their version of the draft agreement.
Outcomes beyond agreement were not on the top of most participants’ minds because the ‘failure’ of the parties to reach agreement created a largely negative perception of other possible outcomes. Nevertheless, the participants did describe two major categories of outcomes including: 1) relationships, and 2) learning. Each of these categories encompasses several sub-categories of findings that appeared repeatedly. The main findings and component categories are described and examples illustrating these patterns are provided. As in the CLFN case study, integrative core outcomes (three in this case) are identified and described. The MCFN findings related to outcomes are presented pictorially in Figure 5-4.

**Figure 5-4:** The outcomes of the MCFN negotiation process, including the main categories, their component categories and the consolidated core outcomes.
5.4.1 Outcomes Related to Relationships

Participants described four categories related to relationship outcomes, including the development of personal relationships, realizations about the limits of relationship building, the development of increased understanding, and the status of trust.

5.4.1.1 Personal relationships

Participants agreed that relationships were established where few or none existed before. The relationships were described as “good personal relationships” (First Nation 18, OMNR 19, Industry 20) among the individuals, which did not necessarily reflect or alter relationships between the organizations the participants represented. Several participants described the ‘personal’ nature of the relationships:

We all got along, we would talk after our meetings … have lunch together, we even went out after and had a beer and talked…because that was one of our interests, not just be in the negotiating room and not know one another … but personally my perception of MNR has not changed, not as a whole. As far as the relationship building, I guess it is only personal (First Nation 18).

The relationship is a personal one based on time and getting to know each other. So the rating of the relationship between the people may be different than the relationship they have with MNR (OMNR 20).

An OMNR participant believed that the personal relationships were so ‘good’ that the failure to complete the draft agreement would not limit future collaboration because he still had “faith in the individuals around the table” (OMNR 22). Participants from each group expressed the belief that these personal relationships were valuable because they were based on an understanding of each other’s interests, which was something that had not existed before and had not developed with other First Nation negotiations they had experienced.

The participants equated the time spent brainstorming and collaboratively identifying ways to meet the interests as time spent building the relationship. For instance, “taking the time to understand interests of other parties was time well spent because at the same time we were building relationships” (Industry 20) and “doing the interests built the relationship” (First Nation 18). An industry participant explained that relationships developed because the parties understood each other’s interests better:
(w)ithout the process that we have gone through, our discussions would not be other
tan, we would like you guys to do more, from both sides (First Nation and industry)
and that would be the end of it…we look at each other and say, yeah, how do we do
that?…Now at least we have built relationships, there is an understanding of what the
First Nation is all about and what can it do and what the interests are…and from what
I see they now understand what a company has to deal with when it is managing the
forest (Industry 20).

Participants also described the development of empathy and emotional connection as part of the
“relationship-building phase” (OMNR 23). First Nation participants described their
belief that
the other participants did come to understand them better and as a result they “wanted to help us
out…they really felt for us…they felt an obligation to do something” (First Nation 17).

Most participants felt that the personal relationships developed were valuable in and of
themselves. However, several participants also expressed the belief that improved relationships,
while a positive step, did not satisfy their expectations. The First Nation participants described
their expectations in terms of concrete on-the-ground commitments from the other parties (for
example, related to training, building their community, revenue sharing and forest management
planning consultation) but also in terms of fundamentally changing their authority relative to
other groups. For example, one participant noted their expectation:

    we were going to take them on an exodus of stepping out of the traditional boxes, to
acknowledge that the First Nation are not just stakeholders here, we are part and
parcel of the whole ownership and we are equal partners throughout this (First
Nation 16).

Essentially, the First Nation expected the negotiation to put in place an Umbrella Agreement
setting out the broad principles for achieving their political and business aspirations. This
approach hinged on building personal relationships but personal relationships were seen as a
means to an end rather than sufficient ends themselves.

OMNR and industry participants explained that their expectations were to develop the
relationship, so that an agreement could be crafted. For example, these participants wanted,
to develop something that was workable, and simple…something that people could
hold up and say I understand exactly what that says and it’s achievable and from an
economic point of view it fits what the company, the government and the First
Nation all need (Industry 20)
at the end of the day to have something concrete enough that it would actually have something occur, that there would be some action at the end that actually moved the parties into making something happen aside from just an agreement in principle and an understanding of what that means (OMNR 23).

This difference in perspectives likely contributed to the OMNR and industry participants’ belief that despite the lack of an agreement, the relationships that developed were still significant outcomes. According to one OMNR participant, the negotiation identified a lot of opportunities, some of which could be done outside of a legal agreement and therefore, “even if we don’t have an agreement, I don’t think the relationships are necessarily lost” (OMNR 22). Likewise, an industry participant felt that because of the relationships there was willingness to “make things happen” (Industry 20) and identify realistic objectives.

The participants described the development of personal relationships as important outcomes. The time spent brainstorming interests and looking for mutually beneficial solutions was considered important for developing relationships and an emotional connection between the participants. The First Nation participants held different expectations of the negotiation process and as a result, while they still described the development of relationships as a positive outcome they were not satisfied with this outcome.

5.4.1.2 Recognition of the limits of relationships

Participants gave several examples of realizations or new understandings that emerged about the limits of what participants described as a ‘relationship building approach’ and why despite their good relationship they were not able to reach agreement. Some of these realizations relate to procedural issues encountered while negotiating and are discussed in the next section on learning about the process. In this section, I describe the realizations related to aspects of the relationship between the parties and not how the process was conducted. These realizations echoed the beliefs expressed by participants in the CLFN case about their understanding of the scope of the negotiations that emerged in that case. It is important to note that I consider participants’ realizations about limitations as ‘outcomes’ because participants described that they would modify future collaboration processes based on this new learning and understanding. In chapter 6, I describe that the limitations of the relationship building approach were also seen as factors that influenced the collaboration process.
Rather than using an adversarial approach that would force the OMNR and industry into agreements, the First Nation participants viewed the relationship building approach as an experiment to find a more amicable way to redress inequities and establish a stable economic base. The process was:

almost an experiment…if we take two years to build the relationship, get them (industry and OMNR) on board, show them how we are going to solve the problems for them, maybe we can avoid that (forcing them) (First Nation 24).

However, after two years the First Nation participants described how their efforts to build personal relationships had not really facilitated any substantial changes in what the OMNR or industry was willing to commit to.

In particular, First Nation participants described how the development of personal relationships had not removed the “bureaucratic barriers” (First Nation 24) of the government. Improved relationships had not contributed to a model for how to work collaboratively given the limitations of the current legislative and policy framework. Participants described how “some of them (OMNR participants) seemed like they really wanted to help us but they were tied by the bureaucracy and by those lawyers in the back room, you know” (First Nation 17) and “some individuals that work for MNR may think differently with what MNR is mandated to do or what their job is…but it came down to the fact that they couldn’t sign off on the agreement” (First Nation 18). OMNR participants were characterized as “so in the box, they’re so policy driven, everybody has their own little cubicle and you don’t step on anybody else’s toes” (First Nation 16) and “bound to by their acts and regulations…what we were asking them to do was step out of their box and they really can’t (Industry 20) and “terrified of the whole Aboriginal issue and take a conservative approach…people with control issues, who try to minimize” (First Nation 24).

These realizations about the OMNR’s ‘bureaucratic’ or organizational barriers contributed to the First Nation considering that the political direction they wanted to negotiate required building relationships with Ministerial-level OMNR and bringing “the party to the table because they are the ones that are interested in political change as long as it is beneficial to them” (First Nation 24).

OMNR participants also described that they expected the relationship building approach to be more productive but that this never materialized. For example, OMNR participants expected that with relationship building they could “do something which is innovative and which will open the
eyes of other people, to say there is a better way to do this” (OMNR 22). After the negotiation, OMNR participants had a newfound understanding that while building a relationship was an important and positive outcome, it was difficult to translate the relationship and reflect their “feelings for one another” (OMNR 23) into a legally binding agreement. OMNR participants also expressed the sentiment that even while they were sympathetic to the First Nation situation and they understood their interests better, “my hands were tied… by the constraints of our own organization” (OMNR 23). For OMNR participants the relationship they built with the First Nation was important but they also considered that perhaps they had not transcended deeper trust issues (OMNR 19, 22, 23) because the community continued to push for ‘open-ended statements’ and would not “agree to come to the middle or let it drop” during negotiations (OMNR 23).

These realizations about the limits of the parties’ relationship served to put a strain on the relationships. First Nation participants noted that the relationships were strained because the outcomes were not what they wanted. Likewise, First Nation participants explained that the OMNR’s opposition to the draft agreement had negatively affected the relationship. One participant noted,

if it was up to the individuals negotiating for the MNR, not having to go through legal whatever, we would have had the agreement signed… I remember sitting with the District Manager saying, we are really close here, like a year ago, and now it has been seven months since they took it and basically they are rewriting it. So what does that tell you about what they think of us? It doesn’t make me feel very happy (First Nation 18).

One OMNR participant regretted that the government would be perceived as the “bad guy” (OMNR 23) because they were not comfortable with the draft agreement. However, this participant felt that they were not solely responsible for the parties not reaching agreement and that the community shared some of the responsibility for trying to make the agreement too broad (OMNR 23).

Thus, the collaboration participants all felt that despite their success at building local relationships they had not really succeeded in developing a ‘better way’ to negotiate for their substantive interests than previous negotiation efforts.
5.4.1.3 Shared understanding of interests

Participants also described that a shared understanding of each party’s interests emerged. In particular, the OMNR participants felt that the brainstorming process encouraged the parties to “have outside the box discussions in new areas” (OMNR 23) and because “nothing was committed to, everything was open,” (OMNR 22) they could inquire, discuss and better understand the First Nation community’s motivations and needs. An industry participant believed that brainstorming fostered more open communication and sharing of information,

it made us more comfortable to share knowledge and information and being able to talk fairly openly about some things …you can get into some sensitive areas about impact on dollars, impact on jobs, impact on people’s lives. There were some things shared in that room that wouldn’t have been shared otherwise (Industry 20).

Several participants noted that the brainstorming process involved explaining, prioritizing and constantly finding common ground. One First Nation participant described this outcome, “everyone was stepping in each other’s shoes and we were getting a real close picture of what each group’s working abilities were …we were figuring how we could go around each other’s mandate” (First Nation 15). An OMNR participant highlighted that:

it was a very a non-confrontational time; we were trying to understand each other and help each other with ideas … (as a result) my attitude changed. I got a better understanding of where they are coming from (OMNR 22).

The OMNR and industry participants also described how they sympathized with the First Nation after understanding their interests, aspirations and requirements better. For instance, an OMNR participant described how he could relate to why MCFN was so committed to re-establishing a community on their traditional territory (OMNR 22). Another OMNR participant described how the First Nation participants’ sharing their history and challenges helped him learn about the community and their motivation but also created an emotional connection:

they shared their history, their migration, they talked about their elders, some of the hardships they’ve been through in their lives and their elders lives. Very passionate and moving descriptions in various sessions, tears were flowing freely. It becomes a very passionate plea to work together…What goes on, the difficulties that occur and what they speak to quite openly and honestly is very sad…I understand how important it is to them to have these opportunities, understand more the history of how they got here and the fact that if it were me as an individual not representing the crown I would trust and partner with them, based on the relationships that were built (OMNR 23).
The development of understanding among the participants is considered a core outcome and is described in greater detail below.

### 5.4.1.4 Status of trust

Participants described the trust among the various participants growing in the early stages of the negotiation but that the interruption of negotiations had negatively affected trust. First Nation participants expressed negative feelings about the status of trust and they were frustrated with what they perceived as the OMNR reneging on their original commitment to support both the interest-based approach and the First Nation’s desired outcomes. The First Nation’s perception that the OMNR had assured them that they could make decisions on the broad issues of concern to the community and then their ‘defaulting’ to legal advisors caused the First Nation to conclude that “they outright lied to us” (First Nation 16). The First Nation participants emphasized that they felt the OMNR participants were insincere, “I think they knew all long it wasn’t going to be done….so it was almost like they changed the process on us” (First Nation 18). Ultimately, First Nation participants felt that the OMNR was exploiting their trust,

> I guess they think if they slap us on the back enough and we have a good enough relationship that we’re not going to push anything, a blockade like New Post (Taykwa Tagamou) did. They played us. They kept acting like they were gonna do something and all the time they’ve got lawyers trying to minimize what we are going to get (First Nation 17).

The First Nation participants noted that as a result of this “confidence was gone” (First Nation 17) in their relationship with OMNR.

First Nation participants were very content with the actions, commitments and relationship developed with the industry participant, Weyco. Negative feelings about the limits of relationships or poor trust did not apply to Weyco, only to the OMNR. First Nations participants felt that they would continue to work with the company and had hopes to negotiate a separate business agreement with Weyco if they were not able to reach a suitable tri-partite agreement. Their relationship with the industry was built and preserved and the level of trust was still high.

OMNR participants recognized that their trustworthiness in the eyes of the community was affected by the negotiation but they felt that they had tried to make their limitations very clear (with the mandate letter and throughout their discussions). Rather they felt they erred in not
ensuring that aspects of the negotiation process were better managed, for example, that they had neutral facilitation. They also felt that they should not have allowed the negotiation to begin with such an open scope or to proceed without clear acknowledgement of their stated ‘mandate’ and that these conditions likely raised the other participant’s expectations. Learning about aspects of the process that limited the negotiation is discussed later in this chapter.

OMNR participants also described events that affected their trust in the First Nation participants. For example, they noted that they initially didn’t understand why the MCFN placed an “arbitrary” (OMNR 23) deadline on the negotiations of March 2003, but they suspected that a lawsuit filed in May 2003 by the Mushkegowuk Council was likely the motivation. The OMNR participants felt it was “very contradictory” (OMNR 21) of the community to develop a forestry agreement, which as a guiding principle supports the CFSA, and then support a lawsuit denouncing it. Some OMNR participants questioned the authenticity of the First Nation participants’ collaborative negotiation approach.

5.4.2 Outcomes Related to Learning

Participants described two categories of outcomes related to learning. Participants considered that they learned how to negotiate as an outcome of the process. Some participants also described learning about other parties’ frames or cross-cultural learning as an outcome.

5.4.2.1 Learning about process

All participants considered their participation in the process to have provided them with insight and experience for negotiating in the future. In particular, participants considered that they were now well-versed with how to employ an interest-based negotiation approach and joint brainstorming process to identify interests and find ways of meeting each other’s interests. Participants also described learning about the limitations of the interest-based approach for these kinds of negotiations.

First Nation participants felt that their involvement in the negotiation was a “learning experience” (First Nation 16) because they learned how to apply an interest-based approach and the value of using this approach. They noted that while they may not have met all their expectations, they felt that the draft agreement that they had produced went beyond the status quo (First Nation 18). Participants gave several examples of instances where the interest-based
approach had contributed to both OMNR and industry participants producing ideas, which sought to address the First Nation’s substantive interests.

OMNR and industry participants also noted that they learned that the brainstorming sessions were very important and for those who had experience with other First Nation negotiation processes, this approach was considered more beneficial (Industry 20, OMNR 21). The Northeast Regional Native Liaison Coordinator’s advice to other OMNR personnel was that “interest based (negotiations are) better than negotiations that are position based” (Johnson 2003). An industry participant noted that the process was better than “arguing about history or arguing about why things couldn’t be the way people wanted them” (Industry 20) and that it produced a draft agreement that they were happy with.

However, all the participants described a paradox that became apparent about the process they went through and the resulting draft agreement. The paradox was that while participants appreciated the visionary, interest-based approach and the brainstorming exercises and valued the relationship and understanding that emerged from this process, the draft agreement that resulted from this was still not acceptable to the OMNR. Participants described that the language and commitments in the draft agreement could not reflect the enhanced local relationship and understanding but rather had to be constrained to limit potential legal interpretations and to maintain the OMNR’s constitutional authority over lands and resources. As a result, OMNR participants stated that they learned that some form of brainstorming and relationship building process was required for any future negotiation but that this had to be accompanied by a clear understanding at the outset of the constraints imposed by all the participants’ organizations (OMNR 23). OMNR participants suggested a number of procedural changes, if they did carry out another negotiation process with the goal of developing a legal agreement. Participants described that they would involve legal advisors for all groups much earlier in the process (OMNR 22), they would hire a neutral facilitator, who recognized the constraints of each party, to guide the brainstorming and develop and maintain one working copy of the draft agreement (OMNR 21). OMNR participants also expressed the belief that they would begin by determining if a legal agreement is even necessary or if the First Nation’s interests can be met with opportunities outside of a legal agreement.
OMNR participants also described organizational learning developing as a result of their negotiation experiences. OMNR participants described the Northeast Region Forestry Agreement Strategy (OMNR 2002b) and the development of a ‘mandate letter’ as two tools being distributed throughout the province. OMNR participants noted that providing other parties with a mandate letter early on would be a standard part of any future process (OMNR 19).

Table 5-3 provides a summary of the lessons learned by OMNR participants based on their experience with the MCFN negotiation and other negotiations in the Northeast Region derived from interviews conducted with OMNR participants, the Northeast Region Forestry Agreement Strategy document, the mandate letter provided to MCFN, and presentation provided by Regional Aboriginal Liaison staff to other OMNR staff in 2003 (Johnson 2003; OMNR 2001b; OMNR 2002b; OMNR 19, 21, 22, 23). All the items in the left-hand column of Table 5-3 were identified as lessons learned or common problems encountered by OMNR in First Nation negotiations. All the proposed approaches in the right-hand column were suggestions for enabling more productive negotiations. For example, OMNR participants felt they got into negotiations when they should not have because the First Nation expected rights-based items would be negotiated. The recommendation for avoiding this in future negotiations was to have an initial ‘exploratory phase’ to determine the First Nation expectations and then develop a ‘mandate letter’ outlining what is and is not negotiable at the outset. If the First Nation did not agree to this scope, then negotiations should not proceed. Some of these lessons reflect some positive procedural improvements (e.g., that District Managers should not have to seek approval from Regional or even higher levels of OMNR for all commitments and that neutral facilitators should sought early). However, most lessons reflect OMNR’s desire to streamline their negotiations with First Nations by promoting and maintaining a more narrow view of their obligations and scope for negotiations (e.g., that fish or wildlife issues were not legitimate and that OMNR should restrict its presence at the negotiating table). These OMNR ‘lessons’ demonstrate significant differences between how OMNR and First Nation participants interpreted OMNR’s responsibilities.
Table 5-3: OMNR Northeast Region summary of lessons learned from First Nation forestry agreement negotiations

<table>
<thead>
<tr>
<th>Experience or lesson learned</th>
<th>Proposed Approach or Strategy</th>
</tr>
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<tbody>
<tr>
<td>OMNR District Managers over-ride their authority at the table.</td>
<td>• Develop mandate letter (identifies items to be negotiated and items not to be negotiated).</td>
</tr>
<tr>
<td>OMNR District Managers required to seek approval from higher levels of government (Assistant Deputy Minister, Deputy Minister) during negotiations causes frustration and extends timeline.</td>
<td>• Develop mandate letter.</td>
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<td></td>
<td>• Develop a regional steering committee comprised of: Regional Director, District Manager, Native Affairs Unit Representative, and Legal Services, which provide guidance to the negotiator and review drafts.</td>
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<td></td>
<td>• Assistant Deputy Minister Field Services Division advises Minister’s staff and approves and provides direction to the Regional Director via the mandate letter.</td>
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<td></td>
<td>• Authority to sign-off on the agreement moved to Regional Director.</td>
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<tr>
<td>Issues beyond forestry (for example, fish/wildlife) are brought up in negotiation.</td>
<td>• Limit scope of any agreement to only forestry (timber harvesting, planning and renewal) issues.</td>
</tr>
<tr>
<td>Geographic area of concern is large or crosses OMNR District boundaries.</td>
<td>• Limit geographic scope to District or forest management area containing or closest to First Nation reserve location.</td>
</tr>
<tr>
<td>OMNR asked to address issues that are outside of legal requirements of Condition 77.</td>
<td>• OMNR restricts its presence at the negotiating table unless requested to facilitate by the other parties. Condition 77 requires OMNR to facilitate negotiations between industry and First Nations if required.</td>
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<tr>
<td></td>
<td>• Develop mandate letter.</td>
</tr>
<tr>
<td></td>
<td>• Follow negotiation process:</td>
</tr>
<tr>
<td></td>
<td>• Exploratory phase to identify expectations, issues, scope of negotiation</td>
</tr>
<tr>
<td></td>
<td>• Mandate letter (identifies participants, OMNR negotiation team, negotiable/non-negotiable items, sequence of events, timeline, costs). Should be provided by all parties.</td>
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| OMNR negotiators are reactive, legal advisors not involved until end, and negotiators word smith document. | • Parties negotiate what is included and not included.  
• If parties do not agree, negotiations do not proceed.  
• If parties agree, develop template of agreement (content headings are agreed upon).  
• Agreement template is ‘word-smithed’ by legal advisors from all parties.  
• Parties negotiate to finalize commitments for training, support, or shared financial contributions.  
• Develop mandate.  
• Follow negotiation process (described above). |
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<tr>
<td>No facilitator selected or facilitator is not neutral.</td>
<td>• Select neutral facilitators early. Facilitator maintains draft agreement.</td>
</tr>
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</table>
| First Nation issues include Aboriginal and treaty rights, or changes to existing regulations. | • Develop mandate letter.  
• If parties do not accept the mandate letter, do not undertake negotiation. District Manager advises First Nation and deals with issues outside agreement. |
| No consistent approach to negotiations. Overall OMNR costs are significant (staff, support). Previously agreements have not been shared. | • Follow negotiation process (described above).  
• Cost sharing understood for all parties.  
• Provide training for OMNR staff involved.  
• Agreement template should include:  
  • A clear sunset clause on life of agreement  
  • Clear commitments by both sides (First Nation & industry)  
  • Public availability of information  
  • Report backs – deliverables, time frame, evaluation criteria |
| Relationships need to be built to support negotiations and maintained during negotiations. | • Carry out exploratory phase to identify expectations, issues, and scope of negotiation.  
• Exercises that develop trust may be required at start of negotiations.  
• Interest-based negotiation better than position-based. |
| Issues exist between First Nation communities. | • First Nation to First Nation issues to be resolved by First Nations. |
5.4.2.2 Learning about other participants’ frames

Participants in the MCFN negotiation also described learning about each other’s frames as an outcome of the process. Participants described changing their views over time and also their tolerance for the opinions and interpretation of others whom did not share their frames increasing. First Nation participants summarized this outcome when they stated, “I saw it from their point of view” (First Nation 15), about understanding a forest industry participant’s motivation and perspective better.

Some participants described a significant change occurring. For example, one First Nation participant described how as he learned more about forest management planning his perspective on logging changed. Before the negotiation he saw logging as wasteful, too intensive and something that should be stopped altogether. After the negotiation he felt he understood that “logging isn’t going to stop…” (First Nation 17) and “it just looks like they are cutting down trees and leaving them there but that tree might be 20 years old, but it just doesn’t grow, there is nothing they can do with it” (First Nation 17). Another First Nation participant noted that it was difficult to reconcile the views of some community members who felt that no timber harvesting should occur at all with this new perspective of forestry:

I am not a forester and I don’t pretend to be but you understand when they (OMNR and industry participants) talk about trees that are over-mature, the trees are no longer doing their job as they are intended to do…there is still the protection for old-growth forest (First Nation 18).

Participants also described instances where the negotiation provided an opportunity to share their different perspectives and resulted in the parties understanding and acknowledging those perspectives. A First Nation participant described an interaction where they asked the industry participants to provide lumber to build homes in the Missanabie area and the industry initially suggested providing the lumber for a wholesale price. The First Nation participants explained that their comment “do you realize what you are saying? You are cutting trees on our land and you want to sell them to us for wholesale. No, we want you to give us the logs” (emphasis by interviewee First Nation 15) resulted in the industry participants understanding their Aboriginal and treaty rights-based claims better.
OMNR and industry participants described developing a new understanding about the motivation and concerns of the First Nation. One participant summarized this outcome:

I thought it was a great learning experience for me to realize what these folks have faced and in some cases some of the hardships they have gone through for many decades if not longer. A mill closes for a year, pales in comparison, to what a First Nation has gone through, they haven’t had any work for 50 years (OMNR 23).

Another OMNR participant also described developing a tolerance for the opinions of Aboriginal people in general, regarding their ‘rights-based’ claims because these were “very legitimate issues” (OMNR 19), even if he did not necessarily approve of the adversarial ways some Aboriginal communities were asserting their rights. Other participants described learning about the “underlying historical things…and why in some cases [Aboriginal people] do not have much patience” (Industry 20) but at the same time he felt that Aboriginal people needed to understand “why the companies do things the way we do, and why from the point of view of forestry, that is good practice” (Industry 20).

The participants in the MCFN case described several examples of learning about each other’s frames that emerged from their negotiation process. The development of personal relationships and an understanding of each other’s interests are related to this outcome. It is not clear to what extent this frame learning was reflected in the draft agreement or how it influenced participant’s actions and perceptions of the collaboration process.

5.5 Core Outcomes of Collaboration for MCFN

The data analysis revealed two central categories (and their component categories) related to outcomes namely, relationships and learning (see Figure 5-4). From these categories and sub-categories, three consolidated outcomes emerged during the Level II analysis. The core outcomes discussed below include: 1) development of relationships, 2) increased understanding among the parties, and 3) definition of the scope of negotiations. As in the CLFN case, the core outcome analysis conducted for the MCFN was an attempt to consolidate the most prevalent and integrative outcomes from participant’s interrelated and progressive descriptions of outcomes.
5.5.1 Core Outcome 1: Development of relationships

Participants described the development of personal relationships where none existed before. These relationships were considered foundational because they were based on ongoing personal communication and participants perceived that great value could come from them, even if a legal agreement was not possible. Personal relationships with OMNR and industry representatives were considered by the First Nation as a necessary mechanism to achieve their other broader goals, for example, reestablishing their community on their traditional territory and providing a stable economic base for that community but relationships were not considered sufficient outcomes themselves. Participants also noted that the personal relationships did not reflect the relationship between the organizations the parties represented.

Likewise, personal relationships did not overcome what the participants described as ‘framework issues’ that limited their mandates or a ‘disjunct’ between the interest-based items they had included in the draft agreement and the scope of their authority or obligations. Thus despite personal relationships, the First Nation participants felt that coming to an agreement was still limited by the narrow scope defined by the OMNR and industry. The parties differed on their interpretation of whether the scope was appropriate or sufficient (see discussion of Core Outcome 3 below).

5.5.2 Core Outcome 2: Increased understanding among the participants

Participants described gaining an understanding of each other’s interests as an important outcome of the negotiation process. The long time spent articulating each party’s interests and brainstorming possible ways to meet these interests was considered essential to learning about what each group wanted to accomplish. First Nation participants noted that they understood and appreciated the interests of the forest industry representatives, which motivated their activities in the forest. Likewise, forest industry and government representatives described how they came to understand the First Nation’s historical struggles and their interests in re-establishing their community on their traditional territory. The frame learning that some MCFN participants described was not considered a core outcome but a component of increased understanding among the participants because participants stopped short of considering that they had developed a shared meaning of the problem or come to an agreement on whether or how to accomplish their varied interests. Participants also described that while they understood each other’s interests and
may have even come to appreciate each other’s frames better, some interests were still quite controversial. First Nation participants felt that the forest industry and OMNR had limited which of their interests where considered valid and how these interests could be satisfied. As I describe in the following chapter, the disconnect between what the participants understood as each other’s interests and what they felt they could or should influence was considered a factor which limited their collaboration.

5.5.3 **Core Outcome 3: Definition of the scope of the negotiation**

Participants in the MCFN process also described that a core outcome of their experiences was that they came to develop an understanding of the limits of the scope of the negotiation they were involved in. The First Nation participants described this outcome in terms of their realization that the OMNR’s narrow definition of the scope persisted despite the use of an interest-based negotiation approach. OMNR participants framed this outcome as developing greater personal and organizational understanding about how negotiations with First Nation’s should be undertaken and how OMNR’s role in negotiations could be better defined.

First Nation representatives explained that they began the negotiation with the expectation that an interest-based approach would avoid many of the constraints placed on previous negotiations and would engender in other participants a desire to find innovative and mutually beneficial ways to meet all the parties interests. First Nation representatives described how they expected that the interest-based approach would allow the parties to define the problems and solutions collaboratively. The parties mutually agreed to the geographic scope, that only issues related to ‘forestry’ would be included and that the parties would not negotiate anything related to Aboriginal rights-based claims. However, as First Nation participants describe, these three limitations of the scope, were not so much agreed to, as they were accepted as the constraints of the OMNR and industry participants. The First Nation participants did not consider that these scope-defining activities would limit the potential of the parties to invent the best possible solutions for the reconciliation of their interests. Rather, the First Nation participants expected the interest-based approach would convince the other parties that their perceived ‘mandates’ need not restrict the possibilities that the parties could invent for maximizing their joint gains (First Nation 16, 18, 24).
However, the First Nation participants described that the OMNR participants’ problems with the draft agreement demonstrated that local District staff were not really capable or authorized to deliver on commitments for maximizing gains in any meaningful way. Rather, First Nation participants considered that the bureaucratic structure of OMNR and the organization’s resistance to precedent-setting legal interpretations limited the scope of the negotiation and the range of possible solutions. First Nation participants felt that local District staff may have supported most of the solutions developed by the parties in the draft agreement but they were required to ensure that they were not exceeding what their organization defined as the scope of their responsibilities (First Nation 15, 18). First Nation participants described that legal advisors and higher-ups in the OMNR who had not undertaken the interest-based process evaluated the draft agreement based solely on its possible legal consequences and not on its merits or potential to contribute to regional improvements in forest management, relationships or forest sustainability (First Nation 16, 18). General principles that were important to the First Nation about how the parties would treat each other in the future were considered vague or potentially precedent setting.

OMNR representatives described the scope of the negotiation being gradually defined in an iterative fashion. They noted that as the community identified their interests, the OMNR representatives sought confirmation from an advisory committee regarding whether these items could or could not be negotiated (OMNR 22). For example, one OMNR participant described that they got guidance that “we can’t do co-management” (OMNR 22) after the First Nation described that they were interested in co-managing activities in the Chapleau Crown Game Preserve. OMNR participants also described that they came to understand that their ‘mandate’ did not include revenue sharing and consent and they could not commit to preferential hiring of First Nation members or addressing community infrastructure needs. However, OMNR participants noted that many rights-based issues and “too many open-ended cooperative statements” (OMNR 23) remained in the draft agreement. According to the OMNR participants they were continually trying to “beat down rights-based issues” (OMNR 19) and the mandate they identified for the negotiations (or their interpretation of the scope) was being continually being challenged and tested by the First Nation, by the consultant, and by the interest-based process they were using.
OMNR’s solution to side step getting into a negotiation and developing a draft agreement beyond their scope in the future was to develop a much more measured and careful approach to forest negotiations. The strategy (OMNR 2002b), which was developed concurrently with this negotiation, required clearer terms of reference and that a mandate letter identifying each parties’ acceptable scope and negotiable items should be developed before any negotiations occurred. OMNR representatives were advised that Condition 77 only required “OMNR to facilitate negotiations between Industry and First Nations if required” (OMNR 2002b) and that if a First Nation identified any items related to Aboriginal rights, including revenue sharing, tenure changes or consent, then negotiations should simply not occur. It was hoped that this would restrict First Nation expectations that negotiations with OMNR would address Aboriginal rights-based claims. OMNR participants also hoped that First Nations would recognize that they would be just as likely to “get a piece of the (forestry) pie” (OMNR 22) outside of a legal agreement. Based on their experiences they felt that going through a broadly focused negotiation had just raised expectations and then potentially setback relationships when commitments later became contentious and that this ultimately contributed to the community “missing out on opportunities” (OMNR 23).
6 Findings: Factors Influencing Outcomes

6.1 Overview of Chapter

This chapter presents the findings from the participants pertaining to the second objective of this study related to understanding the factors influencing collaboration outcomes. Table 6-1 summarizes the factors discouraging and facilitating collaboration in each case and provides representative quotes for each factor. It is important to acknowledge that the factors identified below are not independent and there is a high level of interconnectedness between some or all of the factors identified in each case.

6.2 Factors Influencing the Outcomes of the CLFN Coexistence Agreement Negotiation

The participants in the CLFN coexistence agreement negotiations identified six themes related to the factors that influenced the collaboration outcomes or the ‘success’ of the collaboration process. A lack of enabling policy and contested legislative framework for collaboration, a contested scope for the negotiation, a lack of trust among parties, and representation, capacity and resource differences were identified by the participants as factors that discouraged the development of collaborative outcomes. Supportive individuals and the ability of the parties to focus on shared goals and recognize interdependence were factors that were considered to have facilitated collaborative outcomes. In this section, I describe each factor and explain how various groups of participants perceived each factor and the role it played in their collaboration efforts.
Table 6-1: Summary of factors influencing collaboration in CLFN and MCFN case studies

<table>
<thead>
<tr>
<th>Factors Influencing Collaboration</th>
<th>Case Studies</th>
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<tbody>
<tr>
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<td>Constance Lake Coexistence Agreement Negotiation</td>
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<tr>
<td>Lack of policy and suitable legislation for collaboration</td>
<td>“we are guided by legislation that doesn’t take into account Aboriginal treaty rights... it’s about control of resources” (First Nation 03)</td>
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<td>“when (Provincial government) made the regulations (CFSA) and the conditions (Timber EA Conditions), it was already written without the consent of the First Nation people” (First Nation 04)</td>
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<td>“…we can’t make any major concessions because of the structure of MNR, the province handles everything from the top level and obviously we are in the local level right now and they can’t make big decisions within the district” (First Nation 05).</td>
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<td>“(because of) judiciary issues between the First Nation and the federal government...there is basically an absence of leadership on the part of federal government throughout this” (Industry 08)</td>
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<td>“I have no problem with (revenue sharing) and issuing a part here, a part there...but I can’t do that without the buy-in of government” (Industry 10)</td>
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<td>Contested scope (CLFN)</td>
<td>“we are going to have to subdivide the agenda, separate the issues a bit, if I am expected to go to a table and discuss treaty rights and sharing of (provincial) revenues, you don’t have the right player at the table” (Industry 08).</td>
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<td>Limits of process to influence scope (MCFN)</td>
<td>“this negotiation process kept focusing on the problems and not on where do we want to go” (OMNR 09)</td>
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<td>“there is no long-term vision, that’s the challenge” (Industry 10)</td>
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<td></td>
<td>“industry was very, I thought, ignorant of the way people lived. They said “well what are you going to do, catch a beaver, catch a martin, what’s that worth?”...what they’re saying is, there’s a</td>
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| **Lack of trust** | **heck of a lot more to be made by forest industry than there is for trapping. But which one is more important? what do you mean my culture is not as valuable as your industry?...We tried to talk to them about these things but there was not enough good communication” (First Nation 02) | **can’t do, and we are getting into what we can’t do very late in the game here” (OMNR 23)** |
| **Representation, resources, capacity differences (CLFN)** | “when do peoples track record start to speak for themselves? Lecours and Tembec (have made significant harvesting volumes) available and the union hurdles are behind us” (OMNR 09) “the biggest barrier to me has been and will continue to be for the next little while developing our trust with CL” (OMNR 09) “over time we have had a lot of broken promises. So for us to agree on a darn agreement, it takes quite a bit to build that trust” (First Nation 02) | N/A |
| **Representa** | “the council can’t really operate because of political squabbles that are going on...elections every two years are not healthy” (Industry 10) “who’s in charge? the trappers council, the individual trappers or chief and council?...we don’t know who to turn to” (Industry 12) “see the problem with Constance Lake First Nations is ... when you talk about land and resources....do you sit down individually or do you talk to Chief and council or do you talk to the trappers council or to the membership” (First Nation 04) “the chief and council are overworked, there is only a certain handful of leaders in the community and they are strapped to the gills” (Industry 12) “when you sit at those tables and you go through those negotiations, First Nation people are handicapped ... you need to have to same type of resources and you to have an equal footing” (First Nation 02) “we did not have a forester, any technicians...we didn’t have proper resources in place” (First Nation 05) | “OMNR representatives have no autonomy at all and all the time they were pretending that they did” (First Nation 17) “It was the MNR players who changed...so we would have to start all over again, educating that person...as MNR players changed) you could see that it was starting to not become a priority” (First Nation 15) “we should have had more control of the pen, the consultant did a good job with it (but)...a lot of things would be put into the agreement with a little side note, MNR is not agreeing to this or has problems with it...so that is how a lot of things got in, it wasn’t there because we were sitting at the table and we agreed to it” (OMNR 22) “we should have had legal advice for each party as we went. There was a sense from the parties to defer that, which MNR really wasn’t comfortable with. But the idea was, lets build the agreement and not bring in the lawyers until the end. I think that was a mistake” (OMNR 22) |
**Factors facilitating collaboration:**

| **Supportive individuals** | “(the Chief) did a suburb job of building the (initial) community vision” (OMNR 09)  
“Chief’s leadership style is very collegial...we can continue to improve the local relationships so that when the global stuff (Ministerial-level Aboriginal policy) happens we take better advantage of it” (OMNR 09).  
“(the industry managers) very community minded people, I think that translated into the way they had hoped business would be done...that is the flavour of the Hearst industry...the working relationship here with the MNR has always been much stronger than elsewhere in the province” (Industry 08)  
“Our CEO wants to push the government to do their part (to give the First Nation a share of resource royalties)...that is (our CEO’s) vision” (Industry 12)  
“(District Manager) had a lengthy tenure and a good relationship with the forest industry and this spilled over into a better relationship with Native people” (OMNR 25) |

| **Ability of parties to focus on shared goals and recognize interdependence** | “we know there is no such thing as 100% sovereignty anymore, we are willing to negotiate to play an active role, where we benefit and both sides coexist... maybe we should start working together, business to business, and negotiate and look at us as business partners” (First Nation 05)  
“We need to get them involved in our community...It’s our future workforce. And we need them involved in forest management planning where we most impact their historical way of life” (Industry 12)  
“the BOD for Eagles Earth is all First Nations, we are not on that...we are trying to step out of the way and cultivate community leadership” (OMNR 09)  
“The resolve is still there to keep working with CLFN to find a way of improving the things that we share at heart - participation in the planning process and...work with them to find better job and business opportunities” (Industry 08) | N/A |
<table>
<thead>
<tr>
<th>Clear vision and negotiation plan</th>
<th>N/A</th>
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<tr>
<td>“we spent the time and money on the strategic plan so we would all be on the same page...We were able to point to the plan and say here is what we want, how we are we going to do it and what are the incremental steps” (First Nation 18)</td>
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<td>“The First Nation came to the table with a plan, a fairly detailed plan” (Industry 20)</td>
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<td>“we developed a planned approach as opposed to a piecemeal approach. (We) didn’t want any opportunities that depend on anyone patting us on the back saying good job, here is a little more and a little more, rather with a planned approach here is where we are and here is where we are going to go, each year” (First Nation 24)</td>
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<tr>
<th>Parties commitment to relationship building</th>
<th>N/A</th>
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<td>“with interest-based you agree within the three parties that what comes out is a win-win-win situation whereas position-based you go there with a position and you fight until you get what you want, it does not matter who gets hurt or who walks out...everyone agreed this was the best way to go to build the relationship” (First Nation 15)</td>
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<td>“no doubt that there was good people on all sides of the table...(the other participants) wanted to help us out...they really felt for us...they felt an obligation to do something” (First Nation 17).</td>
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<td>“with MCFN we may have disagreements but everybody can sit at lunch break and talk and you don’t feel a resistance, you feel close, trusted...(in other First Nation negotiations) there is so much friction in any of those meetings” (OMNR 21)</td>
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6.2.1 Lack of Policy and Legislation

Collaboration participants from all sub-groups, including local District OMNR participants, felt that their efforts to collaborate were complicated by the lack of a clear provincial policy regarding how the constitutionally-protected Aboriginal and treaty rights of CFLN members and the legislated rights conferred to SFL holders by OMNR should coexist on the same land base. With no policy there was no place for the rights-based grievances or competing values and perspectives of CLFN members to be addressed. First Nation participants emphasized that, ultimately, the collaboration process was limited by the lack of agreement among the parties about whether the current legislative framework for forestry, including the CFSA and its’ associated forest management planning rules, were legitimate. For First Nation participants, this legislation regulated forest harvesting and not the protection of Aboriginal and treaty rights. OMNR participants recognized the First Nations’ rights-based claims but these participants rationalized that these issues were simply not within their ‘mandate’: “the only area we can deal with is economic development …support to improve Aboriginal economic development within Condition 77 and the forest management planning manual” (OMNR 25). OMNR and industry participants also considered that the rights-based claims of First Nation participants demonstrated that the community was “stuck in the past” (Industry 12) and “focused on the negative” (OMNR 09) and this created tension in the collaboration discussion and limited the success or uptake of opportunities available to the First Nation within the existing forest management framework.

First Nation participants described this contested legislative framework as, “the bigger picture needs to be cleared up” (First Nation 01) and “the courts have established principles for the interpretation of treaty rights but Ontario has their own interpretation” (First Nation 04) and “there is a never ending saga of us just trying to get recognition for our Aboriginal title and everything should be replaced” (First Nation 06). For First Nation participants the outcomes of the collaboration process did not meet their expectations because they were not talking about the ‘real’ issues with the ‘right’ people. Their ‘real’ issues were related to the lack of recognition of their Aboriginal and treaty rights, and also to their exclusion from forestland policy-setting and decision-making and from sharing in the benefits of forest harvesting. The ‘right’ people included federal and provincial Ministerial-level decision makers.
Participants also described problems arising in the collaboration from jurisdictional issues between federal and provincial levels of government in Canada. The rationale behind including an INAC representative as a participant in the negotiation was to provide the other participants with clarity on consultation and compensation requirements. OMNR and industry participants considered that the INAC representatives did not provide any direction on the consultation uncertainties that existed and aside from advocating for a collaborative approach and stronger role for the First Nation, INAC had not made any commitments within the draft agreement. First Nation participants described that neither INAC, nor OMNR participants would commit to establishing a separate government-to-government process to clarify consultation and other related matters as part of the current agreement.

Participants also described other ways that the lack of clear policy and legislative framework influenced their collaboration efforts. Participants identified that the uncertainty contributed to an unclear scope for the collaboration process, created uncertainty for the industry about their role related to Aboriginal people (Industry 08, 12), made INAC reluctant to assume any responsibility (Industry 08, OMNR 25) and constrained the discussion of options or solutions (First Nation 01, 04).

### 6.2.2 Contested Scope for the Negotiation

Related to the collaboration challenges arising from the lack of policy and legislative framework described above, participants also described collaboration outcomes being limited by the parties’ different interpretation of the scope of the collaboration. OMNR and industry participants emphasized that including any Aboriginal rights-based claims in the collaboration process was inappropriate, beyond their mandate and counter-productive to collaboration. OMNR and industry participants also emphasized the negative effect for collaboration progress and their frustration resulting from the community maintaining their ‘rights-based approach’ (Industry 11, OMNR 13). First Nation participants, conversely, considered that any collaboration process had to be based on their Aboriginal and treaty rights and that their rights-based and economic development goals were not mutually exclusive but rather interdependent (First Nation 03, 06).

According to First Nation participants, the scope of the collaboration process was so constrained by the other parties that, even as improvements in the relationships and communication occurred, the collaboration discussion and resulting draft agreement were almost meaningless for them.
First Nation participants also described that their realizations about the limits of the negotiation process only came after considerable time spent negotiating with the other parties. They also noted how these realizations eventually caused them to shift their approach to embracing a forest-related economic development approach, for example, “ok, if you are going to take away some of our culture (through harvesting on our traditional territory), you are going to erode our culture, give us something in return” (First Nation 02). First Nation participants described the development of Mammamattawa and other forestry employment and business opportunities as the community addressing their pressing social and economic needs given the narrow confines defined by the other parties.

OMNR and industry participants described that their dealings with the First Nation were frustrating and their collaboration efforts hampered because the community continued to mix political interests with planning or business development efforts. Thus they perceived the community’s reluctance to ratify the draft agreement, their continued insistence on requiring government-to-government discussions and their use of ‘rights-based’ talk in forestry business discussions and forest management planning meetings as limiting the opportunities that were available to the First Nation and the relationships among the parties. OMNR and industry participants described this collaboration challenge as the parties needing to “separate the issues” (Industry 08, 11, OMNR 09, 13) or in other words, separate First Nation forestry business opportunities from the First Nation community rights-based claims. An industry participant explained a common sentiment that the First Nation should not use rights-based claims to leverage economic development opportunities:

> you hear the First Nations, for example, (complaining about) cutting my trapline, (because) I use the bark from that tree to make a canoe, well Christ I never seen a birch bark canoe in Calstock yet, and I don’t think there was ever one. But yet on the other hand they want to cut the trees themselves, like what is you want, is it because you want to save your trapline or is it because you want to be part of the forest industry. I think people need to be upfront about that (Industry 11).

OMNR and industry participants also described that they felt that the community of Constance Lake lacked a clear vision of what it wanted to accomplish and this contributed to confusion about the scope of the collaboration process. OMNR and industry participants described how from the initial blockade, and through the formal negotiation meetings, to their current work with the community, they felt that they were never able to focus on achieving reasonable objectives or
achieving as much progress as they could have if the community could focus on a clear vision rather than problems beyond their mandates. Industry participants also noted that they still did not know what the community wanted and whether the agreement they drafted collaboratively reflected the community’s interests or if it was not acceptable, why it was unacceptable and whether more conflict was likely to develop in the future (Industry 08,10).

The First Nation participants, conversely, described having a very clear vision of the purpose of the blockade of the Lecours sawmill access road in 1997 and of what they expected the collaboration scope to entail. They had expected this negotiation process to be based on the treaty their ancestors had signed in 1908. The treaty represented an “exchange of promises between the Crown and the First Nation which is sacred” (First Nation 04). First Nation participants wanted to talk about the treaty relationship and what a new relationship defined by the treaty would lead to (First Nation 01). They wanted answers to fundamental questions like, if they extract natural resources from our traditional area, do we get a cut? and why are you cutting all the merchandise in my trapline? where am I going to trap? and if their answer is go ahead and trap, what am I going to trap? you cut all the trees out (First Nation 04).

After six years of negotiation and a leadership change the CLFN vision remained the same. First Nation participants described how throughout the negotiation process the sovereignty component of their vision was never understood, accepted as legitimate or deemed feasible by the other negotiation participants: “they didn’t recognize us as the owners, or part owners of the treaty, part-owners of the resources; they’re still not budging in that area” (First Nation 05). Likewise, First Nation participants described that while issues like revenue sharing were discussed in the negotiation, “it never reached any fruition” (First Nation 02).

For the CLFN leadership a desire for government-to-government negotiations and recognition of treaty rights (with the concomitant changes in decision-making authority this would require) persisted alongside the economic development focus that they embraced when developing Mammamattawa and pursuing other regional economic development projects. However, First Nation participants also described how opting for economic development and participating in forestry within the narrow confines defined by the other parties was not without controversy among First Nation community members. First Nation participants’ views on how to address the underlying substantive issues ranged from “I would claim ownership of this land…(and)
blockade until we get that recognition” (First Nation 06) to “we are trying to build a relationship with the industries and find ways to become participants with economic ventures that would give back to the region” (First Nation 03). The Chief’s collaborative approach and economic development focus was at the time considered progress by OMNR and industry participants. However, any debate within the community between those who were ‘pro-treaty rights’ and those who where ‘pro-development’ also likely contributed to the perception that Constance Lake was a “fractured community with many factions” (Industry 10) which was, as a result, difficult to negotiate and collaborate with.

First Nation participants also explained how the scope was limited to ‘forestry’ as defined by the other parties and thus they could not communicate or address issues based on any alternative worldview of the forest. According to these participants, ‘forestry’ as ‘timber harvesting’, defined how Aboriginal concerns were understood and addressed or whether they were acknowledged in the collaboration process. First Nation participants described how the community’s perspective that forestlands were not just sources of timber but that their living and non-living components had other meaning and spiritual and cultural value was never understood or acknowledged. For example, First Nation participants considered that they were never able to communicate to OMNR and industry that harvesting on traplines “denied Aboriginal people their right to live” (First Nation 26) or that they did not want to be part of clearcutting but rather “part of looking after the forest, taking care of the forest…(because) it’s our home, like how non-native people consider the grocery store, this is what gives us life” (First Nation 05). First Nation participants also described how they came to understand that their initial blockade expectations that they would be “doing forestry differently rather than just to get into big pieces of machinery” (First Nation 01) were never seriously considered in the collaboration process. Rather, the industry participants’ focus on security of wood supply and the OMNR’s perspective that forest management planning already provided a suitable mechanism to incorporate Aboriginal cultural ‘values’, limited the collaboration process’s scope. First Nation participants described how the OMNR considered that more or improved communication would address the community’s ‘values’, whereas they felt that the entire framework for understanding, evaluating and deciding on forest management decisions needed to change. This disparity led the First Nation participants to describe the negotiation process in the end as akin to “talking more in circles” (First Nation 06).
6.2.3 Lack of Trust Among Participants

Representatives of all sub-groups also described the lack of trust as a barrier to the development of collaborative outcomes. On a broad level, participants described that the displacement and assimilation of Aboriginal peoples and a legacy of colonization policies (e.g., Indian Act and the residential school system) meant that little trust existed between Aboriginal and non-Aboriginal people in general. First Nation participants also described more local sources of the lack of trust, related to their exclusion from the growth of the forest industry in Hearst, and their feelings of discrimination and stereotyping from non-Aboriginal people in Hearst. According to First Nation participants it was this lack of trust which contributed to the community’s reluctance to ratify the draft agreement and their insistence on quantification: “over time we have had a lot of broken promises. So for us to agree on a darn agreement, it takes quite a bit to build that trust. So that’s why the quantifying thing is really an issue here” (First Nation 02). First Nation participants also described that their wariness towards signing the draft agreement came from learning that the forest industry representatives had quantified financial and harvesting license commitments in other similar First Nation agreements but would not do so in the CLFN coexistence agreement.

Participants also considered that the general sources of distrust between Aboriginal and non-Aboriginal people and the specific sources between the CLFN and the town of Hearst and forest industry were responsible for the problems encountered with the establishment and management of Mammamattawa. First Nation participants described the forest industry involvement in Mammamattawa as tokenism and not motivated by their actual support for the community. Industry participants confirmed that collaborating with the First Nation was not a priority for some of the industry partners (Industry 10, 12). For example, one participant considered that the First Nation was not given enough support to develop the harvesting business: “there could have been more help to the First Nation, but it was hard because to make it successful the companies had to give away things they weren’t necessarily ready to…it was agreed to by force” (Industry 11).

OMNR and industry participants also noted that because the First Nation did not recognize that they were at least trying to improve the situation and had done some good work, the community was further limiting collaboration outcomes. These participants described being ‘burnt out’ trying to do something for the First Nation and frustrated that the community did not
acknowledge the long list of benefits and all of the time and effort that they had already committed as a result of the collaboration process and related projects (Industry 08, OMNR 09, 13). Industry participants noted that the frequency of meetings with trappers related to forest management plan development and implementation had increased and that they had improved the format of these meetings to increase attendance and participation. However, forest industry managers were frustrated that compensation issues still came up frequently and that First Nation community members did not recognize these efforts as significant or did not think that these forest management planning meetings constituted ‘meaningful’ consultation (Industry 08, 12).

OMNR and industry participants recognized that the lack of trust created a conundrum. With no trust, collaboration opportunities were not embraced and without positive collaboration experiences, trust could not be built. OMNR participants considered that their role in supporting the Eagles Earth and their support for field trips and planning workshops would do more to build trust between the parties than the “problem-focused” (OMNR 09) negotiation process. Likewise, industry participants considered that supporting the reinvigoration of Mammamattawa would contribute to building relationships and trust more than continuing to strive for a signed coexistence agreement (Industry 08, 10). Industry participants also considered that their coexistence approach with Constance Lake required more energy and time than simple one-off agreements (like those signed between forest industry and Aboriginal communities in other areas) that provided sums of money to Chief and council to use in the way they saw fit. However, they still considered that their approach was “the only way to go to make a long-term improvement” (Industry 08) because they were finding ways to include the First Nation in the forestry workforce, providing training and bursaries and improving consultation protocols.

6.2.4 Representation, Resources and Capacity Differences

Participants described issues related to representation within the community and between the First Nation community and other Aboriginal organizations, and resource and capacity disparities among the negotiating parties that contributed to collaboration challenges.

First Nation participants felt that negotiation with OMNR and industry was difficult because they could not necessarily produce the ‘community perspective’ that the other parties were expecting. Finding a ‘legitimate’ representative in trapline harvesting issues was a challenge, for example, “the problem with Constance Lake First Nations is … when you talk about land and
resources….do you sit down individually or do you talk to Chief and council or do you talk to the trappers council or to the membership?” (First Nation 04). First Nation participants noted that in collaboration processes and negotiations, Chief and council or other community representatives are expected to represent an unchanging homogenous community view. This expectation fails to recognize that community views are diverse and it is individual First Nation members that hold treaty rights and not the leadership. Thus the Chief and council representatives described that they had difficulties ‘negotiating’ on behalf of individual trappers and the community as a whole at the same time. These challenges where considered by the First Nation participants to be imposed on them because of the federal band leadership rules and the breakdown of customary Aboriginal governance and processes. First Nation participants also noted that finding a way for other Aboriginal organizations (e.g., NAN or Mattawa Tribal Council) to support their own community-centered negotiation and consultation approaches was necessary (First Nation 01, 06).

OMNR and industry participants also described that their collaboration efforts, particularly to develop a consultation protocol, were limited by the problem of multiple and varied perspectives and groups within the First Nation community. For example, industry participants stated: “who’s in charge? the trappers council, the individual trappers or chief and council? ... we don’t know who to turn to” (Industry 12). Additionally, OMNR and industry participants considered that challenges to the authority of the elected leadership and contested election results (after the 2003 election) were examples of the “community turmoil” (OMNR 09) that contributed to the Chief and council directing their energy to “political squabbles that are going on” (Industry 10) rather than developing visionary collaboration approaches that could support long-term community improvements. Both First Nation and non-First Nation participants considered that collaboration efforts would improve as the First Nation made changes to Indian Act imposed band leadership rules, including the problem of frequent elections (First Nation 05, Industry 10).

Participants also described a number of resource disparities and capacity issues, which discouraged collaboration. OMNR and industry participants considered that the communication and follow-up from the Chief was lacking because the community leadership was overworked, for example, “the Chief is so damn busy...A Chief is a prime minister, a mayor, a premier all rolled into one, I think their priority is to get their school system up and running …so there is other workload priorities here, and I do understand that” (OMNR 09). OMNR and industry
participants also noted that because “there is only a certain handful of leaders in the community and they are strapped to the gills” (Industry 12) it was difficult to communicate with the Chief and council and developing collaborative projects with OMNR and industry were not always priorities. These participants also noted that because the leaders in the community were so busy, OMNR and industry efforts were not acknowledged, and this had the unfortunate effect of making the OMNR and industry participants feel their efforts were not appreciated.

First Nation participants described the collaboration challenges arising from resource and capacity disparities. First Nation participants described their lack of forest management knowledge, which prevented them from critically appraising the other participants’ science-based forest management processes. For example, “we did not have a forester, any technicians…we didn’t agree to clearcutting but we didn’t understand the technical stuff either” (First Nation 05). First Nation participants also described their lack of capacity in terms of being disadvantaged and vulnerable in the negotiation process because the other parties held all the forest policy-making and management planning decision-making power. The First Nation participants explained that the “terms of reference were already defined” (First Nation 04) and we could only “negotiate one small part of it” (First Nation 05) and therefore, “when you sit at those tables and you go through those negotiations, First Nation people are handicapped” (First Nation 02). First Nation participants also considered that they were vulnerable to the industry because the current tenure system made them dependent on industry to provide timber harvesting opportunities or an overlapping harvesting license. According to one participant “why should we even be talking to industry?...You know the industry had big say is what went on here. Why?” (First Nation 06). First Nation participants also described how industry control of the SFL meant that the industry also influenced how forestry-related business partnerships should be structured and managed. First Nation participants noted that Mammamattawa’s initial set-up was not collaborative but that decisions were made by dominant industry representatives, who had a paternalistic approach and were operating without any community input or Chief and council oversight (First Nation 03, 05, 14). Finally, First Nation participants considered that their capacity deficiency also related to the lack of support they received from other First Nation communities and Aboriginal organizations (First Nation 01).
6.2.5 Supportive Individuals

All participants considered that a collaboration process was initiated and a partnership approach was building in CLFN because of unique conditions related to the characteristics of key individuals from all groups. The presence of supportive individuals in industry, OMNR and the First Nation community were considered to be instrumental in initiating and sustaining a collaborative process to resolve some of the issues identified by the CLFN blockade. Participants noted that the industry managers were “very community minded people …that is the flavor of the Hearst industry” (Industry 08). The history of Hearst’s family-owned forest industry was considered to contribute to the forest industry representatives continued desire to contribute to long-term community solutions and address more than just ‘the issues of the day’. For example, one industry participant noted that their CEO’s vision “to push the government to do their part (to give the First Nation resource royalties dues)” (Industry 12) and their company’s progressive Aboriginal policy supported his good relationship with community members at Constance Lake. First Nation participants also noted how an influential industry representative, with whom they had developed a good relationship, had contributed to the development of the coexistence approach and swayed some of the other forest industry leaders (First Nation 02).

Participants also noted that the working relationship between the District office in Hearst and forest industry was stronger than elsewhere in the province (Industry 08). Participants considered that because the District Manager in Hearst had a lengthy tenure and “a good relationship with the forest industry this spilled over into a better relationship with Native people” (OMNR 25). The key industry and OMNR leaders were further considered to be instrumental in recognizing that an independent facilitator was needed to help the parties develop a good negotiation process. Industry and OMNR participants also considered that the CLFN leadership contributed to the collaboration outcomes in a number of ways. At the beginning of the negotiation process, participants considered that the Chief had done “a superb job of building the community vision” (OMNR 09). Likewise, these participants considered that the current Chief was also interested in working in a collegial manner and this helped to improve local relationships, even if they considered that a community vision was no longer clear. Finally, most participants considered that the OMNR-funded Aboriginal Liaison position held by a CLFN member served an important communication and interpretation function. The individual holding this position was considered to be ‘bridging’ the two cultures and increasing reciprocal communication and the
capacity of the First Nation to participate in forest management planning. All of these factors associated with the individuals involved were considered to contribute to the tangible and intangible collaborative outcomes identified by the parties.

6.2.6 Ability to Focus on Shared Goals and Recognize Interdependence

Participants considered that the progress of the relationship in recent years was attributable to the parties’ attempts to “separate the issues” (Industry 08, 11, OMNR 09, 13, First Nation 03) and focus on shared goals. The forest industry considered that secure wood supply and access to markets were dependent on community involvement in both the business and planning of forest harvesting (Industry 10, 12). OMNR and industry participants who lived and worked in Hearst also recognized that the First Nation community’s well-being and development opportunities also influenced their own future and the economic success of Hearst (OMNR 09, 25). To this end, OMNR representatives were approaching economic development opportunities (such as the NBI and Eagles Earth) as community-led endeavors. One OMNR participant described a connection between the community of CLFN and Hearst based on shared ‘northern’ issues and the development of a desire to improve economic opportunities when they explained, “the political will to do anything in Toronto might be missing (but we can still) take matters into our own hands to create opportunities here for Constance Lake” (OMNR 25). Another participant described that the blockade and negotiation, “woke Hearst up” (First Nation 14) and that the regional economic development corporation recognized that both communities would lose out on economic opportunities if they did not work together. Likewise, an industry participant considered that some kind of intercultural collaboration forum to evaluate progress, facilitate continued communication between the parties, and encourage joint action should be developed among the parties (Industry 10).

First Nation participants felt that the most tangible outcomes of the collaboration process, including the increased allocation of fiber to the community, the development of Mammamattawa, the improvements in involving CLFN in forest management planning, the industry’s commitment to meet with trappers prior to initiating any harvesting on traplines, and OMNR’s concerted efforts to generate some kind of economic development activities, were all based on the other parties’ recognizing the First Nation as a legitimate and valuable partner which could contribute to the region (First Nation 02, 03, 05). First Nation participants described
that they wanted to continue to move forward with the non-First Nation residents of the region recognizing their potential to contribute to economic development. Not all community members or First Nation negotiation participants supported an economic development partnership approach (First Nation 01, 06). However, some First Nation participants explained that both approaches were needed and working on shared economic development goals would allow the First Nation to contribute to the region and in turn increase their control in the forest sector (First Nation 03, 05). One First Nation participant summarized their feelings about how their status as partners was evolving, “they started to co-operate…I think we were able to get them to work with us and see that we need each other down the road” (First Nation 03).

6.3 Factors Influencing the Outcomes of the MCFN Umbrella Agreement Negotiation

The analysis of the participants’ perceptions of factors affecting the outcomes of the MCFN Umbrella Agreement negotiations identified five themes. Participants described three factors that limited the development of collaborative outcomes. Similar to the CLFN case, participants identified the barriers arising because they lacked a suitable policy and legislative framework to enable collaborate, as well as the limitations of an interest-based negotiation approach to influence the scope. Participants in MCFN also described procedural problems as factors discouraging collaborative outcomes. Two factors that facilitated collaborative outcomes, including the clear vision and negotiation implementation plan of the First Nation and the parties’ commitment to understanding each other and relationship building are also described.

6.3.1 Lack of Policy and Legislation

Participants in the MCFN negotiation process identified the lack of policy regarding Aboriginal and treaty rights and legislative framework for collaboration as factors that constrained the development of agreement and collective action in their case. OMNR participants expressed the belief that a broader framework for addressing Aboriginal peoples substantive issues was required and that how they worked with First Nations needed redress. However, they were clear that neither they as individuals nor their organization had the power to do this nor was it their responsibility given the current policy and legislative framework. For example,

It is not in my mandate to advance a negotiation based on rights-based issues, like sovereignty or consent….They have shown up at every negotiation table that I am
OMNR participants considered that there was a reluctance within their Ministry to move on clearly defining Aboriginal rights in relation to other legislated rights and provincial constitutional rights regarding lands and resources because the OMNR was “not prepared to give up the right to govern…(or) move into needing consent from people before they make decisions” (OMNR 19). OMNR participants also suggested that if these responsibilities and roles were clear and accepted by the other parties at the outset then forestry negotiations would be much more expedient and productive (OMNR 19, 21). Unfortunately, however, OMNR participants explained that they were not able to be straightforward about their organizational constraints, rather they were often “hopping around to make sure when we get into these sensitive areas around rights that we don’t end up in litigation, we don’t end up with bad media (or) …get criticized for discrimination, racism” (OMNR 19). OMNR participants also explained that they felt that given these policy limitations more benefit could come to First Nation communities from including a non-derogation clause into negotiated forestry agreements than waiting for clarity on Aboriginal rights issues (OMNR 19, 21).

More specifically, the OMNR participants described how these ‘framework’ issues prevented them from developing a collaborative agreement that was acceptable to all parties. OMNR participants also explained that there was a disconnect between what they could legally agree to on paper, given the lack of policy and no interpretation of Aboriginal and treaty rights, and what they had developed from an interest-based negotiation process and understanding the interests of the First Nation (OMNR 21). An industry participant considered that given the OMNR’s limitations related to needing higher-level policy and approval, they should have just entered into a two-party negotiation with the First Nation to develop a forestry agreement (Industry 20).

The First Nation participants felt that the problems OMNR participants identified with the draft agreement were products of OMNR having “the wrong people at the table” (First Nation 15). This significant issue, which affected the collaboration outcomes and the First Nation’s level of trust, was seen as a fundamental problem related to the lack of clear policy. First Nation participants described the problem as OMNR District Managers completely lacking a mechanism
for dealing with any issue that can be construed (even remotely) as being related to Aboriginal and treaty rights. For example, First Nation participants noted how anything that could have uncertain implications, including general principles about how the parties will relate to one another, were seen as potentially touching on Aboriginal and treaty rights in the negotiation and were therefore a source of concern for OMNR participants (First Nation 18, 24).

The lack of clear policy and legislative framework also contributed to the First Nation pursuing litigation aimed at clarifying uncertainty about the nature and scope of treaty and Aboriginal rights and OMNR’s responsibilities. OMNR participants described that the community’s participation in a lawsuit filed by the Mushkegowuk Tribal Council against the Canada and Ontario governments was counter-productive to their local collaboration efforts and was influencing their development of a re-draft of the agreement. The OMNR participants expressed they were unsure of how they could collaborate with the MCFN “with a lawsuit hanging over our heads” (OMNR 23).

6.3.2 Limitations of the Interest-based Negotiation Approach to Influence Scope

In the MCFN case, participants attributed the parties different levels of comfort with the draft agreement to a disparity between what the First Nation participants thought they could do with an interest-based negotiation approach and what the OMNR defined as being acceptable from a legal standpoint. The First Nation participants explained that the interest-based negotiation process (and the other parties’ apparent buy-in for this process) was premised on the expectation that all parties would work together to create mutually beneficial goals and develop approaches to address their needs. However, after their experience, First Nation participants considered that the interest-based negotiation approach, while it may have built understanding and relationships among the parties, had failed to help them overcome the barriers to negotiation imposed by OMNR’s organizational structure and political limitations.

OMNR participants felt that the scope of the negotiation was mutually agreed upon early on, or that it was at least clear and generally accepted after they provided the other parties with their mandate letter. The First Nation participants explained that they had ‘agreed’ to the other parties definition of the geographical scope based on administrative boundaries, limiting the discussion to just forestry issues and excluding any rights-based issues (described in the mandate letter).
However, First Nation participants explained that while they agreed to the other parties scope limitations they expected that because the interest-based negotiation approach sought to maximize gains it would also allow them to question and potentially sway the other participants’ to expand (or at least work innovatively within) their mandate based on the merits of the solutions developed. Essentially, First Nation participants accepted the OMNR’s definition of the scope but the parties did not agree that this scope should limit their locally derived solutions. For example, the First Nation participants explained that they understood that the OMNR did not consider issues outside of forestry should be within the scope of the negotiation but they “proposed that OMNR could commit to help MCFN line themselves up with the right people to go down the right road” (OMNR 24) to address their interests outside of forestry. The First Nation described that it was these kinds of commitments in the draft agreement that were later deemed to be too open-ended by OMNR and therefore not acceptable.

OMNR participants also felt that the interest-based negotiation approach created expectations that they could not meet and created confusion related to how a visionary process should be translated into a legal agreement. For example, an OMNR participant described a “disjunct (sic)” (OMNR 21) between what the parties built together in the agreement and what the OMNR could do:

we talked about jobs, we talked about the need for their community members to work …great stuff that we built together…we can try and do this but when we take it back to legal or to whomever and they say no, we can’t do that (OMNR 21).

OMNR participants still supported interest-based negotiation as a technique to build relationships and increase understanding of each party’s interests. However, OMNR participants considered that “after this experience (I would say) trying to put relationships into (an agreement) is impossible” (OMNR 23). These participants considered that it was difficult to stay within the boundaries of their mandate while they were attempting to develop a legal agreement using an interest-based approach. They felt that this difficulty contributed to the problems encountered in the later stages of the negotiation and called into question the utility of undertaking this kind of negotiation at all. One participant described this realization:

(w)e were consciously trying to stay in a non-critical nature. Just get the ideas out, let them roll. That was problematic, I would say, in terms of significant decisions were left to a later time and as we went through the drafts… the disagreements of different versions would be parked in the agreement and we would never get to saying, let’s
come to an agreement on this part. It was, put it off to another day...As many times as MNR would say, we will have to refer back to our mandate. This is not something we can negotiate. It was very difficult to get that out of the agreement...And then once you have all those things parked, then we got into disagreements afterwards...I think at these negotiations, we sat down at the table to listen, and, in my view there should have been more thought in terms of, is a legal agreement the right way to go (OMNR 22).

The issues participants described related to the limitations of an interest-based approach also involved several procedural problems related to how the interest-based negotiation process was carried out. These issues are described below.

6.3.3 Representation, Role of Consultant, Role of Legal Advisors

Participants in the MCFN case also described a number of problems related to the internal conditions of the negotiation that discouraged developing a mutually acceptable agreement. Primarily, First Nation participants considered that the OMNR representatives were not appropriately authorized and mandated to negotiate and were required to check with legal advisors (First Nation 15, 17, 18, 24). Whereas, OMNR identified a number of problems they had in actually following and carrying out the process due to the lack of a neutral facilitator and trying to ‘word-smith’ the document without legal advice.

Participants noted that they had spent time during the negotiation discussing whether the OMNR participants, “where the right people at the table” (First Nation 17) given the First Nation’s expectation that the tri-partite agreement they developed would provide general commitments, but more importantly “political direction” (Model Draft 19). OMNR participants considered that they did have delegated authority from their organization to negotiate a ‘forestry agreement’ in keeping with their mandate letter. Both OMNR and First Nation participants acknowledged that the District OMNR participants’ lack of authority to make substantive decisions on the more political questions contributed to the parties’ collaboration challenges (First Nation 17, 18, OMNR 19, 22). However, the parties differed in whether they considered this was a problem that should be addressed or simply the current institutional reality. According to First Nation participants this problem arose because of the “lack of understanding on the part of the government in terms of the treaties and the way provincial government interprets their obligations to the First Nation” (First Nation 16). As a result First Nation participants considered that collaborating was difficult because “we send our government, they send their bureaucrats”
(First Nation 18). As I describe below, OMNR participants considered that this problem arose because their mandate was either not clear to the First Nation or if it was clear the First Nation never accepted it and continued to try to include items in the draft agreement that were outside this mandate.

First Nation participants also attributed the OMNR’s disapproval of the draft to the high turnover of OMNR participants during the negotiation process and suggested that the OMNR participants who came into the negotiation in later stages did not understand or support the items in the draft agreement because they had not contributed to their development (First Nation 17, 18, 24). The OMNR participants who participated in the initial relationship building and interest identification process were considered to have “bought into the system …(and) knew the process very well, so (they) understood the issues” (First Nation 18). First Nation participants described instances in the negotiation where the initial OMNR participants had agreed to (or seemingly agreed to) consider issues beyond their official mandate. These included supporting the community’s interests related to the development of community infrastructure through in-kind contributions, supporting dialogue with the MCFN for input and mitigation of impacts related to harvest allocation decisions, and for the potential inclusion of Manitou Mountain (a significant spiritual site) in the geographic scope of the agreement (First Nation 18, 24, Model Draft 19).

OMNR participants also considered that “changing representatives mid-stream” (OMNR 22) influenced the process and “parachuting into the middle or the end of a process was very difficult, there is no question about it” (OMNR 21) but they did not consider that this altered what OMNR participants were willing to commit to. OMNR participants who were not involved in the initial brainstorming process, described that they had a hard time understanding why the negotiation process was taking so long and why the parties had waded into what they considered were non-negotiable issues (OMNR 21). It is not clear to what degree a consensus had emerged on the various issues among the early participants at the table and participants held different perspectives on the effect of the turnover of OMNR participants.
Conversely, OMNR participants considered that the draft agreement\textsuperscript{10} contained items that they “cannot live with” (OMNR 22) for several reasons. One OMNR participant described that the process to develop the draft agreement was plagued by a number of problems, including that the joint brainstorming process was either too “open-ended” (OMNR 22) or was not accompanied by a clear approval of the scope of the negotiations. For example, the parties “never had a good enough discussion to say, either we can meet that interest or we can’t, (to explain) right up front, sorry, that’s a non-starter, we can’t do that” (OMNR 22). This participant recognized that to be effective the brainstorming required that the parties think creatively without fear of being held to their ideas as commitments but that taking this approach had raised participant expectations that all the interests were reasonable and achievable. The brainstorming should have been followed by “a critical evaluation of whether the interests could be met or not” (OMNR 22).

Likewise, OMNR participants considered there was a poor link between the interests and options generated and the development of the agreement (OMNR 22, 23). OMNR participants explained that rather than evaluating all the suggested options, the other participants moved from identifying their interests to taking a position as soon as they started to draft the agreement. For example, the First Nation identified as an interest “finding a way to identify Aboriginal values before forest harvesting and ensure they are protected” (OMNR 22) but OMNR participants noted that in the draft agreement, the only First Nation’s took the ‘position’ that the other parties had to commit to “a dollar figure that was required for values information” (OMNR 22).

OMNR participants also described that they knew early on that some of the interests identified “we couldn’t do anything with” (OMNR 22) but despite the mandate letter, they were not able to effectively convey this, nor exclude them from the negotiation, nor remove them from the agreement. OMNR participants suggested that interests they could not negotiate remained in the draft agreement because the parties lacked a neutral facilitator or “someone who was skilled at facilitation…without a stake in it” (OMNR 22). OMNR considered that the First Nation’s consultant maintained the draft agreement and thus largely “controlled the pen” (OMNR 19, 21,

\textsuperscript{10}The parties referred to the document arising from the joint brainstorming in interviews and discussion as the ‘draft agreement’. However, the document was called “model draft no. x” on paper and participants suggested that this arose because OMNR participants were nervous about using the word ‘agreement’ because they did not want items under discussion to be construed as having been agreed to (Industry 20).
although OMNR and Weyco also tried keeping their own drafts often resulting in “dueling laptops at the meeting” (OMNR 22). One participant explained that one of the effects of not having neutral facilitation was that many issues became ‘parked’ in the agreement:

if I was a party and I got something in the agreement that I wanted, it was to my best interest to leave it there and say, let’s just park it there and then we can negotiate it later. …There was a reluctance of the other parties to acknowledge that that could not be negotiated and to take it out of the agreement (OMNR 22).

OMNR participants noted that the First Nation’s consultant included side notes in the growing draft agreement outlining participants’ objections or suggestions but ultimately the draft agreement was long, dense, repetitive and contained several commitments that they continued to dispute (OMNR 19, 21, 22, 23). OMNR participants suggested that personality issues and past relationships influenced their interactions with the consultant and that the consultant may have had “some interest in this and in other ventures in other parts of the province” (OMNR 22), or “wasn’t always representing what the First Nation was saying” (OMNR 23). OMNR participants also considered that the consultant’s approach was to make sure that “everything was captured…and no stone left unturned” (OMNR 23), whereas a neutral facilitator may have been better able to help the parties streamline the agreement and “put in reality checks” (OMNR 19, 22) of what was possible. It is likely that the community’s lack of trust in government also contributed to these procedural issues. For example, one participant explained,

they (OMNR) are saying that a lot of it was said over and over again and they wonder why and we say, well look at the treaty, it was one page and what the hell did we get out of it…you wonder why we want to make sure everything is in there, well that is why (First Nation 18).

The consultant clearly played an important role in the negotiation but First Nation and OMNR participants held different perspectives regarding whether the role was positive or negative. Citing the consultant’s experience working with OMNR and industry and also involvement in a “previous successful negotiation for another First Nation” (First Nation 16) the First Nation participants described that the consultant provided them with the expertise they needed to plan and undertake negotiations and overcome their lack of knowledge about the inner workings of forest industry and OMNR (First Nation 15, 16, 17). First Nation participants did not consider that having their consultant act as the main facilitator and maintain the draft agreement had negatively influenced the negotiation process in any way, rather they considered that “we had the
“best facilitator” (First Nation 16) to bring the other parties to the table, to secure commitments and to develop a long-term and substantial agreement. The First Nation considered that there were very few ‘neutral’ facilitators that had the negotiation skill set required and the knowledge of OMNR policies, forest management planning processes or forest industry motivations to help the community achieve what they wanted. However, OMNR participants cautioned that in general if consultants involved in these negotiations “get(s) into rights-based areas…(this can) deaden the table fairly quickly” (OMNR 19) and that previous relationships between consultants and other parties can influence the process and the openness of the relationship (OMNR 19, 21).

OMNR participants also considered that not seeking legal review of the draft agreement sooner “was a mistake” (OMNR 22). First Nation and OMNR participants differed in their interpretation about whether the decision to not involve legal advisors for the three parties early on was mutually agreed to. OMNR participants described that they were never comfortable with the First Nation’s suggestion to “not bring in the lawyers until the end” (OMNR 22). OMNR participants did consult with an ‘advisory team’ at various stages of the negotiation. First Nation participants described being surprised and insulted when they learned during the process that OMNR was “working with their lawyers (because) the lawyers were not supposed to come in until we had all those interests defined the way we wanted it” (First Nation 15). But for OMNR, the involvement of legal advisors in the early draft development stage would have allowed all the parties to “come to a clearer understanding earlier that this is time well spent or it is not” (OMNR 22).

6.3.4 Clear First Nation Vision and Negotiation Plan

A frequent sentiment among First Nation participants was that the course of the negotiation process and its outcomes were positively influenced by the First Nation’s clear vision and their resulting well-planned negotiation approach. First Nation participants explained that the motivation to re-establish their community on their traditional territory was a strong unifying and motivating force (First Nation 15, 17). The community’s frustration with their on-going TLE claim negotiation also contributed to this motivation to collaborate with OMNR and industry. First Nation participants also recognized that their earlier discussions with forest industry were
hampered because they did not have a plan or a clear understanding of what they wanted (First Nation 18).

Prior to discussion with the industry or OMNR, the consultant and the community undertook workshops, member surveys and planning exercises to develop “clear goals and objectives” (First Nation 24). First Nation participants noted that having a plan outlining their goals and the incremental steps and timelines to get there was beneficial for the community to keep focused but also in engaging with the other parties, “it kept us focused…we were able to point to the plan and say here is what we want, how we are going to do it and what are the incremental steps … and we can keep consistent with what the membership tells us” (First Nation 18). An industry representative also considered that because the community “came to the table with a plan” (Industry 20) they were able to respond in a positive way to those items.

Developing an overarching Umbrella Agreement (or a framework agreement) to get, what one First Nation participant called “the tough stuff, the politics” (First Nation 24) out of the way, was an important component of this plan. Specifically, the First Nation hoped the agreement would identify,

how we are going to relate to each other, these are some principles by which we will work by, this is the scope of what we are trying to do, here is the skills and development that can be done at this level, here is how we are going to discuss things and work on things together, here are the financial resources (First Nation 24).

OMNR participants noted, “all three parties agreed to go down the road (proposed by the consultant) of a framework agreement, then business-to-business agreements” (OMNR 22) because this approach had worked in other negotiations. The First Nation participants considered that a framework agreement approach established the principles of the relationship before the parties got into developing business agreements. The approach had two important features including, building in training and capacity development for the community and building in structures and assurances for the actual implementation of the agreement. For example, the framework agreement would establish an agreement implementation and steering committee to develop action plans, establish timelines and criteria, and guide opportunities identified in the agreement using solid project planning principles (Model draft 19).
The MCFN Strategic Plan also attempted to address several procedural issues. The Chief and council appointed a negotiation team that would remain consistent (even in the event of a Chief and council change) and defined clear roles for the team members, including a political specialist, technical specialist and a communications coordinator (Strategic Plan 2000). The negotiation team kept the community informed through a newsletter and updates at their Annual Gathering held each August. The MCFN plan was also useful because the First Nation anticipated several perceived difficulties and suggested solutions. For example, “we offered solutions too in that plan. One of the reasons [interests] they came up with was what about other First Nations. We told them we’ve got that in our plan, we have got that figured out” (First Nation 18). The First Nation also included in their plan the need to develop communication with other First Nations with shared territorial interest. To this end, they began to “form an alliance (with other First Nations) of some kind to work together…so that they don’t play one First Nation against the other” (First Nation 18). MCFN also planned so that they would have funds and resources in place to support negotiation. Unfortunately, First Nation participants noted that the “consultant was expensive” (First Nation 17), negotiations took longer than they planned for and that a lack of funds to continue to support the consultant and meetings eventually caused the formal meetings of the parties to stall.

6.3.5 Commitment of Parties to Relationship Building

The MCFN participants also identified that individuals’ commitment to relationship building was important to the development of outcomes such as personal relationships and shared understanding of interests. The parties were all extremely supportive of the extensive brainstorming and relationship and trust building activities they undertook as part of the negotiation process. OMNR and industry participants noted that the community’s openness and honesty in communicating their interests and in particular in sharing their feelings, experiences, culture and teachings increased their understanding of the community and lead to close relationships being built (OMNR 20, 21, Industry 20). Compared to other negotiations recently completed or underway at the same time, OMNR participants felt that the First Nation participants had made a concerted effort to negotiate professionally (i.e., respect meetings times) and be positive and productive so that the process was enjoyable and friendly (OMNR 19). For example, “we may have disagreements but everybody can sit at lunch break and talk and you don’t feel resistance, you feel close, trusted” (OMNR 21).
First Nation participants explained the parties’ mutual efforts to build relationships during the negotiation process: “we had icebreakers at the beginning that were a lot of fun, we had heart warmers at the end of the day that spoke to how important everyone was to each other, so there was a lot of bonding going on” (First Nation 24). The participants’ willingness to engage in these relationship building activities contributed to First Nation participants expressing the sentiment that “the people at the table were all good people” (First Nation 18) and the feeling that OMNR and industry participants were committed to collaborating with the First Nation even if the degree of collaboration was constrained by organizational barriers and institutional rules (First Nation 15, 17, 18). The participants’ commitment to formal and informal interaction, including field visits, workshops and informal talks also contributed to relationship building.

6.3.6 Summary

The analysis of participants’ perceptions of factors influencing collaboration demonstrates a number of systemic factors discouraging collaboration in both cases and a few facilitating factors in each case. In both cases, the lack of a policy clarifying the obligations of the province regarding the Aboriginal and treaty rights of First Nation members limited the development of a shared problem definition and collaborative action. Related to this lack of policy was disagreement between First Nation and non-First Nation participants about the validity and appropriateness of forest management legislation and related forest management planning processes. Where First Nation participants considered their Aboriginal and treaty rights required that OMNR had an obligation to undertake comprehensive consultation prior to making resource allocation decisions related to all aspects of forestland management (i.e., forests, minerals, fish/wildlife, water, parks), OMNR participants described the need to maintain the exclusivity of provincial jurisdiction and that the requirements of the FMPM were suitable to accommodate Aboriginal interests and values. Participants in both cases described scope definition disagreements also limited collaboration, although in the MCFN case, participants described difficulties arising because they expected the interest-based approach should have transcended scope issues as parties sought mutually beneficial ways to meet each other’s interests. Participants also described issues with representation in both cases. In CLFN, the ability and legitimacy of Chief and council to represent First Nation individual and broader community views and issues created by leadership changes were seen as factors limiting the development of a community vision and cooperative action. In MCFN, representation issues limiting
collaboration included, the lack of influence of District level OMNR, the turnover of OMNR representatives and challenges created by not having a neutral facilitator.

Factors facilitating collaboration outcomes included, supportive individuals and the ability of all parties to focus on shared goals and recognize interdependence in CLFN. In MCFN, participants considered that the community’s clear vision and preparedness with a negotiation strategy and goals and all parties’ commitment to relationship building and understanding each other’s interests facilitated the outcomes identified in this case. In the following chapter, I compare the outcomes from chapter 5 and the factors influencing collaboration described in this chapter between the two cases. I describe how various context and process factors contributed to the development of outcomes in each case.
7 Comparing Outcomes and Determinants of Collaboration

7.1 Overview of Chapter

This chapter provides a comparison of the CLFN Coexistence Agreement negotiation process and the MCFN Umbrella Agreement negotiation process characteristics, the core outcomes developed (chapter 5) and the factors influencing outcomes (chapter 6). Although the outcomes and factors influencing outcomes are presented as distinct categories in previous chapters, in reality, participants perspectives, their experiences and the conditions of the context and processes used are intertwined. Any attempt to tease apart specific threads or identify correlations necessarily faces challenges. This comparison makes sense of this complex web of intercultural collaboration experience by comparing the attributes and process characteristics of each case, similar outcomes across the cases and the unique outcomes of one case. First, I describe the First Nation and non-First Nation community attributes and each negotiation process’ characteristics. Second, I describe two similar outcomes developed in both cases and I explain the factors likely to have influenced the development of these outcomes. Thirdly, I describe unique outcomes that emerged in only the CLFN case and I explain the factors related to the emergence of these outcomes, including those described by participants and those evident from comparing the context of the cases. Finally, I examine the role of process characteristics in the MCFN case and explain the factors that influenced the development of collaboration in this case. I discuss these findings in light of the literature to understand collaboration prospects and challenges from which lessons for future intercultural collaboration practice and evaluation can be derived.

This discussion demonstrates that the development of shared goals in CFLN, the recognition of interdependence and other important outcomes were related to the contextual conditions in this case, including the attributes of the community and negotiation partners, the parties pre-existing relationships, and the timing of the negotiation. In the MCFN case, the use of an interest-based negotiation approach and efforts to mutually define the scope of the negotiation, did not contribute to participants developing collaborative outcomes, such as collective action towards shared goals. However, these process criteria were considered important to the development of relationships and increased understanding in the MCFN case. Both cases demonstrated that there
were a number of more systemic barriers to the development of collaboration including, the lack of policy and legislative framework to support collaboration, a contested scope, and other worldviewing differences of the parties, especially related to how participants expected First Nation communities should be included in forest benefit sharing.

7.2 Comparison of Community Attributes and Negotiation Process Characteristics

In many ways the CLFN negotiation process and the MCFN process are similar. They were both initiated under the same forest management planning policy and legislation and operated within the same federal and provincial institutional context. They were both intended to respond to what the Timber EA concluded were “adverse environmental impacts of a social and economic nature” (EA Board 1994, 346) for Aboriginal peoples from timber harvesting. Finally, in both cases, the Treaty No. 9 signatory Cree and Oji-Cree First Nation communities were generally engaged with the dominant actors in forestry in northeastern Ontario: OMNR District Managers and SFL holders. However, in the two cases examined, the community attributes and negotiation process characteristics differ in important ways. These attributes are summarized in Table 4-1.

In this section, I explain four community and negotiation process differences between the cases. First, I describe several differences between the two case study communities involved (both the First Nation and neighboring non-First Nation community) including the connection between the non-First Nation community located in the SFL, the forest industry and the OMNR District staff and the degree and nature of the interactions between these three entities and the First Nation. Next, I describe the previous involvement of the First Nation in forestry activities, forest management planning and forest-based activities. Third, I describe differences in the negotiation strategy, procedures and approaches to develop a draft agreement between the two cases. Finally, I describe the differences in the timing of each process and the impact of other negotiation processes. These four differences likely explain much of the different collaboration outcomes between the cases. This comparison provides a context for the subsequent discussion comparing the outcomes identified in each case and the factors influencing collaboration in the two cases.
7.2.1 Community Attributes and Connections

The most obvious difference between the CLFN community and the MCFN community is that the MCFN ‘community’ existed in the hearts and minds of its members and in their relationships to the traditional territory but not as an actual reserve with roads, homes and services. Since treaty signing the CLFN on-reserve members have essentially lived within a few days of travel of their traditional territory, even as they were influenced to migrate for seasonal or permanent employment from Mammamattawa, to Pagwa, and finally to the current reserve location. Conversely, the MCFN members were prosecuted for carrying out trapping, hunting or fishing on their traditional territory in the 1920s due to the establishment of the Chapleau wildlife preserve and they were essentially left without any land on which they could reside. Many members grew up in the vicinity of their traditional territory but little community data exists on the number of members that continue to hunt and trap here or elsewhere (Bateson 2009; Lovesick 2003). Without a reserve and without access to their traditional territory for hunting, trapping and fishing, the MCFN members do not have the same degree of permanency to their residence on the traditional territory. The impact for CLFN members of remaining near and able to access their traditional territory (even if the trapline system modified this use) was that their connections to the other negotiation participants were quite different. This comparison does not make any determination of the spiritual or cultural connection of either the MCFN members or CLFN members to their traditional territory.

The characteristics of the representatives that the First Nation was negotiating with are also different between the cases. When First Nation participants in the CLFN case described their relationship with other negotiation participants, the ‘town of Hearst’ and ‘forest industry’ were interchangeable proxies, and the OMNR participants were also viewed as part of the ‘town of Hearst’. In contrast, in the MCFN case, the First Nation was negotiating with two different Districts and an SFL holder whose representatives lived in Sault Ste. Marie, Wawa or Chapleau. Thus, in the CLFN case, the First Nation was negotiating with the representatives of a ‘community’ and the characteristics of this ‘community’ were unique. OMNR and forest industry participants in Hearst shared a strong sense of place and attachment to the surrounding forests and strong sense of community with informal and formal connections among them and between them and other residents and local business owners in the town of Hearst. Representatives cited the early establishment of a forestry stakeholder advisory committee in Hearst (created in 1992)
with a high-level of participation from forest industry managers and municipal politicians, and the coordination with the local and regional economic development corporations, as examples of the network connections amongst them. Because of the history of forest harvesting and the development of the sawmills in the Hearst area, the ‘flavor of the Hearst forest industry’ was cooperative, civically engaged and well connected. Forest industry executives and managers traditionally resided locally and were involved in the community in various social roles (i.e., school board trustees, politicians, leaders of service groups). Essentially, they had a vested interest in the future of ‘their’ community and the forest industry as a whole.

Hearst District OMNR employees also tended to stay in their positions for a long time or moved up within District-level positions. For example, the District Manager at the time of the blockade resided in the town of Hearst and remained in this position for 19 years. This created personal relationships between the forest industry managers and District employees and a continuity in the relationship between the District and the CLFN. Similarly, as a result of the geography and the administrative boundaries of the Hearst SFL, the District OMNR office, located in the town of Hearst, was the primary OMNR office with which CLFN members had contact with and developed a relationship. The only other First Nation community considered to have an interest in the Hearst SFL was the Hornepayne First Nation.

All of these factors contributed to the very strong connectedness among the parties and between the parties and the forests they all depended on when they sat down to hear the CLFN community’s demands after the blockade in January of 1997. Conversely, there was a very limited connection between the District representatives, and the SFL holder representatives to the place they were negotiating about and between both of these parties and the MCFN community members in 2001.

7.2.2 Previous Relationships

The characteristics of the case and participants also contribute to several other important differences between the pre-existing relationships between the parties in the CLFN and MCFN cases. First, there was a discernible and dependent relationship between the community of CLFN and the community of Hearst, whereas little previous relationship existed between the MCFN and the other parties involved in the negotiation process. Second, the CLFN members, especially
trappers, experienced ‘forestry’ in their lives and on their lands very differently than MCFN and held different ‘forestry’ expectations.

The community of CLFN and the community of Hearst had grown in tandem and in close proximity. CLFN students were (until recently) bused to school in Hearst and CLFN members often made the 50 minute drive to Hearst more than once a day to access shopping and other services. The CLFN Chief estimated that First Nation member spending accounts for approximately 40% of the local Hearst economy (Gentilli 2011). A close relationship between the MCFN and the nearest non-First Nation town to their traditional territory, Missanabie, a small town with a year-round population of 40, does not exist. While the community of Hearst benefited economically from CLFN and CLFN relied on Hearst for a variety of services, First Nation members generally felt excluded from the “inward looking” (First Nation 25) community of Hearst and forest industry. Neither of these conditions existed in the MCFN case.

CLFN members also experienced the effects of forestry directly and had done so for a long time. CLFN participants described their parents and grandparents being persuaded to relocate to the current reserve location with hope of participating in a growing forest harvesting industry. However, participants described that their grandfathers were excluded from forestry opportunities when they could not keep up with mechanization demands. Community members also described how the SFL holders they were negotiating with “came with a backpack and a bucksaw” (First Nation 07) and later built the forest industry that CLFN was struggling so hard to be a part of. This history contributed to many CLFN members’ feelings of deprivation and exclusion from the forestry ‘boom’ that created and sustained a high quality of life in the town of Hearst but for various reasons they did not benefit from. Having an independently owned sawmill located on the Constance Lake reserve also contributed to participants feeling excluded, even as they were also being employed in this mill. For example, one participant and mill employee described the feeling of marginalization arising from the forest industry so close, “you see a thousand trucks a week maybe more (leaving that mill)…that mill has been there for over 50 years and what do we get out of that?” (First Nation 06). MCFN participants did not describe the same direct connection between their feelings of exclusion and deprivation and forest industry activities.
CLFN and the District OMNR staff also had established relationships because they had been attempting to communicate about how forest management planning could or ought to be carried out for a longer time. Following the FMPM Native consultation requirements developed in 1994, the OMNR District office described “significant” (OMNR 09) efforts to include the CLFN in forest management planning, including providing $180,000 for a Native values collection study for CLFN and the nearby Hornepayne First Nation. Conversely, there was little communication between the OMNR District of Wawa or Chapleau and the MCFN and here the community was not involved in any forest management planning discussions prior to the negotiation process. These efforts in CLFN likely contributed to heightened understanding in the community of forestry legislation and also from the community’s perspective the inadequacy of the FMPM requirements. CLFN also had a large number of active trappers and an established trappers’ council that experienced the impact of forest harvesting directly. Trappers’ desires to contribute to decision-making related to forest harvesting on their traplines and for compensation from industry for adverse impacts of harvesting on their Aboriginal and treaty rights to hunt and trap were a strong motivating factor for the CLFN community direction in forestry and the 1997 blockade. Commencing with the preparation of the 1997 FMP, the First Nation began actively voicing their concerns about the impacts of forest harvesting on trapping as a “way of life” (First Nation 02) to the District and the inadequacies of the OMNR’s approach to ‘Native values’ (Bioforest 2003, 16).

CLFN also had more actual ‘forestry’ experience and desire to be involved in various forestry-related activities, whereas MCFN members were not involved in forest operations and it was uncertain if members would return to the area if forestry economic development opportunities arose. CLFN had the experience of harvesting a small timber allocation for the previous 10 years (approximately 13,000 cubic meters since 1988) and expected that both that quantity and their degree of power to influence future allocation decisions should increase. Members had also developed some forest harvesting skills and some had trucks and trucking licenses and many more were interested to participate in mechanized forest harvesting training courses (First Nation 02). Members had also been involved in tree planting, other silvicultural contracts, and forest fire fighting.
7.2.3 Negotiation Strategy and Procedures

The negotiation process used in the MCFN case differed from the CLFN case (and from any previous Aboriginal forestry negotiation) in several important ways. Evidence from the parties’ descriptions of the discussion, negotiation reports, and from the fact that the parties collaboratively developed the model draft agreement suggests that the parties had more frequent and higher quality deliberation in the MCFN case. Participants in the MCFN case undertook approximately 50 meetings directly related to developing a forestry agreement. The participants in the MCFN case also tried to employ ‘good’ negotiation procedures; they used an interest-based negotiation approach and they mutually defined the scope prior to substantive negotiations by sharing strategy and goal documents, and developing a ‘mandate letter’. The First Nation participants also developed a negotiation strategic plan, and had external funding to support both community consultation and communication and to support a consultant and the negotiation team.

An important caveat to this comparison is that it was not possible to reconstruct the actual details of the negotiation process or make an objective determination on the quality of the deliberation in CLFN. Participants’ accounts of the early negotiation meetings described the negotiation as responding to the immediate crisis of the blockade. The process was described as “venting” (First Nation 01, Industry 08) and meetings were highly charged with the community presenting their high, medium and low priority demands and the forest industry and OMNR responding to those demands based on their interpretation of legislative requirements (First Nation 01, 26). The community also retained an Aboriginal and treaty rights lawyer who was involved in other litigation related to the CFSA in Ontario and this also likely reflected a more contentious atmosphere in this negotiation process (First Nation 01). The CLFN participants also described their Aboriginal and treaty rights as the foundation for the blockade and that they have always strived for an approach defined by the obligations arising from the governments’ fiduciary duty and the treaty relationship. Participants did consider that the independent mediator was fair and knowledgeable and that the discussion was broad and different understandings were encouraged. Unfortunately, without observing meetings or analyzing meeting minutes any discussion of the content of the negotiation and procedures used in CLFN is speculative. I have already described how I have addressed this challenge of the case in the design of the research questions for this study (chapter 3).
The approach in MCFN was from the beginning a planned approach informed by the procedures specified in interest-based negotiation practitioner literature. It is likely that the mediator in CLFN was also influenced by similar interest-based ideals, given that mediation as a field of expertise for lawyers has arisen from interest-based negotiation theory. However, the participants in CLFN did not undertake a concerted ‘interest’ identification effort or extensive collaborative brainstorming. In this regard, the amount of time spent learning about each party’s interests, the frequency of meetings and the duration of the actual draft agreement dialogue were much higher in MCFN. In CLFN, the mediator had developed a draft agreement within six months. However, neither the former nor the current Chief of CLFN reported being involved in drafting the agreement. Conversely, the Chief and negotiation team in MCFN described contributing to the agreement content and wording directly based on a shared understanding of each party’s interests and mutually defined beneficial ways to meet each party’s needs. The consultant also played an important role in MCFN because he brought with him experience from a recently concluded tripartite forestry agreement. In CLFN, the First Nation participants reported that they did not have forestry expertise, or knowledge of the forest industry, or resources to support community consultations (First Nation 01, 02). In MCFN, the consultant worked directly on behalf of the First Nation as their advocate and advisor, addressing many of these capacity issues, all the while contributing to securing extensive external funding for the negotiation process and directing the procedures and development of the agreement (First Nation 15, 18). Regardless of the challenges of reconstructing the process characteristics of the CLFN negotiation, it is possible to conclude that the MCFN case involved more and higher quality deliberation, formal and informal interactions intended to build relationships and the First Nation participants were better prepared with a negotiation strategy, external funding to support the process and expertise from a consultant.

7.2.4 Timing and Impact of Other Negotiations and Agreements

An additional difference between the cases was their time of initiation and the total length of time since they began. The CLFN negotiation was the first multi-party Condition 77 negotiation to occur. Whereas, the MCFN negotiation began a full three years after the CLFN negotiation was initiated and after several other agreements had been concluded. OMNR and industry experience with prior and concurrent negotiations in the northeastern part of Ontario seems to have also been influential in MCFN and CLFN.
Industry and OMNR participants in CLFN reported being unsure at the initiation of the negotiation of how Aboriginal and treaty rights could or should be attended to. CLFN participants described their decision to blockade being bolstered by the Supreme Court ruling in Delgamuukw, in 1997, particularly principles related to fair compensation for provincial infringements of Aboriginal title. INAC representatives had been expressly included to address these issues. By the time the MCFN negotiation was initiated, OMNR had considerably clarified their position on what was negotiable and what was not negotiable in forestry negotiations and was trying to initiate more consistency across Districts, primarily by developing a ‘mandate letter’. OMNR considered that moving forward the Ontario-wide strategy should be less reactive in these situations and carefully consider the impacts of agreements (Johnston 2003) 11.

The forest industry had also developed a number of forestry agreements with other First Nations in the region (with and without OMNR involvement) that were considered, despite confidentiality clauses, to have been circulated among Aboriginal and industry leaders. For example, a forestry agreement developed between Taykwa Tagamou First Nation and Tembec in 2001, identified a harvest allocation commitment of 300,000 cubic meters and this likely influenced the CLFN’s desire for quantification in their draft agreement. One participant considered that Tembec, in particular, “took a fair amount of heat from the industry generally as a result of (these agreements)” (OMNR 13) and that the Hearst industry participants’ unstated attitude following these agreements was that the community would be “better off dealing with us in a different context [outside of a legal agreement] and we are already probably doing more than you would get out of a Tembec type of agreement anyway” (OMNR 13).

7.3 Similar Outcomes Described in Both Cases

The outcomes described by participants and those emerging from the data in both cases are consolidated in Table 7-1. Two similar outcomes emerged in both cases: 1) the development of relationships and improvements in understanding and communication, and 2) the recognition of the limits of the scope of the negotiation or the definition of each groups’ acceptable scope. In

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11 OMNR participants described previous negotiation processes as being reactive and agreements developed at a District-level “it sort just sort of came and went and no one really got knowledge of it until all was said and done” (OMNR 19).
this section, I describe these two similar outcomes and identify several factors that appeared to contribute to the development of these outcomes. It is important to recognize that this comparison of outcomes between the two cases is limited because MCFN participants only identified short-term outcomes, in the fall of 2003, from their negotiation process that had just recently stalled in March 2003. A longitudinal study would be required to determine if long-term outcomes differed between the two cases.

Table 7-1: Comparison of outcomes identified in CLFN and MCFN cases

<table>
<thead>
<tr>
<th>Similar outcomes identified in both cases:</th>
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</thead>
<tbody>
<tr>
<td>Relationship/communication/understanding improvements</td>
</tr>
<tr>
<td>Parties recognize each others scope definition/limitations</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Outcomes identified only in CLFN:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Focus on shared goals/recognize interdependence</td>
</tr>
<tr>
<td>Strengthening of power/identity of First Nation</td>
</tr>
<tr>
<td>Business/partnership experience</td>
</tr>
</tbody>
</table>

In this study, the development of relationships and improvements in communication among previously unconnected or antagonistic parties in both cases, lends support to a growing literature that contends that even in the absence of a signed agreement, collaborative negotiations lead to important social outcomes (Cullen et al. 2010; Innes 2004; Plummer and Armitage 2007). Other authors have described ‘improved relationships among partners’ as components of social capital that are outcomes of Aboriginal and forest industry collaborative efforts (Wyatt et al. 2010, 26). However, as I describe below, participants’ assessments of the value of relationships arising from collaboration are different and First Nation participants did not consider that ‘improved’ relationships and better understanding were suitable or sufficient outcomes. In particular, for First Nation participants, improved relationships did not contribute to their
substantive interests being acknowledged or addressed. Relationships also did not proceed linearly during the negotiation; rather they fluctuated throughout the collaboration depending on a number of factors. The characteristics of the relationships developed and insights into how the relationships were perceived have important implications for how collaboration is evaluated and encouraged.

The participants’ descriptions of outcomes also demonstrate that a shared understanding of the scope of the negotiation or clear terms of reference or a joint problem definition, which are often considered precursors to consensus building and collective action (Ansell and Gash 2008; Gray 1989; Innes 2004; Plummer and Armitage 2007; Susskind, McKearnan and Thomas-Larmer 1999), were not developed prior to negotiation in either case. In both negotiation processes, the First Nation, OMNR and forest industry participants sat down to ‘negotiate’ very different things. In CLFN, the more powerful parties gradually defined the scope. First Nation participants considered their realizations about the limits of the scope an outcome because it contributed to the community directing their efforts to what they saw as more meaningful approaches and it facilitated joint action on a more limited definition of the problem that was mutually acceptable. In MCFN, the participants agreed on the process design and had undertaken mutual scope-defining activities early on, but these efforts still had not identified a clear scope to facilitate the negotiation of substantive issues. First Nation participants considered that despite their attention to process and relationship building, the OMNR’s need to redraft the agreement reflected the other parties’ narrow scope interpretation and their limited interpretation of their responsibilities. As a consequence of realizations about the scope differences of the parties and their role in limiting negotiation outcomes, the OMNR refined their approach to future negotiations, while the First Nation continued to develop their relationship with industry partners and develop alliances with other First Nations.

7.3.1 Relationship and Communication Improvements

In both cases, participants described that as a result of the negotiation relationships, understanding and communication among the parties had improved. However, in each case the First Nation and non-First Nation participants placed different value on this outcome. I describe how the different parties perceived relationships and communication improvements as outcomes
and how these outcomes developed. I discuss the implications of these findings for the evaluation of collaboration.

In the CLFN case, the relationships between the First Nation and the District OMNR office and SFL holders were generally considered poor prior to the blockade and negotiation. First Nation parties entered into the negotiation with intense feelings of deprivation directed at the other parties and the OMNR and forest industry participants entered the negotiation with feelings of frustration and trepidation directed towards the First Nation and the process. Clearly the parties had a long way to go to build positive ‘relationships’.

Participants described that during the negotiation process and in the years subsequent to formal negotiations their relationships did improve. Personal relationships between individuals grew and First Nation participants described the increased willingness of OMNR and industry to work with the First Nation, industry commitment to consult with trappers prior to harvesting on traplines and OMNR support for First Nation forest management planning involvement and an Aboriginal Liaison position as evidence of improved relationships and growing understanding about First Nation social and cultural needs and perspectives. But First Nation participants considered that even if personal and working relationships and communication between the parties had improved, this outcome was not sufficient because the other participants continued to side-step what was the singularly most important aspect of their relationship – the recognition of their Aboriginal and treaty rights and the balancing of power and decision-making differences that would come from this. First Nation participants also felt that any improvements in the relationships had only come about locally because they had blockaded and forced the other parties to recognize their claims and because they continued to assert their rights vis-à-vis the forest industry.

OMNR and industry participants also felt that personal relationships were developed and that the overall relationship between the parties was for the time being ‘collegial’ but not stable. The reluctance of the community to ratify the agreement after the other parties had invested considerable time and money and the First Nation’s continued emphasis on rights-based claims (including government-to-government negotiations) and quantification of commitments was a major disappointment for OMNR and industry participants, which negatively impacted their perception of the relationship. According to these participants much of the good work resulting
from the negotiation was unrecognized and the potential for finding solutions for long-term coexistence was lost. OMNR and industry participants focused their efforts after the negotiation on improving communication for forest management planning and supporting CLFN capacity building and economic development opportunities. All participants noted that their relationships had improved following the negotiation to a point where they could at least work collaboratively on these two goals, even if the broader issues related to rights-based claims, meaningful consultation, compensation and revenue-sharing remained.

In the MCFN case, relationships among the individuals did not really exist prior to the negotiation and there was very little interaction among the groups they represented. As a community without a reserve, the MCFN members had not been involved previously in forest management planning nor had they had many ‘grievances’ with forest industry or OMNR, although their past experiences and negative treatment contributed to a poor starting point for relationships. The First Nation participants’ primary motivation for the negotiation process was to support their goal of re-establishing a self-sufficient community on their traditional territory. Access to resource revenue or a harvesting allocation were considered reasonable and achievable goals because the First Nation participants expected that with the resolution of their TLE claim they would have ownership over a large part of the forest that the negotiation was focused on and thus they were negotiating an agreement to satisfy their needs in the interim with nothing really to lose. The OMNR and forest industry participants’ main goals for the negotiation were to understand the First Nation’s forest-related interests and expectations better and to develop a simple agreement for improving the sharing of benefits from forest harvesting. The industry did not want to significantly increase their costs, or exceed their time and resource capacities and the OMNR did not want to commit all the opportunities to just one First Nation or get into any rights-based issues that could set a legal precedent.

All MCFN participants considered that the personal relationships developed among the individuals at the negotiation table were important outcomes of the process. These relationships were seen to be a product of the time spent understanding the different parties’ interests, the personal and frequent nature of the interactions and communication, the high quality of the discussion in new areas and each party’s support for a visionary process and buy-in to the interest-based negotiation approach. However, First Nation participants were not satisfied that the relationships developed were the only tangible ‘outcomes’ of over two years of effort and
considerable funding. First Nation participants felt that improved relationships did not influence how they were treated by OMNR as a whole and that the frequent turnover of OMNR representatives in the negotiation reflected the low priority of the First Nation to the OMNR. Similarly, the development of personal relationships around the table had not inspired the other parties to make commitments to substantive changes to their operations or procedures as the First Nation had hoped it would. They explained that the negotiation approach and ‘getting personal’ was intended to induce industry and OMNR participants to support the community’s broader political interests, for example, for the industry to support MCFN to acquire a share of resource royalties or for the OMNR participants to develop innovative First Nation training programs and hiring policies. For the First Nation, the OMNR redraft of the agreement called into question the OMNR participants’ commitment to the process, the authenticity of their intentions and negatively affected the nascent relationship. Conversely, the OMNR participants viewed the relationships built with the First Nation as positive outcomes that would continue to grow as soon as the redraft of the agreement clarified their role and the limits of their responsibility more clearly.

7.3.1.1 Relationships as Outcome Criteria Questioned

There is a common conception in the literature on collaboration that face-to-face dialogue and good faith negotiation contributes to trust-building and improved relationships among stakeholders (Ansell and Gash 2008; Connick and Innes 2003; Wondolleck and Yafee 2000). The assumption associated with this is that, with improved trust and relationships, stakeholders can develop a shared understanding of the problem or of what they can collaboratively accomplish. Consequently, participants’ perceptions of the relationship or other measures of improved stakeholder relations are often considered a social capital benefit that can be used to evaluate collaboration; with researchers concluding that improved relationships can be considered among “broad measures of success” (Cullen et al. 2010; 339).

However, in this study sub-group representatives’ varied assessments of the status of the relationships, and of the value of improved relationships as an outcome suggest that ‘improved relationships’ is not a useful criterion by which to evaluate intercultural collaboration. Participants in both cases described that improved relationships, as outcomes of costly and time-consuming processes, did not meet their expectations and thus that the collaboration efforts were
not ‘successful’. For First Nation participants, improved relationships did not bring about meaningful changes in how the other groups attended to their interests or contributed to the other parties acknowledging their broader issues of concern, such as addressing policy changes required for revenue sharing or compensation or meaningful consultation. In the MCFN case, First Nation participants described disappointment and a loss of trust in OMNR and in the CLFN case, First Nation participants described continuing discord and no improvements in trust because the scope of the negotiation did not match their interpretation of the terms of the treaty relationship and because the other parties refused to quantify their commitments. This study demonstrates that participants may identify improved relationships as an outcome of collaboration but they may still not consider that the collaboration has been ‘successful’. It seems then that in these cases, as Ansell and Gash (2008) suggest, “face-to-face dialogue is a necessary but not sufficient condition for collaboration” (emphasis in original) (558). In other words, good relationships may be required but not sufficient to ensure collaboration success.

The potential of collaboration, and specifically the potential of relationship building was diminished in both cases because First Nation participants considered that the issues of most concern to them were not seen as valid or ‘on the table’ or at the very least were not fully explored or discussed. Several factors identified by the participants including, a lack of policy, a legislative framework that did not support the distribution of forest decision-making authority and responsibilities and scope limitations imposed by more powerful groups, significantly constrained the development of collaborative outcomes and the contribution of relationship-building in both cases. This finding confirms previous findings that existing structural and legislative systems create significant barriers to collaboration and the identification of mutual goals by creating “non-negotiables” (Richards, Blackstock and Carter 2004,15) – issues of importance for less powerful parties or problem definitions that are off the table (Beckley and Korber 1996; Bidwell and Ryan 2006; Nadasady 2004; Margerum 2002; Marshall, Blackstock and Dunglinson 2010). As Edmunds and Wollenberg (2001) have noted, the real issues of interest for groups struggling for sovereignty recognition or cultural survival are not easy to accommodate in multi-stakeholder negotiations and an “invitation to the negotiation table does not mean that disadvantaged groups will have their issues heard by other stakeholders” (245). For OMNR and industry participants the rights-based issues identified by the First Nation communities were nothing they felt they could or should ‘negotiate’. The legislation, forest
management planning policy, tenure system and allocation commitments existed and Aboriginal and treaty rights were already accounted for within these provincial rules and institutions. Rather, OMNR and industry participants felt that if parties could focus on the issues that the OMNR was mandated to address and that the industry was able to influence, than the parties could make ‘great progress’ locally while they waited for courts or Ministerial-level politics to sort out the nature and implications of Aboriginal and treaty rights.

Building trust, developing relationships and creating social capital have all been considered both outcomes of collaboration and preconditions for collaboration, and are often presented in a cyclical form. For example, as communication and collaboration increases, trust increases, relationships are built and more complex and genuine (equitable) forms of collaboration emerge (Wyatt et al. 2010, 29). From the participants’ descriptions of how relationships developed in this study, it is clear that understanding and relationships increased as parties shared their goals, interests and perspectives but the parties continued to have very different understandings of what was a valid goal and how to achieve it, and this in turn negatively affected relationships and trust.

Important for intercultural collaboration evaluation, the relationships described by participants did not proceed neatly towards more trusting or more complex and thus did not necessarily contribute to improved collaboration. In practice, relationships begin at different starting points depending on the parties’ past experiences and the context of the negotiation and they can improve or be damaged quickly and sometimes enduringly. As was the situation in CLFN, relationships may be considered ‘poor’ to begin with, they may improve as participants share information, make small concessions or increase understanding of each other’s motivation and interests but perceptions that parties are not willing to acknowledge efforts, or that parties are not willing to make firm commitments can negatively impact them. Conversely, as in MCFN, relationships may start out ‘good’ or at least not antagonistic because no direct conflict precedes collaboration, continue growing while interests are shared and solutions are developed but can be damaged by the perception that one of the parties never intended to meaningfully ‘negotiate’ or by one party refusing to endorse draft agreements.

These findings about relationships suggest that the presence of improved relationships may not reflect participants’ true experiences in intercultural collaboration or indicate whether collaboration has been successful. It may be more useful to understand whether collaborative relationships served to facilitate the participants’ diverse goals. For First Nation participants this
may mean determining if improved relationships contributed to meaningful changes in how the other parties acknowledged and addressed their interests or concerns. Researchers interested in evaluating intercultural collaboration should endeavor to explore if the participants’ relationships influenced the definition of the problem and how to resolve it, not just whether participants developed relationships and a shared understanding of each other’s perspectives (e.g., Cullen et al. 2010; Plummer and FitzGibbon 2006).

7.3.2 Recognition of Each Parties’ Scope Definition and Limitations

Participants in both cases came to recognize the limits of other parties’ definition of the most appropriate scope as an outcome of the negotiation. First Nation participants, in CLFN and MCFN, gained an understanding of how the other parties’ power and organizational barriers limited the scope of the negotiation and the discussion about the scope of the negotiation. These participants learned that the community blockading in CLFN and the MCFN participants’ attention to process and mutual scope-defining activities had not resulted in the other parties expanding their acceptable scope. Following these realizations about the limits of the scope, First Nation participants in both cases also directed their efforts to other (often non-collaborative) approaches. Both cases demonstrate that power differences and constitutional questions limited the ability of participants to mutually define a suitable scope for their collaboration efforts.

Where marginalized groups are struggling to influence resource decision-making or to become involved in resource development to exert some control over that development, they generally do not see the ‘problem’ the same way as dominant groups who currently control the resources and their management. The limited scope within which First Nation participants were permitted to participate or collaborate was the ‘problem’. In both cases scope contests continued and relationships, trust and collaborative actions were hampered because discussion of alternative understandings was constrained and participants’ true issues underlying their scope definitions were not acknowledged. However, focusing only on the failure to establish a mutually acceptable scope masks these underlying worldview differences that explain why the parties do not define the scope the same way. In this section, I describe the development of scope recognition in each case and discuss implications for developing and evaluating intercultural collaboration.
In the CLFN case study, the OMNR and industry participants entered into the negotiation process with some uncertainty about whether and how Aboriginal and treaty rights-based claims should be attended to. The industry participants had made a verbal commitment early on that some form of compensation would be provided to CLFN trappers for harvesting on traplines and that this compensation would apply retroactively to the date of the blockade. By September 2001, industry and OMNR participants reasoned that the coexistence approach that was initially mutually agreed upon would be more effective and genuine than including direct compensation commitments or quantifying allocations and other commitments. The coexistence agreement was considered a long-term approach to capacity building, employment creation, joint ventures and training, rather than simply providing direct payments for compensation. Direct compensation, while not expressly eliminated from the negotiation, became a subject that no longer fit with the OMNR and industry participants’ version of ‘coexistence’ found in the draft agreement, which was to increase the First Nation’s capacity to participate in forest harvesting. Trappers still brought up the industry participants’ original commitment made for retroactive compensation and industry foresters still confirmed the commitment in forest management planning discussions but direct compensation was considered outside the original, mutual intent of the draft agreement.

The OMNR participants, while they may have recognized personally that they were operating in a “policy void” (OMNR 25) and more attention was necessary to address First Nation aspirations, maintained that improving economic sharing from the forest and improving First Nation involvement in forest management planning was the only acceptable scope for the negotiation. Any other topics, like ‘power-sharing’, were considered dangerous areas to get into and areas that District-level OMNR had no ability to change or mandate to negotiate. Most importantly, any discussion involving Aboriginal and treaty rights were seen as negative and ‘going backward’ rather than visionary and focusing on what the parties could collaboratively develop. This emphasis on a ‘visionary’ approach for the future relationship allowed the OMNR to support First Nation economic development without treading into co-management or rights-based discussions.

The First Nation participants expected that their Aboriginal and treaty rights would frame the negotiation. First Nation participants described it as a revelation that their Aboriginal and treaty rights could be constitutionally protected and the requirement for their involvement in forest
economic sharing incorporated in Condition 77, but they could still not be considered legitimate forest management decision-makers. The First Nation only accepted that they could not change the scope of the negotiation or advance their rights-based claims in the negotiation after considerable time. When the scope of the negotiation could not be expanded to include their desire for government-to-government negotiations, the First Nation participants chose not to sign the draft agreement but use the newly developed forest industry and OMNR relationships to advance related economic development and consultation goals while still keeping their rights-based assertions central to their future development. Different opinions remained within the community about the SFL holders’ right to harvest traplines at all and at meetings and in community forums it was clear that the community leadership was trying to find ways to accommodate different community opinions about the appropriateness of a rights-based approach or an economic development approach to nation-building. First Nation participants noted that they had not achieved any effect on “doing things in a sustainable manner, being able to become major decision makers, and determining what a treaty relationship would do to build healthy communities” (First Nation 01).

Eventually, the OMNR and industry participants’ definition of the scope dominated. This definition of the scope both reflected and maintained their perceived rights and responsibilities and institutional power. The First Nation participants came to accept that given these limits, their community’s interests (at least temporarily and under the current forest policy framework), were at least partially served by working collaboratively to develop economic development opportunities and forest management planning improvements locally, while concomitantly pursuing the recognition of their jurisdiction in other forums.

CLFN participants did undertake joint action and work collaboratively on the more limited goals that were mutually acceptable to the parties, despite continuing to define the ‘real’ problem differently. For example, with regard to FMP consultation, OMNR, industry and First Nation participants experimented with different approaches to FMP consultation, including having the Chief on the planning team, having the Chief appoint a representative with forestry training and political experience to the planning team and most recently by communicating through a First Nation member hired in the Aboriginal Liaison position. The work of the Liaison position and the OMNR support of a ‘lands and values’ office on the reserve was considered to be the most successful approach to date, even though some First Nation participants also considered it was
just another diversion tactic. For example, the grievances of trappers regarding harvesting on their traplines were now directed to industry and OMNR through the lands and values office but they were still not appropriately addressed.

Collaborating on more limited but mutually acceptable goals also had the effect of limiting the other parties’ perception of the relevance and appropriateness of Aboriginal and treaty ‘rights-based talk’ from future discussions. Importantly, the First Nation’s refusal to sign the draft agreement and members rights-based talk in FMP meetings and other forums elicited frustration and contributed to OMNR and industry participants characterizing the First Nation as divided, lacking leadership and without a clear vision. OMNR and industry participants thought that the scope contest had been (or should have been) settled through the coexistence agreement negotiation process, that the First Nation leadership should embrace and promote this scope (the only ‘acceptable’ scope in their view) and not bring up rights-based issues in planning or business partnership discussions. When the First Nation leadership and members invoked their rights in various forums, the other parties considered these actions as incongruous and counter-productive.

In the MCFN case, the parties agreed on the procedures to be followed and several ground rules for the process early on. The parties also explained how they tried to reach a mutual understanding on the scope of the negotiation process in a variety of ways. OMNR had at this point been involved in several other First Nation forestry negotiations and they were trying to develop a more strategic and consistent approach. For example, the OMNR mandate letter formalized in writing the parties to be represented, the geographical area to be considered, and the focus on timber harvesting-related opportunities only; all items that the parties had already discussed and seemingly agreed to in their initial meetings. The mandate letter was also intended to clearly identify to the other parties that the OMNR would not negotiate anything related to Aboriginal and treaty rights. First Nation participants also provided the other parties with negotiation strategy document outlining their requirements at the outset of negotiations. Interest-based negotiation was expected to help all parties to uncover shared interests and jointly define shared goals. The OMNR or industry participants’ stated ‘mandates’ were not considered significant barriers by First Nation participants because the interest-based approach would facilitate finding solutions to the OMNR and industry participants ‘interests’, including the limits of their perceived responsibilities or legal requirements. Participants noted that they had spent
time during the negotiation discussing whether the OMNR participants had the authority to bind their organization to substantive political decisions.

These efforts by both parties to define the scope did not prevent both the OMNR and the First Nation from continuing to ‘define the problem’ late into the negotiation process and ultimately contributed to the OMNR being unable to support the draft agreement they had helped develop. The First Nation participants described learning that the agreement was unacceptable to the OMNR because the language and commitments could be construed as affecting OMNR jurisdiction and authority or setting a precedent. Essentially, participants felt that interest-based negotiation had not contributed to the development of shared goals. The focus on ‘interests’ and ‘maximizing joint gains’ may have actually confused participants’ constitutional and legislated rights in this case. I describe this further in a sub-section of this chapter.

Considerable literature has highlighted the importance of the development of shared understanding of the scope of the negotiation among collaboration participants as a critical precursor to developing a common problem definition and collective action. Shared understanding of the scope of the negotiation is considered critical because if participants are not able to set the agenda and the scope of the discussion they will not consider it fair (Renn, Webler and Wiedemann 1995; Santos and Chess 2003; Webler and Tuler 2000). Similarly, if participants do not define the problem the same way they will not be able to agree on how to solve it or what joint action should be undertaken (Ansell and Gash 2008; Gray 1989; Moote, McClaran and Chickering 1997; Plummer and Armitage 2007). Thus the development of a mutually accepted scope prior to substantive negotiation is considered tantamount to consensus building and collaboration. However, this study demonstrates that where deeply held values and rights are contested and power differences exist, less powerful parties’ scope and problem definitions are constrained. The participants in this study continued to define the problem differently but participants (both First Nation and non-First Nation) did acknowledge that the other parties’ definitions of the scope of the negotiation were different. Thus it may not be appropriate to use the development of a mutually acceptable scope prior to negotiation as an evaluation criterion for intercultural collaboration. A shared understanding of the scope may not be a reasonable precondition for intercultural collaboration but some more limited shared problem definition or the development of superordinate goals (Moore 1996) may be an outcome of the process.
Negotiation theory would consider that the primary reason why both processes did not reach agreement was that the participants had failed to develop a mutually acceptable scope for the negotiation. Unfortunately, this assessment does not provide any guidance for how parties with different interpretations of the appropriate scope or with different understandings of the problem can collaborate. Suggesting that the parties should collaboratively delineate in advance what is up for negotiation and what was not, is too simplistic. The parties in MCFN attempted to do this but ultimately could not. In both cases, the OMNR and industry participants constrained the scope to fit their perceived roles and responsibilities and because industry controlled the resource and OMNR maintained their constitutional authority to manage the resource, these dominant groups determined what was in and what was out. First Nation participants described that the other parties in the negotiation did not acknowledge their constitutional rights, understand their worldview of forests nor accepted their forest-related interests and concerns. Whether or not the constitutional rights or worldviews and interests of the First Nation community are legally valid or relevant to the negotiation process is mute. The fact that OMNR and industry participants did not acknowledge the First Nation communities’ understanding of what is due to them because of their constitutional rights, or assumed that their worldviews were easily accounted for or not significant, had important implications for developing an effective negotiation process and ultimately for the progress and outcomes of the collaboration process. Participants’ mismatched interpretations of the appropriate scope for the negotiation should be understood as “manifestations of (the parties’) deep-rooted worldviewing differences” (Docherty 2001,196). In this way, the negotiation scope may very well have been contested throughout the negotiation processes but the worldview differences of the parties underlying this contestation are more likely the real explanations for why collaboration outcomes were limited.

Defining specific Aboriginal worldview and non-Aboriginal worldview differences was not the aim of this study. However, this study does contend that the worldviewing differences of collaboration participants should be understood as a factor that plays an important role in shaping intercultural collaboration outcomes and in this regard, worldview differences need to be explored by collaboration participants themselves. In this study, Aboriginal worldviews about forests and human and non-human relationships and responsibilities were not considered valid discussion topics or were only superficially explored or understood by collaboration participants. Considerable research has demonstrated that Aboriginal worldviews are rarely understood or
accommodated in co-management. For example, as Howitt (2001, 157) has noted, “[t]he idea of people as kin to other species, as co-equal occupants of places, as embedded in rather than outside and above ecological relations is not just marginalized in the process but actually overruled and reconstituted”. This study also demonstrates that ‘rights-based talk’, because it relates to First Nation participants’ conceptions of their identity relative to other parties, and their place in the world and their relationship to nature, was an important component of the First Nation participants’ worldview. When this component of the First Nation participants’ worldview was excluded from the dialogue, it resulted in First Nation participants feeling that their ‘truth’ was not considered valid. This study confirms that defending and maintaining a narrow scope and problem definition, rather than exploring all the worldview differences underlying the participants’ different interpretations and understandings, limited the potential of the collaboration efforts. However, this study also found that negotiating within a contested scope still provided participants with an understanding of each party’s interests and boundaries and this delimitation or definition gradually allowed the participants to direct their efforts to what they considered more meaningful approaches or it facilitated joint action on a more limited range of problems that were mutually acceptable.

For ‘resources’ entrenched in a political and economic system that wants at all cost to maintain the status quo, it is especially clear, as Ebbin (2011) notes, that the limited scope offered to First Nation participants and the current problem definition (i.e., increasing forest economic development opportunities verses defining goals and stewardship approaches based on Aboriginal worldviews) is “a function of both the power relationships of the various actors and the institutional structures themselves” (152). It is possible that approaches to forest management and planning based on Aboriginal worldviews could be developed that also address provincial management responsibilities and commercial forestry requirements (e.g., community-based planning in the northern Boreal). However, as these negotiation processes demonstrate, the lack of policy related to Aboriginal and treaty rights and the current legislative framework constrains OMNR and industry perceptions of their responsibilities to First Nations, District OMNR willingness or perspectives on the appropriateness of developing innovative responses to First Nations’ interests, and thus efforts of participants to share worldviews and build common understanding. The First Nation participants’ contentions that the FMP process does not permit Aboriginal communities to define goals and stewardship approaches based on their worldviews
will likely not be addressed by negotiating more ‘meaningful’ consultation approaches or simply ‘tweaking’ current FMP processes. Within this current legislative and policy context, collaborations involving First Nations should not be judged on whether the participants developed a suitable scope prior to negotiations but rather by their progress in aiding the parties to recognize their differing understandings of the problem and to develop capacities to focus on suitable shared goals as a first step to developing “hybrid” (Wyatt 2008) management approaches. Rather than striving for a defining an acceptable scope prior to deliberation, intercultural collaboration will be facilitated if parties recognize different worldviews underlying their definition of the problem and work toward integrating these into collaboration efforts.

7.3.3 Outcomes Identified in CLFN Only

This study demonstrated that there were several collaborative outcomes that were identified in the CLFN case only (Table 7-1). In particular, the recognition of interdependence among the parties and the development of a shared economic development goal are highlighted here because they are considered significant outcomes in collaboration literature. The strengthening of First Nation identity and power and the development of business and partnership experience were also important outcomes but these are not discussed separately because they were contributory to the other outcomes. I explain the factors influencing the emergence of these outcomes in this case, including those described by participants and those identified by comparing the context of the case.

7.3.3.1 Recognition of Interdependence and Development of Shared Goals

In the CLFN case, the negotiation process became subsumed by a larger collaborative effort in which participants recognized that they were interdependent and needed to work together to ensure their collective sustainability and prosperity. The participants were able to ‘separate the issues’ to some degree to find a more narrowly defined but mutually acceptable goal.

This interdependence and shared goal definition likely developed in CLFN for several reasons. First, the community comparison demonstrates that the parties in CLFN began their negotiation with a stronger shared place-based identity, had more interactions over the years and First Nation participants had gained some experience working in forestry and on forest management. There were also close relationships among the forest industry managers and between the forest industry
and District OMNR staff and a history of good cooperation between these groups. Similarly, the OMNR and industry participants who lived and worked in the town of Hearst had existing networks and a personal interest in the future of ‘their’ community and the improvement of relationships with the CLFN. Participants identified the beneficial role of supportive individuals and leaders within the First Nation, the forest industry and the OMNR. Supportive leaders or collaboration champions from each group were considered to play a large role in initiating the negotiation process, communicating visionary expectations to other parties, sustaining collaboration attempts despite challenges and including lessons learned into their future approaches and organizational practices.

Participants also described that collaboration developed despite continuing disagreements about the validity of legislation and the appropriate collaboration scope because shared understanding emerged on the necessity of addressing the First Nation’s social and economic disparities, not just because of the Condition 77 requirement to do so. The First Nation was recognized as an authentic partner in regional economic development progress. The community’s consistent ‘rights-based’ approach and their previous protests of other economic development projects proposed without their meaningful consultation and involvement, contributed to a strengthened First Nation power and identity. Following Gray’s (2003) typology of power frames that participants use to influence collaboration, the First Nation participants cited improvements in their ‘relational’ power as a community, in their ‘force or coercive threat’ power and in the ‘voice’ power they obtained from being at the table.

The shared goals, including economic development and to a lesser extent, improved forest management planning, also became mutually acceptable as First Nation participants realized the constraints placed on the attainment of their other negotiation goals by the OMNR and industry. First Nation participants were not able to question the economic or ecological assumptions underlying timber extraction or alter the forest industry and government participants’ perceptions that the status quo approach to resource extraction was appropriate and necessary. Nevertheless, learning that they could not change the status quo within the context of the negotiation process, contributed to the community developing what can be described as a ‘rights-based collaborative regional economic development approach’. Additionally, the shared goals were framed in a way that was acceptable to the First Nation participants. In particular, the economic development goal was approached as a long-term, regional ‘partnership’ directed by and responsive to the First
Nation community. For example, OMNR considered it was important that the Board of Directors of Eagles Earth were all First Nation members and that the community carried out decision-making for this venture, and industry partners left Mammamattawa restructuring decisions up to BOD. These outcomes also likely emerged because as one participant noted, the First Nation derived some power from choosing to not sign the draft agreement, this approach “kept everyone up front, free to leave, free to participate” (First Nation 26). The First Nation was still able to advocate politically for their rights-based claims in other forums or when required to do so with the OMNR and industry participants. Likewise, the First Nation was also able to use this position to leverage support from their ‘partners’ to work towards other more substantial policy changes or contribute to broader community development goals (e.g., industry support for resource revenue sharing).

The shared understanding of mutually acceptable goals that developed in CLFN was categorically different than what the MCFN participants described as increased understanding among the parties. The difference between the cases is demonstrated by comparing the First Nation, OMNR and industry participants’ perceptions of how the two communities should be involved in forest benefit sharing. These differences demonstrate that the development of shared economic development goals in CLFN emerged largely because of the context of this case.

In CLFN, the industry partners because they were operating on First Nation traplines seemed to acknowledge that some form of ‘compensation’ for the community was required. Industry participants never provided the community with direct compensation, and as described previously, they gradually refined their definition of how the parties should coexist to exclude direct payments to trappers but they still maintained that operating on traplines increased the chances that they were going to encounter resistance or conflict and that the First Nation legitimately needed to be involved. As a result, one of the companies, in particular, considered that it was their corporate responsibility to “improve the social conditions of the community” (Industry 10) and that it “took a lot of resources on the company’s behalf” (Industry 10) and a broader company culture to support this. This company also supported developing a provincial revenue sharing arrangement with First Nations. The other industry partners may not have shared this level of commitment but they still supported the general direction.
Similarly, in CLFN the OMNR supported the First Nation eventually becoming the SFL holder or a partner with HFMI and the OMNR participants also advocated for the parties to work in partnership with the community. The OMNR also promoted unique ways to involve the community in forest management and supported field trips for the parties to learn how First Nation forestry arrangements in other areas worked. The draft agreement, while it was not acceptable to the First Nation, also included several open-ended commitments reflecting a more liberal interpretation of OMNR and industry requirements. For example, that industry partners would make their best efforts to provide employment opportunities to CLFN members if these did not displace existing workers, that OMNR would facilitate a meeting between businesses in Hearst and CLFN to explore business opportunities and OMNR would ensure that CLFN had access to job and business opportunities within OMNR, such as fish stocking, fire-fighting and survey and inventory activities (Draft 10). Thus, the OMNR and industry participants in CLFN seem to have developed a broader perspective on how they should involve the community in forestry and sharing the benefits of forest resources and of what the community ‘deserved’. OMNR and industry participants considered that developing partnerships with the First Nation and encouraging a First Nation leadership role in economic development initiatives not only met Condition 77 requirements but also were actually necessary, either because they considered the First Nation had legitimate claims or because it contributed to regional sustainability and development.

Conversely, in MCFN, the OMNR and industry participants held a more narrow interpretation of the necessity of including the First Nation and what forest benefit sharing entailed. These differences reflect the context of the MCFN case. In particular, the characteristics of the negotiating parties, the lack of prior relationships between the parties, the lack of interdependence between the parties and possibly the perception that MCFNs’ forestry claims were less relevant or pressing. In MCFN, collaboration with the community was desirable but it was not considered necessary nor was it interpreted as broadly.

The industry partner in the MCFN case was willing to undertake collaborative discussions because First Nation negotiations were a condition of the SFL and they were pursuing forest certification. However, they wanted to ensure that any MCFN commitments were realistic and cost effective and would not “bring major change and higher cost” (Industry 20). Similarly, the mandate letter and OMNR negotiation strategy, demonstrates a more impoverished view of what
the OMNR considered were their responsibilities to the MCFN. OMNR participants also described being “very conscious of not setting precedent” (OMNR 23) and that the “track record” (OMNR 22) of the community and their ability to carry out other community development projects was important to how the community should be involved in forestry activities. Industry and OMNR participants considered that because the MCFN had no previous forestry experience they should develop opportunities following an incremental approach, such that “here is a small contract, we want to see if you are able to do it, you do it, next year we are going to give you a bigger contract, it just keeps growing, and growing” (OMNR 21). The First Nation’s proposed approach of “being a middle man” (OMNR 21) by acquiring an SFL or a controlling share of an SFL and contracting out forest harvesting, management, planning activities was not considered appropriate for forestry benefit sharing or community development (Industry 20, OMNR 19). Essentially, the other participants in the MCFN case framed MCFN forest benefit sharing as short-term, incremental contracts or commitments or as gradual forest planning participation but not as a major project justifying concerted effort and a long-term ‘partnership’ approach with the First Nation.

OMNR participants also described their discomfort with the more visionary approach used in this case and the model draft that was produced. They noted that trying to come up with broad principles of how the parties would deal with each other and what they could accomplish together took them into areas that they did not have a ‘mandate’ for. Essentially, the OMNR participants in the MCFN case described that their goal for First Nation forest benefit sharing was to “make something occur” (OMNR 22) regarding forest harvesting or silvicultural contracts. First Nation participants, conversely, called this approach “taking what you can get verses getting what you deserve” (First Nation 24). The First Nation was unequivocal when they began negotiations that they wanted to develop opportunities using a partnership approach (not ‘piecemeal’ contracts) to ensure that any economic ventures undertaken would be successful and to reach their broader community development goals. However, while the OMNR participants were redrafting the agreement, the industry partner had provided a small pinecone collection contract to the First Nation as a first start to their business relationship. Other ‘bigger ticket’ items where also planned but for First Nation participants this contract did not begin to approximate the ‘partnership’ approach they expected.
From this description of the development of a shared goal in CLFN, it is clear that this outcome was related to the context of the case and not the characteristics of the negotiation process. A shared goal emerged in CLFN because the participants were able to recognize their interdependence and because the other parties appreciated the necessity of including the First Nation as partners. Industry participants in CLFN were grappling with the challenges created from having established the joint venture company in the past without considering the First Nation as a true partner and thus their current approach reflected this experience. It is also likely that the timing of the MCFN negotiation also played a role in the OMNR and industry participants’ more limited interpretations of their forest benefit sharing responsibilities in this case. Over time and with more First Nation negotiation experience, OMNR became increasingly careful to limit the scope of negotiations and clearly define their role in forestry negotiations, although more research would be required to confirm whether this contributed to a narrower conception of forest benefit sharing.

The finding that the social context of the CLFN case, particularly related to existing networks, a stronger shared place-based identity, shared values (goals) and a commitment to collaboration as a social norm, supports Plummer and Fitzgibbon’s (2006) contention that social capital and social learning are required for parties to be open to new ideas and to become adaptive. However, rather than finding that “deliberation that enables social learning may produce social capital, both of which are requisite for adaptive co-management” (Plummer and Fitzgibbon 2006, 56), this study suggests that the presence of indicators of social capital contribute to the willingness of individuals to deliberate and of more powerful parties to expand their perceptions of their roles and responsibilities.

7.3.4 Role of Process in MCFN

In this section, I describe why the process used in MCFN, in particular, the satisfaction of several process conditions in the literature, had not facilitated the development of an agreement in this case or shared goals. I also discuss several important issues raised by the use of interest-based negotiation to resolve dissensual disputes. All participants in MCFN valued the interest-based negotiation process and the relationships and shared understanding of each other’s interests that resulted from this process but the lack of agreement was disappointing. Explaining the role of process in the MCFN case is challenged by the fact that the negotiations had only just stalled and
thus participants were describing short-term outcomes in this case. This study did not determine if the negotiation process laid the foundation for the development of other collaborative outcomes in the future.

Participants in MCFN attributed the difficulties they encountered in reaching an agreement to the lack of policy and suitable legislative framework. Especially for First Nation participants, the OMNR participants’ resistance to expanding the scope of the negotiation or their perception that they needed to maintain their ‘mandate’ limited the commitments in the agreement and the OMNR’s acceptance of the draft agreement. First Nation participants described hoping they could ‘swing’ the other parties to expand their scope because the interest-based process was aimed at developing win/win solutions that satisfied each party’s interests. However, participants noted that despite trying to mutually define the scope, using an interest-based negotiation approach and building relationships, “it still came down to the same issues at the end of the day” (First Nation 24). First Nation participants came to the realization that their approach had not worked because “unless it is in policy from the party, the government will have to be forced to maximizing benefits and they don’t have any policy. That is what is lacking in Ontario” (First Nation 24).

Participants also described that the interest-based negotiation process was difficult to carry out in an intercultural context and some procedural issues limited its effectiveness. First Nation participants noted problems were created by the OMNR changing representatives several times and involving their legal advisors too early. Changing representatives slowed the development of relationships and resulted in the OMNR participants who entered into the negotiation later, not ‘buying into’ the approach and the commitments. Involving legal advisors too early contributed to limiting the development of local, innovative solutions. OMNR participants suggested that the lack of a neutral facilitator, the First Nation consultant controlling the draft agreement and the lack of early involvement of legal advisors all contributed to the interest-based process creating expectation that would not be met and resulting in an open-ended and repetitive draft agreement.

The cross-case comparison of the context also demonstrates that the ‘good’ process used in this case was influenced by the conditions of the case. In MCFN, the process may have only begun to bring the parties to a greater level of interaction and experience that already existed in the CFLN case. One participant noted “I knew nothing about negotiations with large resource extraction
companies and their goals or the role of the government within that and I have a great understanding of that now” (First Nation 16). The MCFN community also did not have a relationship with either District or the forest industry prior to the negotiation and neither of these parties considered that the First Nation had any particular ‘forestry’ grievances. The OMNR and industry participants’ expectations from this negotiation were to find out “What is it the First Nation wants?” (OMNR 19) Conversely, because of the blockade in CLFN, the OMNR and industry participants in this case, began the negotiation with the expectation that they needed to find a way to coexist, resolve the conflict and develop peace in the forest and security of wood supply. Also, as OMNR participants in MCFN described, there were several other First Nation communities with an interest or located within the Superior SFL and thus the OMNR did not want to “negotiate all of opportunities to one First Nation and have nothing to negotiate with afterwards” (OMNR 22). In CLFN, only the Hornpayne First Nation (a small non-status Aboriginal community without a reserve) was considered to have an interest in the Hearst SFL.

The use of an interest-based approach to collaboration where the conflict is dissensual (i.e., involving values, ideology, identities or who deserves what) brings up significant questions. For example, what affect did translating the Aboriginal and treaty rights-based claims of the MCFN into ‘interests’ have on how those claims were attended to? Although, interest-based negotiation approaches are ubiquitous, little research has considered if this model is appropriate for Aboriginal land claim and resource negotiations (e.g., Coyle 2009). In MCFN, First Nation participants described ‘pursuing their legal treaty rights’ through the negotiation and wanting, “a legal agreement…that was a measure of good faith and a measure of what we believed was in our treaty rights to be sharing in the resources as opposed to handing them over” (First Nation 16). However, during the negotiation process the community’s claim that they should receive a share of the resource revenues for trees being harvested on their potential future reserve lands was translated into an ‘interest’ in developing their community infrastructure. In the draft agreement the other parties attempted to satisfy this interest by providing in-kind contributions of surplus buildings or assets. All participants appreciated the interest-based approach because it facilitated an open, imaginative and sustained dialogue, but it is unclear if First Nation members’ Aboriginal and treaty rights claims would have been satisfactorily addressed by these arrangements. Because the OMNR participants never accepted the draft agreement this was never tested. It is likely that in the MCFN case, the First Nation participants’ desire for more
open-ended general principles in the agreement reflected their understanding of their Aboriginal rights that were not satisfied by the commitments identified by the other participants in the draft agreement.

In this study, the recognition of Aboriginal peoples’ rights did not frame forest management discussions and if Aboriginal and treaty rights were brought up they were regarded as being irrelevant, uncertain or already sufficiently addressed by non-First Nation participants. Governments and industries often concede to include a non-derogation clause in formal agreements to allow participants to come to some agreement on immediate substantive interests while leaving rights untouched. However, it is not clear if Aboriginal peoples’ rights can be separated from their substantive interests because interpretations of these rights are used to determine what Aboriginal people ‘deserve’ in terms of forest benefit sharing, consultation, decision-making etc. Other authors have confirmed that applying interest-based negotiation to value disputes assumes that parties share “substantive frames [which] define what the conflict is about” (Putnam and Holmer 1992, 135). Likewise, worldview negotiation theorists have demonstrated that positions can only be reframed as interests when the parties define the problem or the conflict in the same way (Docherty 2001). The forestry negotiations examined in this study clearly involved different values (or worldviews) informing different perceptions of the problem but they also involved very different aspirations and interests and interpretations of constitutional and legislated rights.

This study demonstrated that the CLFN participants developed a broader interpretation (although still not a completely acceptable interpretation from the First Nation’s point of view) of what the First Nation deserved, mainly because the conditions of the case contributed to interdependence and supported the development of shared goals. The interest-based approach used in the MCFN negotiation did not allow the participants to create ‘solutions for mutual gain’ because of the OMNR’s need to limit how Aboriginal rights were interpreted and to minimize their commitments and because the OMNR and industry felt they could not support a broader interpretation of how the First Nation should be involved. A number of innovative and likely socially and economically sustainable local approaches and solutions (e.g., that an alliance of First Nation communities would contribute to the collaborative management of the Chapleau Crown Game Preserve) were excluded because the interest-based negotiation process was operating in a legally contentious setting. Importantly, when the OMNR threw out what they
perceived as ideas touching on ‘rights-based’ issues they also threw out the relationship and trust that had developed in creating them. The interest-based negotiation approach also contributed to raising participants’ expectations of what was possible and what the other parties were willing to do and these expectations later turned to disappointment and distrust when the OMNR did not ‘deliver’ on perceived promises. It is unclear if applying an extensive interest-based negotiation approach in a different context in Ontario (for example, in CLFN where First Nation and non-First Nation participants recognize their interdependence or where leaders support a visionary approach) would produce innovative solutions and how OMNR and industry participants would handle potentially precedent-setting solutions that may be generated in these cases.

7.3.5 Summary and Two Intercultural Collaboration Metaphors

This chapter demonstrates that the context within which an intercultural collaboration effort operates plays a large role in determining the outcomes. I also explain that in both cases relationships and understanding increased but these outcomes did not necessarily contribute to perceptions of ‘successful’ collaboration. I suggest that instead of evaluating intercultural collaboration based on the development of relationships, it may be more useful to assess whether collaborative relationships contribute to the participants recognizing their diverse goals. This study also demonstrated that the parties were not able to develop a shared understanding of the problem or a mutually acceptable scope for the negotiation and this limited their ability to collaborate. Specifically, First Nation and non-First Nation participants could not accept each other’s interpretation of how the First Nation should be involved in forest management or forest benefit sharing.

However, the CLFN participants’ ability to focus on shared goals, despite underlying scope differences, demonstrates that intercultural collaboration processes may be more suitably judged by how they help parties to recognize their different understandings of the problem and seek shared goals as interim strategies. In CLFN, the recognition of interdependence and shared goals that emerged were likely related to the attributes of the community and negotiation partners, including the parties pre-existing relationships, the more direct clash between forest harvesting and trapping and the early initiation of the negotiation. In the MCFN case, the use of an interest-based negotiation approach and efforts to mutually define the scope of the negotiation, did not contribute to participants developing collaborative outcomes, such as collective action towards
shared goals. ‘Good’ process criteria were difficult to satisfy given scope contests, the worldview differences of parties and the legally contentious setting. In this case, when some ‘good’ process criteria were applied in this ‘poor context’ (or applied without addressing policy and institutional barriers), the parties were not to develop a shared problem definition and thus process-related criteria did not contribute to improved outcomes.

Both cases demonstrate that any OMNR, First Nation and industry collaboration effort operating in the absence of a supportive legislative basis for collaboration or shared-decision making will likely encounter scope agreement difficulties. Likewise, a lack of policy discourages OMNR and industry participants from entertaining anything that may be even remotely construed as being a ‘rights-based’ claim and this has the unfortunate effect of harming relationships and invalidates how First Nations themselves think they should be included in forest collaboration. Unfortunately, both collaboration processes fell short of the acknowledgement of different worldviews or the “recognition that other disputants’ views are valid and credible” (Elliott, Gray and Lewicki 2003, 428) - a requirement if collaboration efforts are to move beyond what participants in this study described as ‘talking in circles’.

Two contrasting metaphors to describe the participants’ collaboration experiences became apparent during the course of the research. I describe these metaphors briefly because they encapsulate the challenges to, and requirements for, achieving more effective and equitable intercultural collaboration. The first metaphor, that of an ‘uncomfortable dance’, was articulated by an OMNR employee\textsuperscript{12}. In this metaphor, natural resource managers interacting daily with Aboriginal trappers and forest users who claim that timber harvesting and related activities are infringing their Aboriginal and treaty rights, liken themselves to carefully dancing around the topic of Aboriginal and treaty rights, worrying that what they say or don’t say will be considered disrespectful, or provoke conflict. They worry that what they agree to do or not do will be legally misinterpreted, misconstrued or raise expectations. They listen to the rights-based talk and ‘stories’ related to ‘spirituality’ or ‘history’ but they do not understand their significance to Aboriginal peoples or their relevance to the tasks at hand. Essentially, they try not to step on their

\textsuperscript{12} The OMNR employee who described this metaphor wished to remain anonymous, but several OMNR and forest industry participants described a similar relationship.
dance partner’s toes, while at the same time preserve the dance steps they are familiar with. Even if natural resource managers consider that collaborative solutions to these problems require ‘creative movement’, their repertoire of dance steps is limited. Little room exists for an exchange of worldviews and knowledge in this metaphor, because inviting new perspectives could cause the dance to become even more awkward and uncoordinated. While this metaphor described the interactions between the province, the forest industry and Aboriginal peoples at the time of this study, many of the individuals involved in this dance (both Aboriginal and non-Aboriginal), also recognized a need to move beyond it; essentially, they were looking for a new metaphor.

An Aboriginal participant described their hope for developing more respectful relationships in the future, using the metaphor of ‘walking together for a time’. In this metaphor, intercultural collaboration was likened to walking together, where parties learn a little more about each other over progressive interactions. While it is possible to learn about each other’s mannerisms, their pace, and whether they step lightly or heavily, each party is still coming from different places and walking to different places. Over time this walking together may result in finding a shared path where the parties can work together, but perspectives on the most appropriate starting place and end point may still differ. As this thesis demonstrates, moving past the ‘uncomfortable dance’ and ‘walking together’, requires as a first step, a much deeper appreciation and recognition of the problem definitions and worldviews parties bring to the table in intercultural collaboration efforts.
8 Conclusion

8.1 Overview of Chapter

This study addressed the need to understand how intercultural collaboration participants perceived collaboration outcomes and what factors facilitate or discourage collaboration. Specifically, I examined how attention to the process characteristics, a common requirement identified in the literature, contributed to collaborative outcomes.

In this chapter, the main research findings and conclusions, addressing the three research questions of this thesis, are followed by a summary of implications for theory and policy and practice. Several recommendations for First Nations, resource industry representatives, and agencies seeking to work collaboratively are described. Finally, I discuss research limitations and future research opportunities.

8.2 Main Findings and Conclusion

The analysis of collaboration outcomes above demonstrates that intercultural collaboration outcomes are progressive, complex and interrelated. Participants in both cases considered that the collaboration processes they were involved in were not ‘successful’ but they described a range of tangible and intangible outcomes. Two similar outcomes emerged in both cases, namely improvements in relationships, understanding and communication and the gradual definition of the scope of the negotiation or recognition of each party’s interpretation of the scope. Participants’ ascribed different value to these outcomes related to their expectations or goals for the process. This study demonstrates that common evaluation criteria, including the development of relationships and whether the participants have defined a mutually acceptable scope prior to negotiation are not be applicable to intercultural collaboration or sufficient to understand whether collaboration participants consider the process successful. In only the CLFN case, participants also described developing shared goals, recognizing their interdependence, a strengthening of the First Nation identity and power and the development of business expertise and partnership experience. Cross-case analysis demonstrated that the recognition of interdependence and shared goals that emerged in the CLFN case were related to the attributes of the community and negotiation partners and their pre-existing relationships.
Participants described several factors that facilitated and discouraged their intercultural collaboration efforts. In particular, the lack of policy clarifying Aboriginal and treaty rights and a suitable legislative framework for collaboration were considered to discourage intercultural collaboration in both cases. In both cases, participants’ different perspectives on the acceptable scope for the negotiation and their reluctance to acknowledge and understand the other parties underlying worldviews motivating their scope and problem definitions, discouraged collaboration. The contested scope (and participants’ worldviews underlying these different scope understandings) limited both cases from reaching a final agreement and more importantly, it strained relationships and communication and reduced the status of trust between the participants. Collaborative outcomes that did emerge in CLFN seem to be related to the particular context of the case. Cross-case analysis demonstrated that several characteristics were relevant including, the degree of social connection between the OMNR District, forest industry and the neighboring town, the presence of pre-existing interdependent relationships between all parties, the degree of prior involvement of the Aboriginal community in forestry, the community’s experience of forestry impacts and the timing of the negotiation.

As far as the question of process characteristics is concerned, several process conditions met in the MCFN case, including mutual scope-defining efforts, the use of an interest-based negotiation approach and frequent and high quality face-to-face dialogue, do not appear to have facilitated the development of more collaborative outcomes in this case. The interest-based negotiation process was supported and appreciated by all the parties and did contribute to the development of increased understanding of the interests, aspirations and limitations of all parties but it may have raised expectations and made communicating about participants’ acceptable scope more difficult. In particular, it may have made it more difficult for First Nation participants to advocate for what they considered their Aboriginal and treaty rights justified. I do not suggest that a collaborative process should not pay critical attention to procedural fairness, that participants should not seek the interests underlying their stated positions, that participants should not try to define the scope early, or have sustained, broad and authentic dialogue. However, in the case of intercultural collaborations operating within a contested legislative framework and with no clear policy or willingness on the part of the more powerful parties to expand beyond the limits of their narrow definition of the problem, these efforts did not appear to encourage collaborative outcomes or shared goal development. When First Nation participants tried to expand the scope by
maximizing joint gains, the ideas created around the table did not match OMNR’s political directive to protect their jurisdiction. Interest-based negotiation may have evened out power to participate at the table but the ultimate power to define how collaboration would occur was still with OMNR. Focusing on interests in the MCFN case let the discussion proceed without the community’s full appreciation of the limits of the other parties, it raised expectations which the other parties could not deliver and it ultimately, decreased trust and strained relationships. Essentially, applying a good process to a poor context (or applying a good process without removing policy and institutional barriers to collaboration) did not contribute to improved collaborative outcomes.

8.3 Implications for Theory

This study has demonstrated that applying a consensus building framework to assess the function the intercultural collaboration requires stretching the theory and framework to address power, worldview differences and other factors important to intercultural collaboration that are not specified. It is also clear that intercultural collaboration efforts challenge the core assumptions of collaboration, namely that increased communication leads to building relationships, which in turn leads to developing shared goals and collective action, or the notion that more collaboration will contribute to improved collaboration outcomes. Both cases demonstrate that the worldview nature of the conflict and broader institutional barriers to collaboration temper the potential of relationship building to contribute to shared problem definition.

Researchers should also critically examine the assumptions underlying common evaluation approaches, including determining whether attention to procedural conditions alone is suitable to facilitate intercultural collaboration outcomes or useful for the evaluation of intercultural collaboration. Specifically, two criteria identified in the literature – improved relationships and the definition of a mutually acceptable scope prior to negotiation – are not appropriate to intercultural collaboration efforts. What can be used to guide Aboriginal and non-Aboriginal collaboration efforts? This study demonstrated that the development of shared goals, how scope contests are dealt with, partner support for Aboriginal and treaty rights, and worldview acknowledgement and perspective-taking are more useful factors to examine. This study supports other findings that criteria identified through the literature of both the process and the outcomes of collaboration may not always be appropriate and that elements to evaluate
collaboration efforts should be defined by participants themselves or that some combination of internal (developed by participants) and external (developed from theory and literature) process and outcome criteria should be used (Blackstock et al. 2012, 121; Santos and Chess 2003, 278).

Similarly, assessing intercultural collaboration using inductive approaches and participants’ own understanding of outcomes and factors influencing outcomes produces nuanced insights. Using only surveys of predetermined criteria may not yield sufficient data. If we want to develop robust frameworks to explain collaboration outcomes and move beyond conclusions such as, “First Nations tended to view themselves as a level of government that should be dealt with directly with other governments not with other stakeholders” (Cullen et al. 2010, 346) then we should examine all participants’ perspectives, use more detailed ethnographic or inductive approaches, compare multiple, similar cases and include both more and less successful collaboration processes.

8.4 Implications for Policy and Practice

Other authors have noted that the trouble with OMNR and First Nation negotiations in Ontario (particularly those related to First Nation’s access to social and economic benefits of forest management and extraction) stems from the different ‘perceptions’ between Aboriginal peoples and the OMNR about Aboriginal and treaty rights (Nashkawa 2005). From this study, it may not be so much an issue of different ‘perceptions’ but rather of parties’ incentive or willingness to lay aside their different perceptions so that shared goals can be developed. Of course, this approach also risks perpetuating existing power relations where First Nations people are asked to put aside their constitutional rights or filter their perspectives through the constraints imposed by other parties. However, this study suggests that the incentive and willingness of OMNR and industry participants to modify their perceptions of their roles and responsibilities related to Aboriginal and treaty rights can be encouraged, for example, by developing shared place-based goals and recognizing interdependence.

How to develop shared goals when power, resource and capacity disparities exist and when more powerful participants unilaterally define the scope is still unclear. Interest-based negotiation does not seem to be a suitable model to do accomplish this. There are important legal questions arising from the use of IBN in these settings that have not been examined and it may be inappropriate to expect First Nation participants to translate their rights into interests and make concessions on
those interests. Presumably, if IBN is applied within a legally contentious setting and used when participants are seeking legal agreements, dominant parties’ political directives will require clarity and minimizing commitments. IBN may be more properly applied to negotiate agreements after Aboriginal and treaty rights are acknowledged in some more meaningful way. Nevertheless, First Nation and non-First Nation collaborative efforts can still benefit from adopting IBN approaches. IBN may facilitate trust and increase understanding when the deliberations and collaboration efforts are without prejudice to legal rights. As the CLFN case demonstrates, a visionary, or joint problem-solving approach may be more productive to developing common goals and collective action when certain contextual conditions exist, such as place-based interdependence, community networks and previous relationships, government and industry willingness, supportive leaders and increased First Nation political and regional economic power and perception of legitimacy.

The challenges participants in both cases faced in coming to an agreement demonstrate that for intercultural collaboration, process criteria are not easily satisfied and when they are, they provide little guarantee that more powerful parties or the context of the case will not constrain the development of collaborative outcomes. Given these limitations, it is important that First Nation participants consider whether relationship building and increased understanding are among their goals for forest negotiations, and if they are not, can their other goals be achieved more efficiently in other ways. One First Nation participant described they were “trying to access what the MNR seems to freely provide to non-Aboriginal people, the right to do certain things in our territory like purchase land for development” (First Nation 16). Clearly these goals should not require building relationships or understanding with OMNR. However, if First Nation participants consider that “reaching a mutual level of understanding and respect is a priority for effective forest management” (e.g., O’Flaherty, Davidson-Hunt and Miller 2009, 32), then satisfying process criteria alone is not likely to facilitate this level of understanding.

This study also has implications for the assessment of the effectiveness of Condition 77. It is clear that the outcomes of First Nation and non-First Nation forestry negotiations are context dependent. If the EA Decision recognized that First Nations faced ‘adverse social and economic impacts from timber harvesting’ in Ontario then a condition directing them to commit further time, expertise and capital to simply get a ‘piece of the forestry pie’ is far from satisfactory. There are contextual factors that limit the tangible forest economic development opportunities
that communities obtain and local participants have very little control over these conditions (e.g., the prior relationships of the participants, the characteristics of the forest industry, the supportiveness of the District Manager, or the timing of these negotiations). Simply mandating ill-equipped or inexperienced District Managers to ‘facilitate’ these negotiations will not balance these impacts. It seems unconscionable that the Condition 34 policy remained essentially the same after the EA Review made it clear that OMNR reported on-going challenges and Aboriginal leaders considered the approach a “dismal failure” (McKay 2006, 19).

Joint venture experience in the CLFN case has also demonstrated several important challenges for Condition 77 effectiveness. A First Nation’s entry into the forest harvesting business is likely to be resisted by established operators and forest industry managers and this creates tension between First Nation and non-First Nation communities. Likewise, forestry ventures are extremely cash-intensive and harvest allocations are not guaranteed, creating great financial risk for First Nation communities. Forestry economic opportunities are also often not based on sound business principles but carried out to increase employment or as corporate relation exercises. If joint ventures fail or Aboriginal contractors do not satisfy the conditions of contracts, the perception is perpetuated that Aboriginal peoples are not reliable or interested partners. The Condition 77 approach also leaves Aboriginal people extremely vulnerable to forest industry benevolence. Despite all these challenges, forest industry partners continue to consider that these forest opportunities should satisfy Aboriginal peoples’ ‘compensation’ requirements arising from infringements of Aboriginal and treaty rights. Thus at the same time as Aboriginal people are constrained from using their rights-based claims to justify economic development and management aspirations, OMNR and industry participants attempt to justify their accommodation of Aboriginal and treaty rights based on providing these forestry opportunities. Similarly, industry and OMNR participants consider that they know how best to involve First Nations in forestry economic development opportunities. For example, when First Nations suggest ‘buying out’ an existing allocation and contracting out non-First Nation employees to carry out the work while they develop their skills and capacities, this is perceived as the community being a ‘middle man’ and not suitable for addressing community development concerns. Most important, however, Condition 77 serves to maintain the ‘status quo’ because the parties are not accountable to address the real social and economic impacts that motivated the Condition in the first place.
8.5 Recommendations

To satisfy the broad aim of this project to identify lessons learned to improve future forestry-related collaboration efforts, I offer several recommendations for First Nation communities, forest industry and Provincial government.

**Recommendation 1:** Provincial government should develop clear policy guidance for Aboriginal and treaty rights vis-à-vis forest harvesting rights and provincial jurisdiction and reconcile current forest management planning processes with Crown consultation responsibilities to Aboriginal peoples. As experience with newly introduced Provincial consultation guidelines demonstrates, the long-term ‘reconciliation’ of these competing rights and responsibilities, will likely require a legislative framework for resource revenue sharing or new management models.

**Recommendation 2:** In the absence of this policy guidance or a supportive legislative basis for the distribution of forest decision-making authority, First Nation, government and forest industry participants should continue to foster the development of shared goals and collaborative projects at local levels.

**Recommendation 3:** Social-relational contextual conditions, which contribute to the development of shared goals, such as fostering a place-based identity, increasing incentives for leaders to champion collaboration and supporting liaison positions, should be enhanced to facilitate the development of shared goals and collaborative approaches.

**Recommendation 4:** The lack of knowledge among non-First Nation individuals about the implications of the treaty relationship and the reciprocal rights and responsibilities resulting from this relationship should be addressed along with increasing opportunities at all levels for cultural exchange and learning.

**Recommendation 5:** District-level OMNR, industry representatives and interested First Nation communities should organize and support collaboration and conflict resolution training workshops with special emphasis on modules relevant to intercultural collaboration requirements so that participants’ core competencies in this area are increased.
8.6 Limitations

This study demonstrates that the nature of social interactions, such as collaboration, is complex and unbounded. It is not always clear when a collaboration process begins or when it is complete and especially in enduring Aboriginal and non-Aboriginal forestland-related negotiations, the representatives may change, the subject matter or priorities may shift and participants have a difficult time differentiating between various processes and their outcomes. For example, it was clear in CLFN that participants described various negotiation processes and outcomes, both previous and ongoing, because these efforts were all interrelated. Sometimes it was difficult to distinguish the outcomes arising from the coexistence negotiation process from those emerging from other social processes and contextual changes.

Thus this study was limited because it was reconstructive, dependent on recollection of the participants, not all of whom were available and not all of whom were able to recall the events surrounding their participation or confused this case with what happened before or after. I was also not able to directly observe or participate in the negotiation processes and this likely limited my interpretations. Direct observation of participants’ early negotiation interactions in both cases would have provided additional insight. It is also possible that a participatory evaluation or ‘co-learning’ approach (e.g., Davidson-Hunt and O’Flaherty 2007) may help collaborating parties and researchers develop more appropriate questions or co-create more substantial frameworks related to collaboration.

Finally, this study only solicited short-term outcomes and does not reflect other more or less collaborative outcomes emerging from the collaboration efforts. Comparing the very short-term outcomes of the MCFN with the outcomes in CLFN, where more time had passed since the negotiation, was also a limitation. A longitudinal approach to the research would have also been useful as it would have illuminated how the negotiation processes shaped collaborative action over time.

While it is unfortunate that a considerable amount of time passed between when the research was conducted and when the dissertation was submitted, I do not consider this a significant limitation of this study. During the intervening time no new cases of Aboriginal, OMNR and forest industry collaborations meeting the conditions of this study have occurred and no studies have been conducted identifying collaboration outcomes or determinants using similar cases. Additionally,
as I describe in Appendix F, the legal and policy context for forest management collaboration has changed very little, and thus the snapshot of intercultural collaboration that this thesis provides, continues to offer useful insight for current collaboration efforts.

8.7 Future Research Guided by ‘Walking Together for a Time’

I have used the metaphor of ‘walking together for a time’ (described in chapter 7) to guide suggestions for future research arising from this research project. To this end, more efforts directed at understanding how parties negotiate and communicate about the worldviews guiding them, as they attempt to ‘walk together’, are of critical importance.

In particular, worldview or frame analysis techniques could be applied to uncover the underlying frames held by different parties about how forests should be used and managed. In this thesis, several disparate identity, characterization, process and substantive frames became apparent during the coding process but because these were not systematically collected they did not inform this analysis. It is clear that worldview or problem definition differences limit the development of collaborative outcomes and thus it would be useful to identify those worldview differences. It would also be useful to understand how collaboration participants’ worldviews are communicated, shared, and/or adjusted during collaboration experiences and if worldview or frame learning contributes to collaborative action.

This thesis also touches on, but does not explore the role of various forms of power, including the power to influence collaboration processes and outcomes but also, more importantly for Aboriginal people, the power generated from alliance and network formation and direct action or coercion. Several Aboriginal and non-Aboriginal participants considered some form of mobilization (either cooperative or antagonistic) was necessary to motivate future policy change to facilitate more equitable collaboration. Investigations of how First Nation resistance or mobilization efforts motivate policy change or can increase First Nation power to derive more benefits within current processes would be valuable.

It would also be beneficial to examine intercultural collaboration efforts in Ontario where agreements have been signed. This research could employ some combination of specific quantitative and qualitative indicators of community well being and the intercultural collaboration conditions identified in this study, including whether relationships built during
collaboration served to enable the participants’ to achieve their diverse goals and whether the process aided the parties to recognize different understandings of the problem and focus on suitable shared goals.
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Appendices

Appendix A: Interview Questions

Section A: Profile of individual and prior relationships

1. Where do you live and how long have you lived in that area?
2. What is your current occupation? How long have you held this position?
3. What groups or organizations are you affiliated with and prior experiences with other types of organizations (e.g., business, recreation, conservation, cultural)? Title and description of any other work if worked previously with First Nations and forestry?
4. What is your age and level of formal education?
5. Describe the history of the relationship between the organization your represented in the negotiation and the other parties involved.

Section B: Your role in the CLFN/MCFN negotiation process

1. What roles have you had? When did you first become involved, for how long?
2. How did you come to be involved?
3. When you first became involved, what were your initial goals or expectations for the negotiation? Did they change over time? How? What factors contributed to these changes?
4. What is your understanding of the issues of most importance to the parties that led to initiating the negotiation?
5. When you first began what were the issues of most importance to you? Did they change over time? How? What factors contributed to these changes?
6. Are there issues of importance to you or the other parties that were not addressed in the negotiation? If so, what were these and why were they not part of the negotiation?

Section C: Process questions – How did you decide how to negotiate? How and what did you negotiate?

1. Did you decide which issues would be the subject of negotiation? Can you explain how?
2. Did you discuss how you would proceed with negotiating these issues? Explain how?
3. Was a specific negotiation approach selected? Can you describe the approach used and why?
4. How did you decide who would participate? Who was selected and why? Did you consider using a facilitator? How was this individual selected? Describe their role.
5. Did the negotiation take the form of formal meetings? How often were these held, for how long, where? Did you undertake informal discussions or meetings held outside of the formal process? How often, who involved, where?
6. What format did meetings adopt? e.g., formal – chair, minutes, etc.
7. During the negotiation process how did you make decisions in the group?
8. During the negotiation process how did you resolve conflicts? Examples.
10. Did you set goals for the negotiation process as a group?
11. During the negotiation process, did you communicate with the group or people you were representing? How often, what kind of communication, one-way or two-way? Explain or examples.

12. Did you have authority to make a final decision on behalf of your group? If no, how did you work between the negotiation and the final authority in your organization?

13. Did you try to change the views of the final authority in your organization based on inputs from the negotiation? Were you successful at doing that?

Section E: Your level of satisfaction with the process

1. What is your level of satisfaction with the process (not the outcomes) and why? How could the process have been better?

2. What would you suggest to change about the process?

3. If you were to begin another negotiation with another group on similar topics, how would you proceed? Would you use the same process or a different process and why?

4. What are the main features of the process, which you would like to use again, and what are the features you would not like to use again?

Section F: The Outcomes

1. What were the social or economic outcomes of the processes you were involved in?

2. Did the negotiation meet your personal or your group’s expectations? Explain?

3. Did your participation increase your understanding of the issues and other participants’ point of view? Explain?

4. Did you develop new relationships or strengthen existing relationships with other participants? Were relationships with other participants strained? Explain.

5. Did your trust in other participants increase or decrease? Did your trust in the groups the other participants represented increase or decrease?

6. Did your participation change your attitude towards the way you thought about any issues or other participants?

7. Did the negotiation process increase business opportunities for the group you represented?

8. Did the negotiation lead to an acceptable agreement? Why was the draft agreement acceptable or not acceptable to you?

9. Did the negotiation lead to spin-off discussions related to other matters?

10. Did the negotiation lead to the participants identifying mutual goals or a common purpose? What are these goals?

11. What were the outcomes of the process from a forest management or environmental perspective?

12. Did the negotiations alter current or future forest management planning practices?

13. Did your participation increase your understanding of other types of knowledge and how to incorporate this into forest management?

14. Did the negotiation change the way you understood Aboriginal values and how to incorporate these into forest management planning?

Section G: Your level of satisfaction with the outcomes and identification of factors influencing outcomes.

1. Are you satisfied with the outcomes and why? Which outcomes met your expectations?
2. What outcomes/expectations were not realized?
3. What constrained the achievement of your expectations/goals?
4. The negotiation process has been inhibited by…?
5. The negotiation process has made progress because…?

Section H: Summary findings (triangulation questions)

1. Please summarize your overall experience and satisfaction with the process and the outcomes of the negotiation process.
2. What have you learned from this negotiation process about how to address First Nation and non-First Nation forest management issues and problems?
3. How will you/or have you used this knowledge to approach these issues differently in future or resolve current problems?
4. Any advice for other communities/groups for future negotiations?

Section I: Specific questions for interviewees involved in economic development projects that emerged outside or after the negotiation process (e.g., Mammamattawa, other forest industry collaboration efforts).

1. What are the main objectives of the project/company? Explain how you and other groups decided what the main objectives would be?
2. Describe the current operation of the project/company. How do you make decisions, communicate, resolve issues, set policy, financing, etc.?
3. Your level of satisfaction with the current operation/function of the project/company?
4. What would you like to see change about how this project/company operates?
5. What are biggest challenges to project/company successful operation? What is working well?
6. What are the outcomes of the project/company?
7. How has the project/company influenced the relationship between the community, local industry and OMNR? Explain?
8. What has been the impact of the project/company on the attitudes or behaviors of the partners? trust between partners? understanding between partners?
9. What kind of industry/OMNR support for the project/company is there? Has it increased/decreased? Explain?
10. What lessons did you learn? How are you/will you use this knowledge to improve the current or future project/company?
11. Any suggestions for others embarking on a forestry economic development project/company?
Appendix B: Interview Consent Form

Title of Project: Sustainable Forest Management through Co-management in Northern Ontario: Understanding Forest Management Partnership Arrangements between First Nations, the Government of Ontario and Forest Industries

Investigators:

Dr. Shashi Kant, Faculty of Forestry, University of Toronto, Ontario M5S 3B3
Phone: (416) 978-6196 Email: shashi.kant@utoronto.ca

Ms. Giuliana Casimirri, Faculty of Forestry, University of Toronto, Ontario M5S 3B3
Phone: (416) 946-7023 Email: g.casimirri@utoronto.ca

Description of Project:

The purpose of this study is to understand factors that contribute to initiating and sustaining forest management partnership arrangements between First Nations, the government (Ontario Ministry of Natural Resources) and forest industries in northeastern Ontario. We are interviewing representatives from these three groups to ask their opinions about the development and outcomes of various collaborative relationships they are involved in. We are requesting one to two hours of your time to ask your opinions about this topic and will be using an open-ended questionnaire to guide our discussion.

With your permission, we will record the interviews by audio-tape or by taking notes. We will then analyze the responses and identify common themes from the interviews. All interview data will be kept confidential and will not be made available to anyone other than the project investigators. We will use a coding system to keep your identity anonymous at all times. Any reports from this study will not be used to identify you in any way without your prior permission. We may identify participants by their affiliations (e.g. First Nations, Government, Industry) but will not identify any of the participants by name.

The results will be used to produce a thesis report and may be published in scientific journals or become the subject of public presentations. A copy of the thesis report will be available at the University of Toronto library or an executive summary can be provided to you, if requested.
Your participation in the study may be of no personal benefit to you, but we hope your participation will contribute to recommendations to the key parties involved to improve collaborative forest management relationships.

Your participation in the research is purely voluntary and you may decide to withdraw from this study at any point. If you agree to be interviewed, you may choose not to answer any of the questions or stop the interview at any time. If you have any questions about the interview or study in general you may contact the investigators at the addresses and telephone numbers listed above.

Consent:

I acknowledge that the research procedures described above have been explained to me and that I have received a copy of these procedures. Any questions I have asked have been answered to my satisfaction and I understand that I may contact the people designated on this form if I have more questions, either now or in the future. I understand that personal records relating to this study will be kept confidential and that nothing I say during the interviews will be shared with other participants in this project. I understand that I am free to withdraw from this study at any time. I also understand that quotations from interviews and the results of this study will be published but that my name will not be associated with interview data.

_____________________________________________________________________

(Name of Participant)               (Signature of Investigator)

_____________________________________________________________________

(Signature of Participant)           (Date)
Appendix C: Example of Draft Research Protocol

Draft Research Protocol between

Dr. Shashi Kant, Principal Investigator and Giuliana Casimirri, Ph.D. Candidate

and Community Name

on the research project entitled

Understanding Forest Management Partnership Arrangements between First Nations, the Government of Ontario, and Forest Industries

The researchers will:

1. Fully inform all Community Name participants in the project about the purpose, design, and methods used in the research project.

2. Seek the informed consent of Community Name participants and their representative organizations in the research.

3. Maintain the confidentiality of responses by individual Community Name participants in the research.

4. Acknowledge the participation of Community Name participants in the research.

5. Seek, respect and consider the viewpoints of Community Name participants in the design and conduct of the research.

6. Ensure that all publications which result from the research are distributed to Community Name participants.

Community Name representatives will:

1. Provide the necessary endorsements for the researchers to gain introductions to community members.

2. Share data and research publications with researchers as appropriate.

3. Provide expertise and comments to the researchers on the research design, methods, and preliminary results during the course of the research.

Signed this ____________________ day of __________________ 2003.

_________________________________  ______________________________

on behalf of Community Name _______ on behalf of Faculty of Forestry, Univ. Toronto
# Appendix D: Examples of Node Lists and Category Development

<table>
<thead>
<tr>
<th>Original Nodes</th>
<th>Categories (if was a negative or positive influence)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resource and capacity differences</td>
<td>Representation, resource and capacity differences (-)</td>
</tr>
<tr>
<td>First Nation representation issues (authority, consistency, follow up)</td>
<td></td>
</tr>
<tr>
<td>Lack of provincial policy re Aboriginal rights and forestry</td>
<td>Lack of policy/contested legislative framework (-)</td>
</tr>
<tr>
<td>Lack of broader framework (CFSA determines scope, power from tenure, limited treaty interpretation)</td>
<td></td>
</tr>
<tr>
<td>No Condition 77 strategy</td>
<td></td>
</tr>
<tr>
<td>Lack of First Nation vision</td>
<td>Contested Scope (-)</td>
</tr>
<tr>
<td>Worldviews of forest, rights, problem</td>
<td></td>
</tr>
<tr>
<td>Problem focused vs. vision focused</td>
<td></td>
</tr>
<tr>
<td>Aboriginal rights vs. economic development</td>
<td></td>
</tr>
<tr>
<td>“We are all benefiting”</td>
<td>Ability to focus on shared goals and recognize interdependence (+)</td>
</tr>
<tr>
<td>Shared economic development focus</td>
<td></td>
</tr>
<tr>
<td>Separate rights from economic development</td>
<td></td>
</tr>
<tr>
<td>First Nation vulnerable to industry benevolence</td>
<td>Lack of Trust (-)</td>
</tr>
<tr>
<td>Quantification</td>
<td></td>
</tr>
<tr>
<td>Lack of Trust</td>
<td></td>
</tr>
<tr>
<td>No recognition of efforts</td>
<td></td>
</tr>
<tr>
<td>Role of leaders</td>
<td>Supportive individuals (+)</td>
</tr>
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</table>
### Development of Nodes, Categories and Core Outcomes

<table>
<thead>
<tr>
<th>Initial Categories</th>
<th>Initial nodes</th>
<th>Revised sub-categories</th>
<th>Revised Main Categories</th>
<th>Core Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>CLFN Outcomes</td>
<td>community participation in FMP</td>
<td>community participation in FMP</td>
<td>relationship/communication</td>
<td>recognition of interdependence</td>
</tr>
<tr>
<td></td>
<td>increased understanding of FN desires</td>
<td>changes in relationships</td>
<td></td>
<td>focus on shared goals</td>
</tr>
<tr>
<td></td>
<td>Hearst reactions to blockade/negotiation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>relationship negative/positive changes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>efforts not recognized</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>vision focus vs. problem focus</td>
<td>status of trust</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>trust (see factors influencing)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>economic development</td>
<td>forest business lessons</td>
<td>economic development</td>
<td>development of business expertise and partnership experience</td>
</tr>
<tr>
<td></td>
<td>forest business</td>
<td>compensation discussion</td>
<td>compensation discussion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>structure/mgmt. problems</td>
<td>lessons/paradoxes</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>economic development</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>power changes</td>
<td>changes in power</td>
<td>power</td>
<td>definition of the scope of negotiations</td>
</tr>
<tr>
<td></td>
<td>understanding of power and other limitations</td>
<td>recognition of power</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>community identity/vision</td>
<td>community empowerment</td>
<td></td>
<td>strengthening of First Nation identity and power</td>
</tr>
<tr>
<td></td>
<td>community threats/coercion</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>increased information/forest sector knowledge</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MCFN Outcomes</td>
<td>relationships</td>
<td>personal relationships</td>
<td>relationships</td>
<td>development of relationships</td>
</tr>
<tr>
<td></td>
<td>understanding each parties interests</td>
<td>shared understanding of interests</td>
<td></td>
<td>increased understanding among the parties</td>
</tr>
<tr>
<td></td>
<td>limits of relationship building</td>
<td>recognition of limits of relationship</td>
<td></td>
<td>definition of the scope of negotiations</td>
</tr>
<tr>
<td></td>
<td>different views on progress</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>OMNR maintain mandate</td>
<td>status of trust</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>trust (reduced with negotiation)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>learning about negotiation</td>
<td>learning about process</td>
<td>learning</td>
<td></td>
</tr>
<tr>
<td></td>
<td>learning about others different interests</td>
<td>learning about frames</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Appendix F: The Context for Collaboration

A. The Boreal Forest

According to the OMNR ecological classification system, the forestlands that were the subject of negotiations (the Hearst Forest Management Unit (FMU), and the Superior FMU) fall within the Ontario Shield Boreal ecozone (Crins et al. 2009). The Hearst FMU is primarily within ecoregion 3E (also known as Hill’s site region 3E), although the traditional territory of the CLFN and the northern portions of the Hearst FMU extend into the Hudson Bay Lowlands ecozone and ecoregion 2E (Crins et al. 2009). The Superior FMU was located within ecoregion 4E (Crins et al. 2009) or the Missinaibi-Cabonga section of the Boreal forest (Rowe 1972). The MCFN pre-1900 land use also extends into the Hudson Bay Lowlands ecozone (Lovisek 2003).

The Boreal forest occurs in a band across Ontario from the northern limits of the Great Lakes-St. Lawrence forest, with its dominant deciduous hardwoods and white and red pine, to the wetland-dominated Hudson Bay Lowlands (Watkins 2011). The Missinaibi-Cabonga section of the Boreal forest region includes the height of land between the Great Lakes and Hudson Bay and thus it contains some species of the Great Lakes-St. Lawrence forest region, either as scattered individuals or in isolated patches (Watkins 2011). Travelling north towards James Bay and Hudson Bay, the forest transitions from Boreal forest to subarctic tundra. Peatland (or muskeg) with sparse patches of black spruce and tamarack characterizes most of the Hudson Bay Lowlands, with denser patches of white and black spruce, balsam fir, and white birch occurring on riverbanks or on localized uplands where the drainage is good (Fahlgren 1985). The northernmost limit of commercial forestry in Northeastern Ontario also corresponds with the beginning of the peatlands of the Lowlands, roughly the 50th parallel. This Lowlands area has never been considered suitable to support commercial forestry because of low productivity, poor regeneration potential and excessive wetness (Fahlgren 1985, plate 45).

Boreal forests are disturbance driven, more so than other forest types, with fire, windstorms and insect outbreaks initiating the regeneration of large areas (McRae et al. 2001). Among these disturbances, large-scale fires are considered the most important stand-replacing disturbances in
the Boreal forest (Bergeron and Harper 2009). Most of the Boreal forest is dominated by black spruce (*Picea mariana*) occurring in monospecific stands that are usually even-aged except in lowland sites (OMNR 1997). Several other conifer tree species and hardwoods exist as minor or major components of ‘boreal mixedwood stands’ depending on the local climatic, topographic and soil conditions and disturbance history (OMNR 2003). Black spruce is also the most economically desirable timber species and has since the turn of the century fuelled Ontario’s large, export-oriented forest industry, largely because of its abundance, consistency and suitability for paper production.

Where commercial forestry occurs in the Boreal, the forests are primarily clearcut. In clearcut harvesting, most, or all, of the existing overstorey is removed in one operation. Clearcut harvesting has been promoted as the most suitable silvicultural system for harvesting and regeneration in the Boreal forest because it is efficient and because it supports the regeneration requirements of black spruce and it produces even-aged stands similar to natural disturbance regimes, such as fire (OMNR 1997). Variations on clearcut harvesting, such as Careful Logging Around Advanced Growth (CLAAG) or Harvest with Regeneration Protection (HARP) which leave more ‘residual’ trees in various patterns, to mimic natural disturbance, were in use at the time of this study but not widely in either the Hearst or Superior FMU areas (OMNR 1997; HFMI 2007; Tembec 2011). Emulating natural disturbance is supported in policy and practice in Ontario (OMNR 2001b) but both its application through the clearcut silvicultural system and its ecological consequences are largely unexamined (Brassard and Chen 2010; Groot et al. 2005; Thorpe and Thomas 2007). Clearcut harvesting continues to be controversial. While our understanding of Boreal natural disturbance regimes remains fragmentary, research has revealed that in many parts of the Boreal, large-scale fires that produce even-aged stands may not have been omnipresent and longer fire cycles may apply (Bergeron et al. 2004; Bergeron and Harper 2009). There are also significant differences between fire and clearcutting affecting both the forest structure and composition, at stand and landscape scales (Brassard and Chen 2010; McCrae et al. 2001).
B. The Provincial Forest Policy Setting

The provincial forest policy setting influences the relationships between Aboriginal peoples and the OMNR and forest industry managers of natural resources\(^{13}\). In the province of Ontario, 91% of the land base is designated Crown land (NRCAN 2004). Crown lands and natural resources, including forests are the responsibility of the provincial government, specifically the OMNR, who manages them on behalf of all Ontarian’s. Within the OMNR, forests, wildlife, water, fisheries, and parks are divided among the bureaucratic structure and regulated according to various legislation and regulations, which set out the rules of access, use and control. The total area of First Nation federally reserved lands (reserves) in Ontario is extremely small (1.55%) (Bartlett 1983) and reserves fall within the core of federal responsibilities\(^{14}\) making them subject to Indian Act provisions related to land management and largely unsuitable for forest harvesting or use. Those lands that an Aboriginal group used and occupied historically, and for which they may or may not pursue a claim in formal Federal or Provincial land claims processes are known as First Nation traditional territories, and are much more extensive than current reserves. First Nation traditional territories thus usually overlap with Crown land, which is licensed to private sector corporations for forest management\(^{15}\).

The Crown Forest Sustainability Act (CFSA), 1994, the Forest Management Planning Manual (FMPM) (OMNR 1996; OMNR 2004) and the conditions arising from the Class Environmental Assessment for Timber Management on Crown Lands in Ontario (EAB 1994) (known as the EA), directs forest harvesting in these lands. Crown forestlands within the AOU area are divided up into territorial units for forest management purposes with boundaries defined by historical

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\(^{13}\) Smith’s (2007) thesis focuses on the macro-level international and national and provincial institutional impediments to the inclusion of Aboriginal peoples and their rights in forest management.

\(^{14}\) Following the Constitution Act, 1867, legislative authority of the federal government includes “Indians, and Lands reserved for the Indians”. Whereas the provincial parliament may make laws related to, “the management and sale of the public lands belonging to the Province and of the timber and wood thereon”…(and) in each province, the legislature may exclusively make laws in relation to…development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom.”

\(^{15}\) Collectively, I call these corporations, which are usually large, vertically integrated and publically traded ‘the forest industry’.
usage, or other administrative reasons. Generally, this means that for Aboriginal peoples in the Boreal forest of Ontario, the OMNR and these related policy instruments shape how they can access and use their territories, and carry out their land-based Aboriginal and treaty rights. Importantly, at the time of this study there were no provincial-level policies or processes that identified, defined or recognized Aboriginal and treaty rights in the province.


The province developed the CFSA (1994) concurrently with the EA process to replace the outdated Crown Timber Act (1952). Where the previous act was only concerned with facilitating harvesting and regeneration of timber on a sustained yield basis, the purpose of the CFSA is to “provide for the sustainability of Crown forests and, in accordance with that objective, to manage Crown forests to meet social, economic and environmental needs of present and future generations”. The CFSA directly mentions Aboriginal peoples in two places, in a non-derogation clause (section 6) and in section 23 stating that “the Minister may enter into agreements with First Nations for the joint exercise of any authority of the Minister”. The effect and meaning of non-derogation clauses in federal and provincial legislation is still unclear (Standing Senate Committee on Legal and Constitutional Affairs 2007). Smith (2007, 95) notes that section 23 has never been used by any Minister but could facilitate the negotiation of cooperative arrangements with Aboriginal peoples. Otherwise, the CFSA was primarily significant for Aboriginal people because it defined sustainability, for the first time, as minimizing adverse effects on social and economic values, including heritage values. The FMPM, a regulation under the CFSA, outlined the requirements for the preparation and approval of forest management plans and for determining how sustainability would be assessed.

The CFSA and FMPM were also significant because they identified requirements for public consultation and Aboriginal consultation in forest management planning. Local citizens committees (LCCs) were established to “obtain the public’s views on the desired benefits from the management unit which can be achieved through management of forest cover” (OMNR 1996, A-154). From the outset, Aboriginal groups voiced their concerns that LLCs were not suited to the unique status of Aboriginal people as treaty right-holders and the distinct government-to-government role sought by First Nations (NAFA 1995). In general, LCCs do not have adequate Aboriginal involvement (Parkins et al. 2006) and participants generally represent
economic interests (e.g., forestry company representatives, forestry company workers, independent logging contractors, tourist operators, trappers, bait fishers), leisure interests (e.g. anglers, hunters, non-consumptive recreationists), environmental organizations, local chambers of commerce, and the general public (Robson and Hunt 2010).

The FMPM (OMNR 1996) also described the public consultation program and a separate but parallel Native consultation program, which was available for Aboriginal communities who requested it. Both the public and the Native consultation schedule outlined providing an invitation to participate, and three information centre meetings or community meetings (in the case of the Native process), each followed by a 60 day period within which community responses were due (OMNR 1996). A measurable indicator of sustainability was to be the “percentage of Native communities in or adjacent to the management unit involved in the special Native consultation option” (OMNR 1996, C-67). The manual also required that “Native background information reports” and “Native values maps” be prepared and included in forest management plans. However, as McGregor (2000, 90) notes a Native background information report (with a Native values map) was required for forest management plan approval, but Aboriginal participation was not. Native background information reports and Native values maps could be, and were often, developed with little or no Aboriginal participation. Once Native values are identified they are considered an ‘area of concern’ and a general process which applies to all site-specific features, such as heron rookeries, or osprey nests, is used to protect them (OMNR 2004). Depending on the value, modifications to harvest operations may be applied or a buffer around the area is created where no timber management operations occur (OMNR 2004).

The FMPM also requires that several forest management guidelines be used in the preparation and implementation of a forest management plan. The 1991 Timber Management Guidelines for the Protection of Cultural Heritage Resources (OMNR 1991) served as the main guideline for the protection of Aboriginal values. This guide was not developed for the protection of Aboriginal

16 The data required in the Native background information report included: a summary of past timber use by the community, a summary of past resource use, a Native values map with location of specific features, land uses and values, including areas of traditional significance, traplines, reserves, areas used for fuelwood or building materials, and sites of cultural heritage, religious or archaeological significance, a summary of forest-management related problems or issues which arose in the last five years, and a summary of the success or failure of negotiations at the local level related to economic and social benefits of forestry (OMNR 1996, A-10).
values but rather focused on historical values such as “activities, endeavours, or events of the historic and Prehistoric periods in Ontario” (OMNR 1991, 4), which could be “defined geographically and mapped at a specific location” (OMNR 1991, 4). No guide dealt with Aboriginal values not associated with physical remains, or a specific location, or which were not ‘historical’. An updated version of this document reflects a continued static perspective of Aboriginal values in forest management planning (OMNR 2007).

Finally, as a last method for ensuring the public’s concerns are addressed in forest management planning, anyone not satisfied with a forest management plan can initiate an OMNR conflict resolution process, involving a review by the OMNR Regional Director. Likewise, anyone can make a “bump-up” request to the Minister of Environment for a full environmental assessment during the planning process (EAB 1994, 518). The Minister determines the validity of the request and whether to proceed with an individual assessment. When bump-up requests have been submitted related to the protection of Aboriginal values and Condition 77, OMNR has been found to be in compliance with the conditions of the EA (OMNR 2002a, 6). The OMNR has noted “disagreements about the potential for addressing Aboriginal values in a forest management plan, as well as the strategies developed to deal with certain values, still occur” (OMNR 2006, 530).

In 1994, the Native consultation program was approved by the EA Board because it was anticipated to provide “opportunities for First Nations and Aboriginal communities to get recognition for their unique concerns” (EAB 1994, 13) in forest management planning. Unfortunately, there were no guidelines for how these ‘unique’ concerns should be addressed in Aboriginal consultations, or how Native values map information was to be collected or used. OMNR District offices who oversee the development and approval of forest management plans for the forest management units within their Districts had significant autonomy to determine how they would approach the Aboriginal communities in their area. The potential for inconsistencies across Districts was high and as McGregor (2000, 178) notes rather than resulting from a desire for flexibility at the local level, inconsistencies often related to a low level of competency with
regards to Aboriginal participation and commitment and experience of OMNR staff. It is likely that the skills, attitude and experience of individual OMNR District Managers (and other key planning team members) have played a large role in determining the scope and scale of Aboriginal peoples’ involvement in forest management planning, but no studies have explored this factor. In her thesis on this topic, McGregor (2000, 75) describes how the Native consultation program from its early days reflected incongruent Aboriginal and OMNR perspectives on a variety of fundamental issues, particularly the appropriateness of addressing Aboriginal concerns at an OMNR District level rather than on a government-to-government level. While unique in Canada, the Native consultation program and efforts to define, map and protect Native values through the FMPM were deemed to be not compatible with the goals and needs of Aboriginal peoples (McGregor 2000, 162).

At the time of this study, the degree to which Aboriginal communities participated in forest management planning and satisfaction with that participation was variable. Some communities were not involved in forest management planning at all or they participated sporadically, to obtain information, rather than provide information (NAFA/IOG 2000). Other communities participated in part or all of a plan preparation process by having a representative on the planning team or contributing to Native value identification (OMNR 2002a). Many Aboriginal people found the process unacceptable due to their differing perspectives on Aboriginal ‘values’ and a feeling of ‘futility’ with the process, because they felt Aboriginal values were not actually protected following their identification or Aboriginal grievances were ignored (McGregor 2000; Sapic, Runesson and Smith 2009). Disappointment with the inability of the process to address forest-harvesting access issues or Aboriginal and treaty rights-based concerns and the lack of capacity and technical forestry expertise in Aboriginal communities were also barriers to FMPM acceptance and participation.

For Aboriginal people, the Native consultation process, which was the only consultation available, was also ineffective because it was hampered by a “lack of capacity” in First Nation communities (Kepkay 2007; Stevenson and Perreault 2008). In 2002, a NAN Forestry

\[\text{\textsuperscript{17}}\]

\textsuperscript{17} The capacity in OMNR to address Aboriginal issues was also likely impacted by a significantly reduction in OMNR funding and staff concomitant with the introduction of the FMPM (Clark and Yacoumidis 2000).
Coordinator position was created, specifically to provide advice and information to NAN First Nation communities regarding forest management planning and forest-related economic development (David Flood, pers. comm. 2003). The OMNR also endeavored to increase Aboriginal capacity to participate in forest management planning by supporting community Aboriginal Liaison officers, under the direction of a regional Aboriginal Liaison coordinator, based out of Sault Ste. Marie. In 2003, eight individuals were employed in Liaison positions in the Northeast Region (Bob Johnson, pers. comm. 2003). At the time of this study, both OMNR District offices involved in the negotiation processes supported Liaison officer positions.

Aboriginal communities like CLFN, often decided to try and initiate more meaningful consultation and achieve their broader goals by participating in various form of direct action. Between 1997 and 2003, in Northeastern Ontario, approximately eight First Nation communities were involved in blockades or protests related to forest management (e.g., Constance Lake, Wahgoshig, Taykwa Tagamou, Hornpayne, Aroland, Marten Falls, Eabametoong, Mishkeegogamang). In other parts of Ontario, blockades and legal challenges against forest management planning also occurred (e.g., Grassy Narrows First Nation). First Nation communities were also involved in pursuing their forestland rights and responsibilities through court proceedings, land claims, provincial territorial organization (PTO) level lobbying efforts, community business initiatives, or partnerships with environmental groups.

In short, the FMPM process at the time of this study was not considered suitable or sufficient for addressing Aboriginal values (even those narrowly defined as historical, point-specific values), and Aboriginal peoples’ experiences with the forest management planning process, LCCs and Native values mapping was generally negative and frustrating. Broader issues, such as obtaining a share of the benefits derived from forest management on Aboriginal traditional territories, collaboratively determining a process for ‘meaningful consultation’ (NAN 2001),

18 The updated 2004 FMPM continued to approach Aboriginal peoples and their ‘values’ in much the same way. A new provision was included for an Aboriginal community representative to be appointed to the planning team and for jointly establishing a ‘consultation approach’ including “requirements regarding notices, consultation forums, information availability, written responses to comments and submissions, and opportunities to consult directly with representatives from the planning team and the local citizens committee” (OMNR 2004, A-130). Aboriginal organizations and communities continue to maintain that the provisions in the FMPM for Aboriginal participation are inadequate and that they are not meaningfully consulted (Nashkawa 2005).
obtaining access to forest resources and forest-related business opportunities continued to be sources of disagreement during the time of this study. At the time of this study the OMNR maintained that:

the forest management planning (FMP) process is also not intended to be a vehicle for the resolution or definition of the nature and scope of treaty and Aboriginal rights…where uncertainty or disagreement continues to exist…those issues may need to be resolved through litigation or appropriately mandated processes at the federal/provincial level (OMNR 2005, 26).

I have outlined the FMPM requirements for Aboriginal consultation because defining meaningful consultation (in terms of the locus of decision-making, the degree of consultation, and the attendant financial and technical support provided to Aboriginal communities) for the protection of Aboriginal ‘values’ was a fundamental issue that permeated the relationships between the three parties at the time of this study. At its core, the failure of the FMPM for Aboriginal people reflected the position of the OMNR regarding Aboriginal and treaty rights at the time. This position is described in detail in the last section of this chapter. The following section describes the EA decision and Condition 77, related to Aboriginal peoples involvement in the ‘business’ of forest management, and how it affected the context of intercultural collaboration in this study.

B.2 Class Environmental Assessment for Timber Management on Crown Lands in Ontario

Under the authority of the *Environmental Assessment Act (1975)*, a Class Environmental Assessment was carried out to determine if timber harvesting (the undertaking) “served the betterment of the people, of the whole or any part of Ontario, by providing the protection, conservation and wise management in Ontario of the environment” (s.2). After four and a half years of extensive public hearings and submissions from various groups, the EA Board approved timber harvesting subject to 115 terms and conditions (EAB 1994). The EA recognized that:

Aboriginal peoples should, but do not, have the same access to the benefits of timber management planning as do other northern communities and forest users in the area of the undertaking. This exclusion has developed as a result of historical circumstances and ongoing uncertainty about the meaning and definition of Treaty and Aboriginal Rights (EAB 1994, 346).

The EA was also significant because it recognized that “off-reserve timber must be made
available for harvesting to the Aboriginal communities, or they cannot begin to improve their economic situation” (EAB 1994, 362). To this end, the EA Board created Condition 77, outlining a legal requirement for OMNR to conduct negotiations with Aboriginal peoples, which states:

During the term of this approval, MNR District Managers shall conduct negotiations at the local level with Aboriginal peoples whose communities are situated in a management unit, in order to identify and implement ways of achieving a more equal participation by Aboriginal peoples in the benefits provided through timber management planning. These negotiations will include but are not limited to the following matters:

a) providing job opportunities and income associated with bush and mill operations in the vicinity of Aboriginal communities;

b) supplying wood to wood processing facilities such as sawmills in Aboriginal communities;

c) facilitation of Aboriginal third-party license negotiations with existing licensees where opportunities exist;

d) providing forest resource licenses to Aboriginal people where unallocated Crown timber exists close to reserves;

e) development of programs to provide jobs, training and income for Aboriginal people in timber management operations through joint projects with Indian and Northern Affairs Canada;

f) and other forest resources that may be affected by forest management or which can be addressed in the timber management planning process as provided for in Condition 23(c) (EAB 1994, 374-5).

Condition 77 was the EA Boards response (given their mandate limited to timber management planning and not licensing or the definition of Aboriginal and treaty rights) to what they concluded were “adverse environmental impacts of a social and economic nature” (EAB 1994, 346) for Aboriginal peoples from timber harvesting as it occurred at the time. The degree to which these adverse impacts have been remedied as a result of Condition 77 is unclear.
There is some evidence that Condition 77 (along with a number of other factors at work throughout Canada\(^\text{19}\)) has increased Aboriginal peoples involvement in the actual business of forestry, including silviculture contracts, trucking opportunities, joint ventures, timber allocations, and bush and mill employment. One study commissioned by the Union of Ontario Indians and the OMNR concluded that Aboriginal involvement in forestry has increased (Transitions 2003) which the author attributed to increased interest and capacity on the part of First Nations, increased commitment from OMNR and the forest industry and improved cooperation, understanding and trust between all three groups. Likewise, OMNR reports that timber allocations offered to Aboriginal communities have increased steadily (OMNR 2009).

However, there have been many criticisms of Condition 77 (later called Condition 34)\(^\text{20}\). For example, criticisms include that the OMNR has not satisfied the original EA decision and their recommendations (NAFA 1995), that there was no Aboriginal consultation in the development of guidelines (Smith 2007), that the draft implementation guidelines are narrow (McKibbon 1999), that there are no mechanisms to measure implementation progress, and there has been a lack of consistent, timely and clear reporting on progress to meet Condition 77. There have also been more general assessments on progress towards Aboriginal economic sharing of the benefits of forest management, which consider Condition 77 a “dismal failure” (McKay 2006, 19) and that despite Condition 77, the OMNR has made no significant changes to policy or procedures to address the exclusion of Aboriginal people from the economic benefits of timber harvesting.

There were also inconsistencies with implementation and differences across Districts with regard to how Condition 77 was interpreted and applied. For example, in some Districts, Condition 77 was thought to only apply to First Nation communities and not Aboriginal-owned businesses (Bioforest 2004). It was also unclear what influence or authority District Managers had or should

\(^{19}\)Wyatt et al. (2010, 15) describes several factors driving Aboriginal peoples involvement in forestry economic collaborations in Canada, including, the definition and recognition of Aboriginal rights, tenure changes, and forest certification processes.

\(^{20}\)As a result of the review of the EA approval conducted by OMNR, in 2002, Condition 34 replaced Condition 77 but the text remained essentially the same. References to ‘timber’ were updated to ‘forest’, reference to ‘unalienated’ was updated to ‘unallocated’, and reference to ‘the Department of Indian and Northern Affairs’ was updated to ‘Indian and Northern Affairs Canada’ (OMNR 2002a). I call it Condition 77 or 34 depending on which applied at the time I am referring to, even though the Conditions were nearly identical.
assume to influence the allocation of overlapping forest licences or approval of SFL transfers prior to addressing First Nation concerns. Some District Managers were perceived as making a stronger commitment to “leaning on the forest industry to make opportunities available” (Terry Wilson, pers. comm. 2012). Finally, it was unclear to most individuals involved, how Condition 77 negotiations differed from the forest management planning process. Forest management plans reported on the outcomes of Condition 77 negotiations and these negotiations often included discussions about ‘consultation’ and approaches for Aboriginal participation in forest management planning. In some cases Aboriginal communities brought forward an issue in the forest management planning process only to be told that it was better suited to a Condition 77 negotiation and vice versa. This led to District Managers and planning team members making determinations about the ‘scope’ of both the forest management planning process and Condition 77 negotiation processes. If Aboriginal interests were considered to potentially touch on Aboriginal or treaty rights-based claims, for example, infringement, accommodation, compensation, or priority forest access or benefit sharing, they were considered ‘beyond the scope’ of both processes. Likewise, the interests and policies of the particular forest industry operating on the Aboriginal traditional territory, and the relationship between the District OMNR staff and the forest industry often influenced the initiation and commitments arising from Condition 77 negotiations. There was great variation across the Treaty No. 9 area of the AOU, in terms of what kinds of forest opportunities were considered ‘on the table’ and how these were determined.

OMNR has acknowledged that since its inception, Condition 77 has been challenging to implement because most timber is already allocated to SFL holders (OMNR 2002b) and thus dependent on their cooperation. OMNR and industry managers also consider that Condition 77 implementation is limited by lack of capacity within Aboriginal communities and will improve as First Nations demonstrate through a track record of business success that their members possess the necessary technical skills and capacity to manage forest-related enterprises or deliver on forest-related contracts (Transitions 2003). OMNR has also noted that “the subject of Aboriginal and treaty rights has sometimes complicated local negotiations between District Managers and Aboriginal peoples” (OMNR 2002b, 185) but they maintained that the EA Board direction was clear, that the negotiations referred to in Condition 77 should not include matters related to Aboriginal and treaty rights.
There has been very little research on the negotiation processes resulting from Condition 77 and their outcomes, aside from broad OMNR reporting on the topic. A phone survey of Aboriginal communities in Northeastern Ontario to establish case study location for this research demonstrated that in 2003, almost 10 years after Condition 77, in many instances ‘negotiations’ had consisted of phone conversations between OMNR staff, or forest industry managers and a First Nation Chief or councilor. The negotiations examined in this study, which were considered to meet the requirements of Condition 77 by OMNR, were multi-year, tri-partite, comprehensive negotiations with outside facilitation. No previous study has explored the negotiations at either end of this spectrum or determined if they have addressed the adverse and unique impacts identified by the EA board. Some of the negotiations carried out to fulfill Condition 77 requirements have produced signed agreements and others have been abandoned. It is not clear if underlying issues related to Aboriginal and treaty rights are responsible for the failure to reach agreement or the abandoning of local negotiations or if there are other factors that affect the outcomes of these negotiations.

At the time of this study, the general recommendation, which had emerged, was that Aboriginal people should keep their negotiations with OMNR and forest industries operating on their territories “outside the process dealing with issues of treaty and Aboriginal rights and land claims” (Transitions 2003, 35). Unfortunately, neither in the past, nor currently, has there been a suitable ‘process’ for dealing with issues of Aboriginal and treaty rights in Ontario. Business-to-business relationships and arrangements directly with forestry industries (with or without OMNR facilitation or involvement) were thought to provide more immediate benefits to First Nation communities, than negotiations, which involved more people, and broader issues. Thus, while Condition 77 was significant to initiating the negotiation efforts examined in this study, it was by 2003, considered merely a form of leverage communities could use to ensure that OMNR and forest industry sat down with them to explore forestry-related economic opportunities. First Nations also recognized that Condition 77 negotiations were not the panacea they hoped for and they could not affect broad tenure changes or the distribution of power and decision-making authority, which were considered fundamental for Aboriginal peoples aspirations. Rather Condition 77 became for many Aboriginal communities a starting point for long-term, gradual relationship building and obtaining progressive commitments for training, harvest allocations, and business developments. Multi-year, tri-partite facilitated negotiations aimed at developing a
collaborative agreement, in response to Condition 77 and later Condition 34, have for various reasons, including the economic downturn in the forest industry, largely fallen out of use. The MCFN process represents one of the last of these kinds of negotiations. More recently, forest certification approvals in the region are motivating industry applicants to either continue or initiate negotiations with Aboriginal communities with an interest in their SFL area (e.g., Smartwood 2006).

B.3 Tenure and Land Use Planning in Northern Ontario

The tenure system – the process by which the provincial government decides who can harvest trees on Crown land – has not changed since the first area-based timber licenses were negotiated with mill-owning corporations at the turn of the last century. The tenure system and related land-use planning processes significantly affect OMNR, Aboriginal and forest industry relationships.

Under the CFSA, the Minister of Natural Resources, through a competitive process awards SFLs for a 20-year term, which can be renewed for 5 years, provided that the licensee has complied with the conditions of the license. Until very recently, all SFLs in Ontario were held by corporations with processing facilities, or shareholder-based companies established to act as the SFL holder, or managed by the Crown. SFLs are free to obtain and because they contain great value they are retained and transferred between corporations as they merge or are bought-out. Most SFLs have Ministerial wood supply commitments (legislated under the CFSA) associated with them. These commitments direct the timber within the management unit to a particular mill, corporation or forest operator. Timber resources are also subject to commitments arising from licensees’ private-sector union collective agreements, which determine who can be employed to harvest timber in a particular area. Thus, the tenure system had the important effect of limiting Aboriginal people from participating in any significant way in timber harvesting and associated silvicultural activities and also excluding them from timber allocation decisions.

Ontario’s tenure system, including the nature of the rights granted, and to whom they were granted, was at the time of this study and for some time previous to this, considered to be at the root of several forest policy problems. ‘Tenure reform’ was deemed particularly relevant and necessary to protect other forest values, to reduce the vulnerability of forest dependent communities and for the protection and accommodation of Aboriginal and treaty rights (Curran and M’Gonigle 1999; Ross and Smith 2002; Williams, Clark and Wedeles, 2010) but at the time
of this study, making fundamental changes to the tenure system was not promoted by OMNR. A review of tenure has only recently been undertaken by the province in response to Ontario’s economic ‘forestry crisis’ and resulting ‘wood hoarding’ by existing SFL holders. In May 2011, the *Ontario Forest Tenure Modernization Act* was passed. This act establishes Local Forest Management Corporations (two of which are currently being piloted with Aboriginal participation) with the goal of creating a greater separation between wood-consuming mills and the management of Crown forests.

Two other land use-planning processes, the Lands for Life process and the Northern Boreal Initiative (NBI), also influenced the context for Aboriginal, OMNR and forest industry collaboration. The Lands for Life process was controversial, with Aboriginal representatives eventually withdrawing from the process, “due to lack of meaningful consultation and the ignoring of Aboriginal and Treaty Rights” (NAN 2007). Subsequent negotiations, aimed primarily at addressing the concerns of the forest industry and environmental groups, resulted in these groups signing the Ontario Forest Accord in March 1999 (referred to as ‘the Accord’). Aboriginal peoples were excluded from the Accord negotiation process and this contributed to a generally strained relationship between the OMNR, Aboriginal peoples and the forest industry in Ontario at time of this study.

The Accord committed the OMNR, forest industry and the environmental groups to supporting “a representative system of parks and protected areas encompassing 12% of the Lands for Life planning area” (OMNR 1999) on the premise that there would be no increase in the cost of wood delivered to the mill and no long-term reduction in the supply of fiber (OMNR 1999). In order to mitigate reductions of future wood supply resulting from protected areas and to address a perceived future divergence between timber supply and demand, long and short-term approaches to increasing timber supply including intensive forest management, and the development of forestry north of the AOU were envisioned. The NBI was initiated in 2000 to facilitate the commitments of the Accord, particularly the “orderly development of areas north of the AOU” (OMNR 1999). The Accord included a commitment that any development north of the AOU would be subject to full agreement of affected First Nations communities (OMNR 1999).

The OMNR, in their NBI concept document, proposed a partnership approach, with Treaty No. 9 signatory First Nations in the area immediately north of the AOU. They proposed that “First
Nation communities will lead *Community-centered* planning … [and would be] encouraged to share in the responsibility for broader planning and its integration with the *Community-centered* process” (OMNR 2001a, 9). Changes in tenure were not contemplated, but for the first time, First Nation communities might become the tenure holders (OMNR 2001a). NAN representatives identified their concerns with the NBI process including that,

> it must be done in a sustainable basis using the knowledge of our people of the land. …The MNR must act in a manner which is respectful of our Treaty and Aboriginal rights and need to consult with us on the basis of these rights. We will not allow the NBI to be used to divide and conquer us or diminish our rights (Ferris 2001, pers. comm.).

It was these concerns and a desire to understand the lessons learned from the experiences of communities in the AOU involved with forestry industry and OMNR, which contributed to the development of this study.

Community-land use planning continues to occur in the northern part of Ontario. The work initiated under the NBI, has now been subsumed under new legislation, called the *Far North Act* (2010), ‘an Act with respect to land use planning and protection in the far north’. This Act has also been met with resistance from NAN and it is unclear if this legislation will enable communities to play a significant role in planning and serve as a mechanism for improved collaboration.

C. The Legal Context for Aboriginal and Treaty Rights in Ontario

Aboriginal and treaty rights, have since 1982, been recognized and affirmed by the *Constitution Act*. However, Aboriginal and treaty rights and attendant issues of concern to First Nations, such as First Nations informed consent prior to timber harvesting, resource benefit sharing, and compensation for the infringement of treaty rights were at the time of this study not considered to be within the scope of OMNR jurisdiction and were excluded from forest management planning, Condition 77 negotiations, and largely from provincial forest policy.

In Northern Ontario, this lack of recognition and accommodation of Aboriginal and treaty rights has come about largely because of the provincial governments interpretation of Treaty No. 9 and their assertion that:
the parameters of Treaty and Aboriginal Rights, both in a legal context and otherwise remain to a large extent undefined. Consequently it is not possible to define and assess the potential effects of Timber Management activities on Aboriginal and Treaty Rights (EAB 1994, 352, citing Crystal, p.452 of MNR Argument).

In this section, I briefly provide a context for Aboriginal and treaty rights by describing Treaty No. 9 and its interpretation by Aboriginal people and the subsequent interpretation by the province of Ontario. I also describe evolving case law defining Aboriginal and treaty rights related to forestlands in Ontario.

C.1 James Bay Treaty Number 9

In 1905 treaty commissioners travelled to northern Ontario to negotiate a treaty with the Anishnaabe (Ojibway) and Mushkegowuk (Cree) people inhabiting the unceded lands drained by the Albany and Moose River systems (roughly 235,000 km²) (Canada 1964,1). According to the Treaty report, “increasing settlement, activity in mining and railway construction in that large section of the province of Ontario north of the height of land and south of the Albany River rendered it advisable to extinguish the Indian title” (Canada 1964,1). This treaty followed the pattern codified by King George III’s Royal Proclamation of 1763, which recognized Aboriginal peoples in British North America as ‘nations’ from whom only the British Crown could acquire unceded land (Borrows 1997). Previous disputes between the province of Ontario and Canada relating to Treaty No. 3 and the decision in the St. Catharine’s Milling case (1888) and subsequent expansion of Ontario’s northern and western boundary meant that for the first time, the province of Ontario had approved the treaty terms that would be offered and was also participating in the treaty negotiations by sending their own commissioner.

Treaty commissioners report that at the various locations where Aboriginal people were assembled they explained the terms of Treaty No. 9, acquired representatives signatures, selected reserve locations and made gratuity payments (Canada 1964). As other authors have noted, treaty negotiations in Canada codified an attempt by “two peoples with mutually exclusive worldviews ... to communicate” (Hildebrandt, First Rider and Carter 1996, xiv). The potential for miscommunication and misunderstanding at the time was immense (Macklem 1997; Morrison 1986). More than 100 years after treaty-making, the divergence between the English language text and Aboriginal people’s own oral history and understanding of Treaty No. 9, continues to be
one of the core problems encountered by Aboriginal and non-Aboriginal people attempting to build relationships related to forests.

Treaty No. 9 was not so much negotiated as it was explained, being that the terms of the treaty were set by the federal government and approved by the province and were written on parchment before the commissioners left southern Ontario. There is considerable evidence that these explanations, aside from facing complications arising from the parties not being able to speak and understand each other’s language and problems with interpretation, contributed to Aboriginal peoples current understanding of Treaty No. 9 as a ‘sharing’ agreement (Long 2010). Treaty commissioners continually re-assured Aboriginal leaders that their fears that:

if they signed the treaty, they would be compelled to reside upon the reserve to be set apart for them, and would be deprived of the fishing and hunting privileges which they now enjoy...were groundless, as their present manner of making their livelihood would in no way be interfered with (Canada 1964, 5).

Aboriginal peoples in the Treaty No. 9 area have always maintained that as sovereign nations their ancestors entered into treaty relationships with the Crown to preserve their way of life and share the land. Terms such as ‘surrender’ and ‘cede’, in the written version of the treaty, assuming that there was even an attempt made to translate them, would not have been interpreted as giving away anything. As many other authors have noted, in most Aboriginal worldviews, the concept of legal title to land, or the ability of one party to exclusively own, divide, surrender, sell or destroy land, as the Crown would have understood it, did not exist (Hildebrandt, First Rider and Carter 1996; LAO 2009; Nadasady 2003). Rather, in establishing a treaty relationship, Aboriginal people were extending rights to the Crown, to share the use of the land. Aboriginal people were assured that reserves, were protected enclaves, that no settlers could use, within a much larger territory, where Aboriginal people would continue to carry out their ‘livelihood’.

Aboriginal people continue to maintain that Treaty No. 9 affirmed their jurisdiction and that their interpretation of the treaty and the oral promises made at the time of treaty signing provide the framework for how the parties should relate to one another (NAN 2012b; Louttit 2012).

The Crown has always interpreted the written text of Treaty No.9 as the extinguishment of Aboriginal title and the basis for their jurisdiction. Regarding natural resources, Treaty No. 9 (following almost identical wording from Treaty No. 3, 1873) states:
And His Majesty the King hereby agrees with the said Indians that they shall have the right to pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the government of the country, acting under the authority of His Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes (Canada 1964, 20).

_St. Catharine’s Milling_ (1888) had previously found that Treaty No. 3 had extinguished Aboriginal peoples title (understood as a form of property ownership) to the land and that federal jurisdiction only extended to lands set aside as Indian reserves after treaty. Essentially, lands subject to treaty were considered entirely under the jurisdiction of the province. The only encumbrance recognized on provincial Crown jurisdiction over resources and lands at the time and well into this decade was that “Indians are entitled to hunt, trap and fish on non-reserve treaty lands except where these lands are taken up from time to time for settlement, mining, lumbering, trading or other purposes”.” (EAB 1994, 352, quoting Crystal 169-170 of Ex. 209).

The province has always maintained that this literal interpretation of Treaty No. 9 (and the other numbered treaties in Ontario) establishes the extent of their obligations to Aboriginal peoples.

OMNR legal representatives in the EA hearings also described the province’s assertion that “the treaties do not contemplate compensation for Indians for loss of their right to pursue these vocations when they are displaced” (EAB 1994, 352 quoting Crystal trans: vol. 44: 7505). The above interpretation represents the OMNR’s perspective on the legal basis of Aboriginal title and Aboriginal and treaty rights at the time that the negotiation processes examined in this study were initiated.

C.2 Recent Court Decisions and Aboriginal and Treaty Rights in Ontario

It has only been in the last few decades, with the constitutional protection of Aboriginal and treaty rights and the increasing definition of Aboriginal and treaty rights in the courts, that a

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21 Despite recognition of the “right to pursue their usual vocations” in Treaty No. 3 and No. 9, Aboriginal peoples in Ontario were required to follow hunting and fishing restrictions and game laws introduced in the late 1800s (Calverley 1999) and faced penalties when they did not. The OMNR only established a “leniency policy” allowing ‘Indians’ to hunt and fish off-reserve for their subsistence needs in 1979. Following the _Sparrow_ decision the policy was reformulated as an “Interim Enforcement Policy” giving enforcement discretion to constitutionally protected Aboriginal rights to harvest fish and wildlife for subsistence purposes, subject to safety, conservation and private property concerns (OMNR 2005, 10).
different interpretation of provincial responsibilities and Aboriginal and treaty rights has begun to gain currency. Since 1990, the courts have held that Aboriginal and treaty rights cannot be extinguished by unilateral governmental action, but they can still be infringed by legislation if the infringement can be justified by proof of a substantial and compelling objective and respect for the Crown's fiduciary obligations to the Aboriginal people concerned (R. v. Sparrow, 1990). The Crown is expected to produce the least infringement necessary, and it is required to accommodate Aboriginal and treaty rights through consultation and potentially through compensation for any loss as a result of infringement. The recent Supreme Court of Canada decisions in Haida Nation v. British Columbia (2004), Taku River Tlingit First Nation v. British Columbia (2004) and Mikisew Cree First Nation v. Canada (2005) have further elaborated the provincial and federal governments’ legal ‘duty to consult’ with Aboriginal peoples when they propose activities that might infringe both Aboriginal and/or treaty rights. As Beamish notes: “the duty to consult and accommodate is rooted in the Crown’s honour, arises when the Crown has knowledge, real or constructive, of the potential existence of an Aboriginal or treaty right and contemplates conduct that might adversely affect that interest” (in McKay 2006, 58).

Summarizing case law Coyle (2007, 406) emphasizes that:

\[\text{the decisions of the Supreme Court in Haida, Mikisew and Taku River established that the Crown has an obligation to consult with Aboriginal peoples where its proposed actions risk violating section 35 rights that have been asserted but not yet proven in court.}\]

Haida also found that if consultation is to be meaningful it should occur at a higher level of land-use planning or granting and renewing licenses to the resource.

Post Haida and Mikisew, Ontario acknowledges that they are legally obligated to respect treaty rights in keeping with the ‘honour of the Crown’ doctrine (OMNR 2006, 514). However, as was demonstrated in the recent legal proceedings determining the interpretation of the ‘taken-up’ provision in Treaty No. 3, brought forward by members of Grassy Narrows First Nation against the OMNR, Ontario “wants to honour the Treaty promise as Ontario narrowly interprets it” (Keewatin v. Minister of Natural Resources 2011, 304). Draft provincial guidelines for consultation are the only tangible evidence of Ontario’s attempt to address its duty to consult and accommodate Aboriginal and treaty rights (Ontario 2006). Unfortunately, these guidelines are considered vague and offering no real guidance on how Aboriginal and treaty rights are to be
pro-actively addressed in keeping with the Crown’s obligations emphasized by the Courts (Coyle 2007; Beardy 2006) nor are they expected to offer any departure from the current *ad hoc* Crown referral process (Morellato 2008, 72). In effect, Aboriginal and treaty rights continue to permeate all discussions and interactions between Aboriginal peoples and non-Aboriginal actors and institutions related to provincial forest activities but at the same time there is no place where these Aboriginal and treaty rights are squarely acknowledged, addressed or reconciled.

Recent court decisions have also determined that it is the Crown alone who holds the duty to consult with Aboriginal peoples. According to *Haida*, the Crown may delegate procedural aspects of consultation, called ‘engagement’, to third parties by statute or regulation but cannot delegate the substantive component of consultation. Thus third parties, for example, forest license holders or mining resource developers, cannot satisfy the Crown’s duty to consult and, “the Crown alone remains legally responsible for the consequences of its actions and interactions with third parties, that affect Aboriginal interests” (*Haida Nation v. British Columbia* 2004, para 53). In *Platinex Inc. v. Kitchenuhmuykoosib Inninuwug First Nation* (2006), the Crown was found to have abdicated its responsibility and improperly delegated its duty to consult to a mining company. However, this case also reveals that third parties, like forestry or mining companies, will not be granted injunction relief when they do not make efforts to resolve issues with affected First Nations in a timely and appropriate manner.

Aboriginal peoples’ efforts to get respect for treaty promises related to forestlands and resources are thus part of a much broader struggle for the recognition of Aboriginal peoples’ original jurisdiction as sovereign and unconquered nations. Because of this ‘nation’ status, it’s confirmation through Treaty No. 9 and it’s continued affirmation in Section 35(1) of the *Constitution Act*, Aboriginal peoples have always upheld, in a forest management context, that they are not ‘just another stakeholder’ (NAFA 1995) but that they are right-holders. More fundamentally, Aboriginal ‘values’ cannot be defined and subsequently protected by institutions and processes that are created without their involvement. Respect for Aboriginal and treaty rights and the original nation-to-nation relationship are inseparable from the day-to-day activities and interactions occurring on the land and in the forests. Attempting to ‘negotiate’ or collaborate on any issue related to Aboriginal people and forest management (e.g., forest access, harvesting opportunities, consultation approaches, protection of Aboriginal values) must thus be understood as part of this broader rights-based struggle.
D. Summary

It is clear from this review of the broader context of this study that forest management collaboration in Ontario between the OMNR, Aboriginal peoples and the forest industry at the time of this study was challenged by a number of factors. The poor relationships and obvious conflicts between the parties can be traced to OMNR’s limited interpretation of Aboriginal and treaty rights and what the Ipperwash Inquiry called a “pattern of excluding any consideration of the treaty rights and economic interests of Aboriginal people” (Linden 2007, 60). Since field research for study was conducted, the collaboration context has changed only slightly. Aside from the 2006 draft consultation guidelines and an alternative tenure approach being piloted, the policy and legislation guiding forest management and Aboriginal consultation in the area of the undertaking remains the same. As a result, the findings of this study provide a ‘snapshot’ of two collaboration processes that continue to offer pertinent lessons and guidance to current collaboration efforts.

In recent years, First Nation litigation related to the CFSA (e.g., Keewatin v. Minister of Natural Resources) and the explosion of new resource developments in Northern Ontario continues to demonstrate that understanding the variables involved and outcomes of intercultural collaboration efforts is still required and relevant. For example, communities near the Ring of Fire (an area with high potential for mineral extraction north of Martin Falls) and in the area covered by the Far North Planning Act continue to come into conflict with the provincial government and resource extraction corporations over what are fundamentally the same questions encountered at the time of this study; why are you operating on our land without our permission? and why are we not involved in developing policies to guide resource extraction based on our communities’ rights, knowledge, and values? A recent national grassroots movement to restore the treaty relationship and address sharing of Aboriginal lands and resources, called Idle No More (Idle No More, 2012), has garnered considerable attention and continues to demonstrate that in some ways that national dialogue about building Aboriginal and non-Aboriginal land and resource-sharing relationships is only just beginning.
E. Reference List for Appendix F


