

Evaluating Municipally-Owned Corporations as Community Forests Governance Structures

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complex mandate of community forests

- **to manage for multiple economic, social and environmental values**
- **respond to different incentives** (community standards often higher than provincial ones)
- **challenging expectations for sustainable management** (on small area, difficult terrain)
- **representative of community & accountable to it** (but often conflicting constituencies)

Main governance structures created by the CFs by 2011

- Tree Farm License (1)
- Cooperatives (3)
- Corporations partnering with other governing bodies and NGOs (5)
- Societies (8)
- First Nations government (9)
- **Municipally-owned Corporations (15)**

Sample size informing this presentation

- 2-week visits to 5 CFs; 2 other brief visits
- Telephone interviews with 4 others
- Published or in-process research on 3 others
- 165 interviews total
- Review of web pages, literature
- Names not used here: **focus on structures & institutional arrangements, not people**

Criteria for evaluating CF governance structures?

A 2006 review of CFA program for MoF

<http://www.for.gov.bc.ca/ftp/hth/external/!publish/web/timber-tenures/community/cfa-program-review-2006.pdf>

offered these criteria:

- have clear **accountability** to the community
- have active and regular **involvement** from a broad range of stakeholders
- can be held **legally liable** for meeting all the conditions of the tenure

Other criteria: evaluate the processes & outcomes of decision making in CFs

- against the goals and objectives specified by the provincial Community Forests Program
- against the community forest's own plans
- against recognized standards for decision making (Clark 2002, Bruner et al. 2005, Tyler et al. 2007)
- against the record of community-based management in many parts of the world without the resources to do senior government monitoring [as in McKean 1992]

...Criteria for evaluating CF governance structures?

Because of time limitations, this presentation focuses mostly on ONE of those evaluative measures:

- **against recognized standards for decision making** (Carver 1997, Clark 2002, Brunner et al. 2005, Tyler et al. 2007)

The Question: ***What is desirable in Community Forest governance?***

Widely recognized standards for decision making

Process

- *Representativeness* (of community)
- *Accountability* (to community, FPB, MoF, FNs)
- *Civic engagement* (community involvement in CF)
- *Transparency* (of decisions)

Outcomes

- *Effectiveness* (in achieving objectives, goals)
- *Adaptability* (learns from experience)
- *Equity* (distribution of opportunities, benefits)

Many CF corporations (not MOCs) have formed valuable partnerships

- Municipalities, regional districts, First Nations
- Municipalities or First Nation and local mills
- More than one First Nation

Have many strengths, and because of need for **accountability among partners**, appear to have fairly **representative and accountable** governance.

municipally-owned corporation = most frequent & most diverse model

- show many ways to design accountability, representativeness, etc. into Articles of Incorporation

MOC1: *expertise, civic duty, stability, honour, non-political*

- CF board members have strong professional forestry & business experience
- Attitude of public service to their community
- Badge of honour; commands respect
- Retired/part-time, volunteer considerable time
- Board membership is stable.
- No town councilors serve on the community forest board -- keeps it non-political

MOC1: *efficient operation of small tenure through cost containment*

- CF board hires part-time management co at c. \$50,000/yr. Knows job well, keeps close eye on management decisions & costs. Gives free expert advice to management & board.
- Creative, terrier-type person demands management fees be well below industry standard (\$3.50/m³); buys pre-existing engineering plans at half price
- Puts management position out for bid after 2 yrs

MOC1: *dependable, comprehensive information available*

Veteran in management company offers advice on experience of sub-contractors: CF awards sometimes to highest skill vs lowest cost (**e.g. transparency increases effectiveness**)

No town councilors on CF board but communicate with city rep. Public demands to see all minutes.

Alternatives debated: CF board member says publicly that people not willing to jeopardize drinking WS. Board & mgmt use FPC standards.

MOC1: Good relations with FN and MoF

First Nations on CF board; CF helps FN get own CF; both CFs coordinate road & bridge work to support activities of FN's CF; some cost sharing of road maintenance

MoF local office puts in extra work during holidays to make deadlines in CF application

MOC1: distribution of benefits is transparent and accountable

- Municipality passed by-law that CF board should decide where profits from the community forest are allocated
- CF board developed criteria for applicants such as creating local benefit, providing matching funds (showing that they had seriously worked on a project for some time), having a business plan, employing locals, etc.

MOC2

- *expertise, civic duty, stability*
- *alternatives are debated by the board & the public has access to all board meeting minutes*
- *dependable, comprehensive information available from chair & manager*
- *efficient operation of small tenure through cost containment: hires management company, pays manager c. ¼ time at \$35,000. Puts out management contract for bid every 2 years*

MOC2: Good relations with environmental groups in community

Does detailed planning with recreational user groups within its chart area:

- puts skid trails where recreation group plans to build trails in future.
- keeps 100 metre buffer on each side of trails; consults and profit shares 50/50 on anything taken out of buffer (removes trees from buffer only if recreation group agrees)

MOC2: distribution of benefits

- Invited FN to apply for CF with them
- Made FN both board member & beneficiary anyway
- All benefits split evenly between communities
- CF board distributes benefits & contracts; at arms length from town councils
- Distribution of benefits is transparent, accountable, and equitable: use clear criteria

Distribution of CF benefits by body independent from municipality is key

Municipality for MOC1 passed by-law that **CF board had main say in where money allocated**: CF board made criteria for applicants (e.g. local benefit, matching funds, business plan, employ locals)

3rd non-MOC CF set up separate society to distribute profits, at arms length from CF board

Creative civic engagement is key

MOC2 has chair who makes regular presentations to town, stakeholder groups, hires mgmt co to do regular public reports, has rotating at-large community seats on board who are eyes & ears

3rd CF (non-MOC) set up advisory committee to be communication avenue with public, give feedback, collate and organize ideas, present at venues like Farmers' Market, give feedback

One non-MOC CF uses regular newsletter & weekly social gathering in pub

Clear separation of leadership responsibilities creates transparency

CF Board Chair: elected by board, runs meetings, sets agenda, works with executive committee (policy)

Manager: implements/oversees specific projects

Potential conflict of interest if manager & chair are same person.

Problems when no role separation: non-transparency/accountability

- Need manager to report to CF board and need CF board to have all information and decision making to keep manager accountable
- Potential board legal liability without due diligence in overseeing all manager's activities

Problems if MOC mandate interpreted narrowly

MOC is accountable to more than “shareholders”:
limits to business activities of the corporation
stated in Articles of Incorporation: “To profitably
manage CF in a sustainable, effective &
environmentally sensitive manner with broad
community participation & support”

FOI Commission rules in favour of people who want
info on CF’s activities, accounts, etc.

Key learnings from these cases: CF board is most effective when:

- Separation of CF board from municipal council keeps CF board non-political and thus able to recruit best talent (RPFs, woodlot owners, etc); conflict-avoidant RPFs may be unwilling to serve on board unless non-political
- High level of expertise/experience on CF board contributes to ethic of honourable volunteer contributions to community
- Multiple modes of transparency & communication maintain public support/confidence

Legal constraints on MOCs

BC Ministry of Community Services. *Launching and Maintaining a Local Government Corporation. A Guide For Local Officials*

- audited financial statements & corporate articles must be open to public at town office
- requirements for annual open public meeting and conflict of interest avoidance

...Legal constraints on MOCs

Trade, Investment & Labor Mobility

Agreement (TILMA) **limits MOC's ability to control to whom contracts flow**, unless they are under thresholds: \$75,000 for goods & services, \$200,000 for construction projects

<http://www.tilma.ca>

Public responsibilities of MOCs

Although MOCs are set up legally as private corporations, they have a **broader range of responsibilities to stakeholders and the general public** than the typical private corporation, because of their role in, and relationship, with the community. They are **more like the public corporations** for which the laws of ethical and environmental responsibility is rapidly evolving.

Policy influence on MOCs from corporate law

- ***BCE decision (2008) re responsibilities of directors*** of corporation to stakeholders: must determine best interests of corporation with reference to interests of shareholders, employees, creditors, consumers, governments ***& the environment;***
- must treat all stakeholders fairly
- must consider ***long-term interests***, not just short-term profits

Policy influence on MOCs from changes in securities law

Change from shareholder-centric world of giving access only to financial results

- Investor protection but also source of stakeholder engagement?
- France: all public companies listed on its main stock exchange must report on their ***environmental & social impacts***.
- England: changes to corporate law to require reporting in certain circumstances

Conclusion: many MOCs DO meet ideal standards for good governance

Process

- ***Representativeness***
- ***Accountability***
- ***Transparency***
- ***Degree of civic engagement***

Outcomes

- ***Effectiveness*** [increased by transparency & civic engagement]
- ***Adaptability***
- ***Equity***

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- Feedback? questions? discussion?

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