

**COMMERCIAL RECREATION PROPERTY RIGHTS AND
SECURITY IN BRITISH COLUMBIA**

by

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ABSTRACT

In the mid-1990's the BC government established the Commercial Backcountry Interim Policy, in order to regulate BC's emerging and rapidly growing commercial recreation (CR) industry. This research identifies the resulting tenure and property rights issues related to the long-term economic development of CR on BC's Crown lands. Specifically, it identifies weaknesses in BC's current CR tenure rights and determines ways in which government can improve the strength and security of such rights. To accomplish these goals, the research employs a comparative analysis of tenure and property rights granted to BC's CR industry relative to those for other Crown land-dependent resource industries in BC, as well as CR businesses operating in external jurisdictions. This is followed by a survey and interviews, which assess the impacts of property right security on CR operators. Based on findings emanating from these two investigative phases, policy options for increasing security and certainty are provided.

DEDICATION

To my family and wife, who have continued to encourage, believe in and support me. To be surrounded by such supportive individuals, I am truly blessed. I love you all!

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LIST OF ACRONYMS AND ABBREVIATIONS

AAC	Annual Allowable Cut
AK	Alaska
ALA	Alberta Lands Application
ATLRP	Alberta Tourism Recreation Leasing Process 1999
ATV	All Terrain Vehicle
BC	British Columbia
BCROA	British Columbia River Outfitters Association
BLM	Bureau of Land Management (United States)
CP	Concession Permit
CR	Commercial Recreation
CROIF	Commercial Recreations Operator Input Form (British Columbia)
CUL	Commercial Use Licence
DNR	Department of Natural Resources
Fact sheet 6	Yukon Lands Information Fact Sheet 6
FL	Forest Licence (British Columbia)
FS	Forest Service (United States)
JSC	Joint Steering Committee
LRMP	Land and Resource Management Plan (British Columbia)
LUP	Land Use Permit
LWBC	Land and Water British Columbia Incorporated
LWBC-fees	Land and Water British Columbia Land Use Fees
LWBC-lup	Land and Water British Columbia Land Use Plan
MAL	Ministry of Agriculture and Lands (British Columbia)
MDA	Master Development Agreement (British Columbia – ski hill)
MFR	Ministry of Forest and Range (British Columbia)
MNR	Ministry of Natural Resources
MoE	Ministry of Environment (British Columbia)

MOF	Ministry of Forests (British Columbia – now MFR)
MP	Management Plan
MTSA	Ministry of Tourism, Sport, and the Arts (British Columbia)
MWLAP	Ministry of Water Land and Air Protection (British Columbia)
NAFTA	North American Free Trade Agreement
NPCR	National Parks of Canada Lease and Licence of Occupation Regulations
NPS	National Parks Service (Alaska)
PUP	Park Use Permit
PUP-fees	BC Park and Recreation Area Regulation Land Use Fees
Q&A	Provincial Park Use Permit fees Q&A (British Columbia)
SDM	Shared Decision Making
SEA	Strategic Environmental Assessment
SPSS	Statistical Package for the Social Sciences
SRP	Special Recreation Permit
SUP	Special Use Permit
TFL	Tree Farm Licence (British Columbia)
TTSQR	Timber Tenure System Quick Reference, Cortex Consulting 2001
TUP	Temporary Use Permit (British Columbia)
US	United States
USDA	United States Department of Agriculture
US DNR	United States Department of Natural Resource
USFS	United States Forest Service
WTA	Wilderness Tourism Association
YT	Yukon Territory

1 INTRODUCTION

1.1 Context and Rationale

British Columbia (BC) is gifted with an abundance and diversity of wilderness, landscapes, and wildlife. This backdrop creates the perfect setting for a commercial recreation (CR) industry. In BC, CR consists of fee-for-service experiences in natural settings. Common examples include heli/cat-skiing, wildlife viewing, and whitewater river rafting. In the 1980s BC's CR industry realized rapid growth (Outdoor Recreation Council, 1988). The provincial government's role in regulating the industry at that time was relatively limited, focussing on licensing guide-outfitters and anglers, and creating policies to licence commercial helicopter skiing and alpine skiing on Crown land (BC Lands, 1990). This growth was combined with the introduction of a wide range of new activities, which led to increased pressures on the environment, and escalating conflict amongst resource users (BC Lands, 1990). The BC government recognized a need 'to create a comprehensive, coordinated government policy and program, specifically tailored to the needs of the [CR] industry as a whole' (BC Lands, 1990, p.3). It undertook a policy development process comprised of the: development of a discussion paper; implementation of consultative exercises; creation of a policy proposal; and, solicitation of public comment concerning the appropriateness of that proposal. The result was the establishment of a Commercial Backcountry Interim Policy, which required all CR

operators using Crown land to hold a valid tenure¹ (Ministry of Environment, Lands and Parks, 1995).

Several constraints shaping the policy were identified in the policy development process. First, the process occurred at a time when the majority of BC's Crown land was either designated, or the resources on the land legally committed to, other resource industries, primarily forestry (BC Lands, 1990). As backcountry recreation typically requires access to large, relatively pristine areas for its operations, this made land use overlaps with other more extractive resource uses problematic. Second, no comprehensive inventory of lands and resources suitable for CR existed at the time. Similarly, there was insufficient knowledge of the carrying capacity of existing lands for recreation. Most importantly, the absence of a mechanism for determining priority among area land uses made establishing an appropriate tenuring process difficult. Fourth, the public process employed raised significant concern among public recreation groups over the impact of a business focussed policy on future public access to Crown land. In BC, a long-standing tradition of free access to Crown land for recreation use was well established (BC Lands, 1990), and the public was reluctant to support any process that resulted in a loss of such access. Finally, Aboriginal rights and title issues were emerging and new government policies had to be responsive to First Nation property rights interests (Flahr, 2002).

These issues, exerted from multiple directions, pressured the government to diminish property rights assigned to CR (BC Lands, 1991). The CR industry's ability to strengthen its land use tenure position was likely further diluted by the reality that it: was

¹ A tenure is a type of right or title by which Crown land is held and used (LWBC, 2004)

not traditionally recognized as a resource industry; had historically received limited government attention and representation; lacked both internal and government funding for advocacy initiatives; and, had little legislative power to influence tourism policies (Reed & Gill, 1997; Williams et. al, 1998a).

More than a decade later, BC's CR industry has become an increasingly important component of the BC economy. It is BC's fastest growing tourism sector, generating about \$900 million in direct revenues in 2001 (Tourism British Columbia, 2005). This growth is strategically important to the province because it is concentrated in close proximity to rural communities (BC government, 2005). The CR industry has the potential to bring numerous benefits to rural areas in the form of job creation, local tax revenue generation, and regional development. Its provincial contributions include: increased fees and other revenues for the use of Crown land; much needed diversification of the provincial economy (Gunton, 1998); and a broadened range of competitive tourism products for visitor markets (Curtis, 2003). Recognizing the increasingly important role tourism is playing in the province's economy, the provincial government created the Ministry of Tourism, Sport and the Arts (MTSA) in June of 2005. Specific to the interests of the CR industry, the Ministry's goals include: developing and implementing a provincial tourism strategy; implementing strategies to promote BC and achieve increases in all seasons resorts, as well as commercial and public recreation; investing in recreation facilities; and conducting marketing, planning and research to support the sustainable development of tourism (Ministry of Tourism, Sport and the Arts, 2005).

Much has been learned about the CR industry since BC's first backcountry recreation policy was created. Researchers now recognize that a secure and certain land

base for CR activities is integral to the success of the industry (McKercher, 1992; Williams et. al, 1998b, 1998c). Specifically, as the CR industry competes in a market economy, resource certainty relative to the industry's competitors is important (Bromley, 1991). To a great extent, security is determined by the degree to which tenure holders trust the socio-political system in which their tenure rights have been granted (Haley and Luckert, 1990). Tenure holders who perceive their tenure to be insecure expect that the benefits of their property rights will be limited by unpredictable government actions. Conversely, tenure holders with secure property rights expect future changes affecting their arrangements will be minor, beneficial, or non-existent (Haley and Luckert, 1990). For this reason, increasing the security of CR's land rights in BC is important in improving the ability of the industry to compete with other provincially based resource industries and with similar tourism operations beyond the province. An early step in understanding the level of security currently offered involves assessing how BC's CR property rights compare with those for other resource sectors using Crown lands in various competing jurisdictions.

While strengthening property rights is important to improving security and investment, the social and environmental impacts that may arise from changes in policy must be addressed as well (BC Lands, 1990; Bromley, 1991). This principle is supported in a BC Lands public discussion paper (1990), which indicates:

“The main issue is how to ensure orderly development of [the CR] economic sector in balance with the needs of other resource users and residents, and the capacity of the land and resources to bear such use.”(p.i)

Important to this goal is fair distribution of costs and benefits among important stakeholders (Schwindt et al., 2003). Many stakeholders in BC compete for access to

resources and are affected by resource decisions. Thus, any changes in property rights should recognize the importance of meeting the interests of all stakeholders. In addition, Canadians highly value the natural environment (Globescan Inc., 2004) and benefit from the many ecosystem services it provides. For this reason, maintaining a high level of ecosystem integrity on BC's land base is important. The relative youth of the CR industry in BC, combined with a reliance on a relatively pristine land base, places the industry in a unique position. It both allows the industry to be shaped by, and requires it to embrace, sustainability principles not only economically, but also socially and environmentally. A critical foundation for meeting this requirement is a balanced bundle of property rights.

1.2 Research Purpose, Goals and Questions

The purpose of this research is to provide a stronger understanding of those property rights and tenure security strategies that will help facilitate long-term economic development of CR on BC's Crown lands. The specific goal is to identify weaknesses in BC's current CR tenure rights and determine ways in which government can improve the strength and security of such rights. This is accomplished by answering the following question:

1. Does the level of property rights granted to BC's CR industry place CR operators at a competitive disadvantage?

This question has three interrelated parts:

- a. How do the property rights granted to BC's CR industry differ when compared across tenure types?
- b. Do the property rights granted to the BC CR industry create difficulties in establishing and growing a CR business?

- c. Does the current level of property rights security associated with CR tenures in BC create demoralization among CR operators?

CR land use does not exist in a vacuum. Their rights and obligations affect and are affected by many other stakeholders. This study makes no attempt to comprehensively address the potential impacts on other stakeholder groups that may result from changes to CR property rights. However, potential environmental and social impacts, along with possible mitigation tools are briefly discussed.

1.3 Method

The first research question is explored using a comparative analysis of over 50 land tenure contracts in BC and surrounding regions. Several discrete dimensions of these tenure contracts and policies were used to frame these comparisons. More specifically, property rights characteristics were initially disaggregated using approaches developed by Scott and Johnson (1983). Haley and Luckert (1990) and Schwindt (1992) used modified versions of these property rights characteristics to compare the competitiveness of forestry tenures across Canada, as well as the rights of forestry and mining tenure holders in BC. A modification of the property rights framework developed by Haley and Luckert (1990) guides this study's comparison of tenure arrangements in various jurisdictions and business sectors. It specifically focused on tenure factors associated with: comprehensiveness, duration, renewability, transferability, exclusivity, and security.

In this study, CR contracts in BC are compared to other resource contracts in BC, and those in similar tourism businesses in strategically competitive regions outside of BC. These jurisdictions include Alaska, Yukon, Alberta, Ontario, as well as lands

managed by the United States Forest Service (FS) and the United States Bureau of Land Management (BLM).

The second phase of the analysis examines the degree to which current CR property rights and tenure policies are perceived to affect industry competitiveness and demoralization. This entailed collecting and analyzing CR stakeholder responses to a range of survey questions concerning property rights. In particular, CR stakeholders were asked a series of questions concerning the likelihood of different forms of tenure takings, consultation, and compensation occurring. Their cumulative responses provided a sense of the demoralization impacts created based on the perceived lack of security and certainty (Schwindt, 1992). Based on those areas of competitive disadvantage and demoralization identified, options for increasing security and certainty are proposed. From this analysis, social and environmental management implications are briefly discussed and strategies for mitigation recommended.

1.4 Report Organisation

The report includes 6 chapters. Chapter 2 reviews the current literature and creates the foundation on which this study is based. Specifically, the chapter:

- Outlines the origins of property as a concept, defines property and property rights, discusses the role of property rights in creating industry security, and explains the various categories of property rights regimes, placing BC's Crown land system in this framework;
- Defines takings and compensation, briefly outlining the strengths and weaknesses of government provided compensation, the role of demoralization cost, and the legal framework that governs compensation in Canada;
- Discusses the role of consultation in increasing security;

- Defines commercial recreation and outlines the industry's resource needs; and,
- Introduces BC's CR Land Use Policy.

Chapter 3 details the research questions and methods used in the study. It describes the research designs used to inform the various research questions. Next, Chapter 4 reports the findings of the study. The management implications of the findings are discussed in Chapter 5. Chapter 6 completes the report, presenting the major conclusions and listing recommendations for further research.

2 LITERATURE REVIEW

2.1 Introduction

This literature review establishes a rationale and research framework for examining property rights security in a CR context. Five literature themes are explored to achieve this end. The first is a discussion of CR tourism and its specific land and natural resource tenure needs. The second is property and property rights. It establishes the importance of property rights in creating economic output and efficiency; places BC's current land system within a property rights regime; and, introduces a framework for comparing property rights across various tenure types and jurisdictions. The third theme explores the concept of takings and compensation. It defines "taking" and "demoralization cost"; summarizes arguments for and against government provided takings compensation, including its role in improving security and certainty while allowing the government to make decisions in the public's interest; and, reviews the current BC legal framework used to decide compensation for takings. The fourth literature theme examined discusses consultation and shared-decision making as tools for increasing perceived security and ensuring wider stakeholder representation in decision-making processes. The final theme describes BC's CR Land Use Policy, outlines its evolution, and describes the forms of tenure available to CR operators.

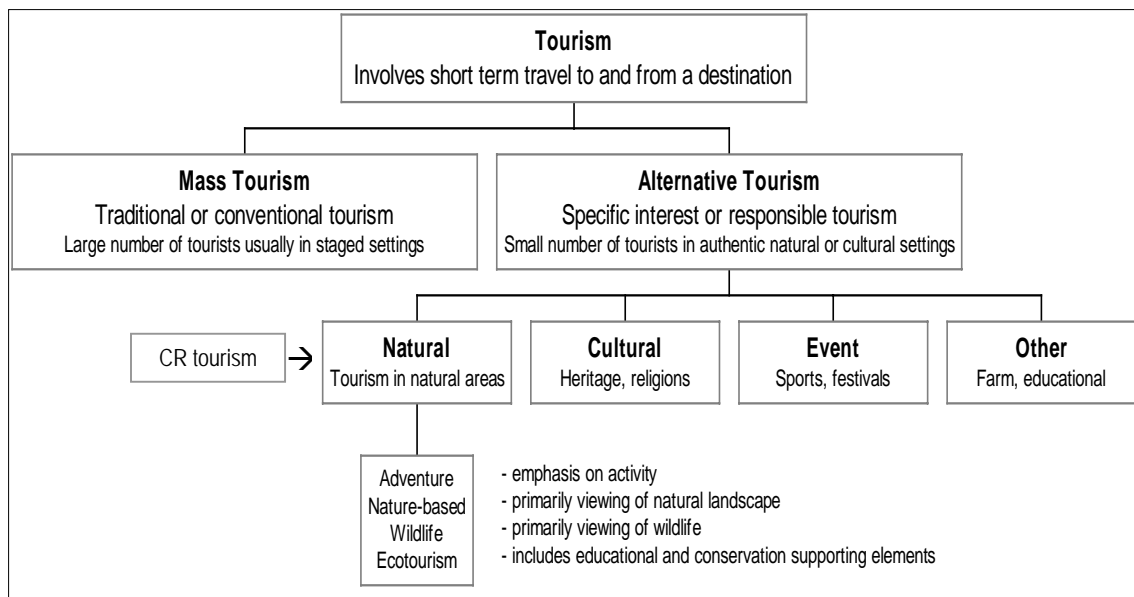
2.2 CR Tourism

This section defines CR and highlights the importance of BC's natural resources to the industry's success.

2.2.1 Defining Commercial Recreation

CR tourism includes a wide range of recreation opportunities provided by commercial enterprises. This diversity makes succinctly defining the industry challenging (Ewert, 1987). Operationally, CR is defined by the types of activities it generates (Ewert, 1989; McMenamim, 1992). This approach creates difficulties when new activities emerge. Newsome et al. (2002) defines CR in more conceptual terms. They include CR as part of natural areas tourism (Figure 2.1). A defining element of natural areas tourism is its dependence on the natural environment for its core attractions.

Figure 2-1: An overview of natural tourism (and CR) within the larger tourism landscape



Adapted from Newsome et. al. 2001

In BC, the provincial government’s definition of CR emphasizes the importance of the industry’s dependence on the natural environment:

‘Outdoor recreational activities provided on a fee-for-service basis, with a focus on experiences associated with the natural environment’ (Land and Water BC, 2005b).

The BC government designates tourism in natural areas occurring on a fee-for-service basis as CR. It does not consider the same activities undertaken by non-paying users CR. Thus, two distinct features emerge: (1) CR relies on natural areas for its success; and (2) CR occurs on a fee-for-service basis. For the purposes of this study, the Land and Water BC (LWBC) definition of CR is used.

2.2.2 Natural Resource Needs

In many parts of the world there is a growing recognition that the tourism industry competes for and depends on scarce natural resources for its sustainability (McKercher, 1992; Williams, 1993; Reid, 1998). This is especially the case in BC. In the early 1990s BC Lands² created policies that sought to balance the land and resource needs of the tourism sector with those of other public and private sector resource stakeholders (BC Lands, 1990). This involved modifying existing land and resource use policies so that CR operators would be better positioned to:

- Compete for land and resources with other CR industry businesses;
- Compete for land and resources with other resource sector businesses; and,
- Access those natural resources they required to compete for market share.

Despite progress in increasing tenure security, constraints to enhancing CR industry competitiveness still exist. Williams et al. (1998a, 1998b) stressed several key requirements that would strengthen the industry's opportunities for continued growth and stability. These included:

- Increasing the number of large protected areas

² In 1998 BC Lands, a department in The Ministry of Environment, Lands and Parks, became BC Assets and Lands Corporation (BCAL). In 2002, BCAL became Land and Water BC Incorporated (LWBC). In June 2005 LWBC programs were integrated into the Ministry of Agriculture and Lands and the Ministry of Tourism, Sport and the Arts.

- Restricting logging and mining in foothills and mountain ranges
- Restricting further development of roads in the backcountry
- Recognizing CR as a priority industry in buffer zones around protected areas
- Maintaining access for backcountry tourism in all protected areas

The foundation of a successful CR industry, and central to achieving these recommendations, is secure property rights. Typically, government allocates property rights for resource use purposes with the intent of encouraging economic development (Schwindt, 1992). In BC, such property rights are viewed as a vehicle to ‘facilitate economic development, job creation and revenue generation by aggressively pursuing and encouraging investment and optimal use of Crown land and water resources’ (Land and Water BC, 2004a, p.3). However, because of tourism’s relatively low profile within the traditional resourced-based management arenas of government, the foundation for such certainty is weak (Wilderness Tourism Association, 2005). Reid (1998) points out that this problem exists throughout North America:

‘Although provincial and state governments have always paid lip service to tourism as the rising sector of the economy, they have been unable to grasp the implications of making decisions with regard to competing interests. All too often protecting the natural areas on which a sustainable and vital tourism industry depends is given up in favour of the extraction or construction industries’ (p.79).

As the value of a CR business’s assets depends on the physical characteristics of the land base used and the associated property rights for their use (Scott and Johnson, 1983), they are integral to the industry’s ongoing competitiveness.

2.3 Property and Property Rights

To appreciate the role property plays in creating business security, it is essential to understand the origin of property, contemporary forms of property, and its place in

today's society. Central to this understanding is recognition that property is comprised of a 'bundle of rights'. Disaggregating property into various rights characteristics opens a window into possible avenues for comparing and assessing ways of managing business security.

2.3.1 The Concept of Property

References to property reach back to the First Testament and the classic philosophers of Rome (Denman, 1978). Early discussions centred on two theories of the origins of property. Some proponents suggested that property stemmed from the 'natural order of things', while others maintained it was a societal convention supported by positivist law (Michelman, 1993). Contemporary academics have largely adopted the latter theory (Bromley, 1991; Michelman, 1993; Scott, 2000). However, this was not always the case.

In the late 17th century, Samuel Pufendorf argued that property in its natural state was held in common, but man's improvement to and settlement on such land rendered it private. This right, he continued, was recognized through 'a common agreement among men' (Oldfather and Oldfather, 1934). John Locke developed Pufendorf's hypothesis, creating the Labour Theory of Property (Locke, 1924). It posited that nature endowed a title to private property to those who laboured to create wealth, novelty, or a substance out of the natural order. Locke's argument built on natural law, which is based on truths discovered in nature rather than laws created by society. Natural law gives man property of his own person. Locke extended this position by claiming that any labour, which joined man's hand with nature, gave right to that nature as property. His theory supported mere possession as the requirement of property and highlighted the link between property

of person and property of physical things. Lockean supporters believed that individual property rights were an immutable and timeless entitlement, which should only be contravened under due process and if fair compensation was paid (Bromley, 1991). Others built on Locke's theory and acknowledged the link between nature, human capital, private property and prosperity (Bowering, 1962). In a US context, this paved the way towards a society based on capitalist principles and the constitutional protection of property from government action without fair compensation (McKeon, 1938). By contrast, the Canadian constitution does not expressly protect property rights (Todd, 1992).

Immanuel Kant challenged Locke's theory of a natural right to property on two grounds: universality and necessity (Bromley, 1991). He argued that while appropriation was necessary for something to become property, possession could not in itself establish ownership. A social recognition of the property holder's claim to the right also needed to exist (Williams, 1977). Rights recognized by society must also be accompanied by corresponding duties to respect and uphold property rights. Without this collective agreement, simply procuring a resource would not result in the ability of the resource holder to recognize a benefit stream. Instead, the right must also be legitimised through a collective recognition of the social usefulness of the property claim (Williams, 1977).

Jeremy Bentham also promoted rights to property as a function of a societal contract, separate from nature (Bowering, 1962). He argued that rights were rules of utility, defined by law and created in order to increase happiness. Property rights increased security, which was required to encourage people to produce wealth for

themselves and their neighbours (Denman, 1978). Accordingly, he viewed property to be a social institution that promoted maximum production of wealth and well-being.

Several contemporary academics support the theory that authority comes from social convention. For example, Keasby (1999) stated:

“The ownership and disposition of land is a major component of most wealth and is at the basis of social structure. Ownership rights to property have been institutionalized and controlled through law to protect society.” (p.1)

Similarly, Meyer (2000) argues that property rights come from culture and community:

“One person living in isolation does not need to worry about property rights. However, when a number of people come together, they need to define and enforce the rules of access to and from the benefits from the property. In this way, the group or community defines the stream of benefits.” (p. 1)

Georg Hegel expanded on the importance of private property for society. He argued that man’s personality found expression in his possessions, and that a denial of private property blocked the expansion of social freedoms (Denman, 1978). Indeed, the link between property and personal identity witnessed throughout history is a prominent feature in North America society.

A universal definition of property is difficult to find. Economists often define property simply as possession or ownership. Though such traits are important components of property, mere possession or ownership of something is not a complete definition of property (Denman, 1978). Fischer (1923) defined property rights as “the liberty or permit to enjoy the benefits of wealth while assuming the costs which these benefits entail”. Ostrom and Schlager (1996) provided a more contemporary definition of property by suggesting that: “[property] is a social relationship between a resource user

and other potential users, with respect to a particular object, place, or feature of the land” (p. 129). In line with Bentham’s views on property being a product of social convention, this definition stresses that property can only exist if society recognizes the rights of the property holder. Property does not describe a relationship between an individual and an object, but rather between a person(s) and others with respect to that object (Ostrom and Schlager, 1996).

Property is closely aligned to rights. Bromley (1991) suggested that property is: “a set of actions and behaviours that the possessor may not be prevented from undertaking” (p.3). This assertion emphasizes that rights imply a corresponding duty on the part of all others to refrain from preventing those actions or behaviours. In this context property rights are a claim to a benefit stream, which the state agrees to protect through the assignment of duties to others who may covet or somehow interfere with the benefit stream (Bromley, 1991).

Three key points emerge from this review. First, property is a societal agreement with respect to rights and obligations to an object. This indicates that rights to property can be modified over time to best suit societal needs. Second, property is important in creating wealth and efficiency in a capitalist society. This connection illustrates the role property plays in the economy. By extension, changing property rights could have an effect on efficiency, and for specific situations an optimal set of rights is likely to exist. Third, property helps define an individual and their place in society. These last two points are important when considering the issue of demoralization cost, which will be discussed later in greater detail. The next section reviews how property can be described as a

bundle of rights. This technique clarifies the rights and restrictions of the property holder and associated obligations of society.

2.3.2 Property Rights

Property can be likened to a bundle of sticks – each stick representing a right. This perspective was applied in *Belfast Corporation v. O.D. Cars Ltd*, a 1960 English court decision of the House of Lords. The court, referring to property as a bundle of rights, clearly distinguished between any of the rights of the bundle and the bundle as a whole, stating that individual rights do not constitute property in themselves. However, the ruling did not specify which rights were most important, nor did it state a minimum required number of rights needed to constitute property. The case merely established that the greater the number of rights held, the more complete the property right became (Todd, 1992).

A property rights holder is said to have acquired a right if the benefits of the right outweigh the associated contractual requirements (Haley and Luckert, 1989). For example, BC forest tenures: allow tenure holders to harvest timber over a certain period of time, grant them a degree of exclusivity; and, permit them to transfer some of their rights from one holder to another. Property rights also include restrictions. In the case of BC forest tenures, the rights to run tourism operations, extract minerals, or sell water are usually not included. Specific regulations also accompany such rights. A licence to harvest timber usually requires the tenure holder to meet certain environmental regulations, pay government user and management fees, and carry insurance. If there is a net benefit associated with the bundle of rights, restrictions and regulations, then the rights holder has access to a benefit stream.

Defining property as a bundle of rights raises two questions. The first is whether the bundle is greater than the sum of its parts (Dias, 1976). The *Belfast Corporation* decision ruled that an individual right does not constitute property. However, because ownership of certain rights can be parted with singly or in smaller bundles without alienating or destroying the particular ownership to which the individual rights contribute, Dias (1976) argued that ownership is not more than a bundle of separate rights. Thus, some minimum level of rights must be required to consider something property. Above this base level, a bundle of rights may not be greater than the sum of its parts. The second question pertains to the composition of the bundle that constitutes property. Kruse (1939) analysed various civil codes and common law to create five categories of rights, which as a bundle could be sufficient to constitute property. These included powers to: use, alienate, assimilate, pass by succession, and defend or lay claim to.

Others have added to and refined the list to describe various property rights regimes. Categories identified by Haley and Luckert (1990) pertinent to CR tenures include:

- **Comprehensiveness:** refers to the number of asset attributes a property rights' holder controls. In transferring certain rights to land through tenure, governments frequently withhold other resource uses.
- **Duration:** refers to the period that property rights can be exercised. Private ownership usually implies a period of perpetual duration. In contrast, tenures specify terms of varying length. Duration includes renewability and affects the degree of certainty provided to the tenure holder.
- **Transferability:** refers to the rights of property holders to sell, or otherwise dispose of their property.

- Exclusivity: refers to the property holder's rights to prevent others from freely enjoying the benefits of the asset. Without some degree of exclusivity, property rights may be of very little value to their holders. In the case of CR tenures, if an unregulated number of CR operators have access to one area, it may be over-used, destroying the values of the asset for CR investors.
- Security: refers to:
 - The ability of the tenure provider to terminate or restrict a tenure (or portion thereof); and,
 - The tenure holder's trust in the political / bureaucratic system to honour the terms under which the property rights were granted.

These rights provide a useful framework for assessing and comparing the bundle of property rights held by tenure holders. For instance, a more comprehensive list was successfully employed to compare different forest tenures in Canada (Haley and Luckert, 1990). Haley and Luckert's list requires minimal modifications for comparable CR tenure holder rights research.

2.3.3 Property Rights Regimes

Property rights regimes encompass a structure of rights and duties characterizing the relationship of individuals to one another with respect to an environmental resource (Bromley, 1991). Further, these regimes determine how property rights are distributed across society. Berkes et al. (1989) characterize four main property rights regimes:

1. Open access – *res nullius* – there are no well defined use rights and the resource is in essence open to all.
2. Common property – *res communes* – the rights to use and exclude others are held by an identifiable community.

3. State property – *res publicae* – the state holds the rights to the resource in trust for the public.
4. Private property – *res privatae* – the rights to use and exclude others are held by either an individual or a corporation.

In 1968, Garrett Hardin cautioned that open access resulted in resource degradation. Hardin's thesis, concerning the 'tragedy of the commons' (Hardin, 1968), stressed the need for government's to convert remaining open access regimes to state or private property. Currently, the majority of resource rights in BC are classified as state property. The Crown holds approximately 94% of land in BC and grants *usufruct* rights to the use of its resources (Land and Water BC, 2005a). A *usufruct* right provides the holder with resource access or withdrawal from another's property without diminishing or destroying the property (Symes, 1998). In other words, the rights holder has access on the land, with corresponding ownership rights to specific resources, rather than to the land itself.

Bromley (1991) contends that state regimes remove managerial discretion from the resource user and weaken tenure security. Kooiman and van Vliet (1995) indicate that this 'command and control' system of management enjoys only marginal success. This success diminishes as societies become increasingly complex and governments find it difficult to perform their managerial duties. State representatives suggest it is increasingly challenging to manage such property for the greater public good (Bromley, 1991).

Private property is recognized as providing the greatest bundle of property rights. It is often equated to the right of alienation, which places no limits on the transferability of interests (Ostrom, 1998). Private property advocates maintain that the greater the bundle of rights, the more likely that property will be put to its most efficient use,

yielding the highest potential value (Ostrom, 1998). Advocates argue that the ability of private property rights to create the most efficient use of resources has been illustrated throughout history (Flanagan and Alcantara, 2002). These arguments pressure government to convert Crown land to private property (Bromley, 1991). However, private property may not be suitable if: the owner chooses to produce things that are not valuable to society; interests of the owner are not in general accord with non-owners; or, the property is not used to increase societal well-being (Sax, 1983).

The preceding discussion suggests that all property rights regimes are flawed in some fashion. Symes (1997) advocates an integrated approach that emphasizes the complementary features of each system rather than their differences. For instance, co-management is highlighted as a 'bottom-up' governance approach that recognizes the importance of participation by both the state and stakeholder groups in management (Pinkerton, 1989). It contrasts with market-based approaches to management, which emphasize the generation of wealth and economic efficiency, by also stressing the social benefits of collective action (Jentoft et al., 1998). While the principles of co-management are increasingly drawing the attention of budget-constrained governments, the applicability of the concept to large resources in developed nations has been questioned (Symes, 1997). Potential problems include: differing user group perspectives that hinder consensus building; varying levels of stakeholder organization commitment to regulate their members; concerns over the resilience of the co-management process to overcome strong vested interests of industry; and issues around the lack of free access to state-owned resources such as data (Pinkerton, 1999; Eythorsson, 2003).

2.3.4 Property Rights and Security

Governments assign property rights to promote economic gains (Schwindt, 1992). However, they retain a certain level of control in order to improve societal welfare that would not otherwise be realized by the private sector (Haley and Luckert, 1990). Thus a balance exists between increasing economic efficiency and protecting societal objectives (Boyd and Hyde, 1989). This section briefly discusses how strengthening property rights improves efficiency and how it may also impact societal welfare. The discussion follows the property rights framework for policy analysis developed by Haley and Luckert (1990).

Comprehensiveness

Increasing the number of activities allowed to be undertaken by a CR operator allows the operator greater flexibility in responding to market changes. This creates greater business flexibility and certainty that the business will be viable long-term. In addition, greater private management of resources may ensure a resource-use strategy that is optimal from a market perspective (Haley and Luckert, 1990). Conversely, increased comprehensiveness of resource use can weaken government's ability to manage non-market products such as public recreation and wildlife (Marchak et. al, 1999) or adapt to societal, environmental, or economic changes (Bromley, 1991).

Duration and Renewability

Restrictions on duration have important implications for how a resource is managed (Haley and Luckert, 1990). The length of a resource tenure specifies the time horizon in which any investments must be realized (Scott & Johnson, 1985). Further, any

restriction of term provides incentives to postpone costs and bring forward benefits (Pejovich, 1984). While longer durations are advantageous to CR businesses long-term tenures give government less flexibility to meet changing social needs and preferences (Pearce, 1976). Duration of tenure is also influenced by its renewability. A tenure that guarantees ongoing renewal with minimal modification of the original rights is in effect a perpetual tenure. The less certain renewal is or the greater the ability of government to make changes to the tenure upon renewal, the more significant the impact on a tenure holder's investment strategies (Haley and Luckert, 1990).

Transferability

Transferability of tenure is important in creating efficient use of resources (Demsetz, 1967; Pearce, 1976; De Alessi, 1980; Scott, 1984). Transferability of property rights allows markets to direct resources to their highest and best use. In doing so, resource users gain from comparative advantage, specialization, and economies of scale (Haley and Luckert, 1990). Restrictions on the transferability of property rights has important effects on private sector behaviour. This is of particular importance when capital investments to use the resource have long time horizons, as is the case with backcountry lodges and heli-ski operations. Pearce (1976) argued that government might restrict the transferability of timber resource rights to improve social welfare. Reasons for this, which are also pertinent to CR include: to avoid excessive concentration of rights, particularly oligopolies and monopolies; to control relocation of activities in order to meet with community stability and development objectives; and to maintain a balance between domestic and foreign ownership and control.

Exclusivity

Non-exclusivity of resource rights can lead to over-use and degradation of the resource (Healy, 1994). Overlapping use of recreation areas by public recreation users, industrial resource users, and CR can also lead to conflict among user groups (Jackson and Wong, 1982; Vaske et. al, 2000; Carothers et al., 2001). Both of these factors can have an impact on CR business viability. Government may be reluctant to increase exclusivity of use because of a perceived societal right to unfettered access (BC Lands, 1991), and increased costs associated with monitoring and enforcing exclusivity (Scott and Johnson, 1985).

Security

Uncertainty surrounding the ability of government to terminate or change the terms of a contract can have significant negative impacts on CR business viability (Crane, 2005). Insecurity has a major impact on tenure holders' investment behaviour by reducing the expected returns on current expenditures (Haley and Luckert, 1990). The greater such insecurity, the more likely that CR business investments will not be undertaken. While government often retains the right to change tenures or expropriate rights to improve decision-making options, this flexibility can come at a significant impact on industry viability.

2.3.5 Summary

Property rights represent a societal agreement with respect to an object. These rights are assigned to create wealth and improve efficiency. In BC, the provincial government allocates resource rights under a state property regime. This system has the

advantage of helping government represent broader public interests, while harnessing the efficiency of the private sector to create economic output. However, efficiency may be lost through weak property rights and high monitoring costs. Aspects of private property, including extended duration and greater security, increase efficiency (Conner, 2000; Scott, 2000). Hybrid forms of property rights regimes, such as co-management, can increase societal benefits through increased collective action. These features can be used to develop more effective forms of state property rights allocation. The assessment framework developed by Haley and Luckert (1990) represents a useful tool for comparing property rights and will be employed in this study.

2.4 Takings and Compensation

Takings and compensation play a significant role in shaping the extent of CR property rights security. This section defines property rights takings, reviews the arguments for and against government provided compensation for takings, and describes the BC legal framework used to decide compensation for takings. The review offers insights into what type of compensation can be expected if takings occur and the degree of freedom government has in deciding whether or not to provide compensation for takings.

2.4.1 What is a Taking?

While property rights are considered an important part of economic health, individual rights, and societal well-being, government typically retains the right to alter those rights and expropriate property in instances where it is in the interest of all citizens (Cohen and Radnoff, 1998). When the Crown asserts its freedom to vary or restrict

property rights and resource interests, the issue of taking arises (Schwindt, 1992). In theory, every government action that diminishes the value of land or property could be viewed as a taking (Schwindt, 1992). However, in some situations, property rights are weak and if taken may only create insignificant losses. Conversely, strong property rights if taken can impose significant losses for the owner. For example, restricting the width of trails a CR operator can construct is not likely to create significant losses. On the other hand overlapping a CR wildlife viewing tenure with an industrial logging tenure could have a significant and measurable impact for the CR property rights holder. Young (2005) adds some clarity to this debate by asserting that before an action becomes a taking, it must deprive a property owner of the core rights that identify ownership. These include essential characteristics that define a relationship between an owner and the property, which is substantially different from the relationship between a stranger and the property. Such characteristics might include the right to undertake specific activities (comprehensiveness), without overlapping uses (exclusivity), for a specified period of time (duration).

2.4.2 Demoralization Cost

Demoralization reflects the unhappiness of tenure holders impacted by takings and the influence of such takings on their future behaviour. Potential demoralized behaviours include decreased investment and production activities, resulting in declines in future welfare (Schwindt, 1992). Michelman (1967) first defined "demoralization costs" as:

“The total of (1) the dollar value necessary to offset disutilities which accrue to losers and their sympathizers specifically from the realization that no compensation is offered, and (2) the present capitalized dollar

value of lost future production (reflecting either impaired incentives or social unrest) caused by demoralization of uncompensated losers, their sympathizers, and other observers disturbed by the thought that they themselves may be subjected to similar treatment on some other occasion.” (p. 1214).

Demoralization costs occur in addition to the value of the right that is taken. This theory is exemplified by looking at how the mechanism in which a valuable object is removed from a person’s possession affects their happiness and future behaviour (Schwindt, 1992). When an object is stolen an individual tends to feel worse than when they lose or accidentally break the object. This cost is not limited to the initial loss of the stolen property, but also carries into the future, as the property holder and others who fear similar thefts alter their behaviour (Michelman, 1967).

Michelman (1967) outlines three factors that can lead people to fear exploitation through taking processes. First, if the value of the taking is easily determined and compensation does not take place greater demoralization is possible. Second, the less clear the societal benefits that accrue from the taking, the more likely the property owner will be demoralized if not appropriately compensated. Third, if a certain group feels it is being targeted for under compensated expropriations, they will express greater levels of demoralization. Demoralization costs can be reduced through appropriate compensation (Schwindt, 1992).

Alternatively, demoralization costs can be viewed as a created norm (Cohen and Radnoff, 1998). If a consistent approach to takings without compensation is adopted, demoralization costs may decrease. Expropriation insurance, which removes the financial costs of a taking, might also help to relieve demoralization costs (Cohen and Radnoff, 1998). However, due to the unique characteristics of each case consistency in takings is

difficult to accomplish (Knetsch, 1983). Similarly, in BC expropriation insurance does not currently exist to protect property rights holders from takings. Hence, the financial burden of takings rests with the property rights holder and/or government (Schwindt, 1992). Leaving the financial burden on the property rights holder increases the probability of demoralization costs.

2.4.3 Compensation

Current legislation in BC leaves the issue of compensation for takings uncertain. Many analysts agree that there is a need to create legislation that addresses the uncertainty surrounding compensation for takings of property rights on public lands (Cohen and Radnoff, 1998; McDade, 1993; Schwindt, 1992; Knetsch, 1983). However, the most appropriate type of legislation is unclear. Two overriding options exist: policies favouring compensation and those against such compensation. The argument focuses on economically efficient decision-making and parity.

Cohen and Radnoff (1998) also stress the need for compensation policies that protect ecological integrity. They argue that because environmental goals are not necessarily included in traditional definitions of economic efficiency and parity, it is important to consider them separately. Economically efficient decision-making, parity, and the ecological integrity of a compensation policy are often used to weigh the various options. Approaches to meeting each of the requirements follow.

Economic Efficiency

Schwindt (1992) and Knetsch (1983) argued that a fair compensation policy is essential to an efficient economy. Compensation provides the security entrepreneurs

require to invest fully in their business. Without compensation, industry demoralization may occur, leading to under investment and economic inefficiency (Schwindt, 1992). In addition, fair compensation helps ensure that gains from takings outweigh the costs that are imposed, increasing the likelihood that land and/or resource rights are put to the most efficient use (Knetsch, 1983). Conversely, inadequate compensation may cause governments to favour public use over private land use (Schwindt, 1992). As a consequence, government officials may underestimate the social value associated with private land use and take back rights. Moreover, compensation reduces the opposition by influential or well-organized groups who might otherwise hinder or block the adoption of a desirable change (Knetsch, 1983). Thus, a clear and fair compensation policy could reduce possibilities of costly political challenges and court battles.

Opponents to government compensation argue that it may lead to risky behaviour and over-investment by industry (Cohen and Radnoff, 1998). If compensation is guaranteed for takings, property holders may be less likely to mitigate that risk and more apt to over-invest in land use activities (Knetsch, 1983). Opponents to compensation contend that as property holders mitigate other risks through insurance and investment diversification, takings risk could also be reduced through such market mechanisms. While an insurance market does not currently exist for takings risk, this may be a result of government provided compensation (Cohen and Radnoff, 1998). This designates government as the 'insurer'. If legislation eliminating government provided compensation existed, the demand for takings insurance might be realized. However, this is uncertain.

The second market solution to takings risk is diversity of investment (Cohen and Radnoff, 1998). It encourages industry to invest in a variety of markets, thereby decreasing the harm of a particular investment failure. While this approach is common for multinational companies, (e.g. the majority of timber and mining companies holding property rights in BC), it may not be a viable option for small or family run businesses operating on Crown land. This is pertinent as small business provides more than half of nature-based tourism in BC (Tourism BC, 2005).

The final argument against the efficiency of government provided compensation is high administrative costs. Such costs would create an additional economic burden on government. This may decrease the likelihood that it would carry out takings when increased social welfare dictates such takings should occur (Cohen and Radnoff, 1998).

Parity

Parity requires that neither the burden nor the benefit of public policy accrue disproportionately to an individual or a group. It plays an important ethical role, as well as a critical role in economic decision-making (Schwindt, 1992). Fairness requires that where the burden has become disproportionately large for the property holder, and is a result of government increasing overall public welfare, the property holder be compensated (Knetsch, 1983). Compensation proponents point out that parity also affects demoralization cost (Knetsch, 1983; Schwindt 1992). Compensation policies should consider the impacts of demoralization on both the immediate and long-term performance of both the property holder and industry. Opponents to compensation argue that takings are just one of many market risks associated with business and thus parity should not play a role in government's decision to compensate (Cohen and Radnoff, 1998).

Ecological Integrity

Compensation policies may have ecological impacts. Cohen and Radnoff (1998) argue that as the steward of Crown land, government has the responsibility to ensure that Crown land activities are not irreversibly harming the environment. If compensation is granted, government may be more likely to calculate whether the political benefits of the taking outweigh the monetary cost of compensation (Cohen and Radnoff, 1998). As such, an inclusive list of societal benefits and costs may not be addressed. If government provides compensation it may be hesitant to expropriate rights or tighten environmental regulations because of the prohibitive costs associated with compensation settlements. Thus, opponents of government provided compensation claim it leads to a decrease in social welfare (Cohen and Radnoff, 1998).

McDade (1993) offers an alternative option. He argues that government decision-making under a government provided compensation policy could be enhanced with the development of a dedicated compensation fund. The fund could be financed through tenure, stumpage, and resource extraction fees. In BC, stumpage fees do not currently reflect the value of the resource rights being allocated (Dobin, 2006). It is likely that other resource extraction fees are similarly low. As such, proponents of such a system feel that an increase is unlikely to have a negative economic effect on the Province's resource industries (McDade, 1993). With a dedicated fund, government might be more willing to assess the benefits and costs of a taking on societal welfare, rather than simply the immediate associated costs.

Regardless of the method government chooses to finance compensation for takings, such options can play an important role in creating an efficient economy, as well

as in shaping fairness and parity issues (Knetsch, 1983; Schwindt, 1992; McDade, 1993). For these reasons, a funded compensation policy would give government greater decision making options, while maintaining appropriate levels of industry security. As the next section illustrates, legal rights to compensation in Canada also support the provision of government provided compensation.

2.4.4 Legal Rights to Compensation

Modern expropriation³ law in Canada links back to the English railway boom of the mid-nineteenth century (Todd, 1992). Expropriation principles established in the mid-nineteenth century were initially used extensively in Canada. However, the past 20 years has witnessed a complete transformation of expropriation law in Canada (Todd, 1992). Currently, BC's Expropriation Act [1996], like the laws in most other Canadian jurisdictions, provides for fair procedures and generous compensation when expropriation of fee simple land occurs. The implicit basic minimum objective of the law is to make an expropriated owner economically whole (Knetsch, 1992). Value of the expropriated property often centers on determination of the market value. However, BC can still expropriate property without compensation when it has enacted legislation that clearly authorizes it to do so.

Until 1978, compensation for takings in Canada was only available in two narrowly defined circumstances: first, if the regulatory action resulted in a formal expropriation of one's ownership interest, or second, if the property was damaged (Cohen and Radnoff, 1998). However, since 1978 the courts have considerably broadened the parameters governing compensation. These decisions have been grounded in common

³ Expropriation occurs when government takes property without the consent of the property holder.

law doctrine, rather than any explicit constitutional protection. As Young (2005) points out:

‘Since ownership of property in Canada is not constitutionally protected in terms directly referable to property, there is nothing absolute or immutable about the nature of either. Both the concepts and characteristics of property and ownership are subject to change through evolution of the common law. Similarly, both are open to legislative diminution.’ (p. 2)

The result of a lack of constitutional protection and/or well-defined legislation is a compensatory system that is largely determined on a case-by-case basis. As resource interests are not typically ‘expropriated’ but diminished through regulations (Schwindt, 1992), it is this area of the law that most greatly affects resource rights. In Canada, five important cases have shaped expropriation law for regulatory actions. They are summarized in the following paragraphs.

Manitoba Fisheries Ltd. v. Canada (1978, Supreme Court of Canada): This was the first recent case to expand the right to compensation. In this case, the Supreme Court of Canada awarded compensation in a situation where the federal government established a Crown Corporation and created a monopoly in favour of that entity to regulate the trans-border shipment and sale of fish in Manitoba (Cohen and Radnoff, 1998). While the federal government did not formally expropriate the plaintiff’s property, it did enact legislation enabling the creation of a Crown Corporation. The legislation provided that Manitoba Fisheries Ltd.’s suppliers and customers could only deal with the newly established Crown Corporation (Young, 2005). The court held that this amounted to an expropriation of property (Cohen and Radnoff, 1998). While the statute did not contain specific provision for compensation, once it was established that expropriation of property occurred compensation was awarded. This case established that a regulation

could result in a compensable taking, even when the property taken was not a tangible asset. Further, the case confirmed that the right to compensation would be presumed if not otherwise stated in an express manner.

BC Medical Association v. R. (1984, BC Court of Appeal): This case further tested the presumption in favour of compensation. In this case, the enactment of legislation prevented doctors from “balance billing”, thereby regulating a doctor’s fee for service wage. The BCMA sued the government for compensation for their loss in wages. The BC Court of Appeal denied compensation stating that the presumption in favour of compensation is not a purely mechanical matter of examining the legislation and asking whether there is an express written reference to a denial of compensation. Rather, it is what the Legislature intended with respect to compensation that is important (Young, 2005). Thus, mere absence of a compensation clause does not guarantee compensation should be paid for a taking.

British Columbia v. Tener (1985, Supreme Court of Canada): This case further expanded compensation law for regulatory takings. In 1973 the provincial government reclassified Wells Gray Park in order to preserve its natural resources. Though the plaintiff David Tener held surface and mineral rights in the park, he could not exercise these rights unless government issued a park permit. He was unable to obtain a permit (Young, 2005). The majority of the Court held that the denial of access amounted to a recovery by the Crown of a part of a right originally granted. This action constituted a taking for which compensation was required (Todd, 1992). The significance of this case lies not only in the fact that a regulatory taking is compensable, but also in the reality that

the regulation was enacted to protect an important and sensitive environmental resource from exploitation.

Rock Resources Ltd. v. British Columbia (2003, BC Court of Appeal): In this case the British Columbia Court of Appeal applied the presumption in favour of compensation to the taking of a mining claim by operation of park restrictions. The mineral claim in *Rock Resources* was unique from most previous claims because it involved claims for personal property as opposed to a clear interest in land. In examining the legislation to see if some implied intention not to pay compensation for a taking of personal property might be found, the Court ruled that a lack of reference to compensation for personal property was not sufficient to free the government of its duty to compensate (Young, 2005). Thus, *Rock Resources* significantly expanded what constitutes a compensable taking.

Canadian Pacific Railway v. Vancouver (2004, British Columbia Court of Appeal): In this case, an express negation of compensation was considered. Railway lands supporting track no longer in use were designated for a thoroughfare pursuant to the city's official development plan. A statute provided that "where Council ... exercises any of the powers contained in this Part, any property thereby affected shall be deemed as against the city not to have been taken ... and no compensation shall be payable." (Young, 2005). The Court found no claim for compensation. The case affirmed that if government has authorization to take and has expressly denied compensation its intent must be honoured. This ruling was recently upheld in the Supreme Court of Canada.

The critical points affecting compensation emanating from these cases are as follows:

- The property of a subject cannot be taken without authorization in the form of a legislative enactment. (*Manitoba Fisheries Inc.*)
- The authorization must be clear. If there is any ambiguity about whether the authority may take the subject's property, the legislation must be construed in favour of the subject. (*Manitoba Fisheries Inc.*)
- Even if the legislation clearly permits the taking of the subject's property, there is a presumption, based on justice and fairness, that the authority will pay compensation to the subject (*Manitoba Fisheries Inc.*)
- The presumption in favour of compensation rule is not a purely mechanical matter of examining the legislation and asking whether there is an express written reference to 'without compensation of any kind'. Rather it is the intention of the Legislature that is being sought. (*BC Medical Association*)
- These rules pertain to takings outside of real property, extending to goodwill (*Manitoba Fisheries Inc.*), and other personal property (*Rock Resources*).
- The right does not need to be expropriated. It is enough that government regulation prevents the rights holder from exercising their rights (*Manitoba Fisheries Inc, Tener, Rock Resources*).
- If the legislation explicitly states that compensation will not be paid, the courts will respect government's decision (*Canadian Pacific Railway*).

Not every decision involving compensation for takings reaches the courts. For example, in 1999 the Province reached an out of court settlement with MacMillan Bloedel. The government compensated the company \$83.75 million, in resource rights, land and/or cash, for tenured land that the Province turned into a park (Ministry of Forests, 1999). As certain types of takings gain established common law rights to compensation, government is likely to settle outside of court, rather than incur the political and monetary costs of a lengthy court battle (Schwindt, 1992).

2.4.5 Compensation and International Agreements

Compensation policy can no longer be considered solely at the national or provincial level. Under the North American Free Trade Agreement (NAFTA), which regulates trade between Canada, the United States and Mexico, Canada has agreed to expropriation and compensation provisions that follow the domestic US model. Article 1110 of NAFTA provides that parties may not nationalize or expropriate an investment of an investor, either directly or indirectly, or take measures tantamount to expropriation (International Trade Canada, 2003). Where expropriation is allowed compensation must be paid. Under NAFTA, expropriation is not defined and in the past the expropriation provision has been interpreted broadly – in one case including non-discriminatory regulatory measures as expropriation (Campbell and Nizami, 2001). While the operation of these NAFTA provisions only benefits American and Mexican companies in BC, it will likely influence future policy considerations at the federal and provincial level.

2.4.6 Summary

Actions that render a property right of little or no value are considered takings in both the academic literature and by the courts. Takings have a direct cost to society and the property rights holder. They also have an associated demoralization cost in addition to the value of the property. Demoralization costs can be felt by the industry as a whole and may have impacts well into the future. Compensation has been put forth as an option for decreasing the impacts of government takings. In this section, the effect of providing compensation was assessed using standards of economic efficiency, parity and ecological integrity. The section established that a case could be made for government provided compensation.

Similarly, the reviewed court cases confirm that government is legally responsible for providing compensation for takings unless they expressly provide that they will not do so. The cases also emphasize that complete expropriation is not required for a taking to necessitate compensation. In addition, international agreements, which strongly favour compensation for takings, might affect future compensation decisions in Canada. It is clear that a policy in favour of government provided compensation can be an important tool in improving government decision making flexibility, while maintaining economic efficiency and fairness.

2.5 Consultation

The role of consultation is explored in this portion of the literature review. The literature suggests how consultation can be useful in improving decision making related to property rights and compensation decisions.

2.5.1 Improving the Decision Making Process

An increase in natural resource demand can lead to more “environmental problems”, which in many cases arise due to conflicting rights claims (Bromley, 1991). Bromley (1991) provides examples of such cases:

“Those disputed resources could represent the mutually exclusive use of certain pristine landscapes – say for urban development or greenspace – or they could represent the competing claims of a shrimp fishery and the desires of a chemical plant to find a cheap way to dispose of residues” (p. 3).

About 94% of BC’s land is owned by the Crown (Land and Water BC, 2005a). As a result the provincial government is responsible for assigning property rights over much of the province. These rights were predominantly assigned to BC’s forestry and mining

industries (BC Lands, 1990). Because of tourism's low profile and weak lobbying power within the resourced-based arenas of government, certainty surrounding commercial recreation's rights to use Crown land is weak (Wilderness Tourism Association, 2005). Similarly, an increasing number of stakeholder voices, with an interest in how BC's Crown land is managed, have spurred government to find new methods to resolve natural resource disputes (Selin & Chavez, 1995; Duffy et. al, 1996; Wondolleck and Yaffe, 2000). Complaints with respect to the current decision making system include:

- Lack of effective instruments for developing and implementing good environmental policy,
- Failure of the existing process to address public and private interests,
- Inability of the current system to successfully move toward sustainability among ongoing land and resource disputes, and
- Lack of participation in the decision-making process. (Susskind and Cruikshank, 1987; Duffy et. al, 1996; Weidner, 1998)

These weaknesses have resulted in an increased interest in more inclusive decision-making processes.

The level of participation in planning activities can be presented as a ladder metaphor. On this ladder citizen "empowerment" moves from lower rungs of non-participation (manipulation, therapy), to degrees of tokenism (informing, consultation, placation), to successfully higher levels of citizen engagement (partnership, delegated power, citizen control) (Arnstein, 1969; Buchy et. al, 2000). More participatory forms of decision-making are likely to foster higher levels of social capital (e.g. through a greater level of political participation, and improved accountability of governing institutions). They are also apt to improve the quality of decisions through the utilization of local

knowledge (Pinkerton, 1998). The latter of these two strengths is specifically important to CR stakeholders and their property rights security.

When changes to the provisions of a tenure contract or to resource allocation on the land base must be made, consultation between government and tenure holders can improve the probability of reaching a positive outcome. Consultation helps to:

- Identify the interests of the tenure holder, often leading to more innovative and efficient solutions (Buchy et. al, 2000);
- Clarify appropriate forms of compensation in cases where alternative solutions cannot be reached (Schwindt, 1992); and,
- Increase levels of confidence and business security, leading to potentially greater investment and resource use efficiency (Schwindt, 1992).

2.5.2 A Framework for Consultation

Recent changes in the manner in which government consults with First Nations with respect to land-use decisions (Ministry of Forest and Range, 2003) provide a useful framework for government consultation with CR operators. A detailed list of these consultative principles can be found in Appendix 1. Important elements of this framework, which are essential to effective consultation include:

- Engagement of stakeholders before decisions are made;
- Procedures for participation;
- An exchange of information;
- An understanding by all stakeholders of the potential effects on interests;
- An outline of those circumstances where mediation or dispute resolution is appropriate; and,
- A commitment to an agreeable outcome.

The degree and type of consultation should be tailored to suit the extent of the changes contemplated (Ministry of Forest and Range, 2003). Thus, when decisions with a broader impact are considered, greater levels of “empowerment” should take place. At the broadest level, where CR Land Use Policy changes are required to increase CR security, collaborative planning should be used (Jamal and Getz, 1995). Collaborative planning delegates responsibility for assessing options, and developing recommendations to stakeholder tables that engage in consensus-based negotiations to reach agreement (Cormick et al., 1996). This process results in decisions that are more likely to be in the public’s best interest by addressing the concerns of all affected parties (Duffy et al., 1996; Albert et al., 2003).

A consultation precedent does exist between the provincial government and the CR industry in BC. The CR joint steering committee (JSC) established a venue for government and industry representatives to exchange ideas and improve industry security. Among other initiatives the committee has worked towards improving the transferability of tenures. However, the committee’s activities have not addressed the issues of contract security in a significant fashion (B. Gunn, personal communication, 2005). While the JSC does not currently have the mandate to address many property rights security issues it could act as a launching pad to strengthen the consultation process between the CR industry and government.

2.5.3 Summary

Well established consultation can improve decision-making processes and security issues for the CR industry in BC. The BC government has an extensive policy

for consultation with First Nations, which provides a useful framework for strengthening the consultation process between the CR industry and government.

2.6 The BC Commercial Recreation Land Use Policy

This section introduces and discusses the evolution of the LWBC CR Land Use Policy, which governs CR tenure applications and contracts. The challenges faced in the process of policy development are an important factor in current CR property rights management in BC. This section summarizes the various CR contract types, which are analyzed in greater detail in the findings chapter.

2.6.1 Commercial Recreation in BC

BC's CR policy does not include a specific definition for CR. It takes an operational approach, stating which activities are included under the policy. It includes those activities that are pursued in the outdoors, carried out on provincial Crown land, provided on a fee-for-service basis, mechanized and non-mechanized in nature, and greater than 14 days in duration (Land and Water BC, 2004b). Activities that require modification to the land but are less than 14 days in duration are also included under the policy.

2.6.2 Evolution of the CR Land Use Policy

Traditionally, CR focussed on guide-outfitting and guided angling activities (BC Lands, 1990). However, the industry witnessed rapid growth in demand for recreation opportunities (15-20% per annum) combined with an emergence of new CR activities in the 1980s (Outdoor Recreation Council, 1988). This demand was largely driven by an increasingly affluent and activity conscious "Baby Boom" generation (BC Lands, 1990).

While local residents undertook the majority of recreation in BC, interest in such pursuits from across Canada, the United States and overseas added to demand. Increased interest in BC was largely fuelled by BC's diverse landscapes, abundant natural opportunities, and temperate climate (BC Lands, 1990).

Prior to this recreation pressure the provincial government's role in managing and encouraging orderly commercial use of the backcountry had been relatively limited (BC Lands, 1990). However, the emergence of businesses catering to these recreationalists led to increasing levels of conflict between different operators and other land and resource users (Curtis, 2003). In response, government created ad hoc programs to address these challenges. However, a comprehensive and coordinated government policy tailored to meet the needs of the industry, as a whole, did not exist (BC Lands, 1990). A serious impediment to creating such a policy was the multitude of Ministries responsible for various components of the CR industry. These included: Ministry of Crown Lands, Ministry of Environment, Ministry of Forests, Ministry of Parks, and Ministry of Tourism (BC Lands, 1990). The result was a limited and uncoordinated approach to managing the development and impacts of the CR industry. Eventually, BC Lands initiated a process to develop a comprehensive set of policies and procedures relating to all CR activities on Crown land (Curtis, 2003). Included in the process was a discussion paper developed by the Ministry of Lands and Parks, and a consultative process, which was summarized into a report in 1990 (BC Lands, 1991). The discussion paper identified the following CR Land Use Policy goal:

'To support the development of a commercial backcountry recreation industry on suitable Crown land in British Columbia.' (BC Lands, 1990, p. 7)

The goal was accompanied by a series of policy objectives. Challenges to creating an effective CR policy included:

- Finding effective ways to integrate CR operations within resource capability, existing resource commitments, and with public expectations for outdoor recreational use of public lands;
- Ensuring industry development was responsive to the evolution of provincial policy on aboriginal land issues; and,
- Ensuring that the economic benefits of CR contributed to local economies to the maximum extent possible. (BC Lands, 1990)

The outcome of the process was the Province's first formal *Commercial Backcountry (Interim) Policy* (Ministry of Environment, Lands and Parks, 1995). In 1996, BC Lands initiated a one-year review of the policy, which resulted in the revised *Commercial Recreation on Crown Land Policy* (Brown, 1997; Ministry of Environment, Lands and Parks, 1998). This policy has been altered over the subsequent years but its core remains the same. It is currently administered by MTSA.

2.6.3 Forms of Commercial Recreation Tenures

Not all CR tenures are governed by the CR Land Use Policy. CR tenures fall under two jurisdictions: MTSA, and the Ministry of the Environment (MoE). The CR Land Use Policy and the BC *Land Act* guide those governed by MTSA, while the BC *Wildlife Act* and BC *Parks Act* guide those administered by MoE. The following section describes each tenure and some of the basic property rights granted. A more in-depth tenure comparison is provided in the findings chapter.

Ministry of Tourism, Sport and the Arts Tenures⁴

Investigative Permit

An investigative permit grants the tenure holder the right to carry out specified activities for a maximum term of 2 years. The permit is designed for the investigation of project and/or CR business feasibility and generally does not permit commercial activity, construction of any improvements, nor does it guarantee a future tenure in the area. It may be replaced when there are legitimate business requirements for a longer investigative period. The Crown may cancel the permit for non-diligent use, such as inactivity. The permit holder must allow public access to the area without interference. The Crown retains the right to grant overlapping tenures. However, it must consult with the permit holder before issuing any other tenure for any purpose over the investigative permit site. Investigative permits holders cannot transfer their permit.

Temporary Permit

A temporary permit grants the right to carry out specified activities for a maximum term of 2 years and is replaceable. Replacement of tenures is at the Crown's discretion. A temporary permit may be issued for any temporary uses (including one-time events and sustained or repeated use of Crown land), where a business is better served by such a permit than by a license of occupation. Temporary permits are often granted to ocean kayaking and white water river operators. A temporary permit does not grant exclusive use. The tenure holder must allow public access to the area without interference and must recognize that government may authorize the overlapping and layering of tenures.

⁴ This information was taken from the LWBC website: (http://lwbc.bc.ca/01lwbc/policies/policy/land/crown_land_allocation.pdf) on July 30th, 2005.

Works Permit

A works permit may be issued to construct a road, non-commercial airstrip, bridge or trail over the land. This permit does not entitle the applicant to deny to any person the right to use the road, non-commercial airstrip, bridge or trail. The standard term for a works permit is 2 years and the maximum term is 10 years. Works permits may be replaced.

Licence of Occupation

A licence of occupation may be issued where minimum improvements are proposed or where short term tenure (e.g., 5 to 30 years) is required. Licences of occupation are usually granted where a CR operator uses temporary or semi-permanent camps and requires a large area of land to conduct their operation. This is the most common type of CR tenure issued in BC. A licence of occupation conveys fewer rights than a lease. It conveys non-exclusive use for the purpose described, cannot be registered against title to the land, and does not require a survey.

The tenure holder may, in accordance with section 65 of the *BC Land Act*, take legal action against any unlawful acts by individuals interfering with the holder's right to use the land as authorized by the tenure (e.g., stealing personal property, damaging improvements). However, a licence of occupation does not confer a right to the exclusive use and occupancy of the land. A licence of occupation does not allow the tenure holder to curtail public access over the licence area except where it would impact the licensee's right to use the land as per the licence document (e.g., improvements placed on the land may be locked or gated). Government may authorize overlapping tenures. For example, other resource interests or multiple CR operations could be given the right to use the same parcel of land. The standard term for a licence of occupation is 10 years, however a

maximum term of 30 years is available when the licence is tied to a lease or fee simple ownership of land.

In most cases, tenure holders may apply for a tenure replacement following the mid-term of the tenure. Replacement of tenures is at the Crown's discretion. The Crown may decline to replace a tenure, or may alter the terms and conditions of a replacement tenure, if the existing tenure is not in good standing, if development contemplated in an approved management plan has not been completed, or where it is deemed to be in the public interest. Replacement tenures are granted for up to 30 years.

Lease

A lease is issued where long-term tenure is required, where substantial improvements are proposed, or where definite boundaries are required in order to avoid land use and property conflicts. Leases are often granted for permanent CR improvements such as lodges. A legal survey is required at the applicant's expense to define the tenured area. These surveys usually have a high associated cost. The tenure holder has the right to modify the land and/or construct improvements as specified in the tenure document. The tenure holder is granted the right to exclusive use and enjoyment of the area. Thus, the tenure holder also has the right to exclude or charge the public for use of the land and/or improvements, and block the overlapping of additional tenures where they may have a material affect or where such action is consistent with the terms of the lease. The lessee may, in accordance with section 65 of the BC *Land Act*, take legal action against trespassers to the lease area. The standard term for a lease is 30 years. In most cases, tenure holders may apply for a tenure replacement at any time following the mid-term of the tenure. Replacement of tenure is at the Crown's discretion. The Crown

may decline to replace a tenure, or may alter the terms and conditions of a replacement tenure, if the existing tenure is not in good standing or if development contemplated in an approved management plan has not been completed.

Ministry of Environment

BC Park Use Permit

By legislation, a permit is required for many types of commercial use, and land use/land occupancy that take place in parks and protected areas designated under the *BC Park Act*, the *BC Environment and Land Use Act* or the *Protected Areas of British Columbia Act*. This covers all types of CR, including hiking, wildlife viewing, and back-country skiing. There are five types of park use permits (PUP) that can be used for the purposes of commercial recreation: Interim PUP, non-exclusive PUP, exclusive/limited PUP, exclusive with moderate facilities PUP, and exclusive with major facilities PUP. Interim permits are issued for one year to allow a developer to create a lodge development and management plan. Non-exclusive PUPs are issued for non-exclusive CR activities with no or minimal facilities, and can be issued for 1-5 years. For example, these permits may be issued for wildlife viewing activities or backcountry skiing. The exclusive/limited PUP is issued for exclusive use, with no or minimal facilities, such as a temporary camp, and can be issued for up to 10 years. Exclusive with moderate facilities PUPs for the most part grant exclusive rights for CR activities, and permit the development of facilities with a low level of investment. For example, a backcountry warming hut for a back-country skiing operation. Permit duration is for up to 10 years. The exclusive with major facilities PUP offers exclusive rights for CR activities and allows the development of facilities with a high level of investment, such as lodges. The duration is for up to 20 years. With the exception of the interim permit all PUPs offer

mid-term renewal. Each permit may allow for differing levels of activity impact, and motorized or non-motorized use, however the higher the activity impact the greater the permit fees.

*Guide Outfitters Licence and Certificate*⁵

The guide outfitter licence is issued annually and allows the guide outfitter to operate a guiding business. Without a licenced guide outfitter there can be no business. A licenced guide outfitter may apply to a regional wildlife manager for a guide outfitter certificate, which gives him or her the exclusive guiding privileges in a guide area for a period not exceeding 10 years. Guide outfitter certificates are granted for an exclusive guide area with clearly defined and legally described boundaries. The guide areas vary considerably in size and availability of big game species. The certificate may be renewed any time after the fifth anniversary for a further 10 years. The certificate does not confer any property rights to the holder, and the Province only recognizes the rights of the person named on the certificate. Under section 61 of BC's *Wildlife Act*, a regional manager has the power to suspend, cancel or refuse to renew a guide outfitter's licence or certificate.

2.7 Summary

This review brought together five areas of literature important to the study. The first section defined CR. This exercise was important in deciding which tourism activities should be included in the study. The importance of natural resource security for the CR industry was also established. The next section defined property and property rights. It advanced the important economic and social role property rights play in our society. This

⁵ This information was taken from the Fish and Wildlife Branch website: (http://wlapwww.gov.bc.ca/fw/home/becoming_guide_outfitter.htm) on October 16th, 2005.

section also provided a framework for conducting the comparative analysis of tenures and creating a CR operator questionnaire for this study.

The next two sections described tools that can improve tenure security, while also addressing broader stakeholder interests and sustainability issues. The third section defined a taking, outlined the impact of demoralization cost when a taking occurs, presented an argument as to why government should create a clear and fair policy that provides compensation for significant takings, and established the current legal framework for compensation in Canada. The fourth section identified the dual role consultation can play in increasing security for CR operators. First, consultation increases CR operator security by: leading to innovative solutions, increasing confidence in business security, and clarifying appropriate forms of compensation in the case of a taking. Second, consultation ensures that all stakeholder concerns that may result from the proposed policy changes to the CR Land Use Policy are addressed.

The final section outlined the driving pressures behind the development of the CR Land Use Policy. It also introduced BC's major CR tenure types and suggested the key elements that shape the way in which CR operators must utilize Crown lands. In combination with the preceding sections, the review provides both a context and frame for the research that follows.

3 METHODS

3.1 Introduction

This study uses three methods to answer the research question: a comparative policy analysis, a series of semi-structured key informant interviews, and a structured CR operator survey. The research objectives and associated methods are described in the following sections of this chapter.

3.2 Research Questions

The purpose of this research is to provide a stronger understanding of those property rights and tenure security strategies that will help facilitate long-term economic development of CR on BC's Crown lands. The specific goal is to identify weaknesses in BC's current CR tenure rights and determine ways in which government can improve the strength and security of such rights. This is accomplished by addressing the following question:

1. Does the level of property rights granted to BC's CR industry place CR operators at a competitive disadvantage?

This question has three interrelated parts:

- a. How do the property rights granted to BC's CR industry differ when compared across tenure types?
- b. Do the property rights granted to the BC CR industry create difficulties in establishing and growing a CR business?
- c. Does the current level of property rights security associated with CR tenures in BC create demoralization among CR operators?

By answering these questions areas of variance between different tenure and property rights packages, which may cause competitive disadvantages for BC's CR operators are identified and possible solutions are offered. In addition, potential environmental and social impacts, which may result from changes to CR property rights are discussed, along with possible mitigation tools.

3.3 Research Design

3.3.1 Policy Analysis Methods

To effectively describe and compare tenure contracts and policies, it is useful to disaggregate them into discrete components (Haley and Luckert, 1990). These components can be described as tenure characteristics. Scott and Johnson (1983) developed an initial list of property rights characteristics that can be used to compare tenures. Haley and Luckert (1990) and Schwindt (1992) have used modified versions of these property rights characteristics to compare Canadian tenures. Haley and Luckert rationalize this classification system in the following way:

The classification system has been adopted because it is thought that these categories best describe attributes of property rights as they apply to forest tenures. Furthermore, in classifying property rights, there is the question of which restrictions placed on tenure holders may be considered specific to forest tenures and which restrictions are part of the more general legal framework within which any property rights are granted. This study considers those restrictions which affect forest tenure holders' decisions, but not the more legal restrictions which affect all property holders. (p.4)

These property characteristics provided a useful framework for assessing and comparing the bundle of rights held by property and tenure holders. For instance, they were successfully employed to compare different forest tenure holder rights in Canada (Haley and Luckert, 1990). They required only minimal modifications for use in this

study's comparative research on CR tenure holder rights in BC. While Haley and Luckert identified eleven characteristics for their analysis (comprehensiveness, duration, transferability, right of tenure holder to economic benefits, exclusivity, security, use restriction, allotment types, size specifications, management stipulations, and operational controls) this study used just seven. Allotment types and size specifications were discarded because they were too specific to logging tenures. The right of the tenure holder to economic benefits, use restrictions, management stipulations and operations controls were included in the initial analysis; however, further investigation revealed that the methodology employed did not reveal enough specific information to allow useful comparison among tenures. Specifically, individual contracts and policies did not accurately portray the degree of resources required by, or limits placed on, the industry as a result of these characteristics. The data collected for all characteristics is listed in Appendix 4. However, no analysis of information concerning these four property rights characteristics is presented in the formal findings.

Each characteristic used was further disaggregated to further operationalize them for analytical purposes. This facilitated a measurement of the extent to which property rights were present in CR tenures and contracts. It also facilitated comparisons across tenure types. Table 3.1 provides a list of the characteristics and the disaggregated components used in the analysis, while Chapter 4 provides an explanation of each.

Table 3-1: Property rights characteristics and sub-characteristics

Comprehensiveness	Tenure may be used for more than one resource
	Tenure may be used for more than one activity
Duration	Length of term
	Renewable during term
	Renewable at expiration of term
Transferability	Tenure transferable with government consent
	Sublicence allowed with government consent
	No government take back applied for transfer or sublicence
Exclusiveness	Exclusive use of area under tenure
	Sole property of area under tenure
Security	No disposal of portion of tenure
	No termination due to financial arrears
	No termination due to non-compliance
	No termination due to public interest or for no cause
	Length of notice by government before termination greater than 3 months
	Government cannot alter contract fees within term
	Government cannot change restrictions on contract within term
Consultation	Consultation before changes to regulations/fees
	Consultation before other tenures are granted in the area
	Consultation before disposal of portion of tenure
	Consultation before tenure termination
Compensation	Compensation for no-fault tenure termination
	Compensation for other takings
	Compensation for loss of improvements

List modified from Haley and Luckert (1990)

The preceding framework guided the examination of approaches and rights conferred in CR land dispositions in British Columbia (BC), Alberta, Ontario, Yukon, Alaska, and the federal lands administered by the United States Department of Agriculture (USDA) Forest Service (FS), and Bureau of Land Management (BLM) in the continental United States. Also included in the analysis were the BC Ministry of Forests and Range's (MFR) forest licence and tree farm licence, Parks Canada's lease and licence of occupation, and a wide selection of other BC land dispositions administered by the

Ministry of Agriculture and Lands (MAL). Not every tenure type was analysed in each region. Outside of BC, only those CR tenures most commonly granted in specific competitive regions were explored. The analysis in BC included a broad sample of common tenure types. A list of contracts, legislative acts, and secondary information used in the study is provided in Appendix 2.

The following sequence of analytical steps guided the examination of each tenure:

- Analysis of the tenure contract
- Analysis of the corresponding policy or legislative act (e.g. CR Land Use Policy, Parks Act, etc.)
- Analysis of secondary information available on the ministry/department/website which administered the tenure
- Questioning of government staff to clarify uncertainty

In the initial phase tenure contracts were examined. If information pertaining to a property rights category could not be found in the tenure contract, the corresponding legislative act or policy was analyzed. Not all of the categories were either apparent or fully described in every contract. In some cases, there was no known secondary reference for the property rights information. In other cases attempts to contact government staff were unsuccessful. When the examination process extended beyond immediate tenure contracts, a tenure holder's rights became less clear and comparable (Schwindt, 1992).

The tenure contracts used in the study were primarily standardized templates used to design individual contracts. As a result 'pick clauses' and 'free field' provisions, which may or may not have ended up in an individual contract, were considered in the analysis. However, case specific contract provisions were not included in the analysis. As such the analysis of a certain tenure type may not correspond perfectly to an individual's tenure.

The overriding findings from this analysis were recorded in matrix format (Appendix 3). This approach facilitated direct comparison across all tenure characteristics. It also provided an efficient means of cataloguing and identifying the specific provisions of each tenure. The large and cumbersome character of the initial matrix created was eventually collapsed into a series of single property and tenure rights characteristics that were comparable across all tenure types (Chapter 4).

3.3.2 Interview Method

The study incorporated phone interviews with key informants on issues of takings and their influence on contract security. Such interviews are appropriate when there is a need for extensive information on a small number of complex topics (Burns, 2000). They are especially useful when the researcher intends to investigate topics with a small number of “key” individuals using mainly open-ended questions (Gilham, 2000). A purposive sample of these informants was selected based on their past experience with tenuring systems in general and CR tenures systems in particular (Patton, 1990). Phone interviews were conducted due to the remote location of many of the key informants.

Interviews were recorded and transcribed. Recording the interviews helped ensure that researcher biases to responses were avoided. It also helped to accurately capture complex and detailed information (Weiss, 1975; Patton 1990; Gray and Guppy, 1994). The phone interviews were conducted between July 13th and August 10th, 2005. In accordance with the Simon Fraser University’s Research Ethics Regulations, all interviewees were introduced to the purpose of the study and familiarized with the voluntary nature of the interview. Numbers and types of informants are listed in Table 3.2. Interview templates are listed in Appendix 6.

CR Experience Interview

Eight tenured CR operators with direct government takings experience were interviewed. Wilderness Tourism Association members assisted in identifying the interviewees. The following criteria were employed to choose interviewees:

- Individuals must have had experiences of taking and/or conflict to do with land use;
- Individuals must own or operate a CR business in BC; and,
- Individuals must have held a CR tenure at the time of the taking and/or conflict.

Interviewees were asked to describe their experience with takings. Their comments were guided by a series of questions dealing with aspects of various types of takings. These aspects included: tenure termination, partial land takings, changing tenure regulations, and the granting of overlapping tenures. Interviewees were only asked for commentary on those types of takings with which they had experience. Open-ended questions were used to allow the respondents to provide more flexible, clear and elaborate commentary on their tenure taking experiences (Patton, 1990). Interviewees were also asked questions concerning the degree to which consultation and compensation had occurred in their taking experience.

Professional Stakeholder Interviews

Professional stakeholder interviews were conducted with insurance brokers, bank lenders, and a lawyer. A steering committee of CR operators identified the professional interviewees. Each stakeholder had previously worked with these operators on CR security related issues in the past. The interviewees were asked their perspectives concerning the degree to which various CR property rights characteristics affected

financial lending and insurance decisions. Each property rights characteristic used in the policy analysis was examined with respect to its impacts on business certainty. Most of the questions were close ended. However, where the interviewee felt that a property right characteristic affected decisions, they were asked to expand on their perspective in an open-ended fashion.

Table 3-2: Key Informants interviewed

Type of Interviewee	Number
CR Operator	8
Insurance Broker	2
Bank Lender	2
Lawyer	1

3.3.3 CR Operator Survey Method

The CR operator survey was designed to identify their perceptions concerning the extent to which: 1) takings policies created demoralization in the CR industry; 2) current CR tenure property rights created a healthy investment environment; and, 3) parity existed among different resource industries with respect to property rights and takings. The questionnaire explored property rights characteristics used in the policy analysis. Respondents were asked thirty-nine close-ended questions concerning their perception of CR property rights security and the likelihood of different types of government takings, consultation, and compensation. Responses were recorded using a five point Likert type scale that included the following response categories: strongly disagree, somewhat disagree, neutral, somewhat agree, and strongly agree. Opportunities for additional open-ended comments were provided where appropriate.

To ensure relevancy, comprehension and completeness of the survey, pre-testing of the survey instrument was undertaken with four CR operators. Based on suggestions from this process improvements were made to the questionnaire before the final version was distributed. Appendix 5 provides a copy of the questionnaire used in the study.

Questionnaires were e-mailed to CR operators belonging to the following associations:

- 35 members of the British Columbia River Outfitters Association (BCROA)
- 14 members of HeliCat Canada and the Backcountry Lodges of BC
- 150 Wilderness Tourism Association (WTA) members
- 20 CR associations that belong to the WTA who distributed individually to their members.

Overall, about 200 questionnaires were sent to CR operators. The survey instrument was e-mailed to potential respondents between July 5th-20th, 2005. Respondents could return their responses by e-mail, fax or post. Initially only 18 questionnaires were returned. This low response level could have been due to the timing of the survey. July and August are the two busiest months for the majority of CR operators in BC. During August 2005, three follow-up requests were sent to non-respondents. These additional requests helped boost the response rate to 61 completed surveys.

Due to the voluntary nature of response, the process of survey completion was self-selecting. As a result the responses received cannot be considered a random sample, and generalizations to a broader population may not be valid. Respondents represented a wide variety of CR operator types. Table 3.3 lists the distribution of respondents. Close to 20% of the respondents were from the HeliCat industry. The high proportion of

respondents from this industry may be due to the timing of the survey. A high proportion of responses were also received from river and ocean kayak guides (20%), back-country lodge operators (13%) and self-propelled backcountry operators (11%).

Table 3-3: Breakdown of CR perception questionnaire respondents

CR Operation Type	Number of Operators	Operators Providing Other CR Services	% of total Operators*
Cat/Heli Ski/Hiking	12		19.67
River/Ocean Use	12	1	19.67
Backcountry Lodge	8	3	13.11
Self-Propelled Backcountry	7	6	11.48
Fishing	5	3	8.20
Guide Outfitters	5		8.20
Snowmobiling/ATV	4		6.56
Wildlife Viewing	2	3	3.28
Horseback Riding	1	3	1.64
Outdoor Education	1	1	1.64
Adventure Tours	1		1.64
Unidentified	3		4.92
TOTAL	61	20	100.00

*Percentage based on first CR business listing provided by operator.

3.4 Data Analysis

3.4.1 Policy Analysis

Policy and contract provisions were grouped into the property rights sub-characteristics previously mentioned. These provisions were then compared across regions and industries. Common trends as well as discrepancies amongst contracts were sought. Comparisons between similar tenure types occurred wherever possible. For example, leases were compared to other leases, while licences of occupation were compared to their counterparts elsewhere. The analysis was focussed on comparing all of the contracts to CR contracts administered by MTSA in BC.

While the analysis is qualitative, the sub-characteristics lent themselves to some quantification (Haley and Luckert, 1990). A summary table and findings for each characteristic are presented in Chapter 4. Specific reference to the provisions used in the analysis is provided in Appendix 4.

3.4.2 Interview Analysis

All interviews were transcribed verbatim. This process aided the researcher in sorting the relevant information and forming a greater understanding of the overarching issues. Interview results were used to give context to the policy analysis findings. Specific experiences highlight how weaknesses of current policies have affected tenured CR operators. They also shed light on which policies aid CR operators or where solutions to CR concerns have been realized. Due to the small number of interviews conducted, no attempts to code and categorize responses, or generalize experiences to a broader population occur.

3.4.3 Survey Analysis

Surveys were returned and stored in an anonymous fashion. Descriptive statistics were generated using SPSS. Responses were evaluated in aggregate and by sample segments. Segmentation was employed to determine whether attitudes varied between sub-populations. Specifically, responses from licence vs. leaseholders, and non-mechanized vs. mechanized CR operators were compared.

3.5 Study Limitations

All study methods have inherent weaknesses. However, researchers can strengthen their investigations by employing multiple research methods (Babbie, 2001).

To increase validity and reliability, and to triangulate results, this study utilized a close-ended questionnaire, open-ended interviews and a comparative analysis. Limitations pertinent to each approach are discussed in the following sections.

3.5.1 Limitations of Comparative Analysis Approach

The comparative analysis of tenures was qualitative. When analysing each tenure, the researcher interpreted intent and categorized provisions. While operationalizing the property rights characteristics increased the objectivity of this exercise, a degree of subjectivity remained. A content analysis of tenures may have partially eliminated this weakness, however the variance of terminology used across resource sectors and among jurisdictions made full use of this technique impractical.

The second weakness of the analysis involves the comparability of the various tenures. Leases, licences and permits are designed to offer different rights to tenure holders. Thus, comparing tenures could produce misleading results. While comparing leases to leases and licences to licences was applied where possible, in some instances this was not feasible. For example, the US BLM refers to all tenure types as permits. However many of the property rights assigned under this tenure type are similar to leases in BC. To limit this weakness, the analysis was explicit in what types of tenures were compared. When the contracts were analysed in aggregate, they were referred to as tenures. Finally, the de jure rights and regulations outlined in a tenure contract may not always equate to the de facto rights and regulations practiced (Bromley, 1991). This analysis was limited to the contractual and policy provisions, which may not be representative of the understanding and actions of tenure holders and government.

3.5.2 Limitations of Interview Approach

While semi-structured interviews increase flexibility and allow for an in-depth investigation of complex social processes, they can result in substantially varied responses from different respondents (Babbie, 2001). Such variance can reduce the comparability of the interviews. In addition, the descriptive nature of open-ended interviews can lead to variability in interpretation (Patton, 1990). This may decrease the reliability of the results.

3.5.3 Limitations of Survey Approach

The questionnaire suffers from the typical weaknesses of self-administered surveys including: closed-ended questions, which can standardize people's attitudes; inflexibility in adjusting the survey to new information; and, artificiality, which refers to the discrepancy between a respondent's survey answers and their actions. These weaknesses can lead to decreased validity (Babbie, 2001).

Strategic responses can also influence the validity of a survey (Patton, 1990). As survey completion was self-selecting, individuals interested in strengthening their property rights may have had more incentive to complete the questionnaire. This incentive could have also resulted in responses that sought to strengthen CR operator's desire for more complete property rights, despite the validity of their response. This weakness can be minimized through the use of multiple research methods (Sarantakos, 1998; Babbie, 2001). Specific to this study, contrast between the comparative policy analysis and survey results may indicate strategic survey responses. However, this contradiction may also indicate that operators have inaccurate information about their tenure rights (Patton, 1990).

Specific to this questionnaire, some respondents found it difficult to hypothesize how government may treat them in the future. As there was not a “no opinion” or “not applicable” option for any of the questions, respondents may have chosen the “neutral” response as a default answer thereby skewing the results towards the middle. Finally, to save costs, and speed up response time an email format was chosen for the questionnaire. While respondents were able to fax or mail back their responses, a few indicated that they had difficulty with the electronic file. As such, it is likely that others also had difficulty and chose not to fill out the survey.

3.6 Summary

This study employed three methods: A comparative analysis of tenure contracts based on a property rights framework; semi-structured key informant interviews with CR operators who experienced government takings, as well as legal, lending, and insurance professionals familiar with BC’s CR industry; and, a close-ended questionnaire completed by CR operators in BC. This three-pronged approach to the issue of property rights and security in BC increased the validity and reliability of the study’s findings.

The next chapter presents the findings from these three areas of investigation. It demonstrates the extent to which the study was able to answer the research questions directing this project.

4 FINDINGS AND ANALYSIS

4.1 Introduction

This chapter presents the findings of the comparative analysis, key informant interviews, and CR operator questionnaire. Each section is divided and analyzed by property rights characteristics.

4.2 Comparative Analysis

To clarify the CR industry's competitive position with respect to tenure agreements, the following comparative analysis is presented. It examines different public land tenure agreements with respect to two overriding questions:

- Who holds which interests; and,
- How well do CR tenures in BC measure up against (i) other resource tenures in BC and (ii) CR tenures in competitive regions?

A modified property rights framework guides the comparison of tenure arrangements in various jurisdictions and business sectors. Specifically, it focuses on tenure factors associated with: comprehensiveness, duration, renewability, transferability, exclusiveness, and security. In some cases, analysis categories are divided into sub-themes for clarity. The degree to which contracts and policies address the issues of consultation and compensation is also examined. The analysis explains those rights that affect security of tenure and shows discrepancies across resource industries and/or regions. A matrix form of the analysis is provided in Appendix 3.

Land dispositions in BC, Alberta, Ontario, Yukon, Alaska, Parks Canada and the federal lands administered by the USDA, FS, and BLM in the continental United States are examined. Not every tenure type is analysed in each region. Outside of BC, only those CR tenures most commonly granted are considered. Within BC a broad sample of common tenure types is considered, however the list is not exhaustive. Specifically, mining tenures are excluded. This is because of the extensive differences between mining and other industry tenures in BC, making useful comparisons untenable. A list of contracts, land use policies, legislative acts, and secondary information used in the analysis appears in Appendix 2.

4.2.1 Comprehensiveness

Comprehensiveness refers to the number of asset attributes a tenure holder controls. Increased ability to add activities and use multiple resources allows the tenure holder to adapt to market signals and adjust their operation. All of the tenures reviewed limit resource use to the specific intent of the tenure. However, some of the tenures allow the holder to add additional activities upon government approval. Table 4.1 summarizes these findings.

MAL and MTSA Dispositions⁶

All MAL and MTSA contracts, with the exception of the ski hill Master Development Agreement (MDA) limit the activities allowed to those negotiated in the management plan. Thus, the extent of the permitted activities is unique to each contract. The tenure holder can offer as many products as they like under their tenure as long as it

⁶ At the time this comparative analysis was conducted MTSA and MAL tenures were administered collectively by LWBC. As a result the tenures administered by these two ministries still contain a high degree of overlap. For this reason, they continue to be analysed together.

is agreed to in the management plan. If the tenure holder wishes to add activities to their management plan they can apply for an amendment to do so. MAL and MTSA contracts also include provisions that prohibit extractive uses of the land such as logging.

The MDA does not specifically state which activities are permitted, except to state that the developer may conduct, subject to prior rights, recreation activities on the land. These activities must be spelled out in the agreement.

Other dispositions in BC outside of MAL and MTSA

The MoE PUPs limit land use to those activities described in the management plan. The guide outfitters certificate allows guided hunting over a specified area. The guide outfitters licence specifies area, species and quotas. The MFR forest licence limits use of the land to timber extraction and the construction of improvements that are required in the process of extraction. In contrast, the tree farm licence provides the licensee with more control through a provision that grants management rights over the land. Control is not absolute, however, as the licensee must consider other uses in the management plan.

CR dispositions outside of BC

Similar to many of the tenures in BC, land use in Alberta is limited to those activities outlined in the management plan. However, the Alberta *Public Lands Act* includes a provision that allows the tenure holder to add additional activities to the management plan with government consent.

The Ontario lease and the Yukon lease and land use permit (LUP) are also limited to the uses outlined in the contract. CR contracts administered in the Yukon also explicitly restrict the tenure holder from undertaking any extractive activities.

The Parks Canada lease and licence of occupation also limit activities to those outlined in the contract. Similar to the Alberta lease, additional activities can be added to the lease through a written proposal to government, which may be accepted at the government's discretion.

CR dispositions in the US

Each USDA Forest Service special use permit (SUP) outlines the permitted activities at the beginning of the document. The ski hill and marina development SUPs permit those activities required to build and maintain an inclusive resort. All SUPs issued by the Forest Service (USFS) include provisions prohibiting the use of vegetation and rights to water. The BLM special recreation permit (SRP) requires the permit holder to list all proposed activities and limits resource use to those activities listed. Use of timber by a BLM SRP holder is prohibited.

The commercial use licence (CUL) and concession permit (CP) administered by the NPS in Alaska limits permitted activities to those agreed upon and referred to in the contract. Alaska's Department of Natural Resources (DNR) LUP and commercial recreation permit (CRP) define those activities permitted on the land and include provisions prohibiting the use of live timber and the improvements for activities outside of those outlined in the contract. The DNR lease requires the lessee to submit a development plan to the government outlining the proposed use of the land. Only those

uses approved by the lessor may be undertaken. Like all of the other CR tenures reviewed, entitlement to the land under the lease excludes rights to extractive resources.

Summary

All of the tenures reviewed limit the permitted activities to those outlined in the contract. BC's ski hill MDA, and the USFS ski area and marina resort SUP are the most comprehensive. Each allows the permit holder to conduct those activities required to operate an inclusive resort. Thirty-six percent⁷ of the tenures examined, including those administered by MTSA and MAL, explicitly allow the tenure holder to apply for an increase in the number of tenured activities. Thus, BC's CR operators face similar constraints to other tenure holders in BC and competing jurisdictions.

⁷ In this section percentages are calculated by treating all tenures issued by a particular agency and of a specific type as one tenure. For example, five MTSA CR licences of occupation and five MAL licences of occupation were studied, however each group of five was treated as one tenure when calculating percentages.

Table 4-1: Ability to add activities to tenure

Region	Issuing Institution	Tenure contract and pertinent legislation	Tenure holder has ability to add activities to tenure	Additional activities require government approval
BC	MTSA	CR licence of occupation	√	X
		CR lease	√	X
		CR temporary use permit	√	X
		Ski hill master development agreement	√	X
	MAL	Lease	√	X
		Licence of occupation	√	X
		Statutory right of way	√	X
	MoE	Park use permit commercial land use		
		Park use permit commercial recreation		
		Guide outfitters certificate		
		Guide outfitters licence		
	MFR	Forest licence		
		Tree farm licence		
AB	Public Lands	Recreational lease	√	X
		Miscellaneous lease	√	X
		Licence of occupation	√	X
ON	MNR	Land lease - tenure		
YT	Lands Division	TLYA lease		
		YLA lease		
		Land use permit		
CAN	Parks Canada	Lease	√	X
		Licence of occupation	√	X
USA	Forest Service	Marina resort term special use permit		
		Ski area term special use permit		
		Outfitting and guiding SUP – priority		
		Outfitting and guiding SUP - temporary		
		Special recreation permit		
AK	NPS	Commercial use licence		
		Concession permit		
	DNR	Land use permit		
		Commercial recreation permit		
		Lease		

Information for the tables in this section was collected from the tenure contracts, acts and policies listed in Appendix 2.

“The tables in this section of the report summarize the degree to which provisions within a tenure contract provide security to the tenure holder. An **X** indicates that the provision decreases the security of the tenure contract, while a **√** indicates that the provision increases the security of the tenure contract.

4.2.2 Duration and Renewability

The length of contract and security of renewal tends to be greater for leases and licences. Permits are usually granted for shorter periods and in many cases are not renewable. However, variability in this category is great. The greatest level of tenure renewal security is offered by MTSA's ski hill MDA, the BC MFR's forest licence and tree farm licence, Yukon's lease, some Parks Canada leases, and the United States DNR lease and land use permit. Table 4.2 identifies the degree of government control over tenure renewability.

MAL and MTSA Dispositions

Of the three types of CR tenures in BC, the lease provides the greatest duration. Leases can be granted for up to 30 years, while licences are initially granted for ten years. After mid-term renewal, licences can be renewed for 30 years. CR temporary use permits (TUP) are granted for two years and are renewable at the end of the term for an additional 2 years if MTSA accepts the proposed management plan. Only the CR leases and licences, along with the quarrying lease, include a provision in the contract that stipulates that the tenure is renewable. The renewal clause states that renewal will occur only if MTSA or MAL considers it appropriate. Unlike all other leases and licences administered by MAL, the grazing lease states that MAL shall not be obliged to extend the term or issue a new lease upon the expiration of the lease. While tenure replacement information is not provided in most MAL contracts, it can be found in the corresponding land use policy. MAL and MTSA allow renewal requests to be made at the midterm of the existing contract; however, renewal will be granted at MAL and/or MTSA's sole discretion.

The duration of the MDA is 60 years. A replacement request can be made at the mid-term of the contract, and barring no event of default outstanding the government will offer the lessee a replacement contract.

Other dispositions in BC outside of MAL and MTSA

PUPs are usually granted for 1 year, however the government is considering increasing the length of term to 5 years. The permit holder must request a renewal of the permit 30 days prior to expiration, which is granted at government's sole discretion. The guide outfitters certificate is issued for up to 10 years and is renewable after 5 years for a maximum of 10 more years. Guide outfitters licences are issued for one year.

FLs and TFLs are replaceable. A TFL is granted for a 25-year term and is replaceable every five years. In contrast, the term of a FL is for no more than 20 years, however it is also replaceable every 5 years. If the licensee has satisfactorily performed the existing contract up to the time of the offer, the government must tender a replacement contract.

CR dispositions outside of BC

An Alberta lease is granted for 10 years, while the duration of a licence varies depending on the purpose of the licence. Each of these dispositions is renewable at the government's discretion. An Ontario lease is granted for up to 20 years. Similarly, the decision to issue a new lease is within the government's absolute discretion. The two forms of Yukon land leases are granted for 5 years but are renewable for up to 60 years. Renewal is subject to the lessee having performed and observed all of the covenants and

conditions. The Yukon LUP contract makes no mention of renewability, however long term use is granted.

A Parks Canada lease can be granted for a maximum of 42 years, however for most of these leases renewal, must be for terms that do not exceed 21 years in the aggregate, where the initial term of the lease and the terms of all renewals do not exceed 49 years. Some leases also include a provision for perpetual renewal. A licence can also be granted for up to 42 years, however the contract and regulations make no reference to renewability.

CR dispositions in the US

The four types of land use permits issued by the US Parks service differ in length of term and renewability. The Marina SUP is issued for 30 years but is not renewable. By contrast, the holder of a ski hill SUP may apply for renewal six months prior to expiration. The priority SUP for guiding and outfitting can be issued for 5 years and is renewable, while the temporary SUP has a term of less than 1-year and is not renewable. The BLM SRP can be issued for anywhere from 1 day to 10 years and is renewable at the end of the term at the government's discretion.

The Alaska NPS CUL is granted for 2 years and may not be renewed. The NPS CP can be granted for up to 10 years and is renewable at the government's discretion. Alaska's DNR LUP is granted for 5 years and may be renewed if the conditions of the permit have been met and if the activity does not conflict with other land uses planned by the DNR. The DNR CRP is issued for 1 year and no preference for long-term use or conveyance of the land is granted or implied by the issuance of a permit. The DNR lease

is granted for 10 years and no later than one year prior to the lease expiration the lessee may apply for renewal.

Summary

There is a wide range of tenure duration, from 1 day (BLM SRP) to 60 years (MTSA ski hill MDA). CR tenures in BC range from 2 to 30 years (depending on tenure type). This situation is similar to many of the other tenures reviewed. In general, tenure duration tends to be longer where more intensive infrastructure investment is required. Greater disparity exists with respect to renewability of tenure. Only Alaska's NPS commercial use licence is not renewable. However, for 61% of the tenures, renewal is at the government's discretion. In BC, the MFR forest licence and tree farm licence, as well as MTSA's ski hill MDA guarantee replacement or renewal if contractual obligations are met. Thirty-five percent of out-of-province CR tenures include similar renewability clauses. As MTSA and MoE tenures in BC limit renewal tenures to government discretion BC's CR operators are at a disadvantage, in comparison to many of their competitors.

Table 4-2: Security of contract renewal

Region	Issuing Institution	Tenure contract and pertinent legislation	Government has sole discretion over renewal	Renewal is based upon following regulations	Government offers mid-term renewal
BC	MTSA	CR licence of occupation	X		√
		CR lease	X		√
		CR temporary use permit	X		
		Ski hill master development agreement		√	√
	MAL	Lease	X		√
		Licence of occupation	X		√
		Statutory right of way	X		√
	MoE	Park use permit commercial land use	X		√
		Park use permit commercial recreation	X		√
		Guide outfitters certificate			√
	MFR	Guide outfitters licence	X		
		Forest licence		√	√*
		Tree farm licence		√	√*
AB	Public Lands	Recreational lease	X		
		Miscellaneous lease	X		
		Licence of occupation	X		
ON	MNR	Land lease - tenure	X		
YT	Lands Division	TLYA lease		√	
		YLA lease		√	
		Land use permit	X		
CAN	Parks Canada	Lease		√	√
		Licence of occupation	X		
USA	Forest Service	Marina resort term special use permit	X		
		Ski area term special use permit		√	
		Outfitting and guiding SUP – priority		√	
		Outfitting and guiding SUP - temporary	X		
		Special recreation permit	X		
AK	NPS	Commercial use licence			
		Concession permit	X		
	DNR	Land use permit		√	
		Commercial recreation permit	X		
		Lease		√	√

Information for the tables in this section was collected from the tenure contracts, acts and policies listed in Appendix 2.

*A replacement tenure is offered every 5 years. This is different from a renewal as a replacement tenure could include significantly different provisions than the existing tenure.

4.2.3 Transferability

Transferability of tenure is not consistent across regions or between tenure types. Transferability ranges from unrestricted, to transferable with written government consent, to not transferable. Details are listed in Table 4.3.

MAL and MTSA Dispositions

According to CR contracts, BC CR tenure holders (regardless of tenure type) can transfer their tenure with consent, which “will not be unreasonably withheld”. However, at the time of this research the CR Land Use Policy contradicted the temporary use permit contracts by not allowing those permits to be transferred or sublicensed. In comparison, transferability and sublicensing of all other land use contracts administered by the MAL may be withheld at the minister’s sole discretion.

Other dispositions in BC outside of MAL and MTSA

Transferability of BC PUPs are under similar constraints as MAL tenures. The guide outfitters certificate is transferable with government consent. The licence contract states that it is non-transferrable, however this is contradicted in BC’s *Wildlife Act*, which permits transfer with the government’s permission. Regardless of the type, BC forestry licences are transferable with few licensee requirements.

CR dispositions outside of BC

The transferability of Ontario’s land lease is similar to BC’s recreation tenures and cannot be unreasonably denied by government. All of Alberta’s CR tenures and the Yukon’s two types of leases require consent from government in order to be transferred. The Yukon LUP is not transferable. The Parks Canada lease is transferable. However,

government may withhold consent if the land was in an undeveloped state prior to the issuance of this lease, and the lessee has not fulfilled any contractual or regulatory obligations to develop the Land. Parks Canada's licence of occupation is non-transferable.

CR dispositions in the US

With few exceptions CR tenures in the US and Alaska cannot be transferred. The USDA Forest Service ski area SUP, BLM RP, and the Alaska NPS CP and DNR lease can be transferred, however consent is required but not guaranteed.

Summary

Seventy-five percent of the tenures reviewed allow the tenure holder to transfer their tenure. However, the degree of government control varies. Government will not unreasonably withhold transfer permission from MTSA tenures in BC. In contrast, all of the other CR tenures examined (74%), with the exception of the Ontario lease and Parks Canada lease, include a greater level of government control over tenure transfer. This places CR operators with MTSA tenures at an advantage in comparison to other CR tenure holders.

Table 4-3: Transferability of tenure

Region	Issuing Institution	Tenure contract and pertinent legislation	Right to transfer is determined by government	Right to transfer will not be unreasonably withheld	Right to sublicence will not be unreasonably withheld
BC	MTSA	CR licence of occupation		√	√
		CR lease		√	√
		CR temporary use permit		√	√
		Ski hill master development agreement		√	√
	MAL	Lease	X	*	*
		Licence of occupation	X		
		Statutory right of way	X		
	MoE	Park use permit commercial land use	X		
		Park use permit commercial recreation	X		
		Guide outfitters certificate	X		
	MFR	Guide outfitters licence	X		
		Forest licence		√	√
		Tree farm licence		√	√
		Recreational lease	X		
AB	Public Lands	Miscellaneous lease	X		
		Licence of occupation	X		
ON	MNR	Land lease - tenure		√	√
YT	Lands Division	TLYA lease	X		
		YLA lease	X		
		Land use permit			
CAN	Parks Canada	Lease		√	√
		Licence of occupation			
USA	Forest Service	Marina resort term special use permit			
		Ski area term special use permit	X		
		Outfitting and guiding SUP – priority			
		Outfitting and guiding SUP - temporary			
AK	BLM	Special recreation permit	X		
		Commercial use licence			
	NPS	Concession permit	X		
DNR		Land use permit			
			Commercial recreation permit		
		Lease	X		

Information for the tables in this section was collected from the tenure contracts, acts and policies listed in Appendix 2.

* MAL communication tenures include provision that prevents the government from unreasonably withholding the transfer of tenure.

4.2.4 Exclusiveness

The majority of leases studied offer exclusive use of the land in a limited manner (Table 4.5). When a tenure involves extensive improvements or intensive use, control over the land tends to be greater (ski hill MDA in BC, ski hill SUP on USDA Forest Service lands, forestry licences in BC).

MAL and MTSA Dispositions

CR extensive licences and TUPs in BC do not grant exclusive use or occupancy of the land. In addition, the documents for all MTSA CR tenures state (clause 5) that any rights granted are subject to existing rights granted under other statutes and that government may make other dispositions over the land without compensation. Supplemental to this provision is a clause that protects the government from any responsibility for losses incurred by CR tenure holders as a result of dispositions or subsisting grants or rights granted under the Acts listed above. In effect, land rights granted under these other Acts supersede CR rights granted under the BC *Land Act*. Also unique to CR tenures (all types) and the moorage licence of occupation is a provision that protects public access over the land. This provision is not in any of the leases or licences administered by MAL (with the exception of the moorage licence of occupation).

MTSA's Land Use Policy for CR includes a lengthy section (Appendix 7 of the CR Land Use Policy) outlining the procedure for granting new dispositions over the land. While current tenure holders must be consulted and given a copy of the applicant's management plan, government can grant new dispositions without compensation and without consent from current tenure holders. As long as prevalent issues can be resolved to MTSA's satisfaction, this applies even if it is determined that compatibility is low.

The CR Land Use Policy states (p.57):

Where an application has low compatibility with an existing CR tenure(s), [MTSA] will consult with the applicant and existing tenure holders to determine if there is potential to actively manage the conflicts to achieve compatible management plans...

If the issues can be resolved to [MTSA's] satisfaction, then the tenure may be processed by [MTSA] with or without the support of the existing operator...

Leases include the following provision: "We will provide you with quiet enjoyment of the land" (LWBC CR lease, 2005, p. 14). This grants the lessee the right to exclusivity, with the exception of existing rights granted under other statutes. Lessees are also given the right to reasonably withhold consent for new dispositions. Though not supported in the contract, the CR Land Use Policy grants intensive CR licences of occupation (primary camps only) the same right to exclusivity.

The ski hill MDA is unique in that the controlled recreation area, which is part of the master development agreement, is granted to the developer via a licence of occupation. Like other licences the controlled recreation area is subject to prior rights. However, because of the controlled recreation area designation, the licence offers a much greater degree of exclusivity than other licences granted by the MTSA. While government is able to grant other dispositions over the land, the lessee can stop the granting of dispositions by withholding written consent. In addition, the developer has the exclusive right to make improvements, and control access routes in the recreation area. Subject to this control, the developer must allow other users to pass freely through the controlled recreation area if they are not using the improvements. However, the developer

may restrict routes and activities of the user and out-right refuse use to persons associated with an operation that is in conflict or competition with the operations of the developer.

Other dispositions in BC outside of MAL and MTSA

The commercial land use PUP allows the province to grant further rights concerning park and permit areas, provided that such rights do not unreasonably impede, obstruct or compete with the rights of the permit holder under the permit. The commercial recreation PUP does not give the permit holder exclusive use and occupancy of the permit area. In addition, the permit holder must not interfere with public access or activities of any other person in the permit area. Finally, the province retains the right to grant to any person the right to enter upon and use the permit area, or any part of it, for any purpose. The guide outfitters certificate grants exclusive hunting rights over a given area, but does not protect the tenure holder from other types of use.

FLs in BC require the licensee to permit all authorized users or occupiers to access the land. However they are given exclusive right to an assigned amount of the annual allowable cut (AAC). TFLs grant the licensee exclusive right to harvest timber from assigned lands. TFL licence holders must allow authorized users to access the area. They must include provisions in the management plan for the integration of activities other than timber production.

CR dispositions outside of BC

Alberta leases and licences do not have any provisions with respect to exclusivity of tenure. However, Alberta's *Public Lands Act* affords the minister the authority to grant more than one disposition over the same land. The Ontario lease and the Ontario *Public*

Lands Act make no reference to exclusiveness of land use or to the right of the government to grant additional dispositions over the land. Leases in the Yukon guarantee the right to ‘vacant possession of the land’ with the exception of public works projects. However, the LUP does not grant exclusive use or tenure over the land.

Parks Canada’s licence is similar to BC’s commercial recreation licence in terms of exclusivity. The government reserves the right to grant other dispositions over the land and the licensee must allow the public to pass freely through the area. The lease makes no reference to exclusivity, however an employee of Parks Canada stated that the term ‘lease’ legally grants the lessee exclusive use of the land (J. Low, personal communication, July 11, 2005).

CR dispositions in the US

Of the three USDA Forest Service SUPs included in this study, all are non-exclusive and include provisions to protect public access to the tenure area. However, the degree of protection from other uses varies from permit to permit. The marina SUP provides no restrictions with respect to non-exclusive use, while the ski area SUP states that additional dispositions must not materially affect the permit holder. The guide and outfitters SUP allows others to use the permit area in any way that is not inconsistent with the holder's rights and privileges under the permit. This happens after consultation with all parties involved. The BLM SRP is also non-exclusive, and permit holders must not block land access to the public. When new applications are received, all authorized users of the land are notified by the BLM.

Neither the NPS CP nor the CUL in Alaska allow for exclusive use. The CUL does not grant the licensee preferential or exclusive right to conduct business in any NPS

administered area. The tenure holder's authority to provide visitor services under the terms of the CP contract is non-exclusive.

Alaska's DNR LUP and CRP forbid the permit holder from restricting the ability of any users to use or access state land or public water in any manner. In addition, the permits are subject to all existing rights. However, government reserves the right to grant additional authorizations to third parties for compatible uses on or adjacent to the land. Authorized concurrent users of state land; their agents, employees, contractors, subcontractors and licensees, cannot interfere with the operation or maintenance activities of authorized users. Alaska's lease is subject to reasonable concurrent uses but only provides protection for public use of navigable water bodies.

Summary

While all leases grant exclusive use over the land, few other tenures include this provision. However, most tenures recognize that overlapping tenures should be compatible with existing land uses. In contrast, MTSA licences of occupation – extensive, and TUPs allow government to grant low compatibility or non-compatible tenures over the same area. This government right is unique to these two tenure types and could have significant negative business outcomes. In addition, only MTSA CR tenures explicitly state that contract rights are secondary to land rights granted under other Acts. Finally, only 42% of the tenures examined allow public use of the tenured land. Specifically, all of the MTSA CR tenures, Parks Canada tenures and USFS permits allow public access. In each of these areas MTSA CR tenures are at a comparative disadvantage.

Table 4-4: Degree of exclusivity granted by contract

Region	Issuing Institution	Tenure contract and pertinent legislation	Tenure grants exclusive use	Government can grant low - non compatible tenures	Contract permits public use over the land	Contract rights secondary to rights under other Acts
BC	MTSA	CR licence of occupation - extensive		X	X	X
		CR licence of occupation - intensive	√*		X	X
		CR lease	√		X	X
		CR temporary use permit		X	X	X
		Ski hill master development	√**		X*****	
	MAL	Lease	√		****	
		Licence of occupation				
		Statutory right of way				
	MoE	Park use permit commercial land use				X
		Park use permit commercial				
		Guide outfitters certificate	√***			
		Guide outfitters licence	√***			
	MFR	Forest licence	√**			
		Tree farm licence	√**			
AB	Public Lands	Recreational lease				
		Miscellaneous lease				
		Licence of occupation				
ON	MNR	Land lease – tenure	√			
YT	Lands Division	TLYA lease	√			
		YLA lease	√			
		Land use permit				
CAN	Parks Canada	Lease	√		X	
		Licence of occupation			X	
USA	Forest Service	Marina resort term special use permit			X	
		Ski area term special use permit			X	
		Outfitting and guiding SUP - priority			X	
		Outfitting and guiding SUP – temp			X	
	BLM	Special recreation permit				
AK	NPS	Commercial use licence				
		Concession permit			X	
	DNR	Land use permit			X	
		Commercial recreation permit				
		Lease	√*			

Information for the tables in this section was collected from the tenure contracts, acts and policies listed in Appendix 2.

* For primary camps only. **Exclusivity does include some restrictions. ***Exclusive guide and outfitter rights for a defined area. ****The only MAL tenure that prohibits the tenure holder from blocking public access over the land is the marina licence of occupation. *****The ski hill MDA allows the developer to place restrictions on the public’s use and limit passage to certain routes.

4.2.5 Termination

All contracts and policies reviewed allow government to terminate tenures due to financial arrears or non-compliance. A number of contracts also permit the termination of contracts for reasons of public interest or at the government's discretion (see Table 4.6).

MAL and MTSA Dispositions

Variation occurs in the power of government to terminate contracts for reasons of 'public interest' or 'no-fault'. Within BC, MAL and MTSA leases and rights of way do not include such a provision. However, licences and TUPs give government this power. All licences of occupation and temporary use permits administered by MAL and MTSA include a provision stating:

if we require the Land for our own use or, in our opinion, it is in the public interest to cancel this Agreement and we have given you «NOTICE_CANCELLATION_PUBLIC_INTEREST» days' written notice of such requirement or opinion;... this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

By contrast, the MDA only includes termination provisions for non-compliance. It also includes an extensive list of government actions that can be taken before termination of the agreement would occur.

Other dispositions in BC outside of MAL and MTSA

The Parks BC commercial land use PUP, the BC *Forest Act* and Parks Canada's lease and licence only include provisions for termination due to non-compliance by the tenure holder. Conversely, the commercial recreation PUP includes a provision for termination due to public interest. The guide outfitters certificate and licence can only be terminated for reasons of non-use or non-compliance.

CR dispositions outside of BC

CR leases and licences in Alberta allow the government to terminate the contract for any reason, however compensation must be given for no-fault termination. The Ontario lease only makes one reference to no-fault termination of the lease. Similar to the MAL and MTSA leases, the Ontario lease includes a provision that permits the province to flood the area and thereby terminate the contract without compensation. Neither of the Yukon CR leases have provisions that allow for termination in the interest of the public.

CR dispositions in the US

Each of the USDA Forest Service SUPs allows for termination due to public interest, however the Outfitting and Guiding SUP does state that reasons must be ‘specific’ and ‘compelling’. In addition, compensation must be paid for improvements if marina or ski hill permits are terminated due to public interest. Similarly, the NPS CUL and CP in Alaska allow for termination due to public interest. Of the three types of tenure granted by the Alaska DNR, only the commercial recreation permit has a provision for termination in the public interest.

Table 4-5: Government ability to terminate contracts due to public interest or government discretion

Region	Issuing Institution	Tenure contract and pertinent legislation	Contract allows termination due to public interest or government's discretion
BC	MTSA	CR licence of occupation	X
		CR lease	
		CR temporary use permit	X
		Ski hill master development agreement	
	MAL	Lease	
		Licence of occupation	X
		Statutory right of way	
	MoE	Park use permit commercial land use	
		Park use permit commercial recreation	X
		Guide outfitters certificate	
		Guide outfitters licence	
	MFR	Forest licence	
		Tree farm licence	
AB	Public Lands	Recreational lease	X*
		Miscellaneous lease	X*
		Licence of occupation	X*
ON	MNR	Land lease - tenure	
YT	Lands Division	TLYA lease	
		YLA lease	
		Land use permit	
CAN	Parks Canada	Lease	
		Licence of occupation	
USA	Forest Service	Marina resort term special use permit	X*
		Ski area term special use permit	X*
		Outfitting and guiding SUP – priority	X**
		Outfitting and guiding SUP - temporary	X**
	BLM	Special recreation permit	X
AK	NPS	Commercial use licence	
		Concession permit	
	DNR	Land use permit	
		Commercial recreation permit	X
		Lease	

Information for the tables in this section was collected from the tenure contracts, acts and policies listed in Appendix 2.

*Compensation must be provided. **Reasons must be 'specific' and 'compelling'.

Summary

Only 18% of the tenures examined allow for termination due to public interest, without some type of restriction on government action. Of these 6 tenures, 3 are MTSA CR tenures. While Alberta and USFS ski area and marina tenures allow for this action, compensation must be paid. The risk of termination due to public interest can create significant uncertainty for tenure holders, in comparison to tenures that only allow for termination due to non-compliance.

4.2.6 In-term Changes to Contracts

Three types of in-term changes to contracts are examined in this study. These are government's right to take a portion of the tenure, alter contract fees, and alter regulations. In many cases a contract would address all of these issues in one provision. Table 4.7 summarizes the findings.

MAL and MTSA Dispositions

BC's *Land Act* includes a provision that allows government to resume up to 1/20th of the land allocated to a tenure if it is deemed to be necessary for making roads, canals, bridges or other public works. All of the licences and leases administered by MAL and MTSA include provisions that allow government to make changes to user fees, the security deposit, and the amount and type of insurance required. Prior to February, 2005 all of the MAL and MTSA contracts included a general provision that prevented the contract from being modified except by a subsequent agreement in writing between the parties. CR contracts after February 2005 may include a provision which allows MTSA to amend Management Plans (MP) during the term of the tenure under certain conditions.

Amendments are permitted if they address public safety concerns, land-use planning, lack of diligent use, carrying capacity and other similar issues. The temporary use permits (sea kayaking and river use) already included this provision. None of the contracts and policies administered by MAL include this provision.

The boundaries in a MDA can be changed if both parties agree to the proposed alterations. With some restrictions, the province can change fees on the 10th anniversary of the agreement. The agreement may not be modified except in writing between the province and the developer.

Other dispositions in BC outside of the MAL and MTSA

The two types of PUPs issued by MoE do not include provisions for the taking of a portion of a tenure or for changes to contract regulations. However, the contracts are currently only issued for one year, and are perhaps too short to make altering worthwhile. The government can, in its sole discretion, change fees on the anniversary date of the agreement and alter the requirements of insurance at any time. The guide outfitters certificate and licence may only be amended for reasons of non-compliance.

The FL includes a provision to alter the boundaries outlined in the contract if a court of competent jurisdiction determines that activities or operations under or associated with the licence unjustifiably infringe on an aboriginal right and/or title, or treaty right. The TFL allows government to take lands/volumes of timber away from the grantee for a number of reasons. These include: granting a wood lot licence, removing timber that remains uncut or not removed by the grantee, and removing timber or granting additional permits for a timber type not specified in the agreement. For these

reasons government is permitted to remove 0.5% of the volume of the AAC each year. For both licences government can adjust the stumpage fees and the annual rent.

The BC FL allows government to make changes during the contract term to the type of timber, terrain, and the part of the timber area the grantee can access. The TFL does not permit changes to the contract unless agreed to between the parties.

CR tenures outside of BC

In Alberta, regardless of the type of disposition, government is able to withdraw land from the contract at any time, in accordance with Alberta's *Public Lands Act*. The miscellaneous land lease allows government to make changes to fees every five years. The other Alberta dispositions make no reference to changes in fee structure. Government can only make changes to contract terms at the renewal of a disposition.

Yukon land leases are subject to boundary changes as may be shown by survey to be necessary. The leases make no reference to government's ability to change fee structures or regulations during the term of the lease. The Yukon LUP makes no reference to government's ability to make changes to the terms of the contract.

Parks Canada may remove a portion of a licence. Government is not able to do this in the case of a lease, however, and in both cases is not able to alter the fees or terms of the contract within the contract term.

CR dispositions in the US

The marina resort and ski area SUPs administered by the USDA Forest Service allow government to alter the terms of the permit to reflect changing times and conditions. They can also incorporate land use allocation decisions made as a result of

revision to forest land and resource management plans. In addition, an authorized officer can amend the terms of the permit to remove the right to use any national forest lands not specifically covered in the master development plan and/or not needed for the use and occupancy authorized by the permit. The ski area SUP includes additional provisions. It allows government to make changes to the MP that benefit the permit holder or are required to protect threatened or endangered species.

The priority outfitting and guiding SUP includes a provision which allows for the reduction in the authorized use if the holder has utilized less than 70 percent of the assigned amount in each of three consecutive years, unless the non-use was approved. As the temporary outfitting and guiding SUP is only granted for one year, this provision is not included. The temporary and priority SUPs allow government, at its discretion, to amend the permits to incorporate new terms that may be required by law, regulation or as a result of other management decisions.

The BLM SRP makes no reference to changes to tenure terms or taking of a portion of the tenure. However, the Federal Regulations for Permits for Recreation on Public Lands allows government to change fees at their discretion.

The Alaska division of the NPS reserves the right to terminate all or any portion of a CP in order to protect area visitors, and protect, conserve and preserve area resources. Neither the CP nor the CUL permit government to change fees or conditions during the term of the contract.

The LUP and CRP administered by Alaska's DNR permit the authorized officer to modify the stipulations of the contract or use additional stipulations as deemed necessary. The permit holder must be advised before any such modifications or additions are

finalized. The LUP may also require a reasonable increase in insurance coverage. This requirement is reviewed on an annual basis. The fees for the lease issued by the DNR can be altered on the 5th anniversary of the contract. The lease may only be modified if agreed to in writing by both parties.

Summary

Only the MTSA, USFS and two of the Alaska DNR tenures give government total power to alter provisions within the contract term. A similarly limited number of tenures allow government to change fees within the contract term. While 55% of the tenures examined allow government to remove a portion of the tenure within its term, most are restricted to small portions of land for public infrastructure projects. MTSA's CR tenures are the only land dispositions examined that give government these powers in all three categories. This could place CR operators in BC at a significant disadvantage in comparison with their competitors.

Table 4-6: Ability of government to remove a portion of the tenure or alter contract provisions within term

Region	Issuing Institution	Tenure contract and pertinent legislation	Government can alter provisions within contract term	Government can change fees within contract term	Government can remove a portion of tenure within term
BC	MTSA	CR licence of occupation	X	X	X
		CR lease	X	X	X
		CR temporary use permit	X	X	X
		Ski hill master development agreement		X**	X
	MAL	Lease			X
		Licence of occupation			X
		Statutory right of way			X
	MoE	Park use permit commercial land use			
		Park use permit commercial recreation			
		Guide outfitters certificate	X*		
		Guide outfitters licence	X*		
	MFR	Forest licence		X	X
		Tree farm licence		X	X
AB	Public Lands	Recreational lease			X
		Miscellaneous lease		X***	X
		Licence of occupation			X
ON	MNR	Land lease - tenure			X
YT	Lands Division	TYLA lease			X
		YLA lease			
		Land use permit			
CAN	Parks Canada	Lease			
		Licence of occupation			X
USA	Forest Service	Marina resort term special use permit	X		X
		Ski area term special use permit	X		
		Outfitting and guiding SUP – priority	X		X
		Outfitting and guiding SUP - temporary	X		
	BLM	Special recreation permit		X	
AK	NPS	Commercial use licence			
		Concession permit			X
	DNR	Land use permit	X		
		Commercial recreation permit	X		
		Lease		X***	

Information for the tables in this section was collected from the tenure contracts, acts and policies listed in Appendix 2.

*Only for reasons of non-compliance or non-use and only after a hearing is conducted. **With restrictions on the 10th anniversary of the agreement. ***Every five years

4.2.7 Consultation

The majority of the tenures and policies studied do not address the question of consultation. The responsibility of government to consult is summarized in Table 4.9.

MAL and MTSA Dispositions

All of the MAL and MTSA contracts include a general provision that requires the grantee and government to act in a reasonable manner. This involves considering the other party, when acting on provisions in the contract. However, where the agreement states that the grantee or MAL/MTSA can act on their sole discretion neither party is required to consult, nor take into consideration the other parties concerns. In addition to this provision, all CR contracts issued after February 2005 include a provision that allows government to alter the management plan (this could include taking a portion of the tenure away from the tenure holder). Included in this provision is a requirement for government to notify the grantee and provide 60 days (this is a standard time period and may be altered at MTSA's discretion) for the grantee to inform government of any concerns or provide a counter proposal. Once the MTSA has considered the grantee's concerns, they must send out a final notice to the grantee outlining their decision. At this stage, the grantee has 60 days to submit a formal objection to MTSA, if he or she does not agree with the final notice. The decision takes effect 12 months after notice, unless the matter is deemed to be urgent. In such urgent cases, the time frame is determined on a case-by-case basis.

Leases and right of ways administered by MAL and MTSA require government to obtain consent from the grantee prior to making any additional land dispositions. In the case of CR licences and TUPs, the CR Land Use Policy requires a tenure applicant to

send a CR Operator Input Form (CROIF) and a copy of the management plan to the operators in the application area. The operator then has 30 days to complete the CROIF. The supplied information is taken into consideration when MTSA makes its decision. All other licences and TUPs administered by MAL and MTSA do not refer to a consultation process before additional dispositions are granted.

The only reference to consultation as a result of tenure termination is in cases of financial arrears or non-compliance. Under these circumstances MAL or MTSA must provide the tenure holder with 60 days notice.

The ski hill MDA constitutes the entire agreement between government and the developer. It may not be modified except as provided in the agreement or by subsequent modification or agreement in writing between government and the developer. The province can only make additional dispositions over the land comprising the controlled recreation area if they receive prior written consent from the developer. The boundaries of the controlled recreation area can be changed upon the agreement of both parties. Consultation provisions are similar to other MTSA dispositions if the contract is cancelled due to financial arrears or non-compliance. However, the MDA provides additional government responses to non-compliance by the developer, leaving termination as a last and unlikely resort.

Dispositions in BC outside of MAL and MTSA

The BC PUP and BC *Park Act* make no reference to consultation before changes to contract provisions, additional dispositions, taking of a portion of the PUP area, or termination of the PUP. The guide outfitters licence and certificate make no reference to

consultation, however there is a lengthy hearing process if government is considering altering or terminating a licence or certificate for reasons of non-compliance.

If government is considering making changes to FL requirements for areas where cutting permits are allowed they must consult with the licensee and will consider their comments. Government must consult the TFL holder and consider any recommendations made by the licensee before deleting an area of scheduled land. In addition, in both cases, government may amend a cutting permit only with the consent of the licensee.

Alberta cannot make changes to a disposition during the term. In the case of a new disposition being granted the applicant must obtain consent from the current tenure holder. The only reference to consultation made in the Ontario land lease is when calculating the annual rent, in which case a mediator will be used to reach a mutually agreed upon solution.

None of the dispositions granted by the Yukon make reference to consultation with the grantee. While contracts issued by Parks Canada also do not make reference directly to consultation, in any instance where a taking or acquisition occurs without the contract holder's consent Canada's *Expropriation Act* will apply. For this reason it would be in government's interest to consult the tenure holder before any type of change to the contract is undertaken.

CR dispositions in the US

Of the three permits issued by the USDA forest service only the guide and outfitters SUP makes reference to consultation. Government must consult permit holders

before making other dispositions over the land. The BLM will also contact tenure holders when additional permit applications are received.

The Alaska NPS CP requires government to undertake good faith negotiations if franchise fees need to be adjusted. The Alaska DNR permits require government to advise the permit holder before any contract stipulation modifications or additions are finalized. The DNR lease may only be modified if agreed to in writing by both parties.

Summary

Only 48% of the tenures examined include a duty to consult before takings occur or additional land dispositions are granted. Of those, in 43% of the cases government retains the right to make changes regardless of the current tenure holder's position. MTSA CR tenures are among this latter group. MTSA leases do require government to obtain consent from the tenure holder in order to grant overlapping land dispositions. However, this is only the case where the lessee can show a negative material effect from the disposition. Increased levels of consultation exist for MTSA's ski hill MDA, MAL's lease and right of way, MFR's licences, all Alberta CR tenures, and Alaska's DNR lease.

Table 4-7: Government requirements to consult tenure holder before takings occur or additional dispositions are granted

Region	Issuing Institution	Tenure contract and pertinent legislation	Consultation however government retains right to make changes	Government must obtain consent of tenure holder
BC	MTSA	CR licence of occupation	√	
		CR lease	√	√*
		CR temporary use permit	√	
		Ski hill master development agreement		√
	MAL	Lease		√
		Licence of occupation		
		Statutory right of way		√
	MoE	Park use permit commercial land use		
		Park use permit commercial recreation		
		Guide outfitters certificate		
		Guide outfitters licence		
	MFR	Forest licence		√
		Tree farm licence		√
AB	Public Lands	Recreational lease		√
		Miscellaneous lease		√
		Licence of occupation		√
ON	MNR	Land lease - tenure		
YT	Lands Division	TYLA lease		
		YLA lease		
		Land use permit		
CAN	Parks Canada	Lease		
		Licence of occupation		
USA	Forest Service	Marina resort term special use permit		
		Ski area term special use permit		
		Outfitting and guiding SUP – priority	√**	
		Outfitting and guiding SUP - temporary	√**	
		Special recreation permit		
AK	NPS	Commercial use licence		
		Concession permit		
		DNR	Land use permit	√
		Commercial recreation permit	√	
		Lease		√

Information for the tables in this section was collected from the tenure contracts, acts and policies listed in Appendix 2.

*In order to grant new tenures, however lease holder must show material effect to block new tenures.

** Government's powers not clear.

4.2.8 Compensation

In tenures where more significant improvements are allowed or expected, such as leases, a wider range of compensation is provided for the occurrence of takings.

However, many contracts make no reference to compensation. Where compensation is addressed, what it constitutes is rarely defined (Table 4.10).

MAL and MTSA Dispositions

Leases offer the most in the way of compensation. Because leases only expressly provide provisions for termination in the case of non-compliance and flooding the lease leaves the door open to compensation in all other cases of contract termination. With respect to compensation for additional dispositions on the land government must consult leaseholders before granting additional dispositions. If the lessee cannot make an argument for material loss as a result of the disposition then the disposition can be granted. However, the contract only prevents the lessee from seeking compensation if the disposition does not have a material effect on the exercise of the lessee's rights under the agreement.

Licences and TUPS offer fewer avenues for compensation. Because provisions allow government to terminate the contract for reasons of public interest there is little avenue for compensation as a result of contract termination. In addition, a pick clause in the CR licence, licence of occupation – river use, and TUPs for river use and kayaking allows government to make changes to the disposition without compensation to the lessee. This clause is unique to these four dispositions in BC – it is not in any of the other tenures outside of these four.

BC's *Land Act* includes provisions that permit government to occupy land under disposition for the purpose of mineral and gas extraction, and water extraction and transport. In this case government must pay the grantee reasonable compensation. Government may also extract gravel, sand, stone, lime, timber or other material that may be required in the construction, maintenance or repair of a road, ferry, bridge or other public work, without compensation.

The ski hill MDA provides for compensation in the case of other dispositions if the lessee has reasonably not consented to the disposition. The contract makes no other mention of compensation in the event of termination (termination of the contract is very unlikely – see section on termination) or losses of improvements or other takings.

Other dispositions in BC outside of MAL and MTSA

The MoE PUP for commercial land use prohibits compensation in the case of contract termination or cancellation. The BC PUP for commercial recreation makes no reference to compensation. The guide outfitters certificate and licence, and the BC *Wildlife Act* make no reference to compensation.

In forestry there are no provisions for no-fault tenure termination. In cases where AAC is reduced in one area, it must be increased in another area to make up the loss. If AAC is decreased by more than 5% over a TFL this decrease must be compensated.

CR dispositions outside of BC

In Alberta leases and licences are pursuant to Alberta's *Public Lands Act*. In the case of a new disposition the applicant must negotiate compensation with the existing tenure holder. In the case of all other terminations in whole or part, with the exception of

termination because the land is irrigable, government must provide compensation. When an agreement on the terms of compensation cannot be agreed upon provisions of Alberta's *Expropriation Act* are applied. The Ontario lease only makes two references to compensation. The first provides that if government floods the lease area they are not responsible for providing compensation (all MAL and MTSA tenures include this provision as well). Second, in the case of contract termination where the lessee does not remove improvements within 60 days government takes ownership of the improvements and does not have to provide compensation to the lessee. Ontario's *Public Lands Act* makes few references to compensation. If government enters and alters an area in the case of an emergency, compensation will be provided following the Ontario *Expropriation Act*. Also, if resources from the land are used in the building of a road, and there is not a provision in the lease or licence contract for this, compensation must be given to the tenure holder. The Yukon leases make no reference to compensation. Parks Canada leases and licences apply Canada's *Expropriation Act* to takings or acquisitions of an interest in public lands where the holder of the interest does not consent.

CR dispositions in the US

US dispositions are confronted with different standards than dispositions in Canada. Because property is protected in the US Constitution under eminent domain, governments in the US must provide compensation for takings. Dispositions reviewed for this study addressed the issue of compensation in three ways:

- Including a clause affirming the tenure holder's right to compensation.

- Stating that ‘the tenure is not real property, nor does it convey interest in real property’. As such, these tenures would not be protected as property under the US constitution, and thus not be guaranteed compensation if takings occurred.
- Not addressing the issue of compensation. Assuming that these tenures are considered property, tenure holders would have the right to compensation for takings.

Specifics regarding US tenures are discussed below.

US Forest Service lands provide for compensation in the case of ski hills and marina developments if termination is due to public interest, however contracts for guide outfitting make no reference to compensation. Similarly, the BLM SUP, and corresponding guidelines make no reference to compensation for taking. The Alaska NPS include a regional stipulation that allows a CUL to be revoked at any time at the discretion of the superintendent without compensation. Alaska’s NPS CP includes a sweeping provision that in the event of suspension or termination of the contract for any reason or expiration of the contract, no compensation of any nature is due to the tenure holder, including, but not limited to, compensation for personal property, or for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination. Of the three permits issued by DNR in Alaska for commercial recreation only the lease makes reference to compensation for takings. If a portion or the lease in its entirety is taken by condemnation, then the lessor maintains the right to all forms of compensation, except for improvements made to the land by the lessee, which will go to the lessee.

Summary

Of the contracts examined, only 18% expressly allow government to terminate a contract at no-fault of the tenure holder without compensation. The MTSA CR licence of occupation and TUP, as well as the MoE commercial land use PUP are included in this group. The MTSA CR licence of occupation and TUP are the only tenures examined that have a similar “no compensation” clause for other forms of takings. However, only 55% of the tenures examined make an explicit reference to compensation for takings or termination. Of these, 67% offer some form of compensation for takings and or no-fault termination. In addition to these numbers, five of the US tenures state that the tenure is not property. This wording attempts to exempt them from takings law in the US.

Table 4-8: Tenure holder’s right to compensation for government takings and no-fault contract termination

Region	Issuing Institution	Tenure contract and pertinent legislation	Includes a no compensation clause for no fault termination	Includes a no compensation clause for other takings	Provides for compensation for takings/ termination
BC	MTSA	CR Licence of occupation	X	X	
		CR Lease			
		CR temporary use permit	X	X	
		Ski Hill Master Development Agreement			√
	MAL	Lease			
		Licence of occupation	X		
		Statutory right of way			
	MoE	Park use permit commercial land use	X		
		Park Use Permit Commercial Recreation			
		Guide and outfitters certificate			
		Guide are outfitters licence			
	MFR	Forest Licence			√
		Tree Farm Licence			√
AB	Public Lands	Recreational Lease			√
		Miscellaneous lease			√
		Licence of Occupation			√
ON	MNR	Land Lease - Tenure	X*		√***
YT	Lands Division	TLYA Lease			
		YLA Lease			
		Land use permit			
CAN	Parks Canada	Lease			√
		Licence of Occupation			√
USA	Forest Service	Marina Resort Term Special Use Permit			√
		Ski Area Term Special Use Permit			√
		Outfitting and Guiding SUP – priority			
		Outfitting and Guiding SUP - temporary			
	BLM	Special recreation permit			
AK	NPS	Commercial Use Licence	X		
		Concession Permit	X		
	DNR	Land Use Permit			
		Commercial Recreation Permit			
		Lease			√***

Information for the tables in this section was collected from the tenure contracts, acts and policies listed in Appendix 2.

* Only refers to flooding of land. ** Only refers to the use of resources of the land for emergency uses.

***Right to compensation for improvements only

4.3 Key informant interviews and questionnaire

Key informant interviews and a CR operator questionnaire were employed to determine the:

- Effect property rights have on lending decisions and tenure security;
- Degree to which CR operators felt government would treat them fairly in tenure decisions; and,
- Current level of demoralization felt by CR operators with respect to CR taking issues.

Question themes aligned with the property rights characteristics utilized for the comparative analysis. Results are summarized below.

4.3.1 Comprehensiveness

Only eighteen percent of the CR operators surveyed agreed that they have enough control over the natural resources in their tenure area to provide the security needed for their business (Table 4.11).

Table 4-9: Perceptions of CR operators with respect to the comprehensiveness of CR tenures in BC

Comprehensiveness Questions	Mean*	% Disagree	% Agree	% Neutral
I have enough control over the natural resources in my tenure area to secure the resource needs of my business	3.98	72.1	18.0	9.8
My tenure allows me to offer enough activities to make my business adaptable to the changing needs of the tourism market	3.18	42.6	41.0	16.4

*Mean scores based on a scale ranging from 1= strongly agree, 2 = somewhat agree, 3 = neutral, 4 = somewhat disagree, 5 = strongly disagree. n=61.

As one operator noted:

“Resource allocation in our land use area does not adequately protect the values required for non-motorized commercial recreation. Ministry land use policies do not adequately recognize the economic impact of land use decisions on commercial recreation.”

Others echoed this response. In particular respondents felt that other industry land uses had a harmful impact on their CR business. Indeed, one respondent correctly pointed out that other industry uses take precedence over CR tenures:

“We have no control over the harvesting of forest products, nor mining which could take precedence over our commercial recreation activities at any time.”

Lending professionals also recognized that other land uses could have a negative effect on the viability of a CR operation. However, information on the degree to which other land uses might impact CR operations is generally not available. As a result, lending professionals felt that this possibility did not have a large effect on the ability of CR operators to obtain financing for their business.

4.3.2 Duration and Renewability

Seven-two percent of respondents disagreed that the duration of their tenure was long enough to establish and invest in a long-term growth strategy for their business (Table 4.12). This sentiment applied to all tenure types. Even though tenure types vary in length from one year to 30 years, no statistical difference in opinion was apparent among respondents with different tenure types. Survey respondents provided additional commentary on the duration of their tenures. A few individuals felt that a 50-year tenure would be required to create business security. Others pointed out the significant difficulty that a 10-year licence created in obtaining institutional financing.

Table 4-10: Perceptions of CR operators with respect to the duration of CR tenures in BC

Duration Question	Mean*	% Disagree	% Agree	% Neutral
The duration of my tenure is long enough to establish and invest in a long term growth strategy for my business	4.11	72.1	14.8	13.1

*Mean scores based on a scale ranging from 1= strongly agree, 2 = somewhat agree, 3 = neutral, 4 = somewhat disagree, 5 = strongly disagree. n=61.

Individuals interviewed at BC lending institutions stressed the importance of duration and renewability in securing financing for CR investment. For instance, a professional lender commented:

“If a tenure is short term our financing in a lot of cases is not short term. The operator could get punted off the property before the payment of the loan is completed.”

Increasing longevity of tenure and a greater probability of renewability not only improves the likelihood of obtaining financing for a CR business, but also affects the CR operator’s investment decisions. Because lenders “usually keep the amortization of lending shorter than the term of the lease”, monthly payments can create a sizable burden on CR operators.

Without a contractual commitment to renewal, lending institutions are less likely to lend money to start or expand a CR operation. A case study investigating the impact of weak tenure security on investment opportunities in the Kootenays found that current tenure provisions result in financing difficulties for CR businesses in that region (Crane, 2005).

4.3.3 Transferability

About 65% of respondents disagreed that government control over the transferability of their tenure does not limit the competitiveness of their business (Table 4.13). This was surprising as CR tenures are among the few dispositions that have a high degree of transferability (see section 4.2.3). This is fortunate as tenure transferability is an important property right to the lenders interviewed:

If something were to happen to the principal of the business and he wasn't able to run the operation and wanted to sell the operation. ...the ability to have that lease or tenure transfer to the new owner – that would be very important.

Table 4-11: Perceptions of CR operators with respect to the transferability of CR tenures in BC

Transferability Question	Mean*	% Disagree	% Agree	% Neutral
Government control over the transferability of my tenure does not limit the competitiveness of my business	3.92	65.6	9.8	24.6

*Mean scores based on a scale ranging from 1= strongly agree, 2 = somewhat agree, 3 = neutral, 4 = somewhat disagree, 5 = strongly disagree. n=61.

4.3.4 Exclusivity

Only 15% of respondents agreed that there was enough certainty surrounding other resource uses to allow them to run their business effectively. In addition, 82% disagreed that the restrictions on other resource users were sufficient to preserve the resources they required for their businesses (Table 4.15). No statistical difference between the opinions of different types of tenure holders was apparent with respect to the exclusiveness questions. This was the case even though leases and intensive use licences of occupation have a greater degree of exclusivity than extensive use licences of

occupation and TUPs. This may be because leaseholders often also rely on an extensive use tenure for the viability of their business.

Similarly, there was also no statistical difference in the opinions of CR operators based on the type of activity they offered. Many non-mechanized operators commented that they were at a disadvantage because while mechanized activities affected the viability of their business, they had a minimal impact on mechanized operators' land use. Thus, one may hypothesize that non-mechanized operators would feel more strongly that their tenures did not give them the resource certainty needed to effectively operate their business. However, the findings do not support this theory.

Table 4-12: Perceptions of CR operators with respect to multiple resource uses

Exclusivity Questions	Mean*	% Disagree	% Agree	% Neutral
There is enough certainty surrounding the multiple resource uses allowed to occur concurrently within my tenure area to allow me to run my business	3.90	65.6	14.8	19.7
The restrictions on other resource users in the area are sufficient to preserve the resources I need to run my business	4.26	82.0	8.2	9.8

*Mean scores based on a scale ranging from 1= strongly agree, 2 = somewhat agree, 3 = neutral, 4 = somewhat disagree, 5 = strongly disagree. n=61.

As one respondent indicated:

“Present land use policy creates significant uncertainty. Primary amongst land use issues is... multiple users - because the ministries will not designate, enforce or protect non-motorized areas until after they have been destroyed by motorized traffic, all of our hiking trails are under attack. We recently suffered the destruction of a recreational hiking trail, by ATVs. This trail was used by a variety of commercial operators and recreational users, but is no longer suitable for commercial backcountry tourism.”

This respondent was not alone in their frustration with motorized forms of recreation.

Others expressed similar frustrations:

“Snowmobile and ATV use by local and out-of-the-area people is seriously affecting my business and is increasing each year. The tenure is for non motorized use and cannot coexist with motorized use.”

“When you work very hard and then have no rights to the land or protection over the land from other users that will come and use it' after you provide easy access it gets very frustrating and can have a severe impact on your business.”

In fact, land dispositions that have a low compatibility with existing tenures are granted against the protests of CR operators. As one operator pointed out:

“...one of the higher non-compliant uses was a mix of cross-country skiing and commercial snowmobiling, and the Crown in its infinite wisdom decided, despite our protestations, to take a third of our licence area and overlap a commercial snowmobiling tenure on top of it... It essentially destroyed the cross-country ski product as we knew it, and suddenly lapsed into a commercial snowmobile tenure area. The two just don't mix. You are not going to get cross-country skiing if there are snowmobiles running. You will get snowmobilers snowmobiling if you have cross country skiers present – that's the problem.”

Based on the interviews conducted, lending institutions emphasize the importance of exclusivity in securing lending. If an overlapping tenure has a potentially significant effect on financial outlook of a CR business, this situation would reduce the chances of lending institutions offering financial support to the operation.

Exclusivity of CR tenures (all types) in BC is also reduced by a contract provision which places CR tenure rights secondary to all of BC's subsisting grants and rights under the *Coal Act*, *Forest Act*, *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Range Act*, *Wildlife Act* or *Water Act*. Supplemental to this provision is a clause that protects government from any responsibility for losses incurred by CR tenure holders as a result

of dispositions or subsisting grants or rights granted under the preceding Acts. In effect, land rights granted under these other Acts supersede CR rights granted under BC's *Land Act*. There is also no formal process for addressing the loss of CR tenure rights when dispositions are granted under these other Acts. As one CR operator stated:

“the current document language puts us at the back of the bus... there is no process by which our interests are addressed with other resource decisions.”

Public Use

While not specifically explored, many operators indicated that public use of tenured areas also contributed to tenure uncertainty. In interviews conducted in this research, BC's CR operators expressed concern about unrestricted public access to the land where their tenure exists. This was especially the case with respect to mechanized public use interfering with non-mechanized CR use. This problem is exemplified by one CR operator's comments:

“One day they [a local snowmobile group] had 18 snowmobilers up there. And it was late season and we were kind of getting the squeeze for snow pack and these guys just came up and boom and they destroyed a whole bunch of our terrain. And when they go over it it is virtually done for a long time because they leave such big ruts in it we can't ski on it. It is just devastating to the business.”

Public access over the land appears to extend to the use of improvements made by tenured operators as well. One operator's experience illustrates this particularly well:

“I had an incident last winter where three snowmobilers snowmobiled to my lodge and intruded into my lodge, and harassed clients and refused to leave. When I took that to LWBC, it took several weeks to get a legal opinion and they said they weren't sure that I could even lock my buildings. They said your licence of occupation doesn't really allow you to lock your buildings.”

While some CR operators interviewed were able to provide examples where they independently worked with public recreation groups to reach a resolution that met the needs of both parties, most cases remain unresolved despite repeated attempts by the CR operator to address the issue. While MTSA regulates and considers conflicting uses of land by registered users, and compliance officers monitor non-tenured CR users who are in trespass, no formal system is currently in place to protect CR operators from conflicting and over use by the public.

One of BC's CR operators found a successful solution to protecting the quality of the company's tourism product. A cat ski operator consulted with community stakeholders, government officials, and BC Lands⁸ staff over several years in hopes of protecting the ski terrain held under a licence of occupation. The challenge involved protecting the area from degradation caused by public snowmobile use. With the support of BC Lands, the Ministry of Forests (now MFR), the BC Snowmobile Association and local snowmobile clubs, the CR operator was able to obtain an Order in Council. This process was challenging:

“It was quite tricky. I think it was amazing that we got it because it actually had to go to cabinet. It was presented to cabinet by someone from [BC] Lands, with all the supporting paperwork. We had support from our own association... and we did have the Snowmobile Association on board which I am not sure if it would have happened if we didn't have them [The Snowmobile Association] on board.”

⁸ In 1998 BC Lands, a department in The Ministry of Environment, Lands and Parks, became BC Assets and Lands Corporation (BCAL). In 2002, BCAL became Land and Water BC Incorporated (LWBC). In June, 2005 LWBC programs were integrated into the Ministry of Agriculture and Lands and the Ministry of Tourism, Sport and the Arts.

A key component to the success of this agreement was a willingness by the CR operator to maintain certain areas of the tenure area for snowmobile use, while protecting other sections for ski clientele.

4.3.5 Security

Fifty-one percent of respondents agreed that it was unlikely that government would terminate their contract before it was due to expire. However, fewer respondents agreed that it was unlikely that government would take a portion of their tenure (33%), or change the restriction of their tenure before it was due to expire (23%) (Table 4.16). In addition, 54% of respondents agreed that it was likely that government would grant another tenure over their tenure area that was not compatible with their business. Though leases offer greater protection from termination and over-lapping tenure use no statistical difference was found between this group and other CR tenure holders.

Table 4-13: Perceptions of CR operators with respect to takings

Termination and In-term Changes to Contract Questions	Mean*	% Disagree	% Agree	% Neutral
It is unlikely that the government will terminate my tenure before it is due to expire	2.70	16.4	50.8	32.8
It is unlikely that the government will take a portion of my tenure before it is due to expire	3.13	36.1	32.8	31.1
It is unlikely that the government will change the restrictions on my tenure before it is due to expire	3.48	49.2	23.0	27.9
It is likely that the government will grant another tenure in my operating area that is not compatible with my business	2.67	26.2	54.1	19.7

*Mean scores based on a scale ranging from 1= strongly agree, 2 = somewhat agree, 3 = neutral, 4 = somewhat disagree, 5 = strongly disagree. n=61.

A few respondents indicated that they have experienced a portion of their tenure being taken and/or an incompatible tenure overlapping in their tenure area. As one operator indicated:

“There are a lot pressures from new interests to overlap tenure areas with sometimes non-compatible activities.”

Another worried that this type of government behaviour may be re-occurring:

“The government has shown that it is willing to amend my tenure over the land base to suit other competing uses. I am worried this could happen again in a more substantive way.”

One lending institution employee stated when asked how the government’s ability to terminate a contract due to public interest would affect a CR tenure holder’s ability to acquire financing:

“We would probably say that if they [government] could do that we are not interested. If we were depending upon the tenure to be in place for the health of the business then we wouldn’t be interested in lending if that was one of the clauses in the contract.”

When asked about how the ability of government to make changes to a contract during its term would affect lending institutions’ decisions one financier stated:

“The government is then determining the likelihood of success of that business. If they [government] are cutting down the number of days they [the operator] can operate, for example, they are probably cutting their [the operator’s] chance of profitability down.”

4.3.6 Consultation

Few respondents’ agreed that appropriate consultation would take place if takings occurred (Table 4.19). Only 18% agreed that government would give them appropriate notice if their tenure were terminated. An even smaller proportion agreed that government would give them appropriate notice if they took a portion of their tenure

(15%) or changed the restrictions of their tenure (16%). Over half of the participants (56%) disagreed that government would consult them if a partial taking, such as a regulatory change, occurred. However, only 44% disagreed that government would consult them if their contract were terminated.

Table 4-14: Perceptions of CR operators with respect to consultation

Consultation Questions	Mean*	% Disagree	% Agree	% Neutral
If the government terminated my tenure they would give me appropriate notice	3.54	50.8	18.0	31.1
If the government took back a portion of my tenure they would give me appropriate notice	3.61	50.8	14.8	34.4
If the government changed the restrictions on my tenure they would give me appropriate notice	3.54	50.8	16.4	32.8
If the government granted another tenure in my tenured operating area that was not compatible with my business they would give me appropriate notice	3.62	55.7	23.0	21.3
The government would consult me before considering terminating my tenure	3.18	44.3	36.1	19.7
The government would consult me before considering taking back a portion of my tenure	3.52	54.1	23.0	23.0
The government would consult me before considering changing the conditions of or restrictions on my tenure	3.70	55.7	16.4	27.9
The government would consult me before considering granting another tenure in my operating area that is not compatible with my business	3.38	49.2	31.1	19.7

*Mean scores based on a scale ranging from 1= strongly agree, 2 = somewhat agree, 3 = neutral, 4 = somewhat disagree, 5 = strongly disagree. n=61.

Many of the respondents commented that while government does have processes to seek opinions and concerns of tenure holders if a taking is contemplated, their approaches rarely equate to consultation. One example illustrates this view:

“The government sends out referrals. Even if it is a non-compatible use that we strongly object to because of negative repercussions on our business we are told ‘to work it out’. The onus is always on the original stakeholder to make sure they work things out and to give up in order to accommodate ‘new and other users.’”

CR operators interviewed felt that the MTSA consultation process was inadequate. One operator, who is threatened with the taking of a portion of his tenure, illustrates the frustration felt by many CR operators interviewed:

“[There has been] very little consultation. Consultation is not a word that I would use. I have been to two meetings where I have been told what the intent is.”

Another CR operator expressed a similar sentiment:

“What is consultation? If it means that they have to talk to you... they have to tell you what they are going to do, but they are going to do what they are going to do regardless of the process. That probably meets the definition for consultation but it doesn’t give me very much comfort.”

4.3.7 Compensation

Of all of the property rights characteristics explored, respondents felt the most strongly about compensation. Seventy-nine percent of respondents disagreed that government would make sure that their business interests were met before terminating their contract (Table 4.20). Similar results were obtained when respondents were asked about less complete forms of taking. A full eighty percent disagreed that they would be compensated if their tenure were terminated.

Table 4-15: Perceptions of CR operators with respect to compensation

Compensation Questions	Mean*	% Disagree	% Agree	% Neutral
The government would make sure my business interests are met before considering terminating my tenure	4.15	78.7	4.9	16.4
The government would make sure my business interests are met before considering taking back a portion of my tenure	4.16	77.0	4.9	18.0
The government would make sure my business interests are met before considering changing the conditions of or restrictions on my tenure	4.15	75.4	3.3	21.3
The government would make sure my business interests are met before considering granting another tenure in my operating area that is not compatible with my business	4.08	75.4	8.2	16.4
The government would compensate me fairly if my tenure was terminated	4.41	80.3	4.9	14.8
The government would compensate me fairly if a portion of my tenure was taken back	4.49	82.0	1.6	16.4
The government would compensate me fairly if the they changed the conditions of/or restrictions on my tenure	4.49	83.6	3.3	13.1

*Mean scores based on a scale ranging from 1= strongly agree, 2 = somewhat agree, 3 = neutral, 4 = somewhat disagree, 5 = strongly disagree. n=61.

Many of the respondents were clear about their contractual rights with respect to compensation. As stated by one respondent:

“The government clearly states in the tenure that it does not have to take the tenure holders business interests into account when deciding what to do with the tenured Crown land.”

In interviews, operators did not hide their disappointment in the lack of compensation offered for government takings. An operator, when asked if compensation was provided when the government granted a disposition for a heliskiing outfit to

conduct business over a significant portion of his tenure (effectively closing off the area to his operation), replied:

“Not at all. The tenure documents very clearly preclude any compensation. The tenure documents state very clearly that the province at its own discretion can do these things. That any rights that we have under this tenure are subordinate to any tenures granted under the Forest Range Act, under the Wildlife Act, under the Coal Act and so on. Forest Act - you name it. All of these rights and tenures supersede what we have.”

4.3.8 Effect of Tenure Provisions on Lending and Insurance

While only 13% of respondents agreed that the terms of their tenure increased their ability to obtain insurance, 64% of respondents disagreed that the terms of their tenure increased their ability to obtain financing for their business (Table 4.21).

Table 4-16: Perceptions of CR operators with respect to contract strength

Questions	Mean*	% Disagree	% Agree	% Neutral
The terms of my tenure increase my ability to obtain financing for my business	3.82	63.9	19.7	16.7
The terms of my tenure increase my ability to acquire insurance to protect my business	3.48	42.6	13.1	44.3
The terms of my tenure make acquiring the insurance I need to protect my business cost prohibitive	3.02	31.1	23.0	45.9

*Mean scores based on a scale ranging from 1= strongly agree, 2 = somewhat agree, 3 = neutral, 4 = somewhat disagree, 5 = strongly disagree. n=61.

Some respondents felt that the inability to obtain financing had a negative effect on the industry as a whole:

“Current tenure language is so unfavourable institutional financing for projects on leased land are very difficult to obtain, which in turn limits growth opportunities.”

One respondent especially felt that the lack of compensation combined with the ability of government to change and/or terminate a contract rendered the tenure useless:

“The government can cancel my tenure for any reason at any time at their discretion, and we are not allowed any compensation. All we get out of our tenure is the right to pay for the use of public land.”

Two themes emerged from the many comments provided concerning why institutional financing was so difficult to obtain. They related to tenure length and the ability of government to change the provisions of a tenure or terminate a contract on short notice. The following CR operator comments highlight some of the prevailing views on these issues:

“30 years is better than previous 20 year term, but ability to change on short notice still gives lending institutions great pause.”

“There is no security in the tenure. The tenure holds little value in the eyes of institutional financing. Why would the banks invest in something that could be revoked at the will of government without compensation? Investing in businesses that rely on tenure is very high risk as is.”

4.3.9 Tenure equity

Only 5% of respondents agreed that the government treats all resource industries with equality in matters related to tenure arrangements (Table 4.22).

Table 4-17: Perceptions of CR operators with respect to contract equity

Questions	Mean*	% Disagree	% Agree	% Neutral
The government treats the various resource industries with equality in matters related to tenure arrangements	4.38	80.3	4.9	14.8

*Mean scores based on a scale ranging from 1= strongly agree, 2 = somewhat agree, 3 = neutral, 4 = somewhat disagree, 5 = strongly disagree. n=61.

Many respondents felt that “tourism tenures were last in line after every possible resource extraction industry.” Others pointed to the stronger rights provided to other industries:

“The government treats various resource industries such as logging and mining, guide outfitters with much more preference. They have strong tenures that have enforcement and compensation for loss etc.”

Respondents felt that the result was an inability to compete. As one individual stated:

“The term and the uncertainty of the tenure are limiting the competitiveness of our businesses.”

4.4 Summary

This chapter presented the findings of: the comparative analysis, which compared tenures across industry type and jurisdiction; key informant interviews, which highlighted the potential effect of the weak property rights; and, the CR operator questionnaire, which shed light on the perspectives of the industry with respect to the characteristics of their tenure. Implications of these findings are discussed in the next chapter.

5 MANAGEMENT IMPLICATIONS AND DISCUSSION

5.1 Introduction

By granting property rights over Crown land, government plays a key role in promoting economic development. Private business access to Crown land can heighten public welfare through increased employment and tax-revenues. In the case of tourism, it can also generate an influx of export-based visitor spending. Conversely, such use can decrease opportunities for other public welfare benefits to be realized. If government encourages private use, it is crucial that a policy and management regime be created which maximizes such benefits. This chapter recommends areas where improved CR property rights will help realize the goal of economic development. A comprehensive look at social and environmental impacts of property rights was outside the scope of this study, however suggestions for further assessment are discussed in Chapter 6.

5.2 Improving Tenure Security

This study identified several areas where changes to existing tenure policies would increase land use security and encourage CR business development. General areas where improvements would increase tenure security include:

- Changes to contract provisions that improve fairness, clarity, stability, and appropriate investment signals;
- Consultation between government and CR operators when changes to tenures are contemplated; and,

- Compensation to operators when government takings have a material effect on business rights and interests, or when demoralization costs and unfavourable perceptions of unfairness result.

Specific recommendations for improving current tenure provisions and CR Land Use Policy follow.

5.2.1 Duration and Renewability

Conner (2000) and Scott (2000) show that duration can be a good gauge of resource stewardship, although the relationship is complex. Tenures of longer duration grant a greater interest in the land, which may in turn lead to greater investment. The majority of CR tenure holders surveyed in BC felt that their tenure duration did not provide enough certainty to invest fully in their business. The types of investment required to successfully start up and operate a business require a lengthy amortization period. Longevity of tenure also improves the likelihood of obtaining financing for a CR business.

As many CR operators hold multiple tenures, security of tenure as a function of duration is limited by the shortest tenure held. For example, if a CR operator has a long-term lease where a lodge is built and acts as a staging ground for a river rafting company that operates on a two-year temporary use permit, the business is only as secure as the two-year permit. As business viability depends on the land area where the recreation opportunities occur, and this land is granted under tenure types that have shorter durations, longer contracts are required for all CR tenure types, if security and certainty is to be increased. Recognizing this weakness, LWBC (now administered by MTSA) developed a policy that increases the duration of licences of occupation to 30 years,

where the tenure holder also retains a lease or freehold. However, lease holders who also hold temporary use permits, park use permits, or guide outfitters permits do not have access to this increased certainty. Extending this policy to include tenure holders that hold these other tenure types, regardless of whether a lease or freehold is also held, would increase strength of CR tenures.

Recommendation #1

Provide tenure operators with the option of increasing the length of their CR tenure contracts (including temporary use permits, park use permits and the guide outfitters certificate) to better reflect lending institutions expectations. A more flexible and longer duration to tenure contracts will alleviate unfavourable certainty issues and improve possibilities for acquiring financial support from conventional lending institutions.

While CR tenures in BC include a provision for mid-term renewal, there is no certainty that government will renew the contract. Lack of contract renewal assurance creates difficulty for CR operators when trying to undertake long-term planning and acquire financing. Examples of tenures with stronger renewal provisions include MTSA's ski hill MDA, the MFR forest licence and tree farm licence, and various permits and leases in the Yukon and United States. Tenures, which attach contract renewal to meeting contractual obligations, rather than government sole discretion, offer greater certainty.

Recommendation #2

Guarantee contract renewal if tenure holder meets contractual obligations. Greater certainty regarding tenure renewal will increase the ability of CR operators to undertake long-term planning.

5.2.2 Transferability

CR tenures in BC offer greater security with respect to transferability because government cannot unreasonably withhold permission to transfer the tenure. Less than

half of the tenures reviewed include a similar provision. The transferability provision in MTSA's CR tenures is an example of the type of language clarity and increased certainty that is required in tenure agreements in order to assist healthy industry development.

Surprisingly, 65% of respondents disagreed that government control over the transferability of their tenure did not limit the competitiveness of their business. The discrepancy between the actual provision and CR respondent's perception could result from three processes. First, the dissatisfaction with transferability rights may be a reflection of the general dissatisfaction with tenure security on a whole. Second, the discrepancy may be a case of inaccurate information on tenure rights amongst operators (Patton, 1990). Increased information for tenure holders on their rights may correct the discrepancy between this policy and CR operator perception. Finally, the disagreement between these two results may be a product of strategic response from CR operators (Patton, 1990). In an effort to strengthen their case for increased property rights operators may express dissatisfaction with rights regardless of their factual satisfaction level.

5.2.3 Exclusivity

Lending institutions emphasize the importance of exclusivity in securing lending. If an overlapping tenure could have a significant effect on the financial outlook of a CR business, the chances of lending institutions offering financial support to the operation could be reduced. A significant number of questionnaire respondents disagreed that the restrictions on other resource users were sufficient to preserve the resources they required to run their business. Similar results were reported by Curtis (2003).

Licences of occupation-extensive use and permits administered by MTSA are one of the few arrangements that allow government to grant additional low compatibility tenures. In order to increase tenure security and promote healthy business investment, CR tenure holders need assurance from government that low compatibility tenures will not be granted without the existing tenure holder's consent. If an area is already stressed and the economic, social or ecological carrying capacity of the land has been reached, even highly compatible tenures could have negative effects on current tenure holders. For this reason, it is imperative that a consultation process be undertaken when government is considering new tenures in areas where tenures currently exist.

Recommendation #3

Limit the disposition of additional tenures over land of low or moderate compatibility to cases where consensus agreements between government, existing tenure holders, and the tenure applicant can be realized. Conflicting tenure uses reduce the viability of all tenured businesses especially in situations involving non-mechanized CR operations. Also important in the decision to grant new tenures is whether the economic, social or ecological carrying capacity of the area has been reached. In this case, even highly compatible tenures could have negative effects on current tenure holders. These situations would benefit from a government employed carrying capacity mechanism, such as the limits of acceptable change model. Regardless of the mechanism chosen it is critical that government exercise a consultation process with current tenure holders, as they will be familiar with the area in question and its carrying capacity. A commitment to a consensus agreement between tenure holders, government and the tenure applicant when new dispositions are being considered should be made in the CR Land Use Policy and supported by CR contracts. Where a consensus agreement is not possible, government should commit to third party arbitration. An industry-government working group could determine specifics surrounding which parties should pay for third party arbitration.

The security of CR tenures (all types) in BC is also reduced by a contract provision which places CR tenure rights secondary to all of BC's subsisting grants and rights under the *Coal Act, Forest Act, Mineral Tenure Act, Petroleum and Natural Gas Act, Range Act, Wildlife Act* and *Water Act*. Supplemental to this provision is a clause that protects government from any responsibility for losses incurred by CR tenure holders as a result of dispositions or subsisting grants or rights granted under the above Acts. In effect, land rights granted under these other Acts supersede CR rights granted under BC's *Land Act*. There is also no formal process for addressing the loss of CR tenure rights when dispositions are granted under these other Acts. Not surprisingly, a significant portion of questionnaire respondents disagreed that they were treated equitably in comparison to other resource industries.

Recommendation #4

Amend clause 5 in the CR tenure contract, which places CR tenure rights secondary to all subsisting grants and rights under the *Coal Act, Forest Act, Mineral Tenure Act, Petroleum and Natural Gas Act, Range Act, and Water Act*. To create the proper investment environment and increase security the clause should create parity among rights granted under the different Acts. Where conflicts with other tenure rights exist, the clause should allow for consultation with all affected tenure holders to occur.

This recommendation necessitates the weakening of other resource tenure rights in BC. As such, its implementation is likely to lead to resistance from other resource industries that are reluctant to have their rights decreased. In considering this recommendation, government should implement a shared decision-making process with all stakeholders.

5.2.4 Public Use

Managing public access to Crown land is a complex issue. The public in BC traditionally believes that they have the right rather than the privilege to access Crown land (BC Lands, 1990). Any attempt to restrict access can be seen as an attempt to deny the public their fundamental right. A public consultation process conducted by BC Lands in 1991 found that the majority of stakeholders commented on the importance of protecting public access to Crown land. On the other hand, over-use of such resources can cause the short-term problem of crowding and the long-term challenge of resource degradation (Healy, 1994). This process can lead to the eventual erosion of CR tourism products, which depend on the extensive use of those resources (McKercher, 1992).

BC's CR operators expressed concern about unrestricted public access to the land where their tenure exists. This was especially the case with respect to mechanized public use interfering with non-mechanized CR use. Similar results were reported by Curtis (2003). Certain areas, including the Sea to Sky corridor, Golden, and Eight Peaks, have created recreation access plans which address the issues of conflicting public and commercial, as well as motorized and non-motorized use. However, the majority of respondents in this study felt that many cases still remained unresolved despite repeated attempts by the CR operator to address the issue. A resource allocation system that includes public users should be developed and implemented if the security of the CR industry in BC is going to be assured. The current CR Land Use Policy allows for recreation plans to be undertaken by one or more government agencies, non-governmental organizations, local governments, or CR operators. The Sea to Sky Backcountry Accord is an excellent example of backcountry users taking the initiative to

reduce conflict and allocate backcountry resources to various stakeholders. The CR Land Use Policy ensures that “where land use or recreation plans provide clear direction regarding uses, tenure decisions will be guided by those plans” (p.51). This process has the potential to reduce public and overlapping tenure conflicts.

Recreation plans, for the most part, are voluntary agreements and do not consider enforcement or carrying capacity. While government regulates and considers conflicting uses of land by registered users, and field compliance and enforcement officers monitor non-tenured CR users who are in trespass, no formal system is currently in place to protect CR operators from conflicting and over use by the public.

As land use intensifies, conflicts among public use and private use are likely to increase in frequency and severity. For this reason, it is imperative that government address the issue of public use on tenured lands. Public access to Crown land is important to the general public and in most cases must be preserved (BC Lands, 1991). However, protection of CR tenures is also needed in situations where public use has low to no compatibility with existing activities or where increasing public use threatens the security of a tenured business.

Recommendation #5

Enhance the equitability and value of CR tenures by managing the public use of tenured land that is not compatible with active dispositions. Public access is of particular concern when motorized public use interferes with non-motorized tenured use. Options to do this include: actively promoting and providing resources for consultative processes that bring public parties and tenure holders together in specific regions to arrive at shared solutions (such as the recreation planning process outlined in Appendix 6 of the CR Land Use Policy); and, examining the appropriateness of adding a provision in some CR tenures giving greater management control to CR operators. This provision could be similar to that provided in article IV of the ski hill MDA, and apply in situations where public or private uses are permitted in important portions of the tenure area. Where agreements have been reached enforcement should be considered. Expanding the role of field compliance and enforcement officers could meet this objective.

5.2.5 Termination

The CR licence of occupation and temporary use permits are in the minority with respect to the ability of government to terminate a contract for public use. Of those tenures studied that have a similar provision even fewer allow termination for reasons of public interest without some restrictions. That only half of survey respondents agreed that it was unlikely that government would terminate their contract indicates that negative impacts on investment are likely. This clause could also have serious effects on a lending institution's willingness to finance CR operations. Increasing the security for these contracts is especially important with respect to extensive use tenures (licence of occupation, temporary use permit, CR park use permit) that are critical to the success of many CR businesses.

Recommendation #6

Remove the following provision from clause 8 of the licence of occupation and temporary use permit agreement:

if we require the Land for our own use or, in our opinion, it is in the public interest to cancel this Agreement and we have given you «NOTICE_CANCELLATION_PUBLIC_INTEREST» days' written notice of such requirement or opinion this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

Improve this clause by making government's ability to terminate a contract due to public interests contingent on fair compensation. This could be accomplished by removing the above provision from clause 8 and creating a separate clause to this effect.

5.2.6 In-term Changes to Contract

The ability of government to make in-term changes to a CR contract is unprecedented in the Canadian resource tenure contracts examined and could have significant effects on the health of the CR industry in BC. Less than one-quarter of the survey respondents agreed it was unlikely that government would make changes to the terms of their contract before it is due to expire. Without knowing that tenures will not undergo significant changes, or that an agreement by both parties will be reached before changes to the tenure are made, many CR operators are unable to accurately gauge the certainty of their tenure investments. Consequently, they may be less likely to invest in their future business operations.

Recommendation #7

Amend the CR Land Use Policy with respect to in-term changes to contracts, making these changes contingent on agreement by both parties. By making in-term changes to the contract contingent on agreement between parties government can maintain the flexibility needed to make changes to the contract as they arise, while ensuring certainty for the CR industry.

5.2.7 Consultation

None of the contracts or supporting policies examined adequately addresses the issue of consultation, nor do they define what constitutes consultation. CR operators interviewed felt that the current consultation process was inadequate and few survey respondents agreed that it was likely that government would consult them before taking actions that impacted their tenure.

Consultation has many benefits. It brings multiple stakeholders to the table and often results in creative and cost effective solutions to problems, which may meet all stakeholders' interests (Buchy et. al, 2000). A consultant who works with many CR operators in BC provided a pertinent example in which an operator and government were able to work together to protect critical goat habitat within the operator's tenure area, while providing the operator with enough ski terrain to run their business. This example illustrates the type of innovative thinking brought about through consultation. Government should play a more active role in promoting these types of solutions.

Recommendation #8

Develop a clear and fair consultation policy, in conjunction with the CR industry. This should include: consultation with stakeholders before decisions are made, procedures for participation, a systematic approach to exchanging information, an effective approach to ensuring understanding by industry and government of the potential effects on interests, an outline of those circumstances where mediation or dispute resolution is appropriate, and a commitment to an agreeable outcome. Consultation should occur before government changes provisions of contracts, grants additional tenures over the land, removes a portion of a tenure, or terminates a tenure for reasons other than non-compliance or financial arrears. Current consultation policies with First Nations in BC could act as a guideline for consultation between government and the CR industry.

5.2.8 Compensation

Lack of compensation can create demoralization costs, which may have long-term negative effects on the industry. In interviews conducted for this study, operators did not hide their disappointment in the lack of compensation offered for government takings. Similarly, an overwhelming number of survey respondents disagreed that compensation would be offered if government takings occurred.

A fair compensation policy cannot merely include loss of intensive improvements, but should also consider the importance of the wilderness product to the success of the CR business. Government decisions that have a material impact on these natural elements should be compensated if increased security is to be realized.

Recommendation #9

Create a clear compensation policy, in conjunction with industry representatives, which addresses the importance of the extensive use of land on the health of CR businesses. A fair compensation policy cannot merely include loss of intensive improvements, but must also consider the importance of the wilderness product to the success of the CR business. Specific details with respect to a fair compensation policy should be determined in conjunction with CR industry representatives. These changes should be reflected in the tenure contract and CR Land Use Policy.

5.3 Demoralization Cost

Results from this study suggest that demoralization within the CR industry exists and should be considered when policy decisions are analysed. Over half of questionnaire respondents disagreed that it was unlikely that their tenure would be terminated before it expired. In addition, the majority of respondents disagreed that government would compensate them fairly if these changes were to occur. Interviews with CR operators

indicated that those who have experienced takings do not feel that government treated them fairly in the process. Perhaps most telling, only 5% of respondents felt that they are treated with equality in comparison to other resource industries in BC. Such feelings within the CR industry may lead to losses in investment by current operators and a reluctance of new operators to enter the market. These demoralization costs could have a serious effect on the health of the CR industry. Following the recommendations about termination, in-term changes to contract, and compensation may go a long way to addressing demoralization cost. Such changes should create a healthier industry.

5.4 Possible External Effects of Contract Changes and Mitigation Strategies

The suggested changes are made in the context of improving the certainty and security of BC's CR industry. They do not consider how the changes will impact other resource industries or the public. For the most part the changes require creating parity between CR and other industry tenures where inequalities currently exist. However, alterations in exclusivity and public use clauses necessitate a direct weakening of other's rights. Through consultation and compensation these changes can occur in a manner that ensures fairness across stakeholder groups. Indeed, implementing the public use recommendations could enhance all user groups' experiences. The next three sections briefly discuss tools for minimizing the negative impacts of the suggested changes.

5.4.1 Consultation

Consultation can enhance the fairness of government decisions and create innovative solutions to problems that affect CR tenures. Similarly, consultation should be used in the process of enhancing the certainty of CR tenures. Where changes to CR

tenures require a policy level change, and have an effect on other stakeholders, a broad consultative process, such as shared-decision making (SDM) will help ensure that all stakeholders' interests are met. An SDM process is especially important where changes to public-use are contemplated. Government could establish such a consultation process by actively promoting and providing resources for the recreation planning process outlined in Appendix 6 of the CR Land Use Policy.

5.4.2 Compensation

An effective compensation policy should help society redirect resources from one use to another with as few negative side effects as possible. In the process it should satisfy fairness criteria, provide proper incentives to both public and private decision makers, and be efficiently implemented (Schwindt, 1992). By offering fair compensation for takings, government can create the flexibility required to implement changes that are in the public's best interest, while ensuring the security required for industry. A fair compensation policy will allow government to continue to protect the public's interest without creating an unfriendly investment climate.

5.4.3 Strategic Environmental Assessment

SEA can be an important tool in improving policy level decision-making (Stinchcombe and Gibson, 2001). As a mechanism for forecasting the impacts of changes to policies, plans and programs it improves stakeholder input, and helps ensure environmental and social issues are considered before a policy is implemented (Marsden, 2002; Therival, 2004). Though no directive or policy exists in BC to necessitate a SEA, it

should be employed, in conjunction with a SDM process to evaluate the recommended options for improving the CR Land Use Policy.

5.5 Summary

A clear feeling of demoralization and insecurity exists within the CR industry with respect to existing tenure and property rights. This outlook can lead to decreased investment, industry flight and an uncompetitive environment for providing high quality tourism products. Without a government commitment to improving the current situation, it is quite likely that the CR industry will be significantly constrained in its ability to fully contribute to increasing the economic sustainability of BC tourism.

The preceding recommendations will: improve the security of CR tenures; send the right signals to decision makers; and, create a healthy investment environment. More importantly, these suggestions will generate the missing balance between the development of the CR industry and the needs of other resource users and residents. They will:

- Increase tenure security for CR operators,
- Strengthen the competitiveness of the tourism industry, and
- Retain the flexibility needed by government to meet public interests.

6 CONCLUSION

6.1 Research Summary

This research set out to provide a stronger understanding of those property rights and tenure security strategies that would help facilitate long-term economic development of CR on BC's Crown lands. Specifically, it identified weaknesses in BC's current CR tenure rights and suggested ways in which government can improve the strength and security of such rights. This was achieved by addressing the following question:

1. Does the level of property rights granted to BC's CR industry place CR operators at a competitive disadvantage?

The question was divided into three components:

- a. How do the property rights granted to BC's CR industry differ when compared across tenure types?
- b. Do the property rights granted to the BC CR industry create difficulties in establishing and growing a CR business?
- c. Does the current level of property rights security associated with CR tenures in BC create demoralization among CR operators?

The findings with respect to each of these sub-questions are summarized below.

How do the property rights granted to BC's CR industry differ when compared across tenure types?

BC's tenures compared favourably in two areas:

- Comprehensiveness – MTSA CR tenures were among the 36% of contracts that allowed tenure holders to add activities to their tenure.

- Transferability – Only 25% of the tenures examined assured tenure holders that they could transfer their rights without onerous government constraints. All of MTSA CR tenures were among this group.

However, BC's CR tenures were comparatively weaker in many areas. In particular, CR operators in BC faced constraints in the areas of:

- Renewability – Almost 40% of the tenures guaranteed renewal if contractual obligations were met. In contrast, renewability of MTSA CR tenures was dependent on government consent, which could be withheld.
- Exclusivity – Only 6% of the tenures examined explicitly allowed government to grant low compatibility or non-compatible tenures over the same land as existing tenures. All of these were MTSA CR tenures. In addition, 58% of tenures restricted public access to the tenured area. Conversely, all of the extensive CR tenures in BC protected public access. This was true regardless of the potential detrimental impact on CR operations. Finally, only MTSA CR tenures explicitly stated that contract rights were secondary to land rights granted under other Acts.
- Security – Only 16% of examined tenures allowed no-fault termination without compensation. All MTSA tenures, with the exception of the MTSA CR lease were among this group. In addition, only MTSA CR tenures allowed for in-term changes to contract fees and regulations.
- Consultation – Forty-eight percent of the tenures examined addressed a duty to consult before takings occurred or additional land dispositions were granted. Of those, in 43% of the cases, government retained the right to make changes regardless of the current tenure holder's position. The majority of MTSA tenures were among this group.
- Compensation – The only tenures that explicitly allowed for no-fault termination without compensation were MTSA CR tenures. In contrast, 67% of tenures stated compensation would be offered for certain no-fault takings.

The comparative analysis findings clearly indicate that BC's CR tenures offer weaker rights than the majority of tenures examined. If these weaknesses are not addressed, BC's CR operators will remain at a significant competitive disadvantage: compared to CR operators in strategically important jurisdictions; and with other resource industries in BC.

Do the property rights granted to the BC CR industry create difficulties in establishing and growing a CR business?

Respondents to the CR operator survey felt that the following contract restrictions created difficulties in building their business:

- **Comprehensiveness** – Seventy-two percent of respondents disagreed that they had enough control over the resources in their tenure area to secure the resource needs for their business.
- **Duration** – Seventy-two percent of respondents disagreed that the duration of their tenure was long enough to establish and invest in a long-term growth strategy for their business.
- **Exclusivity** – Only 8% of respondents agreed that the restrictions faced by other resource users were sufficient to preserve the resources they needed for their business.
- **Security** – Fifty-four percent of respondents agreed it was likely that government would grant another tenure in their area that was incompatible with their business. Only half of the respondents agreed it was unlikely that government would terminate their contract before it was due to expire.
- **Consultation** – Just thirty-one percent agreed that government would consult them if they were granting additional tenures in the area that were not compatible with their business.
- **Compensation** – A mere 5% of respondents agreed that government would compensate them fairly if their tenure was terminated for no-fault reasons.

In general, respondents felt that they were being treated unfairly when compared to other resource industries, and that their tenures did not offer the security and certainty they required to operate a successful business.

Among the tenure weaknesses identified by the comparative analysis and CR operator survey, lending professionals identified the following rights as having a significant impact on their willingness to financially support a CR business:

- Duration - The ability of the tenure to extend the length of a loan's amortization period.
- Exclusiveness – The degree to which CR operators have control over important natural resources.
- Security – The ability of government to terminate or change contract restrictions and fees.
- Consultation – The extent of input existing CR tenure holders have in the granting of overlapping dispositions.
- Compensation – The level of compensation provided for no-fault takings.

The lack of rights in these areas could place significant constraint on the ability of CR operators to obtain business financing.

Does the current level of property rights security associated with CR tenures in BC create demoralization among CR operators?

Demoralization reflects the unhappiness of tenure holders impacted by takings and the influence of such takings on their future behaviour. Potential demoralized behaviours include decreased investment and production activities, resulting in declines in future welfare.

All of the CR operators interviewed believed that their interaction with government through the takings process was unfair. In general, the consultation process

was viewed as inadequate. In addition, none of the operators interviewed received compensation. Each interviewee felt this lack of compensation was unjust. Many pointed out the disparity with respect to CR tenure rights and the rights of BC's other resource industries.

CR operator survey respondents perceived their tenures as vulnerable to takings and lacking key rights needed for investment. In addition, responses indicate that CR operators felt that if takings were to occur consultation and compensation would be inadequate. As supported by the literature, this position may have grown out of the discontent felt by CR operators who have been directly impacted by government takings. The general unhappiness shown through the survey indicates demoralization could be negatively affecting the industry as a whole.

Does the level of property rights granted to BC's CR industry place CR operators at a competitive disadvantage?

The study findings confirm that the level of property rights granted to BC's CR industry place CR operators at a competitive disadvantage. First, the comparative analysis revealed a series of tenure and property rights disadvantages when compared to other resource industries in BC and CR industries in other jurisdictions. Second, interviews with CR operators indicated that they perceived government takings as unfair. The CR operator survey revealed that this outlook may be creating demoralization within the industry. Finally, key informant interviews with financial professionals highlighted various areas where weak tenure rights created barriers to CR operators obtaining financing.

6.2 Recommendations for Further Research

In conducting this research many new areas where further inquiry would benefit researchers, government and policy makers were brought to light. They include:

- *Establishing a method for measuring demoralization cost.* This study only measured perceptions concerning the existence of demoralization. A search of the literature provided no guidance on how to measure the economic impact of demoralization cost. As well, the literature suggests that there is an ongoing debate over the importance of demoralization cost as an impact on industry investment. A method for measuring the economic impact of demoralization on investment would clarify both the importance and magnitude of such costs for both government and industry stakeholders.
- *Determining how various property rights packages would affect CR operator's investment decisions.* This could be achieved through a discrete choice analysis focussed on how property rights characteristics impact CR investment and would assist the CR industry and government in focussing their efforts on those areas that would offer the greatest increases in property rights security for the CR industry.
- *Examining the economic, social and environmental costs and benefits to strengthening CR property rights.* A more holistic approach than this study was able to undertake would better measure the true impact of strengthening property rights for CR operators in BC. Components of such an investigation could include the social impacts of regulating public use, the economic impact of reducing other resource industry rights, and the environmental impact of potentially larger CR operations on the land base.
- *Assessing the applicability of other property rights regimes to improving property rights security and equity.* This study only focussed on how relatively small property rights changes could be made within BC's current state property regime. A study measuring the benefits and costs of switching to a common property or private property regime to allocate CR resource rights would enhance the debate on how best to allocate resource rights.

While there are many avenues that remain to be examined, this study has created a greater understanding of the weaknesses in BC's current CR tenure rights and identified ways in which government can improve the strength and security of such rights. Further research in this area will ensure that changes to tenure rights meet the interests of all stakeholders, while improving the long-term economic growth of BC's CR industry.

APPENDIX 1: CONSULTATIVE FRAMEWORK

The consultative framework that guides BC government relations with First Nations has been modified to act as a tool for government interaction with CR operators. Consultation with CR operators should:

- Be designed to consider CR operator's interests prior to making land or resource decisions concerning Crown land activities that are likely to affect those interests;
- Address and/or accommodate concerns that are raised, provided that those concerns relate directly to CR interests that are sound and relate to the impacts of Crown decisions on those interests;
- Be carried out as early as possible in the decision-making process;
- Involve representatives from all potentially affected CR operators;
- Be effective and timely, carried out in good faith, and wherever possible meet applicable legislative timelines;
- Be integrated when a number of agencies are involved to ensure maximum clarity and efficiency;
- Be clearly outlined to the CR operators in question;
- Detail how information provided by a CR operator is or is to be considered in decision making processes and planning;
- Be carried out in a variety of ways, depending on the circumstances and nature of the proposed activity. Methods for meaningful consultation should be selected in relation to the nature of the proposed activity, the requests of the CR operators in question (where those are reasonable), the soundness of the CR operators interests that are at issue, and other relevant factors; and
- Inform the CR operators in question of the potential effect of a proposed activity. Information should be provided in a manageable and understandable format, with adequate time for review, wherever possible within the context of time limits imposed for the making of statutory decisions.

APPENDIX 2: CONTRACTS, LEGISLATIVE ACTS AND SECONDARY INFORMATION USED IN COMPARATIVE ANALYSIS

Contracts Administered by Lands and Water BC Incorporated prior to July 2005

- Agriculture Lease with Option to Purchase
- Aquaculture Lease – Unregisterable
- Commercial Recreation Lease
- Commercial Recreation Licence of Occupation
- Commercial Recreation Licence of Occupation – Intensive Use
- Commercial Licence of Occupation – Non Profit Intensive Use
- Commercial Recreation Licence of Occupation – River Use
- Commercial Recreation Licence of Occupation – Sport Fishing
- Commercial Recreation Temporary Use Permit – River Use
- Commercial Recreation Temporary Use Permit - Sea Kayaking
- Communication Sites Licence of Occupation
- Communication Sites Statutory Right of Way
- Energy Production Lease
- Energy Production Licence of Occupation
- Energy Production Right of Way
- Golf Lease
- Grazing Lease
- Industrial Lease
- Industrial Licence of Occupation
- Moorage Licence of Occupation
- Quarrying Lease
- Quarry Licence of Occupation
- Ski Hill Master Development Agreement
- Standard Lease – Unregisterable
- Utility Licence of Occupation
- Utility Statutory Right of Way

Contracts Administered by BC Ministry of the Environment (was Ministry of Water, Land and Air Protection)

- Guide Outfitters Certificate
- Guide Outfitters Licence
- Park Use Permit – Commercial Land Use Occupancy
- Park Use Permit – Commercial Recreation

Contracts Administered by BC Ministry of Forests and Range (was Ministry of Forests)

- Forest Licence

- Tree Farm Licence

Contracts Administered by Alberta Public Lands Division

- Licence of Occupation
- Miscellaneous Lease Public Lands and Forests
- Recreation Lease

Contracts Administered by Ontario Ministry of Natural Resources

- Land Lease – Tenure

Contracts Administered by Yukon Lands Division

- Lands Use Permit
- Lease (Territorial Lands (Yukon) Act the Territorial Lands Regulation)
- Lease (Yukon Lands Act and Lands Regulation)

Contracts Administered by Parks Canada

- Lease
- Licence of Occupation

Contracts Administered by the USDA Forest Service

- Marina Resort Term Special Use Permit
- Ski Area Term Special Use Permit
- Special Use Permit for Outfitting and Guiding

Contracts Administered by the USDI Bureau of Land Management

- Special Recreation Permit

Contracts Administered by the USDI National Parks Service (Alaska division)

- Commercial Use Licence
- Concession Permit

Contracts Administered by the Alaska Department of Natural Resources

- Commercial Recreation Permit Application
- Land Use Permit
- Lease

Land Use Policies in BC

- Land and Water BC Aggregate and Quarry Materials Land Use Policy (<http://www.lwbc.bc.ca/01lwbc/policies/policy/land/aggregates.pdf>)
- Land and Water BC Agriculture Extensive Land Use Policy (http://www.lwbc.bc.ca/01lwbc/policies/policy/land/agriculture_ex.pdf)
- Land and Water BC Aquaculture Land Use Policy (<http://lwbc.bc.ca/01lwbc/policies/policy/land/aquaculture.pdf>)
- Land and Water BC Commercial – General Land Use Policy (http://lwbc.bc.ca/01lwbc/policies/policy/land/com_general.pdf)
- Land and Water BC Commercial Alpine Ski Land Use Policy

- (http://lwbc.bc.ca/01lwbc/policies/policy/land/skiing_alpine.pdf)
- Land and Water BC Commercial Recreation Land Use Policy
(http://www.lwbc.bc.ca/01lwbc/policies/policy/land/com_rec.pdf)
- Land and Water BC Communication Sites Land Use Policy
(http://lwbc.bc.ca/01lwbc/policies/policy/land/communication_sites.pdf)
- Land and Water BC Grazing Land Use Policy
(<http://lwbc.bc.ca/01lwbc/policies/policy/land/grazing.pdf>)
- Land and Water BC Industrial – General Land Use Policy
(http://lwbc.bc.ca/01lwbc/policies/policy/land/industrial_gen.pdf)
- Land and Water BC Oil and Gas Land Use Policy
(http://lwbc.bc.ca/01lwbc/policies/policy/land/oil_gas.pdf)
- Land and Water BC Utilities Land Use Policy
(<http://lwbc.bc.ca/01lwbc/policies/policy/land/utilities.pdf>)

Legislative Acts in BC

- Forest Act
- Forest and Range Practices Act
- Land Act
- Parks Act
- Wildlife Act

Legislative Acts in Alberta

- Expropriation Act
- Public Lands Act

Legislative Acts in Ontario

- Expropriation Act
- Public Lands Act

Legislative Acts in Yukon

- Territorial Lands Act

Legislative Acts in Canada

- Canada National Parks Act
- Expropriation Act

Regulations in the United States of America

- Public Lands Act – Interior

Statutes in Alaska

- Alaska Land Act

Secondary Resources

- Alberta Tourism Recreation Leasing Process 1999
(<http://www.alberta-canada.com/td/files/pdf/atrl.pdf>)

- Alberta Lands Application
(http://www3.gov.ab.ca/srd/land/docs/LS1_application.doc)
- National Parks of Canada Lease and Licence of Occupation Regulations 1991
(<http://laws.justice.gc.ca/en/N-14.01/SOR-92-25/text.html>)
- Timber Tenure System Quick Reference, Cortex Consulting 2001
(http://www.cortex.org/TimberTenSysWeb_Nov2001.pdf)
- Yukon Lands Info Fact Sheet 6
(http://www.emr.gov.yk.ca/lands/info/fact_sheets/fact_sheet_six_landusepermits.pdf)
- BC Park and recreation area regulation land use fees
(http://wlapwww.gov.bc.ca/bcparks/info/pup_fees.pdf)
- Provincial Park Use Permit fees Q&A
(http://wlapwww.gov.bc.ca/bcparks/info/pup_fees_q&a.pdf)
- Land and Water BC land use fees
(<http://www.lwbc.bc.ca/01lwbc/leg/docs/fees-land.pdf>)

APPENDIX 3: COMPARATIVE ANALYSIS MATRIX

Region	Issuing Institution	Tenure Contract	Comprehensiveness		Duration			Transferability		Exclusiveness		
			Tenure may be used for more than one resource	Tenure may be used for more than one activity	Length of term	Renewability	Conditions	Tenure transferable	Sublicense allowed with consent	Exclusive use of area under tenure	Sole property of area under tenure	Public use
BC	MTSA	CR Licence Of Occupation	no	unique to each contract	10 years	mid-term for up to 30 years	at government's sole-discretion	yes, consent will not be unreasonably be withheld	yes, consent will not be unreasonably be withheld	no	no	protected
		Cr Lease	no	unique to each contract	30 years	mid-term	at government's sole-discretion	yes, consent will not be unreasonably be withheld	yes, consent will not be unreasonably be withheld	yes (except for rights under other acts)	yes	protected
		CR Licence Of Occupation - Intensive Use	no	unique to each contract	10 years	mid-term for up to 30 years	at government's sole-discretion	yes, consent will not be unreasonably be withheld	yes, consent will not be unreasonably be withheld	no	no	protected
		CR Licence Of Occupation - Non-Profit Intensive Use	no	unique to each contract	10 years	mid-term for up to 30 years	at government's sole-discretion	yes, consent will not be unreasonably be withheld	yes, consent will not be unreasonably be withheld	no	no	protected
		CR Licence Of Occupation - River User	no	unique to each contract	10 years	mid-term for up to 30 years	at government's sole-discretion	yes, consent will not be unreasonably be withheld	yes, consent will not be unreasonably be withheld	no	no	protected
		CR Licence Of Occupation - Sport Fishing	no	unique to each contract	10 years	mid-term for up to 30 years	at government's sole-discretion	yes, consent will not be unreasonably be withheld	yes, consent will not be unreasonably be withheld	no	no	protected

Tenure Contract	Security				Consultation				Compensation		
	Termination due to public interest/ no cause	Government can take a portion of a tenure	Government can alter contract fees within term	Government can change contract restrictions within term	Consultation before changes to regulations/ fees	Consultation before other tenures are granted in area	Consultation before disposal of portion of tenure	Consultation before tenure termination	Compensation for no-fault tenure termination	Compensation for other takings	Compensation for loss of improvements
CR Licence Of Occupation	yes	1/20th of land (and additional lands after Feb. 2005)	yes	yes	process to express concerns (government still retains sole discretion)	CR operator input form (government still retains sole discretion)	process to express concerns (government still retains sole discretion)	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no
Cr Lease	no	1/20th of land (and additional lands after Feb. 2005)	yes	yes	process to express concerns (government still retains sole discretion)	requires tenure holder's consent which may be reasonably withheld	process to express concerns (government still retains sole discretion)	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference
CR Licence Of Occupation - Intensive Use	yes	1/20th of land (and additional lands after Feb. 2005)	yes	yes	process to express concerns (government still retains sole discretion)	CR operator input form (government still retains sole discretion)	process to express concerns (government still retains sole discretion)	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no
CR Licence Of Occupation - Non-Profit Intensive Use	yes	1/20th of land (and additional lands after Feb. 2005)	yes	yes	process to express concerns (government still retains sole discretion)	CR operator input form (government still retains sole discretion)	process to express concerns (government still retains sole discretion)	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no
CR Licence Of Occupation - River User	yes	1/20th of land (and additional lands after Feb. 2005)	yes	yes	process to express concerns (government still retains sole discretion)	CR operator input form (government still retains sole discretion)	process to express concerns (government still retains sole discretion)	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no
CR Licence Of Occupation - Sport Fishing	yes	1/20th of land (and additional lands after Feb. 2005)	yes	yes	process to express concerns (government still retains sole discretion)	CR operator input form (government still retains sole discretion)	process to express concerns (government still retains sole discretion)	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no

Region	Issuing Institution	Tenure Contract	Comprehensiveness		Duration			Transferability		Exclusiveness		
			Tenure may be used for more than one resource	Tenure may be used for more than one activity	Length of term	Renewability	Conditions	Tenure transferable	Sublicense allowed with consent	Exclusive use of area under tenure	Sole property of area under tenure	Public use
BC	MTSA	CR Temporary Use Permit- River User	no	unique to each contract	2 years	end of term	if government accepts management plan	yes, consent will not be unreasonably be withheld	yes, consent will not be unreasonably be withheld	no	no	protected
		CR Temporary Use Permit - Sea Kayaking	no	unique to each contract	2 years	end of term	if government accepts management plan	yes, consent will not be unreasonably be withheld	yes, consent will not be unreasonably be withheld	no	no	protected
		Ski Hill Master Development Agreement	no	Any recreational activity subject to prior rights	60 years	mid-term	guaranteed if contractual obligations are met	yes, consent will not be unreasonably withheld	yes, consent will not be unreasonably withheld	yes	yes	restricted
	MAL	Agriculture Lease With Option To Purchase	no	unique to each contract	30 years	no	n/a	yes, at government's sole discretion	yes, at government's sole discretion	yes	yes	no
		Aquaculture Lease Unregisterable	no	unique to each contract	30 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	yes	yes	no
		Communication Sites Licence Of Occupation	no	unique to each contract	30 years	mid-term	at government's sole-discretion	yes, will not be unreasonably withheld	yes, will not be unreasonably withheld	no	no	restricted
		Communication Sites Statutory Right Of Way	no	unique to each contract	30 years	mid-term	at government's sole-discretion	yes, will not be unreasonably withheld	yes, will not be unreasonably withheld	no	no	protected

Tenure contract	Security				Consultation				Compensation		
	Termination due to public interest/ no cause	Government can take a portion of a tenure	Government can alter contract fees within term	Government can change contract restrictions within term	Consultation before changes to regulations/ fees	Consultation before other tenures are granted in area	Consultation before disposal of portion of tenure	Consultation before tenure termination	Compensation for no-fault tenure termination	Compensation for other takings	Compensation for loss of improvements
CR Temporary Use Permit- River User	yes	1/20th of land (and additional lands after Feb. 2005)	yes	yes	process to express concerns (government still retains sole discretion)	CR operator input form (government still retains sole discretion)	process to express concerns (government still retains sole discretion)	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no
CR Temporary Use Permit - Sea Kayaking	yes	1/20th of land (and additional lands after Feb. 2005)	yes	yes	process to express concerns (government still retains sole discretion)	CR operator input form (government still retains sole discretion)	process to express concerns (government still retains sole discretion)	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no
Ski Hill Master Development Agreement	no	boundaries can be changed but both parties must agree	on 10th anniversary with restrictions	no	only allowed if agreed to in writing by both parties	only allowed if agreed to in writing by both parties	only allowed if agreed to in writing by both parties	60 days notice (for fault termination)	n/a	yes (for overlapping tenures)	no reference
Agriculture Lease With Option To Purchase	no	1/20th of land	no	no	n/a	requires tenure holder's consent which may be reasonably withheld	n/a	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference
Aquaculture Lease Unregisterable	no	1/20th of land	no	no	n/a	requires tenure holder's consent which may be reasonably withheld	n/a	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference
Communication Sites Licence Of Occupation	yes	1/20th of land	no	no	n/a	requires consent from both parties	n/a	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no reference
Communication Sites Statutory Right Of Way	no	1/20th of land	no	no	n/a	requires consent from both parties	n/a	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference

Region	Issuing Institution	Tenure Contract	Comprehensiveness		Duration			Transferability		Exclusiveness		
			Tenure may be used for more than one resource	Tenure may be used for more than one activity	Length of term	Renewability	Conditions	Tenure transferable	Sublicense allowed with consent	Exclusive use of area under tenure	Sole property of area under tenure	Public use
BC	MAL	Industrial Lease	no	unique to each contract	30 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	yes	yes	no
		Industrial Licence Of Occupation	no	unique to each contract	10 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	no	no	restricted
		Moorage Licence Of Occupation	no	unique to each contract	10 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	no	no	protected
		Quarry Licence Of Occupation	no	unique to each contract	10 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	no	no	restricted
		Standard Lease Unregisterable	no	unique to each contract	30 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	yes	yes	no
		Utility Licence Of Occupation	no	unique to each contract	10 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	no	no	restricted
		Utility Statutory Right Of Way	no	unique to each contract	for as long as required	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	no	no	protected

Tenure contract	Security				Consultation				Compensation		
	Termination due to public interest/ no cause	Government can take a portion of a tenure	Government can alter contract fees within term	Government can change contract restrictions within term	Consultation before changes to regulations/ fees	Consultation before other tenures are granted in area	Consultation before disposal of portion of tenure	Consultation before tenure termination	Compensation for no-fault tenure termination	Compensation for other takings	Compensation for loss of improvements
Industrial Lease	no	1/20th of land	no	no	n/a	requires tenure holder's consent which may be reasonably withheld	n/a	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference
Industrial Licence Of Occupation	yes	1/20th of land	no	no	n/a	government may authorize	n/a	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no reference
Moorage Licence Of Occupation	yes	1/20th of land	no	no	n/a	government may authorize	n/a	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no reference
Quarry Licence Of Occupation	yes	1/20th of land	no	no	n/a	government may authorize	n/a	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no reference
Standard Lease Unregisterable	no	1/20th of land	no	no	n/a	requires tenure holder's consent which may be reasonably withheld	n/a	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference
Utility Licence Of Occupation	yes	1/20th of land	no	no	n/a	government may authorize	n/a	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no reference
Utility Statutory Right Of Way	yes	1/20th of land	no	no	n/a	requires tenure holder's consent which may be reasonably withheld	n/a	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction or where material affect can be shown	no reference

Region	Issuing Institution	Tenure Contract	Comprehensiveness		Duration			Transferability		Exclusiveness		
			Tenure may be used for more than one resource	Tenure may be used for more than one activity	Length of term	Renewability	Conditions	Tenure transferable	Sublicense allowed with consent	Exclusive use of area under tenure	Sole property of area under tenure	Public use
BC	MAL	Energy Production Lease	no	unique to each contract	30 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	yes	yes	no
		Energy Production Licence Of Occupation	no	unique to each contract	10 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	no	no	restricted
		Energy Production Right Of Way	no	unique to each contract	for as long as required	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	no	no	restricted
		Golf Lease	no	unique to each contract	30 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	yes	yes	no
		Grazing Lease	no	unique to each contract	20 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	yes	yes	no
		Quarrying Lease	no	unique to each contract	30 years	mid-term	at government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	yes	yes	no

Tenure contract	Security				Consultation				Compensation		
	Termination due to public interest/ no cause	Government can take a portion of a tenure	Government can alter contract fees within term	Government can change contract restrictions within term	Consultation before changes to regulations/ fees	Consultation before other tenures are granted in area	Consultation before disposal of portion of tenure	Consultation before tenure termination	Compensation for no-fault tenure termination	Compensation for other takings	Compensation for loss of improvements
Energy Production Lease	no	1/20th of land	no	no	n/a	requires tenure holder's consent which may be reasonably withheld	n/a	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference
Energy Production Licence Of Occupation	yes	1/20th of land	no	no	n/a	government may authorize	n/a	60 days notice (includes no-fault termination)	no	for mineral, gas and water extraction only	no reference
Energy Production Right Of Way	no	1/20th of land	no	no	n/a	requires tenure holder's consent which may be reasonably withheld	n/a	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference
Golf Lease	no	1/20th of land	no	no	n/a	requires tenure holder's consent which may be reasonably withheld	n/a	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference
Grazing Lease	no	1/20th of land	no	no	n/a	requires tenure holder's consent which may be reasonably withheld	n/a	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference
Quarrying Lease	no	1/20th of land	no	no	n/a	requires tenure holder's consent which may be reasonably withheld	n/a	60 days notice (for fault termination)	n/a	for mineral, gas and water extraction or where material affect can be shown	no reference

Region	Issuing Institution	Tenure Contract	Comprehensiveness		Duration			Transferability		Exclusiveness		
			Tenure may be used for more than one resource	Tenure may be used for more than one activity	Length of term	Renewability	Conditions	Tenure transferable	Sublicense allowed with consent	Exclusive use of area under tenure	Sole property of area under tenure	Public use
BC	MoE	Park Use Permit Commercial Land Use Occupancy	no	activities described in management plan	1 year	mid-term	At government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	no	no	protected
		Park Use Permit Commercial Recreation	no	activities described in management plan	1 year	mid-term	At government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	no	no	protected
		Guide Outfitters Certificate	n/a	n/a	up to 10 years	mid-term	At government's sole-discretion	yes, at government's sole discretion	yes, at government's sole discretion	yes	yes	n/a
		Guide Outfitters Licence	no	specifies species and area	1 year	no	n/a	non-transferrable	non-transferrable	n/a	n/a	n/a
	MFR	Forest Licence	no	no	20 years	every five years	guaranteed if contractual obligations are met	yes, with few constraints	yes, with few constraints	no	yes (for AAC)	restricted
		Tree Farm Licence	no	no	25 years	every five years	guaranteed if contractual obligations are met	yes, with few constraints	yes, with few constraints	management control	management control	restricted
CAN	Parks Canada	Lease	no	unique to each contract	up to 42 years	yes (some include perpetual renewal)	on terms the government thinks fit	yes, if contractual obligations are met	yes, if contractual obligations are met	yes	yes	no
		License Of Occupation	no	unique to each contract	up to 42 years	no reference	n/a	non-transferrable	no	no	no	protected

Tenure Contract	Security				Consultation				Compensation		
	Termination due to public interest/ no cause	Government can take a portion of a tenure	Government can alter contract fees within term	Government can change contract restrictions within term	Consultation before changes to regulations/ fees	Consultation before other tenures are granted in area	Consultation before disposal of portion of tenure	Consultation before tenure termination	Compensation for no-fault tenure termination	Compensation for other takings	Compensation for loss of improvements
Park Use Permit Commercial Land Use Occupancy	no	no	no	no	n/a	no reference	n/a	N/a	no	no reference	no reference
Park Use Permit Commercial Recreation	yes	no	no	no	n/a	no reference	n/a	N/a	no reference	no reference	no reference
Guide Outfitters Certificate	no	no	no	no	n/a	n/a	n/a	lengthy hearing process for non-compliance	no reference	no reference	no reference
Guide Outfitters Licence	no	no	no	no	n/a	n/a	n/a	lengthy hearing process for non-compliance	no reference	no reference	no reference
Forest Licence	no	for reasons of aboriginal title	yes	no	n/a	n/a	must obtain tenure holder's consent	no reference	n/a	yes if taking greater than 5% of AAC	no reference
Tree Farm Licence	no	for reasons of aboriginal title / 0.5% per year for various reasons	yes	no	n/a	n/a	must obtain tenure holder's consent	no reference	n/a	yes if taking greater than 5% of AAC	no reference

Region	Issuing Institution	Tenure Contract	Comprehensiveness		Duration			Transferability		Exclusiveness		
			Tenure may be used for more than one resource	Tenure may be used for more than one activity	Length of term	Renewability	Conditions	Tenure transferable	Sublicense allowed with consent	Exclusive use of area under tenure	Sole property of area under tenure	Public use
AB	Public Lands Division	Recreational Lease	no	activities described in management plan	10 years	yes	At government's sole-discretion	yes, upon government consent	yes, upon government consent	yes	yes	no
		Miscellaneous Lease Public Lands And Forests	no	activities described in management plan	10 years	yes	At government's sole-discretion	yes, upon government consent	yes, upon government consent	yes	yes	no
		License Of Occupation	no	unique to each contract	unique to use	yes	At government's sole-discretion	yes, upon government consent	yes, upon government consent	no	no	no reference
ON	Ministry of NR	Land Lease - Tenure	no	unique to each contract	20 years	yes	At government's sole-discretion	yes, cannot be unreasonably withheld	yes, cannot be unreasonably withheld	yes	yes	no
YT	Lands Division	TLYA Lease	no	unique to each contract	5 years but renewable for 60 years	yes for up to 60 years	guaranteed if contractual obligations are met	yes, upon government consent	yes, upon government consent	yes	yes	no
		YLA Lease	no	unique to each contract	6 years but renewable for 60 years	yes for up to 60 years	guaranteed if contractual obligations are met	yes, upon government consent	yes, upon government consent	yes	yes	no
		Land Use Permit	no	unique to each contract	long-term' use	no	n/a	non-transferrable	no	no	no	no reference

Tenure Contract	Security				Consultation				Compensation		
	Termination due to public interest/ no cause	Government can take a portion of a tenure	Government can alter contract fees within term	Government can change contract restrictions within term	Consultation before changes to regulations/ fees	Consultation before other tenures are granted in area	Consultation before disposal of portion of tenure	Consultation before tenure termination	Compensation for no-fault tenure termination	Compensation for other takings	Compensation for loss of improvements
Park Use Permit Commercial Land Use Occupancy	yes (with compensation)	yes	no reference	no	n/a	must obtain tenure holder's consent	n/a	government retains right	yes (unless land is irrigable)	yes, for other dispositions	no reference
Park Use Permit Commercial Recreation	yes (with compensation)	yes	every five years	no	n/a	must obtain tenure holder's consent	n/a	government retains right	yes (unless land is irrigable)	yes, for other dispositions	no reference
Guide Outfitters Certificate	yes (with compensation)	yes	no reference	no	n/a	must obtain tenure holder's consent	n/a	government retains right	yes (unless land is irrigable)	yes, for other dispositions	no reference
Guide Outfitters Licence	yes (for Hydro purposes)	no reference	no reference	no reference	n/a	n/a	n/a	government retains right in cases of flooding (hydro)	not for flooding, otherwise no reference	yes (for emergency situations or resource extraction)	no reference
Forest Licence	no	no reference	no reference	no reference	no reference	n/a	no reference	n/a	no reference	no reference	no reference
Forest Service Special Use Permit	no	no reference	no reference	no reference	no reference	n/a	no reference	n/a	no reference	no reference	no reference
Tree Farm Licence	no reference	no reference	no reference	no reference	no reference	n/a	no reference	no reference	no reference	no reference	no reference
Lease	no	no	no	no	n/a	n/a	n/a	no (w/o consent government must compensate)	applies Canada Expropriation Act	applies Canada Expropriation Act	applies Canada Expropriation Act
Licence Of Occupation	no	yes	no	no	n/a	no reference	n/a	no (w/o consent government must compensate)	applies Canada Expropriation Act	applies Canada Expropriation Act	applies Canada Expropriation Act

Region	Issuing Institution	Tenure Contract	Comprehensiveness		Duration			Transferability		Exclusiveness		
			Tenure may be used for more than one resource	Tenure may be used for more than one activity	Length of term	Renewability	Conditions	Tenure transferable	Sublicense allowed with consent	Exclusive use of area under tenure	Sole property of area under tenure	Public use
USA	Forest Service	Marina Resort Term Special Use Permit	no	all activities required to maintain an inclusive resort	30 years	no	n/a			no	no	protected
		Ski Area Term Special Use Permit	no	all activities required to maintain an inclusive resort	30 years	end of term	no reference	yes, upon government consent	yes, upon government consent	no	no	protected
		Special Use Permit For Outfitting And Guiding	no	unique to each contract	5 years	yes	no reference	non-transferrable	no	no	no	protected
		Special Use Permit For Outfitting And Guiding	no	unique to each contract	1 year	no	no reference	non-transferrable	no	no	no	protected
	BLM	Special Recreation Permit	no	unique to each contract	up to 10 years	end of term	at government's sole-discretion	yes, upon government consent	yes, upon government consent	no	no	protected
AK	National Parks Service	Commercial Use License	no	unique to each contract	2 years	no	n/a	non-transferrable	no	no	no	no reference
		Concession Permit	no	unique to each contract	10 years	yes	at government's sole-discretion	yes, upon government consent	yes, upon government consent	no	no	no reference
	Department of NR	Land Use Permit	no	unique to each contract	5 years	yes	guaranteed if contractual obligations are met	non-transferrable	no	no	no	protected
		Commercial Recreation Permit Application	no	unique to each contract	1 year	no	n/a	non-transferrable	no	no	no	protected
		Lease		activities described in development plan	10 years	no later than 1 year prior to expiration	no reference	yes, upon government consent	yes, upon government consent	yes	yes	no

Tenure Contract	Security				Consultation				Compensation		
	Termination due to public interest/ no cause	Government can take a portion of a tenure	Government can alter contract fees within term	Government can change contract restrictions within term	Consultation before changes to regulations/ fees	Consultation before other tenures are granted in area	Consultation before disposal of portion of tenure	Consultation before tenure termination	Compensation for no-fault tenure termination	Compensation for other takings	Compensation for loss of improvements
Marina Resort Term Special Use Permit	Yes (with some compensation)	with restrictions	no	with restrictions	no reference	no reference	no reference	no reference	yes	no reference	no reference
Ski Area Term Special Use Permit	Yes (with some compensation)	with restrictions	no	with restrictions	no reference	no reference	no reference	no reference	yes	no reference	no reference
Special Use Permit For Outfitting And Guiding	yes (reason must be specific and compelling)	with restrictions	no	with restrictions	no reference	yes	no reference	no reference	no reference	no reference	no reference
Special Use Permit For Outfitting And Guiding	yes (reason must be specific and compelling)	with restrictions	no	with restrictions	no reference	yes	no reference	no reference	no reference	no reference	no reference
Special Recreation Permit	no	no	yes	no	n/a	government will inform tenure holder when new applications are received	n/a	n/a	no reference	no reference	no reference
Commercial Use License	yes	no	no	no	n/a	no reference	n/a	no reference	no reference	no reference	no reference
Concession Permit	yes	yes	no	no	n/a	no reference	no reference	no reference	no	no	no
Land Use Permit	no	no reference	no	yes	government must notify tenure holder	no reference	no reference	n/a	no reference	no reference	no reference
Commercial Recreation Permit Application	yes	no reference	no	yes	government must notify tenure holder	no reference	no reference	no reference	no reference	no reference	no reference
Lease	no	no reference	yes, on 5th anniversary	no	written consent must be obtained from both parties	n/a	no reference	n/a	no	no	yes

APPENDIX 4: COMPARATIVE ANALYSIS MATRIX – CONTRACT PROVISIONS*

Region	Issuing institution	Tenure Contract	Comprehensiveness		Duration			Transferability			Use restrictions
			Tenure may be used for more than one resource	Tenure may be used for more than specific activity	Length of term greater than 10 years	Improvement to land with restrictions	Renewable during term	Renewable at expiration of term	Tenure transferable with consent	Sublicense allowed with consent	No take back applied for transfer/ sublicense
BC	MTSA	CR Licence of Occupation	2.1, 4.1f,k	2.1	2.3	4.1g/h, .x,y, 5.1i,s	2.3	n/a	7.1	7.1	7.4
		CR Lease	2.1, 4.1f,k	2.1	2.3	4.1w	2.3	n/a	7.1	7.1	7.4
		CR Licence of Occupation - Intensive use	2.1, 4.1f,k	2.1	2.3	4.1.g/h,x,y, 5.1.r	2.3	n/a	7.1	7.1	7.4
		CR Licence of Occupation - non-profit intensive use	2.1, 4.1f,k	2.1	2.3	4.1.g/h,x,y, 5.1.r	2.3	n/a	7.1	7.1	7.4
		CR Licence of Occupation - River User	2.1, 5.1.d,i	2.1	2.3	5.1.g,n	2.3	n/a	9.1	9.1	9.4
		CR Licence of Occupation - Sport Fishing	2.1, 4.1f,k	2.1	2.3	4.1.g/h,x,y, 5.1.q	2.3	n/a	7.1	7.1	7.4
		CR temporary use permit - River User	2.1, 5.1.d,i	2.1	<i>lwbc-lup</i>	5.1.g,n	<i>lwbc-lup</i>	n/a	9.1	9.1	9.4
		CR Temporary use permit - Sea Kayaking	2.1, 5.1.d,i	2.1	<i>lwbc-lup</i>	5.1.g,n	<i>lwbc-lup</i>	n/a	9.1	9.1	9.4
		Ski Hill Master Development Agreement	10.01, 14.01t	10.01	2.01	6.01.b.iii, .iv, 6.04, 8.01-03, 14.01m,	18.01, 18.02	n/a	16.01, 16.02	10.01	none

*LEGEND: numbers in cells refer to the specific provision that was referenced for the property rights characteristics sub-theme in the corresponding column. Regular type style refers to the contract referenced in the corresponding row, **bold type style refers to the legislative act that governs the industry in the corresponding row**, and *italic type style refers to secondary sources*. The secondary sources are listed in appendix 2.

Tenure Contract	Limits to Economic Benefits					Exclusiveness		Security						
	Application fees	Use fees	Mgmt. fees (= security deposit)	Ownership of intensive improvements	Option to purchase land	Exclusive use of area under tenure	Sole property of area under tenure	Disposal of portion of tenure	Termination due to financial arrears	Termination due to non-compliance	Termination due to public interest/ no cause	Length of notice by government before termination	Government alteration of contract fees within term	Government alteration of contract regulations within term
CR Licence of Occupation	4.1ss,tt, <i>lwbc-fees</i>	3.1	3.1,6.1	4.1xx.ii, 5.1ee,ff	no	2.1, 4.1l,t,u, 5.1b,e,x- z,aa-cc	<i>lwbc-lup</i>	50.1.a, <i>lwbc-lup</i> 9.7	8.1	8.1	8.1	some provision for 60 days (8.1)	3.5, 6.5.a, 6.7.a	1.8, 5.1.dd, <i>lwbc-lup</i> 9.7
CR Lease	4.1ss, <i>lwbc-fees</i>	3.1	6.1*	4.1ww.ii	3.38	4.3 (4.1.l, 5.1b, 5.1bb- ee)	4.3, <i>lwbc-lup</i>	50.1.a, <i>lwbc-lup</i> 9.7	8.1	8.1	5.1.q (flooding)	some provision for 60 days (8.1)	3.2, 6.5.a, 6.7.a	1.8, <i>lwbc-lup</i> 9.7
CR Licence of Occupation - Intensive use	4.1.tt, .uu, <i>lwbc-fees</i>	3.1	6.1*	4.1xx.ii, 5.1.cc, dd	no	4.1.l,.t,.u, 5.1.b.i, 5.1.e, 5.1.w-.bb	<i>lwbc-lup</i>	50.1.a, <i>lwbc-lup</i> 9.7	8.1	8.1	5.1.p (flooding), 8.1	some provision for 60 days (8.1), 8.2	3.2, 6.5.a, 6.7.a	1.8, <i>lwbc-lup</i> 9.7
CR Licence of Occupation - non-profit intensive use	4.1.tt, .uu, <i>lwbc-fees</i>	3.1 (6.1*	4.1xx.ii, 5.1.cc, dd	no	2.1, 4.1.l,.t,.u, 5.1.b.i, 5.1.e, 5.1.w-.bb	<i>lwbc-lup</i>	50.1.a, <i>lwbc-lup</i> 9.7	8.1	8.1	5.1.p (flooding), 8.1	some provision for 60 days (8.1), 8.2	3.2, 6.5.a, 6.7.a	1.8, <i>lwbc-lup</i> 9.7
CR Licence of Occupation - River User	<i>lwbc-fees</i>	3.1, 3.2, 3.3, 3.4	3.1, 3.2, 3.3, 3.4, 7.3*	5.1.j	no	2.1, 5.1.h,l,p, 6.1.a,d,e,l	6.1.d, <i>lwbc-lup</i>	4.6.d, 4.7, 50.1.a, <i>lwbc-lup</i> 9.7	8.1	4.5, 8.1	8.1	some provision for 60 days (8.1)	3.5, 7.2.a	1.8, 4.7, <i>lwbc-lup</i> 9.7
CR Licence of Occupation - Sport Fishing	4.1.tt, .uu <i>lwbc-fees</i>	3.1	6.1*	4.1xx.ii, 5.1.bb,cc	no	4.1.l,.t,.u, 5.1.b.i, 5.1.e, 5.1.v-.aa	<i>lwbc-lup</i>	50.1.a, <i>lwbc-lup</i> 9.7	8.1	8.1	5.1.o (flooding), 8.1	some provision for 60 days (8.1), 8.2	3.2, 6.5.a, 6.7.a	1.8, <i>lwbc-lup</i> 9.7
CR temporary use permit - River User	<i>lwbc-fees</i>	3.1, 3.2, 3.3	3.1, 3.2, 3.3, 7.3*	5.1.j	no	2.1, 5.1.h,l,p, 6.1.a,d,e,l	6.1.d, <i>lwbc-lup</i>	4.6.d, 4.7, 50.1.a, <i>lwbc-lup</i> 9.7	8.1	4.5, 8.1	8.1	some provision for 60 days (8.1)	3.4,7.2.a	1.8, 4.7, <i>lwbc-lup</i> 9.7
CR temporary use permit - Sea Kayaking	<i>lwbc-fees</i>	3.1, 3.2, 3.3	3.1, 3.2, 3.3, 7.3*	5.1.j	no	2.1, 5.1.h,l,p, 6.1.a,d,e,l	6.1.d, <i>lwbc-lup</i>	4.6.d, 4.7, 50.1.a, <i>lwbc-lup</i> 9.7	8.1	4.5, 8.1	8.1	some provision for 60 days (8.1)	3.4,7.2.a	1.8, 4.7, <i>lwbc-lup</i> 9.7
Ski Hill Master Development Agreement	5.12, 13.02.c	5.05, .06, .07	6.01.b.iii, .iv, 15.06, 17.01, .02	3.03, 6.06, 19.01a	7.01, 7.03, 17.02	3.06.b, 4.01, 4.02, 4.03, 13.02f, 21.09	4.03	12.06 (with consent)	15.01, 15.02.d	2.02, 15.01, 15.02.d	no reference	no reference	5.08	1.08

Tenure Contract	Management Stipulations			Operational Controls		Consultation				Compensation		
	Required Environment/cultural Protection	Required Improvements	Required external licences and/or insurance	Required management plans, written status reports	Required periodic audits/inspection	Consultation before changes to regulations/fees	Consultation before other tenures are granted in area	Consultation before disposal of portion of tenure	Consultation before tenure termination	Compensation for takings	Compensation for loss of improvements	Compensation for no-fault tenure termination
CR Licence of Occupation	4.1e,o,p,q,r,w,s, environmental schedule	4.1z	4.1.jj-mm, 6.6.a	2.1	4.1m,n	1.12, <i>lwbc-lup 9.7</i>	<i>appendix 7-3 of lwbc-lup</i>	<i>lwbc-lup 9.7</i>	8.1	5.1q,8.3a	5.1f,p,dd, 50.1.a.ii	no reference
CR Lease	4.1 e,n,o,p,v,ww environmental schedule	4.1y	4.1ii-kk	2.1	4.1uu	1.12, <i>lwbc-lup 9.7</i>	5.1.e,f	<i>lwbc-lup 9.7</i>	8.1	5.1s, 8.3a	5.1g,j,r 50.1.a.ii	no reference
CR Licence of Occupation - Intensive use	4.1.e,o-r,v,w,z,aa,ss, 4.1.xx.iv, 5.1.i,j,k,l, environmental schedule	4.1.z	4.1.jj-pp, 5.1.m, 6.6a	4.1.n	4.1.m, vv	1.12, <i>lwbc-lup 9.7</i>	<i>appendix 7-3 of lwbc-lup</i>	<i>lwbc-lup 9.7</i>	8.1	5.1.p, 8.3.a	5.1.f,o, 50.1.a.ii	no reference
CR Licence of Occupation - non-profit intensive use	4.1.e,o-r,v,w,z,aa-ii,ss, 4.1.xx.v, 5.1.i,j,k,l, environmental schedule	4.1.z	4.1.jj-pp, 5.1.m, 6.6a	4.1.n	4.1.m, vv	1.12, <i>lwbc-lup 9.7</i>	<i>appendix 7-3 of lwbc-lup</i>	<i>lwbc-lup 9.7</i>	8.1	5.1.p, 8.3.a	5.1.f,o, 50.1.a.ii	no reference
CR Licence of Occupation - River User	4.6.c, 5.1.f,j,q,r, 5.1.u.ii	none	7.1.a,	3.8, 3.10, 4.1, 4.6, 5.1.m	5.1.k,r	1.12, <i>lwbc-lup 9.7</i>	<i>appendix 7-3 of lwbc-lup</i>	4.7, <i>lwbc-lup 9.7</i>	8.1	8.2.a	4.8, 6.1.f, 50.1.a.ii	no reference
CR Licence of Occupation - Sport Fishing	4.1.e,o-r,v,w,z,aa-dd,ff-ii,ss, 4.1.xx.v, 5.1.i,j,k,l, environmental schedule	none	4.1.jj-pp, 6.6a	4.1.n	4.1.m, vv	1.12, <i>lwbc-lup 9.7</i>	<i>appendix 7-3 of lwbc-lup</i>	<i>lwbc-lup 9.7</i>	8.1	5.1.o, 8.3.a	5.1.f,n, 50.1.a.ii	no reference
CR temporary use permit- River User	4.6.c, 5.1.f,j,q,r, 5.1.t.ii	none	7.1.a,	3.7, 3.9, 4.1, 4.6, 5.1.m	5.1.k,u	1.12, <i>lwbc-lup 9.7</i>	<i>appendix 7-3 of lwbc-lup</i>	4.7, <i>lwbc-lup 9.7</i>	8.1	8.2.a	4.8, 6.1.f, 50.1.a.ii	no reference
CR temporary use permit - Sea Kayaking	4.6.c, 5.1.f,j,q, 5.1.s.ii	none	7.1.a,	3.7, 3.9, 4.1, 4.6, 5.1.m	5.1.k,t	1.12, <i>lwbc-lup 9.7</i>	<i>appendix 7-3 of lwbc-lup</i>	4.7, <i>lwbc-lup 9.7</i>	8.1	8.2.a	4.8, 6.1.f, 50.1.a.ii	no reference
Ski Hill Master Development Agreement	7.06e, 14.01b, 14.01.j. n	3.03.b	3.05.b, 6.01.b, 6.02.b, 13.01.g.vi, 14.01.e.iii	5.09, 6.01b	5.10, E.4.01.e	1.08	21.09	12.06	15.01	no reference	21.11, 50.1.a.ii	no reference

Region	Issuing institution	Tenure Contract	Comprehensiveness		Duration			Transferability			Use restrictions
			Tenure may be used for more than one resource	Tenure may be used for more than specific activity	Length of term greater than 10 years	Improvement to land with restrictions	Renewable during term	Renewable at expiration of term	Tenure transferable with consent	Sublicense allowed with consent	No take back applied for transfer/ sublicense
BC	MAL	Agriculture lease with option to purchase	2.1, 4.1.f, .h, .k, 5.1.k	4.1.f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g, .p, .i, 5.1.o
		Aquaculture lease unregistrable	2.1, 4.1.f, j	4.1.f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g
		Communication Sites Licence of Occupation	2.1, 4.1.f,k	4.2.a, 4.5.a	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g,h, 4.2.b, 4.5.b,
		Communication sites statutory right of way	2.1, 4.1.k	4.1.f, 4.2.a	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4, 7.5	4.1g,h, 4.2.b, 4.5
		Industrial Lease	2.1, 4.1f,k	4.1f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g,h
		Industrial Licence of Occupation	2.1, 4.1f,k	4.1f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g,h
		Moorage Licence of Occupation	2.1, 4.1.g, 4.1.j	2.1, 4.1.g	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1.f
		Quarry Licence of Occupation	4.1f	4.1f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g
		Standard Lease Unregistrable	2.1, 4.1f,k	2.1, 4.1f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g,s,t,w,aa,cc,eee, 5.1k,l,m,n,s
		Utility Licence of Occupation	2.1, 4.1f,j	4.1f	<i>lwbc-lup</i>	<i>n/a</i>	2.3	4.1k, 5.1i, 7.1	4.1k, 5.1i, 7.1	7.4	4.1g
		Utility Statutory Right of Way	2.1, 4.1.f,j	4.1.f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g,k,l, 5.1.j,k

Tenure Contract	Limits to Economic Benefits					Exclusiveness		Security						
	Application fees	Use fees	Mgmt. fees (*= security deposit)	Ownership of intensive improvements	Option to purchase land	Exclusive use of area under tenure	Sole property of area under tenure	Disposal of portion of tenure	Termination due to financial arrears	Termination due to non-compliance	Termination due to public interest/ no cause	Length of notice by government before termination	Government alteration of contract fees within term	Government alteration of contract regulations within term
Agriculture lease with option to purchase	4.1.kk-ll (land survey), <i>lwbc-fees</i>	3.1	6.1*	4.1.oo.ii, 5.1.y-z	2.3	4.3(4.1.m, 5.1.b.i, 5.1.e, .t.-x)	4.3, <i>lwbc-lup</i>	50.1.a	8.1	8.1	5.1.m (flooding)	8.2 (60 days)	3.4, 6.5.a, 6.7.a,	1.8
Aquaculture lease unregistrable	4.1.p, <i>lwbc-fees</i>	3.1	6.1*	4.1.u.ii, 5.1.k-l	3.38	4.3 (5.1.b, e)	4.3, <i>lwbc-lup</i>	50.1.a	8.1	8.1	no reference	8.2 (60 days)	3.2, 6.7	1.8, 4.1.q
Communication Sites Licence of Occupation	<i>lwbc-fees</i>	3.1	6.1*	4.1.o.ii, 5.1.i-j	no	2.1, 5.1b,e	<i>lwbc-lup</i>	50.1.a	8.1	8.1	8.1	8.2 (60 days)	3.2, 6.5.a, 6.7.a	1.8
Communication sites statutory right of way	<i>lwbc-fees</i>	3.1	6.1*	4.1.o.ii, 5.1.j-k	no	2.1, 5.1.b.l, 5.1.e	<i>lwbc-lup</i>	50.1.a	8.1	8.1	no reference	8.2 (60 days)	3.2, 6.5.a, 6.7.a	1.8
Industrial Lease	<i>lwbc-fees</i>	3.1	6.1*	4.1.s, 5.1k,l	3.38	4.3 (2.1, 5.1b,e)	4.3, <i>lwbc-lup</i>	50.1.a	8.1	8.1	no reference	no reference	3.2,3.4,6.5,6.7	1.8
Industrial Licence of Occupation	<i>lwbc-fees</i>	3.1	6.1*	4.1.n, 5.1i,j	no	2.1, 5.1b,e	<i>lwbc-lup</i>	50.1.a	8.1	8.1	8.1	no reference	3.2,3.4,6.5,6.7	1.8
Moorage Licence of Occupation	<i>lwbc-fees</i>	3.1 (flat fee)	6.1*	4.1.n.ii, 5.1.m,n	no	2.1, 4.1.k, 5.1.b.i, 5.1.e	<i>lwbc-lup</i>	50.1.a	8.1	8.1	8.1	8.2 (60 days)	3.2, 6.5.a, 6.7.a	1.8
Quarry Licence of Occupation	<i>lwbc-fees</i>	3.1	6.1*	4.1.s, 5.1j, 5.1k	no	2.1, 5.1b,e	<i>lwbc-lup</i>	50.1.a	8.1	8.1	8.1	8.2 (60 days)	6.5	1.8
Standard Lease unregistrable	4.1bbb, eee, <i>lwbc-fees</i>	3.1	6.1*	4.1.iii, 5.1dd, ee	3.38	4.3 (4.1q,r, 5.1e,i,x-cc)	4.3, <i>lwbc-lup</i>	50.1.a	8.1	8.1	no reference	8.2 (60 days)	3.2, 6.5, 6.7	1.8
Utility Licence of Occupation	<i>lwbc-fees</i>	3.1	6.1*	4.1p, 5.1k, 5.1l	no	4.3 (2.1, 5.1b,e)	<i>lwbc-lup</i>	50.1.a	8.1	8.1	8.1	8.2 (60 days)	3.2, 6.5, 6.7	1.8
Utility Statutory Right of Way	<i>lwbc-fees</i>	3.1 (flat fee)	6.1*	4.1p.ii, 5.1.l, 5.1.m	no	5.1.b.i, 5.1.e	<i>lwbc-lup</i>	50.1.a	8.1	8.1	no reference	8.2 (60 days)	3.2, 6.5.a, 6.7.a	1.8

Tenure Contract	Management Stipulations			Operational Controls		Consultation				Compensation		
	Required Environment/ cultural Protection	Required Improvements	Required external licences and/or insurance	Required management plans, written status reports	Required periodic audits/ inspection	Consultation before changes to regulations/ fees	Consultation before other tenures are granted in area	Consultation before disposal of portion of tenure	Consultation before tenure termination	Compensation for takings	Compensation for loss of improvements	Compensation for no-fault tenure termination
Agriculture lease with option to purchase	4.1.e, .o, 4.1.oo.iv, environmental schedule	4.1.u, management plan schedule	4.1.ee-hh, 6.6.a	management plan	4.1.mm	1.12	5.1.e, .f	no reference	8.1	8.3.a	5.1g, m, 50.1.a.ii	no reference
Aquaculture lease unregistrable	4.1.e,m-o, u.iv,	none	6.6.a	management plan	4.1.s	1.12	5.1e,f	no reference	8.1	8.3.a	5.1g, 50.1.a.ii	no reference
Communication Sites Licence of Occupation	4.1.e, 4.1.o.v	none	6.6.a	4.3.a	4.1.m, 4.9	1.12	no reference	no reference	8.1	8.3.a	5.1.f, 50.1.a.ii	no reference
Communication sites statutory right of way	4.1.e, 4.1.o.v	none	6.6.a	management plan	4.1.l, 4.1.m, 4.9	1.12	5.1e,f	no reference	8.1	8.3.a	5.1.g, 50.1.a.ii	no reference
Industrial Lease	4.1e	none	6.6a	management plan	4.1l	1.12	5.1e,f	no reference	8.1	8.3a	5.1g, 50.1.a.ii	no reference
Industrial Licence of Occupation	4.1e	none	6.6a	management plan	4.1l	1.12	no reference	no reference	8.1	8.3a	5.1f, 50.1.a.ii	no reference
Moorage Licence of Occupation	4.1.e, 4.1.n.v, 5.1.i-l	none	6.6a	management plan	4.1.l	1.12	no reference	no reference	8.1	8.3a	5.1f, 50.1.a.ii	no reference
Quarry Licence of Occupation	4.1.e	4.1o	6.6	4.1l,m	4.1n,q	1.12	no reference	no reference	8.1	8.3a	5.1f, 50.1.a.ii	no reference
Standard Lease unregistrable	4.1e,l-o,u,x-z,iii(iv), environmental schedule	4.1bb	4.1qq-tt, 6.6a	management plan	4.1ggg	1.12	5.1e,f	no reference	8.1	5.1q, 8.3	5.1g, p, 50.1.a.ii	no reference
Utility Licence of Occupation	4.1e	none	6.6	management plan	4.1n	1.12	no reference	no reference	8.1	8.3a	5.1f, 50.1.a.ii	no reference
Utility Statutory Right of Way	4.1.e,m, 4.1.p.v,	none	6.6.a	management plan	4.1.n	1.12	5.1.e,f	no reference	8.1	8.2.a	5.1.g, 50.1.a.ii	no reference

Region	Issuing institution	Tenure Contract	Comprehensiveness		Duration			Transferability			Use restrictions
			Tenure may be used for more than one resource	Tenure may be used for more than specific activity	Length of term greater than 10 years	Improvement to land with restrictions	Renewable during term	Renewable at expiration of term	Tenure transferable with consent	Sublicense allowed with consent	No take back applied for transfer/sublicense
BC	MAL	Energy Production Lease	2.1, 4.1.f,l	4.1.f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g,o,p
		Energy Production Licence of occupation	2.1, 4.1.f,l	4.1.f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g,o,p
		Energy Production Right of Way	2.1, 4.1.f,l	4.1.f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g,o,p
		Golf Lease	2.1, 4.1.f,j	4.1.f	<i>lwbc-lup</i>	<i>lwbc-lup</i>	n/a	7.1	7.1	7.4	4.1g,o,p, 5.1.n
		Grazing Lease	2.1, 2.4.a, 3.1, 5.1.g,j, 6.1.k	2.4.a	<i>lwbc-lup</i>	2.3	2.3	8.1	8.1	8.4	5.1.f,o,s, 6.1.o
		Quarrying Lease	2.1, 4.1.f,j	4.1.f	<i>lwbc-lup</i>	2.3	n/a	7.1	7.1	7.4	4.1g,q,r, 5.1.n
	MoE	Park use permit commercial land use occupancy	1.01	1.01	<i>Q&A</i>	9.01	9.01	5.01	5.01	5.01	6.01j
		Park Use Permit Commercial Recreation	1.01	1.01	<i>Q&A</i>	7.01	7.01	5.01q	5.01q	no	5.01h
		Guide Outfitters Certificate	no	no	4	4	n/a	62	n/a	no	no
		Guide Outfitters Licence	no	no	1	no	no	62	n/a	no	no

Tenure Contract	Limits to Economic Benefits					Exclusiveness		Security						
	Application fees	Use fees	Mgmt. fees (*= security deposit)	Ownership of intensive improvements	Option to purchase land	Exclusive use of area under tenure	Sole property of area under tenure	Disposal of portion of tenure	Termination due to financial arrears	Termination due to non-compliance	Termination due to public interest/ no cause	Length of notice by government before termination	Government alteration of contract fees within term	Government alteration of contract regulations within term
Energy Production Lease	4.1.y-z, <i>lwbc-fees</i>	3.1	6.1*	4.1.cc.ii, 5.1.r,s	3.38	4.3 (5.1.b.i, 5.1.e,m-q)	4.3, <i>lwbc-lup</i>	50.1.a	8.1	8.1	no reference	8.2 (60 days)	3.4, 6.5.a, 6.7.a	1.8
Energy Production Licence of occupation	4.1.y-z, <i>lwbc-fees</i>	3.1	6.1*	4.1.dd.ii,iv, 5.1.p,q	No	5.1.b.i, 5.1.e,k-o	<i>lwbc-lup</i>	50.1.a	8.1	8.1	8.1	8.2 (60 days)	3.4, 6.5.a, 6.7.a	1.8
Energy Production Right of Way	4.1.y-z, <i>lwbc-fees</i>	3.1	6.1*	4.1.cc.ii, 5.1.q,r	No	5.1.b.i, 5.1.e,l-p	<i>lwbc-lup</i>	50.1.a	8.1	8.1	no reference	8.2 (60 days)	3.4, 6.5.a, 6.7.a	1.8
Golf Lease	4.1.kk-ll, <i>lwbc-fees</i>	3.1	6.1*	4.1.oo.ii, 5.1.x,y	3.38	4.3 (4.1.k,l, 5.1.b.i, 5.1.e,s-w)	4.3, <i>lwbc-lup</i>	50.1.a	8.1	8.1	no reference	8.2 (60 days)	3.2, 6.5.a, 6.7.a	1.8
Grazing Lease	5.1.ll, <i>lwbc-fees</i>	4.1	7.1*	5.1.oo.ii, 6.1.y,z	3.38	5.3 (5.1.l, 6.1.b.i, 6.1.e,t-x, 6.2)	5.3, <i>lwbc-lup</i>	50.1.a	9.1	9.1	no reference	9.2 (60 days)	4.2, 7.5.a, 7.7.a	1.8, 5.1.k
Quarrying Lease	4.1.m,z,aa	3.1	6.1*	4.1.dd.ii, 5.1.y,z	3.38	4.3 (5.1.b.i, 5.1.e,s-w)	4.3, <i>lwbc-lup</i>	50.1.a	8.1	8.1	no reference	8.2 (60 days)	3.2, 3.5, 6.5.a, 6.7.a	1.8
Park use permit commercial land use occupancy	<i>pup-fees</i>	3.01, 10.01	22*	6.01r	no	7.01c	7.01c	no reference	12.01	12.01	no reference	12.01	3.02, 4.08	no reference
Park Use Permit Commercial Recreation	<i>pup-fees</i>	3.01	22*	5.01h	no	1.02, 5.01o, 6.01a,d	6.01d	no reference	9.01	9.01	9.01	9.01	3.02,4.08	no reference
Guide Outfitters Certificate	no reference	69	no	n/a	no	no	1	61.1	61.1	61.1	no	61.2	no	no
Guide Outfitters Licence	start of document	69	no	n/a	no	no	no	61.1	61.1	61.1	no	61.2	no	no

Region	Issuing institution	Tenure Contract	Comprehensiveness		Duration			Transferability			Use restrictions
			Tenure may be used for more than one resource	Tenure may be used for more than specific activity	Length of term greater than 10 years	Improvement to land with restrictions	Renewable during term	Renewable at expiration of term	Tenure transferable with consent	Sublicense allowed with consent	No take back applied for transfer/sublicense
BC	MFR	Forest Licence	1.01	1.01	1.02	1.03, 152	n/a	4.54	7.01	none	no specific reference -see section 13
		Forest Service Special Use Permit	1.01	2.02	no reference	no reference	no reference	4.54	no reference	none	permit is for improvements to land
		Tree Farm Licence	1.02	1.02	1.01	6.14 (cutting permit), (ttsqr), 152	n/a	4.54	12.01, 12.06	none	no specific reference
AB	Public Lands Division	Recreational Lease	1.b, 3, 35	1.b, 77 (with ministers consent)	no reference	15	15	43	43	none	3, 77
		Miscellaneous lease Public lands and Forests	4, 35	4, 77 (with ministers consent)	(start of document)	15	15	10, 43	10, 43	none	6, 77
		License of Occupation	5, 35	5, 77 (with ministers consent)	varies depending on purpose	15	15	6, 43	6, 43	none	77
ON	MNR	Land Lease - Tenure	8, 21, 22a, tdrp lease tool kit	8	Up to 20 years	18a	18a	11	11	11c	9
YT	Lands Division	TLYA Lease	use B, a-f?, 3	B	5 years, renewable for up to 60	7	7	24	24	24	9, 10, 11, 14
		YLA Lease	use B, a-f?, 3	B, 3	5 years, renewable for up to 60	7	7	24	24	24	9,10,11,14
		Land Use Permit	fact sheet 6	fact sheet 6	no reference	no reference	no reference	none	none	n/a	21.7, 21.8

Region	Issuing institution	Tenure Contract	Comprehensiveness		Duration			Transferability			Use restrictions
			Tenure may be used for more than one resource	Tenure may be used for more than specific activity	Length of term greater than 10 years	Improvement to land with restrictions	Renewable during term	Renewable at expiration of term	Tenure transferable with consent	Sublicense allowed with consent	No take back applied for transfer/sublicense
CAN	Parks Canada	Lease	2.01.a, 3.03, 3.05	2.03 (with consent)	3.1(NPCR)	3.3(NPCR)	3.3(NPCR)	9.01	9.01	no	2.06
		License of Occupation	2.01.a, 2.05, 3.07	2.01.a	18.1 (NPCR)	no reference	no reference	9.01	9.01	no	2.07
USA	Forest Service	Marina Resort Term Special Use Permit	unclear, III.D, XIV.D	start of document	I.D (30 years)	X	X	VI.B, VII.B	VIII	n/a	II.B, start of document
		Ski Area Term Special Use Permit	unclear, III.D, XI.F.2	start of document	I.D	I.D, IX.A	I.D, IX.A	VII.B, C	VII.A	VII.C	II.A
		Special Use Permit for Outfitting and Guiding (priority)	start of document, II.M, III.D	start of document	5 years	I.D	I.D	I.H.2	II.E	n/a	I.I, II.D
		Special Use Permit for Outfitting and Guiding (temporary)	start of document, II.M, III.D	start of document	1 year or less	I.D	I.D	I.H.2	II.E	n/a	I.I, II.D
	BLM	Special Recreation Permit	13, 11	13	2932.42	no	2932.51	4, 2932.54	4	n/a	15
AK	NPS	Commercial Use License	start of document	start of document, (A.36.CFR.5.3)	start of document	B.3	B.3	A.4, B.3	A.4, B.3	n/a	no reference
		Concession Permit	2.a	2.a, Add1.B.III.A.1	1	add1.8.a	add1.8.a	9	1.3.d	no reference	2.e
	Department of NR	Land Use Permit	top of document, 6	6, ss3	top of document	ss 19	ss 19	16	16	n/a	5c, ss4
		Commercial Recreation Permit application	7	2,3	1	23	23	24	24	n/a	3a, 3b
		Lease	14, 16	4	1	B.14	B.14	6	5,6	no	as outlined in development plan

Tenure Contract	Limits to Economic Benefits					Exclusiveness		Security						
	Application fees	Use fees	Mgmt. fees (*= security deposit)	Ownership of intensive improvements	Option to purchase land	Exclusive use of area under tenure	Sole property of area under tenure	Disposal of portion of tenure	Termination due to financial arrears	Termination due to non-compliance	Termination due to public interest/ no cause	Length of notice by government before termination	Government alteration of contract fees within term	Government alteration of contract regulations within term
Lease	public solicitation	start of document	7.02	12.01	no	no reference	no reference	no	14.01, 14.02	14.01, 14.02	none	14.01	no	no
License of Occupation	public solicitation	start of document	7.02	12.01	no	start of document, 3.04	3.03	3.05	14.01, 14.02	14.01, 14.02	none	14.01	no	no
Marina Resort Term Special Use Permit	start of document, XIII.L	V.A	XIV.G	XI	no	I.E,I,F, IV.B	I.E,I,F, IV.B	I.G.2	V.G.3, V.H	III.A, IX.A	IX.A, XIV.O	IX.B,	no reference	I.G.1
Ski Area Term Special Use Permit	start of document	VI, VI.A, VI.B	XI.E	X.A	no	I.E, I.F	I.E, I.F	I.H.2	VI.D.3.d	I.D, III.A, VIII.A	VIII.A	VIII.B, VIII.C	no reference	I.H.1, II.D, XI.J
Special Use Permit for Outfitting and Guiding (priority)	no reference	IV.A	III.J	VI.G	no	III.B, I.G	I.G	II.N	IV.D.3.d	VI.A.1,2, VI.B	VI.A.5	no reference	no reference	I.E
Special Use Permit for Outfitting and Guiding (temporary)	no reference	IV.A	III.J	VI.G	no	III.B, I.G	I.G	no	IV.D.3.d	VI.A.1,2, VI.B	VI.A.5	no reference	no reference	I.E
Special Recreation Permit	16, a	5	d	no reference	no	b,8,13	b	no reference	1	1	1	1 (length of notice not stipulated)	2932.31 (d.2)	no reference
Commercial Use License	start of document	B.9.b	B.9.b	n/a	no	B.2	B.2	no reference	A.5, B.7	A.5, B.7	A.5, B.7	no reference	no reference	no reference
Concession Permit	1.4.b	5.a.1	no reference	8.b.2	no	2.b	2.b	8.a.1	8.a.2-3, 1.7	8.a.2	8.a.1	8.a.3	5.a.1	no reference
Land Use Permit	ss19	ss1a,b	ss17*	ss15	no	3,4,13,14	13,14	no reference	18	18	none	no reference	ss 16	end of document
Commercial Recreation Permit application	no reference	28a,b	no reference	11	no	14, 19-21	20	no reference	28	17, 22, 29	22	no reference	no reference	29
Lease	no reference	2.a	25*	21.a, 22, 90	no	10.a,b, 15	10.a,b, 15	none	21.a	21.a	none	21.a	2.b (in year 6 of lease)	30

Tenure Contract	Management Stipulations			Operational Controls		Consultation				Compensation		
	Required Environment/cultural Protection	Required Improvements	Required external licences and/or insurance	Required management plans, written status reports	Required periodic audits/ inspection	Consultation before changes to regulations/ fees	Consultation before other tenures are granted in area	Consultation before disposal of portion of tenure	Consultation before tenure termination	Compensation for takings	Compensation for loss of improvements	Compensation for no-fault tenure termination
Lease	2.05, 3.01e, 3.04, 5.01, 5.02.a,b, 5.03, 13.01.f	As agreed upon in contract	2.01.b, 11.01.a	7.01.a	6.01.b	n/a	15.4	15.4	15.4	15.4	15.4	15.4
License of Occupation	2.04, 3.01.e, 3.06, 5.01,02,03,04 12.02, 13.01.f	As agreed upon in contract, 7.01.b	2.01.b, 11.01.a	7.01.a, 16.01.a	6.01.b, 16.01.b,c, e	n/a	15.4	15.4	15.4	15.4	15.4	15.4
Marina Resort Term Special Use Permit	IV.E, XII.C., E, XIII.A., .B., .E-.I., .L	III.A, schedule c	IV.H	III.B	III.C, V.I	no reference	no reference	no reference	no reference	X.C	no reference	no reference
Ski Area Term Special Use Permit	XI.I, XI.J	III.A, schedule c	V.F	I.G, II.B,C, II.E, III.C,	III.B, IV.F, VI.B.5, XI.B	no reference	no reference	no reference	no reference	VIII.C	no reference	no reference
Special Use Permit for Outfitting and Guiding (priority)	II.L, II.O, III.F, III.F.1, III.G, V.A, V.C-H	none	III.I	II.A-C, IV.C	I.G, IV.F	no reference	I.G	no reference	no reference	VI.F	III.B	no reference
Special Use Permit for Outfitting and Guiding (temp.)	II.L, II.O, III.F, III.F.1, III.G, V.A, V.C-H	none	III.I	II.A-C, IV.C	I.G, IV.F	no reference	I.G	no reference	no reference	VI.F	III.B	no reference
Special Recreation Permit	7, 15, 16	none	c	16	2932.55	no reference	b	no reference	1	no reference	no reference	no reference
Commercial Use License	B.15	none	start of document, B.5, B.10	B.7	no reference	no reference	no reference	no reference	no reference	B.7	no reference	no reference
Concession Permit	1.3.e, 1.4.a, 1.B.III.A.9	none	6, 1.D.I-II	7.b.1, 7.c.2, 1.4.b, II.B.2, II.B.III.A.5	2.b, 1.3.c, 1.A.I.6, 1.B.III.E.1	1.5.a.3	no reference	no reference	no reference	8.b.1	8.b.1	8.b.1
Land Use Permit	5a,b, 7-11, ss5-ss7	none	ss16	ss2, ss13, ss18a	15	end of document	no reference	no reference	no reference	no reference	no reference	no reference
Commercial Recreation Permit application	4-6,8-10, 12,15,16	none	25?	29	13	end of document	no reference	no reference	no reference	no reference	no reference	no reference
Lease	4, 22, 26	none	24	4, 26.c	2.a, 13	30	no reference	n/a	n/a	11.1, 11.2.c	11.1, 11.2.c	11.1, 11.2.c

APPENDIX 5: QUESTIONNAIRE TEMPLATE

SIMON FRASER UNIVERSITY

CENTRE FOR TOURISM POLICY
AND RESEARCH
FACULTY OF APPLIED SCIENCES



BURNABY, BRITISH COLUMBIA
CANADA V5A 1S6

Telephone: (604) 291-3074
Fax: (604) 291-4968

Dear Commercial Recreation Operator

This research concerning the impact of current land-use tenure arrangements on commercial recreation operations is being conducted by Simon Fraser University's Centre for Tourism Policy and Research in partnership with several nature based tourism associations in British Columbia*

As a current commercial recreation operator we would appreciate your views on a variety of tenure issues affecting the competitiveness of BC's tourism businesses. Would you kindly complete the following survey and send it back to the project's lead researcher Aaron Heidt, at one of the following addresses (email: awheidt@sfu.ca, fax: 604-291-4968) by Tuesday, July 19th. To ensure the validity of the study please only fill out and send the survey in once.

Your participation in this survey is voluntary, and you may choose not to respond to any question or terminate the questionnaire at any time. When a survey may require comments or opinions about your employer or company the SFU ethics policy requires me to inform you that your employer has not been approached for approval of this survey and that by submitting this survey you are giving consent to participate in this study.

All information that you provide in this survey will be kept strictly confidential in accordance with Simon Fraser University's research ethics guidelines. However, the medium of response (email) may not allow for absolute and guaranteed confidentiality. Any personal identifying information you provide will be used only to contact you for survey purposes. Your responses will be stored in a secure manner. Individual records will be identified using a confidential code for data analysis and all records will be destroyed once the data analysis is complete. Your responses will be combined with those of several other respondents to provide an overall understanding of experiences relating to current land use tenure arrangements.

Your participation in this research is very important to us, and we appreciate the valuable time you are sharing to complete this survey. If you have any questions or concerns about the interview content or use, please feel free to contact Dr. Peter Williams, Director of the Centre for Tourism Policy and Research at Simon Fraser University at 604-291-3074 or peter_williams@sfu.ca

Thank you for your time. I look forward to your hearing your views on this important matter.
Sincerely, Aaron Heidt

* The following organizations have financially committed to this research: Association of Canadian Mountain Guides (ACMG), Back Country Lodges Association of BC, (BCLABC), Commercial Bear Viewing Association of BC (CBVA), Guide Outfitters Association of BC (GOABC), BC Helicopter and Snowcat Skiing Operators Association (BCHSSOA), BC River Outfitter Association (BCROA) and Wilderness Tourism Association of BC (WTA)".

What type of tenure do you currently hold? CR Lease

How long have you held your current tenure for? less than 5 years

Have you held any other tenures in the past? yes If yes, what type? CR Lease

What type of commercial recreation business are you involved with (provide a short description)?

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#	Questions	Choose the answer from the drop down menu that most closely represents your viewpoint	Additional Comments: If you have any further information you wish to share on this issue, or any specific tenure requirements that you feel relate to this concern, please record them in this column.
1	I have enough control over the natural resources in my tenure area to secure the resource needs of my business	neutral	
2	My tenure allows me to offer enough activities to make my business adaptable to the changing needs of the tourism market	neutral	
3	The duration of my tenure is long enough to establish and invest in a long term growth strategy for my business	neutral	
4	Government control over the transferability of my tenure does not limit the competitiveness of my business	neutral	
5	The application fees and required consultations, assessments etc. did not hinder my ability to obtain this tenure	neutral	
6	The required tenure user, management and security deposit fees do not unduly restrict my business viability	neutral	
7	The lack of ownership over the improvements I have made to the land does not limit the type of or level of investments in improvements I am willing to make	neutral	

#	Questions	Choose the answer from the drop down menu that most closely represents your viewpoint	Additional Comments: If you have any further information you wish to share on this issue, or any specific tenure requirements that you feel relate to this concern, please record them in this column.
8	There is enough certainty surrounding the multiple resource uses allowed to occur concurrently within my tenure area to allow me to run my business	neutral	
9	The restrictions on other resource users in the area are sufficient to preserve the resources I need to run my business	neutral	
10	It is unlikely that the government will terminate my tenure before it is due to expire	neutral	
11	It is unlikely that the government will take a portion of my tenure before it is due to expire	neutral	
12	It is unlikely that the government will change the restrictions on my tenure before it is due to expire	neutral	
13	It is likely that the government will grant another tenure in my operating area that is not compatible with my business	neutral	
14	If the government terminated my tenure they would give me appropriate notice	neutral	
15	If the government took back a portion of my tenure they would give me appropriate notice	neutral	
16	If the government changed the restrictions on my tenure they would give me appropriate notice	neutral	
17	If the government granted another tenure in my tenured operating area that was not compatible with my business they would give me appropriate notice	neutral	
18	The government treats the various resource industries with equality in matters related to tenure arrangements	neutral	

#	Questions	Choose the answer from the drop down menu that most closely represents your viewpoint	Additional Comments: If you have any further information you wish to share on this issue, or any specific tenure requirements that you feel relate to this concern, please record them in this column.
19	The terms of my tenure increase my ability to obtain financing for my business	neutral	
20	The terms of my tenure increase my ability to acquire insurance to protect my business	neutral	
21	The terms of my tenure make acquiring the insurance I need to protect my business cost prohibitive	neutral	
22	The guidelines that regulate the improvements I am allowed to make in my tenure area are appropriate	neutral	
23	The size of my tenure allows me to run my business in an effective manner	neutral	
24	The guidelines that protect environmental and/or cultural resources in my tenure area allow me to run my business in a competitive manner	neutral	
25	The regulations the government used to control my tenure do not keep me from running my business in a competitive manner	neutral	
26	The government would consult me before considering terminating my tenure	neutral	
27	The government would make sure my business interests are met before considering terminating my tenure	neutral	
28	The government would consult me before considering taking back a portion of my tenure	neutral	

#	Questions	Choose the answer from the drop down menu that most closely represents your viewpoint	Additional Comments: If you have any further information you wish to share on this issue, or any specific tenure requirements that you feel relate to this concern, please record them in this column.
29	The government would make sure my business interests are met before considering taking back a portion of my tenure	neutral	
30	The government would consult me before considering changing the conditions of or restrictions on my tenure	neutral	
31	The government would make sure my business interests are met before considering changing the conditions of or restrictions on my tenure	neutral	
32	The government would consult me before considering granting another tenure in my operating area that is not compatible with my business	neutral	
33	The government would make sure my business interests are met before considering granting another tenure in my operating area that is not compatible with my business	neutral	
34	The government would compensate me <i>fairly</i> if my tenure was terminated	neutral	
35	The government would compensate me <i>fairly</i> if a portion of my tenure was taken back	neutral	
36	The government would compensate me <i>fairly</i> if they changed the conditions of/or restrictions on my tenure	neutral	

#	Questions	Comments
37	Are there terms of your current tenure document that you feel unfairly limit the competitiveness of your business?	
38	If yes, what specific changes to the terms of your current tenure document do you feel would be required to address this issue(s)?	
39	Are there any tenure compliance tools used by the government that you feel are not effective in creating compatible use of public lands?	

APPENDIX 6: INTERVIEW TEMPLATES

The following statement was similar for all the phone interviews listed below:

My name is Aaron Heidt and I am a graduate student in the School of Resource and Environmental Management at Simon Fraser University in British Columbia. I sent you an e-mail about my research on the security of commercial recreation land-use tenures and the rights of tenure holders to compensation for government taking.

Thank-you for responding to my e-mail.

Before we begin I would like to remind you that your participation in this interview is voluntary and you may choose not to respond to any question or terminate the interview at any time. When an interview may require comments or opinions about your employer or company, the SFU ethics policy requires me to inform you that your employer has not been approached for approval of this interview and that by answering questions over the telephone you are giving consent to participate in this study.

All information that you provide in this interview will be kept strictly confidential in accordance with Simon Fraser University's research ethics guidelines. Any personal identifying information you provide will be used only to contact you for interview purposes. Your response will be stored in a secure manner. Individual records will be identified using a code for data analysis and all records will be destroyed once the data analysis is complete. Your responses will be combined with those of several other respondents to provide an overall understanding of experiences relating to security of commercial recreation tenure contracts.

Your participation in this research is very important to us, and we appreciate the valuable time you are sharing to complete this interview. If you have any questions or concerns about the interview content or use, please feel free to contact my supervisor Dr. Peter Williams, Director of the Centre for Tourism Policy and Research at Simon Fraser University at 604-291-3074 or peter_williams@sfu.ca

Would you like to continue with the interview? Do you have any questions before we begin?

CR EXPERIENCE TELEPHONE INTERVIEW

What type of tenure do you currently hold?

How long have you held your tenure for?

Have you held any other tenures in the past?

If yes, what type?

What type of commercial recreation business are you involved with?

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	QUESTIONS	YES	NO	COMMENTS:
	1. Have you ever had an experience with the termination of your tenure?			
If yes,	a) Were you compensated?			
(If no skip to question 2)	b) If yes, was the compensation fair?			
	c) Were you consulted?			
	d) Do you feel the consultation process was adequate?			
	e) Were you given advance notice?			
	f) Was the notice adequate?			
	2. Have you ever had an experience with the government taking a portion of your tenure?			
If yes,	a) Were you compensated?			
(If no skip to question 3)	b) If yes, was the compensation fair?			
	c) Were you consulted?			
	d) Do you feel the consultation process was adequate?			
	e) Were you given advance notice?			

	QUESTIONS	YES	NO	COMMENTS:
	f) Was the notice adequate?			
	3) Have you ever had an experience with the government changing the provisions of your tenure?			
If yes,	a) Were you compensated?			
(If no skip to question 4)	b) If yes, was the compensation fair?			
	c) Were you consulted?			
	d) Do you feel the consultation process was adequate?			
	e) Were you given advance notice?			
	f) Was the notice adequate?			
	4) Have you ever had an experience with the government granting a tenure you felt was not compatible with your tenure over the same area and time period?			
If yes,	a) Were you compensated?			
(If no skip to question 5)	b) If yes, was the compensation fair?			
	c) Were you consulted?			
	d) Do you feel the consultation process was adequate?			
	e) Were you given advance notice?			
	f) Was the notice adequate?			
	5. Have you had an experience with your current or past tenure contracts where you were unable to acquire financing as a direct result of the terms of your tenure contract?			

	QUESTIONS	YES	NO	COMMENTS:
	6. Have you had an experience with your current or past tenure contract(s) where you were unable to acquire the insurance you were seeking as a result of terms in your tenure contract?			
	7. Have you had an experience with your current or past tenure contract(s) where the terms of the contract resulted in an increase in cost (or, if this is your first policy, a cost that is prohibitive to business start-up) of your insurance premium?			

INSURANCE AGENCY TELEPHONE INTERVIEW

How long have you worked in the insurance business for?

What size of commercial recreation businesses do you generally insure?

Do you insure CR operations in BC exclusively or do you insure CR operators in other regions as well?

#		Please state to what degree the following commercial recreation tenure contract characteristics affect the insurance premiums/ availability/ scope of coverage/ deductible amount of CR tenure holders	Not at all	Marginal	Somewhat	To a great extent	Completely	If the contract characteristic influences the insurance premiums/ availability/ scope of coverage/ deductible amount of the CR tenure holder's insurance policy please briefly state in what way
1	Comprehensiveness	The degree of control over different resource uses (forests, minerals, water etc) in tenure area						
2		The degree to which the contract allows the tenure holder to adjust activities to meet market needs						
3	Duration	The length of the contract						
4		Assurance that the contract can be renewed						
5	Transferability	The ability of the tenure holder to sell the contract to a willing buyer						

#		Please state to what degree the following commercial recreation tenure contract characteristics affect the insurance premiums/ availability/ scope of coverage/ deductible amount of CR tenure holders	Not at all	Marginal	Somewhat	To a great extent	Completely	If the contract characteristic influences the insurance premiums/ availability/ scope of coverage/ deductible amount of the CR tenure holder's insurance policy please briefly state in what way
6		The ability of the tenure holder to sublicense a portion of the tenure						
7	Limits to economic benefits	The tenure application fee and associated consultation and feasibility studies required in the application process						
8		User fees						
9		Management fees and security deposit						
10		Ownership of intensive improvements (lodges, fences etc.)						
11		Ownership of extensive improvements (trail networks, viewscapes etc.)						
12	Exclusiveness	The sole right to use the resources in a particular area for any purpose						
13		The sole right to use the resources in a particular area for commercial recreation purposes						
14		Restrictions on other users that protect the resource for recreation use						
15	Security	Ability of government to terminate contract due to financial arrears						
16		Ability of government to terminate contract due to non-compliance of tenure holder to contract regulations						
17		Ability of government to terminate contract due to public interest or for no cause						
18		The length of notice government gives to tenure holder before contract is terminated						
19		Governments ability to change the regulations of the contract						

#		Please state to what degree the following commercial recreation tenure contract characteristics affect the insurance premiums/ availability/ scope of coverage/ deductible amount of CR tenure holders	Not at all	Marginal	Somewhat	To a great extent	Completely	If the contract characteristic influences the insurance premiums/ availability/ scope of coverage/ deductible amount of the CR tenure holder's insurance policy please briefly state in what way
20		Governments ability to change the fees outlined in the contract						
21	Use restrictions	The ability of the tenure holder to make improvements to the land without restriction						
22	Size specifications	The size of the area under the tenure						
23	Management stipulations	The extent of environmental, cultural protection and other environmental regulations						
24		The requirement of the tenure holder to hold external licenses						
25	Operational controls	Government requirements for management plans from tenure holder						
26		Government's ability to audit and/ or inspect tenure holders site						
27	Consultation	Degree to which the government consults tenure holder about changes to the tenure contract						
28		Degree to which the government consults tenure holder about the termination of tenure contract						
29		Degree to which the government consults tenure holder about granting additional tenures in the area						
30	Compensation	Degree to which the government compensates the tenure holder for changes in contract regulations						
31		Degree to which the government compensates the tenure holder for contract termination						
32		Degree to which the government compensates the tenure holder for intensive improvements						
33		Degree to which the government compensates the tenure holder for extensive improvements						

		Comments:
34	Are any tenure contracts looked upon more favourably by insurance agencies (license of occupation, leases, park use permits)?	
35	Are any resource industries (forestry, mining, aquaculture, commercial recreation, oil and gas, etc.) more favourably treated by insurance agencies?	
36	If yes, to what degree is this treatment a reflection of terms of their tenure contracts?	

LENDING INSTITUTION TELEPHONE INTERVIEW

How long have you been in the lending business for?

What size of commercial recreation businesses do you generally lend to?

Do you lend to CR operations in BC exclusively or do you lend to CR operators in other regions as well?

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#		Please state to what degree the following commercial recreation tenure contract characteristics influence the ability of CR tenure holders to acquire financing	None	Marginal	Somewhat	To a great extent	Completely	If the contract characteristic influences the ability of the tenure holder to obtain financing please briefly state in what way
1	Comprehensiveness	The degree of control over different resource uses (forests, minerals, water etc) in tenure area						
2		The degree to which the contract allows the tenure holder to adjust activities to meet market needs						
3	Duration	The length of the contract						
4		Assurance that the contract can be renewed						
5	Transferability	The ability of the tenure holder to sell the contract to a willing buyer						
6		The ability of the tenure holder to sublicense a portion of the tenure						

#		Please state to what degree the following commercial recreation tenure contract characteristics influence the ability of CR tenure holders to acquire financing	None	Marginal	Somewhat	To a great extent	Completely	If the contract characteristic influences the ability of the tenure holder to obtain financing please briefly state in what way
7	Limits to economic benefits	The tenure application fee and associated consultation and feasibility studies required in the application process						
8		User fees						
9		Management fees and security deposit						
10		Ownership of intensive improvements (lodges, fences etc.)						
11		Ownership of extensive improvements (trail networks, viewscapes etc.)						
12	Exclusiveness	The sole right to use the resources in a particular area for any purpose						
13		The sole right to use the resources in a particular area for commercial recreation purposes						
14		Restrictions on other users that protect the resource for recreation use						
15	Security	Ability of government to terminate contract due to financial arrears						
16		Ability of government to terminate contract due to non-compliance of tenure holder to contract regulations						
17		Ability of government to terminate contract due to public interest or for no cause						
18		The length of notice government gives to tenure holder before contract is terminated						
19		Governments ability to change tenure provisions						
20		Governments ability to change the fees outlined in the contract						
21	Use restrictions	The ability of the tenure holder to make improvements to the land without restriction						

#		Please state to what degree the following commercial recreation tenure contract characteristics influence the ability of CR tenure holders to acquire financing	None	Marginal	Somewhat	To a great extent	Completely	If the contract characteristic influences the ability of the tenure holder to obtain financing please briefly state in what way
22	Size specifications	The size of the area under the tenure						
23	Management stipulations	The extent of environmental, cultural protection and other environmental regulations						
24		The requirement of the tenure holder to hold external licenses and/or insurance						
25	Operational controls	Government requirements for management plans from tenure holder						
26		Government's ability to audit and/ or inspect tenure holders site						
27	Consultation	Degree to which the government consults tenure holder about changes to the tenure contract						
28		Degree to which the government consults tenure holder about the termination of tenure contract						
29		Degree to which the government consults tenure holder about granting additional tenures in the area						
30	Compensation	Degree to which the government compensates the tenure holder for changes in contract regulations						
31		Degree to which the government compensates the tenure holder for contract termination						
32		Degree to which the government compensates the tenure holder for intensive improvements						
33		Degree to which the government compensates the tenure holder for extensive improvements						

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Are any tenure contracts (license of occupation, leases, park use permits) more likely to be denied financing because of the tenure provisions?

Comments:

35	Are any resource industries (forestry, mining, aquaculture, commercial recreation, oil and gas, etc.) more favourably treated by lending institutions?	
36	If yes, to what degree is this treatment a reflection of terms of their tenure contracts?	

LEGAL PROFESSIONALS TELEPHONE INTERVIEW

What type of experience do you have working with CR operators?

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#		To what degree do the following property rights characteristics influence the right of the tenure holder to compensation for government taking	None	Marginal	Somewhat	To a great extent	Completely	If the contract characteristic influences the right of the CR tenure holder to compensation please briefly state in what way
1	Comprehensiveness	The degree of control over different resource uses (forests, minerals, water etc) in tenure area						
2		The degree to which the contract allows the tenure holder to adjust activities to meet market needs						
3	Duration	The length of the contract						
4		Assurance that the contract can be renewed						
5	Transferability	The ability of the tenure holder to sell the contract to a willing buyer						
6		The ability of the tenure holder to sublicense a portion of the tenure						
7	Limits to economic benefits	The tenure application fee and associated consultation and feasibility studies required in the application process						
8		User fees						
9		Management fees and security deposit						
10		Ownership of intensive improvements (lodges, fences etc.)						
11		Ownership of extensive improvements (trail networks, viewscapes etc.)						

#		To what degree do the following property rights characteristics influence the right of the tenure holder to compensation for government taking	None	Marginal	Somewhat	To a great extent	Completely	If the contract characteristic influences the right of the CR tenure holder to compensation please briefly state in what way
12	Exclusiveness	The sole right to use the resources in a particular area for any purpose						
13		The sole right to use the resources in a particular area for commercial recreation purposes						
14		Restrictions on other users that protect the resource for recreation use						
15	Security	Ability of government to terminate contract due to financial arrears						
16		Ability of government to terminate contract due to non-compliance of tenure holder to contract regulations						
17		Ability of government to terminate contract due to public interest or for no cause						
18		The length of notice government gives to tenure holder before contract is terminated						
19		Governments ability to change the regulations of the contract						
20		Governments ability to change the fees outlined in the contract						
21	Use restrictions	The ability of the tenure holder to make improvements to the land without restriction						
22	Size specifications	The size of the area under the tenure						
23	Management stipulations	The extent of environmental, cultural protection and other environmental regulations						
24		The requirement of the tenure holder to hold external licenses and/or insurance						
25	Operational controls	Government requirements for management plans from tenure holder						
26		Government's ability to audit and/ or inspect tenure holders site						

#		To what degree do the following property rights characteristics influence the right of the tenure holder to compensation for government taking	None	Marginal	Somewhat	To a great extent	Completely	If the contract characteristic influences the right of the CR tenure holder to compensation please briefly state in what way
27	Consultation	Degree to which the government consults tenure holder about changes to the tenure contract						
28		Degree to which the government consults tenure holder about the termination of tenure contract						
29		Degree to which the government consults tenure holder about granting additional tenures in the area						
30	Compensation	Degree to which the government addresses compensation in the tenure contract						

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		Comments:
34	As a whole do any tenure contracts afford the tenure holder greater rights to compensation (license of occupation, leases, park use permits)?	
35	Do any resource industries (forestry, mining, aquaculture, commercial recreation, oil and gas, etc.) have a greater right to compensation (or have received a greater degree of compensation in the past)?	
36	If yes, to what degree is this treatment a reflection of terms of their tenure contracts?	

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