Date: 19970624
Docket: A963993
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHIEF BERNIE METECHEAH, on his own behalf and on behalf of all other members of the HALFWAY RIVER FIRST NATION, and the HALFWAY RIVER FIRST NATION

PETITIONERS

AND:

THE MINISTRY OF FORESTS and CANADIAN FOREST PRODUCTS LTD.

RESPONDENTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE DORGAN

Counsel for the Petitioners:	C. Allan Donovan
Counsel for the Respondent, The Ministry of Forests	Michael W.W. Frey Jeffrey M. Loenen
Counsel for the Respondent, Canadian Forest Products Ltd.	S. Bradley Armstrong Line A. Lacasse Jill M. Marks
Place and Dates of Hearing:	Vancouver, B.C. January 6 - 10, 1997; January 13 - 15, 1997

[1] Pursuant to the ***Judicial Review Procedure Act***, R.S.B.C. 1996 c.241, the Halfway River First Nation ("Halfway") seeks review of a decision of the District Manager ("Lawson"), Fort St. John Forest District, Ministry of Forests, made September 13, 1996. The decision approved the application of Canadian Forest Products Ltd. ("Canfor") for Cutting Permit 212 ("CP212").

[2] The decision under review was the culmination of a lengthy informal process over 4½ years. Counsel have agreed on what constitutes "the record", a chronological precis of which I have compiled as Appendix "A" to these reasons.

[3] The Halfway Nation are descendants of the Hudson Hope Beaver people who were signatories to Treaty 8 in 1900. Canfor is the licensee under a forest licence in the Fort St. John timber supply area which lies within the boundaries of the area covered by Treaty 8.

[4] Halfway asserts that in addition to its reserve land, it uses an area immediately adjacent to its reserve referred to as "Tusdzuh" for such traditional purposes as hunting, gathering plants for food and medicinal purposes, and spiritual ceremonies. The Halfway Nation asserts this area is integral to the maintenance of its traditional culture and indeed its sustenance. In 1995, Halfway filed a treaty land entitlement

claim with the Federal Government in respect of the Tusdzuh area. Apparently, finality has not yet come to that process.

[5] Pursuant to the applicable legislation and its licence, each year Canfor submits harvesting proposals in respect of five-year periods. In its application which resulted in the decision under review, Canfor applied to the Ministry of Forests for approval to harvest trees within the CP212 area. CP212 is located within the Tusdzuh area.

[6] It is the responsibility of the District Manager (in this case Lawson) of the forestry district in which the proposed harvest is located (in this case Fort St. John) to deal with Canfor's application. On September 13, 1996 Lawson approved the application for harvest within CP212.

[7] In December 1996, Canfor proceeded to commence its harvesting operations and the Halfway Nation erected a roadblock. Canfor responded with an application to this Court for an injunction. The parties agreed that the injunction application may be argued following delivery of these reasons.

[8] Halfway argues that the approval of CP212 violates principles of administrative law and infringes their Aboriginal and Treaty Rights. The administrative law issues which arise are:

1. Did Lawson commit an error by failing to consider relevant considerations or by considering irrelevant considerations;

2. Did Lawson unlawfully fetter his discretion;

3. Was there real or apprehended bias on the part of Lawson such as to disqualify him. If there was, did Halfway impliedly waive its right to allege bias;

4. Did Lawson commit an error of law in making his decision;

5. Did Lawson commit an error of fact;

6. Did Lawson violate principles of procedural fairness by failing to adequately consult with Halfway or by failing to provide Halfway with sufficient notice of his decision;

7. If Halfway is entitled to a remedy what order should the Court make.

[9] The native law issues which arise are:

1. Does the approval of CP212 infringe the Aboriginal or Treaty Rights of the Halfway Nation as guaranteed by s. 35(1) of the ***Constitution Act, 1982***;

2. Does the Provincial Crown owe a fiduciary duty to the Halfway Nation. If so, what is the scope of this duty and has the Ministry of Forests breached it.

A. ADMINISTRATIVE LAW ISSUES

A.1 CONSIDERATION OF RELEVANT AND IRRELEVANT CONSIDERATIONS

Relevant Considerations

[10] The petitioners submit that Lawson failed to take into account the following relevant considerations:

(a) The existence of archaeological sites in CP212, with respect to which the Ministry of Forests ("MOF") undertook no investigation.

(b) The fact that the Ministry of Environment ("MOE") recommended further studies to determine the potential wildlife impacts within CP212.

(c) The way in which approval of the cutting permit would interfere with Halfway's use of the CP212 area.

[11] While failure to consider relevant factors may provide a basis for impugning the exercise of discretion, an exercise of discretion will only be *ultra vires* if the decision-maker overlooked a relevant factor that its enabling statute expressly or, more usually, impliedly obliged it to consider. See ***Oakwood Development Ltd. v. St. Francois Xavier (Rural Mun.)***, [1985] 2 S.C.R. 164 at 174, 20 D.L.R. (4th) 641, 18 Admin. L.R. 59.

[12] The enabling statutes are the ***Forest Act***, R.S.B.C. 1979, c.140 (the "***Act***") and the ***Forest Practices Code of British Columbia Act***, S.B.C. 1994, c. 41 (the "***Code***").

[13] The ***Act*** in s. 12(f) provides that cutting permits may be issued by the District Manager pursuant to a forest licence, and that their issuance must be in accordance with the ***Act*** and the ***Code***.

[14] The ***Code*** gives rise to further requirements. In ***Chetwynd Environmental Society v. Dawson Creek Forest District (District Manager)*** (1995), 13 B.C.L.R. (3d) 338 (S.C.), Holmes J. considered the factors which govern the issuance of a Licence to Cut under s. 47 of the ***Forest Act***. His comments are equally applicable to the issuance of a cutting permit. He states, at 347:

> The authority to issue a Licence to Cut under s. 47 of the ***Forest Act*** must be read in the context of the preamble to the Code for guidance as to the

> underlying principles governing the Province's forest resource.

[15] The preamble of the ***Code*** implies an obligation to consider a variety of factors in approving cutting permits. It reads:

> WHEREAS British Columbians desire sustainable use of the forests they hold in trust for future generations;
>
> AND WHEREAS sustainable use includes
>
> (a) managing forests to meet present needs without compromising the needs of future generations,
>
> (b) providing stewardship of forests based on an ethic of respect for the land,
>
> (c) balancing productive, spiritual, ecological and recreational values of forests to meet the economic and cultural needs of peoples and communities, including First Nations,
>
> (d) conserving biological diversity, soil, water, fish, wildlife, scenic diversity and other forest resources, and
>
> (e) restoring damaged ecologies;
>
> THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

[16] The three considerations the petitioner alleges that Lawson failed to take into account all fall within the preamble, namely, archaeological sites, impacts on wildlife, and use of the area by Halfway.

[17] However, Lawson's Reasons for Decision at p. 4 suggest that he did consider these factors. With respect to wildlife

values, all the blocks were reviewed on September 13 by Lambert, a biologist with the MOE. According to Lambert's affidavit, all of his concerns regarding potential impacts on wildlife were addressed.

[18] With respect to archaeological sites, Lawson notes that changes were made to the cutting permit to avoid an old pack trail and that the Cultural Heritage Overview Assessment ("CHOA") identified no other sites.

[19] Finally, with respect to interference with Halfway's use of the area Lawson considered the impact of harvesting on hunting, fishing and trapping, relying on information provided by the MOE. He also considered the impact of increased access, noting that Canfor would deactivate all roads.

Irrelevant Considerations

[20] The petitioners also submit that Lawson based his decision on the following irrelevant considerations:

(a) The need to make a decision quickly: the decision-maker set an arbitrary date of September 13, 1996 for the delivery of its decision.

(b) Political pressure to issue permits in CP212.

(c) Government policy regarding Aboriginal and Treaty issues.

(d) The economic impact of non-approval on Canfor and the economic situation of Canfor generally.

(e) The threat of litigation.

[21] In certain circumstances, the court may review the exercise of discretion by an administrative decision-maker on the grounds that it was based on irrelevant considerations. See ***Maple Lodge Farms v. Canada***, [1982] 2 S.C.R. 1 at 7-8, 137 D.L.R. (3d) 558.

[22] While a tribunal *may* consider irrelevant circumstances, where a decision is based entirely or predominantly on irrelevant factors it may be subject to judicial review. In ***Canadian Association of Regulated Importers v. Canada (Attorney General)*** (1994), 17 Admin. L.R. (2d) 121 at 130-131 (F.C.A.), Linden J.A. stated:

> It is not fatal to a policy decision that some irrelevant factors be taken into account; it is only when such a decision is based entirely or predominantly on irrelevant factors that it is impeachable. It is not up to the court to pass judgment on whether a decision is "wise or unwise." (See ***Cantwell v. Canada (Minister of the Environment)*** (1991), 41 F.T.R. 18, at p. 36 per MacKay J.)

[23] In the present case, at pp. 3 - 6 of his Reasons, Lawson appears to have taken into consideration the following factors in making his decision:

(a) The fact that the cutting permit application was consistent with Canfor's approved Five Year Development Plan.

(b) The fact that CP212 complied with the ***Forest Practices Code***, as required by s. 12(f) ***Forest Act***.

(c) The impact on fish and wildlife populations as determined from the Lambert Report and other information provided by BCE staff.

(d) The impact of the proposed harvesting on trapping, as determined from information provided by BCE staff.

(e) The Protection of Aboriginal Rights Policy.

(f) The Cultural Heritage (Ethnographic) Overview Assessment.

(g) The impact of improved access to the area on Native hunting.

[24] These are all relevant considerations and therefore even if Lawson's decision was based in part on the factors suggested by the petitioners, it cannot be said to have been entirely or even predominantly based on irrelevant factors.

[25] Moreover, with respect to the factors specified by the petitioners, they are all either irrelevant or were not given any weight by Lawson:

(a) Timing of the decision: This was a factor in determining when the decision was made but not what the decision was.

(b) Political pressure from Canfor: There is no evidence that this had any impact on Lawson's decision and in any event there was pressure from the Halfway Band as well.

(c) Canfor's situation: I accept the argument of Canfor's counsel that as the cutting permit applicant, Canfor's circumstances must be relevant. Moreover, this factor would fall under paragraph (c) of the preamble to the ***Forest Practices Code***.

(d) Government policy: This goes to the issue of fettering discretion and in any event can be a relevant factor. (see D.P. Jones and A.S. de Villars,

Principles of Administrative Law, 2nd ed. (Toronto: Carswell, 1994) at 172-173)

(e) Threat of litigation: There is no evidence this had any impact and both sides were threatening litigation.

A.2 FETTERING OF DISCRETION

[26] The petitioners submit that Lawson fettered his discretion by:

(a) Treating the government leave policy of not halting resource development pending TLE Claims as binding upon him.

(b) Refusing to consider the option of halting all logging in CP212 (adopting an inflexible policy).

(c) Arbitrarily setting September 13 as the date on which a decision with respect to CP212 would be made.

[27] The petitioners also submit that Lawson's discretion was fettered by his superiors (the Minister of Forests and others).

(a) Government Policy

[28] A decision-maker's discretion may be fettered where he or she makes a decision with reference to the policy of another government body. See ***Innisfil v. Vespra***, [1981] 2 S.C.R. 145.

[29] ***Jones and de Villars***, *supra* at 173, state:

> [E]ven if the external policy is relevant, the rule against fettering requires the delegate to exercise his own discretion in deciding whether and how to accept the policy. In particular, the delegate cannot simply treat the external policy as a given, and may be required to permit cross-examination and refutation of that policy.

[30] Similarly, a decision-maker's discretion may be fettered where he or she simply complies with a direction from a superior, rather than making his or her own decision on the merits. See ***Alkali Lake Indian Band v. Westcoast Transmission Company Limited et al*** (1984), 53 B.C.L.R. 323 (C.A.).

[31] Counsel for Canfor submits that Halfway's request that no logging take place in CP212 is analogous to the request made by the Western Canada Wilderness Committee to set aside large tracts of land as spotted owl habitat in ***Western Canada Wilderness Committee v. British Columbia (Chief Forester)*** (March 18, 1996) Vancouver Registry No. A954191 (S.C.) ["***W.C.W.C.***"]. In that case Allen J. upheld the Chief Forester's refusal to set aside large tracts of land for spotted owls on the grounds that such decisions were not within his jurisdiction, but rather fell to be decided by the Minister of Forests and the Provincial Cabinet.

[32] The circumstances in ***W.C.W.C.*** are significantly different from those at bar. Here, the district manager has the authority to halt logging in the area to protect First Nations' rights. The fact that Aboriginal and Treaty Rights are at stake is also significant.

(b) Inflexible Policy

[33] As enunciated by McIntyre J in ***Maple Lodge Farms***, *supra*, at 7, a decision-maker may not adopt an inflexible policy or guideline but rather must make each decision on its merits.

[34] The petitioners argue that Lawson adopted the inflexible policy of refusing to halt logging in CP212. They claim that Lawson advised Rath that a halt to logging would not be considered (Metecheah Affidavit at paragraph 38) and that a MOF briefing note rejected the no-logging option. However, Lawson denies making the alleged statement to Rath (Lawson Affidavit #1) and the briefing note recommends pursuing approval for CP212 but does not rule out the option of non-approval. As well, in a letter dated February 14, 1996 Lawson states that "The Ministry of Forests will inform First Nations on how their concerns were addressed in the granting or denying of approvals." [emphasis added] (Lawson Affidavit #1).

[35] Notwithstanding these references which indicate a notion of weighing various interests, on the whole of the record I am

satisfied that Lawson fettered his discretion by treating the government policy of not halting development as a given and by simply following the direction of the Minister of Forests not to halt development. This is particularly evident from p. 4 of his Reasons for Decision which reads:

> ... in December 1995 the Minister of Forests advised both ourselves and the Halfway Band that it is not the policy of the provincial government to halt resource development pending resolution of the Treaty Land Entitlement (TLE) Claim and that we must honor legal obligations to both the Forest Industry as well as First Nations. This fact was again reiterated by Janna Kumi, Assistant Deputy Minister, Operations, upon her meeting with the Halfway Band in January 1996.

(c) September 13 Date

[36] Finally, setting September 13 as the date for deciding on CP212 in no way fettered Lawson's decision. He was still free to either approve or not approve the application on its merits.

A.3 BIAS

[37] The petitioners allege actual bias as well as a reasonable apprehension of bias.

Actual Bias

[38] The petitioners allege that "the overwhelming accumulation of evidence of improper conduct, failing to consult Halfway, considering irrelevant considerations, failing to consider relevant considerations, ignoring reasonable requests, making errors in law and making patently unreasonable findings of fact, together suggest that actual bias exists."

[39] The courts have held that the accumulation of improprieties by a decision-maker may prove real bias. In ***Vlahovic v. Teamsters' Joint Council No. 36*** (1979), 17 B.C.L.R. 277 at 281 (S.C.), Gould J. found that the combination of legal errors and "foolish and immature rulings" directed against one party demonstrated real bias on the part of the decision-maker.

[40] The improprieties alleged in this case are more limited. I have already rejected allegations that Lawson considered irrelevant considerations and failed to consider relevant considerations. Allegations of error of law have not been made out. The remaining alleged improprieties are insufficient to establish real bias.

Reasonable Apprehension of Bias

[41] Attitudinal bias arises where a decision-maker has pre-judged an issue and has not brought an open mind to the decision-making process. The rule against bias disqualifies decision-makers with attitudinal biases. See ***Committee for***

Justice and Liberty v. National Energy Board, [1978] 1 S.C.R. 369, 68 D.L.R. (3d) 716.

[42] While all administrative tribunals owe a general duty of fairness to the parties whose interests they must determine, the content of that duty varies given the nature of the decision, that is those of a judicial or quasi-judicial nature at one end of the spectrum and those of a legislative nature at the other. However, the right to be treated fairly is an "independent and unqualified right". See, ***Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners Public Utilities)***, [1992] 1 S.C.R. 623 at 645, 89 D.L.R. (4th) 289 at 304.

[43] In that case Mr. Justice Cory set out the test for reasonable apprehension of bias (at 636):

> The duty to act fairly includes the duty to provide procedural fairness to the parties. That simply cannot exist if an adjudicator is biased. It is, of course, impossible to determine the precise state of mind of an adjudicator who has made an administrative board decision. As a result, the courts have taken the position that an unbiased appearance is, in itself, an essential component of procedural fairness. ... The test is whether a reasonably informed bystander could reasonably perceive bias on the part of an adjudicator.

[44] In ***Adams v. Workers' Compensation Board*** (1989), 42 B.C.L.R. (2d) 228 at 231-32 (C.A.) Gibbs JA concluded that where allegations of bias or a reasonable apprehension of bias

are made, there must be some evidence upon which a reasonable person could conclude that the decision-maker will not bring an impartial mind to bear upon the issue. Suspicion is not enough.

[45] Given the nature of the decision in question, I have concluded that the District Manager must comply with a high standard of fairness which in the context of bias means that even a reasonable apprehension of bias would be sufficient to disqualify him.

[46] The petitioners allege that the following statements indicate prejudgment on the part of Lawson:

> (a) In the event the band rejects our request to engage in a planning process, Dave wishes to sign the permit. (statement contained in an e-mail forwarded by Lawson to another MOF staff member, dated February 23, 1996)
>
> (b) If [Halfway's representatives] do not choose to come to the table then once we have the comments back from the AG's office and AB Affairs and if everything is in order we will proceed towards the approval of CP.212. (statement in e-mail sent by Lawson March 19, 1996)

[47] These statements say only that if Halfway does not come to the table approval will proceed, the implication being that if consultation does occur, the application approval might not proceed.

[48] However, a further statement by Lawson is of concern. In his letter to Chief Metecheah dated August 29, 1996 Lawson states "I must inform you that if the application is in order and abides by all Ministry regulations and the Forest Practices Code I have no compelling reasons not to approve their application." This statement strongly suggests that Lawson had already concluded that there was no infringement of Treaty or Aboriginal Rights. His only remaining concerns about the application were with respect to compliance with MOF and *Code* requirements. He requests information on Aboriginal and Treaty Rights with respect to future Canfor activities but makes no reference to such rights vis-a-vis CP212. The only conclusion to be drawn from this letter is that Lawson had already decided that there was no infringement of Halfway's rights.

[49] As well, it should be noted that at paragraph 18 of the affidavit of David Menzies, he states:

> Approval to proceed with harvesting in Blocks 1, 2, 4, 5, 17 and 19 was granted by the District Manager on September 13, 1996 (attached as Exhibit 8). The formal application letter was only sent after the Ministry of Forests confirmed that the application would be granted, consistent with the approval already granted for the Development Plan. [emphasis added]

This evidence indicates that once the Development Plan was approved, all applications for cutting permits within it will likely be approved as well and is evidence which supports a finding of a reasonable apprehension of bias.

Waiver of Bias

[50] Where a party is aware of circumstances which may give rise to a reasonable apprehension of bias it must raise an objection at the earliest opportunity. The party may not wait to see the outcome of the decision and then when the decision goes against it raise the allegation of bias. See, ***Ghirardosi v. Minister of Highways (B.C.)***, [1966] S.C.R. 367 at 371-372, 56 D.L.R. (2d) 469; and ***West Region Tribal Council v. Booth*** (1992), 55 F.T.R. 28.

[51] The MOF alleges that Halfway had possession of the internal MOF e-mails no later than the summer of 1996. This is well before Lawson made his decision and gave Halfway ample opportunity to raise the issue of bias prior to the decision. The MOF further submits that the petitioners' approach of waiting to see if the decision went in their favour before raising the allegation of bias is abusive and should be discouraged.

[52] In my view, the arguments of the MOF cannot succeed. There is limited evidence showing when Halfway obtained copies of the e-mails. The MOF argues that an adverse inference should be drawn because it is within the petitioners' power to prove when these e-mails were received. I disagree. The MOF is alleging waiver and the burden of proving such waiver must fall on it. Moreover, the evidence shows that only Chief

Desjarlais and Judy Maas received the e-mails. Desjarlais is the chief of the West Moberly Band and Judy Maas is head of the Treaty 8 Tribal Association; neither is a member of Halfway nor a petitioner in this application.

[53] Furthermore, Halfway never adopted the posture of "waiting to discover whether one wins the contention before the adjudicator, prepared to make no allegation of prejudice if one does win, and complaining of alleged prejudice as a means of trying to avoid a confirmed loss" (as per ***West Region Tribal Council***, *supra*). Halfway's position was that it did not want any decision to be made until there was adequate evidence and it had provided input.

[54] The limited notice received by Halfway regarding the impending decision suggests that there was a limited opportunity to raise bias prior to the decision. In addition, some evidence of bias or prejudgment may not have been available to Halfway in time for them to raise the issue prior to September 13 (for instance, the fact that Lawson made the decision on September 13 without Halfway being present and the statements made by Lawson in a letter dated August 29, 1996).

[55] Finally, Halfway's limited resources may have hampered its ability to consider all the legal arguments it might raise prior to the decision of September 13.

[56] In all these circumstances, the argument of the respondent MOF regarding waiver cannot succeed.

A.4 ERROR OF LAW

[57] The petitioners argue that Lawson committed an error of law when he used the *Protection of Aboriginal Rights Policy* to evaluate the treaty rights of Halfway and in so doing committed an error of law as that policy, according to the petitioners' argument, was based on an interpretation of ***Delgamuukw v. B.C.***, [1991] 3 W.W.R. 97 at 423 (B.C.S.C.) which does not apply to treaty rights. This latter point was not seriously argued by counsel.

[58] The standard of a review for an error of law depends in part on whether the alleged error is jurisdictional in nature. In ***U.E.S. Local 298 v. Bibeault***, [1988] 2 S.C.R. 1048 at 1086, Beetz J. wrote:

> It is, I think, possible to summarize in two propositions the circumstances in which an administrative tribunal will exceed its jurisdiction because of error:
>
> > 1. if the question of law at issue is within the tribunal's jurisdiction, it will only exceed its jurisdiction if it errs in a patently unreasonable manner; a tribunal which is competent to answer a question may make errors in so doing without being subject to judicial review;
> >
> > 2. if however the question at issue concerns a legislative provision limiting the tribunal's powers, a mere error will cause it to lose

> jurisdiction and subject the tribunal to judicial review.

[59] The interpretation of Aboriginal and Treaty Rights is not within the jurisdiction of a District Manager. His interpretation and application of such rights is therefore subject to judicial review for mere error. I am not satisfied on the material before me and the arguments as submitted that Lawson committed an error of law.

A.5 ERROR OF FACT

[60] Generally, *certiorari* will not issue to correct an error of fact. There are, however, two exceptions to this rule:

> Judicial review is warranted when a decision-making body does not base its decision on evidence, or where the decision appears patently unreasonable in relation to the evidence submitted.
>
> R. Dussault and L. Borgeat, ***Administrative Law***, 2d ed, vol.4 (Vancouver: Carswell, 1990) at 236-237.

[61] The first permits review where there is a complete absence of evidence for a material finding of fact since a decision without any evidence is arbitrary and therefore reviewable. This constitutes jurisdictional error.

[62] The test for determining if there is no evidence was set out by McLachlin J. in ***Re McInnes and Simon Fraser University***

(1982), 140 D.L.R. (3d) 694 at 698 (B.C.S.C.), aff'd (1984), 3 D.L.R. (4th) 708 (B.C.C.A.):

> If the decision is to be upheld, there must be some evidence logically capable of supporting the conclusion to which the tribunal has come. Such evidence is sometimes referred to as evidence which "reasonably" supports the conclusion, leading to statements such as that found in ***Re Stalybridge, supra***, to the effect that the conclusion must be one to which the tribunal could reasonably have come on the evidence. Such language does not, in my view, authorize the court to embark on the exercise of weighing and evaluating evidence which was properly received by the committee and which possesses some probative value. The court of review remains confined to the initial question of whether there is some evidence capable of supporting the committee's conclusion.

And at 701:

> The tribunal may reject portions of evidence and accept others; and it may determine what weight to place on those portions of the evidence which it accepts. Provided that the tribunal's conclusion is one to which it could reasonably have come on that evidence, this court has no power to interfere.

[63] In the present case it cannot be said that there was no evidence supporting Lawson's finding that Aboriginal and Treaty Rights would not be infringed. Lawson had the CHOA report and information provided by BCE staff regarding the impact of harvesting on the traditional activities of hunting, trapping and fishing.

[64] Secondly, the court may review a patently unreasonable error of fact since this affects the jurisdiction of the tribunal.

[65] A decision is patently unreasonable only where it is evidently not in accordance with reason or is clearly irrational. As stated by Cory J. in ***Canada v. PSAC***, [1993] 1 S.C.R. 941 at 963-964, 101 D.L.R. (4th) 673:

> Thus, based on the dictionary definition of the words "patently unreasonable", it is apparent that if the decision the Board reached, acting within its jurisdiction, is not clearly irrational, that is to say evidently not in accordance with reason, then it cannot be said that there was a loss of jurisdiction.

And at 691:

> It is not enough that the decision of the Board is wrong in the eyes of the court; it must, in order to be patently unreasonable, be found by the court to be clearly irrational.

[66] Given the limited evidence available to Lawson, the factual conclusions which he reached as to infringement of Treaty 8 or Aboriginal Rights is unreasonable. There was some evidence supporting his findings, however, Lawson had no information from Halfway. How can one reach any reasonable conclusion as to the impact on Halfway's rights without obtaining information from Halfway on their uses of the area in question? This problem was recognized in the CHOA report, which stated, at 33-34:

> In summary, the Cultural Heritage (Ethnographic) Overview presented here provides a useful starting point for assessing the extent of the Halfway River First Nation's use of the Tusdzah study area. It demonstrates the area was, and continues to be, utilized for hunting, fishing, trapping and plant collecting, and provides a ranking of the use

> potential for each of these activities. However, these data alone are not sufficient to understanding the issues surrounding infringement of Treaty and/or Aboriginal rights of the Halfway River Peoples. It is my opinion that additional cultural and ecological studies of the Tusdzah study area are required before this issue can be adequately addressed.
>
> ...
>
> However, as discussed above, there are numerous shortcomings with a study of this nature, from both a cultural and an ecological perspective. In fact, I suggest that until more detailed information is obtained in both these areas, studies such as this will fail to adequately address the concerns and management needs of forest managers and First Nations.

[67] The MOF's briefing notes also acknowledged the inadequacy of the available information on Treaty and Aboriginal Rights.

> "*Values Summary in the Canfor C.P.212/Tusdzuh Conflict*"; "*Ministry of Forests Protection of Treaty Rights Checklist for Canfor's CP.212 Application*"; Ministry of Forests British Columbia Forest Service Briefing Note from David Lawson to Janna Kumi, March 14, 1996.

[68] Given the importance attached to Treaty and Aboriginal Rights, in the absence of significant information and in the face of assertions by Halfway as to their uses of CP212, it was patently unreasonable for Lawson to conclude that there was no infringement.

A.6 THE DUTY OF FAIRNESS AND THE RIGHT TO BE HEARD

[69] It is settled law that where a decision is administrative in nature, the parties are entitled to procedural fairness.

[70] However, the courts have moved away from classifying decisions as administrative, legislative or quasi-judicial and then applying principles of fairness based on this classification. In moving away from the classification noted above, the courts now tend to look at three factors in determining whether and to what extent a duty of fairness is owed: the nature of the decision to be made; the relationship between the administrative body and the individual; and the effect of the decision on the individual's rights.

> See ***Knight v. Indian Head School Division No. 19***, [1990] 1 S.C.R. 653 at 669; ***Old St. Boniface Residents Association v. Winnipeg (City)***, [1990] 3 S.C.R. 1170 at 1190; ***Syndicat des employes de production du Quebec et de l'Acadie v. Canada (Canadian Human Rights Commission)***, [1989] 2 S.C.R. 879.

[71] Given that Lawson's decision was final in that no appeal is provided for in the ***Act*** or the ***Code***, that the decision is specific in that it relates to a particular permit and an application for that permit made by a specific person or entity, that the relationship between the Provincial Government and its representative, in this case the District Manager, and Halfway is fiduciary in nature and that there is evidence to

suggest that harvesting in CP212 could significantly affect Halfway's very way of life. I have concluded that the highest standards of fairness should apply.

[72] Generally, fairness will require that notice be given and an effective opportunity to be heard be provided. Given the circumstances of this case, the duty of fairness ought to include an obligation on the District Manager to make all reasonable efforts and provide every opportunity for Halfway to be heard. Consultation must be meaningful and the district manager must take into serious consideration the information provided by Halfway and Halfway's rights in general. This is very similar to the consultation requirement associated with the MOF's fiduciary duty to Halfway.

[73] In addition, procedural fairness requires that Halfway be given notice of the decision to be made. The evidence shows that Halfway had notice of the proposed harvesting in CP212 through the following mechanisms:

(a) Canfor's Five Year Forest Development Plans. As early as 1991 these showed the proposed harvesting of CP212.

(b) A letter dated June 11, 1993 from Canfor to Halfway indicating that CP212 harvesting would be delayed several years.

(c) A letter dated December 9, 1993 from Canfor to Halfway indicating that the proposed harvest date of June 1995 for CP212 had been rescheduled.

(d) A letter dated April 3, 1995 from Gray to Halfway saying that the MOF will not approve CP212 until after a review.

(e) An October 3, 1995 meeting between Canfor and Halfway at which Canfor advised that CP212 planning was continuing.

(f) Advertisements of CP212 Silviculture Prescription, October 26 and 27, 1995.

(g) A letter dated November 8, 1995 from Lawson to Halfway including a copy of Canfor's CP212 application.

(h) A letter dated March 5, 1996 from Lawson to Halfway's lawyer stating that a decision regarding CP212 would be made within a couple of weeks.

(i) A meeting with Lawson on May 13, 1996 during which Lawson provided Halfway with a map of Canfor's proposed harvesting activities, including blocks in CP212.

(j) A letter dated August 27, 1996 from Lawson to Halfway indicating a decision would be made September 13, 1996 on the approval of CP212.

(k) A letter dated August 29, 1996 from Lawson to Halfway setting out Canfor's logging plans.

[74] The Forest Development Plans (paragraph (a)) provide only very general notice as to Canfor's logging plans; they cannot be considered notice of specific blocks to be harvested in CP212. The same can be said of paragraph (e).

[75] Paragraphs (b) through (d) were notice that cutting in CP212 would not be proceeding, at least until an unspecified later date.

[76] Paragraphs (f) and (g) relate to cut blocks not included in the cutting permit application approved by Lawson on September 13. Two of the blocks referred to in these paragraphs were not approved for cutting in the winter of 1996 and the third was outside of the Tusdzuh area.

[77] The notice referred to in paragraph (h) is not significant since the decision was not actually made within a couple of weeks.

[78] Paragraph (i) is the only true advance notice that Halfway had of Canfor's plans for the winter of 1997. It is not notice that Lawson would make his decision on September 13.

[79] The letters dated August 27 and 29, 1996 (paragraphs (j) and (k)) cannot be considered adequate notice of Canfor's application given the late date at which they were sent.

[80] Moreover, in reply the petitioners noted that blocks are routinely added, deleted or altered by the applicant prior to application; therefore Halfway cannot comment until it sees the application. Canfor's application regarding the cut blocks in issue was not provided to Halfway until after Lawson had approved it.

[81] Given these circumstances, notice was inadequate.

B. NATIVE LAW ISSUES

[82] The following issues arise:

(1) Does the approval of CP212 infringe the Aboriginal or Treaty Rights of Halfway, as guaranteed by s. 35(1) of the ***Constitution Act, 1982***?

(2) Does the provincial Crown owe a fiduciary duty to Halfway? If so, what is the scope of this duty, and has the MOF breached it?

B.1 SECTION 35 INFRINGEMENT

[83] Section 35(1) of the ***Constitution Act, 1982*** provides:

> 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Test for Infringement

[84] The test for determining the infringement of Treaty or Aboriginal Rights is set out in ***R. v. Sparrow***, [1990] 1 S.C.R. 1075, [1990] 3 C.N.L.R. 178, [1990] 4 W.W.R. 410. The various steps may be summarized as follows:

(1) Does the regulation (or decision) interfere with the exercise of Aboriginal Rights? If so, then it is a *prima facie* infringement of s. 35(1).

To determine interference, ask:

(a) Is the limitation unreasonable?

(b) Does it cause undue hardship?

(c) Does it deny the preferred means of exercising the right?

(2) Can the interference be justified by the government?

To determine justification, ask:

(a) Is there a valid legislative objective?

(b) If there is a valid objective, has the honour of the Crown been upheld? This is determined by asking:

(i) Has priority been given to native rights?

(ii) Has there been as little infringement as possible to effect the desired result?

(iii) Is compensation available? (expropriation cases)

(iv) Has the aboriginal group been consulted?

(v) Other questions, depending on the particular circumstances. ***Sparrow*** does not set out an exhaustive list.

If the interference cannot be justified, there is infringement of Aboriginal Rights.

Application of the Test

Interference

[85] The onus of proving interference with an Aboriginal Right lies on Halfway.

Sparrow, *supra* at 1112.

[86] The inquiry into interference should begin with a consideration of the characteristics or incidents of the Aboriginal Right(s) at stake. The onus is on the aboriginal group to establish the nature and extent of the Aboriginal Right.

> ***R. v. Nikal***, [1996] 1 S.C.R. 1013 at 1056, 19 B.C.L.R. (3d) 201, [1996] 3 C.N.L.R. 178.

[87] In conducting the inquiry, the court should be sensitive to the aboriginal perspective on the meaning of the rights at stake.

> ***Sparrow***, *supra*, at 1112.

[88] This latter point is significant given the divergence between the MOF and Halfway views on the nature of Halfway's rights. The MOF argues that Aboriginal Rights are "site specific" and that a "site" covers a very limited area, for example, a bear den, a grave site or a moose calving area. Halfway adopts a more holistic approach, seeing the right to hunt as relating to the entire Tusdzuh area. Its position is that logging in any part of the Tusdzuh has widespread effects on Aboriginal Rights throughout the area, for example, by providing better access to non-native hunters, by disturbing trails, horse corrals and meat-drying camps and by affecting wildlife.

[89] The following passage from a letter dated February 8, 1996 from Halfway to Janna Kumi, Assistant Deputy Minister, Operations Division, sets out Halfway's perspective:

> As you know, your Ministry's obligations to avoid treaty right infringement extend far beyond the identification and protection of specific sites of concern such as mouse licks or burial sites; the full nature and extent of the impact on treaty rights resulting from any one cut block can not be assessed without examining the full context of cumulative impacts on the whole area, and your ministry's lawful obligation with regard to mitigation or infringement avoidance can not always be discharged through measures such as buffers or remediation plans. There will be instances where the only appropriate discharge of your lawful obligations will be to not cut at all, and we submit that, if the context is properly considered, this will be one of them.

[90] With this in mind, the Aboriginal Rights of Halfway can be considered. These are set out in Treaty 8.

[91] Pursuant to Treaty 8 the Beaver First Nation (of which Halfway is a member) agreed to surrender "all their rights, titles and privileges whatsoever" to the Tusdzuh area. Treaty 8 appears to have extinguished any non-Treaty Aboriginal Rights Halfway may have had prior to entering into the Treaty.

> See, for example, ***Ontario (Attorney-General) v. Bear Island Foundation***, [1991] 2 S.C.R. 570 at 575, 83 D.L.R. (4th) 381.

[92] In return for the surrender of land, the government agreed that the Natives would have the "right to pursue their usual

vocations of hunting, trapping and fishing throughout the tract surrendered." In ***R. v. Noel***, [1995] 4 C.N.L.R. 78 at 88 (N.W.T. Terr. Ct.), Halifax J. stated:

> There is no doubt that Treaty No.8 provided a right to fish, hunt and trap to persons covered under that Treaty.

[93] According to the Treaty, these rights were subject to "such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes."

[94] Treaty 8 was considered in detail in ***R. v. Badger***, [1996] 1 S.C.R. 771, [1996] 2 C.N.L.R. 77. Cory J. held, at p. 793, that there were two limitations on the Treaty 8 rights. The first was a geographical limitation: the rights could only be exercised "throughout the tract surrendered ... saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes." The second was that the right could be limited by government regulations for conservation purposes.

[95] In coming to these conclusions, Cory J., at 793-794, applied the following principles of treaty interpretation:

(1) A treaty is a sacred agreement that represents an exchange of solemn promises between the Crown and a First Nation.

(2) Treaty interpretation must be approached in a manner that maintains the integrity of the Crown.

(3) Any ambiguities must be resolved in favour of the First Nation.

(4) The onus of proving extinguishment of a Treaty or Aboriginal Right is on the Crown. There must be strict proof of extinguishment and evidence of a clear and plain intention on the part of the government to extinguish treaty rights.

(5) Words in a treaty must not be interpreted strictly, but rather should be interpreted in the sense that they would naturally have been understood by the First Nation at the time of signing.

[96] In addition, the courts have held that the context in which a treaty was signed should be considered. In ***Badger***, *supra* at 798, Cory J. stated:

> In addition, when considering a treaty, a court must take into account the context in which the treaties were negotiated, concluded and committed to writing. The treaties, as written documents, recorded an agreement that had already been reached orally and

> they did not always record the full extent of the oral agreement.

[97] A similar approach was applied in ***R. v. Sioui***, [1990] 1 S.C.R. 1025 at 1068, where Lamer J stated:

> The historical context, which has been used to demonstrate the existence of the treaty, may equally assist us in interpreting the extent of the rights contained in it.

[98] In ***Badger***, *supra*, Cory J went on to consider the Commissioners' Report respecting Treaty No. 8. At 793 he refers to the following extract from the Reports:

> There was expressed at every point the fear that the making of the treaty would be followed by the curtailment of the hunting and fishing privileges, ... We pointed out ... that the same means of earning a livelihood would continue after the treaty as existed before it ...
>
> Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed. The provision in the treaty under which ammunition and twine is to be furnished went far in the direction of quieting the fears of the Indians, for they admitted that it would be unreasonable to furnish the means of hunting and fishing if laws were to be enacted which would make hunting and fishing so restricted as to render it impossible to make a livelihood by such pursuits. But over and above the provision, we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it.

[99] Canfor submits that because of the geographical limitation on Treaty 8 rights, the mere setting aside or "taking up" of

lands for logging cannot be considered a *prima facie* infringement of these rights.

[100] Canfor's argument is buttressed by the principle that in determining interference, the court must keep in mind that aboriginal rights, like all other rights, are limited by the rights of others -- in this case the right to harvest timber. Where they are so limited, this does not necessarily amount to infringement. See ***Nikal***, *supra*, at 1057-1058.

[101] However, this submission is not compatible with the statements made in the Report of the Commissioners, considered by Cory J in ***Badger***, *supra*, to be relevant to the interpretation of Treaty 8 rights. These statements suggest that any interference with the right to hunt, fish or trap constitutes a *prima facie* infringement of Treaty 8 rights. Because of these statements, the scope of the geographical limits on Treaty 8 rights ought to be restricted. It would thus appear that it will not be difficult for Halfway to prove *prima facie* infringement.

[102] This is in accordance with the principle that, although the onus is on Halfway to establish infringement, this onus is not a heavy one.

R. v. Sampson (1995), 16 B.C.L.R. (3d) 226 (C.A.)

[103] The following evidence supports the contention that Halfway has demonstrated *prima facie* infringement:

(a) Statements in December 1, 1995 letter from Maas and Metecheah to Petter, copied to Lawson.

(b) Letter from Metecheah to Gray dated May 19, 1995. (Lawson Affidavit #2)

(c) Letter from Gunnerson to Lambert dated December 21, 1995. (Lawson Affidavit #2)

(d) Letter from Metecheah to Kumi dated February 8, 1996, copied to Lawson. (Lawson Affidavit #2)

(e) Lawson e-mail dated May 14, 1996. (Lawson Affidavit #2)

(f) Letter from Metecheah to Lawson dated September 6, 1996. (Lawson Affidavit #2)

(g) Letter from Metecheah to Lawson dated September 12, 1996. (Metecheah Affidavit)

(h) The CHOA report indicates that, at a minimum, the "use potential" for hunting and trapping is high in the Tusdzuh area.

(i) Canfor's logging plans show that several roads will be constructed to enable logging of CP212. Common sense may suggest that this will improve access to the area, thereby increasing non-native hunting pressure and reducing the game available to Halfway.

(j) The report "*Potential Impacts to Fish and Wildlife Resources*" prepared by Lambert of the BCE notes that the area is of importance to Halfway and that Halfway is concerned that harvesting will infringe on its Treaty rights of hunting, fishing and trapping.

(k) The establishment of wildlife tree patches for the express purpose of mitigating the impacts of harvesting on wildlife provides circumstantial evidence (and is a recognition by the MOF) that logging adversely impacts wildlife populations and thereby affects hunting.

[104] In addition to this evidence, the court must consider the questions posed by the Supreme Court of Canada in ***Sparrow***, *supra*.

The Reasonableness of the Limitation

[105] The MOF and Canfor argue that CP212 is a reasonable limit on Halfway's rights since only a very small portion of

the Tusdzuh area is approved for logging, leaving a vast area where Halfway can exercise its traditional rights.

[106] This argument ignores the aboriginal perspective referred to above. To Halfway the Tusdzuh region is one of the last unspoiled areas of wilderness where they can exercise their traditional way of life. Logging even a limited area of the Tusdzuh would irrevocably change its character. In ***Derickson v. B.C. (A.G.)*** (February 16, 1996), Vancouver Registry No. A960076 (S.C.), the court recognized that the impacts of logging were felt beyond simply the logged area.

[107] The area which will be affected by logging also includes the sites of proposed roads, the land adjacent to these roads and the land adjacent to the cut blocks.

[108] While the onus is on the petitioners to establish infringement, it is worth noting that there is no persuasive evidence to suggest that other areas do not exist which Canfor could log in place of CP212 to avoid interfering with aboriginal rights.

Undue Hardship

[109] To establish undue hardship it is necessary to show more than mere inconvenience:

> The term "undue hardship" implies that a situation exists which imposes something more than mere inconvenience. It follows that a licence which is freely and readily available cannot be considered an undue hardship. The situation might be different if, for example, the licence could only be obtained at locations many kilometres away from the reserve and accessible only at great inconvenience or expense.
>
> ***Nikal***, *supra* at 1060.

[110] The evidence supports a finding that the approval of CP212 may cause undue hardship in the manner specified by ***Nikal***.

[111] According to the Metecheah affidavit, at paragraphs 3, 4, 10 and 11, members of Halfway depend on hunting to feed their families and the proximity of the Tusdzuh area to the reserve allows Halfway members easy access to quality hunting areas where they can harvest game to feed their families.

[112] The MOF replies that there are thousands of other acres, including lands close to the reserve, where logging will not take place and where Halfway members could readily hunt. However, there is no persuasive evidence in this regard.

[113] In its letter of September 6, 1996 to Lawson (Lawson Affidavit #2), the petitioners state that encroachments have already forced Halfway to go further and further to find quality hunting. The reasonable inference to be drawn from

this letter is that logging in CP212 will be another "further encroachment" which will cause the petitioners hardship.

Denial of the Preferred Means

[114] The MOF and Canfor argue that Halfway has the rest of the Tusdzuh area in which to enjoy the preferred means of exercising its rights. This again ignores the holistic perspective of Halfway. Their preferred means are to exercise their rights to hunt, trap and fish in an unspoiled wilderness in close proximity to their reserve lands. In that sense, the approval of CP212 denies Halfway the preferred means of exercising its rights.

[115] The MOF poses a final argument respecting *prima facie* infringement: that the evidence contained in the Metecheah Affidavit as to how Halfway uses CP212 (in particular evidence respecting cultural sites) was not put before Lawson. The MOF further submits that "Where such assertions are made at the last minute in the course of court proceedings, the court is entitled to take that circumstance into account in assessing that evidence and is entitled to expect some explanation for the lateness of that claim", citing ***Tlowitsis-Mumtagila Band v. MacMillan Bloedel Ltd.***, [1991] 4 W.W.R. 83 at 96 (B.C.C.A.).

[116] In my view, there is substantial evidence to refute this argument. See, Exhibits 15, 16, 25, 38, 41, 45, and 49 to Lawson Affidavit #2.

Justification

[117] If the objective in approving CP212 is to enhance the economy of northern British Columbia through the harvesting of its forest resources, this is more specific than the "public interest" which was rejected in ***Sparrow*** and likely qualifies as a valid objective.

[118] The question then becomes whether the honour of the Crown has been upheld. As noted above, four factors should be considered in answering this question:

(a) Priority to Aboriginal Rights: the approval of CP212 appears to give Canfor priority over Halfway. Canfor and the MOF argue that this is not the case: had evidence of traditional use been provided by Halfway, logging would not have been approved for the areas to which this evidence related

(b) Minimal infringement: other areas may be available to Canfor where Halfway does not exercise its traditional rights. Canfor argues that the blocks scheduled to be logged make up only a tiny percentage of the Tusdzuh area. In ***Nikal***, *supra* at 1064-1065, the Supreme Court of Canada noted that the existence of other solutions involving less infringement (ie, logging elsewhere) did not automatically mean that

the infringement could not be justified. The court also stated, at 1065: "So long as the infringement was one which in the context of the circumstances presented could reasonably be considered to be as minimal as possible then it will meet the test."

(c) Compensation for expropriation: this is not relevant.

(d) Consultation: this factor is addressed below in the arguments with respect to fiduciary duty.

B.2 Relationship Between the Provincial Crown and Aboriginal Peoples

The Existence of a Fiduciary Relationship

[119] In ***Guerin v. The Queen***, [1984] 2 S.C.R. 335, [1985] 1 C.N.L.R. 120, the Supreme Court of Canada held that the federal Crown was in a fiduciary relationship with a Native Band where the Band had surrendered reserve land to the Crown to be dealt with for the Band's benefit. This fiduciary relationship arose out of the fact that Natives have certain interests in lands and these interests are only alienable to the Crown.

[120] In ***Sparrow***, *supra* at 1108, Dickson C.J. and La Forest J. stated:

> This Court found that the Crown owed a fiduciary obligation to the Indians with respect to the lands. The *sui generis* nature of Indian title, and the historic powers and responsibility assumed by the Crown constituted the source of such a fiduciary obligation. In our opinion, ***Guerin***, together with ***R. v. Taylor and Williams*** (1981), 34 O.R. (2d) 360, ground a general guiding principle for s.35(1). That is, the Government has the responsibility to act in a fiduciary capacity with respect to aboriginal peoples. The relationship between the Government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship.

And at 1114:

> If a valid legislative objective is found, the analysis proceeds to the second part of the justification issue. Here, we refer back to the guiding interpretive principle derived from ***Taylor and Williams*** and ***Guerin***, *supra*. That is, the honour of the Crown is at stake in dealings with aboriginal peoples. The special trust relationship and the responsibility of the government vis-a-vis aboriginals must be the first consideration in determining whether the legislation or action in question can be justified.

[121] In ***Badger***, *supra*, at 794, Cory J. stated:

> [T]he honour of the Crown is always at stake in its dealing with Indian people. Interpretations of treaties and statutory provisions which have an impact upon treaty or aboriginal rights must be approached in a manner which maintains the integrity of the Crown.

[122] In ***Badger***, *supra*, at pp. 820-821 these principles were also applied to the provincial Crown.

Fiduciary Obligations: The Duty to Consult

[123] The petitioners submit that the fiduciary relationship imposes an obligation on the provincial Crown to consult with First Nations before taking any action which might impact on their Aboriginal or Treaty Rights.

[124] Such a requirement accords with the following statement in ***Guerin***, *supra* (at 389):

> In obtaining without consultation a much less valuable lease than that promised, the Crown breached the fiduciary obligation it owed the band. [emphasis added]

[125] Similarly, in ***Derickson***, *supra,* Curtis J. held, in the context of an injunction application, (at para 17):

> The Crown, as owner of the land, has an obligation to allow and provide for existing aboriginal rights when permitting other uses. As discussed in ***Sparrow v. R.***, [1990] 4 W.W.R. 410 (S.C.C.) and ***Delgamuukw***, that duty includes a duty to consult the holders of aboriginal rights concerning proposed actions which might affect their rights.

[126] In ***Delgamuukw***, *supra*, McEachern J. considered the Crown's duty to consult with native bands and stated (at 423):

> Secondly, the ministers of the province and their officers should always keep the aboriginal interests of the plaintiffs very much in mind in deciding which legislation to recommend to the legislature, and what policies to implement in the territory. There should be reasonable consultation so that the plaintiffs will know the extent to which their use might be terminated or disturbed. A right of consultation does not include a veto, or any requirement for consent or agreement, although such is much to be desired.

[127] The requirement to consult has been imposed in the context of the justification stage of the ***Sparrow*** analysis. That analysis requires the court to ask, in determining whether interference with the aboriginal right in question is justified, whether or not the aboriginals have been consulted.

[128] The consultation issue was considered in ***R. v. Jack*** (1995), 16 B.C.L.R. (3d) 201 (C.A.), in the context of determining whether an interference with aboriginal rights was justified.

[129] In ***Jack***, the court held that the duty on the Department of Fisheries and Oceans to consult with natives when establishing conservation measures included a duty to provide the Indian Band with full information on the conservation measures and their effect on the Band, as well as a duty to fully inform itself of the fishing practices of the Band and the Band's views of the conservation measures.

[130] In the present case, this translates into a duty on the MOF to inform itself of Halfway's traditional uses of the Tusdzuh area, without imposing a requirement that there be agreement between Halfway and the Crown on all actions to be taken by the Crown.

[131] In ***Noel***, *supra*, at 95, Halifax J. commented on the consultation requirement in the context of the second stage of the ***Sparrow*** analysis, stating:

> Consultation must require the government to carry out meaningful and reasonable discussions with the representatives of Aboriginal people involved. The fact that the time frame for action was short does not justify the government to push forward with the proposed regulation without proper consultation. Otherwise, the recognition and affirmation of Aboriginal rights in s. 35(1) of the ***Constitution Act, 1982*** would become another hollow promise to Aboriginal people.

[132] The MOF submits that the duty to consult does not arise until the aboriginal group has established a *prima facie* infringement, citing ***Sparrow***, where consultation is not considered until the second stage of the infringement test. In my view, this approach is inconsistent with the cases referred to and is inappropriate given the relationship between the Crown and native people.

[133] Based on the ***Jack***, ***Noel*** and ***Delgamuukw*** cases, the Crown has an obligation to undertake reasonable consultation with a First Nation which may be affected by its decision. In order for the Crown to consult reasonably, it must fully inform itself of the practices and of the views of the Nation affected. In so doing, it must ensure that the group affected is provided with full information with respect to the proposed legislation or decision and its potential impact on aboriginal rights.

Has the Crown Fulfilled Its Duty to Consult

[134] The MOF and Canfor provided Halfway with the following opportunities to be heard:

(a) The public review and comment process associated with the approval of the 1991/96 and subsequent Five Year Forest Development Plans.

(b) Meetings between Canfor and Halfway representatives: August 1992; February 3, 1993; February 21, 1994; June 5, 1995; June 12, 1995; August 22, 1995; September 12, 1995; October 3, 1995; November 1, 1995; January 10, 1996; May 15, 1996; May 22, 1996; June 4, 1996; June 19, 1996; July 29, 1996; August 6, 1996.

(c) The Dunne-Za project between Halfway and Canfor; as part of this project, Canfor offered funding to be used to study CP212.

(d) Letters from the MOF to Halfway requesting information and/or a meeting: April 26, 1995 (Gray); June 2, 1995 (Gray-re TUS); November 8, 1995 (Lawson); November 15, 1995 (Gray-re TUS); February 26, 1996 (Lawson); March 5, 1996 (Lawson); March 7,

1996 (Madill); March 14, 1996 (Lawson); March 15, 1996 (Lawson); June 19, 1996 (Lawson); August 15, 1996 (Higgenbotham; but specified meeting not to be held until early September); August 27, 1996 (Lawson; this letter specifies September 13 as the decision date); August 29, 1996 (Lawson); September 12, 1996 (Lawson).

(e) Letters from the MOF or the Minister indicating willingness to consult or encouraging consultation: November 6, 1995 (Minister); February 14, 1996 (Lawson); March 25, 1996 (Minister); April 3, 1996 (Minister).

(f) Discussions regarding the TUS Proposal between the MOF and Halfway, from May to November 1994. It is significant that this proposal never came to fruition and that Gray and not Lawson dealt with these negotiations.

(g) Meetings between the MOF and Halfway: MOF/T8TA workshop, November 27-28, 1995 (Lawson present); January 26, 1996 (Lawson not present); February 2, 1996 (Lawson present); May 13, 1996 (Lawson present; he discussed the proposed land management planning process at this meeting); July 23, 1996 (Lawson not present).

(h) Telephone calls between the MOF and Halfway: March 31, 1995 (Gray); February 21, 1996 (Lawson); March 1, 1996 (Lawson); June 4, 1996 (Lawson); June 12, 1996 (Lawson); September 11/12, 1996 (Lawson).

(i) A letter dated February 20, 1996 from Lawson to Halfway inviting participation in a land management planning process beginning in March 1996.

(j) A letter inviting input and participation regarding the CHOA was sent to Halfway but not delivered to Halfway until after the report had been completed. Prior to this there was notification that the CHOA was proceeding (December 21, 1995 letter from Madill to Metecheah). A copy of the final report was sent to Halfway for review and comments on March 7, 1996; no response was received.

[135] The FDP review process (paragraph (a)) did not specifically address CP212 and thus provided a somewhat limited opportunity for Halfway to express its concerns regarding CP212. It dealt with the entire forest licence area.

[136] Meetings between Canfor and Halfway (paragraphs (b) and (c)) did not involve Lawson or other MOF members and thus cannot be considered consultation for the purposes of determining whether Lawson met his fiduciary obligations.

[137] With respect to the written offers of consultation, the letters from August 15, 1996 onwards cannot be considered meaningful opportunities to consult due to their lateness and due to the prejudgment issue on the question of infringement previously noted. The same applies to the telephone calls from Lawson to Metecheah on September 11 and 12, 1996.

[138] The discussions with respect to the TUS Proposal (paragraph (f)) did not result in a project between Halfway and the MOF.

[139] On its face, the letter from Lawson inviting participation in a land management planning process is not significant given that it states the decision on CP212 will be taken before this process commences. Moreover, Lawson promised to provide terms of reference, which he did not do.

[140] In summary, then, the following meaningful opportunities to consult were provided:

(a) Fourteen letters from the MOF to Halfway during 1995 and 1996 requesting information and/or a meeting or offering consultation.

(b) Three meetings between Lawson and Halfway: on November 27/28, 1995; and February 2 and May 13, 1996.

(c) Five telephone calls between the MOF and Halfway in 1995 and 1996.

(d) An opportunity to provide feedback on the CHOA.

[141] The following reasonable opportunities to consult were denied to Halfway:

(a) Halfway was not invited to attend the meeting between MOF and Canfor employees at which the cutting permit was approved.

(b) The report "Potential Impacts to Fish & Wildlife Resources" was not provided to Halfway until August 26, 1996, despite that a draft copy was available January 4, 1996.

(c) There was no real opportunity to participate in the CHOA.

(d) Canfor's actual application for CP212 was not provided to Halfway until after the decision was made.

[142] While the MOF did make some efforts to inform itself, by requesting information from and meetings with Halfway, I

have concluded these measures were inadequate. Briefing notes prepared by the MOF indicate that there was inadequate information with respect to potential infringement of treaty and aboriginal rights.

> See *Ministry of Forests Protection of Treaty Rights Checklist for Canfor's CP. 212 Application*; Ministry of Forests British Columbia Forest Service Briefing Note from David Lawson to Janna Kumi, March 14, 1996.

[143] Moreover, the CHOA report recommended further consultation with Halfway and stated, at 34:

> [T]here are numerous shortcomings with a study of this nature, from both a cultural and an ecological perspective. In fact, I suggest that until more detailed information is obtained in both these areas, studies such as this will fail to adequately address the concerns and management needs of forest managers and First Nations.

Lawson relied on this report in deciding to approve CP212.

[144] The MOF was informed of Halfway's TLE claim in the Tusdzuh area but on the evidence it made little or no effort to determine the nature or extent of this claim and how it could be impacted by harvesting in CP212.

[145] The MOF also appears to have failed to ensure that Halfway was provided with full information with respect to the proposed decision. As noted above, the BCE study was not

provided to Halfway until late August. Canfor's formal cutting permit application was not provided until after the decision was made in September.

Fiduciary Obligations: The Duty to Provide Funding

[146] The petitioners submit that the fiduciary duty on the provincial Crown includes a duty to provide direct funding to Halfway to enable it to gather information so that it can provide meaningful input. I am not satisfied on the authorities that the fiduciary duty of the Crown may be so clearly defined.

[147] In ***Canada (Attorney General) v. Stuart, J., and Savard*** (1996), 74 B.C.A.C. 81 (Y.T.C.A.), it was held, in the context of payment by government of the fees of a legal aid lawyer, that the court may not expressly order the Crown to make such a payment. It is arguable, however, that the court did not limit the ability of a court to order the Crown to comply with a duty even where compliance necessitates the expenditure of funds.

Fiduciary Obligations: The Duty on Halfway to Co-operate

[148] In addition to the obligations on the MOF to consult with Halfway, there were obligations on Halfway to make reasonable efforts to facilitate discussion with the MOF. In

Eastmain Band v. Robinson (1992), 99 D.L.R. (4th) 16 at 27, the Federal Court of Appeal stated:

> Even if we ascribe a fiduciary character to the relationship between the Crown and the aboriginals, it requires good faith and reasonableness on both sides and presumes that each party respects the obligations that it assumes toward the other.

[149] The concept of reasonableness comes into play with respect to both parties involved in consultation. The Supreme Court made the following comments in ***Nikal***, *supra* at 1065:

> So too in the aspects of information and consultation the concept of reasonableness must come into play. For example, the need for the dissemination of information and a request for consultations cannot simply be denied. So long as every reasonable effort is made to inform and to consult, such efforts would suffice to meet the justification requirement.

[150] The respondent MOF contends that the facts in the present case are analogous to those in ***Ryan v. Shultz*** (January 25, 1994), Smithers Registry, No.7855 (S.C.). In ***Ryan***, the Gitskan Indian Band applied for judicial review of a decision of the District Manager approving a cutting permit in an area they claimed as their traditional territory.

[151] Macdonald J. held that, in accordance with the principles enunciated in ***Delgamuukw***, the Gitskan were entitled to be consulted regarding logging activities in their traditional territory. However, he went on to find that the Gitskan had refused to participate in consultation and that the consultation process was impeded "by their persistent refusal

to take part in the process unless their fundamental demands were met." He concluded, at 10:

> I accept the submission that the M.O.F. more than satisfied any duty to consult which is upon it. It was the failure of the Petitioners to avail themselves of the consultation process, except on their own terms, which lies at the heart of this dispute.

[152] In reaching the above conclusion, Macdonald J. appears to have placed weight on the following facts:

(a) The Gitskan refused to meet with the MOF until a co-management agreement, in the form proposed by the Gitskan, was concluded.

(b) The Gitskan initially refused to participate unless the MOF prohibited all physical activity on the land.

(c) Opposition to logging would have faded if the province had agreed to hand over jurisdiction or provide a veto to the Gitskan. The Gitskan were only interested in a process which would give them control.

[153] In some respects, the facts of the present case are similar to those in ***Ryan***. While Halfway expressed a desire to consult with the MOF, it suggested that such consultation must

be meaningful, be based on a process acceptable to both sides and include the provision of funding to Halfway.

[154] Halfway also continually insisted that no activity take place in the Tusdzuh area pending their TLE Claim and an assessment of the impact on aboriginal and treaty rights. The petitioners argue that this insistence was in the nature of a "request" for no logging; Halfway did not use a blockade or other attempts to pressure the MOF into accepting the request, as was the case in ***Ryan***.

[155] Halfway also insisted that the TUS Proposal proceed on its terms. It refused to make any changes to the proposal based on criticism by the MOF, despite that much of this criticism was valid. Similarly, Halfway refused to use the Dunne-Za process to generate information on the Tusdzuh area.

[156] However, the present case is also different from ***Ryan*** in a number of respects. Halfway did not refuse to meet with the Ministry of Forests and in fact requested such meetings on a number of occasions, as evidenced by the letter from Metecheah to Lawson dated September 9, 1996; the letter from Rath to Lawson dated April 15, 1996; the telephone conversation between Lawson and Rath June 4, 1996; and the letter from Metecheah to Petter dated December 15, 1995.

[157] The demands made by Halfway with respect to consultation were somewhat different in character from those made by the Gitskan. Halfway sought the establishment of a consultation process acceptable to both parties, whereas the Gitskan wanted a Co-Management Agreement on its own terms. In one respect, the requests of Halfway may be more extreme than those of the Gitskan: Halfway asked that funding be provided to it by the MOF.

[158] Finally, the present case is categorically different from ***Ryan*** in that in the present case the MOF failed to make all reasonable efforts to consult. In ***Ryan*** Macdonald J. stated, at 10, "I accept the submission that the M.O.F. more than satisfied any duty to consult which is upon it." While Halfway may not have been entirely reasonable, the fact remains that the MOF did not meet its fiduciary obligations.

CONCLUSIONS

ADMINISTRATIVE LAW ISSUES

(1) While the information available to Lawson on the Aboriginal and Treaty Rights issue was incomplete, it cannot be said that he failed to take into account this or any other relevant consideration. Lawson did not consider any irrelevant considerations and, even

if he did, these are not sufficient to warrant overturning his decision.

(2) Lawson did unlawfully fetter his discretion.

(3) While the bulk of the allegations made by Halfway regarding the bias issue should be rejected, Lawson does appear to have prejudged the issue of approval. His letter of August 29, 1996 to Chief Metecheah clearly shows that he had decided there was no infringement of Aboriginal or Treaty Rights by this date. Moreover, Halfway cannot be said to have waived its right to raise the issue of bias.

(4) Lawson did not make an error of law.

(5) Although there was some evidence supporting Lawson's decision, the decision is unreasonable because it was based on such blatantly incomplete evidence. A patently unreasonable error of fact has been established.

(6) Lawson violated principles of procedural fairness by failing to adequately consult Halfway and by failing to provide sufficient notice of the impending approval of CP212.

NATIVE LAW ISSUES

[159]

1. Halfway has a treaty right to hunt, fish and trap in the Tusdzuh area. There is some evidence to suggest that harvesting in CP212 will infringe upon this right, and in my view this evidence establishes *prima facie* infringement. The MOF has failed to justify this infringement under the second stage of the ***Sparrow*** test. Of particular significance is the fact that the MOF did not adequately consult with Halfway prior to approving Canfor's CP212 application.

(2) The MOF owes a fiduciary duty to Halfway. As part of this duty, the MOF must consult with the Band prior to making decisions which may affect treaty or aboriginal rights. The MOF failed to make all reasonable efforts to consult with Halfway, and in particular failed to fully inform itself respecting aboriginal and treaty rights in the Tusdzuh region and the impact the approval of CP212 would have on these rights. The MOF also failed to provide Halfway with information relevant to CP212 approval.

NATURE OF THE ORDER

[160] The *Amended Petition* requests an order:

(a) Quashing the approval of CP212.

(b) Declaring that the MOF owes a fiduciary and constitutional duty to adequately consult with Halfway and that the level consultation to date is insufficient.

(c) Compelling the MOF to consult with Halfway on the effects of harvesting on Aboriginal and Treaty Rights and to provide Halfway with funding to support this consultation process.

(d) Remitting the matter back to the MOF to complete the consultation process and then reconsider the application for CP212.

(e) Prohibiting any decision regarding CP212 until consultation is complete.

(f) Retaining jurisdiction so that the parties may retain for further directions.

[161] The MOF submits that an order in the nature of *mandamus* is inappropriate in that the *mandamus* can only be used to compel performance of a statutory duty. The further argument is that since the duty to consult is not imposed by any statute, but rather as a consequence of the requirement of

procedural fairness and the fiduciary duty of the Crown, the court may not compel the MOF to consult with Halfway. This later argument would appear to be sound, considering ***Delgamuukw*** and the recent decision of the Ontario Court of Appeal in ***R. v. Perry***, [Q.L. 1997 O.J. No. 2314] (C.A.).

[162] However, in this case, *mandamus* is not the only alternative. Considering the findings I have made, there will be an order quashing the decision made September 13, 1996, which approved the application for CP212. It is hoped that no further decision will be made without meaningful consultation with, and inclusion of, the petitioners, which is an integral component of the Crown's fiduciary obligation as well as being vital to the requirement of procedural fairness.

[163] Costs follow the event.

"Dorgan, J."
(The Honourable Madam Justice Dorgan)

APPENDIX "A"

CHRONOLOGY OF NOTICE AND CONSULTATION

1991

1991: Canfor identifies CP212 in 1991/96 FDP.

Lawson Affidavit #1 at par.24.

1992

Jan. 20: Letter from Metecheah to Minister of Forests requesting a meeting to discuss development in Tusdzuh. (Exhibit 6 to Stephenson Affidavit)

June 30: Letter from Canfor to T8TA advising of proposed harvesting. (Exhibit 7 to Stephenson Affidavit)

July 16: Letter from T8TA to MOF requesting a meeting with MOF and Canfor to review cutting plans and hear HRIB concerns and expressing concern over government's failure to address treaty rights. (Exhibit 8 to Stephenson Affidavit)

August: Meeting between Canfor and HRIB representatives; Canfor presents logging plans for following year. (Stephenson Affidavit at par.25)

Nov. 17: Letter from MOF to Canfor approving 1991-95 Development Plan. (Exhibit 1 to Menzies Affidavit)

1993

Jan. 29: Letter from Metecheah to Canfor inviting meeting at reserve to discuss Canfor's Development Plan. (Exhibit 9 to Stephenson Affidavit)

Letter from Canfor to HRIB agreeing to meet. (Exhibit 10 to Stephenson Affidavit)

Feb. 3: Meeting between HRIB and Canfor representatives during which HRIB expressed concerns. (Stephenson Affidavit at par.28)

March 9: Letter from MOF to Canfor approving Management and Working Plan for March 31, 1993 to March 31, 1998. (Exhibit 4 to Stephenson Affidavit)

April 2: Letter from Canfor to HRIB re Feb.3 meeting. (Exhibit 11 to Stephenson Affidavit)

Mar-Apr: Canfor phones HRIB several times to request a meeting. (Stephenson Affidavit at par.30)

April 23: Letter from T8TA to Canfor requesting a written response to concerns raised at the February 3 meeting before further meetings are held. (Exhibit 12 to Stephenson Affidavit)

June 10: Letter from Canfor to Metecheah outlining employment opportunities open to the HRIB. (Exhibit 13 to Stephenson Affidavit)

June 11: Letter from Canfor to Metecheah outlining action taken in response to HRIB concerns and offering to consult. (Exhibit 14 to Stephenson Affidavit)

Summer: Canfor agrees to delay harvesting in CP212 from winter 1994/95 to winter 1995/96. (Lawson Affidavit #1 at par.25)

Dec. 9: Letter from Canfor to Metecheah setting out harvesting schedule and other information re proposed activities. (Exhibit 15 to Stephenson Affidavit)

1994

1994: Canfor submits 1994/99 FDP for approval; harvesting of CP212 proposed for 1995/96 - 1997/98 seasons. (Lawson Affidavit #1 at par.27)

Jan. 25: Letter from Lawson to Canfor extending approval 1991/96 FDP to December 1, 1994. (Exhibit C to Lawson Affidavit #1)

Jan. 31: Letter from Canfor to T8TA requesting a meeting to discuss forest management planning. (Exhibit 16 to Stephenson Affidavit)

Feb. 21: Meeting between HRIB, Canfor and T8TA representatives to discuss 5 Year Development Plan and Native Concerns. (Stephenson Affidavit at par.36)

March 4: Letter from Canfor to T8TA proposing operational assessments of cutblocks, including CP212. (Exhibit 17 to Stephenson Affidavit)

Mar-July: Meetings involving T8TA, HRIB, Canfor, Doig River and Blueberry River Bands to discuss operational assessments. (Stephenson Affidavit at par.38)

April 6: Letter from T8TA to Minister of Forests outlining their view of consultation. (Exhibit A to Gunnarsen Affidavit)

July: Canfor and T8TA enter into Dunne-Za Project. (Lawson Affidavit #1 at par.33)

July 8: Canfor and Chiefs of Halfway, Doig and Blueberry River Bands sign Protocol Agreement. (Stephenson Affidavit at par.39)

Aug-Oct: Native technician training, operational assessments and archaeological assessments completed on area's to be harvested in 1994/95. (Stephenson Affidavit at par.40)

Nov. 30: Letter from Lawson to Canfor approving 1994/99 FDP. (Exhibit D to Lawson Affidavit #1; Exhibit 4 to Menzies Affidavit)

1995

1995: Canfor submits 1995/2000 FDP with amendments to CP212. (Lawson Affidavit #1 at par.28 and Exhibit E)

Feb. 6: Canfor completes initial visual quality work on CP212. (Stephenson Affidavit at par.41)

March 21: MOF circulates "Protection of Aboriginal Rights Policy". (Maas Affidavit at par.4)

March 27: Letter from Metecheah to Gray requesting that CP212 and 235 be set aside and protected from logging. (Exhibit 2 to Lawson Affidavit #2; Exhibit L to Lawson Affidavit #1: Exhibit 18 to Stephenson Affidavit)

March 29: Note left on Canfor vehicle from HRIB threatening a blockade if they continued to enter the area. (Stephenson Affidavit at par.43)

March 31: Telephone conversation between Havlik and Gray during which Gray says MOF won't approve CP212 pending resolution of TLE Claim. (Havlik Affidavit at par.2 and Exhibit A)

April 3: Letter from Gray to Metecheah stating that Canfor has been told that the MOF will not approve the permits pending a review. (Exhibit 3 to Lawson Affidavit #2; Exhibit B to Metecheah Affidavit; Exhibit 19 to Stephenson Affidavit)

April 10: Letter from MOF to HRIB with map of TLE Claim. (Exhibit 20 to Stephenson Affidavit)

April 26: Letter from Gray to Metecheah suggesting a meeting. (Exhibit C to Metecheah Affidavit)

May-Nov: MOF and HRIB discussions re TUS proposal. (Lawson Affidavit #1 at par.37)

May 3: Inquiry Report on TLE Claim area prepared by MOF. (Havlik Affidavit at par.15 and Exhibit O).

May 16: Meeting between Gray and Metecheah to discuss funding for consultation (TUS). (Metecheah Affidavit at par.15; Lawson Affidavit #2 at par.19; Gray Affidavit #1 at par.2. See also Havlik Affidavit at par.3 and Exhibit B)

May 19: Letter from Metecheah to Gray stating that TLE Claim nearly ready for submission and expressing concern re planning activities taking place in Tusdzuh. (Exhibit 16 to Lawson Affidavit #2; Exhibit B to Gray Affidavit #1)

May 23: Canfor tree-planters threatened by HRIB members. (Stephenson Affidavit at par.46)

May 31: Letter from Canfor (Stephenson) to Gray requesting clarification of MOF's policy re TLE Claim. (Exhibit 4 to Lawson Affidavit #2; Exhibit C to Havlik Affidavit; Exhibit 21 to Stephenson Affidavit)

June 2: Letter from Gray to Metecheah suggesting meeting to obtain funding for TUS. (Exhibit E to Metecheah Affidavit; Exhibit 17 to Lawson Affidavit #2; Exhibit E to Gray Affidavit #1)

June 5: Meeting between Canfor and Native representatives; Metecheah threatens blockade if logging occurs in CP212. (Stephenson Affidavit at par.48)

Letter from Gray to Stephenson outlining MOF policy. (Exhibit 5 to Lawson Affidavit #2; Exhibit N to Lawson Affidavit #1)

June 12: Canfor representative presents lists of blocks to be assessed in 1995, including CP212, at a training session on the HRIB reserve. (Stephenson Affidavit at par.49)

Letter from Council of Forest Industries to MOF requesting information re MOF's position re HRIB's TLE Claim. (Exhibit 6 to Lawson Affidavit #2)

June 19: HRIB decides to go ahead with TUS. (Metecheah Affidavit at par.19; Havlik Affidavit at par.7 and Exhibit F)

Letter from T8TA to Gray complaining about a Socio-Economic Analysis prepared for the MOF. (Exhibit F to Maas Affidavit; Exhibit H to Havlik Affidavit)

June 23: Fax from Gray to T8TA of contract and terms of reference for TUS that MOF had entered into with the Doig River Indian Band. (Exhibit C to Gray Affidavit #1)

June 25: Letter from Gray to Stephenson advising that he could submit CPs 212 & 213 for approval and noting that MOF would follow the Protection of Aboriginal Rights policy. (Exhibit 7 to Lawson Affidavit #2; Exhibit D to Havlik Affidavit; Exhibit 22 to Stephenson Affidavit)

July 12: Letter from Metecheah to Gray outlining problems with TUS as proposed by MOF. (Exhibit D to Gray Affidavit #1)

July 20: Letter from MOF to COFI setting out MOF policy. (Exhibit 8 to Lawson Affidavit #2)

July 31: Letter from HRIB to Industry and Government Representatives stating that it is necessary to hire HRIB members to do work within HRIB's traditional territory. (Exhibit 23 to Stephenson Affidavit)

August 1: Havlik, Metecheah and Whitford (all HRIB) discuss pressure from Canfor. (Havlik Affidavit at par.6 and Exhibit E)

Telephone calls between HRIB and Hewitt and Stephenson; HRIB requested that there be no more assessments in CP212 and that Canfor tear down flagging tape. (Stephenson Affidavit at par.51)

August 3: 10th meeting of Project Advisory Committee; Metecheah and Maas advised Canfor that they don't want to see logging in CP212. (Stephenson Affidavit at par.52)

Aug 10: Letter from Metecheah to Canfor saying that HRIB wants no activity in the Tusdzuh area and accusing Canfor of not acting in good faith. (Exhibit G to Metecheah Affidavit; Exhibit 24 to Stephenson Affidavit)

Aug 14: Letter from Canfor to HRIB offering first right of refusal for harvesting of a Timber Sale to the Band. (Exhibit 25 to Stephenson Affidavit)

Aug 15: Letter from T8TA to Gray outlining complaints re Socio-Economic Analysis. (Exhibit G to Maas Affidavit; Exhibit I to Havlik Affidavit)

Aug 22: Fax from T8TA to Gray of HRIB's proposal for TUS. (Exhibit E to Gray Affidavit #1)

Hewitt met with Project and Field Managers and advised them that CP212 should be included in the list of assessments. (Stephenson Affidavit at par.55)

Aug 31: Letter from Canfor to Metecheah stating that planning activities for logging would continue and commenting on the Dunne-Za/Canfor project. (Exhibit H to Metecheah Affidavit; Exhibit 9 to Lawson Affidavit #2; Exhibit D to Maas Affidavit; Exhibit 26 to Stephenson Affidavit)

Sept 8: Portions of CP212 had been assessed by HRIB at this point. (Stephenson Affidavit at par.57)

Letter from Gray to Treaty 8 Tribal Association critiquing the draft TUS. (Exhibit J to Metecheah Affidavit; Exhibit 18 to Lawson Affidavit #2; Exhibit F to Gray Affidavit #1; Exhibit E to Maas Affidavit; Exhibit G to Havlik Affidavit)

Sept 12: 11th Project Advisory Committee meeting; Metecheah says no logging in CP212 or HRIB will blockade. (Stephenson Affidavit at par.58)

Sept 15: Letter from HRIB to Canfor declining offer re Timber Sale and suggesting Canfor offer contract to Jerry

Hunter, a Band contractor. (Exhibit 27 to Stephenson Affidavit)

Letter from Metecheah to Gray saying the TUS will be done "in the proper manner" and asking if the MOF will work collaboratively. (Exhibit K to Metecheah Affidavit; Exhibit G to Gray Affidavit #1. This letter was received Oct.31, 1995: Gray Affidavit #1 at par.11)

October: Canfor applies for cutting permit in CP212. (Metecheah Affidavit at par.22)

Oct 3: 12th Project Advisory Committee meeting; Stephenson advised committee of Canfor's intention to continue CP212 planning activities. (Stephenson Affidavit at par.60)

Oct 4: Canfor inspects CP212-5 and relocates road around horse corral. (Stephenson Affidavit at par.61)

Oct 5: Letter from Metecheah to Minister of Forests requesting a meeting to discuss Canfor logging proposal for CP212. (Exhibit M, Metecheah Affidavit; Exhibit 10 to Lawson Affidavit #2)

Oct 18: Hewitt advises Ruttan that he wants assessments of CP212, blocks 1, 5, and 19. (Stephenson Affidavit at par.62)

Oct 23: Letter from Hewitt (Canfor) to St. Jean (MOF) with cutting permit application for CP212. (Exhibit P to Lawson Affidavit #1; Exhibit 11 to Lawson Affidavit #2; Exhibit 28 to Stephenson Affidavit)

Oct 26: Notice of CP212 Silviculture Prescription advertised in *British Columbia Gazette*. (Stephenson Affidavit at par.64)

Oct 27: Notice of CP212 Silviculture Prescription advertised in *Alaska Highway Daily News*. (Stephenson Affidavit at par.65)

Letter from T8TA to Minister of Forests requesting a halt to activities in the Tusdzuh. (Exhibit 12 to Lawson Affidavit #2)

Nov 1: 13th Project Advisory Committee meeting. (Stephenson Affidavit at par.66)

Nov 6: Letter from Minister of Forests to T8TA stating that the government can't halt development pending the

resolution of the HRIB's claim. (Exhibit 13 to Lawson Affidavit #2; Exhibit O to Lawson Affidavit #1)

Nov 8: Letter from Lawson to Metecheah including a copy of Canfor's CP212 application and requesting information on HRIB traditional activities in the area of CP212. (Exhibit Q to Lawson Affidavit #1; Exhibit N to Metecheah Affidavit; Exhibit 14 to Lawson Affidavit #2; Exhibit H to Maas Affidavit)

Nov 15: Letter from Gray to Metecheah outlining problems with HRIB's proposed TUS and requesting a meeting with Metecheah. (Exhibit 19 to Lawson Affidavit #2; Exhibit H to Gray Affidavit #1)

Canfor signs contract with Haystack Enterprises for harvesting of Timber Sale. (Stephenson Affidavit at par.67)

Nov 21: Letter from Metecheah to Canfor inviting Canfor to meet to discuss the environmental and social impacts of Canfor logging in the HRIB's traditional territory. (Exhibit O to Metecheah Affidavit; Exhibit 29 to Stephenson Affidavit)

Nov 26: Heritage North Consulting sends report on historical sites in CP212 to HRIB. (Metecheah Affidavit at par.26)

Nov 27: Letter from Canfor to Metecheah requesting a different date for the meeting proposed by Metecheah. (Exhibit 30 to Stephenson Affidavit)

Nov 27-8: Joint MOF/T8TA workshop during which First Nations people criticized the government. (Lawson Affidavit #2 at par.23; see also Maas Affidavit at par.12)

Nov 30: Letter from Lawson to Canfor approving 1995/2000 FDP. (Exhibit F to Lawson Affidavit #1)

Dec 1: T8TA sends Heritage North Report to MOF. (Exhibit P to Metecheah Affidavit; Exhibit 15 to Lawson Affidavit #2)

Dec 5/6: E-mails sent among MOF officials. (Exhibit 20 to Lawson Affidavit #2; Exhibit I to Maas Affidavit)

Dec 15: HRIB submits TUS proposal alone. (Exhibit Q to Metecheah Affidavit; Exhibit I to Gray Affidavit #1)

Letter from Metecheah to Petter suggesting a meeting between HRIB and Assistant Deputy Minister Janna Kumi in early January to discuss logging and development

of a meaningful consultation process. (Exhibit R to Metecheah Affidavit; Exhibit 55 to Lawson Affidavit #2)

Dec 18: Telephone conversation between Gray and Senecal (T8TA) re TUS Proposal. Senecal says he won't change it. (Gray Affidavit #2 at par.7)

Dec 19: E-mail from Gray to Moon (Aboriginal Affairs Branch) re TUS Proposal. (Exhibit A to Gray Affidavit #2)

Dec 21: MOF invites proposals re CHOA. (Lawson Affidavit #2 at par.30)

Letter from Madill to Metecheah advising that MOF was proceeding with a CHOA and urging HRIB to contact the MOF. (Exhibit 21 to Lawson Affidavit #2)

MOF requests MOE to prepare a report on CP212. (Exhibit 41 to Lawson Affidavit #2; Exhibit R to Lawson Affidavit #1; Exhibit A to Lambert Affidavit)

1996

Jan 4: MOF receives draft report from MOE ("Potential Impacts to Fish & Wildlife Resources"). (Lawson Affidavit #2 at par.71; Lambert Affidavit at par.3)

Jan 10: Meeting between HRIB and Canfor representatives; HRIB asks for more involvement in forestry planning. (Stephenson Affidavit at par.70)

Jan 18: Letter from Metecheah to Canfor outlining what was agreed at the January 10 meeting. (Exhibit 31 to Stephenson Affidavit)

Jan 26: Meeting between MOF and HRIB representatives; HRIB asked to provide specific information with respect to resource use in the TLE area. (Lawson Affidavit #1 at par.43; Metecheah Affidavit at par.30; Lawson Affidavit #2 at par.33)

Internal MOF e-mail from Willis to Gray criticizing the HRIB TUS proposal. (Exhibit M to Maas Affidavit)

Jan 29: MOF approves cutting of CP212-19; letter sent by MOF to Canfor. (Exhibit T to Metecheah Affidavit; Exhibit 22 to Lawson Affidavit #2; Exhibit 32 to Stephenson Affidavit)

Feb 2: Meeting between HRIB, Blueberry River Band, Doig River Band, T8TA and MOF to discuss implementation of the Dunne-Za Report. Band were verbally aggressive ("hanging white men"). (Lawson Affidavit #2 at par.34)

Letter from band chiefs to Minister of Forests. (Exhibit 24 to Lawson Affidavit #2)

Feb 8: Letter from HRIB to MOF re January 26 meeting. This letter states that the HRIB is willing to consult with the MOF provided that such consultation is meaningful and sets out the importance of CP212 to the HRIB. (Exhibit S to Metecheah Affidavit; Exhibit 25 to Lawson Affidavit #2)

Feb 12: Letter from Canfor to Metecheah responding to recommendations in the Dunne-Za final report re CP114 and requesting a meeting with Metecheah and Lawson. (Exhibit 33 to Lawson Affidavit #2)

Feb 14: Letter from Lawson to Metecheah outlining his definition of "consultation". (Metecheah Affidavit, Exhibit U; Exhibit 26 to Lawson Affidavit #2; Exhibit J to Maas Affidavit)

Letter from Paul Kerr, TUS Research Officer to Heather Moon outlining concerns re HRIB TUS proposal. (Exhibit J to Gray Affidavit #1. This letter was faxed to John Gray: see Exhibit K to Maas Affidavit)

Feb 16: Letter from Lawson to Metecheah inviting participation in the CHOA. This letter was not received until February 22, 1996 and specified that the study would be completed by February 21, 1996. (Metecheah Affidavit at par.35 and Exhibit V; Lawson Affidavit #2 at par.39 and Exhibit 27)

Feb 19: Letter from Indian and Norther Affairs Canada to Metecheah concerning TLE Claim. (Exhibit W to Metecheah Affidavit)

Feb 20: Letter from Lawson to Metecheah. This letter states: "It is expected that this information gathering [CHOA] will be concluded by February 21, 1996. At that time a decision will be made regarding the potential infringement of Treaty Rights and to the issuance of CP 212." Lawson then goes on to invite the HRIB to participate in a land management planning process starting in March, 1996 and lasting no more than 4 month. (Metecheah Affidavit Exhibit X; Exhibit 29 to Lawson Affidavit #2)

Feb 21: Telephone conversation between Lawson and Metecheah. (Lawson Affidavit #2 at par.43)

Telephone conversation between Lawson and Rath; Lawson tells Rath he would not consider stopping cutting in all of CP212. This is disputed by Lawson. (Metecheah Affidavit at par.38. The notation "struck" appears next to this paragraph. See Lawson Affidavit #2 at pars.45-47)

HRIB erects sign on Haystack Road. (Lawson Affidavit #2 at par.40)

Feb 26: Letter from MOF to FRBC detailing concerns with HRIB TUS Proposal. (Exhibit K to Gray Affidavit #1; Exhibit A to Negrave Affidavit; Exhibit J to Havlik Affidavit)

Letter from Lawson to Metecheah indicating that CHOA is complete and the cutting permit is ready for final review and requesting a meeting, preferably on March 1. (Exhibit Y to Metecheah Affidavit; Exhibit 30 to Lawson Affidavit #2)

Feb 29: Letter from Rath to Lawson requesting that the March 1 meeting be put off until March 29 to enable HRIB time to prepare and stating the legal position that the MOF may not approve any cutting permits for CP212 without consultation with the HRIB. (Exhibit Z to Metecheah Affidavit; Exhibit 31 to Lawson Affidavit #2)

March 1: Canfor and MOF staff meet to discuss CP212. (Metecheah Affidavit at par.42; Lawson Affidavit #2 at par.55)

Telephone conversation between Rath and Lawson during which Lawson tells Rath he wants to meet ASAP after March 29. (Lawson Affidavit #2 at par.49)

March 5: Letter from Lawson to Rath saying that decision re CP212 will be made within a couple of weeks and requesting information from and a meeting with the HRIB. (Exhibit AA to Metecheah Affidavit; Exhibit 32 to Lawson Affidavit #2)

March 7: CHOA report sent to HRIB for review and comment. Letter from Madill to Metecheah inviting comment and discussion on treaty rights. (Lawson Affidavit #1 at par.42; Exhibit BB Metecheah Affidavit; Exhibit 28 to Lawson Affidavit #2)

Letter from Metecheah to Canfor agreeing to allow cutting of CP212-19 provided a 2km buffer is placed around the TLE Area. (Exhibit CC to Metecheah Affidavit; Exhibit 33 to Stephenson Affidavit)

March 14: Letter from Lawson to Metecheah summarizing steps to date and requesting information on CP212 and a meeting in the near future. (Exhibit 35 to Lawson Affidavit #2)

March 15: Letter from Lawson to Metecheah summarizing process to date and expressing willingness to meet with HRIB ASAP. Any information from HRIB will be taken into serious consideration. (Exhibit DD to Metecheah Affidavit)

March 21: Letter from Canfor to Metecheah refusing to halt logging in the area and expressing a desire to work something out with the HRIB. (Exhibit EE to Metecheah Affidavit; Exhibit 34 to Stephenson Affidavit)

March 25: Letter from Minister of Forests to T8TA stating that the government's policy is not to halt development pending TLE Claims and encouraging the HRIB to participate in the planning process offered by the MOF. (Exhibit 56 to Lawson Affidavit #2; Exhibit L to Maas Affidavit)

April 3: Letter from Minister of Forests to 3 Chiefs stating that information they provided would be considered and encouraging them to work with Lawson. (Exhibit 57 to Lawson Affidavit #2)

April 8: Letter from Metecheah to Canfor reiterating request for a 2km buffer. (Exhibit FF to Metecheah Affidavit)

April 15: Letter from Rath to Lawson requesting he meet with HRIB on May 16, 1996 since he (Lawson) was unavailable during April but was available from May 13-17. (Exhibit GG to Metecheah Affidavit; Exhibit 36 to Lawson Affidavit #2)

May 13: Lawson meets with HRIB, presents map indicating proposed harvesting activities for 1996/97 re CP212, and invites HRIB to enter into an enhanced planning process with MOF. (Lawson Affidavit #1 at par.44; Metecheah Affidavit at par.49; Lawson Affidavit #2 at pars.60, 61; see Exhibit 37 to Lawson Affidavit #2 for draft agenda of meeting; and Exhibit 38 to Lawson Affidavit #2 for Lawson's e-mail summary of this meeting)

May 15: Meeting between HRIB and Canfor representatives to discuss replacing the Dunne-Za agreement. (Stephenson Affidavit at par.75)

May 22: Meeting between Maas and Stephenson to discuss solutions re Canfor's proposed logging. (Stephenson Affidavit at par.76)

Telephone call between Metecheah and Stephenson; Metecheah refuses request to present Five Year Development Plan to HRIB. (Stephenson Affidavit at par.77)

May 27: Letter from FRBC to Metecheah rejecting funding proposal. (Exhibit HH to Metecheah Affidavit)

June 4: Telephone conversation between Lawson and Rath; Rath says HRIB wants to sit down and work things out. (Lawson Affidavit #2 at par.62)

Meeting between Maas and Stephenson discussing potential consultation. (Stephenson Affidavit at par.78)

June 10: Letter from Chiefs Yahey, Attachie and Metecheah to Lawson discussing MOF's fiduciary obligations, requesting meaningful consultation and suggesting that MOF provide funding to the HRIB. (Exhibit II to Metecheah Affidavit; Exhibit 39 to Lawson Affidavit #2)

June 12: Telephone conversation between Lawson and Rath; Rath advises June 10 letter is not HRIB response to proposed enhanced planning process. (Lawson Affidavit #2 at par.63)

June 19: Letter from Lawson to Metecheah stating that MOF would contact him to set up a meeting re establishing a MOU on consultation. (Exhibit 40 to Lawson Affidavit #2)

Meeting between Maas and Stephenson. (Stephenson Affidavit at par.79)

June 21: Lambert discusses his concerns re CP212 with Canfor at round table meeting. (Lambert Affidavit at par.4)

July 2: Letter from T8TA to Minister of Forests complaining about the lack of cooperation from FRBC and requesting support for TUS which would amount to $1.6 million. (Exhibit 58 to Lawson Affidavit #2)

July 4: FRBC and T8TA representative meet to discuss TUS in CP212. (Maas Affidavit at par.17)

Letter sent by T8TA to FRBC requesting copies of information in the TUS file. (Maas Affidavit at par.18)

July 18: Letter from Metecheah to Canfor including proposed guidelines for community based biophysical field assessments of forest operations. (Exhibit 36 to Stephenson Affidavit)

July 23: Meeting between MOF and T8TA representatives to discuss MOU on consultation at which Madill (MOF) said he couldn't discuss issues of that magnitude. (Lawson Affidavit #2 at par.67)

July 25: Letter from Chiefs to Canfor enclosing Draft Letters of Intent. (Exhibit 37 to Stephenson Affidavit)

July 26: Letter from Canfor to Ruttan setting out when Canfor will be willing to pay his invoices and including a proposal for a joint Canfor/HRIB study of the proposed cut blocks which Canfor would fund. (Exhibit JJ to Metecheah Affidavit; Exhibit 38 to Stephenson Affidavit)

July 29: Meeting between HRIB and Canfor representatives to discuss cutblock assessments. (Stephenson Affidavit at par.84)

July 30: Letter from Minister of Forests to T8TA outlining requirements for TUS and suggesting they speak to the TUS Coordinator re resubmission of their proposals. (Exhibit 59 to Lawson Affidavit #2)

August: Canfor submits 1996/2001 FDP for approval. (Lawson Affidavit #1 at par.30 and Exhibit H)

August 6: Meeting between HRIB, T8TA and Canfor representatives to discuss cutblock assessments. (Stephenson Affidavit at par.85)

August 7: Letter from Metecheah and Yahey to Canfor criticizing Canfor's approach and including proposed budgets. (Exhibit 39 to Stephenson Affidavit)

Aug 13: MOF receives final version of report "Potential Impacts to Fish & Wildlife Resources" from MOE. (Lawson Affidavit #2 at par.72 and Exhibit 42; Lambert Affidavit at par.5 and Exhibit C)

Aug 14: Meeting between Stephenson and FRBC employees; FRBC indicates TUS proposal won't be approved unless amended. (Stephenson Affidavit at par.14)

Aug 15: Letter from Higginbotham to Senecal agreeing to meet to discuss issues in August 7 letter, but not until after an internal assessment in early September. (Exhibit 40 to Stephenson Affidavit)

Aug 19: Lambert and Schilling (Canfor) travel down FSR to CP212 and see a sign forbidding entry. (Lambert Affidavit at par.7)

Aug 26: Copy of the report *Potential Impacts to Fish and Wildlife Resources* sent to HRIB by Lawson. (Exhibit KK to Metecheah Affidavit: Lawson Affidavit #2 at par.72)

Aug 27: Letter from Lawson to Metecheah notifying him that a decision will be made September 13. Lawson states: "my offer for an enhanced planning exercise for the Treaty Land Entitlement Claim Area is still available" and requests information from the HRIB with respect to Treaty Rights practised in CP212. (Exhibit T to Lawson Affidavit #1; Exhibit 43 to Lawson Affidavit #2)

Aug 29: Letter from Lawson to Metecheah setting out Canfor's logging plans and requesting information. (Exhibit 44 to Lawson Affidavit #2)

Sept 2: Lambert issues amended report. (Lambert Affidavit at 6)

Sept 5: Robert Ruttan phones MOF (Howard Madill) and requests copies of logging plans, stating that he had been asked to do an assessment of CPs 212, 213 and 220 by the HRIB. (Madill Affidavit at par.2; Lawson Affidavit #2 at par.76)

Sept 6: Letter from Metecheah to Lawson indicating that the HRIB is willing to consult with the MOF, but only if that consultation is meaningful. Metecheah states: "Suffice it to say that common sense requires any meaningful consultation to take place on a level playing field where an honest effort is made to assess the full nature and extent of any potential impact on treaty guaranteed priority land use rights, and where the affected First Nation is provided with the financial resources both to facilitate its participation and to obtain access to independent technical advice. There must also be some assurance that, once provided, the First Nation's input will

not be ignored, and that the raw data used as a basis for the input will not be misused or indiscriminately distributed." This letter was faxed September 9. (Exhibit U to Lawson Affidavit #1; Exhibit 45 to Lawson Affidavit #2; Exhibit B to Gunnarsen Affidavit)

Sept 9: Letter from Metecheah to Lawson formally requesting that the decision with respect to CP212 be postponed and that a further meeting be held between the HRIB and the MOF. (Exhibit V to Lawson Affidavit #1; Exhibit MM to Metecheah Affidavit; Exhibit 46 to Lawson Affidavit #2)

Sept 10: Lawson attempts to call Metecheah. (Lawson Affidavit #2 at par.78)

Sep11/12: Telephone conversations between Lawson and Metecheah. Lawson invites Metecheah to provide information to assist him with making a decision on September 13. (Lawson Affidavit #1 at par.48; Lawson Affidavit #2 at pars.79, 81)

Sept 12: Letter from Canfor to Metecheah re amendment to CP212. (Exhibit 7A to Menzies Affidavit)

Letter from MOF to Canfor extending approval for Management and Working Plan. (Exhibit 4 to Stephenson Affidavit)

Letter from Canfor to MOF with amendment to CP212; formal application re CP212. (Exhibit 47 to Lawson Affidavit #2; Exhibit W to Lawson Affidavit #1)

Fax from Lawson to Metecheah indicating he is prepared to meet with Metecheah and requesting a meeting for September 12 so that he has information from Metecheah for the September 13 decision. (Exhibit NN to Metecheah Affidavit; Exhibit 48 to Lawson Affidavit #2)

Fax from Metecheah to Lawson summarizing the situation and requesting a meeting for September 19 in order to establish a meaningful process for consultation. (Exhibit OO to Metecheah Affidavit; Exhibit 49 to Lawson Affidavit #2)

Sept 13: Lawson meets with Canfor and Lambert to review Lambert's report and Canfor's application. (Lawson Affidavit #2 at pars.86-90; Lawson Affidavit #1 at par.50; Lambert Affidavit at par.10, 11)

Lawson decides to conditionally approve the cutting permit. (Lawson Affidavit #1 at par.50)

Letter from Lawson to Canfor approving CP212-1,2,4,5,17&18. (Exhibit 50 to Lawson Affidavit #2)

Fax from Lawson to Metecheah indicating Madill would meet with HRIB September 19 re enhanced planning process but that review and determination of cutting permits would continue. (Exhibit PP to Metecheah Affidavit; Exhibit 51 to Lawson Affidavit #2)

Fax from Lawson to Metecheah indicating CP212 had been approved. (Exhibit QQ to Metecheah Affidavit)

Sept 16: Letter from HRIB to Madill (MOF) re proposed September 19 meeting. (Exhibit 52 to Lawson Affidavit #2)

Sept 19: Meeting between MOF and Metecheah to discuss approval of CP212; Gunnarsen allegedly states HRIB not adequately consulted. (Metecheah Affidavit at par.60: Gunnarsen Affidavit at par.3; Maas Affidavit at par.20; Cameron Affidavit at pars.2-8 and Exhibit A)

Sept 20: Letter from Metecheah to Minister of Forests requesting a meeting. (Exhibit RR to Metecheah Affidavit)

Sept 30: Letter from Metecheah to Minister of Forests requesting a meeting. (Exhibit SS to Metecheah Affidavit)

Oct 1: Havlik makes application under *Freedom of Information and Protection of Privacy Act* for FRBC and MOF records re TUS Proposal. (Havlik Affidavit at par.12 and Exhibits K and L)

Oct 3: Lawson provides written reasons. (Metecheah Affidavit at par.62 and Exhibit TT; Lawson Affidavit #2 at par.94 and Exhibit 53; Lawson Affidavit #1 at par.51 and Exhibit X; Exhibit 41 to Stephenson Affidavit)

Oct 16: Letter from Lawson to Metecheah requesting input on Canfor's Forest Development Plan. (Exhibit 54 to Lawson Affidavit #2; Exhibit J to Lawson Affidavit #1)

Oct 17: Meeting between Bands and Canfor to discuss consultation. (Stephenson Affidavit at par.89)

Oct 21: Letter from Indian and Northern Affairs to Havlik (HRIB) re TLE Claim indicating that there was a

shortfall in the reserve land allocated to the HRIB. (Exhibit M to Havlik Affidavit)

Oct 24: Letter from Metecheah to Minister of Forests requesting a meeting. (Exhibit UU to Metecheah Affidavit)

Nov 3: Stephenson and an archaeologist denied access to CP212 by Metecheah. (Stephenson Affidavit at par.92)

Nov 4: Letter from Metecheah to Canfor stating that "Until the Minister of Forests himself meets with our Chief and Council, we will not allow anyone into the CP212 area." (Exhibit 43 to Stephenson Affidavit)

Nov 7: Letter from Metecheah to Minister of Forests requesting a meeting. (Exhibit VV to Metecheah Affidavit)

Nov 26: Letter from Canfor to Metecheah informing him that road construction re CP212 would commence the next day. (Exhibit WW to Metecheah Affidavit; Exhibit 44 to Stephenson Affidavit)

Nov 27: Stephenson and others attempt to start work on CP212 but are prevented from entering the area by HRIB members. (Stephenson Affidavit at pars.96-107)

Nov 29: Letters from Lawson to Canfor approving 1996/2001 FDP. (Exhibit K to Lawson Affidavit #1)