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Ottawa, Ontario, July 20, 2007

PRESENT: The Honourable Mr. Justice Blanchard

PRESENT:

CHIEF LLOYD CHICOT suing on his own behalf and on behalf of all Members of the KA'A'GEE Tu First Nation and the KA'A'GEE TU FIRST NATION

Applicants

and

THE ATTORNEY GENERAL OF CANADA and PARAMOUNT RESOURCES LTD.

Respondents

REASONS FOR ORDER AND ORDER

INDEX

1. Introduction

[1] This application for judicial review challenges the decision to approve a recommendation of a project involving oil and gas development in the Northwest Territories. The project, known as the Extension Project, proposed by Paramount Resources Ltd. (Paramount) is located in the Cameron Hills, over which the Ka'a'Gee Tu First Nation (KTFN) claims Aboriginal rights and treaty rights. The KTFN states that the project negatively impacts their established treaty rights and their asserted Aboriginal rights and consequently argues that the Crown had a duty to consult and accommodate before approving the project. In this application the KTFN claims that the Crown failed to meet its duty to consult and accommodate.

2. Background Facts

- *The Parties*

[2] The KTFN, a community of the Deh Cho First Nations (DCFN) who descend from the South Slavey people of the Dene Nation, and its Chief Lloyd Chicot are Applicants in this proceeding. On November 1, 1990, a sub-Band of the Fort Providence Band consisting of 36 members residing at Kakisa Lake formed the Kakisa Lake Band. In 1996, the Kakisa Lake Band Council resolved to be known as the Ka'a'Gee Tu First Nation. Currently there are approximately 55 people living at the Kakisa settlement on the east side of Kakisa Lake. There are now about 62 people on the KTFN Band list.

[3] Paramount, a Respondent in this application, is a Calgary based energy company that explores, develops, processes, transports and markets oil and gas. Paramount has explored and

developed oil and gas reserves in the Cameron Hills area since about 1979, after it acquired exploration licenses for approximately 80,800 acres in that area.

[4] The "Responsible Ministers" pursuant to section 111 of the *Mackenzie Valley Resource Management Act*, 1998 c. 25 (the Act) are the Minister of Indian and Northern Affairs Canada (INAC), the Minister of Fisheries and Oceans, the Minister of the Environment Canada and Natural Resources Government of the Northwest Territories.

- *The Geography*

[5] Cameron Hills is a remote area in the Northwest Territories just north of the Alberta border, consisting of a high plateau, which is south of Tathlina Lake and a collection of surrounding lower laying hills to the southwest and west of Tathlina Lake. Paramount's development project is located on the high plateau. The plateau is inaccessible from the north, northwest and southeast sides, and is accessible only by a winter road when the ground is frozen, via the southwest side where the terrain is not as steep. The Cameron River flows in a northwesterly direction off the plateau and eventually into Tathlina Lake which is located about 10 kilometers north of the plateau. Kakisa Lake lies approximately 70 kilometers north of the Cameron Hills plateau, and Kakisa settlement is situated on the east side of that lake.

[6] The Applicants claim a deep spiritual and cultural connection, as well as an economic reliance on the Cameron Hills. In the words of Chief Chicot: "our culture, economy, spirituality and our way of life are intimately connected to our land, which supports and sustains us. Our land is the home of the Ka'a'Gee Tu people who are alive today as well as the home of our

ancestors and the home for all future generations of Ka'a'Gee Tu". Prior to the arrival of settlers to the area, the KTFN have harvested animals, fish, trees and water from the area, and many families continue to hunt and trap in the Cameron Hills area.

[7] The Applicants claim stewardship over the Cameron Hills area. However, other Aboriginal groups, including the Deh Cho members of the Deh Gah Got'ie, the Katlodeeche, the West Point and the Trout Lake First Nations; the Alberta First Nation Dene Tha'; the Fort Providence First Nation and the NWT Métis also claim Cameron Hills as part of their traditional territory. There is no consensus amongst these Aboriginal groups regarding this stewardship.

[8] There is no dispute amongst the parties in this application that the lands subject to Paramount's proposed development are also the lands over which the Applicants claim treaty rights and assert Aboriginal rights. There is no agreement, however, concerning the seriousness of the impact of Paramount's proposed project on these rights. While the Respondents agree that the Crown owed a duty to consult to the Applicants, there is no agreement on the scope or content of that duty. The Respondents take the position that the Crown discharged its duty to consult in the circumstances.

- *The Project*

[9] Oil and gas development in the Cameron Hills proceeded in phases. Exploration for oil and gas began in the early 1960s. Paramount obtained long term mineral rights in the early 1980s and by 2004 had been granted several exploration, discovery and production licenses. Paramount's development in the Cameron Hills proceeded in three phases: the Drilling Project

(August 2000), the Gathering and Pipeline System Project (April 2001), and the Extension Project (August 2003). These three projects are collectively referred to as the Cameron Hills Development. The development proposed at the outset consisted of setting up a trans-border pipeline, central battery and gathering facilities. Once the construction of the Gathering and Pipeline System had been completed in August 2002, Paramount sought land use permits and water licenses to access new well sites and tie-in the new wells to the newly constructed gathering system. This aspect of the development came to be known as the Extension Project. It signalled the beginning of Paramount's production work in the Cameron Hills. The approval of the Extension Project is the decision being reviewed in this application.

[10] The Extension Project is significant in scope. Over time, the Project will include: drilling, testing and tie-in of up to 50 additional wells over a period of 10 years; oil and gas production over a 15 to 20 year period; excavation of 733 km of seismic lines; construction of temporary camps servicing up to 200 workers; the withdrawal of water from lakes; and the disposal of drill waste.

[11] Before turning to the issues in this application, which essentially concern the Crown's duty to consult, it is necessary to understand the context in which the impugned decision was made. To that end, I propose to review background information in respect to the applicable treaties, the Deh Cho comprehensive land claims process, the regulatory approval process under the Act and how this process was applied in the circumstances of this case.

- *Treaties 8 and 11*

[12] The Deh Cho First Nations fall within Treaty 8 and 11. Treaty 8 was signed on June 21, 1899, and Treaty 11 was signed on June 27, 1921 with an adherence agreement signed on July 17, 1922. At the time of the signing of Treaty 11, the KTFN was part of the community of Deh Cho First Nations and are consequently bound by that Treaty. Both Treaties contain cession of land and surrender of rights provisions. The Treaties also guarantee to its Aboriginal signatories the right to pursue "their usual vocations of hunting, trapping and fishing throughout the tract surrendered". Both Treaties also provided for the creation of reserve lands. However, in the Northwest Territories (the NWT), no reserves have been set aside pursuant to Treaty 11, the treaty at issue in this application.

[13] The Crown in right of Canada and the Deh Cho First Nations disagree on whether Treaty 11 extinguished Aboriginal title. The Crown construes Treaty 11 as an extinguishment treaty while the Deh Cho and the Applicants understand Treaty 11 to be a peace and friendship treaty, whereby Aboriginal title was not surrendered. The Applicants contend that the Deh Cho did not allow reserve lands to be set aside pursuant to the Treaties because they did not want to submit to the Crown's interpretation of the Treaties.

[14] While Aboriginal title in respect to the land under the treaties is disputed there is no dispute as to the existence of the Applicants' treaty rights to hunt, fish and trap in the Cameron Hills area.

- *Deh Cho Process*

[15] In 1976 and 1977, on the basis that the land provisions of the Treaties had not been implemented, Canada accepted comprehensive land claims from the Dene and Métis of the Mackenzie Valley in the NWT. Ultimately, agreements were reached and implemented in respect of the Gwich'in, the Sahtu Dene and the Métis, all under Treaty 11, following which Canada passed the Act essentially to give effect to these agreements. The Act was amended in August 2005 to reflect the requirements of the land claims and self-government agreement between Canada and the Tlicho.

[16] The relevant outstanding comprehensive land claim relating to Treaty 11 is with respect to what is known as the Deh Cho region, which includes the Cameron Hills area. This claim was accepted for negotiation by the Crown in right of Canada in 1998. The negotiation process became known as the "Deh Cho Process". The parties to the negotiations are the Deh Cho First Nations, including the Applicants, the Government of Canada and the Government of the Northwest Territories. The process was to provide a forum for respectful interaction of Aboriginal and Crown titles and jurisdictions with the view of negotiating a final agreement.

[17] Although negotiations are ongoing in the Deh Cho Process, various agreements have been reached along the way, including the Interim Measures Agreement of 2003, which contemplates collaborative land use planning for the Deh Cho territory in accordance with Deh Cho principles of respect for land. This agreement establishes the Deh Cho Land Use Planning Committee which provides for the conservation, development and utilization of the land, waters and other resources. Under this agreement, Canada and the Deh Cho First Nations have

identified and negotiated the withdrawal of certain lands from disposal and mineral staking. Criteria agreed upon in identifying such lands include: lands used for the harvest of food and medicines; lands that are culturally and spiritually significant; lands which are ecologically sensitive as well as watersheds. Withdrawn lands remain subject to the continuing exercise of existing rights and interests.

- *Regulatory Approval Process*

[18] Oil and gas development in the Mackenzie Valley is complex involving several pieces of legislation and engaging several administrative bodies. The text of pertinent statutory provisions is attached to these reasons as Appendix A.

[19] Construction and operation of a pipeline and gathering system occurs under the authority of the National Energy Board (the NEB), pursuant to the *Canada Oil and Gas Operations Act*, R.S., 1985, c. O-7, and the *Canadian Petroleum Resources Act*, R.S., 1985, c. 36 (2nd Supp.). Following the Gwich'in and Métis Comprehensive Land Claim Agreements, the *Mackenzie Valley Resource Management Act* was enacted in 1998. It provides for two regulatory boards: the Mackenzie Valley Land and Water Board (the Land and Water Board) and the Mackenzie Valley Environmental Impact Review Board (the Review Board). These Boards are established pursuant to the Act as institutions of public government within an integrated and coordinated system of land and water management in the Mackenzie Valley.

[20] The Land and Water Board and the Review Board are established for the purpose of regulating all land and water uses, including deposits of waste, in the Mackenzie Valley. Bill

C-6, which preceded the legislation, took five years to complete, during which time there was considerable consultation with all affected groups, including affected First Nations who were funded to review the proposed Bill.

[21] Under the Act, the Land and Water Board is responsible for issuing land use permits and water licences in the unsettled land claim areas within the Mackenzie Valley. A developer must apply to the Land and Water Board for a land use permit and water licence where the proposed activity is to be carried out in the Mackenzie Valley. Section 60.1 of the Act specifically requires that the Land and Water Board gives consideration to "the well-being and way of life of the Aboriginal peoples of Canada" in making its decisions. The section provides as follows:

60.1 In exercising its powers, a board shall consider (*a*) the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley; and (*b*) any traditional knowledge and scientific information that is made available to it.	**60.1** Dans l'exercice de ses pouvoirs, l'office tient compte, d'une part, de l'importance de préserver les ressources pour le bien-être et le mode de vie des peuples autochtones du Canada visés par l'article 35 de la *Loi constitutionnelle de 1982* et qui utilisent les ressources d'une région de la vallée du Mackenzie et, d'autre part, des connaissances traditionnelles et des renseignements scientifiques mis à sa disposition.

[22] Pursuant to subsection 63(2) of the Act, the Land and Water Board is required to notify affected communities and First Nations upon receipt of an application for a permit or license.

[23] Section 114 of the Act sets out the purpose of Part 5 of the Act, which is to establish a process comprising a preliminary screening, an environmental assessment and an environmental impact review. The Review Board is established as the main instrument in the Mackenzie Valley for the environmental assessment and the environmental impact review and is mandated with ensuring that the concerns of Aboriginal people and the general public are taken into account in the process.

[24] The guiding principles of Part 5, set out in section 115 of the Act, provide that the process shall have regard to the following: the protection of the environment from significant adverse effects of proposed developments; the protection of the social, cultural and economic well-being of the residents and communities in the Mackenzie Valley; and, the importance of conservation to the well-being and way of life of the Aboriginal peoples. Section 115.1 states specifically that the Review Board shall consider any traditional knowledge that is made available to it in exercising its powers.

[25] Community consultation is integral to the processes undertaken by both the Land and Water Board and the Review Board. Section 3 of the Act governs how this consultation is to be carried out:

3. Wherever in this Act reference is made, in relation to any matter, to a power or duty to consult, that power or duty shall be exercised	**3**. Toute consultation effectuée sous le régime de la présente loi comprend l'envoi, à la partie à consulter, d'un avis suffisamment détaillé pour lui permettre de préparer ses arguments, l'octroi d'un délai suffisant pour ce faire et la possibilité de présenter à qui de
(*a*) by providing, to the party to be consulted,	

(i) notice of the matter in sufficient form and detail to allow the party to prepare its views on the matter,	droit ses vues sur la question; elle comprend enfin une étude approfondie et impartiale de ces vues.
(ii) a reasonable period for the party to prepare those views, and	
(iii) an opportunity to present those views to the party having the power or duty to consult; and	
(*b*) by considering, fully and impartially, any views so presented.	

[26] Both the Land and Water Board and the Review Board provide guidelines on how consultation is to be undertaken by developers when applications are made to the respective boards.

[27] The Act provides for a three stage review process: a preliminary screening, an environmental assessment and an environmental impact review. Developers must consult with affected parties before submitting an application, and the consultation should involve notice of the matter in sufficient detail, a reasonable period for the party consulted to prepare their views, and the opportunity to present those views to the developer. Once the Land and Water Board is satisfied pre-application community consultation has taken place, it performs the preliminary screening which involves determining whether the development might have a significant adverse impact on the environment. If development might have a significant adverse impact, then the Land and Water Board will refer the proposal to the Review Board for an environmental

assessment under section 125 of the Act. Otherwise the application will proceed to the permitting phase.

[28] Once an environmental assessment has been triggered by a referral from the Land and Water Board, the Review Board determine the scope of the environmental assessment and request a more detailed description of the development. Next, issues are identified by the Review Board and Terms of Reference (TOR) for the environmental assessment are determined. A draft version of the TOR is circulated to all parties for comments. After the TOR is finalized, the developer proceeds to prepare the Developer's Assessment Report (DAR). The DAR is circulated to all parties and undergoes a conformity check in which it is compared to the TOR. It then undergoes a Technical Review in which participants may present their views supported by facts and evidence in a forum that is open to the public. Questions arising from the Technical Review which require formal responses are issued by way of Information Requests (IRs), which may originate from any party, and are made accessible to everyone. The Review Board may order a hearing. Following the hearing, the Review Board will consider the DAR and the evidence and determine whether the development is likely to have significant adverse environmental impacts or be a cause of significant public concern. Under section 128, the Review Board may determine that no assessment need be performed, recommend that the approval of the proposal be made subject to the imposition of measures that the Review Board considers necessary to prevent an adverse impact, recommend the proposal be rejected without an environmental assessment, or, if the Review Board decides that the development is likely to cause significant public concern, order an environmental impact review. The decision of the

Review Board is subject to section 130 of the Act which essentially places the ultimate decision in the hands of the Ministers.

[29] Pursuant to section 130 of the Act, after having considered the environmental assessment report, the Ministers may order an environmental impact review even if the Review Board determined such a review need not be conducted (paragraph 130(1)(*a*)). Where the Review Board recommends the approval of a proposal subject to the imposition of certain measures or the rejection of a proposal because of its adverse impact on the environment, the Ministers may:

(1) adopt the recommendation or refer it back to the Review Board for further consideration (subparagraph 130(1)(*b*)(ii)) or

(2) after consulting the Review Board, reject the recommendation and order an environmental impact review of the proposal or adopt the recommendation with modifications

This latter option is known as the “consult to modify” process. The parties that participate in the consult to modify process are the representatives of the Responsible Ministers and representatives of the Review Board. The Act imposes no obligation on the Ministers to involve others in the process including the parties to the Environmental Assessment or Environmental Impact Review.

[30] The third stage, the environmental impact review, consists of a review of the environmental assessment by a panel of three or more members appointed by the Review Board. The Panel is vested with the powers of a review board and the Act sets out a comprehensive

process as to how the review is to be conducted. Pursuant to subsection 135(1) of the Act, after considering the report from the Review Panel, the Ministers may adopt the recommendations contained in the report with or without modifications, reject them or refer the proposal back to the Review Board.

- *Funding*

[31] The Applicants contend that throughout the Review Board process concerning the Cameron Hills development they participated in each environmental assessment process to the extent permitted by their limited resources.

[32] While the Applicants complain that their full and meaningful participation in the consultation process under the Act was compromised by lack of resources, the evidence indicates that funding was made available by the Crown to assist the Applicants.

[33] In fiscal year 2001-2002, the KTFN requested and received from INAC $40,000 to assist with costs associated with an Oral Traditional Knowledge Research Project. This resulted in the production of a documentary film, which is in evidence, entitled “Straight from the Heart”. The film documents Elders speaking to KTFN regarding traditional knowledge, which included gathering stories, legends and knowledge of the land. The cost of the project was $30,844 resulting in a $9,166 surplus.

[34] In fiscal year 2002-2003, the KTFN requested and received from INAC the sum of $40,000 to allow participation in land and resource management activities in the area. To this

end an Oil and Gas Coordinator was hired to address environmental concerns and act as spokesperson for the KTFN. The Government of the Northwest Territories (GNWT) also provided $40,000 in funding for this purpose. A $6,476 surplus resulted from the $80,000 in grants for resource management activities provided in 2002-2003.

[35] In 2003-2004, the KTFN requested $40,000 and received $10,000 from INAC to continue funding the Oil and Gas Coordinator. The same funding was obtained in 2004-2005 for this purpose. Also, in 2004-2005, INAC provided $10,000 for the completion of a community protocol for the Cameron Hills Oil and Gas Project.

[36] In summary, from 2001 to 2005, INAC and the GNWT provided a total of $140,000 to the KTFN for their traditional knowledge project and for the services of the Oil and Gas Councillor. This represents $30,000 less than the amount the KTFN requested. Of the total amount received, the record indicates that the KTFN had a $15,642 surplus.

- *The First Two Phases of the Cameron Hills Development*

[37] Since 1992, Paramount obtained 14 production licenses (two issued in 1992, four in 2002, two in 2003 and six in 2004), and it holds 7 land use permits (LUP), 4 water licenses and 22 federal surface leases, all in the Cameron Hills. As mentioned, development proceeded in three phases: the Drilling Project, the Gathering and Pipeline Project, and the Extension Project.

[38] The Drilling Project involved 9 new wells and 7 existing wells in order to evaluate oil and gas reserves. The Gathering and Pipeline Project involved the construction of an extensive

trans-boundary pipeline and gathering system to connect Paramount's wells in the Cameron Hills to Alberta's pipeline system. This also included more than 60 km of pipelines, well-site facilities for 11 existing and 9 new wells, temporary construction camps to house up to 200 workers, a permanent camp for 20 workers, an airstrip and vehicle access routes to well-sites.

[39] Applications for land use permit and water licences for the Drilling Project were made to the Land and Water Board on August 29, 2000. The project was referred to the Review Board for an environmental assessment on November 20, 2000, and the Review Board issued its environmental assessment report on October 16, 2001. The Review Board recommended that land use permits and water licenses be issued on condition that the mitigating measures contained in Paramount's environmental report be respected. The Drilling Project was eventually allowed to proceed on this basis.

[40] The Applicants state that they were surprised to learn in 2001, when the Drilling Project was first before the Review Board, the full magnitude of Paramount's plans for the Cameron Hills area. They claim that they were not aware that the Federal Crown had previously issued Paramount extensive licenses in the Cameron Hills. The Applicants argue that the KTFN were facing a major industrial development without any meaningful input into the issuance of the original discovery and exploration licenses granted to Paramount.

[41] Paramount initiated the Gathering and Pipeline System Project in April 2001 by applying to the Land and Water Board for land use permits and water licenses. The KTFN were involved in the preliminary screening and environmental review processes for the Gathering and Pipeline

Project. Between June 22, 2000, and November 19, 2001, more than a dozen meetings were held and numerous phone calls were made with Paramount, discussing traditional knowledge, benefits of the project for the Kakisa community, concerns in respect to other Bands claiming stewardship over the Cameron Hills area as traditional territory, and mitigating measures for the environment. The KTFN's participation included a helicopter flyover of the proposed project and a three day excursion to the territory around Tathlina Lake for the purpose of discussing traditional knowledge.

[42] The project was referred to the Review Board for environmental assessment and on December 3, 2001, the Review Board issued its report on the Environment Assessment.

[43] Paramount's DAR prepared for the Gathering and Pipeline System Environmental Assessment concluded that the project would have no significant cumulative environmental impacts and was not expected to have an adverse effect on the pursuit of traditional activities. Both the KTFN and the GNWT disagreed. The Applicants questioned Paramount's ability to draw conclusions regarding impacts of its project on the Applicants in the absence of a proper Traditional Land Use Study. In its submissions to the Review Board, the GNWT argued that Paramount had underestimated the impact of the project on the boreal caribou population. In its Environmental Assessment Report for the Gathering and Pipeline Project, the Review Board found that the Applicants were "very actively involved in traditional land use … most if not all residents participate in traditional land use in one manner or another". The Review Board accepted the GNWT data that "…Kakisa families derive 50-60%, and possibly more, of their annual food basket requirements from the land." Ultimately, the Review Board recommended

that with the implementation of 21 mitigating measures, the project "… is not likely in its opinion to have any significant adverse impact on the environment or to be a cause of significant public concern".

[44] Paramount expressed serious concern in respect to measures 13, 15, 16 and 17. I reproduce these recommendations in Appendix B to these reasons. These recommendations essentially provided that the project not proceed until Paramount: (1) has revised its Heritage Resource Plan to incorporate First Nation concerns; (2) has developed a compensation plan co-operatively with affected First Nations which address the effects on land and resources used beyond trapping; and (3) has provided INAC with proof that affected First Nations have approved of the Traditional Use Study and incorporated any mitigating measures arising from the Study into their development plan.

[45] The KTFN wrote to the Review Board and INAC urging support for the measures and asking that the necessary steps be taken to ensure that these conditions are fulfilled by Paramount before any construction begins on the ground. The KTFN noted that the report supported their position that Paramount's Traditional Use Study had not been completed and the Benefits Plan failed to meet some of its legislated requirements regarding compensation.

[46] From the beginning of the Cameron Hills development, the Applicants have expressed concerns regarding the project's actual impact on land, water and wildlife in the Cameron Hills area, affecting their rights to hunt fish and trap. From the outset, the KTFN consistently expressed two concerns: first, that a Traditional Land Use Study was required to provide baseline

data against which mitigating measures could be designed and damages caused by Paramount's development could be measured, and second, that an Impacts and Benefits Agreement which would include investments in the community and employment opportunities, be negotiated with the KTFN to address Paramount's infringement of their aboriginal title and treaty rights. In the Applicant's submission, neither of these objectives has been met.

[47] With respect to the Traditional Land Use Study, Paramount prepared a statutory Benefits Plan pursuant to subsection 5(2) of the *Canada Oil and Gas Operations Act*. Paramount concedes that the Benefits Plan was never intended to address specific benefits or impact on a particular community, but was a plan to address benefits to Canadians in general and people in the north in particular.

[48] The Applicants' contend that Paramount's Traditional Knowledge (TK) Study did not meet the requirements of a proper Traditional Land Use Study. They argue that the study was prepared without meaningful consultation and completed without their full or proper involvement or participation. They claim the study was deficient in that it did not consider or address how the KTFN occupied their territory, how their laws protected the land, water and wildlife, or how Paramount's operations truly impact their economy, culture, traditional way of life and well-being.

[49] Paramount argues that the availability of traditional knowledge of the KTFN to further assist in fashioning mitigating measures was limited by the KTFN itself. Paramount's TK study was prepared from information gathered from KTFN Elders and Chief Chicot himself, who

participated in the process. Paramount contends that after it prepared the study it made several attempts to request further input from the Applicants. None was forthcoming. Paramount's study was therefore submitted to the Review Board without the Applicants' further input.

[50] The Applicants agree that only a limited amount of traditional land use information was provided to Paramount and the Review Board. They explain that they did not want some of their sensitive traditional knowledge to become public, such as the location of trap lines. They further believed that Paramount "needs to recognize the aboriginal and treaty rights of the KTFN before the remaining information is shared as part of the ABA negotiations about infringing KTFN rights".

[51] The Applicants also contend that they were not involved in the process that led to the preparation of the benefits agreement by Paramount and there was no meaningful consultation about accommodating matters of real concern to their community. The Plan provided for compensating trappers "who can conclusively establish that they have sustained lower harvests directly attributable to Paramount's operations in the area." In the Applicants' view, Paramount's plan was unworkable for a number of reasons. First, precise records of their harvesting were not kept. Second, direct loss of trapping income is not the only impact warranting compensation or benefits. Third, the plan does not consider the fact that the Applicants' treaty rights and asserted Aboriginal rights are at stake.

[52] The consult to modify process was initiated by the Minister of INAC with respect to the Gathering and Pipeline Project Environmental Assessment Report on December 20, 2001. The

Ministers expressed concern with recommendations 13, 15, 16 and 17 in the Review Board's Environmental Assessment Report and proposed certain modifications and a deletion. The Review Board felt that other participants to the environmental assessment process should have the opportunity to make their concerns known in respect of the impugned measures to be discussed at the upcoming meeting between INAC, the NEB and the Review Board. As a result, all participants, including the KTFN, were sent a copy of the Review Board's December 24, 2001 letter to INAC wherein it expressed the view it would not object to these participants making their views known in respect to the proposed changes sought by the Ministers.

[53] In a letter to the Review Board dated January 3, 2002, INAC expressed the view that the provisions of the Act provide that only the federal Minister and the Responsible Ministers are to consult with the Review Board regarding its Report.

[54] The Review Board and the Ministers met in a closed meeting on January 4, 2002, despite the Applicants' protestation. After considering the evidence presented in the consult to modify process, the Review Board approved modifications to all of the impugned measures, and also deleted measure 17. On January 11, 2002, the Ministers issued a final decision that substantially modified recommendations 13, 15, 16 and deleted recommendation 17. I reproduce these modified recommendations in Appendix C to these reasons. In his decision letter, the Minister of INAC, writing on behalf of the Responsible Ministers under the Act, indicated that certain letters expressing the views of the Applicants were considered. I note, however, that certain other letters on behalf of the Applicants were not identified by the Minister.

[55] The Applicants perceived the Ministers' decision to be detrimental to their interests and, in particular, protested the deletion of recommendation 17 and modifications to the other recommended measures. The Applicants reiterated their position that they had not been consulted on this issue.

- *The Extension Project*

[56] In April 2003, Paramount brought an application to the Land and Water Board to amend some of the land use permits and water licenses issued with respect to its initial project. This aspect of the development came to be known as the Extension Project. It signalled the beginning of Paramount's production work in the Cameron Hills. The project initially involved approval for 5 additional wells but would eventually also include the drilling, testing and tie-in of up to 50 additional wells over a period of 10 years; the production of oil and gas for over 15-20 years; the excavation of 733 km of seismic lines; the construction of temporary camps servicing up to 200 workers; the withdrawal of water from lakes; and the disposal of drill waste.

[57] After receiving the application, the Land and Water Board conducted the requisite preliminary screening of the project. During this stage it consulted with 21 organizations, including the KTFN and the DCFN. The Land and Water Board found, as a result of its preliminary screening, that it was satisfied of the project's significant adverse impacts on the environment and that there was a clear indication of public concern. As a result the Land and Water Board referred Paramount's application to the Review Board for an environmental assessment pursuant to section 125 of the Act, and recommended that the Review Board consider joint public hearings with the Land and Water Board.

[58] The environmental assessment followed the process outlined earlier in these reasons. In June 2003, the draft TOR and a draft work plan were sent to the interested parties, including the Applicants. On July 21, 2003, the Applicants responded to the draft TOR and as a result of comments made by the KTFN the work plan was adjusted.

[59] On August 8, 2003, the Review Board issued the final TOR, setting out the scope of the environmental review. The Review Board determined the environmental assessment should be focused on the cumulative effects of drilling, testing and tie-in of up to 50 additional wells over the next 10 years indicated in Paramount's planned development and not just the 5 well sites actually applied for.

[60] On September 17, 2003, Paramount prepared and submitted its DAR to the Review Board which included an assessment of the impact of the 5 well sites applied for, plus the additional 48 under the planned development. The DAR also included a detailed summary of the public consultation process and the results of various studies that were undertaken for the purposes of the environmental assessment. The DAR also set out in an appendix a summary of the consultation and communication which had occurred between Paramount and the KTFN since May of 2000. The summary indicates extensive correspondence and a great number of meetings and exchanges between the parties.

[61] The second phase of the environmental assessment included two rounds of IRs. Many of these requests originated from the KTFN and were directed to both INAC and Paramount. Responses were provided, but not always to the satisfaction of the KTFN.

[62] A pre-hearing conference was held to address the hearing process and to set a draft agenda for the public hearing. A community meeting was held at Kakisa on February 17, 2004, between members of the KTFN, the Land and Water Board, the Review Board and Paramount to discuss related issues.

[63] A public hearing was held jointly by the Review Board and the Land and Water Board at Hay River on February 18 and 19, 2004. The Applicants participated in the hearing and had the opportunity to question Paramount and other parties involved in the environmental assessment.

[64] Following the public hearing, the parties were invited to submit technical reports to the Review Board. The KTFN did so on March 2, 2004 and on March 10, 2004 Paramount responded to the concerns raised in the technical report submitted by the KTFN. INAC, in a letter dated March 11, 2004, to the Review Board, also responded to concerns raised by the KTFN in its technical report and answered questions asked by the KTFN at the public hearing.

[65] During the Environmental Assessment Process the Applicants issued two Information Requests (IR 1.2.136 and IR 1.2.137) asking INAC to clarify how it intended to discharge its duty to consult and accommodate. INAC responded that the Land and Water Board and the Review Board are the primary vehicles for environmental assessment consultations with

Aboriginal groups and the general public, producing an opportunity for participation. INAC indicated that it would wait until the environmental assessment process was complete before making any decision regarding potential infringement and Aboriginal consultation regarding the project.

[66] INAC's understanding of the Crown's duty to consult in respect to an asserted Aboriginal right is expressed in its response to KTFN Information Request 1.2.31, which I reproduce below:

> With respect to Aboriginal rights: the Crown may not unjustifiably infringe on rights protected by Section 35 of the *Constitution Act, 1982*, and **the onus is on the First National to prove that a right exists and that it would be unjustifiably infringed upon.** The Crown is unable to unilaterally determine what assertions a First Nation might make or what the ultimate outcome of that assertion may be. When responding to an assertion, and without limiting in any way the breadth or scope of the matters that Canada may consider, including the ethnographic, historical, traditional, and other evidence, Canada also takes into consideration expressions by the First Nations of consent or support for the proposed activity.
>
> [Emphasis in original.]

[67] The Review Board issued its Report and its reasons on the environmental assessment on June 1, 2004. In its report the Review Board recognized the KTFN dependence on the Cameron Hills Area and made certain findings in respect to the projects potential impact on the Applicants' rights. I reproduce below certain applicable excerpts from the report.

> The Cameron Hills is an important traditional use area for local First Nations. (p. vi)
>
> There is no doubt, in the Review Board's opinion, that the evidence in this proceeding provides a firm foundation for the concerns expressed about this area, particularly in relation to the

> possible effects of the proposed development on the traditional activities important to the [Ka'a'Gee Tu and other aboriginal communities]. (p. 14)
>
> [The] Board concludes that the environmental consequence of the combined direct and indirect footprint of the Planned Development Case is *High* (potentially significant) for boreal caribou and marten. (p. 42)
>
> The Review Board supports the communities' requests for a socio-economic agreement with Paramount. The Review Board also concurs with the GNWT on the effectiveness of socio-economic agreements to aid in assessing the impact on the social and the cultural aspects of northern development. (p. 51)

[68] Notwithstanding the above observations the Review Board concluded that "…with the implementation of the measures recommended in this Report of EA and the commitments made by Paramount Resources Ltd, … the proposed development will not likely have a significant environmental impact or be cause for significant public concern and should proceed to the regulatory phase of approvals." The Review Board in its report issued 17 mitigating measures and suggestions. These measures and suggestions are attached as Appendix D to these reasons.

[69] The Report considered impacts on both the "Biophysical Environment" and "Socio-Economic and cultural environment".

[70] In respect to the Biophysical Environment, issues concerning air quality, water quality, wildlife and in particular the Boral Caribou and the cumulative impact of the project were considered.

[71] The Applicants raised concerns about water quality and its impact on fishing. The Review Board found that there was potential for significant adverse environmental impacts to water due to potential spills and sedimentation of waterways from erosion as a result of Paramount's operations in the Cameron Hills. The Review Board found that application of measures R-8 to R-11 and suggestion S-1 would mitigate these potential impacts.

[72] In relation to hunting and trapping, the Review Board concluded that the balance of the evidence did not suggest wildlife concerns, except in the case of the Boreal Caribou. It found that the measures concerning the Boreal Caribou proposed by the GNWT, supported by the Applicants, would mitigate the likelihood for significant adverse environmental impacts on the Boreal Caribou population. Additional concerns were raised regarding wolves and wolverines. The Review Board considered the evidence and concluded that the approach taken by Paramount was reasonable, and decided that wolves and wolverines should be explicitly considered in future environmental assessments in the area. Ultimately, the Review Board provided mitigation measures R-12 to R-14 and suggestions S-3 and S-4 in relation to wildlife.

[73] In respect to impacts on the socio-economic and cultural environment, the Review Board considered the difficulties surrounding an agreement on the Wildlife and Resources Harvesting Compensation Plan. It noted that the Aboriginal communities emphasized that compensation plans must address economic as well as cultural components and not merely the lost revenue from harvesting. The Review Board found that to prevent significant potential adverse socio-economic impacts on the environment relating to the viability of the Cameron Hills as a source

of harvesting and preserving harvesting opportunities over the long term, further mitigation was needed. It recommended measures R-15 and R-16 and suggestions S-5 and S-6.

[74] In a letter dated June 24, 2004, addressed to the Responsible Ministers, the KTFN provided its response to the Review Board's environmental report. In a subsequent letter dated July 7, 2004 to the Responsible Ministers and the Review Board, the KTFN sought to be included in the post-Report process under sections 130 and 131 of the Act. In their July 29, 2004 letter to INAC, the KTFN firmly stated their position that the "…closed door, post-Report process that shuts them out" clearly violates the principles of natural justice and fairness and by engaging in such a process the Crown is failing to discharge its duty to consult.

[75] In a letter to the KTFN dated August 26, 2004, the Minister of Fisheries and Oceans stated that he and the other Responsible Ministers would be making a decision pursuant to section 130 of the Act. This also represents the position adopted by INAC, which is repeatedly expressed in the record, namely that pursuant to the Act, only the Responsible Ministers and the Review Board may participate in the consult to modify process.

- *Consult to Modify Process for the Extension Project*

[76] Both the NEB and the Responsible Ministers had concerns about some of the mitigation measures set out by the Review Board. By letter dated August 19, 2004, addressed to the Review Board, the Minister of INAC on behalf of the Responsible Ministers initiated consultation with the Review Board, pursuant to subparagraph 130 (1)(*b*)(ii) of the Act. INAC informed the Review Board on November 17, 2004, that the Responsible Ministers wanted to address

recommended measures R7, R11, R12, R13, R15, and R16 in the Environmental Assessment Report. Proposed modifications with supporting rationale were submitted for the Review Board's consideration. In particular, the modifications proposed the deletion of recommendations R15 and R16.

[77] The Review Board decided to seek comments and input related to the Responsible Ministers' proposed modifications, from parties to the Environmental Assessment process, which included the Applicants.

[78] In response, the KTFN wrote to the Review Board on December 17, 2004, and provided comprehensive comments on the proposed modifications to the Review Board's recommended measures. In essence the KTFN reasserted views it had expressed in its June 14, 2004 letter to the Review Board. While the KTFN stated that certain proposed changes were generally acceptable, it strongly objected to the deletion of recommendations R15 and R16 and urged the Responsible Ministers to strengthen the recommended measures. Further, the KTFN submitted that the consult to modify process was not in keeping with the Crown's duty to consult as clarified by the Supreme Court of Canada in the recent decisions of *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511 and *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74, [2004] 3 S.C.R. 550. The honour of the Crown was at stake in such matters and meaningful consultation must take place prior to the approval of projects that will infringe Aboriginal title and rights. In KTFN's submission to the Review Board, the consult to modify process and the substance of the proposed modifications represents an "an impoverished vision of the honour of the Crown".

[79] Following the release of the Supreme Court decisions in *Haida* and *Taku* and before the decision on the Extension Project was made, INAC conducted a "Crown Consultation Analysis" with the view of assessing whether consultation and accommodation performed to date had been adequate in addressing the potential infringements on an Aboriginal Treaty and/or upon asserted Aboriginal rights. The analysis concluded that adequate consultation had been conducted.

[80] Thereafter, the Applicants were excluded from the consult to modify process which continued for three months until March 15, 2005, when the Review Board adopted the revised recommendations.

[81] The Review Board, the Ministers and the NEB met on January 24, 2005, and decided that Canada would take the position that R-15 and R-16 would be substantially revised instead of deleted. On March 15, 2005, the Review Board forwarded final revised recommendations to the Ministers. The Applicants did not participate in this meeting and were not consulted in respect to the final recommendations.

[82] The KTFN wrote directly to the Minister of INAC on six different occasions between July 20, 2004 and April 27, 2005, asking INAC to respect its legal duty to consult before rendering a final decision. These letters went unanswered until May 17, 2005, at which time the Minister of INAC wrote to Chief Chicot and assured him that he would be contacted before a final decision was made. However, this commitment was not kept. INAC never met with the

KTFN to discuss the proposed modifications to the recommended measures or the final decision on the Extension Project.

[83] In her March 24, 2005 letter to the Minister of INAC, counsel for the KTFN addressed the modified recommendations that had been submitted to the Responsible Ministers for decision. In her submissions on behalf of the KTFN, counsel argued that the process that led to the modified recommendations failed to solicit the input of the KTFN and as a result its concerns were not heard. The KTFN submitted that the recommendations were substantially rewritten in secret and, as a consequence, fairness and justice were lost and the honour of the Crown impugned. The KTFN further submitted that the proposed modifications are in effect tantamount to a rejection of the original recommendations and as a result trigger the statutory requirement that an environmental impact review be ordered. Finally, it is argued that, in the circumstances, the Crown has not discharged its duty to consult and accommodate.

[84] The Minister of INAC, on behalf of the Responsible Ministers, by letter dated July 5, 2005, adopted the recommended mitigating measures of the Review Board with modifications. In the decision letter, the Minister stated that the decision was made after undertaking consultation with the Review Board and considering the Environmental Assessment Report and letters from various stakeholders, including the following letters; from the KTFN dated June 24 and August 10, 2004; and the letters from Counsel for the KTFN dated July 20, August 31, November 19, December 13, 2004, and March 24 and April 28, 2005.

[85] By letter dated July 20 and July 28, 2005, the Applicants wrote to the Land and Water Board informing it that the Ministers' decision was made in breach of the Federal Crown's duty to consult and accommodate and that there had yet to be proper consultation with the Applicants.

[86] Of the 17 recommended measures, 12 were modified during the consult to modify process. Six measures falling within the jurisdiction of the NEB were modified by the NEB. The NEB contends that these modifications were made after receipt of comments from Paramount, government departments and the Applicants.

[87] Six other measures falling within the jurisdictions of the Responsible Ministers were modified by the Responsible Ministers. R-15 and R-16 were not deleted as originally proposed but instead were modified. The modifications to R-15 removed the requirement for a compensation plan and enforcement to be determined through binding arbitration, and modifications to R-16 removed the requirement for a socio-economic agreement to be developed in consultation with affected communities. I reproduce below the two recommendations as modified:

> R-15 The Review Board recommends that Paramount commit, in a letter to the Parties to the Environmental Assessment, to compensate the Ka'a'Gee Tu First Nation and other affected Aboriginal groups for any direct wildlife harvesting and resource harvesting losses suffered as a result of project activities, and to consider indirect losses on a case-by-case basis.
>
> R-16 The Review Board recommends that Paramount report annually to the Government of the Northwest Territories and the other Parties to the Environmental Assessment documenting its performance in the provision of socio-economic benefits, such as employment and training opportunities for local residents, including a detailed ongoing community consultation plan

> describing the steps it has taken and will take to improve its performance in those areas. The Government of the Northwest Territories will review this report with Paramount in collaboration with the other Parties to the Environmental Assessment.

[88] The Applicants challenge the Responsible Ministers' decision by filing the within application for judicial review on August 9, 2005, which was amended on February 23, 2006.

3. Issues

[89] The central issue in this application is whether the Crown failed to discharge its duty to consult in making the decision. The issue involves answering the following questions:

(1) What is the content of the Crown's duty to consult and accommodate?

(2) Did the Crown fulfil its duty in the circumstances of this case?

(3) What is the appropriate remedy, in the event it is determined that the Crown failed to fulfill the duty to consult?

4. Standard of Review

[90] The applicable standard of review of government decisions which are challenged on the basis of allegations that the government failed to discharge its duty to consult and accommodate pending claims resolution was canvassed by the Supreme Court in *Haida*. In that case, Chief Justice McLachlin suggested that, absent a statutory process for such a review, general principles of administrative law were to be considered. Here, as in *Haida*, no specific review process has been established. At paragraphs 61 to 63 of the Court's reasons for decision, the Chief Justice wrote:

61. On questions of law, a decision-maker must generally be correct: for example, *Paul v. British Columbia (Forest Appeals Commission)*, 2003 SCC 55 (CanLII), [2003] 2 S.C.R. 585, 2003 SCC 55. On questions of fact or mixed fact and law, on the other hand, a reviewing body may owe a degree of deference to the decision-maker. The existence or extent of the duty to consult or accommodate is a legal question in the sense that it defines a legal duty. However, it is typically premised on an assessment of the facts. It follows that a degree of deference to the findings of fact of the initial adjudicator may be appropriate. The need for deference and its degree will depend on the nature of the question the tribunal was addressing and the extent to which the facts were within the expertise of the tribunal: *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 (CanLII), [2003] 1 S.C.R. 247, 2003 SCC 20; *Paul*, supra. Absent error on legal issues, the tribunal may be in a better position to evaluate the issue than the reviewing court, and some degree of deference may be required. In such a case, the standard of review is likely to be reasonableness. To the extent that the issue is one of pure law, and can be isolated from the issues of fact, the standard is correctness. However, where the two are inextricably entwined, the standard will likely be reasonableness: *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748.

62. The process itself would likely fall to be examined on a standard of reasonableness. Perfect satisfaction is not required; the question is whether the regulatory scheme or government action "viewed as a whole, accommodates the collective aboriginal right in question": Gladstone, supra, at para. 170. What is required is not perfection, but reasonableness. As stated in *Nikal*, supra, at para. 110, "in . . . information and consultation the concept of reasonableness must come into play. . . . So long as every reasonable effort is made to inform and to consult, such efforts would suffice." The government is required to make reasonable efforts to inform and consult. This suffices to discharge the duty.

63. Should the government misconceive the seriousness of the claim or impact of the infringement, this question of law would likely be judged by correctness. Where the government is correct on these matters and acts on the appropriate standard, the decision will be set aside only if the government's process is unreasonable. The focus, as discussed above, is not on the outcome, but on the process of consultation and accommodation.

[91] The above general principles find application here. A question as to the existence and content of the duty to consult and accommodate is a question of law reviewable on the standard of correctness. A question as to whether the Crown failed to discharge its duty to consult in making the decision typically involves assessing the facts of the case against the content of the duty. On findings of fact, deference to the decision maker may be warranted. The degree of deference to be afforded by a reviewing court depends on the nature of the question and the relative expertise of the decision maker in respect to the facts. Here, it is difficult to isolate the pure questions of law from the issues of fact. In essence, the central question is whether, as implemented, the mandated environmental assessment and regulatory processes are sufficient to discharge the Crown's duty to consult and accommodate in the circumstances. This is a mixed question of fact and law. Applying the reasoning set out above in *Haida*, it would therefore follow that absent error on legal issues, because of the factual component of the decision, the Ministers may be in a better position to evaluate the issue than the reviewing court, and as a result some degree of deference may be required.

[92] Further, Ministerial decisions in these circumstances are polycentric in nature, in the sense that they often involve the making of choices between competing interests. These factors militate towards a certain degree of deference in favour of the decision maker.

[93] Based on the above principles articulated in *Haida*, I find that the question of whether the regulatory process at issue and its implementation discharge the Crown's duty to consult and accommodate in the circumstances is to be examined on the standard of reasonableness.

Questions concerning the existence and content of the duty, to the extent such questions arise in this application, are to be reviewed on the standard of correctness.

5. The Law

[94] The duty to consult was first held to arise from the fiduciary duty owed by the Crown toward Aboriginal peoples (see *Guerin v. Canada*, [1984] 2 S.C.R. 335, 13 D.L.R. (4th) 321 and *R. v. Sparrow*, [1990] 1 S.C.R. 1075). In more recent cases, the Supreme Court has held that the duty to consult and accommodate is founded upon the honour of the Crown, which requires that the Crown, acting honourably, participate in processes of negotiation with the view to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake (see *Haida, supra*; *Taku, supra*, and *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage*), 2005 SCC 69, [2005] S.C.J. No. 71).

[95] In *Haida*, Chief Justice McLachlin sets out the circumstances which give rise to the duty to consult. At paragraph 35 of the reasons for decision, she wrote:

> But, when precisely does a duty to consult arise? The foundation of the duty in the Crown's honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it: see *Halfway River First Nation v. British Columbia (Minister of Forests*), [1997] 4 C.N.L.R. 45 (B.C.S.C), at p. 71, *per* Dorgan J.

[96] For the duty to arise there must, first, be either an existing or potentially existing Aboriginal right or title that might be adversely affected by the Crown's contemplated conduct. Second, the Crown must have knowledge (either subjective or objective) of this potentially

existing right or title and that the contemplated conduct might adversely affect those rights. While the facts in *Haida* did not concern treaties, there is nothing in that decision which would indicate that the same principles would not find application in Treaty cases. Indeed in *Mikisew*, the Supreme Court essentially decided that the *Haida* principles apply to Treaties.

[97] While knowledge of a credible but unproven claim suffices to trigger a duty to consult and, if appropriate, accommodate, the content of the duty varies with the circumstances. Precisely what is required of the government may vary with the strength of the claim and the impact of the contemplated government conduct on the rights at issue. However, at a minimum, it must be consistent with the honour of the Crown. At paragraph 37 of *Haida*, the Chief Justice wrote:

> …Precisely what duties arise in different situations will be defined as the case law in this emerging area develops. In general terms, however, it may be asserted that the scope of the duty is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of the potentially adverse effect upon the right or title claimed. Hence, unlike the question of whether there is or is not a duty to consult, which attracts a yes or no answer, the question of what this duty consists, is inherently variable. Both the strength of the right asserted and the seriousness of the potential impact on this right are the factors used to determine the content of the duty to consult.

[98] At paragraphs 43 to 45, the Chief Justice invokes the concept of a spectrum to assist in determining the kind of duties that may arise in different situations.

> Against this background, I turn to the kind of duties that may arise in different situations. In this respect, the concept of a spectrum may be helpful, not to suggest watertight legal compartments but rather to indicate what the honour of the Crown may require in

> particular circumstances. At one end of the spectrum lie cases where the claim to title is weak, the Aboriginal right limited, or the potential for infringement minor. In such cases, the only duty on the Crown may be to give notice, disclose information, and discuss any issues raised in response to the notice. "'[C]onsultation' in its least technical definition is talking together for mutual understanding": T. Isaac and A. Knox, "The Crown's Duty to Consult Aboriginal People" (2003), 41 *Alta. L. Rev.* 49, at p. 61.
>
> At the other end of the spectrum lie cases where a strong *prima facie* case for the claim is established, the right and potential infringement is of high significance to the Aboriginal peoples, and the risk of non-compensable damage is high. In such cases deep consultation, aimed at finding a satisfactory interim solution, may be required. While precise requirements will vary with the circumstances, the consultation required at this stage may entail the opportunity to make submissions for consideration, formal participation in the decision- making process, and provision of written reasons to show that Aboriginal concerns were considered and to reveal the impact they had on the decision. This list is neither exhaustive, nor mandatory for every case. The government may wish to adopt dispute resolution procedures like mediation or administrative regimes with impartial decision-makers in complex or difficult cases.
>
> Between these two extremes of the spectrum just described, will lie other situations. Every case must be approached individually. Each must also be approached flexibly, since the level of consultation required may change as the process goes on and new information comes to light. The controlling question in all situations is what is required to maintain the honour of the Crown and to effect reconciliation between the Crown and the Aboriginal peoples with respect to the interests at stake. Pending settlement, the Crown is bound by its honour to balance societal and Aboriginal interests in making decisions that may affect Aboriginal claims. The Crown may be required to make decisions in the face of disagreement as to the adequacy of its response to Aboriginal concerns. Balance and compromise will then be necessary.

[99] The kind of duty and level of consultation will therefore vary in different circumstances.

6. Analysis

[100] Here, the Respondent, the Attorney General of Canada does not dispute that the Crown had an obligation to consult with the Applicants in advance of making the impugned decision. It is the Attorney General of Canada's contention that the consultation process engaged in was sufficient to discharge the Crown's duty to consult and accommodate in the circumstances of this case. Since it is agreed that the duty is triggered I will now turn to consider the content and scope of the duty to consult owed by the Crown to the KTFN in the circumstances. As indicated in *Haida*, the scope of the duty to consult and accommodate is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title and to the seriousness of the potentially adverse effects upon the right or title claimed. I will now deal with each of the above factors in turn.

[101] The existence of the Applicants' broad harvesting rights to hunt, trap and fish under Treaty 11 is not in dispute. Since these rights are not asserted rights but established rights, the analysis would usually now turn to consideration of the degree to which the conduct contemplated by the Crown would adversely affect the harvesting rights of the Applicants in order to determine the content of the Crown's duty to consult. Here, however, there is also an asserted claim to Aboriginal title which may have a bearing on the Crown's duty. It is therefore necessary before turning to consider the seriousness of the potential adverse effect upon the right or title claimed to consider the strength of the Applicants' asserted claim.

[102] Here, the Applicants assert that their Aboriginal rights were never surrendered by Treaty 11. Contrary to INAC's expressed understanding of the Crown's duty to consult

articulated in response to IR 1.2.31, which I reproduced at paragraph 66, above, *Haida* teaches that the Aboriginal group need not prove that an asserted right exists before the obligation is triggered. While there is no dispute as to the existence of the Applicants' harvesting rights, the parties disagree about whether Treaty 11 extinguished Aboriginal title. The Applicants understand Treaty 11 to be a peace and friendship treaty and contend that the Aboriginal signatories to the Treaty did not, thereby, intend to surrender Aboriginal title. The Crown construes Treaty 11 as an extinguishment agreement which essentially provides for the cession and surrender of the described lands subject to "the right to pursue their usual vocations of hunting, trapping and fishing." The Crown acknowledges that it did not fulfill the reserve creation obligation of that Treaty. The Applicants contend that the Deh Cho did not allow reserve lands to be set aside for them pursuant to the Treaty because they did not want to submit to the Crown's interpretation of the Treaty.

[103] Since 1998, the issue of Aboriginal title, "the land question" has been subject to the "Deh Cho Process" whereby the Crown in right of Canada, the Deh Cho First Nations, and the Government of the NWT have agreed to seek a negotiated resolution to the land question. The Process has led to a negotiated Framework Agreement signed in 2001. Two subsequent agreements were negotiated: an Interim Resource Development Agreement and an Interim Measures Agreement. The latter agreement established the *Deh Cho Land Use Planning Committee*, which contemplates a collaborative approach in land use planning of the Deh Cho territory, which includes the Cameron Hills area.

[104] The Respondent contends that the land claims process was entered into on a without prejudice basis and should therefore have no bearing on the determination of the strength of the Applicants' asserted claim. I disagree. While not a determinative factor, the Crown's participation in the land claims process is a factor that may inform the Court in assessing the strength of the Applicants' asserted claim.

[105] The evidence establishes that a significant component of Treaty 11, the Crown's obligation to set aside reserve lands, was not fulfilled. This is not disputed by the parties to these proceedings. The eventual legal impact of the Crown's failure to fulfill its Treaty obligation on the Applicants' asserted Aboriginal title remains to be determined on a more fulsome record at trial. For the purposes of this application, I think it appropriate to consider these underlying circumstances to the land title issues which flow from Treaty 11 as material factors in assessing the strength of the Applicants' asserted claim.

[106] The Crown's obligation under Treaty 11, to set aside reserve lands, is arguably a fundamental aspect of the Treaty. Here, the Crown failed to set aside reserve lands for the exclusive use of the Aboriginal community as required under the terms of the Treaty. The question then is what effect, if any, does the Crown's breach of its Treaty obligation have on the Applicants' asserted claim of Aboriginal title? In my view, the question, at a minimum, raises a serious issue to be debated. Further, the Crown's acceptance of the comprehensive land claims process with the view of seeking a negotiated resolution to the land question, and resulting agreements, lend further support to the Applicants' argument that their asserted claim is meritorious. The above factors must be balanced against the language in the Treaty, which in the

Respondent's submission clearly supports an agreement to relinquish Aboriginal title in the lands at issue.

[107] It is not for the Court, in the conduct of a judicial review application, to decide the Applicants' asserted claim. Such questions are best left to be dealt with in the context of a trial where the ethnographic, historical, and traditional evidence is comprehensively reviewed and considered. In the circumstances of this case, while it is difficult to quantify the strength of the Applicants' asserted claim, I am nevertheless satisfied that the claim raises a reasonably arguable case. This determination is based on a review of the record before me, the nature of the asserted claim, the language of Treaty 11, the Crown's breach of its Treaty obligation and the Crown's commitment to the comprehensive land claims process. In the circumstances, these factors serve to elevate the content of the Crown's duty to consult from what would otherwise have been the case had the content of the duty been based exclusively on the interpretation of the Treaty rights in play.

[108] I now turn to the seriousness of the potentially adverse effect of the intended Crown conduct upon the rights or title claimed.

[109] The Extension Project involves, among other work that I addressed earlier in these reasons, the drilling and testing of up to 50 additional wells over a 10 year period, reclamation work, 733 km of seismic lines and temporary camps to be set up to service the needs of up to 200 workers. Even at the preliminary screening stage, the Review Board was satisfied of the project's significant adverse impacts on the environment and that there was a clear indication of public

concern. To appreciate the significance of the potential impact the Extension Project would have on the lands at issue and on the harvesting rights of the Applicants, one need only consider the report which resulted from the Environmental Assessment Process under the Act. At page 14 of its report, the Review Board found that the evidence provided a "firm foundation for the concerns expressed about this area, particularly in relation to the possible effects of the proposed development on the traditional activities important to the Ka'a'Gee Tu and other aboriginal communities".

[110] Paramount contends that there is little indication that any of the Applicants' traditional activities actually occur on the plateau of the Cameron Hills, the site of Paramount's activities in this Application. While this may be so, it remains that the Plateau is within the area over which the Applicants' claim Aboriginal title. Further, as stated earlier in these reasons, the Review Board was satisfied on the evidence, that the combined direct and indirect footprint of the Planned Development would have a significant impact on the environment. Also, the Review Board did not distinguish the Plateau from other areas in the Cameron Hills. Rather, the Review Board recognized the Cameron Hills as an important traditional use area for local First Nations.

[111] The Review Board issued comprehensive Environmental Reports for both the Gathering and Pipeline Project and the Extension Project. These reports, which I have reviewed in some detail earlier in these reasons, discuss the potential impacts of oil and gas development on the lands, fish and wildlife in the affected territory and recommend numerous mitigating measures viewed by the Review Board as necessary to address and minimize the impact of the projects on the environment and therefore by extension on the Applicants' Treaty and asserted rights. A

review of the evidence which led the Review Board to prepare its report on the Extension Project and recommend mitigating measures, leaves little doubt as to the significance of the potential impact on the Cameron Hills area and on the Applicants' Treaty and asserted rights.

[112] I am therefore satisfied that the extension project will have a significant and lasting impact on the Cameron Hills area and, consequently, on the lands over which the Applicants assert Aboriginal title. I am also satisfied that the project has the potential of having a significant impact on the Applicants' "broad harvesting rights to hunt, trap and fish".

[113] The Respondent, the Attorney General of Canada, cites *Mikisew* for the proposition that the Crown's duty, in the circumstances, lies at the lower end of the Spectrum. In *Mikise*, where established Treaty rights were also at issue, Mr. Justice Binnie on behalf of the Supreme Court wrote: "…given that the Crown is proposing to build a fairly minor winter road on *surrendered* lands where the *Mikisew* hunting, fishing and trapping rights are expressly subject to the 'taking up' limitation, I believe the Crown's duty lies at the lower end of the spectrum." Mr. Justice Bennie went on to describe the content of the duty at the lower end of the spectrum.

[114] Here, the Applicants also assert a claim of Aboriginal title, which was not the case in *Mikisew*. Further, oil and gas development in the Cameron Hills area, from its inception, and the Extension Project in particular, involve far more than the building of a minor road. In my view the project's physical scope and potential impact on the environment and the Applicants' established rights to hunt, fish and trap, and asserted aboriginal title, as discussed above, militate

in favour of the content of the Crown's duty to consult being greater than that found to be the case in *Mikisew*.

[115] Even in *Mikisew*, where Mr. Justice Binnie found the Crown's duty to consult to lie at the lower end of the spectrum, he nevertheless held that the Crown was required to attempt to minimize adverse impacts on the Mikisew hunting, fishing and trapping rights. At paragraph 64 of the Court's reasons, he described the content of the duty as follows:

> …The Crown was required to provide notice to the Mikisew and to engage directly with them (and not, as seems to have been the case here, as an afterthought to a general public consultation with Park users. This engagement ought to have included the provision of information about the project addressing what the Crown knew to be Mikisew interests and what the Crown anticipated might be the potential adverse impact on those interests. The Crown was required to solicit and to listen carefully to the Mikisew concerns, and to attempt to minimize adverse impacts on the Mikisew hunting, fishing and trapping rights).

[116] Mr. Justice Binnie agreed with the following articulation of the duty to consult by Mr. Justice Finch, J.A., (now C.J.B.C.), in *Halfway River First Nation v. British Columbia (Ministry of Forests)* (1999), 178 D.L.R. (4th) 666 at paras. 159-160:

> The fact that adequate notice of an intended decision may have been given does not mean that the requirement for adequate consultation has also been met.
>
> The Crown's duty to consult imposes on it a positive obligation to reasonably ensure that aboriginal peoples are provided with all necessary information in a timely way so that they have an opportunity to express their interests and concerns, and to ensure that their representations are seriously considered and, wherever possible, demonstrably integrated into the proposed plan of action.
>
> [Emphasis added.]

[117] In my view, the contextual factors in this case, particularly the seriousness of the impact on the Aboriginal people, by the Crown's proposed course of action and the strength of the Applicants' asserted aboriginal claim, militate in favour of a more important role of consultation. The duty must in these circumstances involve formal participation in the decision-making process.

[118] The consultation process provided for under the Act is comprehensive and provides the opportunity for significant consultation between the developer and the affected Aboriginal groups. As noted above, the record indicates that the Applicants have had many opportunities to express their concerns in writing or at public meetings through submissions made by counsel on their behalf or by the Applicants directly. The record also establishes the Applicants were heavily involved in the process and that their involvement influenced the work and recommendations of the Review Board. In essence, the product of the consultation process is reflected in the Review Board's Environmental Assessment Reports. These reports, while not necessarily producing the results sought by the Applicants, do reflect the collective input of all of the parties involved, including the Applicants. The Environmental Assessment Report concerning the Extension Project clearly shows that many of the concerns of the Applicants were taken into account. While the Review Board ultimately endorsed the project, it did so only with significant mitigating measures and suggestions which were supported by the Applicants and which went a long way in addressing their main concerns.

[119] Up until this point, the process, in my view, provided an opportunity for the Applicants to express their interests and concerns, and ensured that these concerns were seriously considered and, wherever possible, demonstrably integrated into the proposed plan of action. Up until this point in the process, I am satisfied that the Applicants benefited from formal participation in the decision-making process.

[120] The difficulty in this case arises when the Crown elected to avail itself of the "consult to modify process" provided for in the Act. Under the Act, where a recommendation approving a project is made by the Review Board and is subject to the imposition of measures considered necessary to prevent the significant adverse impact of the project, this process provides that the Responsible Ministers may agree to adopt the recommendation with modifications after consulting the Review Board. As a result of the consult to modify process, many of the Review Board's recommendations were modified. Recommendations R-15 and R-16 were of particular importance to the Applicants, affecting the wildlife compensation plan and the socio-economic agreement. This occurred notwithstanding the firmly expressed and long held position of the Applicants that these recommendations were critical to them. The Applicants, apart from objecting to any change or deletion of these recommendations, had no opportunity for any input in respect to proposed changes to these recommendations. There may well have been other options that could have gone a long way in satisfying the Applicants' objections. In the absence of consultations we will never know. The consult to modify process, in the circumstances of this case, essentially allowed the Crown to unilaterally change the outcome of what was arguably, until that point, a meaningful process of consultation. Implementation of the mitigating measures recommended by the Review Board may not have been sufficient to address all of the concerns

of the Applicants, but may have been sufficient to discharge the Crown's duty to consult and accommodate in the circumstances. This is so because the recommendations were the product of a process that provided the Aboriginals an opportunity for meaningful input whereby the Crown, through the Review Board, demonstrated an intention of substantially addressing their concerns. Clearly, this cannot be said of the consult to modify process. The new proposals which resulted from the consult to modify process were never submitted to the Applicants for their input. There was simply no consultation, let alone any meaningful consultation at this stage.

[121] It is not enough to rely on the process provided for in the Act. From the outset, representatives of the Crown defended the process under the Act as sufficient to discharge its duty to consult, essentially because it was provided for in the Act. I agree with the Applicants that the Crown's duty to consult cannot be boxed in by legislation. That is not to say that engaging in a statutory process may never discharge the duty to consult**.** In *Taku,* at paragraph 22, the Supreme Court found that the process engaged in by the Province of British Columbia under the *Environmental Protection Act* of that jurisdiction fulfilled the requirements of the Crown's duty to consult. The circumstances here are different. The powers granted to the Ministers under the Act must be exercised in a manner that fulfills the honour of the Crown. The manner in which the consult to modify process was implemented in this case, for reasons expressed herein, failed to fulfill the Crown's duty to consult and was inconsistent with the honour of the Crown.

[122] The Respondent, the Attorney General of Canada, argues that the role of the tribunal at the consult to modify stage of the process is a polycentric one, made in the exercise of judgment

that takes into account appropriate economic, social, political and other considerations and as a consequence a reviewing court should show deference to the tribunal's decision. Further, the Respondent, the Attorney General of Canada, argues that the consult to modify process is but one small part of the overall process and that prior to making a decision under section 130 of the Act, a full exploration of the proposal and its actual and long-term effects had occurred.

[123] It is true that the Review Board via a long hearing process which involved the KTFN undertook the task of investigating the Applicants' concerns and eventually made recommendations to address some of those concerns. However, by engaging the "consult to modify process" which resulted in a substantial revision of certain key recommendations of the Review Board, in particular Recommendations 15 and 16, without consulting the Applicants, the Ministers essentially decided not to rely on the investigative and fact finding role of the Review Board. It is not good enough for the Ministers, at this stage, to argue that as a consequence of prior consultation they were made aware of the concerns of the Applicants. The difficulty is that the Applicants were not made aware of subsequent proposals by the Ministers that changed the recommended mitigating measures of the Review Board. They could not provide their views or build on the proposed modifications because they were not part of the process. They were simply not consulted. The Ministers, in effect, commenced their own process of determining how to respond to the Applicants' concerns and that process made no provision for any input by the Applicants. The matter is further aggravated here by the significance of the changes made to recommendations of the Review Board, which the Ministers knew were important to the

Applicants. In my view, the Crown's duty to consult in respect to the new proposals which resulted from the consult to modify process was not met in the circumstances.

[124] I find the Crown failed to discharge its duty to consult in the circumstances of this case. In sum, the consult to modify process allowed for fundamental changes to be made to important recommendations which were the result of an earlier consultative process involving the Applicants and other stakeholders. These changes were made without input from the Applicants. It cannot be said, therefore, that the consult to modify process was conducted with the genuine intention of allowing the KTFN's concerns to be integrated into the final decision. At this stage the Applicants were essentially shut out of the process.

7. Other Issues

[125] The Applicants contend that the Ministers' meeting with Paramount on May 17, 2005, breached the rules of procedural fairness and gives rise to a reasonable apprehension of bias. It is argued that the Ministers, at that time, were aware that the parties had taken adversarial positions on whether recommendations in the Environmental Assessment Report on the Extension Project should be modified. It was therefore incumbent on the Ministers to ensure procedural fairness was met and to provide equal access to the Applicants.

[126] Paramount argues that the meetings in Ottawa were never about the consult to modify process, but were generally about Paramount's development and the delay in the regulatory process. Mr. Livingstone, on behalf of the Respondents, attests that while Paramount tabled a

"generic presentation about its development to Mimi Fortier" the meeting had nothing to do with the consult to modify process and that it was open to the Applicants to request a similar meeting.

[127] In my view, it is strongly advisable that representatives of Ministers should not hold meetings with any party to a proceeding, absent the adverse party or parties, in cases where a decision by the said Ministers is pending. I am nevertheless satisfied that the evidence here does not allow me to conclude that the impugned meeting resulted in a breach of procedural fairness or that the particular circumstances give rise to a reasonable apprehension of bias.

[128] The Applicants also argue that their full and meaningful participation in the consultation process under the Act was compromised by a lack of resources. The evidence indicates that the Crown did provide funding to allow the KTFN to participate in the consultation process. The financial resources advanced over the five year period were not every thing the Applicants had requested, but they were not insignificant. While the Applicants allege that the lack of resources impaired their ability to fully participate in the process, they fail to identify what additional resources would have been required to adequately address their needs, or to what end such additional resources would be used. Further, as mentioned, the evidence established that a surplus remained from the funds that were provided. Based on the evidence on the record, I am unable to determine whether the resources provided were sufficient to allow a meaningful participation in the process. In any event, given my above determination that the Crown in right of Canada has not discharged its duty to consult in the circumstances, resolution of the funding issue in not necessary in order to dispose of this application.

[129] Finally, the Applicants argue that Paramount's Traditional Knowledge study was prepared by Paramount without meaningful consultation and consequently fails to meet the requirements of a proper Traditional Land Use Study. On the evidence, I find that the Applicants have not justified their failure to participate in the consultative process for the purpose of developing a TK study. I am not persuaded that the concerns or excuses offered by the Applicants for not sharing TK information with Paramount or the Review Board have merit.

[130] I understand the main concern to be the protection of sensitive information concerning Traditional Knowledge of the Applicants becoming public. No evidence was adduced to suggest that other options were unavailable to protect against public dissemination of such sensitive information, while still participating in the process. In my view, since the Applicants have not justified their failure to participate, the Applicants cannot now complain that their concerns were not considered in the preparation of the TK study. While it may not be necessary to decide the issue, given my earlier determinative finding that the Crown breached its duty to consult, any future consultative process will require the Applicants' sharing their traditional knowledge and full meaningful participation in the consultation process.

8. Conclusion

[131] The Crown in right of Canada has failed to discharge it duty to consult and, if necessary, accommodate before making a final decision on the approval of the Extension Project. The Crown in right of Canada has a duty to consult with the KTFN in respect to modifications it proposes to bring to the recommendations of the Review Board pursuant to the Environmental Assessment Process concerning the Extension Project. Good faith consultation in the consult to

modify stage of the process is required and while there is no duty to reach an agreement, such consultation may well lead to an obligation to accommodate the concerns of the KTFN. The extent and nature of accommodation, if any, can only be ascertained after meaningful consultation at this final stage of the process.

9. Remedy

[132] The Applicants seek a remedy which provides for the following relief:

(a) An order declaring that the decision is invalid and unlawful, quashing and setting aside the decision. Also a declaration that the Ministers breached their constitutional and legal duty to consult with and accommodate the Ka'a'Gee Tu before issuing the Ministers' decision.

(b) An order directing the Ministers to consult through good faith negotiations with the Ka'a'Gee Tu and accommodate the Ka'a'Gee Tu's Treaty with respect to their concerns before allowing the Extension Project to proceed, with a direction that Paramount participate in the negotiations. These negotiations would be conducted with Court oversight.

(c) An order restraining the Ministers and Paramount from taking any further steps in relation to the approval of the Extension Project, pending further order of the Court.

(d) An order that the parties are at liberty to re-apply to this Court for further relief.

(e) Costs.

[133] I am satisfied that the proper relief in the circumstances consists in a declaration that the Crown in right of Canada has breached its duty to consult and accommodate. As a consequence, I will order that in accord with the above reasons, the parties are to engage in a process of meaningful consultation with the view of taking into account the concerns of the KTFN and if necessary accommodate those concerns. The process is to be conducted with the aim of reconciling outstanding differences between the parties, in a manner that is consistent with the honour of the Crown and the principles articulated by the Supreme Court of Canada in *Haida* and *Taku*.

[134] The Applicants will have their costs on the application.

ORDER

THIS COURT DECLARES that:

The Crown in right of Canada has breached its duty to consult with the Ka'a'Gee Tu First Nation before deciding to approve the Extension Project.

THIS COURT ORDERS that:

1. In accordance with the above reasons, the parties are to engage in a process of meaningful consultation with the view of taking into account the concerns of the KTFN and if necessary accommodate those concerns. The process is to be conducted with the aim of reconciliation in a manner that is consistent with the honour of the Crown and the principles articulated by the Supreme Court of Canada in *Haida* and *Taku*.

2. The Applicants will have their costs on the application, to be borne and shared by the Respondents in proportions to be agreed upon by them.

3. Failing such agreement, each Respondent may serve and file written submissions on the issue of the apportioning of the costs between Respondents, not to exceed 10 pages each

no later than August 20, 2007, with replies not to exceed 5 pages each to be served and filed no later than August 31, 2007. The Court will then determine, after consideration of the written submissions, the proportion of the costs to be borne by each Respondent.

"Edmond P. Blanchard"
Judge

APPENDIX A

Mackenzie Valley Resource Management Act, 1998 C-26
Loi sur la gestion des ressources de la vallée du Mackenzie 1998, ch. 26

3. Wherever in this Act reference is made, in relation to any matter, to a power or duty to consult, that power or duty shall be exercised

(*a*) by providing, to the party to be consulted,

(i) notice of the matter in sufficient form and detail to allow the party to prepare its views on the matter,

(ii) a reasonable period for the party to prepare those views, and

(iii) an opportunity to present those views to the party having the power or duty to consult; and

(*b*) by considering, fully and impartially, any views so presented.

3. Toute consultation effectuée sous le régime de la présente loi comprend l'envoi, à la partie à consulter, d'un avis suffisamment détaillé pour lui permettre de préparer ses arguments, l'octroi d'un délai suffisant pour ce faire et la possibilité de présenter à qui de droit ses vues sur la question; elle comprend enfin une étude approfondie et impartiale de ces vues.

60.1 In exercising its powers, a board shall consider

(*a*) the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley; and

(*b*) any traditional knowledge and scientific information that is made available to it.

60.1 Dans l'exercice de ses pouvoirs, l'office tient compte, d'une part, de l'importance de préserver les ressources pour le bien-être et le mode de vie des peuples autochtones du Canada visés par l'article 35 de la *Loi constitutionnelle de 1982* et qui utilisent les ressources d'une région de la vallée du Mackenzie et, d'autre part, des connaissances traditionnelles et des renseignements scientifiques mis à sa disposition.

63. (1) A board shall provide a copy of each application made to the board for a licence or permit to the owner of any land

63. (1) L'office adresse une copie de toute demande de permis dont il est saisi aux ministères et organismes compétents

to which the application relates and to appropriate departments and agencies of the federal and territorial governments.

Notice of applications

(2) A board shall notify affected communities and first nations of an application made to the board for a licence, permit or authorization and allow a reasonable period of time for them to make representations to the board with respect to the application.

Notice to Tlicho Government

(3) The Wekeezhii Land and Water Board shall notify the Tlicho Government of an application made to the Board for a licence, permit or authorization and allow a reasonable period of time for it to make representations to the Board with respect to the application.

Consultation with Tlicho Government

(4) The Wekeezhii Land and Water Board shall consult the Tlicho Government before issuing, amending or renewing any licence, permit or authorization for a use of Tlicho lands or waters on those lands or a deposit of waste on those lands or in those waters.

des gouvernements fédéral et territorial, ainsi qu'au propriétaire des terres visées.

Avis à la collectivité et à la première nation

(2) Il avise la collectivité et la première nation concernées de toute demande de permis ou d'autorisation dont il est saisi et leur accorde un délai suffisant pour lui présenter des observations à cet égard.

Avis au gouvernement tlicho

(3) L'Office des terres et des eaux du Wekeezhii avise de plus le gouvernement tlicho de toute demande de permis ou d'autorisation dont il est saisi et lui accorde un délai suffisant pour lui présenter des observations à cet égard.

Consultation du gouvernement tlicho

(4) L'Office des terres et des eaux du Wekeezhii consulte le gouvernement tlicho avant de délivrer, modifier ou renouveler un permis ou une autorisation relativement à l'utilisation des terres tlichos ou des eaux qui s'y trouvent ou au dépôt de déchets dans ces lieux.

111. (1) The following definitions apply in this Part.

"designated regulatory agency" « *organisme administratif désigné* »

"designated regulatory agency" means an agency named in the schedule, referred to in a land claim agreement as an

111. (1) Les définitions qui suivent s'appliquent à la présente partie.

« autorité administrative » "*regulatory authority*"

« autorité administrative » Personne ou organisme chargé, au titre de toute règle de droit fédérale ou territoriale, de délivrer les permis ou autres autorisations

independent regulatory agency.

"development"
« *projet de développement* »

"development" means any undertaking, or any part or extension of an undertaking, that is carried out on land or water and includes an acquisition of lands pursuant to the *Historic Sites and Monuments Act* and measures carried out by a department or agency of government leading to the establishment of a park subject to the *Canada National Parks Act* or the establishment of a park under a territorial law.

"environmental assessment"
« *évaluation environnementale* »

"environmental assessment" means an examination of a proposal for a development undertaken by the Review Board pursuant to section 126.

"environmental impact review"
« *étude d'impact* »

"environmental impact review" means an examination of a proposal for a development undertaken by a review panel established under section 132.

"follow-up program"
« *programme de suivi* »

"follow-up program" means a program for evaluating

(*a*) the soundness of an environmental assessment or environmental impact review of a proposal for a development; and

(*b*) the effectiveness of the mitigative or remedial measures imposed as

relativement à un projet de développement. Sont exclus les administrations locales et les organismes administratifs désignés.

« étude d'impact »
"*environmental impact review*"

«étude d'impact » Examen d'un projet de développement effectué par une formation de l'Office en vertu de l'article 132.

« évaluation environnementale »
"*environmental assessment*"

« évaluation environnementale » Examen d'un projet de développement effectué par l'Office en vertu de l'article 126.

« examen préalable »
"*preliminary screening*"

«examen préalable » Examen d'un projet de développement effectué en vertu de l'article 124.

« mesures correctives ou d'atténuation »
"*mitigative or remedial measure*"

« mesures correctives ou d'atténuation » Mesures visant la limitation, la réduction ou l'élimination des répercussions négatives sur l'environnement. Sont notamment visées les mesures de rétablissement.

« ministre compétent »
"*responsible minister*"

« ministre compétent » Le ministre du gouvernement fédéral ou du gouvernement territorial ayant compétence, sous le régime des règles de droit fédérales ou territoriales, selon le cas, en ce qui touche le projet de

conditions of approval of the proposal.

"impact on the environment"
« *répercussions environnementales* » ou « *répercussions sur l'environnement* »

"impact on the environment" means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

"mitigative or remedial measure"
« *mesures correctives ou d'atténuation* »

"mitigative or remedial measure" means a measure for the control, reduction or elimination of an adverse impact of a development on the environment, including a restorative measure.

"preliminary screening"
« *examen préalable* »

"preliminary screening" means an examination of a proposal for a development undertaken pursuant to section 124.

"regulatory authority"
« *autorité administrative* »

"regulatory authority" , in relation to a development, means a body or person responsible for issuing a licence, permit or other authorization required for the development under any federal or territorial law, but does not include a designated regulatory agency or a local government.

"responsible minister"
« *ministre compétent* »

"responsible minister" , in relation to a proposal for a development, means any

développement en cause.

« Office »
"*Review Board*"

« Office » L'Office d'examen des répercussions environnementales de la vallée du Mackenzie constitué en vertu du paragraphe 112(1).

« organisme administratif désigné »
"*designated regulatory agency*"

« organisme administratif désigné » Organisme mentionné à l'annexe. « Organisme administratif autonome » dans l'accord de revendication.

« programme de suivi »
"*follow-up program*"

« programme de suivi » Programme visant à vérifier, d'une part, le bien-fondé des conclusions de l'évaluation environnementale ou de l'étude d'impact, selon le cas, et, d'autre part, l'efficacité des mesures correctives ou d'atténuation auxquelles est assujetti le projet de développement.

« projet de développement »
"*development*"

« projet de développement » Ouvrage ou activité — ou toute partie ou extension de ceux-ci — devant être réalisé sur la terre ou sur l'eau. Y sont assimilées la prise de mesures, par un ministère ou un organisme gouvernemental, en vue de la constitution de parcs régis par la *Loi sur les parcs nationaux du Canada* ou de la constitution de parcs en vertu d'une règle de droit territoriale ainsi que l'acquisition de terres sous le régime de la *Loi sur les lieux et monuments historiques*.

minister of the Crown in right of Canada or of the territorial government having jurisdiction in relation to the development under federal or territorial law.

"Review Board"
« *Office* »

"Review Board" means the Mackenzie Valley Environmental Impact Review Board established by subsection 112(1)

« répercussions environnementales » ou « répercussions sur l'environnement »
"*impact on the environment*"

« répercussions environnementales » ou « répercussions sur l'environnement » Les répercussions sur le sol, l'eau et l'air et toute autre composante de l'environnement, ainsi que sur l'exploitation des ressources fauniques. Y sont assimilées les répercussions sur l'environnement social et culturel et sur les ressources patrimoniales.

Application

(2) This Part applies in respect of developments to be carried out wholly or partly within the Mackenzie Valley and, except for section 142, does not apply in respect of developments wholly outside the Mackenzie Valley.
1998, c. 25, s. 111; 2000, c. 32, s. 55; 2005, c. 1, s. 65.

Champ d'application

(2) La présente partie s'applique aux projets de développement devant être réalisés en tout ou en partie dans la vallée du Mackenzie et ne s'applique pas, à l'exception de l'article 142, aux projets devant être réalisés entièrement à l'extérieur de celle-ci.
1998, ch. 25, art. 111; 2000, ch. 32, art. 55; 2005, ch. 1, art. 65.

114. The purpose of this Part is to establish a process comprising a preliminary screening, an environmental assessment and an environmental impact review in relation to proposals for developments, and

(*a*) to establish the Review Board as the main instrument in the Mackenzie Valley for the environmental assessment and environmental impact review of developments;

(*b*) to ensure that the impact on the environment of proposed developments receives careful consideration before actions are taken in connection with them; and

114. La présente partie a pour objet d'instaurer un processus comprenant un examen préalable, une évaluation environnementale et une étude d'impact relativement aux projets de développement et, ce faisant :

a) de faire de l'Office l'outil primordial, dans la vallée du Mackenzie, en ce qui concerne l'évaluation environnementale et l'étude d'impact de ces projets;

b) de veiller à ce que la prise de mesures à l'égard de tout projet de développement découle d'un jugement éclairé quant à ses répercussions environnementales;

c) de veiller à ce qu'il soit tenu compte,

(*c*) to ensure that the concerns of aboriginal people and the general public are taken into account in that process.

115. The process established by this Part shall be carried out in a timely and expeditious manner and shall have regard to

(*a*) the protection of the environment from the significant adverse impacts of proposed developments;

(*b*) the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley; and

(*c*) the importance of conservation to the well-being and way of life of the aboriginal peoples of Canada to whom section 35 of the *Constitution Act, 1982* applies and who use an area of the Mackenzie Valley.

1998, c. 25, s. 115; 2005, c. 1, s. 67.

Considerations

115.1 In exercising its powers, the Review Board shall consider any traditional knowledge and scientific information that is made available to it.

2005, c. 1, s. 68.

125. (1) Except as provided by subsection (2), a body that conducts a preliminary screening of a proposal shall

(*a*) determine and report to the Review Board whether, in its opinion, the development might have a significant

dans le cadre du processus, des préoccupations des autochtones et du public en général.

115. Le processus mis en place par la présente partie est suivi avec célérité, compte tenu des points suivants :

a) la protection de l'environnement contre les répercussions négatives importantes du projet de développement;

b) le maintien du bien-être social, culturel et économique des habitants et des collectivités de la vallée du Mackenzie;

c) l'importance de préserver les ressources pour le bien-être et le mode de vie des peuples autochtones du Canada visés par l'article 35 de la *Loi constitutionnelle de 1982* et qui utilisent les ressources d'une région de la vallée du Mackenzie.

1998, ch. 25, art. 115; 2005, ch. 1, art. 67.

Éléments à considérer

115.1 Dans l'exercice de ses pouvoirs, l'Office tient compte des connaissances traditionnelles et des renseignements scientifiques mis à sa disposition.

2005, ch. 1, art. 68.

125. (1) Sauf dans les cas visés au paragraphe (2), l'organe chargé de l'examen préalable indique, dans un rapport d'examen adressé à l'Office, si, à son avis, le projet est susceptible soit d'avoir des répercussions négatives importantes sur l'environnement, soit

adverse impact on the environment or might be a cause of public concern; and

(*b*) where it so determines in the affirmative, refer the proposal to the Review Board for an environmental assessment.

Within local government territory

(2) Where a proposed development is wholly within the boundaries of a local government, a body that conducts a preliminary screening of the proposal shall

(*a*) determine and report to the Review Board whether, in its opinion, the development is likely to have a significant adverse impact on air, water or renewable resources or might be a cause of public concern; and

(*b*) where it so determines in the affirmative, refer the proposal to the Review Board for an environmental assessment.

Assessment by Review Board

128. (1) On completing an environmental assessment of a proposal for a development, the Review Board shall,

(*a*) where the development is not likely in its opinion to have any significant adverse impact on the environment or to be a cause of significant public concern, determine that an environmental impact review of the proposal need not be conducted;

(*b*) where the development is likely in its opinion to have a significant adverse impact on the environment,

d'être la cause de préoccupations pour le public. Dans l'affirmative, il renvoie l'affaire à l'Office pour qu'il procède à une évaluation environnementale.

Territoire d'une administration locale

(2) Dans le cas d'un projet devant être entièrement réalisé dans le territoire d'une administration locale, le rapport indique si, de l'avis de l'organe chargé de l'examen préalable, le projet soit aura vraisemblablement des répercussions négatives importantes sur l'air, l'eau ou les ressources renouvelables, soit est susceptible d'être la cause de préoccupations pour le public. Dans l'affirmative, l'affaire fait l'objet du même renvoi.

Résultat de l'évaluation environnementale

128. (1) Au terme de l'évaluation environnementale, l'Office :

a) s'il conclut que le projet n'aura vraisemblablement pas de répercussions négatives importantes sur l'environnement ou ne sera vraisemblablement pas la cause de préoccupations importantes pour le public, déclare que l'étude d'impact n'est pas nécessaire;

b) s'il conclut que le projet aura vraisemblablement des répercussions négatives importantes sur

(i) order that an environmental impact review of the proposal be conducted, subject to paragraph 130(1)(*c*), or

(ii) recommend that the approval of the proposal be made subject to the imposition of such measures as it considers necessary to prevent the significant adverse impact;

(*c*) where the development is likely in its opinion to be a cause of significant public concern, order that an environmental impact review of the proposal be conducted, subject to paragraph 130(1)(*c*); and

(*d*) where the development is likely in its opinion to cause an adverse impact on the environment so significant that it cannot be justified, recommend that the proposal be rejected without an environmental impact review.

Report to ministers, agencies and Tlicho Government

(2) The Review Board shall make a report of an environmental assessment to

(*a*) the federal Minister, who shall distribute it to every responsible minister;

(*b*) any designated regulatory agency from which a licence, permit or other authorization is required for the carrying out of the development; and

(*c*) if the development is to be carried out wholly or partly on Tlicho lands, the Tlicho Government.

Copies of report

l'environnement :

(i) soit ordonne, sous réserve de la décision ministérielle prise au titre de l'alinéa 130(1)*c*), la réalisation d'une étude d'impact,

(ii) soit recommande que le projet ne soit approuvé que si la prise de mesures de nature, à son avis, à éviter ces répercussions est ordonnée;

c) s'il conclut que le projet sera vraisemblablement la cause de préoccupations importantes pour le public, ordonne, sous réserve de la décision ministérielle prise au titre de l'alinéa 130(1)*c*), la réalisation d'une étude d'impact;

d) s'il conclut que le projet aura vraisemblablement des répercussions négatives si importantes sur l'environnement qu'il est injustifiable, en recommande le rejet, sans étude d'impact.

Rapport de l'Office

(2) L'Office adresse son rapport d'évaluation, d'une part, au ministre fédéral, qui est tenu de le transmettre à tout ministre compétent, et, d'autre part, à l'organisme administratif désigné chargé de délivrer les permis ou autres autorisations nécessaires à la réalisation du projet. Il adresse également le rapport au gouvernement tlicho s'il s'agit d'un projet devant être réalisé — même en partie — sur les terres tlichos.

Copie

(3) L'Office adresse une copie du rapport au promoteur du projet de développement,

(3) The Review Board shall provide a copy of its report to any body that conducted a preliminary screening of the proposal, to any body that referred the proposal to the Review Board under subsection 126(2) and to the person or body that proposes to carry out the development.

Areas identified

(4) The Review Board shall identify in its report any area within or outside the Mackenzie Valley in which the development is likely, in its opinion, to have a significant adverse impact or to be a cause of significant public concern and specify the extent to which that area is affected.
1998, c. 25, s. 128; 2005, c. 1, s. 78.

130. (1) After considering the report of an environmental assessment, the federal Minister and the responsible ministers to whom the report was distributed may agree

(*a*) to order an environmental impact review of a proposal, notwithstanding a determination under paragraph 128(1)(*a*);

(*b*) where a recommendation is made under subparagraph 128(1)(*b*)(ii) or paragraph 128(1)(*d*),

(i) to adopt the recommendation or refer it back to the Review Board for further consideration, or

(ii) after consulting the Review Board, to adopt the recommendation with modifications or reject it and order an environmental impact review of the proposal; or

(*c*) irrespective of the determination in

à l'organe en ayant effectué l'examen préalable et, en cas de renvoi effectué en vertu du paragraphe 126(2), au ministère, à l'organisme, à la première nation, au gouvernement tlicho ou à l'administration locale concernée.

Régions touchées

(4) Dans son rapport, l'Office précise la région — même située à l'extérieur de la vallée du Mackenzie — dans laquelle, à son avis, le projet aura vraisemblablement les répercussions visées à l'alinéa (1)*b*) ou sera vraisemblablement la cause des préoccupations visées à l'alinéa (1)*c*), ainsi que la mesure dans laquelle la région sera ainsi touchée.
1998, ch. 25, art. 128; 2005, ch. 1, art. 78.

130. (1) Au terme de leur étude du rapport d'évaluation environnementale, le ministre fédéral et les ministres compétents auxquels le rapport a été transmis peuvent, d'un commun accord :

a) ordonner la réalisation d'une étude d'impact malgré la déclaration contraire faite en vertu de l'alinéa 128(1)*a*);

b) accepter la recommandation faite par l'Office en vertu du sous-alinéa 128(1)*b*)(ii) ou de l'alinéa 128(1)*d*), la lui renvoyer pour réexamen ou après avoir consulté ce dernier soit l'accepter avec certaines modifications, soit la rejeter et ordonner la réalisation d'une étude d'impact;

c) dans les cas où, à leur avis, l'intérêt national l'exige et après avoir consulté le ministre de l'Environnement, saisir celui-ci de l'affaire, quelles que soient les conclusions du rapport, pour qu'un

the report, to refer the proposal to the Minister of the Environment, following consultation with that Minister, for the purpose of a joint review under the *Canadian Environmental Assessment Act*, where the federal Minister and the responsible ministers determine that it is in the national interest to do so.

Consultation

(1.1) Before making an order under paragraph (1)(*a*) or a referral under paragraph (1)(*c*), the federal Minister and the responsible ministers shall consult the Tlicho Government if the development is to be carried out wholly or partly on Tlicho lands.

Areas identified

(2) Where an environmental impact review of a proposal is ordered under subsection (1), the federal Minister and responsible ministers shall identify any area within or outside the Mackenzie Valley in which the development is likely, in their opinion, to have a significant adverse impact or to be a cause of significant public concern and specify the extent to which that area is affected.

Additional information

(3) If the federal Minister and responsible ministers consider any new information that was not before the Review Board, or any matter of public concern not referred to in the Review Board's reasons, the new information or matter shall be identified in the decision made under this section and in any consultation under paragraph (1)(*b*).

examen conjoint soit effectué sous le régime de la *Loi canadienne sur l'évaluation environnementale*.

Consultation du gouvernement tlicho

(1.1) Avant de prendre la mesure visée aux alinéas (1)*a*) ou *c*), le ministre fédéral et les ministres compétents consultent le gouvernement tlicho si le projet de développement doit être réalisé — même en partie — sur les terres tlichos.

Régions touchées

(2) Dans les cas où ils ordonnent la réalisation d'une étude d'impact, le ministre fédéral et les ministres compétents précisent la région — même située à l'extérieur de la vallée du Mackenzie — dans laquelle, à leur avis, le projet aura vraisemblablement des répercussions négatives importantes ou sera vraisemblablement la cause de préoccupations importantes pour le public, ainsi que la mesure dans laquelle la région sera ainsi touchée.

Renseignements supplémentaires

(3) Le ministre fédéral et les ministres compétents sont tenus d'indiquer, au soutien de la décision ou dans le cadre des consultations visées à l'alinéa (1)*b*), les renseignements dont il a été tenu compte et qui étaient inconnus de l'Office, ainsi que les questions d'intérêt public qui ont été étudiées et qui n'ont pas été soulevées par ce dernier.

Distribution of decision

(4) The federal Minister shall distribute a decision made under this section to the Review Board and to every first nation, local government, regulatory authority and department and agency of the federal or territorial government affected by the decision.

Communication de la décision

(4) Le ministre fédéral est chargé de communiquer la décision ainsi rendue à l'Office, aux premières nations, administrations locales et autorités administratives touchées par celle-ci et aux ministères et organismes des gouvernements fédéral et territorial concernés.

Effect of decision

(5) The federal Minister and responsible ministers shall carry out a decision made under this section to the extent of their respective authorities. A first nation, local government, regulatory authority or department or agency of the federal or territorial government affected by a decision made under this section shall act in conformity with the decision to the extent of their respective authorities. 1998, c. 25, s. 130; 2005, c. 1, s. 80.

Mise en œuvre

(5) Ces premières nations, administrations locales, autorités administratives, ministères et organismes sont tenus de se conformer à la décision ministérielle dans la mesure de leur compétence. La mise en œuvre de celle-ci incombe au ministre fédéral et aux ministres compétents. 1998, ch. 25, art. 130; 2005, ch. 1, art. 80.

Decision by designated Agency

131. (1) A designated regulatory agency shall, after considering a report of the Review Board containing a recommendation made under subparagraph 128(1)(*b*)(ii) or paragraph 128(1)(*d*),

(*a*) adopt the recommendation or refer it back to the Review Board for further consideration; or

(*b*) after consulting the Review Board, adopt the recommendation with modifications or reject it and order an environmental impact review of the proposal.

Organisme administrative désigné

131. (1) Au terme de son étude du rapport d'évaluation environnementale, l'organisme administratif désigné accepte la recommandation faite par l'Office en vertu du sous-alinéa 128(1)*b*)(ii) ou de l'alinéa 128(1)*d*), la lui renvoie pour réexamen ou après avoir consulté ce dernier soit l'accepte avec certaines modifications, soit la rejette et ordonne la réalisation d'une étude d'impact.

Effect of decision

(2) A designated regulatory agency shall carry out, to the extent of its authority, any recommendation that it adopts.

Areas identified

(3) Where an environmental impact review of a proposal is ordered under subsection (1), the designated regulatory agency shall identify any area within or outside the Mackenzie Valley in which the development is likely, in its opinion, to have a significant adverse impact or to be a cause of significant public concern and specify the extent to which that area is affected.

Additional information

(4) If a designated regulatory agency considers any new information that was not before the Review Board, or any matter of public concern that was not referred to in the Review Board's reasons, the new information or matter shall be identified in the decision made under this section and in any consultation under paragraph (1)(*b*).

Decision by Tlicho Government

131.1 (1) If a development is to be carried out wholly or partly on Tlicho lands, the Tlicho Government shall, after considering a report of the Review Board containing a recommendation made under subparagraph 128(1)(*b*)(ii),

(*a*) adopt the recommendation or refer it back to the Review Board for further consideration; or

(*b*) after consulting the Review Board, adopt the recommendation with

Mise en oeuvre

(2) L'organisme administratif désigné est tenu, dans la mesure de sa compétence, de mettre en oeuvre toute recommandation qu'il accepte.

Régions touchées

(3) Dans les cas où il ordonne la réalisation d'une étude d'impact, l'organisme administratif désigné précise la région — même située à l'extérieur de la vallée du Mackenzie — dans laquelle, à son avis, le projet aura vraisemblablement des répercussions négatives importantes ou sera vraisemblablement la cause de préoccupations importantes pour le public, ainsi que la mesure dans laquelle la région sera ainsi touchée.

Renseignements supplémentaires

(4) L'organisme administratif désigné est tenu d'indiquer, au soutien de sa décision ou dans le cadre des consultations visées au paragraphe (1), les renseignements dont il tient compte et qui étaient inconnus de l'Office, ainsi que les questions d'intérêt public qu'il a étudiées et qui n'ont pas été soulevées par ce dernier.

Décision du gouvernement tlicho

131.1 (1) Lorsque le projet de développement doit être réalisé — même en partie — sur les terres tlichos, le gouvernement tlicho, au terme de son étude du rapport d'évaluation environnementale, accepte la recommandation faite par l'Office en vertu du sous-alinéa 128(1)*b*)(ii), la lui renvoie pour réexamen ou, après l'avoir consulté, soit l'accepte avec modifications, soit la rejette.

modifications or reject it.

Effect of decision

(2) The Tlicho Government shall carry out, to the extent of its authority, any recommendation that it adopts.

Additional information

(3) If the Tlicho Government considers any new information that was not before the Review Board, or any matter of public concern that was not referred to in the Review Board's reasons, the new information or matter shall be identified in the decision made under this section and in any consultation under paragraph (1)(*b*).

2005, c. 1, s. 81.

Conservation

131.2 In making a decision under paragraph 130(1)(*b*) or subsection 131(1) or 131.1(1), the federal Minister and the responsible ministers, a designated regulatory agency or the Tlicho Government, as the case may be, shall consider the importance of the conservation of the lands, waters and wildlife of the Mackenzie Valley on which the development might have an impact.

2005, c. 1, s. 81.

Consideration of report by ministers

135. (1) After considering the report of a review panel, the federal Minister and responsible ministers to whom the report was distributed may agree to

(*a*) adopt the recommendation of the review panel or refer it back to the

Mise en œuvre

(2) Le gouvernement tlicho est tenu, dans la mesure de sa compétence, de mettre en œuvre toute recommandation qu'il accepte.

Renseignements supplémentaires

(3) Il est tenu d'indiquer, au soutien de sa décision ou dans le cadre des consultations visées au paragraphe (1), les renseignements dont il tient compte et qui étaient inconnus de l'Office, ainsi que les questions d'intérêt public qu'il a étudiées et qui n'ont pas été soulevées par ce dernier. 2005, ch. 1, art. 81.

Préservation des terres, des eaux et de la faune

131.2 Pour la prise de toute décision en vertu de l'alinéa 130(1)*b*) ou des paragraphes 131(1) ou 131.1(1), le ministre fédéral et les ministres compétents, l'organisme administratif désigné ou le gouvernement tlicho, selon le cas, tiennent compte de l'importance de préserver les terres, les eaux et la faune de la vallée du Mackenzie qui peuvent être touchées par le projet de développement.

2005, ch. 1, art. 81.

Décision ministérielle

135. (1) Au terme de son étude du rapport visé au paragraphe 134(2), le ministre fédéral et les ministres compétents auxquels ce document a été transmis peuvent, d'un commun accord, parvenir à l'une des décisions suivantes :

panel for further consideration; or

(*b*) after consulting the review panel, adopt the recommendation with modifications or reject it.

a) ils acceptent la recommandation de la formation de l'Office ou la lui renvoient pour réexamen;

b) après avoir consulté cette dernière, ils l'acceptent avec certaines modifications ou la rejettent.

Additional information

(2) If the federal Minister and responsible ministers consider any new information that was not before the review panel, or any matter of public concern not referred to in the panel's reasons, the new information or the matter shall be identified in the decision made under this section and in their consultations under paragraph (1)(*b*).

Renseignements supplémentaires

(2) Le ministre fédéral et les ministres compétents sont tenus d'indiquer, au soutien de la décision ou dans le cadre des consultations visées à l'alinéa (1)*b*), les renseignements dont il a été tenu compte et qui étaient inconnus de la formation, ainsi que les questions d'intérêt public qui ont été étudiées et qui n'ont pas été soulevées par celle-ci.

Canada Oil and Gas Operations Act/
Loi sur les opérations pétrolières au Canada

5(2) Before authorizing any work or activity under paragraph (1)(*b*), the National Energy Board shall require the submission of a plan satisfactory to the National Energy Board for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in that work or activity.

5(2) Avant d'autoriser les activités prévues à l'alinéa (1)*b*), l'Office national de l'énergie exige la soumission d'un programme qu'il juge acceptable, prévoyant dans l'exécution de celles-ci l'embauche de Canadiens et offrant aux fabricants, conseillers, entrepreneurs et compagnies de services canadiens la juste possibilité de participer, compte tenu de leur compétitivité, à la fourniture des biens et services utilisés lors de ces activités.

APPENDIX B

Recommended Mitigating Measures R-13, R-15, R-16 and R-17
From the Environmental Assessment Report concerning the
Gathering and Pipeline Project

The MVEIRB produced the following Recommendations with respect to the Gathering and Pipeline Project in the original Environmental Assessment Report, dated October 16, 2001:

R-13 INAC ensures that Paramount discusses its proposed compensation plan with the affected communities and the GNWT. Paramount should widen the scope of the compensation plan as required to ensure that reasonable and credible land and resource use impacts caused by the development and identified by the communities are eligible for compensation.

R-14 The MVLWB and the NEB ensure that Paramount includes mitigative measures in the TK study to address impacts identified by the TK study. The MVLWB and the NEB should obtain copies of the completed TK study from Paramount along with evidence of community approval of the study. The MVLWB and the NEB should ensure that authorization terms and conditions are amended as appropriate to address any impacts identified by the study that have not already been addressed with existing terms and conditions.

R-15 INAC and Paramount amend the Benefits Plan approved by INAC on September 25, 2001 to include the revised compensation plan developed as a result of Review Board Measure #13 or that a separate compensation plan be developed to address these concerns. Should Paramount and the communities be unable to come to an agreement on the contents of the revised compensation plan, then INAC should make the final decision and proceed with its approval of the amended Benefits Plan.

R-16 INAC ensures that the amended Benefits Plan requires Paramount to provide copies of the Annual Reports required by the Benefits Plan to the GNWT, the Review Board, the MVLWB and the local communities in addition to INAC. The scope of the Annual Reports should be expanded beyond what is currently required. The Annual Reports should detail consultations undertaken with the local communities, discuss what concerns were raised by the communities, describe how Paramount has addressed or intends to address these concerns and discuss what actions Paramount will take to enhance positive socio-economic impacts and mitigate negative socio-economic impacts.

R-17 The MVLWB, the NEB and INAC do not take any irreversible steps in relation to this development until INAC has accepted this recommendation for an amended Benefits Plan. When complete, a copy of the amended Plan should be provided to each of the potentially impacted communities and to the Review Board, the MVLWB, the NEB, INAC and the GNWT.

APPENDIX C

Modified Recommendations R-13, R-15, R-16 and R-17
Following the Consult to Modify Process in respect
To the Gathering and Pipeline Project

INAC initiated a consult to modify process to change these recommendations. The final recommendations issued January 11, 2002, significantly modified recommendations R-13 to R-16 and deleted R-17. The modified recommendations follow:

R-13 (as modified)	Paramount is to discuss, develop and implement a wildlife and resource harvesting compensation plan with potentially affected First Nation communities – Deh Gah Go'tie First Nation, Fort Providence Métis, Ka'a'Gee Tu First Nation, K'atlodeeche First Nation and West Point First Nation. The scope of the plan is to include compensation for hunting, trapping, fishing and other resource harvesting activity losses resulting from the development as agreed to by Paramount and the communities. Paramount is to commence the consultations as soon as possible, with a draft plan submitted to the communities within 60 days of EA Report acceptance by the INAC Minister and a final plan submitted to the communities within 90 days of EA Report acceptance. The plan is to apply retroactively to impacts arising from the start of construction of the gathering facilities and pipeline. If requested by Paramount or any of the communities, the GNWT and INAC are to facilitate the discussions on the plan.
R-14 (as modified)	The MVLWB and/or the NEB should ensure that the affected aboriginal communities have been provided a copy of the TK study and an opportunity to comment on the study and Paramount's proposed mitigative measures. The MVLWB and/or the NEB should ensure that Paramount implements appropriate mitigative measures to address impacts throughout the life span of the development.
R-15 (as modified)	Paramount and the communities are to cooperate to the fullest extent possible in developing the wildlife and resource harvesting compensation plan. If the parties are unable to come to an agreement on the contents of the plan within the 90 day period, an independent arbitrator shall be jointly appointed within 30 days by the GNWT and INAC. The arbitration process shall conclude within 30 days of the appointment of the arbitrator.

R-16 (as modified)	Following review and acceptance of Paramount's Cameron Hills Annual Report, INAC will provide copies of the Report to the GNWT, the Review Board, the MVLWB and the potentially affected First Nations communities. The scope of the Annual Report should detail consultations undertaken with the local communities, discuss concerns raised by the communities, describe how Paramount has addressed or intends to address these concerns and discuss what actions Paramount will take to enhance positive socio-economic impacts.
R-17 (as modified)	This measure has been deleted.

APPENDIX D

SUMMARY OF RECOMMENDATIONS AND SUGGESTIONS
Report of Environmental Assessment and Reasons for Decision
EA03-005 Paramount Resources Limited Cameron Hills Extension

Recommendations

R-1 The Review Board recommends that regulatory authorities include in their authorizations those items set out in the Developer's commitments, outlined in Appendix A, that are within their jurisdiction.

R-2 The Review Board recommends that Paramount prepare a report within 12 months and thereafter, annually, until the developments on the SDL are abandoned and restored, for distribution in plain language to the parties in this EA. This report will outline the implementation status of each commitment made during the course of this EA, as set out in Appendix A.

R-3 The Review Board recommends that prior to the issuance of any further licenses or permits Paramount install a meteorological station (at minimum must monitor wind speed, wind direction and temperature) in the Cameron Hills SDL to gather baseline data related to its development. Meteorological data will be provided annually to air quality staff of GNWT-RWED and Environment Canada along with a detailed re-modeling of Paramount's various development scenarios to ensure onsite meteorological conditions are reflected in the modeled outputs.

R-4 The Review Board recommends that Paramount install a continuous gas analysis monitoring system to track ambient air quality (at minimum 1 hour SO_2 and NO_2) and provide the data to the general public via website, to be updated no less than monthly if a live connection is not available. Annual reports on the status of the air quality at Cameron Hills will be provided by Paramount to all potentially affected communities and government in a plain language document throughout the life of the Paramount operations at Cameron Hills.

R-5 The Review Board recommends that Paramount install an amine fuel sweetening unit at the Central Battery (H-03) location prior to bringing any further wells online or pipe in sweet fuel from outside Cameron Hills, as per Paramount's original development plan.

R-6 The Review Board recommends that any further combustion engines being installed for line heaters and pumpjacks at the Cameron Hills operation must use the sweetened fuel or an alternate source of no sulphur fuel.

R-7 The Review Board recommends that the Government of Canada (INAC and Environment Canada) and the Government of the Northwest Territories implement recommendation 7 from the Ranger-Chevron EA by June 2005.

R-8 The Review Board recommends that Paramount modify its spill reporting procedures for the Paramount Cameron Hills developments to include notice of spill occurrences to potentially affected communities. Spills must be reported according to the NWT Spill Reporting Procedures.

R-9 The Review Board recommends that Paramount continue to monitor all work sites for erosion, and take appropriate measures in advance to avoid such problems. The Review Board recommends appropriate erosion mitigation measures be identified in advance and authorized by the NEB and INAC inspectors, and that any remediation of sites be documented and reported to regulators and the Ka'a'Gee Tu First Nation on a quarterly basis.

R-10 The Review Board recommends that Paramount, in the case of an isolated water crossing, maintain downstream water flow at pre-in-stream work levels. All in-stream work must be completed as expediently as possible to mitigate disruption of fish movements.

R-11 The Review Board recommends that the Department of Fisheries and Oceans conduct regular site visits to the Cameron Hills to inspect for determine if any impacts to fish or fish habitat. Reports of these inspections must be made publicly available via DFO and also be sent directly to the Ka'a'Gee Tu First Nation, in a plain language version.

R-12 The Review Board recommends that RWED will, within the next six months, initiate the formation of a Deh Cho Boreal Caribou Working Group (DCBCWG). The Working Group will, among other things, consider: habitat identification, range plan development, thresholds, monitoring systems, adaptive mitigation, research programs and cumulative effects models. In addition, it will coordinate its activities with similar working groups in Alberta and British Columbia.

R-13 The Review Board recommends that the MVLWB adopt an average linear disturbance target of 1.8 km per km squared as a boreal caribou disturbance threshold for the entire Cameron Hills, NT area, in order to prevent significant adverse environmental impacts on boreal caribou populations whose range includes the Paramount SDL and surrounding area. This shall be considered in all future land use applications for the area.

R-14 The Review Board recommends that paramount locate at least 50% of all proposed and planned development In the Cameron Hills SDL, as described In Paramount's Developer's Assessment Report, on areas that are currently disturbed (as of the date of Ministerial approval of this Report of Environmental Assessment). This requirement should be included as a condition in land use permit MV2002A0046.

R-15 The Review Board recommends that Paramount and the other parties to the unfinished Cameron Hills Wildlife and Resources Harvesting Compensation Plan developed in response to measures 13 and 15 of EA01-005 complete the compensation plan. If a compensation plan cannot be completed by these parties within 90 days of the federal Minister's acceptance of this report, this matter will proceed to binding arbitration, pursuant to the NWT Arbitration Act. A letter signed by the parties, indicating agreement to the compensation plan or in the case of arbitration, the arbitrator's decision must be filed with NEB and MVLWB prior to the commencement of Paramount's operations under land use permit MV2002A0046.

R-16 The Review Board recommends that the GNWT develop a socio-economic agreement with Paramount in consultation with affected communities before operations proceed under the land use permit MV2002A0046. The socio-economic agreement is to address issues such as employment targets, educational and training opportunities for local residents and a detailed ongoing community consultation plan.

R-17 The Review Board recommends the KTFN be notified directly if any heritage resources are suspected or encountered during Paramount's activities in the Cameron Hills.

Suggestions

S-1 The Review Board suggests that a member of the K'a'Gee Tu First Nation be invited by DFO to accompany its inspectors while conducting inspections in the Cameron Hills operations area.

S-2 The Review Board suggests the agencies responsible for water resource management and protection increase their monitoring and enforcement efforts commensurate with the increase in the scope of Paramount's development in the Cameron Hills area.

S-3 The Review Board suggests that the MVLWB and NEB specify low-impact seismic lines (currently =4.5 m wide average, maximum =5 m wide, maximum line of sight =200 m) as the current standard for geophysical programs in boreal caribou habitat, as outlined in the MVEIRB 2003 draft document: Reference Bulletin - Preliminary Screening of Seismic Operations in the Mackenzie Valley.

S-4 The Review Board suggests that RWED determine the need for cooperative research to document the impacts of the Cameron Hills development on marten, wolf, and wolverine populations.

S-5 The Review Board suggests that the discussion and drafting of the community investment plan be resumed between the KTFN and Paramount, with a target date of completion and implementation of November 30, 2004.

S-6 The Review Board suggests that Paramount continue discussions with the Hay River Health and Social Services with regards to services (emergency or other) that may be utilized by the company in certain instances.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1379-05
STYLE OF CAUSE:	CHIEF LLOYD CHICOT suing on his own behalf and on behalf of all Members of the Ka'a'Gee Tu First Nation and the KA'A'GEE TU FIRST NATION v. THE ATTORNEY GENERAL OF CANADA and PARAMOUNT RESOURCES LTD.
PLACE OF HEARING:	Vancouver, B.C.
DATE OF HEARING:	January 23, 2007
REASONS FOR ORDER AND ORDER:	Blanchard J.
DATED:	July 20, 2007

APPEARANCES:

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Ms.Donna Tomljanovic	FOR THE RESPONDENT ATTORNEY GENERAL
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