

THE QUEEN'S BENCH

WINNIPEG CENTRE

APPLICATION UNDER Queens' Bench Rule 14.05(2)(c)(iv)

BETWEEN:

WESTERN CANADA WILDERNESS COMMITTEE

Applicant,

- and -

THE GOVERNMENT OF MANITOBA,

Respondent.

AFFIDAVIT OF GAILE LILLIAN WHELAN-ENNS
SWORN THE 14th DAY OF JUNE, 2011

JUN 16 2011

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(File No. 45961/1)

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I, GAILE LILLIAN WHELAN-ENNS of the City of Winnipeg, in the Province of Manitoba,
Director of Manitoba Wildlands,

MAKE OATH AND SAY THAT:

1. I am the Director of Manitoba Wildlands (hereinafter "MW"), an association which works alongside and on occasion jointly with the Applicant and which focuses on decisions relating to Manitoba's lands, waters and ecosystems and, as such have personal knowledge of the facts and matters hereinafter deposed to by me, except where same are stated to be based on information and belief, in which case I verily believe same to be true.
2. I have been the Director of MW since its formation in 2000.
3. Prior to establishing MW, I represented the World Wildlife Federation – Canada as the Manitoba Protected Areas Coordinator from 1993-2000.

4. On or about May 14, 2008, MW submitted comments to Manitoba Conservation's Environmental Assessment and Licensing Branch expressing concerns about the Tolko Industries Ltd.'s (hereinafter "Tolko") proposal (Public Registry file #3094.70) to build a logging road (hereinafter "Dickstone Road") through Grass River Provincial Park (hereinafter the "Park"). MW's comments indicated that it did not feel that this proposal should go ahead.

5. The comments highlighted, among other things, MW's opinion that if logging was to be prohibited in the Park, then related logging activities such as building a logging road should also be prohibited.

6. On or about June 2, 2009, I made a presentation to the Standing Committee on Legislative Affairs in regards to "Bill 3 – The Forest Amendment Act" (hereinafter "Bill 3").

7. Bill 3 was intended to prohibit logging activities in Manitoba's provincial parks through amendments to Manitoba's *Forest Act* and *Provincial Parks Act*. Attached hereto as Exhibit "A" is a press release from the Respondent about the intent of Bill 3.

8. Bill 3 received third reading without further amendment on June 3rd, 2009. Clauses 9 and 31, amended Manitoba's *Forest Act* and *Provincial Parks Act* respectively to prohibit commercial logging in Manitoba's provincial parks. Bill 3 came into effect upon Royal Assent on June 11, 2009.

9. On or about August 12, 2009, the Respondent issued to Tolko, Environment Act License No. 2896 (hereinafter the "Licence"), which authorized the construction, operation, and maintenance of Dickstone Road.

10. In or about the fall of 2010 Hugh Arklie showed me a copy of a legal opinion that he had obtained from the Public Interest Law Centre which concluded that the term "logging" as found in *The Forest Act* was broad enough to include the construction of a logging road.

11. On or about March 21, 2011, I met with Hugh Arklie, and Eric Reder of the Applicant to discuss our options regarding the potential legal review of the meaning of the term "logging" as found in *The Forest Act*. We decided that we would offer the Respondent the opportunity to participate jointly in our legal review of the changes which made the Park a "no logging" park. All parties would then agree to be bound by the outcome of the legal review.

12. On or about March 29, 2011, I personally visited Conservation Minister Bill Blaikie (hereinafter "Blaikie") of the Respondent. At that meeting we discussed the legal opinion Hugh Arklie had obtained regarding the legality of the License, and invited the Respondent to cooperate in a Court Application pursuant to Rule 14.05 for an interpretation of the term "logging" as it appears in *The Forest Act*.

13. On or about April 4, 2011, MW and the Applicant sent a joint letter to Blaikie, confirming the contents of my discussion with him of March 29, 2011. We reiterated our hope to pursue review of this matter cooperatively with the Respondent. Attached hereto and marked as Exhibit "B" is a copy of the said letter.

14. On or about April 8, 2011, I received a phone call from Serge Scrafield (hereinafter "Scrafield"), Assistant Deputy Minister at Manitoba Conservation, which confirmed that work on Dickstone Road had ended early in April as per clause 17 of the Licence.

15. On or about April 20, 2011, I received a phone call from Scrafield. Scrafield inquired into the reasoning of our legal strategy, and our reason for requesting a Queen's Bench Rule review. Furthermore Scrafield indicated that the Respondent had reviewed its decisions regarding Dickstone Road and felt its interpretation of *The Forest Act* was correct. I pointed out that we were trying to pursue this in a non-adversarial, cooperative, manner whereby all parties including the Respondent would abide by the result. Scrafield indicated that he would be interested in having the Applicant's

legal counsel (unnamed at this point) and the Respondent's legal counsel meet to discuss what was proposed.

16. On April 29, 2011, I received a reply addressed to Eric Reder of the Applicant and to me from Conservation Minister Bill Blaikie dated April 26, 2011 where he indicated that he did not agree with our legal position, and therefore Manitoba Conservation would not be cooperating in an application requesting interpretation pursuant to Queen's Bench Rule 14.05. Attached hereto as Exhibit "C" is a copy of the said April 26, 2011 letter.

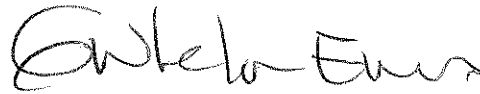
17. I make this Affidavit *bona fide*.

SWORN before me in the City of Winnipeg,)
in the Province of Manitoba, this 14th day of)
June, 2011.)



~~A Commissioner for Oaths in and for the~~
~~Province of Manitoba.~~

~~My Commission Expires:~~
A Notary Public in and for
the Province of Manitoba



GAILE LILLIAN WHELAN-ENNS