

December 20<sup>th</sup>, 2009

Ms. Karen McMaster  
Box 1988  
Yellowknife, NT  
X1A 2P5

**Sent by e-Mail**

Dear Ms. McMaster

**RE: Wek'eezhii Renewable Resources Board Proceeding on Joint GNWT  
and Tlicho Government Proposal on Bathurst Caribou Management**

I am counsel to the Wek'eezhii Renewable Resources Board (the Board). I have been asked to respond to several of your e-mails related to the captioned proceeding. These e-mails were directed to the interim Chair of the Board. In particular, I am referring to e-mails sent and dated December 4<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup>. I am aware that you have been involved in other e-mail communications with the Board through Mr. Pryznyk and my comments below will also address that practice in a general way.

I note in the dated e-mails referred to above that you indicate that you have been a lawyer and that you hold an LLB along with other academic credentials. You are not, however, registered to practice in the Northwest Territories. I will, nonetheless, proceed with my response below on the assumption that you are familiar with the framework set out in Chapter 12 of the Tlicho Agreement and the basic legal principles which underlie administrative proceedings.

On December 3<sup>rd</sup>, 2009 the Board amended the time lines set out for this proceeding. In its letter of that date the Board indicated that it did so in "the interests of maintaining a fair and transparent process". Among the reasons for the Board's decision were the facts that supporting documents necessary for the analysis of the Joint Proposal had been submitted late; the number of parties securing intervenor status exceeded the Board's expectations; and the complexity of the issues raised all militated in favour of an extension of the time lines first set out by the Board.

On December 4<sup>th</sup>, the interim Chair referred to the Board's authority under section 12.3.6 of the Tlicho Agreement in response to an e-mail question from Mr. Knutson about the change in the time lines. It appears that you were copied with the Knutson e-mail and you then e-mailed Mr. Pryznyk on the same day copying all parties and expressed your "opinion" that the Board should restart the process. I assume that this "opinion" was not a legal opinion but rather a personal one.

---

\* Practising law through the John Donihee Professional Corporation.

In any event, had you reviewed the Board's Rules of Procedure you would have seen that they directly address the issue of the Board changing the timeline in a proceeding - see in Rule 8 below:

(From the draft Rules)

4. These Rules apply to all Proceedings of the Board.
5. Where any matter of procedure is not provided for by these Rules, the Board may, at any time, issue a direction on procedure to deal with the matter.
6. The Board may, by its own motion, or an application by a party in any Proceeding, dispense with, vary or supplement these Rules.
7. Where there is a conflict between the Rules and a specific direction given by the Board on procedure, the direction on procedure prevails over the Rules.
8. To address the requirements of fairness, the Board may, ***upon notice to the parties to a Proceeding, shorten or extend the time fixed by these Rules for any action.***

Rule 8 applies specifically to this situation. The Board's December 3<sup>rd</sup> letter makes it clear that the reason for the change was to ensure that the proceeding would be fair. With respect to your concern about compensation for participants, a reading of Chapter 12 of the Tlicho Agreement and consideration of the rules related to tribunal jurisdiction should clearly indicate that the Board does not have the authority to provide such compensation. Moreover, I am unaware of any legal authority to support your suggestion that the Board, or any administrative tribunal, has an obligation to compensate the participants in one of its proceedings when a change is made to ensure fairness for those same participants.

You indicated in your December 4<sup>th</sup> e-mail that you intended to raise these issues as "formal legal issues" by the required deadline.

On December 9<sup>th</sup> you engaged in another series of e-mail exchanges with Mr. Pryznyk beginning with questions about the role of the Independent Advisor, Dr. Anne Gunn who has been retained by the Board and going on to questions about what documentary material is posted on the record and what is not. Mr. Pryznyk instructed you to submit those concerns to the Board in letter format but to date you have not done so. He also explained that it is not the Board's practice to post e-mails on the record for its proceedings. He explained the Board's policies in this regard.

In your final response in this exchange dated December 10<sup>th</sup> you raise another concern about "a lot happening behind the scenes .... [all] without any notice to the interveners". This is the very kind of bilateral e-mail exchange that contributes to the problem you were complaining about. It was this kind of exchange that the interim Chair was seeking to head off with his instruction to you to submit your concerns in writing.

It is inappropriate for you to be e-mailing the interim Chair and making arguments about "fundamental flaws" in the process on an *ex parte* basis. On November 24<sup>th</sup>, 2009 the Board wrote to the parties and provided instructions on the appropriate format for raising legal issues in relation to the Joint Proposal proceeding. Notwithstanding these instructions, you continued to e-mail the interim Chair rather than write to the Board, even after you received the benefit of

an explanation of the Board's policy about e-mails and after the interim Chair reminded you in a December 9<sup>th</sup> e-mail to submit your concerns "in a letter format".

To compound these concerns, you corresponded by e-mail with the interim Chair on December 11<sup>th</sup>, including an "apology" for your "mass e-mail". Your message raises legal issues and is not in the format you have been instructed to use to raise such matters. The tone of this message, in my view, is disrespectful and inappropriate. You are not in a position to be expressing any "legal" opinions in the NWT and you should govern yourself accordingly. By copying this message to all participants in the proceeding you also cast aspersions on the Board's process. This is not constructive and it detracts from the efforts being made by the Board to ensure that the parties have access to all the information needed to analyze the Joint Proposal and a fair opportunity to do so.

If you would like to know more about the workings of section 12.5.14 of the Tlicho Agreement you may wish to contact either the Tlicho Government or the GNWT Department of Environment and Natural Resources. Their actions in relation to an "emergency" do not automatically fall within the scope of the current Board proceeding. Your December 11<sup>th</sup> e-mail is based on assumptions about the role of the Board in the "emergency" process which are simply incorrect.

You finally corresponded with the Board on December 11<sup>th</sup> but did not set out your legal concerns as instructed. The Board wanted to hear from parties about such concerns so that it can establish a process to address them in a way that is fair to all. Instead of helping the Board, you once again simply complained about the deadline and the process, indicating that you intend to bring any legal issues you identify forward as the process unfolds. Your approach to these matters is not in compliance with the Board's instruction and not helpful.

If you have legal concerns or issues to raise the Board wants them on the record for the benefit of all parties. If you would like a Board ruling on any matter you must seek that remedy in accordance with the Board's rules of procedure. I trust that this is clear.

Yours truly,



John Donihee  
Counsel WRRB

cc. Parties Bathurst Joint Proposal Proceeding