



## OKANAGAN NATION ALLIANCE

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### PRESS RELEASE – FOR IMMEDIATE RELEASE

October 23, 2009

#### OKANAGAN NATION MAINTAINS OPPOSITION TO CLEAR-CUT LOGGING

**OKANAGAN TERRITORY (VERNON, BC)** – The Okanagan Nation Alliance (ONA) is currently undertaking the necessary steps to prevent clear-cut logging of the Brown's Creek Watershed. The Province's claim to title and jurisdiction to the Brown's Creek Watershed is challenged by the *Wilson* case by the Okanagan Nation in the watersheds in a dispute that has been before the Courts for over a decade.

Tolko was granted TFL 49 despite strong objections from the Okanagan Nation Alliance and the Okanagan Indian Band. The Courts granted the Okanagan Indian Band a preservation order to allow the preservation of evidence and trail-mapping evidence necessary to prove their Aboriginal Title. While the evidence is being collected, Tolko has decided it will log the litigation area and they issued notice and began logging on October 21, 2009. Okanagan leaders and members from many Okanagan communities organized themselves in defence of Okanagan Title and Rights and the carrying out of stewardship responsibilities entrusted to the Okanagan Nation.

Tolko informed the Okanagan Nation that it would be seeking an injunction in response to the Okanagan Nation activities within the Brown's Creek Watershed.

The Okanagan Nation stands committed to the protection and preservation of evidence of Okanagan Title and Rights through supporting the *Wilson* litigation which has been on-going in good faith for ten (10) years.

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#### For further comment contact:

Grand Chief Stewart Phillip, Okanagan Nation Alliance Chairman mobile: (250) 490-5314  
Chief Fabian Alexis, Okanagan Indian Band mobile: (250) 306-2838





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## BROWN'S CREEK LOGGING DISPUTE UPDATE

October 23, 2009

The Province's exclusive claim to title and jurisdiction to the Brown's Creek watershed has been the subject of a major legal challenge by Dan Wilson on behalf of the Okanagan Indian Band (Wilson case) this significant legal challenge has been before the courts for the last 10 years.

In spite of strong objections by the Okanagan Indian Band and the Okanagan Nation Alliance, Tolko was granted TFL 49.

Within the context of the Wilson case, the Okanagan Indian Band was granted a court-ordered Preservation Order to allow for the preservation of archaeological evidence and the mapping and documentation of cultural evidence.

While this vital archaeological evidence is being collected, Tolko made a unilateral declaration of their intent to commence clear-cut logging operations within the litigation area on October 21, 2009. In response, member communities of the Okanagan Nation Alliance have joined Chief Fabian Alexis of the Okanagan Indian Band and Chief Tim Manuel of the Upper Nicola Band in their fight to protect the Brown's Creek watershed. Grand Chief Stewart Phillip, Chair of the Okanagan Nation Alliance and approximately 25 community members have assisted in the establishment of a check point at Bouleau Lake to monitor and manage the flow of traffic within the Brown's Creek watershed. The check-point site has been in operation for the last couple of days.

On Thursday, Tolko officials (Murray Wilson/Jim Knight) attended the check-point site and hand delivered a threatening letter from their legal counsel (Bull, Housser & Tupper-Daniel Bennett).

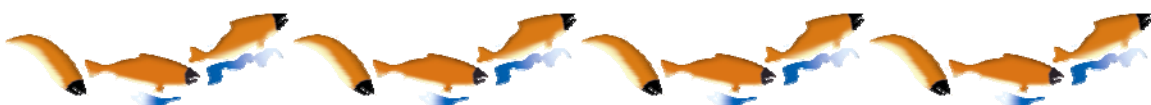
The letter demanded that all OKIB, UNB and ONA members immediately cease and desist from obstructing Tolko's effort to commence logging operations in the litigation area. Further, Tolko indicated they were intending on seeking an injunctive relief. When approached by Tolko representatives, there was no physical blockage of the road. Chief Alexis asked Jim Knight that Tolko respect Okanagan land, culture and watersheds and allow the elders, witnesses to continue working and mapping in the area. Today, through their legal counsel (Mandell-Pinder), OKIB, UNB, and ONA have responded to Tolko's recent legal intimidation tactics.

Based on legal discussions between legal counsels for both parties, it appears an Injunction Hearing will be held as early as November 19/20, 2009. Legal counsel for the OKIB, UNB and ONA offered to recommend that their clients 'stand down' in the event that Tolko agrees not to commence any logging activities until after the Injunction Hearing of November 19/20, 2009.

### For More Information Contact:

Chief Fabian Alexis, Okanagan Indian Band  
Grand Chief Stewart Phillip, ONA Chairman  
Chief Tim Manuel, Upper Nicola Band

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October 23, 2009

**Via Fax (604) 646-2553**

Bull Houser Tupper  
3000 Royal Centre, PO Box 11130  
1055 West Georgia Street  
Vancouver, BC V6E 3R3

**Attention: Daniel R. Bennett**

Dear Sir:

**Re: Timber Harvesting in the *Wilson* Litigation Area**

We write in response to your letter of yesterday's date, which was hand delivered to our clients. We disagree that Tolko may proceed to log without any regard to the destruction of evidence in the litigation area, and with your view that the Okanagan are not entitled to be present in the area, and must immediately vacate it. The reason there are so many trails in the area is that it is culturally a very important area for the Okanagan.

In 2007, when Sigurdson J. ordered that the trial in *British Columbia (Minister of Forests) v. Okanagan Indian Band* ("*Wilson*") proceed in stages, he responded to our clients' concern that evidence would be lost with respect to establishing Aboriginal Title if our clients could not continue to collect evidence in the litigation area. Our clients presented evidence to Sigurdson J. about Tolko's logging plans to demonstrate that this was a real concern. In his Oral Reasons for Judgment dated August 29, 2007, the Sigurdson J. ordered that to ensure that evidence of Aboriginal title is not lost, our clients may take steps to map and record trails, and that if there is other physical evidence at risk of being lost which is relevant to an Aboriginal title defence, they may apply to have such evidence preserved.

If Tolko proceeds to log in the litigation area it will destroy evidence of Aboriginal title and this is in direct conflict with the Court's order about preservation of evidence. As you know, we have filed and served upon you evidence from the Okangan people involved in trail mapping indicating that logging has already destroyed trails and that they have had to piece together trails which are cut off by clearcuts. We also filed an expert affidavit by archaeologist David Pokotylo which confirms that logging in the litigation area is sure to destroy archaeological evidence.

Due to the extent of past logging in the *Wilson* litigation area and the surrounding areas, the unlogged portions of the litigation area now constitute one of the few remaining culturally sensitive areas that have not been destroyed by resource development. The Okanagan were not able to carry out the evidence gathering which they planned for the summer as they were asked to stay out of the area because of the forest fires. When representatives of your client spoke to Chief Fabian Alexis yesterday, there was no physical blockage of the road. Chief Alexis asked Jim Knight that Tolko respect the Okanagan land and culture and the watersheds, and allow the elders and witnesses to continue working and mapping in the area. The Okanagan people were not blockading but rather set up a check point to monitor and control the flow of traffic and ask Tolko's employees to respect the work that is taking place in the area.

You note that the blocks which Tolko wishes to harvest are infested with MPB. However, interspersed with the infected trees are healthy trees, including non-pine species such as spruce. Tolko rejected an offer by the Okanagan that would allow Tolko to log the infected trees. The witnesses who have been working in the area have seen a large amount of healthy pine and non-pine species in the area.

We also note that while our clients did not proceed with the injunction application filed earlier this year, Tolko did not proceed with its logging plans for economic reasons. The current situation has arisen because Tolko has now declared its intention to commence clearcut logging in areas of cultural importance to the Okanagan and where the gathering of Aboriginal title evidence is not complete. Our clients perceive this as an act of provocation and damaging to the possibility of a resolution. The cultural and traditional economic loss to the Okanagan would be devastating if this area is logged. In this regard, we are instructed to advise that in the event that Tolko is responsible for destroying the remaining valuable cultural resources or archaeological evidence, the Okanagan will hold Tolko responsible for such irreplaceable losses, and for precluding the completion of evidence gathering.

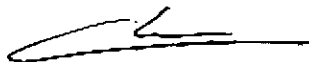
Regarding safety issues, which you say are created by our clients, we have been informed by the witnesses and trail mappers who are gathering evidence in the watersheds that the standard safety protocol is to use certain radio channels when travelling through the area, and for loggers and others to call their positions on the road to avoid accidents. Our clients are concerned that Tolko's employees are not calling their position on the roads and are constantly switching the channels that they use. We are advised that these are very dangerous practices and we ask that you forward this information to your client.

Finally, we note that in your email yesterday to our office you stated that you would reserve November 19 and 20 with the courts for the hearing of your injunction application, and that once those dates are confirmed, Tolko is prepared to refrain from its intended logging until the hearing. This confirmed our conversation that we would agree to expedited dates for the hearing so that the parties could avoid conflict on the land pending court and the exploration of discussion options. The only further clarification which I understood was required was whether the dates were confirmed by the registry. I was therefore surprised to read yesterday's letter and

the emails you sent me today, in which you now advise that Tolko will not agree to refrain from logging until the hearing of your injunction, and that you will seek an order for an expedited hearing.

Yours truly,

MANDELL PINDER



*LM* Louise Mandell  
Barrister & Solicitor

LM:CS/ms

cc: clients



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Direct Fax:	604.646.2553
E-mail:	db@bht.com
Our File:	08-4416
Date:	October 22, 2009

**BY HAND**

To Whom It May Concern

**Re: Interference of Timber Harvesting in Tree Farm Licence 49**

We act for Tolko Industries Ltd. ("Tolko") and write with regard to your blockade of and interference with Tolko's timber harvesting in the Browns Creek area of Tree Farm Licence 49 ("TFL 49") and Cutting Permits 635, 636 and 637 issued by the Ministry of Forests and Range.

We hereby demand that you immediately and permanently cease and desist your blockade and interference with Tolko's timber harvesting activities, and, in particular, immediately and vacate the areas in which Tolko is harvesting and plans to harvest within the Brown's Creek Watershed until said harvesting is complete. Your conduct is creating serious safety issues as well as significant financial damage to Tolko.

Tolko has followed an extensive regulatory process to ensure its operating plans are consistent with all regulatory requirements and has obtained all necessary permits and authorizations to undertake its timber harvesting pursuant to the above-noted cutting permits. These blocks contain significant percentages of pine trees and are infested with mountain pine beetle ("MPB"). The MPB infestation has already, and continues to, seriously degrade the utility and value of the timber in the cut blocks. As such, harvesting can no longer be delayed.

Contrary to what you may have heard, there is no Preservation Order in the Wilson litigation. While there is an order that provides the OKIB with funding to collect evidence, that order in no way restricts or limits Tolko from exercising its legal rights in the Browns Creek area. Further, although the OKIB filed an application for an injunction against Tolko earlier this year, the OKIB never proceeded with that or any similar application.



**Bull, Housser  
& Tupper** LLP

If you do not immediately stop interfering with Tolko's harvesting activities in the Browns Creek area, Tolko has instructed us to obtain a court order to prohibit such interference. Further, if your activities result in Tolko not completing its harvesting in a timely manner, Tolko will hold you responsible for its losses, including the diminution in value of the remaining timber in the cut blocks. Tolko will also hold you responsible for any and all delay costs arising from your conduct.

Yours truly,

Bull, Housser & Tupper LLP

Daniel R. Bennett

MCL/2062271