



MEMORANDUM

TO: Law Associates for *Kitkatla First Nation / B.C. Ministry of Forests, Lands & Natural Resource Operations / Government of Canada / Hutchinson Logging Ltd.*

FROM: Senior Partner 19 January 2021

RE: **Kitkatla Blockade – Banks Island – File # LIT-2021K**

Thank you for taking on this important file. Please keep me informed of your issues, questions, strategy, and progress on this file throughout negotiation preparations.

I am attaching **copies** of the following documents:

- (1) **Negotiation File** – (available in PDF on the project page)
- i. Document 1 – Outline of Problem: File Notes
 - ii. Document 2 – *Haida & Taku* Decisions: Clarifying Roles & Responsibilities of Consultation
 - iii. Document 3 – Appendix A – Forest Development Plan (Oct. 1998 to Sept. 2004)
 - iv. Document 4 – Appendix B – Archaeological Inventory & Impact Assessment
 - v. Document 5 – Appendix C – Consultation Transcript (Kitkatla and Provincial Crown)
 - vi. Document 6 – Appendix D – File Note Re: Banks Island Field Trip Aug. 2000
 - vii. Document 7 – Appendix E – Archaeology Branch Letter and Alteration Permit
 - viii. Document 8 – *Heritage Conservation Act* – Alteration Permit
 - ix. Document 9 – Appendix F – A Note About Injunctions
 - x. Document 10 – Phases of Negotiation
 - xi. Document 11 – *Forests for the Future* – Tsimshian Involvement in the Forest Sector
 - xii. Document 12 – Relationship Road Map
- (2) **Aboriginal Law Readings** (focus on the *Sparrow* & *Haida* cases) (available in PDF on the project page)

- (3) The name of your client (see project page under Client List). I need the thinking & creativity of your mind. This is a challenging case, as you will see (available on the project page)
- (4) Strategic Agenda for 2021 (available in PDF on the project page)

As you will see in the Negotiation File — Document 1, in January 2001 the *Kitkatla First Nation* threatened to bring, and, did bring, an injunction application to prevent *Hutchinson Logging Ltd.* from logging on Banks Island. The *Kitkatla First Nation* was unsuccessful, as you will understand when you read the law. But there was a harsh winter in 2001 that prevented Hutchinson from logging coupled with a 19-year moratorium on logging in that region due to a shift in government policy (you can imagine there were some *Kitkatla* members who saw a higher force at work here).

In any event, *Hutchinson Logging Ltd.* weathered the legal and economic storm, as it had not been until recently that the moratorium expired (31 Dec. 2020) and *Hutchinson Logging Ltd.* was ready and able to begin logging again. That is when the *Kitkatla* blockade went up on Banks Island.

There is now an injunction application scheduled for the 08th of February 2021 to ask the court to declare the blockade illegal and dangerous and to have the court order it dismantled so Hutchinson can begin logging operations (including road building). There is more information on the blockade in the file itself. This is a very sensitive issue, as you will see, that requires a thoughtful, creative, well-researched and respectful approach by all parties involved. It requires a deeper understanding of the historical and contemporary relationship between Indigenous Peoples and colonial settler governments and the resource industry. It demands a strong command of Canadian Aboriginal case law and appropriate Indigenous (*Kitkatla / Tsimshian*) law.

I would you to act for our client during negotiation preparations and the negotiation itself (this year the actual negotiations are hypothetical). If a negotiated settlement is not reached between all parties, as the senior litigator I will take over. However, with your help, our goal is to end the blockade and settle the dispute on better terms.

In any case, as senior partner on this file, I will brief you on the strategic agenda for the April negotiation preparation (see project page).

Good luck.

M. Bauer

M. B. Bauer (J.D.)

Senior Partner