

MEDIA RELEASE

For Immediate Release

February 24, 2003

First Nation launches lawsuit over massive salmon hatchery
Heiltsuk First Nation sues BC government and aquaculture giant to protect traditional territory

VANCOUVER, BC – The Heiltsuk First Nation announced today that it is suing the Government of British Columbia and aquaculture giant Omega Salmon Group Ltd., over a massive Atlantic salmon facility that is being built in the heart of its traditional territory on BC's mid-coast. Represented by Sierra Legal Defence Fund and the private law firm Woodward & Company, the Heiltsuk allege that the province has acted illegally by permitting the construction of the hatchery in Ocean Falls, near Bella Bella, without adequate consultation.

"Despite being well informed about the importance of this area to the Heiltsuk, the government's blatant disregard for our title and rights has felt like a slap in the face," said Heiltsuk spokesperson Philip Hogan. "It has created a situation where legal action is our only recourse to counter the threat that aquaculture poses to our way of life."

The construction site is located on lands that were extensively contaminated by an abandoned pulp and paper mill that had been built at the site of a traditional Heiltsuk village, forcing the Heiltsuk to move. Even though the Heiltsuk have never surrendered the title or rights for the area, the province leased the site to Omega, a subsidiary of the one of the world's largest multi-national fish farming companies, in late 2001. The Heiltsuk claim that, without adequate consultation, the province illegally granted a series of licenses for the salmon hatchery. Omega began construction in late 2002.

"It is our position that the province and Omega have repeatedly denied the Heiltsuk's requests to conduct proper consultations regarding the site," said Sierra Legal lawyer Angela McCue. "The province has stated that because the site was contaminated, the Heiltsuk's aboriginal rights and title were extinguished. We are hopeful that the court will extinguish this absurd argument and ensure that this project is halted until an appropriate consultation process takes place and the Heiltsuks' aboriginal and environmental concerns have been fully addressed."

The Heiltsuk are concerned that the huge hatchery, which is expected to produce at least 10 million Atlantic salmon smolts annually, will fuel the expansion of the aquaculture industry throughout the BC coast while mounting evidence suggests that salmon farming poses a significant and immediate threat to the area's wild Pacific salmon and other marine life. The recent decimation of an estimated 98% of the wild pink salmon run in the Broughton Archipelago, which was directly linked to sea lice contamination of the area's fish farms, clearly illustrates the dangers posed by open net pen aquaculture.

"The Heiltsuk people never surrendered the title or rights concerned with Ocean Falls," said Harvey Humchitt Sr., Hereditary Chief of the Heiltsuk. "We continue to rely heavily upon our marine resources for subsistence as well as for cultural and social uses. The proposed hatchery threatens our way of life and we will use every available legal tool to protect my people and stop this development."

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For further information please contact:

Sierra Legal Defence Fund: Angela McCue, Lawyer (604) 685-5618 ext 293
Heiltsuk First Nation: Harvey Humchitt, Hereditary Chief (250) 957-2319
Philip Hogan, Spokesperson (250) 957-2303 ext 24

BACKGROUNDER

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The Heiltsuk First Nation and Ocean Falls

- ' Ocean Falls is located at the head of Cousins Inlet on British Columbia's mid-coast, a fairly remote area about two hours by plane north of Vancouver.
- ' In the early 1900's, Ocean Falls was the site of a Heiltsuk traditional village. The Heiltsuk First Nation has asserted a claim over traditional territory that includes Ocean Falls and has repeatedly been involved in treaty negotiations with the provincial and federal governments.
- ' The Heiltsuk informed the provincial government on numerous occasions both that their traditional territory includes Ocean Falls and that they have a "zero tolerance" policy towards salmon aquaculture in their territory.

Omega Salmon Group Ltd.

- ' Omega Salmon Group Ltd is a subsidiary of Pan Fish, the world's second largest aquaculture corporation.
- ' Omega plans to develop a fish hatchery facility at Ocean Falls that is expected to produce at least 10 million Atlantic salmon smolts annually.
- ' The construction site is located on lands that were extensively contaminated by an abandoned pulp and paper mill that had been built at the site of a traditional Heiltsuk village
- ' The hatchery will be instrumental in fuelling the expansion of a fish farming industry that has been recently liberated by the decision of the Province to lift the moratorium on new aquaculture operations.

Legal Issues

- ' The Heiltsuk have submitted a judicial review application challenging a series of four licences granted to Omega to for the purpose of constructing and operating an Atlantic salmon hatchery facility at Ocean Falls.
- ' The bases for the challenge include the alleged failure of the British Columbia Minister of Sustainable Resource Management and Land and Water British Columbia Inc. to properly consult with the Heiltsuk Nation prior to granting the licenses to Omega.
- ' It is also alleged that Omega failed to adequately consult with the Heiltsuk and to seek accommodation prior to and upon obtaining the licences and before commencing development at the Ocean Falls site.

Environmental Issues in Aquaculture

- ' The hatchery itself has potentially harmful effects on the marine environment. Also of significant environmental concern are the impacts of the open net pen aquaculture operations that will receive the Atlantic salmon reared in the hatchery.
- ' Open pens permit the release of substantial pollution into the marine environment, most abundantly in the form of parasitic infestations, viruses, escapes of alien species with

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associated threats to wild fish habitat, and impacts on the benthic environment (sea floor) from the deposit of wastes from salmon aquaculture facilities.

- ' The past year has seen several infestations of the Infectious Hematopoietic Necrosis (IHN) virus and outbreaks of parasitic sea lice in BC aquaculture operations. Scientific literature suggests that wild fish stocks may be exposed to the virus and parasite during their migrations through areas populated by farms.
- ' Destructive impacts from sea lice and IHN on wild fish stocks have been observed in virtually every jurisdiction in the world in which Atlantic salmon are farmed. The recent near-decimation of the pink salmon stocks near the Broughton Archipelago have been linked to the sea lice outbreaks.
- ' Escaped salmon move into nearby waterways, thus competing with wild fish for food and habitat, and transferring diseases and parasites to the wild stocks.
- ' Wastes in the form of food, chemicals, antibiotics, and excrement pollute the water and the ocean floor beneath the aquaculture facilities. The dire effects of these various forms of pollution on the health of the marine environment is clear, and further examples of these impacts are constantly emerging.
- ' For greater detail regarding impacts of open net-pen salmon aquaculture, please see: www.farmedanddangerous.org.

The Groups

- ' **Sierra Legal Defence Fund** is Canada's foremost national non-profit environmental organization dedicated to enforcing and strengthening the laws that safeguard our environment, wildlife and public health. Website: www.sierralegal.org
- ' The **Heiltsuk Nation** is comprised of the descendants of the Heiltsuk Tribal Groups; 'Isdaitxv, Uyalitxv, Uwithitxv, 'Qvuqvayaitxv, Xixis, and 'Kvial'itxv who reside in Waglisla (Bella Bella) and who have inhabited their lands since time immemorial. Website: www.heiltsuk.com

No. _____
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HEILTSUK TRIBAL COUNCIL AND HEILTSUK HEMAS SOCIETY, on their own behalf and on behalf of all other members of the HEILTSUK NATION

PETITIONERS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA as represented by the MINISTER OF SUSTAINABLE RESOURCE MANAGEMENT AND LAND AND WATER BRITISH COLUMBIA INC. AND OMEGA SALMON GROUP LTD.

PETITION TO THE COURT

THIS IS THE PETITION OF:

Heiltsuk Tribal Council and Heiltsuk Hemas Society, on their own behalf
and on behalf of all other members of the Heiltsuk Nation
P.O. Box 880
Waglisla, BC V0T 1Z0

ON NOTICE TO:

Minister of Sustainable Resource Management
PO Box 9054 STN PROV GOVT
Victoria, BC V8W 9E2

Land and Water British Columbia Inc.
900 Waterfront Centre
200 Burrard St.
PO Box 48600
Vancouver, BC V7X 1T2

Omega Salmon Group Ltd.
PO Box 49170
2000-595 Burrard St.
Vancouver, BC V7X 1R7

Notice as required by ss. 15 and 16 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c.241:

The Attorney General of British Columbia
Ministry of the Attorney General
Legal Services Branch
1001 Douglas St
Victoria, B.C. V8V 1X4

Let all persons whose interests may be affected by the order sought **TAKE NOTICE** that the petitioner applies to court for the relief set out in this petition.

APPEARANCE REQUIRED

IF YOU WISH TO BE NOTIFIED of any further proceedings, **YOU MUST GIVE NOTICE** of your intention by filing a form entitled "Appearance" in the above registry of this court within the Time for Appearance and **YOU MUST ALSO DELIVER** a copy of the "Appearance" to the petitioner's address for delivery, which is set out in this petition.

YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" at the registry.

IF YOU FAIL to file the "Appearance" within the proper Time for Appearance, the petitioner

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may continue this application without further notice.

TIME FOR APPEARANCE

Where this Petition is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this petition is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, where the time for appearance has been set by order of the court, within that time.]

TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the application, you must, on or before the 8th day after you have entered an appearance,

- (a) deliver to the petitioner
 - (i) 2 copies of a response in Form 124, and
 - (ii) 2 copies of each affidavit on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
 - (i) one copy of a response in Form 124, and
 - (ii) one copy of each affidavit on which you intend to rely at the hearing.

(1) The address of the registry is: Supreme Court of British Columbia Law Courts 800 Smithe St. Vancouver BC, V6Z 2E1
(2) The ADDRESS FOR DELIVERY is: Woodward and Company 4 th Floor – 848 Courtney Street Victoria, BC V8W 1C4 Fax number for delivery: 1-250-380-6560
(3) The name and office address of the petitioner’s solicitor is: Jack Woodward Woodward and Company 4 th Floor – 848 Courtney Street Victoria, BC V8W 1C4

The petitioner applies for an order that:

1. a declaration that the Minister of Sustainable Resource Management (“Minister”) and Land and Water British Columbia Inc. (“LWBC”) have now, and had in 2001 and

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earlier, an enforceable legal and equitable duty to consult with the Heiltsuk Nation (“Heiltsuk”) before issuing the following licences related to Omega Salmon Group Ltd.’s (“Omega”) proposed Atlantic hatchery development at Ocean Falls, British Columbia (“Proposed Atlantic Salmon Hatchery Development”):

- Conditional Water Licence for Martin Lake, dated December 19, 2001 (the “Martin Lake Water Licence”), a true copy of which is attached hereto as Schedule A;
 - Licence of Occupation to operate a commercial fish hatchery, dated January 15, 2002 (“Hatchery Licence of Occupation”), a true copy of which is attached hereto as Schedule B;
 - Licence of Occupation for a salt-water intake pipe, effluent pipe and general dock, dated October 1, 2002 (“Dock and Pipe Licence of Occupation”) a true copy of which is attached hereto as Schedule C; and
 - Conditional Water Licence for Link River, dated November 18, 2002 (“Link River Water Licence”), a true copy of which is attached hereto as Schedule D
- (collectively “the Licences”);
2. a declaration that the Minister and LWBC, and each of them, had an enforceable legal and equitable duty to accommodate Heiltsuk interests and concerns before issuing the Licences;
 3. a declaration that the Minister and LWBC, and each of them, have a fiduciary duty to consult with the Petitioner prior to any dealings, including authorizations and dispositions, with respect to the lands and waters subject to their claim for aboriginal title and aboriginal rights, where such authorizations and dispositions have the potential for infringing rights;
 4. a declaration that the Minister and LWBC, and each of them, breached the foregoing duties;
 5. a declaration that Omega Salmon Group Ltd. (“Omega”) has now, and had at all times material to this proceeding, an enforceable legal and equitable duty to consult with the Heiltsuk;
 6. a declaration that Omega has now, and had at all times material to this proceeding, an enforceable legal and equitable duty to accommodate the interests and concerns of the Heiltsuk;
 7. a declaration that Omega breached the foregoing duties;
 8. a declaration that the Martin Lake Water Licence is of no force and effect;
 9. an order in the nature of *certiorari* quashing and setting aside the Martin Lake Water Licence;
 10. an order in the nature of *certiorari* quashing and setting aside the Hatchery Licence of Occupation;

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11. an order in the nature of *certiorari* quashing and setting aside the Dock and Pipe Licence of Occupation;
12. an order in the nature of *certiorari* quashing and setting aside the Link River Water Licence;
13. an order in the nature of prohibition barring the issuance of any approvals, permits or other authorizations relating to the Proposed Atlantic Salmon Hatchery Development;
14. an interim or interlocutory injunction prohibiting Omega and/or any delegate and any individuals having notice of this order from taking any action for the purpose of initiating, enabling or instructing construction of the Proposed Atlantic Salmon Hatchery Development, pending the final disposition of this proceeding or until such time as the court deems just;
15. costs; and
16. such further and other relief as this Honourable Court deems just.

The petitioner will rely on:

1. The *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241;
2. The Rules of Court; and
3. Such further and other authorities as counsel may advise.

At the hearing of this petition will be read the following affidavits copies of which are served herewith, and such further affidavits as counsel may advise:

1. Affidavit of Pamela Reid, sworn January 10, 2003;
2. Affidavit of Harvey Humchitt Sr., sworn January 24, 2003;
3. Affidavit of Philip Hogan, affirmed January 22, 2003;
4. Affidavit of Kelly Brown, sworn February 6, 2003;
5. Affidavit of Jennifer Carpenter, affirmed January 21, 2003; and
6. Affidavit of Keith Hamilton, sworn February 13, 2003.

The facts upon which this petition is based are as follows:

1. The Petitioner is a First Nation consisting of approximately 2,000 members, most of whom live on the Central Coast of British Columbia.

2. The Respondent Minister is a representative of Her Majesty the Queen in right of British Columbia responsible for administration of Crown land under the *Land Act*.
3. The Respondent LWBC is a Crown Corporation that is an authorized representative of the Minister responsible for administering dispositions of Provincial Crown land under the *Land Act*.
4. The Respondent Omega is a British Columbia company, whose registered office is 2000-595 Burrard St., Vancouver, BC V7X 1R7.

As to the Heiltsuk claim of aboriginal rights and title:

5. In 1981, the Heiltsuk gave notice of the extent of its traditional territory to Her Majesty the Queen in Right of British Columbia (the “Province”) through a Statement of Comprehensive Aboriginal Rights Claim.
6. In 1993, the Heiltsuk filed a Statement of Intent with the British Columbia Treaty Commission and were accepted into treaty negotiations with the Province and with Her Majesty the Queen in Right of Canada.
7. At all material times, and throughout the course of the treaty negotiations, the Heiltsuk negotiators continually asserted the Heiltsuk claim to the territory that includes the area described by the Licences.
8. Since 1993, or earlier, the Province has known of the extent of Heiltsuk aboriginal rights and title as there has been available to the Province, and to LWBC, a significant body of evidence that indicates the Heiltsuk people exclusively occupied and used, or shared such use and occupation with neighbouring First Nations, both coastal and inland areas of Central Coast of British Columbia, including the area in which the Licences were issued.

As to the Heiltsuk policy on salmon aquaculture:

9. At all materials times, throughout the course of treaty negotiations, throughout the course of the Province’s work on the Central Coast Land Resource Management Plan, and in ongoing communications since at least 1997, the Heiltsuk have expressed to the Province its opposition to any form of salmon aquaculture operations in Heiltsuk traditional territory.

As to the Martin Lake Water Licence and the Hatchery Licence of Occupation:

10. Since the decision of the British Columbia Court of Appeal in *Delgamuukw v. British Columbia* on June 25, 1993, the Province has known that there is no blanket extinguishment of aboriginal rights in British Columbia.
11. In November of 2001 the Province first informed the Heiltsuk of the Proposed Atlantic Salmon Hatchery Development and promised to provide a package of information for the purpose of consulting with the Heiltsuk.

12. In December 2001, the Province and LWBC informed the Heiltsuk that no information package regarding the Hatchery Licence of Occupation or the Martin Lake Water Licence for the Proposed Atlantic Salmon Hatchery Development would be provided on the stated bases:
 - a) that aboriginal rights and title had been extinguished “*due to the nature of the land – being contaminated*”; and
 - b) that water rights had been transferred directly to Omega.
13. On December 19, 2001, the Minister and LWBC issued the Martin Lake Water Licence to Omega.
14. On January 15, 2002, the Minister and LWBC issued the Hatchery Licence of Occupation to Omega.
15. In December of 2001 and January 2002 before the issuance of the Martin Lake Water Licence and the Hatchery Licence of Occupation respectively, the Heiltsuk expressed concerns about the Proposed Atlantic Salmon Hatchery Development and reiterated the Heiltsuk’s claims to aboriginal rights and title.
16. Prior to the issuance of the Martin Lake Water Licence and the Hatchery Licence of Occupation, the only information about the Proposed Atlantic Salmon Hatchery Development received by the Heiltsuk from the Minister or LWBC was a one page map of the Proposed Atlantic Salmon Hatchery Development that was faxed by LWBC in response to a request by the Heiltsuk for information. The concerns of the Heiltsuk were not responded to adequately, or at all, prior to issuance of the aforementioned licences.
17. In May of 2002, LWBC admitted that there had been a lack of substantive consultation with the Heiltsuk before the granting of the Martin Lake Water Licence in December of 2001. Representatives of Omega were present when the acknowledgement was made.
18. The Minister and LWBC had a legal, equitable, and fiduciary duty to meaningfully consult with the Heiltsuk before issuing the Martin Lake Water Licence and the Hatchery Licence of Occupation to Omega.
19. The Minister and LWBC had a legal, equitable, and fiduciary duty to accommodate the interests of the Heiltsuk before issuing the Martin Lake Water Licence and the Hatchery Licence of Occupation to Omega.
20. In breach of the aforementioned duties, the Minister and LWBC did not meaningfully consult with the Heiltsuk and did not seek accommodation before LWBC’s decision to award the Martin Lake Water Licence and the Hatchery Licence of Occupation to Omega, and the Minister’s decision to authorize and issue the licences.

As to the Dock and Pipe Licence of Occupation:

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21. In April of 2002, the Heiltsuk were asked by LWBC to provide comments on Omega's application for the Dock and Pipe Licence of Occupation for the Proposed Atlantic Salmon Hatchery Development.
22. In May of 2002, the Heiltsuk responded to LWBC, raising concerns about the Proposed Atlantic Salmon Hatchery Development and its anticipated impacts and once again advising LWBC of, *inter alia*, the Heiltsuk's opposition to the alienation of land in Heiltsuk traditional territory, and of the Heiltsuk's opposition to the Proposed Atlantic Salmon Hatchery Development and to the development of any aquaculture operations in Heiltsuk traditional territory.
23. On October 1, 2002, the Minister and LWBC issued the Dock and Pipe Licence of Occupation to Omega.
24. None of the concerns raised by the Heiltsuk were addressed adequately, or at all, by the Minister or LWBC before the Dock and Pipe Licence of Occupation was offered or issued to Omega.
25. The Minister and LWBC had a legal, equitable, and fiduciary duty to meaningfully consult with the Heiltsuk before offering or issuing the Dock and Pipe Licence of Occupation.
26. The Minister and LWBC had a legal, equitable, and fiduciary duty to accommodate the interests of the Heiltsuk before offering or issuing the Dock and Pipe Licence of Occupation.
27. In breach of the aforementioned duties to consult and seek accommodation, the Minister and LWBC did not meaningfully consult with the Heiltsuk and did not seek accommodation before LWBC's decision to award the Dock and Pipe Licence of Occupation to Omega, and the Minister's decision to authorize and issue the licence.

As to the Link River Water Licence:

28. The Heiltsuk received a communication, dated August 28, 2002, from LWBC inviting the Heiltsuk to comment on revisions to a September 26, 2001 application by Omega for a water licence for Link River. The Heiltsuk had not been advised of the initial application in September 2001, and were not invited to comment when the initial Link River application was submitted.
29. On October 15, 2002, the Heiltsuk responded to LWBC and again reiterated, *inter alia*, the Heiltsuk's concerns about anticipated impacts of the Proposed Atlantic Salmon Hatchery Development as well as reiterating the Heiltsuk's opposition to the alienation of land in Heiltsuk traditional territory, and the Heiltsuk's opposition to the Proposed Atlantic Salmon Hatchery Development and to the development of any aquaculture operations in Heiltsuk traditional territory.
30. On November 18, 2002, the Minister and LWBC issued the Link River Water Licence to Omega.

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31. Prior to the issuance of the Link River Water Licence to Omega, the concerns raised by the Heiltsuk were not addressed adequately, or at all, by the Minister or LWBC.
32. The Minister and LWBC had a legal, equitable, and fiduciary duty to meaningfully consult with the Heiltsuk before issuing the Link River Water Licence.
33. The Minister and LWBC had a legal, equitable, and fiduciary duty to accommodate the interests of the Heiltsuk before issuing the Link River Water Licence.
34. In breach of the aforementioned duties, the Minister and LWBC did not meaningfully consult with the Heiltsuk and did not seek accommodation before LWBC's decision to award the Link River Water Licence to Omega, and the Minister's decision to authorize and issue the licence.

As to Omega's duty to consult and accommodate:

35. In November of 2001, Omega advised the Heiltsuk that Omega was considering Ocean Falls as the potential site for an Atlantic salmon hatchery. The Heiltsuk advised Omega that it did not support salmon aquaculture operations in Heiltsuk territory, and that there had been no consultation.
36. In January of 2002, Omega representatives met with members of the Heiltsuk to advise of Omega's plans for the Proposed Atlantic Salmon Hatchery Development. Omega advised the Heiltsuk that it had already been granted a water licence for Martin Lake. The Heiltsuk advised Omega, *inter alia*, of the Heiltsuk's opposition to the Proposed Atlantic Salmon Hatchery Development. The Heiltsuk raised concerns about various anticipated impacts of the Proposed Atlantic Salmon Hatchery Development and expressed concerns about the lack of consultation. These concerns were not addressed adequately, or at all.
37. In May of 2002, Omega representatives met with members of the Heiltsuk to present Omega's plans for the Proposed Atlantic Salmon Hatchery Development. The Heiltsuk advised Omega, *inter alia*, that it did not consider the meeting to be consultation and that Ocean Falls was located in traditional Heiltsuk territory. The Heiltsuk raised concerns about various anticipated impacts of the Proposed Atlantic Salmon Hatchery Development and expressed concerns about the lack of consultation. These concerns were not addressed adequately, or at all.
38. In May of 2002, representatives of Omega were present when the LWBC admitted that there had been a substantive failure to consult.
39. In the circumstances, Omega knew or ought to have known that the Minister and LWBC had not consulted with the Heiltsuk adequately, or at all.
40. The licences, and each of them, are legally defective because the Minister and LWBC have not consulted with the Heiltsuk adequately, or at all, and Omega has had notice of the Heiltsuk's claims to rights and title.

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41. Omega has commenced construction of the Proposed Atlantic Salmon Hatchery Development.
42. Omega had a duty to meaningfully consult with the Heiltsuk prior to commencing construction of the Proposed Atlantic Salmon Hatchery Development.
43. Omega had a duty to accommodate the concerns and interests of the Heiltsuk prior to commencing construction of the Proposed Atlantic Salmon Hatchery Development.
44. In breach of the aforementioned duties, Omega failed to consult or accommodate adequately, or at all.
45. The petitioner relies on such further facts as are found in the affidavits filed in support of this petition.

The petitioner estimates that the application will take 2 days.

Dated _____

Jack Woodward
Solicitor for the Petitioner

This Petition is filed and delivered by Jack Woodward, of the firm Woodward & Company, whose address of business and place for service is 4th Floor, 848 Courtney Street, Victoria, BC V8W 1C4 Phone: (250) 383-2356 Fax: (250) 380-6560