

In the Matter of
Request for Review of the Lower Athabasca Regional Plan
Pursuant to s. 19.2 of the *Alberta Land Stewardship Act*
Submitted by the **Fort McKay First Nation and the Fort McKay Metis Community
Association**

June 25, 2014

**Response Submissions
of the Government of Alberta**

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INTRODUCTION

1. The Fort McKay First Nation and the Fort McKay Métis Community Association (collectively the Applicant) have requested a review of specific provisions of the Lower Athabasca Regional Plan (LARP) as included in Part II of their submissions, and certain specific amendments, as outlined in Part IV of their submissions, under section 19.2 of the *Alberta Land Stewardship Act* (ALSA).
2. Pursuant to ALSA, the Stewardship Minister has found the application to be complete in form and has forwarded the application to the Review Panel.
3. The Government of Alberta (Alberta or Crown) submits the following in response to the Applicant's review request.

EXECUTIVE SUMMARY

4. Alberta submits that the majority of the concerns expressed by the Applicant are outside the jurisdiction of the Panel as the concerns are not with the content of LARP but relate to:
 - The creation process of LARP;
 - Allegations of harms related to pre-existing development activities;
 - Allegations of harms related to potential future development activities;
 - Allegations of harms related to the implementation of LARP; and
 - Items or features alleged to be missing from the content of LARP.
5. Some of the Applicant's concerns are within the jurisdiction of the Panel as they relate to the content of LARP. However, the provisions of LARP pointed to by the Applicant do not cause any harm to the Applicant; instead, the LARP content enhances the existing regulatory regimes and does not take away from any existing rights and uses.
6. The Applicant's dissatisfaction with the overall balancing of the competing interests in LARP is not sufficient to trigger the Panel's role in recommending specific amendments to the Minister.
7. Alberta does not necessarily agree with any or all of the Applicant's characterization of its members' rights, activities and land use. For the purposes of this response, whatever that characterization may be, Alberta submits that the Applicant has not shown that there is any existing or future harm to income, property, health or quiet enjoyment of property caused by a provision of LARP so as to trigger the Panel's power to provide recommendations for amendment to the Minister.
8. Therefore, Alberta requests that the Panel report to the Minister, pursuant to Rules 36-37,¹ that the Applicant is not directly and adversely affected.

¹ Alberta Land Stewardship Act – Rules of Practice for Conducting Reviews of Regional Plans (March 2014) [Panel Rules], Rule 36-37 – **Authorities Tab 1**

REGULATORY CONTEXT OF LARP

LARP Balances Interests

9. ALSA's purpose is:
- (a) to provide a means by which the Government can give direction and provide leadership in identifying the objectives of the Province of Alberta, including economic, environmental and social objectives;
 - (b) to provide a means to plan for the future, recognizing the need to manage activity to meet the reasonably foreseeable needs of current and future generations of Albertans, including aboriginal peoples;
 - (c) to provide for the co-ordination of decisions by decision-makers concerning land, species, human settlement, natural resources and the environment;
 - (d) to create legislation and policy that enable sustainable development by taking account of and responding to the cumulative effect of human endeavour and other events.²
10. ALSA authorizes the Lieutenant Governor in Council to establish integrated planning regions, such as the Lower Athabasca Region, and a regional plan for the region following public consultation.³ The regional plan must describe the vision and objectives for the region and may, amongst other things, include policies, set thresholds, specify indicators, describe monitoring, and describe the measures to be taken to achieve the objectives and policies.⁴
11. The Lower Athabasca Regional Plan (LARP) is a regional plan established by the Lieutenant Governor in Council pursuant to ALSA.
12. In keeping with ALSA's overarching purpose and its requirements for regional plans, LARP establishes a framework in which to balance competing interests on the landscape of economic opportunities, social considerations, and environmental considerations within the Lower Athabasca Region.⁵ More specifically, LARP:
- Establishes a long-term vision for the region;
 - Aligns provincial policies at the regional level to balance Alberta's economic, environmental and social goals;
 - Reflects ongoing commitment to engage Albertans, including aboriginal peoples, and land-use planning;
 - Uses a cumulative effects management approach to balance economic development opportunities and social and environmental considerations;
 - Set desired economic, environmental and social outcomes and objectives for the region;

² *Alberta Land Stewardship Act*, S.A. 2009, c. A-26.8, s. 1(2) – **Authorities Tab 2**

³ ALSA, ss. 3(1), 4(1) and 5

⁴ ALSA, ss. 8(1) and 8(2)

⁵ Lower Athabasca Regional Plan 2012-2022, OC 268/2012, (2012) Alberta Gazette 2012, Part I, pg. 1049 (ISBN No. 978-1-4601-053705 (Printed version) and ISBN No. 978-1-4601-0538-2 (Online version)) [LARP], pg. 2 – Purpose

- Describes strategies, actions, approaches and tools required to achieve the desired outcomes and objectives;
 - Establishes monitoring, evaluation and reporting commitments to assess progress; and
 - Provides guidance to provincial and local decision-makers regarding land-use management for the region.⁶
13. LARP does not give priority to any one of economic, environmental or social considerations.
14. LARP itself has four main parts:
- Introduction – which includes the overall purpose of LARP and how LARP is intended to inform land-use decisions;
 - Strategic Plan – which sets out the vision for the future of the Lower Athabasca Region and outlines a set of strategic directions which will assist in realizing the vision and desired outcomes;
 - Implementation Plan – which includes more specific regional objectives, strategies and actions to support realization of the regional vision, and includes indicators so that progress towards this vision can be measured and evaluated;
 - Regulatory Details Plan- which introduces regulatory requirements to enable the achievement of the strategic direction and associated actions.
15. LARP also establishes a number of Management Frameworks for the Lower Athabasca Region for important environmental considerations including air quality and surface water quality. LARP and the Management Frameworks identify indicators and triggers and limits for those indicators.⁷
16. LARP also expressly contemplates the creation of additional frameworks, including those relating to groundwater management, surface water quantity, and biodiversity management. These additional frameworks and other initiatives to fully implement the terms of LARP continue to be developed.
17. LARP is the culmination of years of work by the Government of Alberta as well as specific consultation and engagement with a Regional Advisory Council, First Nations and Metis organizations, municipalities, environmental groups, industry stakeholders and members of the public.⁸

⁶ LARP, pg. 2

⁷ LARP, pgs.73-76; Lower Athabasca Region Air Quality Management Framework for Nitrogen Dioxide (NO₂) and Sulphur Dioxide (SO₂), printed August 2012, ISBN978-1-4601-0532-0 (Online Version), available on the website http://environment.alberta.ca/documents/LARP_Framework_AirQuality_FINAL.pdf [Air Quality Management Framework], pgs. 19 and 26 – **Authorities Tab 3**; and Lower Athabasca Region Surface Water Quality Management Framework for the Lower Athabasca River, August 2012, ISBN No. 978-1-4601-0530-6 (Online Version), available on the website, http://environment.alberta.ca/documents/LARP_Framework_SurfaceWaterQuality_FINAL.pdf [Surface Water Quality Management Framework] pg. 17 – **Authorities Tab 4**

⁸ LARP, pg. 2

LARP Does not Take Away From the Existing Regulatory Regimes

18. LARP does not replace or take away from the existing regulatory regimes. For any activity on the landscape within the Lower Athabasca Region, LARP simply adds a layer to the existing regulatory structure.
19. LARP does not authorize any particular development or activity.
20. A proponent for any activity is still required to go through the provincial regulatory process, including receiving the necessary regulatory authorizations under legislation, prior to commencing any activity. This legislation includes, but is not limited to, the *Environmental Protection and Enhancement Act (EPEA)*, the *Water Act*, the *Public Lands Act*, the *Historical Resources Act* and the *Forests Act*.
21. As an example, under EPEA, a proponent for a proposed activity may have to conduct an environmental assessment and prepare an environmental impact assessment report if the activity is listed as a mandatory activity in regulation or is otherwise referred to the assessment process.⁹ The environmental impact assessment report must contain the information outlined in the terms of reference issued for the particular report and must also include:
 - (a) a description of the proposed activity and an analysis of the need for the activity;
 - (b) an analysis of the site selection procedure for the proposed activity, including a statement of the reasons why the proposed site was chosen and a consideration of alternative sites;
 - (c) an identification of existing baseline environmental conditions and areas of major concern that should be considered;
 - (d) a description of potential positive and negative environmental, social, economic and cultural impacts of the proposed activity, including cumulative, regional, temporal and spatial considerations;
 - (e) an analysis of the significance of the potential impacts identified under clause (d);
 - (f) the plans that have been or will be developed to mitigate the potential negative impacts identified under clause (d);
 - (g) an identification of issues related to human health that should be considered;
 - (h) a consideration of the alternatives to the proposed activity, including the alternative of not proceeding with the proposed activity;
 - (i) the plans that have been or will be developed to monitor environmental impacts that are predicted to occur and the plans that have been or will be developed to monitor proposed mitigation measures;

⁹ *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 [EPEA], ss. 44-45 – **Authorities Tab 5**

- (j) the contingency plans that have been or will be developed in order to respond to unpredicted negative impacts;
- (k) the plans that have been or will be developed for waste minimization and recycling;
- (l) the manner in which the proponent intends to implement a program of public consultation in respect of the undertaking of the proposed activity and to present the results of that program;
- (m) the plans that have been or will be developed to minimize the production or the release into the environment of substances that may have an adverse effect;
- (n) the final terms of reference; and
- (o) any other information that the Director considers necessary to assess the proposed activity.¹⁰
22. This report must be published and made publicly available.¹¹
23. Once the Director determines that the environmental impact assessment report is complete, depending on the activity, the Director advises the Alberta Energy Regulator (AER), the Natural Resources Conservation Board (NRCB), the Alberta Utilities Commission (AUC) or the Minister (Minister of Environment and Sustainable Resource Development)(ESRD) that the report is complete.¹²
24. The proponent will then be in a position to apply for the specific authorizations required for the activity in question from the AER, NRCB, AUC or ESRD (or some combination of these entities) as necessary.
25. Each of these entities has an application process and a review process which requires the proponent to submit additional information specific to the regulatory process and the activity in question which the decision-maker must consider. Each of these processes allows for some form of public participation in the review process. Forms of public participation include statements of concern by affected members of the public, appeal rights, or a public hearing.
26. Once one of these entities issues an authorization under the applicable legislation, the holder of the authorization, such as the holder of an approval issued under EPEA, must continue to comply with the terms and conditions of the authorization. These requirements are not replaced by LARP.
27. LARP then is an additional consideration which must be taken into account by the decision-maker in determining whether to authorize the applied for activity. In other words, after assessing all the other information provided by the public and by the proponent, the decision-maker must also assess whether the activity is consistent with LARP before deciding whether to

¹⁰ EPEA (Tab 5), s. 49

¹¹ EPEA (Tab 5), s. 50

¹² EPEA (Tab 5), s. 53

allow the activity. LARP also adds the requirement for Alberta to initiate management responses in accordance with the management frameworks should a trigger or limit be exceeded.¹³

LARP Does Not Take Away From the Crown's Duty and Policy Commitments to Consult

28. LARP does not take away the Crown's existing duty and policy commitment to consult with aboriginal peoples when government decisions may adversely affect their exercise of constitutionally protected rights.¹⁴
29. In addition to the regulatory application process, the Crown continues to meet any applicable duty or policy commitment to consult with aboriginal peoples (such as First Nations), including those arising from section 35 of the *Constitution Act, 1982*.
30. LARP cannot and does not change Canada's Constitution. Treaty rights and their constitutional protection exist regardless of what Alberta legislates.
31. Further, all regulatory decision-makers must ensure that their decision-making complies with Canada's Constitution, which includes recognition of treaty rights. Under LARP, the Applicant's ability to raise concerns with project-specific regulatory decision-makers about the impacts of specific projects on treaty rights remains intact.

ROLE OF REVIEW PANEL

Panel is Limited to Determinations of Direct and Adverse Effect Related to the Content of LARP

32. The Panel is created by statute and therefore is limited in its jurisdiction to the powers granted to it under its enabling legislation.
33. Section 19.2 of ALSA provides:
 - (1) A person who is directly and adversely affected by a regional plan or an amendment to a regional plan may, within 12 months from the date the regional plan or amendment affecting the person comes into force, request a review of the regional plan or amendment affecting the person in accordance with the regulations.
 - (2) On receiving a request under subsection (1), the Stewardship Minister must establish a panel to conduct a review of the regional plan or amendment and report the results of the review and any recommendations to the Stewardship Minister.¹⁵
34. Section 5(1)(c) of the *Alberta Land Stewardship Regulation* defines "directly and adversely affected" in respect of a person with regard to a regional plan, as meaning "that there is a reasonable probability that a person's health, property, income or quiet enjoyment of property, or some combination of them, is being or will be more than minimally harmed by the regional plan".¹⁶

¹³ LARP, Regulatory Details, ss. 26 and 33

¹⁴ LARP, pgs. 5, 34, 40, 63, 69

¹⁵ ALSA (Tab 2), s. 19.2(1) and (2)

¹⁶ *Alberta Land Stewardship Regulation*, AR 179/2011 [ALS Reg.], s. 5(1)(c) – **Authorities Tab 6**

35. Section 7(1) of the Regulation indicates the required contents of an application for review which includes:
- Identification of specific provisions of the regional plan which the applicant believes is or will directly and adversely affect the applicant;¹⁷
 - An explanation of how each of the above indicated specific provisions is or will directly and adversely affect the applicant;¹⁸
 - An explanation of the adverse effects suffered or expected to be suffered as a result of the above indicated specific provisions;¹⁹ and
 - The relief requested which may include an amendment to the above indicated specific provisions that the applicant proposes to diminish or eliminate the adverse effects.²⁰
36. Rule 36 of the Rules of Practice for Conducting Reviews of Regional Plans provides that the Panel must provide advice on whether the applicant is directly and adversely affected by “a specific provision or provisions in a regional plan”.²¹
37. If the Panel’s advice is that the applicant is directly and adversely affected, the Panel must in its report to the Minister:
- a) Identify and explain how the specific provision or provisions in the regional plan or in an amendment to a regional plan directly and adversely affects the applicant, and
 - b) Explain the adverse effects with respect to health, property, income or quiet enjoyment of property, or some combination of them, that the applicant is suffering or expects to suffer as a result of the specific provision(s) identified.²²
38. The effect of these provisions is that the Panel is limited in its jurisdiction to reporting to the Minister as to existing or future harms to health, property, income or quiet enjoyment of property, caused by the content of specific, identified provisions of LARP. The Panel does not have the jurisdiction to conduct a review of LARP in its entirety. The role of the Panel is not to again balance the competing economic, social and environmental considerations in the entire Lower Athabasca Region.
39. The Panel does not then have the jurisdiction to consider matters such as:
- The creation process of LARP;
 - Allegations of harms related to pre-existing development activities;
 - Allegations of harms related to potential future development activities;
 - Concerns related to the implementation of LARP; and

¹⁷ ALS Reg. (Tab 6), s. 7(1)(d)

¹⁸ ALS Reg. (Tab 6), s. 7(1)(e)

¹⁹ ALS Reg. (Tab 6), s. 7(1)(f)

²⁰ ALS Reg. (Tab 6), s. 7(1)(g)

²¹ Panel Rules (Tab 1), Rule 36 a)

²² Panel Rules (Tab 1), Rule 38.

- Items or features alleged to be missing from the content of LARP.
40. The Panel also does not have jurisdiction to consider any questions of constitutional law, which would include alleged infringements of aboriginal or treaty rights, or alleged breaches of section 35 of the *Constitution Act, 1982*.²³

“Directly and Adversely Affected” – General Causation Principles Apply

41. As set out above, the Panel’s role is confined to identifying specific provisions of LARP, if any, that directly and adversely affect the Applicant. There must be a direct causative link between LARP content and the harm alleged.
42. The Supreme Court of Canada recently discussed causation of adverse impacts on aboriginal or treaty rights in *Rio Tinto Alcan v. Carrier Sekani Tribal Council (Carrier Sekani)*.²⁴ The alleged harm must be caused by the government action complained of. In particular, past harms cannot be said to be caused by the current government action. Furthermore, the harm must be more than speculative to count as an adverse effect. The Court stated:

... The claimant must show a causal relationship between the proposed government conduct or decision and a potential for adverse impacts on pending Aboriginal claims or rights. Past wrongs, including previous breaches of the duty to consult, do not suffice.

... Mere speculative impacts, however, will not suffice. ..., there must an “appreciable adverse effect on the First Nations’ ability to exercise their aboriginal right”. The adverse effect must be on the future exercise of the right itself; ...²⁵

43. While *Carrier Sekani* was about the Crown’s duty to consult regarding potential adverse impacts on aboriginal rights in the absence of a treaty, the general principles of causation are relevant to the issue of whether the Applicant is or will be harmed by LARP content.
44. The Applicant’s dissatisfaction with LARP content, and a desire for revisions and additions, is not a sufficient trigger for the Panel’s power to recommend relief. Just because LARP might not include what the Applicant would like LARP to have included does not mean that LARP harms or will harm the Applicant.
45. The Applicant may suggest that the definition of “directly and adversely affected” set out in the *Alberta Land Stewardship Regulation* should be given a special interpretation on the basis that the Applicant’s members are an aboriginal people. However, that suggestion is contrary to case law. While there is a principle suggesting that “statutes relating to Indians should be liberally construed”, this principle applies only to interpreting Indian-specific federal legislation, and does not apply to provincial legislation of general application.²⁶ ALSA and the associated Regulation

²³ *Constitution Act, 1982*, R.S.C. 1985, App. II, No. 44, Sched. B, Pt. II, s. 35 – **Authorities Tab 7**; *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3 [APJA], ss. 10, 11 and 16 – **Authorities Tab 8**.

²⁴ *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 [*Carrier Sekani*] – **Authorities Tab 9**

²⁵ *Carrier Sekani* (Tab 9) at paras. 45 and 46

²⁶ *Wasauksing First Nation v. Wasausink Lands Inc.*, 2004 CarswellOnt 936 (Ont. C.A.) at paras. 92-94 – **Authorities Tab 10**

are provincial legislation of general application. Therefore, an ordinary and factual-based interpretation of “directly and adversely affected” is appropriate.

CONCERNS OF THE APPLICANT

46. Broadly, the concerns expressed by the Applicant are as follows:

- LARP prioritizes oil sands development at the expense of the Applicant’s rights;
- The majority of the land management strategies and implementation under LARP are not yet developed or in place; and
- LARP does not contain any outcomes, thresholds, frameworks or management plans for managing adverse impacts to the Applicant’s lands or for adverse effects on opportunities to exercise treaty and aboriginal rights and traditional land uses.

47. The Applicant requests the following amendments to LARP:

- a) The effective date of LARP be amended to December 2015 or completion of certain management frameworks and tools and a traditional land use framework, whichever is earlier;
- b) Buffer areas in which resource development is not permitted be designated in the following areas: surrounding the Hamlet of Fort McKay and adjacent unidentified lands stated to be owned by the Applicant, and surrounding Reserves 174A and 174B;
- c) Creation of additional conservation areas contiguous to the Birch Mountain Wildland Park and the north, south and east of Reserves 174A and 174B sufficient to support reasonable and meaningful opportunities to exercise what the Applicant considers to be its members’ treaty and aboriginal rights;
- d) The inclusion of a requirement to develop and implement a management framework by 2015 for traditional land use, with thresholds for preserving sufficient animal and traditional plants and fish to support reasonable opportunities for what the Applicant considers to be the exercise of its members’ treaty and aboriginal rights;
- e) Designation of areas preserved for traditional land use purposes within reasonable proximity to Fort McKay communities;
- f) An amendment to include outcomes, and objectives for the preservation of reasonable opportunities for the exercise of what the Applicant considers to be treaty and aboriginal rights;
- g) The inclusion of a requirement to complete a framework for protection of water levels and water quality in all Rivers and Namur and Gardiner Lake;
- h) An amendment to require the expansion of the air management framework to include all criteria air contaminants and reduced sulphur compounds, acrolein, and other substances with thresholds necessary to protect human health;

- i) Clarification that predicted exceedances in regional thresholds are to be considered by decision-makers and preventative measures taken before issuing approvals; and
- j) An amendment to require consultation of Metis communities in the development of the biodiversity framework and the requested traditional land use framework.

ISSUES OUTSIDE THE PANEL'S JURISDICTION

48. Alberta submits that the Panel does not have the jurisdiction to consider the majority of the issues raised by the Applicant because:
- the harms alleged raise questions of constitutional law;
 - the harms alleged relate to the creation process of LARP, not to the content of LARP;
 - the harms alleged relate to pre-existing activities;
 - the harms alleged relate to potential future activities;
 - the harms alleged relate to implementation of LARP, not its content; and
 - the harms alleged relate to purported omissions from LARP, not the content of LARP.

Panel has no Jurisdiction to Determine Questions of Constitutional Law

49. The *Administrative Procedures and Jurisdiction Act* (APJA) indicates that no decision-maker has jurisdiction to determine a question of constitutional law (which includes a determination of any right under the Constitution) unless conferred such jurisdiction by regulation.²⁷ The Panel is a “decision-maker” to which the APJA applies. While the Panel’s role pursuant to ALSA is to provide a report and recommendations to the Stewardship Minister, rather than the Panel itself rendering changes to the regional plan,²⁸ other panels who provide recommendations have been found to be “decision-makers” pursuant to APJA.²⁹
50. As a decision-maker, the Panel has not been granted jurisdiction to determine questions of constitutional law. The *Designation of Constitutional Decision Makers Regulation*, which confers jurisdiction in relation to questions of constitutional law to certain decision-makers, does not include a Panel under ALSA.³⁰
51. As the Alberta Court of Appeal noted, “the Alberta statute reflects a policy decision that the citizens of Alberta are ultimately entitled to have their constitutional rights determined by a superior court”.³¹

²⁷ APJA (Tab 8), ss. 10, 11 and 16.

²⁸ ALSA (Tab 2), s. 19.2

²⁹ *Siksika First Nation v. Alberta (Director, Southern Region, Environment)*, 2007 ABCA 402, para. 10 – **Authorities Tab 11**

³⁰ *Designation of Constitutional Decision Makers Regulation*, Alta. Reg. 69/2006 – **Authorities Tab 12**

³¹ *UFCW, Local 401 v. Alberta (Information and Privacy Commissioner)*, 2012 ABCA 130, para. 43 – **Authorities Tab 13**

52. Therefore, the Panel cannot determine any question of constitutional law.
53. As a finding that LARP somehow infringes the Applicant's members' treaty rights or aboriginal rights would necessarily involve determining rights by applying s. 35 of the *Constitution Act, 1982* to LARP, this would be a "question of constitutional law" and therefore, outside the scope of the Panel's jurisdiction.
54. In any event, Alberta would note treaty and aboriginal rights are protected by s. 35 of the *Constitution Act, 1982*, irrespective of whether it is specifically enshrined within LARP. LARP cannot and does not purport to change Canada's *Constitution*.

Panel has no Jurisdiction to Consider Matters Related to LARP Creation

55. As noted above under the heading Role of Review Panel, the combined effect of ALSA, the Regulation and the Rules is that the Panel is limited in its jurisdiction to reporting to the Minister as to existing or future harms caused by the content of LARP. Therefore, it is outside of the jurisdiction of the Panel to consider other matters related to LARP creation process as they do not relate to the content of LARP.
56. This means that the Panel cannot consider the Applicant's concerns that the LARP does not meet the Terms of Reference including:
 - the term that "it will be important that continued opportunities exist for Aboriginal traditional uses to be in close proximity to First Nations and Metis communities", as referenced at paragraphs 35, and 67 of the Applicant's submissions;
 - the term that "land use must be managed to include Aboriginal traditional land use", as referenced at paragraph 36 of the Applicant's submissions;
 - the term that the criteria for establishing conservation areas included "areas that support aboriginal traditional uses", also referenced in paragraph 36 of the Applicant's submissions; and
 - the term that LARP was to consider how lands under federal jurisdiction, such as First Nation lands, will be impacted, as contained at paragraph 38 of the Applicant's submissions.
57. Similarly, there is no authority for the Panel to review the date on which LARP came into force, as suggested by the Applicant in Part II, B and at paragraph 113 a) of its submissions. It is the coming into force of LARP in the past which enables the Applicant to make a review request and the Panel to review the content of LARP, as enacted, under section 19.2 of ALSA, and section 7 (1) of the Regulation.
58. In any event, Alberta submits that LARP did fulfill the above noted Terms of Reference.
59. While there are indeed no new conservation areas contemplated in LARP in close proximity to the Hamlet of Fort McKay, the Birch Mountains Wildland Provincial Park (expansion) and adjacent Birch River Conservation Area were included in LARP adjacent to the Applicant's

Reserves 174A and 174B.³² Alberta submits that the inclusion of these areas within LARP recognizes the importance of continued opportunities for aboriginal traditional uses as is stated in the Terms of Reference.

60. In relation to the Terms of Reference regarding the consideration of lands under federal jurisdiction, Alberta submits that such lands were considered but under the federal-provincial division of powers, Alberta's regulatory authority over such lands is limited.³³ This was specifically recognized by the Terms of Reference.³⁴ These lands are also specifically acknowledged within LARP: LARP acknowledges that approximately 10% of the region includes the Cold Lake Air Weapons Range, First Nations Reserves, Métis Settlements and Lake Athabasca.³⁵
61. In summary, Alberta submits that the Panel does not have the jurisdiction to address the issues raised by the Applicant concerning the effective date of LARP and the fulfillment of the LARP Terms of Reference. Alberta also submits that, in any event, LARP does meet its Terms of Reference as outlined above.

Panel has no Jurisdiction over Alleged Harms from Activities Which Pre-date LARP

62. As noted above, the Panel has jurisdiction only with respect to harms alleged to be caused by the content of LARP. Harms which are alleged to have occurred due to activities which were carried on or approved prior to LARP cannot be caused by LARP and are therefore outside of the Panel's jurisdiction.
63. Alberta submits that this includes the following concerns:
- The Applicant is already adversely affected by the proximity of oil sands development and the intensity and scale of development with 98% of trapping areas and 70% of the area the Applicant considers to be its traditional territory previously leased to oil sands developers, as noted in paragraph 57-60 of the Applicant's submissions;
 - Adverse impacts experienced to date include air pollution, including odours, degradation of air quality, noise, light pollution, the shaking of houses, blocked or delayed access to the Hamlet, cabins and reserves, noise cannons on tailings ponds, back up beepers on trucks, traffic on the CNRL and TOTAL access roads, blasting from a quarry, emissions from upgraders, high levels of traffic on highway 63, large mine sites blocking traditional trails, explosions, fires and releases of toxic substances, as noted in paragraphs 61-64 of the Applicant's submissions;
 - Existing development is causing adverse effects to wildlife populations, as noted in paragraphs 68-72 of the Applicant's submissions;

³² LARP, pg. 93

³³ *Constitution Act, 1867*, R.S.C. 1985, App. II, No. 5, ss.91 and 92 – **Authorities Tab 17**

³⁴ *Terms of Reference for Developing the Lower Athabasca Regional Plan*, 2009, available on the Land Use Secretariat website at

<https://landuse.alberta.ca/LandUse%20Documents/Terms%20of%20Reference%20for%20Developing%20the%20Lower%20Athabasca%20Regional%20Plan%20-%202009-07.pdf> at pg. 3 – **Authorities Tab 14**

³⁵ LARP, pg. 88

- Existing impacts to the Applicant's members' trapping areas include loss of substantial areas for use, blocked access, decreased wildlife, and increased risk of personal injury due to heavy equipment being operated on traditional trails and access routes, as noted in paragraph 74 of the Applicant's submissions;
 - The concern that current and planned development are exceeding thresholds for biodiversity and wildlife population survival, as noted in paragraph 76 of the Applicant's submissions;
 - Adverse effects which have already occurred to the Applicant's cultural heritage as a result of existing oil sands and related development, as noted in paragraph 93-95 of the Applicant's submissions; and
 - The reduction in the availability of traditional food (moose) caused by existing and approved development, as noted in paragraph 98 of the Applicant's submissions.
64. In any event, Alberta submits that LARP takes into account existing development impacts and works towards ameliorating continued effects of such development. Most notably, LARP sets aside approximately 1.5 million more hectares of land as conservation areas.³⁶ The reduction in land disturbance by the creation of conservation areas is expected to enhance opportunities for the exercise of treaty rights and traditional land uses.
65. For example, in relation to the consideration of existing land and other disturbances, LARP recognizes the need for a biodiversity framework and a landscape management plan, with input from First Nations, to consider how the exercise of the constitutionally protected rights to hunt, fish and trap can continue to occur.³⁷
66. In regards to the Applicant's concerns about the effects of existing developments, LARP establishes a new monitoring and evaluation system for air, water and biodiversity.³⁸ LARP also addresses land fragmentation through its commitment to create a landscape management plan.³⁹ This systemic approach to managing regional biodiversity, which did not previously exist, is anticipated to provide better sustainability for the landscapes that support the exercise of treaty rights and traditional use. The biodiversity management framework, land disturbance planning and access planning under LARP will assist to conserve lands and protect wildlife habitat and populations important to the Applicant (and other aboriginal communities) for hunting, trapping and fishing. The surface water quality framework will sustain water quality which, by extension, will sustain fisheries habitat and support the exercise of the treaty right to fish.
67. In summary, Alberta submits that the above noted harms alleged by the Applicant are said to have occurred due to activities which pre-date LARP and are therefore outside of the Panel's jurisdiction.

³⁶ LARP, pg. 84

³⁷ LARP, pg. 29

³⁸ LARP, pg. 27-29, 42, 45-59

³⁹ LARP, pgs. 45-46

68. In any event, Alberta also submits that LARP does consider existing development and works towards reducing continued effects of all development at a regional level.

Panel has no Jurisdiction to Consider Applicant’s Allegations of Harms Related to Potential Future Development Activities

69. As noted above in the explanation of LARP’s place in the overall regulatory structure, LARP does not authorize any particular activity or development. All future development activities remain subject to the existing regulatory process. Therefore, alleged harms related to potential future activities are not caused by LARP and are outside of the Panel’s jurisdiction.
70. Alberta submits that the following concerns of the Applicant fall within this category:
- The impacts of development will increase as more approved projects begin operating and more projects are approved, as noted in paragraph 59 of the Applicant’s submissions;
 - Air quality limits may be exceeded once approved oil sands facilities are built, as noted in paragraph 103 to 105 of the Applicant’s submissions;
 - Future development encroaching on Reserves and conservation areas will change the ecology of the land and adversely affect the lands ability to support biodiversity, as noted in paragraph 65, 70-72 and 77; and
 - The future potential for escalation of cumulative effects, as noted in paragraph 80 and 83 of the Applicant’s submissions.
71. In any event, Alberta submits that LARP either (a) reduces the likelihood of the prospective future harm which the Applicant is concerned with or (b) has no effect on such harms. LARP overall does not increase the possibility of such potential future harms.
72. The Applicant notes in its submissions, at paragraphs 104 and 105, a concern that LARP does not require actions to address air quality issues until limits are exceeded, which limits, the Applicant suggests, may be exceeded once approved oil sands facilities become operational.
73. LARP’s Outcome #4 is “Air and water are managed to support human and ecosystem needs”⁴⁰. For air quality, LARP identifies two indicators, NO₂ and SO₂, and sets limits and triggers for each. The limits are based on the Alberta Ambient Air Quality Objectives (AAAQO), established under the Alberta *Environmental Protection and Enhancement Act* prior to the introduction of LARP. The AAAQO are used, and were used prior to the introduction of LARP, “to establish approval conditions for regulated industrial facilities; to evaluate proposals for constructing facilities; ... and to assess compliance near major industrial air emission sources”⁴¹. Facility specific maximums are contained generally in approvals issued under the *Environmental Protection and Enhancement Act*. LARP does not change the existing limit at any specific facility. However, LARP now requires that those same limits be applied on a regional basis. LARP also sets a system of

⁴⁰ LARP, pg. 46

⁴¹ “Ambient Air Quality Objective”, Alberta Environment and Sustainable Resource Development website: <http://esrd.alberta.ca/air/objectives-directives-policies-and-standards/ambient-air-quality-objectives.aspx> -

triggers which initiate a management response by ESRD well before the limit is exceeded.⁴² This early warning system for air quality on a cumulative basis did not exist prior to LARP.

74. Similarly, the concerns expressed by the Applicant related to encroaching development on Reserves and conservation areas changing the ecology of the land, thereby decreasing the natural range of variation and populations of certain wildlife species (as contained in paragraphs 65, 70-72 and 77 of the Applicant's submissions) are ameliorated by the environmental frameworks limits contemplated by LARP⁴³ and the designation of new conservation areas. LARP designates an additional 1,521,402 hectares, at 16.32%⁴⁴ of the Lower Athabasca Region, as new conservation areas. Indeed, the Applicant acknowledges at paragraph 72 of its submissions that the modeling showing the expanded protected areas under LARP demonstrates that LARP improves future predicted declines of wildlife populations.
75. These concerns, and the Applicant's concerns regarding cumulative effects, are in no way exacerbated by LARP. Prior to LARP, the ability for Alberta to initiate management responses at the regional level was limited. LARP provides Alberta with the tools to respond on a regional basis, in addition to project-specific regulation. LARP adds an additional, regional layer to the existing regulatory framework so as to understand and manage effects on a broader, cumulative level.
76. In summary, Alberta submits that the above alleged harms relate to potential future activities and are outside of the Panel's jurisdiction.
77. In any event, Alberta also submits that LARP does not increase the potential for any of these alleged harms, but rather, reduces the likelihood that these harms will occur.

Panel has no Jurisdiction to Consider Allegations of Harms Related to the Implementation of LARP

78. As noted above, the Panel must consider only the harm caused by the content of LARP. Alleged harms caused by how LARP is or may be applied or interpreted by industry or regulatory decision-makers are outside the Panel's jurisdiction and cannot be considered.
79. Alberta submits that the following concerns of the Applicant are therefore outside of the Panel's jurisdiction:
 - The AER's consideration of LARP, as noted in paragraphs 85 – 88 of the Applicant's submissions.
80. In any event, Alberta notes the general principle that all decision-making must comply with the requirements of legislation, including Canada's Constitution with its express recognition of aboriginal peoples' rights. In *Quebec (Attorney General) v. Canada (National Energy Board)*, the Supreme Court of Canada stated "it is obvious that the Board must exercise its decision-making

⁴² LARP, pg. 73; Air Quality Management Framework (Tab 3), pg. 19-35

⁴³ LARP, pg. 27

⁴⁴ LARP, pg. 84

function, including the interpretation and application of its governing legislation, in accordance with the dictates of the Constitution, including s. 35(1) of the *Constitution Act, 1982*.”⁴⁵

81. LARP does not take away from the Applicant’s ability to raise its concerns with these project-specific decision-makers about the impacts of projects on such constitutionally recognized rights. Concerns regarding the alleged failure of regulatory decision-makers to comply with the constitutional recognition of these rights can still be raised in the appropriate forum, which may be through the appeal or judicial review mechanism for that specific decision-maker. LARP leaves this ability intact.

Panel has no Jurisdiction in Relation to Alleged Omissions from LARP

82. As noted above, the Panel has jurisdiction only with respect to harms alleged to be caused by specific provisions of LARP. The Panel then has no ability to consider measures alleged to be missing from LARP.
83. Where LARP is silent on a particular topic, no taking away from existing rights occurs; rather, the current regulatory regime remains unchanged.⁴⁶ The Alberta Court of Appeal has indicated that maintenance of the status quo with respect to a First Nation’s concerns is not an adverse impact.⁴⁷ In other words, LARP causes no harm by omitting to add a layer to the present regulatory regime with respect to certain matters.
84. Alberta submits that the Panel has no jurisdiction to consider the following concerns raised by the Applicant:
- LARP does not contain objectives for biodiversity or land disturbance or sufficient conserved areas, as noted in paragraph 5 of the Applicant’s submissions;
 - LARP does not contain, outcomes, objectives, thresholds, frameworks or management plans for managing adverse impacts to the Applicant’s reserve lands or for adverse effects on opportunities to exercise what the Applicant considers to be its members’ treaty and aboriginal rights or for traditional land use, as noted in paragraphs 33 and 37 of the Applicant’s submissions;
 - LARP indicates that “cumulative effects management focuses on outcomes” but no outcomes and objectives have been established in several areas, as noted in paragraph 34 of the Applicant’s submissions;
 - LARP does not include what the Applicant believes are sufficient traditional land sites of the Applicant within the conservation areas , as noted at paragraph 36 of the Applicant’s submissions;

⁴⁵ *Quebec (Attorney General) v. Canada (National Energy Board)*, [1994] 1 S.C.R. 159 at para. 44 – **Authorities Tab 15**

⁴⁶ LARP, pg. 27

⁴⁷ *Tsuu T’ina Nation v. Alberta (Environment)*, 2010 ABCA 137, at para. 89 – **Authorities Tab 16**

- LARP does not contain or contemplate objectives or a management framework for water quality or quantity for any water bodies other than the Athabasca River, as noted in paragraph 40 of the Applicant’s submissions; and
 - There are no odour objectives or thresholds in LARP and no limits for any substances that adversely affect human health other than NO₂ and SO₂, as noted in paragraph 41 of the Applicant’s submissions.
85. In any event, in relation to the concern that LARP does not explicitly include mechanisms for managing traditional land use or access for the exercise of treaty rights or adverse impacts to reserve lands, Alberta submits that it must also respect its jurisdictional limits as included in the federal-provincial division of powers within sections 91 and 92 of the *Constitution Act, 1867*. Under this division of powers, Canada has exclusive legislative power over “Indians” and “Lands reserved for the Indians”.⁴⁸ While provincial enactments of general application (such as LARP) apply of their own force to “Indians” and on reserves, this is subject to exceptions arising from the division of powers. The key exceptions are that LARP and other provincial enactments cannot legislate about Indian rights, the status or capacities of Indians as Indians or the Indian interest in land. Nor can such provincial enactments single out “Indians” for special treatment.⁴⁹ Therefore, in legislating access to provincial Crown land, Alberta could not expressly define somebody as being or not being an “Indian” or lands as those to which “Indians” have a right of access to exercise treaty rights. To the extent that the Applicant suggests that LARP should be amended to do such things, such amendments may be unconstitutional.
86. With respect to the designation of conservation areas, Alberta submits that one of the key criteria for establishment of conservation areas were that the area support aboriginal traditional uses.⁵⁰ These uses were considered, along with the other criteria, such as little to no industrial activity and areas that are representative of the biological diversity, in establishing the location of conservation areas.
87. More generally, LARP states that the biodiversity management framework and landscape management plan are to have several measures that will support systematic, regional management of wildlife habitat and populations and should, in turn, support the exercise of treaty rights and traditional land use.⁵¹ LARP also expressly indicates that Alberta will work with First Nations in developing the biodiversity management framework, the landscape management plan, and the Lower Athabasca Regional Trail System Plan.⁵²
88. Further, as noted above, LARP does not take away from the Crown’s duty to consult or other policy commitments to consult with aboriginal peoples (such as First Nations) when government decisions may adversely affect the exercise of constitutionally protected rights.
89. In relation to the Applicant’s concern that sufficient traditional use sites were not included within the conservation areas under LARP, Alberta would note that the Birch River Conservation Area and the Birch Mountains Provincial Wildland Park added approximately 334,536 hectares

⁴⁸ *Constitution Act, 1867* (Tab 17)

⁴⁹ *R. v. Sutherland*, [1980] 2 S.C.R. 451, para. 5 – **Authorities Tab 18**

⁵⁰ LARP, pg. 30

⁵¹ LARP, pgs. 45-46

⁵² LARP, pgs. 63-65

to the existing Birch Mountain Wildland Park (144,505 hectares) which are contiguous with the Applicant's Reserves 174 A and 174B.⁵³

90. With respect to the Air Quality Management Framework, Alberta notes that the triggers and limits within the framework are based on the Alberta Ambient Air Quality Objectives (AAAQO). The AAAQO were developed and implemented under the *Environmental Protection and Enhancement Act* (EPEA) to protect the environment and human health, while recognizing principles of sustainability that include environmental as well as technical, social and economic considerations.⁵⁴ An AAAQO is "a numerical compensation, value or narrative statement which is intended to provide protection of the environment and human health to the extent that is technically and economically feasible, and the socially and politically acceptable".⁵⁵
91. For the specific AAAQOs used in the LARP Air Quality Management Framework⁵⁶:
- The 1-hour average Alberta Ambient Air Quality Objective for nitrogen dioxide is 300 µg m-3 (159 ppb) based on respiratory effects.
 - The annual average Alberta Ambient Air Quality Objective for nitrogen dioxide is 45 µg m-3 (24 ppb) based on vegetation.
 - The 1-hour average Alberta Ambient Air Quality Objective for sulphur dioxide is 450 µg m-3 (172 ppb) based on pulmonary effects.
 - The annual average Alberta Ambient Air Quality Objective for sulphur dioxide is 20 µg m-3 (8.0 ppb) adopted from the European Union, which based its objective on the protection of ecosystems.
92. Further, LARP enhances the use of AAAQOs by establishing triggers that are below the limit for each indicator (the LARP air quality limits are the AAAQO). This allows sufficient time to plan and react to manage air quality so as to avoid reaching that limit. LARP also addresses cumulative effects by ensuring releases from various sources and at various scales are managed so that they do not collectively result in unacceptable air quality. It also contemplates the use of both regulatory and non-regulatory tools in addressing air quality concerns.⁵⁷
93. In summary, Alberta submits that items or measures alleged to be missing from LARP cannot be harm caused by LARP and are outside of the Panel's jurisdiction.
94. In any event, the existing regulatory structure will continue to apply where LARP is silent with respect to a particular topic, maintaining the status quo. Alberta submits that maintenance of the status quo is not an adverse effect caused by LARP.

⁵³ LARP, pgs. 83, 84 and 93

⁵⁴ LARP, pg. 73 and the Air Quality Management Framework (Tab 3) pg. 12

⁵⁵ Air Quality Management Framework pg. 12

⁵⁶ Air Quality Management Framework pg. 12

⁵⁷ Air Quality Management Framework

ISSUES WITHIN THE PANEL'S JURISDICTION

95. The following concerns raised by the Applicant relate to the content of LARP:
- LARP authorizes and prioritizes development, as noted at paragraphs 4, 6, 21, 24, 57, 58, 64 and 85 of the Applicant's submissions.
96. However, Alberta submits that the content of LARP does not, in fact, cause the harm alleged by the Applicant.

LARP does not Authorize or Prioritize Development

97. The Applicant suggests that LARP authorizes and prioritizes development (paragraphs 4, 6, 21, 24, 57, 58, 64, 85).
98. This assertion is not accurate.
99. LARP does not authorize development. Rather, it creates a framework that is intended to guide decision-makers in the exercise of their powers and duties.
100. As indicated above, applications for proposed future development activities will continue to be processed and decided upon by statutory decision-makers under their enabling legislation such as *EPEA* or the *Water Act*. These statutory consents must comply with LARP; however LARP does not give life to them. LARP is but one of the considerations a decision-maker must look at before determining if an activity should be allowed within the Lower Athabasca Region.
101. The Applicant's argument confuses LARP not prohibiting certain activities in certain areas with authorization. The existing regulatory regime will continue to apply to proposed development activities and this regime contains checks and balances to ensure that statutory consents are subject to due process, rights of appeal, opportunities for public involvement, and consultation, where appropriate. LARP does not displace these checks and balances; it adds an additional layer of scrutiny to ensure that decisions are consistent with the goals and objectives of the regional plan.
102. Nor does LARP prioritize development. LARP "aligns provincial policies at the regional level to balance Alberta's economic, environmental and social goals".⁵⁸ LARP's vision describes "a desired future state for the Lower Athabasca in which the region's diverse economic opportunities are balanced with social and environmental considerations using a cumulative effects management approach".⁵⁹
103. The Applicant points out (at paragraph 24 of its submissions) that of LARP's seven regional outcomes, the first one listed is optimizing the economic potential of the oil sands. This does not mean that development is prioritized. LARP does not rank the regional outcomes. Other outcomes, which are to be weighed equally, are managing landscapes to maintain ecosystem

⁵⁸ LARP, pg. 2

⁵⁹ LARP, pg. 23

function and biodiversity, managing air and water to support human and ecosystem needs, and inclusion of aboriginal peoples in land use planning.⁶⁰

104. The Applicant also points to the fact that the Crown has not yet completed various management tools that would support the exercise of treaty rights to argue that LARP prioritizes development. The Applicant also repeats its argument about the lack of management frameworks. Alberta submits that, contrary to the Applicant's suggestion, the continued development of management tools demonstrates the commitment under LARP to balance environmental, social and economic interests. Through LARP, Alberta developed and committed to implement the Air Quality Management Framework and the Surface Water Quality Framework, as well as further commitments to develop a biodiversity framework, a landscape management plan, a tailings management framework, a Groundwater Management Framework, and to complete an updated surface water quantity management framework.⁶¹ These measures are protective of ecosystem function and human health and will support the exercise of treaty rights and traditional land uses.
105. The Applicant also raises concern that the conservation areas have not yet been created, either as wildland provincial parks under the *Provincial Parks Act* or as a public land use zone under the *Public Lands Act*, as noted on pages 6-9 of the Applicant's submissions. The Applicant points to s. 7(3) of the Regulatory Details of LARP which provides that a decision-maker "must not adjourn, defer, deny, refuse, or reject any application, proceeding or decision making process before it by reason only of ... b) the incompleteness by the Crown or anybody of any direction or commitment made in a provision of either the LARP Strategic Plan or LARP Implementation Plan" (emphasis added). The Applicant then repeats its argument that LARP authorizes resource development.
106. Section 7(3) of the Regulatory Details does not mean that applications for statutory consents must or will be approved in conservation areas prior to their creation under the applicable legislation. In making a decision, a statutory decision-maker must still consider the management intent indicated by LARP for the conservation area.
107. The purpose of s. 7(3) of the Regulatory Details is simply to indicate that decision-makers must continue to process, and decide upon, all applications received. In other words, the decision-maker cannot hold the application in abeyance pending the implementation of any direction or commitment under LARP. Under this section, the decision-maker is left the option to refuse the application because of its inconsistency with the intent of the planned conservation area.
108. In summary, LARP does not prioritize development for the Lower Athabasca Region. Rather, it strives to strike a balance between social, environmental and economic outcomes, taking into account the current state of the region.

CONCLUSION

109. Alberta submits that the majority of the concerns raised by the Applicant are not related to the content of LARP and are therefore outside of the Panel's jurisdiction and must not be considered.

⁶⁰ LARP, pg. 37

⁶¹ LARP, pg. 71

110. For the concerns noted above which are within the Panel's jurisdiction, as they relate to the current content of LARP, Alberta submits that no harm to the Applicant, as alleged, or at all, arises from the content of LARP complained of.
111. Alberta submits that the Applicant has not shown that there is any existing or future harm caused by a provision of LARP so as to trigger the Panel's power to provide recommendations for amendment to the Minister.
112. Consequently, Alberta requests that the Panel report to the Minister, pursuant to Rule 37, that the Applicant is not directly and adversely affected in accordance with Rule 36.

All of which is respectfully submitted June 25, 2014.

ALBERTA JUSTICE AND SOLICITOR GENERAL

A handwritten signature in blue ink, appearing to be 'L. Semenchuk', written over a horizontal line.

Per: Lisa Semenchuk, Wendy Thiessen, and Witek Gierulski
Counsel for the Government of Alberta

Table of Authorities

Tab	
1.	Alberta Land Stewardship Act – Rules of Practice for Conducting Reviews of Regional Plans (March 2014)
2.	<i>Alberta Land Stewardship Act</i> , S.A. 2009, c. A-26.8
3.	Lower Athabasca Region Air Quality Management Framework for Nitrogen Dioxide (NO ₂) and Sulphur Dioxide (SO ₂)
4.	Lower Athabasca Region Surface Water Quality Management Framework for the Lower Athabasca River
5.	<i>Environmental Protection and Enhancement Act</i> , R.S.A. 2000, c. E-12
6.	<i>Alberta Land Stewardship Regulation</i> , AR 179/2011
7.	<i>Constitution Act, 1982</i> , R.S.C. 1985, App. II, No. 44, Sched. B, Pt. II
8.	<i>Administrative Procedures and Jurisdiction Act</i> , R.S.A. 2000, c. A-3
9.	<i>Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council</i> , 2010 SCC 43
10.	<i>Wasauksing First Nation v. Wasausink Lands Inc.</i> , 2004 CarswellOnt 936 (Ont. C.A.)
11.	<i>Siksika First Nation v. Alberta (Director, Southern Region, Environment)</i> , 2007 ABCA 402
12.	<i>Designation of Constitutional Decision Makers Regulation</i> , Alta. Reg. 69/2006
13.	<i>UFCW, Local 401 v. Alberta (Information and Privacy Commissioner)</i> , 2012 ABCA 130
14.	<i>Terms of Reference for Developing the Lower Athabasca Regional Plan</i> , 2009
15.	<i>Quebec (Attorney General) v. Canada (National Energy Board)</i> , [1994] 1 S.C.R. 159
16.	<i>Tsuu T'ina Nation v. Alberta (Environment)</i> , 2010 ABCA 137
17.	<i>Constitution Act, 1867</i> , R.S.C. 1985, App. II, No. 5
18.	<i>R. v. Sutherland</i> , [1980] 2 S.C.R. 451
19.	"Ambient Air Quality Objective", Alberta Environment and Sustainable Resource Development Website