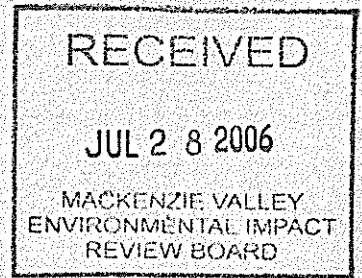


**PHILLIPS
AND
WRIGHT**
BARRISTERS & SOLICITORS



GERARD K. PHILLIPS ■ ADRIAN C. WRIGHT

SUITE 1008 PRECAMBRIAN BUILDING, 4920-52ND STREET, YELLOWKNIFE, NORTHWEST TERRITORIES, X1A 3T1
PHONE: (867) 873-3335 FAX: (867) 873-2773

July 28, 2006

Our File: 1021485ACW

Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
Box 938, 5102 - 50th Avenue
Yellowknife, NT, X1A 2N7

Dear Sir:

Re: De Beers Canada Inc. v. Mackenzie Valley Environmental Impact Review Board

Enclosed for service upon you please find the following documents:

1. Originating Notice, Application for Judicial Review; and
2. Affidavit of Paul Cobban.

On Friday, August 25 an order will be sought to set the Judicial Review for a special chambers date that is convenient for all counsel involved. Mr. Eric Groody will be in touch you prior to August 25 to discuss scheduling.

Yours Truly,
PHILLIPS & WRIGHT
PER:

Adrian C. Wright
/trl

encl.

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DE BEERS CANADA INC.

Applicant

- and -

MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

Respondent

ORIGINATING NOTICE
APPLICATION FOR JUDICIAL REVIEW

TAKE NOTICE that an application will be made before the presiding Justice in Chambers at the Courthouse in the City of Yellowknife in the Northwest Territories on Friday the 25th day of August 2006 at 10:00 in the morning or so soon thereafter as counsel may be heard for an order:

- a. For directions on whether any other parties need to be given notice of the application and served with this Originating Notice;
- b. Quashing the order of the Mackenzie Valley Environmental Impact Review Board of June 12, 2006 in the matter of an environmental assessment conducted pursuant to the Applicant's proposed Gahcho Kue development and associated Land Use Permit Application MV2005C0032 and Type A Water Licence Application MV2005L@-0015 to conduct an environmental impact review;
- c. Requiring the Mackenzie Valley Environmental Impact Review Board to conduct an environmental assessment in conformance with the *Mackenzie Valley Resource Management Act*; and
- d. For costs payable to the Applicant.

AND TAKE NOTICE that the grounds on which the application is based are as follows:

1. Part 5 of the *Mackenzie Valley Resource Management Act* (the "Act") provides for a process of environmental assessment of proposals for development, and stipulates that no licence or permit for a development is valid unless it was issued in accordance with Part 5.
2. The Applicant De Beers Canada Inc. applied for a Type A Land Use Permit and Type A Water Licence from the Mackenzie Land and Water Board for its proposed Gahcho Kué diamond mine.
3. The Land and Water Board commenced a preliminary screening. On December 22, 2005 Environment Canada referred the development to the Mackenzie Valley Environmental Impact Review Board ("Review Board") for environmental assessment.
4. The Review Board issued an Order on June 12, 2006 that directed the proposed development to an environmental impact review.
5. The Review Board was required by s117 of the Act to consider the impact of the development on the environment, including any cumulative impact that is likely to result, the significance of any such impact, and whether mitigative or remedial measures are necessary. The Review Board failed to consider these matters and instead deferred their consideration to the environmental impact review.
6. As a result, the Order does not comply with Part 5 of the Act. The Review Board erred in law and exceeded its jurisdiction by issuing the Order.
7. The errors made by the Board are substantive in nature and the Order is illegally issued.

AND TAKE NOTICE that in support of the application will be read the Affidavit of Paul Cobban filed July 28, 2006, copies of which are served with this Originating Notice.

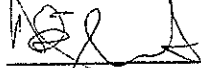
AND TAKE NOTICE that in support of the application the Applicant will rely on the following:

- a. evidence in the Return required to be made to this Honourable Court by the Respondent;
- b. *Mackenzie Valley Resource Management Act*, S.C. 1998, c. 25, section 32 and Part 5;
- c. *Rules of the Supreme Court of the Northwest Territories*, Part 44; and
- d. *Judicature Act*, R.S.N.W.T., 1988, c. J-1, sections 27 and 41.

DATED at Yellowknife, Northwest Territories, on July 19, 2006 and taken out by Adrian Wright of Phillips and Wright, Barristers & Solicitors, solicitor for the Applicant, whose address for service is in care of Phillips and Wright, Barristers & Solicitors, 1008, 4920 – 52 Street, Yellowknife, Northwest Territories, X1A 3T1, phone: 867-873-3335 (ext 31), fax: 867-873-2773.

Phillips and Wright

Per:

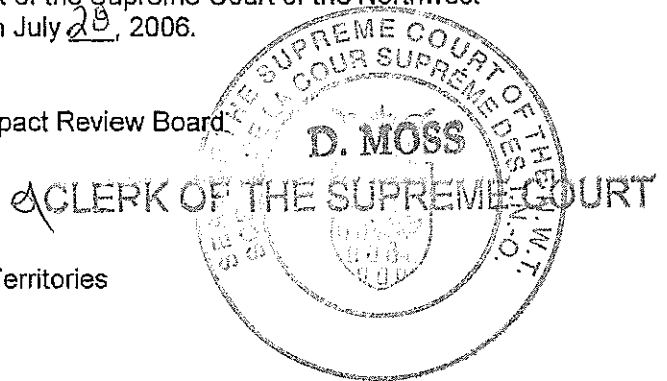


Adrian C. Wright
Counsel for the Applicant

ISSUED out of the office of the Clerk of the Supreme Court of the Northwest Territories, at Yellowknife, Northwest Territories, on July 20, 2006.

TO: Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
Box 938, 5102-50th Ave
Yellowknife, NT X1A 2N7

AND TO: Attorney General of the Northwest Territories
Minister of Justice
4903-49th Street
Courthouse 6th Floor
Yellowknife, NT



Rule 595. (1) On receiving an originating notice endorsed in accordance with rule 595, the person in respect of whose decision or act relief is claimed shall return forthwith to the Clerk

- (a) the judgment, order or decision, as the case may be;
- (b) the process commencing the proceeding;
- (c) the evidence and all exhibits filed, if any;
- (d) all things touching the matter;
- (e) the originating notice served on the person; and
- (f) a certificate in the following form:

"Pursuant to the accompanying originating notice, I hereby return to the Honourable Supreme Court the following papers and documents:

- (a) the judgment, order or decision, as the case may be, and the reasons for it;
- (b) the process commencing the proceeding;
- (c) the evidence taken at the hearing and all exhibits filed;
- (d) all other papers or documents touching the matter.

And I hereby certify to the Honourable Supreme Court that I have enclosed in this return all the papers and documents in my custody relating to the matter set forth in the originating notice."

- (2) The certificate required by subrule (1) has the same effect as a return to a writ of certiorari.
- (3) Where the proceedings are not in the possession of the person required to transmit them, that person shall, in lieu of the certificate required by subrule (1), so state and explain the circumstances.
- (4) Where the proceedings have not been received by the Clerk before the application for judicial review is heard, the Clerk shall return a certificate stating that fact.
- (5) The Court may dispense with the return of the evidence or exhibits or part of the evidence or exhibits.
- (6) Notwithstanding the requirements of this rule, the parties may agree on what constitutes the record for the purpose of the application for judicial review.

NOTICES

S.C. No. S0001012006000155

To the Respondent:

IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES

You are hereby notified that the Applicant may enter judgment in accordance with this Notice, or such judgment as the Applicant may be entitled to in accordance with the practice of the Supreme Court of the Northwest Territories, without any further notice to you unless you or your agent or solicitor appear at the place and on the time and date specified.

Between:

DE BEERS CANADA INC.

Applicant

– and –

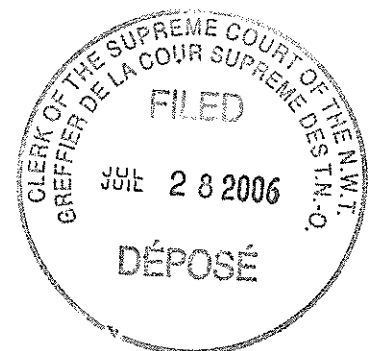
MACKENZIE VALLEY ENVIRONMENTAL
IMPACT REVIEW BOARD

Respondent

ORIGINATING NOTICE
FOR JUDICIAL REVIEW

ADRIAN WRIGHT
Phillips and Wright,
Barristers & Solicitors,
1008, 4920 – 52 Street
Yellowknife, NWT X1A 3T1,
Phone: 867-873-3335 (ext 31)
Fax: 67-873-2773

File No. 10357.005



No. S.C.

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

BETWEEN:

DE BEERS CANADA INC.

Applicant

– and –

MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

Respondent

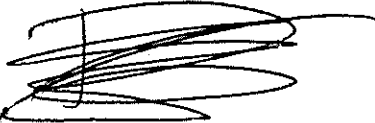
AFFIDAVIT

I, Paul Cobban, of the City of Yellowknife, of the Northwest Territories, employee of the Applicant, make oath and say that:

1. I am the Interim Manager of Environmental Affairs of the Applicant De Beers Canada Inc. ("De Beers") and as such have personal knowledge of the matters herein deposed to, except where stated to be based on information and belief.
2. De Beers has proposed the development of the Gahcho Kue diamond mine. De Beers made application for a Type A Land Use Permit and a Type A Water License to the Mackenzie Valley Land and Water Board in order to proceed with the development.
3. The Land and Water Board commenced a preliminary screening. On December 22, 2005, Environment Canada referred the development to the Mackenzie Valley Environmental Impact Review Board for environmental assessment, pursuant to the *Mackenzie Valley Resource Management Act*.

4. The Review Board issued a work plan on February 22, 2006 and thereafter took steps in an environmental assessment of the development. The work plan is attached hereto as Exhibit "A" to this my Affidavit.
5. On June 13, 2006, De Beers received the June 12, 2006 Order of the Review Board. This Order and its cover letter are attached hereto as Exhibit "B" to this my Affidavit.
6. The Review Board's *Reasons for Decision and Report of Environmental Assessment for the De Beers Gahcho Kué Diamond Mine, Kennady Lake, NT* was issued on June 28, 2006. The document is attached hereto as Exhibit "C" to this my Affidavit.
7. I and other personnel at De Beers (as they inform me) are concerned about whether the Order complies with the *Mackenzie Valley Resource Management Act* because of the Review Board's failure to include considerations required by the Act. In particular, our concerns are as set out in the Originating Notice for this judicial review.
8. I make this Affidavit in support of an application for judicial review of the Review Board's June 12, 2006 Order.

SWORN BEFORE ME at the City of)
Vancouver, in the Province of British Columbia,)
this 11th day of July, 2006.)

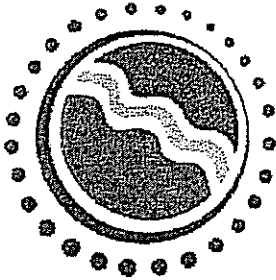


A Commissioner for Oaths and Notary
Public in and for the Province of British
Columbia)

Brock Martland
Barrister and Solicitor
Smart & Williams
1190 - 840 Howe Street
Vancouver, B.C. V6Z 2L2



Paul Cobban



Mackenzie Valley
Environmental Impact Review Board

Work Plan
for the
Environmental Assessment

of the

De Beers Gahcho Kué Diamond Project

(EA0506-008)

Mackenzie Valley Environmental Impact Review Board

Tel: (867) 766-7050


THIS IS EXHIBIT " A " Fax : (867) 766-7074
to the Affidavit of

Paul Cobben

Sworn before me this 12th

Feb. 22, 2006

day of July, 20 06


A Commissioner for Oaths, Notary Public
in and for the Province of Alberta, British Columbia

Brock Martland
Barrister and Solicitor
Smart & Williams
1190 - 840 Howe Street
Vancouver, B.C. V6Z 2J2



Mackenzie Valley
Environmental Impact
Review Board

- In the Matter of: **A Land Use Permit Application MV2005C0032 and a type A Water Licence Application MV2005L2-0015 made by DeBeers Canada in support of the proposed Gahcho Kue development;**
- And in the Matter of: **An Environmental Assessment conducted in relation to these applications and the proposed Gahcho Kue development;**
- And in the Matter of: **A decision made under section 128(1)(c) of the *Mackenzie Valley Resource Management Act*.**

ORDER

The Mackenzie Valley Environmental Impact Review Board, pursuant to its authority under section 128(1)(c) of the *Mackenzie Valley Resource Management Act*, having formed the opinion that the Gahcho Kue development is likely to be a cause of significant public concern hereby orders that an environmental impact review be conducted of the proposed Gahcho Kue development.

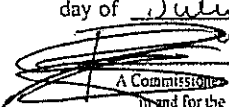
For the Mackenzie Valley Environmental Impact Review Board:

Chanelle Mackenzie Scott
Gabrielle Mackenzie Scott, Chairperson

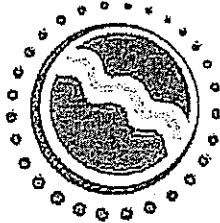
Dated: the 12th of June, 2006.

THIS IS EXHIBIT " B "
to the Affidavit of

Paul Cobban
Sworn before me this 11th
day of July, 20 06


A Commissioner for Oaths/Notary Public
in and for the Province of Alberta - High Columbia

Brock Martland
Barrister and Solicitor
Smart & Williams
1190 - 840 Howe Street
Vancouver, B.C. V6Z 2L2



Mackenzie Valley Environmental Impact Review Board

June 13, 2006

The Honourable Jim Prentice
Minister, Indian Affairs and Northern Development
10 Wellington St. North Tower
Hull, P.Q. K1A 0H4

Dear Minister Prentice:

**Re: MVEIRB Environmental Assessment Decision on the Proposed DeBeers Canada
Gahcho Kue Diamond Mine**

I am pleased, on behalf of the Mackenzie Valley Environmental Impact Review Board (MVEIRB), to convey our decision in the Environmental Assessment (EA) of the DeBeers Canada Gahcho Kue project.

The MVEIRB held technical and community scoping workshops in Yellowknife, Dettah, Lutsel K'e, Fort Resolution and Behchoko, as well as technical and community scoping hearings in Yellowknife in order to form its opinion in this matter. We heard from a wide spectrum of residents of the Mackenzie Valley including aboriginal leaders and elders, and representatives from various government agencies. Based on the information gathered at the workshops and hearings, as well as written submissions, the MVEIRB concluded that the proposed Gahcho Kue diamond mine is likely to be cause of significant public concern.

During its meeting of June 8, 2006 the MVEIRB exercised its statutory authority under paragraph 128(1)(c) of the Mackenzie Valley Resource Management Act and issued an order for an Environmental Impact Review of the Gahcho Kue diamond mine project. The order is attached to this letter. The MVEIRB's reasons for decision and report of environmental assessment will follow shortly under separate cover.

Yours truly,

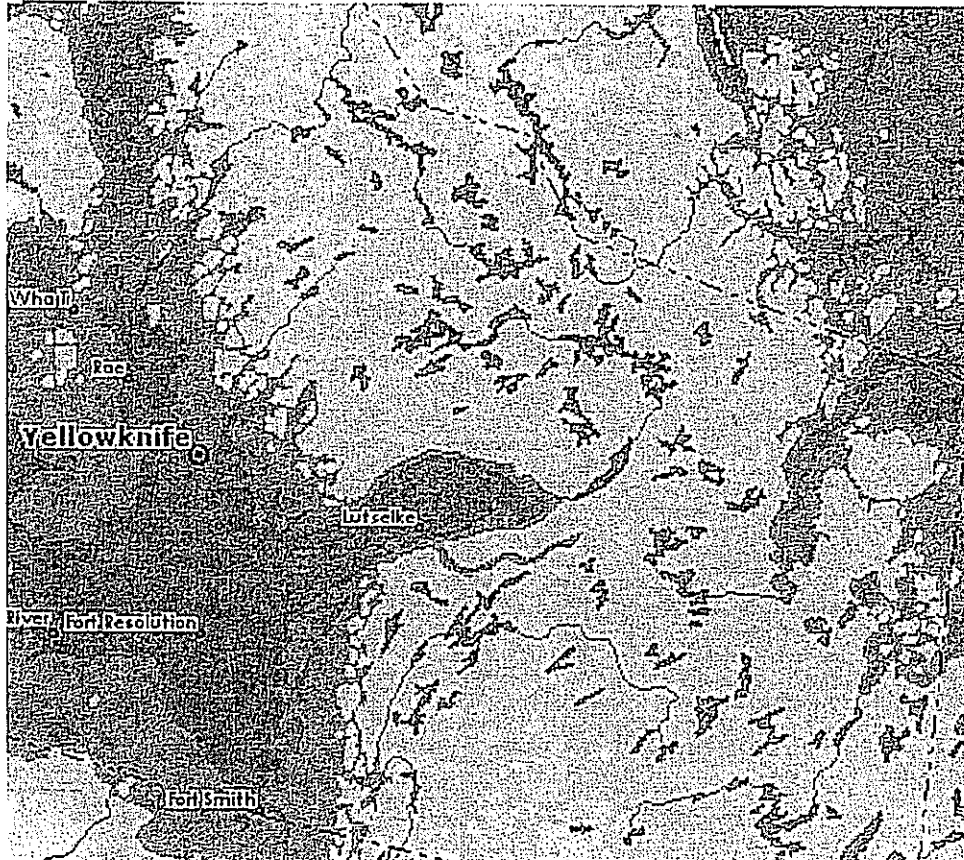
A handwritten signature in black ink, appearing to read "Gabrielle Mackenzie-Scott".

Gabrielle Mackenzie-Scott

Chairperson

Encl.

**Reasons for Decision and Report of
Environmental Assessment for the DeBeers
Gahcho Kué Diamond Mine, Kennady Lake, NT**



**Mackenzie Valley
Environmental Impact
Review Board**

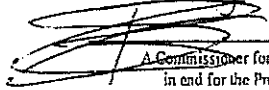
THIS IS EXHIBIT " C "
to the Affidavit of

June 28, 2006

Paul Colban

Sworn before me this 11th

day of July, 20 06


A Commissioner for Oaths/Notary Public
in and for the Province of Alberta & British Columbia

Brock Martland
Barrister and Solicitor
Smart & Williams
1190 - 840 Howe Street
Vancouver, B.C. V6Z 2T6