

COURT OF APPEAL FOR YUKON

Citation: 2013 YKCA 7,
Ross River Dena Council v. Government of Yukon

Date: 20130528
Docket: 11-YU689

Between:

Ross River Dena Council

Appellant
(Plaintiff)

And

Government of Yukon

Respondent
(Defendant)

And

Yukon Chamber of Mines

Intervenor
(Intervenor)

Before: The Honourable Mr. Justice Tysoe
The Honourable Mr. Justice Groberman
The Honourable Mr. Justice Hinkson

Supplementary Reasons to: Yukon Court of Appeal, December 27, 2012,
(*Ross River Dena Council v. Government of Yukon*, 2012 YKCA 14, No. 11-YU689)

Counsel for the Appellant: S.L. Walsh

Counsel for the Respondent: P. Gawn and L.A. Henderson

Counsel for the Intervenor: R.A. Buchan and K.G. O'Callaghan

Place and Date of Hearing: Whitehorse, Yukon
June 5 and 6, 2012

Place and Date of Judgment: Vancouver, British Columbia
October 4, 2012

Written Submissions on Costs Received: April 17 and May 3, 2013

Date of Supplementary Judgment: May 28, 2013

Supplementary Reasons of the Court

Supplementary Reasons for Judgment of the Court:

[1] On December 27, 2012, we allowed the appeal in this matter, and granted the following declarations:

- a) the Government of Yukon has a duty to consult with the plaintiff in determining whether mineral rights on Crown lands within lands compromising the Ross River Area are to be made available to third parties under the provisions of the *Quartz Mining Act*.
- b) the Government of Yukon has a duty to notify and, where appropriate, consult with and accommodate the plaintiff before allowing any mining exploration activities to take place within the Ross River Area, to the extent that those activities may prejudicially affect Aboriginal rights claimed by the plaintiff.

[2] The appellant now applies for costs, both in this Court and below. It contends that the matter was of unusual difficulty or importance, and seeks costs on scale 3 in this Court.

[3] The respondent says that there has been mixed success on the appeal, and that each party should bear its own costs.

[4] In accordance with the conditions upon which the Yukon Chamber of Mines received intervenor status, costs are neither sought by nor against it.

[5] The ordinary practice of this Court is that costs are awarded to the party that enjoys substantial success on the appeal. We are of the view that, while the appellant has not succeeded in obtaining all of the relief that it sought, it has been substantially successful.

[6] This case concerned the duties of the Crown to consult with the appellant over the recording of mineral claims. The main question on this appeal was whether the chambers judge erred in finding that the Crown's duty to consult could be satisfied simply by notifying the appellant after it recorded mineral claims under the *Quartz Mining Act*, S.Y. 2003, c. 14. The appellant succeeded on that question.

[7] With its substantial success on this appeal, the appellant can also be said to have succeeded substantially in the litigation. Accordingly, it is appropriate that it receive its costs before the Yukon Supreme Court, as well.

[8] While consultation with First Nations is an important issue, we are not persuaded that this case was particularly complex, nor are we of the view that it breaks substantial new legal ground. In our view, it is appropriate that costs be awarded on the ordinary scale, scale 1.

[9] In the result, we order that the respondent pay the appellant's costs on scale 1 in this Court and on Scale B in the Yukon Supreme Court.

“The Honourable Mr. Justice Tysoe”

“The Honourable Mr. Justice Groberman”

“The Honourable Mr. Justice Hinkson”