

SUPREME COURT OF YUKON

Citation: *Ross River Dena Council v. Yukon (Government of)*,
2015 YKSC 10

Date: 20150219
S.C. No.: 14-A0055
Registry: Whitehorse

BETWEEN:

ROSS RIVER DENA COUNCIL

PLAINTIFF

AND

GOVERNMENT OF YUKON

DEFENDANT

Before the Honourable Mr. Justice R.S. Veale

Appearances:

Stephen L. Walsh

Mark Radke

Gordon Zealand

Counsel for the Plaintiff

Counsel for the Defendant

Appearing for Yukon Fish and Game Association

RULING ON APPLICATION (INTERVENOR STATUS)

[1] VEALE J. (Oral): This is an application by the Yukon Fish and Game Association for intervenor status in this action where Ross River Dena Council seeks a declaration that the Government of Yukon has a duty to consult with and, where indicated, accommodate the Ross River Dena Council prior to issuing hunting licences and seals under the *Wildlife Act*, R.S.Y. 2002, c. 229, as amended, and the *Wildlife Regulation*, O.I.C. 2012/84. The Government of Yukon takes no position on the application. Ross

River Dena Council opposes the application and, in the alternative, proposes conditions to be placed upon intervenor status. It is understood that the intervenor status does not permit a claim or liability for costs, nor does it permit a right of appeal.

[2] The law on intervenor status has been recently stated in *Ahousaht Indian Band v. Canada (Attorney General)*, 2012 BCCA 330 at paras. 3 to 5, which I summarize as follows:

1. The Court will grant leave to intervene where the decision will have a direct impact upon the applicant in the sense that the applicant's rights will be determined by the Court. A direct interest is difficult to establish, as indicated in *Ahousaht*, where commercial fishing associations did not have a direct interest even though the Court's decision might have an impact on the quantity of fish available to them.
2. The second basis for granting intervenor status is that the applicant is particularly well-placed to assist the Court by providing a special perspective on an issue of public importance. On this basis, the Court is attempting to ensure that important points of view are not overlooked. The intervenor must be able to present a perspective that is not already before the Court but, at the same time, not hijack the litigation by focusing on an issue peripheral to the case.

[3] In the *Ahousaht* case, the Court of Appeal did not grant intervenor status to the commercial fishing associations but did grant it to an Ontario First Nation that had specific experience on an issue that deserved consideration by the Court. (see para. 25)

[4] In the case at bar, the Fish and Game Association asserts in an affidavit of Gordon Zealand that :

2. The YFGA has a membership of approximately 800 Yukon residents.
3. The YFGA is a non-profit organization established in 1945 that pursues the sound, long-term management of fish, wildlife, and outdoor recreation resources in the best interests of all residents of Yukon.
4. The YFGA has long been recognized as a major stakeholder in matters of conservation and fish and wildlife management in the Yukon.
5. The management of fish and wildlife matters in the Yukon is an intricate matter.
6. Given that fish and wildlife are not subject to boundaries established by humans, proper and effective management of fish and wildlife requires a central authority to consider any and all overlapping fish and wildlife management issues and the interests of the various stakeholders.

[5] And:

9. As an active stakeholder in matters of fish and wildlife management in the Yukon since 1945, the YFGA has promoted and defended the sound, long-term management of fish, wildlife, and outdoor recreation resources in the best interests of all residents of Yukon.

[6] I agree with the submission of the Ross River Dena Council that this information does not establish the specific area or subjects that the Yukon Fish and Game Association might present in this case.

[7] However, as stated in *Schooff v. Medical Services Commission*, 2009 BCSC 1596, at para. 201, it is not necessary at this point, prior to trial, to know the legal arguments that the proposed intervenor will make, unlike in the Court of Appeal in *Ahousaht* where the applicant must satisfy the Court that they will not simply advance

arguments that are the same as Ross River Dena Council, in this case, or the Government of Yukon.

[8] In my view, there are important issues of constitutional law at stake in this case and the perspective of the Yukon Fish and Game Association may assist the Court. I therefore grant intervenor status on the following conditions:

1. The Yukon Fish and Game Association may file a written submission on a date to be determined in case management no longer than five pages in length.
2. Ross River Dena Council and the Government of Yukon may file written submissions in response.
3. The Yukon Fish and Game Association submission shall attempt to avoid duplication of any of the arguments advanced by Ross River Dena Council or the Government of Yukon.
4. The Court will determine, after all submissions are filed, whether the Yukon Fish and Game Association may make oral arguments.
5. The Yukon Fish and Game Association will not be entitled to or liable for costs and has no right of appeal of the Court's decision on the merits in this matter.

VEALE J.