

SUPREME COURT OF YUKON

Citation: *837386 Yukon Inc. v Yukon (Government of)*
2023 YKSC 19

Date: 20230411
S.C. No.: 22-AP010
Registry: Whitehorse

Between

837386 Yukon Inc.

Petitioner

and

Government of Yukon and Yukon First Nation Chamber of Commerce

Respondent

Before Justice A. Kent

Counsel for the petitioner

Geoff Bowman

Counsel for the respondent, Government of Yukon

I.H. Fraser

Counsel for the respondent, Yukon First Nation
Chamber of Commerce

Mark E. Wallace
Arthur Mauro

REASONS FOR DECISION

[1] This decision follows from my decision, filed March 8, 2023 (2023 YKSC 11), wherein I directed counsel to make further submissions with respect to remedy given that I had decided that the process whereby 837386 Yukon Inc. (“837386”) had been denied to have its name added to the Yukon First Nations Registry (the “Registry”) was unfair and that the reasons given for that denial were unreasonable. These further submissions were made by virtual hearing.

[2] Counsel for Yukon First Nation Chamber of Commerce (“YFNCC”) made brief written submissions and no oral submissions. YFNCC made three points: they have ceased to administer the Registry effective March 31, 2023; the Registry may not exist in coming months or it may be in a different form; and any decision about remedy for 837386 should reference its benefits under the Yukon First Nation Procurement Policy (the “Policy”) rather than entry onto the Registry.

[3] 837386 made six submissions. Three were conceded by the Government of Yukon (“Yukon”) so they are not dealt with here but will be reflected in the final order. The other three submissions seek a declaration that 837386 is a Yukon First Nation Business that falls within the meaning of the Policy; a declaration that 837386 is entitled to be placed on the Registry so that 837386 is entitled to the benefits of being on the Registry insofar as that placement entitles it to benefits under the Policy for a period of one year; and that 837386 is entitled to special costs.

[4] 837386 argues that it seeks these declarations to ensure that it will benefit from the Policy, particularly considering the uncertain future of the Registry. As well, in light of the unclear position of Yukon, specifically the discrepancy between the documents cited in my decision that indicated that an entity needed to be on the Registry to qualify for benefits under the Policy and Yukon’s counsel’s position during argument that an entity did not need to be on the Registry, 837386 argues that it needs all of the relief sought to ensure that it receives the benefits that it is entitled to.

[5] Yukon argues that 837836 should be in no better position than any other entity. In the future, the Policy and the Registry may both need to be restructured to ensure that the objectives of the Policy are met. As a result, the only declaration should be that

837386 is on the Registry which in turn means that as of the date of the declaration, it is entitled to the benefits of the Policy. Yukon argues that if I either make a declaration that it is entitled to the benefits of the Policy or make a declaration that it is entitled to the Policy benefits for a year, then 837386 will be better placed than any other entity who could be affected by future changes to the Registry or the Policy.

[6] The decision under review was the process and reasoning resulting in the decision to deny 837386 be added to the Registry. Given my findings, 837386 should be added to the Registry and there will be a declaration to that effect. There is no need to make a declaration that it is entitled to the benefits of the Policy because the only requirement in 1(2)(qq) is the ownership threshold which 837386 meets. The other portions of 1(2)(qq) all deal with the requirements to be added to the Registry. Counsel for Yukon has confirmed that an order adding 837386 will give it access to the benefits under the Policy.

[7] I will not add any temporal provision to the declaration that 837386 be added to the Registry because that would give it something more that it would have received under the process in this review.

[8] On the question of costs, 837386 argues that it should receive special costs because the position of Yukon during argument was inconsistent with the documents that formed the record. That inconsistency results in the kind of misconduct that usually attracts special costs.

[9] I disagree. At the outset of my reasons of March 8, 2023, I instructed myself to be mindful of the purposes of the Policy under consideration, and the need to ensure that I underpin my analysis with the importance of moving along the path to

reconciliation. That path is not a straight one, nor is it an easy one. It is not a pleasant amble through the woods. It will continue to be tough slogging as we get it right. Mistakes will be made, and we will all need to bear the consequences of those mistakes.

[10] I see nothing outrageous in what happened here. 837386 will have one set of costs on Scale B. Given this decision, I have reviewed the order drafted by Counsel for Yukon. I would ask Counsel for 837386 to review it and provide any comments within 7 days of this decision. If there are no comments, that order will go subject to formatting that ensure that the last page does not only contain my signature.

KENT J.