SUPREME COURT OF YUKON

Citation: *First Nation of Na-Cho Nyäk Dun v Yukon (Government of)*, 2026 YKSC 99

Date: 20261105
S.C. No. 25-A0185
Registry: Whitehorse

BETWEEN:

FIRST NATION OF NA-CHO NYÄK DUN

PLAINTIFF

AND

GOVERNMENT OF YUKON AND
THE ATTORNEY GENERAL OF CANADA

DEFENDANTS

Before Chief Justice S.M. Duncan

Counsel for the Plaintiff	Nuri Frame and Jonah Dutz
Counsel for the Government of Yukon	Jessica Lewis
Counsel for the Attorney General of Canada	Marlaine Anderson-Lindsay and Jordan Calladine
Counsel for the Chamber of Mines	Kevin O'Callaghan and Samuel Geisterfer

REASONS FOR DECISION

OVERVIEW

[1] This is an application by the Yukon Chamber of Mines (Chamber of Mines) to intervene in the application for an interlocutory injunction to institute a prohibition on all mineral staking in certain regions of the traditional territory of the First Nation of Na-Cho Nyäk Dun (FNNND) (the Staking Injunction). The injunction is scheduled to be heard

over six days from January 4-11, 2027. The Chamber of Mines seeks leave to intervene on a public interest basis and specifically requests to file written submissions limited to 20 pages and make oral submission of up to two hours.

[2] The two defendants in the underlying action (respondents to the interlocutory injunction), the Government of Yukon and the Attorney General of Canada, do not oppose the Chamber of Mines' application. The plaintiff, FNNND, (applicant in the interlocutory injunction) opposes the Chamber of Mines' proposed intervention and in the alternative seeks limits on its scope and extent. It also requests the ability to seek costs from the Chamber of Mines after the hearing of the injunction application.

[3] The Chamber of Mines meets the test for intervention. Limitations on their participation shall include 15 pages of written submissions and 30 minutes of oral submissions. The affidavit of Jonas Smith limited to 11 pages will be permitted. The content of the submissions and evidence will not expand or duplicate the issues raised by the parties. Consistent with the general rule, no costs will be awarded for or against the intervenor.

Issues

i. Does the Chamber of Mines meet the test for intervention? More specifically, do they have a unique and different perspective that will assist the Court and will they expand the scope of the application by raising issues not raised by the parties?

ii. If granted status as an intervenor, what limitations, if any, should be placed upon their intervention?

iii. Should the intervenor be permitted to adduce affidavit evidence or will it improperly expand the evidentiary record?

iv. Should the Court exercise discretion and depart from the usual no costs rule and determine whether costs should be awarded as a result of the intervention at the conclusion of the injunction application?

Background

[4] On December 9, 2025, FNNND commenced the underlying action against the Yukon government and the Attorney General of Canada seeking relief for breaches of FNNND's rights under the FNNND Final Agreement (Final Agreement), and failures to fulfill duties arising from the honour of the Crown. Relief claimed includes declarations, an accounting and disgorgement order, damages, aggravated damages, and injunctions.

[5] On June 30, 2026, FNNND filed an application for interlocutory injunctive relief against the Yukon government. The application requests two injunctions: (a) a Staking Injunction seeking an order prohibiting mineral staking in certain regions of FNNND traditional territory, specifically those regions not currently subject to a staking withdrawal, mutually acceptable interim protections or an approved regional land use plan under Chapter 11 of the Final Agreement (the Unplanned Region) and (b) a Consultation Injunction seeking an order requiring the Yukon government to develop with FNNND a mutually acceptable agreement for consultation and accommodation on proposed mineral exploration and development in FNNND traditional territory.

[6] The application for Staking Injunction affects new mineral rights only; it does not affect any existing mineral claims, projects or rights. The rationale for the application

includes the allegations that the Yukon government has authorized mineral activities across FNNND traditional territory at an unsustainable pace, and it has failed to implement treaty promises to FNNND with respect to co-management, land use planning and sustainable development. If mineral staking proceeds in the Unplanned Region, FNNND's treaty rights will continue to be abrogated and undermined. The staking of a mineral claim gives the claimholder exclusive rights to the minerals in the claim area, and the claim encumbers any future land use planning in the claim area.

[7] Counsel for the Chamber of Mines first advised the parties on April 30, 2026 of the intention to apply for intervention in the at that time prospective injunction application. Further email correspondence occurred between counsel about their respective positions that same day and later in May 2026. On July 7, 2026, in response to a request on July 6 from counsel, FNNND counsel provided the injunction application materials to counsel for the Chamber of Mines.

[8] On August 14, 2026, the Chamber of Mines filed an application for intervention in the Staking Injunction application on the basis of its impacts on mineral staking currently held or planned, and exploration and development work currently being planned or conducted by members of the Chamber of Mines in the Unplanned Region.

[9] The Chamber of Mines has previously been granted intervenor status in the cases concerning Aboriginal and treaty rights and other matters affecting its membership, including *Ross River Dena Council v Government of Yukon*, 2012 YKCA 14; *Western Copper Corporation v Yukon Water Board*, 2011 YKSC 16; *Miller et al v Government of Yukon et al*, 2010 YKSC 22; *Taku River Tlingit First Nation v British*

Columbia (Project Assessment Director), 2004 SCC 74; and *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73).

Legal Principles – the test for intervention

[10] Intervention is generally permitted on one of two grounds:

> i. where the applicant has a direct interest in the litigation; or
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> ii. where the applicant brings a different and useful perspective on an issue of public importance.
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> (*AB v Yukon (Government of)*, 2022 YKSC 70 (*AB*); *Frost v Blake*, 2021 YKSC 29 (*Frost*), *Wright v Yukon (Director of Public Safety and Investigations*, 2021 YKSC 55 (*Wright*))

[11] The Chamber of Mines' application for intervention is brought on the second ground. Intervention on a public interest basis exists to ensure that important points of view are not overlooked by the court. The intervenor must make a valuable contribution or present a different perspective that is not already before the court. It must not raise new matters or change the focus of the litigation to an issue peripheral to the case.

[12] More specifically, there are four factors for the court to consider in an application to intervene on a public interest basis:

> a) Does the proposed intervenor have a broad representative base?
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> b) Does the case legitimately engage the proposed intervenor's interests in the issue of public importance?
>
> c) Does the proposed intervenor have a unique and different perspective that will assist the Court in the resolution of the issues?
>
> d) Does the proposed intervenor seek to expand the scope of the proceeding by raising issues not raised by the parties?

> (*AB* at para. 10; *Frost* at para. 19 adopting *Snaw-Naw-As First Nation v Canada (Attorney General)*, 2021 BCCA 89; *Wright* at para. 8)

[13] The final factor invites a court to consider whether the intervention will place an undue burden or injustice on the parties, including undue delay (*Frost* at para. 21 quoting *Carter v Canada (Attorney General)*, 2012 BCCA 502 at para. 14, and *Faculty Association of the University of British Columbia v University of British Columbia*, 2008 BCCA 376 at para. 15), and whether restrictions on the scope and extent of the participation of the intervenor are appropriate, including legal submissions and affidavit evidence.

[14] Interventions at the trial level are not common. Allowing intervenors to adduce evidence is generally only allowed in rare circumstances (*Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 29). This is in part to prevent an undue burden on the parties, and to help address two of the factors above – ensuring only a unique and different perspective is presented, and that the issues are not expanded beyond those raised by the parties – in other words, that the intervenor does not take the litigation away from those directly affected by it (*Ahousaht Indian Band and Nation v Canada (Attorney General)*, 2012 BCCA 330 at para. 5) .

Analysis

I. Does the Chamber of Mines meet the test for intervention?

[15] I will address how each of the factors for intervention are applied to the facts of this case.

(a) Does the Chamber of Mines have a broad representative base?

[16] The Chamber of Mines has a broad representative base. It is the representative body of the Yukon minerals industry. It is a non-profit society, initially incorporated in January 1943. Its members consist of 298 individuals and entities, including exploration companies of all sizes, prospectors, geoscientists, production mining companies of all sizes, Indigenous development corporations, research groups, and service and supply companies who depend directly or indirectly on mineral exploration and development in the Yukon.

(b) Does the case legitimately engage the Chamber of Mines' interests in the public law issue raised?

[17] The interests of the Chamber of Mines are engaged by the question of whether mineral staking in this highly active area can continue. More specifically, the public law issue can be described as evaluation of the negative effects of mineral staking on the conduct and implementation of the treaty relationship between FNNND and the Yukon government, as well as the negative effects of the Staking Injunction on others who are involved in and/or who may be benefitting from the mineral staking regime.

[18] The mandate of the Chamber of Mines includes: to promote, assist and protect the development of the mining industry in the Yukon; to consider all questions connected with mining and with the trade, commerce and manufacture of the products of mining; to promote or oppose legislative or other measure affecting mines and mining; and to collect and circulate statistics and other information relating to mines and mining.

[19] In this area, the Chamber of Mines members and their affiliates hold approximately 57% of all active mineral claims and constitute approximately 40% of the

unique claim holders. Combined exploration and development expenditures in FNNND traditional territory reached $207 million in 2025, with 26 active exploration projects. Between 2020 and 2026, 14,931 new claims were staked within FNNND traditional territory, including 1,715 in 2024 and 1,566 in 2025.

[20] If the relief sought by FNNND in this injunction is granted, it will affect the ability of the members of the Chamber of Mines to stake and subsequently explore mineral claims within the Unplanned Region of FNNND traditional territory. The inability to establish the mineral tenure that provides the foundation for future exploration, may cause harm to their immediate and future business activities.

(c) Does the Chamber of Mines offer a unique and different perspective that will assist the Court in the resolution of the issues?

[21] The Chamber of Mines brings a unique and different perspective that will assist the Court.

[22] This factor is highly disputed by FNNND. The only party against whom injunctive relief is sought is the Yukon government. FNNND says the interests of the Chamber of Mines and the Yukon government are wholly aligned. FNNND says that both oppose the injunction because it will disrupt mineral activity and create an adverse impact on the mining industry and the Yukon economy. Their arguments and evidence are similar. Where there is the potential for the Chamber of Mines to provide evidence that is unique and different, such as the costs incurred by individual members in desktop research, field work and logistics prior to staking, FNNND says that the Chamber of Mines provided no details in their affidavit. FNNND says the Chamber of Mines' proposed evidence duplicates the content of affidavits filed by the Yukon government and FNNND itself: specifically, evidence about the operation of the staking regime, the importance of

staking to mineral exploration, the effect of a staking prohibition on the ability to obtain financing and in creating economic hardships for those in the industry, and the economic relevance of the FNNND traditional territory to staking.

[23] The Chamber of Mines on the other hand says it provides a first-hand, practitioner perspective describing how staking functions at an operational level, including the sequence and timing of pre-staking expenditures, the constraints of the exploration season, and the importance of a recorded claim in securing financing for an individual or entity's further exploration. Information on the economic and commercial significance of exploration and development activity within the FNNND traditional territory is provided from the perspective of those who do the mineral staking and exploration work. The description of members' engagement with First Nations during the mineral staking and subsequent processes is unique and not provided elsewhere.

[24] While the Chamber of Mines agrees there is some overlap between its submissions and those of the Yukon government and acknowledged that the affidavit of John McLeod filed by FNNND as well as those from the Yukon government contain similar information about the staking regime as its affidavit, they say this is insufficient to disqualify them. As representatives of those who undertake mineral exploration work in the Yukon, their perspective on similar information is different from those from government. The affidavit of Jonas Smith of the Chamber of Mines also provides more detail on the staking process from the perspective of the staker and the requirements of and activities surrounding permitting before exploration can occur.

[25] The Chamber of Mines will provide a unique and different perspective useful to the Court in the application for injunction because:

i) it focuses on the direct present and future economic and business-related harms of a staking prohibition on individuals and entities involved in the mining industry, from stakers to suppliers and others who support and benefit from the industry, rather than the greater focus on the macro-economic impact provided by the Yukon government;

ii) in describing the staking process, it presents a characterization from the individual staker's perspective; for example, claim staking is described as their intellectual property that protects them from others who may try to claim-jump or capitalize on the knowledge or understanding of the prospector;

iii) it explains from the staker's perspective why access to large areas of land for staking is necessary;

iv) it describes their engagement with third parties pre-staking, including Indigenous communities, as part of the mineral tenure process;

v) it describes the importance to a staker of securing financing and a revenue stream before, during and after the staking process and how that is done; and

vi) it provides data gathered as part of the Chamber of Mines' objectives of the economic impact of a staking moratorium in another part of the territory.

[26] The Chamber of Mines' perspective in these areas will be useful to the Court because it can increase the understanding of the scope of the impact of the Staking Injunction on the activities of the individuals whose livelihood is mining. No one else

who provided evidence can testify from this hands-on, personal experience perspective. John McLeod, a prospector, mine designer and mine operator and not a member of the Chamber of Mines has filed an affidavit on behalf of FNNND about mining activities and their environmental impacts in the Yukon. While there is some content about staking, most of his affidavit is focussed on exploration activities and their effects. He does not depose about the harms to those in the industry of a staking prohibition.

[27] The Yukon government affiants have provided some similar information but not from the industry perspective. The importance of the various steps in the staking process to the individual, including the legal effect of staking; the costs incurred before and during staking; and the necessity and challenges of financing provides a unique and different perspective from the evidence and submissions of those on behalf of government.

[28] Further, the members' engagement with Indigenous communities at an early stage in the process and a description of their approach is not relevant only to the Consultation Injunction as argued by FNNND. As part of the overall staking and exploration process, it is useful information for the court to have, not provided by anyone else, and may have relevance to the balance of convenience argument.

(d) Does the Chamber of Mines seek to expand the scope of the proceedings by raising issues beyond those raised by the parties?

[29] Some of what the Chamber of Mines proposes to submit expands the issues beyond those raised by the parties. This can be managed by the imposition of limits on their intervention, set out in the following section.

[30] The Chamber of Mines proposes submissions in four areas: (a) the nature of the injunction sought – meaning whether or not the injunction as framed is essentially a

mandatory injunction and not a prohibitive injunction which may give rise to a different legal test; (b) the nature of the harm FNNND says is irreparable – that is, the Chamber of Mines' understanding of the impact of staking and post-staking activities; (c) the impact of the Staking Injunction on third parties – details of how the injunction will detrimentally impact their members; and (d) the balance of convenience – how the impact of the injunction on third parties as compared to the impact on FNNND should be weighed. In this last factor, they ask the Court to consider the implications of this injunction if it is repeated by other First Nations. They further seek to make submissions on the possibility of other First Nations bringing similar applications.

[31] FNNND says if the intervention is allowed, the only area in which submissions should be made is the impact of the injunction on third parties, that is the members of the Chamber of Mines. The first area proposed by the Chamber of Mines is a legal issue that does not concern them; the second is presumptuous as it relates to harm to FNNND and their treaty rights; and the balance of convenience submissions can be made within the submissions about the harm to their members. FNNND says the last issue about the possible actions of other First Nations is speculative and well beyond the scope of this application.

[32] The submissions or evidence on the nature of the injunction sought, any submissions from the Chamber of Mines about the impact on treaty rights of FNNND, are duplicative or inappropriate, and will be limited as outlined below. The submissions on the possible actions of other First Nations as a result of this injunction are beyond the scope of the application.

II. What limitations should be placed upon the intervention of the Chamber of Mines?

[33] The following limitations shall be placed upon the submissions and evidence of the Chamber of Mines.

[34] The Chamber of Mines shall not be permitted to make submissions or introduce evidence in the following two areas.

[35] The legal issue identified by the Chamber of Mines about the nature of the injunction was raised by the Yukon government in its response to the application for the injunction. For the Chamber of Mines to argue this would be duplicative and unnecessary.

[36] The proposed submissions about the impact of the Staking Injunction outside of FNNND's traditional territory because of other First Nations bringing similar applications is speculative and beyond the issues raised in this application, confined to FNNND traditional territory.

[37] Submissions and evidence about the harms of the Staking Injunction, if granted, from the perspective of the Chamber of Mines' members, and on the irreparable harm experienced by FNNND are permissible. The Chamber of Mines clarified that the scope of their submissions on the irreparable harm to First Nations will be restricted to the effects of staking and post-staking from the perspective of industry. They do not intend to make any submissions or provide evidence related to treaty rights. Finally, it is appropriate for the Chamber of Mines to address how the various factors should be weighed in determining balance of convenience and to make legal submissions in this area.

[38] Submissions and evidence on how the staking regime functions, focussing on the perspective of the members of the Chamber of Mines; if and how the members of the Chamber of Mines engage with First Nations during the mineral tenure process; and practical and economic consequences to their members that would follow if the Staking Injunction is granted are all permissible areas.

[39] The intervenor's written submissions shall be limited to 15 pages, and oral submissions to 30 minutes.

III. Should the Chamber of Mines be permitted to adduce affidavit evidence?

[40] As earlier noted, the filing of affidavit evidence by an intervenor is rare. In this case the factual nature of their unique perspective makes limited affidavit evidence helpful. The affidavit of Jonas Smith may be filed, once the duplicative or inappropriate paragraphs consistent with the areas identified above are removed. Any objection to any of the content of the affidavit may be addressed at the hearing in January 2027.

IV. Should the Court depart from the usual no costs rule?

[41] The general rule that intervenors neither receive nor are liable for costs will apply (*Wright v Yukon (Director of Public Safety and Investigation),* 2023 YKSC 15; *Dickson v Vuntut Gwitchin First Nation*, 2021 YKCA 3 at para. 19; *Faculty Association of the University of British Columbia v University of British Columbia*, 2009 BCCA 56 at para. 4).

[42] FNNND's reasons for asking the Court to depart from the usual no costs rule have largely been addressed. The fact that the intervention is motivated by business interests is not a rationale for a costs award – this is the purpose of the Chamber of Mines and the basis of their unique and different perspective. It does not change the

nature of the underlying public law issue. While some of the Chamber of Mines' submissions will overlap with those of the Yukon government, the limitations set out above will address some of that overlap. Some overlap in submissions or evidence is not a bar to intervention, as long as there is a unique and different perspective that will assist the Court.

[43] Finally, counsel for the Chamber of Mines' provision of early notice to FNNND of their interest in this application and proposed intervention application is appreciated by the Court. Their interests and application were able to be accommodated in the first case management conference to set dates, a welcome change from the more common situation requiring intervention matters to be fit into the schedule after dates between the parties have already been set.

Conclusion

[44] Intervenor status in the application for Staking Injunction is granted to the Yukon Chamber of Mines on the following conditions:

i. The Chamber of Mines may file the affidavit of Jonas Smith at a maximum of 11 pages on or before December 9, 2026.

ii. The Chamber of Mines may file written submissions limited to 15 pages on or before December 9, 2026.

iii. The Chamber of Mines may make oral submissions of no more than 30 minutes at the hearing of the application for Staking Injunction between January 4-11, 2027.

iv. The Chamber of Mines shall attempt to avoid duplication of any of the evidence and submissions made by the Yukon government, the Attorney General of Canada, and FNNND.

v. The submissions and evidence of the Chamber of Mines shall not include the nature of the injunction, the treaty rights of the FNNND in the context of any argument on irreparable harm, or the potential actions of any other First Nations as a result of this application for injunction.

vi. The Chamber of Mines shall not be entitled to or liable for costs in this matter and has no right of appeal of the Court's decision.

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DUNCAN C.J.