COURT OF APPEAL FOR YUKON

Citation: ***Ross River Dena Council v. Government of Yukon***

Citation number: 2012 YKCA 14
No.: 11-YU689

Ross River Dena Council

v.

Government of Yukon

JUDGES:	Tysoe J.A. Groberman J.A. Hinkson J.A.
JUDGMENT GIVEN BY:	Groberman J.A.
JUDGMENT RELEASED:	December 27, 2012
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APPEALED FROM:	Veale J.

SUMMARY:

The Ross River Dena Council claims Aboriginal title and rights over a large area of Yukon. It alleges that the current statutory and regulatory framework for the granting of mineral rights does not conform with the requirements for consultation discussed in *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73. The chambers judge granted a declaration that there is a duty to consult, but also declared that the duty would be satisfied by the government giving notice to the plaintiff after quartz mining claims are recorded. The First Nation appealed. Appeal allowed, modified declarations granted. Mere notice of the recording of a quartz mining claim will not always satisfy the consultation requirements in *Haida*. Where the granting of a mining claim or the working of that claim will have serious adverse effects on a credible claim to Aboriginal title or rights, the government must provide for consultation before the mining claim is granted or the work is commenced. It must also maintain the ability to prevent or regulate activities where it is appropriate to do so.

COURT OF APPEAL FOR YUKON

Citation: *Ross River Dena Council v. Government of Yukon*, 2012 YKCA 14

Date: 20121227
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

On appeal from Supreme Court of Yukon, November 15, 2011
(*Ross River Dena Council v. Government of Yukon*, 2011 YKSC 84, Whitehorse No. 10-A0148)

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 December 27, 2012

Written Reasons by:
The Honourable Mr. Justice Groberman

Concurred in by:
The Honourable Mr. Justice Tysoe
The Honourable Mr. Justice Hinkson

Reasons for Judgment of the Honourable Mr. Justice Groberman:

[1] This appeal concerns the duty of the Government of Yukon to consult with the plaintiff when it allows mineral claims to be recorded on land over which the plaintiff has asserted claims of Aboriginal title and Aboriginal rights.

[2] The plaintiff is one of three Yukon First Nations that have not entered into a final agreement with the governments of Yukon and of Canada with respect to their claims to Aboriginal title and rights. The plaintiff is a member of the larger Kaska First Nation, and its claims are to a part of the Kaska traditional territory defined in the statement of claim as the "Ross River Area". The claims extend to over 63,000 km^2 of the southeastern part of Yukon (approximately 13% of Yukon).

[3] Under the *Quartz Mining Act*, S.Y. 2003, c. 14, an individual can acquire mineral rights simply by physically staking a claim and then recording it with the Mining Recorder. Once a quartz mining claim is recorded, the claimant is entitled to the minerals within the claim and may conduct certain exploration activities on the land without further authorization and without notice to the Government of Yukon.

[4] The plaintiff asserts that the scheme that is in place allows activities that are inimical to asserted Aboriginal title and rights, and that the principles enunciated in *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511 ("*Haida*"), require the Government of Yukon to consult with it before recording quartz mining claims within the Ross River Area.

[5] The chambers judge held that the government's practices in respect of new mineral claims under the *Quartz Mining Act* do not measure up to the consultation requirements enunciated in *Haida*. He considered, however, that those requirements would be satisfied by a scheme under which the Government of Yukon provided notice to the plaintiff of newly-recorded quartz mining claims within its traditional territory. The plaintiff appeals, asserting that consultation must take place before the recording of mineral claims, and that consultation requires more than mere notice of new claims.

[6] For reasons that follow, I agree with the chambers judge's finding that the statutory and regulatory regime currently in place for the recording of mineral claims within the traditional territory of the Ross River Dena does not measure up to the consultation requirements in *Haida*. The Ross River Dena have strong claims to Aboriginal rights and title in at least some parts of their traditional territory. The current regime may allow mineral claims to be granted without regard to asserted Aboriginal title. They also allow exploratory work that may adversely affect claimed Aboriginal rights to be carried out without consultation.

[7] I do not, however, agree with the chambers judge's view that mere notice to the plaintiff of the recording of a claim will always satisfy the Crown's *Haida* obligations. In order for the Crown to meet its obligations, it must develop a regime that provides for consultation commensurate with the nature and strength of the Aboriginal rights or title claim and with the extent to which proposed activities may interfere with claimed Aboriginal interests.

Status of the Yukon Chamber of Mines on this Appeal

[8] Before addressing the merits of the appeal, I wish to mention a procedural issue that arose in respect to the participation of the Yukon Chamber of Mines [the "Chamber of Mines"] in this appeal. The Chamber of Mines is an industry organization representing people involved in mining in Yukon. It supports, for the most part, the position taken by the Government of Yukon.

[9] The procedures by which the Chamber of Mines purported to gain the right to file written argument and make oral submissions in this case were irregular. While we accepted its factum and heard its submissions, we wish to take this opportunity to clear up confusion as to the process by which an intervenor may be given the right to make argument in this Court.

[10] The Chamber of Mines intervened in this case before the Supreme Court of Yukon. The appellant, apparently assuming that the intervention in the court below made the Chamber of Mines a party to the appeal, listed it as a "respondent" in its notice of appeal. All participants in this appeal, including the Chamber of Mines,

proceeded on the basis that the Chamber was a party to the appeal, though an order made on February 14, 2012, with the consent of all parties, placed some limitations on the arguments that it could advance.

[11] In our view, the Chamber of Mines' intervention in the court below did not make it a proper party to the appeal. This Court is entitled, as part of its jurisdiction to control its own process, to determine whether and to what extent an intervention will be allowed on appeal. A decision by the court below to allow a person to intervene before it does not serve to give that person rights on appeal.

[12] This view is consonant with the practice of our sister court, the British Columbia Court of Appeal. An intervenor before a trial court in British Columbia does not automatically have status on an appeal (see Holly A. Brinton, *Civil Appeal Handbook*, looseleaf (Vancouver: Continuing Legal Education Society of British Columbia, 2002 (updated 2012)) at §4.13). The British Columbia Court of Appeal has indicated that intervenors in the trial courts below should not automatically be included in the style of cause on appeal – see B.C. Court of Appeal *2006 Annual Report* at 14.

[13] There is nothing in the Yukon *Court of Appeal Rules, 2005* that suggests this Court's practice should differ from that of the British Columbia Court of Appeal on this issue.

[14] In order to obtain the right to present argument on the appeal, the Chamber of Mines ought to have applied in chambers for intervenor status under Rule 36. While it did not do so, the chambers judge did consider the degree to which it should participate in the appeal in the course of making the order of February 14, 2012. From a practical standpoint, that order limited the Chamber of Mines to the rights that an intervenor would have.

[15] Under the circumstances, and given that we are satisfied that the Chamber of Mines ought to have intervenor status on the appeal, we have treated the February 14, 2012 order as if it granted the Chamber of Mines status as an intervenor. The style of cause is amended accordingly.

[16] I turn, then, to the substance of the appeal.

Overview of the *Haida* duty to consult

[17] In *Haida*, the Supreme Court of Canada considered the extent to which the Crown must recognize credible though unproven claims to Aboriginal title and rights in its management of resources. It held that the duty of the Crown to act honourably in its dealings with First Nations requires that it engage in a process of consultation where proposed Crown conduct may adversely affect claims to Aboriginal interests in land. While the Crown is entitled to manage resources, it must do so only with due consideration of the effect of that management on Aboriginal rights claims.

[18] To this end, the Crown must engage in *bona fide* consultation with First Nations with a view to accommodating, where appropriate, claimed interests before authorizing any activities that may adversely affect those interests.

[19] Where the duty to consult is triggered, the nature of the consultation required will depend on the apparent strength of the First Nation's claim to Aboriginal title or rights, and on the degree to which the proposed Crown activity will adversely affect the claimed title or rights. Where the claim is a weak one, or where the potential adverse effect of Crown activity is minimal, the duty of consultation may require only that the Crown notify the First Nation of the proposed activity. Where the claim is a strong one, or the effect of the proposed Crown activity is significant, however, deeper consultation will be required, and it is more likely that accommodation will be required.

The "Open Entry" Mining Regime in Yukon

[20] The *Quartz Mining Act* governs hard rock mining (i.e., mining other than placer mining). As has been the case from the inception of legislative mining regimes in Yukon, a person acquires a mineral claim through a process of "locating" or "staking" the claim. Under s. 12 of the *Act*, any adult may stake a claim on land administered by the Government of Yukon, other than land that is already subject to

a mineral claim or otherwise excluded under the legislation. This is referred to as an "open entry" system. The *Quartz Mining Act* sets out the technical requirements for locating a claim. Essentially, they consist of placing tagged posts in the ground at each end of the claim and marking a "location line" between them. The posts may be up to 1500 feet apart, and the tag on the first post must indicate, among other things, the distance to which the claim extends on each side of the location line. The total width of the claim may be up to 1500 feet.

[21] Within 30 days of staking, the individual must "record" (i.e., register) the claim with the Mining Recorder under s. 41 of the *Quartz Mining Act*. The Mining Recorder's role in registering a claim is purely ministerial in nature – the Recorder does not possess any discretion to refuse to record a claim that complies with the statutory requirements.

[22] Sections 50 and 78(1) of the *Quartz Mining Act* provide that the holder of a mineral claim is entitled to all minerals within the boundaries of the claim. A recorded claim is initially valid for one year, but can be renewed annually, under s. 56, by filing proof that work with a value of at least $100 has been done on the claim. Section 59 provides that a claim may also be renewed by paying $100 in lieu of doing work on the claim.

[23] Part 2 of the *Quartz Mining Act* deals with land use on a mineral claim. Section 131 provides for four classes of exploration programs, the details of which are established by the *Quartz Mining Land Use Regulation*, O.I.C. 2003/64 [the "*Regulation*"]. Under the *Act* and the *Regulation*, the holder of a mineral claim is entitled to undertake a Class 1 exploration program without providing notice to the Government of Yukon or its officials, and (subject to certain exceptions that are not relevant to this case) without obtaining permission from any person.

[24] In general, mineral exploration activities in Yukon are subject to assessment under the *Yukon Environmental and Socio-economic Assessment Act*, S.C. 2003, c. 7. Section 74(2) of that *Act* includes a requirement for consultation with First Nations. Certain exploration activities (corresponding to those that fall within a

Class 1 exploration program) are, however, exempted from assessment under the *Assessable Activities, Exceptions and Executive Committee Projects Regulations*, S.O.R./2005-379. In the result, Class 1 exploration activities take place without notice to or consultation with First Nations whose claims may be affected by them.

[25] While Class 1 exploration programs are less intensive and cover smaller areas than Class 2, 3 and 4 programs, they can still have a substantial impact on the land. Such activities include – within prescribed limits – the clearing of land, the construction of lines, corridors and temporary trails, the use of explosives, the removal of subsurface rock, and other specified activities. A full list of Class 1 exploration activities is contained in column 2 of the Exploration Program Class Criteria Table in the *Regulation*; the same activities are listed in Item 1 of Part 1 of Schedule 1 to the *Assessable Activities, Exceptions and Executive Committee Projects Regulations.*

Does the Recording of a Mineral Claim Trigger Consultation

[26] In *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650, the Court described the three elements of the test to determine whether the Crown's duty to consult is triggered:

> [31] The … duty to consult arises "when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it" (para. 35 [of *Haida*]). This test can be broken down into three elements: (1) the Crown's knowledge, actual or constructive, of a potential Aboriginal claim or right; (2) contemplated Crown conduct; and (3) the potential that the contemplated conduct may adversely affect an Aboriginal claim or right. [Emphasis in original.]

[27] The plaintiff contends that all three elements are present where the government proposes to record a mineral claim within territory that is subject to its Aboriginal rights and title claims. The government argues that because the recording of a claim does not involve any discretionary action on the part of the Mining Recorder, or any other governmental official, no duty to consult is triggered. While it says that the chambers judge erred in finding that it has a duty to notify the plaintiff

of new mineral claims in its traditional territory, it is content to provide such notification and has not pursued a cross-appeal.

[28] There can be no doubt that the first element of the test described in *Rio Tinto* is present when a mineral claim is recorded within the Ross River Area. The parties have a long history of land claims negotiations and interim agreements in respect of the area. Yukon concedes that it has knowledge of the plaintiff's asserted Aboriginal rights.

[29] There is some disagreement as to whether the plaintiff has established Aboriginal rights and title within its traditional territory. In agreements entered into in 1997 and 2003, the Government of Yukon acknowledged that the Kaska "have aboriginal rights, titles and interest in and to the Kaska Traditional Territory in the Yukon". The plaintiff says that this acknowledgement amounts to a concession that the plaintiff has, at least at certain unspecified locations within its traditional territory, Aboriginal rights and title.

[30] The Government of Yukon says that the agreements did no more than acknowledge that the Kaska were asserting claims within their traditional territory. It says that the agreements did not acknowledge the validity of any such claims.

[31] In my view, nothing in this case turns on the disagreement between the parties as to the proper interpretation of the agreements. Whether or not Yukon has acknowledged that some unparticularized part of the plaintiff's land claim is valid, it does not dispute that the claim is a serious one with sufficient credibility to satisfy the first element of the *Haida* test.

[32] There can also be no doubt that the third element of the *Haida* test is made out where the Crown registers a quartz mining claim within the plaintiff's claimed territory. Aboriginal title includes mineral rights (see *Delgamuukw v. British Columbia,* [1997] 3 S.C.R. 1010, at para. 122). In transferring mineral rights to quartz mining claim holders, the Crown engages in conduct that is inconsistent with the recognition of Aboriginal title.

[33] As well, the claimholder's right to engage in Class 1 exploration programs may adversely affect claimed Aboriginal rights. While Class 1 exploration programs are limited, they may still seriously impede or prevent the enjoyment of some Aboriginal rights in more than a transient or trivial manner.

[34] The real issue that divides the parties to this litigation is the question of whether the second element of the *Haida* test is engaged in this case. Yukon says that the recording of a quartz mineral claim is not "contemplated Crown conduct" because the statute does not give the Mining Recorder any discretion in respect of the recording of a quartz mining claim. If the quartz mining claim formally complies with the requirements of the statute, the Recorder must record it. The Government of Yukon says that because the granting of a mineral claim is automatic when the statutory requirements are met, there is no duty to consult. It notes that the Supreme Court of Canada has expressly left open the question of whether legislative action constitutes government conduct for the purposes of the *Haida* test (see *Rio Tinto* at para. 44).

[35] It should be noted that the statutory and regulatory scheme that is in place is not as devoid of discretion as the Crown suggests. Section 15 of the *Quartz Mining Act* allows the government broad discretion to prohibit the location of quartz mining claims on particular lands. As I will indicate later in these reasons, that discretion is of considerable importance.

[36] I do not, in any event, accept the Crown's argument that the absence of statutory discretion in relation to the recording of claims under the *Quartz Mining Act* absolves the Crown of its duty to consult.

[37] The duty to consult exists to ensure that the Crown does not manage its resources in a manner that ignores Aboriginal claims. It is a mechanism by which the claims of First Nations can be reconciled with the Crown's right to manage resources. Statutory regimes that do not allow for consultation and fail to provide any other equally effective means to acknowledge and accommodate Aboriginal claims are defective and cannot be allowed to subsist.

[38] The honour of the Crown demands that it take into account Aboriginal claims before divesting itself of control over land. Far from being an answer to the plaintiff's claim in this case, the failure of the Crown to provide any discretion in the recording of mineral claims under the *Quartz Mining Act* regime can be said to be the source of the problem.

[39] I acknowledge that in *Rio Tinto* the Supreme Court of Canada left open the question of whether "government conduct" includes legislative action. I read that reservation narrowly, however. It may be that the doctrine of parliamentary sovereignty precludes the imposition of a requirement that governments consult with First Nations before introducing legislation (see *Reference Re Canada Assistance Plan (B.C.)*, [1991] 2 S.C.R. 525 at 563). Such a limitation on the duty to consult would, however, only apply to the introduction of the legislation itself, and could not justify the absence of consultation in the carrying out of a statutory regime.

[40] In my view, therefore, the chambers judge was correct in finding that the regime for the acquisition of a quartz mineral claim in Yukon is deficient in that it fails to provide any mechanism for consultation with First Nations.

Is the Giving of Notice Sufficient?

[41] The chambers judge, having found that there is a duty to consult on the recording of a quartz mining claim, went on to consider the nature of the duty. He analyzed the issue as follows:

> [71] The Government of Yukon submits that there is no way to have a meaningful consultation prior to the recording of a mineral claim. This highlights a major difference between a Tree Farm Licence and a mineral claim. In the case of a Tree Farm Licence, the trees exist for all to see and assess. There are no secrecy or confidentiality concerns as there are in the mining business where the claim holder does not want to disclose knowledge of the proposed area to be explored at a stage where the claim holder has no rights to the mineral and may be disclosing valuable commercial information. To some extent, the same argument may apply to a Tree Farm Licence but this commercial sensitivity really goes to the heart of the mining business.
>
> [72] A second aspect in the government's submission is the administrative nightmare that would occur if hundreds or thousands of individual duties to

> consult arise before the issuance of a mineral claim. This would impose an onerous obligation on both the Government of Yukon and First Nations without a final settlement. However, the impact of such an obligation could be substantially mitigated by applying the grouping concept already in place in the *Quartz Mining Act*.
>
> [73] I conclude, in the context of the *Quartz Mining Act* and [the *Yukon Environmental and Socio-economic Assessment Act*], that the appropriate time for consultation is after the grant of the mineral claim, when the holder of the claim has some security of tenure and the First Nation is able to determine its potential adverse impact. I recognize that this timing of the duty to consult places the right to occupy and mine a mineral claim before the establishment or agreement on the nature and extent of the Ross River Dena Council aboriginal title. However, it also recognizes the right of the Crown to manage the resource in consultation with the First Nation.
>
> [74] For the purposes of this court action, a duty to consult after the recording of the claim could only extend to notice, because in the absence of proposed exploration there is no context that would expand the duty beyond this. In other words, the Government of Yukon would be required to notify the Ross River Dena Council when mineral claims are recorded in the Ross River Area. This is not particularly onerous as, in satisfaction of this duty, the Government could simply provide the First Nation with the monthly report it now receives from the Mining Recorder under s. 6 of the *Quartz Mining Act*. I note that the Chamber of Mines, while not conceding that there should be a duty to consult, acknowledges that the earliest point that the Crown could undertake a consultation would be after the mineral claim is recorded.

[42] It is apparent that the judge considered the open entry aspects of the *Quartz Mining Act* to be essential to the mining industry, and considered that any requirement of consultation greater than the mere furnishing of notice of claims would be impractical.

[43] I am of the opinion that the judge erred in his analysis. I fully understand that the open entry system continued under the *Quartz Mining Act* has considerable value in maintaining a viable mining industry and encouraging prospecting. I also acknowledge that there is a long tradition of acquiring mineral claims by staking, and that the system is important both historically and economically to Yukon. It must, however, be modified in order for the Crown to act in accordance with its constitutional duties.

[44] The potential impact of mining claims on Aboriginal title and rights is such that mere notice cannot suffice as the sole mechanism of consultation. A more elaborate

system must be engrafted onto the regime set out in the *Quartz Mining Act.* In particular, the regime must allow for an appropriate level of consultation before Aboriginal claims are adversely affected.

What Consultation is Required?

[45] It is not necessary or appropriate for the Court, in this proceeding, to specify precisely how the Yukon regime can be brought into conformity with the requirements of *Haida*. Those requirements are themselves flexible. What is required is that consultations be meaningful, and that the system allow for accommodation to take place, where required, before claimed Aboriginal title or rights are adversely affected.

[46] To some extent, consultation has already taken place. In 1988, when the Crown entered into treaty negotiations with the Kaska, it gave interim protection to lands selected by the Ross River Dena Council to preserve them for potential inclusion in a settlement of claims by way of a treaty. That interim protection has been continued. Currently the *Order Prohibiting Entry on Certain Lands in Yukon (Ross River Dena Council)*, O.I.C. 2008/45, made under s. 15 of the *Quartz Mining Act*, prohibits the location of quartz mining claims on specified lands. The prohibition extends to March 31, 2013, and includes approximately 4800 km^2 of the lands claimed by the plaintiff.

[47] The consultation that resulted in the prohibition took place before the *Haida* framework for consultation was formulated by the Supreme Court of Canada, and it is not clear that the discussions that took place took into account all of the appropriate considerations. I express no view as to whether the consultation that took place conformed with the requirements of *Haida*.

[48] Consultation is an ongoing process, and further discussions may be necessary to ensure that O.I.C. 2008/45 represents an appropriate accommodation of the plaintiff's Aboriginal title claims. In any event, given that the current order expires in March 2013, it can be expected that further consultation will take place.

[49] A prohibition on locating claims in all or part of the claimed territory is the most obvious method (though, perhaps, not the only method) of accommodating Aboriginal title claims. Claims to Aboriginal rights other than title raise other issues. The location and recording of a quartz mining claim, in and of itself, is not likely to interfere with claims to Aboriginal rights other than title. It is the actual performance of work on the land that may affect such claimed rights.

[50] First Nations were involved in the Yukon Mining Advisory Committee in the early 1990s, and the current statutory regime is largely a result of consensus recommendations made by that committee. The division of exploration activities into four categories, or classes, goes some way to ensuring that governmental oversight of such activities will be commensurate with their environmental impact. The regime does not, however, specifically address concerns about the impact of Class 1 exploration activities on claims of Aboriginal rights.

[51] At least where Class 1 exploration activities will have serious or long-lasting adverse effects on claimed Aboriginal rights, the Crown must be in a position to engage in consultations with First Nations before the activities are allowed to take place. The affected First Nation must be provided with notice of the proposed activities and, where appropriate, an opportunity to consult prior to the activity taking place. The Crown must ensure that it maintains the ability to prevent or regulate activities where it is appropriate to do so.

[52] It may be that changes to the *Quartz Mining Act* will be necessary to comply with this imperative. The defendant argues that the Court ought not to address the possibility of statutory change because the current case does not specifically seek to invalidate statutory provisions. I would not accede to that argument. As the plaintiff points out, it is *possible* for the government to meet the requirements of *Haida* under the current statute by engaging in consultations with a view to using s. 15 of the *Quartz Mining Act* to exclude from quartz mining claims all areas in which exploration activities would prejudice claimed Aboriginal rights. Therefore, the

plaintiff did not need to assert, nor could it demonstrate, that the statute itself is incompatible with its duties under *Haida*.

[53] Given the importance of the open entry system to the mining industry and the Yukon economy, the Government of Yukon may not see s. 15 of the *Quartz Mining Act* as an ideal instrument for dealing with claims to Aboriginal rights. It is, of course, open to the Legislature to fashion a more flexible or precise statutory mechanism.

Remedy

[54] In the amended statement of claim, the plaintiff sought the following declarations:

> a) a declaration that the Government of Yukon has a duty to consult with the Ross River Dena Council prior to recording the grant of quartz mineral claims within the lands comprising the Ross River Area;
>
> b) a declaration that the failure of the defendant Government of Yukon and its servants or agents to consult the Ross River Dena Council prior to recording the grant of quartz mineral claims within the lands comprising the Ross River Area constitutes a breach of the defendant Government of Yukon's duty to consult,
>
> c) a declaration that any further quartz mineral claims recorded within the lands comprising the Ross River Area prior to consulting and, where indicated, accommodating the Ross River Dena Council are void....

[55] The chambers judge granted a declaration that the Government of Yukon has a duty to consult after the issuance of a mineral claim within the Ross River Area, and a declaration that the duty to consult may be satisfied by giving notice to the First Nation that a mineral claim has been issued, through providing the report prepared by the Mining Recorder under s. 6 of the *Quartz Mining Act*.

[56] I would allow that appeal by granting 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.

[57] The plaintiff acknowledges that the Government of Yukon may well wish to make statutory and regulatory changes in order to provide for appropriate consultation, and has suggested that the declarations be suspended for a period of time. As there is no opposition to that suggestion, I would agree to suspend the declarations for a period of one year.

The Honourable Mr. Justice Groberman

I agree:

The Honourable Mr. Justice Tysoe

I agree:

The Honourable Mr. Justice Hinkson