

*Inukshuk Resources Inc. v. 413152 B.C. Ltd., et al*  
2002 YKSC 23

Date: 20020412  
Docket: S.C. No. 01-A0083  
Registry: Whitehorse

**IN THE SUPREME COURT OF THE YUKON TERRITORY**

BETWEEN:

Inukshuk Resources Inc.

Petitioner

AND:

413152 B.C. Ltd. (formerly Transwest Dynequip Ltd.), HCI Canada Inc. (formerly Stanchem Inc.), Finning International Inc., BXL Bulk Explosives Ltd., Explosives Ltd., Yukon Explosives Ltd., Lomak North Corp., Svedala Industries Canada Inc., ICG Propane, a division of Superior Propane Inc., Kal Tire Distributors Ltd., Petro-Canada, Van Waters & Rogers Ltd., P&H MinePro Services Canada (formerly Harnishfeger Corporation of Canada Ltd.), AltaSteel Ltd., Moly-Cop Canada, Electric Motor Services Ltd., The Electrical Shop Ltd., Bearing Supply, Hydraulic Technologies Inc. (formerly Coast Valve Industries Ltd.), Southwest Mining, Jacobs Industries Ltd., Wajax Industries Ltd., Alaska Marine Lines Inc., B.C. Bearing Engineers Ltd., Norcast, a division of Trittech Precision Inc., North 60 Petro Ltd., Advanced Drilling Ltd., Bennett & Emmott (1986) Ltd., Bennett & Emmott Machinery Co. Ltd., Bennett & Emmott Unit Rig Ltd., Cando International Food Consultants, Golden Hill Ventures Ltd., MacMillan Mining Contractors Ltd., Vortex Mining Inc., Great Northern Oil Inc., Norcan Leasing, MBEDZH / Norcan Services Ltd., Pacific Dena Transport, Northern Metallic Sales, Access Mining Consultants Ltd., Ketza Construction Corp., Dynamic Industrial Services (Yukon) Ltd., Yukon Energy Corporation, Government of the Yukon, Her Majesty the Queen in Right of Canada as represented by the Department of Indian Affairs and Northern Development

Respondents

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**MEMORANDUM OF RULING OF  
MR. JUSTICE HUDSON**

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[1] These proceedings were commenced by the petitioner and are in essence for determination of the constitutional issue as to whether the Yukon *Miners Lien Act*, R.S.Y. 1986, c.116, is *ultra vires* insofar as it affects federal lands.

[2] The other side, the respondents, argue that there are other characterizations of the proceedings and cite several arguments against granting the relief claimed.

[3] The respondents have filed two notices of motion asking for a large variety of orders including relief based upon *res judicata*, mootness, abuse of the process and dismissal for lack of standing. But for these purposes today, the principal application is that the matters be adjourned generally, pending a determination of an appeal of the Ontario Court of Appeal in the matter of an arrangement under the *Companies' Creditors Arrangement Act*, R.S.C., 1985 c. C-25, approved by the Commercial List of the Ontario Superior Court of Justice. It now appears to be common ground that the determination of this appeal is highly relevant to this matter. This was the position always taken by the respondents herein.

[4] I am persuaded that the decision of the Court of Appeal is good reason to suspend proceedings in this matter.

[5] On January 11, 2002, it was ordered that the matters on the motions be heard in Whitehorse on April 15, 16 and 17, 2002, and that dates of May 21, 22 and 23, 2002, be reserved for the hearing of the petition herein. This resulted from urgency expressed by the petitioner. The petitioner argued that the proceedings in the Court of Appeal of Ontario were no reason to delay this matter. There has been a major change of position by the petitioner, therefore.

[6] The respondents argue that I should order costs against the petitioner and that they should be ordered payable forthwith. The petitioner responds that no substantive issues, no rulings on the merits, have been decided and therefore it is premature to order costs.

[7] Therefore, what I have here today is an extraordinary application to the Court to receive a ruling on a question regarding the appropriateness of proceeding as scheduled when matters pending in another court may materially affect those proceedings.

[8] My ruling is sought in order to avoid the costs of counsel traveling to Whitehorse unnecessarily and staying for 2 or 3 days.

[9] The respondents' position is that with respect with Motion no. 2, they have no particular objection or else they take no position.

[10] I therefore deal with Motion no.1. At the moment I don't see any reason why items number 1 and 2 cannot be dealt with quickly and they are not really referenced by the Court of Appeal proceedings. My comment with respect to item 3 is that this should await the results of Court of Appeal hearing. It involves other parties not before me and involves expenses and involvement which may not, when the decision of the Court of Appeal is known, be found to be appropriate. Item number 4, an application to turn this matter into a proceeding, virtually by way of writ and statement of claim, this also in my view should await the Court of Appeal ruling principally to avoid multiplicity of proceedings, which our rules of court call upon judges to strive to avoid and because it appears to me to be possible that the ruling of the Appeal Court regarding the

arrangement could affect this procedure question. Item number 5, I do not believe is affected by the Court of Appeal ruling. The costs of these applications in addition, I will be dealing with here and now.

[11] Therefore, in view of all the submissions that I have heard, and my deliberations, I order that the hearing of the motions filed and the hearing of the petition are to be adjourned generally pending the final decision of the Ontario Court of Appeal with respect to the Ontario Superior Court of Justice matter 98 BK 001208, subject to the following conditions:

1. Items 1,2 and 5 in the Notice of Motion no.1 will be heard by telephone on Monday, April 15, 2002, at 11:00 PST.
2. No other interlocutory proceedings or indeed other proceedings in this matter will take place without leave of the court pending the determination of the Ontario Court of Appeal matter.
3. The petitioner shall be responsible for costs thrown away regarding today's proceeding, the proceedings of January 11 and preparing for the April 15 hearing. These costs after assessment to be payable forthwith on scale 3. Regarding this I direct counsel to the case of *Cominco Ltd. v. Westinghouse Canada Ltd.* (1980), 16 C.P.C. 19; [1980] B.C.J. No 1353 (S.C.) (QL).

And those are my rulings.

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Hudson J.

Counsel for the Petitioner	and	Mr. Brian Crane, Q.C. Mr. Andrew K. Lokan.
Counsel for certain Lien Claimants	and	Mr. Murray J. Leitch. Mr. John Phelps.
Counsel for Yukon Energy Corporation		Mr. P. John Landry
Counsel for certain Lien Claimants		Mr. Keith Parkkari.
Counsel for Northern Metallic Sales		Mr. Gary W. Whittle.
Counsel for the Federal Government		Mr. Mark Radke.
Counsel for the Yukon Territorial Government		Ms. Penelope Gawn.