



Media Release

Court of appeal agrees with Kaska challenge to “free entry” mining system

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For years the Kaska Nation has been looking to negotiate modern day solutions with Government to the realities of common law regarding aboriginal rights and title in Canada. The issue of “free entry” has been one that the Kaska have been asking YTG to negotiate with them on. YTG continue to refuse to negotiate, instead choosing a path of confrontation with First Nations on issues such as the Peel and changes to the Yukon Oil and Gas Act.

“Our First Nation’s government didn’t see the free entry system as working properly. People would stake claims, sometimes great numbers of claims, and then we would be notified afterwards. That wasn’t satisfying the Yukon Government’s duty to consult and accommodate us. We’ve never been really opposed to mining and mineral development in our territory. We just want to see things done properly in our territory and we want to be a big part of the things that are happening. So, the Court of Appeal’s decision really puts us in a good position. We feel that through this decision our concerns about the existing system will finally be addressed.” said RRDC Chief Brian Ladue.

In a recent media release and local radio interviews a representative of the Yukon Chamber of Mines stated that “the *Quartz Mining Act* and the free entry system is not at issue” in the Yukon Court of Appeal’s recent decision and that that decision “only applies to Ross River area” and “does not apply to other First Nations.” While Kaska leaders are pursuing a new relationship through constructive dialogue with the Chamber of Mines, the leaders of the Kaska Nation feel compelled to set the record straight.

There can be no doubt that both the *Act* and the free entry system—which the Court of Appeal called “open entry”— is at issue in the decision that was released. For example, here is some of what the Court actually said about the *Act* “open entry system”:

*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.

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.

“While the Ross River Dena Council’s case specifically addressed a portion of the Kaska traditional territory referred to as the “Ross River area”, there can be no doubt whatsoever that the legal principles expressed by the Court of Appeal will apply to the remainder of the Kaska territory and, as well, to the traditional territory of the only other Yukon First Nation that has not entered into a land claim agreement - the White River First Nation. It appears that maybe the Premier hasn’t yet read the book on aboriginal rights and title we gave him for Christmas.” said LFN Chief Liard McMillan.

Moreover, after reviewing the decision, we are of the view that aspects of the Court of Appeal’s decision may well apply to the Yukon First Nations that have settled their land claims, and the entire Yukon. The Court confirmed that Class 1 exploration activities may adversely affect the aboriginal rights of the Kaska and, therefore, the Kaska must be notified, consulted and perhaps accommodated with respect to those activities before they occur. Kaska Leaders say that precisely the same argument could be made by the settled First Nations with respect to the adverse effects of Class 1 exploration activities on their treaty harvesting rights.

“While we are unable to agree with some of the public statements made last week by the Yukon Chamber of Mines, we want to take this opportunity to confirm that we agree with the Chamber’s representatives that we need to work towards a common sense approach to meeting the requirements of the Court of Appeal’s decision and we look forward to engaging in that process to build upon the excellent meeting we had with them in Dec 2012.” said KDC Chair George Miller.

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Chief Liard McMillan
Liard First Nation
867-536-4800

George Miller, Chair
Kaska Dena Council
867-779-3010

Chief Brian Ladue
Ross River Dena Council
867-969-2278