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Intervenors join Gitxaala in court to argue against BC’s mineral claim regime

Indigenous nations and political organizations, environmental groups and businesses are among those presenting arguments today in BC Supreme Court challenging BC’s “free entry” system

VANCOUVER / x^wməθk^wəy̓əm, Skwxwú7mesh & səliwətaʔt territories – Today, the BC Supreme Court will hear from a diverse array of groups intervening in the Gitxaala Nation’s legal challenge against BC’s “free entry” mineral tenure regime. The litigation, launched in October 2021, takes aim at the provincial government’s outdated practice of granting mineral claims without Indigenous consultation or consent, contrary to both the government’s constitutional obligations and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Intervenors representing the First Nations Leadership Council, four Indigenous nations, six environmental and community groups, and two mineral exploration businesses will be in Court today to make their legal arguments opposing BC’s current legal regime for granting mineral rights.

The case is the first to substantively interpret BC’s legal obligations under the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA).

“The importance of this case, and widespread concern with BC’s failure to respect Indigenous rights in its mineral claim regime, are demonstrated by all those joining us in the courtroom today. Their own experiences highlight why ensuring respect for Indigenous governance and law is in everyone’s interest, including the mining industry and the public, in order to sustainably manage the lands and waters that sustain us all,” said Gitxaala Chief Councillor Linda Innes.

Under BC’s current *Mineral Tenure Act*, “free miners” can easily acquire mineral rights online for a nominal fee through an automated system, with no requirement for Indigenous consultation or consent. Like Gitxaala, intervenors say this system is in urgent need of an overhaul to align with UNDRIP and to address the wide-ranging negative impacts of the mineral tenure regime, which affect both Indigenous and non-Indigenous communities, and the ecosystems they rely on.

Gitxaala’s case is being heard alongside a similar legal challenge to mineral claims launched by the Ehattesaht First Nation. The two-week hearing runs from April 3-14, 2023.

Quotes from Intervenors

Naxginkw (Tara Marsden), Gitanyow Hereditary Chiefs:

“The provincial government has failed to prioritize mineral tenure reform, despite decades of concerns brought forward by First Nations, including Gitanyow. We have been forced to the courts in support of

Gitxaala to seek to overturn a legislative colonial relic that threatens our precious salmon ecosystems and our right to decide how our lands are used.”

Kukpi7 Justin Kane, Ts'kw'aylaxw First Nation:

“Ts'kw'aylaxw is happy to be part of this case and to stand with Gitxaala in challenging BC's outdated mineral claim system, which clearly needs to change. With a law like DRIPA in place, we shouldn't even be here – but despite the passing of BC's legislation, mining claims continue to be granted without our free, prior and informed consent. With DRIPA, the law has been written, and now we hope the courts start holding the Province accountable.”

Chief Aileen Prince, Nak'azdli Whuten:

“The total lack of consultation of Nak'azdli and other First Nations before mineral rights are granted in BC is completely unacceptable, unconstitutional and inconsistent with the United Nations Declaration on the Rights of Indigenous Peoples. It is disappointing, to say the least, that BC is arguing that its commitment to align laws with the UN Declaration is not enforceable in court.”

Nuskmata (Jacinda Mack), Mining Spokesperson, Nuxalk Nation:

“Nuxalk Nation stands with Gitxaala in this important work to protect people, lands and waters from outdated and harmful mining practices that impact us all. We applaud the leadership that Gitxaala is taking to address and correct BC's 'mining at all costs' system and blatant disregard for human rights. We stand with them as an intervenor, and as relatives on the front lines of our unceded Indigenous homelands.”

Jamie Kneen, MiningWatch Canada and Co-Chair, BC Mining Law Reform Network:

“BC's *Mineral Tenure Act* is the root cause of a host of problems. It disregards Indigenous rights and allows claims to be staked in almost anyone's backyard, without their knowledge, much less consent. It exempts claims from land use planning requirements, ignores the voice of local governments, and makes the creation of protected areas much more difficult and more expensive. Gitxaala's litigation presents an opportunity for the Province to respect the UN Declaration on the Rights of Indigenous Peoples, and to address these major problems for the benefit of local communities and the environment.”

Regional Chief Terry Teegee, British Columbia Assembly of First Nations:

“The Province of BC is trying to have it both ways, by making political commitments to reform the *Mineral Tenure Act* while fighting reform in the courtroom. In this era of the *Declaration on the Rights of Indigenous Peoples Act*, this is unacceptable. The First Nations Leadership Council welcomes the opportunity to provide the court with its on-the-ground perspective on the proper interpretation of DRIPA, and by extension the current domestic significance of UNDRIP in British Columbia.”

Grand Chief Stewart Phillip, Union of BC Indian Chiefs:

“In this day and age, the fact that someone can huddle over their keyboard in a dark basement and file mineral claims over tens of thousands of acres of Indigenous lands – without any consultation whatsoever, and without any notification – is a complete, egregious violation of the *Declaration Act*, and it's unacceptable. The passing of the *Declaration Act* represented a commitment to bring the Province's

laws in line with the UN Declaration, including the right to free, prior and informed consent. I applaud the Gitxaala people for their courage and visionary leadership in this case, which gives us hope for progressive change in the province of British Columbia. We expect the Province's submissions to the Court to be fully aligned with the UN Declaration."

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Legal Backgrounder Attached