



Background

Yukon Supreme Court Decision – KDC v. Yukon and Liard First Nation

The Kaska Dena Council (“KDC”) commenced a court action claiming that the Government of Yukon (“Yukon”) owed KDC a duty to consult and accommodate before issuing sport hunting licenses and tags in the southeastern Yukon. The Liard First Nation (“LFN”) was added as a defendant to the court action in September 2017. LFN did not initiate or condone the KDC case and felt obligated to join the litigation in order to protect the rights, title and interests of the Kaska in the southeast Yukon. LFN’s concern was not whether the duty to consult was owed but rather, whom it was owed to.

The case was heard over five days between July 11 – 17, 2018 in Whitehorse. Yukon Supreme Court Chief Justice Ron Veale released his decision on March 5, 2019. LFN argued, among other things, that KDC was stepping outside of its authority as a land claim negotiation organization in claiming a duty to be consulted in its own name on S.35 rights.

Justice Veale ruled strongly against KDC. His ultimate finding is repeated throughout the judgment but perhaps most succinctly at paragraph 146 where he states:

“[KDC’s] claim is based upon the acknowledged aboriginal title of the Kaska represented by the KDC which is disputed by both Yukon and LFN. I have concluded that KDC is not an aboriginal rights-bearing group that it is not authorized to act on behalf of its individual Kaska members of the Kaska First Nations who do hold the collective aboriginal rights of the Kaska Nation. Further, I have concluded that the claim for aboriginal title by virtue of the purported acknowledgement by Yukon does not establish aboriginal title”.¹

Justice Veale found that there are currently four legitimate rights-holding groups within the Kaska First Nation: Ross River Dena Council, Liard First Nation, Dease River First and Kwadacha First Nation.² KDC is not a rights-holding group of the Kaska Nation and therefore was required to obtain authorization before bringing a court action claiming a duty of consultation from Yukon.. KDC did not obtain such authorization and therefore does not have any authority to bring the court action.

¹ *Kaska Dena Council v. Yukon (Government of Yukon)*, 2019 YKSC 13 at para 146.

² Para. 91