



JUL 22 1997

T-1033-95

BETWEEN:

THE SAHTU SECRETARIAT INCORPORATED,

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

97 204 080

REASONS FOR ORDER

JEROME A.C.J.:

This application was heard before me in Vancouver, British Columbia on April 9, 1997. At issue in this Rule 475 motion is whether the word "royalty", as defined by the *Sahtu Dene and Metis Comprehensive Land Claim Agreement, Volume I*, (the Agreement) is ambiguous or not. At the conclusion of argument, I took the matter under reserve and indicated that these written reasons would follow.

There is one issue in this application; whether the contractual definition for the word "royalty" is ambiguous or not.

The definition at issue is found a page 6 of the *Sahtu Dene and Metis Comprehensive Land Claim Agreement, Volume I*. It reads as follows:

"royalty" means any payment, whether in money or in kind, in respect of production of a resource in, on or under the Mackenzie Valley, including the Norman Wells Proven Area described in chapter 9, paid or payable to government as owner of the resource, but does not include any payment for a service, for issuance of a right or interest or for the granting of an approval or authorization; (emphasis not in original)

Another definition important to this matter is that of "resource". It is defined on the same above referenced page:

"resource" means mines and minerals whether solid, liquid or gaseous;

The payment, any payment, must be made in respect of production of a resource. The production of a resource must mean more than simply the resource. It includes among a plethora of processes, surveying, drilling, extracting, and storing of the product. "Production of the resource" is the resource (the minerals in the ground) plus something else, namely the processes involved in extracting the minerals from where they lay. This production results in a produced resource that may later be sold.

Within the definition of "royalty" the "any payment" must be "paid to the government as owner of the resource". On its face the literal meaning of the phrase "owner of the resource" is, owner of the land on which the mines and minerals (solid, liquid or gaseous) are found. It does not mean owner of the produced resources. The definition properly narrows the scope "any payment" when it states that only payments made to the government as "owner" of the resources, or more clearly, owner of the land on which those resources are found, come within the definition of "royalty".

I am satisfied that these phrases within the "royalty" definition are sufficiently clear to determine the specific meaning of that term. The contractual definition of "royalty" is in itself a proper and sufficiently clear literal definition and does not require a contextual interpretation to further clarify its meaning. There is nothing ambiguous about the definition.

For these reasons I have determined that the word "royalty" as defined by the *Sahtu Dene and Metis Comprehensive Land Claim Agreement, Volume I* is not ambiguous. No order as to costs.

O T T A W A

June 13, 1997

"James A. Jerome"

A.C.J.

FEDERAL COURT OF CANADA
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS ON THE RECORD

COURT FILE NO.: T-1033-95
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v.
Her Majesty The Queen in Right of Canada
PLACE OF HEARING: Vancouver, British Columbia
DATE OF HEARING: April 9, 1997
REASONS FOR ORDER OF THE ASSOCIATE CHIEF JUSTICE JEROME
DATED: June 13, 1997

APPEARANCES:

Mr. Michael P. Carroll, Q.C. FOR THE PLAINTIFF
Ms. Sarah P. Pike

Mr. Mitchell Taylor FOR THE DEFENDANT
Ms. Victoria Cox

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