



Action No: 114556  
Victoria Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**MARILYN BAPTISTE on her own behalf and on behalf of all other members  
of the Xenigwet'in First Nations Government and the Tsilhqot'in Nation**

APPLICANTS

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH  
COLUMBIA, the CHIEF INSPECTOR OF MINES and the DISTRICT MANAGER  
RESOURCE OPERATIONS, CARIBOO-CHILCOTIN**

RESPONDENTS

AND:

**TASEKO MINES LIMITED**

RESPONDENT

**NOTICE OF APPLICATION**

**Names of applicants:** MARILYN BAPTISTE on her own behalf and on behalf of all other members of the Xenigwet'in First Nations Government and the Tsilhqot'in Nation

**ON NOTICE TO:**

Her Majesty the Queen in Right of the Province Of British Columbia  
PO Box 9055 STN PROV GOVT  
Victoria, BC V8W 9E2

Chief Inspector of Mines  
Ministry of Energy and Mines  
PO Box 9320 Stn Prov Govt  
Victoria BC V8W9N3

District Manager Resource Operations, Cariboo-Chilcotin  
Ministry of Forests, Lands and Natural Resource Operations  
200-640 Boreland Street  
Williams Lake, BC V2G 4T1

Taseko Mines Limited  
c/o Joan Young  
McMillan LLP  
Royal Centre, 1055 W. Georgia Street, Suite 1500  
PO Box 11117  
Vancouver, BC V6E 4N7

TAKE NOTICE that an application will be made by the applicants to the presiding judge at the courthouse at 850 Burdett Avenue, Victoria, BC at a time and date to be determined for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. an interim injunction pursuant to Rule 10-4(5) of the *Supreme Court Civil Rules* enjoining Taseko Mines Limited and its agents or employees from undertaking any of the activities authorized under the Notice of Work granted on or about September 29, 2011 and/or the Occupant Licence to Cut granted on or about October 31, 2011 until such time as the application for judicial review of these approvals is heard and determined;
2. an order pursuant to Rule 10-4(5) of the *Supreme Court Civil Rules* relieving the Applicants of the undertaking to abide by any order that the Court may make as to damages;
3. an order for costs; and
4. such further and other relief as this Honourable Court may deem just.

**Part 2: FACTUAL BASIS**

1. The Xeni Gwet'in First Nations (the "**Xeni Gwet'in**") is a body of Indians, for whose use and benefit in common reserve lands have been set apart, and who constitute a "band" within the meaning of the *Indian Act*, R.S.C. 1985, c. I-5.
2. The Plaintiff Chief Marilyn Baptiste brings this Petition on her own behalf and, as a representative, on behalf of all other members of the Xeni Gwet'in and all other members of the Tsilhqot'in Nation. Marilyn Baptiste is the elected Chief of the Xeni Gwet'in. She is a member of the Xeni Gwet'in and a member of the Tsilhqot'in Nation.

3. The Respondent Taseko Mines Limited (“TML”) is a provincially incorporated company (Incorporation Number BC0069082) with its registered office at 1500 Royal Centre, 1055 West Georgia St., P.O. Box 11117, Vancouver, BC, V6E 4N7, Canada.
4. The Respondent, Her Majesty the Queen in Right of the Province of British Columbia asserts ownership of the lands and resources in the area at issue in this Petition pursuant to s. 109 of the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3, and is ultimately responsible for discharging the Crown’s duty to consult with, and accommodate, the Xenigwet’in and the Tsilhqot’in Nation.
5. The Respondent, Chief Inspector of Mines, granted the 2011 Notice of Work approval (the “**NOW Approval**”) to TML pursuant to s. 10 of the *Mines Act*, R.S.B.C. 1996, c. 293 on or about September 29, 2011.
6. The Respondent, District Manager Resource Operations, Cariboo-Chilcotin, granted the 2011 Occupant Licence to Cut (the “**OLTC Approval**”) to TML pursuant to s. 47.4 of the *Forest Act*, R.S.B.C. 1996, c. 157 on or about October 31, 2011.
7. The Applicant filed a petition for judicial review of the NOW Approval and OLTC Approval (the “**Approvals**”) on November 10, 2011, seeking, *inter alia*: declarations that the Crown breached its duties of consultation to the Xenigwet’in and Tsilhqot’in Nation in granting the Approvals; an order quashing or, alternatively, suspending the Approvals; and interim injunctive relief (the “**Judicial Review**”).
8. The Judicial Review raises a serious issue as to the lawfulness of the Approvals and relates to an area of unique and significant cultural importance to the Xenigwet’in and the Tsilhqot’in Nation.
9. The Respondent TML has indicated that it intends to undertake the activities authorized by the Approvals as soon as possible and in advance of the determination of the Judicial Review of the Approvals.

10. The Xení Gwet'in and Tsilhqot'in Nation face irreparable harm if the activities authorized by the Approvals are undertaken before the hearing and determination of the Judicial Review, and the balance of convenience favours the granting of an interim injunction to restrain TML from undertaking such work until the issues raised by the Judicial Review are heard and determined.
11. Neither Chief Marilyn Baptise nor the Aboriginal groups that she represents is in a position to provide an undertaking as to damages.

### **Part 3: LEGAL BASIS**

1. The Applicants satisfy the test for a pre-trial injunction under s. 10-4 of the *Supreme Court Civil Rules* as set out in *RJR -- MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 and *A.G. British Columbia v. Wale* 1986 CanLII 171 (BC CA), (1986), 9 B.C.L.R. (2d) 333 at 345 (C.A.), aff'd [1991] 1 S.C.R. 62.

### **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Chief Marilyn Baptiste, filed on November 10, 2011;
2. Affidavit #1 of John-Paul Laplante, filed on November 10, 2011; and
3. Such further and other materials as this Court may permit.

The Applicants estimate that the application will take 1 day.

This matter is within the jurisdiction of a master.


This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and

- (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: November 14, 2011

  
 \_\_\_\_\_  
 Jay Nelson  
 applicant     lawyer for applicants

***To be completed by the court only:***

Order made

- In the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application
- With the following variation and additional terms:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
 Signature of  Judge     Master

## Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts