IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Save Record Ridge Action Committee Society v. British Columbia (Environment and Parks),* 2026 BCSC 477

Date: 20260311
Docket: S16387
Registry: Rossland

Between:

Save Record Ridge Action Committee Society

Petitioner

And

Minister of Environment and Parks

Respondent

And

Sinixt Confederacy

Respondent

Before: The Honourable Justice Dley

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner, appearing via videoconference:	B. Isitt N. Mock, Articled Student
Counsel for the Minister of Environment and Parks, appearing via videoconference:	T. Bant
Counsel for Sinixt Confederacy, appearing via videoconference:	D. Wu
Counsel for West High Yield (W.H.Y.) Resources Ltd., appearing via videoconference:	J.M. Young

Place and Dates of Hearing:	Rossland, B.C. March 9 & 10, 2026
Place and Date of Judgment:	Rossland, B.C. March 11, 2026

Introduction

[1] **THE COURT:** West High Yield (W.H.Y.) Resources Ltd. (“WHY”) was granted a permit (“Permit”) to annually mine 63,500 tonnes of ore from an intended magnesium open pit mine at Record Ridge, located approximately 7 kilometres from the City of Rossland. The Permit is valid from October 20, 2025 to November 15, 2028. The mining may only occur from April 1 to November 15 each year. The first period of construction or mining may commence on April 1, 2026.

[2] The Save Record Ridge Action Committee Society (“SRRACS”) sought to have an environmental assessment done of the project and had provided their concerns about the mine to the relevant governmental authorities. The Permit was granted without an environmental assessment.

[3] The applicants have filed a petition (“Petition”) for a judicial review of the decision. They say that the Minister of Environment and Parks and the Chief Permitting Officer erred in not requiring an environmental assessment. For the balance of this judgment, I will refer to the Minister and their delegates collectively as "the Minister."

[4] There were local dates available for the hearing of the Petition in November 2025, and April and May 2026. Counsel for all parties were available in January and February if the matter could be heard elsewhere. Counsel for WHY indicated that they were not available until August 2026.

[5] The applicants bring this application seeking either a stay of the Permit or an interim injunction until judgment has been rendered on the Petition.

[6] For the reasons that follow, the petitioner is granted an interim injunction with security for damages to be posted in the sum of $162,500.

Background Facts

[7] Beginning in 2005, WHY commenced exploratory work for the Record Ridge project. In 2019, it submitted an application to mine magnesium with an annual

production capacity of 400,000 tonnes. A revised application in 2022 established an annual production capacity of 249,000 tonnes. In 2023, a further revised application was submitted with an annual production capacity of 200,000 tonnes.

[8] In August 2024, the Environmental Assessment Office (“EAO”) determined that the Record Ridge project was automatically reviewable, and accordingly an environmental assessment was required. WHY responded by revising its application and reducing the annual production capacity to 63,500 tonnes. The infrastructure, mine plan, reclamation, and mitigation plans essentially remained the same.

[9] In April and May 2025, SRRACS and the Sinixt Confederacy applied to the EAO seeking to have the Record Ridge project designated for an environmental assessment.

[10] On August 19, 2025, the Chief Executive Assessment Officer declined to designate the project for environmental assessment.

[11] On September 22, SRRACS filed and served the Petition in this action. Counsel for SRRACS attempted to set the matter for hearing at an early date. Counsel for WHY indicated that they were not available for an early hearing date.

[12] On October 20, 2025, WHY was granted a Permit to construct and operate the mine.

[13] Counsel engaged in discussions with respect to setting the Petition for a hearing. Counsel for SRRACS, Sinixt, and the Minister indicated availability for January and February dates. There was also time during the April or May, Rossland Assizes. WHY's counsel said that they were not available until August. Ultimately, the Petition was set to be heard commencing August 17, 2026, on the Nelson Assize.

[14] There is time for the Petition to be heard on the Rossland Assize commencing May 5.

Position of the Parties

SRRACS

[15] SRRCS argues that this application for interim relief was necessary because WHY was not available to have the Petition heard on its merits until well after construction would commence. Section 11 of the *Environmental Assessment Act*, S.B.C. 2018, c. 51 [the *"Act"*], states that environmental assessments can only be granted for projects that are not substantially started. SRRACS states that irreparable harm will be suffered if a stay or interim injunction is not granted because the remedy being sought would not be available as the project would have been substantially started.

[16] SRRCS does not suggest that WHY is going to breach the terms of the issued Permit. SRRACS says that the project to be built will be able to accommodate a much larger disturbance than the stated 63,500 tonnes of annual extraction under the Permit. It is argued that the Ministry erred by not considering or ordering an environmental assessment based on the overbuild. The concern is that there may be no opportunity for an environmental assessment if one is not required at the outset. SRRACS questions the Minister's level of scrutiny in these circumstances.

Sinixt Confederacy

[17] Sinixt has been added to this action as a respondent. Sinixt supports the application for a stay on interim injunction. It has filed a robust response and tendered affidavit evidence in support of the application.

[18] Sinixt argues that the Minister's decision was unreasonable and points to the added factors that must be considered in the *Act*. The *Act* was proclaimed in 2018 and replaced the earlier statute that was the subject of comment in the leading case of *Friends of Davie Bay v. Province of British Columbia*, 2012 BCCA 293.

[19] For all intents and purposes, Sinixt's arguments mirror those of SRRACS, albeit couched in a different manner.

Minister of Environment and Parks

[20] The Minister takes no position with respect to the relief being claimed. The Minister provided insight with respect to the impact of a stay order to the Permit as opposed to the effects of an interim injunction.

WHY

[21] WHY argues that there was extensive input from the community and consultation with concerned stakeholders, including Sinixt. WHY maintains that because the stated production capacity was below the threshold of 75,000 tonnes, there was no reason to have the project designated as a reviewable project, and therefore no environmental assessment was required. WHY relies on the decision of the Minister that mentioned the *Davie Bay* decision and also referenced the impact of the new legislation. WHY argues that *Davie Bay* and *Fort Nelson First Nation v. British Columbia (Environmental Assessment Office)*, 2016 BCCA 500, are clear authorities that confirm its argument that no environmental assessment was required.

The Law

[22] I am satisfied that the factors applicable to assessing whether an interim injunction should be granted are as set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311. More recently, the application of the *RJR-MacDonald* factors has been commented upon in *Naghmeh v. 1530378 B.C. Ltd.*, 2025 BCSC 1673, at paras. 40 to 44:

> [40] The three-factor framework from *RJR* requires the court to consider the following before issuing an interlocutory injunction:
>
> i. Under a preliminary assessment of the merits of the case, whether there is a serious question (or, in some cases, a strong *prima facie* case) to be tried,
>
> ii. Whether irreparable harm will be suffered by the applicant if the relief is not granted, and,
>
> iii. Whether the "balance of convenience" (an assessment of which of the parties would suffer the greater harm from the granting or refusing the injunction) favours the applicant.

> [41] In my view, the parties have not identified any actual conflict in the law. The cases they have cited are complementary. The real difference between their positions reflects the parties each, in their own favour, stating the law in more absolute terms than they properly should.
>
> [42] The *RJR* three-factor framework does apply in British Columbia. However, it sets out factors, not "requirements". The *RJR* framework is not to be rigidly or formulaically applied, as the framework itself is nothing more than a judicial expression of the authority conferred under s. 39(1) of the *Law and Equity Act*. (This is the point made at para. 33 of *Instaloans*, and it remains an accurate statement of the law.)
>
> [43] The three *RJR* factors are not watertight compartments. The factors are interrelated, and strength in one may compensate for weakness in another: *British Columbia (Attorney General) v. Wale*, 1986 CanLII 171 (BC CA), 9 B.C.L.R. (2d) 333 at 346–47, aff'd 1991 CanLII 109 (SCC), [1991] 1 S.C.R. 62; C*ambie Surgeries Corporation v. British Columbia (Attorney General)*, 2019 BCCA 29 at para. 19.
>
> [44] Nor does the factors constitute mandatory requirements. There is no absolute requirement to establish a risk of irreparable harm. If that were an absolute requirement, then the second factor would constitute an "independent hurdle" to obtaining relief. As was recently re-stated in *Air Passenger Rights v. WestJet Airlines Ltd.*, 2025 BCSC 155, at para. 41, it is not:
>
> > [40] The elements of the conventional test are not necessarily a checklist or a series of independent hurdles. They are intended to be considered together in assessing the central issue of the relative risks of harm to the parties resulting from granting or withholding interlocutory relief.
> >
> > [41] <u>It is not required that all factors be satisfied before injunctive relief is granted</u> – the strength of one factor may compensate for weakness in another. The fundamental question is "whether the granting of an injunction is just and equitable in all of the circumstances".

<u>Discussion</u>

[23] There is some disagreement as to the nature of the injunction being sought. WHY says that this is an application for a *quia timet* injunction. *Quia timet* injunctions are relevant to those cases where it is necessary to restrain wrongful acts that are either imminent or have been threatened: *526901 B.C. Ltd. v. Dairy Queen Canada Inc.*, 2018 BCSC 1092, at paras. 68 to 72.

[24] WHY refers to *Harness Racing B.C. Society v. Orangeville Raceway Limited*, 2025 BCSC 1249, as authority for the proposition that where there is future harm, an

application for an injunction necessarily requires a higher threshold and thus must be regarded as a *quia timet* injunction. In *Harness Racing*, the plaintiffs alleged that the defendant had breached the contract. That was a wrongful act and thus attracted the issue of whether the application involved a *quia timet* injunction.

[25] There is no suggestion that WHY intends to breach the terms of the Permit. SRRACS concedes that WHY has been transparent in its conduct and has done nothing wrong. The issue is with the reasonableness of the Minister's decision in not requiring an environmental assessment.

[26] I conclude that this is not an application for a *quia timet* injunction, and therefore SRRACS is not required to show the high degree of probability that WHY will breach its Permit. Even if this was a *quia timet* injunction application, it would not change my conclusion.

[27] I agree with the submissions of the Minister that if relief is granted, then it should be an injunction rather than a stay of the Permit. The Permit requires WHY to undertake various tasks and provide ongoing reporting. There is no reason to interfere with those obligations.

[28] WHY has expressed concern about the manner in which Sinixt has participated in this application. WHY says that it is improper for Sinixt to have joined the action as a respondent when it supported the petitioner. WHY intends to challenge Sinixt's standing.

[29] Rule 8-1(10) of the *Supreme Court Civil Rules,* B.C. Reg. 168/2009, allows a party that is opposing an application to summarize its position as to why the relief sought should not be granted and list the affidavits and other documents to be referenced. A party that is not opposed to the relief sought need only indicate if it consents or takes no position. Sinixt has filed extensive materials and significant affidavit materials all in support of the application. WHY argues that the court should not consider the material because it is in substance, bootstrapping and case splitting.

[30] There is much merit to WHY's concern about the manner in which Sinixt has attached itself to this application. However, my decision does not require any reliance on submissions made by Sinixt. Whether Sinixt has standing is not for me to decide. That is left for another day. The decision on this application does not take into account any of the evidence or arguments proffered by Sinixt.

[31] The first issue, then, is whether there is a serious question to be tried. WHY says that the question has already been answered by the Court of Appeal's rulings in *Friends of Davie Bay* and *Fort Nelson*. WHY had set the annual extraction limit of 63,500 tonnes, which is below the 75,000-tonne threshold for requiring an environmental assessment. In *Davie Bay*, the court said at para. 40:

> [40] According to the scheme, the proponent first determines whether there will be a mandatory environmental assessment by stipulating its intended production capacity. In order for a proponent to be able to ascertain where the threshold production capacity lies, it must be expressed in clear and unambiguous terms. Here, the Lieutenant Governor in Council has determined that all mining projects producing 250,000 tonnes or more of quarried product per year have the potential to bring about the adverse consequences listed in s. 6(1)(a) of the *Act* such that an environmental assessment is required. If the question whether a project exceeds or falls short of this threshold is to be determined by considering the amount of product a project could possibly produce if operating at a theoretical maximum capacity, it would rarely be possible for the proponent to answer it without speculation.

[32] In *Fort Nelson* at paras. 15 and 20, the court stated:

> [15] The preliminary issue arises here because under the *EAA* and the *Regulation* there is no obvious decision by a statutory delegate involved in designating a project as a reviewable project under the *Regulation*. As is well-known, this regulatory scheme is proponent-driven: *Friends of Davie Bay v. Province of British Columbia*, 2012 BCCA 293 [*Davie Bay*] at para 47. It is for the proponent to determine whether under the *Regulation* a project is a reviewable project. There is no application process, no form of statutory approval, no licence, and no express statutory authority in the *EAA* or the *Regulation* which confers a power on, in this case, the EAO to decide whether any particular project is reviewable under the *Regulation*.
> …
> [20] Whether or not the Project is a reviewable project depends on the application of the *Regulation* to the Project, rather than any mandated assessment of the Project by the EAO. It is also well-established that the criteria in the *Regulation* are intended to provide a clear and unambiguous bright line for determining if a project is reviewable or not: *Davie Bay* at

> para. 40. It is as if the Legislature contemplated that the criteria in the *Regulation* would be self-applying to any set of facts. The EAO plays no statutory role, in this proponent-driven scheme, in determining whether a project is reviewable under the *Regulation*.

[33] SRRACS argues that the *Davie Bay* decision was under the prior statute, and the new provisions of the *Act* cause that case to be distinguishable. Although I do not dismiss SRRACS's argument, I do not consider it to be particularly strong. SRRACS faces an uphill challenge to distinguish *Davie Bay* and *Fort Nelson*.

[34] If the relief is not granted, there will be irreparable harm to SRRACS. It is likely that by the time the matter can be heard and the decision rendered, WHY will have crossed the “substantially started” threshold to the extent that an environmental assessment would no longer be available. SRRACS's claim for relief in the petition would become moot.

[35] The balance of convenience favours the applicant. SRRACS will suffer the greater harm if the injunction is not granted because the relief it seeks will not be available.

[36] There will also be harm to WHY if the injunction is granted because it will not be able to proceed with the project in its entirety as of April 1st. However, WHY will still be able to carry out some tasks that will be needed in any event (such as surveying and taking core samples) but without significant disturbance of the landscape. I do note that WHY has indicated that there is no certainty that the project could commence on April 1st because not all permits have been secured, and the work is weather dependent.

[37] The circumstances of this application are unique because of the difficulties that the petitioner has had in trying to have the matter heard on its merits. If WHY had been available on earlier dates that were proposed, this application would not have been necessary. The Petition would have been heard before the April 1st date became a concern. WHY stands to succeed in defeating the Petition without arguing the merits if an injunction is not granted. The longer this matter is delayed beyond

April 1st without injunctive relief, the more work WHY can do on the project and thereby render the Petition moot. That outcome cannot be fair or just.

[38] To accede to WHY's position would be tantamount to this Court endorsing unavailability as a reason to delay the otherwise timely hearing of a dispute. A party is at liberty to retain counsel of its choosing, but if counsel is so busy that they cannot be available on a reasonable basis, that party cannot rely on unavailability as a reason to avoid hearing dates.

[39] Here, the petitioner was reasonable in their request for hearing dates. Other parties were prepared to adjust their calendars so as to have the matter heard in a timely fashion. By simply making themselves available to argue the petition in early 2026, WHY could have avoided the prospect of an injunction. Refusing to agree to a hearing date until August was unreasonable.

[40] In all of the circumstances, the granting of a time-limited injunction is just and equitable. It will allow all parties to argue the issues on their merits. To do otherwise would deny the petitioner access to justice.

[41] SRRACS has indicated that it will abide by any undertaking as to damages. It is apparent that SRRACS has limited means, and the likelihood of being able to satisfy a large damage award is unlikely. However, the reason why this application was necessary was because WHY failed to make itself available earlier. It is the author of its own doing as it relates to some of its potential damages.

[42] In these circumstances, the just approach is to ensure that there is some undertaking for damages. SRRACS has funds on deposit of just over $61,000. I am advised that there are further funds that have been pledged to provide security for damages. The total amount available to provide security as an undertaking to pay damages is said to be $162,500. An undertaking to pay damages is only as good as the ability to pay, particularly when there is no personal liability. Accordingly, the undertaking will be replaced by a deposit of funds to be held until further order of this Court.

[43] I am going to order that the sum of $60,000 on deposit at Nelson & District Credit Union account number [number redacted] be frozen until further order of this Court. Within two weeks, SRRACS must deposit with its solicitor a further sum of $102,500, which funds shall be held in trust pending a further order of this Court. Those funds totalling $162,500 will provide the undertaking as to damages.

Summary

[44] The resulting orders are as follows:

1. The hearing of the petition shall be placed on the Rossland Assize commencing on May 5, 2026.

2. An interim injunction is granted lasting until the date the judgment is pronounced on the merits of the amended petition in this proceeding, prohibiting WHY or its agents from engaging in any construction, operations, or any other ground-distributing activities authorized under Permit Number Q100000563.

3. The sum of $60,000 on deposit at Nelson & District Credit Union account [number redacted] be frozen until further order of this Court. Within two weeks, SRRACS must deposit with its solicitor a further sum of $102,500, which funds shall be held in trust pending a further order of this Court.

4. The costs of this application will be costs in the cause.

[45] Mr. Isitt, anything further?

[46] CNSL B. ISITT: With respect to the accounts, we're – we're certainly – abide by the freezing. In the final affidavit of Nathan Mock, the latest statement we provided, there was 43,000 in the account you've referenced. There was just shy 25,000 in the second account. The balance was approximately 66,000. To ensure – because the – the construction of your order is so clear, I wonder whether we should reference – we understand the point of your order is to have 60,000 frozen. We can attend to that forthwith, but it will require the treasurer, Ms. Mercier, or assistant,

Mr. Mellish, to just – to get that balance up to the 60K before the freezing occurs. If you have any guidance on –

[47] THE COURT: That is fine. That can be done today.

[48] CNSL B. ISITT: Forth – yes, certainly. Okay. Understood. So, we will top up that balance to the 60K. Thank you, Mr. Justice.

[49] THE COURT: All right.

[50] Anything further from any of the participants online?

[51] CNSL J. YOUNG: Yes, Justice, for W.H.Y. Resources. In response to some of the questions that you had posed yesterday, I believe it was yesterday to Ms. Chiu, who was there on behalf of WHY, our office had made inquiries of court registries across the province for a hearing date. And so, there is an alternative available on May 25th, the assize in Williams Lake, which I understand all parties are available for.

[52] THE COURT: May 25th?

[53] CNSL J. YOUNG: Yes. And so, my request to the court is that that also be granted as an alternative, as – as Ms. Chiu sit – I am in court in a judicial review during the May 5 and May ... just looking at the dates, pardon me – May 11th.

[54] THE COURT: Right.

[55] CNSL J. YOUNG: I am in court one week and a judicial review the next. It is some possibility the judicial review may adjourn, in which case I would be available on the second week of the assize. But I'd like to have the option that we could proceed on that other date in May, which is available, and I do understand that all counsel are available for that. But I will of course let other counsel speak to that point.

[56] THE COURT: All right. Mr. Isitt.

[57] CNSL B. ISITT: For me it would require – I have a matter out of the province which I described. Depending where it gets set on the assize, I could fly back for the four days.

[58] We do point to the interests of justice of everyone in this community who clearly cares about the proceeding and chose to set the matter down here. And my understanding is that some of the other parties may not be available. So, our preference – and then the prejudice to SRRACS of three additional weeks of potential damages to WHY based on your order, that could be a significant financial impact, when we get into the spring months, the ground falling and that difference involving the weather.

[59] So we would say the order as described by Your Justice would be the most appropriate order and that a large firm like McMillan can certainly appear, as they did this week.

[60] THE COURT: I am sympathetic to the conflict in your calendar, Ms. Young, but it seems to me that this is the kind of file where it should be emphasized that the hearing should take place in the community that has been impacted and will be affected by whatever order is ultimately made. The residents of the community should be in a position to see the proceedings. That is part of access to justice.

[61] So I am going to leave my order as it is; that it will proceed on the May 5th Assize.

[62] CNSL J. YOUNG: Fair enough, thank you, Justice.

[63] THE COURT: All right. Thank you.

"Dley J."