

Specifically included are those lands which have been withdrawn by Yukon Indians for the settlement of their land claims.

The government thought these lands were protected. A court challenge with respect to the Yukon Placer Mining Act, proved the government wrong.

It has been government practice for some time to withdraw from the public domain, lands which are claimed by aboriginal peoples while negotiations on the settlement of these claims are proceeding. The legal authority to do so is contained in various sections of certain pieces of legislation. For example, Section 23 of the Territorial Lands Act permits the Governor in Council to withdraw tracts of territorial lands from disposal, upon giving reason. Territorial lands are defined as lands in Yukon or Northwest Territories that are vested in the Crown or are lands over which the federal government has the power to dispose.

Section 98 of the Yukon Placer Mining Act permits the Governor in Council to prohibit entry on certain lands for the purpose of locating a claim or prospecting for gold or other precious minerals or stones, except on some terms as he or she may prescribe. The Yukon Quartz Mining Act contains no provisions to withdraw lands or prohibit mining on certain lands as specified in Section 98 of the Yukon Placer Mining Act. However, Section 14 of the Yukon Quartz Mining Act provides for exceptions to the general rights to acquire mineral rights.

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The government's position has been that a withdrawal under Section 23 of the Territorial Lands Act should be considered an exception under Section 14 of the Yukon Quartz Mining Act.

The government's position with respect to the applicability of the Territorial Lands Act withdrawal orders to the Yukon Quartz Mining Act was challenged. A prospector staked 265 mineral claims in an area withdrawn for the settlement of the Kluane Tribal Council land claim. The mining recorder refused the mineral claims. The matter was brought to the federal court on July 12, 1988. On February 12 of this year, a judgment in favour of the individual was brought down. The decision was based on the fact that subsection 3(3) of the Territorial Lands Act states:

### *Government Orders*

—nothing in this Act shall be construed as limiting the operation of the Yukon Quartz Mining Act, the Yukon Placer Mining Act, the Dominion Water Power Act, or the National Parks Act.

The judge decided, therefore, that any withdrawal orders made pursuant to the Territorial Lands Act could not have an effect on the Yukon Quartz Mining Act. In other words, claim staking under the Yukon Quartz Mining Act could not be curtailed by orders pursuant to the Territorial Lands Act.

The judge ordered the mining recorder to accept the claims. The day after the court decision, the then Minister of Indian Affairs and Northern Development, the hon. member for Vaudreuil, made a statement in the House of Commons. He announced that the government would be bringing forward legislation to amend the Yukon Quartz Mining Act and the Yukon Placer Mining Act. Also, he indicated that the forthcoming legislation would be retroactive to that day, February 13, 1990.

The government had to act fast to prevent any further mining claim registration disputes. On March 9, the new Minister of Indian Affairs and Northern Development introduced the promised legislation, Bill C-68. This bill amends two pieces of legislation: the Yukon Placer Mining Act, Sections 17 and 98, and the Yukon Quartz Mining Act, Section 14.

The purpose of the amendments is to ensure that the lands withdrawn for the settlement of aboriginal claims are clearly within the definition of withdrawn lands.

The amendment to Section 17 of the Yukon Placer Mining Act changes a phrase "prospecting for minerals" to "prospecting for gold and other precious minerals or stones". This new wording clarifies the definition of placer deposits. The same wording is already utilized in Section 98 of this act. As such, this is basically a housekeeping or clarification amendment.

The amendment to Section 98 is more substantial. It specifically includes land which may be required for the settlement of aboriginal land claims in the definition of land upon which prospecting or locating a claim may be prohibited.

New subsections are added to Section 14 of the Yukon Quartz Mining Act. The new subsections ensure that there is not an unfettered right to acquire mineral claims. Subsection 14.1(2) lists the types of land upon which the Governor in Council may prohibit entry and lands required for the settlement of aboriginal land