

## First nations get win in ongoing legal battle with RioTinto Alcan

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The stakes have been upped in an ongoing legal battle between two north-central B.C. first nations and RioTinto Alcan over the diversion of water out of the Nechako River.

In a decision issued January 30, B.C. Supreme Court Justice Nigel Kent granted the Saik'uz and Stelat'en first nations permission to seek a form of declaratory relief should they prove their allegations against the company.

Specifically, Kent said they could seek an injunction that would require RioTinto Alcan to "reinststate the functional flows that make up the natural flow of the Nechako River."

They could also secure declarations that would effectively require the federal and provincial governments to enforce the injunction.

It was the latest turn in a court case that dates back to October 2011 when a lawsuit against the company was first filed.

It hit a roadblock in December 2013 when a B.C. Supreme Court Justice [threw out the action](#). But in March 2015, the B.C. Court of Appeal overturned the lower-court decision and six months later, the Supreme Court of Canada [denied RioTinto Alcan's subsequent appeal](#).

Located about 185 km west of Prince George, the Kenney Dam was constructed in 1952 and created the massive Nechako Reservoir which provides hydro power to Alcan's aluminum smelter in Kitimat in northwest B.C.

The lawsuit claims that the 1987 and 1997 Settlement Agreements entered into by Alcan and B.C. and Canada are not defenses against the First Nations, based on constitutional grounds.

Kent said the plaintiffs may still "confront formidable obstacles" when it comes to proving their case.

"The dam has been in operation for many years and has been the subject of much negotiation and litigation since its inception and in which the Crown has presumably acted in bona fides promotion of the public interest," Kent said. "The Crown has also been actively involved in creating downstream enhancement of the Nechako watershed area, including the initiation of programs aimed at the protection and conservation of the fish within the Nechako system. Establishing liability, whether in nuisance or breach of riparian rights, resulting in damage of a sort warranting a legal remedy may be challenging indeed, particularly insofar as overcoming any defence of 'statutory authority' is concerned."

A trial on the matter is set to begin September 9 in Vancouver.

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