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B.C. Court of Appeal decision spotlights urgent need for reform of Mines Act

VICTORIA, B.C. – In rejecting an appeal brought by the Highlands District Community Association (HDCA), Monday's decision by the B.C. Court of Appeal highlights the shortcomings of the province's *Mines Act* in responding to climate change.

The HDCA's case presented to the Court of Appeal centred on a failure on the part of the province's Statutory Decision Maker (since renamed Mines Inspector) to consider climate change impacts before approving a mining permit to OKI Industries (OKI) for a bedrock strip mine in the Highlands last year, making his decision unreasonable.

"In my view, this is a submission that seeks a legislative response to a problem of global magnitude, but provides no basis for this court to intervene," Hon. Madam Justice Fisher states in her written reasons on behalf of the three-Justice Court.

The Court of Appeal heard the case on May 5, the same day that OKI began blasting an access road into its 64-acre property off Millstream Road in the south Highlands. The Court's decision lands almost a year to the day after the HDCA initially filed an application to the B.C. Supreme Court for a judicial review of the Province's approval of OKI's mining permit.

Both of the HDCA cases were brought against the Attorney General for B.C., the Minister of Mines, Energy & Petroleum Resources, the Chief Inspector of Mines, and OKI.

HDCA Chair Scott Richardson said he is delighted that the Court of Appeal identified the limitations in the mining legislation to adequately respond to climate change.

"This unwanted strip mine is what happens when a community like the Highlands is already moving to a new paradigm that acknowledges the limits of what the environment can or should bear," said Richardson. "OKI's deep scar on our landscape shows up as a jarring misalignment with our community's values and right to self-determination."

Madam Justice Fisher states that in her view, "the heart of HDCA's concern goes much deeper than the legal parameters of the Mines Inspector's authority," agreeing with the HDCA that "while the emissions of any particular project may be small, this understates the nature of the environmental challenge at issue."

Richardson goes further. "In the face of the greatest existential threat to the future of our species, OKI carries on in its business-as-usual style, over the objections of an entire community, destroying a vibrant, intact, carbon-sequestering ecosystem, all for the sake of profit."

“This is the tragedy of the commons – as each resource extraction enterprise seeks to grab its share without any regard for global climate change, each is incrementally destroying our commons and our hope for a healthy planet,” said Richardson.

The Court of Appeal acknowledges that climate change “could have been relevant” to the permitting decision, but it said neither the HDCA nor anyone else presented to the Mines Inspector factual, comprehensive scientific evidence about potential climate change impacts associated with the project.

Richardson said the Court’s decision reveals that the *Mines Act* unfairly places the onus on individuals and organizations such as the HDCA to prove climate change impacts of projects.

“Government has a huge and important role for boundary setting and regulation, which we would have expected the New Democrats to understand and be responsive to, but apparently not,” said Richardson.

“Instead, they only seem interested in symbolic renaming of ministries – the Ministry of Energy, Mines and Low Carbon Innovation, and the Ministry of Environment and Climate Change Strategy – while leaving the actual burden of fighting climate change with individual citizens and resisting calls to reform the *Mines Act* to bring it in line with the social and environmental realities of the 22nd Century.”

Ian Knapp, legal counsel for the HDCA, said the judgement in this case represents a setback in efforts to curb global climate change.

“Statutory decision makers are tasked with the difficult job of balancing private rights with the public interest in overseeing resource development in the province, and most British Columbians would rightly expect them to consider pressing environmental concerns in assessing individual projects,” said Knapp.

“In this case, one of the most pressing environmental challenges of our time – climate change – was expressly overlooked in this balancing exercise and the courts have, to date, held that the law does not demand such consideration. It is apparent that this deficiency in the law should be corrected by either the legislature or a higher court.”

Calvin Sandborn, Legal Director of UVic’s Environmental Law Centre, added that the Court of Appeal decision demonstrates the need for the legislature to act, and to require the Mines Ministry to actually consider climate change impacts before it approves any mine or quarry.

“Officials should be required to carefully consider the destruction of carbon sinks like wetlands and forests, in addition to emissions of a project,” said Sandborn. “Climate change is a death of a thousand cuts – a thousand development decisions. Every resource decision must carefully consider climate change. Otherwise, we’re not going to beat this global challenge.”

The HDCA has remained strongly and vocally opposed to the strip mine since it was first proposed in 2016. A community petition against OKI's proposal was signed by more than 1,000 residents (nearly half the municipality's population of 2,200), and over 9,100 others have signed a [Change.org petition](#).

The HDCA has been receiving financial support from West Coast Environmental Law, Western Mining Action Network, Highlands residents, and the now-defunct Highlands Preservation Society. The legal appeal was presented by Ian Knapp of MacKenzie Fujisawa LLP, with additional research provided by UVic's Environmental Law Centre.

In [separate legal action](#), the District of Highlands is awaiting a decision from the B.C. Court of Appeal against OKI regarding the application of the District's bylaws to OKI's quarry site.

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