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## Mining and First Nations in Canada

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# Mining and First Nations in Canada

Andre Xavier <sup>a</sup>, John Meech <sup>o</sup> & Marcello Veiga <sup>p</sup>

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*"How long have I known you, Oh Canada? A hundred years?...And today, when you celebrate your hundred years, Oh Canada, I am sad for all the Indian people...For I have known you when your forests were mine; when they gave me my meat and my clothing. I have known you in your streams and rivers where your fish flashed and danced...where the waters said '...come and eat of my abundance.' I have known you in the freedom of the winds. And my spirit, like the winds, once roamed your good lands...in the long hundred years since the white man came, I have seen my freedom disappear like the salmon going mysteriously out to sea. The white man's strange customs...pressed down upon me until I could no longer breathe. When I fought to protect my land..., I was called a savage. When I neither understood nor welcomed his way of life, I was called lazy. When I tried to rule my people, I was stripped of my authority. My nation was ignored in your history textbooks – they were ...(as)...important ... (as)...the buffalo that ranged the plains. I was ridiculed in your plays and motion pictures, and when I drank your fire-water, I got drunk... And I forgot."*

- from Lament for Confederation, Chief Dan George, July 1, 1967.

## I. BACKGROUND

Canadian Aboriginal people are the indigenous peoples in North America within the boundaries of Canada. They comprise the First Nations, the Inuit and the Métis. The 2011 census of Canada shows that 1,400,685 people identify as Aboriginal (4.3% of the national population), spread over 600 recognized First Nations governments (or bands) with distinct culture, language, art, and music. The Aboriginal population increased by 232,385 (20.1%) between 2006 and 2011, compared with 5.2% for the non-Aboriginal population. These figures give annual growth rates of 3.73% and

1.02% respectively, which means all things remaining equal, the Aboriginal make-up of Canada will grow to 7% of the total population over the next two decades.<sup>1</sup>

A total of 851,560 people identify as First Nations persons<sup>2</sup>, representing 61% of the Aboriginal population or 2.6% of the total population of Canada.<sup>1</sup> The Inuit are a group of culturally-similar indigenous people who inhabit the Arctic regions of Greenland (Denmark), Canada, and Alaska (U.S.).<sup>2</sup> Inuit is a plural noun; the singular is Inuk. The inukshuk (or inuksuk), erected frequently on the northern tundra by the Inuit, has become an important icon in Canada today. In 2011, 59,445 people identified as Inuit representing 4.2% of the Aboriginal population and 0.2% of the total national population. About three-quarters of Inuit in Canada live in the Northwest Territories and in Nunavut.<sup>1</sup>

The Métis are a recognized Aboriginal people in Canada of mixed First Nations and European heritage.<sup>2</sup> Historically, the name was a catch-all pejorative term describing the offspring of such unions, but within a few generations, the culture evolved into what is a distinct aboriginal group today with formal recognition in the Canadian Constitution. In 2011, 451,795 people identified as Métis which is 32% of the total Aboriginal population and 1.4% of the national population.<sup>1</sup>

Yukon, the Northwest Territories, and Nunavut, although territories rather than provinces, have their own territorial governments subservient to the Federal government. The 2011 population of the territories is small at 107,265 (0.3%), but the area is enormous at 3.867 million km<sup>2</sup> (38% of Canada). Aboriginal people make up the largest share of the population in Canada's territories: in Nunavut they account for 86% of the total population; in the Northwest Territories they account for 52% of the population; while in Yukon, 23% of the population have an Aboriginal identity.<sup>1</sup>

Historically, Canadian Aboriginal societies included permanent settlements with agriculture, civic, and ceremonial structures as well as complex societal and governing hierarchies with significant trading networks. The Métis culture of mixed blood began in the mid-1600s when First Nation and Inuit people married Europeans. The Inuit had less interaction with European settlers during this early period. Various laws, treaties, and legislation have been enacted between European immigrants and First Nations in Canada. The idea of Aboriginal Right to Self-Government provides opportunities for these people to manage historical,

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cultural, political, health care, and economic control within their communities.<sup>3</sup>

British Columbia is home to 203 First Nation bands and about 30 different tribal groups making-up 232,290 people (~5.4% of the total population) who have lived here since time immemorial. Nearly 78% of the B.C. Aboriginal people today live off-reserve.<sup>1</sup> Difficulties between the Crown and Aboriginal peoples in B.C. have resulted in significant impact on starting up over 4 mines in the past 7 years. Since the settlement (or occupation, depending on your viewpoint!) of B.C. by Europeans and others that began about 300 years ago, First Nations people have suffered considerably. First, smallpox brought to their land by the settlers is estimated to have wiped out tens of thousands in the first 150 years. Some First Nations claim there is evidence that smallpox was deliberately introduced within their communities by "Indian Agents" who knowingly and collectively distributed infected blankets. Second, alcohol and other drugs entered their culture leading to terrible effects. This issue has led to the myth that many First Nations have a genetic predisposition to alcohol intolerance (alcoholism). This in fact, is untrue, but it cannot be denied that alcohol has had a devastating effect that is at a rate twice that of the general population.<sup>51</sup>

Third, broken treaties and the Reserve System pushed them onto limited land compared to what they consider to be their traditional territory. Fourth, attempts at assimilation or "education" in mission schools caused irreparable harm with physical and mental abuse and disrespect for their culture and languages. Children were torn away from their families and sent to these schools. Those four issues alone clearly justify the lack of trust and faith they have today in the "white man" and his governments.<sup>4</sup>

Today, many First Nations communities exist in poverty conditions equal to, if not worse than, those in some parts of the Third World and this has occurred despite huge sums of money entering their communities through the department of Aboriginal Affairs and Northern Development Canada and its predecessors. For these reasons, it is incumbent upon all Canadians that when we enter their traditional territory for any commercial or recreational purpose to acknowledge their rights and title and traditions and culture. We must show respect for their culture and continue to look for ways to work with them to reduce the poverty under which so many of their people currently live.<sup>4</sup>

First Nations people have many spiritual ties to the environment (land, water, and air). Mining is not a major part of their culture, although there are examples of certain bands who practiced mining. Mining is generally viewed as an intrusive activity that spoils the land and waters where they hunt, trap, and collect traditional food. As a result of these past wrongs and the very nature of what mining does, significant suspicion

exists among Aboriginal people about the mining industry. Many projects are in jeopardy because of this situation.

## II. TREATIES

As stipulated by the Royal Proclamation of 1763 in the British Parliament, the new government of Canada was required to enter into a treaty-making process with First Nations in Western Canada.<sup>5</sup> Eleven numbered treaties were signed with First Nations groups between 1871 and 1921. Most of the settled lands in Ontario, Manitoba, Saskatchewan, and Alberta, were transferred from First Nations to the Crown through treaties; not so in much of British Columbia.

Mineral resources were the main incentive to negotiate Treaties 8 and 11 as the federal government laid claim to the west.<sup>6</sup> The effects of diseases brought by the Europeans also played a role in signing of treaties since Aboriginals hoped that medical care could be provided through a treaty. The smallpox epidemic swept over the Treaty 8 area from Fort Chipewyan to Fort Resolution as it did elsewhere. The Indians asked for medical care before signing the treaty. It was promised to them, but pitifully, little was provided in the years to follow.<sup>7</sup>

The treaty process was not a common approach for the British since in building their empire, they generally acquired land through purchase or armed conflict.<sup>8</sup> In this regard, the decision to pursue the treaty process with First Nations was due to the newly-formed Canadian government being unable to afford to enter into a war with the original inhabitants of the region.<sup>8</sup> This idea is confirmed by the following quote: "It was impossible to ignore them [the Aboriginals]. It was also impossible for the young nation to fight them. The Americans were spending 20 million dollars a year for their bloody Indian conquests; Ottawa had about that same amount of money available to run all the affairs of the entire country".<sup>8</sup> The Canadian approach is often considered to have been a more humane way to deal with the "Indian Problem" compared to the incredible violence of the U.S. Indian War. However, when one examines how the treaty process evolved over time with most agreements being broken time and again, perhaps the Canadian approach is more like "1,000 cuts over time" – a form of torture.

For the Aboriginals, the practice of treaty-making dates back to before the first European contact. First Nations commonly made use of oral treaties to resolve land disputes and end conflicts among themselves. Furthermore, trade and marriage arrangements were also commonly established between tribes.<sup>9</sup> Treaties today are understood as agreements made between the Crown and First Nations people. Within these treaties, the First Nations typically exchanged some of their interest in specific areas of

their lands in return for various kinds of payments and promises from the Crown.<sup>10</sup> From the Crown's perspective, treaties were intended to open land for settlement and Crown use by exchanging all rights over land for reserves, harvesting rights, and other benefits. Many Aboriginal people do not agree with this interpretation and see the Treaties as peace and friendship agreements between sovereign nations.

The concept and practice of written treaties was introduced by the Europeans, but they soon became seen as problematic by Aboriginals since the written treaties "did not include oral promises made to the Aboriginals in the written treaties".<sup>9</sup> The British Crown considered treaties as a surrender of Aboriginal rights and title to the land.<sup>5</sup> The First Nations believed they were entering into a trusting relationship with representatives of the British Crown who wished to coexist with them sharing the bounty of Mother Earth provided to them for their survival.<sup>5</sup> This clash of interpretation and expectation regarding the treaty process has led to disappointment, resentment, and issues of distrust between Aboriginals and the Crown. First Nations surrendered huge tracts of land in exchange for annual financial payments and recognized reserve lands, as well as supposed respect for traditional Aboriginal hunting and fishing rights by signing the treaties from 1871 to 1906. The financial compensation provided to Aboriginals was \$5 per year, a sum which is still paid today on "Treaty Day" to each and every registered Aboriginal person.<sup>11</sup>

According to Aboriginal Affairs, annual treaty payments continue "to fulfill an obligation", but also are "a symbolic reminder of the special relationship that exists between Canada and First Nations".<sup>12</sup> Treaty interpretation appears to be more of an art than a science.<sup>13</sup> Disagreements regarding interpretations of what was agreed upon in the treaties have led to numerous court disputes, resulting in the creation of the Specific Claim Process and an administrative tribunal to deal with unresolved claims. As of 2011, 588 specific claims remained unresolved.<sup>13</sup>

### III. INDIAN RESIDENTIAL SCHOOLS

A significant component of First Nations history since "contact" involves the Indian Residential School (IRS) system. The Department of Indian Affairs was created by the federal government in 1880 to deal with the "Indian Problem".<sup>14</sup> In partnership with several church denominations (Catholic, Anglican, Presbyterian, Methodist, and United), the Indian Residential School (IRS) system was established<sup>15</sup> that remained in place for over a century.<sup>16</sup>

The rationale behind the IRS included using it to deliver Christianity to Aboriginal people as well as a way for the federal government to satisfy its constitutional obligations to Aboriginal people by providing education.

To many critics, the IRS was set up so the federal government could control First Nations and attempt to integrate (assimilate) them into mainstream society.<sup>17</sup>

Indian Residential Schools were located far from Aboriginal reserves, and children, aged 5 to 16, were separated from their families by force to attend these schools. This remained compulsory until the 1950s, but the last one closed only recently – in 1996 in Regina, Saskatchewan.<sup>14</sup> About 150,000 children were taken to over 125 schools over this time.<sup>16</sup> Children were taken, often abducted, from their families. They were not allowed to speak their language. Brothers and sisters were separated from one another. They were taught they were inferior; that they were uncivilized; that they were savages. A typical day at residential school was divided into academic studies and trades-related activities such as carpentry or auto-mechanics for boys, and cooking and sewing for girls.<sup>16</sup> All aspects of life including a dress code, use of English only, and behavior were tightly regulated.<sup>14</sup> In 1945, the family allowance provided to Aboriginals by the federal government was made subject to school attendance.<sup>15</sup> In 1950, the government began to realize that the objectives of the IRS were not being achieved and rumors prevailed of abuse at the schools. A year later, Aboriginal children were permitted to attend provincial schools, but partnership with churches did not end until 1969.<sup>15</sup>

In 1998, a statement of reconciliation was issued to the Aboriginal people by the federal government, and a "healing fund" of \$350 million was established to provide counseling services for former students.<sup>14</sup> The influence of the forced residential school system left many negative effects on indigenous culture including heavy impact on intergenerational ties.<sup>6</sup> For many of the 80,000 survivors of these schools, the residual effects of the emotional, physical, and sexual abuse they experienced have resulted in many social problems including addiction and suicide.<sup>16</sup>

Chief Rick O'Brien of the Kwanlin Dun First Nation said "when I think of residential school, I think of everything we have lost, and how that has translated into poverty, high rates of incarceration, addiction. Many of us have lost confidence in who we are as First Nations. Residential school caused us to lose the sense of being from somewhere. And that's part of your identity." Almost all survivors talk about the greatest damage being destruction of the family.<sup>18</sup>

The Indian Residential School Settlement Agreement (IRSSA) was approved by the government of Canada in 2006, and its implementation began in September 2007. As a result of this agreement, IRS survivors can now access measures towards healing and support, as well as commemorative activities. Payments have been made to former students and independent assessment processes were undertaken regarding claims of sexual or physical abuse which occurred in the residential schools.<sup>19</sup> The IRS Truth and



Reconciliation Commission was created in 2008. Later that year, a formal apology was offered by Prime Minister Stephen Harper on behalf of the Government of Canada and all Canadians to former IRS students for the impact that the schools have had on their heritage, culture and language.<sup>19</sup>

#### IV. TOWARDS SUSTAINABLE MINING (TSM) – ABORIGINAL COMPONENT

In 2004, the Mining Association of Canada (MAC) established a set of principles with the aim to enhance the industry's reputation by improving its performance. These principles are mandatory across the industry and all members of MAC are expected to comply with them. There are many components to this new approach to mining which mandates that a balanced approach to techno-economic, environmental, and socio-political issues must be taken in future decision-making.

TSM attempts to help the industry sustain its position as a leading contributor to Canada's economy while at the same time protecting the environment and remaining responsive to Canadians. It helps the industry maintain its "social license to operate" and improve its performance by aligning mining activities with the priorities and values of local communities. The program aims to see that industry operates in a proactive and socially responsible way.<sup>20</sup>

TSM has established a set of Performance Measures (PM) and Protocols on Crisis Management, Energy and GHG Emissions Management, Tailings Management, Biodiversity Conservation Management and Health & Safety, Aboriginal Relations/Community Outreach, and Mine Closure. The Aboriginal Relations and Community Outreach protocol has 4 PMs:

1. Communities of Interest Identification;
2. Effective Communities of Interest Engagement and Dialogue;
3. Communities of Interest Response Mechanism;
4. Reporting.

Core values<sup>4</sup> in engaging and consulting with First Nations are as follows:

- Input from communities can help design, construct, operate, and close the project;
- Environmental and cultural awareness are key elements to create a sound project;
- Each First Nation group must be dealt with separately and uniquely;
- Funding is made available to support capacity-building to understand the Project.

Objectives<sup>4</sup> in working with First Nations are aimed at:

- Effective, proactive, and responsive communications;
- Continuous dialogue and exchange of information about the project;
- Timely and transparent consultations to meet the needs of local communities;
- Appropriate consultation programs and methods for each First Nation;
- Accurate documentation of all communications;
- Communications between the company and First Nations are publicly known;
- Appropriate commitments to First Nations during all phases of the Project.

#### V. INTERACTIONS WITH FIRST NATIONS COMMUNITIES

There are many aspects to the design and implementation of a successful program of interaction with First Nations. It must begin with the establishment of trust and respect. Without those concepts lying at the root foundation of the program, significant difficulties will result. Four central components make-up the plan: education, empowerment, engagement, and partnership.

##### a) *Education: Capacity Building*

In the context of a community, education goes far beyond each citizen mastering a profession or becoming a skilled worker.<sup>21,22</sup> From a broad perspective, education involves a process of becoming more knowledgeable about oneself and one's surroundings by gaining awareness of issues, challenges, and opportunities that present at the micro- and macro-levels in a community or region.<sup>23</sup> This provides new opportunities to make informed decisions to positively affect the development of individuals as well as the society in which they live.<sup>23</sup>

Many mining companies and other organizations understand the relevance and role of using education to improve a community's quality of life. However in many cases, the approach taken is short-sighted and remains in the realm of developing technical skills or learning a trade or art form. While technical learning and developing a profession are important, if these are the only learning forms, it may result in an indoctrination that leads to a dependency rather than freeing individuals to think for themselves. In support of this argument, while working with northern communities in British Columbia, Chouinard<sup>21</sup> found that:

1. The objectives of education must be valuable, useful, and meaningful to the learners;

2. The process of developing such programs must involve cycles of action and reflection with input from the intended learners;
3. Retention of information occurs through an experience of knowledge presented in a culturally-based framework informed by stories, experiences, teachers, places, values, histories, and materials.

Education must be viewed as means to assist a community by bringing matters to the people's attention and preparing them for knowledgeable and empowered action – the next step.<sup>24</sup>

#### b) Empowerment

Working with communities involves creating a friendly, honest space in which people can voice their ideas and opinions and develop their potential.<sup>24</sup> From an organizational viewpoint, companies must strive to assist local community members to develop a stronger belief in their own personal power and that of their group. Empowerment helps build confidence and makes the intended learners realize their input and participation are vital components of the process, and that such efforts contribute to a better future for themselves and their community.

Empowerment is the process whereby individuals and groups acquire power to influence issues that affect them and their communities. In other words, it provides people with a "greater sense of worth and personal control to recognize they can participate with others to influence conditions that affect them".<sup>24</sup> Mining companies must understand this aspect and work towards its fulfillment even if it means sharing some of their future decision-making authority.

#### c) Engagement

While education is the gateway to empowerment, empowerment in turn leads to active and meaningful community engagement. Note that engagement must occur after or at least at the same time as empowerment. Community engagement includes all processes that involve the public in problem-solving or decision-making to use public input to make more informed "smart" decisions.<sup>25</sup> Some people refer to this collective input as "Swarm Intelligence".<sup>26</sup>

For community engagement to be truly meaningful the following aspects are vital: building trust; informing; consulting with; collaborating with; and continuing to empower the community.<sup>25</sup> Table 1 presents a community engagement continuum outlining the company and community roles at different levels of engagement.

Public involvement in mining-related decision-making and management processes is an important factor to enhance the legitimacy of the industry; to develop public trust in the ability and desire of a mine to conduct its business in an environmentally-responsible manner; and to improve the quality of the decision-making.<sup>27</sup> Community engagement is not stakeholder consultation.<sup>28</sup> Community engagement, in the context of the mining industry, involves the process of building a collaborative relationship with local people and organizations that will be or are affected by the mine operation and which engages a wide range of community members, focusing on long-term outcomes.<sup>29</sup>

Table 1 : Community Engagement Continuum

COMMUNITY ENGAGEMENT CONTINUUM					
LEVEL OF COMMUNITY INFLUENCE ON DECISIONS					
Engagement Level	Inform	Consult	Participate	Collaborate	Empower
Company Role	Provide local citizens and organizations with clear information to assist them to understand and present the opportunity challenges.	Ask and listen to the community on specific issues; obtain feedback on alternatives and solutions.	Include the community in planning and implementation of projects; ask community for opinions on how they would approach the project.	Work with the community to find solutions; partner with the public to find alternatives, to implement projects and to identify preferred solutions.	Help develop the skill levels of community members so they play active roles in community decisions; Co-authorize all final decisions with the local community.
Community Role	Passive	Reactive	Participative	Co-ownership	Leadership

Source: adapted from *Infrastructure Planning and Natural Resources (IPlan)* ([www.iplan.nsw.gov.au](http://www.iplan.nsw.gov.au))

It involves creating a welcoming environment where community members feel comfortable in participating and sharing ideas and where they are convinced that their contribution matters. It does not simply involve being present at community meetings. It does not simply involve providing funds to the community to "conduct studies" independently. On the contrary, it must include real and direct involvement in community issues to gain an understanding of their complexity; and to be willing to play a role in enhancing the community's overall quality of life. And this must occur in a collaborative fashion without coercion or a patronizing attitude. Proper community engagement must be inclusive ensuring minorities in the community (the elderly and women) are engaged and active participants.

One group, whose voice is often not heard, especially in male-oriented societies, is that of women. At a 2003 conference on Women in Mining held in Papua New Guinea, a survey on the negative and positive impacts of mining on women was distributed amongst the delegates – over 67% of the respondents identified violence, alcoholism, prostitution, sexual abuse, and social/family disruption as the most harmful impacts<sup>30</sup>, and 40% chose cultural/tradition degradation, health deterioration, and failure to include women in decision-making. The social-economic consequences of a mine operating and closing are strongly felt by women and their families, and long-term strategies must ensure that women participate at every stage of the plan.

To reiterate, engaging with the community involves more than simply consulting or eliciting feedback on certain matters. In the engagement process, people must be seen as, and must feel that they are active participants – educated and knowledgeable enough to influence the direction and future of their community.

#### d) *Partnerships*

In addition to fostering community and stakeholder engagement, partnerships function as a mechanism to help fully-develop a local community. Participatory capacity-building activities help communities make informed choices and learn to take control of their own development needs. These activities are an effective way to reduce a developing dependency on the mining company.<sup>31,32</sup> Partnerships provide guidance to mine managers on how to maximize opportunities for communities impacted by a mine operation by successfully delivering social projects, distributing funds from the company in an appropriate manner, and establishing partnerships and alliances with outside agencies.<sup>31</sup> A partnership is an important mechanism to build constructive relationships with local communities since it fosters cooperative community development.<sup>31</sup> Partnering with members of

a local community enables a company to develop not-for-profit competencies such as legitimacy, awareness of social forces, distinct networks, and specialized technical expertise.<sup>31</sup>

#### e) *Planning*

Nowadays, creating a mine must include a plan for mine closure to be developed even prior to the mine beginning to operate. It is an on-going process that starts in the exploration phase and becomes increasingly more concrete and detailed as the project advances towards development.<sup>33</sup> A mine closure plan must also include a social component; it must go well-beyond adequate financing; concrete targets; sound evaluation; and monitoring to include impacts on the local economy after the mine has closed.<sup>28</sup> Over the lifetime of the mine, new technologies are developed, community expectations change, and legal and political frameworks evolve, so closure plans must incorporate elements of flexibility and dynamism into its process.

Within the context of community development, planning exists to assess the current situation and to define strategies and implement actions to improve the quality of life of all community members. One of the major challenges in community development and mining relates to community access since many mining communities are located in regions with rudimentary or non-existent roads. Some are only reachable by boat or airplane as with Aboriginal communities in the Northwest Territories. In addition, many communities lack basic infrastructure such as adequate housing, electricity, or potable water. Such challenges increase the difficulties for a mining company to be present in the community all the time. To improve this situation, some companies have hired a community liaison officer whose role involves sharing and disseminating information, and providing feedback on community-company affairs to both the mining company and the community. However, the existence of a community liaison representative does not eliminate the importance of having a senior company official with decision-making authority, present in the community.

## VI. IMPACT OF ABORIGINAL ISSUES ON MINING PROJECTS

During the 1970's Canadians began facing-up to Aboriginal issues through the strong opposition to the proposed Mackenzie Valley Pipeline. Many churches across the country created a joint coalition called Project North to advocate a meaningful place for First Nations in decision-making that affected their lives and livelihoods. Project North was founded on the "conviction that ethical and spiritual values have political implications".<sup>34</sup> During the 1990's, Project North was reborn as the "Aboriginal Rights Coalition" (ARC) and more recently, it morphed into the "Idle No More" movement by the Aboriginal

people themselves. A major change in focus was the emphasis on *Partnership with First Nations*. No longer were the Church groups willing to speak on Aboriginal issues without the presence of Aboriginals in the circle of decision-making. Aboriginal people became a central part of ARC. The emergence of a social activist faction in the Anglican Church of Canada in the mid-1960s played a key role in changing Aboriginal culture and communities. The Nisga'a land claim case, the first Aboriginal rights case presented to Canada's Supreme Court, gave these activists a cause to erase the stigma they felt about the theft of Native lands and freedoms. The church activists who joined the Nisga'a cause in the 1960s were motivated in part by a deep regret about the actions of their missionary ancestors.

#### *Kitsault Mine, B.C. (molybdenum) 1980/2014*

The Kitsault Molybdenum mine has been a hot topic since the late 1970s. First, the mine was approved to conduct marine tailings disposal in 1980 by an Order in Council just prior to a federal election call. There were no Environmental Assessments or public hearings. Secondly, the mine practiced a highly controversial method of tailings disposal by discharging tailings into a deep (400m) pothole at the bottom of Alice Arm. The Nisga'a Nation together with the Anglican Church fought long and hard to prevent this mine, but to no avail. It operated for about two years before closing due to low metal prices.<sup>34</sup>

In 1980, the Nisga'a Tribal Council learned about AMAX Canada's plan to dump tailings into Alice Arm, a major Nisga'a fishing area. Both the federal and provincial governments quietly issued permits allowing dumping without environmental or social review, and so Project North carried the campaign to the national level. Anglican activists purchased AMAX shares and turned them over to a Nisga'a delegation to attend the shareholders' AGM in New York in 1981<sup>35</sup> and present a motion against the dumping. The motion did not pass, but it may have influenced the decision to mothball the mine a few months later when the molybdenum price fell.

In 1996, the Nisga'a Tribal Council signed an agreement that came into effect in 1998 shortly after the provincial government agreed to join the federal government in negotiating land claims. The Nisga'a Treaty involved a cash payment of \$190 million dollars over a period of time; establishment of a form of self-government much akin to a municipality over 2,000 km<sup>2</sup> of land in the Nass Valley; as well as certain entitlements to migratory salmon and wild animal stocks (moose, caribou, etc). Over the years, the Nisga'a garnered significant added concessions – control of their own school district and their own health care system. They created a profitable investment and enterprise development organization; generated a Nisga'a college; and completed a major survey of land use and ownership in the claims areas. They have significant

input into decision-making through participation on several regional planning boards.<sup>35</sup>

In 2012, a junior mining company called Avanti Mining acquired the Kitsault Mine site and began mine-planning. The permits from 1980 were still in place, but despite being legally exempt from the BC Environmental Assessment process, Avanti voluntarily opted into the assessment process because of a strong track record of BCEAO in addressing aboriginal and treaty rights and the company's desire to gain support from the Nisga'a.<sup>36</sup>

The project places environmental assessment obligations on both B.C. and Canada under the Nisga'a Final Treaty Agreement since the operations could have negative environmental, social, economic, and cultural effects on Nisga'a people. It has been argued by some that B.C. did not complete all the terms required by the Nisga'a Treaty, and rushed the approval through to issue an Environmental Assessment Certificate for the project in March 2013. The Nisga'a Nation, although not opposed to the mine itself at this point, entered into court proceedings to require the province to perform the assessments required by the treaty. Looking at the BCEAO web site, considerable information is available on all matters of substance and opportunities were obviously available for the public and the Nisga'a to participate, but the lawsuit may yet result in significant delays in bringing this project on-stream in a timely manner.<sup>37</sup>

#### *Kemess North, B.C. (Cu/Au) 2007*

Kemess is an open-pit copper/gold deposit, located in northeast B.C. It was owned and operated by Royal Oak Mines from 1994 to 1999 when it was purchased by Northgate Minerals. Northgate operated the mine until 2011 when it was taken over by AuRico Gold.

As the mine continued depleting its southern orebody in the mid-2000s, Northgate realized that the North Kemess orebody needed to be developed to sustain the operation. Part of the plan involved changing the approach to tailings disposal. Instead of pumping tailings up a steep slope to an expanded tailings dam, the company examined a plan to dispose of the material into a nearby lake. The CEAA undertook an assessment of the project in 2006-2007. First Nations are well-removed from the site, but several bands claimed the lake had important spiritual value to their traditional and cultural rights. Accordingly, in 2007, the CEAA Panel ruled against the mine on the basis of this "spiritual value" and on the fact that the lake would be contaminated.<sup>37</sup> The mine closed soon after. AuRico is currently considering developing an underground block cave mine using the existing South Kemess Open Pit to store tailings which is already permitted. This expansion can be brought on-stream without the need for CEAA or BCEA environmental assessments or First Nations oversight, but underground mining is more costly than an open pit.



*Arctos Anthracite Mine, B.C. (coal) 2013*

Fortune Minerals Ltd. is a junior Canadian mining company focused on developing the Arctos Anthracite Project in northern B.C. – one of the world's premier metallurgical coal deposits. The proposed mine would produce premium-grade anthracite coal for steel manufacturing and metals processing. The project is a joint venture between Fortune (80%) and POSCO Canada Ltd. (20%), a subsidiary of POSCO in South Korea – one of the world's largest steel producers.

Despite saying all the right things about establishing positive working relationships with Aboriginal peoples and contributing to their social, cultural, and economic well-being, the company has been "banned" from the traditional land by the Tahltan Nation.<sup>39</sup> The company says they believe involvement of local First Nations is essential to ensure the project achieves the highest standards of environmental stewardship and cultural and heritage protection. "Every person that works for or represents the Arctos project will know that we truly value our relationships with Aboriginal peoples and that it is our responsibility to be respectful, to be good listeners, learners, colleagues, business partners and neighbours." Local First Nations will be given priority consideration to access employment, training, business, and contracting benefits and opportunities that the project will generate. However, First Nation leaders are angered by reports that company officials have directly approached reserve residents to promote the mine, thus by-passing band leaders. The Tahltan say they oppose development in an area known as the Sacred Headwaters – the source of three major salmon-bearing rivers: the Skeena, Stikine, and Nass. This place is considered by Aboriginals to have extreme cultural value.<sup>40</sup>

*Morrison Mine, B.C. (Cu/Au/Mo) 2011-2014*

Pacific Booker Minerals (PBM) owns the Morrison property (a porphyry copper/gold/molybdenum deposit) in central B.C. 35 km north of Granisle. The site is located very near two former producing copper mines, Bell Copper and Granisle Copper. The area has a long tradition of mining. PBM began working on the property in 1998 and purchased the entire resource from Noranda in 2004 and finalized payments in 2006.<sup>40</sup>

On October 14, 2008, the Lake Babine Nation (LBN) issued a media news release stating that "it is withdrawing from dialogue...due to serious concerns regarding Pacific Booker's conduct." LBN asserted that "PBM continues to offer us Capacity Funding but we haven't seen a dime" and they accused the company of improperly questioning "our members about our confidential traditional uses without asking permission." They claimed the company was trying to dictate who is allowed on the LBN negotiating team and called this action "disrespectful".

On Oct. 23, 2008, the Minister of State for Mining announced the Province has authorized revenue-sharing with First Nations on new mining projects to be set at 37% of royalties. PBM announced on November 6, 2008, they had entered into an agreement to provide the LBN with Capacity Funding to participate in the EA process, improve communications, share information, address specific concerns, and commit to work together to build a long lasting and mutually supportive relationship. "This is a good first step in our relationship of mutual respect", stated Chief Betty Patrick, "and we look forward to entering into many more agreements with PBM, including an Impact and Benefits Agreement." On January 5, 2009, PBM submitted a Statement of Claim in the BC Supreme Court for the "damaging and allegedly defamatory press release by the LBN on October 14, 2008". On October 22, 2009, the company discontinued its proceeding against the LBN following election of a new Chief and Band Council.

The company completed a \$6.0 million Environmental Assessment Statement and submitted an application for an Environmental Assessment Certificate to the CEAA and the BCEAO in July 2010. On August 20, 2012 (*day 763 of the 180-day review period*) the BCEAO completed the environmental assessment and submitted their report to the Ministers for a decision. On October 1, 2012, the application was jointly rejected by the BC Minister of Energy and Mines and the BC Minister of the Environment on the recommendation of the Executive Director of the BCEAO, despite the fact that the assessment report concluded that the project "does not have the potential for significant adverse effects on the environment" and that the First Nations consultation process was "carried out in good faith"; was "appropriate and reasonable in the circumstances"; and was sufficient to "maintain the honour of the Crown".<sup>40</sup>

In April 2013, PBM petitioned the BC Supreme Court to set aside this decision. The company believed the government had overlooked many of the report's conclusions; PBM claimed that Executive Director's recommendation was based in part on a "risk vs. benefit" test introduced after the report was completed and that PBM was not given an opportunity to address this new test. This analysis was not part of the assessment Terms of Reference; it was not applied previously to other projects; and it was inconsistently applied to other projects since the Morrison decision. The Company believed this situation failed to meet the tenets of "procedural fairness". A second part of the BCEAO recommendation was based on a statement that "the project was opposed by Gitksan and Gitanyow Nations and LBN".<sup>40</sup>

On December 9, 2013, the BC Supreme Court released its judgment regarding PBM's challenge. The judge quashed and set aside the Ministers' decision and ordered PBM's application to be reconsidered. He also

awarded costs. As of April 2014, an appeal of this decision has not been made by the Crown and a decision on the resubmitted application has yet to be announced.<sup>40</sup>

#### *New Prosperity Mine, B.C. (Cu/Au) 2010/2014*

In recent times, one of the most hotly-debated projects in B.C. is Taseko Mines' New Prosperity project near Fish Lake in the Cariboo-Chilcotin. Virtually all First Nation leaders in the region are vehemently opposed. The New Prosperity project is the tenth largest undeveloped gold-copper porphyry deposit in the world. It will result in the following economic benefits:

- Direct capital expenditures of \$1.5 billion over the project life;
- Production revenues over \$11.0 billion;
- Employment totaling 71,000 person-years directly and indirectly (over 3,000 new jobs);
- Additional consumer spending in B.C. of ~\$9.0 billion;
- Investments in construction, machinery, and equipment by others of ~\$3 billion;
- Increased total tax revenues of \$9.8 billion;
- Total monetary cash flow through the economy of over \$35 billion.

The BCEAO review concluded that the environmental issues were justified on balance when considering the incredible value of the project. However, the CEAA review of the project which took place in 2009-2011 concluded that significant adverse environmental effects will result from the plan to deposit waste rock into Fish Lake – a 1 km<sup>2</sup>, 12m deep lake with an over-stocked fish population and so the Canadian government rejected the project.<sup>41</sup> As it turned out, the lake was considered "sacred" by First Nations. The former Chief of the Alexis Creek Band and Tribal Chief of the Chilcotin Nation, Ervin Charleyboy, said "if Fish Lake is drained it will be over my dead body". Taseko proposed to mitigate the impact by creating an adjacent artificial lake stocked with healthy rainbow trout to create an aquaculture business for First Nations people, but the idea of destroying a lake created significant opposition from all parts of the province and around North America.

On the invitation of the government of Canada, Taseko resubmitted a new mine plan for review in October, 2011.<sup>42</sup> This plan added \$300 million to the capital costs to prevent contamination of Fish Lake, protect it, and preserve it in-perpetuity. Following the issuance of details of this new plan, Ervin Charleyboy changed his position saying he recognized that the new plan will save Fish Lake and his people needed jobs and training. Here are some relevant quotes from some of the First Nation leaders in the Cariboo-Chilcotin:

Ervin Charleyboy: "I was a chief for 20 years in my community and I don't see any employment for the people... (I) see my young people living from welfare cheque to welfare cheque every month. After logging, we will have nothing...now this new proposal came out, I see things differently...environmentally, I don't think it's going to hurt anything...I took some Elders to Gibraltar mine last fall...They're planting grass. They're planting trees. And you couldn't even tell if there's a mine there because of all the re-growth going on and there's reclamation...My Elders were quite impressed with that...I hear so much about our way of life, our culture, and I'm sorry to say that our way of life went out the back door the day we accepted welfare cheques on reserve. It just saddens me to see our young people...waiting from month-to-month on \$185 that they get from the welfare...We have nothing on the reserve...Why don't the Chiefs sit down with Taseko Mines and talk...about...impact, benefits, partnership...the Chiefs, they're talking about consultation. Who is going to consult with you when you don't want to talk?"

Bernie Mack: "As a leader, you sometimes have to tell people what they need to hear, not what they want to hear."

Percy Guichon: "In my time as chief I never – we've never sat down with Taseko to discuss any types of compensation because the chiefs, as a whole, TNG, have always opposed the mine. So we haven't even gone there yet. We're at the panel hearings again, to reject the proposal and there ha(ve) been no other discussions beyond that."

The second Panel hearings took place in July and August 2013, with the release of an assessment report on Oct. 31, 2013.<sup>42</sup> The report concluded that this mine plan would also create significant adverse environmental impacts: on water quality in Fish Lake; on fish and fish habitat in Fish Lake; on current use of lands and resources for traditional purposes by certain Aboriginal groups; and on their cultural heritage. In essence, the Panel did not believe that Taseko could protect the lake using the plan they derived with a number of BC-based engineering firms.

In December 2014, Taseko petitioned the Federal Court to commence a Judicial Review of the CEAA Panel decision.<sup>44</sup> The company claimed that in making its decision, the Panel relied on a report from Natural Resources Canada (NRCan) that predicted seepage from the Tailings Storage Facility (TSF) would be 11 times higher than the estimate of Taseko and its consultants. Taseko claimed that the basis for the NRCan prediction came from a model that bears little to no resemblance to the TSF design that was presented to the Panel.<sup>44</sup> Furthermore, Taseko claimed that meetings were held between government officials and

the opponents of the mine (mainly Aboriginal leaders) prior to the final decision by the Minister of the Environment in March 2014 and that Taseko had no knowledge of these meetings and were given no opportunity to respond to what was discussed. This may represent "procedural unfairness" in the assessment process.<sup>45</sup>

#### *Gahcho Kue Mine, NWT (diamonds) 2014*

Aboriginals in the Northwest Territories are urging the federal government not to approve a new diamond mine as it is currently proposed. The Gahcho Kue mine, a joint venture between De Beers and Mountain Province Diamond, is situated about 300 km east of Yellowknife and southeast of De Beers' Snap Lake diamond project. The project passed an environmental review in March 2014, but three Inuit communities say the company's plans to reduce impacts on the environment are insufficient. To mine the ore body, the southern part of Kennady Lake is to be drained. Following mining, the lake will be restored. The project's critics say the review does not address their concerns about water quality, caribou, or the future of Kennady Lake. They say there is no clear benefit to people in the area. They have asked the Minister of Aboriginal Affairs and Northern Development to order a further review of the project.<sup>46</sup>

#### *Nechalacho Mine, NWT (rare earth elements) - 2014*

Rare earth metals are a collection of 17 elements used in high-tech devices such as batteries, magnets, wind turbines, cell-phones, electric cars, flat-screen televisions, and missile guidance systems. There is a global rush to discover and process new rare earth deposits as most of the world supply comes from China where there are signs of limiting export. The chief of the Deninu K'ue First Nation in Fort Resolution, NWT, has questioned Avalon Rare Metals' plans to build a processing plant outside NWT. Avalon recently announced it is considering relocating its hydrometallurgy plant to treat concentrate extracted from the proposed Nechalacho mine. Chief Louis Balsillie claims Avalon waited until it had received regulatory approval before making this news public. He says Avalon did not inform the band and the territorial government about this option before approvals were granted.<sup>47</sup> In its feasibility study, Avalon said about 300 jobs would be created in the NWT - about 80 of which are in the hydrometallurgy plant. The prospect of these jobs helped Avalon gain co-operation of the Deninu K'ue. Avalon intends the Nechalacho mine to be operational by 2017, but this opposition places doubt on this start-up date.<sup>47</sup>

#### *Ring of Fire, Ontario (chromite/Cu/Ni/PGMs) - 2014*

The discovery of a very significant chromite-Cu-Ni-PGMs sulfide deposit 400 km north of Thunder Bay offers exciting potential for the future development of Northern Ontario. The deposit is enormous, perhaps

rivaling the Sudbury Basin Cu-Ni ores in size and grade. A total of 12 First Nation communities are located in close proximity to the site. The former Leader of the federal Liberal Party, Bob Rae, resigned his seat in the House of Commons and is now representing the First Nations in their negotiations with the Crown (Ontario and Canada).

A decision by Cliffs Natural Resources in August 2013 to suspend operations on its chromite deposit in the Ring of Fire because of delays with infrastructure approval has sent waves through the mining sector. Some say it sends a bad message about Ontario, but others believe it could provide the impetus to move forward. A junior mining company called Noront is in a position to bring one of the major parts of the deposit on-stream and they are actively developing their relations with First Nations in a very proactive, consultative, and cooperative manner. Their mine plan is extremely innovative. Automation is a major feature of the underground mining plan with virtually no material being stored on surface. Processing will take place underground and concentrate will be transported by pipeline to an existing railhead about 20 km away. All waste material will be stored within the mine to allow continued mining using a cut-and-fill technique. Tailings will be used as paste backfill.

Key issues are the settlement of land claims with the federal government and the sharing of ore values with First Nations communities to provide significant infrastructure and on-going benefits. There is a huge opportunity for nation-building in the north – the values in the ground are estimated at this point to be over \$60 billion. It will indeed be interesting to see how the project moves ahead and if new approaches to resource development by First Nations and new Canadian mining companies are undertaken.<sup>48</sup>

## VII. POSSIBLE WAY TO IMPROVE THE SITUATION

In a recent Fraser Institute report<sup>49</sup>, a comparison has been made between how mineral rights and claims are handled in Canada and in the United States. In Canada, minerals are reserved by the provinces, while in the US minerals are either associated with surface ownership (primarily in the east) or reserved by the federal government (primarily in the west). Furthermore, in Canada mineral rights are retained by the Crown (i.e., the provinces) who issue leases to interested parties to mine at a particular site; while mineral rights are privately-owned in the US. The report suggests that by changing to a private sector model, the door would be opened for First Nation groups in Canada to buy into ownership of the mineral rights on their traditional lands and, in this way, partnerships with mining companies could develop to speed up the

assessment process.<sup>50</sup> While this is an interesting idea, one must wonder where the First Nation will find the funds to make these purchases assuming they are even interested in making such investments.

## VIII. CONCLUSION

It is clear that the impact on the Mining Industry of the needs, concerns, and objections of Aboriginals in Canada cannot be taken for granted. Dealing with these issues requires skills that many companies are still grappling to develop and learn. Local First Nations communities want reassurances about environmental protection, about protection of their traditional rights and titles, about their engagement in the decision-making, and about becoming partners in new resource extraction enterprises. Companies must develop approaches to educate, to empower, to engage, and to partner with these groups. Education and engagement seem to be moving forward, but empowerment and partnership appear to be major stumbling blocks. The requirement to consult on such projects rests with the Crown – provincial (or territorial) and federal. In B.C., a revenue-sharing formula has emerged from the province, but reconciliation with the federal government over historical wrongs committed in the past remain outstanding. Furthermore, the First Nations want more than simply sharing in government revenue from these projects – they want to be part of the mining process beyond employment and hand-outs. Until these issues are resolved, each new project is likely to undergo serious delay and conflict that in many cases may lead to rejection of the project. Canadian mining companies need to develop an approach that promotes sustainable development of aboriginal and non-aboriginal communities specifically addressing the question of Sharing the Wealth among shareholders, operators, governments, and First Nations.

## IX. EPILOGUE

To end this paper, let's return to Chief Dan George. Although his speech was a heart-broken a passionate expression of sorrow about how Canada has treated his people over the past two centuries, he ended with an important message of hope (and a challenge for all of us):

*"I must forget what's past and gone. Oh God in heaven! Give me back the courage of the olden chiefs. Let me wrestle with my surroundings. Let me again, as in the days of old, dominate my environment. Let me humbly accept this new culture and through it rise up and go on. Oh God! Like the thunderbird of old I shall rise again out of the sea; I shall grab the instruments of the white man's success-his education, his skills- and with these new tools I shall build my race into the proudest segment of your society."*

- from Lament for Confederation, Chief Dan George, July 1, 1967.

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