A wide-angle photograph of a mountain range at sunset. The sky is a mix of orange, yellow, and blue, with the sun low on the horizon. The mountains are layered, with the foreground in deep shadow and the background peaks catching the light of the setting sun. A winding river or stream is visible in the lower right foreground, reflecting the light.

True North Strong and Free?

*Working and partnering with proud unconquered people,
on unsundered lands.*

Marke Wong and Selene Nguyet

▲ The development of Canada's northern resources is described by Prime Minister Stephen Harper as the "great national dream"; however, this dream is complicated by unsettled claims regarding Aboriginal rights and title; and most recently by the challenge to the free entry system of staking of mineral rights on unsundered aboriginal lands.

Photo: Selene Nguyet

In Canada and around the world, the practice of community engagement and negotiating of agreements between resource companies and Indigenous people has been on the rise. In many cases this has brought new opportunities and a renewed hope for greater independence and self-determination among aboriginal communities.

In Canada, community engagement with aboriginal communities is further complicated by something referred to as “*Indian Specific Land Claims*” – which embody Canada’s failure to address and resolve the claims of aboriginal rights and title of Canada’s first peoples¹. The latest reason for resource companies to engage aboriginal communities early is a Dec. 27, 2012 court ruling by the Yukon Court of Appeal. The decision directs the Yukon government to consult with first nations before allowing mineral exploration activities that might affect Aboriginal title or rights.

“The honour of the Crown demands that it take into account Aboriginal claims before divesting itself of control over land - What is required is that consultations be meaningful, and that the system allow for accommodation to take place, where required, before claimed Aboriginal title or rights are adversely affected.”

Ross River Dena Council v.
Government of Yukon (2012 YCA).

THE HONOUR OF THE CROWN?

The relationship between the aboriginal people of Canada and the Crown stretches back to first contact in 1497, when the British expedition of the Italian navigator Giovanni Cabota, first reached Newfoundland. Following the British conquest of New France the relationship was formalized by King George III in the *Royal Proclamation of 1763*. The Royal Proclamation is regarded by Canada’s aboriginal people as their Magna Carta, protecting their rights, recognizing them as nations, and also stipulating that only the Crown could acquire their lands, and only through a treaty. Today the Royal Proclamation of 1763 lives on in Subsection 35 (1) of the Constitution Act, 1982 which provides that “the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed.”

“Put simply, Canada’s Aboriginal peoples were here when Europeans came, and were never conquered. Many bands reconciled their claims with the sovereignty of the Crown through negotiated treaties. Others, notably in British Columbia, have yet to do so. The potential rights embedded in these claims are protected by c. 35 of the Constitution Act, 1982. The honour of the Crown requires that these rights be determined, recognised and respected.”

Haida Nation v. British Columbia
(Ministry of Forests), (2004 SCC).

The Duty to Consult and the Free Entry System

The duty to consult exists to ensure that the Crown does not ignore Aboriginal claims. The Crown’s duty to consult is triggered when a Crown action or decision has the potential to adversely affect Aboriginal and treaty rights. The Crown cannot delegate its responsibility to consult; and although the crown may delegate certain procedural aspects of consultation to industry; the ultimate responsibility rests with the Crown.² Aboriginal peoples also have a reciprocal duty to negotiate in good faith during the consultation process.³ While there is no duty to agree upon a settlement there is a duty to engage in a meaningful process of consultation; as well as, a responsibility to use established regulatory procedures to address their concerns about development projects.⁴

Some provinces and territories have a “free entry” system for mineral exploration. The system is designed to encourage prospecting and sustain a viable mining industry. In a December 27, 2012 court ruling the Yukon Court of Appeal Justice J.A. Groberman held that the duty to consult is triggered by the mere recording of a mineral claim which has the potential to impact aboriginal title, given that such title includes mineral rights; and “*where Class 1 exploration activities will have serious or long-lasting adverse effects...[t]he affected First Nation must be provided notice...and, where appropriate, an opportunity to consult prior to the activity to take place.*”⁵

This ruling is predicted to have far reaching consequences not only in the Yukon, but particularly in BC where most of the province remains unceded aboriginal territory; and underscores the importance of developing effective partnerships with aboriginal peoples.

Partners of Choice: Sectoral Agreements

The recent publication by Natural Resources Canada (2012) entitled “*Agreements between Mining Companies and Aboriginal Communities or Governments*” lists 175 various types of sectoral agreements. In the Northwest Territory, for the non-treaty First Nations such as the Akaitcho Dene First Nations one of the very first agreements came in 2009; in the form of an Exploration Agreement with ATW Resources Ltd.

1. Chief Justice Sinclair (2007) Canadian Aboriginal Mining Association (CAMA) Conference, Vancouver, B.C.
2. Haida, supra note 5 at Para 53.
3. R. Vs. Douglas, 2008 BCSC 1098 at para. 51 [Douglas]; and see Haida, supra note 5 at para. 42.
4. Brokenhead, supra note 119 at para. 42.
5. Adkins S. and T. Issac (2012). Aboriginal Law Update: Ross River Dene Council v. Government of Yukon (YKCA)

“By using this model in the Chief Drygeese Territory, we have an agreement that gives certainty to the First Nation and ATW. The company can conduct its exploration activities, but we know our values and objectives are going to be respected – With this agreement with those that follow we are creating a new relationship between industry and the First Nation – no longer will consultation be an unknown process. It will have defined responsibilities for both sides, allowing the company to undertake their work while at the same time protecting the values that we hold dear.”

Chief Edward Sangris,
Yellowknife Dene First Nation (YKDFN) (Dettah) ⁶



◀ ATW Resources Ltd. hosts a community lunch gathering with Lutsel K'e Dene First Nation a community in the North Slave region of the Northwest Territories. Initial consultations led to the very first modern mineral exploration land use agreement with the Yellowknife Dene First Nation and for the Akaitcho Territory Government.

Photo: Marke Wong

In 2011 members the Dehcho First Nation, signed Impact Benefit Agreements (IBAs) with Canadian Zinc for the Prairie Creek Mine.

In the Yukon, one of the first agreements for mineral exploration on settlement land of the self-governing Teslin Tlingit Council (TTC) was with Tarsis Resources Ltd., a sister company of ATW Resources Ltd. Early demonstrations of respect helped Tarsis gain the formal consent of the TTC through a land use permit; and helped manage community expectations.

“We understood this was a relatively small early stage project. Tarsis still took the time to demonstrate respect, recognize our interests and accommodate our values. They worked with our people to help build our capacity and in doing so they became our partner of choice.”

Peter Johnston, Chief Teslin Tlingit Council ⁷

Tarsis employed several local TTC members on the project and helped one successful First Nation's company get its start; and the Tescon Development Corporation continues to work in the mining sector across the Yukon today. *“Ralph has never let me down - he's one of our most reliable contractors”* - said Marc Blythe, President and CEO, of Tarsis Resources Ltd.

6. <http://www.marketwire.com/press-release/ATW-Resources-Ltd-First-Nation-Formally-Supports-Mineral-Exploration-Project-1001676.htm>

7. Peter Johnston, Chief (2008-12), Deputy Chief (2005-09) Teslin Tlingit Council



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▲ Ralph Smarch of Tescon Development Corporation worked with Tarsis on their first project on Teslin Tlingit Council Category B Settlement lands. He continues to work in the mineral exploration and mining sector today on projects across the Yukon.

Photo: Tescon Development Corp (867.332.4017)

The positive experience with Tarsis helped the TTC shape their own mineral exploration and mining policy; and it built trust between the two parties that resulted in closer collaboration on related interests; including sharing technical expertise to help TTC's resource development caucus on planning issues; as well as, supporting the TTC Lands & Heritage Department.

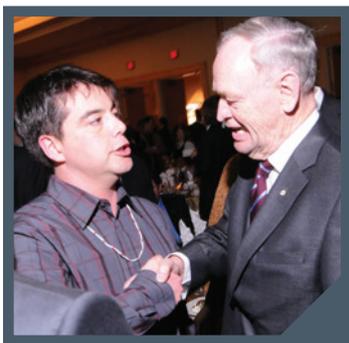


◀ Richard Mueller, Teslin Tlingit Council Environment Officer (standing) and Selene Nguyet of Tarsis Resources (in foreground) get a briefing from Yukon Water Resources Inspector Colin Remillard regarding a tailings discharge from a mine site within the traditional territory of the Teslin Tlingit Council.

Photo: Marke Wong

► Chief Peter Johnston of the self-governing Teslin Tlingit Council (left) shares a moment with former Prime Minister Jean Chretien during the 2010 Association for Mineral Exploration Roundup conference held annually in Vancouver.

Photo: Brian Dennehy/AME BC



The Minto Mine, owned by Capstone Mining Corp. is unique as it is located on Category A Settlement Land of the self-governing Selkirk First Nation (SFN). The SFN negotiated their own surface lease agreement (SLA) with Capstone Mining Corp.; and one hundred per cent of the royalties are transferred to the Selkirk First Nation.⁸

8. <http://www.gov.yk.ca/news/12-185.html>



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Since 2008, the Minto Mine is reported to have paid \$12.6 million in royalties.⁹ Some of the benefits include an early childhood development centre and a new water-treatment plant in Pelly Crossing; in addition the company paid a one-time dividend of \$15,000 to some 600 citizens¹⁰



◀ Tarsis Resources meets with Chief Darin Isaac (top right) and Council of the Selkirk First Nation at a community meeting for industry in the town of Pelly Crossing. Selene Nguyet, community engagement specialist (far left) and Marc Blythe, President & CEO (second from left).

Photo: Marke Wong

Other examples in the Yukon include Ross River Dene who have an MOU with Ketza River Holdings; and in 2010 The Na-Cho Nayak Dun government and Victoria Gold came to agreement on an impact benefit agreement on the Eagle Gold Mine. Mine construction is planned for April 2013.

“...they are our partners, essentially...When I go into meetings with the Environmental Review Board, sometimes the Chief comes with me just to show the support of the First Nation, and I think that’s pretty unique.”

John McConnell, President & CEO, Victoria Gold ¹¹

More recently, in 2012 the Tr’ondëk Hwëch’in government signed a socio-economic agreement with Golden Predator regarding the Brewery Creek Mine; and Kluane First Nation signed a cooperation agreement with Prophecy Platinum.

In BC a sister company of Tarsis Resources worked on early stage agreements with the Nicoamen and Westbank First Nations; and provided training and capacity building opportunities with the Upper Nicola and Upper Similkameen Indian Bands.

▶ Casey Holmes (left) a natural resource technician from the Upper Nicola Indian Band gets some hands on hydrological monitoring training from Gary Van Emmerick a hydrological technician on a near term gold project in BC.



Photo: Selene Nguyet

On January 29, 2013 the Ktunaxa Nation became the most recent First Nation in BC to sign a revenue sharing agreement with the Crown, in this case regarding mineral tax royalties from the coal resources of the Elk Valley. The three previous agreements include those signed by the McLeod Lake Indian Band (August 25, 2010) and the Nak’azdli First Nation (June 12, 2012) regarding the Mt. Milligan Mine; and the Stk’emlúpsenc of the Secwepemc Nation (August 24, 2010) regarding the New Afton Gold Mine, near Kamloops, BC. The Stk’emlúpsenc will receive about one-third of the royalties, estimated at approximately \$30 million over the life of the project.

One of the important factors for communities is the ability to participate in economic opportunities through employment and contracting. Preparation for this can begin in the early stages of mineral exploration; and skills training programs for environmental officers, camp managers, exploration assistants, drilling assistants and core technicians are available at various institutions across the country. Some training programs such as Northwest Community College School of Exploration and Mining¹², BCIT Aboriginal Mineral Training Program¹³ and the BC Aboriginal Mine Training Association¹⁴, the Yukon Mine Training Association¹⁵, Aurora College¹⁶ and Nunavut Arctic College¹⁷ have programs that are specifically geared towards aboriginal job readiness training.



◀ Marke Wong, Director of Environment and Community Affairs for Tarsis Resources Ltd., volunteers his time to teach a unit on environmental assessment to a class of aboriginal students at the Northwest Community College School of Exploration and Mining, based in Smithers, BC.

Photo: Selene Nguyet

▶ Eldridge Johnny a White River First Nation member working as a core technician on the Tarsis Resources’ White River Project, located in southern Yukon.



Photo: Jay Timmerman

In order for Aboriginal communities to be able to develop effective partnerships and mutually beneficial agreements appropriate to each project stage, it is helpful to understand the differences between mineral exploration and actual mining operations. Each activity has very different potential environmental and socio-economic impacts and benefits.

THE CHALLENGE OF MINERAL EXPLORATION

“The North’s time has come” said Prime Minister Stephen Harper in his summer tour of the North; and he described the development of Canada’s northern resources as the “great national dream”. In his August 21, 2012 speech Mr. Harper also mentioned the importance of early stage mineral exploration efforts; and singled out Tarsis Resources Ltd. as an example of companies that are making good use of the government geoscience and mapping information; and are continuing to raise capital and make new discoveries in the Yukon despite a global economic recession.¹⁸

9. Mining royalties are a share of profits from a mine paid to the owner of the mineral rights for permitting and extraction of mineral resources. Royalties are paid every year in which the operating mine returns a profit.

10. <http://yukon-news.com/opinions/columns/30027/>

11. <http://business.financialpost.com/2012/09/16/the-eagle-is-close-to-takeoff-interview-with-victoria-gold-ceo-john-mcconnell/>

12. <http://sem.nwcc.bc.ca/>

13. <http://commons.bcit.ca/mining/minex/amte/>

14. <http://www.bcanta.ca/>

15. <http://www.yukonminetraining.com>

16. <http://www.auroracollege.nt.ca>

17. <http://www.arcticcollege.ca/>

18. http://pm.gc.ca/eng/media_gallery.asp?featureId=11&pageId=65&media_category_typ_id=1&media_category_id=20&media_id=10842

The Prospect Generator

Vancouver based Tarsis Resources Ltd. is a ‘prospect generator’, an early stage explorer of mineral potential. The company focuses on low cost grassroots mineral exploration projects such as reconnaissance and detailed surface studies in areas that have had little or no previous exploration or mining activities. The risks are greater when exploring in new areas; however, the upside is the possibility of finding something that may be large with huge potential. One of the key challenges facing prospect generators is the management of community expectations.

“It’s very important to be upfront with the communities about the project stage and what the company is able to accomplish within the scale of the project, both time wise and financially. Most exploration companies are not miners and do not generate revenues. Early stage mineral exploration is an investment in the land - the research and development to identify new mineral discoveries, which provides the materials and wealth for future generations.”

Marc Blythe, President & CEO, Tarsis Resources Ltd.

A mineral discovery does not mean a mine is going to be developed. In fact, it probably won’t be a mine because statistically, the odds are thousands to one that a project will move from mineral exploration to actual mine development. Geologic success can only come about if a company is exploring in the right geologic terrain; one that is capable of hosting a major deposit. It is estimated that approximately 90% of mineralized systems do not

contain an economic deposit; they are anomalies. Exploration companies such as prospect generators are in the business of testing these geological anomalies to determine if they may be economic. To understand how a mineral exploration project develops into a mining project, it helps to understand the project life cycle.

The Project Life Cycle

Figure 1 shows the project life cycle divided into the exploration phase and the mining phase. Knowing the stage and scale of the project is important for understanding what kinds of agreements might be most appropriate at each successive project stage.

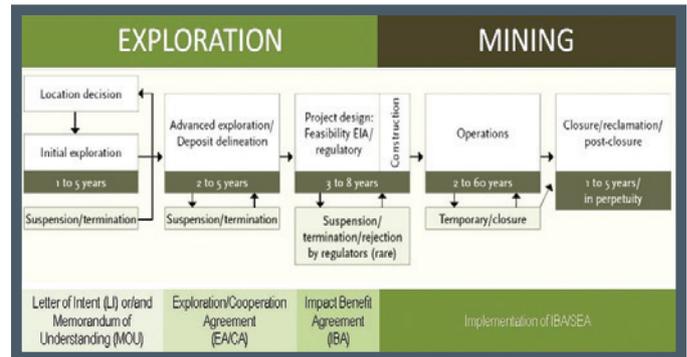


Figure 1: The Project Life Cycle and the Types of Agreements (modified from Gibson and O’Faircheallaigh, 2010).¹⁹

19. <http://www.ibacommunitytoolkit.ca/>

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The project life cycle begins with *initial exploration* which may include 1 to 5 years of prospecting, staking, target generation and exploratory drilling. This may be conducted with relatively small crews operating from fly-in or small onsite camps, with no road building and no heavy equipment. If things go well the project may move to an advanced exploration stage with a focus on deposit delineation; this may involve 2 to 5 years of definition drilling before a preliminary economic assessment (PEA) can be made. A PEA is required to understand what the mineral deposit might actually be worth. This requires an assessment of the probable mining method, processing, and capital costs plus, metallurgical recovery and local infrastructure. Tax rates, royalties, permitting, social and political issues; all have to be factored in as well. If an economic assessment of the resource is positive then the project may move to the *project design* stage; this may involve 3 to 8 years of engineering prefeasibility, feasibility and environmental social impact assessment (ESIA) studies. Only once an engineered feasibility study and ESIA are approved, can a mining permit be issued and the project move from the exploration phase to the mine development phase.

Mine development begins with *construction*; opportunities for training, capacity building, employment and contracts begin to increase in scale and this is an important time for communities to build skills and experience in anticipation of work and contracts during mine *operations* which may last as long as 50 or 60 years. During the *closure* and *reclamation* stage the project begins to scale down and ideally aboriginal partners will be the top candidates for closure and reclamation contracts.

Figure 2 shows the life cycle of a mineral exploration company and the risk associated with early stage venture capital speculation of mineral exploration vs. institutional investment of mining during production stages.

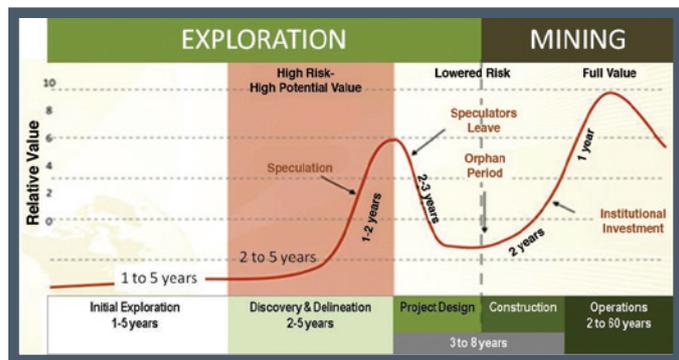


Figure 2: Project Life Cycle (modified after Cook, 2010).²⁰

One of the key differences between mineral exploration companies like Tarsis Resources Ltd. and actual mining companies is that, exploration companies have no actual revenues. Operating mines generate actual revenues from mine production and have the potential to generate new wealth not only for institutional investors but also for communities.

A DREAM FOR THE TRUE NORTH

Natural resources development in the north has become a renewed focus to meet global demand, particularly in the Asia Pacific region. Governments are preparing strategies to eliminate regulatory duplication

and streamline the permitting process; however, already the public opposition to the proposed 'Northern Gateway' oil pipeline and the rise of the 'Idle No More' movement against Bill C-45; has captured the attention of the Canadian public and the international community.²¹ Achieving a northern economic dream will face serious challenges to ensure aboriginal rights and titles are not adversely affected. Many industry proponents and aboriginal communities believe before this dream can be achieved, governments will have to 'wake up' to the reality of settling land rights and title issues with the original people of Canada.

Natural resource companies are well advised to consult with First Nations early in the process and to actively look for ways to accommodate community interests and values into the project work plan at the outset. Aboriginal peoples also have a reciprocal duty to negotiate in good faith during the consultation process.²² While there is no duty to agree upon a settlement there is a duty to engage in a meaningful process of consultation; as well as, a responsibility to use established regulatory procedures to address their concerns about projects.²³ Some communities may have unreasonable expectations of what kinds of benefits can be realized during an early stage project; or may not yet have the training or capacity for specific jobs or contracts. This can result in lost opportunities for the community and the company.

Aboriginal communities who understand the project life cycle and are ready to build effective partnerships with companies during the early stage will be better able to develop opportunities throughout the mineral exploration stage; and if a mineral prospect eventually proves to be economic; then the community will be better prepared for providing input during the mine feasibility and permitting stage; as well as, negotiating impact benefit agreements for implementation during mine construction and operation.

Working in effective partnerships for responsible resource development with industry can enhance capacity and help generate economic wealth for aboriginal communities. Here is a legitimate dream for the 'true north' and one that would help keep the land strong and free, for all Canadians.

www.tarsis.ca

20. <http://www.fmdynamics.com/2010/09/gold-miners-explorers-face-serious.html>

21. <http://www.cbc.ca/news/canada/edmonton/story/2013/01/13/edmonton-idle-no-more-west-ed.html>

22. R. Vs. Douglas, 2008 BCSC 1098 at para. 51 [Douglas]; and see Haida, supra note 5 at para. 42.

23. Brokenhead, supra note 119 at para. 42.

