

What's in a Social License to Mine?

Indigenous, Industry, and Government Best Practices for Social Innovation



1. Why Does SLO Matter?

Over last decade, Sweden witnessed an increasing level of tension over mine establishments, particularly in relation to Indigenous rights and land use. Many actors address the importance of Social License to Operate (SLO) and call for more knowledge about tools and practices to avoid or handle mining related conflicts. Funded by Vinnova, the *What's in a Social License to Mine?* Project, led by Lulea University of Technology and the University of Saskatchewan, aims at developing tools to better handle Swedish land use conflicts involving the mining industry, Sámi Reindeer herding communities, and the state by drawing on Canadian experiences. This project brief summarizes the experiences of Canadian researchers and partners involved in a comparative analysis of three Canadian case studies. Along with this brief, the project has also produced a compendium toolkit on best practice solutions for the Swedish context, developed through comparative research, learning and social innovation involving key stakeholders. This project brief identifies best practices that will help increase the Swedish mining and metal producing industry's contribution to sustainable development and assist the industry in gaining a social license to operate.

The concept of SLO is frequently used in the corporate and academic literature on mining development. There is widespread recognition that mineral developers today need to gain a SLO from local communities. In order to avoid potentially costly conflict and exposure to social risks, a social license is considered to exist when a project receives ongoing support, and the company enjoys broad acceptance from society to conduct its activities. Social licensing is a complex process that involves not only the company and the community, but also the state. Understanding current and future sources of conflict and deficits in legitimacy serves as a critical point of departure to ensuring processes of social licensing that meet the needs and aspirations of local people/communities; and,

hence, is useful for companies adopting new practices to gain local acceptance.

Exploring the SLO experience in Canada offers several unique opportunities. On one hand, like Sweden, Canada offers a comparable context in the sense that it represents a Western democracy with an economically important mining industry facing similar discussions about SLO and Indigenous peoples. On the other hand, the institutional context of Canada (i.e., regulatory framework and Indigenous rights) not only differs from Sweden but also varies among Canada's provinces and territories and Indigenous communities. This brief draws on two cases in Canada where SLO has been achieved – the McArthur/Key Lake mining operations in Saskatchewan and the Diavik mine in the Northwest Territories – and one case in which it has not – the proposed Prosperity mine in British Columbia.

2. SLO Achieved

The most advanced examples of corporate-community engagement and partnerships are found in the McArthur River/Key Lake and Diavik cases. Here, collaboration has evolved under particular challenges that, at the same time, may have opened opportunities for collaboration. In the McArthur River/Key Lake case in Saskatchewan, the company achieved government permission to extract uranium, a commodity that is strictly regulated and monitored and a subject of public opinion. An important reason was the combination of government requirements under mining surface lease agreements to provide employment and procurement opportunities, as well as company initiatives to develop agreements to share benefits. In the Diavik case, the company wanted government permission, in combination with local support, to extract diamonds at a time when power was being transferred to Indigenous nations in the Northwest Territories (NWT). Such challenges may have shaped corporate strategies and facilitated the development of truly collaborative processes. Both cases have robust

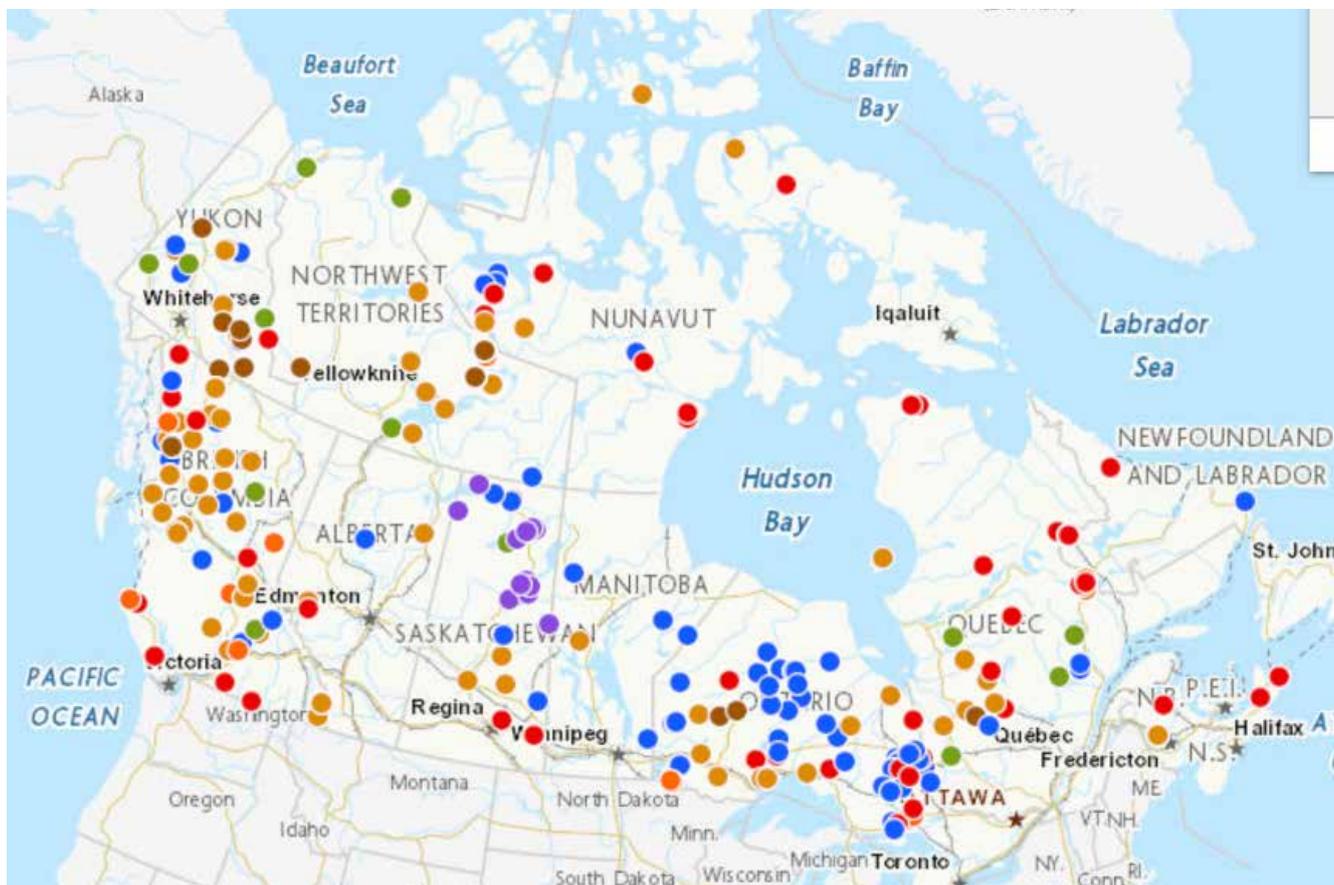
relationships operationalized in large part through Impact Benefit Agreements (IBAs).

In Canada, IBAs are most commonly, privately-negotiated bilateral agreements between companies and Indigenous or local communities. Typically, they are not legally required and are separate from the *duty to consult* which is a legal requirement and must be fulfilled by the applicable federal, provincial and/or territorial government. The timing of IBAs relative to the regulatory Environmental Assessment (EA) process varies – IBA negotiations may be initiated before, during, or after an EA.

Traditionally, companies used IBAs to gain support for their projects from participating Indigenous and local communities. More recently, IBAs have been negotiated as a means to ensure mutual benefits from project development and are an expected part of doing business. The nature of privately negotiated IBAs varies from one project to the next, but they typically include provisions for benefits sharing, environmental stewardship, and ongoing relationship building and collaboration.

The importance and value of IBAs in Canada is

demonstrated by their growth as a tool for building Indigenous-industry relations. The first IBA in Canada was the Strathcona Agreement in 1974; by 2015, a total of 335 IBAs had been signed for 198 mining projects (Kielland 2015). As of 2019, there were 455 IBAs and active agreements (including such things as exploration agreements) between Indigenous communities and mining companies (Mining Association of Canada 2019). Lessons from Saskatchewan and Northwest Territories, in particular, indicate that IBAs (and similar negotiated agreements across Canada) have proven to be a viable tool to secure a social licence to operate. See the following link for Indigenous [Mining Agreements | Natural Resources Canada \(atlas.gc.ca\)](https://atlas.gc.ca/).



Case One: McArthur River and Key Lake in Saskatchewan, Canada

The Athabasca Basin in northern Saskatchewan, Canada, is home to high-grade uranium reserves with ore grades up to 100 times the world average. Operations in the Athabasca Basin include the two highest grade mines in the world (Cigar Lake mine/McLean Lake mill and McArthur River mine/Key Lake mill), as well as Rabbit Lake mine and mill. These operations have accounted for the entirety of uranium production from Canada over the last decade, which in 2019 was 13% of global supply (World Uranium Mining – World Nuclear Association (world-nuclear.org). McArthur River/Key Lake and Rabbit Lake are currently in safe states of care and maintenance, with a restart announced February 9, 2022.

The Athabasca Basin sits within the Northern Administration District (NAD) of Saskatchewan, which accounts for almost half of the province's territory at 268,390 square km (Statistics Canada, 2012) but is home to only about 37,000 people in 45 communities. The vast majority of this territory is Crown land. The region is known for innovative IBAs with First Nations communities, including English River First Nation (ERFN). ERFN is composed of seven reserves: Cree Lake, Porter Island, Elak Dase, Knee Lake, Dipper Rapids, Wapachewunak, and LaPlonge. The main reserve is in Patuanak, near the Churchill River, 250 kilometres northwest of Meadow Lake, Saskatchewan. ERFN is a Dene First Nation with about 1,500 members. Like many northern Indigenous communities, the ERFN relies to a significant extent on land-based activities such as hunting and trapping for subsistence and income (AWG, 2014 and CNSC, 2012); but the wage economy and government transfers make up the two of three pillars of the local economy. The ERFN is a signatory to Treaty 10. Historic treaties are agreements made between the Crown and First Nations that define ongoing rights and obligations in exchange for land.

The Government of Saskatchewan established the first Mineral Surface Lease Agreement (MSLA) in 1978. This agreement arose pursuant to the Provincial Lands Act which was enacted to provide a legislative framework that allows producers to acquire rights to use surface land and provide Crown with compensation for the sale, lease or disposal of lands. At public hearings in the late 1970s, northern Saskatchewan residents expressed interests in the field of employment and business opportunities in uranium mining (Benefits from Northern Mining, 2018). This led to the joint federal-provincial panel on uranium mining developments in northern Saskatchewan, which made a number of recommendations, including the recommendation to establish surface lease agreements. An MSLA ensures that mining companies have measures in place to train, employ and provide opportunities to local community business ([Mineral Surface Lease Agreements | Profiles | Government of Saskatchewan](#); Parsons and Barsi, 2001). Also, mine operators are expected to negotiate and enter into Human Resource Development Agreements (HRDA) for each mine site. The HRDA was introduced into the MSLA in 1989 and was signed between mining companies and the Government of Saskatchewan. This agreement focuses on “recruiting, hiring, training and job advancement opportunities for residents of Saskatchewan’s north and are signed by the proponent and the Ministry of the Economy” (Government of Saskatchewan, 2013). These agreements have been signed by mining companies in northern Saskatchewan, leading to the mining sector becoming industry leaders in Indigenous employment and business procurement. The mining company Cameco has MSLAs with the provincial government (Ministries of Environment and the former Ministry of First Nations and Metis Relations or Northern Affairs), which contains provisions to assist in “enhancing benefits to, mitigating impacts on, and engaging Indigenous communities” (Scott, 2016). Therefore, all mining companies operating in the NAD are required to

make four northern commitments, which are employee services, education promotion, community vitality and public involvement, and report progress to the government (Parsons and Barsi, 2001). However, follow-up and monitoring programs are focused heavily on biophysical effects monitoring in the local project environment, which is carried out by industry and regulated by the government. However, before a MSLA is entered into, all other approval, such as pursuant to The Environmental Assessment Act (Saskatchewan), must be granted.

The uranium mining and milling industry is the only mining industry in Canada that requires a federal licence to operate under federal legislation. The uranium industry is overseen through all stages of its lifecycle by an independent administrative tribunal, the Canadian Nuclear Safety Commission (CNSC). Beyond this federal licence to operate, mines and mills in Saskatchewan require an approval to operate from the Saskatchewan Ministry of Environment.

Thus, a proponent in the uranium mining industry in Saskatchewan must meet regulatory requirements and permitting processes as set forth by both the federal and provincial governments.

Additionally, prior to pursuing a federal licence to operate or provincial approval to operate, a proposed project may be required to complete a planning process and assessment pursuant to either the *Impact Assessment Act* (federal) or *The Environmental Assessment Act* (Saskatchewan) (SEAA) or both. If the project is federally designated as requiring an impact assessment, or considered a development pursuant to SEAA then it would complete the necessary process and obtain any necessary approval pursuant to these acts. Before any licence or permits are granted, an EA or IA, if required, would be carried out in accordance with each Act and may include site preparation, development, and decommissioning, for instance. The implementation of The Environmental Assessment Act (Saskatchewan) increased community consultation and involvement in northern development (Par-

sons and Barsi, 2001). Under this provincial system, proponents were required to prepare an impact statement, detailing their assessment and management plans for all aspects of a project, including decommissioning and abandonment, and to provide a specific outline to be used for mitigating any environmental disturbances – ecological, social, or economic (Wittrup and Murphy, 2012). Prior to 2018, a “positive decision is reached regarding the application, the various licences and permits are then issued for the proposed activity” (CNSC, 2007). Under SEAA, projects that are considered developments are required to conduct an environmental impact assessment (EIA) and prepare and submit an environmental impact statement to the Saskatchewan Ministry of the Environment. For the provincial EA process, see the provincial government website: [The Environmental Assessment Process | Environmental Assessment | Government of Saskatchewan](#). While different aspects of the various acts may or may not contribute to the SLO, as a whole the comprehensive legislative regime provides legitimacy for the regulatory and approval processes and provides the governance context under which Indigenous engagement has occurred in Saskatchewan. It is important to note that recent federal legislation that did not apply to the Saskatchewan cases may make a difference for SLO on new projects in the future.

Since its creation in 1988 and especially after its initial public offering in 1991, Cameco has worked extensively with northern communities to build trust regarding their operations and corporate practices. Because the population of northern Saskatchewan is largely Indigenous, Cameco has made working with Indigenous communities its priority – both for acceptance of uranium mining and to benefit from a local, stable workforce. Regarding the communities related to this project, after several years of discussion and negotiations, in May 2013, the English River First Nation, Cameco Corporation, and AREVA Resources Canada Inc. announced the signing of a collaboration agreement

that will strengthen the relationship between the parties and formalize how benefits from uranium mining will be shared with the ERFN community (Cameco Corp., 2015). The agreement provides a framework and guiding principles for long-term working relations. It sets out Cameco's obligations to these communities under four main pillars: workforce development, business development, community investment and community engagement and environmental stewardship (Cameco Corp., 2015). In particular, the agreement specifies how the parties will work together, combining business conditions with customary demands, land rights and environmental management. The agreement clarifies how the ERFN will support the project if Cameco fulfils its advisory and partnership responsibilities as set out in the agreement. This agreement builds on the historic relationship between Cameco and the ERFN around community development as well as the commercial relationship with community-owned businesses. The economic benefit will come in the shape of business contracts and employee wages. Moreover, the companies will also be responsible for signing bonuses, milestone payments and annual community investment (based on mine production for ERFN community development initiatives). Not only is this a business partnership, but it is also a form of social and economic development. Revenue generated from mining operations will help in the development of the ERFN youth, with funds directed towards education, health, and wellness.

The ERFN is currently represented through Des Nedhe Group. ERFN owns Des Nedhe Group, which has four main divisions, Construction and Mining, Retail, Investments, and Real Estate. Des Nedhe owns Tron Construction & Mining LP, a general contracting services company that specializes in construction projects and maintenance contracts. The company also engages in heavy earthmoving, electrical, mechanical, pipeline and environmental cleanup for the mining sector. Des Nedhe and Tron were incubated through pro-

urement activities created from the relationships with Cameco and AREVA and have diversified substantially to other sectors and projects, thus creating a variety of economic development opportunities for the nation and its members.

Over the course of decades, the result of interaction between Cameco and ERFN is mutually appreciated and beneficial dialogue. Communication occurs regularly, especially with the recent volatility in uranium prices, but the result of the trust between company and community is on-going collaboration and partnerships.

Lessons Learned

- Companies on-the ground and connected to community often have a better understanding of community needs and aspirations than governments who are more geographically distanced and socially removed. Governments often have less understanding of the day-to-day; companies often need to 'educate' government about local context
- Proactive development of a local engagement strategy, led by respected Indigenous leaders from within the company, was instrumental to strong company-community relationships and building trust - more so than any formal institutional provisions or consultation requirements.
- Continuity in terms of 'who' is leading company-community engagement is key to building and maintaining trust with communities. Company-community partnerships achieve optimal success when predicated on strong personal relationships.
- Governments need to be more engaged at the strategic levels of pre-development planning and engagement, such as through regional and strategic environmental assessments, which can set a pathway for more meaningful engagement when development projects are initiated.
- While formal assessments (e.g. Joint Review Panel of Uranium Mining) set out the 'need'

for greater engagement of communities in uranium mining, the industry pioneered the strategy for engagement and ensured its implementation.

- Surface Lease Agreements were an innovative catalyst for the development of industry-community relations by establishing targets on employment, training, and business opportunities. SLAs showed that much innovation can occur within existing legislative frameworks and institutions if there is the political will to implement policy instruments, even without changing legislation or institutions.
- Benefit agreements have been positive instruments of relationship building and wealth sharing; strong focus on implementation is critical once such agreements are finalized.
- Sometimes resource companies may look at IBAs as legal agreements creating certainty, and then create transactional systems and procedures to operationalize these agreements. However, communities view the agreements as relationship agreements, ones that need to be flexible to adjust to the realities of the communities.
- Company engagement strategies can go beyond project approvals, to ensure a community's on-going participation in environmental and social monitoring programs and build local capacity and skill-sets.
- Companies are now moving past the "old" thinking of IBAs as simply instruments to secure SLO to the "new" thinking that IBAs provide a mechanism to develop a locally skilled and loyal workforce based on solid industry-community relations and community support, substantial business opportunities for Indigenous owned businesses, and increased community involvement in regulatory processes; thus, IBAs improve overall return on investment (ROI).
- Indigenous rights are important; however, this should not stop the progress of developing In-

igenous business. Growing Indigenous business can support Indigenous rights by creating wealth for the Nation.

Case Two: Diavik in Northwest Territories, Canada

The Northwest Territories (NWT) is 1,143,794 km² with a population of only 41,786, approximately 50% of which is Indigenous (Statistics Canada, 2016). Mining is the largest economic driver in the territory. Diamonds were first discovered in 1991, leading to the establishment of Canada's first diamond mine, Ekati – followed by the Diavik and Gahcho Kue mines. Diavik is located on a 20 km² island in Lac de Gras, and consists of four kimberlite pipes beneath the lake. The mine is a joint venture between Rio Tinto and Dominion. A fly-in-fly-out operation, Diavik neighbours the Ekati mine and is approximately 300 km from the largest center (Yellowknife) and 190 km from the closest Indigenous community. The mine is located in the Bathurst caribou herd spring migration route. Although an historically important resource for many Indigenous peoples, harvest of Bathurst caribou has not been allowed since 2015. Herd population has declined dramatically over the last 30-plus years, from approximately 470,000 animals in the mid-1980s to approximately 8,000 today (GNWT, 2019).

Diavik was preceded by the Ekati mine. Given the novelty of diamond mining in the North and the uncertain environmental impacts, Ekati was subject to an independent review panel EIA under the Canadian Environmental Assessment Act. Drawing on Ekati's experience and impact mitigation solutions, Diavik was subject to a more streamlined comprehensive study EA under the federal act, which determined that given the mitigation plans identified by the proponent, and based on public consultation, Diavik "is unlikely to cause significant adverse effects" (Canada 1999). This determination did not mean that the project would have no adverse effects, but that any adverse effects

were considered to be manageable given the project's impact mitigation plans. Diamond production at Diavik started in 2003. In 2019, the mine produced 6.7 million carats and employed 1,124 people – of which 22% were northern Indigenous (Mining Data Online, 2020). Mining is expected to continue until at least 2025, but recent mining of new ore bodies may further extend the mine's lifespan.

Diavik was proposed during a transition period in NWT governance. The mining companies initiated consultation and the EA process in the mid-1990s, submitting an impact statement report to the federal government in 1998. It was also in 1998 that the *Mackenzie Valley Resource Management Act* was established. The Act was as part of a commitment under comprehensive Indigenous land claims agreements settled between the Government of Canada, Government of the Northwest Territories, and Indigenous Government Organizations (Gwich'in and Sahtu Dene and Metis) establishing a system of shared decision making power based on co-management boards. Diavik's environmental assessment was grandfathered under the federal regulatory process, but post-approval mining governance falls under the *Mackenzie Valley Resource Management Act*.

Diavik's corporate policies include formal commitments to social and cultural services, including cultural leaves (i.e. time away from work for traditional hunting or other cultural practices and occasions) for employees and cross-cultural awareness training. Diavik and the Government of the NWT have also signed a memorandum of understanding to maximize the economic benefits that accrue from diamond mining (Missens et al., 2007). However, the most significant instruments that have shaped the relationship between the company and Indigenous communities are formal, negotiated agreements.

When the mine was approved, a Socio-Economic Agreement was signed between Diavik, Government of the Northwest Territories, and five

Indigenous government organizations: Tlicho Government, Yellowknives Dene First Nation, North Slave Metis Alliance, Kitikmeot Inuit Assoc, and the Lustel K'e Dene First Nation (Diavik Diamond Mines, 2015). The Socio-Economic Agreement, required as a condition of project approval, formalizes local employment, training, and capacity building commitments, established a communities advisory board for monitoring proponent commitments, and sets out a formal mechanism for consultation and dispute resolution. It also outlines a framework for a series of Participation Agreements – these are confidential agreements between Diavik and each Indigenous group, detailing further company commitments on matters such as local contracts, revenue, and business ventures.

An Environmental Agreement was also established, between Diavik, Indigenous government organizations, and the federal and territorial governments. The Environmental Agreement provides for additional environmental monitoring of Diavik, complementing regulatory monitoring requirements, and is intended to support effective communication about the project with communities and effective engagement of Indigenous peoples in monitoring and reporting activities. An Environmental Monitoring Advisory Board, representing the agreement's signatories and funded by Diavik, provides oversight of Diavik's monitoring activities, monitors proponent and regulator commitments, and provides recommendations to Diavik and regulators on important issues and concerns about project performance. Under the terms of the agreement, the proponent and regulators are required to respond to the board's recommendations and provide justification should the board's recommendations not be adopted.

These agreements establish a formal process for engagement, relationship building and trust – ensuring that proponent commitments to local investment in Indigenous communities, and to environmental monitoring and performance, are met; but also providing a mechanism for ongoing

relationship building and ensuring trust. Missens et al. characterize Diavik as an example of “thinking beyond extraction” and “supporting communities and their enterprises.” The Tlicho Government, for example, one of the five Indigenous signatories to the agreements, renewed its Participation Agreement with Diavik in 2013 – describing the renewal as “a reflection of the strength of our relationship with Diavik” (Tlicho Government, 2013).

Lessons Learned

- Jurisdictional structures do matter. The unique co-management structure in the NWT enabled a “supra-regulatory” approach demonstrating innovation in agreement structure and implementation which engaged government(s), industry, and community:
 - Public social and environmental agreements between government-company-and Indigenous communities served to ensure public accountability of the company’s commitments via monitoring and public reporting of performance.
 - Public social and environmental agreements between government-company-and Indigenous communities can set a framework for privatized company-community agreements.
 - Privately negotiated agreements between the company and Indigenous communities served to secure additional benefits from mining and commitments to engagement and stewardship beyond those established by way of regulatory EA approval and public government-company-community agreements
- Governments need to be more pro-active at the strategic levels of pre-development planning and engagement, which can set a pathway for more meaningful engagement when devel-

opment projects are initiated. The Mackenzie Valley Environmental Impact Review Board is currently exploring such regional and strategic assessment frameworks and opportunities.

- Benefit agreements have been positive instruments of relationship building and wealth sharing.

3. SLO Not Achieved

The Prosperity case illustrates processes in which trustful interactions between the company (Taseko) and the Tsilhqot’in, the affected Indigenous community, neither started nor developed. The lack of trust on the part of the Tsilhqot’in National Government (TNG) was compounded by the provincial government’s decision to abandon the joint federal-provincial environmental assessment process in favour of a separate provincial environment assessment process. Although this was well within the rights of the provincial government, the TNG saw it as a betrayal of trust, and a politicization of the environmental assessment process. Moreover, in the Prosperity case, the TNG strongly disagreed with the mining plans from the outset. From their point of view, the proposed locations were not suitable for mine development, consultation was not adequate, and the preconditions for further negotiations and collaboration were, therefore, not in place.

Case Three: Proposed Prosperity Mine

For over a decade, a proposed open pit, gold-copper mine in central British Columbia (B.C.), Canada has been the source of much contention between industry and First Nations communities. Taseko Mines Limited, a Canadian company, first proposed the Prosperity Mine in 2008, after conducting exploration activities going back to the 1970s. After a design change, the mine project was renamed New Prosperity in 2011. Taseko estimates the deposit to contain 5.3 billion pounds of copper and 13.3 million ounces of gold placing it in the top 15 deposits globally (www.tasekomines.com).

The mine life has been estimated to be around 20 years (CEAA 2010).

The deposit is located on the traditional territory of the T̓silhqot̓in First Nation and this land has not been formally ceded through a Treaty process. The T̓silhqot̓in National Government (TNG) was established in 1989 to represent the T̓silhqot̓in Nation and the six T̓silhqot̓in communities of Tl'etinqox, ʔEsdilagh, Yunešit'in, Tšideldel, Tl'esqox and Xeni Gwet'in. The TNG represented the T̓silhqot̓in people in federal and provincial institutional processes regarding the establishment of the mine. The Prosperity/New Prosperity Mine lies outside of the T̓silhqot̓in declared title area established by the landmark Canadian Supreme Court case in 2014 (T̓silhqot̓in Nation v. British Columbia, 2014 SCC 44) but within the traditional territory and within an area of court-declared, proven Aboriginal rights as established by the B.C. Court of Appeal in 2012.

The proposed mine site is within the province's Cariboo Regional District (CRD) and 125 kilometers from the City of Williams Lake, central British Columbia (statistics below are from Statistics Canada and British Columbia. Consulting with First Nations). The population of the CRD is under 62,000 of which 17 percent self-identify as having Aboriginal Identity (in 2016). Of the CRD population, just under 11,000 people live in Williams Lake. The population of the six communities which comprise the T̓silhqot̓in Nation is 3,818. Access to paid work is lower in the CRD compared to the province overall, as indicated by the lower labour force participation and employment rates and higher unemployment rates. Forestry and related manufacturing comprise the largest industrial sectors in the CRD, although these are in decline.

There was support for the mine from some local municipal government and business leaders because of the economic benefits that a mine would bring. However, TNG's opposition to the mine is also shared by some local community groups,

Indigenous groups and environmental organizations in other parts of B.C. and Canada. (CEAA 2010). The T̓silhqot̓in opposed the development of the mine on the grounds that it would, inter alia, adversely affect Teztan Biny (Fish Lake) and the surrounding area (Nabas), which is an important fish habitat and a site of unique and special significance for their cultural identity, and their ability to use the land and resources for traditional purposes. (TNG 2013)

According to the legislation, both federal and provincial governments are involved in the environmental review and permitting of a proposed major mine. The two levels of government can agree to undertake a joint review, or to conduct separate environmental reviews (Canada-British Columbia Agreement for Environmental Assessment Cooperation, 2004). In the Prosperity Mine case, the two jurisdictions initially discussed a joint environmental review and drafted the terms of reference, however, the provincial government decided to conduct its own separate review. Thus, the province of British Columbia and the federal government of Canada undertook separate environmental assessments of the environmental and other impacts associated with the proposed mine. Taseko submitted the same Environmental Impact Study report to both processes.

The province of B.C. approved the Prosperity Mine project in January 2010 and the federal government of Canada rejected the project in November 2010. Despite the fact that the same proposal was being considered, the two governments came to different conclusions regarding the environmental impacts of the project, in part as a result of differences in the scope, judgements, and federal and provincial legislation informing the reviews. Both provincial and federal review processes recognize "Aboriginal rights and title" in EA processes. The province of B.C. delegates the State's Duty to Consult in the EA process to the proponent and in this case, several First Nations expressed concern about the inadequacy of the proponent's consulta-



Source: T̓silhqot̓in National Government.

tion (CEAA 2010, 45). The provincial and federal review reports came to different conclusions about the impacts on Aboriginal rights and title (Haddock 2011, 56).

The TNG did provide input into the federal review of the Prosperity Mine in several different ways throughout the process but did not participate in the provincial EA process.^f The TNG indicated that the provincial EA process lacked legitimacy and was not credible (TNG 2009). Critics have also argued that the provincial review was less rigorous and that the process was tainted by political objectives (Haddock 2011).

After the rejection of the mine by the federal government, Taseko developed a new mine plan and renamed the project, the New Prosperity Mine. Taseko submitted a new Environmental Impact Study for review by the federal government of Canada but the project was again rejected by the federal government in 2014.

Since 2014, there have been multiple legal challenges. Taseko has mounted a number of unsuccessful legal challenges of the federal government's EA process and decision. In May 2020, a Supreme Court of Canada ruling dismissed Taseko's appeal

of an earlier Federal Court of Appeal ruling and exhausted the company's ability to appeal the mine rejection decision. During this period, TNG also engaged in legal, and some extra-legal, actions against the mining permits that were issued by the province for mine exploration work (which was not covered by the federal rejection of mine operations).

Taseko's Aboriginal Policy document states that it is "committed to developing mutually beneficial relationships with Aboriginal Peoples and with local communities that are affected by, or that affect, the company's various endeavors" (Taseko 2017) but this has clearly not been achieved with this project.

The T̓silhqot̓in have developed their own land-use plan for the area, including the proposed mine site. Following the 2014 Supreme Court decision (*T̓silhqot̓in Nation v. British Columbia*, 2014 SCC 44), the TNG established the Dasiqox Tribal Park, an initiative based on a vision of "engaging in environmental stewardship, developing a sustainable economy and upholding the land as a place where T̓silhqot̓in culture and language can thrive." (<https://dasiqox.org/>).

Lessons Learned

- Overlapping, competing and potentially contradictory EA processes can lead to a lack of confidence and trust between companies, community and governments. EA processes should therefore be clear, transparent, and multi-dimensional.
 - The EA processes, while appealing to technical criteria, are also subject to political pressures
 - The separation of permitting processes for mine exploration and mine operation may create conflict for controversial projects
 - Impacts of mine development on Aboriginal rights are title are complex and, in practice, the weighting of such impacts can be problematic
- Company commitments to Indigenous engagement need to recognize, and be adaptive and reflexive to, Indigenous rights and values; this should also enable companies to self-assess when they should not proceed with a project.
 - Company engagement with Indigenous communities needs to occur before any mine planning takes place and must be regarded as a mutual and meaningful exchange
 - Although *duty to consult* does not convey a veto, companies must be prepared for some projects not to proceed if Indigenous communities do not give consent

- Indigenous communities may have views of land use which are incompatible with mining in a particular location and may develop their own alternative visions for economic development consistent with their cultural values

4. Conclusion

This brief draws on two cases in Canada where SLO has been achieved—the Diavik mine in the Northwest Territories and the McArthur/Key Lake mining operations in Saskatchewan—and one case in which it has not been achieved—the proposed Prosperity mine in British Columbia. It shows both the differences and the complexities associated with the practice of SLO. An overarching lesson is that company-community engagement needs to be respectful and based on understanding of values, needs and seeking mutual benefits. Government regulations, where applicable to processes that affect SLO, need to be clear, transparent, and fair.

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Cover photo: Diavik Diamond mines, Rio tinto

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