

Potential Impact on Mining

KEN SUMANIK

Introduction

The potential impacts of *Delgamuukw* on the mining industry are conjectural: they depend ultimately on who owns the land and to what extent the owners and prospective users are able to agree on terms and conditions of use. In the interim, mineral tenure holders and mining developers are expected to engage in “meaningful consultation” with aboriginal peoples as a pre-requisite to “work,” while the ownership questions are being argued in our courts. This uncertainty has increased the currently high levels of risk to exploration and development.

Mining Is a Risky Business

The study of risk measurement in the mining industry is made difficult by diverse influences. Some are technical, some human, and some political—each study is unique. Between 1927 and 1967, Cominco explored more than 1,000 properties in Canada. Of these, only 78 were of sufficient interest to warrant a major exploration program. Sixty were found to contain insufficient ore to justify production; 18 were brought into production, but of these, 11 were not sufficiently profitable to permit recovery of the original investment. Only seven of the original

Notes will be found on page 465.

1,000 properties became profitable mines.¹ During that 40-year period, the company spent more than \$300 million in its search for new mines.

Technical risks have now been overtaken by human and political risks. These commonly include security of mineral tenure, access to land, excessive regulations, taxation, mineral commodity prices, and energy and labour costs. Much has been written about the impacts of these factors on the industry. National, provincial and territorial associations and independent members have expressed their concerns to governments, but to little or no avail. This ambivalence towards the industry varies from one jurisdiction to another, depending on its relative economic importance.

Two significant risk factors have emerged over the past decade: aboriginal land claims, and the creation of more parks and wilderness areas.² Results of a Fraser Institute survey sent to 174 senior and junior mining companies identified aboriginal land claims and new parks and wilderness area designations as major concerns; 92 percent and 89 percent of respondents respectively. This conclusive evidence dispelled previous doubt that aboriginal issues were not a paramount concern of exploration companies planning to work in B.C.

Protected Areas and Parks and Wilderness Area Designations in B.C.

The *Parks '90-Wilderness '90* initiative was a government campaign by the provincial Ministries of Environment, Land and Parks, and Forests to convince British Columbians that their provincial park and wilderness systems had to be expanded. This led to an increase in Land and Resource Management Planning (LRMPs) and the creation of a Commission of Resources and Environment (CORE), which directed land-use planning by multi-stakeholder groups in the regions of Vancouver Island, Cariboo-Chilcotin, and Kootenay-Boundary. The objective of this "Protected Area Strategy for British Columbia" was to increase the area of provincial parks and wilderness, from 6 to 12 percent and to re-zone land use on the remaining 88 percent. CORE is no longer operational but LRMPs continue, albeit "without prejudice" to aboriginal land claims.

Most of central and southern British Columbia is covered by LRMPs that have either been completed, or are nearing completion. Only the northernmost regions of British Columbia outside the boundaries of Tatshenshini and Muskwa-Kechika Parks, remain "unplanned," but when the process is completed, more than 12 percent of British Columbia will be designated as Parks and Protected Areas (PAs). Mineral exploration and mining is prohibited in Parks and PAs. A significant percentage of the areas not designated as Parks and Protected Areas are being zoned as Special Management Areas. Although exploration and

development are allowed in those areas, they have onerous operational constraints that preclude effective exploration and development. They are considered by industry as “Parks-in-Waiting.”

Aboriginal Issues

Aboriginal issues, particularly those involving land claims, have emerged recently as a significant factor in mineral exploration and mining developments in Canada generally, but in British Columbia particularly. Unlike other provinces and territories, land claims were not negotiated with most B.C. aboriginal groups, except for several treaties covering small areas of land on southern Vancouver Island. However, negotiations were officially started in 1993 with the establishment of the Treaty Commission, a tripartite organization including Canada, British Columbia, and the First Nations Summit (FNS), representing about 70 percent of B.C. aboriginal peoples. Together, they are actively involved in treaty negotiations. Since its inception, the Treaty Commission has accepted 51 Statements of Intent from First Nations to negotiate treaties.³ The Nisga'a land claim which commenced before the Treaty Commission was formed, has been negotiated and a final agreement has been signed by Canada, British Columbia, and the Nisga'a. Other aboriginal groups not negotiating treaties are affiliated with the Union of B.C. Indian Chiefs.

Frustrated by a treaty process that was either too slow or failed to protect their interests, some aboriginal people in B.C. resorted to acts of civil disobedience. Prominent in B.C. were the Duffy lake, Adams River and Green Mountain road blockades and the Gustafson Lake confrontation. Conflicts have also arisen between some aboriginal groups and resource developers and governments in other provinces, where land claims have been settled for many decades.

In the Yukon and Northwest Territories, where land claims are nearing completion or have been settled recently, mineral exploration and mining development is relatively static or decreasing. Inhabitants of Nunavut, established in 1992, have stated repeatedly that their “territory is open for business.” Despite a significant diamond discovery at Lac de Gras northeast of Yellowknife and several important satellite discoveries, prospectors and developers are not flocking to Nunavut. Land north of latitude-60 is resource-deficient except for minerals, yet many inhabitants accept mining reluctantly.

Delgamuukw

On December 11, 1997, the Supreme Court of Canada (SCC) rendered a decision on *Delgamuukw*, a claim by the Gitksan and Wet'suwet'en to 58,000 square kilometers of west-central B.C. The decision culminated

13 years of litigation, which began in the Supreme Court of B.C., went to the B.C. Court of Appeal, and finally the Supreme Court of Canada. The Court has recommended a re-trial but this option rests with the Gitksan and Wet'suwet'en. Presumably, the Supreme Court decision is now one of the principal reasons for B.C.'s sagging mining and mineral exploration industries. But other factors that reflect the industries' cyclical nature must also be considered before assigning any or all responsibility for our present economic plight to the Supreme Court and to aboriginal people.

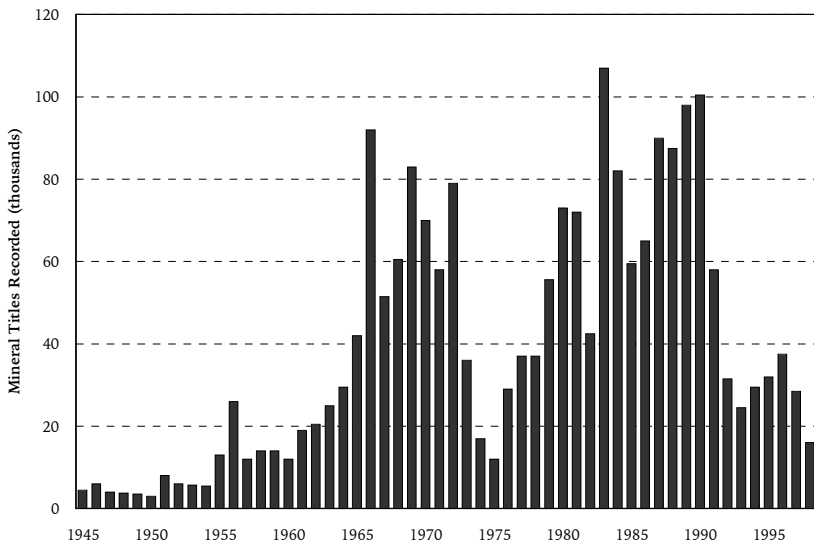
B.C. Staking Activity and Exploration Expenditures

The number of mineral claims staked each year is a consistent measure of exploration activity. A record of mineral claims staked annually in B.C. is presented in Figure 1.

It depicts the cyclical nature of exploration and development. Combining exploration expenditures annually with the number of mineral claim units staked, Figure 2⁵ is a reliable indicator of investment and economic activity. Two discrete cycles are evident from 1960 to 1998. Although the greatest variation is coincident with changing governments and government policies, other factors also contribute to the variation but are not as apparent.

A list of events from 1980 to 1998 that eventually affected exploration and development is presented to supplement data .

Figure 1: Mineral Tenure Recorded (as Reported by Year)

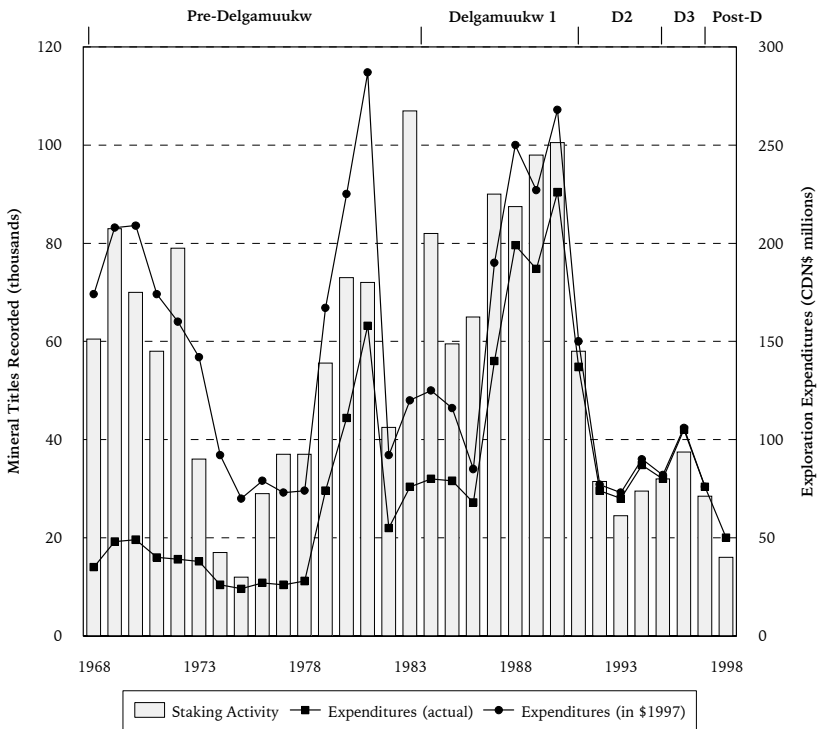


From the mid-1970s to 1990, B.C. had a relatively stable regulatory environment which enabled mineral resource exploration and development to flourish.

Chronology of Events: 1980 to 1998

- 1980–1990 A decade of consistent rules and regulations; access to land
- 1982–1983 Windy Craggy discovered by Falconbridge; development started later by Geddes Resources
- 1984 Gitksan-Wet’suwet’en (Delgamuukw) case begins, Supreme Court of B.C.
- 1985–1989 Flow-Thru’ share period; beneficial to exploration
- 1990 Discovery of Mt. Milligan, Eskay Ck. and Red Mountain Parks ‘90 - Wilderness ‘90; LRMPs begin
Duffy Lake Road Blockade

Figure 2: BC Staking Activity and Exploration Expenditures



- 1991 NDP elected; Delgamuukw, (BCSC) decision;
Delgamuukw 2, BC Court of Appeal begins
- 1992 Commission on Resources and Environment started
- 1993 Tatshenshini Park created; Windy Craggy Project terminated
Delgamuukw2, BC Court of Appeal decision; negotiations
attempted as an alternative to litigation
- 1994 Negotiations fail; Delgamuukw 3 SCC action commences
Tatshenshini designated a World Heritage Site
- 1995 Cheslatta lawsuit, Re: Huckleberry Mine approval
Green Mountain road, Adams River Bridge and Gustafsen
Lake conflict
NDP re-elected
- 1996 CORE planning completed; LRMPs continue
- 1997 Muskwa-Kechika Park created; Delgamuukw3, SCC decision
- 1998 Post Delgamuukw “How to Cope and Prosper Workshops”
Statement to Ministers Stewart and Cashore from the First
Nations Summit (FNS) stating that aboriginal title is on “an
equal footing with the Crown’s title”
Rejection of referral process by the Shuswap Nation
Tsay Keh Dene vs The Ministries of Environment, Land and
Parks and Forests, Re: S. Kemess Mine approval
Takla Lake Indian Band v. Attorney General of Canada, Gov-
ernment of B.C. and Royal Oak Mines Ltd., Re: S. Kemess
Mine approval

These events have had a negative impact on mineral exploration and development in B.C. Only when ownership (i.e. aboriginal title) and access to land issues are resolved and a stable regulatory order re-implemented, will there be a return to normal staking and spending.

The industry continues to work with aboriginal groups in many jurisdictions and is fully committed to improving relationships. Co-operation and understanding by governments, aboriginal groups and industry is a pre-requisite to investment for future exploration and development.

Notes

- 1 J. R. Hoskins, 1982. "Mineral Industry Costs," Northwest Mining Association, p. 241.
- 2 L. Jones and F. Arman, 1997. The Fraser Institute Survey of "Mining Companies Operating in Canada," pp. 21-22.
- 3 BC Treaty Commission Annual Report, 1998, p. 2.
- 4 Mining Review, 1995, p. 18.
- 5 British Columbia's Mineral Exploration Review and Natural Resources Canada (1968-1998).