

JAN 19 2022

NO. _____
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*
R.S.B.C. 1996, c. 241

BETWEEN:

CARLYLE COMMODITIES CORP.

PETITIONER

AND:

GEORGE WARNOCK, CHIEF PERMITTING OFFICER,
MINISTRY OF ENERGY, MINES AND LOW CARBON
INNOVATION and THE HONOURABLE BRUCE RALSTON,
MINISTER OF ENERGY, MINES AND LOW CARBON
INNOVATION

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO:

George Warnock, Chief Permitting Officer
Ministry of Energy, Mines and Low Carbon Innovation
PO Box 9380 Stn Prov Govt
Victoria, BC V8W 9M6

Honourable Bruce Ralston, Minister of Energy, Mines and Low Carbon Innovation
PO Box 9380 Stn Prov Govt
Victoria, BC V8W 9M6

Attorney General of British Columbia
c/o Deputy Attorney General
Ministry of Justice
PO Box 9280 Stn Prov Govt
Victoria, BC V8W 9J7

This proceeding is brought for the relief set out in Part 1 below, by

the person(s) named as petitioner(s) in the style of proceedings above

.....[name(s)]..... (the petitioner(s))

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner(s)

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s)

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or,

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	The Law Courts 800 Smithe Street Vancouver, BC V6Z 2E1
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(2)	<p>The ADDRESS FOR SERVICE of the petitioner(s) is:</p> <p>Fax number address for service (if any) of the petitioner(s):</p> <p>E-mail address for service (if any) of the petitioner(s):</p>	<p>McMillan LLP Barristers and Solicitors 1500 – 1055 West Georgia Street Vancouver, British Columbia V6E 4N7 Telephone: (604) 689-9111 Attention: Robin Junger</p> <p>robin.junger@mcmillan.ca</p>
(3)	<p>The name and office address of the petitioner's(s') lawyer is:</p>	<p>Same as above</p>

CLAIM OF THE PETITIONERS

Part 1: ORDERS SOUGHT

1. Declarations that:

(a) the Strategic Engagement Agreement (the “**Agreement**”), entered into between the Province of British Columbia (the “**Province**”), the T̓silhqot̓in Nation and the T̓silhqot̓in National Government (the “**TNG**”) does not:

(i) modify the Crown’s duty to consult under section 35 of the *Constitution Act, 1982*; or

(ii) displace common law principles of administrative law, including procedural fairness, that apply to statutory decision-makers acting under provincial legislation.

(b) the Respondents have violated the administrative law rights of the Petitioner by taking actions and making decisions under the Agreement that affect the Petitioner’s rights and interests (including delays in rendering a decision) without providing the Petitioner a prior opportunity to make submissions in respect of those steps and decisions.

(c) The Agreement unlawfully fettered the exercise of discretion of the Respondent Chief Permitting Officer under the *Mines Act*, R.S.B.C. 1996, c. 293;

2. An Order in the nature of *mandamus* directing the Respondent Chief Permitting Officer, or his delegate, to make a decision on the permit application submitted by the Petitioner without further delay.

3. Costs.

4. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

The Parties

1. The Petitioner, Carlyle Commodities Corp. (“**Carlyle**”) is a company duly incorporated under the laws of British Columbia with a registered address of Suite 620 – 1111 Melville Street, Vancouver, BC, V6E3V6.

2. Carlyle is a public company and trades on the Canadian Securities Exchange under the symbol “CCC”.

3. The Respondent, George Warnock, Chief Permitting Officer (the “**Chief Permitting Officer**”) of the Ministry of Energy, Mines and Low Carbon Innovation (“**Ministry**”), and his delegates, holds statutory powers respecting the issuance of permits under the *Mines Act*.

4. The Respondent, the Honourable Bruce Ralston, Minister of Energy, Mines and Low Carbon Innovation (the “**Minister**”), is a member of the Executive Council and is the minister responsible for the *Mines Act*.

The Newton Project

5. The Petitioners are engaged in the exploration and development of mineral properties and hold mineral tenures in an area of the Clinton Mining Division in central-interior British Columbia (the “**Newton Project**”).

6. The Newton Project is approximately 24,000 hectares in size and includes 62 mineral claims (the “**Mineral Claims**”) of which Carlyle, through Isaac Newton Mining Corp. (“**IMC**”), owns a 100% undivided interest. IMC is a wholly-owned subsidiary of Carlyle and is the registered holder of the Mineral Claims.

7. The Newton Project has been the subject of more than 33,000 metres of exploration drilling since 1972, with nearly 30,000 metres of drilling by its previous owner, Amarc Resources Ltd., which explored and developed the resource between 2009 and 2012.

The Agreement

8. On April 1, 2021 the Minister of Aboriginal Relations and Reconciliation, on behalf of the Province, signed the Agreement with the T̓silhqot’in Nation and the TNG. The Agreement is a renewal agreement and is substantially similar to the previous version of the agreement signed March 31, 2017 (the “**2017 Agreement**”), which amended and restated the T̓silhqot’in Stewardship Agreement dated June 1, 2014. Carlyle is not a party to the Agreement.

9. The Agreement contains numerous provisions governing how the T̓silhqot’in Nation and the TNG will engage with the Province with respect to land and resource management engagements on Crown land.

10. The Agreement sets out various levels of engagement and processes concerning permit applications in the area that is subject to the Agreement (the “**Engagement Levels**”). The Engagement Levels are defined as Engagement Level 1 through 5.

The Permit Application

11. On February 10, 2021, Carlyle filed a Notice of Work and Reclamation Program permit application (the “**Permit Application**”) under section 10 of the *Mines Act* for the Newton Project. It sought a 5-year, area-based permit to conduct exploration activities on the Mineral Claims. These activities include, among others, exploration drilling, mainly focused in a previous area of drilling, and induced polarization surveys. The Permit Application also addressed reclamation activities.

12. Nearly four months later, on June 2, 2021, Brendan Scorrar, Inspector of Mines – Permitting (the “**Inspector of Mines (Permitting)**”) sent Carlyle a letter requesting certain information, stating that it was required for further processing of the Permit Application. Mitchell Patitucci, on behalf of Carlyle, responded on June 10, 2021.

13. On June 11, 2021, the Inspector of Mines (Permitting), acknowledged receipt of the Permit Application and suggested the required security deposit of \$40,000 be paid “at this time to avoid any delays”. Carlyle paid the \$40,000 security deposit by an electronic funds transfer payment to the Province of British Columbia on June 16, 2021. Jeremy Hanson, on behalf of Carlyle, followed up with the Ministry the following day.

14. Nearly a month later, on July 12, 2021, the Inspector of Mines (Permitting) informed Carlyle that the Permit Application was sent to the TNG on July 9, 2021 at Engagement Level 1 with responses from First Nations requested by August 8, 2021.

15. On July 26, 2021, the Inspector of Mines (Permitting) stated that the TNG had expressed interest in talking with Carlyle regarding the Newton Project.

16. Jason Quigley, President of One-Eighty Consulting Group Inc. (a consultant working on behalf of Carlyle) (the “**Consultant**”), attempted to call Helga Harlander, the TNG’s Mining, Oil and Gas Coordinator (the “**TNG’s Representative**”) on July 28, 2021, but she was on vacation until August 9, 2021.

17. On the same day, the Consultant spoke to the Inspector of Mines (Permitting) to inform him of the outreach attempt. The Consultant suggested to the Inspector of Mines (Permitting) that in the absence of any specific concerns by the TNG, the Chief Permitting Officer could issue the permit because the consultation period was set to end before the TNG’s Representative returned. The Consultant further indicated that if the TNG’s interests were general and revolving around building a relationship, the permit does not need to be held up for that. The Consultant further indicated that Carlyle would continue with relationship building with the TNG in any case.

18. The Inspector of Mines (Permitting) advised the Consultant that he thought the Ministry’s First Nations advisor would be unlikely to agree to proceed to a decision while the

TNG's Representative was on vacation. He also stated that he would follow up with Carlyle after a meeting with the Ministry's First Nations advisor to determine if the TNG raised any specific concerns, but did not provide any details at this time. The Consultant urged the Inspector of Mines (Permitting) to encourage the First Nations advisor to determine whether there were specific issues of concern, or whether the TNG's interests were more in the nature of general or political interests.

19. In a subsequent email, dated July 28, 2021, the Inspector of Mines (Permitting) stated that "the FN advisor suspects there will be concern about the area close to the Taseko River and this area in general as it is close to the title area", but the Inspector of Mines (Permitting) did not specify what those suspected concerns were.

20. Section 2.12 of Appendix A of the Agreement permits the increase of the Engagement Level in circumstances where the TNG informs the Province that they disagree with the proposed Engagement Level by 4:30pm on the Tuesday following the submission of the relevant application. Such an increase may be done by mutual agreement between the Province and the TNG. Alternatively, where the Province and the TNG do not agree, the TNG may unilaterally increase the Engagement Level by a factor of one.

21. On August 3, 2021, five days before the consultation period was set to expire, the Inspector of Mines (Permitting) informed Carlyle that the TNG had elevated the Engagement Level to Engagement Level 2, adding 20 working days to the consultation period. This was 25 days after the referral to the TNG and nearly six months after the Permit Application had been filed. The Inspector of Mines (Permitting) did not give any indication whether this increase was done unilaterally by the TNG or whether the Province and the TNG had mutually agreed to it.

22. On August 4, 2021, the Consultant asked the Inspector of Mines (Permitting) for the rationale behind the decision to elevate the Engagement Level. The Consultant also noted that the Ministry does not typically consult with Indigenous groups on induced polarization applications due to the negligible impacts on Aboriginal rights. The response from the Province by the Inspector of Mines (Permitting) was to provide the Consultant with a link to the earlier 2017 Agreement, stating that while the Ministry has been issuing letters to other proponents