

**A Brief Submitted to the 61st Annual Energy & Mines Ministers'
Conference**

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by the

**PROSPECTORS AND DEVELOPERS ASSOCIATION OF
CANADA**

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EXECUTIVE SUMMARY

This brief is submitted to the 61st Annual Energy and Mines Ministers' Conference by the Prospectors and Developers Association of Canada, a national organization that protects and promotes the interests of the Canadian mineral industry sector. The submission covers five subject areas which members of the association have identified as key in the mineral industry today.

A. REFORMING CANADA'S SECURITIES REGULATORY SYSTEM

There is growing support and momentum for Canada's securities regulatory system to be overhauled. The most effective way to do this is to institute a single securities regulator which is empowered to apply and administer one set of rules consistently across Canada. A single regulator would be supported by strong regional offices known for their specific sector expertise. The single regulator should also recognize the need for proportionate regulation of large and small companies. Overhauling the system could be accomplished by a pooling of powers, initially on a trial basis and as carried out in Australia. Compliance costs required by Canada's current structure of multiple jurisdictions would be reduced. Junior mineral exploration companies, which make up 25% of publicly traded companies, need to raise financings frequently, and a reduction in their spending on compliance obligations would result in more investors' money being spent where it is intended - on exploration. All Canadian investors, regardless of their province of residence, would be treated uniformly and would have equal access to new stock issues. It is important that the single regulator involve the federal government to ensure appropriate police monitoring, enforcement and prosecution of inter-provincial and international securities violations. The PDAC believes that reform can only be achieved at the political level with three or four key jurisdictions leading the way.

B. MEETING GEOSCIENCE FUNDING COMMITMENTS

Canada's geoscience knowledge base is one of this country's chief competitive advantages. Funding for public geoscience is an investment in the public good. The results of geoscience work carried out by geological surveys can stimulate a good deal of private sector economic activity which sustains jobs directly in exploration and, upon economic discoveries, in mining. Indirect jobs are sustained by downstream smelting, refining and port and rail infrastructure essential to the nation's fabric. In 2000, mines ministers committed to providing the long-term funding to support the implementation of the Co-operative Geological Mapping Strategies Across Canada, an innovative and effective federal-provincial initiative. Ministers are asked to honour this commitment and to provide long-term funding for the Northern Geoscience initiative.

C. DEVELOPING A NATIONAL DIAMOND STRATEGY

The Ekati and Diavik diamond mines have vaulted Canada into third place in the world by value of rough diamond production. New mines, now under development, will add to this momentum, although they are smaller than the first generation mines. The current proposed national diamond strategy is based on the production from two world-class mines but runs the risk of being compromised unless further large economic deposits are discovered. A successful long-term national diamond strategy and the continuation of Canada's young diamond industry will depend almost entirely on a robust diamond exploration industry that is encouraged to explore for and find further economic deposits. In this way, a supply of rough diamonds will be assured. Exploration is currently held up by impediments to the regulatory and permitting processes, a situation which is adding to exploration and mine permitting costs. These rising costs have the potential to render new

discoveries uneconomic and as a result future exploration activity could be discouraged. In seeking the best possible diamond strategy for Canada, the PDAC recommends that: i) there be free market access for producers of rough diamonds; ii) the regulatory and permitting processes relating to diamond exploration and mining be improved; iii) map staking north of 60 be instituted; iv) a Canadian diamond continue to be defined as a diamond ‘mined in Canada;’ and v) the excise tax on all jewelry be removed.

D. TAX TREATMENT FOR COSTS OF COMMUNITY CONSULTATIONS, BASELINE ENVIRONMENTAL, PRE-FEASIBILITY AND FEASIBILITY STUDIES

Junior mineral exploration companies fund much of their exploration activity through the issuance of flow-through shares. Raising money in this way is easier than by other means because investors in flow-through shares can deduct certain qualifying expenditures against personal income for tax purposes. Exploration activities funded by flow-through shares must qualify for Canadian Exploration Expense (CEE). Currently, community consultations, baseline environmental, pre-feasibility and feasibility studies do not qualify for CEE. These costs, which in the case of community consultations are increasingly court mandated, are sometimes considerable, especially in the territories. Because federal government officials consider them as non-CEE expenditures, they must be paid for with non-flow-through funds. For many junior exploration companies, these kinds of funds are difficult to come by. The PDAC is requesting that CEE be re-interpreted so that they include community consultations, baseline environmental, pre-feasibility and feasibility studies. The PDAC is also requesting that the costs of these activities qualify as assessment expenditures under provincial and territorial mining regulations.

E. ACQUIRING MINERAL RIGHTS

The primacy of the free entry system as it relates to the right of access to acquire mineral rights by staking is fundamental to a viable exploration and development industry. However, the “free” in the historic term “free entry” is increasingly misconstrued particularly in areas where ground staking is still required by statute. In most of Canada, the Crown owns both the surface rights and mineral rights. However, where these rights are held separately, there is the potential for conflict between the holder of the surface rights and the prospector or company wishing to acquire the mineral rights. These confrontations are challenging the free entry system to acquire mineral rights. Calls for the prospector or exploration company to give notice before staking have the potential to tip off competitors. This contravenes the essence of the free entry system which is designed to encourage competition. The PDAC supports ground staking in certain situations; however, the association believes that map staking will ensure the continuation, protection, and smooth operation of the free entry system and will help reduce confrontations between surface rights and mineral rights holders. As added benefits, map staking reduces the high costs of ground staking, particularly in remote areas such as Nunavut and the Northwest Territories, is environmentally benign, makes exploration safer, and reduces challenges to the free entry system.

F. MAKING THE INVESTMENT TAX CREDIT FOR EXPLORATION IN CANADA PERMANENT

The Investment Tax Credit for Exploration in Canada (ITCE) program was introduced by the federal government in October 2000 and has been extended twice since its inception.

The program, which was designed to stimulate the mineral exploration sector, enabled Canadian junior mineral exploration companies to recover more quickly from the prolonged commodity price cycle lows of the early years of this century than their global competitors. Since the program's introduction, over \$875 million has been raised in total flow-through financings to April 2004. In 2003, the ITCE program raised \$370 million, exceeding the PDAC's target for success of \$300 million annually. Having fulfilled its initial purpose of stimulating the mineral exploration sector, the program is now succeeding in moving exploration in Canada toward levels that are adequate to replace the nation's mineral reserves. The program is recognized as an important privately administered program of transfer payments to rural and northern Canada and has been a stimulus for diamond exploration. Discussions and recommendations in the development of a national diamond strategy propose that the federal government make the ITCE program permanent. The PDAC strongly endorses this recommendation.

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The following brief is submitted to the 61st Annual Energy and Mines Ministers' Conference by the Prospectors and Developers Association of Canada (PDAC). The association, which has 5,000 individual and 330 corporate members, protects and promotes the interests of the Canadian mineral exploration sector and works to ensure a robust mining industry in Canada. The association also encourages the highest standards of technical, environmental, safety and social practices in Canada and internationally.

This submission covers five subject areas which members of the association have identified as key in the mineral industry today: a) reforming Canada's securities regulatory system; b) meeting geoscience funding commitments; c) developing a national diamond strategy; d) tax treatment for costs of community consultations, baseline environmental studies, pre-feasibility and feasibility studies; e) acquiring mineral rights; and f) making the Investment Tax Credit for Exploration in Canada permanent

A. REFORMING CANADA'S SECURITIES REGULATORY SYSTEM

The need to improve Canada's securities regulatory system is now firmly on the highest political agenda and there is growing support and momentum for change. Securities reform has been a major issue for the Prospectors and Developers Association of Canada since 2001, and we thank those mines ministers who helped bring this issue to the attention of their cabinet colleagues.

Mineral exploration companies account for about 25 percent of the publicly listed companies in Canada. Most of these companies finance their programs through the sale of shares because they have no cash flow. Financings tend to be small and relatively frequent, relating as they do to the stages of exploration, and because of these frequent financings, junior companies pay a disproportionate amount in regulatory compliance costs.

Companies reduce their issuing costs by selectively listing in only two or three of Canada's thirteen jurisdictions, all of which collect fees and require different documentation, which triggers legal costs. As a consequence, domestic capital markets are biased against residents of those provinces that do not warrant the time and expense of qualifying new and normally less expensive stock issues. Many investors in less populous jurisdictions, therefore, cannot get in on the ground floor of a stock issue.

Investors and the mineral industry want effective use of their money for exploration. Spending investors' money on multi-jurisdictional compliance is wasteful. Investors and the mineral industry also want effective prosecution of fraud. This is best accomplished through a single securities regulator that can enforce the federal criminal code and has the necessary policing powers. Jurisdictional issues for Canada's police must be resolved so that perpetrators of white-collar crime can be successfully prosecuted.

There have been many previous attempts over the past seventy years to rationalize the current system of securities regulation which is fraught with competing interests, constitutional hurdles, fragmentation, and regional disparities. According to former federal Finance Minister John Manley, the United States' Securities and Exchange Commission has become Canada's *de facto* single securities regulator.

Well intentioned attempts to create a "passport" system and/or adopt the Canadian Securities Administrators' proposal for Uniform Securities Regulation (which itself is not uniform) have only prolonged the decline in relevance of Canada's capital markets. In May 2004, British Columbia

introduced new local rules that are more at variance with other jurisdictions than the rules they replaced, and in April 2004, New Brunswick updated its legislation and regulations. These are modeled on those of Ontario.

In an April 2004 speech to the Canadian Investor Relations Institute, David Brown, chairman of the Ontario Securities Commission, indicated that a single national regulator need not mean a federal regulator. He also noted that: a) the national regulator need not be based in Ontario; b) strong regional offices with sector expertise will be required; and c) agreement among an initial core group of jurisdictions is necessary to help facilitate the way forward for the whole of Canada. Since the provinces are not prepared to surrender powers to the federal government, a pooling arrangement similar to one proposed in 1996, possibly on a trail basis initially, would appear to be one way forward. This could be an incremental process with a core group of provinces initiating the process and others following.

Serious consideration should also be given to proportionate governance regulations such as those applied in British Columbia. These are scaled to company size and asset value and would accommodate venture capital companies such as those in the junior mineral exploration business. These companies are the engines of sustainable development and growth, feeding mineral discoveries into the mining pipeline.

Australia has faced similar structural challenges in its efforts to improve its securities regulatory system. The country has made significant progress in making the transition to one regulator by seconding state powers rather than surrendering them to a federal commonwealth body. This is an important step forward for Canada's primary competitor. Australia is similar to Canada in terms of the percentage of publicly traded junior mineral exploration companies compared to total listings, domestic exploration expenditures and government sponsored geoscience research and development.

The issues are many and complex, but, as the title of the Wise Persons' Committee's report clearly states, *It's Time* for political decision. The PDAC has repeated the message many times that, for our members and entrepreneurial companies from other sectors, *one set of rules consistently applied across Canada by a single regulator* must be Canada's goal.

A reformed securities regulatory system should ensure that:

1. All Canadians, regardless of province of residence, are treated uniformly with respect to access to new stock issues.
2. Prosecution under the criminal code of inter-provincial and international securities fraud is made possible and more effective.
3. A single national regulator comprises a tiered structure of corporate governance to accommodate the proportionate need for regulation of large and small companies, as reflected by the TSX and TSX-V stock exchanges.
4. Appropriate exemptions are permitted for small companies across Canada. For example, the integrated disclosure system introduced as Continuous Market Access by the British Columbia Securities Commission is an innovative approach.

Recommendation: Ministers are asked to support their premiers and cabinet colleagues in instituting a single securities regulator which is empowered to apply and administer one set of securities rules consistently across Canada.

The PDAC is asking ministers to support this recommendation because:

- a. Canada's current multi-jurisdictional securities regulatory system discriminates among investors because it offers opportunities to some investors to make money and not to others simply on the basis of where they live. This is unacceptable and Canadians deserve better.
- b. Canada is the sole G7 country that does not have a single securities regulator. There is anecdotal evidence to suggest that trading partners China and members of the European Union are no longer prepared to invest time and effort signing memoranda of understanding with Canada on a province-by-province basis.
- c. The existence of multiple provincial securities regulatory bodies, each with its own set of regulations, impedes the efficacy of capital markets and job creation and acts as a barrier to Canada successfully participating in the global economy.
- d. Public awareness of the need for securities regulatory reform increases with cases such as Nortel. Policy-makers are urged to take advantage of this opportunity and to take steps to protect the investing public.
- e. Pan-Canadian attempts over the past seventy years to streamline the country's regulatory system have failed. The solution, whether it be a seconding or pooling of provincial powers to a single regulator, lies at the political level.

B. MEETING GEOSCIENCE FUNDING COMMITMENTS

One of Canada's main competitive advantages that attracts mineral exploration investment is this country's geoscience knowledge base. This includes high quality geological maps and other geoscience data produced by our federal, provincial and territorial geological surveys.

In a country as vast as Canada, the challenge to maintaining the geoscience knowledge base is one of appropriate and adequate coverage.

Funding for public geoscience is an investment in the public good. Government geological surveys directly contribute to this public good by providing the highest quality, most complete, most accessible natural resource data sets which can be used to:

- assess the quantity and quality of Canada's fresh water;
- determine the background concentrations of naturally occurring elements in our waters and soils to distinguish between natural variation and anthropomorphic induced change;
- evaluate terrain for access (pipeline, road and hydro) corridors;
- determine permafrost distribution in the context of climate change;
- assess natural hazards such as glacial clay slips, natural dams and constrictions in water flow in the context of 50 and 100 year weather events;
- evaluate energy and mineral potential for long term sovereignty considerations and planning.

Regional-scale mapping and metallogenic studies conducted by government geological surveys form the knowledge base on which mineral exploration is founded. Targets are frequently generated as a result of new geotechnical survey activities or when a new understanding of host rocks, provided by government mapping or re-mapping, leads to a re-evaluation of old mineral occurrences.

For each mine discovered, payback can be orders of magnitude higher than exploration expenditures, which themselves are a good return on government investment in public geoscience. A 1999 study estimated that every \$1 million of government investment to enhance the geoscience knowledge base will stimulate \$5 million of private sector exploration expenditures. This, in turn, will result in discovery of new resources with an average value of \$125 million (R.B. Boulton & Associates, 1999). Jobs are sustained directly through exploration and mining and indirectly by downstream smelting, refining, and port and rail infrastructure essential to the national fabric.

In 2000, mines ministers made a commitment to seek the long-term funding necessary to support the effective implementation of the Co-operative Geological Mapping Strategies Across Canada (CGMS). This commitment came about as a result of three years of government and industry research and analysis and resulted in recommendations contained in the 1999 report, *Funding of Government Geological Surveys – How much is Enough*.

The PDAC is encouraged by various geoscience initiatives being undertaken. For example, the *Targeted Geoscience Initiative* (2000-2005) currently underway has funded more than 30 joint mineral and energy geoscience projects across the country. This in turn has attracted considerable private sector interest. The evolving Canadian Geoscience Knowledge Network (CGKN) is also worthy of mention. In this initiative each jurisdiction's databases are produced and maintained locally, but the databases are eventually to become linked and the data accessible from anywhere in Canada.

In 2003 then Indian and Northern Affairs Minister Robert Nault committed funds that would enable the mid-term 2003-2004 objectives of the Northern Geoscience initiative to be implemented. Minister Nault acknowledged that geoscience expenditure levels north of the 60th parallel were significantly lower than in any other jurisdiction in Canada both on a per capita and per unit area basis. A funding commitment is now required for the long-term 2005-2015 objectives, an estimated \$75 million over ten years.

Recommendation: Ministers are asked to honour commitments made on behalf of their jurisdictions to champion the long-term funding necessary to support the implementation of the Co-operative Geological Mapping Strategies Across Canada and to commit long-term funding to the Northern Geoscience initiative.

The PDAC is asking ministers to support this recommendation because:

- a. Commitments were made by mines ministers in 2000 to provide the long-term funding for geoscience activities. It is important that these commitments be honoured.
- b. Funding geoscience activities is an investment made by governments for the public good.
- c. Canada's geoscience knowledge base is one of this country's key competitive advantages which attracts mineral exploration investment and leads to the discovery of new mineral deposits.

C. DEVELOPING A NATIONAL DIAMOND STRATEGY

Canada's first two diamond mines, Ekati and Diavik, are world class and will likely rank globally as upper quartile or even upper decile mines. In just six years, these exceptional mines have propelled Canada into third place in the world by value of rough diamond production.

The addition of the Snap Lake, Jericho and Victor deposits, now under development, will add to this momentum, although they are smaller than the first generation mines. Continuation of the exceptional beginning to this new industry and the establishment of a successful diamond strategy for Canada will be challenging. The current proposed national diamond strategy is based on the production from two world-class mines but runs the risk of being compromised unless further large economic deposits are discovered. A successful long-term national diamond strategy will depend almost entirely on the facilitation of successful exploration efforts that lead to the discovery of further economic deposits, thereby assuring an adequate supply of rough diamonds.

Of primary importance to a national diamond strategy for Canada is a robust diamond exploration industry which is sustained by high quality geoscience information specifically targeted to this new industrial base.

A strong diamond exploration industry also depends on its human resources. A shortage of qualified professors and skilled graduates has been identified as a major limiting factor for geoscience support for the diamond sector.

Impediments to the regulatory and permitting processes, particularly with respect to the operation of the boards authorized to issue permits, are frustrating exploration efforts and are adding significantly to exploration and mine permitting costs. Given the time value of money, these rising costs are negatively affecting the economics of the next generation of diamond mines, and could discourage future exploration activity. More upper quartile mines may lie waiting to be discovered but without a dynamic diamond exploration sector, opportunities for value added and secondary processing remain limited.

Mines ministers have been asked to contribute to and support a national diamond strategy for Canada's premiers to approve. The PDAC requests that consideration be given to the following points in developing such a strategy:

1. The provision of free market access for producers of rough diamonds is essential to maintaining investor confidence in exploration in all jurisdictions. Free market access for rough diamonds is also fundamental to the requirements of debt financing institutions that provide the large amounts of capital required for new diamond mine development. Any attempt to link permitting and/or title to the selective off-take of rough diamond production would be detrimental to investor and lender confidence because of the way rough diamonds are sold or auctioned. Run of mine rough diamonds are auctioned in parcels containing a mixture of high to low value stones of variable size. Any pre-selection of better quality diamonds for local use would significantly reduce the value received for all diamonds in two ways: a) fewer auction participants at local levels would constrain the bidding process; and b) remaining parcels, depleted of better stones, would fetch less at global auctions.
2. Regulatory uncertainty with respect to jurisdictional overlap, land claims, lack of clarity and delays in various ministries' approvals processes, and confusion between community consultation and community benefit agreements all contribute to inefficient processes and costly delays in permitting. Regulatory uncertainty could potentially limit the long-term supply of rough diamonds by damaging the business case for diamond deposits of more average size and grade.

3. Ground staking in northern and remote areas is a key concern for a number of reasons, including its high costs, safety issues, surface rights and environmental considerations. Ground staking is a regulated requirement that contributes little if anything to the actual search for diamonds and investors would be better served if more of their money were spent on actual exploration. The implementation of map staking is the logical solution to this.
4. A Canadian diamond should remain defined as a diamond “mined in Canada” because the definition is simple, easy to understand and administer, and straightforward to market.
5. The PDAC also supports the view expressed by many during the recent Yellowknife Round Table that the federal excise tax on all jewelry, Canada’s sole remaining luxury tax, should be eliminated. In order to undertake an effective promotion of Canadian diamonds domestically and internationally, the jewelry sector should be relieved of this anomalous tax burden. Removing the excise tax on all jewelry would enhance the competitiveness of high value added Canadian jewelry manufacturing and sales, increase retail demand (both domestic and foreign) and reduce smuggling. Increasing competitiveness would stimulate the Canada-based cutting and polishing sector.

In developing a national diamond strategy for Canada, ministers are asked to pay the most attention to supporting those elements of the diamond business which generate the highest profit margins, namely mining and jewelry manufacturing/retail sales.

Recommendation: As part of their commitment to developing a national diamond strategy, ministers are asked to take those steps necessary to support a robust and continuing diamond exploration industry, specifically:

- **Guarantee free market access for rough diamonds**
- **Improve the regulatory and permitting processes**
- **Institute map staking north of 60 to acquire mineral tenure**
- **Retain the definition of a Canadian diamond as a diamond which is ‘mined in Canada’**
- **Remove the excise tax on all jewelry**

The PDAC is asking ministers to support this recommendation because:

- a. A robust diamond exploration industry is the foundation for a sustainable national diamond strategy and will assure this country’s continuing status as a leading diamond producer.
- b. Sustained diamond production and supply will support and encourage growth in the value-added areas of the diamond business and will create opportunities for direct and indirect employment.
- c. Diamond production is generating new wealth for Canada.
- d. Removing the excise tax on all jewelry will enhance the competitiveness of high value added Canadian jewelry manufacturing and sales, increase retail demand (both domestic and foreign) and reduce smuggling. Increasing competitiveness will also stimulate the Canada-based cutting and polishing sector.

D. TAX TREATMENT FOR COSTS OF COMMUNITY CONSULTATIONS, BASELINE ENVIRONMENTAL, PRE-FEASIBILITY AND FEASIBILITY STUDIES

Junior mineral exploration companies fund much of their exploration activity through the issuance of flow-through shares. Raising money in this way is easier than by other means because investors in flow-through shares can deduct certain qualifying expenditures from personal income for tax purposes. Exploration activities funded by flow-through shares must qualify for Canadian Exploration Expense (CEE). Currently, community consultations, baseline environmental, pre-feasibility and feasibility studies do not qualify for CEE. These costs, which are sometimes considerable and mandatory, must be paid for with non-flow-through funds. For many junior exploration companies, these kinds of funds are difficult to access.

In recent times, community consultation, particularly with First Nations, has become a significant court mandated obligation for mineral exploration companies. Costs associated with community consultation include: expenditures for public notices, community visits, site tours, employee travel, rental costs for meeting facilities, translation services, and legal advice, as well as salaries, benefits, administrative overhead and other internal expenses necessary to carry out the consultation process.

In addition, some companies are electing to undertake environmental baseline studies and to establish a “before” or background environmental database. This due diligence information adds value to the project by demonstrating that exploration has no material impact on the natural environment around communities, particularly with respect to water quality. Such studies include sample collection, analytical reviews, preparation of a database and evaluation costs.

Since exploration commonly occurs in remote areas of Canada, the cost of consultation and environmental baseline expenditures can be considerable. For junior companies conducting relatively inexpensive early stage exploration work, consultation and baseline environmental costs can be disproportionately high.

Currently Canada Revenue Agency (CRA) and Finance Canada (Finance) treat community consultation costs as Canadian Development Expense (CDE). They argue that these expenditures arise from acquiring a right, license or privilege to prospect, explore, drill or mine for minerals in a mineral resource in Canada and, therefore, belong in the CDE category. Because of this interpretation, mining exploration companies have to meet these costs with funding that has not been raised through the issuance of flow-through shares. This type of funding is harder to raise. Furthermore, because these costs are considered CDE expenditures, junior exploration companies, without taxable income, cannot make use of these deductions.

The PDAC, on the other hand, considers that the costs of community consultation and environmental baseline studies rightly belong in the CEE category because they are associated with a need to conduct prospecting activity of subsurface rights that have already been acquired (rather than with the acquisition of mining or exploration rights). If these costs are considered CEE, then mineral exploration companies would be able to finance them more readily with money raised through flow-through shares.

CRA and Finance officials also question the need to re-classify these costs as CEE because companies currently are claiming limited amounts of costs relating to community consultation and the collection of baseline environmental data under CDE. The implication is that they are not spending significant amounts of money on these activities. The PDAC agrees that these practices were limited in the past; however, recent court decisions, governance issues relating to best practices, and society's expectations are changing the way the sector works, and companies are integrating these practices into their costs of doing business.

The PDAC, in conjunction with the Mining Association of Canada, has requested that Finance Canada formally recognize that the costs associated with community consultation and environmental baseline studies be treated as exploration expenses and, as such, qualify as CEE. We believe that Finance Canada can accomplish this in one of two ways: a) simply clarify that these types of expenditures constitute and qualify for CEE in an Interpretation Bulletin, income tax technical news release, or other government publication issued by Canada Revenue Agency; or b) re-define CEE in the Income Tax Act (Canada) so that it includes community consultation and environmental baseline studies.

In a joint submission to Finance Canada in February 2004, the PDAC and the Mining Association of Canada requested that expenses relating to pre-feasibility and feasibility studies also be made eligible for CEE. These kinds of studies advance knowledge about the location, extent and viability of mineralization. However, a positive outcome of the studies cannot be guaranteed in advance. When the studies have a negative outcome, i.e., when they indicate that a viable rate of return (for example, 15%) will not be achieved, then these costs cannot be recovered because there will be no mine earnings.

While the re-interpretation of CEE is a federal government responsibility, the PDAC believes that provincial and territorial ministers can assist the industry by updating their mining regulations to ensure these costs qualify for assessment work. Ministers will agree that there is great value in mineral exploration companies undertaking these types of activities. Consulting and sharing knowledge about a planned exploration project with local communities is much more likely to lead to that project's successful execution. The data collected during baseline environmental analyses, particularly the information on water quality, could be particularly useful if they could be added to publicly accessible archives.

Recommendations:

Ministers are asked to encourage their cabinet counterparts in finance and revenue ministries to press the federal government to re-interpret Canadian Exploration Expense so that it includes the costs of community consultations, baseline environmental studies, pre-feasibility and feasibility studies.

Ministers are asked to modify their provincial and territorial regulations governing assessment work to include the costs of community consultations and baseline environmental studies.

The PDAC is asking ministers to support these recommendations for the following reasons:

- a. A re-interpretation of CEE to include the costs of community consultations and baseline environmental studies will allow mineral exploration companies to use money raised through

flow-through shares for these activities. Because this funding is easier to raise, companies are more likely to undertake these activities. This in itself is likely to facilitate consultation with local communities, particularly First Nations. Consultation and the collection of environmental data will likely lead to a more smoothly run exploration project.

- b. A re-interpretation of CEE will not require any change in legislation; a clarification in an Interpretation Bulletin or similar federal government publication will suffice.
- c. By treating community consultation and baseline environmental studies as assessment work, provincial and territorial governments are bringing those regulations governing exploration into line with society's expectations, are acknowledging and recognizing the value of these types of activities, and are giving exploration companies credit for undertaking these activities.

E. ACQUIRING MINERAL RIGHTS

In Canada, the Crown owns both the surface rights and mineral rights on most of the land mass. Over the years, governments have encouraged mineral exploration and development by adopting laws that allow companies and individuals to acquire mineral rights by “free entry.” Such a system encourages competition, creates wealth within communities, and provides tax dollars to provincial treasuries.

In some instances and for obvious reasons, mineral rights beneath certain land areas are not open for staking and cannot be acquired. Examples include urban areas, protected areas and parks. However, there are also many areas where surface rights are privately owned yet the mineral rights continue to be held by the Crown and are open to be staked or acquired for mineral exploration and development. This is not a new development. The division between surface and mining rights has been in place for over one hundred years and is well known to residents of mining communities. Canada has a long tradition of “separate” surface rights title and mineral rights title in the mining and oil and gas industries. Dispute and compensation mechanisms have been established in many jurisdictions and the PDAC has always been open to discussing changes to these systems to adapt to community and industry needs.

The primacy of the free entry system as it relates to the right of access to acquire mineral rights by staking is fundamental to a viable exploration and development industry. However, the “free” in the historic term “free entry” is increasingly misconstrued. In areas where statute still requires ground staking to acquire a mineral claim, problems can arise between surface rights holders and prospectors seeking to acquire the mining rights. Where these kinds of problems have arisen, there have been calls for prospectors to give notice before staking (a requirement that would tip off competitors and have an impact on exploration). Campaigns which falsely imply that prospectors, mineral exploration companies and mining companies can enter upon lands that have surface rights owned by others and “freely” conduct unfettered activities without regard for consequences have the potential to seriously compromise the free entry system.

Demographic data in some parts of Canada demonstrate that increasingly urban dwellers are tending to retire to more rural parts that are located on or close to Crown lands. This trend has brought many of these people into contact with exploration and mining for the first time. While mining rights are understood by most northerners who live in the vicinity of mining communities, these same rights are not understood by, and therefore come as a surprise to, many former urban residents as they move into areas of mineral potential.

In January 2004, the PDAC’s board of directors approved an ad hoc committee report on the acquisition of mineral rights in Canada. One of the most significant findings of this report was that a majority of jurisdictions now allow for map staking, a combination of map staking and ground staking, or ground staking that does not require the blazing or cutting down of trees to acquire a mineral right.

The PDAC believes that map staking reduces the risk of confrontation between surface rights owners and prospectors or exploration companies. The fewer the number of confrontations, the fewer the challenges to the right of the free entry system to acquire mineral rights.

The PDAC believes that, in a situation where the mineral and surface rights are separate, prospectors or exploration companies, upon securing the mineral rights, should provide notice to surface rights holders of the acquisition of the mineral rights and of their intention to undertake exploration activities. By providing this information to surface rights holders, particularly those who are not

familiar with the mining cycle, prospectors or exploration companies can allay the fear of the unknown for surface rights holders.

While the PDAC supports ground staking in certain situations, it also supports those governments which are currently endeavoring to adopt some form of map staking, which can:

- Reduce mobilization and ground staking costs which do little if anything to advance property knowledge.
- Address environmental and aesthetic concerns of local residents and cultural concerns of First Nations people.
- Make the acquisition of mineral rights safer by avoiding the use of helicopters and fixed wing aircraft during staking. Safety is an issue particularly in inclement weather and when there is a staking rush.
- Reduce challenges to the free entry system.

Recommendations:

Ministers of those jurisdictions now encountering clashes of interest between surface rights holders and mineral rights holders are asked to consider some form of map staking in areas of well established cadastral coordinates.

Ministers are also urged to adopt map staking in areas where ground staking adds significantly to the costs of exploration. This is particularly the case in Nunavut and the Northwest Territories. Such a move would also add to the robustness of the diamond exploration industry in those territories.

Ministers are urged to ensure the continuation, protection, and smooth operation of the free entry system of acquiring mineral rights in Canada by:

- **establishing procedures for those who have acquired mineral rights to give notice to surface rights holders once the mineral rights have been acquired.**
- **establishing awareness programs in areas of mineral potential to ensure that communities understand that mineral rights are owned by the Crown and are open to be explored and developed.**

The PDAC is asking ministers to support these recommendations because:

- a. Free entry is a fair and efficient system for acquiring mineral rights and is the basis for all successful mining legislation around the world. It is a system that has worked successfully for over a hundred years and ensures competition, creates wealth within communities, and provides tax dollars to provincial treasuries.
- b. Map staking is a cost-effective way for governments to maintain the free entry system of acquiring mineral rights and to reduce confrontations between surface and mineral rights holders.
- c. Map staking is a way for industry to keep the environmental impact of acquiring a mineral right to an absolute minimum. For example, it eliminates the need to damage or kill trees, has no impact on the aesthetics of the landscape, and mitigates unintended damage to sacred sites or areas of cultural significance to First Nations.

F. MAKING THE INVESTMENT TAX CREDIT FOR EXPLORATION PERMANENT

On behalf of the Canadian exploration community, the PDAC wishes to thank all of those ministers, staff, and officials who assisted with implementing and twice extending the temporary Investment Tax Credit for Exploration in Canada (ITCE) program. Known to investors as the “super” flow-through share program, this tax credit enabled Canadian junior mineral exploration companies to recover more quickly than their global competitors from the prolonged commodity price cycle lows of the early years of this century. Having fulfilled its initial purpose of stimulating the sector, the ITCE program is now succeeding in moving exploration activity in Canada toward levels that are adequate to replace the nation’s mineral reserves.

Since the introduction of the ITCE program in October 2000, over \$875 million has been raised in total flow-through financings to April 2004. The PDAC estimated in 1999 that, for the program to be successful, flow-through share financings would need to be in the order of \$300 million annually. In 2003, over \$370 million was raised, and there are early indications that similar levels will be attained in 2004.

The success of the ITCE program is recognized as an important privately administered program of transfer payments to mainly rural and northern Canada. It has played a vital role in exploring for diamonds. As a consequence, in May 2004 the Taxation and Financing Discussion Group of the National Diamond Round Table recommended that the temporary ITCE be made permanent to ensure the robustness of diamond exploration. The PDAC strongly supports this recommendation.

Recommendation: Ministers are asked to work with their provincial and territorial colleagues and federal counterparts to make the ITCE tax credit program permanent.

The PDAC is asking ministers to support this program because:

- a. Canada is recognized as having great geological potential; however, the country is also known as a relatively high cost jurisdiction in which to explore. A permanent incentive can compensate for this cost differential, thereby maintaining adequate domestic levels of exploration to replace depleting national reserves.
- b. Earlier this year, the federal government instituted a program in which operating companies qualify for a permanent 10 percent tax credit for exploration expenditures they incur. However, neither this tax credit nor the exploration expenditures can be flowed through to investors. This program is of no use to companies without production and cash flow. By making the ITCE program permanent, there will be an equivalent and symmetrical permanent program available to companies without cash flow.
- c. Instituting a permanent ITCE program will support grassroots exploration for base and precious metals and diamonds. A robust diamond exploration industry has been identified as an important component of a national diamond strategy.