

# **The Canadian Minerals and Metals Plan: Proposed Government Actions to Address Canada's Declining Mineral Industry Competitiveness**

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**Submitted by the Canadian Mineral Industry Federation (CMIF):**

## National Associations

Canadian Institute of Mining, Metallurgy and Petroleum  
Canada Mining Innovation Council  
Coal Association of Canada  
Fertilizer Canada  
Mining Association of Canada  
Mining Industry Human Resources Council  
Mining Suppliers Trade Association (Canada)  
Prospectors & Developers Association of Canada

## Provincial and Territorial Associations

Alberta Chamber of Resources  
Association for Mineral Exploration British Columbia  
Association de l'exploration minière du Québec  
Association minière du Québec  
Manitoba Prospectors and Developers  
Mining Association of British Columbia  
Mining Association of Manitoba  
Mining Association of Nova Scotia  
Mining Industry NL  
Newfoundland and Labrador Prospectors Association  
NWT & Nunavut Chamber of Mines  
Ontario Mining Association  
Ontario Prospectors Association  
Saskatchewan Mining Association  
Saskatchewan Potash Producers Association  
Yukon Chamber of Mines

The members of the Canadian Mineral Industry Federation (CMIF) represent the majority of companies engaged in mineral exploration, mining and processing in Canada, and the supply sector that supports these industrial activities. Members account for most of Canada's production of base and precious metals, uranium, diamonds, metallurgical and thermal coal, potash and mined oil sands. CMIF appreciates this opportunity to provide federal, provincial and territorial ministers responsible for the mining portfolio with views and recommendations regarding policy issues of importance to the minerals and metals industry.

**This submission was prepared by the Prospectors & Developers Association of Canada (PDAC) and the Mining Association of Canada (MAC), with the participation and support of CMIF members.**

## **ALIGNING CMIF PRIORITIES WITH THE CANADIAN MINERALS AND METALS PLAN (CMMP) AREAS FOR ACTION**

Developed through consultation led by Natural Resources Canada (NRCan) culminating in its March 2019 release, the Canadian Minerals and Metals Plan (CMMP) has the potential to be a key federal/provincial/territorial (F/P/T) vehicle for actions by government to address Canada's waning mineral industry competitiveness and help position the sector for future success .

The Canadian Mineral Industry Federation (CMIF) underscores that an internationally competitive Canadian mineral industry is fundamental for determining if the industry will continue to responsibly generate economic and societal benefits for Canada.

As such, this brief identifies CMIF recommendations that align with the six CMMP Strategic Directions and subsequent Areas for Action.

- 1. Economic Development and Competitiveness**
- 2. Advancing the Participation of Indigenous Peoples**
- 3. Environment**
- 4. Science, Technology and Innovation**
- 5. Communities**
- 6. Global Leadership**

## **INTRODUCTION: CANADA IS A MINERAL EXPLORATION AND MINING NATION**

The value of the mineral industry's contribution to Canada cannot be overstated. For many decades, Canada has been a world leader in the discovery, production and processing of minerals and metals needed to improve the quality of life of the world's growing middle-class. In fact, one of the mineral exploration and mining industry's most important contributions is our ability to generate significant economic and social benefits in remote communities, Indigenous communities, as well as large and small urban centres across Canada. Canadian mineral production, domestically and internationally, is also critical for enabling the transition to a lower carbon economy.

The industry employs over 630,000 workers across the country, and in 2017 accounted for 5% of Canada's total nominal GDP (directly and indirectly). Valued at \$97 billion in 2017, mineral exports accounted for 19% of Canada's total domestic exports. Toronto is the mine equity finance capital of the world, with 59% of all global mining equity financing transactions done on the TMX in 2017. Much of the world's leading legal, engineering, geological, equipment and financial expertise is also found in Canada, a unique global industry super-cluster that has developed over the course of more than a century.

The mineral sector has also continued to build its reputation as responsible, sustainable corporate citizens in Canada and abroad. As an example of this growing reputation, MAC's Towards Sustainable Mining (TSM) continues to expand internationally and be implemented in more countries<sup>1</sup>. Further,

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<sup>1</sup> In March 2018, CONFEDEM, the national mining association of Spain, became the fifth national mining association outside of Canada to adopt MAC's Towards Sustainable Mining® (TSM®), underscoring the program's growing global presence. The national mining associations of Finland (FinnMin), Argentina (Cámara Argentina de Empresarios Mineros), Botswana (Botswana Chamber of Mines), and the Philippines (Chamber of Mines of the Philippines) are currently implementing TSM.

PDAC has recently launched gender diversity and inclusion guidance which is a practical tool to assist junior exploration and mining companies improve their gender diversity and inclusion in the workplace and community setting.

In short, Canada is a mineral exploration and mining nation.

### **MEASURING CANADA'S MINERAL INDUSTRY COMPETITIVENESS – CONTINUED SIGNS OF DECLINE DESPITE MARKET UPTURN**

While Canada has long been the dominant global mineral exploration and mining nation in mineral production, exploration and mining finance, services and supplies, and sustainability and safety, our competitiveness continues to erode. Canada is losing out on its ability to seize new opportunities for growth and it is essential that the federal, provincial and territorial governments take action to reverse this trend.

While the industry is encouraged by initiatives put forth by governments in recognition of industry challenges which should help address current trends, including the renewal of the Mineral Exploration Tax Credit (METC) for a five-year term, the enhanced Accelerated Capital Cost Allowances and the recently released Canadian Minerals and Metals Plan, further action is required.

One of the most pressing issues of concern for Canada's mineral industry is the fact that investment in new projects has fallen, highlighting the fact that our country's economic prospects are uncertain. More needs to be done to boost our domestic and international competitiveness in order for Canada to reclaim its position as the global leader in the mineral exploration and mining sector.

#### **Concerning Trends for Canada's Mineral Sector<sup>2</sup>:**

- Mineral exploration financing experienced a severe downturn from 2012-2015, with global financing for exploration decreasing 85%. In 2016 and 2017 there were some signs of improvement for global financing for exploration, however in 2018 the trend reversed as funding declined by more than 50% from a year earlier and represented less than 25% of peak exploration investment levels reached in 2012.
- While Canada remained the world's top destination for non-ferrous exploration spending in 2017, it continued to cede market share to other jurisdictions, including Australia. This marks the sixth consecutive year that Canada's share of international exploration investment has fallen.
- Between 2011 and 2016, exploration expenditures in Canada are estimated by NRCan to have dropped 61%, with grassroots exploration reduced by 37% between 2013 and 2014 alone, as reported by S&P Global Market Intelligence.
- The value of total mining projects planned and under construction from 2018 to 2028 has reduced by 55% since 2014, from \$160 billion to \$72 billion.
- Capital investment in the mining sector has declined each year since 2012, with investment intentions for 2018 in line with this trend.
- Only four new mining projects, all gold mines, were submitted for federal environmental assessment in 2017 – far below historical trends.

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<sup>2</sup> Cite PDAC's State of Mineral Finance and MAC's F&F

- Over the past five years, Canada has lost ranking for seven out of 16 commodities for which it had been a top-five producer.
- In 2016, InfoMine, a mining database, reported that Australia's identified mining supply sector surpassed that of Canada's, bumping Canada to third place. In 2017, this gap expanded with Australia adding more than 200 firms to its list. In 2018, Canada was trailing by nearly 800 firms, only adding two firms year-over-year.

There is vast mineral potential in Canada's remote and northern regions – areas that exceed one-third of Canada that remain untapped largely due to the high costs of operating in the north.

Declines in mineral investment in Canada cannot be primarily attributed to the most recent industry market down cycle. As the quantitative and qualitative data outlines, Canada's mineral industry is stagnating and facing intense competition from global competitors. CMIF members would like to underscore how specific policy decisions at the federal, provincial and territorial levels pertaining to project permitting, tax expenditure, climate change, transportation policy and infrastructure, land access and conservation, Indigenous reconciliation, and innovation, continue to impact decisions being made by companies and investors about where to invest. The implications of these policy decisions, unless addressed, are likely to persist regardless of improving market conditions. Policy uncertainty affects Canada's ability to attract investment.

Despite these challenges, the industry continues to make significant contributions to the social and economic well-being of Canadians. However, this cannot be taken for granted and the ability of Canada's mineral industry to maintain and grow these vast contributions is paramount. Policy-makers must continue to take concrete steps, building on actions like those included in the Federal Government's 2018 Fall Economic Statement (FES) and 2019 Budget, to position the sector for present and future success.

### **Boost to Mineral Sector Competitiveness in Federal Government's 2018 Fall Economic Statement and 2019 Budget**

CMIF acknowledges the boost to the investment competitiveness of Canada's mineral sector through measures included in the federal government's 2018 Fall Economic Statement (FES) and 2019 Budget, including:

- Extending the Mineral Exploration Tax Credit (METC) for a five-year term, bringing greater investment certainty for early stage mineral exploration.
- The Accelerated Investment Incentive, which will enable miners to write off three times the eligible cost of newly acquired assets in the year the investment is made.
- Accelerated investment of \$773.9 million over the next five years of national, trade-corridors funding.
- Allowing businesses to immediately write-off the full cost of clean energy equipment.
- An additional \$800 million over five years for the Strategic-Innovation Fund.
- A commitment to increase overseas exports by 50% by 2025.
- A proposed increase of \$13.6 million to the Multimodal Integrated Passenger-Freight Information System.
- Bolstering the Canadian Trade Commissioners Service, including a tripling of its CanExport program to help Canadian businesses move into new markets. The mining and mining supply

sector significantly values the work of Trade Commissioners around the world that support our access to global markets.

- A suite of proposals to improve regulatory competitiveness, including the establishment of a dedicated External Advisory Committee on Regulatory Competitiveness.
- Additional funding to the Canadian Northern Economic Development Agency for its current economic development program.
- Funding for northern and Arctic communities for education, economic development programming, etc.
- Investments in initiatives to support universal high-speed internet in rural, remote and northern communities.
- Funds for Crown-Indigenous Relations and Northern Affairs Canada to create the Northern Abandoned Mine Reclamation Program.
- Initiatives aimed at supporting reconciliation with Indigenous Peoples.
- Investments in Indigenous communities to work towards addressing gaps in socio-economic conditions and education.
- Investments in skills training, apprenticeship programs for skilled trades and Indigenous education and training.

### **Summary of CMIF Recommendations: Proposed Government Actions through the CMMP to Address Canada's Declining Mineral Industry Competitiveness**

To build on these and other initiatives, additional measures are needed to address Canada's waning mineral industry competitiveness and CMIF urges F/P/T governments to prioritize and align the following key policy issues with ongoing work to action the CMMP:

#### **1. Economic Development and Competitiveness**

##### **a. Tax and Financial Incentives**

- Implement fiscal incentives to increase the exploration for the minerals and metals that are crucial to a low carbon future to position Canada as the global supplier of choice for these.
- Under the CMMP, F/P/T governments should develop a national action plan to identify and advance production of Canadian reserves of metals necessary for the transition to a low carbon economy, including those necessary for battery production.

##### **Specific Tax Policy Recommendations:**

- Reduce the headline corporate income tax rate to achieve equivalency with the U.S. rate for exporters or reinstate a 33% resource allowance.
- Reverse, reinstate and enhance mining tax reforms from Federal Budgets 2012 and 2013, including augmenting the Accelerated Capital Cost Allowance to include zero declining balance to match the U.S.
- Phase out Dividend Withholding Tax Rules to bring Canada in line with many other countries that have augmented their competitiveness vis-a-vis Canada in this respect.
- Introduce a substantial shareholder exemption for corporate reorganization performed by Canadian or foreign groups to be tax free and allow for a better allocation of capital.

*Specific Provincial and Territorial Recommendations:*

- Provincial and territorial mines ministers should support capital flows into mineral exploration in Canada by maintaining, adopting and enhancing fiscal incentives for early-stage exploration, such as tax credits, exploration incentives, prospector assistance programs and venture capital funds.

**b. Regulation**

- CMIF urges all F/P/T ministers responsible for natural resources to:
  - Work together to ensure that project reviews are conducted in a manner that prioritizes inter-jurisdictional cooperation and enhances Canada's investment climate.
  - Take an active role in the development of regulations for the Impact Assessment Act (IAA), and ensure improved coordination between federal and provincial assessment review and approval processes for mineral industry projects.

**c. Land Access and Land Use**

- CMIF members appreciate that certain lands will be withdrawn from resource development activity due to a diverse range of values associated with the use of land in Canada, including economic, ecological, cultural, spiritual, and aesthetic values. However, land use decisions and the creation of any protected areas must ensure responsible access to land by:
  - Balancing diverse goals and values, including economic.
  - Establishing credible, inclusive and evidence-based processes.
  - Incorporating a comprehensive mineral resource assessment, based on geoscience studies, to understand the value of mineral potential.

*Specific Provincial and Territorial Recommendations:*

- Provincial and territorial governments should:
  - Work towards requiring and financially resourcing processes, such as comprehensive mineral resource assessments, that study and consider the mineral potential of lands prior to making land use/land withdrawal decisions.
  - Gather information on the manner in which mineral and energy potential is factored into land withdrawal decision-making processes, including an inventory of leading practices that can be shared with other jurisdictions.

**d. Northern Infrastructure:**

- Government must make strategic, substantive investments in critical transportation, energy and communication infrastructure in remote and northern Canada.
- The Canada Infrastructure Bank should have a strong economic development focus for northern Canada.

*Specific Provincial and Territorial Recommendations:*

- Considering the extremely high costs of operating in northern and remote regions of Canada, cost-recovery provisions outlined in various legislation should be removed.
- Invest in alternative energy sources, such as small-scale nuclear power.
- Continue to advocate to the federal government for strategic infrastructure investments, including transportation, energy and communication.

**e. Rail Infrastructure:**

- Governments should increase provincial and territorial awareness of the impacts on mining of the longstanding railway/shipper imbalance in respective jurisdictions, as well as relevant federal legislation such as Bill C-49 in the 42<sup>nd</sup> Parliament that failed to address mining sector rail challenges.
- Governments should commit to enhanced and formal federal, provincial and territorial collaboration and engagement on these critical issues to ensure that the next opportunity for legislative changes to the *Canada Transportation Act* result in a more competitive, balanced and efficient transportation system for the mining industry. In the interim, stemming from Bill C-49, collaboration on federal government consultation on rail capacity data is critical.

**2. Advancing the Participation of Indigenous Peoples**

**Respecting Rights, Meaningful Engagement, Capacity Building, and Economic Benefits**

- CMIF recommends that governments actively support industry efforts to enhance the participation of Indigenous Peoples in the mineral industry through:
  - Foundational social investments (health, housing, water, education) that contribute to better socioeconomic outcomes for Indigenous Peoples; and,
  - Targeted funds for skills training and entrepreneurship to assist Indigenous Peoples in securing employment and business development opportunities generated by the industry.
- The Crown should revise, where required, its consultation processes with Indigenous communities to ensure that it adequately discharges its duty to consult and accommodate in relation to mineral development
  - Specifically, when developing a path forward for clarifying consultation and accommodation in the new Impact Assessment (IA) assessment process, it is important to consider a number of challenges that have been identified across Canada related to the implementation of the duty to consult.

*Specific Provincial and Territorial Recommendations:*

- Invest in capacity-building programs for Indigenous communities at the regional level, in proximity to areas of potential and current mineral activity.
- Where appropriate, improve mechanisms through which governments share the benefits and/or a portion of the existing revenues generated by mining with impacted Indigenous communities (i.e. government resource revenue sharing).
- Review consultation processes with Indigenous communities to address common challenge areas that have been identified in relation to the Crown's implementation of its duty to consult and accommodate (see below). This will support the protection of Indigenous and treaty rights and also avoid project delays, increased costs, investor uncertainty and negative impacts to company-community relationships.

**3. Environment**

**a. Climate Change:**

- The federal government should enhance collaboration with mineral exploration and mining companies and associations to increase awareness of rapidly evolving federal climate change policy developments.
- Federal, provincial and territorial governments should work together to make strategic, large-scale and transformative energy infrastructure investments (including hydro, micro-nuclear, natural gas, among others).
- Any carbon price regime must:
  - Be revenue neutral, protect emissions intensive and trade-exposed (EITE) sectors, and address the unique challenges faced by remote and northern regions, and other measures reflected in [MAC's Principles for Climate Change Policy Design](#).
  - Clearly demonstrate complementarity before adopting non-pricing climate change policies and regulations to avoid cumulative effects. This demonstration should include a robust and publicly-disclosed economic impact assessment.
  - Commit, in principle, to the inclusion of EITE protections for any and all policies or regulations that result in a cost on carbon.
- Failing to avoid cumulative effects in existing or developing regulatory initiatives will result in double regulation of the same emissions in one or more respects.
- The federal government must build recognition of northern factors into climate change policies and regulations. One-size-fits-all policies have not worked in the North before, and climate change policy is no different.
- Robust and strategic funding should be established to enhance the sector's ability to embrace opportunities relating to the transition to a low carbon economy, and supplement CMIF member R&D and innovation initiatives and investments in areas such as developing and adopting low emission and renewable energy technologies that reduce emissions, improve grinding and processing to reduce or eliminate water use, and enhancing tailings management to reduce waste.

**b. Species at Risk**

- With regards to the *Species at Risk Act* and ensuring access to land for proposed projects, the federal government must:
  - Work with provincial and territorial governments to encourage consistent and complementary approaches to species protection and recovery, and to ensure the generation, sharing and application of the best available information needed to support protection and recovery efforts.
  - Work with provinces and territories to ensure that recovery and action plans are holistic in approach and based on local circumstances and publicly accessible sound science.
  - Meaningfully engage with Indigenous communities and stakeholders on the development and implementation of Section 11 Conservation Agreements.

**4. Science, Technology & Innovation**

**a. Geoscience**

- The federal government should continue to support the collection and dissemination of public geoscience data by renewing the Geo-mapping for Energy and Minerals (GEM) and the Targeted Geoscience Initiative (TGI) programs

- The federal government should significantly expand rigorous geological studies across Canada, particularly for mapping of remote regions in greater detail.

*Specific Provincial and Territorial Recommendations:*

- Provincial and Territorial governments should:
  - Continue to fund and enhance support of the work of geological surveys to conduct geological studies that will generate key data to drive mineral exploration.
  - Consciously test and de-risk new exploration techniques and technologies, including through the work of the geological surveys.

**b. Innovation**

- The federal government should:
  - Invest in the testing and de-risking of new exploration techniques and technologies.
  - Collaborate and invest in the Canada Mining Innovation Council (CMIC) to implement the Towards Zero Waste Mining (TZMW) strategy.
  - Provide financial support to catalyze private sector innovation investments, leading to real progress in energy efficiency, environmental protection and business productivity.

**5. Communities**

**a. Human Resources and Skills Training**

- The federal government should:
  - Continue to invest in education, skills training and work readiness programs, particularly for underrepresented groups
  - Increase collaboration between governments, industry and educational institutions to ensure new entrants to the mineral industry have the required skills
  - Continue to invest in the Mining Industry Human Resources Council (MiHR), through the Sectoral Initiatives Program (SIP) to provide relevant and timely labour market information, national occupational standards and programs that support a more efficient mining labour market
  - Continue to support students looking to obtain work-integrated learning opportunities through the Student Work Placement Program (SWPP)

*Specific Provincial and Territorial Recommendations:*

- Supplement federal and industry initiatives related to training and workforce development

**b. Diversity and Inclusion**

- Governments should enhance support for initiatives to address barriers to diversity and inclusion, including through:
  - The creation of government funding mechanisms to support diversity and inclusion initiatives (e.g. Gender Based Analysis+, unconscious bias training for corporations, etc.)
  - Enhanced government investments in education, skills training and work readiness programs for underrepresented groups

**6. Global Leadership**

**a. Support for Canadian Mineral Industry Abroad**

- The federal government should continue to expand market access through free trade and investment agreements. The industry welcomes the Canadian government’s trade efforts and encourages the government to pursue trade agreements with other important markets, like China and India.
  - With respect to new trade and investment agreements, it is critical that these mechanisms include labour mobility, regulatory and investment protection and investor state dispute resolution (ISDS) provisions.

*Specific Provincial and Territorial Recommendations:*

- Governments should continue to work with mineral exploration and mining companies to promote respective jurisdictions as destinations for investment.

**b. Supporting Leading Practices for Responsible Business Conduct**

- Governments should continue to support and endorse Canadian industry association sustainability frameworks and activities such as TSM and e3Plus.
- The federal government should continue to promote leading practices by Canadian mineral exploration and mining companies operating in Canada and internationally
- Continue federal government – mineral industry partnerships to advance Canada’s development goals and expand the benefits that mining activity brings to communities around the globe.
- The Canadian Ombudsperson for Responsible Enterprise (CORE) should be based on collaborative dispute resolution and joint fact-finding methods and apply to all Canadian business operating abroad, not just currently covered sectors including mining, oil & gas and textiles.

## **CMMP Strategic Direction #1 - Economic Development and Competitiveness**

Canada's business and innovation environment for the minerals sector is the world's most competitive and most attractive for investment

### **CMMP AREAS FOR ACTION:**

#### **TAX AND FINANCIAL INCENTIVES**

The federal, provincial and territorial governments should review Canada's tax position and adjust tax policies and other fiscal instruments to support cost competitiveness and attract investment.

#### **REGULATION**

The federal, provincial and territorial governments should continue to harmonize or mutually recognize regulations, where appropriate. The federal, provincial and territorial governments should continue to work with industry to develop tools to help stakeholders understand and navigate regulations. The federal, provincial and territorial governments should ensure that those government bodies conducting environmental assessments have the capacity to deliver advice and decisions in a timely and efficient manner.

#### **GEOSCIENCE**

The federal, provincial and territorial governments and industry should explore options for increased funding for geoscience and examine ways to increase international collaboration on geoscience innovation.

#### **LAND ACCESS AND LAND USE**

The federal government, in collaboration with the provinces and territories, should continue to settle land claims as a principle for reconciling with Indigenous Peoples. The federal, provincial and territorial governments should explore ways to provide increased clarity around land use and land access where it does not exist. Decisions should incorporate economic factors alongside social and environmental considerations, and leverage scientific and local knowledge.

#### **INFRASTRUCTURE**

The federal, provincial and territorial governments should work with Indigenous Peoples, remote and isolated communities, and industry to identify enabling infrastructure needs in regions of high mineral development potential. The federal, provincial and territorial governments could consider dedicating additional resources to unlock the mineral potential of northern, remote and isolated areas.

### **CMIF Recommendations - Tax and Fiscal Incentives:**

- Implement fiscal incentives to increase the exploration for the minerals and metals that are crucial to a low carbon future to position Canada as the global supplier of choice for these.
- Under the CMMP, F/P/T governments should develop a national action plan to identify and advance production of Canadian reserves of metals necessary for the transition to a low carbon economy, including those necessary for battery production.

#### **Specific Tax Policy Recommendations:**

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- Reverse, reinstate and enhance mining tax reforms from Federal Budgets 2012 and 2013, including augmenting the Accelerated Capital Cost Allowance to include zero declining balance to match the U.S.
- Phase out Dividend Withholding Tax Rules to bring Canada in line with many other countries that have augmented their competitiveness vis-a-vis Canada in this respect.
- Introduce a substantial shareholder exemption for corporate reorganization performed by Canadian or foreign groups to be tax free and allow for a better allocation of capital.

#### **Specific Provincial and Territorial Recommendations:**

- Provincial and territorial mines ministers should support capital flows into mineral exploration in Canada by maintaining, adopting and enhancing fiscal incentives for early-stage exploration, such as tax credits, exploration incentives, prospector assistance programs and venture capital funds.

### **Fiscal Incentives and Tax Measures**

#### ***Financing for Mineral Exploration***

Sound fiscal policy is needed to ensure a jurisdiction's competitiveness in the global mineral industry. Canada's mineral industry continues to experience a number of unique circumstances (e.g. the industry's financing model, the remote geographic location of projects, regulatory governance by different levels of government that often overlap and duplicate, etc.) and, as aforementioned, has faced extremely challenging times over the past five years, particularly in terms of financing.

Access to capital for Canada's mineral exploration and development sector can be difficult, even when the industry is not in a down cycle. Most junior exploration companies generate no income and fund the bulk of their activities primarily by issuing shares. In addition to significantly reduced exploration financing and expenditures in recent years, Canada's current reserves for many metals are less than half of what they were in 1980, pointing to the need for sustained exploration. As reserves are depleted, mines begin to close, and economic benefits disappear. The costs of making new discoveries are also on the rise, exacerbating the challenges.

Canada is facing structural challenges that make exploration and mining more expensive and less efficient. As many of the easily accessible deposits have been mined, there has been a shift towards exploration at depth and in remote, high-cost parts of the country. The construction and operation of mines in northern and remote regions are also significantly more expensive due to the costs of energy and lack of infrastructure. The 2015 industry association report: *Levelling the Playing Field* determined that depending on remoteness, exploration projects costs are 2-6 times greater, and mining production

capital costs about double for gold mines, 2.5 times higher for base metal mines, 15%–20% higher for diamond mines, with operating costs for all, are about 30%–60% higher. Various fiscal incentives such as provincial and territorial tax credits and funding assistance programs, and the federal Mineral Exploration Tax Credit (METC) are critical policy tools that support and stimulate mineral exploration.

***The Decline of Canada’s Mining Tax Competitiveness:***

Canada’s mining tax regime has been falling behind international competitors for several years. Federal Budgets 2012 and 2013 reduced or eliminated several direct and indirect mining related tax credits. In areas such as dividend withholding tax and corporate restructuring rules, other jurisdictions have amended their fiscal regimes to better attract foreign direct investment while Canada has not. Most recently, the American *Tax Cuts and Jobs Act* reforms have significantly reduced Canada’s mining tax competitiveness vis-à-vis the United States of America (U.S).

Essential to understanding the impact of recent tax changes in the U.S. is the need to appreciate the cumulative effect of the broader package of reforms and not focusing exclusively on changes to the headline corporate income tax rate. The table in Annex A provides a comparative overview of several measures that enhance the competitiveness of the U.S. mining tax regime over that of Canada, including reforms to, or the introduction of:

- 1) A lower aggregate corporate income tax rate.
- 2) A 100% immediate depreciation rate for eligible capital investment.
- 3) A robust tax mechanism for high margin goods or services destined for export (amounting to ~8% tax reduction for eligible goods and services).
- 4) A generous resource allowance of up to 50%.

The cumulative competitiveness increase for U.S. firms of these measures when compared to Canada is significant. The table models in Annex B highlight the implications of the new U.S. tax regime against the status quo tax system in Canada on the same copper mine. It illustrates an approximate 40% to 50% reduction in the effective tax rate for the same mine in the United States compared to how that mine would be taxed in Canada.

While the federal government undertook positive first steps in the 2018 Fall Economic Statement, significant actions are required by Canadian governments to reduce Canada’s waning international mining tax competitiveness. For example, to be competitive with the new U.S. tax rate for exporters (16.06%), federal and provincial governments would need to reduce their corporate income tax (CIT) rates to 8% respectively or reinstate a resource allowance of 33%. Given Canada’s reliance on foreign direct investment for economic growth, and the interconnectedness of our respective economies, these reforms present a significant challenge to Canada’s ability to attract the investment on which our economic wellbeing depends. Expedient, equivalent, and multi-faceted tax reform to improve Canada’s competitiveness vis-à-vis the United States, and internationally, are needed.

Given the contextual realities of mineral exploration and mining in Canada, ensuring a competitive landscape through changes to the tax regime and by stimulating investment through government fiscal policies is critical. The 5-year renewal of the METC is an example of a cornerstone measure towards achieving greater certainty in the exploration investment landscape.

## Context for Tax Policy Reform Recommendations:

To regain our competitive position multi-faceted action is needed as no “silver-bullet” can address the gap in Canada-US Tax Competitiveness. The U.S. tax reform package was comprehensive, including competitiveness enhancements to corporate income tax, capital investments, export-facing activities and the introduction of a de facto resource allowance via percentage depletion. Canada’s response should be equivalent by degree and/or scope in order to halt ongoing investment leakage and should consider all available options (including reduction of the headline CIT rate to achieve equivalency with the U.S. rate for exporters or reinstatement of a 33% resource allowance).

- **Reversing, reinstating and enhancing mining tax reforms from Federal Budgets 2012 and 2013:** Federal Budgets 2012 and 2013 reduced Canada’s global attractiveness for mineral investment by reducing or eliminating several direct or indirect mining tax credits. Since that time, Canada’s global share of mineral investment has shrunk, and Canada has witnessed six consecutive years of reduction in capital investment in the mineral industry. CMIF recommends the government reinstate:
  - The Atlantic Investment Tax Credit
  - The Corporate Mineral Exploration and Development Tax Credit
  - The Accelerated Capital Cost Allowance for mining (with zero declining balance to match the U.S.)
  - The Canadian Development Expense
  - Expand tax deductibility for electric vehicles to include heavy industrial equipment
- **Phasing Out Dividend Withholding Tax Rules:** Dividend withholding tax is an additional income tax that becomes payable when profits are distributed to foreign shareholders (other than tax-exempts such as pension funds resident in treaty countries), and serves as a barrier to attracting foreign direct investment. Canada’s dividend withholding tax varies between 5% and 25%, creating an uneven playing field. When added to mining and corporate income taxes, total tax on profits remitted to foreign shareholders reach between 30 % and 61%. To facilitate the flow of funds and cross-border investments needed for project development, many countries no longer require dividend payers to withhold tax. The United States has entered into numerous tax treaties that provide for a 0% dividend withholding tax rate. Australia does not require dividend withholding tax to be remitted when a sufficient amount of corporate tax has been paid. Similar statements can be made for many other countries that have augmented their competitiveness beyond Canada in this respect. A capital importing nation such as Canada would benefit from eliminating this disincentive for foreigners to invest in our economy, particularly given the prominence of this country’s capital-intensive resource sector.
- **Introducing a Substantial Shareholder Exemption:** While business is not static and corporations need to reorganize and focus on their strengths, the Canadian tax system is imposing a cost on those that are trying to do so, leaving assets in the hands of suboptimal owners. Many countries have dealt with this issue by providing capital gain tax exemption (Substantial Shareholder Exemption) on the disposal of shares of corporations that have been owned for more than a year. MAC recommends that Canada introduce a Substantial Shareholding Exemption for corporate reorganization performed by Canadian or foreign groups to be tax free and allow for a better allocation of capital.

- **Modernizing the Tax Treatment of Qualifying Environmental Trusts (QET):** Closure costs constitute large components of capital investment with regards to mining. Substantially all of a mine’s closure costs are incurred in years in which the mine has ceased production and has no offsetting revenues. Currently, income tax rules allow only a three year carryback and often the closure costs are incurred outside this window, reducing a company’s ability to maximize the utility of tax credits in support of reclamation efforts. Further, where satellite deposits are discovered after a mine has closed, reclamation may be deferred even longer so the QET ties up cash/treasury lines too long to be financially affordable. In practice, the restrictions, costs and limitations of the QET mechanism render its use uncommon. The solution would be to extend the carryback period from 3 to 7 years, allowing the reclamation to be deducted at the consolidated level when incurred regardless of which mine is being reclaimed, thus avoiding or reducing stranded or unusable tax deductions. Further, QETs should be tax-exempt until distribution of funds (an RRSP-style approach) given their purpose is to ensure appropriate stewardship of the environment, and the tax system should promote and not constrain such activities.

### **CMIF Recommendations - Regulation:**

- CMIF urges all F/P/T ministers responsible for natural resources to:
  - Work together to ensure that project reviews are conducted in manner that prioritizes inter-jurisdictional cooperation and enhances Canada’s investment climate.
  - Take an active role in the development of regulations for the Impact Assessment Act (IAA), and ensure improved coordination between federal and provincial assessment review and approval processes for mineral industry projects.

### **Regulatory Issues**

Canada has a robustly regulated mineral industry with a record of strong environmental and safety performance. However, the regulatory landscape for the Canadian mineral industry can be complex, uncoordinated, inefficient and difficult for proponents to navigate. Compounding these challenges across federal, provincial and territorial levels are various proposed changes to regulatory processes and the implementation of recently amended processes, foremost among them, legislative changes to the federal Impact Assessment (IA) regime through Bill C-69.

While the industry is optimistic about proposed changes that seek to enhance early IA planning to avoid late in the process information requests and delays, improve coordination and substitution of federal and provincial mining review processes (“one project – one review”), and the definition and application of cumulative effects, good implementation is critical and will require collaboration between federal and provincial governments.

Additionally, challenges related to the federal *Species at Risk Act* (SARA) remain, as the Act does not yet have a full suite of compliance tools, policies and coordination mechanisms for effective implementation.

While federal legislative changes will undoubtedly have an impact across all levels of government, provinces and territories also face a number of other, regionally-focused regulatory challenges whether in relation to new proposals or ongoing implementation issues. For example, the implementation of phase III of the *Mining Act* in Ontario and resulting challenges of the new map-staking system, the

“public concern” trigger in the *Mackenzie Valley Resource Management Act* and resulting delays for early exploration programs, or cost-recovery provisions embedded in northern regulatory regimes.

The federal review of legislation and ongoing regulatory and policy implementation issues at the provincial and territorial levels are contributing to the perception that Canada has a high degree of investment risk. These have resulted in a general sense of uncertainty with regards to mineral investment, in addition to delays and increased costs for project proponents.

### **CMIF Recommendations – Land Access and Land Use:**

- CMIF members appreciate that certain lands will be withdrawn from resource development activity due to a diverse range of values associated with the use of land in Canada, including economic, ecological, cultural, spiritual, and aesthetic values. However, land use decisions and the creation of any protected areas must ensure responsible access to land by:
  - Balancing diverse goals and values, including economic.
  - Establishing credible, inclusive and evidence-based processes.
  - Incorporating a comprehensive mineral resource assessment, based on geoscience studies, to understand the value of mineral potential.

### **Specific Provincial and Territorial Recommendations:**

- Provincial and territorial governments should:
  - Work towards requiring and financially resourcing processes, such as comprehensive mineral resource assessments, that study and consider the mineral potential of lands prior to making land use/land withdrawal decisions.
  - Gather information on the manner in which mineral and energy potential is factored into land withdrawal decision-making processes, including an inventory of leading practices that can be shared with other jurisdictions.

### **Accessing Prospective Lands**

Canada’s ability to attract mineral investment, accelerate its rate of discoveries and advance projects to mine development is contingent upon responsible access to prospective land, with which Canada is so well endowed.

Canada’s excellent and enviable geological endowment is one of our primary competitive advantages over other countries. To capitalize on this advantage, mineral rich areas must be open for exploration to increase the probability of making a discovery. The availability of prospective land profoundly influences investment decisions made by companies. As land withdrawals remove accessibility to prospective areas, Canada becomes a less attractive place to explore, resulting in companies exploring elsewhere in other jurisdictions. While CMIF members understand the value of protecting ecological and cultural sites, we also wish to highlight the importance of ensuring that mineral and energy potential is factored into all land withdrawal decision making processes so that rights-holders, stakeholders and governments have the full scope of information available to them. The issue of land withdrawals is a key factor affecting the ability of jurisdictions to attract investment and the ability of the industry to make discoveries that could lead to mines.

In recent years, several jurisdictions have made commitments to prohibit economic development in significant portions of their respective jurisdiction. At times, the scientific basis for these commitments is not clear. In addition, the processes by which these targets are being developed or lands are removed from staking are not always transparent or inclusive of various types of information, including economic development potential.

Further, as part of Canada's 2020 biodiversity goals and targets, Canada is committed to ensuring that at least 17% of the country's terrestrial and inland water areas and 10% of coastal and marine areas are conserved by 2020 through networks of protected areas and other effective area-based conservation measures. As the Government of Canada works in collaboration with Indigenous communities and other parties to meet its protected areas commitment, a balanced approach that considers socio-economic opportunities and is based on sound science must be applied to ensure significant and prospective mineral development areas are not unduly removed from potential exploration and development.

### ***Key Considerations for Land Use Decision-Making Processes***

Access to prospective land is central to Canada's ability to attract exploration investment and sustain its rate of mineral discoveries. Jurisdictions should ensure that land use/land withdrawal decisions – whether through legislation, regulations, or policies – are made through systematic, structured processes that are:

- ***Transparent:*** the process by which a land use decision is made should be clear to all parties and outlined well in advance.
- ***Inclusive:*** land use planning and land access decision-making should entail a collaborative dialogue among all parties who have a particular interest in the lands or regions in question.
- ***Evidence-based:*** decisions should have sound rationales drawn from adequate data, as well as the input brought in from meaningful multi-stakeholder dialogues. Economic data should include a rigorous, scientific analysis and assessment of the potential mineral value of lands to reduce the risk of alienating highly mineralized areas, and to assist with balancing competing objectives based on information of sufficient scope and quality.
- ***Holistic:*** decisions should be based on a comprehensive set of information that is comprised of environmental, social and economic data, including mineral potential and Indigenous traditional knowledge.
- ***Flexible:*** land use planning and land access regimes, particularly protected areas and other types of land withdrawals, should be sufficiently flexible and contain built-in mechanisms for periodic review. A dynamic and adaptive approach that takes into account new information, fresh insight or updated analysis is necessary.
- ***Adequately resourced:*** adequate capacity, resources, expertise and information for decision makers to assess the long-term economic, social and environmental consequences of any land-related decisions.

### **CMIF Recommendations – Northern Infrastructure:**

- Government must make strategic, substantive investments in critical transportation, energy and communication infrastructure in remote and northern Canada.
- The Canada Infrastructure Bank should have a strong economic development focus for northern Canada.

#### *Specific Provincial and Territorial Recommendations:*

- Considering the extremely high costs of operating in northern and remote regions of Canada, cost-recovery provisions outlined in various legislation should be removed.
- Invest in alternative energy sources, such as small-scale nuclear power.
- Continue to advocate to the federal government for strategic infrastructure investments, including transportation, energy and communication.

## **Infrastructure**

### **Remote and Northern Exploration and Mining**

The future of Canada's mineral industry lies increasingly in remote and northern regions, areas that exceed one-third of Canada and have significant untapped, unmapped mineral potential. These regions are extremely unique and experience various circumstances that influence/impact the activities and success of mineral industry in various ways. These circumstances include but are not limited to: extreme temperatures, disparate communities, virtually no transportation infrastructure or people for hundreds of kilometres, lack of alternative energy sources, some of the highest per-capita living costs in the country.

While there are many factors that affect a company's decision on where to explore and whether or not to develop a mineral deposit into a mine (e.g. grade, commodity prices, fiscal regime, corporate strategy), costs are a primary driver. Costs are largely a function of remoteness – remote deposits cost significantly more to find, develop and mine.

The development of infrastructure in remote and northern Canada is critical to unlocking the region's vast mineral potential and enhancing economic development opportunities. However, the cost premium faced by companies exploring and mining in remote areas due to a lack of infrastructure is a barrier to mineral development. Industry research has identified it can cost as much as 6 times more to explore, 2 to 2.5 times more to construct, and 30-60% higher costs to operate mines in northern regions compared to their southern counterparts. Further, a key impact of this cost premium is that undeveloped deposits are stranded. Reducing the costs of operating in the territories by just 10% through strategic transportation infrastructure investments, could help 5 or 6 new mines open up. Looking forward, the infrastructure deficit is the single largest barrier preventing upwards of 15 mines from starting or restarting production in the next decade, with total life-of-mine investment exceeding \$35 billion – nearly 4.5 times the size of all three territorial economies combined in 2015.

By lowering costs and improving access, enhanced northern infrastructure would provide an incentive for increased mineral development that supports northern and Indigenous employment and business development, as well as revenue generation for governments

Given that much of the future of the Canadian mineral industry lies in remote and northern regions, actions to enhance their competitiveness as a destination for mineral investment is needed. The

alternative is Canada losing out on development opportunities, and the associated benefits, to more competitive jurisdictions. That said, CMIF is encouraged by recent federal infrastructure investment decisions that recognize northern challenges and opportunities, such as the Trade and Transportation Corridors Initiative (TTCI) that received an accelerated investment of \$773.9 million over the next five years through the 2018 Fall Economic Statement, and a renewal of the \$400 million northern allocation in the same program in federal Budget 2019.

The mineral industry continues to engage with the federal government on the new *Arctic Policy Framework* to develop a long-term vision for the Canadian and circumpolar Arctic. CMIF also supports the Investing in Canada Plan, which allocates funding on a per-capita “plus” model. These are creative and much-needed investments in Canada’s North. Beyond these programmatic developments, positive funding decisions in support of the Yukon Resource Gateway (\$360 million) and the Tlicho Road (\$155 million) in the Northwest Territories will increase project viability and community connectivity, reduce costs and remoteness and, ultimately, lessen territorial reliance on Ottawa. CMIF also welcomed the creation of the Canada Infrastructure Bank (CIB), but continues to stress the need for the CIB to recognize challenges facing Canada’s North and supporting economic development opportunities in remote locations. CMIF members support the evaluation of projects on a merit basis. However, the CIB should consider the unique circumstances of Canada’s North and the significantly higher costs associated with living or operating there to ensure applications are assessed on a level playing field.

The recent inclusion of cost recovery provisions in northern legislation is a critical issue with the potential to adversely affect mineral industry investment, particularly given the existing cost disadvantages related to operating in the north. A provision of the *Mackenzie Valley Resource Management Act* (MVRMA) provides that the Minister of Indigenous and Northern Affairs be entitled to recover three categories of costs from an applicant or licensee. The costs eligible for recovery are those the Minister incurs in relation to an application for a water license or its amendment, renewal or cancellation. Similar provisions exist in the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) and the *Nunavut Planning and Project Assessment Act* (NUPPAA) in both Yukon and Nunavut, respectively. There is concern that exploration and mining companies will become vulnerable to accommodating the recovery of costs, which may be impossible to quantify or adequately define, particularly during a complex or lengthy application process. Circumstances of this kind create uncertainty, increased costs in exceptionally high-cost jurisdictions would amount to yet another factor discouraging exploration and development initiatives in the North.

### **CMIF Recommendations – Rail Infrastructure:**

- Governments should increase provincial and territorial awareness of the impacts on mining of the longstanding railway/shipper imbalance in respective jurisdictions, as well as relevant federal legislation such as Bill C-49 in the 42<sup>nd</sup> Parliament that failed to address mining sector rail challenges.
- Governments should commit to enhanced and formal federal, provincial and territorial collaboration and engagement on these critical issues to ensure that the next opportunity for legislative changes to the *Canada Transportation Act* result in a more competitive, balanced and efficient transportation system for the mining industry. In the interim, stemming from Bill C-49, collaboration on federal government consultation on rail capacity data is critical.

### **Canada’s Rail Transportation System**

Legislation amending the *Canada Transportation Act* passed in recent Parliaments repeatedly failed to address the longstanding railway/shipper imbalance, including the most recent attempt in the 42<sup>nd</sup> Parliament, Bill C-49, in which the government removed Senate amendments sought by the mining industry. These amendments would have delivered key improvements to data transparency in Final Offer Arbitration (FOA) and related enhancements to the Agency’s ability to address through investigation rail service and other rail-related issues. During Parliamentary consideration of Bill C-49, provincial and territorial voices were largely absent from the debate. CMIF underscores the need for enhanced provincial and territorial awareness and engagement on these key issues going forward to ensure that the next opportunity for legislative changes to the Act result in a more competitive, balanced and efficient transportation system. As one of Canada’s primary export sectors, the mineral industry must be able to get its products to international markets in a predictable and timely manner in order to maintain its reputation as a reliable trading partner.

## **CMMP Strategic Direction #2 - Advancing the Participation of Indigenous Peoples**

Increased economic opportunities for Indigenous Peoples and supporting the process of reconciliation

### **CMMP AREAS FOR ACTION:**

**RESPECTING RIGHTS** Governments, Indigenous Peoples and industry should ensure that Aboriginal and treaty rights are respected and are at the forefront of relationships. This should be advanced through processes consistent with the Canadian Constitutional framework. Governments should have tools available to help industry be aware of Aboriginal and treaty rights when undertaking and advancing mineral exploration and mining.

**MEANINGFUL ENGAGEMENT** Industry, Indigenous Peoples and federal, provincial and territorial governments should advance opportunities for meaningful engagement on potential projects —at the earliest possible stage and in a culturally aware manner.

**CAPACITY BUILDING** The federal, provincial and territorial governments and industry should work with Indigenous communities to enhance resources for capacity building to support Indigenous Peoples' participation in the mining industry. Indigenous communities should have resources to meaningfully represent their interests, and to pursue employment and business opportunities.

**INDIGENOUS WOMEN** The federal, provincial and territorial governments, stakeholders and Indigenous Peoples should support the greater participation of women in engagement processes and the mining industry, including by eliminating barriers to employment. Industry should support sensitivity and inclusion training for front-line workers, and work to increase the number of women in leadership roles.

**ECONOMIC BENEFITS** Industry should work with communities to explore economic benefit sharing with Indigenous Peoples in the minerals sector. This includes long-term benefits that can be derived from across the sector in areas such as skills training, employment, business development, and financial arrangements. The federal, provincial and territorial governments and industry should work with Indigenous Peoples to explore Indigenous procurement plans and businesses in supplier networks.

### **CMIF Recommendations:**

- CMIF recommends that governments actively support industry efforts to enhance the participation of Indigenous Peoples in the mineral industry through:
  - Foundational social investments (health, housing, water, education) that contribute to better socioeconomic outcomes for Indigenous Peoples; and,
  - Targeted funds for skills training and entrepreneurship to assist Indigenous Peoples in securing employment and business development opportunities generated by the industry.
- The Crown should revise, where required, its consultation processes with Indigenous communities to ensure that it adequately discharges its duty to consult and accommodate in relation to mineral development
  - Specifically, when developing a path forward for clarifying consultation and accommodation in the new Impact Assessment (IA) assessment process, it is important to consider a number of challenges that have been identified across Canada related to the implementation of the duty to consult (see below).

#### *Specific Provincial and Territorial Recommendations:*

- Invest in capacity-building programs for Indigenous communities at the regional level, in proximity to areas of potential and current mineral activity.
- Where appropriate, improve mechanisms through which governments share the benefits and/or a portion of the existing revenues generated by mining with impacted Indigenous communities (i.e. government resource revenue sharing).
- Review consultation processes with Indigenous communities to address common challenge areas that have been identified in relation to the Crown's implementation of its duty to consult and accommodate (see below). This will support the protection of Indigenous and treaty rights and also avoid project delays, increased costs, investor uncertainty and negative impacts to company-community relationships.

### **The Mineral Industry and Indigenous Peoples**

More than any other sector, the mineral industry has prioritized building and maintaining respectful, strong, trusting partnerships with Indigenous communities impacted by or with an interest in mineral exploration and mining activities.

From exploration to mine closure, the mineral industry engages with communities impacted by their projects in order to share information, collaborate on issues related to environmental mitigation, monitoring, and cultural protection, as well as to develop partnerships and initiatives that generate economic opportunities and real wealth for communities. The industry further supports participation through training, business development, employment, social investments and financial arrangements. As a result of its efforts, the minerals industry has become the largest private-sector industrial employer, on a proportional basis, of Indigenous peoples in Canada and a partner of Indigenous businesses.

A key mechanism through which economic opportunities have been created is through innovative, progressive and mutually beneficial partnerships with Indigenous communities, for which Canada's mineral industry is the undisputed global leader. An estimated 455 formal agreements were signed

between mining and exploration companies and Indigenous communities or governments between 2000 and 2017.

There is potential to further increase participation by Indigenous Peoples in the mineral industry, particularly in the context of industry's ongoing efforts to support reconciliation. Efforts by governments to address socio-economic challenges, such as housing, education, infrastructure and health care, can help support the ability to meaningfully participate in the minerals industry and maximize opportunities generated by exploration and mining.

### **The Crown's Duty to Consult**

Challenges continue to arise with regards to the Crown's implementation of its duty to consult and accommodate Indigenous Peoples. Most jurisdictions have produced policies, frameworks and/or guidelines to govern consultation processes. This has led to a patchwork of jurisdiction-specific consultation policies and guidelines that vary in a number of ways in terms of their content and application. Despite efforts by governments to delineate consultation processes and, in some cases, provide guidance for proponents on their role in consultation and engagement, implementation challenges persist and can delay projects, increase costs and investor uncertainty, and have negative impacts on company- community relationships.

In general, the industry strongly believes that collaborative efforts by all parties – government, industry and Indigenous communities, based on a shared understanding and recognition that the mineral sector is a key catalyst for Indigenous economic reconciliation – will lead to more stable and positive business environments for mineral exploration and development, maximize benefits for all parties, and enhance Indigenous participation in the minerals and metals industry.

### **Common consultation Challenges across Jurisdictions**

PDAC research, conducted in partnership with officials from each jurisdiction and CMIF members, has identified the following common areas of concern related to Crown consultation processes at the federal, territorial and provincial level, including:

- **The determination of the trigger, nature and scope of consultation required:** many jurisdictions in Canada lack a clear, transparent (public), systematic consultation framework – a graduated approach to consultation that incorporates an objective, consistent, proportional and transparent assessment of the potential for activities to infringe Aboriginal or treaty rights.
- **Identification of potentially impacted communities:** the identification of potentially impacted communities for Crown consultation and community engagement is often inconsistent between different levels of government, and is not transparently linked, if at all, to the nature of asserted rights or the level of impact.
- **Roles and responsibilities – delegation to proponents:** in a number of jurisdictions the responsibility for and role of various parties (Crown, Indigenous and proponent) in formal consultation is ambiguous, uncertain and/or inconsistent. This ambiguity has also contributed to the conflation of legal Crown consultation and voluntary, proponent-led community engagement activities as it is often unclear how the two processes are distinct.
- **Responsibility for the costs of consultation:** the duration and frequency of consultation can be quite costly. While there is currently no existing case law on the subject, the Crown should assume the responsibility for the costs in discharging its duty.

- **Adhering to timelines – consultation and decision-making:** there is a lack of transparency or clarity with regards to the ways in which consultation could impact permitting timelines, particularly with regards to what “stops the clock”, how this decision is made and by whom, and if it is applied consistently.
- **Assessing the adequacy of consultation:** the factors considered by the Crown when determining consultation adequacy are not made explicit in jurisdiction-specific consultation policies and guidelines. The absence of transparent factors against which consultation is measured results in confusion as to whether the Crown’s duty has been sufficiently discharged and, inevitably, delayed projects and court challenges.
- **Accommodation ambiguity and the blurring of accommodation measures linked to impacts on rights with commercial company-community agreements:** there is a lack of clarity regarding accommodation as it relates to establishing when it is required, who is responsible, and what form is adequate (e.g. mitigation vs. compensation). Linked to this ambiguity is the increasing lack of distinction between formal accommodation measures (resulting from formal, Crown consultation) and commercial, company-community agreements (resulting from engagement).

### **CMMP Strategic Direction #3 – Environment**

The protection of Canada’s natural environment underpins a responsible, competitive industry. Canada is a leader in building public trust, developing tomorrow’s low-footprint mines and managing the legacy of past activities

#### **CMMP AREAS FOR ACTION:**

**REDUCING WASTE** The federal, provincial and territorial governments, industry, academia and other stakeholders should provide more targeted support for research and development (R&D) and innovation that reduces the consumption of water and energy, and the production of waste rock in mining.

**ALTERNATE AND RENEWABLE ENERGY** The federal, provincial and territorial governments and industry should accelerate efforts to develop and adopt clean energy sources, particularly for northern, remote and isolated communities that rely on diesel. The federal government and interested provincial and territorial governments and industry should continue to study the feasibility of small modular reactors in mining operations, as well as the potential market for this technology.

**CIRCULAR ECONOMY** The federal, provincial and territorial governments and industry should study Canada’s recycling and reprocessing capacity and capabilities to determine how they can support sustainability and competitiveness. This includes taking a holistic approach to mining value from tailings as a source of metals and industrial minerals.

**RECLAIMING MINE SITES** Under an expanded mandate, NOAMI should work with provincial and territorial governments and other stakeholders to recommend best practices regarding: • Ecosystem rehabilitation plans • Improving financial assurance measures for new mines • Innovative practices, technologies, and guidelines (regulatory and non-regulatory) to address environmental and other concerns arising from orphaned / abandoned mines

**CLIMATE CHANGE ADAPTATION** The federal, provincial and territorial governments should encourage industry to plan for and adopt measures to adapt to climate change (for current and legacy mines).

### **CMIF Recommendations – Climate Change:**

- The federal government should enhance collaboration with mineral exploration and mining companies and associations to increase awareness of rapidly evolving federal climate change policy developments.
- Federal, provincial and territorial governments should work together to make strategic, large-scale and transformative energy infrastructure investments (including hydro, micro-nuclear, natural gas, among others).
- Any carbon price regime must:
  - Be revenue neutral, protect emissions intensive and trade-exposed (EITE) sectors, and address the unique challenges faced by remote and northern regions, and other measures reflected in [MAC’s Principles for Climate Change Policy Design](#).
  - Clearly demonstrate complementarity before adopting non-pricing climate change policies and regulations to avoid cumulative effects. This demonstration should include a robust and publicly-disclosed economic impact assessment.
  - Commit, in principle, to the inclusion of EITE protections for any and all policies or regulations that result in a cost on carbon.
- Failing to avoid cumulative effects in existing or developing regulatory initiatives will result in double regulation of the same emissions in one or more respects.
- The federal government must build recognition of northern factors into climate change policies and regulations. One-size-fits-all policies have not worked in the North before, and climate change policy is no different.
- Robust and strategic funding should be established to enhance the sector’s ability to embrace opportunities relating to the transition to a low carbon economy, and supplemented CMIF member R&D and innovation initiatives and investments in areas such as developing and adopting low emission and renewable energy technologies that reduce emissions, improve grinding and processing to reduce or eliminate water use, and enhancing tailings management to reduce waste.

### **Climate Change**

Climate change policies must ensure the competitiveness of emissions-intensive and trade-exposed (EITE) sectors and be sensitive to changing economic and geographical realities.

CMIF members will continue to be constructive partners in addressing climate change. However, any successful carbon pricing regime must reduce emissions while growing the economy by ensuring companies remain competitive.

This includes, but is not limited to, being revenue neutral, being sensitive to remote and northern regions, and protecting emissions intensive and trade-exposed (EITE) sectors, like the mineral industry. If not addressed, it will result in “carbon leakage” – the shifting of production and the associated economic benefits from countries that are taking action on climate change to those that are not. This, in turn, will generate higher global emissions and will put Canada’s mines, smelters and refineries, among the world’s lowest carbon operations, at a significant competitive disadvantage – a “lose-lose” scenario.

### ***The Federal Climate Change Regulatory and Policy Landscape: Cumulative Effects of Potentially Duplicative Initiatives***

CMIF notes the multiple concurrent climate change related initiatives being pursued or recently completed by the federal government.

While each of these initiatives requires consideration independently of the others, it must also be assessed whether and how they interrelate. It is critical that all initiatives work harmoniously as a package to create a consistent, coordinated and complementary approach.

In the growing patchwork of Canada's climate change space, provincial and federal policies are increasingly likely to target the same GHG emissions. CMIF is concerned that existing or developing regulatory initiatives result in double regulation of the same emissions in one or more respects. There is concern that some of these initiatives will duplicate or conflict with what provincial or territorial governments are already doing. This duplication would increase overall costs, create additional reporting and compliance burden, frustrate private sector innovation, and generally discourage investment in Canada's mineral sector, all without achieving significant additional GHG emissions reductions. The multitude of additional costs related to these initiatives is negatively affecting the industry's global competitiveness.

### **Climate Change and Environmental Challenges in Canada's North**

Northern energy costs are compounded by the infrastructure deficit, both in the territories and the remote regions of provinces. The extremely limited reach of transmission and distribution infrastructure means mines and development projects are off-grid and are, therefore, dependent exclusively on diesel with very few exceptions. Beyond the cost of fuel itself, the cost-per-unit of delivered fuel is inflated significantly by associated investments essential to supporting the mineral project's energy supply chain. Fuel switching opportunities are also limited and are contingent on geographical considerations.

Taken together, the infrastructure deficit and state of currently available technologies will not provide sufficient options to displace diesel (and associated emissions) on the scale required to avoid companies absorbing the carbon price almost exclusively as a cost of business.

As the backstop mechanism is developed and deployed – one the territorial governments are likely to resort to deploying due to capacity constraints – the federal government must build recognition of northern factors into climate change policies and regulations. One-size-fits-all policies have not worked in the North before, and climate change policy is no different.

### **CMIF Recommendations – Species at Risk:**

- With regards to the *Species at Risk Act* and ensuring access to land for proposed projects, the federal government must:
  - Work with provincial and territorial governments to encourage consistent and complementary approaches to species protection and recovery, and to ensure the generation, sharing and application of the best available information needed to support protection and recovery efforts.
  - Work with provinces and territories to ensure that recovery and action plans are holistic in approach and based on local circumstances and publicly accessible sound science.
  - Meaningfully engage with Indigenous communities and stakeholders on the development and implementation of Section 11 Conservation Agreements.

### **Conserving and Recovering Species at Risk– The Current Approach Fails Both Species and Industry**

Mineral industry challenges are compounded by the underlying issues of the *Species at Risk Act (SARA)*, including the inadequate coordination between the federal and provincial/territorial levels of government. A more effective and stewardship driven approach to species at risk conservation and recovery, including long-term compliance and permitting mechanisms, is needed in order to deliver positive outcomes on the ground while at the same time providing clarity to project proponents.

The recent policy shift, described in the *Pan-Canadian Approach to Transforming Species at Risk in Canada*, offers promise of a more collaborative, multi-species approach to conservation and recovery. However, this approach is not yet reflected in SARA guidance, recovery strategies, conservation agreements, etc. and it is still too early to determine if the appropriate tools, government organizational and programmatic structure, and regulations will be put in place for this change to take place to achieve better outcomes.

Effective implementation of the *Pan-Canadian Approach to Transforming Species at Risk in Canada* must be informed by the best available information on species at risk, including research and data supplied by industry partners. The mineral exploration and mining sector has contributed significantly over the years towards enhancing the understanding of species at risk through monitoring programs, research funding and in-kind support on various initiatives. Decision-makers must have access to these data to ensure that the best-available scientific information informs actions on the ground.

Most importantly, the *Pan-Canadian Approach* must continue to recognize that provinces and territories are best suited to manage land-based decisions. The recently negotiated draft Section 11 Conservation Agreement between Canada and British Columbia and the draft Partnership Agreement between British Columbia, Canada, West Moberly First Nations and Saúlteau First Nations focused on the recovery of southern mountain caribou in BC, as well as the draft conservation agreements for boreal caribou in several provinces and territories demonstrate that efforts are being made towards increased coordination and cooperation between federal and provincial/territorial governments. As these important agreements are implemented, all partners must work to meaningfully engage with Indigenous communities and other parties to ensure all views are taken into consideration as difficult land-use decisions are made.

## **CMMP Strategic Direction #4 – Science, Technology & Innovation**

A modern and innovative industry supported by world-leading science and technology—across all phases of the mineral development cycle

### **CMMP AREAS FOR ACTION:**

**CANADA’S INNOVATION ECOSYSTEM** The federal, provincial and territorial governments and industry should foster a more effective innovation ecosystem to support activities across all phases of the mineral development cycle. Industry should identify systemic challenges, work with other sectors, and pool resources to meet challenges head-on. The federal, provincial and territorial governments should support increased scientific research and innovation funding with a focus on the minerals and metals industry. The federal, provincial and territorial governments and stakeholders should accelerate the research, development and deployment of digital disruptive technologies to boost industry competitiveness and Canada’s position as a leader in mining innovation. The federal, provincial and territorial governments should practice regulatory innovation to support innovation and adoption, while maintaining safety standards. This can include enabling “sandboxes” that serve as testing grounds for new approaches and outcomes-based regulation.

**ADOPTING TECHNOLOGY AND INNOVATIVE PRACTICES** The federal, provincial and territorial governments should work with stakeholders to develop incentives for the adoption of new and clean technologies and innovative practices. Industry, academia and other stakeholders should lead the development of technology roadmaps for critical emerging technologies and processes.

**NEXT GENERATION GEOSCIENCE** The federal, provincial and territorial governments and industry should support the development and deployment of next generation, world-leading geoscience technology and programming.

**NEW FRONTIERS** The federal, provincial and territorial governments, industry and other stakeholders should support increased collaboration between Canada’s minerals and other industries to advance mutually beneficial technology development and adoption. Industry should continue to leverage space-based and other technologies to improve efficiency, and develop solutions for mining in deep, remote, and extreme environments. The federal government should develop a policy approach for mining new frontiers (extreme climates, deep mining, offshore, space) to foster investment and economic development.

### **CMIF Recommendations – Geoscience:**

- The federal government should continue to support the collection and dissemination of public geoscience data by renewing the Geo-mapping for Energy and Minerals (GEM) and the Targeted Geoscience Initiative (TGI) programs
- The federal government should significantly expand rigorous geological studies across Canada, particularly for mapping of remote regions in greater detail.

#### ***Specific Provincial and Territorial Recommendations:***

- Provincial and Territorial governments should:
  - Continue to fund and enhance support of the work of geological surveys to conduct geological studies that will generate key data to drive mineral exploration.
  - Consciously test and de-risk new exploration techniques and technologies, including through the work of the geological surveys.

### **Geoscience**

Government investment in public geoscience has historically played a critical role in attracting exploration activity to Canada and supporting successful discoveries. Mineral exploration in Canada is increasingly more difficult and costly to conduct. Explorers must search for deposits in more challenging environments such as at depth in established mineral regions, in areas of covered terrain and in remote areas with unique challenges such as extreme climate and shortened operating windows. These issues contribute to uncertainty and risks associated with identifying and delineating exploration targets, as well as increase costs for companies operating in Canada, particularly in the North.

Government geoscience programming for public use is central to the future success of mineral exploration in Canada. Improved pre-competitive geological maps and models, geochemical sampling and geophysical surveys help companies conduct more comprehensive desktop research, improve targeting methods and support efforts to reduce the environmental footprint of exploration. Access to pre-competitive public geoscience data helps companies to delineate targets more effectively and at lower costs, while creating more efficient discovery pipelines and improving the odds of exploration success.

Existing government initiatives such as the Targeted Geoscience Initiative IV (TGI) and the Geo-mapping for Energy and Minerals program (GEM) have been critical tools for supporting public geoscience and Canada's mineral exploration sector. These programs are integral to producing sufficient geological maps for Canadians, as well as more focused, detailed geological maps and models across areas of mineral interest. However, GEM and TGI are set to terminate in early 2020 and there is no clear path forward for the future of pre-competitive government geoscience mapping and data collection. CMIF recommends that these important programs be renewed – while the focus of future programs may differ, their overall scope and objectives must be maintained. Significantly expanded, rigorous geological studies are still needed across the country, particularly in under-explored areas and in Canada's North which is highly prospective but remains under-mapped. The work of geological surveys remain highly relevant and ongoing baseline geoscience data collection over Canada's landmass is a precondition for the ongoing vitality and future success of Canada's mineral industry.

### **CMIF Recommendations – Innovation:**

- The federal government should:
  - Invest in the testing and de-risking of new exploration techniques and technologies.
  - Collaborate and invest in the Canada Mining Innovation Council (CMIC)\_ to implement the Towards Zero Waste Mining (TZMW) strategy.
  - Provide financial support to catalyze private sector innovation investments, leading to real progress in energy efficiency, environmental protection and business productivity.

### **Innovation**

While the mineral industry invests millions each year in research and development, Canada underperforms compared to its peers. At risk is Canada’s ability to attract new investment as other jurisdictions offer more attractive innovation environments.

To remain sustainable, progressive and profitable, the mineral industry must innovate and collectively challenge existing ways of thinking. Through innovation investments by industry and governments, the Canadian mineral industry can address these critical business challenges and continuously improve the sector’s environmental and health and safety performance. This will help ensure that Canada’s exploration and mining sector can maintain and grow its immense socio-economic contributions to communities across the country, while meeting Canadians’ evolving expectations of the industry’s environmental performance.

There was considerable disappointment in 2018 with the federal government’s decision to not fund the mineral sector Supercluster proposal under the Innovation Superclusters Initiative (ISI). The funding would have provided a much-needed boost to Canadian mineral industry competitiveness. Since that time, CMIC has worked extensively with organizations across Canada in BC, SK, AB, QC and ON to defragment the innovation ecosystem, define innovation projects drive collaborative projects that will lead to significant reductions in greenhouse gas emissions, water use and tailings discharge, and significant improvements in energy efficiency, environmental protection and operational productivity.

## **CMMP Strategic Direction #5 – Communities**

Communities welcome sustainable mineral development activities for the benefits they deliver

### **CMMP AREAS FOR ACTION:**

**COMMUNITY READINESS** Provincial and territorial governments and industry should consider ways to formally incorporate planning and engagement with communities at the early stages of project development. The federal, provincial and territorial governments should help build capacity and support community readiness in areas such as governance, decision making, employment and business readiness. Support should also mitigate the social impacts that mineral development activities have on communities.

**MINERAL LITERACY** Industry, the federal, provincial and territorial governments and other stakeholders should develop and deliver an information campaign to: shine a light on Canada’s sustainable, high-technology minerals industry; build community support for sustainable mineral development projects; and showcase mining as an excellent career choice.

**HUMAN RESOURCES** The federal, provincial and territorial governments, with partners and stakeholders, should develop and deploy strategies to increase the diversity of the mining labour force to include more Indigenous Peoples, women, and immigrants. The federal, provincial and territorial governments, with partners and stakeholders, should collaborate to develop strategies to address structural human resources challenges. This could include efforts to attract new workers, re-skill and re-train existing workers for an increasingly high-technology industry, and develop strategies to retain skilled labour during economic downturns.

## **CMIF Recommendations – Human Resources and Skills Training**

The federal government should:

- Continue to investment in education, skills training and work readiness programs, particularly for underrepresented groups
- Increase collaboration between governments, industry and educational institutions to ensure new entrants to the mineral industry have the required skills
- Continue to invest in the Mining Industry Human Resources Council (MiHR), through the Sectoral Initiatives Program (SIP) to provide relevant and timely labour market information, national occupational standards and programs that support a more efficient mining labour market
- Continue to support students looking to obtain work-integrated learning opportunities through the Student Work Placement Program (SWPP)

Provincial and Territorial Recommendations:

- Supplement federal and industry initiatives related to training and workforce development

The mineral exploration and mining industry, both in Canada and abroad, faces a number of human resources challenges. The Mining Industry Human Resources Council’s (MiHR) 2017 report, *Canadian*

*Mining Labour Market Outlook*, estimates that the Canadian mineral industry will need to hire 87,830 new workers over the next decade to 2027. These new hires are required to replace retirees and fill new positions to meet baseline production targets. This workforce shortage is compounded by the wave of the industry’s skilled core of workers who are or will be retiring. By 2027, MiHR forecasts more than 52,000 employees will retire from the sector, which represents over 25% of the industry’s current workforce. This will result in a significant loss of industry knowledge and experience. Further, there is competition for skilled employees within Canada and globally which makes recruitment and retention even more challenging.

### **CMIF Recommendations –Diversity and Inclusion**

Governments should enhance support for initiatives to address barriers to diversity and inclusion, including through:

- The creation of government funding mechanisms to support diversity and inclusion initiatives (e.g. Gender Based Analysis+, unconscious bias training for corporations, etc.)
- Enhanced government investments in education, skills training and work readiness programs for underrepresented groups

A transformation is taking place as conversations about diversity and inclusion are reshaping society in different ways. This transformation is permeating the consciousness of decision makers and leaders of Canada’s industrial sectors, including the mineral industry. Increasingly, mineral exploration and mining companies recognize the importance of addressing diversity and inclusion in the workplace, as well as in the communities in which they operate.

Moreover, global studies demonstrate a positive relationship between diversity and business performance. For example, companies with executive teams in the top quartile for gender diversity outperform on profitability and value creation, according to McKinsey and Company. When it comes to the representation of women in the industry, according to MiHR 17% of jobs in the mineral industry in Canada are occupied by women. While there is work to be done to address challenges that impact the participation by women in the mineral sector, companies are actively implementing enterprise-wide diversity and inclusion strategies. These strategies range from setting gender-equity quotas to programs that empower, train and provide mentorship opportunities for women.

It is also well-known that inclusive engagement—that is, seeking input from underrepresented groups—can help to strengthen projects and maximize community benefits, while a failure to do so can perpetuate existing inequalities. Companies are increasingly undertaking efforts to enhance the inclusion of the voices of underrepresented groups in their community engagement efforts, and in all aspects of project development, to ensure that the benefits of exploration and mining-related activities are shared equally among community members.

## **CMMP Strategic Direction #6 – Global Leadership**

A sharpened competitive edge and increased global leadership for Canada

### CMMP AREAS FOR ACTION:

**CANADA BRAND FOR MINING** The federal, provincial and territorial governments, industry and partners should work together to establish a Canada Brand for Mining. This initiative should include clear guidance for stakeholders to use the brand, and strategies to leverage the brand at global trade and investment events.

**INCREASING MINERALS TRADE AND INVESTMENT** The federal government should establish a minerals trade and investment office to support sector-wide minerals trade and investment. This would bring together expertise, align resources, realize synergies across existing federal, provincial and territorial programs and organizations, and increase the impact of promotional efforts.

**RESPONSIBLE BUSINESS CONDUCT (RBC)** The federal, provincial and territorial governments, industry and non-governmental organizations (NGOs) should develop an RBC strategy for mining that advances Canadian leadership. It should be supported with tools and training for junior and mid-tier companies to help build their RBC capacity, as well as resources to help emerging mining jurisdictions strengthen governance regimes. The federal, provincial and territorial governments, NGOs, and industry should advance a Canadian approach to responsible sourcing. It should include measures to raise awareness and deliver training and best practices on supply chain due diligence.

**SUPPORTING THE SUCCESS OF THE MINING SUPPLY AND SERVICES SECTOR** Industry and federal, provincial and territorial export promotion agencies should develop new programs to help MSS companies create export strategies to penetrate global markets. This should include efforts to realize the potential of women-led and Indigenous businesses. Industry and trade development and promotion agencies should leverage their respective expertise and resources to establish a unified front to help Canadian firms win new business. Efforts should include providing opportunities for business-to-business engagement and connecting companies with buyers. Industry should cultivate and leverage linkages with complementary high-technology industrial hubs in areas such as AI, automation, and blockchain. Industry should continue to build on the Cleantech in Mining Action Plan, where proven cutting-edge Canadian cleantech companies are encouraged to pursue opportunities in the mining industry.

## **CMIF Recommendations – Support for Canadian Mineral Industry Abroad**

The federal government should continue to expand market access through free trade and investment agreements. The industry welcomes the Canadian government's trade efforts and encourages the government to pursue trade agreements with other important markets, like China and India.

- With respect to new trade and investment agreements, it is critical that these mechanisms include labour mobility, regulatory and investment protection and investor state dispute resolution (ISDS) provisions.

Provincial and Territorial Recommendations:

- Governments should continue to work with mineral exploration and mining companies to promote respective jurisdictions as destinations for investment.

### **The Canadian Mineral Industry Abroad**

The Canadian mineral exploration and mining industry has a significant international presence with operations in more than 100 countries and is one of the few sectors that consistently makes a positive contribution to Canada's balance of trade. With global demand for mining products once again on the rise, it is critical that Canada's trade policies, programs and services support this position of global leadership or we risk losing it.

International free trade and taxation agreements help facilitate the trade of mining products and support investment flows. These agreements reduce barriers to investment, enhance transparency, and advance cooperation. The reduction and elimination of tariffs increases the competitiveness of Canadian mineral products in foreign jurisdictions by levelling the playing field from a cost standpoint, thus enabling companies to capture greater market share. Investment agreements, complete with dispute resolution mechanisms, provide mineral industry investors with greater certainty over the investments that companies make in foreign jurisdictions. Labour mobility and regulatory cooperation mechanisms provide companies with the ability to secure the key skills needed for project development and operation and provide the opportunity for dialogue on the complex process for obtaining regulatory approvals.

Beyond international agreements, it must be underscored that trade begins at home. Trade-enabling and transportation infrastructure is essential for companies to get their goods to market. Beyond infrastructure expansion, the efficient operation of Canadian transportation mediums, such as rail, is critical.

CMIF is pleased to see the federal government continuing to advance a trade agenda, including negotiating, finalizing and implementing a number of free trade and investment agreements, specifically: The USMCA, CPTPP, the Canada EU CETA, MERCOSUR and the Pacific Alliance

The world looks to Canada as a leader when it comes to mineral exploration and mining. Part of maintaining that global leadership is ensuring that the Canadian exploration, mining and supply sectors have access to modern and comprehensive trade and investment vehicles to meet the world where it does business.

## **Investor State Dispute Settlement (ISDS) Mechanisms**

While CMIF was pleased the federal government was able to conclude NAFTA negotiations in an effort to reduce significant trade and related business uncertainty with our largest business partner, we were disappointed that the USMCA did not include an ISDS mechanism.

ISDS protections are critically important to the Canadian mineral exploration and mining industry due to unique factors that define mineral investments. First, companies must go to where commercially developable mineral and metal deposits are located. While Canada is rich in many minerals and metals, a significant number of our members also have operations overseas, with particularly high concentrations in some countries. For example, nearly 70 per cent of foreign-owned exploration and mining companies operating in Mexico are based in Canada, and the value of Canadian mining assets in Mexico and the US totaled US\$19.4 billion and \$24.8 billion respectively in 2015. For context, the US (at 15%) and Mexico (at 11%) accounted for 26% of the total value of Canadian mining assets abroad in 2015, hosting 263 and 125 Canadian mining companies respectively. On the macro level, Canadian exploration and mining companies possess >\$170 billion in assets in more than 100 countries around the world.

These operations are more vulnerable than those of other sectors due to the tremendous up-front capital costs involved with mineral development. It is common for an average mine's initial capital expenditure to exceed \$1 billion before any minerals are produced or processed. After production begins, mines typically operate for several years to recover capital before any profit is realized. In the event of an interruption of mineral production beyond the miner's control, that investment is as immobile as it is grounded in the host country.

ISDS mechanisms provide a strong enforcement tool that helps to ensure that Canadian investors, businesses and their workers will be treated fairly overseas and can continue to bring international dollars home. While a last resort for companies, this mechanism is an essential part of modernized Canadian trade and investment agreements, including Canada's own FIPA model. It is critical that it remains so in agreements going forward.

### **CMIF Recommendations – Supporting Leading Practices for Responsible Business Conduct**

- Governments should continue to support and endorse Canadian industry association sustainability frameworks and activities such as TSM and e3Plus.
- The federal government should continue to promote leading practices by Canadian mineral exploration and mining companies operating in Canada and internationally
- Continue federal government – mineral industry partnerships to advance Canada's development goals and expand the benefits that mining activity brings to communities around the globe.
- The Canadian Ombudsperson for Responsible Enterprise (CORE) should be based on collaborative dispute resolution and joint fact-finding methods and apply to all Canadian business operating abroad, not just currently covered sectors including mining, oil & gas and textiles.

## **Canadian Mining Abroad and International Development**

The positive economic impact of Canada's exploration and mining sector translates into a significant contribution to raising living standards and poverty eradication. For example, the impact of Kinross' Tasiast Mine in Mauritania has seen the number of people living in poverty cut in half, from 25% in 2011 to 6% in 2017. Household incomes have doubled and there have been corresponding drops in the perception of being in poverty from 50% to 20%. In 2013, these benefits extended out to communities within 30 km of Kinross' Mine. When this study was repeated in 2017, that radius had extended further out, providing benefits to communities further afield. In Brazil, Human Development Index data shows that cities near Canadian-operated mines, such as Kinross' Paracatu Mine, develop faster than the national or state averages. The town of Paracatu enjoys lower infant mortality rates, greater life expectancy at birth, and higher education rates than the national or state averages. These measured outcomes also reflect contributions to a broad range of Sustainable Development Goals (SDGs), principally to SDG 1 (No poverty), SDG 3 (Community health and well-being), SDG 4 (Quality education), SDG 5 (Gender equality), SDG 6 (Clean water and sanitation), SDG 7 (Affordable and Clean energy), and SDG 8 (Decent work and sustainable economic growth).

Leading Canadian mining companies and civil society are working together to increase the benefits from mining to local communities. An example of this is the Devonshire Initiative, which is a forum for leading international development NGOs and mining companies to collaborate on improving community development outcomes where Canadian exploration and mining companies operate overseas. These collaborations often take the form of innovative company-community partnerships, such as IAMGOLD's market gardening project and multi-use milling platform in Burkina Faso, both initiatives focused on providing women with skills development and entrepreneurial opportunities. Canadian exploration and mining companies operating abroad seek to continue working in partnership with the federal government to achieve development goals and expand the benefits that their projects bring to communities.

## **Sharing Canadian Best Practices in Responsible Business Conduct Abroad**

Canadian mineral exploration and mining is helping to build capacity within the global mineral industry by sharing its expertise in sustainable mining practices. As an example, MAC and its members have been freely sharing the Towards Sustainable Mining® (TSM) initiative with countries seeking tools to improve the performance of their mining industries. Launched in 2004, the TSM initiative is an internationally recognized sustainability standard that measures mining facilities' performance related to environmental stewardship, community engagement, and energy efficiency. Participation in TSM is mandatory for MAC members' Canadian operations and is proactively applied by several of our members internationally. As part of TSM, members report on the performance of their mine sites every year, and every three years this performance undergoes third-party verification. TSM is backed by best practice guidance and is overseen by a Community of Interest Advisory Panel that advises and continually shapes the program.

Global interest in TSM is growing at a rapid pace. Over the past two years, it has spread beyond Canada to five other countries on four continents that have formally adopted the program to improve the performance of their domestic mining sectors: Finland (FinnMin), Argentina (Cámara Argentina de Empresarios Mineros), Botswana (Botswana Chamber of Mines), the Philippines (Chamber of Mines of the Philippines) and, most recently, Spain (Confederación Nacional de Empresarios de la Minería y de Metalurgia). Many other countries have also expressed interest in the program and are exploring

adoption.

On the exploration side of the mineral sector, PDAC developed *e3 Plus: A Framework for Responsible Exploration* to help exploration companies continuously improve their social, environmental, and health and safety performance. The content of e3 Plus is built upon eight key principles for responsible exploration, guidance notes for converting principles into action, and supplemented by internet-based comprehensive toolkits to further enhance practical performance. e3 Plus is available free of charge online and exists as a 'living document', subject to modification and improvement as experience is gained and circumstances change.

In June 2019, PDAC launched new content for e3 Plus – *Gender Diversity and Inclusion: A Guide for Explorers*. The Guidance is a practical tool that will assist junior exploration and mining companies improve their gender diversity and inclusion in both the workplace and community setting. It provides information and practical tools for implementing gender diversity and inclusion strategies that can be used for cultivating more inclusive and diverse environments within companies and the communities that companies engage with and operate.

### **Canadian Ombudsperson for Responsible Enterprise (CORE)**

Canada's mineral exploration and mining industry is the global leader in many areas, including responsible mining practices, innovation, and community engagement. Canada sets the global standard for dispute resolution mechanisms, and our sector's companies experience lower rates of community conflict than mineral companies from other countries, according to research by the University of Ottawa's Professor Paul Haslam.

Professor Haslam examined a database of 634 mines in five Latin American countries, including Chile, Argentina, Peru, Brazil and Mexico where NGOs document allegations of the presence or absence of conflict associated with mines. His research has found that Canadian mining companies outperform other foreign-owned mining companies in these countries. Using a very expansive definition of "conflict", and taking the allegations at face value, Professor Haslam found that 128 of the 634 mines (20%) had some allegations of conflict. While Canadian companies account for 36% of the mines in the database, only 20% had some allegations of conflict. In comparison, over 34% of the mines owned by companies based in other foreign countries were associated with conflict, despite representing only 24% of the mines in the database. The key takeaway from this study is that the majority of mines are operating peacefully, and of the minority that have faced some allegations of conflict a disproportionately smaller number involve Canadian-owned companies compared to other foreign-owned companies.

In addition, Harvard Professor John Ruggie, lead author of the United Nations Guiding Principles on Business and Human Rights, published a report in 2015 that reviewed the current state of the OECD network of National Contact Points (NCPs), highlighting best practices. In the report, he commended Canada for being the only country to impose a penalty on companies that choose not to participate in the dispute resolution processes handled by our country's two mechanisms, Canada's NCP and the (former) Office of the CSR Counsellor.

With the establishment of the CORE, the federal government aims to further strengthen Canada's already world leading dispute resolution mechanisms. CMIF continues to be supportive of the CORE which was established with a mandate for collaborative dispute resolution that employs joint fact finding to resolve conflicts between companies and communities. However, we remain concerned at the prospect that the mandate for the CORE could include quasi-judicial powers to compel evidence.

Our position, based on legal advice, is that establishing an ombudsperson with powers to compel is out of step with the growing international consensus that unilateral investigative processes are not effective and, in fact, counter-productive to resolving disputes. The inclusion of such powers would also change the nature of such a mechanism and would result in an adversarial process that would threaten to undermine the CORE's capacity to resolve disputes by inserting the same antagonism, conflict, and delays associated with civil or criminal litigation. Any company subject to such a process would certainly acquire legal representation and seek to protect its constitutional, legal and privacy rights and those of its employees.

Endowing the CORE with the power to compel evidence outside of Canada would result in the creation of a significant overreach of its jurisdiction. For example, if the CORE wished to compel the production of documents located outside Canada, or compulsion of testimony from persons outside Canada, there could be conflict between Canadian and foreign law. This is further complicated by the reality that, in most circumstances, a thorough investigative process would require an examination of the conduct of the host country or state entities, creating additional complexities for the Government of Canada.

The requirement for more onerous and formal procedures that would need to accompany a mechanism with powers to compel, together with the risk of challenges to any evidentiary orders, would increase expense for all parties and create the prospect of lengthy delays, almost certainly resulting in a legal challenge of the validity of the CORE.

## **CONCLUSION**

Canada is rich in mineral resources and our enviable economic prosperity and standard of living, relative to most other nations, is largely a reflection of our ability to responsibly develop our natural resource advantage. With supportive government policy, such as concrete action plans by F/P/T governments to advance the vision of the Canadian Minerals and Metals Plan (CMMP), Canada's mineral industry will be able to seize emerging opportunities such as supplying the sustainably sourced materials needed to build the products and infrastructure essential to modern life, including key clean growth technologies that will support the transition to a low carbon economy. However, an increase in global competition for mineral investment, Canada's stagnation and decline on various fronts as compared to other jurisdictions, and numerous policy factors have shifted the landscape of which Canada previously enjoyed clear mineral industry dominance and is putting at risk the industry's ability to seize opportunities. Returning to a position of dominance will only be achieved with proactive collaboration between federal, provincial and territorial governments, collectively working towards solutions.

If Canada does not respond to ensure the global competitiveness of the mineral sector, its reputation and attractiveness as a destination for mineral investment will continue to further decline, along with the social and economic benefits that accompany it.

## **ANNEXES:**

### **ANNEX A:**

#### **Comparative Overview of Several Tax Measures – USA and Canada**

	Canada	USA	
Tax rate	Federal	15,0%	21,0%
	Province / State (deductible)	11,5%	6,0%
	Total	26,5%	25,7%
Tax rate on export (FDII - high margin goods or services)	26,5%	16,1%	
Depreciation rate	25% DB	100%	
Resource Allowance / Percentage Depletion	N/A	up to 50%	
R&D Credits	all	incremental	
Interest deduction	Thin cap rules	30% EBITDA	
Loss carry forward			
	pre-2018 losses	100% income	100% income
	post-2017 losses	100% income	80% income

## ANNEX B:

### Simplified comparative tax computation (copper mine) USA vs. Canada

	USA	Canada	USA	Canada
Revenue	1 000 \$	1 000 \$	2 000 \$	2 000 \$
Deductible costs	<u>(800)\$</u>	<u>(800)\$</u>	<u>(800)\$</u>	<u>(800)\$</u>
Taxable income before percentage depletion	200 \$	200 \$	1 200 \$	1 200 \$
Percentage depletion				
Lesser of				
50% of mining profit	100 \$		600 \$	
15% of gross mining revenue <sup>1</sup>	150 \$	N/A	300 \$	N/A
	<u>100 \$</u>	<u>200 \$</u>	<u>900 \$</u>	<u>1 200 \$</u>
Taxable income				
Federal Tax	21,0%	15,0%	21,0%	15,0%
State (deductible) / Provincial tax	<u>6,0%</u>	<u>11,5%</u>	<u>6,0%</u>	<u>11,5%</u>
	25,7%	26,5%	25,7%	26,5%
Income tax payable	26\$	53\$	232 \$	318 \$
Effective tax rate	12,9%	26,5%	19,3%	26,5%

- 1) Percentage of gross mining revenue varies with the ore mined.
- 2) Taxpayers can deduct the highest between depletion and the percentage depletion. Depletion is computed on capitalized development costs.