



**CANADA'S MINERALS INDUSTRY
AT A CROSSROAD –
INVESTING IN OUR
NATURAL ADVANTAGE**

A brief to the 73rd Energy and
Mines Ministers' Conference

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



CANADA'S MINERALS INDUSTRY AT A CROSSROAD – INVESTING IN OUR NATURAL ADVANTAGE

National Associations

Canadian Association of Mining Equipment and Services for Export
Canadian Fertilizer Institute
Canadian Institute for Mining, Metallurgy and Petroleum
Canada Mining Innovation Council
Coal Association of Canada
The Mining Association of Canada
Mining Industry Human Resources Council
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
Mining Association of British Columbia
The Mining Association of Manitoba
The 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 Mines Ministers 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.

EXECUTIVE SUMMARY

The Canadian minerals and metals industry continues to experience a significant downturn, although some signals suggest we may have hit the bottom of the cycle.¹ Despite the challenges this presents, the industry continues to make enormous contributions to the social and economic well-being of Canadians. These contributions cannot be taken for granted, however, and policy-makers must take concrete steps to position the sector for future success.

Accordingly, the Canadian Mineral Industry Federation (CMIF) is submitting this brief to Canada's Mines Ministers for consideration during the 2016 Energy and Mines Ministers' Conference (EMMC). CMIF hopes to work with Mines Ministers and Intergovernmental Working Group (IGWG) officials to address the following priority issues both collaboratively (i.e., through the 2016 communiqué and subsequent policy cycle) as well as bilaterally with individual jurisdictions across Canada.

1 Public confidence

The theme for this year's EMMC is public confidence. Prior to undertaking policy work in this area, two important distinctions need to be made – first, between public confidence in energy resource development and public confidence in mineral resource development. Second, between project-specific, site-level concerns and broader societal concerns that intersect with resource development (e.g. climate change, nuclear energy, Aboriginal reconciliation).

Recent public opinion data continues to demonstrate that there is widespread public support for the development of the country's mineral resources. This data also identifies that the public feel governments should do more to promote mining. The public associates mining with producing the products that society needs. They recognize that mining provides good jobs and benefits provincial and territorial economies – providing revenues to support social programming such as health and education. In specific jurisdictions such as the Northwest Territories and Saskatchewan, public and Aboriginal support for mineral resource development is extraordinarily high, due to the significant efforts that have been made by governments, regulatory bodies and industry to address public concerns and optimize benefits.

Exploration and mining projects are already subject to significant regulatory oversight, with well-established processes for identifying, preventing and mitigating potential negative impacts. Unlike for other major resource sectors, federal regulatory reforms of the past few years did not reduce, but in fact increased federal oversight of mining. More projects were captured by the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) than its

1. As of June 10, metals & mining, and gold, were the two top-performing S&P 500 industries so far in 2016. Els, Frik. "Gold, copper price jumps spark major mining stocks rally." Accessed June 16, 2016 from <http://www.mining.com/mining-stocks-rally-as-copper-price-jumps/>.

predecessor, with no reduction in scope, no diminishment of the ability of the public to participate in federal reviews of mining projects, and with more onerous and rigorous application of the *Fisheries Act* to mining's impacts on fish and fish habitat. While regulatory oversight should be (and is) subject to a process of continuous improvement, CMIF members would like Energy and Mines Ministers to distinguish public concerns with the regulatory oversight of energy projects from those related to mineral resource development.

This will allow Mines Ministers to focus on responding to the issues outlined in this brief, which (if addressed) will enhance public confidence in the development of mineral resources and support a competitive and responsible Canadian minerals industry.

2 Financing for grassroots exploration

CMIF calls upon all jurisdictions to sustain and enhance the fiscal incentives in place to facilitate the flow of risk-tolerant capital into grassroots exploration to ensure that new discoveries continue to be made in Canada. In particular, CMIF encourages the federal government to maintain the highly efficient and effective flow-through shares system that allows companies to attract risk-tolerant capital for early-stage exploration activities.

3 Aboriginal relations

CMIF recommends that governments support industry efforts to enhance the participation of Aboriginal Peoples in the industry through:

- ▶ Investments in health, education and skills-training, particularly for youth; and
- ▶ Government resource revenue sharing: Improve mechanisms through which federal/provincial and territorial governments share the benefits and/or a portion of the revenues generated by mining with impacted Aboriginal communities.

CMIF also recommends that IGWG gather leading practices on how jurisdictions are responding to the specific areas of concern outlined in this brief related to how the Crown is implementing its duty to consult and accommodate Aboriginal Peoples, and report back at EMMC 2017.

4 Regulatory affairs

To ensure the recently announced review of regulatory processes strengthen public confidence by facilitating balance, efficiency and proportionality to risk in the regulatory process, CMIF urges Mines Ministers to:

- ▶ Improve coordination between federal and provincial assessment and approval processes for mining projects;
- ▶ Engage actively in the reviews of the *Canadian Environmental Assessment Act*;
- ▶ Advocate for practical ways for mining projects to comply with the federal

- Species at Risk Act* while jurisdictions work to develop requisite Action Plans and Range Plans and agree on how the aggregate of federal and provincial legislative frameworks will function in a particular ecosystem location; and
- ▶ Press Environment and Climate Change Canada to re-examine its ever-broadening application of the Metal Mining Effluent Regulations Schedule 2 and ensure that it can deliver approvals in a timely way that is coordinated with environmental assessments and consultations.

5 Land withdrawals

Canada's ability to attract exploration investment, and sustain its rate of mineral discoveries, is contingent upon ensuring highly prospective areas remain open for exploration. CMIF members request that IGWG 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 at EMMC 2017.

6 Infrastructure

CMIF supports the establishment of a northern infrastructure fund within the proposed Canada Infrastructure Bank that would operate in a manner similar to that of the Alaska Industrial Development and Export Authority, as well as the use of fiscal incentives to help offset the costs of exploring and operating in remote Canada.

7 Innovation

To support the industry's goal of continually reducing environmental impacts, including in the transition toward a lower carbon future, the federal government should invest \$50 million in the Canada Mining Innovation Council (CMIC) over the next five years in support of its Towards Zero Waste Mining initiative.

8 Strengthening multi-stakeholder collaboration to support a competitive and responsible Canadian minerals industry

CMIF members would like to reiterate their belief that the annual Mines Ministers Conference has the potential to become more than a forum for dialogue. With concerted effort, it could become the pivotal platform for collaborative action towards supporting a sustainable and competitive Canadian minerals and metals industry.

We encourage Mines Ministers to undertake a study of how similar annual Ministerial meetings (e.g. Ministers of Health, Environment, Forestry) are used as a means to drive improvements in both government and industry performance. We also urge Mines Ministers to examine how stakeholders are involved in policy work both during the annual meeting, as well as throughout the year. We ask that a report comparing these different models be tabled at EMMC 2017, with recommendations.

STATE OF THE MINERALS AND METALS INDUSTRY

Canada is a mineral-resource rich nation and its current positive stature and standard of living is largely a reflection of our country's ability to responsibly develop our natural resources. We can continue to build on this natural resource advantage in a responsible manner with a robust and efficient regulatory system.

Global minerals and metals industry in transition: According to PwC, in 2015 the top 40 global mining companies operated at a collective US\$27 billion net loss, with market capitalization falling by 37%, effectively wiping out all the gains made during the super cycle. Together, they experienced \$53 billion in impairments, and have written off the equivalent of 32% of capex spent since 2010. Focus on cost control continues – with a 17% drop in operating costs – but economic headwinds have also not abated. Of the top 40 companies globally, it is notable that nine are MAC members.

Mineral financing and global exploration budgets continue to decline: Total mining-related equity financing activity across all exchanges globally fell by 20% annually between 2007 and 2014, an absolute decline of 80% over that period. Financing for mineral exploration specifically has fallen even more dramatically. In Q4 2014, only \$170 million was raised for mineral exploration on all exchanges, down from a high of \$4.5 billion in Q4 2007. The downturn in exploration financing has, not surprisingly, led to steep declines in exploration budgets. SNL Metals & Mining recently calculated that the minerals and metals industry's total budget for non-ferrous metals exploration was US\$9.5 billion in 2015, down 20% over 2014 levels and less than half of the record high of \$20.5 billion in 2012.⁴

Canada now #2 as a destination for exploration: In the annual Fraser Institute survey of mining executives, a Canadian jurisdiction no longer takes top spot as the most attractive destination in which to explore or mine, with Western Australia taking that honour in the latest survey. Australia also had three jurisdictions in the top 10 as opposed to just two from Canada. This qualitative survey of perceptions is also backed up by quantitative data. When factoring in exploration budgets for iron ore, SNL Metals & Mining data indicates that Canada no longer attracts the single-largest share of total global mineral exploration budgets, conceding first place to Australia in 2015.

2. Prospectors & Developers Association (2015). Déjà Vu: State of Mineral Finance 2015. Page 12. Accessible from <http://www.pdac.ca/policy/finance-taxation/policy/2015/02/27/state-of-mineral-finance-2015-d%C3%A9j%C3%A0-vu>.

3. Ibid., page 26.

4. SNL Metals & Mining. World Exploration Trends 2016: PDAC Convention Report. Released March 2016.

Accessed from <http://go.snl.com/SNL-Metals-Mining-World-Exploration-Trends-WET-2016-Report-Request-PR.html>

The consequences of both absolute and relative declines in Canada's ability to attract exploration investment are serious. As Natural Resources Canada recently noted:

Overall investment for the more vulnerable off-mine-site exploration work phase [in Canada]... declined from a high of \$2.8 billion in 2011 to \$823 million in 2015, and is expected to decline further in 2016 to \$683 million. This total is the lowest for such spending in more than a decade, and a prolonged weakness in this category would reinforce concerns about Canada's capacity to generate new mineral discoveries and projects.⁵

Data from mineral economist Richard Schodde suggests that companies exploring in Australia find more economic value per dollar spent, suggesting that urgent action is needed in Canada to improve discovery rates and enhance exploration efficiency.⁶ Additionally, if deposits in other jurisdictions are able to be discovered, developed and marketed in a more timely manner, Canada will lose the advantage of being "first to market" which is critical for many commodities, including potash and uranium.

Global economic outlook remains uncertain: Global economic growth has been volatile in recent years, with annual growth projections consistently downgraded as market conditions unfolded. Descriptors such as "rebalancing" and "modest and uneven recovery" characterize the global economy as it continues to navigate through a generalized slowdown in emerging market economies, China's rebalancing, lower commodity prices, and a transition from aggressive monetary policy in key advanced economies. Looking forward, the IMF forecasts global growth at 3.4% in 2016 and 3.6% in 2017, and attributes this to the "gradual improvement" of countries currently experiencing severe economic duress, such as Brazil and Russia. This forecast is made under the caveat that even this "projected partial recovery" is vulnerable to geopolitical and economic shocks.

Recent commodity price performance: Declining or weaker than expected economic growth rates, combined with increased supply of commodities coming online, have pushed prices downward. From winter 2011 highs, both nickel and copper have fallen, losing approximately 70% and 50% of their value, respectively. Similar trends with subtle variations are seen for silver, uranium and potash. Beyond gold's \$800/ounce fall, iron ore and coal have experienced the most dramatic swings. The monthly average price of iron ore (62% Fe) dropped by over two-thirds (a 72% decrease) from \$187.18 per metric tonne in February 2011 to \$51.36 in June 2016, up from a low of \$37 per metric tonne in December 2015. Quarterly benchmark prices for seaborne metallurgical coal have dropped from a peak of \$330 per metric tonne in 2011 to \$89 in May 2016 – a near four-fold decrease in value.

5. Natural Resources Canada. *Information Bulletin – Mineral Exploration and Deposit Appraisal (March 2016)*. Accessed from <http://www.nrcan.gc.ca/mining-materials/publications/17762>

6. Schodde, Richard. Canada's discovery performance and outlook. Report commissioned by Prospectors & Developers Association Canada for 2015 PDAC Convention. Accessed from <http://www.minexconsulting.com/publications/R%20Schodde%20PDAC%20Conf%20March%202015%20FINAL.pdf>

Cautious signs suggest the cycle may have plateaued, with some commodities experiencing upticks. Most notably at the time of writing, gold has jumped approximately \$200/ounce since December 2015, with notable but smaller upticks in copper, silver, zinc and iron ore over the winter and spring months. The extent to which these shifts will persist is yet to be determined.

Recent economic contributions: Despite challenges, the Canadian industry remains an economic stalwart, contributing more than \$57 billion in GDP (3.4%) in 2014, employing 375,000 people, and paying an estimated \$71 billion in taxes and royalties to governments over the decade through 2012. Proportionally, the minerals and metals industry is the largest private sector employer of Aboriginal peoples. Canada also remains home to the greatest number of publicly listed mining companies in the world.

The mining supply sector greatly extends the economic and employment reach of the minerals and metals industry across Canada. For example, a recent study by the Canadian Association of Mining Equipment and Services for Export found that 913 companies identify as mining suppliers in Ontario alone. Together, they provide 68,000 additional jobs across the province, and generate 1% of provincial GDP and \$1.5 billion in government tax revenue. Similar indirect contributions are made to the governments of other mining provinces. As a core economic driver, the industry also:

- ▶ Accounts for approximately 50% of total rail freight revenue generated annually;
- ▶ Invests over half a billion annually on R&D and innovation; and
- ▶ Accounts for approximately 10% of both Foreign Direct Investment into Canada and Canadian Direct Investment Abroad (\$66.4 billion and \$81.4 billion respectively in 2013).

Looking forward: The prevailing view is that the minerals and metals industry's economic prospects are strong over the medium and long term. China's growth, while slower, is still significant and over a much larger base. Consumption of minerals and metals continues to increase and is expected to accelerate as other emerging economies, such as India, take their place behind China. To compete globally, Canada must work to remain attractive as a destination for investment in mineral exploration and development. Canada must also maintain the components of the ecosystem that makes the Canadian minerals and metals industry unique, namely its world-class exploration and supply sectors, financing expertise and reputation as a consistent and stable jurisdiction in which to build and operate mines.

POLICY PRIORITIES

1. Financing for Grassroots Exploration

Over the last three years, PDAC has been closely tracking the global downturn in exploration financing, particularly financing for early-stage exploration and financing for junior exploration companies.⁷ A recent report suggested that over 70% of all discoveries in Canada over the last decade have been made by juniors, highlighting the importance of responding to their financing challenges.⁸

Data from Natural Resources Canada, however, suggests that spending by juniors in Canada in 2016 is likely to drop below \$500 million for the first time since 2004.⁹ Sustaining junior exploration in Canada is a critical component of any strategy to maintain and grow mineral production in this country.

RECOMMENDATIONS

1A. Help sustain capital flows into grassroots 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.¹⁰

CMIF would like to acknowledge the actions that have been taken by a number of jurisdictions over the last three years, and encourages them to stay the course and for others to follow suit (see Annex A).

In particular, CMIF calls upon the federal government to maintain the highly efficient and effective flow-through shares system that allows companies to attract risk-tolerant capital for early-stage exploration activities. In 2014, flow-through share financing accounted for 90% of all exploration-focused financing done on Canadian stock exchanges, up from an average of 70% between 2007 and 2014.¹¹

7. See, for example: Samad Uddin, State of Mineral Finance, 2015, <http://www.pdac.ca/policy/finance-taxation/policy/2015/02/27/state-of-mineral-finance-2015-d%C3%A9%20vu> or various "Capital Crisis" reports at <http://www.pdac.ca/policy/finance-taxation/policy/2014/10/29/capital-crisis>.

8. R.C. Schodde, "Canada's discovery performance and outlook," Presentation to the Prospectors & Developers Association of Canada, Toronto, March 2015, <http://www.minexconsulting.com/publications/R%20Schodde%20PDAC%20Conf%20March%202015%20FINAL.pdf>

9. Cf. footnote 5.

10. PDAC has summarized the exploration incentives available in each jurisdiction. <http://www.pdac.ca/policy/finance-taxation/policy/2016/07/25/supporting-mineral-exploration-in-canada>

11. From PDAC analysis of proprietary data provided by Gamah International. Data only available to December 31, 2014.

1B. Advocate for the emergent Cooperative Capital Markets Regulator to adopt a regulatory framework that explicitly acknowledges the role of capital markets in fostering economic growth, and prioritizes cost-effective capital raising by venture-issuers. CMIF would like the new regulatory framework to:

- ▶ *Facilitate capital-raising from a broader base of investors to increase global competitiveness by including:*
 - ▷ An expanded definition of what constitutes an accredited investor, to include factors such as “experience, professional qualifications and sophistication”.
 - ▷ The suite of new prospectus exemptions that have been proposed over the last year, such as the Offering Memorandum exemption; Friends, Family and Business Associations exemption; existing security holders exemption; crowdfunding exemptions.
- ▶ *Reduce regulatory burden and compliance costs in order to improve efficiency and competitiveness by:*
 - ▷ Adopting a simplified, proportional regime for smaller issuers that would have less onerous rules for junior exploration companies and other speculative industries that depend on risk-tolerant capital.
 - ▷ Mandating regulatory impact assessments, both prior to and after adoption of new regulations, that are then made public.
- ▶ *Establish a more effective enforcement regime, with sufficient resources allocated to prosecuting criminals, to maintain investor confidence (instead of relying on ever increasing, and costly, regulations).*

2. Regulatory Environment

After four years of transitioning to new federal legislation affecting mining projects, while planning for changes to the Metal Mining Effluent Regulations, the mining sector is again facing uncertainty at the same time that some flaws in the 2012 legislative changes are becoming apparent. The problematic regulatory situation at the federal level is being exacerbated by increasing delays in approval processes caused by departmental staff reductions and changes in policy interpretation, ongoing confusion in the application of the federal *Species at Risk Act* to mining projects, and long standing shortcomings in coordination between federal and provincial jurisdictions and within the federal government. At the same time, the industry is responding in new ways to broad issues including climate change and air quality, dealing with a still-fragile commodity market, and facing escalating electricity costs.

The current policy trend, unless addressed effectively, risks a return to past periods when Canada was perceived by the investment community as having an undesirably high level of investment risk. Canada's political stability and excellent workforce cannot compensate indefinitely for growing delays, uncertainty and arbitrary shifts in policy. Rather than repeat history, Mines Ministers must refocus their attention and engage with their Cabinet colleagues to resolve frequent, unnecessary impositions and delays.

In June, the federal government announced the reviews of the *Canadian Environmental Assessment Act* (CEAA), the *Fisheries Act* and the *Navigation Protection Act*. The reviews are to take place this fall with recommendations in early 2017. The outcome of these reviews, particularly the review of CEAA, as well as the path governments take towards reconciliation with Canada's Aboriginal peoples, will be critical in determining whether Canada's mineral industry will rebound and thrive or wither in the coming decades. At risk is a significant economic engine of the Canadian economy and one of the most important economic partners of Aboriginal peoples in the country.

RECOMMENDATIONS

2. To ensure the outcomes of the recently announced regulatory review strengthen public confidence by enabling a balanced and efficient regulatory regime that is proportionate to risk, we urge Mines Ministers to:

- ▶ Press their colleagues to improve coordination between federal and provincial assessment review and approval processes for mining projects.
- ▶ Engage actively in reviews of the *Canadian Environmental Assessment Act*.
- ▶ Advocate for practical ways for mining projects to comply with the federal *Species at Risk Act* while jurisdictions work to develop requisite Action Plans and Range Plans and agree on how the aggregate of federal and provincial legislative frameworks will function in a particular ecosystem location.
- ▶ Press Environment and Climate Change Canada to re-examine its ever-broadening application of the Metal Mining Effluent Regulations Schedule 2 and ensure that it can deliver approvals in a timely way that is coordinated with environmental assessments and consultations.

3. Aboriginal Affairs

The minerals and metals industry strongly supports efforts to facilitate the full participation of Aboriginal people in the opportunities it generates. It also recognizes that it is critical to develop and maintain strong, open and trusting relationships with Aboriginal communities impacted by, or with an interest in, mineral exploration and mining activities.

Supporting Aboriginal participation in the economic opportunities created by the minerals and mining industry

The minerals industry builds strong partnerships with and generates economic opportunities for Aboriginal communities within the context of a challenging and evolving landscape, characterized by historical legacies, land tenure disputes, poor socio-economic conditions in many communities and complex Crown-Aboriginal relations.

The minerals industry encourages efforts to facilitate the full participation of Aboriginal people in the economic opportunities generated by mineral development. These opportunities exist throughout the mineral development sequence, differing in scope and breadth depending on the stage of the project, the state of the market and type of project. The industry supports participation through training, business development, employment and financial arrangements. In addition, the industry often makes social investments through different initiatives and partnerships that both improve quality of life in Aboriginal communities and support Aboriginal participation in the resource economy.

As a result of its efforts, the minerals industry has become the largest private-sector employer on a proportional basis of Aboriginal people in Canada. Aboriginal employment in the mining and mineral processing industry increased 12.0% from 2007 to 2015.¹²

A key mechanism through which economic opportunities have been created is the use of company-community agreements. There has been a significant number of agreements signed between mineral companies and Aboriginal communities, with nearly 500 agreements signed since 1974; the majority (376) have been signed within the last decade¹³. These voluntary agreements are progressive in their collaborative scope and depth, particularly for production-stage projects, and are increasingly recognized internationally as a leading practice. Agreements are a testament to the strength of commitment by the industry to developing mutually-beneficial partnerships, and to the interest of many communities in economic development opportunities generated by the minerals sector.

The Crown's implementation of its duty to consult and accommodate Aboriginal people

12. Intergovernmental Working Group on Minerals and Metals. (2016). Mining Sector Performance Report (draft).

13. *Ibid*

The *Haida Nation v. British Columbia* decision by the Supreme Court of Canada (SCC) in 2004, and subsequent court cases, outlined principles of the duty to consult and, if appropriate, accommodate Aboriginal Peoples. They have also encouraged the development of regulatory regimes by governments that would help guide consultation.

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 result in delayed projects, increased costs, investor uncertainty and negative impacts to company and community relationships.

While policy and practice indeed differ 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:

- ▶ ***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 too broad, inconsistent between different levels of government, and is not transparently linked, if at all, to the nature of asserted rights.
- ▶ ***Roles and responsibilities—delegation to proponents:*** in a number of jurisdictions the responsibility for, and various parties' roles in, formal consultation (as outlined by the SCC) 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 and onerous; the question of “who pays” for consultation is frequently raised across Canada, particularly as there is no existing case law that indicates whether the Crown or proponents are responsible for these costs.

- ▶ **Adhering to timelines for consultation and decision-making:** there is a lack of transparency or clarity with regards to changes in timelines, how the decisions are made and by whom, and if the decision-making process 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.
- ▶ **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 consultation) and commercial, company-community agreements (resulting from engagement).

The federal government has committed to implementing all 94 recommendations of the Truth and Reconciliation Commission, beginning with the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). The Minister of Indigenous and Northern Affairs Canada has stated that Canada's constitutional obligations of meaningful consultation and accommodation under section 35 of the *Constitution Act, 1982* serve to fulfill the principles of Free, Prior, and Informed Consent in the Declaration. The federal government will be engaging with Aboriginal Peoples, provincial and territorial governments, industry and other stakeholders to develop the framework for the implementation of the UNDRIP.

RECOMMENDATIONS

3A. CMIF recommends that governments support industry efforts to enhance the participation of Aboriginal peoples in the industry through:

- ▶ Foundational social investments (health, housing, water, education) that contribute to better health and educational outcomes for Aboriginal people.
- ▶ Targeted funds for skills training and entrepreneurship to assist Aboriginal people in securing employment and business development opportunities generated by the industry.
- ▶ Government resource revenue sharing: Improve mechanisms through which federal, provincial and territorial governments share the benefits and/or a portion of the revenues generated by mining with impacted Aboriginal communities.

In general, the industry strongly believes that collaborative efforts by all parties - government, industry and Aboriginal communities - will lead to more stable and positive business environments for mineral exploration and development, maximize benefits for all parties, and enhance Aboriginal participation in the minerals and metals industry.

3B. CMIF also recommends that IGWG gather leading practices on how jurisdictions are responding to the seven areas of concern outlined in this brief (related to how the Crown is implementing its duty to consult and accommodate Aboriginal people) and report back at EMMC 2017.

4. Address the Costs of Operating in Remote and Northern Canada

Enabling sustainable economic development in remote and northern Canada is fundamental to the government's Aboriginal reconciliation and climate change policy objectives in these regions. Minister Bennett was mandated to "improve essential physical infrastructure for Indigenous communities" and to "promote economic development and create jobs for Indigenous peoples." Minister McKenna was mandated to work in partnership with the provinces and territories to "develop a plan to combat climate change and reduce greenhouse gas emissions." Without strategic and wealth-generating infrastructure development to enhance investment competitiveness, these regions will unsustainably remain disproportionately reliant on transfer funding for core services and program delivery (frequently at lower standards than southern Canadian jurisdictions enjoy). Equally strategic and synergistic investments in energy infrastructure are essential to reduce northern reliance on costly and high emitting fossil fuels. The goal should be to combine the delivery of these objectives together to the benefit of northern and Aboriginal communities, and all Canadians.

Mining is the largest private sector driver in the territories and northern Saskatchewan. It employs approximately 8,500 people (1 in every 6 jobs) in the territories and directly employs 1,750 residents of northern Saskatchewan at mine sites in northern Saskatchewan (1 in every 5 jobs). Direct GDP contributions in the Yukon, the Northwest Territories and Nunavut are approximately 18%, 29% and 18%, respectively, as of 2014. However, the territories and the northern parts of our provinces lack critical infrastructure to facilitate exploration, service mines and get products to market. Industry's *Levelling the Playing Field*¹⁴ report indicates that the cost of exploration in remote Canada is two to six times more expensive than exploration in southern Canada. Similarly, the cost of developing gold and base metal mines in northern regions is 2 to 2.5 times higher than in southern regions, with 70% of the cost differential for mine development directly related to the infrastructure deficit. A second study, to be released in fall 2016 by the PDAC, illuminates the significant percentage of discoveries that remain undeveloped in the territories, and outlines how reducing the costs required to develop a deposit by just 10% could make it feasible to move five discoveries into production.¹⁵

14. Prospectors & Developers Association of Canada, Mining Association of Canada, Association of Consulting Engineers of Canada, NWT/Nunavut Chamber of Mines and Yukon Chamber of Mines. (2014). *Levelling the Playing Field*. Accessible from <http://www.pdac.ca/policy/finance-taxation/policy/2015/06/05/levelling-the-playing-field-pdac-advocates-for-fiscal-incentives-to-offset-the-higher-costs-of-remote-exploration-and-mining>.

15. Prospectors & Developers Association of Canada, "The Tyranny of Distance," Presentation to the North of 60 Forum, 2015, <http://www.pdac.ca/policy/finance-taxation/policy/2015/06/24/the-tyranny-of-distance-northern-infrastructure---challenges-and-opportunities>

Further, above and beyond the infrastructure deficit, recent MAC research indicates Canada's North is less competitive in multiple ways when compared to other northern mining jurisdictions, including Finland and Sweden. Given that the future of the Canadian minerals and metals industry increasingly 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.

Although the federal government has committed to establishing a Canada Infrastructure Bank through a joint mandate shared by Ministers Morneau and Sohi, the mandate letters exclude mention of the territories. Given the disproportionately acute infrastructure deficit in the territories compared to the rest of Canada, and the barrier this deficit presents to sustained socio-economic development activity, specific consideration for northern challenges and opportunities must have its place in the proposed mechanism. Including a northern-specific fund in the context of the proposed Canada Infrastructure Bank would be consistent with a recommendation from industry's *Levelling the Playing Field* report, and further supported by the National Aboriginal Economic Development Board, as articulated in its January 2016 report.¹⁶

Depending on how the Canadian model is developed, direct and indirect job creation, tax and royalty revenue generation, and broad-based social and economic development considerations can be weighed in assessing the public value of an applicant's business case. Further, special consideration could be given to infrastructure investments that enhance the economic viability of projects in regions with high unemployment and limited alternative development opportunities. Considerations such as these require recognition of the unique challenges and opportunities facing northern Canada. By creating a mechanism that facilitates economic growth, over time, remote and northern regions will be able to further develop their potential for business development, thus reducing their reliance on federal support.

RECOMMENDATIONS

CMIF members recommend:

4A. In the context of the proposed Canada Infrastructure Bank, the establishment of a Northern Infrastructure Investment Fund based on the Alaskan Industrial Development and Export Authority (AIDEA):

Industry sees value in incorporating the strengths of AIDEA into the proposed Canadian mechanism. Alaska, one-third the size of Canada's Arctic, has seven times more people (710,000), has a \$50 billion Heritage Fund, and has six large-scale operating mines. Alaska also has the Prudhoe Bay oil fields and pipeline, as well as 25 seaports. Despite being northern, infrastructure has significantly reduced the remoteness of these regions, facilitating both social and economic development and prosperity, as well as enhancing sovereignty claims by increasing mobility and territorial accessibility. AIDEA has been strategic in facilitating this success.

16. Available at <http://naedb-cndea.com/reports/recommendations-on-northern-infrastructure.pdf>.

Most significantly, AIDEA has repaid its original endowment, generating over \$330 million in royalties back to the state treasury since 1997. It is now fully autonomous.

4B. Consistent with industry's *Levelling the Playing Field* report, and the Northern Aboriginal Economic Development Board's findings in its *Recommendations on Northern Infrastructure to Support Economic Development*¹⁷ report, use fiscal incentives to enhance the attractiveness of remote and northern regions for economic development by:

- ▶ Creating an investment tax credit (10%) on all capital expenditures associated with remote and northern mines, and either:
 - ▷ Provide a supplementary 15% investment tax credit on specified infrastructure investments (e.g., roads, ports, docks, dams, rail lines, power plants); or
 - ▷ Create a mechanism for conditionally repayable contributions related to infrastructure investments that could cover up to 25% of specified infrastructure investments, with the option of pardoning the loan in exchange for public ownership of that infrastructure at mine closure.
- ▶ Government and industry develop a partnership plan that would:
 - ▷ Allow for the costs of building and maintaining infrastructure to a mine site to be deducted from future royalty payments; and
 - ▷ Have government invest in part of the costs of road and other infrastructure development, recognizing that the public will utilize the infrastructure and that it will become an investment platform for additional economic opportunities (mineral development, fish harvesting, tourism, etc.).

5. Climate Change, Clean Technology and Innovation

The Canada Mining Innovation Council (CMIC) has been identified by industry as the umbrella organization to coordinate innovation in the mining industry in much the same way as FPInnovations and COSIA represent national innovation for forestry and oil sands, respectively. With industry leaders across Canada and the MAC, CMIC has created an innovation strategy - Towards Zero Waste Mining (TZWM) - which provides a long-term vision of net zero waste in mining in 10-20 years.

CMIC, with its partners, has developed a business case, created technology roadmaps, and identified transformational targets. Currently, CMIC is delivering and developing projects that will significantly reduce the environmental footprint of mining, including energy consumption, GHG and CO2 emissions, tailings discharge and water use. Through TZWM, industry will develop new technology that will be deployed in Canadian mines and globally. This will increase foreign direct investment in Canada by international technology companies, make Canada a global centre of mining innovation, and increase Canada's export market share for new and cleaner mining technologies.

17. See findings and related recommendations 3 and 5 on pages 23 and 26 respectively: <http://naedb-cndea.com/reports/recommendations-on-northern-infrastructure.pdf>

CMIC is prepared to fully execute on the TZWM innovation strategy for the mining sector. However, mechanisms to fund TZWM do not exist and the appropriate type and level of support from the Government of Canada is urgently required. The TZWM innovation strategy requires a five-year, \$50 million investment by the federal government. The TZWM strategy will reduce energy and environmental waste, reduce GHG emissions, assist the industry in its move to more sustainable practices and technologies and stimulate technology innovation in Canada.

RECOMMENDATIONS

5. The federal government should invest \$50 million in CMIC over the next five years to implement the TZWM roadmap. This investment would support CMIC's technology initiatives, many of which are directly related to clean technology and climate change, and designed to enable the mining sector to significantly reduce energy costs, improve productivity and significantly reduce GHG emissions:

- ▶ CMIC's underground mining portfolio aims to move the industry away from the traditional drill and blast production cycle to a continuous, smart mining approach.
- ▶ CMIC is developing projects across Canada through the use of advanced technology for mechanical cutting, electric ore haulage, electrification and the use of advanced information communication technology.
- ▶ CMIC's processing portfolio is targeting an increase in energy efficiency of 45% in the comminution, or grinding circuits of the mining industry. Comminution consumes approximately 3-4% of the world's energy and up to 50% of the total energy consumed at a mine site, presenting major opportunities for efficiency and waste-reduction gains given targeted support.

6. Land Withdrawals

Canada's geological endowment is one of our primary competitive advantages over other countries. To capitalize on this advantage, mineral rich areas need to be open for exploration in order to increase the probability of making a discovery. The availability of prospective land, therefore, also profoundly influences investment decisions made by companies. As land withdrawals remove accessibility to prospective areas, Canada becomes a less attractive place to explore, and companies go elsewhere.

In recent years, several jurisdictions have made commitments to prohibit economic development in significant portions of their jurisdiction (e.g. the *Far North Act* in Ontario, which calls for 50% of northern Ontario to be withdrawn). At times, the scientific basis for these commitments is not clear. In addition, the processes by which these targets are being developed are not always transparent or inclusive.

While CMIF members understand the value of protecting precious 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 stakeholders, rights-holders (i.e. Aboriginal people) and governments have full information available to them.

RECOMMENDATIONS

6A. CMIF members would like all jurisdictions to ensure that land use planning and 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 Aboriginal 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.

6B. CMIF members request that IGWG 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 at EMMC 2017.

7. Strengthening EMMC: Moving from dialogue to collaborative action

EMMC should strive to become *the* platform for multi-stakeholder dialogue on the key risks and opportunities facing the industry. It should also function as the primary institutional framework for coordinating and enabling collaborative multi-

stakeholder responses to those risks and opportunities.

The Canadian Council of Forest Ministers (CCFM) provides a compelling example of what EMMC could look like. In addition to being a “forum for discussion” (which EMMC does accomplish, to a certain extent – see below), CCFM also sees itself as a “vehicle to work cooperatively on common... issues”, which can include “maintaining the scientific information base” for sustainable forest management and “providing a framework within which agreements can be signed and implemented on specific areas”.¹⁸ CCFM has become a place for substantive collaborative policy and program work to unfold, leading them to create (for example) a stand-alone, permanent website that outlines the work they’re doing in five areas that last longer than just one year.

CMIF members invite Mines Ministers to initiate a study comparing the role of other annual Ministerial meetings in driving improvements in outcomes for Canadians, and how stakeholders and partners are involved in those policy processes.

CMIF members were very pleased this year to have NRCan and Manitoba organize a multi-stakeholder workshop in advance of EMMC 2016, on the theme of public confidence. This was a welcome step forward towards the vision articulated above. It complements other actions that have been taken recently, such as:

- ▶ Holding an “open session” wherein select stakeholders are able to present directly to ministers on a key topic, while others are able to observe ministerial discussions of the overarching theme.
- ▶ Organizing panel sessions on diverse themes, to engage stakeholders that attend EMMC, during the “closed session” of ministers.

While these opportunities are welcome, CMIF members believe that more could be done to facilitate greater dialogue between the minerals and metals industry and governments, and allow for industry actors to share their unique insights, expertise and advice more effectively. In particular, the minerals and metals industry would like to contribute by:

- ▶ Informing the selection of what the annual theme of each event should be.
- ▶ Participating in the design of EMMC itself (e.g., designing the open session, identifying topics, suggesting speakers).
- ▶ Co-organizing events throughout the year as part of the lead-up to the event, working in partnership with the IGWG sub-committees established following each EMMC.
- ▶ Presenting the annual CMIF brief directly to ministers, followed by a short discussion of the items identified therein.

Improved engagement on these matters would augment the business case for industry participation in the event.

18. <http://www.ccfm.org/english/aboutus.asp>

CONCLUSION



Canada is rich in mineral-resources and its current positive stature and standard of living is largely a reflection of our ability to responsibly develop our natural resource advantage. The minerals and metals industry helps build the products and infrastructure essential to modern life, and the Canadian minerals and metals industry is a global leader. A shift in the global centre of mineral consumption and a fierce increase in competition to attract mineral investment are changing the dynamic in which Canada fulfils its leadership role. This presents both challenges and opportunities to Canadian governments.

By proactively working towards solutions, Canada will transition through the current period of market volatility, and capitalize on the opportunities that lie ahead. If Canada does not act, its reputation and attractiveness as a location for global mineral investment will decrease over time, along with the social and economic benefits that accompany it.

ANNEX A

MINERAL EXPLORATION INCENTIVES: Changes made between January 2013 and June 2016

JURISDICTION	TAX CREDITS AND REBATE	GRANTS	NON-FINANCIAL PROSPECTOR ASSISTANCE	VENTURE CAPITAL	INFRASTRUCTURE ASSISTANCE/ OTHER
FEDERAL					
Government of Canada	<p><i>*Extended METC, a 15% tax credit for "flow-through mining expenditures".</i></p> <p><i>* Expanded scope of CEE to include certain community consultation and environmental expenses in 2016.</i></p> <p><i>*Phased out the 100% CEE deduction for pre-production development, changing it to a CDE 30% d.b. deduction by 2018.</i></p> <p><i>*Phased out the 10% corporate Mineral Exploration and Development Tax Credit from 2013 to 2015</i></p>				<p><i>*Announced in Budget 2016 investment in infrastructure of \$120 Billion over 10 years, where some spending in northern and remote areas will indirectly assist mineral exploration and development</i></p>
PROVINCIAL					
NL		<p><i>*Increased the maximum eligible costs for the Junior Exploration Assistance program grant of 50%, from \$100,000 to \$150,000 in NFL and from \$150,000 to \$225,000 per project in Labrador.</i></p> <p><i>*Maintained the grants up to \$6,000 for grass-roots prospecting. Also up to \$6,000 for air support to remote sites. \$12,000 for eligible "advanced" stage prospects.</i></p>	<p><i>*Maintained support of prospector training courses.</i></p>		
NS		<p><i>*Maintained prospector grants of up to \$15,000 on grass-roots projects.</i></p> <p><i>*Increased max. for advanced project grants from \$100,000 to \$150,000, that provide up to 50% eligible costs.</i></p>	<p><i>*Maintained support for prospector training and attendance at conventions such as the PDAC.</i></p>		
NB	<p><i>*Maintained Metallic Minerals Tax deduction of 150% of NB exploration expenses for mineral-producing companies.</i></p>	<p><i>*Maintained the Junior Mining Assistance program grants of 50% of eligible costs up to \$100,000 and prospector grants of up to \$15,000.</i></p>	<p><i>*Maintained sponsorship funds for attendance at "Roundup" and PDAC convention.</i></p>		

MINERAL EXPLORATION INCENTIVES: Changes made between January 2013 and June 2016

JURISDICTION	TAX CREDITS AND REBATE	GRANTS	NON-FINANCIAL PROSPECTOR ASSISTANCE	VENTURE CAPITAL	INFRASTRUCTURE ASSISTANCE/ OTHER
PROVINCIAL					
QC	<p>* Reduced in from 25% to 10% the FTS tax deduction for a junior company, and the additional deduction for surface exploration from 25% to 10%.</p> <p>*Reduced the tax credit relating to resources from 35% to 28% for non-operating companies and 38.75% to 31% for projects in North. For operating company from 15% to 12% and from 18.75% to 15% in North.</p> <p>*Reinstated in 2016 the 38.75% credit for non-operating companies in the North.</p> <p>*Maintained the 10% Investment Tax Credit for pre-production mining expenses.</p>	<p>*Maintained funding to groups such as the Cree Mineral Exploration Board.</p>		<p>*Maintained and enhanced provision of venture capital to selected projects from government organizations such as SIDEX, Sodemex and Ressources Quebec, including the creation (in 2013) of the Sodemex Development Fund</p>	<p>*Maintained the Plan Nord which provides funding for northern development including roads such as the Renard diamond project road completed in 2013.</p> <p>*Introduced a 35% reduction of work assessment credits for 2015 and 2016</p>
ON	<p>*Maintained the 5% refundable flow-through share tax credit.</p>	<p>*Maintained the Ontario Exploration Corporation grants of up to \$85,000 in exchange for a net smelter royalty.</p> <p>*Introduced a Junior Exploration Assistance Program, which provides up to \$100,000 per project for 33.3% of the exploration costs for junior mining companies with no production and a market cap of less than \$5 Million.</p>			<p>*Confirmed in 2016 a conditional commitment of up to \$1 Billion for infrastructure in the "Ring of Fire" region of northern Ontario.</p>
MB	<p>*Increased the Manitoba Mineral Exploration Tax Credit from 20%- 30% on flow-through share agreements entered into from April 1, 2013 to March 31, 2016.</p> <p>*Maintained a 150% deduction from Manitoba mining taxes/royalties for off-site exploration.</p>	<p>*Reduced, in 2016, MEAP grants from 40% to 25% of approved costs and 50% to 35% for projects in Northern or remote areas, except Flin-Flon area stays at 50%.</p> <p>*Maintained MPAP grants of 50% of approved costs to a max. \$10,000. Remote locations can also receive 80% of charter air costs to a max. of \$1,500.</p>			<p>*Introduced for 2014-2016 double credit for assessment work.</p>
SK	<p>*Maintained the 10% Saskatchewan Mineral Exploration Tax Credit for flow-through share investors.</p>				

MINERAL EXPLORATION INCENTIVES: Changes made between January 2013 and June 2016

JURISDICTION	TAX CREDITS AND REBATE	GRANTS	NON-FINANCIAL PROSPECTOR ASSISTANCE	VENTURE CAPITAL	INFRASTRUCTURE ASSISTANCE/ OTHER
PROVINCIAL					
BC	<p>*Extended the 20% BC Mining Flow-Through Share Tax Credit till December,31 2016.</p> <p>*Extended the 20% BC Mining Exploration Tax Credit till January1, 2020, with enhanced rate of 30% for exploration in the Mountain Pine Beetle affected areas.</p>				
TERRITORIAL					
NU		<p>*Maintained the Nunavut Prospectors Program Grants of up to \$8 000 per year. A fuel tax rebate is also available.</p>			<p>*Maintained ability to seek contribution agreements with government for costs like road building to exploration sites.</p>
NT		<p>*Introduced a Corporate Mining Incentive Program in 2014, providing 50% of exploration costs up to \$100,000 to companies. *Introduced a Prospector Mining Incentive Program in 2014, providing up to \$15,000 in funding to prospectors.</p>			
YK		<p>*Maintained the Yukon Minerals Exploration Program, Focused-Regional exploration funding for 75% of costs up to \$25,000, and the Target Evaluation funding for 50% of costs up to \$50,000.</p>	<p>*Maintained the Yukon Minerals Exploration Program, Grassroots Prospecting funding providing prospectors with up to \$15 000 per year for 100% of approved expenses.</p>		

