



TRANSPARENCY
INTERNATIONAL
CANADA

ACCOUNTABLE MINING

A Risk Assessment of the
Environmental Assessment Process

British Columbia Technical Report



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ABOUT THIS REPORT

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About TI Canada

Transparency International Canada (TI Canada) is the Canadian chapter of Transparency International. Since its foundation in 1996, TI Canada has been at the forefront of the national anti-corruption agenda.

In addition to advocating legal and policy reform on issues such as whistleblower protection, public procurement and corporate disclosure, we design practical tools for Canadian businesses and institutions looking to manage corruption risks, and serve as an anti-corruption resource for organizations across Canada.

About the Accountable Mining Program

Transparency International's (TI) Accountable Mining Program studies transparency and accountability vulnerabilities in mine permitting processes. Funded by the BHP Foundation and the Australian Government through the Department of Foreign Affairs and Trade, this initiative is being implemented in over 20 countries with coordination by the TI national chapter in Australia. The Accountable Mining Program works toward building robust, transparent and accountable processes for obtaining mining permits and licences by working collaboratively with governments, companies, civil society organizations and communities.

Mine permitting and licensing are critical as governments, communities and proponents negotiate if and under which terms mineral resources might be explored and exploited. Mining permits and licences awarded by governments impact current and future generations. Therefore, transparent and accountable permitting and licensing processes are important to ensure:

- all stakeholders and rights holders have the opportunity to be involved in the discussion of if and how mineral resources will be exploited at the early stage of the mining value chain, and
- the development of socially responsible, environmentally sensitive and economically feasible projects by qualified proponents, providing benefits not only to shareholders but also host communities and the public.

Transparency International Canada (TI Canada) is responsible for conducting the program in Canada. This research aims to identify transparency and accountability risks by conducting a risk assessment in mine permitting. The Canadian study focuses on the environmental assessment processes and their legal frameworks in Ontario, British Columbia and the Yukon Territory.

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Acronyms

AIR	Application Information Requirement
BC	British Columbia
CEAA	Canadian Environmental Assessment Act
EPIC	EAO Project Information and Collaboration System
EC	Environment and Climate Change Canada
EA	Environmental Assessment
EAC	Environmental Assessment Certificates
EAO	Environmental Assessment Office
EIA	Environmental Impact Assessment
EMA	<i>Environmental Management Act</i>
EI	Extractive Industries
ESTMA	<i>Extractive Sector Transparency Measures Act</i>
DFO	Fisheries and Oceans Canada
FMC	Free Miner Certificate
GBA	Gender Based Analysis
HIV	Human Immunodeficiency Viruses
IA	Impact Assessment
IAAC	Impact Assessment Agency of Canada
LRMP	Land and Resource Management Plans
MMO	Major Mines Office
MACRA	Mining Awards Corruption Risk Assessment
EMPR	Ministry of Energy, Mining and Petroleum Resources
NRCan	Natural Resources Canada
NoW	Notice of Work
ON	Ontario
PEST	Political, Economic, Social, and Technological
RP	Review Panel
RPR	Reviewable Projects Regulation
TC	Transport Canada
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
YT	Yukon Territory

1

Introduction

Transparency International's (TI) Accountable Mining Program studies transparency and accountability vulnerabilities in mine permitting processes to evaluate if these vulnerabilities may lead to corruption. The global Accountable Mining Program, funded by the BHP Foundation and the Australian Government through the Department of Foreign Affairs and Trade, is coordinated by the Australian chapter of TI. The global program focuses on jurisdictionally specific processes of obtaining a mining or exploration permit and related processes, and studying to whom and under what conditions the right to mine is awarded. At a broader level, the Accountable Mining Program works toward building a fairer, clearer and cleaner process for obtaining clearances to advance mining projects and activities by working collaboratively with governments, companies, civil society organizations and communities.

The Accountable Mining Program complements existing efforts to improve transparency and accountability in extractive industries by specifically targeting the start of the mining decision chain: the point at which governments award mining permits and licences, negotiate contracts, make decisions and conclude agreements that will shape subsequent mining activities. The program studies transparency and accountability vulnerabilities in the mining awarding processes to evaluate if they may lead to corruption and to advise policymakers, civil society and the mining industry to take precautions to ensure that corruption does not occur.

TI's definition of corruption is "the abuse of entrusted power for private gain" (TI, 2019). Abuse of entrusted power extends beyond government officials. In the Accountable Mining Program, it also includes power entrusted to community leadership, businesses (corporate social responsibility), other professionals who are relied upon and legal representatives. Community leadership is entrusted to represent community interests, not their own personal interests, in negotiations with government and companies. Similarly, business executives are expected to behave ethically during negotiations and not to seek to avoid accountability for the terms agreed during negotiations about permitting.

TI defines transparency as a "characteristic of governments, companies, organisations and individuals of being open in the clear disclosure of information, rules, plans, processes and actions" (TI, n.d.). Transparency matters as decision makers and executives in the public and private sector as well as in civil society organizations have a responsibility to act visibly and predictably to promote participation and accountability, and allow third parties to easily perceive what actions are being performed.

Accountability refers to "the concept that individuals, agencies and organizations (public, private and civil society) are held responsible for reporting on their activities and executing their powers properly. It also includes the responsibility for money or other entrusted property" (TI, 2019). Accountability of the mining industry and public authorities is critical to build public trust and confidence that the sector's impacts on communities and the environment have been thoroughly accounted for and adequate provisions are in place to mitigate any adverse impacts. From a business case perspective, a study by the Mining Association of Canada highlights that building trust in the mine awarding process is essential to attract qualified mining companies and investment to Canada (Marshall, 2018). Furthermore, accountability of the mining industry and public authorities is critical to build public trust and confidence, as a pathway to mitigating social conflict and minimizing permitting risks and project delays.

Lack of transparency and accountability in permitting mining exploration and development can cause negative impacts on the following (TI, 2017):

- Impartiality in decision-making
- Security of property rights
- Environmental, labour and social standards
- Revenue to the state

- Company profits
- Competition in the mining sector
- Fairness to applicants
- Reputation of companies, governments and community leaders
- Innovation in the sector
- Quality of applications
- Accountability of decision makers, and
- Transparency over the management of public resources.

Transparency International Canada (TI Canada) is one of 20 national chapters participating in TI's global Accountable Mining Program. As part of the program, TI Canada's ultimate aim is to engage policymakers, civil society and the mining industry to take necessary precautions and to conduct due diligence to eliminate transparency and accountability risks in mine permitting and licencing in Canada. This report exclusively presents the findings of the risk assessment of the environmental assessment process in British Columbia.

2 Accountable Mining Program in Canada

The Accountable Mining Program in Canada has been implemented in two phases. The first phase of the program was implemented in 2016–2017 and focused on a transparency risk assessment of Ontario’s reclamation and mine closure plan. The second phase of the program, which runs until November 2020, applies TI’s risk assessment methodology to the mining permit and licence award process in three selected Canadian jurisdictions — Ontario, British Columbia and Yukon.

OBJECTIVES AND SCOPE

Parallel to the global Accountable Mining Program objectives, the overall objective of the program in Canada is to enhance the transparency and accountability in the awarding of mining permit and licences, with a focus on the environmental assessment process. The specific objectives of the program in Phase II are as follows:

- **Objective 1:** Completing a systematic evaluation of transparency and accountability vulnerabilities and associated corruption risks in the EA processes in three selected Canadian jurisdictions, as well as national and global trends.
- **Objective 2:** Strengthening provincial and federal legislation by identifying opportunities and improvements needed to avoid transparency and accountability vulnerabilities and associated risks in permitting processes.
- **Objective 3:** Implementing an advocacy plan for exchanging good practices, raising the bar domestically for transparency and accountability and strengthening public trust and confidence in mine permitting and licensing decisions.

The scope of this technical report is limited to meeting Objective 1 as it relates to the province of BC. The systematic evaluation of the BC EA process was conducted by deploying TI’s in-house assessment tool (explained in Section 4) for assessing transparency and accountability vulnerabilities. The scope of analysis was restricted solely to transparency and accountability issues that have a bearing on the process of awarding an EA permit for a mining project. As such, the technical aspects of executing an EA study, such as data collection methods, quantitative modelling, analysis of air, water, soil quality and socio-economic analyses, are outside of the research scope.

During the course of the research process, a number of stakeholders raised the significance of placer mining in BC, which involves the practice of mining for minerals in and near streams and riverbeds. This type of mining activity is increasingly important in BC, and has come under criticism as concerns regarding resulting environmental damage and lack of remediation increase (Lavoie, 2018b). Although this is an important topic, limited time and resources restricted the scope of analysis in this report to metal mining as administered under the Mineral Act.¹

¹ For additional context, there have been a number of responses to the identified concerns with the impacts of placer mining. In 2018, the BC Ministry of Energy, Mines and Petroleum Resources (EMPR) and the BC Ministry of Environment and Climate Change Strategy released a Regulatory Proposal Paper outlining changes to the Placer Mining Waste Control Regulation (PMWCR) (BC Ministry of Environment and Climate Change Strategy, 2019). New regulations in line with recommendations to the paper will come into effect in January 2022. In addition, in 2018, the Ministry of Energy, Mines and Petroleum Resources outlined a proposal for a new regulation with respect to water use in small-scale placer mining and mineral exploration.

GUIDING RESEARCH QUESTIONS

Questions that guided the research for Ontario, BC and Yukon are:

- How does the mine permitting regime work in each province and territory?
- How is the EA process for a mining project described in the regulation and implemented in practice? Are there differences between the EA process steps described in the legislation and their implementation in practice? If so, how do these differences affect the transparency and accountability of the EA process?
- What are the concerns of Indigenous Nations, mining-affected communities, companies and civil society about current EA processes?
- In what ways is the existing EA permitting process vulnerable to transparency and accountability risks?

3

Mining in British Columbia

This section provides a high-level overview of key issues and trends related to mining in BC. The research team acknowledges that each of these trends and issues is sufficiently complex to warrant a much more in-depth analysis than what is provided here. In keeping with the scope limits of the project, the content below is presented to illustrate key dynamics that shape the contextual climate within which environmental assessment processes are governed and implemented, and to provide a general snapshot of related concerns where possible.

SOCIO-ECONOMIC SIGNIFICANCE OF MINING IN BC

Natural resource sectors such as mining, agriculture, forestry and fisheries are viewed as vital to BC's economy (DAvignon and Graham, 2017). Eurocentric historical narratives tend to date the beginning of mining in BC in the mid-1800s with coal mines on Vancouver Island and placer gold camps in the Cariboo region (British Columbia Technical and Research Committee on Reclamation, n.d.). However, there is evidence that the earliest phase of the Fraser gold rush included production of gold by Indigenous labour on a commodity-trade basis from 1856, if not earlier (Belshaw, 2015). The Nlaka'pamux in particular were extracting gold ore from their river (which appeared on European maps as the Thompson beginning in the 19th century) in 1857, and were engaged in confrontations with Americans from the old Oregon Territory who had followed rumours of gold in the north (Belshaw, 2015).

Critical perspectives on resource extraction propose that BC's natural resource-endowed lands have historically served as an input to advance economic growth for political and economic elites, with variegated benefits for mining communities (Harris, 2001; Perry, 2001; Godden et al., 2008; Rossiter, 2008; Preston, 2013; Hoogeveen, 2015). In recognition of the inequalities perpetuated by earlier paradigms, there is growing momentum for models that yield a fairer redistribution of the economic gains that result from resource exploitation, particularly for First Nations. In addition, there are increased calls for a renewed social contract between states, mining companies and society to deliver these more equitable outcomes (Weaver, 2012; Demuijnck & Fasterling, 2015; ICMM, 2020).

In line with historical trends, mining continues to be a major focus of government programming. In 2011, the BC Government promised eight new mines by 2015, announced several tax credit programs and opened the Major Mines Office (MMO) with an increase in funding for the Ministry of Energy, Mining and Petroleum Resources (EMPR) by \$6 million (Government of British Columbia, 2012; CBC News, 2015). In 2018, the BC NDP convened a Mining Jobs Task Force to review exploration and mine development and advise the government on key action areas to grow the sector (EMPR, n.d.). This subsequently resulted in a \$20 million investment to strengthen the sector across five action areas: (1) supporting a healthy and diverse workforce; (2) realizing community benefits; (3) enhancing BC's fiscal and regulatory competitiveness; (4) fostering innovation; and (5) building awareness of mining roles in a prosperous BC (EMPR, 2018; Government of BC 2019a).

The province has rich mineral deposits of copper, coal, zinc, silver, gold, lead and molybdenum and more than 30 industrial minerals. It is Canada's largest producer of copper and steelmaking coal, second largest producer of silver and the only producer of molybdenum (Clarke et al., 2019; Mining Association of British Columbia, n.d.). Mineral deposits are scattered throughout the province and often adjacent to sparsely populated areas (Figure 1).

In 2018, 11 metal mines, nine coal mines, approximately 30 industrial mineral mines, more than 1,000 aggregate mines and quarries, and two smelters were in operation (Clarke et al., 2019; Mining Association of BC, 2019). These operations contributed \$12.3 billion in gross revenue to the province (PriceWaterhouseCoopers [PwC], 2019). Combined with the oil and gas sector, the contribution from mining to BC's gross domestic product (GDP) was 3.82% and 3.45% in 2018 and 2019, respectively. (Statistics Canada, n.d.). Payments in mineral taxes amounted to \$953 billion in 2018 paid to government, compared to \$650 billion in 2016 (PwC, 2019). These figures do not include corporate or personal income tax.

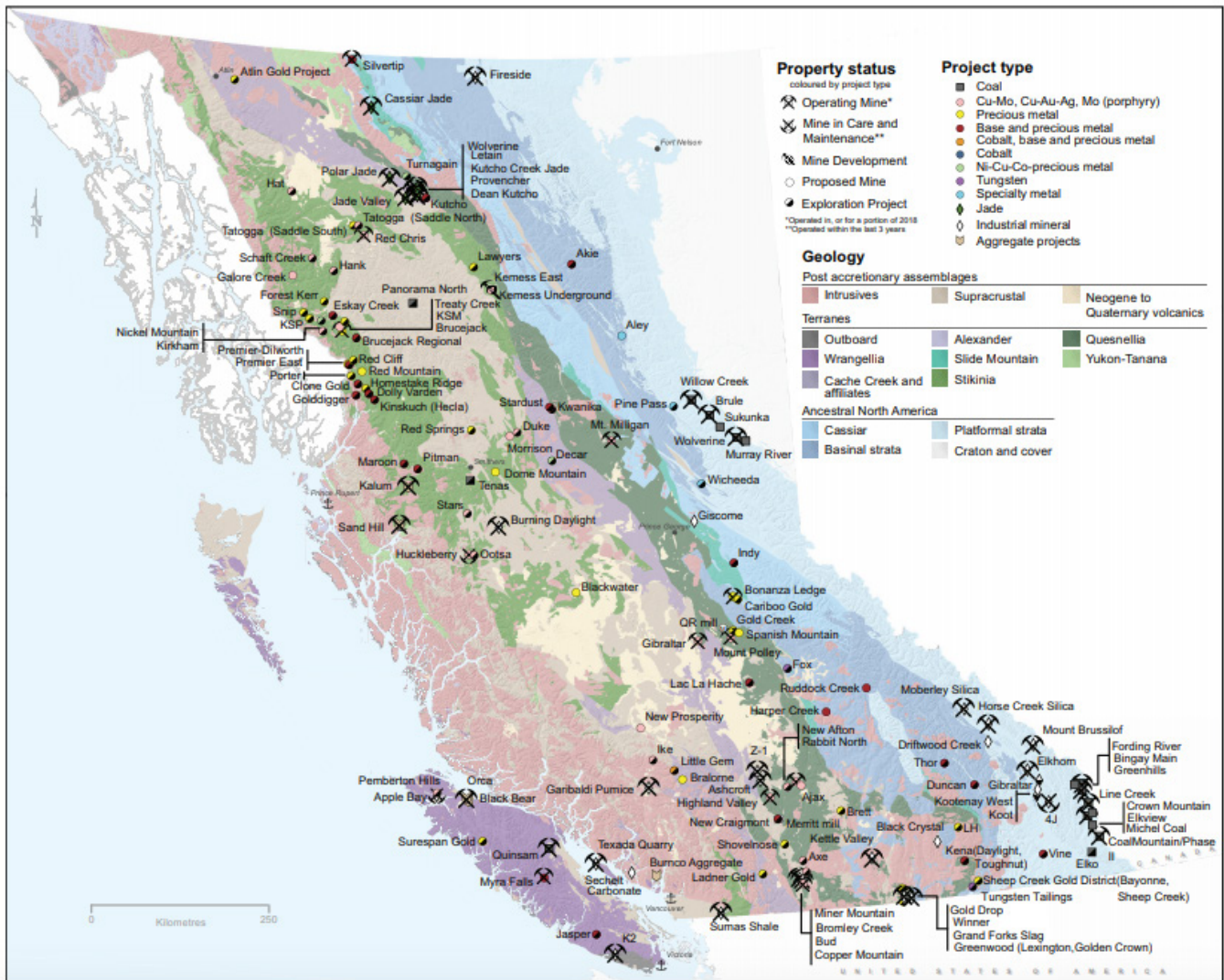


Figure 1. Mines, mine development, selected proposed mines and selected exploration projects in British Columbia, 2018 (Clarke et al., 2019)

In total, in 2018 the mining sector directly employed 39,635 people (17,300 directly employed in mining and exploration, and 23,235 in minerals economy [mineral refining and smelting, and downstream mineral processing]) and contributed to indirect employment in heavy equipment, transportation, industrial materials, environmental sciences, finances, etc. (Government of BC, n.d.-a). A study focusing on the sector's supply chain found that in 2018, 17 operating mines and two smelters spent \$2.9 billion purchasing materials, goods and services from more than 3,700 businesses located across 215 BC communities (Mining Association of BC, 2019).

BC's mining outlook was projected to be strong, with 2018 being the second year of increased exploration spending, totalling \$330 million and representing a 34% increase from 2016 (EMPR et al., 2019). This increase is predominantly attributed to exploration in northwest BC, specifically the area known as the Golden Triangle, which accounted for 50% of the total exploration expenditure (EMPR et al., 2019). Mining and exploration are not new to this area. Many projects were discovered in the late 1980s but waited for favourable commodity prices to develop the projects (Ascot Resources, n.d.).

While contributing to provincial GDP and employment, the BC mining sector has conversely also been shown to adversely impact communities and natural environments. The industry is highly affected by fluctuating commodity prices and has a long track record of boom-and-bust cycles. For example, from 2012 to 2016, 11 mines in BC were forced into “care and maintenance” due to financial difficulties associated with reduced copper, gold and metallurgical coal prices (EMPR, 2018).² Some communities such as Stewart and Tumbler Ridge have experienced large population fluctuations (see for example: Halseth, 2002, Sullivan et al., 2014).

Non-renewable resources also diminish over time, leaving communities with unemployment, declining populations and damaged environments requiring management in perpetuity. Communities benefit from employment and influxes of cash but may also experience pressure on local infrastructure and services, increased housing prices, changes in well-being and mental health with fly-in/fly-out schedules, and disruption of existing culture and sense of community (Carrington & Pereira, 2011; Gibson & Klinck, 2005; Perring et al., 2014; Shandro et al., 2011).

At the time of writing, the economic repercussions of the COVID-19 pandemic and global drop in commodity prices have not fully played out, but are likely to create stress on BC’s mining sector. The sector had rebounded after a commodity price slump in 2015–2016, and analysts suggest that the sector’s ability to withstand the impact of the pandemic will depend on the duration of the crisis (Chen, 2020).

INDIGENOUS PEOPLES AND MINING IN BC

Indigenous Nations have a historical relationship to mining activity in BC. The nature of this relationship has been dramatically altered under colonial systems of resource governance that continue to have legacy effects in the present. Nonetheless, these relationships should not be assumed to be monolithic or static. There are differentiated levels of support and resistance to mining projects across and within Indigenous Nations in BC, and these complexities makes the navigating the EA process and related impacts highly fraught and contested.

Indigenous Peoples in Canada have constitutionally protected rights (Constitution Act, 1982). Although section 35 of the repatriated Constitution Act, 1982 affirmed existing Aboriginal and Treaty rights, when it comes to resource governance and mining-related decision-making, it has been the burden of Indigenous People in Canada to define the nature and quality of those rights through litigation (Indigenous Corporate Training Inc., 2019). Mining in BC inherently impacts the traditional, ancestral and unceded lands of Indigenous Nations that continue to struggle to have an equal say in decision-making related to resource development projects (Hipwell et al., 2002; Baker and McLelland, 2003).

In BC, common law is largely responsible for establishing the Crown’s duty to consult and accommodate Indigenous Nations when a proposed mining development has the potential to adversely affect their constitutionally protected rights (Canadian Chamber of Commerce, 2016). However, the duty to consult can also be statutorily determined such as in the case of BC’s 2018 Environmental Assessment Act (EAA, 2018). At a minimum, the duty to consult and accommodate includes (1) identification of Indigenous communities in the area of the proposed development; (2) disclosure of information on the proposed development; and (3) some level of discussion or meetings with potentially affected Indigenous communities (Olszynski, 2016).

The Government of British Columbia drafted guidelines in 2010 for meeting legal obligations when consulting with Indigenous Nations, but these have remained in draft form (Bains & Ishkanian, 2016). Through legal precedence, it has been established that the Crown can delegate responsibility for procedural aspects to industry, such as through incorporating consultation requirements into the environmental assessment process. As such, several ministries in BC have developed proponent-specific guides to aid industry in understanding their roles in consultation with Indigenous Nations such as the Guide to Involving Proponents When Consulting First Nations in the Environmental Assessment Process (Environmental Assessment Office, 2013a).

² The term “care and maintenance” in reference to mine sites describes a situation where production has ceased but the site is maintained with a view to safety and stability so that operations can resume at a future date.

Much of the early precedent-setting legal cases at the intersection of Indigenous Peoples' rights and mining were rooted in BC (R. v. Sparrow, 1990; Delgamuukw v. British Columbia, 1997; Haida Nation v. British Columbia [Minister of Forests], 2004; Taku River Tlingit First Nation v. British Columbia, 2004; Tsilhqot'in Nation v. British Columbia, 2014). This, in part, is because unlike in other areas of Canada, Indigenous Nations in BC have relatively few treaties. In BC, there are two historic treaties and five modern treaties across 200,000 Indigenous Peoples representing 198 distinct Indigenous Nations, as well as Métis and Inuit groups (BC Treaty Commission, n.d.).³ Remaining traditional territories are unceded and subject to land claims (Fair Mining Collaborative, n.d.). Between treaties and competing, overlapping claims, Indigenous Nations in BC have asserted ownership of the whole province as a traditional territory (Bains & Ishkanian, 2016).

BC is the first province to enact the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (UN, 2007). The BC Declaration on the Rights of Indigenous Peoples Act passed in the legislature in November 2019 (Bill 41, 2019; West Coast Environmental Law, 2019b). The act affirms that UNDRIP applies to BC laws and provides a framework for its implementation.

EAA 2018 also includes an objective to “support reconciliation with Indigenous peoples in British Columbia by (A) supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples” (EEA, 2018, 2[2][b][ii]). In contrast, the Mineral Tenure Act does not contain any legislated requirements for prospectors to engage with Indigenous Nations prior to staking a claims on their territories, and the province has taken the position that staking a claim does not trigger the Crown's duty to consult (Clogg, 2013).

MINING AND ENVIRONMENTAL IMPACTS IN BC

The life cycle of a mining operation is typically long term, and can last beyond 50 years. Environmental impacts are associated with every stage of mining — exploration, mine development and design, construction, operation and closure. In BC flashpoint environmental impacts that have arisen include the clearing of environmentally sensitive ecosystems and loss of biodiversity, air pollution, increased seismicity, and contamination of water resources and soil through waste rock and mine tailing via acidic drainage and leaching of metals from mine waste (Cottrill, 2019; Penner, 2016).

In BC, a number of abandoned and orphaned mines have been left un-remediated. In 2002, the BC Auditor General reported that the EMPR had found 62 significant metal leaching/acid rock drainage sites associated with over 1,800 former mine sites across BC (BC Office of the Auditor General, 2002). The BC First Nations Energy and Mining Council (2008) also noted that “in 2003, there were 1887 closed or abandoned mines in BC, 1171 of which are of environmental concern and present public health and safety issues.”

From 1904 to 1963, the Britannia Mine located along BC's Howe Sound excavated approximately 80 kilometres of underground areas and five open pits, until it was permanently closed in 1974 (BC Ministry of Sustainable Resource Management, 2005; Office of the Auditor General, 2002). The BC government pursued previous owners of the mine for compensation and, in 2001, agreed to a one-time payment of \$30 million (Ministry of Sustainable Resource Management, 2005). A water treatment facility was built in 2006 and the cost for operations is estimated at \$3 million a year for perpetuity (Pynn, 2018).

Another more recent example was the investigation of pollution spills in 2015 at Banks Island Gold's Yellow Giant mine in northwestern BC. In total, the company faced 35 provincial and federal charges related to dumping waste into surrounding ecosystems. The firm's security deposit of \$420,000 was confiscated and it was fined \$15,000 in

³ The historic treaties include the Douglas treaties signed with Indigenous Nations on Vancouver Island and Treaty 8 covering portions of northeastern BC. Modern treaties have been signed with the five Maa-nulth Indigenous Nations, Tla'amin Nation, Tsawwassen First Nation, Nisga'a First Nation and the Yale First Nation. The Yale First Nation Final Agreement has been ratified by all three parties but the effective date was postponed.

2018 for violating the Fisheries Act and the Environmental Management Act. The company filed for bankruptcy in January 2016 and left behind the un-remediated mine site (BC First Nations Energy & Mining Council, 2019).

These two cases and the large number of abandoned and orphan mines across BC highlight the importance of financial security or bonding that is sufficient to ensure BC taxpayers and the province are not left to remediate sites and treat contaminated water in perpetuity (Office of the Auditor General, 2002). The BC Auditor General's (2002) report on managing contaminated lands found that "the bonding amount held by the Province is substantially less than the estimated remediation costs. This exposes the Province to considerable financial risk" (41).

Of all environmental disasters in BC's mining sector, the recent Mount Polley tailings dam failure is most notorious (Amnesty International, 2017; Pollon, 2018). On August 4, 2014, the dam of the Mount Polley gold and copper mine tailings pond breached. As a result, 24 million cubic metres of tailings spilled southeast from Polley Lake Dam through Hazeltine Creek and into Quesnel Lake, the deepest fjord lake in British Columbia (Amnesty International, 2017; Mount Polley Mining Corporation, 2015). This effluent contained a mix of mud, copper, selenium and other metals in the tailing pond (Marshall, 2018). Mount Polley is owned and operated by the Mount Polley Mining Corporation, a subsidiary of Imperial Metals, and is located roughly 30 kilometres from Likely, British Columbia. In 2014, Mount Polley employed around 380 people (Marshall, 2018).

In the immediate aftermath of the disaster, a water ban was issued by the Cariboo Regional District, which affected approximately 300 residents. The water ban was removed eight days later, on August 12, 2014. However, many residents still remain unwilling to drink the water. Hazeltine Creek, originally three metres wide, was widened by "hundreds of metres" during the outflow period (Pynn & Hoekstra, 2014). With respect to effects on wildlife, the dam breached a key habitat and transit point for sockeye salmon. Approximately 800,000 sockeye swam through the waters of Quesnel Lake during and after the breach. Although the numbers of mature sockeye were not recorded as affected by the breach, the survival rates of other fish (including rainbow trout, kokanee and 1–2-year-old sockeye that grow in the lake) declined in the short term. Longitudinal impact studies will be needed to determine the long-term impacts on environmental degradation and biodiversity. The region around Quesnel Lake has also experienced a decline in tourism. In the years since the breach, three governmental investigations were taken by:

- (1) An independent expert engineering panel (to determine the cause of the breach);
- (2) The Chief Inspector of Mines (for similar reasons to the independent panel); and
- (3) The British Columbia Conservation Officer Service (ongoing) (Government of BC, n.d.-e).

In 2017, the Government of British Columbia announced that no provincial charges or penalties would be laid against Imperial Metals (Global News, 2017). However, the spectre of federal charges exceeding \$8 million looms (Hoekstra, 2019). In 2018, settlements to affected parties resulted in Imperial Metals being paid \$108 million (Hoekstra, 2019). The Mount Polley tailing dam failure emphasizes the importance of robust environmental assessment processes and ongoing monitoring of risks and impacts, as well as the geographical scope limits for assessing impact.

WOMEN, MINING AND EA ENGAGEMENT

At the macro level, numerous scholars and civil society actors have affirmed that women and girls feel the negative environmental, social and economic impacts of mining activities disproportionately more than their male counterparts (CIRDI, 2018; Landau & Lewis, 2019; Oxfam International, 2017). Mirroring these macro trends, there is considerable support within reviewed literature that women and men in BC have traditionally held different roles, responsibilities in the mining sector, and are impacted differently by mining projects (MiningWatch Canada, 2004; Carrington and Pereira, 2011; Hajkovicz et al., 2011; MacTaggart et al., 2016; Keenan et al., 2016; Gibson & Kemp, 2017).

With the gendered division of labour in mining activities, male members of households are engaged in atypical work schedules, placing additional pressures on spouses (usually women). Women in remote mining communities experience high stress with lack of resources for childcare and household support, and can experience higher rates of addiction and violence (Keenan et al., 2016). Transient workforces and male-dominated work camps have also been associated with disruptive community behaviour that negatively affects community cohesion and safety (Edwards, 2019). With an influx of transient workers, changing local economies, new socio-economic stresses and shifting power relations within affected communities, mining projects also exacerbate sexual violence and the risks of HIV and AIDS-related infections. Indigenous women (who have unique and more proximate social cultural relations with nature than non-Indigenous groups) have greater exposure to the negative effects of mining activities than other demographic groups (Native Women's Association of Canada, 2018).

It is evident that women bear the brunt of poor environmental planning, and that structural aspects of BC's EA process systemically disadvantage women's meaningful participation. More broadly, women are underrepresented in the Canadian mining workforce, comprising only 19% of sector employees in 2016 (Women in Mining Canada, 2016). From an EA standpoint, although there is a growing number of women involved in these processes in oversight functions within government, as project managers and as community coordinators, there is lower participation of women as technical consultants. Additionally, policy responses to gender issues within the EA process are frequently addressed in a reactive rather than a proactive sense (Goudie & Kilian, 1996; see also Wood, 2014; Sharma, 2010; Hovsepian, 2014; Nijhawan & Bala-Miller, forthcoming). Therefore, leaving procedural and evaluative controls in the realm of reactive planning is likely to result in "gender blind" policy assessments and reviews.

In an effort to address this, gender-based analysis (GBA) tools have been developed and promoted within the Government of Canada to provide "a more holistic picture of a project's impacts on communities to better inform decision-making" (Peletz & Hanna, 2019; Government of Canada, 2018). The Government of Canada's Gender-Based Analysis Plus (GBA+) program was finalized in 2015 by the Status of Women. Compliance with the GBA+ program is mandatory for the Treasury Board Secretariat and civil servants in all departments are expected to implement the program's key principles, tools and approaches.

BC's 2018 Environmental Assessment Act also states that every assessment must consider the "disproportionate effects on distinct human populations, including populations identified by gender" (s. 25[2][d]). The Native Women's Association of Canada (2018) produced a policy paper on Indigenous gender-based analysis as it relates to the Canadian Minerals and Metals Plan. A key finding is the significant lack of data and information on the experiences of two-spirited and gender-diverse Indigenous persons in conducting robust gender-based analysis of the effects of mining activities on these groups, and that primary research into these effects must be supported.

MINING PERMITTING REGIME IN BRITISH COLUMBIA

The division of powers between the provinces and territories and the federal government is set out in Canada's Constitution Act. Prospecting, registering mining claims, exploring, developing mines, and reclaiming and closing mines are the responsibility of the provincial and territorial governments. However, the mining sector is governed by legislation at all levels, covering a myriad of issues such as the rights of Indigenous Peoples, environment, water, fisheries, transportation, health and workers safety. As such for most resource development projects, the responsibility for environmental and impact assessments lies at both levels. It should be noted that BC provincial legislation uses the term "environmental assessment," and the federal legislation has been recently updated to use the term "impact assessment." Federal departments such as Fisheries and Oceans Canada, Environment and Climate Change Canada, Natural Resources Canada, and Transport Canada all have roles in the mining sector and environmental assessment processes in BC.

The following sections will provide a brief overview of the legal framework and political context of BC's mining sector.

AGENCIES, STATUTES AND REGULATIONS FOR MINE PERMITTING IN BC

Ministry of Energy, Mines and Petroleum Resources

The EMPR oversees all aspects of the 1996 Mines Act, the 1996 Mineral Tenure Act, the 2004 Mineral Tenure Act Regulation (amended in 2016), the 2004 Coal Act, the 2004 Coal Act Regulation (amended in 2008), and the Health, Safety and Reclamation Code for Mines in British Columbia, last updated in 2017. EMPR is the provincial agency responsible for mineral titles, coal titles, mine and exploration permits, and compliance and enforcement. Administratively, the EMPR divides the province into six geographic regions: Southwest, Northwest, North Central, Northeast, South Central and Southeast. Mine permitting is issued either by the Major Mines Office (MMO) or by regional offices. The MMO was introduced to improve coordination and accountability in issuing required permits for major mines and expansions. Regional permitting focuses on permits for mineral and coal exploration activities, placer mines, and smaller-scale industrial minerals mines and aggregate pits and quarries through Front Counter BC (Government of BC, n.d.-d).

The BC Auditor General's (2016) report on the mining sector noted that the EMPR was at a high risk of regulatory capture because of the ministry's dual mandate to both promote and regulate mining. The EMPR has since been restructured to establish the Deputy Ministers Mining Compliance and Enforcement Board that includes representatives from the Environmental Assessment Office, the Ministry of Environment and Climate Change Strategy (ENV), and other agencies. The EMPR also created two separate divisions (Mines Competitiveness and Authorizations Division and Mines Health, Safety and Enforcement Division) led by different assistant deputy ministers but reporting to the same deputy minister.

BC Ministry of Environment and Climate Change Strategy and the Environmental Assessment Office

The Environmental Assessment Office (EAO) is responsible for all environmental assessments in BC and was created by provincial statute in 1995 (Haddock, 2010). The EAO seeks input from scientific professionals, Indigenous groups, proponents, the public, local governments, and federal and provincial agencies and produces an assessment report for the relevant provincial ministers (Minister of Environment and Climate Change Strategy and one other responsible minister based on the category of reviewable project) to decide on the project.

The EAO is led by a chief executive assessment officer (CEAO) (formerly executive director) who is appointed by the Lieutenant Governor in Council (EAA, 2002, 2018). The legal framework for EAs in BC now includes the EAAs of 2002 and 2018 (the latter of which came into force on December 16, 2019).

The following supporting orders and regulations still apply to projects undergoing an assessment under the 2002 act (SBC 2002):

- Responsible Minister Order
- Exemption Regulation
- Reviewable Projects Regulation
- Concurrent Approval Regulation
- Prescribed Time Limits Regulation
- Public Consultation Policy Regulation
- Transition Regulation
- Fee Regulation

Supporting orders and regulations for the 2018 act are (Government of British Columbia Website, 2020):

- Responsible Minister Order
- Reviewable Projects Regulation

- Reviewable Projects Transition Regulation
- Environmental Assessment Transition Regulation
- Violation Ticket Administration and Fines Regulation
- Environmental Assessment Fees Regulation
- Conservation Officer Service Authority Regulation
- Natural Resource Officer Authority Regulation
- Protected Areas Regulation
- Administrative Penalties Regulation
- Regulations in development

Under the 2018 regulatory framework the Concurrent Approval Regulation, Prescribed Time Limit Regulation and Public Consultation Policy Regulation from 2002 are not included because elements of these regulations have been embedded directly in 2018 legislation.

The Reviewable Projects Regulation (RPR) from 2002 (updated in 2019) sets out the criteria for determining which projects should be required to undergo an EA by defining thresholds (or triggers) for each prescribed category of projects (industrial, mine, energy, water management, waste disposal, transportation and tourist destination resort projects). In 2018, the EAO released an intentions paper that received over 1,500 individual responses and formal submissions from 30 organizations (EAO, 2018b). The EAO (2019) released an interim “What We Heard” report in December 2019 that summarized the feedback. The regulation has been subsequently updated based on the feedback received.

The EAO sits within the ENV, which plays a role in mine permitting that extends beyond providing technical and regulatory advice during environmental assessments. Under the Environmental Management Act the ministry is also responsible for permitting such as effluent discharge permits for erosion and sediment control during construction, and metal and chemical residues, contact water and tailings during operation stages.

Impact Assessment Agency of Canada

A major mine project in BC might also trigger a federal-level impact assessment. When Canada’s Impact Assessment Act came into force on August 28, 2019, it created the new Impact Assessment Agency of Canada (IAAC) and repealed the Canadian Environmental Assessment Act, 2012. Projects that trigger a federal-level assessment are outlined in the Physical Activities Regulations.

If a project is subject to a BC EA and a federal-level assessment, the EAO will work closely with the IAAC either to enter into a substitution agreement to allow the provincial process to be substituted for the federal process or to work with the IAAC in a coordinated manner to review the proposed project. BC was the first province to establish a cooperation agreement with IAAC (then still the Canadian Environmental Assessment Agency) in 2004. The Canada–British Columbia Impact Assessment Cooperation Agreement has recently been updated to reflect the changes in federal and provincial legislation. It stipulates that the Government of Canada and the Government of BC will undergo a cooperative impact assessment through either coordination, substitution or joint review panel (IAAC, 2019).

Other Line Agencies

This section provides a brief overview of the agencies, acts and regulations that may be required at different stages of a major mine project:

- Ministry of Forests, Lands, Natural Resource Operations and Rural Development (provincial) — responsible for permits, licences and authorizations related to clearing timber, riparian areas, salvage and removal of wildlife, open burning, changes in or about streams or that divert or use water, and archeological and heritage site alterations administered under the Land Act, the Environment and Land Use Act, the Heritage Conservation

Act, the Forest Act, the Forest Practices Code of British Columbia Act, the Water Protection Act, the Water Sustainability Act, the Wildlife Act and more.

- Ministry of Health (provincial) — responsible for camp permits related to drinking water, operation of food premises and disposal of sewage under the Industrial Camps Regulation and the Health Act.
- Ministry of Transportation and Infrastructure (provincial) — responsible for access permits, utility permits and crossing permits under the Transportation Act.
- Fisheries and Oceans Canada (federal) — administration of the Fisheries Act and the Canadian Navigable Waters Act and would become involved if a mining project had potential to harm or destroy fish or fish habitat.
- Transportation Canada (federal) — responsible if mining project may infringe on navigable waterways.
- Environment and Climate Change Canada (federal) — responsible for administration of the Species at Risk Act and the Canada Water Act.
- Natural Resources Canada (federal) — responsible for licences related to explosives in open pits.
- Crown-Indigenous Relations and Northern Affairs Canada (federal) — responsible for providing a climate that enables Indigenous Nations to develop and manage their own mineral resources by assisting them to maximize the benefits, ensuring prudent and safe mining management and promoting good environmental stewardship.

OBTAINING A MINING CLAIM IN BC

BC is a free-entry mining system, which means that most prospectors (or anyone above the age of 18 years) are able to stake a claim and gain subsurface rights to areas throughout the province. The process begins with prospectors gaining a Free Miner Certificate (FMC). An individual or corporate FMC requires payment of a fee and submission of a basic application via the Mineral Titles Branch Office, Service BC officers or Front Counter BC offices.⁴ Once they have an approved certificate, prospectors can use BC's Mineral Titles Online website to stake their claims. Mineral claims are registered on a first-come, first-served basis in BC.

Once a mineral claim is obtained, the claim holder has the right to enter onto the land and explore for minerals. This includes land that is privately owned as long as the landowner is notified in advance and compensated for any property loss (Clogg, 2013; Mineral Tenure Act, 1996). Surface rights and subsurface rights are separate and distinct in BC (EMPR, 2017).

The introduction of online staking dramatically increased the land area being staked and held as mineral claims (Clogg, 2013). The free-entry system in BC is a two-zone system. This means that mining activity across the province is either prioritized or prohibited. Mining is restricted in provincial parks, national parks, other protected areas and “no registration” reserves.⁵ Cumulatively, mining is restricted in approximately 18% of the provincial land mass (BC Mining Law Reform, n.d.; Clogg, 2013; Hemmera, 2016). Approximately a further 37% of the provincial landmass is designated as having conditional access and potentially subject to access restrictions, seasonal closures, and additional mitigation strategies that protect sensitive resource, recreational and other values (Hemmera, 2016). This includes zoning under the land and resource management plans initiated in the 1990s. Mineral claims can be acquired in these areas and access for mineral exploration and development may be permitted at the discretion of the ENV through an EAC and other necessary permits (Hemmera, 2016).

⁴ As at May 9, 2020, the individual fee is \$25.00, waived for people over 65 years of age. The corporate fee is \$500.00.

⁵ No Registration Reserves (NRR) prohibit free miners from registering a mineral or placer claim over a specified area. This provision is often used to prevent further registration of claims in an area proposed as possible treaty settlement land or an area proposed for some alternative use such as a park, conservancy, or a drinking watershed. (BC Government Website (n.d.))

Some representatives of the mining industry have commented that uncertainty about mining activity in conditional access areas negatively impact the sector's competitiveness in BC and the ability to attract and retain mineral exploration (Hemmera, 2016). Environmentalists have also commented that this two-zone system prioritizes mining over other land uses (Clogg, 2013; Ecojustice, 2010). In the past, the province has been subject to legal battles resulting in compensation for industry after the decisions were made to ban mining in certain areas. For example, after the BC government banned mining in the ecologically sensitive Flathead Valley area in 2010, it had to pay a \$9.8 million settlement to Cline Mining Corp. to compensate it for investments in its mineral claims (BC Mining Law Reform, n.d.; Hunter, 2014). The BC government also paid a \$30 million settlement to Boss Power Corp. after it banned uranium mining in 2008 (BC Mining Law Reform, n.d.; Hunter, 2014).

For reference, maps of the mineral tenure permit and exploration process in BC are provided in Appendix 1.

EXPLORATION AND MINE NOTICE OF WORK PERMITS

In BC, non-mechanized mineral exploration does not require authorization or consultation. Exploratory drilling or any mechanical disturbance require a Notice of Work (NoW) permit under the Mines Act (1996). The application must include details about the property, planned activities, emergency response, land-use information, First Nation engagement and reclamation plans. Under the act, there are no stipulated criteria regarding what should be considered in the issuance of a NoW permit.

ENVIRONMENTAL ASSESSMENT IN BC

The first environmental assessment act was introduced in BC in 1995 and required all large-scale projects to undergo a single process. Prior to that, projects were reviewed under separate, somewhat ad hoc processes (Graci & McKenna, 2005). In 2002, the government repealed the act and replaced it as part of a broad deregulation of environmental laws (O'Riordan, 1986).

The EAO was established in 1995 to administer the provincial EA process for major projects under the act and five regulations. The EAO's main duty, as defined in the EAA, is "to provide an open, accountable and neutrally administered process for the assessment of a broader range of reviewable projects" (Haddock, 2010).

In early 2018, the BC Government as part of the Confidence and Supply Agreement committed to "revitalize the Environmental Assessment process in BC and review and address failures in the professional reliance model in BC so that British Columbians' faith in resource development can be restored" (BC Green Caucus & BC New Democrat Caucus, 2017).

The Environmental Assessment Revitalization focused on three main objectives:

1. Enhance public confidence, transparency and meaningful participation;
2. Advance reconciliation with Indigenous Nations; and
3. Protect the environment while offering clear pathways to sustainable project approvals (providing process certainty and predictability).

Three committees were convened to provide independent advice on legislation, regulations and policies: the Environmental Assessment Advisory Committee, the Indigenous Implementation Committee and the Stakeholder Implementation Committee. Direct engagements were held with Indigenous groups, industry and business associations, non-governmental organizations and EA practitioners. Over 2,500 comments were received during the public comment period on the discussion paper, including over 60 policy submissions (Government of BC, 2018).

The research primarily focused on the EAA 2002 and guidelines developed by the EAO and practice examples from projects assessed under the act. However, the EAA 2018 was reviewed and legislated changes are

highlighted throughout. The following sections provide a brief overview of the EA process in BC according to both EAAs and the accompanying regulations. Appendix 1 contains process maps of the key steps of the EA process under the 2002 and 2018 EAAs.

REVIEWABILITY

Under the Reviewable Projects Regulation,⁶ mining projects should be assessed whether they are required to undergo an EA if one of the following conditions is met:

1. The project meets certain thresholds under the RPR
2. The project is designated by the minister (MECCS) as being reviewable
3. A request to the EAO is made to this effect by the proponent.

Thresholds for mining projects that will trigger an EA based on project capacity. According to the 2002 RPR, the threshold limits to trigger an EA applied to new mining projects that would yield more than 75,000 tonnes of mineral ore per year. The threshold for project expansions or modifications was the disturbance of at least 750 hectares of land that was not previously permitted for disturbance or areas that were not previously permitted for disturbance, and that is at least 50% of the area of land that was previously permitted for disturbance at the existing facility (RPR, 2002).

Under the 2019 RPR, the design thresholds remain the same. However, proponents are additionally required to assess if they meet certain effects thresholds. This second layer of effects thresholds is based on area of disturbance, linear disturbance, greenhouse gas emissions and protected areas (EAO, 2020c; RPR, 2019).

Under the 2019 RPR, a project may additionally become reviewable if a minister, in considering required factors, decides to designate the project as reviewable after a formal request is made by an Indigenous Nation or member of the public (EAO, 2020c). A new pathway to reviewability is through project notification. On April 5, 2020, Section 5 of the RPR was enacted and requires the proponent to provide notice to the EAO about projects that are below the thresholds in the RPR (within 15% for production thresholds; similar for effect thresholds). On consideration of the notification, the minister can designate a project as reviewable.

EAA PROCESS, 2002

The EA process under the EAA 2002 and guidance material (originally created in 2011 and updated in 2018) has four phases.

(1) Pre-application Phase

This phase does not have a time limit and focuses on ensuring the EAO has all the information required from the proponent to determine scope and process of the EA and to establish the technical working group. The proponent is responsible for developing a project description according to EAO guidelines (EAO, 2016). The EAO uses the project description to determine reviewability, issues a section 10 order under the EAA, and notifies government agencies, potentially affected Indigenous Nations and local governments. A technical working group is formed with representatives from the provincial, federal and local governments with expertise related to potential effects of the project as well as representatives from potentially affected Indigenous Nations (EAO, 2018a).

The EAO, and in practice with support from the technical working group, develops a section 11 order that outlines the scope, procedures and methods for the EA. Once the section 11 order is received by the proponent, the EAO will begin selecting the valued components and developing an application information requirement (AIR) document.

⁶ The 2002 regulation was repealed on December 16, 2019, and replaced with BC Reg 243/2019.

While not a legislated requirement under the EAA 2002 or related regulations, the section 11 order often requires a formal public comment period (30 days) on the draft AIR. The draft AIR is posted on the EAO Project Information and Collaboration (EPIC) website, and the public can submit written comments.⁷ The EAO issues the approval of the AIR and the proponent begins to prepare the EA application.

When the application is submitted, the EAO reviews the document for completeness by ensuring that the issues outlined in the AIR and section 11 order have been addressed within a period of 30 days. In practice, the technical working group also typically reviews the application at this stage.⁸ The application must include baseline data, analysis of potential environmental, social, health, heritage and economic effects of the project and also mitigation measures to avoid or minimize potential significant adverse effects.

(2) Application Review Phase

If the application is determined to be complete, the EAO publishes it on the EPIC website. This publication starts the clock the application review phase, which can last for a maximum of 180 days. Generally, the EAO conducts a second public comment period of typically 30 to 60 days. The EAO shares any written comments received with the proponent. The EAO does not record or post verbal comments received during open houses.

Timelines can be suspended if the proponent requests an extension or if the EAO requires additional information. The EAO (in practice with support from the technical working group) drafts an assessment report of its findings including evaluation of the extent to which concerns have been addressed and information regarding consultation with Indigenous Nations. The EAO may also provide the responsible ministers with an assessment recommendation regarding whether to issue an EAC.

(3) Ministers' Decisions

Final decisions regarding issuance of the EAC rest with the Minister of Environment and Climate Change Strategy and one other responsible minister. In the case of mining projects, the other minister is the Minister of Energy, Mines and Petroleum Resources. The EAC has a table of conditions (Schedule B) that establishes specific measures that the proponent must implement to mitigate adverse effects associated with the project.

(4) Post- Certificate Phase

In the post-certificate phase, the EAO establishes procedures for monitoring and enforcement and follow-up on reporting requirements.

EAA PROCESS, 2018

Many of the changes observed in the EAA 2018 are grounded in practices that were initiated in 2012, after the EAO introduced new guidance documents. These changes in the 2018 legislation mark progress in ensuring that practices are applied consistently across the province.⁹

The key changes are noted below:

- **Timeline:** The new process adds statutory timelines where none existed previously, and some timelines have been changed from the current process to more accurately reflect the actual time required.
- **Reconciliation and UNDRIP:** The EAO's responsibilities include collaborating with Indigenous Nations in EAs consistent with UNDRIP. Participating Indigenous Nations identify themselves in early engagement. However, the process does not adopt a full consent standard: EAO will seek consensus with participating Indigenous Nations, but the minister can still approve a project that Indigenous Nation has denied consent.

⁷ The EPIC website is at <https://www.projects.eao.gov.bc.ca>.

⁸ Review by the technical working group was not a legislated requirement under the 2002 EAA, and still needs to meet the 30-day time limit.

⁹ The new act was recalled and the majority of regulations were brought into force on December 16, 2019.

- **Public Participation:** An early engagement phase and more public comments periods were added to the process. Community advisory committees must be created where there is sufficient public interest.
- **Sustainable Project Approvals:** The legislation includes the requirement that the EAO apply the best available science, Indigenous knowledge and local knowledge. Indigenous Nations may carry out their own assessment of the effects of a project on their community and Indigenous rights to inform provincial and Indigenous decision makers.

MINE DEVELOPMENT PERMITS

As stipulated by the provincial government, there are two types of mine permits in BC: major mines and regional permits.

Major mine permitting

Proposed major mines, major expansions or upgrades to existing mines, and some large-scale exploration or development projects require approval under the Mines Act as per part 10.1 of the Health, Safety and Reclamation Code for Mines in British Columbia.

The Major Mines Office works to improve coordination across major mine permitting in the province. It works directly with proponents, Indigenous Nations and government technical advisers to coordinate multi-agency regulatory permits and implement the review of high-quality and complete applications for new major mines and major expansion projects (Government of BC, n.d. d).

The permitting process (integrated across the Mines Act and the Environmental Management Act) includes a detailed technical review of geotechnical and geoscience information, as well as reclamation and closure plans (Government of BC, n.d.-d). The Ministry of Energy, Mines and Petroleum Resources and the Ministry of Environment and Climate Change Strategy have developed a guidance document on joint application information requirements, as well as information on other authorizations required for major mining projects (EMPR and ENV, 2019). Joint applications are reviewed by project-specific mine review committees led by MMO project managers. Major mines and expansions (including large-scale industrial mineral and aggregate mines) in BC typically require EACs.

Regional permitting

Applications for mineral and coal exploration activities, placer mines, smaller-scale industrial minerals mines, and aggregate pits or quarries are made online through Front Counter BC. These are NoW applications and are regulated by the Mines Act. NoWs are managed by the EMPR regional offices, with some being reviewed by regional mine development review committees (Government of BC, n.d.-d).

CORRUPTION CHECKS IN BC

Canada has federal and provincial level anti-corruption legislation to manage dealings with public officials and applies to Canadian entities operating domestically and abroad as well as foreign businesses operating in Canada. Those that apply to projects in BC are presented below.

At the federal level, the Criminal Code (1985) prohibits the offering or receipt of a loan, reward, advantage or benefit by a government official to obtain a business advantage or influence. Those violating the Criminal Code are subject to punishment at a court's discretion and imprisonment for up to a five-year. The code specifically prohibits influencing an election and certain types of benefits to judicial officers, members of Parliament, provincial legislators or municipal officials.

The federal Extractive Sector Transparency Measures Act (ESTMA), which went into force in 2015, requires mandatory reporting of payments (taxes, royalties, fees, production entitlements, bonus, dividends, infrastructure improvement payments) exceeding \$100,000 by Canadian companies in the extractive sector to government-related entities (including Indigenous governments) and individuals (Canada, Natural Resources Canada, 2017). ESTMA targets companies on the Canadian stock exchange and private companies that meet certain thresholds. Failure to meet ESTMA requirements can result in a \$250,000 fine per day of non-compliance (Canada, Natural Resources Canada, 2017).

At the provincial level, legislation seeking to control and minimize corruption and transparency concerns include the Election Act (1996), the Members' Conflict of Interest Act (1996), the Public Services Act (1996) and the Financial Disclosure Act (1996).

BC's Election Act was introduced in 1996. Changes to the act in 2017 sought to amend and restrict the potential or perceived potential of influence from individuals, corporations and foreign entities by limiting campaign donations. Individual contributions are now restricted to \$1,250 and corporations, organizations and unions are no longer permitted to donate (BC, Office of the Premier, 2017).

Individuals elected to the provincial legislature and members of the Executive Council are subject to the British Columbia's Members' Conflict of Interest Act. In BC, the power to approve or reject mining projects is vested in the Minister of Environment and Climate Change Strategy and the Minister of Energy, Mines and Petroleum Resources. Under the Members' Conflict of Interest Act, the ministers must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

All BC public service employees are governed by the Public Services Act, the BC Standards of Conduct, and are required to swear the Oath of Employment (Government of BC, 2019b). According to the BC Government website, "the Oath reminds public servants of the special trust placed in them to carry out their duties on behalf of all British Columbians and not to abuse that trust. It also highlights the importance of acting with honesty, integrity and impartiality" (Government of BC, n.d.-g). The standards of conduct include a specific section on conflict of interest (Government of BC, 2019b).

In July 2019 the Attorney General of BC noted that there are limited statutory requirements for disclosure of conflict of interest for senior BC government employees (Wood, 2019). Under BC's Financial Disclosure Act, nominees and elected officials (provincial and local government) and provincial public employees designated by the Lieutenant Governor are required to disclose assets, debts and sources of income, but this does not extend to other public servants (Government of BC, n.d.-c). The Financial Disclosure Act is slated for legislative review in 2020.

4 Methodology

RESEARCH DESIGN

This section provides an overview of the research design choices and rationale underpinning the jurisdictional assessment of transparency and accountability vulnerabilities in BC's EA process.

Research Design: The project's overall research design can be best described as a qualitative case study. As Baxter and Jack (2008) convey, rigorous qualitative case studies afford researchers opportunities to explore or describe a phenomenon in context using a variety of data sources. The largely descriptive research questions and research objectives set out in the previous section lend themselves to qualitatively oriented interrogation given their alignment with four criteria identified by Yin (1994). He proposes that this research design should be adopted when: (a) the focus of the study is to answer "how" and "why" questions; (b) the researcher cannot manipulate the behaviour of those involved in the study (unlike some psychological tests for example); (c) the researcher aims to cover contextual conditions because they are relevant to the phenomenon under study; or (d) the boundaries are not clear between the phenomenon (transparency and accountability vulnerabilities) and contextual conditions. The overall research design was closely guided by Transparency International's Mining Awards Corruption Risk Assessment (MACRA) Tool, which is described in further detail in the section that follows.

Unit of Analysis, Measures and Choice of Field Sites: In line with guidance from Transparency International Canada, the research team conceptualized the phenomenon of concern as corruption vulnerabilities, and operationalized the measurement of this concept as a combination of accountability and transparency gaps, as defined in Section 2 and informed by context-specific nuances such as the transition to new EA legislation in 2019. The primary unit of analysis is the EA process for mining projects within the case of interest — British Columbia. Field sites were chosen based on key characteristics such as access to key informants, ease of geographic access and likelihood of exposure to concepts of concern. Based on these criteria, field-based research activities were implemented in Vancouver, where a large number of academics, EA experts and mining companies are based; Victoria, given its prominence as the seat of provincial government agencies; and three areas that serve as illustrative cases for mining-affected communities in BC, namely Kamloops (Thompson Valley) and Smithers and Terrace in northwestern BC (Golden Triangle or Sacred Headwaters area).

Data Sources and Coding Process: The main data sources used to inform the analysis provided in this technical report included a desk-based literature review of existing policy documents, regulations, legislation, grey literature, media reports and case law. This baseline data was supplemented by semi-structured in-depth interviews with key informants in mining-intensive communities in BC, as well as focus group meetings. These data sources were qualitatively reviewed and coded by the CIRDI research team to corresponding risks in the MACRA Tool provided by TI (described in further detail in the following section). Finally, the risk matrix approach outlined in the MACRA Tool was used for assessing risks based on their likelihood of occurrence and impact should that risk occur. This step is followed in order to determine risk levels along a scale from very low to very high. The validation of the risk assessment was conducted via a multi-stakeholder workshop held in Vancouver.

Sampling Method: Key informants were identified via the creation of a stakeholder map of diverse stakeholders who would have relevant knowledge on BC's EA process, based on publicly available information. Potential interview subjects were then approached following best practices for participant recruitment in research studies, such as the provision of an initial contact letter that outlined the research study's objectives and outputs, information related to confidentiality, incentives for participation, and clarification that monetary compensation would not be provided in exchange for participation, among other issues. Gender disaggregated data for contacted and consenting research participants is provided below (Figures 2, 3, 4 and 5).

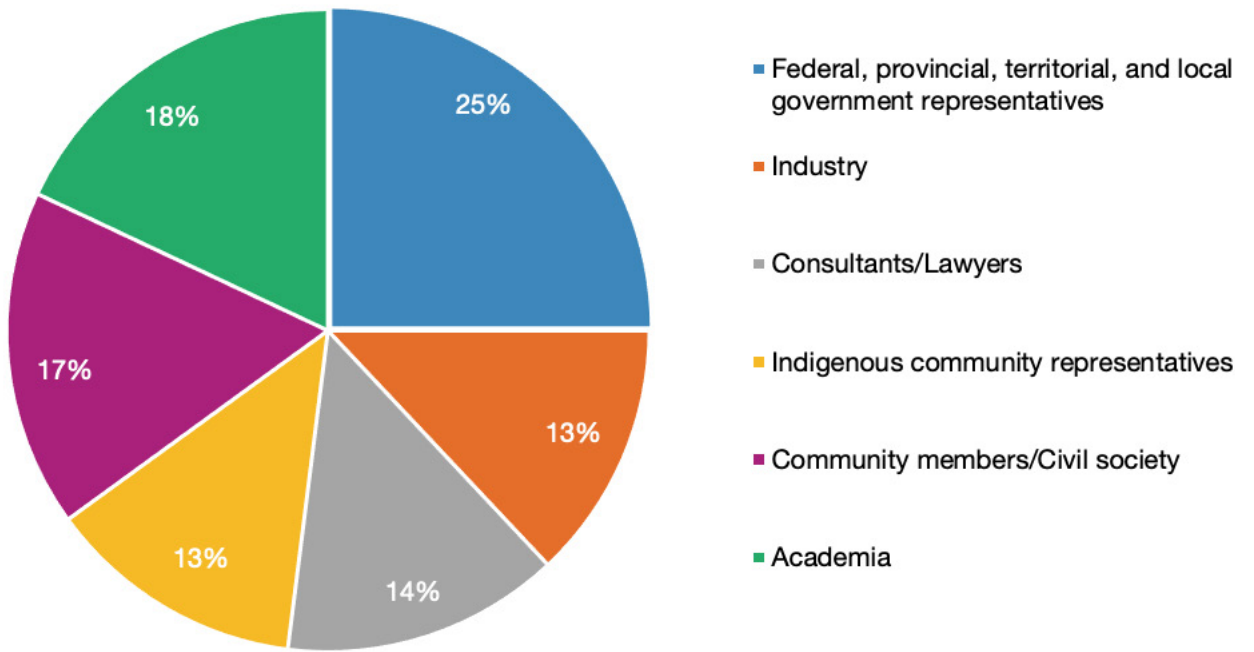


Figure 2: Contacted research participants by stakeholder group [N=262]

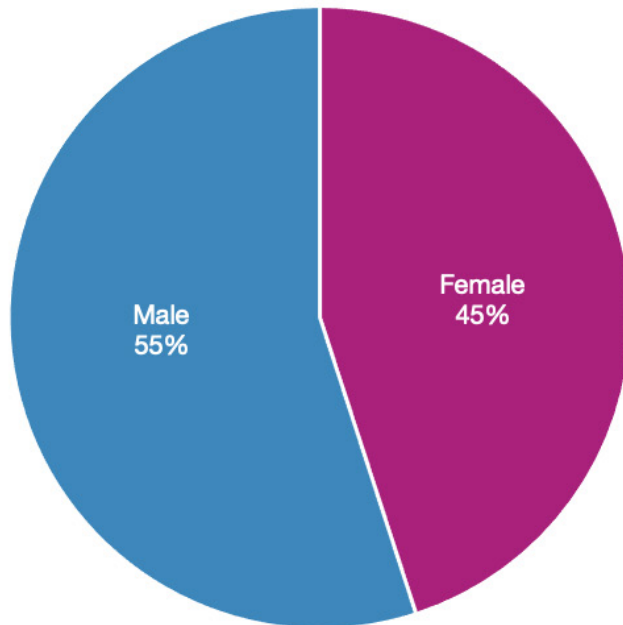


Figure 3: Contacted research participants by gender [N=262]

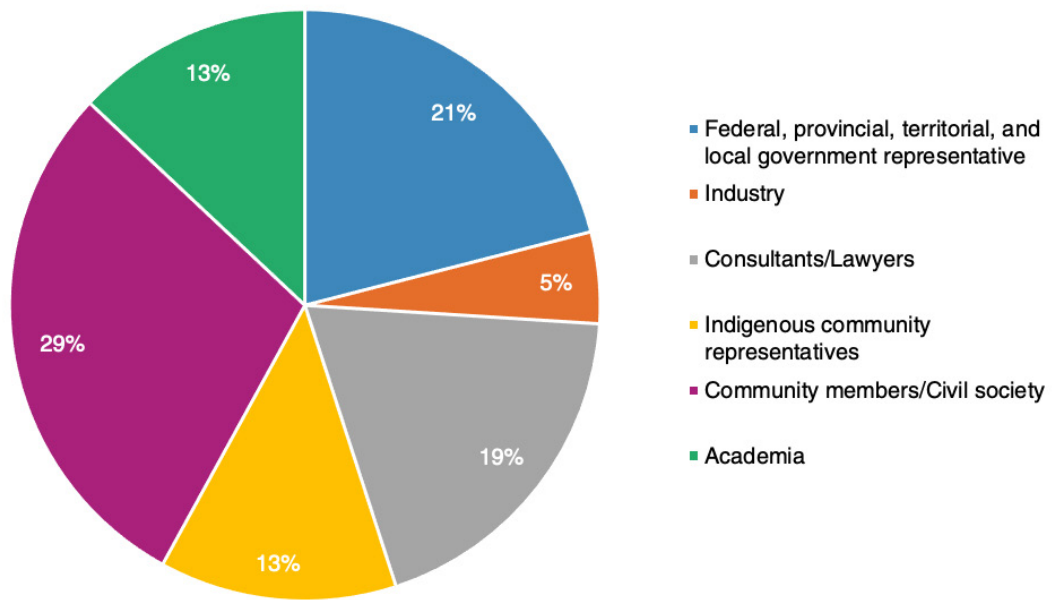


Figure 4: Consenting research participants by stakeholder group [N=55]

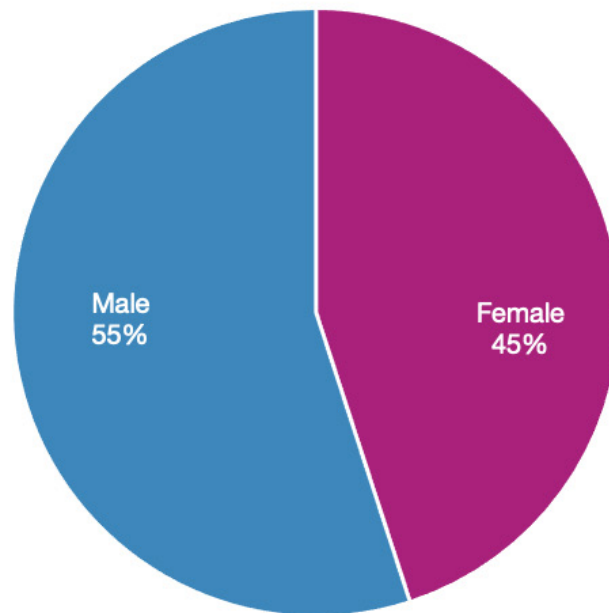


Figure 5: Consenting research participants by gender [N=55]

Risks of the Chosen Research Design and Mitigations: One of the common pitfalls associated with case study-oriented research designs is what is colloquially referred to as “scope creep” — the tendency for researchers to attempt to answer a question that is too broad or a topic that has too many objectives for one study. Following best practices, the report lays out clear scope conditions and objectives in Section 2 (Bennett & Elman, 2006; Baxter & Jack, 2008; Palys, 2008; Blatter et al., 2016; Gerring, 2017). In this regard, the establishment of analytical boundaries in a qualitative case study design is similar to the development of inclusion and exclusion criteria for sample selection in a quantitative study.

Some observers may suggest that the chosen research design and sampling strategy resulted in a focus on elites (policy and technical experts, civil society, industry associations and political associations) that obscure wider or more grassroots perspectives on transparency and accountability risks related to BC's EA process. This would be a fair critique of the technical report. As with most research design choices, this project involved an assessment of trade-offs across available options.

Two practical issues led to a sampling technique that focused on elites (macro level) rather than a cross-section of stakeholders in mining communities (micro level). First, the relatively short implementation horizon was not conducive for adopting participatory action research methods that could have been more effective in surfacing a broad cross-section of views at the micro level. This is especially true for research partnerships with Indigenous Nations that require a number of protocols and engagement practices that should be observed in order to avoid perpetuating the harmful appropriation of Indigenous knowledge and fostering mutual trust-based relations that are aligned with broader priorities of reconciliation in Canada. Second, the assessment of the provincial context suggested that consultation fatigue following BC's amendments to the EA legislation in the previous year would have posed a barrier to this form of broad-based community-level engagement. The lack of additional resources to sustain continuous dialogue with those engaged at a (micro) community level beyond the research timeline was an additional deterrent to adopting a more broad-based localized participatory research process. If pursued, such a process would have been at high risk of being perceived as purely extractive for the benefit of the research team, with low benefits to individual research participants.

Finally, although there is some risk of self-selection bias among the respondents who chose to participate in this study, this bias was offset by approaching a cross-section of stakeholders identified in the mapping exercise, and the addition of the snowball or chain-referral sampling method as complementary outreach method. This method involves requesting initial research respondents to provide recommendations for further key informants.

THE MACRA TOOL

The MACRA Tool was developed for Transparency International's Accountable Mining Program for application to legal (regulated) mining activities. It was not designed to cover issues related to illegal mining activities, or for the oil and gas sector, which has a distinctive set of risks that are beyond the scope of this tool (TI, 2017).

The MACRA Tool is modelled on a qualitative assessment methodology that includes nine steps, as laid out in Figure 6.

METHODOLOGICAL STEPS

Step 1, defining the scope of the analysis, as described earlier was established by TI Canada. Therefore, the research reported in this document starts by developing a process map (Step 2) that shows the steps involved in granting the EA permit for mining projects. The process maps provided in Appendix 1 set a baseline and build the foundation for the remainder of the risk assessment.

The MACRA methodology provides a systematic framework for assessing areas where practice diverges from the official process, or where implementation issues arise that were not contemplated or intended by the legislation. It also helps researchers to understand and to explain the steps, actors and requirements of the award process, while assessing the root cause of divergence between de jure and de facto aspects, and implementation challenges or concerns. Moreover, the process map enables researchers to identify potential accountability or transparency vulnerabilities, creating opportunities for corruption in the process (Step 2A), and recording them on the associated process step for future discussion and analysis (TI, 2017).

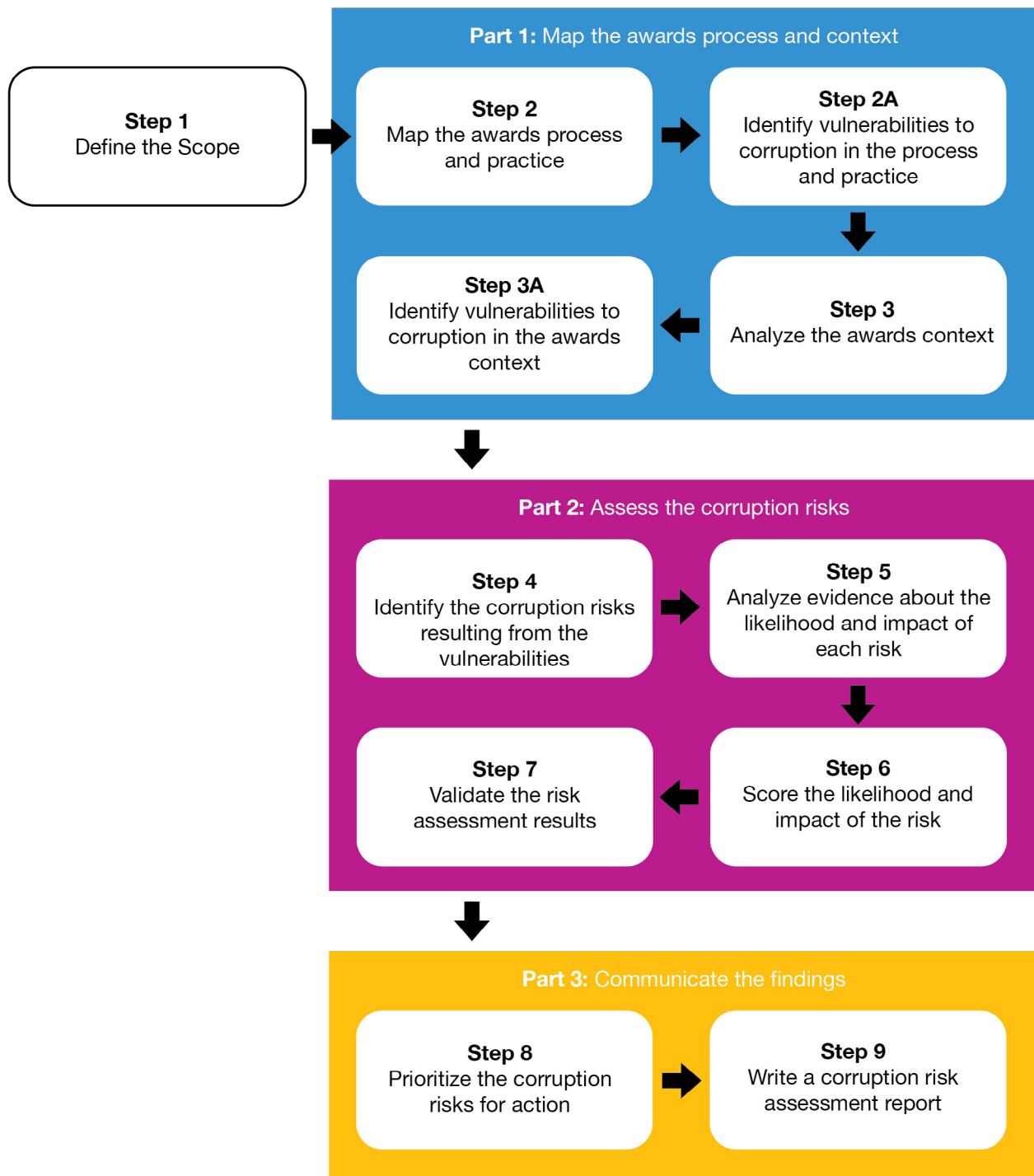


Figure 6. Methodological steps of the MACRA Tool

In addition to the design and implementation of EA processes, characteristics of the prevailing political, economic and social fabric within which these processes are embedded also influence outcomes (TI, 2017). Therefore, Step 3 involves understanding the sector-specific context in which the mining awards process takes place and Step 3A identifies the contextual vulnerabilities in the EA process. Major political, economic, social and technological factors (PEST analysis) are considered in the contextual analysis in this research.

The next step in the MACRA process involves risk assessment. As shown in Figure 6, the risk assessment is performed in four steps that identify corruption risks resulting from the vulnerabilities (Step 4), analyzing evidence about the likelihood and impact of each risk (Step 5), scoring the likelihood and impact of the risk (Step 6) and validating the risk assessment results (Step 7).

The MACRA Tool lists 80 predefined corruption risks that provide a coding framework for the identification of relevant risks resulting from the vulnerabilities, determined in steps 2A and 3A. The MACRA Tool groups these risks into four risk categories pertaining to contextual factors (CF); process design (PD); process practice (PP); and community consultation (CC). Each risk code is denoted by the category, followed by a number (for example, CF 1).

The research team also considered risks in light of the local context. The team coded any risk that did not have a corresponding pre-identified risk in the MACRA Tool under the corresponding group followed by the letter “N” to denote a new risk and then the risk number. For example, PD-N30 would be a new context-specific process design risk numbered 30.

In order to conduct the risk assessment, the team determined the score for likelihood and impact of each listed risk based on the evidence collected during the data collection for mapping the process and ascertaining vulnerabilities. Thus, steps 5 and 6 are completed simultaneously.

The team included primary data from interviews and focus group meetings and secondary data from the literature, including peer-reviewed and media articles, reports, as well as deviations from the official process in practice as evidence in the study. In Step 5, likelihood is based on the probability that the identified transparency or accountability risk will occur, and impact is based on how that identified risk is likely to undermine public trust and confidence in the EA process in BC.

The team used the collected evidence to understand the impact of transparency and accountability vulnerabilities on:

- Accountability, fairness and efficiency in decision-making about the allocation of public resources
- Rights to ownership and access by communities to land and water
- Standards for the environment and treatment of communities
- Fair benefit sharing and transparency for the public and landowners about the management of their resources
- Competition in the mining sector and attracting investors
- Quality of projects with qualified companies with expertise, experience and resources
- Revenue to the state from application fees, and flow-on effects on royalties and taxes from poor projects that result from a corrupt awards process
- Fairness to firms obeying the law and following proper process
- The reputation of Canada, government and Canadian mining industry
- The legitimacy of public institutions and the mining sector as a whole, which can lead to social conflict.

Scoring the likelihood and impact of risks are completed in Step 6. Scoring is performed on a five-points scale for both likelihood and impact, as given in Table 1.

Last but not least, validating the risk assessment results is Step 7. In BC, steps 6 and 7 were conducted by focus group experts. The validated risk assessment results present the most critical issues having a significant impact

on the mining sector, public trust and confidence in how the natural resources are managed. The scored risks are listed from the most critical with the highest to the lowest score in Step 8 and the recommendations and discussion on these are completed in Step 9.

It is important to underscore that the resulting analysis presents a heuristic guide to potential accountability and transparency gaps in BC’s EA process. The research is not intended to benchmark EA processes across provinces, nor should it be interpreted as a rating of the provincial EA process. The findings from the research are meant to serve as a primer for discussion on the identified vulnerabilities and for Transparency International to facilitate these discussions such that a coalition of like-minded individuals and organizations can collaborate to alleviate or mitigate vulnerabilities on a priority basis.

Table 1. Scoring scale of likelihood and impact of risks

Likelihood Scoring	Impact Scoring
5 out of 5: almost certain an event is going to happen	5 out of 5: significant impact on the entire mining industry in Canada, the entire awards system and/or an entire community
3 out of 5: possible that an event will occur — there is a 50-50 chance	3 out of 5: a moderate impact on the EA process
1 out of 5: an event is unlikely	1 out of 5: insignificant impact

5 Analysis

PROCESS MAPS AND VULNERABILITIES

Step 2 of the MACRA Tool (see Figure 6) seeks to lay out EA process as expressed in relevant policies and laws, as well as how the EA is implemented in practice (TI, 2017).

Detailed process maps were developed for EAs in BC using the 2002 and 2018 EAAs (the latter came into force on December 16, 2019). These maps are presented in Appendix 1. For additional context, overview process maps prepared by the EAO are shown in Figures 7 and 8.

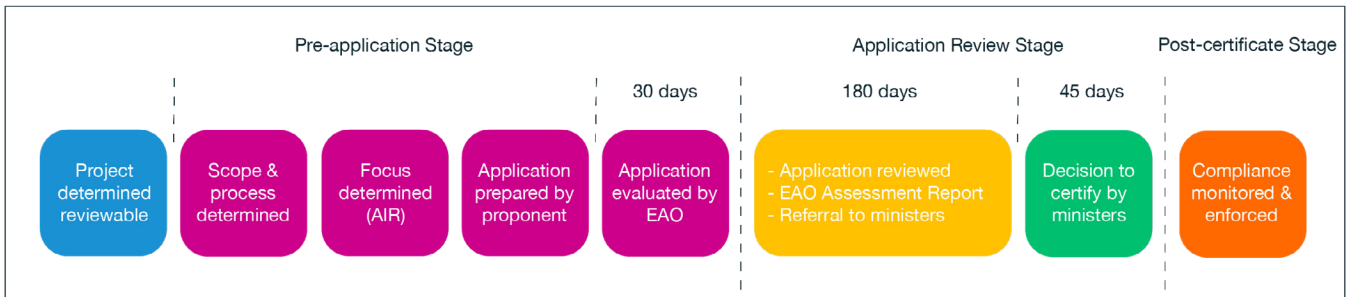


Figure 7: Environmental assessment process chart, 2002 (EAO, 2011)

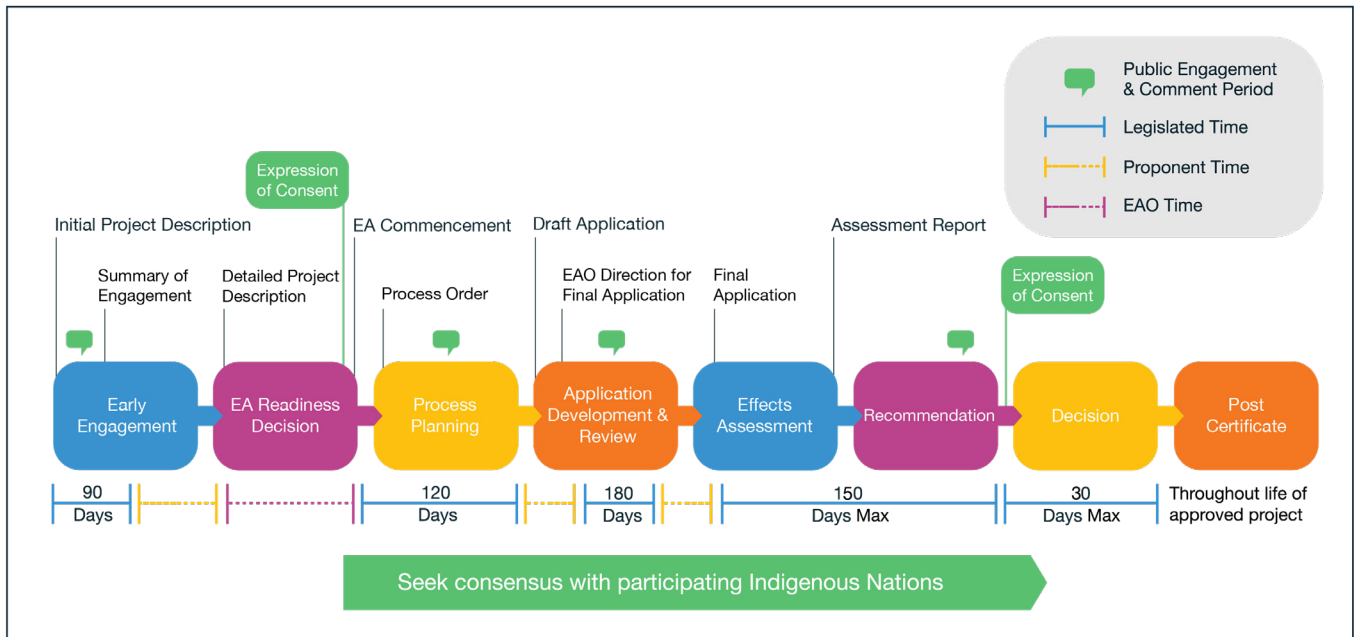


Figure 8: Environmental assessment process chart, 2018 (EAO, 2020b)

Based on these process maps, eight distinct transparency and accountability vulnerabilities were mapped as set out in Table 2. Some vulnerabilities such as engagement with Indigenous communities and the public were repeated at several junctures in the EA process. These vulnerabilities were subsequently mapped against resulting corruption risks previously identified and listed in the MACRA Tool, which defines risk as the uncertainty about the likelihood and impact of events that could have a corrupt effect on the lawful compliance and ethical awarding of government licensing (TI, 2017).

Table 2. Vulnerabilities identified in the process maps

Environmental Assessment Act, 2002	Environmental Assessment Act, 2018
Step 1: Reviewability	
<p>V1. Reviewability criteria are adequate to ensure that mining projects or expansions with potential for adverse effects are required to complete an application for an EAC.</p> <p>Based on the provided project description the minister (MECCS) and/or executive director of the EAO decides if a reviewable mining project may have significant adverse environmental, economic, social, heritage or health effects and thus is required to gain an EAC. The Reviewable Projects Regulation [370/2002] outlines thresholds for mining projects based on production capacity. However, the minister and executive director also have authority to require an EA if a project is deemed to have significant adverse effects (under the five pillars), taking into account practical means of preventing or reducing to an acceptable level any potential adverse effects.</p>	<p>V1. Reviewability criteria are adequate to ensure that mining projects or expansions with potential for adverse effects are required to complete an application for an EAC.</p> <p>Under the EAA 2018, the Reviewable Projects Regulation was revised. The EAO also must now be notified of projects that are within a prescribed category and are close to thresholds or meet the notification thresholds (within 15% of the design of effect close to thresholds).</p>
<p>V2. Minister has discretion to exempt a project from undergoing an assessment.</p> <p>Under the EAA, the minister of environment and the executive director also have authority to exempt a proposed project from requiring an EAC if they consider that a reviewable project will not have a significant adverse environmental, economic, social, heritage or health effect. They may attach legally binding conditions and they may undertake an exemption review process and provide a summary evaluation report.</p>	<p>V2. Minister has discretion to exempt a project from undergoing an assessment.</p> <p>The minister (MECCS) maintains discretionary power to exempt a project, but is required to provide reasons.</p> <p>A person may apply to the minister to have an eligible project designated as reviewable.</p>
Step 2: Early Engagement and Readiness Decision	
<p>Step 2 was not part of the process at this time.</p>	<p>V3. Non-binding requirements for shared decision-making with affected Indigenous Nations. There is an obligation to seek consensus with affected Indigenous Nations. Indigenous Nations are offered an opportunity to express or withhold their consent.</p>
	<p>V4. Indigenous communities overburdened by consultation and lack internal capacity and human resources.</p>

Step 3: Pre-application Phase	Step 3: Process Planning
V3. Unclear legislated requirements for engagement and shared decision-making with affected Indigenous Nations.	
V4. Indigenous communities overburdened by consultation and lack internal capacity and human resources.	
V5. Limited public engagement requirements under legislation.	V5. Although public comment periods are required, the EAO can dispense with them and the community advisory committee if it determines that the community has not “demonstrated sufficient interest.” EAO must seek consensus with participating Indigenous Nations and the proposed process order must be released for public comment for 30 days. EAO must establish a technical advisory committee. Also, section 2 of the act requires the EAO to use the best available science, Indigenous knowledge and local knowledge in decision-making. However, no specific technical competencies required by the advisory committee are laid out. There is a legislated requirement for public comment on the proposed process order to define scope.
V6. Unclear mechanisms to ensure thorough and balanced scope, procedures and methods. [No legislated requirement to ensure evidence comes from multiple sources (western science and Traditional Knowledge). No legislated requirement for review of scope by a third party, public or Indigenous Peoples.]	
Step 4: Application Review	
V3. Unclear legislated requirements for engagement and shared decision-making with affected Indigenous Nations.	
V4. Indigenous communities overburdened by consultation and lack internal capacity and human resources.	V4. Indigenous communities overburdened by consultation and lack internal capacity and human resources. There are consensus-seeking requirements with participating Indigenous Nations and consent opportunity.

V5. Limited public engagement requirements under legislation.	V5. Although public comment periods are required, the EAO can dispense with them and the community advisory committee if it determines that the community has not demonstrated sufficient interest.
V6. Lack of trust in the independence of EAO experts or practitioners and assessment results.	V6. Lack of trust in the independence of technical experts and assessment results. The technical advisory committee is established to provide advice to EAO on technical matters in the assessment.
V7. No legislated requirements for EAO to disclose assessment and recommendation documents.	

Step 5: Application Decision

V8. Ministers have final authority to make decisions on the EAC.

PEST ANALYSIS AND VULNERABILITIES

As outlined in the MACRA Tool methodology, the PEST analysis takes into consideration the contextual factors of the jurisdiction and the sector more broadly. The detailed PEST analysis worksheets are presented in Appendix 2. The PEST analysis was informed by reviewing the literature as well as the completed interviews and focus group discussions.

Table 3: Vulnerabilities identified in the PEST analysis

Political, Social, Economic and Technological Vulnerabilities

P.V1. Free-entry system allows Free Miner Certificate holders to stake claims across most of British Columbia. This prioritizes mining over other land uses and sets expectations for prospectors that they will be able to develop their claim.

P.V2. There is a lack of clarity regarding any due diligence that may take place when evaluating companies eligible for staking or developing a mining claim.

P.V3. Agreements are often negotiated between proponent and Indigenous Nations, communities and landowners at this stage. These are closed-door processes that are not made public.

P.V4. There is the potential for regulatory capture because the Ministry of Energy, Mines and Petroleum Resources holds dual roles as industry promoter and regulator.

P.V5. The reclamation bond system seems insufficient to protect the province and taxpayers from hefty remediation costs.

TRANSPARENCY AND ACCOUNTABILITY VULNERABILITIES AND RISKS

Tables 4 and 5 outline the risks that were evaluated based on vulnerabilities identified in the process mapping and PEST analysis.

Table 4: Risks associated with vulnerabilities identified in the process maps

Identified Vulnerability	Resulting Corruption Risk	MACRA Risk Code
V1. Adequacy of reviewability criteria to ensure that mining projects or expansions with potential for adverse effects are required to complete an EAC application.	Proponents will scope project descriptions to be under the thresholds requiring an EA	PD-N1
V1. Adequacy of reviewability criteria to ensure that mining projects or expansions with potential for adverse effects are required to complete an EAC application.	Limited triggers/thresholds for projects to require an EA	PD-N7
V1. Adequacy of reviewability criteria to ensure that mining projects or expansions with potential for adverse effects are required to complete an application for an EAC.	Low compliance, enforcement and monitoring of EA commitments	PD-N8
V1. Adequacy of reviewability criteria to ensure that mining projects or expansions with potential for adverse effects are required to complete an application for an EAC.	Gaps in regulatory coverage exist in the EA to integrate cumulative effects	PD-N2
V2. Minister's (MECCS) discretion to exempt a project from undergoing an assessment.	External interference on Ministerial decision-making	PD-14

Identified Vulnerability	Resulting Corruption Risk	MACRA Risk Code
V3. Unclear legislated requirements for engagement and shared decision-making with affected Indigenous Nations.	Free, Prior, and Informed Consent (FPIC) of affected communities will be ignored	CC3
V3. Unclear legislated requirements for engagement and shared decision-making with affected Indigenous Nations.	Delegation of consultation leads to absence of meaningful consultation	CC-N2
V4. Indigenous communities overburdened by consultation and lack internal capacity and human resources.	Limited integration of social and cultural considerations in environmental assessments as they relate to indigenous communities	CC-N1
V5. Limited public engagement requirements under legislation.	The legal framework for consultation with communities is not clear	CC1b
V6. Unclear mechanisms to ensure thorough and balanced scope, procedures and methods.	Criteria or scope for EA across similar project categories are not defined	PD-N3
<p>V5. Limited public engagement requirements under legislation.</p> <p>V6. Lack of trust in the independence of technical experts and assessment results.</p> <p>V7. No legislated requirements for EAO to disclose assessment and recommendation documents.</p>	No sufficient verification of EA reports to ensure an accurate impact description	PD-N5
V6. Lack of trust in the independence of technical experts and assessment results.	EA decisions being based on imprecise	PP14
V8. Ministers have final authority to make decisions on the EAC.	External interference on Ministerial decision-making	PD-14

Table 5: Risks associated with vulnerabilities identified in the PEST analysis

Identified Vulnerability	Resulting Corruption Risk	MACRA Risk Code
<p>PV1. Free-entry system allows Free Miner Certificate holders to stake claims across most of British Columbia. This prioritizes mining over other land uses and sets expectations for prospectors that they will be able to develop their claim.</p>	<p>Minimal restrictions for mineral staking/tenure in BC</p>	<p>PD-N9</p>
<p>PV2. Lack of clarity regarding any due diligence that may take place when evaluating companies eligible for staking or developing a mining claim.</p>	<p>Proponents will scope project descriptions to be under the thresholds requiring an EA</p>	<p>PD-N1</p>
<p>PV3. Agreements often negotiated between proponent and Indigenous Nations, communities and landowners at this stage in closed-door processes that are not made public.</p>	<p>Agreements with landholders, Indigenous nations, or community agreements are finalized behind closed doors</p>	<p>CC2</p>
<p>PV4. Potential for regulatory capture with the Ministry of Energy, Mining and Petroleum Resources holding dual roles as industry promoter and regulator.</p>	<p>External interference on Ministerial decision-making</p>	<p>PD-14</p>
<p>PV5. Reclamation bond system insufficient to protect the province and taxpayers from hefty remediation costs.</p>	<p>EA decisions being based on imprecise</p>	<p>PP-14</p>

6

Results and Discussion

RISK ASSESSMENT

As outlined in the MACRA Tool, the risk assessment involves analyzing the evidence about the likelihood and impact of each identified risk. Likelihood is defined as the probability that the risk will occur, and impact refers to the potential costs associated with the occurrence of the identified transparency and accountability vulnerabilities. Detailed supporting evidence for each risk analyzed is included in Appendix 3.

STRENGTHS IN THE APPROVAL PROCESS

From a comparative global perspective, the BC EA process has a number of strengths that should be recognized and valued.

Given that the transition to the 2018 EAA remains ongoing, the BC Government has been responsive to calls for improving transparency and accountability of the process and for minimizing the risk of corruption. Several areas that were absent or unclear in the 2002 legislation were addressed in practice, and have now been made the legislation more explicit. In BC, the minister must publicly release the reasons for the final decision on an EA approval, as well as reasons for the minister's decision on whether a project should proceed to assessment.

For instance, although it was not required in the 2002 legislation, in practice technical working groups were convened with representatives from various line ministries, based on the potential environmental social, economic, health and heritage effects risks posed by a particular mining project. This progressive practice helped to ensure that the EAO was not expected to have in-house capacity on all relevant technical issues, and that variations in capacity at any given moment could inadvertently lead to an uneven assessment process across projects. This risk has not been removed completely by the new legislation, the institutionalization of this practice will help ensure that ministerial representatives who have been involved in working group deliberations will be more informed about any permitting promises made as part of the certificate issuance. In addition to the institutionalization of community advisory committees, such reforms can reduce gaps in information throughout the EA process, which can in turn lead to more consistent implementation and increased public confidence in the impartiality of the process.

Another strength of the new legislation is the retention of the invitation to Indigenous Nations affected by a project to participate in working groups. This aspect has been strengthened procedurally through the identification of consensus points during the process.

Similarly, the 2018 legislation requires a scoping phase that was implemented in practice previously but not mandated under the EAA 2002. During this phase, the working group can comment on what "valued components" a project must assess in order to determine environmental, social, economic, health and heritage effects. Previously, proponents would submit a final report, and other stakeholders could only hope that such valued components were covered. The reformed legislation thus creates greater certainty for proponents.

A thoughtful analysis of both the strengths and weaknesses of the EAA 2018 was published by West Coast Environmental Law in November 2018. With regard to transparency and accountability, the analysis rightly flags the bolstering of cooperation among jurisdictions as a key strength (West Coast Environmental Law, 2018). For instance, the legislation now requires the EAO to coordinate assessments with other jurisdictions. Additional supporting provisions include allowing for agreements about environmental assessment with other jurisdictions,

including with the federal government and Indigenous Nations; stipulations that the EAO must enter into discussions with Indigenous Nations within six months after a Nation indicates an interest in negotiating an EA-related agreement; allowing for the substitution of the assessment process of another jurisdiction (such as the federal government or Indigenous Nation) for BC's process; and ensuring minimum requirements are in place such as public participation and mandatory matters to be assessed. In addition, the process order must provide for a government-to-government agreement about the EA if an Indigenous Nation wants to conduct the assessment of impacts on its nation or its rights and no such agreement exists.

Additional strengths identified in the West Coast Environmental Law (2018) report include strong public participation, allowing for regional and strategic assessments, an increase in the scope and type of projects, expansion of monitoring and compliance programs and activities that are subject to mandatory assessment, and basic process requirements for provincial regulatory approvals that will aid in managing cumulative impacts.

IDENTIFIED RISKS IN THE APPROVAL PROCESS

Although there are progressive improvements on transparency and accountability issues within BC's EA process in the EAA 2018, nonetheless a number of risks surfaced during this project. The data points analyzed for this project, once triangulated, narrowed in on 14 risks. The following section explains how the identified risk can affect transparency and accountability, with supporting evidence. This analysis is based on the interview, focus group and desk research data points that are cited in Appendix 3.

1. PD-N1. Proponents will scope project descriptions to be under the thresholds requiring an EA

Due diligence should be conducted on applicants and their project descriptions and self-assessments, including their financial capacity, environmental record and beneficial ownership. Without due diligence, the province could be held responsible for projects with poor technical and economic viability, and potentially financially responsible for projects with undesirable and unmitigated legacy impacts on the environment and communities. There is a risk that permits will be awarded to companies with a history of non-compliance or corruption, including in their operations in other countries.

A lack of such due diligence could also mean that some projects avoid EAs and later request amendments and expansions that lead to larger projects. Without oversight and tracking of self-assessments for expansions, proponents may be able to split projects by staggering expansions over time to avoid triggering an EA. For example, it is the responsibility of the proponent to complete a self-assessment and determine if the project meets the reviewability thresholds that require an EA. If a proponent decides that the project meets the requirements, it submits a project description to the EAO for review. This remains the case under the 2018 EAA and RPR.

Reviewability thresholds require processes to ensure that assessments are not avoided through project splitting or incremental scope and size creep after the permits have been approved. There was some consensus among research participants that project splitting to avoid EAs is not very common in BC, but splitting expansion activities to avoid EA amendments is more common. Expansions are often designed to remain below thresholds, and a number of research participants raised concerns about this practice. Overall, significant sustainability and cumulative effects can result from projects that expand their footprint and production capacity but are not subject to an EA. This also impacts trust and transparency in the system.

2. PD-N9. Minimal restrictions for mineral staking/tenure in BC

Although the issue of mineral staking occurs prior to the initiation of the EA process in BC, there are concerns that existing rules about mineral tenure set a precedent for prioritizing mining activities in land-use assessments. This prioritization can lead to legal challenges to the government if mining projects are not allowed to proceed.

The lack of restrictions on mineral tenure in BC via the free-entry system can pose direct costs to communities, Indigenous Nations, mining companies and government. Once a claim has been staked, the provincial

government has no discretion to deny the holder a lengthy mining lease. This leads to government possibly paying huge amounts in compensation if land-use priorities change, as has already happened. Many stakeholder groups point to the lack of transparent, predictable and consistent information about whether potential projects can be carried out on staked land as a result of the all-encompassing nature of the free-entry system. Lastly, conflicts related to accountability can arise when mines are proposed in locations of environmental, cultural, societal and economic importance.

3. PD-N7. Limited triggers/thresholds for projects to require an EA

If criteria for requiring an EA are limited, projects or activities with the potential for environmental and social impacts may not be assessed and the public may not be provided with opportunities to voice concern. This can result in lost public confidence and trust.

Under the EAA 2018, proponents and the EMPR are required to inform the EAO if a project is determined not to be reviewable but is within a prescribed category of projects (EAA, 2018, s.10[1]). The 2018 RPR maintains the production capacity and adds effects thresholds that improve risk mitigation. The proponent must assess if the project exceeds an effects threshold under: (1) area of disturbance threshold; (2) linear disturbance threshold; (3) greenhouse gas threshold; and (4) protected areas threshold.

Ongoing debates about threshold targets suggest that social trust in the EA process could be tarnished if the issue is not handled transparently with appropriate levels of disclosure. Only mining projects or expansions that meet defined thresholds trigger an EA. The legislated thresholds for an EA are based on the production capacity (for ore only and not waste rock) or the area of the disturbance for a proposed modification.

Because publicly available information or disclosure for mining projects that do not meet thresholds is limited, it is unclear how many projects proceed without an EA. Other factors could include location, amount of waste rock, the acid-generating potential of waste rock and proximity to communities. Exploration activities do not require an EA in BC compared to other jurisdictions such as the Yukon (EAA, 2018).

The thresholds in both the 2002 and 2018 RPRs are 300% higher than the thresholds in BC's 1995 EAA, but they are below the federal Physical Activities Regulations (2019). Interviewees and focus group participants also identified diverging opinions on threshold values as a potential issue that would benefit from improved disclosure. Under BC's RPR, 2002, the threshold for projects to require an EA may not capture all projects with potential for environmental and social impacts. There is limited information available for projects that do not require an EA. However, on balance, the 2019 RPR may capture more projects via the thresholds for additional effects. Additionally, under the EAA 2018 the public can request the minister of the environment to designate a project as reviewable. Proponents and EMPR are also required to notify the EAO of mining projects that fall under the reviewable thresholds by 15% or have a workforce of 250 or more persons.

4. PD-N8. Low compliance, enforcement and monitoring of EA commitments

Once a project is granted the EAC or an exemption order, ongoing compliance oversight is required. Both EAC and the exemption order are legally binding and contain conditions or commitments that must be followed by the proponent in order to mitigate potential adverse effects. In that sense, enforcement actions should be put in place to ensure that projects are designed, built, operated, and decommissioned or reclaimed.

Unfortunately, monitoring and enforcement are unsatisfactory and mechanisms for inspections, compliance and enforcement are not always clear. Focus group data suggested that there is very little follow-up and monitoring of commitments developed under the EA process. As mining projects have a long time horizon, government oversight of enforcement and compliance over the entire lifecycle of a mining project can be a challenge. This challenge is especially acute for tailings facilities that can require such oversight in perpetuity. Changes in mine ownership pose an additional difficulty for regulators tasked with holding companies to account for environmental and social performance. There is a view that proponents do and say what is required to meet EA requirements, but are not actually delivering on promises fully or timely made therein. Each time a project is taken over by another

company, standards and commitments can change and these changes in turn weaken, with few options for recourse by affected communities and stakeholders.

Concerns that a lack of EA compliance, enforcement and monitoring means that there is little monitoring if proposed mitigation measures are actually being effective at mitigating negative effects. Under the EAA 2018, there is an added requirement for the EAC holder to report on the effectiveness of mitigation measures specified in the certificate (see s. 30). This provision will help increase the amount of information available about mitigation measures but is not a substitute for independently verified evaluations of compliance with mitigation measures and whether these measures are mitigating or reducing negative impacts as anticipated. There is a mechanism for the EAO to request an independent audit of a project (see s. 74). The EAO can also initiate certificate amendments based on audit reports or mitigation effectiveness reports (see s. 32).

5. PD-N2. Gaps in regulatory coverage exist in the EA to integrate cumulative effects

In British Columbia, under the 2018 EAA, all projects undergoing an EA process are required to consider adverse cumulative effects when evaluating large projects. This requirement is part of a bundle of other mandatory considerations that include greenhouse gas emissions, consistency with land-use plans, or regional or strategic assessments, and effects on current and future generations (Clogg, 2013). Recommendations from the EAO or an assessment body must also address these matters, and this material must be considered by the project subject related ministers in making their decision. Further, projects that are considered to have “extraordinarily adverse effects,” or are substantially the same as a project previously rejected, may be subject to a termination order early on, allowing proponents, jurisdictions and the public to avoid the time and cost of a lengthy process for a project unlikely to be approved (Clogg, 2013).

A number of stakeholders suggested there are both process design and substantive issues that require clarification. On the procedural side, when one considers that projects outside the EA process are not required to consider cumulative effects, may further encourage some proponents to split projects to avoid triggering an EA or meeting related requirements that they consider to be too burdensome. This loophole leaves open the possibility that existing cumulative effects studies are poorly aggregated at best and misleading at worst.

Substantively, some technical experts noted that cumulative effects are measured on the basis of residual effects, meaning the mitigation measures that are known to be effective. Unfortunately, there is rarely information available on the effectiveness of mitigation measures, particularly on valued components. As a result, realistic disclosures of how cumulative effects have been assessed and accountability for these assessments are stymied and can also lead to misleading environmental assessments. For example, the EAO’s Environmental Assessment Committee, an independent forum that reviewed and made recommendations on the Environmental Assessment Act, stated that revisions to the 2002 RPR resulted in a 50% reduction of the number of projects entering the EA process (across all sectors) that obscure evaluation and consideration of their potential contribution to cumulative effects in a region.

6. PD-14. EA decisions being based on imprecise data

The EAA 2018 requires the Minister to prepare the final decisions, providing reasons supported by evidence, based on assessment of the balance of public interest employing defined criteria that are then published. Furthermore, under the EAA 2018, project subject related ministers must consider the assessment report, the CEAO’s recommendations, the sustainability and reconciliation purposes of the EAO, and any other matters they consider relevant to the public interest in making their decision. Ministers are also required to publish reasons for their decision.

For Indigenous Nations, under the 2018 act, consensus decision points offer an additional check on external interference. In cases where consensus is stymied, mandatory government-to-government meetings are required. Research participants generally held the view that it is too early to determine if this provision will limit undue influence in ministerial decision-making, but that it significantly advances procedural clarity.

Nonetheless, there are some challenges to full independence of the EAO and the environmental minister. An assessment published in 2016 by the BC Auditor General (2016) noted that the EMPR is at risk of regulatory capture because the ministry’s mandate includes a responsibility to both promote and regulate mining. Despite provisions in the 2018 EAA to maintain internal functional divisions between the sections of the ministry responsible for promotion and regulation, research participants were concerned about undue influence over political decision-making.

Likewise, many interviewees and focus group participants expressed concerns that the EAO and ministers appear to have a close relationship and “behind closed door” conversations with proponents, but do not participate in community-level discussions to the same degree or with similar frequency. The discretionary powers of the minister regarding EA decisions can be politicized.

There is the added recognition by civil society that proponents are large contributors to political campaigns and governments have provincial-level economic incentives to push through significant mining projects. A Kamloops resident filed complaints with BC Ombudsperson alleging that Christy Clark, BC’s Liberal premier, and the EMPR minister had perceived and undeclared conflicts of interest regarding copper and gold mines owned by KGHM Ajax Mining Inc. In 2011, Clark had publicly committed to building eight new mines by 2015, and according to BC Elections KGHM had donated more than \$54,000 to the BC Liberals since 2013 (McSheffrey, 2016; Klassen, 2016).

7. CC3. Free, Prior, and Informed Consent (FPIC) of affected communities will be ignored

Requirements to seek the consent of communities may be ignored or manipulated where there is insufficient guidance about the scope and nature of consent or where there is a lack of government oversight of the consultation process.

Under the EAA 2018 there are multiple decision points and opportunities for EAO to seek consensus with participating Indigenous Nations and non-binding dispute resolution is available where consensus is not reached (see ss. 16, 19, 28, 29, 31 and 5). In 2019 BC enacted the Declaration of the Rights of Indigenous Peoples Act to implement UNDRIP. Additionally, the EAA also makes commitments to UNDRIP and provides several consensus-based decision points (Government of BC, n.d.-f).

The new UNDRIP legislation will possibly have a positive impact about meaningful engagement with Indigenous Peoples. Research participants noted that the EAA 2018 uses the language of consent, which is a strong first step, but the province still needs to develop competencies and effective procedural guidance for entering into government-to-government discussions with individual nations. The EAO must seek consensus with Indigenous Nations throughout the entire EA process. Only the Crown or delegated agencies are permitted to take decisions regarding land use on Crown land. Typically, projects are not contingent on obtaining the consent of Indigenous Peoples, and ultimate decision-making authority continues to rest at the ministerial level.

8. CC-N1. Limited integration of social and cultural considerations in environmental assessments as they relate to indigenous communities

The EA process has evolved to accommodate some of the needs and requirements of Indigenous Peoples, but there is still some distance to go until social and power relations between stakeholders involved in EAs are more balanced. Indigenous Peoples have consistently advocated for their communities to be reflected accurately and comprehensively within the EA process. However, productive and trust-based relationships between proponents (or their delegates) and Indigenous communities have confronted a number of barriers and resulted in considerable information gaps that impede robust assessments.

It is common that Indigenous communities are reluctant to provide community data for what is perceived as company purposes and they distrust proponents and governments to protect their information. Some participants of focus groups and interviews reflect the view that it is challenging to accurately assess social and cultural impacts without complete data. If information is not fully known or understood, stakeholders and decision makers may be misled about impacts.

9. CC-N2. Delegation of consultation leads to absence of meaningful consultation

Requirements to engage Indigenous Nations and the public may be insufficient where there is a lack of guidance, scope and nature of meaningful engagement, or where there is a lack of government oversight of the consultation process.

There are concerns that the EA process in BC, including consultation with Indigenous Nations and the public, is largely proponent driven. Both the provincial and the federal governments have a duty to consult and accommodate Indigenous Nations concerning resource decisions that may affect them. Legal precedence allows for consultation to be delegated to the proponent. However, without the proponent having the authority or responsibility to accommodate, does delegation lead to an absence of meaningful consultation and instead a focus on note taking?

Focus group and interview data indicate that there is a lack of clarity in the legislation in terms of requirements for Free, Prior and Informed Consent and the Crown's duty to consult. The research also highlighted a prevailing sense of "consultation fatigue" or the perception that there are more consultations than necessary due to process inefficiencies and the burden of participating in consultations carried out by the proponent and those conducted under the auspices of Crown's duty to consult. This perception needs to be further analyzed with empirical evidence across contexts and cases so that clear procedural guidance on meaningful consultation can be issued and implemented. In this regard, it should be noted that "meaningful consultation is not just a process of exchanging information. Meaningful consultation 'entails testing and being prepared to amend policy proposals in the light of information received, and providing feedback.' Where deep consultation is required, a dialogue must ensure that leads to a demonstrably serious consideration of accommodation" (Tsleil-Waututh Nation v. Canada [Attorney General], 2018).

10. CC-1b. The legal framework for consultation with communities is not clear

If the legal framework for public consultation, including how or what information should be presented and how comments and concerns should be addressed, cannot be accurately identified and understood, public consultations can be manipulated and be reduced to a "check box" exercise.

Under the EAA 2018 there are legislated requirements for community advisory committees. These committees are to be formed during process planning, once a decision has been made to proceed to an EA.

A number of research participants affirmed that the EAO's EPIC website is a valuable information clearinghouse. However, the complexity and volume of information can pose an access barrier for some members of the public. The focus groups and interviews provided substantial evidence that the lack of clear guidelines to establish what constitutes meaningful public consultation leads to frustration for proponents, the public and the province. At the community level this builds distrust in the system and in the ability for any comments or concerns to effect any change. This may lead to the public becoming disengaged or seeking other means to be heard.

11. PD-N3. Criteria or scope for EA across similar project categories are not defined

When the criteria are unclear or unknown, there is uncertainty about what environmental, social, economic, health, cultural factors were assessed in an EA, which makes it possible to manipulate what gets assessed. Under the EAA 2018 there are opportunities for public comment on the scoping stage.

Although the EAO offers some guiding documents about what valued components get assessed in the EA process, there are still no criteria to define what gets assessed in regards to environmental, social, economic, health or cultural factors. In general, because stakeholders' views varied widely on this risk, aggregate findings are difficult to assess. The issue of valued components, discussed earlier, was contentious. The lack of criteria could lead to discrepancies in the quality of assessments across projects and result in distrust in the process. However, interviewees noted that the EAA 2018 requires that at the beginning of the engagement the proponent must

submit a project description that clearly identifies what aspects of the project design and siting could change. In this respect, the project description should be flexible to allow for stakeholders to discuss how such changes could lead to solutions. The proponent must subsequently address these issues in the detailed project description.

12. PD-N5. No sufficient verification of EA reports to ensure an accurate impact description

Under the EAA 2018, technical advisory committees composed of Indigenous representatives and technical experts from various ministries and local governments are a legislated requirement. There is a mechanism for the EAO to request an independent audit of a project, if that project has an EAC (s. 74).

Nonetheless, some research participants noted that third-party reviewers are provided with limited opportunities to review technical reports. In general, data from desk research, interviews and focus groups affirmed the valuable role of independent third parties in ensuring that valid research methods and appropriate data standards are used. Technical reports are not usually peer reviewed outside of the consultants and government. Some reviewers may be biased, since consultants are hired by proponents, who are interested in the project's approval, and the government, which is sometimes interested in attracting development and investment.

It was noted that there are checks and balances to ensure that the EA process does not just rely on the information presented from the proponent or consultants such as the technical advisory committee. Under the EAA 2018, the EAO must also make its own determination of significance based on all the information presented by the proponents and consultants and the advice of the committee. Previously this determination was made by the consultants engaged by the proponent.

13. PP14. EA decisions being based on imprecise data

The EAA 2018 requires EAC holders to report on the effectiveness of mitigation measures specified in the certificate.

The research process identified the risk of EA reports not adequately presenting uncertainties associated with assessments of effects (cumulative or otherwise), mitigation measures, residuals and determinations of significance. Although the 2018 legislation allows the regulator to make the determination of significance, the process undertaken to make that determination must be accountable and transparent. With this increase in regulatory authority, there is also increased risk of regulatory capture.

There is also a perception among the public and Indigenous community members that consultants are biased toward the concerns of their clients, a problem that is potentially made worse by the “revolving door” dynamic where technical experts may be appointed back and forth between regulatory agencies and the private sector. With regard to data quality, an EA expert panel report published in 2017 stated that “the collection of data by consultants hired by project proponents has led to perceived inconsistencies in the quality of data, analyses and conclusions and the perception of bias in the analysis of impacts” (Canadian Environmental Assessment Agency, 2017). This concern was similarly identified in interviews with non-governmental organizations, consultants, Indigenous community members and academic experts at the provincial level.

14. CC2. Agreements with landholders, Indigenous nations, or community agreements are finalized behind closed doors

A lack of trustworthy oversight on negotiations could lead to manipulation of agreements, resulting in some public distrust of the EA process. Focus group evidence suggests that proponents use many tactics to negotiate and engage with landowners, generally prior to the EA process. In some cases, landowners are poorly equipped and resourced to enter into agreements with companies. Frequently landowners are required to sign non-disclosure agreements, which also prevent them from speaking out against the project or engaging fully in the EA process. In addition, there are additional transparency risks at the community level when leaders and community representatives enter into benefit agreements but these agreements may not reflect consensus at the community level.

One interviewee noted that proponents can sometimes make gifts and payments to Indigenous People as a show of good will and to encourage acceptance. Detailed negotiations on job creation and transfer payments may also be viewed as undesirable influence, particularly if these arrangements privilege individuals over communities.

RISK VALIDATION

To prioritize the risks, the research team used the MACRA Tool and included took into consideration urgency, impact and feasibility in addressing the risks. The analysis of each risk is set out in Appendix 3. At the conclusion of a stakeholder validation workshop in Vancouver, eight research participants completed individual worksheets to assess likelihood and impact scores for each identified risk. The respondents included three academics, one non-Indigenous civil society participant, one industry participant and one Indigenous representative. Two participants preferred not to disclose their stakeholder group affiliation. Average and aggregate risk scores are in the table below.

Table 6: Risk validation scores

Risks	Risk Score
PD-N1: Lack of due diligence of applicants and project descriptions/self-assessments	11.3
PD-N9: Minimal restrictions for mineral staking/tenure in BC	13.0
PD-N7: Limited triggers/thresholds for projects to require an EA	8.8
PD-N8: Low compliance, monitoring and enforcement of EA commitments	11.4
PD-N2: Unclear and limited project-level cumulative effects assessments	15.4
PD-14: External interference on ministerial decision-making	11.4
CC-3: Ignored free, prior and informed consent	10.3
CC-N1: Limited accuracy of social and cultural considerations related to Indigenous communities	8.9
CC-N2: Absence of meaningful consultation as a result of delegation of consultation	9.4
CC-1b: Limited requirements for meaningful public consultation	10.3
PD-N3: Undefined criteria or scope for EA across similar project categories	13.2
PD-N5: Limited verification of the accuracy of environmental and social reports	6.7
PP-14: EAC decisions based on imprecise conclusions	11.8
CC-2: Agreements with landowners Indigenous Nations or communities finalized behind closed doors	11.8

7 Recommendations

The analysis documented in this technical report serves as a heuristic guide to accountability and transparency gaps in BC's EA process. The research is not intended to benchmark EA processes across Canadian provinces and territories, nor should it be interpreted as a rating of the provincial EA process. The research findings are meant to provide a credible primer on the identified gaps and set priorities to alleviate or mitigate vulnerabilities in BC alongside stakeholders.

Based on the research process, the following areas could be explored further to advocate for improvements to BC's EA process with regard to corruption risk:

- 1. Close project-splitting loopholes:** Mitigation measures are needed to reduce the risk of project splitting, as this practice has knock-on impacts for which projects enter into the EA process and which projects are subject to cumulative assessment studies. A failure to effectively narrow the window of opportunity for project splitting as a tactic to avoid regulatory oversight can undermine public trust in the EA process.
- 2. Strengthen corporate accountability measures for negative environmental and social impacts over the long term:** Public awareness of follow-up monitoring and compliance activities is low. There is a need for targeted public information regarding legislative and regulatory safeguards to maximize corporate accountability for bearing social and environmental costs associated with mining. This information may need to be coupled with regulatory reforms to ensure robust bonding safeguards are in place. Ensuring robust bonding safeguards is likely to counter criticism on the grounds that front-loading costs of compliance on proponents will undermine sector competitiveness.
- 3. Issue procedural guidance on mandatory matters:** The effort to provide a second tier of mandatory matters to be assessed (such as cumulative effects, effects on Indigenous Peoples' rights and greenhouse gas emissions) is viewed as positive by stakeholders in BC. However, procedural guidance on criteria and acceptable procedures for undertaking these mandatory assessments is needed in order to maximize public trust in the credibility of these assessments and, more importantly, their bearing on the issuance of EACs. Clear procedural guidance on what counts as meaningful public consultation and considerations of free, prior and informed consent when consultation is delegated to proponents are especially pressing priorities. Appropriate requirements for the individuals or organizations that carry out EAs to recognize the socio-cultural dimensions of those processes need to be established.
- 4. Minimize risks of regulatory capture:** There is a need for accountable and transparent mechanisms for regulators to disclose the processes and frameworks used to make determinations of significance in order to increase confidence that they are acting in the public interest. Similarly, additional disclosures are needed on regulatory and ministerial bodies' meetings with industry and other stakeholders with vested interests in EA outcomes. These disclosures should cover a stipulated period prior to and after the EA process is underway. It would be desirable to limit options for proponents to influence landowners prior to the EA process.

8

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