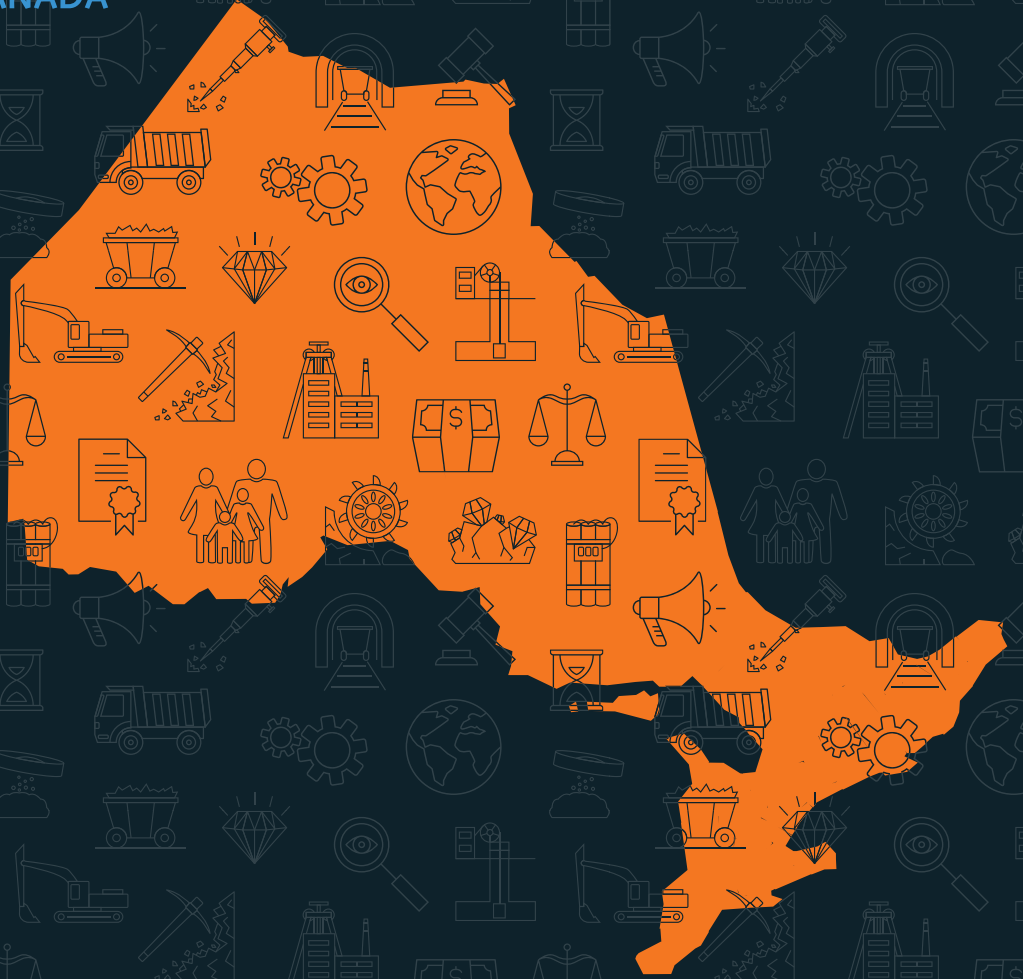




**TRANSPARENCY
INTERNATIONAL
CANADA**



ACCOUNTABLE MINING

**A Risk Assessment of the
Environmental Assessment Process**

Ontario Technical Report



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ABOUT THIS REPORT

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Dr. Cole Atlin led the research in Ontario between May 2019 and January 2020.

Contributors to this report

The following individuals collaborated on the creation of this technical report:

- Principal Investigator: Dr. Cole Atlin
- Research Contributors: Mary Boyden and Peter Siebenmorgen
- Editors: Dr. E. Deniz Yaylaci, Juliana Forner and James Cohen
- Copy editors: Madeline Koch and Janet MacMillan
- Designers: Deana Oulianova, Victoria Hopgood and Juliana Forner.

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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

BC	British Columbia
CEAA	Canadian Environmental Assessment Act
CSR	Corporate Social Responsibility
EA	Environmental Assessment
EAA	<i>Environmental Assessment Act</i>
ECO	Environmental Commissioner of Ontario
FPIC	Free, Prior and Informed Consent
GDP	Gross Domestic Product
MACRA	Mining Awards Corruption Risk Assessment
MECP	Ministry of Environment, Conservation and Parks
MENDM	Ministry of Energy, Northern Development and Mines
MNDM	Ministry of Northern Development and Mines
MTO	Ministry of Transportation
NGO	Non-Governmental Organization
OAIA	Ontario Association for Impact Assessment
OEAA	<i>Ontario Environmental Assessment Act</i>
PEST	Political, Economic, Social, and Technological
SCC	Supreme Court of Canada
TI	Transparency International
TI Canada	Transparency International Canada
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

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 Ontario.

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 Ontario. The systematic evaluation of the Ontario 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.

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 Ontario

SOCIO-ECONOMIC SIGNIFICANCE OF MINING IN ONTARIO

Mining is important to the Ontario economy and has been a major focus of government programming. The value of mineral production in 2017 was \$9.9 billion in Ontario (about 1% of the province's 2017 gross domestic product [GDP], or \$711.99 billion). Exploration and deposit appraisal expenditures in 2017 were \$526 million. From 2012 to 2016, the mining sector paid an average of \$2.2 billion in corporate income taxes and royalties annually. Mining taxes and royalties account for 60% of the taxes paid, while the remainder was corporate income taxes paid to the federal, provincial and territorial governments (Global Business Reports, 2018; Natural Resources Canada, 2019).

In 2017, Ontario had 151,735 jobs in the mineral and quarrying sector, about 2% of Ontario's overall employment (based on 7.3 million employed in the province), including direct employment in mining and quarrying, and employment in support activities for mining, non-metallic mineral product manufacturing, primary metal manufacturing, and fabricated metal product manufacturing. Direct employment in mining and quarrying accounted for 19,215 jobs and support activities for mines accounted for 6,830 jobs, which combined was 0.036% of provincial employment in 2017 (Natural Resources Canada, 2019).

Additionally, a major focus in Ontario is continuing Ontario's mining legacy by developing new mining sites. Ontario has historically been the largest mineral producer in Canada (Natural Resources Canada, 2019). There are numerous multi-generational mining camps in Ontario, including the Timmins camp, and camps in Thunder Bay and Sudbury. Timmins is one of the richest goldfields in the world and, if discovered today, would be worth approximately \$100 billion (Global Business Reports, 2018). Northwest Ontario continues to be enthusiastically mined. Ontario continues to want to expand its mining legacy with the Ring of Fire development in Northern Ontario. The Ring of Fire is often viewed as a massive opportunity for Ontario wealth generation and is thus at the forefront of EAs in the province. After commercially significant quantities of chromite and other minerals were found in the Ring of Fire region in Northern Ontario, in 2013 Treasury Board president Tony Clement called the region "Ontario's oil sands" (Hjartarson et al., 2014, p. 25; Tencer, 2013).

The Ring of Fire is approximately 5,120 square kilometres and is located in the James Bay Lowlands region of Northern Ontario, approximately 500 kilometres northeast of Thunder Bay. Significant deposits of chromite, copper, zinc, nickel, platinum, vanadium and gold have been found. The chromite deposit is the first discovery of commercial quantities in North America and is the fourth largest reserve in the world after South Africa, Zimbabwe and Kazakhstan. Ontario's Ministry of Northern Development and Mines (MNDM) estimated the Ring of Fire to contain roughly \$60 billion worth of minerals. However, there has been limited investigation by the province or the mining companies to substantiate that claim (McGee & Gray, 2019).

The Ontario government and the wider mining industry envision that the Ring of Fire could be a region of multi-generational mining activity similar to the Sudbury Basin, as the deposits are thought to be significant enough to sustain activity for a century. The largest chromite holding changed hands in March 2015 from Cliffs Natural Resources to Noront Resources Ltd. at a major loss for Cliffs Natural Resources, and all activity remains highly speculative, in part because the area has no historical or current industrial activity, and no road or rail access (Environmental Commissioner of Ontario [ECO], 2014; Giorno, 2015). Also, mining proposals in this resource-rich, inaccessible and ecologically sensitive area have generated significant controversy and conflict because the potential for wealth generation is accompanied by potential for significant and possibly serious net-negative, lasting cumulative effects and poorly distributed benefits and risks. Additionally, the value of the region may be significantly exaggerated (McGee & Gray, 2019).

Within the Ring of Fire there are five isolated First Nations communities, Webequie, Nibinamik, Neskantaga, Eabametoong and Marten Falls, and four other Indigenous communities that have road access to the south, Aroland, Long Lake 58, Ginoogaming and Constance Lake. Together, these First Nations make up the nine-

member Matawa Tribal Council. There are also numerous other First Nations communities outside the Matawa region that will be affected by the development, including those within the same watershed and those with long-standing relationships with communities within the Matawa region (Chong, 2014; ECO, 2014).

The Ring of Fire region is part of Ontario's ecologically significant Far North, which contains the world's largest area of boreal forest that is free from large-scale human disturbance (Chong, 2014). The Ring of Fire is also in the James Bay Lowlands — part of the Hudson Bay Lowlands, which form the world's largest peatland. Jointly, the boreal forest and the James Bay Lowlands serve as a crucial carbon sink for Canada and the world. Ring of Fire mining and infrastructure development would alter the regional landscape and ecosystems significantly, with impacts including habitat fragmentation, potentially serious release of pollutants and effluents into watercourses, possible impairment of carbon sequestration functions, increased hunting and fishing pressures facilitated by easier access, and probable introduction of non-native species (Chetkiewicz & Lintner, 2014; ECO, 2014).

The need for economic development, employment opportunities, adequate infrastructure and services (especially potable water and sufficient housing) in these remote Indigenous communities have also been major factors in deliberations about the potential contributions of mining in the Ring of Fire. Poverty, addiction and unemployment are common in the area (Atlin, 2019; Barrera, 2018; Gardner et al., 2012).

Developing infrastructure to support this development has been framed as crucial to Ontario's economic future (McGee & Gray, 2019; Porter, 2014; Ministry of Energy, Northern Development & Mines [MENDM], 2019). Determining assessment processes for this region has proven challenging and complex. The province established a secretariat to try to engage with the communities. However, negotiations have broken down between community and government. Ontario's negotiation process included commitments to enhanced assessment processes, but did not include regional assessment provisions or sustainability considerations. Additionally, negotiations and agreements have been private, with limited opportunity for inter-community or external comment (Atlin, 2019). Moving the projects forward will require continued focus on assessment, with few Ontario-based cases to draw from as examples of good and transparent practice.

INDIGENOUS PEOPLES AND MINING IN ONTARIO

Indigenous communities' dependence on the land, economically, culturally and spiritually, means that Indigenous communities are particularly vulnerable to the negative legacies of mining developments (Booth & Skelton, 2011; Cameron & Levitan, 2014; Canadian Foundation for the Americas, 2008). Mining companies, provincial and federal governments, and all other parties involved in mining undertakings in Canada now have increasingly clear legal, moral and practical obligations to engage Canada's Indigenous Peoples in the development process.

Resource development generates significant challenges for Canada's Indigenous communities, as the ecological and social burdens of resource development have historically affected Indigenous communities most significantly and often negatively, and these communities have typically had insufficient recourse to address damage and little to no access to financial benefits. However, resource development also implies significant potential opportunities for employment and economic development (Anderson et al., 2006; Canadian Foundation for the Americas, 2008; Gibson, 2014). For example, mining is the largest private sector employer of Aboriginal peoples in Canada on a proportional basis (Mining Association of Canada, n.d.).

In Canadian resource regions, Aboriginal rights and interests have historically been minimized, impacted and abused. However, some recognition of Aboriginal rights has been reinforced as a legal obligation under the Canadian Constitution, clarified in recent Supreme Court of Canada rulings (Chadwick 2013; McIlwraith and Cormier 2016), and supported by international initiatives (e.g., the United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP] and promotion of the concept of free, prior and informed consent prior [FPIC] to approval of proposed activities on Indigenous lands). Claims to traditional lands and resources are essential to nationhood. Land claims assist in building new opportunities and rebuilding Indigenous traditional economies to

improve socio-economic circumstances (Anderson et al., 2006). Indigenous Peoples earn on average 30% less, and have less on-reserve access to services than other Canadians (Wilson & Macdonald, 2010), and these limited financial resources have impacted health, education, housing, perceptions of identity and mental health (Anderson et al., 2006; Corntassel, 2008; Scholtz, 2006).

The right to self-determination also includes the right to limit or prohibit industrial development on treaty land (Yellowhead Institute, 2019). Indigenous communities are interested in controlling the form, impacts and benefits from economic development on their land, as well as overall self-determination (Alfred, 1999; Boutilier, 2017; Corntassel, 2008; Yellowhead Institute, 2019). Both development and self-determination relate to continuing colonial oppression of Indigenous Peoples and Indigenous Peoples' goal of exerting autonomy over their lands (Corntassel, 2008; Mercredi & Turpel, 1993; Yellowhead Institute, 2019). The impacts are reflected in the unfair distribution of negative legacies to Indigenous Peoples and benefits to the Canadian private sector and government (Gibson, 2014). The Canadian government and the private sector have often treated land claims dismissively, and have exploited resources despite Indigenous opposition (Coyle, 2014). The concept of the "social licence to operate" has improved Indigenous-private sector relations in many cases (Prno & Slocombe, 2012). However, Indigenous People gained increased western common law legal authority in 2014 as a result of the Supreme Court of Canada's (SCC) groundbreaking decision on Aboriginal title in *Tsilhqot'in Nation v. British Columbia*.¹ This victory came as a result of changing jurisprudence related to Indigenous rights in Canada (Coyle, 2010; Papillon & Rodon, 2017). The court granted the Aboriginal title based on pre-colonial land usage. This decision forms a precedent for future resource and land claim disputes and affirms the need for meaningful consultation to include Indigenous People (Palmer, 2017).

WOMEN AND MINING

Boomtown mining communities can have undesirable aspects for everyone, but are particularly problematic for low income women and especially Indigenous women (Castañeda Carney et al., 2020; Manning et al., 2018). Natural resource development frequently increases levels of crime, violence, anti-social behaviour and disorder in nearby communities. In a 2014 study of 3,000 respondents in a Canadian boomtown, residents "expressed concern about the reductions in quality of life due to anti-social behavior, drug use, and aggressive, impaired or dangerous driving" (Ruddell & Ortiz, 2014). Boomtowns also are linked to eroded senses of community and ugly forms of hyper-masculinity. Employment is primarily geared to men (O'Shaughnessy, 2011). Prostitution, spousal abuse, racism and lack of social services are common consequences (Kilanski, 2015).

The recent economic slowdown in Fort McMurray has resulted in even greater stress on women's shelters and services related to violence and spousal abuse (Ruddell & Ortiz, 2014). Bust times further exacerbate other problems. For example, a 2011 study of Tumbler Ridge, BC, found increases in unplanned pregnancies, sexually transmitted infections and mine-related injuries during booming mine activities. During bust times, mental health issues such as depression and anxiety were reported. Overarching community health issues prominent during both boom and bust periods include burdens to health and social services, family stress, violence toward women, and addiction issues (Shandro et al., 2011).

Race, sexuality, economic status, among other factors, also play a significant role in shaping women's experiences. In particular, "racial minority women experience discrimination in a completely different way than racial minority men or even women as a gender" (Ontario Human Rights Commission, n.d.). The likelihood

¹ Aboriginal title is important because "once established, Aboriginal title gives the right to exclusive use and occupation of the land for a variety of purposes, not confined to traditional or distinctive uses. Aboriginal title holders have the right to decide how land is used and the right to benefit from those uses, subject to the requirement that the uses must be consistent with the group nature of the interest; this condition means that the Aboriginal title land cannot be dealt with in a way that would prevent future generations of the group from using and enjoying it. The SCC also said that once title is established, it may be necessary for the Crown to reassess its prior conduct and potentially cancel decisions that result in an unjustifiable infringement of Aboriginal title" (Osler, Hoskin & Harcourt LLP, 2014).

of boom and bust economies, isolated highways, lack of affordable safe housing, lack of transit, high costs of living and inadequate social services impact women differently, particularly in male dominated remote mining communities.

Under the pressure of historic and ongoing colonialism, Indigenous women have proven resilient and represent a key to the survival of their community and culture (Anderson & Lawrence, 2003). Indigenous women “play a critical role in the survival of families and communities and in healing the effects of social trauma, maintaining cultural vitality and fighting for recognition of Indigenous rights” (O’Faircheallaigh, 2013, p. 1,791). The role that Indigenous women play in their communities, including in mining development negotiations, is crucial for community well-being and development (O’Faircheallaigh, 2013). Indigenous women experience significant inequality (Findlay & Wuttunee, 2007), but in spite of these challenges, remain the foundation of their communities (Settee, 2016).

Despite the clear and important leadership function that Indigenous women play in their communities (O’Faircheallaigh, 2013; Settee, 2016), their role is only beginning to be acknowledged through government support (Boutilier, 2017; Dorrell, 2009; Parks Canada, 2014; Sadiq, 2017).

CUMULATIVE EFFECTS AND MINING

Concerns over cumulative effects resulting from mining anchor much of this report and discussion. Cumulative effects are defined as “changes to the environment that are caused by an action in combination with other past, present and future human actions” (Hegmann et al., 1999, p. 3). “Cumulative impacts are the successive, incremental and combined impacts of one, or more, activities on society, the economy and the environment. Cumulative impacts result from the aggregation and interaction of impacts on a receptor and may be the product of past, present or future activities” (Franks et al., 2010, p. 300). Anticipating cumulative effects is a major conceptual consideration within this study as they are poorly integrated into modern assessment practice and the cause of significant conflict in the Canadian mid-North.

Long-term cumulative effects are crucial in mining cases because orebodies are exhaustible resources and mines have limited and uncertain life expectancies. Also, the legacy effects from mining operations have often been negative. These legacy effects include the depletion of resources, boom/bust effects, residual socio-economic damage, residual contamination and risks, inappropriate infrastructure, and adverse cultural effects in Indigenous communities (Gibson, 2014).

Cumulative effects, therefore, involve combinations and interactions among factors that influence existing social and/or ecological systems or their components. The diverse characteristics of cumulative effects can be recategorized as four types of impacts particularly relevant to mining: (1) coincident effects; (2) induced effects; (3) lifecycle effects; and (4) legacy effects.² Most importantly, all these effects interact and need to be considered together. Also, cumulative effects include the full range of impacts, positive and adverse, near and long term, social, economic and cultural as well as biophysical effects and their interactions (Atlin & Gibson, 2017).

MINING PERMITTING REGIME IN ONTARIO

To acquire rights of reconnaissance in Ontario, one must obtain a prospector’s licence. Prospector’s licences can be obtained by contacting the Ministry of Energy, Northern Development and Mining (MENDM), completing the requisite forms and paying a nominal fee. Ontario is a free entry system, which means that prospectors are able to

² Coincident effects are independently initiated activities in the same system. Induced effects are where one effect or set of effects leads to others; e.g., where one project and its infrastructure in an area facilitate additional projects and associated effects. Lifecycle effects are through product chain, cradle to grave, cradle to cradle. Legacy effects are effects that follow and may extend far beyond the active life of the focal undertakings, such as decommissioned mines with tailings facilities that may entail monitoring and management in perpetuity.

“obtain rights to Crown minerals without owning the land in question and without obtaining the Crown’s permission. That is, the Crown retains no discretion in deciding whether to grant or deny rights to obtain minerals” (Drake, 2015, p. 190). In particular, features of a free entry system include the ability to stake land on any Crown or non-Crown land and the Crown’s limited discretion to revoke a staked claim (Drake, 2015).

Once a prospector has obtained their licence, they may stake a claim utilizing Ontario’s online registration system (see Figure 1). As of 2009, prospectors have to submit an exploration plan or permit when certain activities are undertaken.³ That plan or permit is provided to affected Indigenous communities by the ministry. In turn, this exploration may also require the submission of a class environmental assessment administered and reviewed by the MENDM. The exploration plan directs the prospector to engage in consultation and provides the standards of consultation. Once a claim is staked, the claim holder can exclude all others from staking a claim in the claim area (MNDM, 2018).

Prior to 2009, exploration permits and plans were not required. Their implementation emerged in response to concerns over the lack of considering and accommodating the duty to consult in free staking. This report does not consider the effectiveness of the exploration plan and permit process.

To retain a mineral claim, a prescribed amount of work must be conducted on the claim. An “assessment report” that describes the exploration and costs incurred by the prospector must be filed annually with MENDM.

Prior to commencing mining activities, mineral claims must be converted to mining leases. Mining leases permit the full exploitation of the resources. A letter of intent must be submitted to the Provincial Office’s Technical Services Unit upon any time after completion of the assessment work has been performed and submitted and approved. During the lease application process and before it can be completed, the claim holder must acquire surface rights. Most mining in Ontario occurs on Crown land, meaning that the Crown owns the surface rights and those rights will be granted during the lease application process (MNDM, 2016). The land must also be surveyed and fees, including the first year’s rent, must be paid. Upon completed of this process, as well as compliance with other permitting instruments, such as explosives or permit to take water, mining planning and operations may commence. A federal-level project assessment process, as well as a voluntary provincial assessment (individual assessments), may also be undertaken if the mine reaches a certain size threshold during the mining planning stage.

This research focuses upon the project environmental assessment process, as opposed to other licensing and permitting processes, despite the fact that it is not a required permitting process in the Ontario mining process. Private enterprise is excluded from individual project assessment in Ontario. Ontario has begun to enter into voluntary agreements with mining companies to undertake individual assessments (Ministry of Environment, Conservation & Parks [MECP], 2019a). This ad hoc application of the individual assessment is the focus of this research. However, it is also discussed that the streamlined/class assessment process that often pertains to mines. Ontario’s complex system means that practitioners, Indigenous community members and others must navigate both processes related to mining projects.

The limited application of assessment for mining projects is particularly important to note given Ontario’s role as Canada’s largest mineral producer and that Ontario is the only jurisdiction in Canada without mandatory environmental assessment of mining projects. Although Ontario mines are subject to other regulatory processes and approvals, project-level assessments are not mandatory. The Auditor General summarized the difference between environmental assessment and other permitting processes in Ontario in Table 1.

³ Exploration permits are required for “Line cutting that is a width greater than 1.5 metres; Mechanized stripping of a total surface area of greater than 100 square metres within a 200-metre radius (and below advanced exploration thresholds); Excavation of bedrock that removes more than three cubic metres of material within a 200-metre radius; Use of a drill that weighs more than 150 kilograms” (MENDM, n.d.).

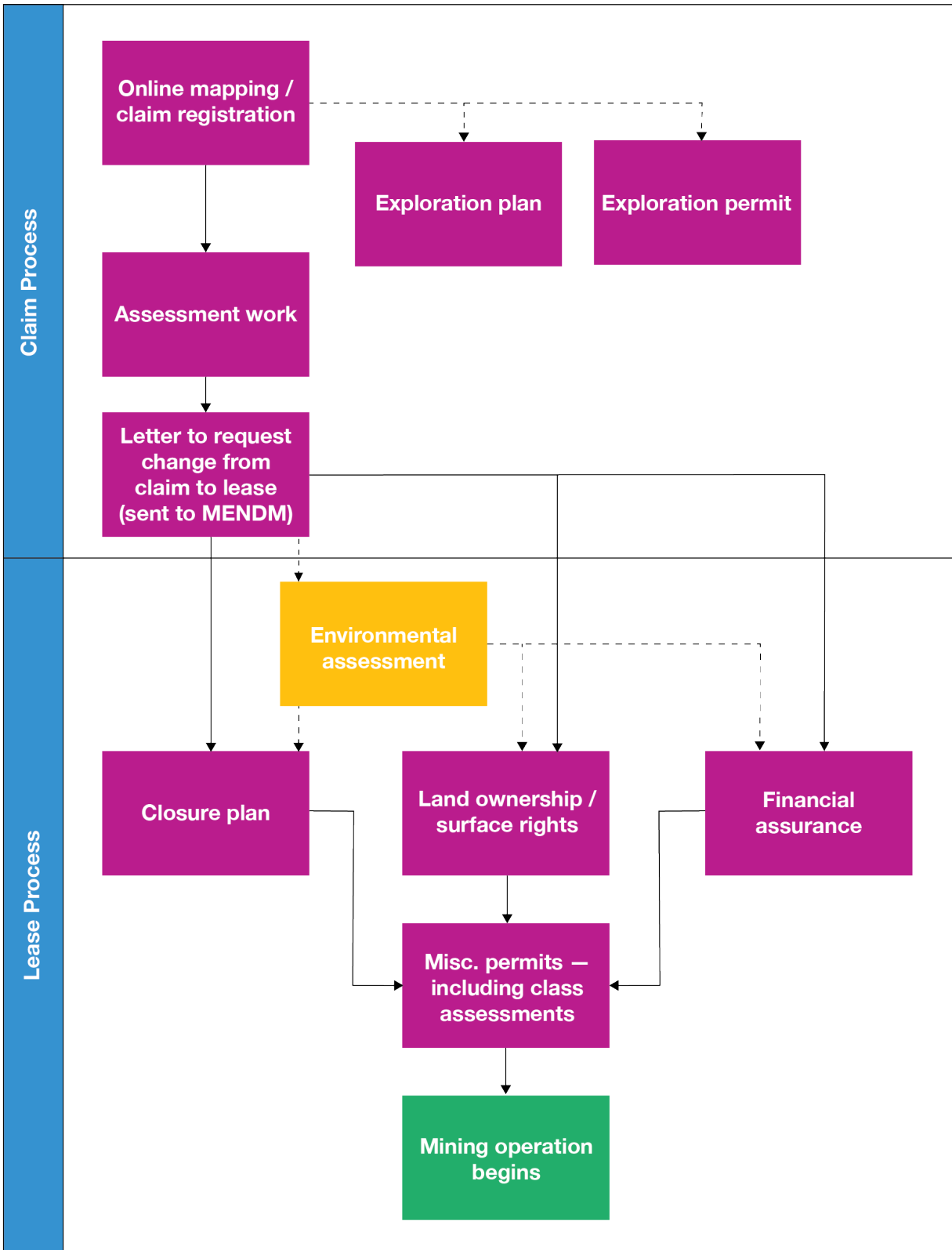


Figure 1. Ontario mining claim and lease process

Table 1. Comparison of Ontario's environmental assessment process and other regulatory processes (Office of the Auditor General of Ontario, 2018)

	Environmental Assessments	Other Regulatory Processes /Approval*
When is approval required?	During project planning	Prior to project construction or operation, but after project planning
What is the overall purpose of the process? <ul style="list-style-type: none"> • alternatives to the project — i.e., different ways of addressing the need being addressed by the project; and • alternative methods of carrying out the project — i.e., different ways of doing the same project? 	To ensure that potential environmental effects are considered before a project begins.	To establish rules for specific activities in a way that helps protect the natural environment and human health
Does the assessment consider”	Yes	No
Does the assessment consider potential environmental effects on the natural, social, economic, cultural and built environments and how they interrelate for every alternative being considered?	Yes	No (only the natural environment)

* Other approvals could include, but are not limited to, environmental compliance approvals, permits to take water, work permits to conduct work on Crown lands, or endangered species overall benefit permits.

The environmental assessment process has been a key focus of reform for many Canadian jurisdictions, including the federal government, the province of BC and others. However, Ontario's process has not been extensively modernized in decades, despite public requests for improvement from many agencies, including the Auditor General of Ontario and the Environmental Commissioner of Ontario (ECO). The chart in Table 1, from the Auditor General of Ontario, demonstrates the important role that assessments play compared to other regulatory processes/approvals.

EA thus acts as an important planning and decision-making tool before a project begins, as opposed to simply a mechanism for compliance. In Ontario, the project assessment process work effectively on many public sector projects. Assessment in Ontario has also filled a crucial role for meeting the constitutional requirements to consult and accommodate Indigenous Peoples.

Moreover, EAs play a significant role in enhancing public trust and confidence in mineral development. The application of the EA effectively contributes to achieving FPIC, as well as transparency and accountability, by informing the public about positive and negative impacts, how positive impacts would be maximized and negatives would be mitigated or minimized. However, the lack of mandatory EAs for mining projects may create transparency and accountability obstacles and the right of Ontarians to contribute to the decision process of whether and how Ontario mineral resources should be exploited. In this regard, when focusing on the EA process in Ontario as part of the Accountable Mining Program in Canada it is critical to conduct an evidence-based study to evaluate if the current EA permitting creates transparency and accountability obstacles.

ENVIRONMENTAL ASSESSMENT IN ONTARIO

In Ontario, there are two types of environmental assessments: streamlined/class assessments and project assessments. Project assessments are the responsibility of the Ministry of Environment, Conservation and Parks (MECP) and are not required (unless regulated or designated by the province) for private proponents (*Environmental Assessment Act* [EAA], 1990). Class assessments are divided responsibilities and are administered by their responsible ministry and are smaller and expected to be more predictable in impacts.

AGENCIES INVOLVED

Ontario does not require mining projects, as private enterprises, to be assessed, unless they are designated by MECP or the company volunteers to undertake assessment. The primary authorities and related legislation for environmental assessments are listed in Table 2.

Table 2. Responsible authorities for environmental assessments in Ontario

Legislation	Responsible Agency	Trigger for Conducting an Environmental Assessment	Environmental Assessment Process Description
<i>Environmental Assessment Act</i>	Ministry of Natural Resources and Forestry	Construction of buildings, roads, dikes, excavation, water crossings, stream bank stabilization, etc., on Crown land	Class environmental assessment (EA) for Resource Stewardship and Facility Development Projects
<i>Environmental Assessment Act</i>	Ministry of Transportation	Construction or realignment of a provincial highway as part of a mine project	Class EA for provincial highways
<i>Environmental Assessment Act</i>	Ministry of Environment, Conservation and Parks (MECP)	None. Voluntary agreement between ministry and proponent to assess a mine under the individual assessment requirements	Individual assessment
<i>Environmental Assessment Act</i>	MECP	Construction of a transmission line to provide power for mine development	Class EA for minor transmission line facilities
<i>Environmental Assessment Act</i>	MECP	Construction of an electricity project to provide power	EA for development of an electricity-generating facility
<i>Environmental Assessment Act</i>	MECP	Construction of a waste management project	Class EA under the <i>Waste Management Projects Regulation</i>
<i>Impact Assessment Act</i>	Impact Assessment Agency of Canada	Designated by the <i>Physical Activities Regulation</i> . Broadly, a new mine with an ore production capacity of 5,000 t/day or more; and expansion of an existing metal mine that would result in an increase in the area of mine operations of 50% or more and a total ore production capacity of 5,000 t/day or more	Project impact assessment

<i>Mining Act</i>	Ontario Ministry of Energy, Northern Development and Mines (MENDM)	Undertakings over which MENDM has a discretionary decision-making ability, such as surface rights, mining rights and chattels, and mine rehabilitation activities	Class EA for activities of MENDM under the <i>Mining Act</i>
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Source: Modified and updated from MNDM, 2008

CLASS ENVIRONMENTAL ASSESSMENT

Streamlined assessments “can be used for routine projects that have predictable and manageable environmental effects. Proponents of these types of projects follow a self-assessment and decision-making process. Approval is not directly granted for each project” (MECP, 2020b). It is important to note that “projects planned following a streamlined process are: pre-approved or exempt (minister’s approval is not required); conditional upon being planned according to the streamlined process; and not required to conduct a higher level of assessment such as an individual environmental assessment” (MECP, 2020b). Class EAs in Ontario are a form of streamlined assessment and follow a “streamlined self-assessment process” (MECP, 2020b).

The class EA process is the primary approach that applies to mining in Ontario. A class environmental assessment “applies to projects that are carried out routinely and have predictable environmental effects that can be readily mitigated” (Government of Ontario, 2020a). It is “a document that sets out a standardized planning process for classes or groups of activities” (Government of Ontario, 2020a). Class EAs apply to numerous components of the mining process. They apply directly to mining in the exploration and decommissioning processes, electricity transmission, municipal road projects, water and wastewater treatment, highways, waterpower projects, and resource stewardship projects. Therefore, class EAs apply to pre- and post-mine development stages, as well as during mine development to support the mine. These class assessments are perceived as “routine” and “predictable.” Class EAs are limited in scope and evaluate narrow impacts. However, cumulatively, they can contribute to the development of a project that can have significant effects on the environment in which they are located.

The class EA process is further refined into different levels of assessment, based on the anticipated effects. The effects of modernizing Ontario’s *Environmental Assessment Act* (EAA) are assumed to expedite the assessment process, through expanding exemptions and limiting the capacity of the class EA. Further analysis of the class EA process is required to understand the impact of proposed legislative changes to mining project’s supplementary infrastructure.

Class level assessments are utilized for discretionary tenure activities, specifically in the initial exploration process as well as in the closure process. Class assessments in the exploration and closure stages are managed by MENDM under the *Mining Act*. This class process considers the environmental impacts of exploration or closure and is not applicable for assessment for a proposed specific mining project (developing and operating an open pit or underground mining) (MNDM, 2014).

“Class assessments” are utilized for projects with predictable impacts, such as electrical generation, roadways, etc., to streamline decision-making and reduce ministry review burden. For class EAs, which are self-assessed by proponents, all projects are, “either ‘pre-approved’ and have no further environmental assessment requirements, or are approved as long as they successfully follow the planning process in the approved class environmental assessment” (Government of Ontario, 2019b). If a class EA is sorted into a B or C level of impacts, the ministry may have additional input and involvement in the review.

PROJECT ASSESSMENT (INDIVIDUAL ENVIRONMENTAL ASSESSMENT)

Ontario is the only Canadian jurisdiction that does not have mandatory EA assessment on private sector projects, including mining, because private enterprise is exempt under the EAA (EAA, 1990, s. 3) (see Table 3). The complicated process in Ontario relates specifically to the nature of assessment in the province, which says that “private sector (e.g., mineral sector) projects are not subject to the *Environmental Assessment Act* unless the project triggers the environmental assessment requirements of another ministry or agency, or is designated by regulation or through a voluntary agreement with the Minister of the Environment and Climate Change” (MNDM, 2018a, p. 7). Therefore, the only legislated mandatory project assessment requirement is at the federal level.

Table 3. Comparison of EA practice on private sector projects in Canadian jurisdictions

Jurisdiction	Project EA Applied to Mines	Threshold/Trigger
Federal	Yes	5,000 t/day or expansion of operations by 50% or more
Alberta	Yes	All oil sands mines and coal mines over 45,000 t/year
British Columbia	Yes	75,000 t/year
Manitoba	Yes, and to mills, refineries and smelters	All mines enter a screening process where technical review and public comments determine type of review
New Brunswick	Yes	“All commercial extraction or processing of a mineral as defined in the Mining Act”
Newfoundland and Labrador	Yes	All mines and mineral processing
Nova Scotia	Yes	All mines and bulk sampling over 100 t
Nunavut	Yes, and exploration activities	A screening phase looks at ecological, harvesting, socio-economic, public concern and technological issues to determine if a full review occurs
Northwest Territories (McKenzie River Watershed)	Yes, and exploration activities	Exploration and mining activities require a land use permit that triggers a screening. Full reviews are done for all mines and some exploration projects.
Quebec	Yes	2,000 t/day for metal mines, all rare earth or uranium mines and other mines over 500 t/day
Saskatchewan	Yes	Development projects with potential impacts must submit to screening
Yukon	Yes, and exploration activities	Smaller exploration projects screened by regional office. Larger projects and mines are screened by executive committee, with all mining projects and some exploration projects going to a full review.
Ontario	No	Not applicable

Projects that trigger federal assessment under the 2019 *Impact Assessment Act* are new mines with ore production capacity of 5,000 t/day or more, and expansion of existing metal mines that would result in an increase in the area of mine operations of 50% or more and a total ore production capacity of 5,000 t/day or more. These major projects’ trigger is a high production bar that will rarely be met, according to mining professionals

interviewed, meaning that most operating mines in Ontario do not have to undertake impact assessments for mine expansions or smaller undertakings. This high threshold will result in the continued exclusion of most mines from EAs in Ontario. For example, only 17% of operating metal, diamond or gold mines in Ontario have ever been subject to a federal project-level assessment.

Ontario does utilize a voluntary agreement process where proponents agree to engage in a provincial assessment that is called individual assessment. Currently, mines do not have individual assessment requirements under Ontario’s legislation (EAA, 1990, s. 3). However, components of the mine are often caught under class EA requirements (e.g., transmission lines, road improvements) (EAA, 1990, Part II). In some cases, mining proponents may consider entering into a voluntary agreement with the province if the proponent is aware of “public interest” in its proposed project or if the proponent is required to complete multiple class environmental assessments for a project (as doing an individual EA allows enables them to address all requirements in one process, rather than in multiple processes). There is no definition or criteria of what makes something of “public interest” to a mining company or to the Ontario government. Where the mining proponent has signed a voluntary agreement with the MECP to subject the project to individual EA requirements, and the proposed project has also triggered federal impact assessment requirements, both government jurisdictions will harmonize the assessment process, where possible. As at the end of December 2019, the minister has designated only one mine as being of public interest, and that was because of public requests for designation, following the Auditor General’s 2018 review.

In practice, voluntary assessments appear to only emerge in major projects where federal assessment is being undertaken and companies then volunteer to undertake provincial assessment. The Auditor General’s Annual Report states that “of the 32 mining operations and related projects that were initiated after the enactment of the Act and are currently being planned or in production, only eight have undergone a provincial environmental assessment. For these eight, the mining companies voluntarily conducted the assessments because the project was already subject to a federal environmental assessment” (Office of the Auditor General of Ontario, 2018, p. 350). As stated above, under voluntary agreements, proponents agree to ensure that projects meet the conditions of the EAA. As Table 4 demonstrates, public requests for project-level assessment infrequently generate designations for project assessment.

Table 4. Public requests for EAs for private sector projects, 1976–2016 (Office of the Auditor General of Ontario, 2018)

Type of Project ¹	Number of Projects the Public Requested to Undergo Environmental Assessments	Number of Projets Where Request was Denied	Number of Projects Where Request was Approved
Quarries	13	12	1
Industrial facilities ²	8	6	2
Mining operations	5	4	1
Residential development	5	5	0
Private infrastructure ³	3	3	0
Other ⁴	8	5	3
Total	42	35	7

¹ Figure includes requests related to private-sector projects that are not currently captured under the electricity or waste management regulations.

² Industrial facilities include three manufacturing plants, a refinery, a mineral processing plant, and two cement plants and kiln, and a pulp mill.

³ Private infrastructure projects were a marina expansion, a snowmobile trail and a disposal system.

⁴ Other projects include an ecological restoration, a harbour remediation, an access road to an island, a grain storage facility, a municipal airport, an energy-from-petroleum-coke generation station, a storage facility for dangerous goods and a crematorium.

The minister can also designate a project for assessment, but again, as noted above, no mining project has ever been designated. However, engaging in a voluntary agreement expedites the processes for proponents if there is any probability that the government could designate the project. As of December 2019 in Ontario, nine mining, one quarry and one mine waste landfill projects have undertaken or are currently involved in a voluntary agreement for individual assessments (MECP, 2020a; Government of Ontario, 2019a). Those projects are:

- Bending Lake Iron Mine
- Cliffs Chromite Project
- Côté Gold Project
- Hammond Reef gold mine
- Marathon Platinum Group Metals and Copper Mine Project
- Noront Eagle's Nest Multi-metal Mine
- Rainy River Gold Mine
- Springpole Gold Project
- Adams Mine landfill
- Highland Companies proposed quarry in Dufferin County.

The Ontario *EAA* is designed for public proponents with specific considerations for review, which are primarily related to public interest. Interviewees have indicated that the process was often at odds with proponent considerations, including intellectual property concerns or internal firm information about other potential developments in other jurisdictions when designing alternatives. Additionally, interviewed experts have found that the materials required for Ontario's process are often extremely detailed compared to the federal process or other provincial jurisdictions, often expecting information that would normally not be required in another jurisdiction until later permitting stages. The infrequent applications in the voluntary process means that there is little experience to draw from.

If a federal comprehensive project EA is required, consultants have indicated that the process is clear, identifiable and anticipatory. Mining project assessments are thus only required under federal legislation if the project is on Crown land or impacts federal authorities, as designated through the project list under the *Impact Assessment Act*. However, many mining proponents for Ontario greenfield mine sites in recent history have also decided to undertake a provincial assessment process, because of corporate interest in undertaking an assessment to reduce the class assessment burden or to prevent designation by the ministry.

The federal government and the province have a cooperation agreement, and some recent mining project assessments have been "joint" in nature (Marathon Metals and Rainy River) where one report was produced that satisfies the requirements of both jurisdictions, but where separate provincial and federal approval is still required. The coordinated mining EAs in Ontario are:

- Bending Lake Iron Mine, formerly the Josephine Cone Mine Project (in progress since 2012)
- Côté Gold Mine (in progress since 2013)
- Detour Lake Mine Project (specifically for the review of the electrical transmission line and power generation, not the mine project itself)
- Hammond Reef gold mine (in progress since 2011)
- Hardrock Gold Mine (in progress since 2014)
- Noront Multi-metal Mine (in progress since 2011)
- Rainy River Gold Mine (approved in 2015).

One jurisdiction will take the lead in administering the assessment. Determining which jurisdiction fulfills the role of the lead party in the assessment is based on whether the land is under federal or provincial jurisdiction. If both

parties have jurisdiction, the lead party will be determined by mutual agreement. Very few projects in Ontario have undertaken a cooperative assessment, meaning a “one project, one assessment” model where the federal and provincial government coordinate. There are significant differences between the federal assessment and the provincial assessment. Most interviewed consultants have referred to the federal and provincial processes as “separate,” and the required information for each assessment is different. Additionally, in a presentation about the modernization of the Ontario environmental assessment process, MECP outlined that the 2004 agreement is outdated and a new cooperation agreement is necessary to find efficiencies and reduce duplication (Lashbrook, 2019). Similar to the new federal impact assessment, one project, one review will be a major emphasis of Ontario’s future assessment approaches to streamline and increase efficiencies (MECP, 2019b).

It is important to note that expansions and brownfield development have infrequently been considered in project assessment processes in Ontario. Expansions and brownfield developments have been approved or undertaken utilizing closure plans (as occurred in Timmins) or through other permitting processes or through a class assessment.

4 Methodology

RESEARCH DESIGN

This section of the report is directly extracted from the BC jurisdictional report and modified for the Ontario report.

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. The primary unit of analysis is the EA process for mining projects within the case of interest — Ontario. Field sites were chosen based on key characteristics such as access to key informants, ease of geographic access and likelihood of exposure to key concepts of concern. Based on these criteria, field-based research activities were implemented in Toronto, where a large number of academics, EA experts and mining companies are based and given its prominence as the seat of provincial government agencies; and in three areas that serve as illustrative cases for mining-affected communities in Ontario, namely Thunder Bay, Eabametoong and Timmins.

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 Ontario, as well as focus group meetings. These data sources were qualitatively reviewed and coded by the research team to corresponding risks in the MACRA Tool. In the event a risk did not have a corresponding pre-identified risk, it was identified as a contextual-specific risk in the analysis. The risk matrix approach was used for assessing risks, and the validation of the risk assessment was conducted via an online survey and a multi-stakeholder workshop held in.

Sampling Method: Key informants were identified first via the creation of a stakeholder map of diverse stakeholders who would have relevant knowledge on Ontario’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.

Research Limitations: This research was limited because of the challenge of gathering knowledgeable participants. In particular, there were very few individuals from the Ontario government or the mining sector who were willing to participate in the research; therefore, there are limited governmental and mining sector perspectives in the research.

This research was also limited by its time span. Additional field research to Eabametoong First Nation was planned. However, because of ongoing initiatives and challenges in the community, the research team was unable to schedule a visit during the field study period.

DATA COLLECTION

STAKEHOLDER ANALYSIS

Stakeholder analysis for the Ontario research is summarized in Table 5.

Table 5. Stakeholder analysis

Who	Interests	Motivations and Expectations	Ability and Willingness to Participate
Indigenous Communities	<ul style="list-style-type: none"> • Exercise of constitutional rights • Access to benefits from mining • Free prior and informed consent (FPIC) and shared decision-making • Poverty reduction • Traditional use of land • Exiting colonial relationship 	<ul style="list-style-type: none"> • Maintenance and improvement of traditional ways of life • Improved, lasting well-being • Economic development that diversifies and fosters Indigenous small businesses • Improved relationships with provincial authorities • Improved the well-being of the community • Maintenance of a pristine natural environment • Prevention of irreversible change • Protection of treaty rights • Development of a framework that shares authority and power in decision-making with the province 	<ul style="list-style-type: none"> • Constitutionally entrenched rights, supported by court rulings • International agreements • Presence on the land
Province of Ontario	<ul style="list-style-type: none"> • Royalties, income tax, etc. • Obligations to Indigenous communities • Expansion of mining production (based on historic industrial importance) 	<ul style="list-style-type: none"> • Mining royalties • Improved socio-economic conditions (i.e. per capita income, decreasing unemployment, etc.) for communities, including First Nations communities • Fulfilment of election promises • Development of roads, infrastructure and mines • Duty to consult and accommodate 	<ul style="list-style-type: none"> • Constitutional authority • Associated law, policy, budgets, institutional structures, etc. • Money • Historic precedence in resource development • Lack of experience in large-scale mining development • Historic colonialism and obligations towards rectifying historic wrong-doings

		<ul style="list-style-type: none"> • Requirement to consult with impacted parties • Utilization of pre-existing policy and legislative structures 	
Proponents	<ul style="list-style-type: none"> • Development of the Ring of Fire as profitably as possible • Substantial infrastructure investment by the province • Development of mines that optimize profit • Lack of buy-in from Indigenous communities • Future of company rides on approvals 	<ul style="list-style-type: none"> • Development of mines • Profit generation for shareholders 	<ul style="list-style-type: none"> • Historic precedence for resource development in Canada • Financial resources and powerful support within government/lobbying capacity • Employment and economic contributions, particularly in First Nations communities
Government of Canada	<ul style="list-style-type: none"> • Constitutional responsibilities • Poverty reduction in Indigenous communities • Expansion of economic development • Expectations of opposing stakeholders 	<ul style="list-style-type: none"> • Duty to consult and accommodate in federal jurisdiction • Impacts provision of services under Ministry of Indian Affairs 	<ul style="list-style-type: none"> • Indigenous affairs are within federal jurisdiction under the constitutional division of powers
Environmental non-governmental organizations	<ul style="list-style-type: none"> • Improved ecological outcomes from mining projects • Canadian alignment with international standards • FPIC • Decarbonization • Prevention of bio-diversity loss • Management of cumulative effects 	<ul style="list-style-type: none"> • Preservation of complete ecosystem 	<ul style="list-style-type: none"> • Knowledgeable and passionate staff

DESKTOP RESEARCH

Significant research exists on best practice and critiques of environmental assessment methods for Canada. This research formed the foundation of the analysis, simultaneously considering what is objectively desirable for assessments and, conversely, what is problematic for Ontario. Materials were coded based on the identified risks.

SEMI-STRUCTURED IN-DEPTH INTERVIEWS

A total of 22 people were interviewed for this project for approximately one hour per interview: seven consulting practitioners, seven members of the federal and provincial government (both elected and civil servants, three

members of Indigenous communities in the Timmins region, two members of non-governmental organizations (NGOs) or civil society groups, two academics and one mining company representative. Seeking the views of EA practitioners and consultants reflected the reality of the Ontario system, where consulting firms are the most knowledgeable about the assessment process.

FOCUS GROUP MEETINGS AND WORKSHOPS

As a research method “the workshop is, on one hand, authentic, as it aims to fulfil participants’ expectations to achieve something related to their own interests. On the other hand, the workshop is specifically designed to fulfil a research purpose: to produce reliable and valid data about the domain in question” (Ørngreen & Levinsen, 2017). Information workshops, with the primary purpose of informing the participants about the research, took place and information was provided to approximately 80 people and to smaller groups of 15 people.

Focus group style workshops and meetings, with dialogue emerging from semi-structured questions, focused on the mining community and Indigenous People. Eight women (four Indigenous and four non-Indigenous) took part in a women’s tea, which provided dialogue and comfortable conversation in Timmins. Ten Indigenous youth, aged 18–22 and interested in mining, participated in a mining and cumulative effects workshop.

THE MACRA TOOL

This research was conducted using the MACRA Tool, a methodology created specifically for Transparency International’s Accountable Mining Program for application to legal (regulated) mining activities. By following the methodological steps of this tool, which will be further explained in this section, the research team outlined certain vulnerabilities related to transparency and accountability in the EA process in Ontario. These vulnerabilities create certain risks, which were also highlighted in this research and assessed in terms of likelihood and potential impact. The MACRA Tool aims to shed a light on where practice diverges from regulation, or where implementation issues that were not contemplated or intended by the legislation arise. It was designed to study legal, regulated mining. It was not designed to assess illegal mining, nor does it take into consideration the oil and gas sector, which has a distinctive set of risks that are beyond the scope of this tool (TI, 2017). In the MACRA Tool, “awards” means permitting or leasing regulations.

The MACRA Tool is modelled on a qualitative assessment methodology that includes nine steps, as laid out in Figure 2.

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).

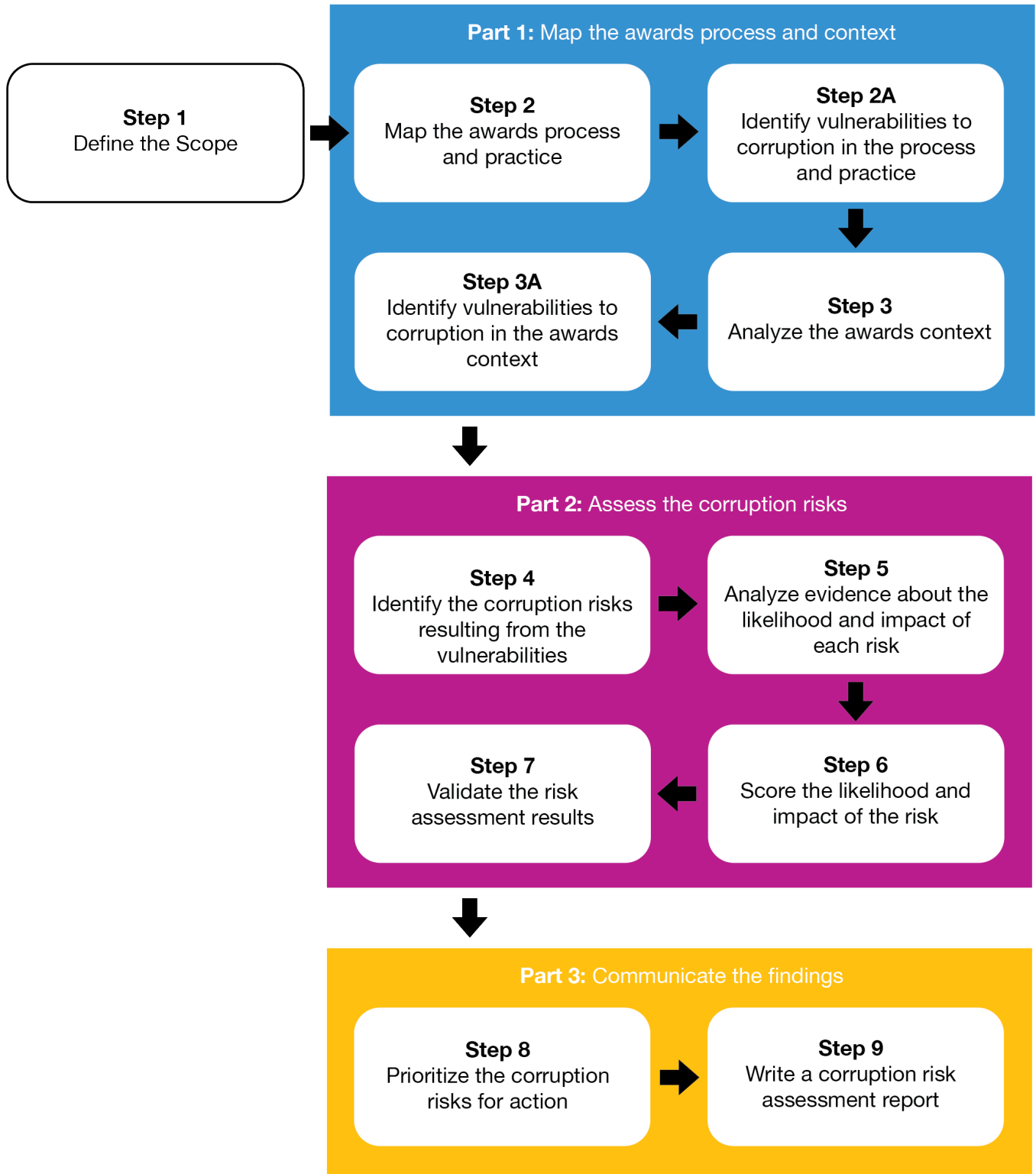


Figure 2. Methodological steps of the MACRA Tool

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 2, 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 Ontario.

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 6.

Last but not least, validating the risk assessment results is Step 7. 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 Ontario'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.

Following the process mapping and contextual analysis, the MACRA Tool includes a risk assessment. As shown in Figure 4, the risks assessment is performed in four steps: identifying the corruption risks resulting from the vulnerabilities (Step 4); analyzing evidence related to 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, and these were used as a base to identify relevant risks in Canada. The research team also defined new risks and vulnerabilities based on the Canadian context and in the Canadian EA process.

In Steps 5 and 6, data from interviews, focus group meetings and the literature were used as evidence to assess impact and likelihood. The scoring was based on a five-point scale for both likelihood and impact, as shown in Table 6. The team determined likelihood based on the probability that a risk will occur. Impact was determined based on the degree to which the occurrence of a risk would weaken the EA process and the Canadian mining industry, and on the effects it would have on local communities and the general public.

The vulnerabilities outlined have the potential to impact:

- Accountability, fairness and efficiency in decision-making
- Rights to ownership and communities' access to land and water
- The environment
- Fair benefit-sharing
- Public's and landowners' knowledge about the management of their resources
- Ability of the sector to attract investors
- Quality of projects
- Provincial revenue from application fees
- Rule of law
- Reputation of the Canadian mining industry.

Validating the risk assessment results is undertaken in Step 7. Assessing the likelihood and impact of risk involves making a judgement. Even though the scoring is performed based on evidence, minimizing bias is critical in the MACRA methodology. Therefore, a robust validation process involving other perspectives was used to minimize the potential subjectivity and possible bias perception of the researchers.

Table 6. Scoring scale of likelihood and impact of risks

Likelihood Scoring	Impact Scoring
5 out of 5: almost certain that 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

Validated risk assessment results present the most critical issues having a significant impact on the mining sector and on public trust in how the natural resources are managed. The scored risks are listed from the most critical risk with the highest score to the lowest score in Step 8 and the recommendations and discussion on these risks are completed in Step 9 in this research.

5 Analysis

PROCESS MAPS AND VULNERABILITIES

Figures 3, 4 and Appendix 1 demonstrate where individual EAs fit into the mining process, where class assessment fits in to the mining process, and the process for class and project assessment in Ontario, respectively. These figures also consider the practice for assessments beyond the written regulatory stipulations. One important element to note in the process of engaging in the project assessment is that consultants employed by proponents did not see the agreement to engage in assessment as voluntary. They suggest that they were directed by MECP staff to engage in assessment to avoid potential designation and additional delays. Therefore, the entry point into the voluntary assessment process may be Ministry directed, due to concerns related to public interest from their perspective.

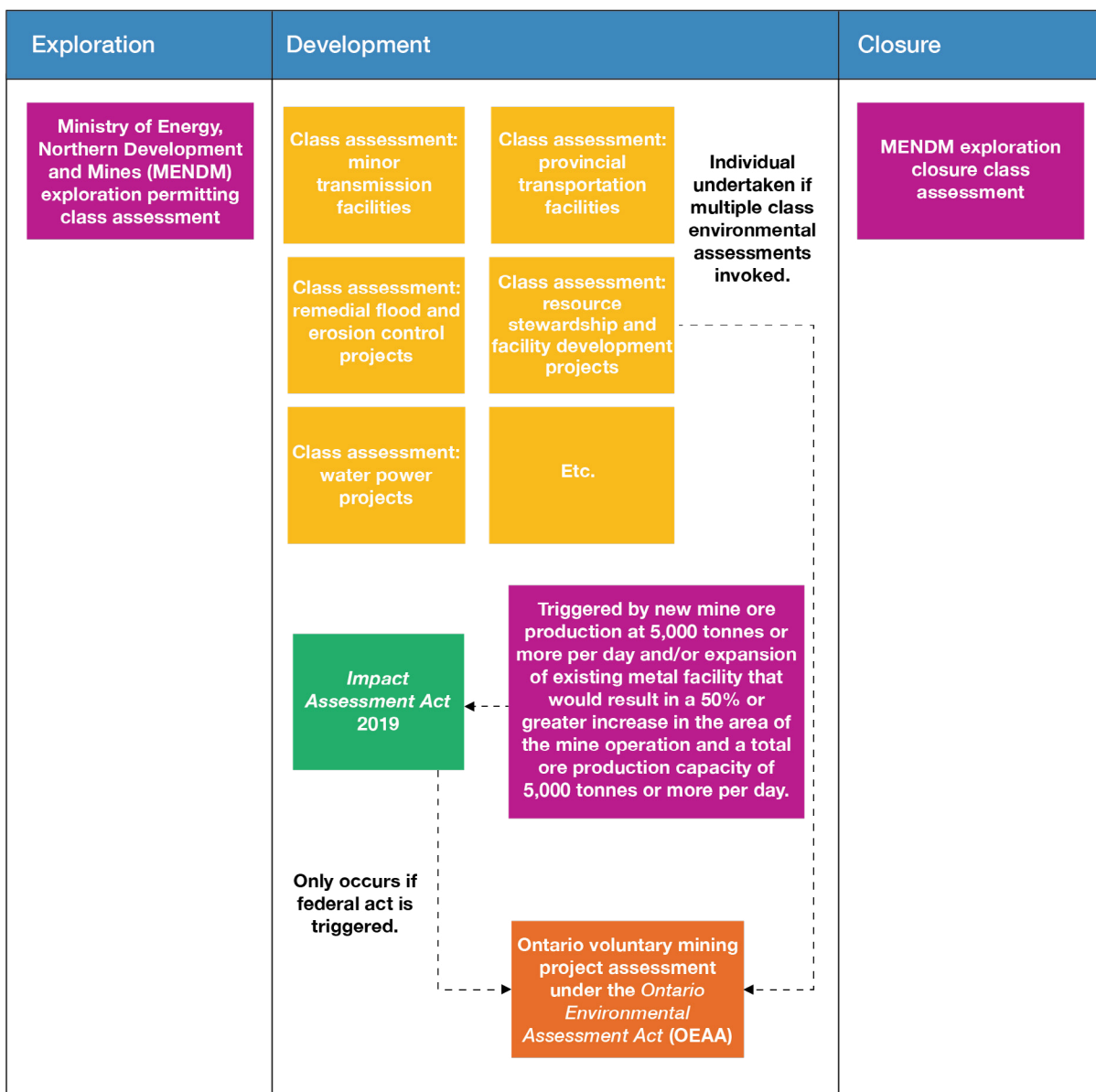


Figure 3. Assessment processes operating for mines in Ontario

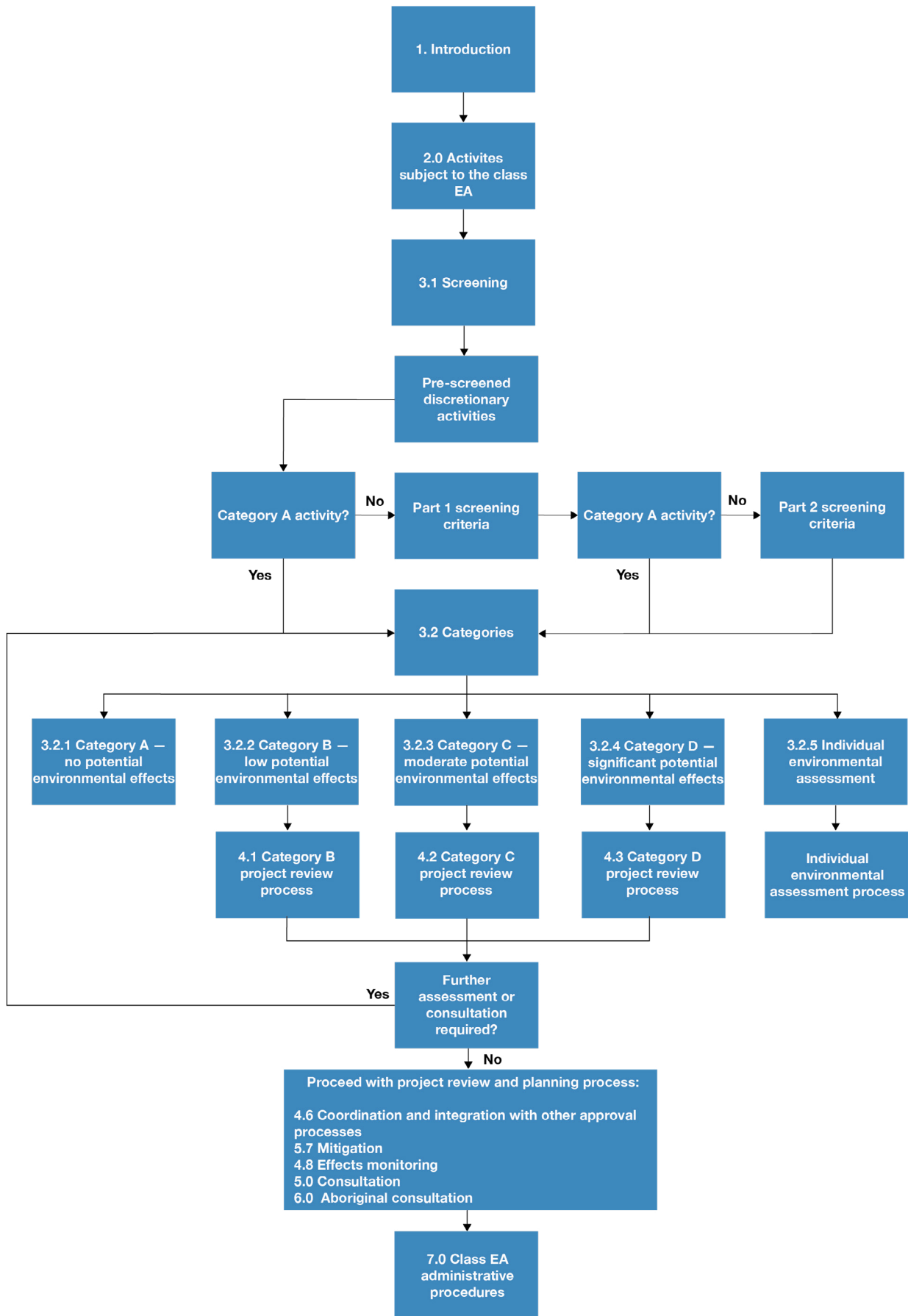


Figure 4. MENDM's class EA process for mining projects

ANALYSIS OF THE CONTEXTUAL FACTORS

Contextual factors that may affect the permitting and decision-making practices are analyzed with a political, economic, social, technical (PEST) analysis, which can be found in Appendix 2.

TRANSPARENCY AND ACCOUNTABILITY VULNERABILITIES AND RISKS

The vulnerabilities identified in the EA process, as well as potential corruption risks that could emerge from them, are listed in Table 7 and in the process map in Appendix I.

Table 7. Vulnerabilities and Resulting Corruption Risks

Vulnerabilities	Resulting Corruption Risks
Step 1: Public Notice	
<p>V2. Consultation period (for public and Indigenous communities) for class assessments preparation is only 30 days.</p>	<p>CC-3. Free, prior and informed consent (FPIC) of affected communities will be ignored.</p> <p>PD-N5. No sufficient verification of EA reports to ensure an accurate impact description</p>
<p>V8. Voluntary process without identifiable trigger other than federal assessment.</p> <p>In practice, the voluntary agreement emerges when (1) multiple class assessments can be replaced by a project; (2) the project will be designated by the ministry because of public interest and the proponent decides to expedite process.</p>	<p>CF-2. Decentralisation of government decision-making will create uncertainty in the EA approval process</p> <p>PD-N1. Proponents will scope project descriptions to be under the thresholds requiring an EA</p> <p>PD-N2. Gaps in regulatory coverage exist in the EA to integrate cumulative effects</p> <p>PD-N4. The criteria and framework that may trigger a private sector EA is not publicly known</p>
<p>V6. There is little history of the minister using the tribunal.</p> <p>Since 1998, only two projects have been referred to the tribunal. Neither of these cases were voluntary individual assessments in the mining sector. Between 2010 and 2016, the ministry received more than 630 requests to refer two environmental assessments to the tribunal. Neither project was referred.</p>	<p>PD-14. External influence on Ministerial decision-making</p>
<p>V7. There is limited history of the minister using mediation.</p> <p>There are few documented cases of mediation in Ontario, though it could be undertaken informally. Pre-existing research suggests that there is limited government or proponent interest in “non-traditional” EA processes despite the potential opportunity to improve transparency.</p>	<p>CC-N2. Delegation of consultation leads to absence of meaningful consultation.</p>

<p>V15. Scoping can be modified to make review easier and to ensure that specific thresholds are avoided.</p>	<p>PD-N2. Gaps in regulatory coverage exist in the EA to integrate cumulative effects.</p> <p>PD-N1. Proponents will scope project descriptions to be under the thresholds that require an EA.</p>
<p>V16. Province can use back channels to indicate to a company that a project is likely be designated and can reach a voluntary agreement with the proponent to undertake a project-level assessment (individual assessment) under the <i>Environmental Assessment Act</i> (EAA).</p> <p>V17. Unclear legislative requirements for FPIC or shared decision-making.</p>	<p>PD-14. External influence on ministerial decision-making.</p> <p>CC-N2. Delegation of consultation leads to absence of meaningful consultation.</p> <p>CC-3. Free, Prior, and Informed Consent (FPIC) of affected communities will be ignored</p>
<p>Step 2: Consultation with Indigenous Peoples</p>	
<p>V9. Indigenous communities are overburdened by consultation requirements and the lack internal capacity causes major consultation fatigue.</p>	<p>CC-N1. Limited integration of social and cultural considerations in EAs as they relate to Indigenous communities.</p> <p>CC-N2. Delegation of consultation leads to absence of meaningful consultation.</p>
<p>V13. Consultation delegated to companies can lead to:</p> <ul style="list-style-type: none"> • Community distrust of company • Challenge to build trust for consultants • An “approval” process rather than to a “decision-making” process • Consultants interested in meeting client’s objectives. 	<p>CC-N1. Limited integration of social and cultural considerations in EAs as they relate to Indigenous communities.</p> <p>CC-N2. Delegation of consultation leads to absence of meaningful consultation.</p>
<p>V18. There is no list of who should be consulted in relation to any given project.</p>	<p>CC-N1. Limited integration of social and cultural considerations in EAs as they relate to Indigenous communities.</p> <p>CC-N2. Delegation of consultation leads to absence of meaningful consultation.</p> <p>CC-3. Free, Prior, and Informed Consent (FPIC) of affected communities will be ignored</p>
<p>Step 3: Substance of Report, Including Financial Assurances</p>	
<p>V4. Time limits for ministerial review are insufficient.</p>	<p>CF-3. Ministry staff and managers will be unable to cope with the workload of the agency.</p>
<p>V5. Government is not required to review documents prepared under class EA.</p>	<p>CF-3. Ministry staff and managers will be unable to cope with the workload of the agency.</p> <p>PD-N5. No sufficient verification of EA reports to ensure an accurate impact description</p>

<p>V11. The Ministry of Environment, Conservation and Parks (MECP) has limited experience of assessing mining projects and limited technical ability to assess mining projects, causing proponent challenges. The EAA does not require mandatory individual assessment of mining projects in Ontario and the class assessments are evaluated by the relevant ministries. Therefore, the MECP does not undertake assessments on mining projects on a regular basis. Individual assessment based on voluntary agreements in the mining sector is limited. Hence, this limits the experience and specialization of the MECP staff in mining project EAs.</p>	<p>CF-3. Ministry staff and managers will be unable to cope with the agency’s workload.</p> <p>CF-N1. Ministry does not have enough technical capacity to manage EAs with high accuracy and precision</p> <p>PD-N5. No sufficient verification of EA reports to ensure an accurate impact description</p>
<p>V14. High thresholds. Many mines and expansions will be excluded from assessment</p>	<p>PD-N1. Proponents will scope project descriptions that are under the thresholds that require an EA.</p> <p>PD-N2. Gaps in regulatory coverage exist in the EA to integrate cumulative effects</p>
Overall Vulnerability	
<p>V1. Class assessment is not required to consider cumulative effects of the proposed project.</p>	<p>PD-N2. Gaps in regulatory coverage exist in the EA to integrate cumulative effects</p> <p>PD-N5. No sufficient verification of EA reports to ensure an accurate impact description</p> <p>CC-3. FPIC of affected communities will be ignored.</p>
<p>V10. Project assessment is not required to consider cumulative effects.</p>	<p>PD-N2. Gaps in regulatory coverage exist in the EA to integrate cumulative effects.</p> <p>CC-3. Free, Prior, and Informed Consent (FPIC) of affected communities will be ignored</p>
<p>V20. No defined professional reliance.</p> <ul style="list-style-type: none"> • Lack of independent experts engaged by proponent for technical studies • Lack of independent review. 	<p>PD-N5. No sufficient verification of EA reports to ensure an accurate impact description</p> <p>PD-14. External influence on ministerial decision-making.</p>
<p>V19. “Revolving door”/conflicts of interest in political system. V12. Public has limited ability to appeal decisions.</p>	<p>PD-14. External influence on ministerial decision-making.</p>

6

Results and Discussion

RISK ASSESSMENT

This study found and assessed 13 risks in Ontario. The complete assessment, including evidence and risk score, can be found in Appendix 3.

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

There is limited evidence that supports the lack of verification of assessments. The validation process indicated that there is a thorough review of all aspects of the documents. However, provincial expertise is limited and does not always identify important concerns, particularly those of Indigenous communities. The suggestion that consultants are biased toward their clients' requests and that the staff at MECP are unable to effectively verify the results exists, but it is primarily anecdotal. Additional research needs to be undertaken to determine the extent of proponent bias in reviews and the capacity within the ministry to credibly assess the reports. Federally, the recent expansion in the hiring of assessment professionals at the Impact Assessment Agency and at other ministries should improve their capacity for review.

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

Consultation requirements are publicly available and broadly understood as required by the Crown, proponents and Indigenous communities. It is expected by the public and proponents that the minimum standard will be met, and legal recourse is likely if that minimum is not met. However, to determine the extent to which consultation embeds neo-colonial realities, examination of the quality of these processes, particularly as it relates to implementing FPIC, is required. Additionally, our validation workshop indicated that many communities do not have consultation protocols, while some are not publicly available, which generates additional challenges.

3. CC-N2(2). What is the risk that the legal framework for consultation with communities is not clear?

From a process prospective, most assessment appears to meet the minimum standards of the duty to consult and accommodate. Communities that have consultation standards appear to have clearer processes. However, MECP should provide more extensive guidance about which communities should be consulted for a project. First Nations governments may consider developing consultation protocols to assist proponents and governments in consultations. Funding from provincial and federal entities should be made available to assist in community consultation protocol development. Validation also indicated that there needs to be consistency across provincial ministries and that there is a pervasive lack of knowledge of how to properly engage.

4. CC-N2(3). Does the delegation of consultation by the government to proponents lead to the absence of meaningful consultation?

Communities do not trust that companies are acting in their best interest, or that their questions or concerns will influence the assessment results. This perception results in an absence of consultation as community members do not attend events or influence the assessment. Therefore, there is a strong likelihood that delegation results in "consultation fatigue" and limited effective consultation. Validation also highlighted that the government's role as the intermediary also means that information from both sides is lost because the project subject related ministry may not have all the information communicated to it by the proponent and because "the ministry does not have the capacity to fully understand the values and concerns of Indigenous communities and has a difficult time ensuring that the proponent appropriately addresses those concerns" (validation workshop comment). The validation workshop also highlighted that proponents and consultants can be confused by government instructions, including lists of who should be consulted (which can differ across ministries), expectations across ministries, etc.

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

Ontario has not implemented FPIC. Additionally, Ontario has limited guidance for undertaking project-level impact assessments on the mining sector. Therefore, there is limited implementation of the FPIC concept in mining projects, unless the proponent is engaged in that approach. Proponent engagement is extremely variable and cannot be relied upon. The duty to consult and accommodate is, however, embedded in Ontario legislation. There may be a natural evolution toward FPIC from these constitutional obligations but there is limited evidence to suggest it. The validation workshop suggested that this impact score should be reflective of Indigenous perspectives; during research, Indigenous participants generally said that FPIC was absent from their experience with mining operations.

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

There has been limited effective integration of Indigenous social and cultural considerations into impact assessments in Ontario. Indigenous communities are reticent to provide community data for what is perceived as company purposes. Federally and provincially, there has been limited guidance on establishing social and cultural criteria to be considered in relation Indigenous communities. It is a challenge to establish social and cultural impacts without considerable data.

7. CF-2. Decentralization of government decision-making will create uncertainty in the EA approval process

Class EAs are challenging to navigate because they are distributed across ministries depending on the project, e.g. mining, transportation, and do not have a centralized repository. Additionally, federal and provincial project assessments of the projects are infrequently harmonized, meaning there is limited coordination between the federal government and the province. The resulting confusion creates challenges for the public, including Indigenous Peoples, to navigate.

8. CF-3. Ministry staff and managers will be unable to cope with the workload of the agency

MECP has demonstrated challenges meeting timelines, has significant turnover rates, high use of contract staff, and not been provided with the opportunity to utilize more innovative approaches to EA. These factors, when combined with the general dissatisfaction that interviewees had with the department, indicate that MECP staff is overburdened with work. The validation exercises also indicate that staff retention is problematic and proponents often educate staff about projects. Federal staff was considered significantly more technically sound. The structure of the legislation also generates an inefficient workload, requiring assessment based on the proponent as opposed to the impact. Therefore, resources cannot be aligned to where they are most needed.

9. CF-N1. Ministry does not have enough technical capacity to manage EAs with high accuracy and precision

The MECP staff was subject to considerable criticism over the course of this review. The skill deficit primarily appears to reflect a high rate of turnover resulting in low institutional knowledge, limited experience in assessing mining developments, and a lack of innovation in their approach to assessment, relying on scripted approaches. Funding cuts, contract employment, limited opportunities for training and skill improvement, and hiring inexperienced staff appear to also contribute to vulnerabilities that are causing the risk. Validation exercises confirmed this evaluation. Importantly, this criticism also indicates that the structure in which MECP is operating is limited, focusing on proponent instead of impact, and limiting staff's capacity to take a more innovative approach focused on impact.

10. PD-14. External influence on ministerial decision-making

In Ontario, the minister has significant discretion in determining if a mine requires an environmental assessment, approving terms of reference and scope, and determining whether a project moves forward or not. Additionally, Cabinet does the decision-making, and therefore numerous ministers can exert influence, including in MENDM promoting mining. Ontario is also aggressively pro-mining in its policy and language, primarily because of its extensive mining history. Also, because ministers are elected, their party may have relationships with industries or lobbies that could influence decisions or policies.

The provincial approaches reflect the “revolving door” of industry and government. Financing infrastructure to support mining development through First Nations communities also lack clear, transparent procedures. Approaches also indicate that the presumption that decisions are pre-determined, regardless of EA, is in evidence. Validation exercises increased this score to moderate, particularly given the limited oversight of ministerial decision-making and the uncertainty industry feels when the governmental policy or ministers change.

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

The federal threshold for assessment is a large, initial operation or significant expansion. Mining operations in Ontario only tend to move toward voluntary agreements if federal thresholds are already triggered. Mining companies may plan to begin operations in Ontario at a production rate that is below the federal threshold and expand the project under the expansion threshold, thereby bypassing environmental assessment requirements. There is limited systematic review of whether companies attempt to avoid thresholds. However, anecdotal evidence suggests that a problem exists. Validation results agree with this conclusion though there was significant discussion regarding whether this avoidance was intentional or based on the economics of the initial projects. Mines must be financially viable to go into development, and if mines are proposed to only have minimal yields, their financial viability might be questionable. Therefore, there are questions related to whether, at the outset, companies expect to expand production beyond their initial project proposal. There are significant concerns about cumulative effects when companies that are not required to undertake environmental assessment or generate a smaller footprint in their assessment then regularly expand their production under the threshold. Additionally, there are some concerns that companies are transparent about their environmental, socio-economic and cultural impacts in the assessment projects and that consultants assist companies to reduce their regulatory burdens. The new, higher federal threshold will mean most mines will not hit the threshold, meaning even fewer projects will require review or it will be easier for proponents to scope the project to avoid review.

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

Ontario is the only Canadian jurisdiction that does not have mandatory impact assessment on private projects, including mining (because private enterprise is exempt under the EAA). There is no written guidance for if and when an individual assessment based on voluntary agreement should be employed, and because of this omission, the EAA cannot be relied upon by proponents, the public and Indigenous communities. Related to this concern, the EAA is designed for public proponents with specific considerations for review primarily related to public interest. Interviewees have indicated that the process is often at odds with proponent considerations, including intellectual property concerns or confidential firm information. Additionally, interviewees found that the materials required for Ontario’s process are often extremely detailed compared to those for the federal process, often expecting information that would normally not be required in another jurisdiction until later permitting stages. Therefore, the process is not knowable or anticipatory because (1) it happens sporadically or infrequently; (2) there is limited written guidance or provincial experience to draw from; and (3) it does not align closely with its federal counterpart. Consultants have indicated that the process is clear, identifiable and anticipatory. Validation showed that the lack of project EA in Ontario is a major risk.

Additionally, projects that trigger federal assessment under the *Impact Assessment Act* are new mines with an ore production capacity of 5,000 t/day or more; and expansions of an existing metal mine that would result in

an increase in the area of mine operations of 50% or more and a total ore production capacity of 5,000 t/day or more. This is an extremely high bar that is rarely met, meaning that most operating mines in Ontario do not have to undertake impact assessment for mine expansion or smaller undertakings. Decision-making authority under the EAA rests with the minister of environment and Cabinet. Therefore, Ontario has considerable leeway in designing a regime with limited application to most mining activities.

13. PD-N4. The criteria and framework that may trigger a private sector EA is not publicly known

Because there is no trigger for private enterprises' EAs in the Ontario EAA, the legislation is unreliable or proponent, the public and Indigenous communities. Even though the EAA includes the possibility of review and designation (primarily related to public interest), what exactly would mobilize a review or designation is unknown. The criteria of what would lead to designation is not clear or publicly available, which limits civil society's ability to hold the government accountable.

Therefore, the process is not knowable or anticipatory because (1) it happens sporadically or infrequently; (2) there is limited written guidance or provincial experience to draw from; and (3) does not align closely with its federal counterpart. If a federal comprehensive project is triggered, consultants have indicated that the process is clear, identifiable and anticipatory.

RISK VALIDATION

The validation workshop was a means of confirming the information collected, and included an overview of TI Canada and the Accountable Mining Program, and a presentation of the assessment and ranking of each of the initial risks. At the workshop, 16 attendees represented the environmental consulting industry, the Federal Impact Assessment Agency, mining companies, Indigenous community members and Indigenous tribal organizations. Attendees were encouraged to talk about the risks and the rankings. From this conversation, some risks were eliminated or changed to greater or lesser risk levels.

Table 8: Risk validation scores

Risks	Risk Score
Risk 1 (PD-N2): Gaps in regulatory coverage in the EA to integrate cumulative effects	25
Risk 2 (PD-N4): The criteria and framework that may trigger a private sector EA are not publicly known	25
Risk 3 (CC-3): Free, prior and informed consent (FPIC) of affected communities ignored	25
Risk 4 (CC-N1): Limited integration of social and cultural considerations in environmental assessments as they relate to Indigenous communities	20
Risk 5 (CC-N2): Absence of meaningful consultation due to delegation of consultation	20
Risk 6 (CF-3): Ministry staff and managers unable to cope with agency's workload	20
Risk 7 (CF-N1): Ministry has inadequate technical capacity to manage EAs with high accuracy and precision	20
Risk 8 (PD-N1): Proponents scoping project descriptions to be under the thresholds requiring an EA	15
Risk 9 (CF2): Uncertainty in EA approval process created by decentralized government decision making	12
Risk 10 (PD-14): External influence on ministerial decision making	9
Risk 11 (PD-N5): Insufficient verification of EA reports to ensure an accurate impact description	8

7 Recommendations

1. Integrate Regulatory Regime for Mining Projects

The study ascertained that the lack of an integrated regulatory regime for mining projects leads to the following risks:

- **PD-N2:** Gaps in regulatory coverage exist in the EA to integrate cumulative effects,
- **PD-N4:** The criteria and framework that may trigger a private sector EA is not publicly known, and
- **CF-2:** Decentralization of government decision-making will create uncertainty in the EA approval process.

Private enterprise is exempted from assessment under the EAA. However, Ontario has expanded its regulatory coverage to include private proponents, for example, the *Waste Management Projects Regulation*,⁴ which applies to both public and private proponents (Government of Ontario, 2020b). Ontario has the capacity to develop a similar regulation for mines that would eliminate the voluntary agreement process and give Ontario a similar standard to the rest of Canada (see Table 2). A regulation for mines could take place without and significant amendments to the EAA. The new regulation would require the determination of what thresholds or screenings would trigger an assessment, which should, ideally, be well below the high federal threshold, and like other those of other provinces. Expansions should also be reviewed in terms of cumulative effects. Additionally, tools like strategic and regional assessment can be utilized by public bodies to better capture cumulative effects.

2. Improve MECP Capacity to Manage Mandate with Improved Legislation, Expanded Staff Capacity and Improved Funding

MECP's capacity is another major issue that the study highlights. It leads to the following risks:

- **CF-N1:** Ministry does not have enough technical capacity to manage EAs with high accuracy and precision
- **CF-3:** Ministry staff and managers will be unable to cope with the workload of the agency

MECP is suffering from internal challenges that result in distrust. Interviewees said that while there are some talented, competent people working at MECP, workplace culture, improved funding, investment in training and education, etc. could pay dividends in the long term in relation to assessments. The use of inexperienced, contract employees generates a lack of confidence, particularly if those individuals might seek future openings in consulting firms while engaged with ongoing assessments, as one member of our validation workshop indicated happens. Additionally, overhauling the legislation to focus on impact as opposed to proponentcy could increase job satisfaction and improve time management, by ensuring that more challenging jobs receive more extensive review.

3. The EA Process and Indigenous Communities — Recommendations from Indigenous Participants in the Research

- **CC-3:** Free, Prior, and Informed Consent (FPIC) of affected communities will be ignored
- **CC-N1:** Limited integration of social and cultural considerations in environmental assessments as they relate to Indigenous communities
- **CC-N2:** Delegation of consultation leads to absence of meaningful consultation
- **PD-N2:** Gaps in regulatory coverage exist in the EA to integrate cumulative effects

⁴ In the waste sector, EAs only typically applied to municipalities and other public bodies. This regulation ensured that the class assessment process applied to both public and private proponents for waste management projects.

Indigenous participants in the research (in interviews, focus groups and validation workshops) were quick to offer substantive and heartfelt insights about the lack of transparency in multiple decision-making processes, but especially about EAs in Ontario. Among the risks identified as having substantive likelihood and impact, four were consistently mentioned by Indigenous participants as very problematic.

4. Increase involvement of Indigenous Communities in Decisions Related to EA Approvals

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

While the concept of FPIC in the mineral development industry remains an aspirational principle or practice at best among international mining firms, it is very clear that this is not an established standard across the industry, and certainly not a legal requirement in Ontario. Indigenous participants in this research identified that until FPIC becomes a legal requirement and is integrated into EA processes, and especially decision-making practices, EAs will continue to be a “battleground” where inadequate consultation approaches and exclusion from vital decisions result in often-contentious and litigious outcomes. The key recommendation here is to meaningfully involve Indigenous Peoples in the final decisions on projects via a FPIC-based approach, and the EA processes that shape those decisions.

5. Consider Indigenous Knowledge When Updating Legislation

- **PD-N2:** Gaps in regulatory coverage exist in the EA to integrate cumulative effects
- Flowing from the previous point on the significance of the mechanics of EA practices (e.g., which alternatives, criteria and indicators are considered and how they are weighted in decisions), Indigenous participants expressed considerable frustration with the lack of appropriate consideration of socio-cultural factors within project EAs. There are many reasons why this is a common occurrence within EA practice in Ontario, but the reality is that Indigenous participants in project EAs often have to aggressively and strategically advocate for the inclusion of Indigenous Knowledge, community-relevant studies on impacts on cultural well-being and other Aboriginal or Treaty rights that may be affected by projects. The range of other well-established and standardized practices for quantifying impacts on water/soil/air quality, for example, have effects on the quality of Indigenous lives, both locally and regionally, and are poorly understood by most EA practitioners, and even less well integrated into project decision-making criteria. Recognizing this set of challenges to EA practice in Ontario, Indigenous participants recommended that new regulations (and new legislation) be established for EA practice through a process of intensive collaboration with Indigenous representatives of each of the major Treaty regions within Ontario.

6. Incorporate Cumulative Effects in Assessments

Another major risk of EA practice identified by Indigenous participants is the many regulatory gaps in Ontario. Most Indigenous participants noted the lack of appropriate consideration given to the informed study of cumulative effects in project EAs. One Indigenous participant noted a recent gold mine project in Ontario that received EA approval and the cumulative effects section was essentially negated because of the proponent’s argument that mitigation measures would minimize any residual effects so there would be few or no net cumulative effects in a region where forestry, other mines, multiple exploration projects, road expansion projects, hydro transmission, and other activities are all ongoing or proposed. Part of the supporting logic in the EA application was that all of these other activities were having substantive effects on the region already, and this one new gold mine would be only a very minor increase to indicators under study after mitigation measures were implemented. From the perspective of Indigenous participants, this all-too-common minimization or disregard of cumulative effects in EA practice is based on a fundamental difference in western scientific and Indigenous knowledge-based approaches to understanding effects and interaction among multiple effects. To resolve this, or at least develop a strengthened approach that integrates complementary knowledge types, Indigenous participants suggested that Ontario EAs incorporate a mandatory Indigenous co-creation of cumulative effects, valued components, and analysis, as well as review of eventual conclusions.

Other concepts identified in the course of this review include:

- Clear guidelines for implementing FPIC
- Consensus by federal, provincial and Indigenous governments as to who should be consulted for undertakings in any given region
- Financial support to assist in the development of community consultation protocols, as well as additional funding for staffing, training, etc., of Indigenous governments.
- Enhanced consultation process and increased the role of the Crown in the EA process. Some interviewees discussed that all steps in the process should be undertaken transparently with Crown, proponent and Indigenous participation.

8

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