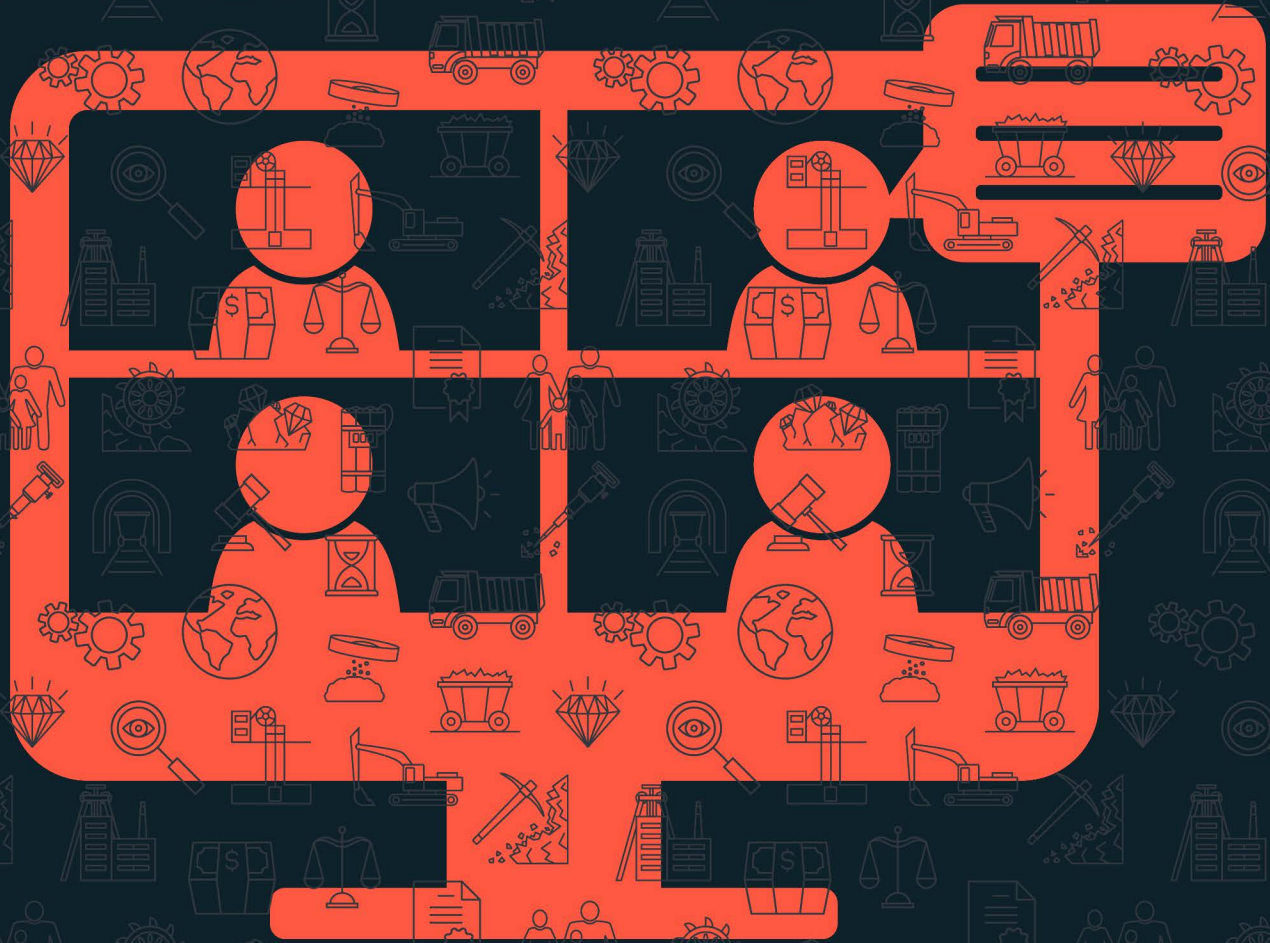




**TRANSPARENCY
INTERNATIONAL
CANADA**



TRANSPARENCY AND ACCOUNTABILITY CONCERNS FOR VIRTUAL CONSULTATION

**The Case of Mining Project
Environmental Assessments in Canada**



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About the Accountable Mining Program

This report is part of Transparency International's (TI) Accountable Mining Program. The 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.

Through mine permitting and licensing, 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 an 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. TI Canada has published four other reports analyzing environmental assessment (EA) processes in Ontario, British Columbia and the Yukon Territory. These reports uncover risks related to transparency and accountability in these jurisdictions' EA processes. The publications can be found at transparencycanada.ca/accountable-mining/overview.

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Acronyms

BC	British Columbia
CNSC	Canadian Nuclear Safety Commission
CRTC	Canadian Radio-television and Telecommunications Commission
EA	Environmental assessment
EAO	British Columbia Environmental Assessment Office
IAAC	Impact Assessment Agency of Canada
IADB	Inter-American Development Bank
IAIA	International Association for Impact Assessment
MAC	Mining Association of Canada
TI	Transparency International
ToR	terms of reference



Executive Summary

Consultation and engagement are critical aspects of mineral resource governance. Governments and proponents use different consultation and engagement methods depending on the targeted audience, at different stages of the permitting and licensing processes. Generally, the in-person approach was the dominant form of engagement and consultation. The COVID-19 pandemic has altered typical practice significantly.

Virtual approaches have become the major, if not the only, way of performing consultation and engagement between proponents, governments and communities since the pandemic has limited travel and in-person engagement in Canada. The pandemic's significant social and economic impacts are challenging governments to take preventive actions for protecting public health and safety while allowing economic activities to continue and letting projects advance.

The uncertainty surrounding the pandemic's duration, coupled with the convenience of online meetings as well as continued community health and safety concerns in the post-COVID-19 world will continue to make virtual interactions the dominant consultation form. This virtual environment poses both opportunities and challenges for transparency, particularly when engaging with Indigenous communities about the mineral resource projects.

As an example of the challenges and opportunities that virtual consultations present for EA governance, domestic and international evidence indicates that the pandemic restrictions are being used to fast-track projects without the possibility of in-person gatherings. Nevertheless, stakeholders and researchers also report that actors are adapting to the pandemic conditions. Thus, virtual engagement and consultation, monitoring, auditing and consulting practices have become common practice, especially in the environmental assessments (EAs) of mining projects.

This discussion paper outlines the online consultation context, its transparency challenges and opportunities, particularly related to Indigenous community consultation processes, and what actions should be deployed to ensure a meaningful virtual engagement and transparency and accountability in EA processes of mining projects in the Canadian context.

The discussion paper lists the following opportunities regarding virtual consultation and engagement:

- Better public health and safety performance due to the reduced exposure to COVID-19,
- Stronger Indigenous youth engagement,
- Better cost and time efficiency,
- Broader accessibility.

The challenges discussed in this document about the virtual engagement and consultation in the mineral resource governance context are:

- Limited infrastructure and digital inequality,
- Limited elder engagement,
- Risk of a perceived neocolonial approach,
- Limited understanding of local and field conditions, and
- Lack of guidance regarding virtual consultation in legislation, and subsequent inadequate guidelines and protocols.

When considering the primary concern of health and safety, as well as economic progress as a key public service criteria, virtual consultation and engagement should be undertaken in a way that allows projects to progress with public oversight. Therefore, to perform meaningful and effective virtual engagement and consultation in EAs for mining and related infrastructure projects, TI Canada recommends:

- Improving the accessibility and inclusiveness of virtual consultations to enhance transparency and accountability in mineral resource governance,
- Determining culturally appropriate methods of virtual consultation in collaboration with Indigenous communities, proponents and governments,
- Updating or generating virtual consultation protocols at the community level,
- Providing clear expectations of government agencies that promote good practices and tools for proponents and EA practitioners.



1 Introduction

The COVID-19 pandemic has caused negative health, social and economic impacts globally. Minimizing the economic impacts of the pandemic has become a governmental priority and has led to fast-tracking projects and exhibiting less concern about transparency and accountability in permitting and compliance monitoring processes. Requirements for consultation are either being eliminated or being transformed into virtual practices. Both the international and domestic contexts present examples of how decision makers are neglecting, suspending or modifying the decision processes in less transparent and accountable ways.

The pandemic has also amplified transparency and accountability concerns in mineral resource exploration, extraction and related infrastructure projects in Canada. The main concern is expediting the processes for natural resource and related infrastructure projects without enabling traditional forms of consultation and engagement, such as in-person meetings, where the project will have an impact. Thus, in this discussion paper, we focus on:

- the pandemic-related changes in consultation and engagement in the environmental and impact assessment processes¹, and
- how these changes impact transparency and accountability of mining permitting processes in the Canadian context.

Consultation is a critical aspect of transparent and accountable decision-making as proponents must disclose the key data and information about their projects that are not publicly accessible or available otherwise. Disclosed data and information about possible future action help actors perform their own due diligence concerning the proposed project's quality, deliverability of outputs, and the management of project-led costs and benefits. Additionally, these

¹ We use environmental assessment (EA) instead of environmental and impact assessment processes in this document in order to keep the language simple and make it consistent with Transparency International Canada's Accountable Mining Program reports about the EAs in Ontario, British Columbia and Yukon. However, we acknowledge the differences among EAs, environmental and socio-economic assessments and impact assessments with respect to legislation in different jurisdictions, their scopes and methods for conducting these works.

parties can provide feedback based on their due diligence, knowledge and experience to shape the final design and decision. Therefore, effective consultation is critical to hold the proponents and governments accountable for their actions and to monitor agreed terms and deliverables. Hence, in the mineral development and governance context, meaningful and effective consultation will considerably prevent the abuse of power for personal gain starting from the early stages of the mine value chain.

ACCOUNTABLE MINING PROGRAM

The discussion paper is part of Transparency International's (TI) Accountable Mining Program in Canada. The Accountable Mining Program is implemented in 20 countries by the TI chapters. The program focuses on mitigating and minimizing transparency, accountability and corruption risks in mine permitting and licensing processes to enhance sustainable development. In Canada, the program evaluated the transparency and accountability vulnerabilities and associated corruption risks in environmental assessment (EA) processes for mining projects in Ontario, British Columbia (BC) and Yukon. Based on the program's findings, TI Canada informs and collaborates with stakeholders and rightsholders in three jurisdictions and at the federal level to raise standards and strengthen public trust in mine permitting and licensing decisions.

The Accountable Mining Program has reported 38 risks in three jurisdictions (TI Canada, 2020a). The findings indicate common risks in the following three areas in the three jurisdictions:

- Ministerial discretion and dual roles of ministries and authorities in EA processes.
- Limited due diligence, compliance and enforcement in EA and post-EA processes.
- Consultation in EAs.

The study found that the effectiveness of consultations conducted by proponents is limited. These consultations aim to integrate the concerns, knowledge and expectations of communities and other actors into decision processes. Limited or ineffective consultation conflicts with the EA's purpose of incorporating social, environmental, economic and cultural considerations into decision-making (TI Canada, 2020a). Therefore, in this discussion paper, we extend the discussion on consultation issues in EAs concerning the COVID-19 pandemic conditions, and we focus on issues related to virtual consultation and engagement in EAs for mining and related infrastructure projects.

OBJECTIVE AND SCOPE

The objective of this discussion paper is to analyze how the COVID-19 pandemic has affected transparency and accountability in the EA consultations for mining and related infrastructure projects in Canada. The paper also provides insight into how virtual meaningful engagement and consultation can be performed in EAs.

METHODOLOGY

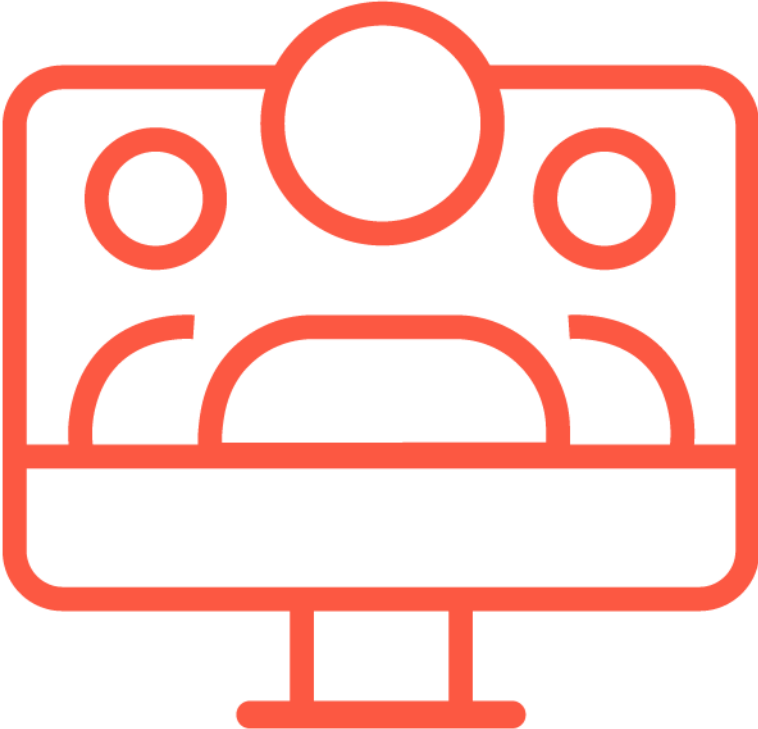
To conduct this analysis, we used secondary data gathered via desktop research to consider the virtual consultation process for EAs in the Canadian mining context. Most data gathered is from the Accountable Mining Program study, published in 2020. The data was collected based on the literature review, focus group meetings and 128 in-depth interviews conducted in Ontario, BC and Yukon. The data considers the context, risks and opportunities of consultations prior to the COVID-19 pandemic in Canada.

The discussion of the context, opportunities and risks both during and after COVID-19 are given based on

data gathered from peer-reviewed articles, publications and seminars produced by subject- and sector-specific organizations such as the International Association for Impact Assessment (IAIA), and TI Canada’s virtual engagements with jurisdictional governments and Indigenous communities in Canada.

LIMITATIONS AND ASSUMPTIONS

One limitation of this study is that we could not validate the post–COVID-19 risks and discussion points externally. Therefore, the recommendations are based on desktop research, online webinar discussions, and the authors’ expertise and experience. Additionally, this study was unable to assess how proponents have been performing virtual consultations as part of EAs in practice. We also acknowledge that there was limited Indigenous community engagement to evaluate and provide a detailed discussion of how these communities have adopted virtual consultations. Moreover, the study could not discuss the effects of virtual consultation and the pandemic on the protocols for Indigenous community consultations.





2

Consultation in the Environmental Assessments for Mining Projects in Canada

CONSULTATION BEFORE THE COVID-19 PANDEMIC

Consultation is a legal obligation in the majority of legislated mine permitting and licensing processes in Canada. Among these processes, EAs for mining and related infrastructure projects play a key role in evaluating the impacts and benefits of a proposed project and measures to mitigate or minimize negative impacts and expand positive ones. The EA processes are jurisdiction specific.

As one of the key mine permitting and licensing processes, effective and meaningful consultation is critical in EAs.² The consultation process in EAs targets the Canadian public, including individuals and organizations. In addition to this, each process must also meet the Crown's duty to consult and accommodate. The duty to consult and accommodate refers to the government's obligation to "consult, and where appropriate, accommodate Indigenous groups when it considers conduct that might adversely impact potential or established Aboriginal or treaty rights" (Crown-Indigenous Relations and Northern Affairs, n.d.). This duty has been affirmed and subsequently reaffirmed under Canadian legislation (Chadwick, 2013; Newman, 2019). The duty to consult and accommodate exists to foster reconciliation with Indigenous peoples and legislate consultation between Indigenous peoples and governments, agencies, and other independent actors (Brideau, 2019). It has expanded to consider whether consultation is meaningful.

² Meaningful consultation can be defined as "the Crown consulting in good faith, the existence of two-way dialogue, the opportunity to participate in the process and to make submissions, open-mindedness by the Crown about accommodation of Indigenous rights, demonstrable integration of Indigenous communities' concerns, substantive responses to information requests (including translation in some contexts), participation funding and a view to accommodation of conflicting interests" (Wright, 2020, p. 1).

Meaningful consultation requires that the public has the power to affect the final result of impact assessment decisions (Arnold & Hanna, 2017). The Accountable Mining Program in Canada reported a lack of meaningful consultation in EAs across Canada. The ineffectiveness of the consultation process as part of an EA was described by an Indigenous Elder living in the Timmins region in Ontario³ as “decisions are already made by the time consultation is made ... we stop caring anymore. Nothing can be done to change it” (TI Canada, 2020a: 10). The research also concluded that Indigenous communities’ perception of consultations is a check-box exercise, and there were limited guidelines about what could be considered meaningful consultation (TI Canada, 2020a).

Other issues related to consultation and the duty to consult regarding EAs of mining projects before the pandemic in Canada are:

- A lack of social and cultural considerations of Indigenous communities in EAs,
- The western perspectives of decision makers and consultants that limit understanding and integrating community specific social and cultural dynamics,
- Challenging timeframes,
- Limited technical human resource and financial capacity of the majority of communities, and,
- The fear of misrepresentation or misuse of the information provided by Indigenous communities (TI Canada, 2020a).

CONSULTATION DURING THE COVID-19 PANDEMIC

REDUCTION IN CONSULTATION IN EA PROCESSES

Globally, consultation requirements for environmental assessments have declined worldwide because of the COVID-19 pandemic. In an IAIA survey, 40% of surveyed assessment practitioners worldwide believed that COVID-19 would be a reason to relax, suspend, or dilute the assessment process and lessen assessment legislation restrictions to encourage or stimulate economic recovery development (Bancroft, 2020). Key jurisdictions mentioned in this study include Canada, Australia, Brazil, India and the United States.

In particular, the IAIA survey also found that 51.68% of participating assessment practitioners worldwide stated they were no longer holding consultations, public meetings or hearings to collect information (Bancroft, 2020). Other responses indicated that 29.32% were using video conferencing, email, social media, online surveys and local contacts, as well as some in-person meetings (Bancroft, 2020). Other findings of the survey concluded that impact assessment professionals were using technologies to overcome the challenges of the COVID-19 pandemic, with popular responses including aerial photos, satellite and drone usage, citizen science and training, and the use of local community members to accomplish field research and monitoring (Esteves et al., 2021). In another IAIA survey, 45% of the 700 participating impact assessment professionals formally bypassed, proposed to bypass, bypassed with a legal challenge or enabled proposals to ignore environmental rules and regulations based on the pandemic (Croal, 2020).

These global trends of reduced consultation and deregulation echo the Canadian experience. The *National Observer* listed all federal and provincial environmental protection changes enacted by the summer of 2020 in response to the COVID-19 pandemic (McIntosh, 2020a). At the federal level, several extensions were granted for industries for reporting pollution and greenhouse gas data. The government also delayed implementing the single-use plastics ban and clean fuel standard (McIntosh, 2020a).

³ The Accountable Mining Program study participants’ details were not disclosed to keep anonymity.

Rollbacks and suspensions varied at the provincial level. Some provinces, such as Prince Edward Island and New Brunswick, saw no changes, whereas Ontario, Alberta, Quebec and Saskatchewan saw numerous cases of bypassed environmental protections. Key industries, especially the Alberta oil sands, BC logging and the Ontario petrochemical sector, were given payment deferrals, exemptions for reporting environmental data such as air emissions and water quality, and provided streamlined government approvals (McIntosh, 2020a).

Some changes at the legislative level included Alberta removing the provincial cabinet's requirement to sign off on expansion projects in the oil sands and Ontario suspending parts of the *Environmental Bill of Rights*. The decision to suspend the *Environmental Bill of Rights* was later reversed. However, the Ontario government introduced the *COVID-19 Economic Recovery Act* (Bill 197). Schedule 6 of Bill 197 pertains to the *Environmental Assessment Act* (Bowman, 2020; King et al., 2020).

The most notable changes saw many public sector infrastructure projects streamlined and exempted from EAs and the removal of the tribunal's ability to review a decision under the amended act (Bowman, 2020). These changes led environmental organizations to commence legal challenges against Bill 197, as they claim that the legislation overhauls the *Environmental Assessment Act* and amends other provincial laws (Canadian Environmental Law Association, 2020; Bowman, 2020). Bill 197 also led to an investigation by the provincial auditor general, who found the proposed bill was not compliant with the *Environmental Bill of Rights* (McIntosh, 2020b).

The changes to provincial and federal legislation resulting from the COVID-19 pandemic have generated transparency and accountability risks.⁴ A major concern emerges as it is unclear how many of these legislative and regulatory changes will be reversed once the pandemic is over (Bancroft, 2020).

The number of cases discussed earlier in this section shows that both public consultation and the duty to consult processes are negatively affected by the COVID-19 pandemic conditions. Hence, finding effective approaches to perform consultations meaningfully is crucial for EAs and other permitting processes, as the pandemic conditions are diluting or eliminating these transparency and accountability mechanisms. In particular, the continued restriction of travel and in-person engagement after one year, as well as findings in the literature, e.g., Croal, 2020, indicate that there is a risk that consultation and subsequent assessment may fall out of practice in a post-pandemic world. Considering the limited meaningful consultation performance before the pandemic, governments, practitioners, proponents and communities should foster new forms of consultations for EAs and use the pandemic as an opportunity to enhance their effectiveness in permitting and licensing processes.

MANDATORY PRACTICE OF VIRTUAL CONSULTATION IN EA PROCESSES

The second concern regarding transparency and accountability in EA consultations that emerges is performing consultations virtually due to the pandemic restrictions. Virtual consultation in the mining sector context can include forms of consultation typically done in person and can fulfill the Crown's duty to consult and accommodate. However, virtual consultation creates new challenges, particularly for Indigenous communities and for the duty to consult process. Infrastructure limitations affect access to virtual processes and online information and the social and cultural backgrounds of some stakeholders and rightsholders make virtual consultation and engagement ineffective and create transparency and accountability concerns, which can limit the inclusiveness of these processes.

Virtual consultation is a long-standing practice, as email, social media updates, websites, telephone and video conferencing are common means of sharing information during the assessment and planning processes (Martinez & Rojas, 2020). However, virtual consultation has been performed as complementary to in-person activities when

⁴ Appendix 1 contains case studies of projects that were and are still active during the current pandemic conditions. These cases illustrate the variety of responses and changes related to the consultation process.

needed and has taken forms such as conducting simple comment surveys with a few questions via a Facebook group. Thus, before pandemic conditions, virtual consultation was not the primary consultation method in Canada, especially with regard to Indigenous community engagement and consultation practices due to the unique characteristics of Indigenous community and proponent/consultant relationships and dynamics.

Therefore, there is little public policy guidance regarding meaningful virtual consultation (Brideau, 2019; BC Environmental Assessment Office [EAO], 2013; Ontario Ministry of Environment, Conservation and Parks, 2016). Additionally, there is limited jurisprudence regarding the role of virtual consultation in meeting the Crown's duty to consult and accommodate as meaningful consultation (Brideau, 2019). However, the COVID-19 pandemic has resulted in virtual consultation emerging as the only form of consultation.

Meaningful consultation is based on a significant body of case law (Wright 2020). But within this definition, nothing suggests that a virtual environment cannot provide the opportunity to consult meaningfully. Meaningful consultation is based on the context of the consultation, not the form. There is no mention of virtual, electronic, remote, or other related forms of virtual consultation, such as in the federal *Impact Assessment Act*. Similarly, provincial and territorial acts provide limited guidance.

According to the *Environmental Assessment Act* in Ontario, consultation must be meaningful, and stakeholders can also be involved via alternative ways. Specifically, the appropriate ministry overseeing the EA process reviews the record of all consultations submitted by the proponent. There are different consultation standards for different types and classes of EA processes (for details see TI Canada, 2020b). Individual EAs for resource extraction have a higher standard than class or streamlined assessments in other areas (transportation, maintenance, etc.). Approval hinges on adequate consultation that reasonably addresses all stakeholder concerns. Aside from ensuring that all communication — oral, written or electronic — is bilingual, there are no notes on virtual consultation.

BC is similar to Ontario in priorities. The province requires notification that provides access to consultation methods and information (*Public Consultation Policy Regulation*). The approach is still very general, with no specific mention of virtual consultation. However, Indigenous-specific documentation highlights the importance of discussions on integrating traditional practices and participation of Indigenous people (EAO).

COVID-19 conditions and restrictions have pushed Canadian consultation toward practice norms that may continue after this health crisis subsides. Ideally, virtual consultation should expand access to anyone who can connect to a virtual forum. However, major social, economic, and cultural divisions among Canadians and historic challenges concerning Indigenous communities present themselves when using virtual forums as the only form of consultation. Additionally, accessibility to affordable and reliable internet in remote locations in Canada also negatively impact the virtual consultation and engagement. Therefore, the approaches and methods of meaningful consultation and processes used in the past need to be adjusted to use in virtual consultations and to accommodate the different cultural and social backgrounds of stakeholders and rightsholders (Esteves et al., 2021). They must also allow for infrastructure characteristics in remote locations in Canada.



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3 Virtual Consultation in the Environmental Assessments for Mining Projects

VIRTUAL CONSULTATION: OPPORTUNITIES

REDUCED EXPOSURE TO COVID-19

The primary advantage of virtual consultation is reduced exposure to COVID-19, which is critically important for remote communities in Canada. Remote, Northern, and Indigenous communities face significant challenges in controlling the spread of the virus and responding to it. Initially, the remote locations of these communities insulated them from the virus. However, these communities could not stay insulated from exposure as the virus could not be controlled completely in the year after it started in Canada. Inevitably, these communities have faced significant challenges in managing the pandemic due to limited access to healthcare, high numbers of pre-existing medical conditions such as diabetes and heart disease among community members, and cramped housing conditions. These issues make these communities particularly vulnerable (Somos, 2021).

Due to the significant public health threat these communities face over a year, communities have taken preventive actions to protect themselves from potential carriers, including limiting access from urban environments (Somos, 2021). In addition to community-based dynamics to stay isolated, governments have actively encouraged external parties to avoid or minimize contact with these communities (Esteves et al., 2021). However, projects in these regions and communities could not stop for months. Therefore, consultation and engagement has had to be undertaken virtually or eliminated for any development to move forward.

The elimination of consultation or halting of projects indefinitely are both undesirable. Virtual consultation provides an avenue forward while reducing communities' exposure to the virus. Thus, virtual consultation facilitates public health measures effectively while allowing proponents to move their activities forward with strict rules and following preventive procedures.

INDIGENOUS YOUTH ENGAGEMENT

One important consideration for virtual consultation is its potential to engage and include youth, a demographic group often under-represented in consultations. In recent years, there has been a push for more youth engagement in research, EAs, policymaking and program design (Liebenberg et al., 2017). Their engagement in the assessment process is an opportunity for community building, knowledge sharing and meaningful change (MacKay et al., 2020; Riemer et al., 2014). Successful consultation with youth is built on tangible, measurable results, both short term and long term (Riemer et al., 2014).

Indigenous youth can contribute to processes effectively (MacKay et al., 2020; National Youth Council et al., 2014). They can create meaningful partnerships and relationships with proponents and decision makers that positively contribute to assessment and planning processes (Liebenberg et al., 2017). Participation in the consultation process can also help transfer traditional knowledge and language from elders to younger generations (Liebenberg et al., 2017). Youth community members may assist elders in accessing online forums and engagement tools, and this process may encourage youth-elder communication.

Indigenous youth engagement should reflect the unique cultural, spiritual and socio-economic contexts Indigenous youth find themselves in (National Youth Council et al., 2014). The principles of respecting culture and language, sharing knowledge, and building traditional and modern skills are important when connecting with Indigenous youth for planning and assessment processes (National Youth Council et al., 2014). Because applying these principles can have a positive impact on the process, the virtual format offers a considerable opportunity for inclusive and meaningful youth engagement in consultations. Stronger youth engagement leads to tangible and measurable results and buy-in by Indigenous youth would force proponents and governments to show better accountability performance in the short and long term.

COST AND TIME EFFICIENCY

Virtual ecosystems are more cost efficient than employing consultants and staff to travel to remote regions. Many resource extraction projects, especially those in the Far North, are remote and only accessible by road in certain months or by plane (Walker, 2018). Accommodation and travel to and from these regions are limited and costly in terms of expenses and staff time. Also, the need for working facilities and services strain local resources, and the costs of goods and services rise during peak seasons that negatively impacts locals' living standards (Walker, 2018). In a virtual environment, the proponent, government agencies and communities spend less money and administration and travel time on the consultation process, if these communities and people have access and connectivity to engage in a virtual consultation.

ACCESSIBILITY

In theory, a virtual practice gives higher accessibility to the consultation and engagement that should make the process more equitable for disadvantaged groups, women, youth and people with mobility limitations. Anyone with internet access can participate. Additionally, digital methods can expand accessibility by using multiple forums, questionnaires, online town halls or video conferencing (Esteves et al., 2021). Information and public opinion can be collected with a higher degree of confidentiality using online questionnaires or forums without disclosing personal information. Such approaches and tools make the process more transparent and allow the inclusion of all opinions and concerns that might not be openly shared in-person engagement. Thus, virtual consultation and engagement practices theoretically increase overall transparency and accountability in EAs.

Proponents and consultants may use visual content to present and discuss project specifics that help individuals become familiar with what would be changed if the project progresses. Individuals and interest groups from these communities without technical knowledge would have more opportunities to become familiar with the project details and possible changes in their lives with visual content presented in the consultation. All virtual consultation

and engagement with visual content can be scheduled when the targeted audience prefers or can focus without dealing with other responsibilities, such as child caring. These options can make participation easier, transparent and inclusive, and better reflect individuals' and groups' preferences.

VIRTUAL CONSULTATION: CHALLENGES

LIMITED INFRASTRUCTURE AND DIGITAL INEQUALITY

The most pressing challenge for virtual consultation is limited access to the internet in remote, rural and northern communities. The need for quality internet has become more apparent during the pandemic. Across Canada, median upload and download speeds in urban areas are 63.72 Mbps and 8.18 Mbps. Rural centres experience download and upload speeds at 5.96 and 1.49 Mbps (Stewart, 2020). At present, only 45.6% of rural Canadian communities have access to broadband speeds of at least 50 Mbps download and 10 Mbps upload and access to unlimited data (Canadian Radio-television and Telecommunications Commission, n.d.). Furthermore, the Canadian Radio-television and Telecommunications Commission (CRTC) estimates that only 30% of Indigenous households have internet connections with the recommended speed (Stewart, 2020).

Additionally, cost and knowledge of virtual services may also cause access challenges. For instance, in Nunavut, it would cost a single household \$7,000 a year to reach the Canadian average data usage level (Tranter, 2021). The CRTC found that the affordability of internet services and digital literacy remains a crucial problem, as “36% of respondents said they were limiting their Internet use due to cost and 24% cited lack of skills as an explanation for limiting their use of the Internet” (Standing Committee on Industry, Science and Technology, 2018). In short, remote communities' connectivity limitations challenge effective and inclusive virtual engagement and consultation.

LIMITED ELDER ENGAGEMENT

Virtual engagement requires access to consultation forums and requires the knowledge, capacity and interest to join online forums. These spaces are unfamiliar and may be challenging for elders within the Indigenous communities in Canada. There are obvious benefits of virtual consultation for elders, namely the ability to stay within their communities and not be obligated to travel for consultation. However, Indigenous peoples may lack the capacity to access these forums, and elders are often overwhelmed with the amount of work and lack the resources to participate, such as connectivity or assistance in learning the process (Booth & Skelton, 2011). Virtual consultation may increase their workload if elders are required to become trained in forms of consultation that they are unfamiliar with.

Finding approaches that can maintain cultural practices virtually is also important. Volunteers have trained elders in virtual methods. Service providers from non-profit organizations and young people can help address knowledge gaps in virtual proficiency (Dennis, 2020). A virtual setting can limit relationship building between community leadership, proponents and participants in the assessment process. Besides these limitations, the culture and custom aspects of elder engagement via virtual approaches needs to be considered for meaningful and effective consultation. Building relationships based on trust and understanding are key to successful engagement with elders in Indigenous communities. This relationship building can be undertaken by encouraging the active participation of rightsholders (EAO, 2020).

Joining communities in traditional ceremonies, spending time on the land or using locally preferred communication protocols are primary means of relationship building (EAO, 2020; Stevenson, 1996). Without a relationship built through trust and participation in the community, key assessment activities such as knowledge transfer, goal setting and collaboration on cost-benefit agreements can be strained (EAO, 2020; Stevenson, 1996).

NEOCOLONIAL APPROACHES

Culturally, virtual engagement may not fit with an Indigenous community's decision-making approach and may further embed colonialism. Several studies indicate the importance of consultation practices that match cultural norms (Brideau, 2019; EAO, 2013, 2020; Stevenson, 1996). It is important to respect cultural traditions and territorial norms in consultations with Indigenous peoples. Practices such as gift giving, participating in traditional celebrations or attending in-person meetings are important for proponents to consider. Virtual environments provide limited capacity for human-to-human connection and dialogue, which is often key to meaningful consultation.

LIMITS TO “ON THE GROUND” UNDERSTANDING

If consultation is entirely virtual, it would limit the ability of proponents, consultants and governments to observe at first hand the specific social and cultural dynamics of the affected communities. As a result, this increases the possible lack of the social and cultural considerations of Indigenous communities in EAs — as reported in the Accountable Mining Program (TI Canada, 2020a).

On-the-ground experience helps decision makers and proponents understand issues. Additionally, respecting cultural and traditional aspects of the consultation process is essential when working with Indigenous communities. On-the-ground experience can deepen the understanding of parties' expectations and concerns and can improve relationships between parties (Stevenson, 1996; Walker, 2004). Land-based activities foster mutual education and help develop collaboration between Indigenous and non-Indigenous stakeholders (Booth & Skelton, 2011). Assessments that prioritize meaningful consultation tend to produce equitable solutions and overall sustainability (Bond et al., 2012; Gibson, 2006, 2016).

VIRTUAL CONSULTATION IN LEGISLATION AND GUIDELINES

Legislation and administration protocols or guidelines are lacking in the virtual consultation processes. The COVID-19 pandemic has illustrated that Canadian agencies and government bodies should improve the virtual consultation processes for all participants in order to be ready for situations such as a pandemic that threatens public health and the economy.

As reported by TI Canada's Accountable Mining Program, Indigenous communities have long advocated for a clear, collaborative and efficient consultation process and practice, even before COVID-19. The pre-pandemic EA consultation and engagement practices have been criticized as confusing, leading to conflict, misunderstanding and high cost (Udofia et al., 2017). Additionally, the pandemic has led to temporary changes and repeals to assessment legislation or practices worldwide, including in some Canadian jurisdictions (Bancroft, 2020; Croal, 2020).



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4

Efforts for Effective and Meaningful Consultation in the COVID-19 Pandemic

The Mining Association of Canada (MAC) published a guiding document to support its members in performing virtual engagement and consultation effectively for their projects during pandemic conditions (MAC, 2020). It recognizes that these conditions create challenges for all members, but these challenges have different characteristics depending on location, previous relationships and communications, local capacity, and conditions. Therefore, there is no “one size fits all” approach for companies to overcome the challenges and communicate and engage effectively with Indigenous communities. MAC stresses that Indigenous and community engagement should adapt to these actors’ interests, needs and concerns.

- In this regard, MAC (2020) lists the actions taken by its members to stay connected with the Indigenous and local communities even though in-person communication and engagement are paused:
- Using alternative communication methods, including email, phone, text, virtual meetings with partners and leadership, email communications, local radio and social media to reach the broader community.
- Understanding the priorities and immediate needs of communities and how those communities prefer to engage with the proponent.
- Using plain language and the local language (where requested).
- Communicating based on a clear process to receive, manage and respond to complaints, comments and requests, and responding promptly.

The Inter-American Development Bank (IADB) has provided considerations for conducting virtual consultations. IADB notes that Indigenous peoples require culturally appropriate consultation, which may include translation of

online materials and longer timelines. Also, it is critical to know the limitations and challenges of the communities involved, such as the local infrastructure that may affect how vulnerable groups participate. Therefore, it is critical to plan the virtual engagement and select the method based on the project stage, e.g. pre-EA or operational stages, and based on socio-economic, technological and cultural characteristics of the stakeholders and rightsholders (Martinez & Rojas, 2020).

Unlike pre-pandemic in-person practices, with which proponents and consultants have significant experience, criteria for planning and selecting the method should also be adapted to the new conditions as virtual communication is the only option in the current conditions and the priorities and needs of the local and Indigenous communities have changed since January 2020. However, it is critical to be aware that all the rules and recommendations for standard best practices in consultation and engagement still apply, regardless of whether consultations and engagement are virtual or not, including the requirement that all available information should be shared in advance.

Guiding its consultants in performing meaningful and effective consultations, IABD recommends:

- using drones and mapping tools,
- using social media, such as WhatsApp and Facebook,
- developing a designated web page and regular updates,
- ensuring proper documentation and information disclosure, and
- ensuring the availability of appropriate equipment and service technologies for all parties, and ensuring easy access to virtual assistants.

LUC, a British consultancy firm, has produced guidelines on adapting consultation to the COVID-19 context. They suggest it will require flexibility to generate acceptable land survey methods and alternative approaches to a traditional in-person consultation (LUC, 2020). The need for alternative approaches is affected by the amount of existing information, size of the project, complexity, risk and the need to adopt a precautionary approach.

LUC lists the following key methods and tools to ensure the safety and health of the staff and participants and perform meaningful consultations:

- using surveys, interviews and video content,
- developing 3D models, using visuals and images to explain and discuss plans,
- developing user-friendly content and sharing via social media,
- introducing virtual whiteboards or forum to post questions, ideas and suggestions, and
- organizing virtual workshops and presentations.



5

Conclusion and Recommendations

Consultation processes in EAs for mining projects are criticized by the Indigenous communities and civil society in Canada regarding their effectiveness and inclusiveness. The specific cases and issues about consultation in EAs are discussed in detail for Ontario, BC and Yukon in TI Canada's Accountable Mining Program report (TI Canada, 2020a). The COVID-19 pandemic has added further challenges and significant limitations to effective, timely, inclusive and meaningful consultation and engagement, especially in remote communities.

Ineffective consultation and engagement undermine transparency and accountability in mineral resource development. Although not ideal, virtual consultations are necessary in the context of a global pandemic, because the absence of consultation opens the mineral resource governance processes and decisions to corruption by undermining public oversight. Yet parties need to improve their virtual practices and avoid using the current conditions to fast-track projects without proper consultation and engagement.

The virtual consultation and engagement experience gained due to COVID-19 restrictions can also enrich consultation legislation by integrating virtual consultation and engagement as a method. Guidelines and protocols for virtual consultation and capacity building in remote communities could generate new ideas for addressing the challenges of meaningful consultation created by the pandemic.

Briefly outlined effective virtual engagement efforts in the previous section, overcoming discussed challenges and enhancing listed opportunities can improve the credibility and effectiveness of virtual engagement. These would also help governments allow projects to progress without risking transparency and accountability and would lead an economic recovery that is socially responsible and environmentally sensitive. Hence, in the context of the Canadian mining sector, governments and sector associations should collaborate with the Indigenous communities and civil society to clarify what constitutes meaningful, transparent and inclusive consultation if the entire process must be done virtually.

However, stand-alone efforts, some of them are listed in Section 3, are not enough to solve the challenges addressed in this document. Therefore, government agencies' expectations should be made clear in order to

promote good practices and tools for proponents and the facilitators and practitioners involved in the EA and consultation. In the context of the COVID-19 pandemic, governments need to be transparent about how long suspensions and changes to legislation will be.

Considering transparency and accountability in mine permitting and licensing decision processes in Canada, we offer three specific recommendations.

1. Improve the accessibility and inclusiveness of virtual consultations to enhance transparency and accountability in mineral resource governance.

Infrastructure limitations and digital inequality are critical to improving internet accessibility and affordability in rural and remote communities in Canada. Improving the infrastructure in Northern Canada needs substantial investment, and collaboration among the federal, provincial and territorial governments, and Indigenous communities. Additionally, government funding should be available when needed for capacity building and providing hardware. Strengthening human resources and building technical capacity will also contribute to socio-economic development and ensure better virtual consultations. This, in turn, would lead to higher transparency and accountability at the local level.

2. Determine culturally appropriate methods of virtual consultation.

Virtual consultation can be undertaken in a culturally appropriate way that meets the Crown's duty to consult and accommodate. However, it requires time, energy and effort by the Crown, proponents and Indigenous communities. Talking circles, one-on-one conversations, virtual tours of communities and the land, and other methods could assist in ensuring that consultation is meaningful. Storytelling is often a vital component of consultation with Indigenous communities. Importantly, governments can learn from experiences in other fields that have heavily adopted virtual consultation, particularly the medical field during COVID-19. Resource development consultation can learn from good practices in the health sector, as medical professionals have been working effectively online since the early stages of the pandemic. Hence, practitioners and representatives of proponents and governments should build the capacity to practice virtually yet culturally appropriate methods effectively in the mining sector.

3. Update or generate virtual consultation protocols at the community level.

Consultation protocols set out a Nation's rules for consultation under the Nation's laws. Protocols align with the Crown's duty to consult, guide the process and provide principles for consultation and accommodation between the Nation, the Crown and proponents about an undertaking. The protocols assist and ensure respectful consultation and provide the Crown and proponents with the direction before speaking with the community. However, there are a few examples of consultation protocols that consider virtual engagement or provide the Crown or proponents with virtual consultation expectations. All actors would benefit from clear virtual consultation protocols provided by communities. Setting consultation protocols for virtual consultations should address privacy and confidentiality related to virtual consultation to guide proponents.

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Appendix 1

Project	Location/ Jurisdiction	Status	Did work occur during the pandemic?	Did consultation occur during the pandemic?	Were changes made to the consultation plan?	Recent decisions	Issues/Concerns
Springpole Gold Project	Red Lake, Ont., Ministry of Environment, Conservation & Parks	Review of terms of reference (ToR)	Yes	Yes	Yes <ul style="list-style-type: none"> • Consultation activities were made virtual as of Mar. 2020 • In-person view of the ToR had to be done by appointment • Zoom listed as a consultation tool • Fall and winter 2020 plan period included virtual activities, no mention after that 	None	ToR do not list virtual consultation activities going forward, including in spring 2021. However, conditions are unlikely to change sufficiently to allow for in-person consultation.
Burnaby oil refinery	Burnaby, BC Environmental Assessment Office (EAO)	Process completed	Yes	Yes	Yes <ul style="list-style-type: none"> • Deadlines for public comment extended • EAO addressed concerns about inadequate consultations by stating proponent had posted the necessary information online, along with a notice to a community panel • Website postings and online presentations listed as tools 	No further EAO review required (Aug. 29, 2020)	Not clear if documents were available online only or also accessible in physical formats, as both EAO response and original documents refer only to comments on the EAO and proponent's websites.
Wheeler River Uranium Mine	Northern Saskatchewan, Canadian Nuclear Safety Commission (CNSC)	Environmental assessment ongoing	No, proponent suspended project	No, however, relevant communities were notified of suspension	No	Jan. 25, 2021: CNSC stated revisions to the original project description submitted by the proponent do not constitute material change and do not need additional consultation	Potential issue in not requiring public consultation after a modified technical plan was submitted, even if changes are minor.

Project	Location/ Jurisdiction	Status	Did work occur during the pandemic?	Did consultation occur during the pandemic?	Were changes made to the consultation plan?	Recent decisions	Issues/Concerns
ATCO Salt Cavern Storage Expansion Project	Strathcona County, Alta., Impact Assessment Agency of Canada (IAAC)	Initial project description submitted	No	Yes	Yes <ul style="list-style-type: none"> Description includes no meetings but does not state if this is in response to COVID-19 or general practice Letters sent to local Indigenous groups to notify plan Proponent is evaluating virtual options for site visits 	None	No description of how virtual site visits would be done, and if this constitutes meaningful consultation. Still early in the process.
Suncor Base Mine Extension	Fort McMurray, Alta., IAAC	Commencement of impact assessment	No	Yes	Yes <ul style="list-style-type: none"> Engagement strategy reflects COVID-19 pandemic Reliance on direct mail, email, video conferencing and phone Comment period extended from 20 to 60 days Public comment is open as March 17, 2021) Virtual engagement is referred in the documentation. 	Sept. 18, 2020: Notice of time limit suspension with reasons, 180-day period in which proponent must commence impact assessment extended Aug. 7, 2020: IAAC ruled project subject to an impact assessment	

Sources: ATCO, 2021; Bronkhorst, 2020; Denison Mines, 2020; EAO, n.d.: 25; First Mining Gold Corp., 2020a, 2020b; IAAC, n.d.-a, b).



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