



The Mining Association of Canada | L'association minière du Canada

The Next Phase of Mining and Aboriginal Partnerships

*Pierre Gratton's Speech to the Canadian Aboriginal Minerals Association
November 7, 2016*

First, I would like to thank Stan for his warm welcome and would like to acknowledge the Algonquin peoples on whose traditional territory we are meeting today.

It's a pleasure to be back at CAMA and an honour to be invited back as a keynote speaker.

Before I begin, I thought I'd share a new development at MAC. For the first time in our history, we now have two Indigenous corporate members. Our relationship, championed by CAMA for two decades, keeps getting stronger.

I come this year at a time of significant change. For our sector, it may even be fair to say we are at a crossroads.

Significant decisions will be made in Canada over the next few years. They will determine whether or not Canadian mining thrives and continues to lead the world by example, including in the area of Indigenous relationships.

Given the time I have, I'm only going to focus on two areas:

- 1) Regulatory reform and Indigenous relations; and
- 2) Infrastructure and northern development

As I do this, I want to put to you a new idea for mining-Indigenous partnerships: partnership on public policy. As your stake in mining grows, I urge you to think hard about the conditions needed to ensure mining thrives.

A Look at Market Conditions

But first, I'll talk briefly about the state of the industry.

As many of you know, we've been struggling through a difficult downturn. The slump, which began in earnest in 2014, has continued into this year. However, there are signs that the worst is behind us.

Prices for gold, zinc and steelmaking coal have made impressive gains this year, while prices for other commodities appear to have bounced off the bottom.

Signs of life are out there. In recent months, Goldcorp acquired Kaminak in the Yukon, New Gold's Rainy River project in Ontario is in full construction and two diamond mines, De Beers' Gahcho

Kué in the NWT and Stornoway's Renard mine in Quebec, have opened. There is reason for some optimism.

But when you dig a little deeper, there is also cause for concern.

We're not as competitive as we used to be. In the latest Fraser Institute survey, Western Australia was named the most attractive destination to explore or mine—normally, a Canadian jurisdiction takes top spot. Australia also had three jurisdictions in the top 10 while Canada had just two.

We're also no longer the top destination for mineral exploration, conceding first place to Australia in 2015.

This slippage has serious consequences, and the numbers speak for themselves. The more vulnerable off-mine-site exploration work in Canada declined from a high of \$2.8 billion in 2011 to \$823 million in 2015. In 2016, this number is expected to decline to \$683 million, marking the lowest spend in more than a decade.

These declines call into question Canada's attractiveness for investment and its ability to generate new mineral discoveries and projects.¹

To be clear, mineral exploration and development dollars are still being spent, but Canada's relative share of that spend is getting smaller and is being shifted to other countries.

Australia is one of them. Mineral economist, Richard Schodde, suggests that companies exploring in Australia get more bang for their buck. He suggests Canada take urgent action to improve discovery rates and enhance exploration efficiency.²

This relative decline manifests itself in multiple ways. Take the mining supplier industry as another example of where we've lost ground recently. For a long time, Canada boasted the second largest mining supplier industry in the world. This year, we've dropped to third place behind Australia. And Brazil, in fourth, is nipping at our heels.

I was also really troubled recently to learn that there have been no new mining projects entering federal environmental assessment in more than a year. This can't be explained by low commodity prices, because new projects have begun in Australia and elsewhere. What it suggests to me is that companies, despite having Canadian-based projects with rich deposits, are prioritizing projects in other countries.

So the question becomes: how can we change course and regain our leadership position in mining?

¹ Natural Resources Canada. *Information Bulletin – Mineral Exploration and Deposit Appraisal (March 2016)*. Accessed from <http://www.nrcan.gc.ca/mining-materials/publications/17762>

² Schodde, Richard. *Canada's discovery performance and outlook*. Report commissioned by Prospectors & Developers Association Canada for 2015 PDAC Convention. Accessed from <http://www.minexconsulting.com/publications/R%20Schodde%20PDAC%20Conf%20March%202015%20FINAL.pdf>

Right now, the federal government is pursuing ambitious policy changes that will directly affect the Canadian mining industry. All of this is happening just as the sector is starting its rebound.

This is why I said we're at a crossroads. Decisions will be made in the next few years that will set the direction of the Canadian mining industry for decades to come. We cannot afford to choose the wrong way.

Canada's Regulatory Morass

So let me now turn to the first issue I raised -- our regulatory system.

Jack Mintz recently wrote about the cost of Canada's regulatory burden on the economy by its impact on the return on investment. He wrote "if the regulatory process was as efficient as Australia's, our tax burden amounts to roughly 24 percent of pre-tax profits. Add three more years of regulatory delay and the tax and regulatory burdens rise dramatically to 31 percent."

Mintz referred to the 2016 World Bank's Doing Business report, which ranks the ease of operating a business in 189 countries. This report shows that Canada sits far below our key competitors like Australia and the U.S.

Why this is? After all, didn't the previous government reform Canada's regulatory system to make it easier for business?

Isn't that why the new government has launched a review of the reforms to "restore public confidence in our regulatory system," because the previous government went too far?

My perspective might surprise you. The regulatory reforms of the previous government have failed Canada's mining sector. If it were possible to turn back the clock to 2011 and reverse the changes to the Canadian Environmental Assessment Act, we would do so.

Let me explain.

Under CEAA 2012, we have seen deterioration in federal and provincial coordination, adding to delays and uncertainty.

Further, the Act is poorly integrated with post-EA permitting. For mining proponents, it's not the time it takes for an EA to be completed that matters, it's the whole time from EA through to final permitting.

CEAA 2012 has created life-of-mine, stand-alone permits with condition statements. This pushes the federal government further into provincial jurisdiction than ever before, but without the capacity for thoughtful follow-up.

And last, but not least, the Act is structured to assess only large, clearly defined projects like mines, rather than the cumulative effects of human activity on ecosystems, species or Aboriginal rights. In so doing, it is failing the environment and Indigenous peoples.

All of this is heading in the direction of gridlock, heightened uncertainty and, if not addressed, a major disincentive to new mining investment.

Let's illustrate with an example.

Two steel-making coal projects are currently undergoing environmental assessment in northeast BC. One is led by CEAA, the other a "substituted project", led by BC but still subject to federal decisions.

Three years into the environmental review of the first project and the federal government has concluded significant adverse effects due to this project's potential for a cumulative impact on caribou habitat, and the hunting rights of local First Nations.

Let me be very clear: respecting First Nations rights in this region and elsewhere is essential. The proponent is in active IBA negotiations with all three local First Nation communities. I want to acknowledge, as well, that local First Nations have themselves imposed a hunting ban in the region because the herd is in danger of extinction. What's at issue is how the current CEAA is forcing an outcome that is neither environmentally nor economically sound, nor respectful of First Nations rights.

A few things you need to know about this project. It is an underground mine, with a small footprint. Its potential impact on caribou habitat is theoretical – it depends on whether or not there is subsidence from underground mining and on whether the herd, which is currently not in the area, eventually at some point moves into the region. All of the land in question is provincial Crown land.

A finding of significant adverse effect means this project must go to cabinet for approval, which means more delay and uncertainty; there are no timelines for cabinet approvals.

There is, in this region, significant activity by other sectors. Natural gas development is intense, while logging has been underway for years, and there's plenty of recreational activity that affects caribou. Site C is nearby. The footprints of all of these activities far outstrip the potential impact of this mine. And these activities, with the exception of Site C, are only regulated by the provincial government, and all are ongoing.

It is because of how CEAA 2012 addresses cumulative effects of major projects, with mining one of the few sectors subject to federal review, that this project finds itself at risk of a no decision -- or indefinite delay -- while these other sectors continue their activity unchecked.

Indeed, over the course of the summer while the proponent was putting together an offset as a way of potentially finding a way forward, logging was underway nearby, adding to habitat loss.

Further away in Jasper National Park, but affecting the same caribou population, the federal government -- which took its own projects out of CEAA in 2012 – announced funding for its own development before any review of the cumulative effects on the caribou. CEAA 2012 has made mining the "fall guy" of industrial development.

A no decision on this project will have no bearing on whether or not the caribou survive and recover nor, therefore, will it protect First Nations' hunting rights. Given the high likelihood of impact benefit agreements and resource revenue sharing from these mines, it also means that First Nations will receive fewer benefits. It's a lose-lose situation all around.

This situation in northeast BC is not unique to this one project. The second mining project in the region I mentioned earlier is in the same boat – the substitution of EA to the province does not solve the problem. And there is potential for similar gridlock for mining elsewhere in Canada

where the identical intersection of species at risk, Aboriginal hunting rights and cumulative effects exist.

As news of this spreads, companies and investment will avoid these regions and, overall, Canada's reputation will deteriorate.

For this reason, we welcome the new federal government's decision to review CEAA 2012.

We welcome it with trepidation, as constant review and amendments to key environmental legislation is a source of much uncertainty. However, the current situation is unsustainable.

We need to find a different way to assess cumulative effects; we need an Act that fosters rather than discourages federal-provincial cooperation; we need an Act that doesn't place the impossible burden of addressing cumulative effects on one project and one sector.

The imposition of layers of process on the mining industry is not helping to protect Canada's environment, further Indigenous reconciliation or, in this case, recover caribou.

Our sector's and our country's economic prospects depend on having an Act that reverses the trend that Jack Mintz identified. If not, the most significant economic development opportunities for Indigenous Canadians and, indeed, the federal government's reconciliation goals -- are going to look very, very grim.

Indigenous Reconciliation

Tied to regulatory reform is the issue of Indigenous reconciliation. The Liberal government has expressed its intention to: "enhance the consultation, engagement and participatory capacity of Indigenous groups in reviewing and monitoring major resource development projects."

Further, the government has asked an expert panel to, among other matters, "consider the relationship between environmental assessment and the Aboriginal and treaty rights of Indigenous peoples and reflect the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples." The Panel is in the midst of a cross-country consultation process and will be in Ottawa tomorrow when MAC will be submitting its views and recommendations.

As you know, UNDRIP includes a requirement to consult and cooperate in good faith in order to obtain the *Free, Prior and Informed Consent* of Indigenous peoples before a project can proceed, which is generally understood to refer to a process of continuous engagement. Some consider it to mean a veto over development projects.

I do not intend to engage in a legal debate with you today on the question of veto. I agree with National Chief Perry Bellegarde that the issue of veto is both polarizing and a distraction. The Courts have been clear on the obligation for meaningful consultation and engagement with impacted communities. Our members are fully committed to this.

In the context of the review of CEAA, what's at issue is the nature and scope of Indigenous participation in environmental assessment.

A few considerations to start with. CEAA 2012, as applied to mining, did not diminish the depth and breadth of environmental assessment. No interested party and no Indigenous group that

has requested the opportunity to participate in a CEEA review of a mining project has been denied standing. Indigenous input in reviews of mining projects plays a central role, often supported by active company and community engagement already in place by the time the EA begins.

As we also know, mining projects invariably come with impact benefit agreements, now pretty much accepted as a standard business practice. This is why, today, there are over 350 active agreements across Canada. And it is why, a few examples notwithstanding, mining projects have not faced the same level of opposition as others, and are obtaining approvals with Indigenous support in hand.

Although Indigenous support for mining projects is by no means a given, it is more and more commonplace. Relationships between our sector and Indigenous communities are arguably the strongest in the country and are getting stronger every day. Given this, my concern is not about *what* Indigenous communities expect from environmental assessment but *the ways* the federal government may change CEEA to enhance Indigenous participation in project reviews.

Reconciliation will not be met by adding three months to the comment period of a mine review, for example, or by eliminating timelines altogether. It will not be met by adding more process to a process-heavy exercise.

In fact, I would suggest the opposite may be true. Rather, improved federal-provincial cooperation may provide more space for meaningful Indigenous participation without adding new delays. Governments more effectively and meaningfully carrying out their duty to consult would also help. Considering cumulative effects within a regional context rather than through the lens of a single project would allow for Indigenous concerns regarding landscape impacts to be more thoroughly and appropriately examined and responded to. Getting provincial and federal governments to work together with indigenous communities to address cumulative effects at a landscape level, and not placing the entire burden on one proponent, would better respond to Indigenous rights and concerns. It may also lead others to follow the mining industry's footsteps in engaging and partnering with Indigenous communities.

And, of course, reconciliation goes far beyond project reviews and environmental assessment. UNDRIP has 41 articles, with Articles 26-29 and 32 dealing with the management of natural resources.

The remainder considers the rights to identity, language, culture, education, health and other matters. Addressing these issues should be seen as integral to any strategy that seeks to eliminate, once and for all, the gap that exists between Indigenous and non-Indigenous Canadians.

Prime Minister Trudeau says he's determined to close this gap. His government has announced major investments in Indigenous education and health. Investing in the capacity of Indigenous communities to participate in and benefit from the opportunities of natural resources development will only increase support for such development over time. This may be the long road, but it's the right one. The wrong road is increasing the burden and duration of regulatory review that will only reduce the opportunities for economic advancement and closing the gap.

I put these thoughts to you and then ask a question. If what I've said resonates in some way, will you work with us to build a better review process? One that works for Indigenous peoples,

attracts investment and allows us to continue to build on the relationship we have been forging together over the past two decades.

Infrastructure and Northern Development

This brings me to the next topic I want to address today – the challenges and opportunities in Canada's North for the mining industry and local Aboriginal communities, and how this relates to reconciliation.

If we find our way out of the current regulatory morass, it will still take a few years. Another way to attract new investment to Canada and to get mining moving again, is to invest in remote and northern infrastructure.

The North is our industry's future, but the territories and the northern parts of our provinces lack the roads, electricity, ports and railways to service mines and get products to market.

Everybody in Ontario knows the infrastructure challenges faced in the Ring of Fire. These same challenges are faced all across the northern half of Canada.

MAC and the PDAC co-authored an industry study that found that it costs about 2 to 2.5 times more to build a gold or base metal mine in northern Canada off grid than in the south. What's behind these costs is lack of infrastructure.

If mining is going to continue to be the North's economic advantage, as the single largest private sector employer of Aboriginal peoples, and the leading contributor to GDP across the territories, then the North needs a new infrastructure deal.

Fortunately, just last week, the government announced a nation-building infrastructure plan that will set us on the right direction.

Not only will the plan benefit remote, northern and Indigenous communities, it could be the single most important stimulus for new mining investment since the Canada-US Free Trade Agreement.

Part of that plan includes the creation of the Canada Infrastructure Bank. This is something that MAC, the Canadian Chamber of Commerce and also several Aboriginal organizations, including the National Aboriginal Economic Development Board and the Kitikmeot Inuit Association, have been advocating for.

This infrastructure bank should enable remote and northern regions to attract investment and facilitate long-term economic growth in these regions. This would reduce their reliance on federal funding for social and other types of programming.

Depending on the bank's mandate, the public value of a potential investment could be assessed by the direct and indirect jobs it will create, the tax and royalty revenues it will generate, among other social and economic benefits.

Depending on the bank's funding structure, special consideration could be given to infrastructure investments, including renewable power, that enhance the economic viability of regions with high unemployment, and limited alternative development opportunities.

The mining industry is ideally situated to generate significant and meaningful employment, spin-off business and other social and economic opportunities for Aboriginal and northern Canadians.

Take Agnico Eagle Mines' Meadowbank Mine in Nunavut as an example. The mine directly employs 250 Inuit employees at an average wage of \$107,000 per year, and many more indirectly. The operation generates significant local business development opportunities to the tune of \$280 million per year in contracts; \$90 million of that is spent in Nunavut, and \$27 million in the Baker Lake region. The company also invests strongly in Aboriginal skills training initiatives at more than \$5 million per year, helping Inuit achieve their red seal in a number of trades.

All of these economic contributions have been generated, despite the fact that the Meadowbank Mine—after six years of operation—is not yet profitable. It is still paying for the infrastructure that it assumed total cost for, including a 110 kilometre road—Nunavut's longest.

The Meliadine project is Agnico's next mine in Nunavut, due to come into production in a few years. To power the mine, Agnico will use diesel fuel, unavoidable in the northern context where there is no grid. Or is it? Run of river generation has potential near the Meliadine project. The proposed infrastructure bank may enable such a project to be viable, and would provide clean power to the mine, to local communities and a permanent, valuable asset to Nunavut that would then attract new investment.

Mining is the North's economic opportunity, and the right policy environment will enable the industry to play an even bigger role in generating economic opportunities for northern and Aboriginal communities.

Upwards of 15 potential mines could start, or re-start, over the next decade across the three territories. Overcoming the infrastructure deficit with strategic energy, telecommunications and transportation infrastructure investments is key to unlocking these opportunities.

This is why we need you to add your voice to ours. Let's make the case for ensuring the North gets its fair share of the infrastructure funding, and work together to ensure the infrastructure bank supports projects in northern Canada.

Conclusion

To summarize, a new federal government has brought about a major shift in priorities and focus. I have touched on a couple of them.

Amidst uncertainty, I see a path forward that is bright, as our industry continues to grow and does so in closer and closer partnership with Indigenous communities. New infrastructure investments in Canada's North can usher in new projects and create new opportunities for communities.

Without such investment, new projects will continue to be very rare in the North, and as our mining industry in southern Canada ages and declines, we will see our sector erode, with deep economic repercussions for the country.

Similarly, I see a regulatory system that is efficient, where both levels of government cooperate and where Indigenous participation is supported and respected. But I also fear a continuation of the path we were put on in 2012, where mining alone faces hurdles that become too big to overcome, and investment goes elsewhere.

As I said, we're at a crossroads. I hope that our industry can work together with Indigenous communities and organizations like those of you here today to take the right steps to ensure we all succeed.

Thank you.