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# A Glimpse into Mining in Canada

Presentation to Brazil Senate Working Group

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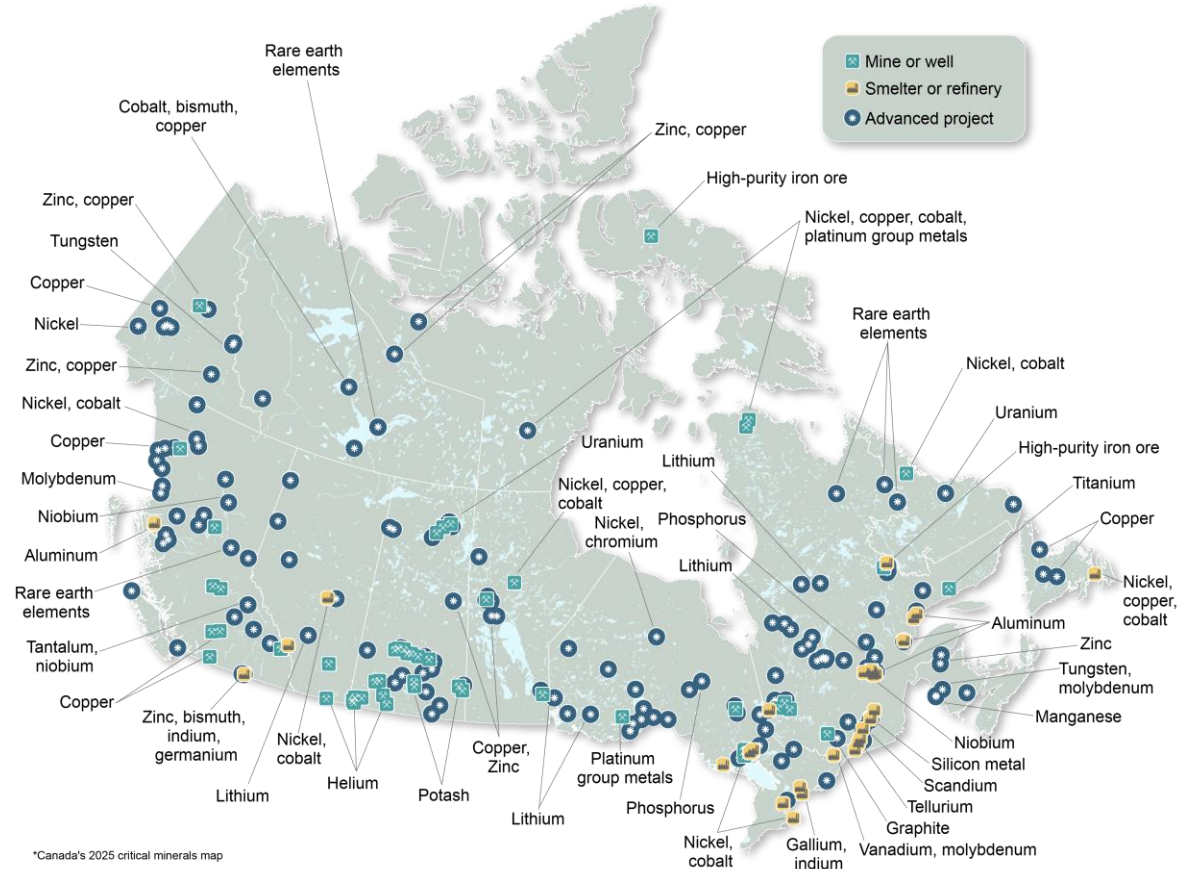
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# Canada is a mining nation, home to a variety of minerals and metals

- More than **60 minerals and metals** are produced from almost **200 mines**, and thousands of pits and quarries in Canada.
- Minerals are produced in **every province and territory**, and large urban cities (such as Toronto and Vancouver) are recognized as **global hubs** for mining and mineral exploration, financing, and legal services
- More than **200 producing mines** and **thousands more exploration properties** are located within 200 kilometers of Indigenous communities.





# Indigenous Relations



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# Indigenous in Canada

- In the Canadian context, the term **Indigenous** person refers to an individual who identifies as belonging to one of the three Indigenous Peoples in Canada: **First Nations**, **Inuit** and **Métis**.
- Superseded terms still used for legal purposes include:
  - The term **Aboriginal** is used in the *Constitution Act 1982* and includes the Indian (or First Nations), Inuit and Métis Peoples.
    - Section 35 of the *Constitution Act 1982* recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada.
  - “Indian” is the legal identity of an Indigenous person who is registered under the *Indian Act*



# Indigenous Peoples and communities across Canada play a key role in mining



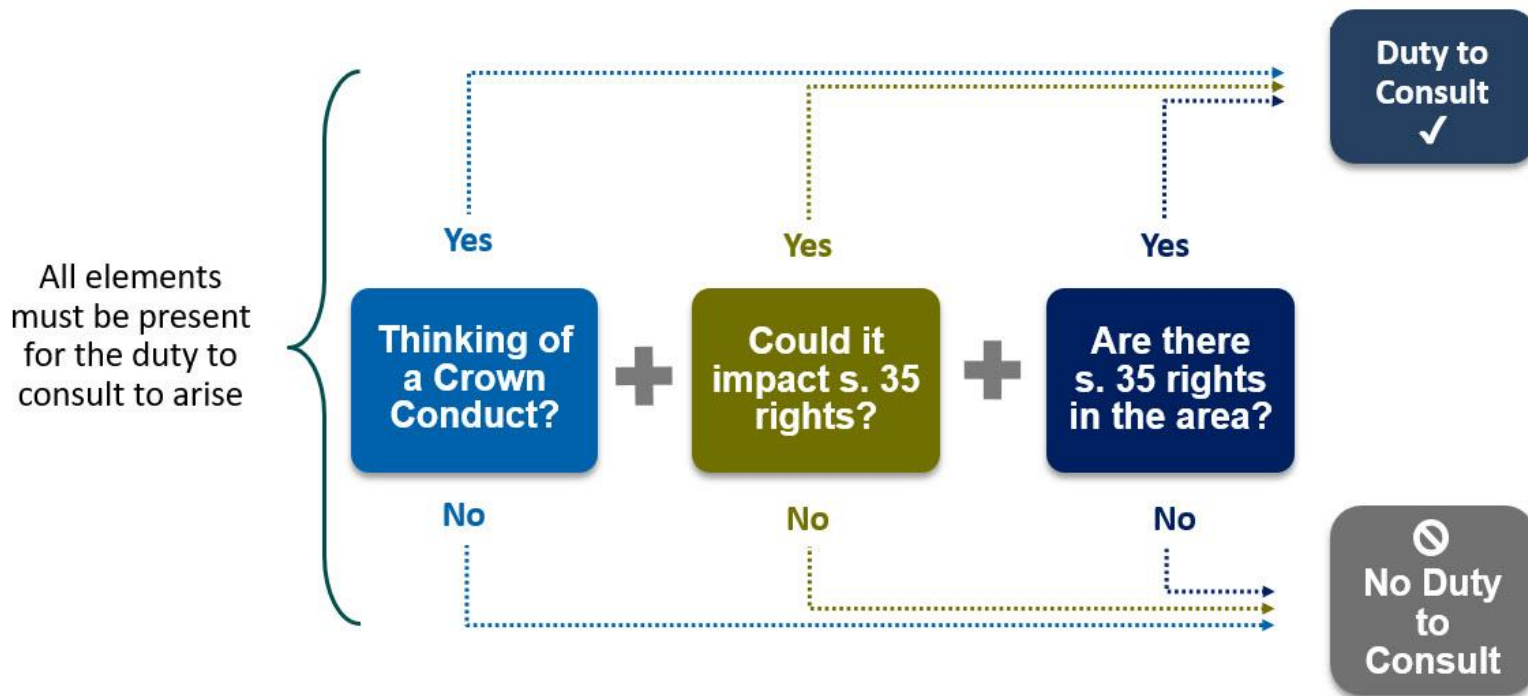
- **Indigenous Peoples are important partners and leaders in the mining sector**
- Mining and associated activities are one of the economic engines that generate wealth and socio-economic growth in rural and remote communities. The mining sector is the **second-largest private sector employer of Indigenous Peoples** in Canada (11% of labour force) and a key client of Indigenous businesses in the mining supply and services sector.
- The Crown has a **duty to consult and accommodate** Indigenous groups when it considers conduct that might adversely impact established Indigenous communities or their treaty rights (*Constitution Act*, s. 35).



## Key Aspects of Consultations and Accommodations

- The duty to consult is owed by the Crown, both federal and provincial, to the Indigenous group that holds the s. 35 rights
- For mining, the Duty To Consult is most likely to be triggered for approvals (permits or authorization under provincial jurisdiction
- Private entities, such as mining proponents, do not have an independent duty to consult
  - In this case, the Crown can delegate certain procedural aspects of consultation to third parties, such as private entities. **The duty, however, remains with the Crown.**

# When Does the Constitutional Duty to Consult Arise?



# What constitutes an adverse impact?



- A potential negative effect on:
  - **Quality or quantity** of the lands or resources needed to exercise rights.
  - **Access to** traditional territories to practice rights
  - Ability to practice rights using preferred means and locations.
  - The **experience** of exercising rights
- Biophysical effects on the environment are not the same as adverse impacts on section 35 rights
- Adverse impacts on rights are categorized as **minor, moderate, or serious.**

# Accommodation



- Purpose is to **avoid, reduce or compensate** for potential adverse impacts to established or asserted Aboriginal or treaty rights
- The nature and extent of accommodation is proportionate to the strength of the claim or treaty rights assessment and the degree of adverse impact
- Accommodation is part of the consultation process
- **Compensation** can be financial or non-financial

# Modern Treaties

## Modern Treaties map



- **Modern treaties are a distinct expression of reconciliation and a constitutionally entrenched commitment** – they are fundamental to advancing the reconciliation of pre-existing Indigenous sovereignty with Crown sovereignty.
- Modern treaties and self-government arrangements cover over 40% of Canada's landmass, including 80% of the North. These agreements recognize Indigenous **jurisdiction, decision-making authority, and stewardship** over lands, resources, and economic development.
- Modern Treaty partners, who are not governed by the *Indian Act*, hold **constitutionally protected** arrangements. The need for collaboration to implement these agreements and the self-government arrangements that accompany many of them created partnerships that can be leveraged in Canada's economic and strategic planning.
- Today, **27 modern treaties and 3 self-government arrangements** form the foundation of relationships with 34 Indigenous partners, representing over 90,000 First Nations, Inuit, and Métis people.

Agreement Between  
the Inuit of the Nunavut Settlement Area  
and Her Majesty the Queen in right of Canada  
as amended



CONSOLIDATED VERSION  
(incorporating amendments to April 13, 2017)  
May 25, 2018



# Mining Governance for Modern Treaties

- The Duty to Consult is a constitutional duty that applies in the context of Modern Treaties; however, officials must look at Treaty provisions first.
- Modern treaties often outline obligations and commitments related to:
  - working in partnership to assess projects in treaty settlement lands and broader territories
  - harmonizing respective impact assessment processes
  - enhancing participation of Modern Treaty Partners in Review Panels
  - seeking to achieve consensus with Modern Treaty Partners through collaboration during impact assessment processes
  - enabling the development of Modern Treaty Partners' own environmental assessment laws in some cases
- Modern treaties often include a land claim settlement agreement, which can include chapters on access, management of settled land and non-renewable resources.

# *United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA)*



- The federal *UN Declaration Act* includes a statutory obligation for the federal government to work in consultation and cooperation with Indigenous Peoples to identify measures and steps to ensure **consistency of Canada's laws** with the UN Declaration, to develop and implement an **Action Plan**, and to prepare annual progress reports.
  - The Action Plan may result in new pieces of legislation and will continue to evolve in consultation and cooperation with Indigenous partners
- Only applies to federal jurisdiction—Provinces and territories may choose to implement the UN Declaration and in their own manner

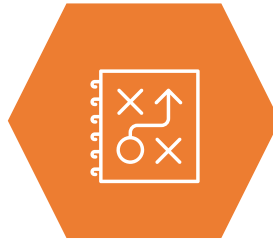
# Indigenous Partnership and Participation in Mining



In Canada, **agreements** between Indigenous groups and mining companies have become common in the mining industry. They are:

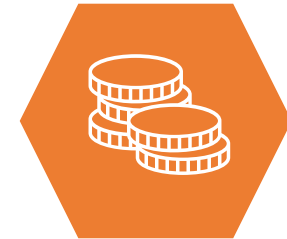
- Commercially negotiated
- Confidential to the parties
- Set out the terms for how an Indigenous group and a mining company work together
- Establish a framework for cooperation and collaboration in relation to a specific project.

While each agreement is unique, common provisions include community participation and mitigation measures for environmental impacts.



Canada is collaborating with governments, Indigenous organisations and their economic development arms, and industry to ensure that Indigenous Peoples are empowered with the information to:

- **make informed decisions regarding mining** on/near their Territories
- ensure they are well positioned to **participate in and benefit from** opportunities and mitigate challenges in mining
- **support Indigenous businesses** uniquely situated to provide goods/services to the industry



Indigenous groups continue to pursue **equity in mining projects** and/or decision-making opportunities for projects, and increased control and profit from development.

One of the largest barriers to Indigenous groups pursuing equity is limited access to capital. In December 2024, the Government of Canada launched the **Indigenous Loan Guarantee Program** (ILGP) to provide up to \$10 billion in loan guarantees to eligible Indigenous groups, supporting Indigenous peoples to make major economic investments in projects.



# Mining Governance



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# Natural resources are a shared responsibility

## FEDERAL

- Federal lands
- National scale thematic geoscience
- Nuclear energy and uranium mining
- Explosives regulations
- International trade and investments
- Navigable waters management
- Aquatic species at risk, fish and fish habitat

## SHARED

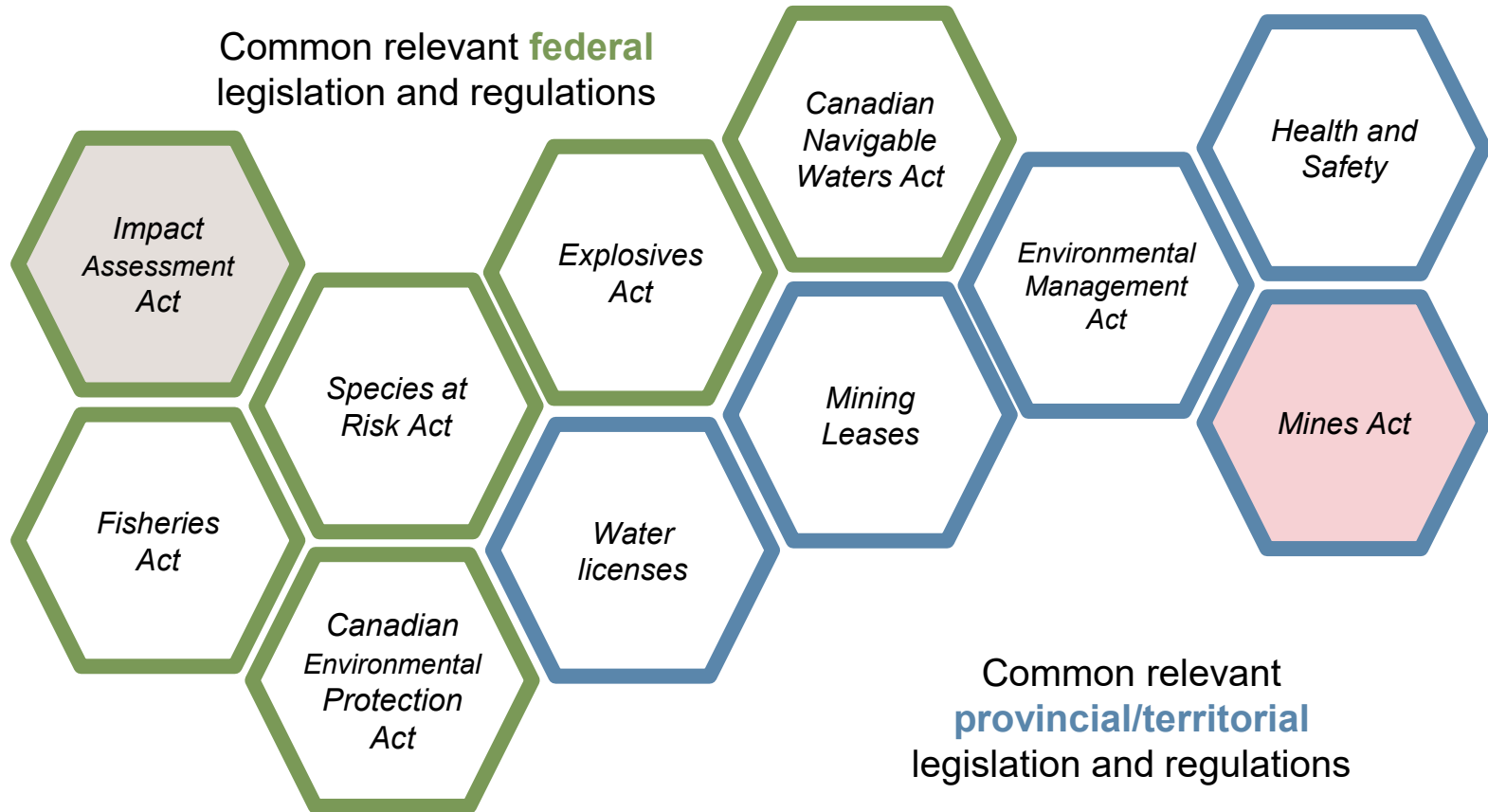
- Environmental protection and conservation
- Economic development
- Indigenous affairs
- Innovation, science, and technology R&D
- Infrastructure
- Health and safety
- Land access

## PROVINCIAL / TERRITORIAL

- Resource ownership and management
- Jurisdictional scale framework geoscience
- Resource exploration and development regulations
- Operational licensing, permitting, and monitoring
- Land-use decision-making

Some resources are located on Aboriginal treaty lands, for which modern treaty signatories have specific rights and jurisdictions related to lands and resources within those areas.

# Canada has a comprehensive regulatory system



# Federal Impact Assessment Process

- Only certain major projects will trigger an impact assessment as mining activities are within provincial and territorial jurisdiction.
- The ***Impact Assessment Act (IAA)*** outlines the federal process for impact assessment and the prevention or mitigation of **significant adverse effects** within federal jurisdiction.
- Examples of **federal jurisdiction** are:
  - Fish and fish habitat
  - Migratory birds
  - Transboundary waters and marine environment
  - Impacts to Indigenous Peoples
- **Only applies to major projects** such as:
  - **Major mines**
  - Marine terminals
  - Large dams

The **Impact Assessment Agency of Canada (IAAC)** is responsible for conducting impact assessments under the ***Impact Assessment Act***.



**Distinct from the regulations and requirements of the province or territory** in which the project is located.

# The Evolving Relationship

- **Negotiations:** Increasingly Governments are prepared to work together in a more coordinated and Indigenous-led way
  - The Tłı̨chǫ Government, the Yellowknives Dene First Nation and the Government of the Northwest Territories have signed memorandum of understanding to advance joint planning for the proposed Arctic Economic and Security Corridor.
- **Indigenous-led Environmental Assessment:** Increasingly, federal and provincial/territorial authorities are working with Indigenous partners to implement ways to share responsibility over assessing potential mining development in their traditional territories
  - The Squamish Nation established the first Indigenous environmental assessment process in Canada, strengthening their governance over activities on their lands.
- **Indigenous-led Land Use Planning:** may support proponents and Indigenous groups working together to identify suitable types of developments or areas for development well in advance of a project entering the regulatory system.
  - The Tahltan Nation and the Province of British Columbia are collaborating to co-develop a Tahltan-B.C. Land Stewardship Plan that aims to establish a framework for sustainable land stewardship and paced and scaled economic growth, ensuring a prosperous future for generations to come.



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## **Annex A: Natural Resources Canada's Mandate and Role**

- Natural Resources Canada (NRCan) develops policies and programs that enhance the contribution of the natural resources sector to the economy, improve the quality of life for all Canadians and conducts innovative science in facilities across Canada to generate ideas and transfer technologies.
- NRCan is an established leader in the fields of:
  - Energy sources and distribution
  - Forests and forestry
  - Minerals and mining
  - Earth sciences and Earth Observation
  - Energy efficiency
  - Science and data
- NRCan also represents Canada at the international level to meet the country's global commitments related to the sustainable development of natural resources.
- NRCan collaborates with other federal departments in the mining space like Global Affairs Canada, and regulatory agencies like the Impact Assessment Agency .

## **Annex B: NRCan's Lands and Minerals Sector**

The Lands and Minerals Sector at NRCan is the Government of Canada's primary source for scientific, technological, economic and strategic policy advice on Canadian lands and minerals.

Our role in relation to lands and minerals is to lead:

- Strategic policy direction to inform policy and regulatory decisions
- Research on geosciences, mineral processing technology, and mine waste management
- Economic, socio-economic analysis, and competitiveness and represent Canadian interests
- Advancement of Indigenous reconciliation and partnerships
- Collaboration with other government departments, provinces and territories and internationally

# Annex C: Related Federal Departments/Agencies

## Environment and Climate Change Canada (ECCC)

Responsible for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*. ECCC works with Provincial and Territorial governments to coordinate and undertake water quality monitoring, data collection and data reporting for priority watersheds through the *Canada Water Act*.

## Fisheries and Oceans Canada (DFO)

Work to support sustainable, stable, prosperous fisheries through the continued implementation of the modernized *Fisheries Act*, which restores lost protections, rebuilds fish populations and incorporates modern safeguards. DFO also implements the *Species at Risk Act* (SARA) for aquatic SAR and regulates development activities taking place in and around fish habitat.

## Natural Resources Canada (NRCan)

Works with Government of Canada departments and agencies to support policy frameworks that are reflective of Canada's ambitions to foster a globally competitive and environmentally conscious mining industry. NRCan supports assessments under the Impact Assessment Act through the provision of science and socio-economic data.

## Global Affairs Canada (GAC)

Responsible for managing Canada's relationship with the U.S., and the implementation of the *Boundary Waters Treaty*. The Governments of Canada and the U.S. created the IJC to help manage our shared waters, and the IJC is guided by the BWT.

## Impact Assessment Agency of Canada (IAAC)

Responsible for leading and managing the impact assessment process for all federally designated projects under *Impact Assessment Act* (IAA). The IAA, where applicable, requires the assessment of changes to the environment that would occur outside of Canada.

## Canada Water Agency (CWA)

Leads the development of the National Freshwater Strategy through coordination and collaboration with partners and stakeholders. Provides federal freshwater policy leadership and a whole-of-government approach to freshwater management.