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

Mining Association of Canada Submission to

The Standing Senate Committee on Energy, the Environment and Natural Resources

Division 28 of Part 4 of Bill C-69: *An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024*

May 28, 2024

The Mining Association of Canada (MAC) is the national organization representing the Canadian mining industry, comprising companies engaged in mineral exploration, mining, smelting, refining and semi-fabrication. Our members account for most of Canada's production of base and precious metals, uranium, diamonds, metallurgical coal, and mined oil sands. MAC members strive to be responsible operators who are respectful environmental stewards, whose actions go beyond legal compliance. Their commitments are demonstrated through participation in the *Towards Sustainable Mining* (TSM) program, an international mining sustainability standard whereby mining operations evaluate, manage and publicly report on critical environmental and social responsibilities. Our members are among the largest private sector employers of Indigenous peoples in Canada.

The urgency of addressing climate change, the need for materials to support technological evolution including the transition to electric vehicles, the electrification of the Canadian economy, decarbonizing energy supply, the fragility of supply chains exposed by the pandemic and geopolitical conflicts have highlighted the need for new mines and infrastructure projects. Yet, Canada's numerous complex processes that a project must navigate before receiving approval to proceed means these projects will not be built in time to meet our shared climate change, energy and supply chain security goals.

There is broad consensus that the timelines for the planning and approval process for new projects must be shortened without losing the requirements for good planning, environmental protections and Indigenous consultation. The federal government has put forward a number of minor initiatives to seemingly improve permitting timelines, including the recent amendments to the federal *Impact Assessment Act* (IAA) in response to the Supreme Court of Canada's opinion on the constitutionality of the IAA.

Mining projects are already subject to comprehensive provincial regulatory frameworks that are unique to each province, including environmental assessment processes, environmental protection regulations, Indigenous consultation processes, permits of general application and regulations, and permits specific to mining.

The federal government does not have jurisdiction over mining on provincial crown land and does not have a dedicated regulator for mines. However, mining projects may be subject to several federal requirements. Mining projects and major expansions that meet the criteria of the *Physical Activities Regulations* are subject to the IAA. As well, the abundance of water in most parts of Canada means that a mining project may also require an authorization under the *Fisheries Act*

habitat provisions, an approval or Governor in Council Order under the *Canadian Navigable Waters Act* (CNWA), and, in some cases, an amendment to Schedule 2 of the *Metal and Diamond Mining Effluent Regulations* (MDMER). All mines must also comply with relevant general federal legislation such as the *Explosives Act*, the Species at Risk Act, the *Migratory Birds Convention Act* and the *Canadian Environmental Protection Act*.

Uranium mines are subject to the same provincial and federal requirements as other mines and are further regulated by the Canadian Nuclear Safety Commission, adding yet another source of federal and provincial regulatory overlap.

The amendments to the IAA tabled as part of the *Budget Implementation Act, 2024,* have the potential to improve the assessment process for mining proponents and the potential to focus assessment and decision-making on effects in federal jurisdiction but in our opinion are insufficient to increase the predictability and timeliness of the process. Put simply, our 30 years of experience with federal assessment has led us to conclude that the law is not enough. A well-structured and systematic implementation is critical. Based on our extensive experience with federal assessment legislation, we are very concerned that these amendments will not materialize into real change for project proponents, including the goal of achieving one project one assessment.

For three decades, our sector has experienced a range of issues with federal assessment legislation, including the regulatory uncertainty that results from periodic legislative changes. Prior to the IAA, mining proponents experienced significant challenges with the *Canadian Environmental Assessment Act,* 2012 (CEAA, 2012), including the uncertainty that came with a lack of tailoring, problematic stop clock provisions that made timelines meaningless, unpredictable information requests and the absence of a timeline for referral to Cabinet if an assessment concluded that a project would cause significant adverse effects.

Contingent on good implementation of the legislation, MAC had expressed support for the IAA, as it held promise for a more predictable, focused, and timely federal assessment process compared to CEAA, 2012. Improvements included more flexibility to promote federal/provincial cooperation, a better approach to time management by government, the potential for the integration of permitting requirements into the assessment process and tailoring of assessments. Unfortunately, the mining sector's early experience with the IAA has fallen well short of our expectations. While the Planning Phase is intended to ensure that assessments are tailored to the unique issues for each project, we have yet to see evidence of effective tailoring. Contrary to the commitment of ensuring that assessments focus on the issues that are unique to the project, proponents are being required to undertake unnecessary, lengthy, and costly studies of issues that fall outside of federal jurisdiction and have negligible bearing on the decision about the effects of the project, all of which adds significant costs and leads to project delays.

Budget 2024 outlines ambitious timelines for federally designated projects and federal permits outside of the impact assessment process. That is, five years for federally designated projects, three years for nuclear projects and two years for federal permits for non-designated projects.

Unless implementation of the IAA is appropriately scoped and executed, achieving the five-year timeline for designated projects will not be feasible for most projects.

Hence, while we welcome this ambition, to ensure the government's own ambitions are achieved and to attract new mining investment, there is an urgent need to do the following at minimum:

- **Federal-Provincial-Indigenous Cooperation:** The IAA addressed in law the inflexibility of CEAA 2012 that prevented cooperation with provincial governments. However, federal/provincial cooperation has not improved in practice, and the promise of one project, one review is as elusive as ever. The new amendments seemingly go further to enable federal-provincial-Indigenous cooperation, but it is imperative that we start seeing results. For too long, mining sector proponents have faced duplicative, uncoordinated reviews of new projects by different levels of governments unseen anywhere else in the world, all of which undermines investor confidence. The federal government must actively pursue and conclude agreements with other levels of government to eliminate duplication and improve efficiencies.
- **Project List:** The upcoming five-year review of the *Physical Activities Regulations* (Project List) must be adjusted to better reflect the potential for adverse effects in areas of federal jurisdiction of the mining sector. We propose that there should be a reverse onus on the determination of whether a federal assessment of a provincially-regulated mining project is required, and whether federal permitting is sufficient to carry out federal responsibilities (e.g. Fisheries Act permits) in light of the fact that the project will undergo assessments by other jurisdictions.
- **Tailoring:** MAC strongly supports tailoring assessments to focus on the unique potential impacts of new projects. Indeed, the introduction of tailoring was a key reason why our members believed the IAA would improve upon previous legislation. Unfortunately, tailoring of project assessments has, to date, been minimal to non-existent. In MAC's view, the SCC opinion fully reinforces the importance of tailoring to focus on a narrower set of federal effects, but to date we have witnessed minimal change to project reviews. This must change and we urge the Agency and the new office at the Privy Council Office to make tailoring a reality.
- **Standard Mitigation Measures:** Consistent with the objective of more focused, tailored and efficient reviews, the federal government should implement standard mitigation measures for effects in federal jurisdiction that are common for mining projects, with the objective of reducing costly, time-consuming, unnecessary studies and data collection. Studies unrelated to federal effects should be discouraged if not prohibited.
- **Clarity and Predictability:** The proposed amendments introduce new terminology, such as "non-negligible" and "to some extent significant", previously unused in federal assessments, creating potential uncertainty for project proponents and the government. The government must clarify these new terms on an urgent basis.

In addition to the measures aimed at improvements within the IAA process, the following support measures are needed:

- **Driving Culture Change:** Ensure that federal ministries are directed and supported as they pursue their mandates in the federal review process in a manner consistent with the direction provided in Budget 2024.
- **Support the Clean Growth Office:** Adequate staffing and authority should be provided to this office to remove barriers to project assessments and ensure inter-departmental coordination.
- **Crown Consultation:** The Government of Canada indicates it takes a "Whole of Government" approach to Crown consultation; however, often consultation is not coordinated. Coordinate across departments and provincially where appropriate and build capacity with federal consultation staff to ensure that scoping and communication of Indigenous consultation is appropriately focused on federal aspects of a mining project, recognizing that for matters in provincial jurisdiction, the duty to consult and accommodate rests with the provincial government.

In order to meet Canada's climate change ambitions, fulfill commitments to allies and address vulnerabilities in the supply chain, acceleration of new mining, energy and infrastructure projects is needed. To do so, however, we need to greatly accelerate the pace of project approvals. The government has itself recognized this imperative; while the proposed amendments to the IAA have the potential to help the government achieve its goals, the Act has to be effectively implemented.

It is hoped that the issues and challenges described above will provide some context for the Standing Committee's consideration of the amendments to the IAA outlined in Bill C-69. It is imperative that Canada partner with provinces, rights holders and other stakeholders to establish a clear and efficient process that can best support necessary investment in this country.