TRANSPARENCY INTERNATIONAL CANADA

ACCOUNTABLE MINING

A Risk Assessment of the Environmental Assessment Process

Canada National Report

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About This Report

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The Accountable Mining Program research was undertaken by contracted researchers on behalf of Transparency International Canada. Dr. Cole Atlin led the research in Ontario between May 2019 and January 2020. The Canadian International Resource and Development Institute (CIRDI) conducted the research in British Columbia between May 2019 and January 2020 and in the Yukon Territory between August 2019 and March 2020. The jurisdictional technical reports resulting from their work are available at **transparencycanada.ca**.

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About the Accountable Mining Program

Transparency International's (TI) Accountable Mining program studies transparency and accountability vulnerabilities in mine permitting processes. Funded by the BHP Foundation and the Australian Government through the Department of Foreign Affairs and Trade, this initiative is being implemented in over 20 countries with coordination by the TI national chapter in Australia. The Accountable Mining program works toward building robust, transparent and accountable processes for obtaining mining permits and licences by working collaboratively with governments, companies, civil society organizations and communities.

Mine permitting and licensing are critical as governments, communities and proponents negotiate if and under which terms mineral resources might be explored and exploited. Mining permits and licences awarded by governments impact current and future generations. Therefore, transparent and accountable permitting and licensing processes are important to ensure:

- all stakeholders and rights holders have the opportunity to be involved in the discussion of if and how mineral resources will be exploited at the early stage of the mining value chain, and

- the development of socially responsible, environmentally sensitive and economically feasible projects by qualified proponents, providing benefits not only to shareholders but also host communities and the public.

Transparency International Canada (TI Canada) is responsible for conducting the program in Canada. This research aims to identify transparency and accountability risks by conducting a risk assessment in mine permitting. The Canadian study focuses on the environmental assessment processes and their legal frameworks in Ontario, British Columbia and the Yukon Territory.

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For more information, please visit:

Global Accountable Mining Program website:
transparency.org.au/global-mining

Canada Accountable Mining Program website:
transparencycanada.ca/accountable-mining/overview

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"A transparent and accountable EA process is essential for meaningful engagement and understanding of the impacts and trade-offs involved in a proposed mineral development project."

Abbreviations

BC	British Columbia
CC	community consultation
CF	contextual factors
CIRDI	Canadian International Resource and Development Institute
DO	designated office – Yukon
EA	environmental assessment
EAA	*Environmental Assessment Act* – British Columbia and Ontario
EAC	environmental assessment certificate – British Columbia
EAO	Environmental Assessment Office – British Columbia
EC	executive committee – Yukon
EMR	Energy, Mines and Resources – Yukon
EMPR	Ministry of Energy, Mining and Petroleum Resources – British Columbia
FPIC	free, prior and informed consent
GDP	gross domestic product
IBA	impact benefit agreement
INAC	Indian and Northern Affairs Canada
MACRA	Mining Awards Corruption Risk Assessment
MECCS	Ministry of Environment and Climate Change Strategy – British Columbia
MECP	Ministry of Environment, Conservation and Parks – Ontario
NRCan	Natural Resources Canada
PD	process design
PP	process practice
RPR	*Reviewable Projects Regulation* – British Columbia
TI	Transparency International
TI Canada	Transparency International Canada
TSX	Toronto Stock Exchange
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
WCEL	West Coast Environmental Law
YESAA	*Yukon Environmental and Socio-economic Assessment Act*
YESAB	Yukon Environmental and Socio-economic Assessment Board

Glossary

Accountability: The concept that individuals, agencies and organizations (public, private and civil society) are held responsible for money or other entrusted property as well as reporting their activities and executing their powers properly.[1]

Brownfield mining project: A mining project in areas where mineral deposits have previously been discovered, explored and exploited.[2]

Claim: "A mining right that grants a holder the exclusive right to search and develop any mineral substance within a given area."[3]

Class assessment: A document setting out a standardized planning process for classes or groups of activities that are carried out routinely and have predictable environmental effects that can be readily managed.[4]

Corruption: The abuse of entrusted power for private gain in public and private sectors, civil society, academia and community leadership by behaving unethically or avoiding being accountable.[5]

Duty to consult: 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."[6]

Environmental assessment: "An assessment of the impacts caused by a development activity such as mining."[7]

Free-entry system: A prospector's ability to obtain mineral rights by staking claims on a parcel of land and to acquire mining rights on a first-come, first-served basis.[8]

Free, prior and informed consent: The concept, recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), relates to the right of Indigenous Peoples to give or withhold consent to a project that may affect them or their territories and enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated.[9]

Greenfield mining project: A mining project in areas with minimal or no previous exploration.[10]

Individual environmental assessments: Environmental assessments that are prepared for large-scale, complex projects with the potential for significant environmental effects, and require approval by the Ontario Ministry of the Environment, Conservation and Parks.[11]

Mineral rights (Mining rights): "Ownership rights to the minerals located on or below a property."[12]

Surface rights: "The rights to use the surface of the land, excluding mineral rights; whereas, sub-surface rights are rights to the minerals under the surface of the land."[13]

Transparency: The characteristic of governments, companies, organizations and individuals of being open in the clear disclosure of information, rules, plans, processes and actions that fulfils the duty to act visibly, predictably and understandably.[14]

Executive Summary

The mining sector is influential in Canada, not just for the revenue it generates and the jobs it creates, but also for the impact it can have on the environment and communities. For this reason, environmental assessments (EAs) are critical components of mining licensing and permitting processes. Moreover, EAs are a key decision point in the mine permitting system because, in the EA process, the public has the opportunity to influence whether, and under which conditions, a right to exploit mineral resources will be given.

The number of actors, room for influence and scale of impact means that the EA process must be transparent in order to assess and address social, economic, cultural and ecological impacts, benefits and trade-offs. In the context of mining and EA processes, transparency refers to the timely availability and public accessibility of information about when, where and how a proposed mining-related action will be performed, what positive and negative impacts are expected, and how negative impacts will be managed and mitigated. Accountability refers to holding all the relevant actors responsible for their actions and agreed terms and conditions on how, when, where and what would happen by whom during exploration, mine development, exploitation, closure and post-closure terms.

An EA process that lacks in transparency or accountability can have impacts ranging from discouraging investment to undermining public confidence in decision outcomes, potentially leading to social conflicts and legal challenges consuming time and money. In the worst case, an opaque EA process could lead to significant environmental damage and negative social impacts. The burden of these consequences most often falls on local communities living in mining-rich regions. Thus, there is the prospect of great rewards to local communities and governments for a mine to go ahead, but because of the potential negative impacts, it is crucial that all actors have a clear view of the process and a clear voice in it.

Methodology

Using the Mining Awards Corruption Risk Assessment (MACRA) Tool, TI Canada analyzed how transparent and accountable EA processes are in three of Canada's largest mining operation and exploration jurisdictions – Ontario, British Columbia (BC) and Yukon. The MACRA Tool compares how a mine permitting or licensing process is meant to proceed on paper and how it works in practice. It also identifies gaps in the process that may lead to transparency and accountability risks. To identify these gaps, researchers conducted desk research, interviews and focus group meetings. In total, 128 in-depth interviews were conducted. The distribution of interviewed parties was as follows: 27% government representatives, 22% civil society and non-Indigenous Peoples, 19% Indigenous Peoples, 17% environmental consultants and lawyers, 10% academics, and 5% mining industry representatives. Further explanations of the MACRA Tool, TI Canada's approach to engaging stakeholders and rights holders, and the criteria for jurisdictional selection are provided in Section 2.

Main Findings of the Study

Strengths

While assessing risks in the EA process, the research also identified noteworthy strengths. Many of those strengths are present in BC's *Environmental Assessment Act* (EAA), which was updated in 2018 and closes loopholes and enhances the EA process. Nevertheless, it is not yet possible to assess how these changes will affect EAs in practice.

Indigenous Community Engagement

In British Columbia, the updated EA legislation now provides for Indigenous communities affected by a project to participate in EA working groups. These working groups can comment on what valued components a project must assess to determine environmental, social, economic, health and heritage effects. Indigenous communities thus have increased participation in the EA scoping phase.

Furthermore, British Columbia is the first Canadian jurisdiction to integrate Free, Prior and Informed Consent (FPIC) into its new regulations. However, the concept was not fully adopted by the provincial government, as the Indigenous communities' denial of consent does not necessarily mean a project will not be developed.

There are also fairly strong provisions for Indigenous communities in Yukon that ensure their involvement in natural resources and wildlife management by creating boards and committees formed by Indigenous People.[15] One of the purposes of the *Yukon Environmental and Socio-economic Assessment Act* (YESAA) is to emphasize the importance of First Nations involvement, in accordance with the *Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon*, which requires that traditional knowledge be given full and fair consideration.[16] Furthermore, the Umbrella Final Agreement also categorizes land that defines the ownership of surface and subsurface rights.

Assessment of Alternatives

The assessment of alternatives is the consideration by proponents of both alternative methods and alternatives to a proposed undertaking in an environmental assessment. It is required by EA legislation in Ontario, British Columbia and Yukon. Consideration of alternatives helps the public and decision makers to be aware of opportunities, challenges and trade-offs of a proposal.

Early Public Participation and Scoping

Early participation is a key factor for effective integration of possible socio-economic, health, cultural and heritage effects of a proposed project in assessments. In this regard, requirements related to early participation in assessments are strengths in YESAA and BC's EAA 2018.

BC's 2002 EAA did not require early participation; however, the practice was applied by proponents in most cases. Thus, the proponents' motivation to engage public consultations determined how comprehensive the EA scope would be. In contrast, as early participation is part of Yukon's EA legislation, the consideration and inclusion of social, cultural, health and heritage effects are broader in the territory's EAs. Even though research interviews in Yukon stressed that the effectiveness of including socio-economic aspects in the assessment process needs further study, referring to socio-economic criteria and Indigenous knowledge and culture is progressive in Yukon.

British Columbia's EAA 2018 requires a scoping phase early in the EA process. During this phase a working group can comment on the valued components concerning environmental, social, cultural, economic, health and heritage effects that should be assessed for each project.

Justified Decisions and Collaboration with Ministries about Technical Issues

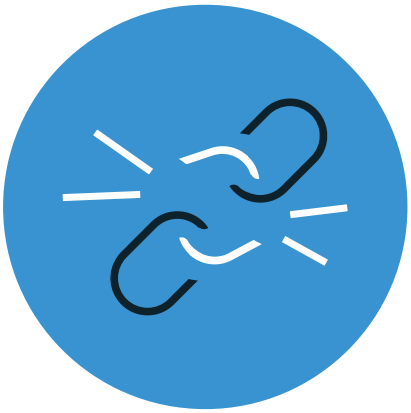
In all the studied jurisdictions, the minister responsible for EAs (or, in the case of Yukon, the decision body) needs to provide reasons for their decision on whether a project should complete an EA. However, in Ontario, the minister only provides reasons to proponents and does not publicly disclose them.[17]

In the updated British Columbia legislation, the minister needs to provide reasons for their decision on whether a project should complete an EA. Also, the minister must release evidence supporting final ministerial decisions on an EA approval. BC EA updates also include establishing technical working groups with representatives from various ministries, depending on project characteristics.

Coordination of Assessment with Other Jurisdictions

British Columbia's 2018 EA process bolsters cooperation among jurisdictions, allowing the province to substitute its assessment process with another jurisdiction's process, namely the federal government and also Indigenous nations. Ontario has a similar process that also triggers the federal EA threshold; however, it does not apply for Indigenous nations.

Weaknesses



Although all three jurisdictions have extensive EA processes in place, TI Canada's research found significant gaps in each. Of the 38 total transparency and accountability risks identified in four categories, the most common risks were in the following three areas:

- **Ministerial discretion and dual roles of ministries and authorities:** The minimal or no publicly available disclosure of the rationale of a given ministerial decision undermines transparency. Additionally, the delegation of the decision-making power to ministries or departments that have dual roles in promoting and regulating mining leads to possible conflicts of interest. Both the poor disclosure of rationales and delegated decision-making weaken the objectivity of the process and the public trust on the robustness of the proposed project.

- **Consultation in EAs:** There is limited effectiveness of consultations conducted by proponents with Indigenous and non-Indigenous communities. These consultations are intended to integrate communities' concerns and priorities into decision processes. The lack of meaningful consultations conflicts with the EA's purpose of incorporating social, environmental, economic and cultural considerations into decision making. The problem is highlighted by an Indigenous Elder from the Timmins region in Ontario as "decisions are already made by the time consultation is made … we stop caring anymore. Nothing can be done to change it." The communities' perception of consultations as a check-box exercise contributes to consultation fatigue and decreases their appetite for participating, which in turn leads to proponents' frustration.

- **Inadequate procedural guidelines for meaningful consultation:** Interviewees stressed the need for detailed procedural guidelines on what counts as meaningful public consultation and achieving FPIC.

Although Ontario has the least number of identified risks, those reported had higher risk scores – or, in other words, were found to have higher impacts and be more likely to happen. This is mostly due to the unique EA regime in the province. Ontario is the only Canadian jurisdiction where an EA is not mandatory for private

sector projects, with a few exemptions. Often, a mining project is only subject to class EAs, which evaluate the impacts of different portion of the project, and these class EAs are limited in scope and essentially preapproved. Proponents can make voluntary agreements to conduct a project EA, called an individual EA, for evaluating the project as a whole, but that happens less frequently. As a result, Ontario's EA framework leads to several critical risks in terms of process design, context and consultations. The most critical risks in Ontario are:

- **Lack of evaluation of a mining project and its impacts cumulatively:** By evaluating parts of a project separately, instead of assessing impacts comprehensively, class EAs do not examine the cumulative impacts of a project. Thus, the current EA framework limits the availability of information for all actors to evaluate how the proposed project will impact the environment and society;

- **Limitations in meaningful Indigenous community consultation:** In addition to the issues highlighted in the common risks section, there are capacity limitations of Indigenous communities, lack of clear government guidelines for meaningful consultations and inconsistency on which communities should be consulted;

- **Uncertainty on thresholds and vague criteria such as public interest:** There is significant uncertainty caused by the lack of clear thresholds that trigger an individual EA or the criteria that would lead the government to bump up a project that initially needed a class EA to requiring an individual EA.

British Columbia completed the revitalization of the EA process while this study was conducted. However, because the research methodology is based on assessing how a process is described on paper and how it works in practice, risks discussed in this study focused on the EAA 2002 process. Nevertheless, gaps that were closed by the EAA 2018 are highlighted throughout the BC report. That study found one critical risk in British Columbia:

- **Loopholes that cause project and expansion splitting to avoid an EA:** The self-screening practice carried out by proponents may create loopholes that may lead to splitting a project or expansions to avoid an EA. Additionally, regular expansions, which happen once every few years due to splitting, are initiated without an EA or renewing an EA.

In Yukon, environmental and socio-economic assessments are conducted by the independent Yukon Environmental and Socio-economic Assessment Board. Besides the common risks, the study found the following critical jurisdictional risks:

- **Information disclosure on engagement and lobbying activities of proponents and their consultants:** There is a lack of disclosure of information about engagement between industry and interest groups with government decision-making bodies, as well as a failure to provide equal opportunity to the public and civil society for engaging with the decision-making bodies.

- **Challenging timelines for Indigenous communities to participate in the EA process:** Indigenous communities found the consultation timelines to be quite short, with a number of engagement requests by proponents for local communities occurring at the same time.

Recommendations

In order to address the gaps in EA processes identified in this report, stakeholders and rights holders need to work together on solutions. As a starting point, the following recommendations are detailed fully in Section 6.

All Jurisdictions

Governments should transfer responsibility for mining promotion to government agencies working with economic development to ensure the unbiased assessment of projects. Furthermore, government ministries and departments should publicly disclose the rationale for EA-related decisions with substantive justifications.

Additionally, Ontario and Yukon should follow British Columbia's lead by adopting FPIC as part of EAs, and all jurisdictions should develop clear guidelines on its implementation.

All three governments should develop criteria to objectively measure what counts as meaningful public consultation and produce procedural guidance on how meaningful consultation will be applied in an EA process. Additionally, terms, roles and responsibilities on consultation must be clarified to avoid misperception about consultations and to manage expectations. The term consultation, as a requirement of an EA process and duty to consult, is mostly used interchangeably among individuals. However, consultations as a part of an EA and duty to consult processes have different objectives. The target audiences of the duty to consult are only Indigenous communities, whereas consultations encompass all the public. Therefore, the role of proponents and governments should be clearly defined and publicly known when the administration of duty to consult is in whole, or in part, delegated to the proponent.

British Columbia

Close project-splitting loopholes: The Ministry of Environment and Climate Change Strategy should put in place provisions to consider cumulative effects of a project after expansion and if the sum of a project's impacts meets EA thresholds. Additionally, when an expansion application is being reviewed by the ministry, the new impacts should be assessed that consider the impacts originally anticipated for a project.

Ontario

Close gaps related to voluntary assessments: The Ontario government should require EAs for private enterprises and determine clear thresholds for individual assessments to mitigate many of the vulnerabilities found. Additionally, it should clearly define terms such as "public interest," used as the main reason for a project's class assessments to be bumped up to an individual assessment.

Improve Indigenous communities' involvement in decisions: Ontario government ministries need to improve their alignment on who should be consulted for mining projects in any region. Additionally, the government can help improve Indigenous inputs through supporting the development of engagement protocols for Indigenous communities and working with Indigenous communities to define the valued components to be assessed.

Yukon

Strengthen disclosures to facilitate transparency: Government decision bodies need to commit to mechanisms by which they can demonstrate full and fair consideration of the recommendations of the executive committee and designated offices, such as making their rationale more robust with substantive justifications. The Yukon government should also promptly implement and enforce the *Lobbyists Registration Act*, which passed in November 2018 as Bill 23, to reduce the risk of unaccountable influence by industry and special interest groups on decision makers and the minister.

Intervene to strengthen and sustain public trust: Stakeholders, including the government and proponents, should continue to assess and implement additional financial and technical support mechanisms that could sustain meaningful participation from Indigenous communities.

Finally, TI Canada recommends further research on free-entry systems, impact benefit agreements, the gender dynamic of EAs and the expansion of the MACRA analysis on other Canadian jurisdictions.

Next Steps

Using the findings in this report, TI Canada aims to engage with stakeholders and rights holders to address the identified gaps. We place particular importance on sharing new knowledge with the Indigenous communities who shared their knowledge with us.

As provincial, territorial and the national governments look to fire up economies in the wake of COVID-19, with mining — particularly for green tech minerals — possibly playing a critical role, it is a critical time to work on fine-tuning EA processes across Canada to ensure decisions are made with clear eyes of the full environmental and social picture.

1 Introduction

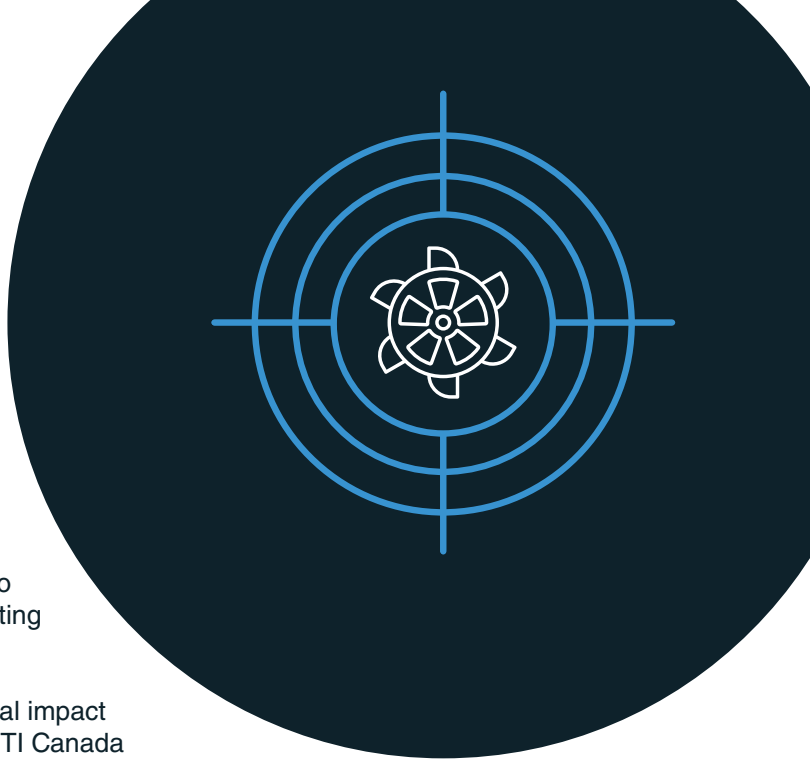
Transparency International's (TI) Accountable Mining Program complements existing efforts to improve transparency and accountability in the mining industry by studying the start of the mining decision chain: the point at which governments award mining permits and licences, negotiate contracts and make agreements. The program focuses on jurisdictional specific processes of obtaining a mining or exploration permit, and includes examining under what conditions the right to mine is awarded.

With the goal of strengthening and improving systems to prevent corruption, the Accountable Mining Program leads evidence-based multi-stakeholder engagement at the national, regional and global levels to improve transparency, accountability and integrity in mining. The ultimate aim is to engage policymakers, civil society, the mining industry and communities to take necessary precautions and to conduct due diligence to improve transparency and accountability.

As of 2020, over 20 national TI national chapters have been involved in this program.* Each TI chapter independently conducts its own research to examine the process for approving mining awards and licences in its country. TI Canada is responsible for conducting the program in Canada.

* Argentina, Armenia, Australia, Cambodia, Canada, Chile, Colombia, Democratic Republic of Congo, Ghana, Guatemala, Indonesia, Kenya, Kyrgyz Republic, Liberia, Madagascar, Mexico, Mongolia, Mozambique, Niger, Peru, Papua New Guinea, Sierra Leone, South Africa, Zambia and Zimbabwe.

Project Objective and Scope



TI Canada's objective for the Accountable Mining Program is to conduct a systematic evaluation of transparency and accountability vulnerabilities and associated corruption risks in the environmental assessment (EA) processes in Ontario, British Columbia (BC) and the Yukon Territory. From this evaluation, TI Canada works with stakeholders and rights holders to identify improvements needed in EA processes to avoid transparency and accountability vulnerabilities and associated risks. By doing so, we aim to raise standards and strengthen public trust in mine permitting and licensing decisions.

To note, this project is not evaluating specific environmental impact statements, nor is it uncovering specific corruption cases. TI Canada did not uncover corruption in the evaluated EA processes, but rather found transparency and accountability vulnerabilities that create risks — according to desk research and in-depth interviews — of varying levels that can compromise an EA process and ultimately the environment and society affected by a mining project.

The EA process was selected for analysis for its significant role in enhancing public trust and confidence in mineral development. Although EA systems vary by jurisdiction, the process involves identifying, predicting, evaluating and mitigating the effects of development proposals prior to decisions being taken and commitments made. An EA thus requires a mining proponent to present the potential impacts of a project before its implementation. If and when a mining project is approved, it will result in job creation and tax and royalty payments, as well as potentially adverse environmental and social impacts. A project can shape a community for generations. It is therefore important that the EA process provides meaningful opportunities for public input prior to a government's approval or rejection of a proposal. In a transparent and accountable EA, the extent to which such input was considered in the decision process and outcome is clearly evident.

As a result, the EA process can enhance transparency and accountability in mining activities and decision making. A transparent decision-making process allows stakeholders to hold authorities accountable, and transparent project planning allows stakeholders to hold companies accountable.

Ontario, British Columbia and the Yukon Territory were selected because they are three leading jurisdictions in Canada with respect to mineral production value and exploration, as well as deposit appraisal expenditures.

The national report consists of seven sections. After the introduction, Section 2 explains the research methodology. Section 3 reviews the Canadian mining sector and includes a discussion of Indigenous communities as rights holders and mining sector key actors. The EA legislation in the three jurisdictions are presented in Section 4. In-depth details are available in the jurisdictional technical reports.* Risk assessment results are given in Section 5, and the recommendations and conclusion are given in Sections 6 and 7 respectively.

* The reports are available on the Accountable Mining Program page on TI Canada's website at **https://transparencycanada.ca/accountable-mining/overview**

2 Methodology

This research was conducted using the Mining Awards Corruption Risk Assessment (MACRA) Tool, created specifically for Transparency International's Accountable Mining Program. The methodological steps of MACRA Tool, which will be further explained in this section, highlights certain vulnerabilities related to transparency and accountability in the EA process in Ontario, British Columbia and Yukon. These vulnerabilities create certain risks, which are also highlighted in this report and are assessed in terms of likelihood and potential impact.

MACRA Tool

The MACRA Tool sheds a light on where practice diverges from regulation, or where implementation issues that were not contemplated or intended by the legislation arise.[18] It was designed to study legal, regulated mining. It was not designed to assess illegal mining, nor does it take into consideration the oil and gas sector, which has a distinctive set of risks that are beyond the scope of this tool. The MACRA Tool is a qualitative assessment methodology formed by nine steps, as outlined in Figure 1. Details of the methodological steps and research design used are presented in Appendix 1.

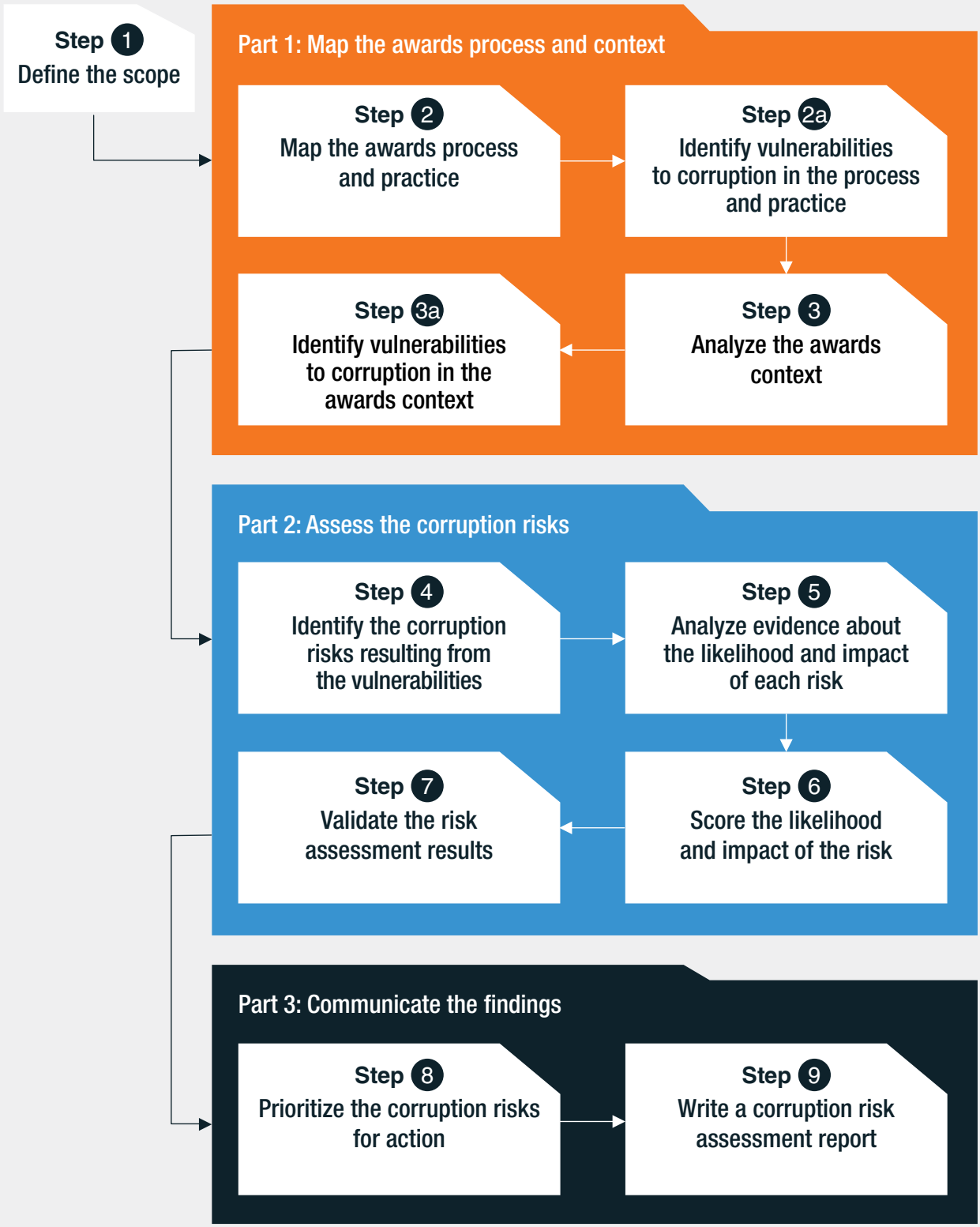
For the risk assessment, the MACRA Tool lists 80 predefined corruption risks, which were used as a base to identify relevant issues in Canada. The research team also defined new risks based on the Canadian context. The scoring of these risks is based on a five-point scale for both likelihood and impact. Likelihood was determined based on the probability that the risk will occur, and impact was determined based on how much its occurrence would weaken the EA process and the Canadian mining industry, as well as affect local communities and the general public (see Table 1).

Table 1 Scoring scale of likelihood and impact risks

Likelihood Scoring		Impact Scoring	
5 OUT OF 5	Almost certain that an event is going to happen.	5 OUT OF 5	Significant impact on the entire mining industry in Canada, the entire awards system and/or an entire community.
3 OUT OF 5	Possible that an event will occur — there is a 50-50 chance.	3 OUT OF 5	A moderate impact on the EA process.
1 OUT OF 5	An event is unlikely.	1 OUT OF 5	Insignificant impact on the EA process.

Very high risk	High risk	Moderate risk	Low risk	Very low risk
Score 20–25	Score 15-20	Score 10-15	Score 5-10	Score 0-5

Figure 1 Methodological steps of the MACRA Tool



3 Mining in the Canadian Context*

Mining plays an important role in the Canadian economy. In 2018, the sector directly and indirectly contributed $97 billion to Canada's nominal gross domestic product (GDP), which represents 5% of the total value.[19] In the same year, the mining industry directly employed approximately 409,000 people.[20] Moreover, mining and select manufacturing sectors (specifically mining and quarrying, primary metal manufacturing and non-metallic mineral product manufacturing) paid an average of $2.1 billion in corporate income taxes and royalties annually in Canada from 2013 to 2017.[21] Due to the scale of these investments and revenue flows, it is imperative that mining activities are carried out with transparency and accountability.

Canada has considerable influence in the global mining business. In 2017, 65% of total Canadian mining assets — with a total value of $163.9 billion — were located abroad.[22] Mineral exports were 19% of Canada's total export in 2018.[23] Canada is also a globally recognized centre for mining finance. The Toronto Stock Exchange (TSX) and the TSX Venture Exchange are the top listing venues of mining and exploration globally, with 50% of the world's publicly traded mining and exploration companies listed on the TSX.[24]

As summarized in Table 2, Ontario and British Columbia were two of the leading jurisdictions in Canada with respect to mineral production value and number of top exploration projects, as well as deposit appraisal expenditures in 2018. At the time of this report's scoping study, the Yukon Territory had attracted more exploration and deposit appraisal expenditures than other Canadian jurisdictions (according to data from 2018).[25]

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* All amounts are in Canadian dollars.

Table 2 Mining sector highlights in British Columbia, Ontario and Yukon

Jurisdiction	Value of mineral production in 2018[a] (% in jurisdictional GDP)	Direct and indirect employment in 2017 (% in jurisdictional overall)	Active Indigenous community agreements (2018)	Number of produced mines[b] (2018)	Top 100 exploration projects (2018)
British Columbia	$9,657 million (3.9%)	38,440 (1.6%)	84	27	25
Ontario	$10,060 million (1.4 %)	151,735 (2%)	136	54	17
Yukon	$217 million (8.4%)	1,650 (7.5%)	25	2	10

Source: Drawn from NRCan (2018), *Atlas of Canada-Interactive Maps*, https://www.nrcan.gc.ca/maps-tools-publications/maps/atlas-canada/explore-our-maps/interactive-maps/18234; NRCan (2019), Canadian Mineral Production Information Bulletin, https://www.nrcan.gc.ca/maps-tools-publications/publications/minerals-mining-publications/canadian-mineral-production/17722; NRCan (2019), Minerals Sector Employment, https://www.nrcan.gc.ca/maps-tools-publications/publications/minerals-mining-publications/minerals-sector-employment/16739; Statista (2020), *Gross Domestic Product of Yukon, Canada from 2000 to 2019*, https://www.statista.com/statistics/577569/gdp-of-yukon-canada; Statista (2020), *Gross Domestic Product of British Columbia, Canada from 2000 to 2019*, https://www.statista.com/statistics/577563/gdp-of-british-columbia-canada; Statista (2020), *Gross Domestic Product of Ontario, Canada from 2000 to 2019*, https://www.statista.com/statistics/577539/gdp-of-ontario-canada; Statistics Canada (2018), *Labour Force Survey, December 2017*, https://www150.statcan.gc.ca/n1/daily-quotidien/180105/dq180105a-eng.htm; Yukon Bureau of Statistics (2018), *Yukon Employment and Skills Survey 2017*, https://yukon.ca/sites/yukon.ca/files/ybs/fin-yukon-employment-skills-survey-2017.pdf.

Notes: a. 2018 mineral production values are preliminary.
b. Both metallic, non-metallic and coal underground and surface (including solution mining) operations and excludes oil sands and concentrators.

Prospecting, mining claim registration, exploration, mine development, and mine reclamation and closure are the responsibility of the provincial and territorial governments as set out in divisions of jurisdictional powers in *Canada's Constitution Act*, 1982. However, the mining sector is governed by legislation at all levels, covering a myriad of issues such as the rights of Indigenous Peoples, environment, water, fisheries, transportation, health and occupational worker safety. Federal departments such as Natural Resources Canada, Environment and Climate Change Canada, Fisheries and Oceans Canada, and Transport Canada all have roles in the mining sector and EA processes. As such, for most mineral resource development projects, regulatory responsibility for the various licensing and permitting requirements associated with a mining operation lies at both the federal and provincial or territorial levels.

The following sections highlight the sector in each jurisdictional context. A more in-depth explanation of contextual factors can be found in the Accountable Mining technical reports for each jurisdiction.

Ontario

As historically the largest mineral producer in Canada, mining is important to the Ontario economy (see Table 2) and has been a major area of focus for the provincial government, e.g., in developing the Ring of Fire.[26] The province spent more than any other jurisdiction on mineral exploration in 2018, with a value of $583 million.[27]

The Ontario government wants to expand the province's mining legacy with the Ring of Fire development in Northern Ontario — a region rich in chromite, copper, zinc and gold. With over 13,000 active mining claims covering over 2,000 square kilometres, the Ring of Fire is often discussed as a massive opportunity for Ontario wealth generation.[28]

The needs for economic development, employment opportunities, adequate infrastructure and services (especially potable water and sufficient housing) in the remote Indigenous communities within the Ring of Fire* have also been major factors in deliberations about the potential contributions of mining in the area.[29] However, development of the Ring of Fire is also heavily contested in terms of potential environmental impacts and impacts on Indigenous rights.[30]

British Columbia

Natural resource sectors such as mining, agriculture, forestry and fisheries are viewed as vital to British Columbia's economy.[31] Its mining outlook has recently been strong, with 2018 the second year of increased exploration spending, totalling $330 million and representing a 34% increase from 2016.[32] This increase is predominantly attributed to exploration in British Columbia's northwest, specifically the area known as the "Golden Triangle," which accounted for 50% of the total exploration expenditure in 2018.[33]

Mining has been a major focus of government's programs and investment in British Columbia. For example, in 2011, the provincial government promised eight new mines by 2015, announced several tax credit programs, and opened the Major Mines Permitting Office with an increase in funding for the Ministry of Energy, Mining and Petroleum Resources (EMPR) by $6 million.[34] In 2018, the BC government convened the Mining Jobs Task Force to review exploration and mine development and advise the government on key action areas to grow the sector.[35] This subsequently resulted in a $20 million investment to strengthen the sector across five areas, including realizing community benefits and enhancing British Columbia's fiscal and regulatory competitiveness.[36]

Yukon

Gold mining has historically been an important economic industry in the Yukon Territory, but in recent times, the focus of the mining sector has shifted to the large undeveloped deposits of zinc-lead, silver, tungsten, iron, molybdenum, nickel and copper. These deposits include the second largest undeveloped iron ore deposit in the world and one of the world's largest undeveloped zinc-lead deposits.[37]

Prior to the COVID-19 pandemic, the Conference Board of Canada had forecasted that the Yukon's GDP would grow by 10% in 2020, up from 2.2% in 2019, with production from the Eagle Gold Mine and expected construction of the Coffee Gold Mine.[38]

In 2017, the Yukon government and self-governing First Nations signed a mining memorandum of understanding agreeing to work together to improve management of the mining sector and to develop the Yukon Mineral Development Strategy.[39] As of June 2020, this strategy was being created with public engagement opportunities.[40]

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* Within the Ring of Fire there are five isolated First Nations communities: Webequie, Nibinamik, Neskantaga, Eabametoong and Marten Falls. Four other Indigenous communities that have road access to the south: Aroland, Long Lake 58, Ginoogaming and Constance Lake. Together, these First Nations make up the nine-member Matawa Tribal Council. There are also numerous other First Nations communities outside of the Matawa region that will be affected by the development, including those within the same watershed.

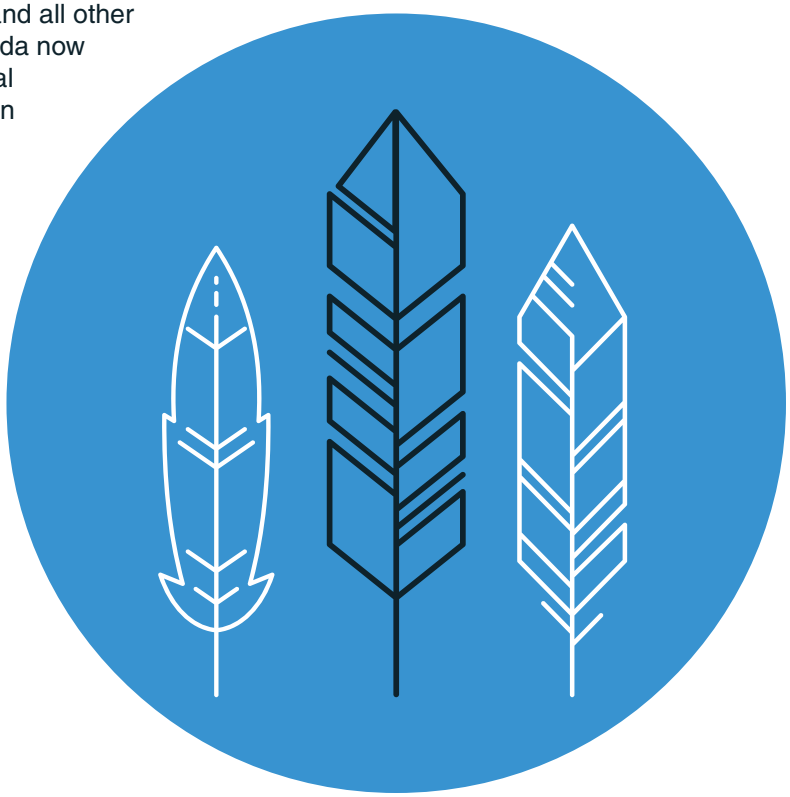
Indigenous Peoples and Mining in Canada

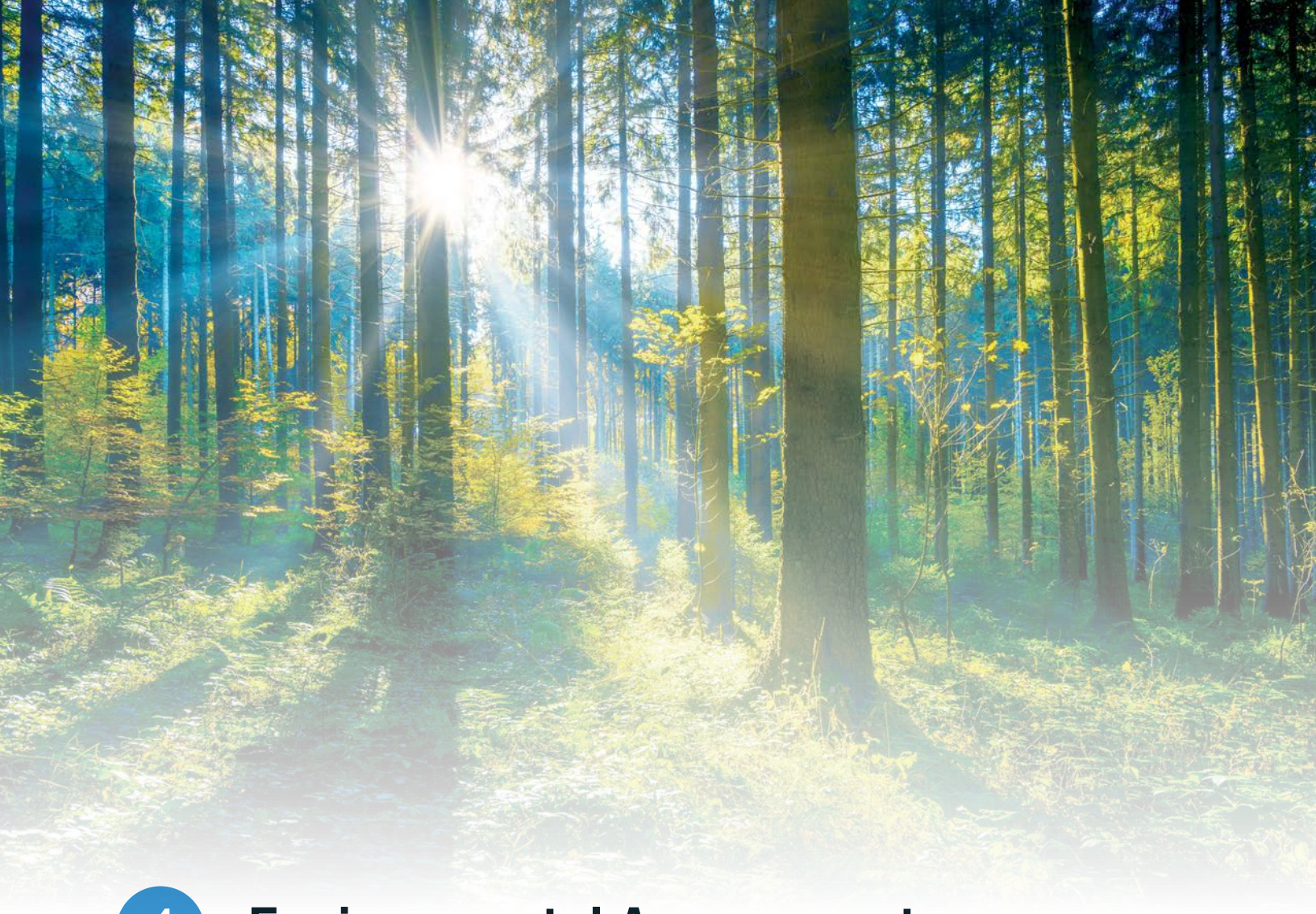
The nature of Indigenous Peoples' relationship with mining in Canada has been dramatically altered over time and should not be assumed to be monolithic or static. There are differentiated levels of support and resistance to mining projects across and within Indigenous communities in Canada, and these complexities makes navigating issues around EA processes challenging.

The importance and value of land to Indigenous communities economically, culturally and spiritually means that Indigenous communities can be particularly vulnerable to the negative legacies of mining developments.[41] Resource development generates significant challenges for Canada's Indigenous communities, who have historically been disproportionately affected by the ecological and social burdens of resource development and have typically had insufficient resources to address the damages. However, resource development also implies significant potential opportunities for employment and economic development.[42] Mining is the largest private sector employer of Indigenous Peoples in Canada proportionally, comprising 7% of the mining sector compared to 4% in the whole Canadian workforce.[43] Increasingly, Indigenous governments and enter into private agreements with mining companies to ensure that the economic benefits of mining, and in some cases royalties, accrue locally.[44]

There has been some recognition of Indigenous rights as legal obligations under the Constitution, clarified in recent rulings by the Supreme Court of Canada.[45] International initiatives have further supported Indigenous rights, such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and promotion of the concept of Free, Prior and Informed Consent (FPIC) prior to approval of proposed activities on Indigenous lands. Mining companies, provincial, territorial and federal governments, and all other parties involved in mining undertakings in Canada now have increasingly clear legal, moral and practical obligations to engage with Indigenous peoples in the development process.

The right to self-determination includes the right to limit or prohibit industrial development on treaty land.[46] Indigenous communities are interested in controlling the form, impacts and benefits from economic development on their land, as well as in overall self-determination.[47] However, in studies and interviews conducted during this research, Indigenous communities argued that the Canadian government and the private sector have often treated land claims dismissively and have exploited resources despite Indigenous opposition.[48] Thus, often the impacts of resource development may be reflected in the unfair distribution of negative legacies to Indigenous peoples and benefits to the Canadian private sector and government.[49]



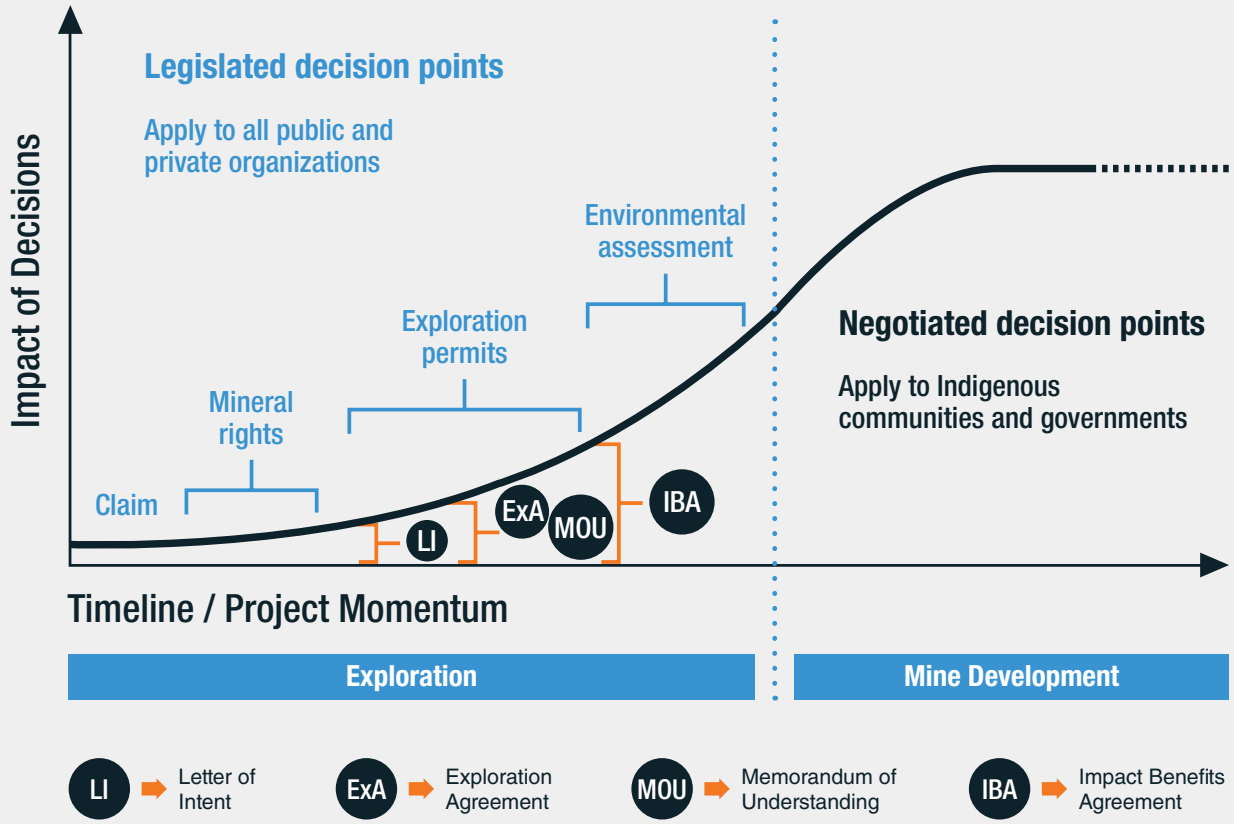


4 Environmental Assessment

Environmental assessment is a planning and decision-support tool that predicts and evaluates a proposed action's positive and negative impacts on the environment, economy and society.[50] Its goal is to prevent unwanted consequences stemming from an endeavour, such as environmental degradation.[51] Provisions and requirements vary by jurisdiction, but EAs typically involve explaining the characteristics of the proposed project, reviewing the current state of the environment, and predicting its state in the future with and without the project, as well as presenting possible solutions to reduce or eliminate negative impacts. If the given project is approved for implementation, the EA process also includes monitoring impacts.[52] In Canada, an important aspect of EAs is Indigenous consultation to assess the impact of proposed actions on Indigenous groups and ensure the project is respecting their rights.[53]

Figure 2 presents critical decision points, including the EA, in the typical mine permitting and award process leading to the development phase of a mining project in Canada. The decision points are categorized as legislated and negotiated. The impact of both legislated and negotiated decisions concerning costs and benefits increases in severity as a project approaches the development phase of a mine.

Figure 2 Decision points in exploration and feasibility phases of a mining project in Canada



Source: Adapted from P. Siebenmorgen & E. Bradshaw (2011), Re-conceiving Impact Benefit Agreements as Instruments of Aboriginal Community Development in Northern Ontario, Canada, *Oil, Gas & Energy Law*, 9(4).

Regulated decisions in the exploration phase of mining include four critical steps that lead to the mine development phase as shown in Figure 2: 1) mineral claim; 2) mineral and surface rights; 3) exploration permits; and 4) EA. These decisions, which apply to everyone, are regulated by the jurisdictional governments, and procedural and agreement details of these are publicly available.

The negotiated decisions in Figure 2, e.g. letter of intent (LI), exploration agreement (ExA), memorandum of understanding (MOA), are not regulated and apply to Indigenous communities and proponents. In many cases, negotiated decisions result in an impact benefit agreement (IBA) between an Indigenous community and a proponent. Such agreements are usually confidential and include negotiated measures to mitigate adverse project impacts and to ensure that Indigenous Peoples benefit from project contracting and employment opportunities.

The consequences of both regulated and negotiated decisions on the public, the environment and the economy — especially at the local level — become clearly observable in the advanced stages of exploration, mine development and exploitation phases. For example, issuing authorizations at the mineral claim or mining lease steps are significant decisions for natural resource governance. However, the direct impacts on the public, the environment and the economy are minimal until the physical exploration with machinery and the mine development and mineral exploitation start. Therefore, as a decision-support tool before the major impacts of obtained rights for mining begin, an EA is critical to the mineral resource development process.

In Canada, an EA is often the first point where all the future costs and benefits of a proposed mining project should be evaluated cumulatively, and the public should have a formal opportunity to engage. In principle, it is at this stage of the mine permitting process where all actors have the most significant opportunity to influence the decision whether a project will be approved or rejected, or the conditions under which it will be approved.

As a result, a transparent and accountable EA process is essential for meaningful engagement and understanding of the impacts and trade-offs involved in a proposed mineral development project.

Environmental Assessment in Ontario

The Ontario government introduced the *Environmental Assessment Act* (EAA) in 1975. The current act, which came into law in 1990, is undergoing a modernization process that started in 2019.[54] Ontario is the only Canadian jurisdiction that does not require a EA for private projects, including mining, as private enterprise is exempt under the EAA. An EA is only required by a private sector (e.g., mineral sector) project if the following occurs:

- The project triggers the EA requirements of another ministry or agency;
- It is designated by regulation; or
- Through a voluntary agreement with the Minister of the Environment, Conservation and Parks.[55]

Therefore, in Ontario the only legislated mandatory project environmental assessment requirement for holistically analyzing a mining project is at the federal level only if the federal act is triggered, like other provinces in Canada. However, parts of a mining project, e.g., building roads or power transmission lines, do trigger an EA in Ontario, under a streamlined EA process.

The streamlined EA process is one of two types of EAs in Ontario. The other is an individual EA. Individual EAs are under the responsibility of the Ministry of Environment, Conservation and Parks (MECP) and are not required unless regulated or designated by the province for private proponents.[56]

Streamlined EAs are further divided into class assessments and streamlined processes established by other regulations (e.g., *Electricity Projects Regulation, Waste Management Projects Regulation and Transit Projects and Metrolinx Undertakings Regulation*). This report focuses on class assessments and individual environmental assessments due to their direct applicability to mining projects.[57]

Streamlined EAs are less comprehensive than individual EAs and are expected to be applied when projects have predictable and manageable impacts.* They are administered by different ministries based on their scope. For instance, the Ministry of Transportation is responsible for class EAs involving the construction or extension of roads for a mine development. Other aspects of a mining project, such as a waste dump site, exploration and reclamation, or a mine processing plant, are evaluated by the Ministry of Energy, Northern Development and Mines as class EAs.

Class Environmental Assessment

Class EAs are the main process used for mining in Ontario. A class EA is "approved under the Environmental Assessment Act and applies to projects that are carried out routinely and have predictable environmental effects that can be readily mitigated."[58] It is "a document that sets out a standardized planning process for those classes or groups of activities for which the proponent is responsible."[59] For class EAs, under which projects are self-assessed by proponents, all projects are "either 'pre-approved' and have no further environmental assessment requirements, or are approved as long as they successfully follow the planning process in the approved class environmental assessment."[60] This method is intended to streamline decision making and reduce the review burden for the government.

Although class assessments are limited and do not evaluate the cumulative impacts of a mining project, they can lead to the implementation of a project that may have significant environmental, social and economic impacts

Individual Environmental Assessment

In Ontario, as described by the government, a large-scale, complex project with the potential for significant environmental effects is required to prepare an individual EA. Individual EAs require MECP approval.[61] The process map of an individual EA is given in Appendix 1.

In some cases, mining proponents may consider entering into a voluntary agreement with MECP to undertake an individual EA if the proponent is aware of public interest in its proposed project or if the proponent is required to complete multiple class environmental assessments for a project. There are no definitions or criteria for what designates something as public interest for a mining company or the Ontario government. The government's explanation for a proponent entering into a voluntary agreement is "this is usually done when the proponent feels that the nature of the project and the level of public interest warrant an individual environmental assessment."[62] To date, only one mine has been designated as being of public interest, because of public requests, following the Ontario Auditor General's 2018 review.[63]

In practice, individual EAs appear to emerge only for major projects where a federal assessment is also being undertaken because the project triggers the federal EA threshold. As stated in the Auditor General's Annual Report, "of the 32 mining operations and related projects that were initiated after the enactment of the Act and are currently being planned or in production, only eight have undergone a provincial environmental assessment. For these eight, the mining companies voluntarily conducted the assessments because the project was already subject to a federal environmental assessment."[64]

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* Expansions and brownfield development, for example, have infrequently been considered in individual EA processes in Ontario. Such developments have been approved by the use of closure plans and other permitting processes or a class EA.

Environmental Assessment in British Columbia

The first *Environmental Assessment Act* (EAA) was introduced in British Columbia in 1995 and required all large-scale projects to undergo a single process. In 2002, the EAA was repealed and replaced with a new EAA and the act went through a new revitalization process in 2018.

The Environmental Assessment Office (EAO) was established in 1995 to administer an open, accountable and neutral EA process for major projects under the EAA and five regulations (Concurrent Approval Regulation, Prescribed Time Limits Regulation, Public Consultation Policy Regulation and Reviewable Projects Regulation). The EAO sits within the Ministry of Environment and Climate Change Strategy (MECCS), which plays a role in mine permitting that extends beyond issuing approvals for environmental assessment certificates (EAC).

A major mine project in British Columbia might also trigger a federal-level impact assessment. If a project is subject to a BC and federal EA, either the EAO works closely with the Impact Assessment Agency of Canada to enter into a substitution agreement to allow the provincial process to be substituted for the federal process or they work in a coordinated manner to review the proposed project.*

* Other agencies that might be involved in the process of developing a mine can be found in the British Columbia technical report

Environmental Assessment Revitalization

In early 2018, the BC government committed to "revitalize the Environmental Assessment process in British Columbia and review and address failures in the professional reliance model in BC so that British Columbians' faith in resource development can be restored."[65] The 2018 EAA came into force on December 16, 2019, and focused on three main objectives, one of which is enhancing public confidence, transparency and meaningful participation.

This report primarily focuses on the EAA 2002 as stakeholders' experiences interacting with the updated EAA cannot be observed yet. However, the EAA 2018 was reviewed and changes are highlighted in this report. The details of both processes are in the British Columbia technical report.

Under the *Reviewable Projects Regulation* (RPR) 2002, which was repealed and replaced by an updated regulation in 2019, mining projects are reviewable to assess whether they are required to undergo an EA in three ways:

1. They meet certain thresholds under the RPR†;
2. They are designated by the minister as being reviewable;
3. A proponent requests that the EAO designate the project as reviewable.

Under the RPR2019, design thresholds, such as production capacity, remain the same. However, proponents are additionally required to assess whether they meet certain effects thresholds, for example regarding greenhouse gas emissions and land clearance.[66]

Under the 2019 RPR, a project may also be reviewable if a minister designates the project as such after a formal request is made by an Indigenous Nation or member of the public.[67]

† For new mineral mines of greater than 75,000 tonnes/year of mineral ore and for expansions, results in the disturbance of at least 750 ha of land that was not previously permitted and 50% of the area of land that was previously permitted for disturbance at the existing facility. The area of 750 ha is the equivalent of the total area covering Vancouver downtown and West End (total of 568 ha) plus 30%.

2002

EAA

2018

2002 Environmental Assessment Process

The EA process, under the EAA 2002, is given in Appendix 2. It has four phases, as follows.

- **Preapplication Phase:** A proponent gathers information about the project for determining reviewability, EA scope and process. The EAO decides on reviewability and notifies government agencies, potentially affected Indigenous communities and local governments.
- **Application Review Phase:** The EAO reviews the proponents' application for completeness, the public review of the application and proponent comments, and its own draft assessment report. The draft assessment report includes the EAO's findings and whether public and Indigenous community concerns are addressed.
- **Minister's Decision Phase:** The final decision regarding issuance of the EAC, which sets out the conditions that establish specific measures that a proponent must implement to mitigate the adverse effects of a project, rests with MECCS and the EMPR minister for a mining project.
- **Post-Certificate Phase:** The EAO establishes procedures and requirements for post-certificate compliance monitoring, enforcement and follow-up reporting.

2018 Environmental Assessment Process

Many of the changes in the EAA 2018 are grounded in practices that were initiated in 2012 after the EAO introduced new guidance documents. Reflecting these practices, changes in the 2018 legislation were made to ensure their consistent application across the province. The key changes are as follows:

- **Timeline:** addition of statutory timelines and expansion of some to accommodate the requirements involved in an EA.
- **Reconciliation and UNDRIP:** incorporation of the concept of FPIC. However, the process does not adopt a full consent standard. A project denied consent by Indigenous communities can still be approved by the government.
- **Public Participation:** inclusion of an early engagement phase and more public comment periods. Advisory committees can also be created to fulfill public interest.
- **Sustainable Project Approvals:** inclusion of the requirement to apply the best available science, Indigenous knowledge and local knowledge in an EA.

Environmental Assessment in Yukon

The *Yukon Environmental and Socio-Economic Assessment Act* (YESAA) is federal legislation enacted in 2003 to fulfill requirements of the *Umbrella Final Agreement between the Government of Canada, the Council for Yukon Indians and the Government of the Yukon* and constitutionally protected final agreements and 11 of 14 Yukon First Nations, related to the development of an assessment process in the territory.[68]

Under YESAA, mining projects in Yukon are subject to environmental review by the independent Yukon Environmental and Socio-economic Assessment Board (YESAB).[69] YESAB is an advisory body that makes recommendations to decision bodies (the Government of Canada, Government of Yukon and/or First Nation governments) whether a proposed project should proceed, not proceed or proceed under certain conditions.[70] It is then up to the decision body to accept, reject or modify the YESAB recommendation and outline its decision in a decision document.[71] The environmental and socio-economic review process of a mining project under YESAA is given in Appendix 3.

The *Assessable Activities, Exceptions and Executive Committee Projects Regulations* detail the types of projects and activities that require assessment under YESAA and at what level a project proposal should be assessed.[72] Based on the screening lists (Schedules 1, 2, 3), most projects are evaluated by designated offices (DO) in one of six communities across Yukon.[73] Projects with higher potential impacts are assessed through executive committee (EC) screenings, which is a more involved process that can take up to 16 months and provides opportunities for the public to comment on both the project proposal and the draft screening report.[74] The Yukon technical report provides details on the DO and EC assessment processes. The highest-level assessments are conducted by a panel of the board, which may be established to "assess projects that: have potential significant adverse effects; are likely to cause significant public concern; involve the use of controversial technology; or other levels of assessment have been unable to come to a recommendation."[75]

Yukon's Ministry of Energy, Mines and Resources (EMR) is responsible for permitting hard rock mines in the territory under the 2003 *Quartz Mining Act and Quartz Mining Land Use Regulation*. Once a mining project has been cleared and approved, a quartz mining licence must be obtained. Mining projects are also required to obtain a water licence from the independent and quasi-judicial Yukon Water Board.[76]

Environmental Assessment Process

A mining project requires an EA if it is listed in *Assessable Activities Regulations*.[77] If the proposed activities are deemed assessable, the proponent develops and submits a project proposal to one of two bodies. If the project or activity is listed in Schedule 1 of the regulations but not in Schedule 2 as a general exception or in Schedule 3, it proceeds to the DO evaluation process.[78] If the project or activity is listed in Schedule 3, it proceeds to EC screening process.

5 Risk Assessment Results and Discussion

Using the MACRA Tool outlined in Section 2, researchers identified 38 risk related to transparency and accountability in EA processes in British Columbia, Ontario and Yukon. These vulnerabilities relate to the legislation and procedural guidelines in writing and in practice. Even though the Accountable Mining study focuses on the EA process, some risks that affect EAs derive from the pre-mine development stages.

Results

Environmental Assessment Process Strengths in British Columbia, Ontario and Yukon

While assessing risks in the EA process, the research also identified noteworthy strengths. Many of those strengths are present in British Columbia based on its updated EAA, which closes loopholes and enhances the EA legislation. Nevertheless, it is not yet possible to assess how these changes will affect EAs in practice.

Indigenous Community Engagement

Ensuring Indigenous communities' meaningful participation in the EA process is a Canada-wide challenge. However, there are relatively strong provisions for Indigenous communities in Yukon for considering their involvement in land, mineral resource, water and wildlife management. For instance, when considering whether a proposed project is likely to have an adverse effect, assessors must consider such matters as Indigenous culture, traditions, lifestyles and Yukon First Nations' interests as described in section 42(1)(g) of YESAA. Furthermore, the Umbrella Final Agreement also categorizes land that defines the ownership of surface and subsurface rights. Therefore, in situations where a First Nation has developed land resource legislation and mineral policy, the legislation may establish complementary requirements and procedures to achieve consent for mineral exploration. In short, the Yukon system has a number of mechanisms that provides opportunities for meaningful Indigenous engagement in an EA. However, the effectiveness of these mechanisms, Indigenous communities' participation and power of influencing decisions in practice need further assessment as this study had limitations in engaging with Indigenous People in this jurisdiction.

In British Columbia, the updated legislation provides for the ability of Indigenous communities affected by a project to participate in EA working groups. These working groups can comment on what valued components a project must assess to determine environmental, social, economic, health and heritage effects. Indigenous communities thus have a mechanism for increased participation in an EA scoping phase.

Furthermore, British Columbia is the first Canadian jurisdiction to integrate FPIC into the EA process. However, the concept of FPIC, as presented by UNDRIP, was not fully adopted by the BC government, as the denial of consent does not necessarily mean a project will not be developed. Also, the historic experiences of Indigenous communities counterbalance some optimism that the new legislation will have a positive impact. Therefore, it is necessary to follow how this change will be implemented in practice to conclude whether meaningful engagement was achieved.

Assessment of Alternatives

The assessment of alternatives is the proponents' consideration of both alternative methods and alternatives to a proposed undertaking in an environmental assessment.[79] It is required in the EA legislations of Ontario (individual EAs), British Columbia and Yukon. Alternative methods for carrying out the proposed undertaking means considering and comparing the impacts of different ways of doing the same activity (e.g., underground mining versus surface mining). Alternatives to the proposed undertaking means functionally different ways of approaching and dealing with a problem or opportunity (e.g., importing mineral resources versus exploiting domestic mineral resources). Consideration of alternatives helps the public and decision makers to be aware of opportunities, challenges and trade-offs about a proposal. Therefore, consideration of alternatives contributes to improving transparency and accountability in decision making. In this regard, the provision for consideration of both alternative methods and alternatives is an important strength in the EA legislation in British Columbia, Yukon and Ontario.

Early Public Participation and Scoping

Requirements for early public participation and scoping the assessment accordingly to integrate socio-economic, health and heritage effects of a proposed project in assessments are strengths in the YESAA and BC's 2018 EAA.

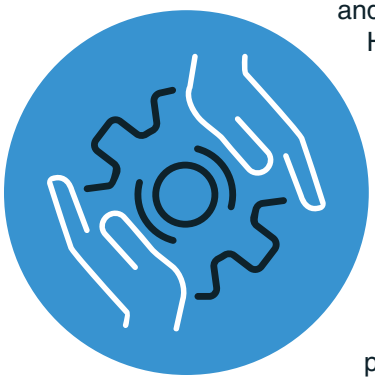
BC's 2002 EAA did not require early participation; however, the practice was applied by proponents in most cases. Thus, the proponents' motivation to engage public consultations determined how comprehensive the EA scope would be. In contrast, as early participation is part of Yukon's legislation, the consideration and inclusion of social, cultural, health and heritage effects are broader in its EAs. Even though research interviews in Yukon stressed that the effectiveness of including socio-economic aspects into the assessment process needs further study. the references to socio-economic criteria and Indigenous knowledge and culture are progressive.

BC's 2018 legislation requires a scoping phase that was implemented in practice but not mandated by EAA 2002. During this phase the working group can comment on what valued components concerning environmental, social, cultural, economic, health and heritage effects should be assessed for each project. Proponents would submit a final report, and other stakeholders could only hope that these valued components were covered. Therefore, the reformed legislation creates greater certainty in outcomes as far as proponent submissions are concerned.

BC's 2018 EAA includes several other positive design improvements: strong public participation, conducting regional and strategic assessments, and broadening the scope and project types subject to an EA.[80] Additionally, expansion of monitoring and compliance programs and establishing a set of process requirements for provincial regulatory approvals will aid in managing cumulative impacts.[81]

Justified Decisions and Collaboration with Ministries about Technical Issues

In the updated British Columbia legislation, the minister responsible needs to provide reasons for their decision whether a project should complete an EA. Also, the minister must release evidence supporting final ministerial decisions on an EA approval. Similar to BC, the decision body — the DO or EC in Yukon and the minister responsible in Ontario — needs to provide reasons for their decision. However, in Ontario, the minister only provides reasons to proponents and does not disclose them publicly.



In addition, the updated BC EA process includes establishing technical working groups with representatives from various ministries, depending on project characteristics. This improves assessments as it would be difficult for the EAO to have in-house capacity on all relevant technical issues. However, variations in capacity could inadvertently lead to an uneven assessment process across projects. Coupled with the institutionalization of community advisory committees, such reforms can decrease the uneven levels information throughout the EA process, which can, in turn, lead to more consistent implementation and increase public confidence in the impartiality of the process in British Columbia.

Coordination of Assessment with Other Jurisdictions

British Columbia's updated EA process bolsters cooperation among jurisdictions. Coordinating assessments with other jurisdictions is now part of EAC's legislated purpose. Coordinated assessments will allow the province to substitute the province's EA process with another jurisdiction's process, namely the federal government and Indigenous Nations. This provision ensures a minimum level of EA requirements and allows an Indigenous Nation to conduct an assessment for a proposed project that is on its land or affects its rights even in the absence of a government-to-government agreement about an EA.[82] Similarly, Ontario has an agreement with the federal government on EA cooperation to mitigate duplication of EAs for a project.[83]

Weaknesses in Environmental Assessment Processes in British Columbia, Ontario and Yukon

The jurisdictional studies found 38 transparency and accountability risks in BC, Ontario and Yukon. The data points, once verified, narrowed to 14 risks in EA processes in British Columbia, 13 risks in Yukon and 11 risks in Ontario, as listed in Table 3. This section summarizes how the risks identified can affect transparency and accountability. The details of the analysis with relevant evidence are available in the technical jurisdictional reports. A summarized discussion of each risk is available in Appendix 5.

As listed in Table 3, the British Columbia EA process has one high risk, nine moderate risks and four low risks. Of the 11 risks found in Ontario, three are classified as very high, five as high, one as moderate and two as low. Finally, the 13 risks in the Yukon EA process break down as one high, four moderate, seven low and one very low.

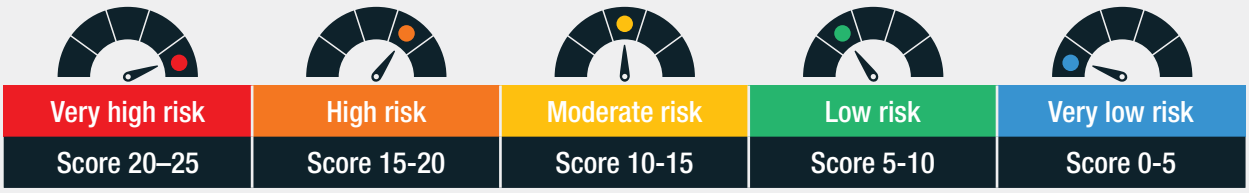
Each risk in Table 3 has a score from 1 to 25, which shows its significance in terms of the likelihood of occurrence and the negative impact on society, the economy, the environment and Canadian mining business if that risk were to occur. As the MACRA Tool uses a scale of one to five for likelihood and impact scores, the highest total risk score is 25 as it is calculated by multiplying the likelihood and impact scores. A score of 25 indicates that the risk is significantly high, which can adversely affect the public's confidence and trust in the EA process, final decision and the mining sector's contribution to sustainable development. A risk is scored one when the likelihood and the impact are seen as insignificant, even negligible.

The risks found in the EA processes are grouped according to four risk categories defined by the MACRA Tool (Figure 3).[84] These categories are:

1. **Community consultation (CC)** are risks related to community engagement in the EA process: 29% of all risks — five risks in British Columbia, three risks in Ontario and three risks in Yukon;
2. **Process design (PD)** are risks related to legislative and regulatory gaps: 53% of all risks — four risks in Ontario, six risks in British Columbia and five risks in Yukon;
3. **Process practice (PP)** are risks related to how the EA process is carried out in practice: 8% of all risks — two risks in Yukon and one in British Columbia;
4. **Contextual factors (CF)** are risks related to the context in which EAs take place: 10% of risks – three risks in Ontario and one for Yukon.

Table 3 Transparency and accountability risks in EA processes in British Columbia, Ontario and Yukon

British Columbia	Ontario	Yukon
PD-N2. Gaps in regulatory coverage in the EA to integrate cumulative effects **(Risk score: 15)**	PD-N2. Gaps in regulatory coverage in the EA to integrate cumulative effects **(Risk score: 25)**	PD-N8. Low compliance, enforcement and monitoring of EA commitments **(Risk score: 15)**
PD-N3. Criteria or scope for EA across similar project categories not defined **(Risk score: 13)**	PD-N4. The criteria and framework that may trigger a private sector EA are not publicly known **(Risk score: 25)**	CC-N1. Limited integration of social and cultural considerations in environmental assessments as they relate to Indigenous communities **(Risk score: 14)**
PD-N9. Minimal restrictions for mineral staking/tenure **(Risk score: 13)**	CC-3. Free, prior and informed consent (FPIC) of affected communities ignored **(Risk score: 25)**	PD-14. External interference on ministerial decision making **(Risk score: 12)**
PP-14. EA decisions based on imprecise data **(Risk score: 12)**	CC-N1. Limited integration of social and cultural considerations in environmental assessments as they relate to Indigenous communities **(Risk score: 20)**	PP-12. Inadequate due diligence on applicants' claims regarding their capacity and financial resources **(Risk score: 12)**
CC-2. Agreements with landholders, Indigenous Nations or community agreements finalized behind closed doors **(Risk score: 12)**	CC-N2. Absence of meaningful consultation due to delegation of consultation **(Risk score: 20)**	PD-N2. Gaps in regulatory coverage in the EA to integrate cumulative effects **(Risk score: 10)**
PD-14. External interference on ministerial decision making **(Risk score: 11)**	CF-3. Ministry staff and managers unable to cope with agency's workload **(Risk score: 20)**	PP-14. EA decisions based on imprecise data **(Risk score: 8)**
PD-N8. Low compliance, enforcement and monitoring of EA commitments **(Risk score: 11)**	CF-N1. Ministry has inadequate technical capacity to manage EAs with high accuracy and precision **(Risk score: 20)**	PD-N9. Uncertain restrictions for mineral staking/tenure **(Risk score: 8)**



British Columbia	Ontario	Yukon
PD-N1. Proponents scoping project descriptions to be under the thresholds requiring an EA **(Risk score: 11)**	PD-N1. Proponents scoping project descriptions to be under the thresholds requiring an EA **(Risk score: 15)**	PD-N3. Undefined criteria or scope for EA across similar project categories **(Risk score: 8)**
CC-3. FPIC of affected communities ignored **(Risk score: 10)**	CF2. Uncertainty in EA approval process created by decentralized government decision making **(Risk score: 12)**	CC-N2. Absence of meaningful consultation due to delegation of consultation **(Risk score: 7)**
CC-1b. Unclear legal framework for consultation with communities **(Risk score: 10)**	PD-14. External influence on ministerial decision making **(Risk score: 9)**	CC-1b. Unclear legal framework for consultation with communities **(Risk score: 6)**
CC-N2. Absence of meaningful consultation created by delegation of consultation **(Risk score: 9)**	PD-N5. Insufficient verification of EA reports to ensure an accurate impact description **(Risk score: 8)**	PD-N11. Regulatory overlap between the Yukon Water Board, Yukon Environmental and Socio-economic Assessment Board and government **(Risk score: 6)**
CC-N1. Limited integration of social and cultural considerations in environmental assessments as they relate to indigenous communities **(Risk score: 9)**		PD-N5. Insufficient verification of EA reports to ensure an accurate impact description **(Risk score: 6)**
PD-N7. Limited triggers or thresholds for projects to require an EA **(Risk score: 9)**		CF-2. Uncertainty in EA approval process caused by decentralized government decision making **(Risk score: 2)**
PD-N5. Insufficient verification of EA reports to ensure an accurate impact description **(Risk score: 7)**		

Note: Risk assessment details are available in the jurisdictional technical reports at transparencycanada.ca/accountable-mining/overview.

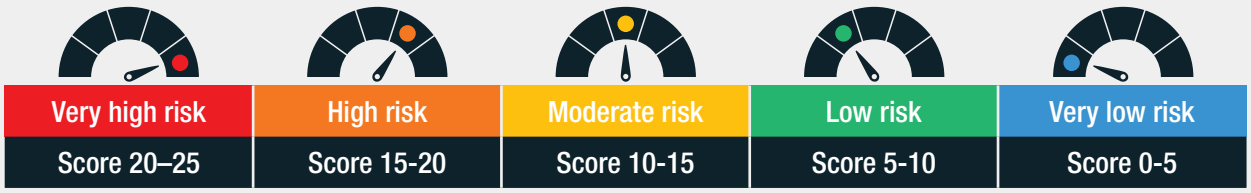


Figure 3 Distribution of transparency and accountability risks by risk category

Median risk scores for each jurisdiction for the four risk categories are presented in Figure 4.* These scores indicate the significance of risks in a category and which risk category is critical for a jurisdiction to mitigate transparency and accountability risks.

Figure 4 Median risk scores by category

* Median is the middle value in a set of data. It is the preferred indicator as more data values are clustered toward one end of their range (for Ontario) and there are a few extreme values (in BC and Yukon).

Source: United States Department of Agriculture, National Water and Climate Center (n.d.), *Median vs. Average to Describe Normal,* https://www.wcc.nrcs.usda.gov/normals/median_average.htm (accessed: August 22, 2020).

Discussion

Many of the risks found in British Columbia, Ontario and Yukon relate to ministerial discretion, regulatory gaps and consultations, particularly with Indigenous communities. Based on the risk scores and feedback from stakeholders, the issues regulatory gaps and community consultation stood out. A review of all risks can be found in Appendix 5 and the complete explanation of the risks in the context of each province can be found in the technical reports.

The ministers in the provinces and the decision body in Yukon have dual roles in promoting and regulating mining and discretional power about the final decision to approve or reject the EA in all the studied jurisdiction EA processes. This undermines transparency and weakens the objectivity of the decision process and the public trust on the robustness of the proposed project.

Regulatory Gaps

British Columbia. It is the responsibility of the proponent in BC to complete a self-assessment and determine if the project meets reviewability thresholds requiring it to undergo an EA, both under the 2002 and the 2018 legislation. Lack of due diligence in the project descriptions and self-assessments used for reviewability could mean that some projects are avoiding EAs and proponents may later request amendments and expansions leading to larger projects.

In a focus group in Vancouver there was some consensus that splitting mine expansions is common. Mine expansions are often just shy of EA thresholds, and a number of research participants raised concerns about this practice of proponents splitting projects or expansions to stay beneath the thresholds and thus avoid an EA. This is a transparency risk because the impacts of the mine development may not be fully understood or publicly known by all stakeholders.

Another risk that hinders the transparency of mining impacts is the integration of mining cumulative effects in EAs. Some technical experts noted that cumulative effects are measured on the basis of residual effects, meaning a mine project's impacts minus the mitigation measures that are known to be effective. Unfortunately, there is rarely information available on the effectiveness of mitigation measures, particularly with regard to valued components. As a result, disclosures of how cumulative effects have been assessed and accountability for these assessments are stymied and can also lead to misleading environmental assessments.

Ontario. Ontario is the only Canadian jurisdiction that does not have a mandatory project EA for private enterprises. Projects can be designated by the province to undertake an assessment based primarily on public interest, but the Auditor General's 2018 Follow-Up Report found that MECP had denied all but one of the 177 public requests to have streamlined assessments bumped up to comprehensive assessments in the five-and-a-half years leading up to its 2016 audit. Without a definition of public interest, clear criteria for what would result in a designation are not publicly known, and the ability of civil society and the public to hold the government accountable is limited.

Some proponents might undertake an assessment under what is called a voluntary agreement, but again, there is no written guidance for if and when an individual EA based on a voluntary agreement should be employed. At present 83% of mineral mines operating in Ontario have not undertaken a project assessment, either federally or provincially.[85]

Due to the lack of a mandatory project EA and a limited number of full EA applications for mining projects in Ontario, the research did not report any risk in the category of process practice (Figures 3 and 4). The absence of process practice risks stems from the MACRA methodology, which bases the risk assessment on deviations between how the process is described on paper and how it is implemented. Therefore, it would not be methodologically appropriate or possible to evaluate gaps associated with the process that do not exist in practice.

For instance, there are no data on evaluating thresholds in the legislation and how that works in practice, and therefore any risk analysis would be based purely on speculation. Additionally, the minimal available data on voluntary agreements in Ontario limited analysis of process practice, and, as a result, fewer risks are reported overall. However, the lack of the mandatory EA process leads to much higher risk scores in other categories overall for Ontario.

As previously explained, most mining projects in the province complete class EAs for different parts of a mining project, such as road extensions, tailing dams and waste dump sites. Under class EAs, only certain impacts of certain aspects of a mining project are assessed — and if more than one project aspect is assessed, each is assessed separately. As a result, the sum of a project's impacts remains publicly unknown.

Yukon. YESAB's recommendation reports to decision bodies are subject to public review. However, decision bodies, as delegated by the premier, ultimately determines whether a project can proceed, as well as the associated terms and conditions of this decision. As the delegated decision body for mining projects, EMR or major project office can (and often does) ask other departments for input to inform whether the project aligns with YESAB recommendations, terms and conditions. In practice, decision making is ultimately vested in one or two people in the department issuing the final decision document.* Any deviation from the recommendation report needs to be accompanied by a rationale, and subsequent permits need to ensure alignment with the terms and conditions presented in the decision document.

Despite these provisions, from the perspective of accountability and transparency, the decision document development process was viewed as a "black box" by research interviewees and potentially subject to external or political influences as multiple interviewees observed that the public is not provided with opportunities to comment on the decision document. Stakeholders said that it is often difficult to follow how final decisions are determined and how potential areas of disagreement with other government departments that have provided input are addressed.

A number of interviewees also flagged concerns about increasing levels of political interference at the decision document stage, the absence of regulations on industry lobbying, the lack of public disclosure of lobbying meetings between special interest groups and the government, and a perceived conflict of interest given the dual mandate of EMR in promoting mining investment while also overseeing the YESAA process.†

Community Consultation

British Columbia. Under the 2018 EAA, there are legislated requirements for community advisory committees, and meaningful public participation is included in the legislated purpose of the EAO.[86] The updated legislation also includes increased public comment periods and new early phase engagement provisions, which are anticipated to generate positive impacts.

However, substantial focus group and interviewee data provided evidence that the lack of clear guidelines to establish what constitutes meaningful public consultation leads to frustration for proponents, the public and the province. The result for communities is distrust in the system and in the ability for their comments or concerns to effect any change. This may lead to the public becoming disengaged or seeking other means to be heard. Additionally, a lack of trustworthy oversight on negotiations could lead to the manipulation of agreements. Focus group feedback suggests that proponents use multiple tactics to negotiate and engage with landowners, generally prior to the EA process. Landowners may be poorly equipped and resourced to enter into agreements with companies. Generally, landowners are required to sign non-disclosure agreements, which also prevent them from speaking out against the project or engaging fully in the EA process.

* For example, with regard to mining activities listed in Schedule 3 of the *Assessable Activities Regulations*, the deputy minister of the Executive Council Office is the delegated decision body.

† In November 2018 the Yukon government passed the *Lobbyists Registration Act* (Bill 23), its first lobbying law. However, it has not yet entered into force, and thus did not affect day-to-day practice when the study conducted in 2019.

Particularly in relation to Indigenous communities, positive sentiments were expressed that the 2018 EAA uses the language of consent, which is a strong first step. However, focus group and interviewee data affirmed that there is a lack of clarity in terms of requirements for FPIC and that procedural guidance is needed.

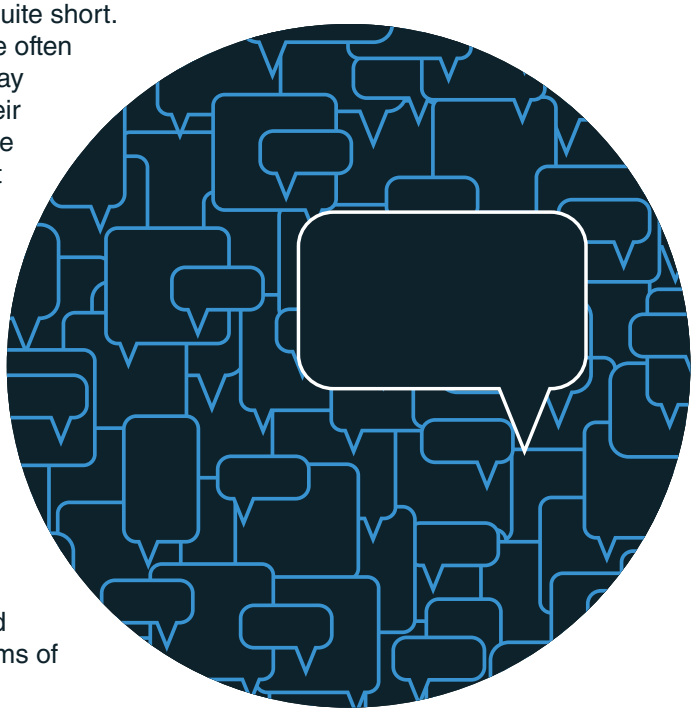
Ontario. The impacts of a project on the social and cultural considerations of Indigenous communities are expected in EAs. However, these considerations are infrequently captured. Interviewed Indigenous community members are wary of working with companies and the government for fear of misrepresentation or misuse of the information they provide. Additionally, accurately depicting social and cultural considerations is often challenging, given the diversity within communities. Proponents and government officials often come from western perspectives and have limited time, capacity or knowledge to draw from for these social and cultural considerations. As a result, there has been limited guidance on establishing social and cultural criteria for Indigenous communities.

Interviews with Indigenous Peoples have also shown a general distrust in consultations. A Timmins Elder said, "Decisions are already made by the time consultation is made … we stop caring anymore. Nothing can be done to change it."

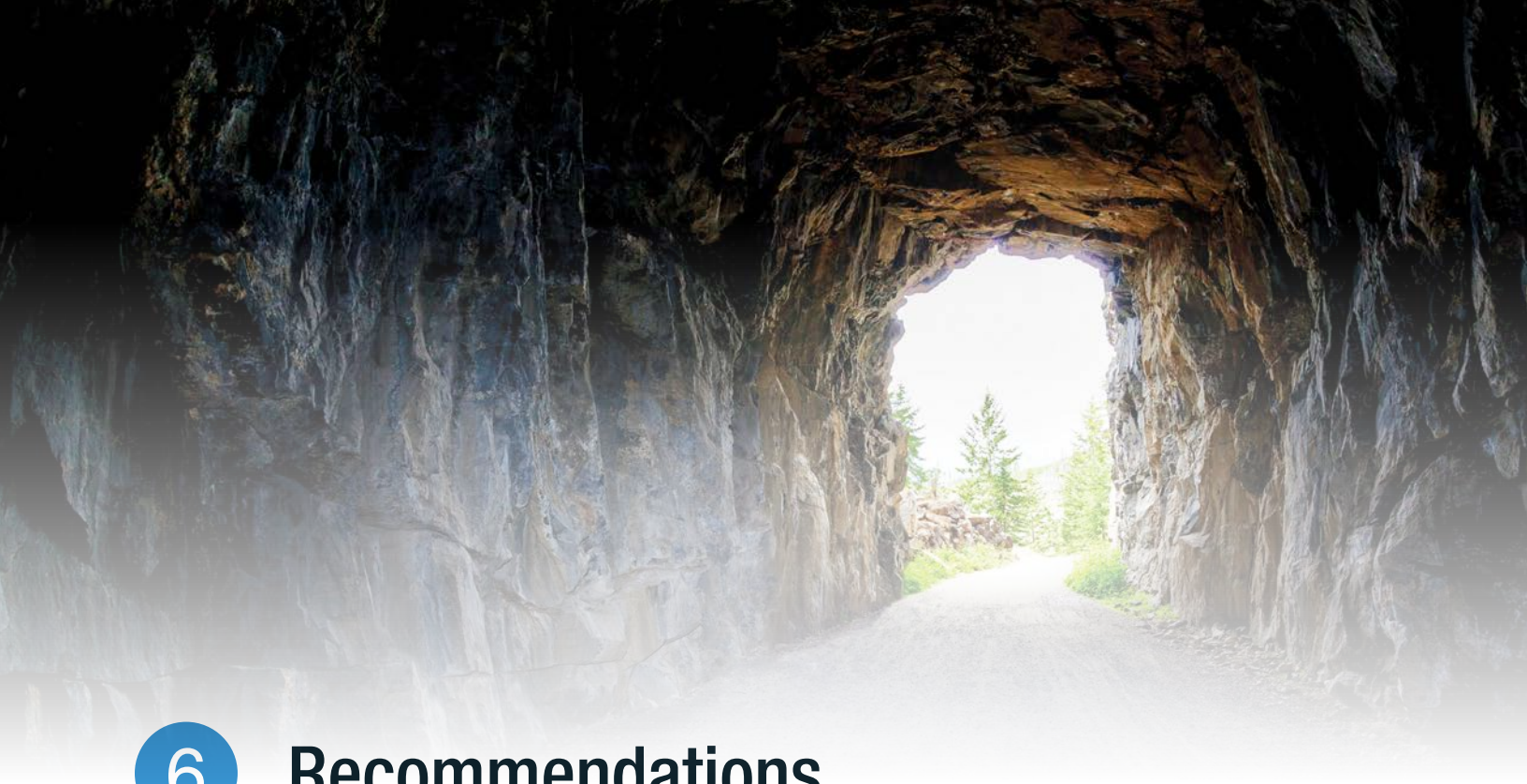
The issue of how communities are selected for consultation for a project was also raised by interviewees. "[It is a] big burden for communities to participate, particularly an administrative burden … There is no mechanism for a community to opt out even if they don't want to be consulted," said one consultant. Validation workshop feedback indicated that sometimes there is no consistency among provincial ministries on which communities are required to be engaged for a project, and there is a lack of guidelines on how to properly engage.

Yukon. DOs and EC assess a high number of activities and projects. While this number should be viewed positively from a monitoring and governance perspective, there are concerns that Indigenous communities do not have adequate financial and human resources to fully participate in the large volume of assessments that may occur at any given time.

The timelines, especially for DO evaluations, are also quite short. Members of the public and Indigenous communities are often provided 14 days to review a project proposal, which may be one of several proponents requesting a review in their territory at the same time. One interviewee said that one Indigenous community has approximately 11 significant project assessments underway, with inadequate tools and financial resources to support its participation. Another pointed out that Indigenous communities' governments are composed of individuals with multiple jobs and responsibilities.



One interviewee expressed the view that an Indigenous community might choose not to participate and review documentation submitted under YESAA and instead wait until the Yukon Water Board permit stage or quartz licence permit stage to invest time and ensure it has the appropriate technical expertise and advice to participate in the negotiations. This would ensure that their perspectives are integrated directly into permits, which have a greater weight in terms of compliance and enforcement.



6 Recommendations

Minimizing and Mitigating Transparency and Accountability Risks in EA Processes

The analysis in this report serves as a guide to accountability and transparency gaps in British Columbia, Ontario and Yukon's EA processes. The research is intended to begin a discussion on the risks identified and potential mitigation measures. Based on the risk scores and stakeholder feedback, the following recommendations should be considered and discussed by stakeholders and rights holders.

All Jurisdictions

In all three jurisdictions, interviewees raised concerns about the fact that the ministries responsible for promoting mining are also tasked with regulating the sector and are one of the key actors in permitting and licensing processes, including EAs. In this regard, the optimal solution to ensuring unbiased assessment of projects is for each jurisdiction to transfer responsibility for mining promotion to government agencies working with economic development. Alternatively, publicly disclosing the rationale for EA-related decisions with substantive justifications could help government agencies demonstrate full and fair consideration of projects.

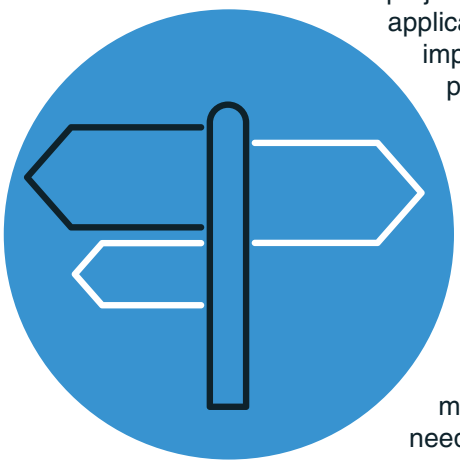
Additionally, Indigenous participants in this research, particularly in Ontario, noted that until FPIC becomes a legal requirement and is integrated into EA processes and especially decision-making practices, EAs will continue to be a "battleground" where inadequate consultation approaches and exclusion from vital decisions result in often-contentious and litigious outcomes. From this feedback, and based on the example set by the updated British Columbia EAA, Ontario and Yukon should adopt FPIC in their EA processes, and all three jurisdictions should adopt clear guidelines on how to implement FPIC.

All three governments should develop criteria to objectively measure what counts as meaningful public consultation and develop procedural guidance on how meaningful consultation will be applied in an EA process. Additionally, terms, roles and responsibilities for meaningful consultation must be clarified to avoid misperceptions about consultation and expectation management. Individuals use the concepts of consultation as a requirement of an EA process and consultation as a requirement of the duty to consult interchangeably. However, these two concepts have different objectives and target audiences. An interesting case in British Columbia supports this argument.

BC's Environmental Appeal Board overturned a water licence granted to a proponent in the northeast of the province after an appeal by a First Nation on the failure to consider the direct and cumulative impacts and to uphold the honour of the Crown through meaningful consultation. The First Nation argued that it was not clear that its engagement with the proponent also constituted the Crown's duty to consult, and that engagement with the proponent did not meet its expectations for engagement with the Crown. The appeal board ruled that the province failed to consult in good faith and that consultation must be based on a transparent framework and set of processes.[87] Therefore, governments must provide clear procedural guidance on what counts as meaningful public consultation and roles and responsibilities of the Crown and proponent when duty to consult is delegated to the proponents. The role of proponents and governments should be clearly defined and publicly known when the administration of duty to consult is delegated in whole or in part to the proponent.

British Columbia

Close project-splitting loopholes: Mitigation measures to reduce the risk of project splitting to avoid EAs are needed because a project might be scaled for different reasons. A transparent phased development program can be appropriate for communities and local authorities to adjust to project impacts. Additionally, smaller capital projects can be easier to finance. However, project splitting has been pointed out as a strategy to avoid the EA process, which has knock-on impacts on cumulative assessment studies. A failure to effectively reduce the opportunity for project splitting or expansions as a tactic to avoid regulatory oversight can undermine public trust in the EA process. Provisions are necessary to consider if the sum of a project's impacts meets EA thresholds. Similarly, when reviewing an expansion application, the EAO and other decision-making bodies should consider the new impacts as well as those originally anticipated. Thus, MECCS should establish provisions to consider the cumulative impacts of a project after expansion and if the sum of those impacts meets EA thresholds.



Issue procedural guidance on FPIC considerations and mandatory matters: Stakeholders resoundingly viewed the effort to provide a second-tier of mandatory matters to be assessed (such as cumulative effects, effects on Indigenous peoples' rights and greenhouse gas emissions) as positive. However, procedural guidance on criteria and acceptable procedures for undertaking these mandatory assessments are needed in order to maximize public trust in the credibility of these assessments and, more importantly, their bearing on the issuance of EACs. The government needs to establish clear procedural guidance on FPIC considerations.

Ontario

Close gaps related to voluntary assessments: The Ontario government has already committed to modernizing the EAA.[88] Requiring EAs for private enterprises and determining clear thresholds for individual assessments (ideally below the high federal threshold, as in other provinces) would mitigate many of the vulnerabilities found in the province. If the class assessment regime is maintained, provisions should be put in place for the government to consider the impacts of a project comprehensively. Additionally, the government should clearly define terms such as "public interest," used as the main reason for a project's class assessments to be bumped up to an individual assessment.

Improve Indigenous communities' involvement in decisions: Federal, provincial and Indigenous governments should reach a consensus on who should be consulted for EAs in any region of Ontario. Rights holders and private sector stakeholders also suggested another mitigation strategy would be for the government and proponents to support Indigenous communities to develop their own community consultation protocols. EAs could incorporate a mandatory analysis of the cumulative effects on valued components as identified collaboratively with Indigenous communities as well as a mandatory review of the eventual conclusions.

Yukon

Stronger disclosures to facilitate transparency: Decision bodies need to commit to mechanisms by which they can demonstrate full and fair consideration of EC and DO recommendations, such as strengthening their rationale with substantive justifications. Another tool to improve transparency in decision-making processes is explanations of potential disagreements among government departments. The Yukon government should also promptly implement and enforce the Lobbyists Registration Act to reduce the risk of unaccountable influence by industry and special interest groups on decision makers and the responsible minister.

Interventions to strengthen and sustain public trust: Stakeholders should continue to assess and implement additional financial and technical support mechanisms that could sustain meaningful participation from Indigenous communities. Although the legal framework is clear, procedural guidance on public consultation methods and alternatives to digital disclosures could be explored. Given that the EC and DO have complete discretion on the format, substance and reporting of outcomes stemming from public meetings, procedural guidance can alleviate concerns that these mechanisms do not facilitate meaningful consultation (versus information provision).

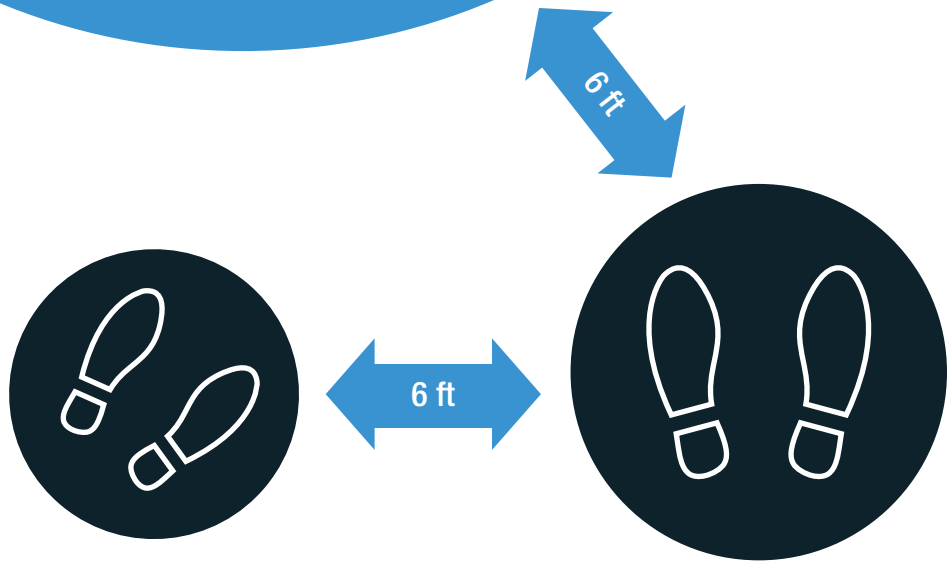
COVID-19 and Consultation

Regarding community consultation risks, the new and significant contextual factor of COVID-19 should be highlighted. COVID-19 has changed the priorities of the communities, governments and businesses drastically in a short period based on health impacts, economic shut down and mitigation practices — namely physical distancing.

COVID-19's impacts on Canada's social and business environment has led to transparency concerns as physical distancing and the need to restart the economy quickly can be used to justify limiting public engagement and consultations in mining projects.[89]

Health concerns must be taken seriously. Nonetheless, the increased use of video conferencing should be leveraged as a means to continue, and possibly even enhance, community consultations.

In light of COVID-19, investing in clear and applicable guiding procedures on consultation and public engagement for proponents and consultants and supporting Indigenous communities to develop community protocols for consultation will create positive outcomes for communities, businesses and governments for fast-tracking processes while achieving better and meaningful consultation.



Future Study

In the course of research for this project, some topics arose that either fell out of the scope or could not be adequately addressed in this report. TI Canada recommends further study on those topics, which include the following.

Expanding the MACRA Analysis to Other Jurisdictions

Canada has considerable potential in mineral project development in its jurisdictions. Therefore, extending the MACRA analysis to other jurisdictions will be valuable for assessing the transparency and accountability strengths and weaknesses in EA processes for mining projects. An expanded study will give governments, Indigenous communities, civil society and industry a full picture of what is working effectively and what is not in EA processes.

Based on resource development and exploration size, Quebec, Newfoundland, the Northwest Territories and Nunavut are good candidates for further application of the MACRA Tool. Saskatchewan has a unique EA process, which could be triggered by any size mining project, but also any mining project could be excluded from performing an EA unless it triggers federal impact assessment.

Expanding MACRA analysis will reveal common issues and allow for the exchange of experience and good practices to enhance transparency and accountability in EAs for mining projects nationwide. Moreover, the outcomes of such a study will contribute to Canada being a safe and reliable mineral development jurisdiction.

Low Compliance, Enforcement and Monitoring of EA Commitments

The lack of follow-up provisions to understand and verify the effectiveness of negative impact mitigation actions in the implementation phases of a mining project was reported as a significant issue in Yukon and as a considerably important vulnerability in British Columbia. Because the Accountable Mining Program focuses explicitly on the pre-mine development phase and this risk is about the post-exploration phase, it is not discussed in detail in the risk assessment and recommendations sections. However, effective compliance, enforcement and monitoring of EA commitments are highly critical aspects of ensuring accountability and transparency in EA approvals as these are terms and conditions of the EA approval and must be followed by the proponent to mitigate and minimize the negative impacts. But, as reported in Yukon and British Columbia, there are inadequate provisions for effectively monitoring if all these terms and conditions are fulfilled after completion of the EA process and awarding of the permit. Additionally, it is challenging to access data and information to monitor compliance of EA commitments, which limits the enforcement performance and the public's ability to hold proponents and governments accountable for unintended and unexpected outcomes. As a result, public trust and confidence in the EA process's ability to mitigate harm and maximize benefits decline. Therefore, a study focusing on compliance, enforcement and monitoring of EA commitments is recommended.

Free-Entry System

In the three jurisdictions studied, a mineral claim can be obtained through a free-entry system, which allows the proponents to apply online to claim a mineral resource in a specific area. This first-come, first-served system with an online application process increases data accessibility and transparency by decreasing human interaction and its related corruption risks. The free-entry system also provides equal opportunity for prospectors, whether individuals or companies. Even though the need for physical staking is a limitation, the cost-effective and straightforward prospector certification and claim application makes the free-entry system equally accessible for all stakeholder groups.

However, the free-entry system does not entirely eliminate transparency and accountability risks. The process needs further study to address transparency and accountability issues caused by:

- a lack of due diligence process and beneficial ownership information because numbered company registrations in claim and tenure applications are allowed;
- prioritization of land use for mining over other land use practices to avoid conflicts in managing natural resources and conflicts with Indigenous peoples' demand for a strong voice in governing natural resources and decision making as right holders; and
- work burden on technical offices of Indigenous communities and limited availability of community-specific consultation protocols.

Negotiated Agreements: Impact Benefit Agreements

Focusing only on legislated permitting and licensing processes in mining is not enough to mitigate transparency and accountability risks in Canada. It is equally critical to analyze negotiated agreements among Indigenous communities and proponents and the Crown as well as the legislated processes to minimize and mitigate transparency and accountability risks. Additionally, studying the timing of IBAs relative to the EA process and the implications relative to the mine development process are crucial to maximizing the benefits of EAs as Indigenous communities would be aware of a project's potential impacts, public concerns, mitigation design and promised benefits.[90]

As the interest in consultation and implementation protocols and Indigenous Nations-led EAs rises and each community has its own political, cultural, economic and social dynamics, considering and initiating discussions about the transparency and accountability of negotiated agreements by Indigenous communities will create a considerable positive outcome for Indigenous People. Furthermore, consideration of gender and disadvantage groups will strengthen the study.

Gender Aspects of Transparency Risks in Mine Permitting and Licensing

This study did not analyze mining's impact on women, gender inequalities within the sector, or the social structure and cultural aspects of communities when it comes to gender norms. However, because mining projects have varying impacts on people of different genders, the EA process should consider gender throughout, including but not limited to ensuring full participation of women in the process as well as the participation of women in the decision-making process, and any accommodations that are needed to make this possible. Therefore, focusing on the gender aspects of transparency risks in mine permitting and licensing is necessary and recommended for future study.

7 Conclusion

The analysis documented in this report and also in the jurisdictional technical reports serves as a guide to potential accountability and transparency gaps in the EA processes in British Columbia, Ontario and the Yukon Territory. The research should not be interpreted as a rating of these jurisdictions' EA processes.

None of the EA processes studied is free of transparency or accountability risks. However, there are clusters of risks that should be considered as priorities. Among these, improvements in the process design and consultation by issuing guidance on mandatory matters would considerably improve the transparency and accountability of all three EA processes. The common points that should be highlighted for the three jurisdictions are as follows.

- Risks related to community consultation and the duty to consult are relevant for all three jurisdictions. The study also highlights the importance of early engagement and meaningful consultation to establish public trust and confidence. As an Elder from Indigenous community explained that in the current practices in Ontario, local stakeholders and rights holders know their engagement would not change the practice, and so they stopped caring about consultation practices.

- The dual roles of authorities and decision makers both to promote mining and to evaluate its impacts in EA processes, which is a "go/no-go" process, are seen as a conflict, and reduce public trust and confidence in the system. Perceptions could be changed considerably by delegating industry promotion to economy and development authorities while keeping mining sector authorities as the technical knowledge hubs.

- Loopholes that make project and expansion splitting to avoid an EA possible are critical transparency and accountability risks. It may be necessary to scale a project due to technical limitations, the boom-bust cycle and project-financing challenges in the mining business. However, the public should be informed about possible future project expansions so be aware of the cumulative effects of possible project expansions and scaling-up on the environment, society and Indigenous rights.

Next Steps

The findings from this report provide mining sector stakeholders and rights holders — governments, industry, Indigenous communities and civil society — with a clear analysis and starting point to improve transparency and accountability in environmental assessment processes and legislation. While TI Canada makes recommendations on how some risks may be addressed, stakeholders and rights holders need to work collaboratively on the report findings to address identified risks.

TI Canada will help kick off these discussions through target audience conversations and assist in facilitating dialogue among stakeholders and rights holders in each jurisdiction. It is our goal to see tangible plans developed collaboratively involving all voices. As noted earlier, TI Canada commits to sharing our knowledge with those Indigenous communities who shared theirs with us.

Appendix 1 Extended Methodology

Methodological Steps of the MACRA Tool

The Mining Awards Corruption Risk Assessment (MACRA) Tool uses a qualitative assessment methodology that includes nine steps (see Figure 1 in the report).[91] Defining the scope (Step 1) is performed by Transparency International (TI) Canada. Therefore, the research reported in this document starts by developing a process map (Step 2) that shows the steps involved in granting the environmental assessment (EA) permit for mining projects. The developed map sets a baseline and builds the foundation for the risk assessment. The MACRA methodology studies the process to see where practice diverges from the official process, or where implementation issues arise that were not contemplated or intended by the legislation. It also facilitates understanding and explaining the steps, actors and requirements of the award process while assessing the root cause of divergence and implementation issues. Moreover, the process map helps identify the vulnerabilities that create opportunities for corruption in the process (Step 2A) and records them in the associated process step for future discussion and analysis.

In addition to the process design and implementation, characteristics of politics, economy and society also influence the mining sector and how the mining awards process is administered and operates. Therefore, understanding the country, region and the sector-specific context in which the mining awards process takes place and identifying the contextual vulnerabilities in the EA process are conducted in Steps 3 and 3A. Major political, economic, social and technological factors (PEST analysis) are considered in the contextual analysis in this research.

The risk assessment follows the mapping and evaluating the process and context in the MACRA methodology. As shown in Figure 1 in the report, the risk assessment is performed in four steps: identifying the corruption risks resulting from the vulnerabilities (Step 4); analyzing evidence about the likelihood and impact of each risk (Step 5); scoring the likelihood and impact of the risk (Step 6); and validating the risk assessment results (Step 7).

The MACRA Tool lists 80 predefined corruption risks, and these are used for identifying relevant risks resulting from the vulnerabilities, determined in Steps 2A and 3A. The research team also defined risks based on the Canadian context and vulnerabilities in the EA process. The team used the evidence found in the data collection phase to determine the score for likelihood and impact for each risk. Thus, Steps 5 and 6 are completed simultaneously.

The study used evidence from primary data from interviews and focus group meetings and secondary data from the literature, including peer review and media articles, reports, and deviations from the official process in practice and repeated vulnerabilities. In Step 5, the research team determined likelihood based on the probability that the risk will occur, and impact based on the cost of weakening or undermining process on the local communities, mining companies, general public and the Canadian mining industry.

Collected evidence is used to understand the impact of transparency and accountability vulnerabilities on:

- Accountability, fairness and efficiency in decision making about the allocation of public resources
- Rights to ownership and access by communities to land and water
- Standards for the environment and treatment of communities
- Fair benefit sharing and informing the public and landholders about the management of their resources
- Competition in the mining sector and attracting investors
- Quality of projects with qualified companies with expertise, experience and resources
- Revenue to the state from application fees, and flow-on effects on royalties and taxes from poor projects that result from a corrupt awards process
- Firms obeying the law and following the proper process
- The reputation of Canada, the government and Canadian mining industry.

As a result of evaluating the impact of transparency and accountability vulnerabilities on the Canadian mining sector and society, scoring the likelihood and impact of risks are completed in Step 6. Scoring is performed on a five-point scale for both likelihood and impact, as given in Table 1 in the report.

Last but not least, validating the risk assessment results is completed in Step 7. Assessing the likelihood and impact of risk involves making a judgement. Even though the scoring is performed based on evidence, minimizing bias is critical in the MACRA methodology. Therefore, a robust validation process that involves other perspectives is completed to minimize the potential subjectivity and possible bias perception of the researchers.

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

Research Design

To collect data, the researchers used literature review, focus group meetings and semi-structured in-depth interviews with experts, stakeholders and right holders. Interviews were conducted by phone and in field visits. Potential interviewees were then approached following best practices for participant recruitment in research studies, such as the provision of an initial contact letter that outlined the research study's objectives and outputs, information related to confidentiality, incentives for participation and clarification that monetary compensation would not be provided in exchange for participation. Researchers conducted 128 interviews in total.

The distribution of interviewed parties was 27% government representatives, 22% civil society and non-Indigenous Peoples, 19% Indigenous community members, 17% environmental consultants and lawyers, 10% academics and 5% mining industry representatives. TI Canada and researchers put in considerable staff-hours and effort to engage with mining industry representatives, including both proponents and associations. However, correspondence from the industry representatives was limited.

Field sites were chosen based on key characteristics such as access to key informants, ease of geographic access and likelihood of exposure to key concepts of concern. Based on these criteria, field-based research activities were carried out in Toronto and Timmins in Ontario, Victoria, Vancouver, Kamloops and Terrace in British Columbia, and Mayo and Whitehorse in the Yukon Territory. As required in Yukon, a research licence was obtained for conducting the project-based activities in line with the *Yukon Scientists and Explorers Act.*

Focus group meetings were held in Vancouver, Toronto and Whitehorse. Representatives of mining companies and sector associations, Indigenous communities, civil society, academia and governmental decision-making bodies as well as practitioners, both consultants and lawyers, were invited.

Furthermore, a multi-stakeholder workshop was organized in each jurisdiction to validate research findings where key stakeholders, including representatives of jurisdictional decision authorities and civil society and the advisory committee, had the opportunity to review a first draft of this report before publication. Their feedback was taken into consideration in the creation of this final document.

A total of 33 subject matter experts and representatives from government, industry, Indigenous communities and civil society attended the three validation workshops. The majority of the validation workshop participants were practitioners as 12 consultants and lawyers contributed to validate the risks. Additionally, nine governmental authorities, five Indigenous community members and four mining company representatives participated in the validation workshops in person or online.

Appendix 2 Environmental Assessment Process Maps for British Columbia

Legend

This appendix contains illustrations that describe the process set out in British Columbia's exploration phase permits and *Environmental Assessment Act* in 2002 and then updated in the *Environmental Assessment Act* in 2018. The processes described here were in place as at December 2019.

Responsibilities, actions of Environmental Assessment Office (EAO), Minister of Environment and Climate Change and the responsible Minister (e.g. Ministry of Energy, Mines & Petroleum Resources (EMPR)) under the Environmental Assessment Act (EAA), 2002

Responsibilities, actions of EAO under the EAA, 2018

Responsibilities, actions of proponent

Indigenous Peoples engagement/consultation opportunities

Public engagement/consultation opportunities

Vulnerabilities identified

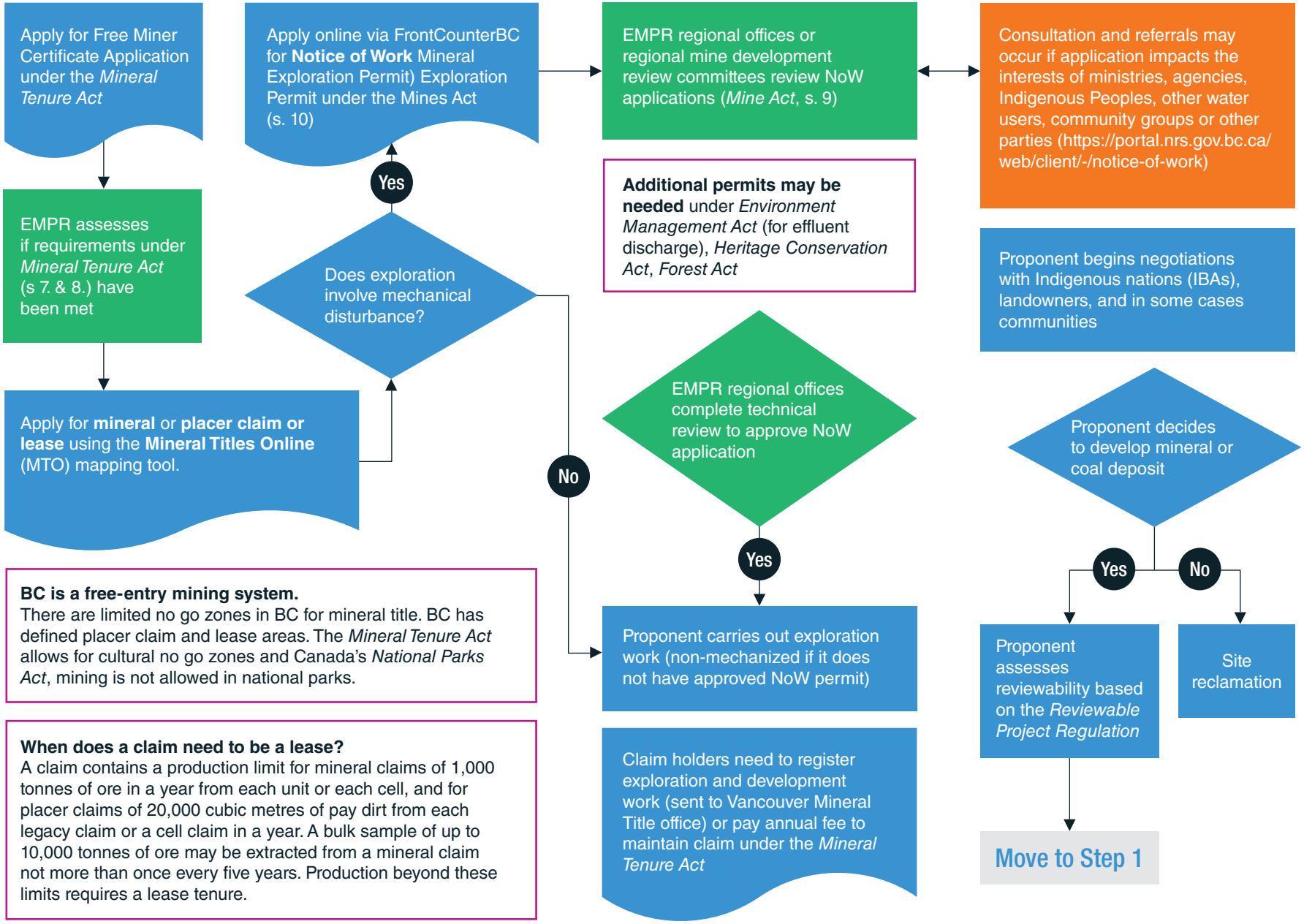
Additional notes for context from guidance documents or other

Boxes shaped with curved bottom edge indicate an application or document requirement

Dashed box line with no fill indicates a step applied in practice or governed by a guidance document but not legislated

Indication of flow of procedural and practice steps

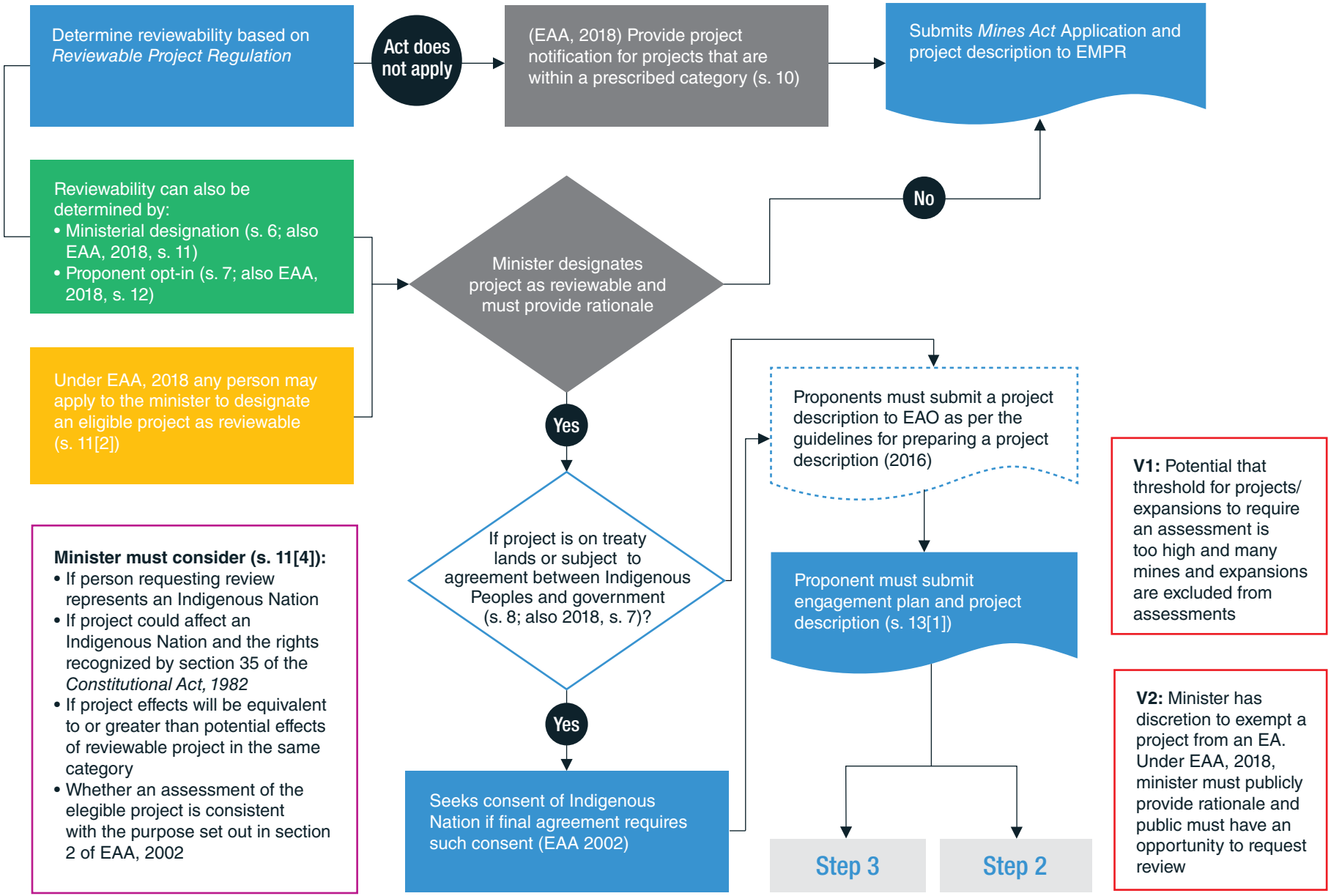
Mineral Tenure Permit and Exploration in British Columbia



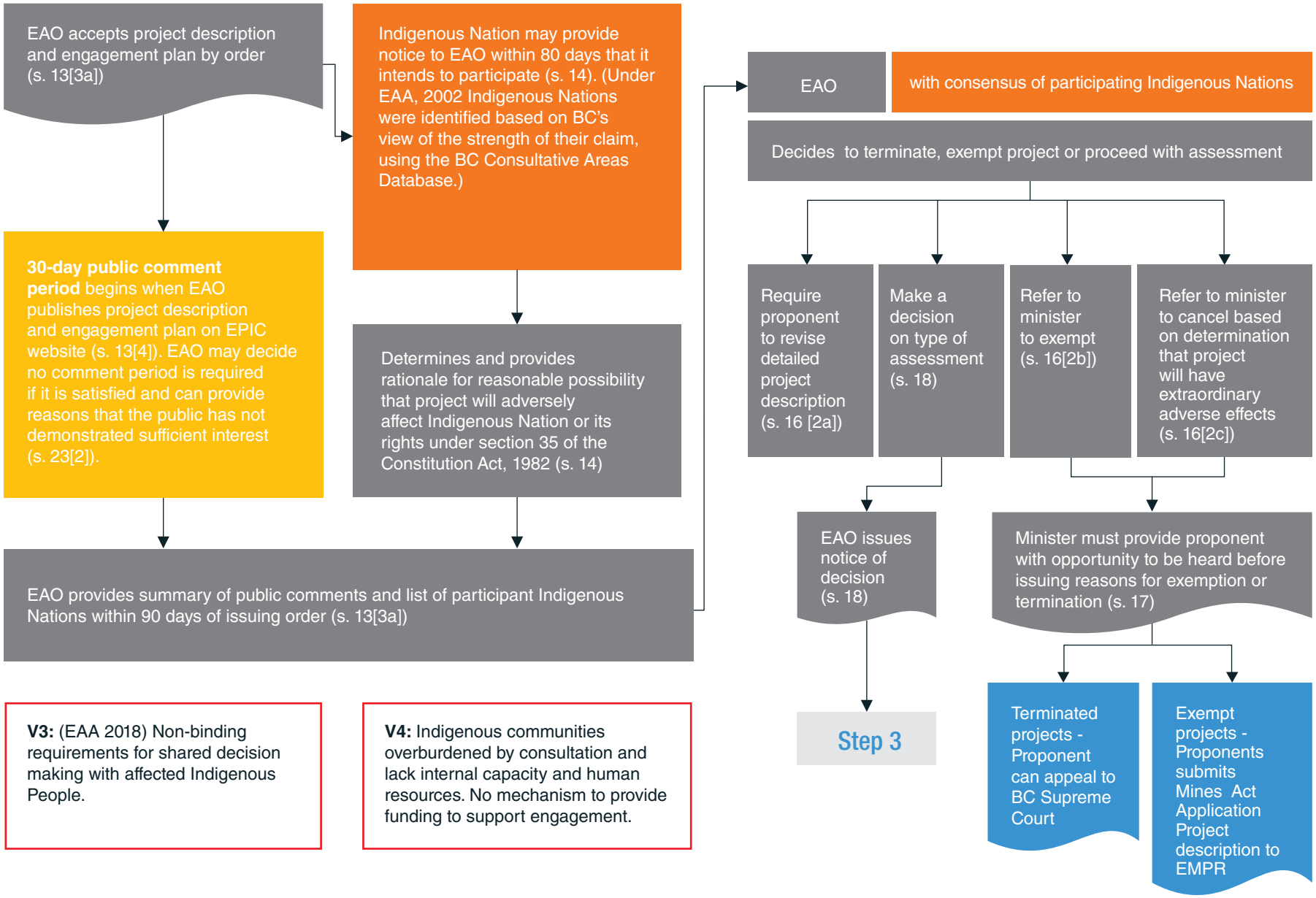
BC is a free-entry mining system.
There are limited no go zones in BC for mineral title. BC has defined placer claim and lease areas. The *Mineral Tenure Act* allows for cultural no go zones and Canada's *National Parks Act*, mining is not allowed in national parks.

When does a claim need to be a lease?
A claim contains a production limit for mineral claims of 1,000 tonnes of ore in a year from each unit or each cell, and for placer claims of 20,000 cubic metres of pay dirt from each legacy claim or a cell claim in a year. A bulk sample of up to 10,000 tonnes of ore may be extracted from a mineral claim not more than once every five years. Production beyond these limits requires a lease tenure.

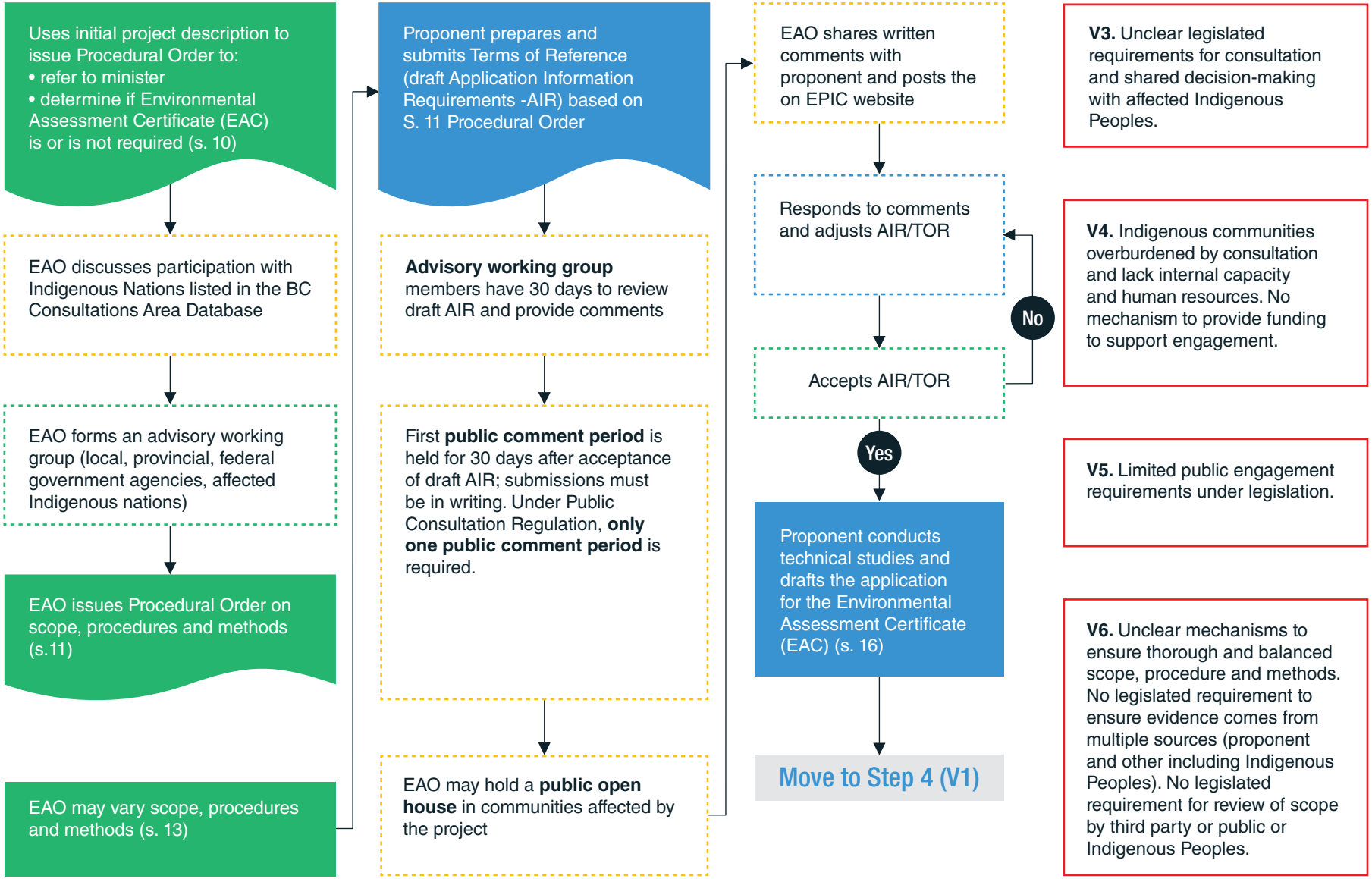
Step 1: Environmental Assessment Reviewability



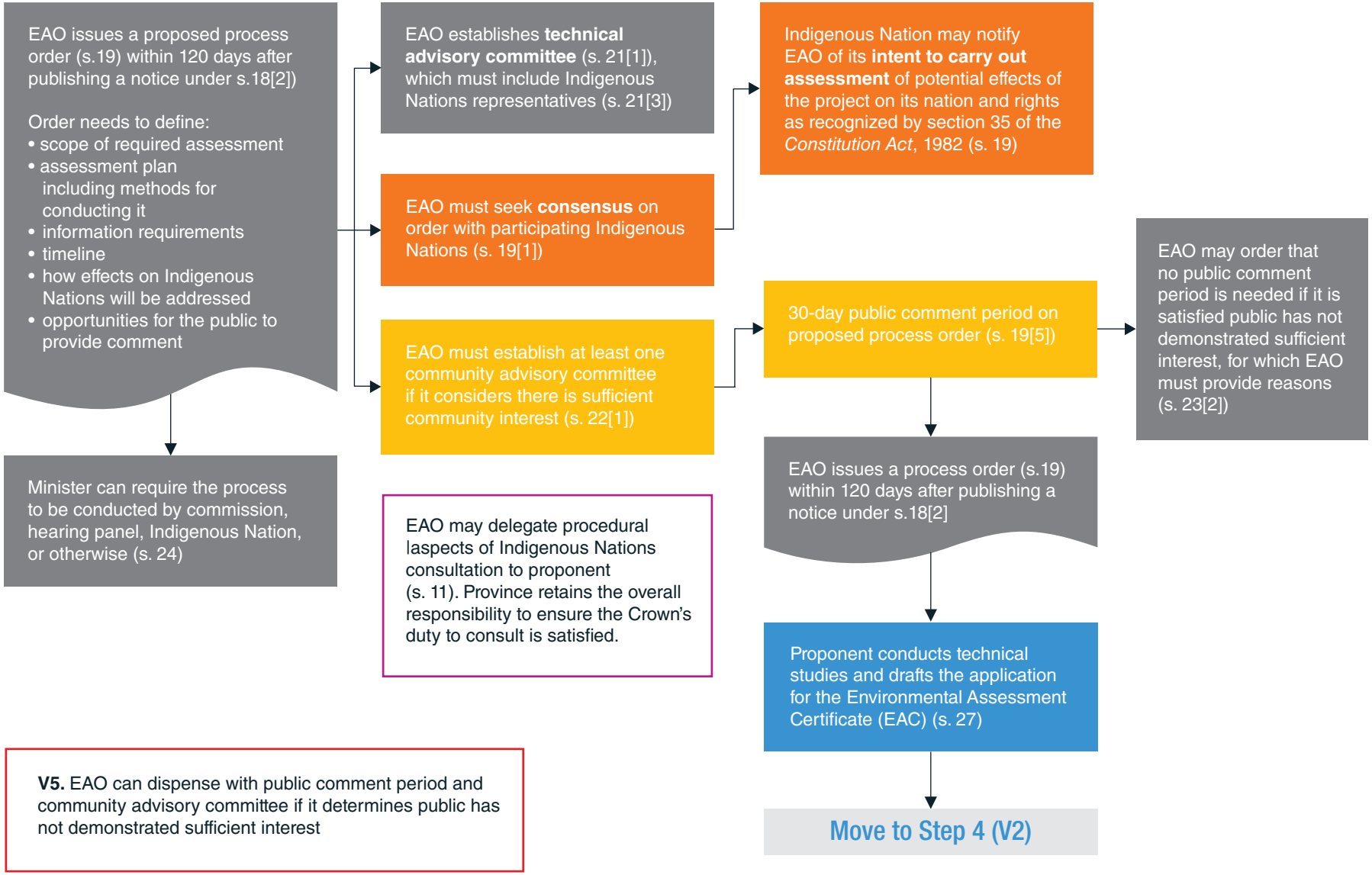
Step 2: Early Engagement and EA Readiness Decision, EAA, 2018



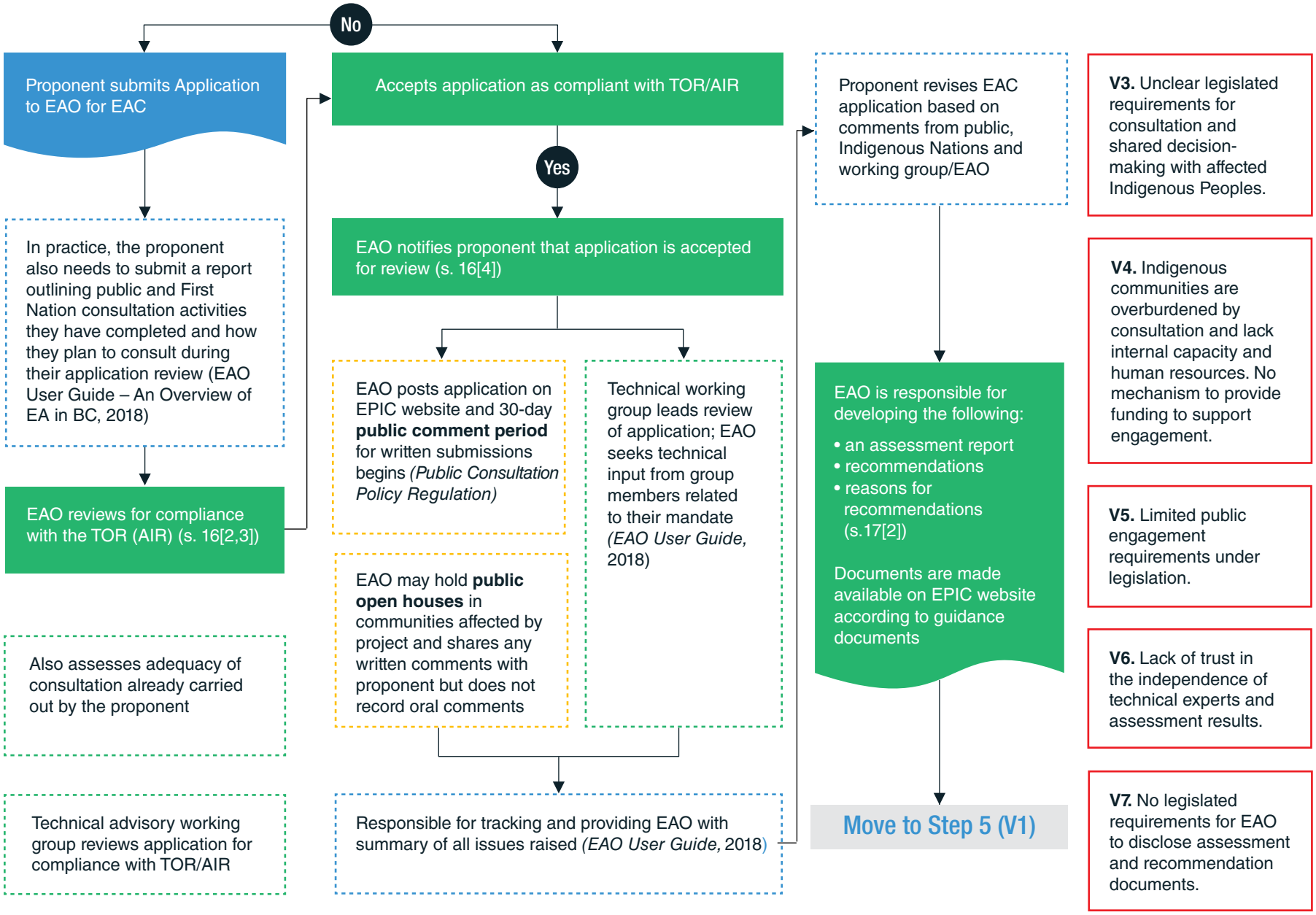
Step 3: Pre-application Phase, EAA, 2002



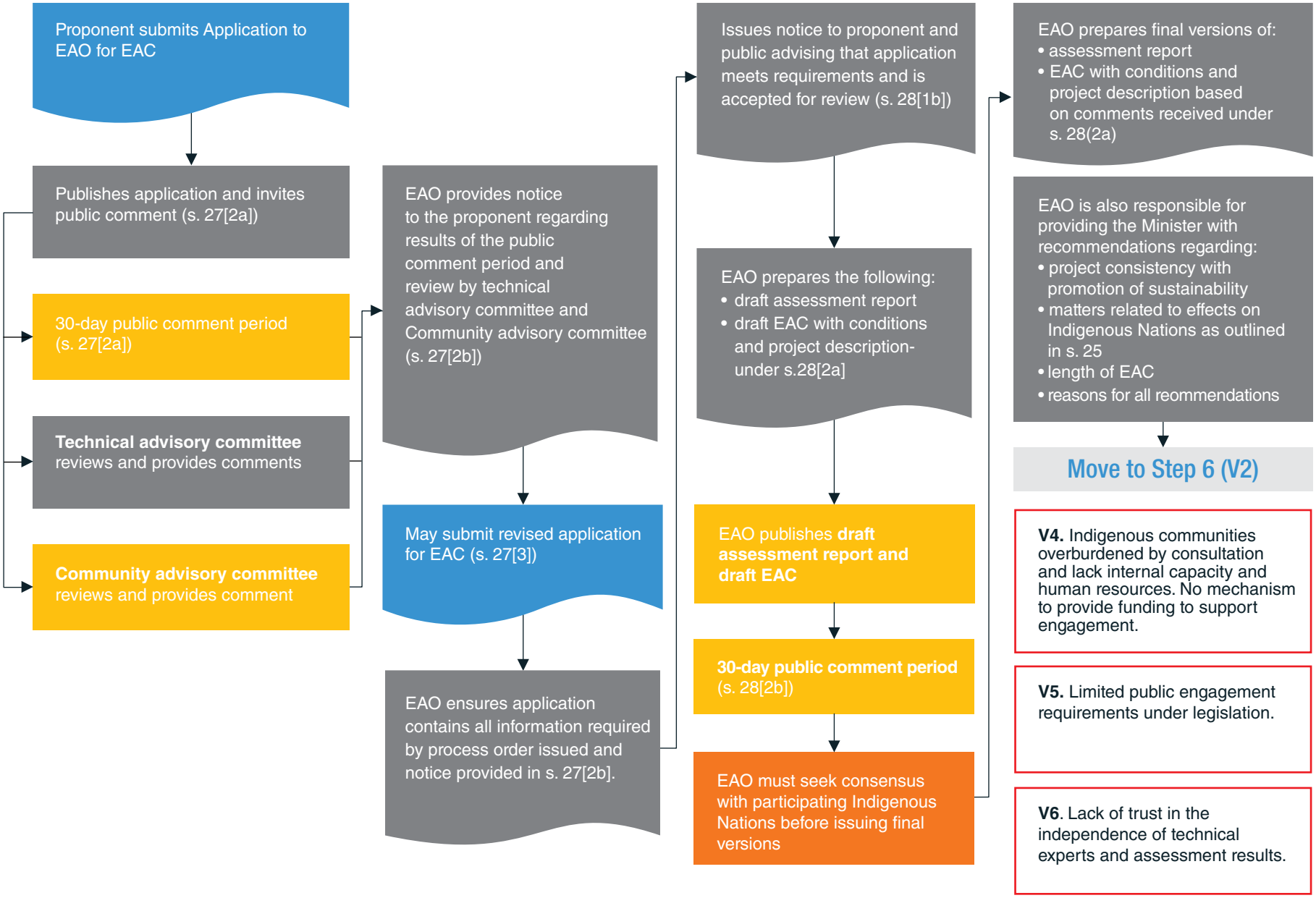
Step 3: Process Planning, EAA, 2018



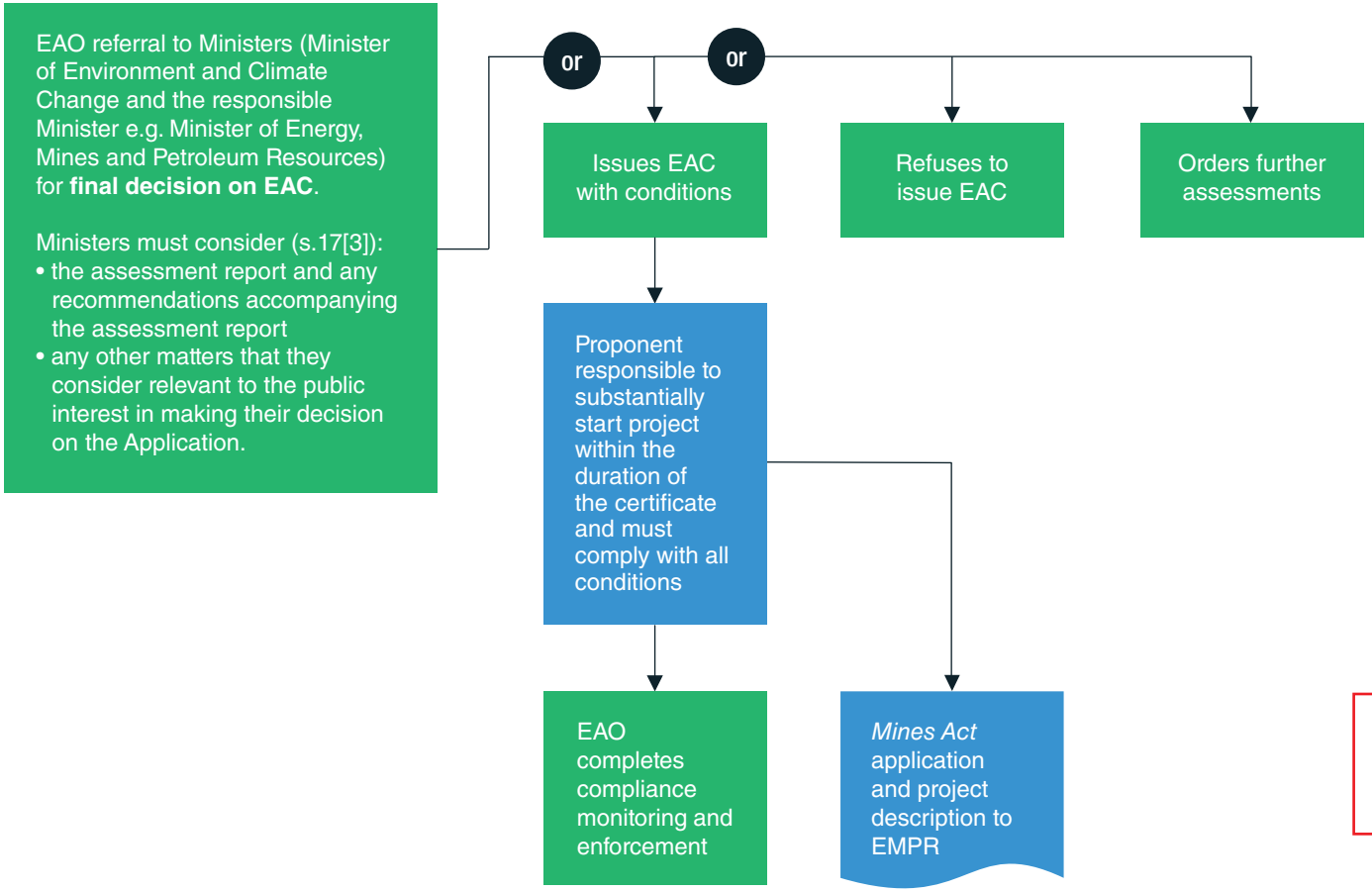
Step 4: Application Review, EAA, 2002



Step 4: Application Review, EAA, 2018

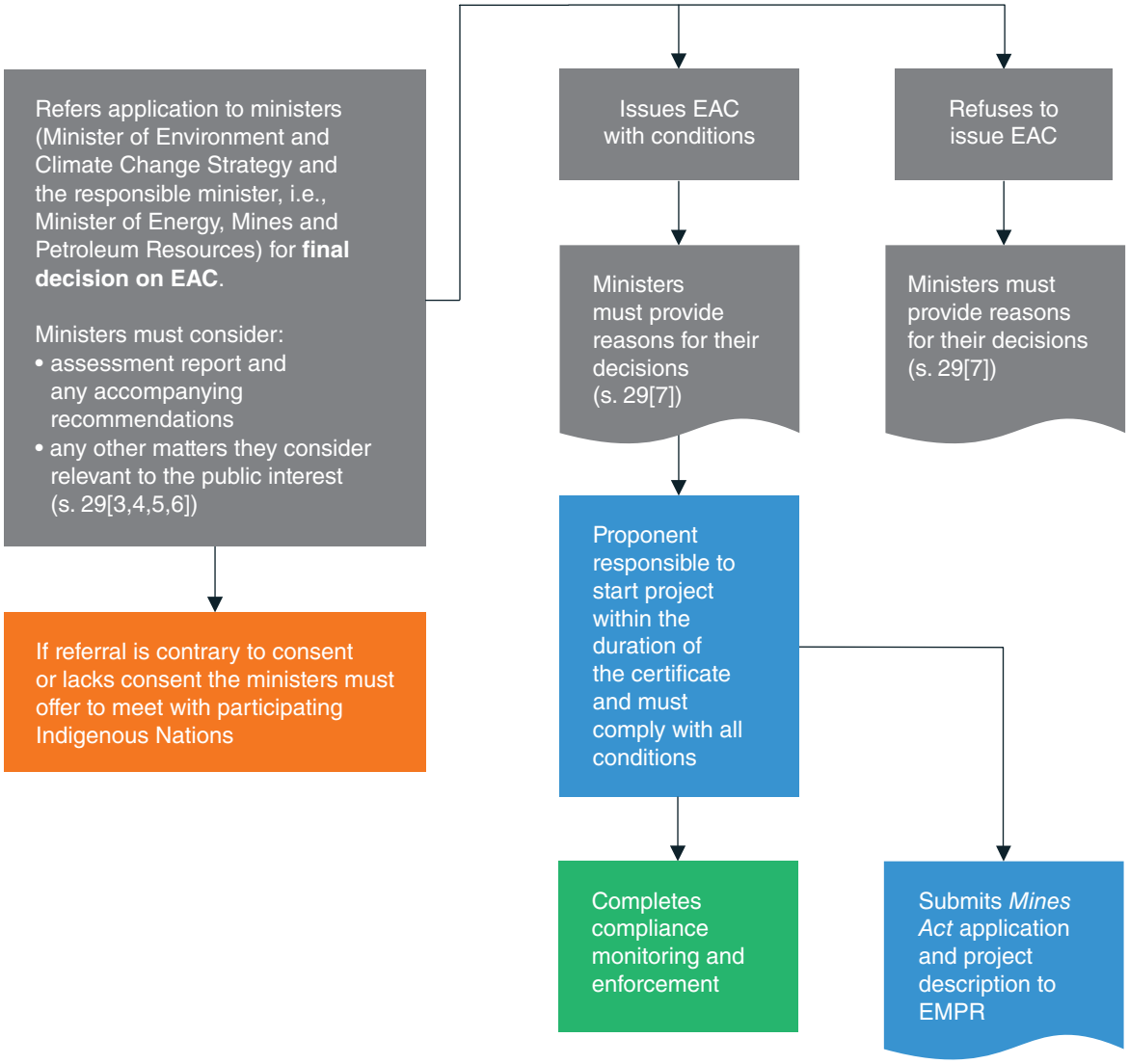


Step 5: Application decision, EAA, 2002



V9. Ministers maintain final authority to make decisions on the EAC.

Step 5: Application Decision, EAA, 2018



V9. Ministers maintain final authority to make decisions on the EAC.

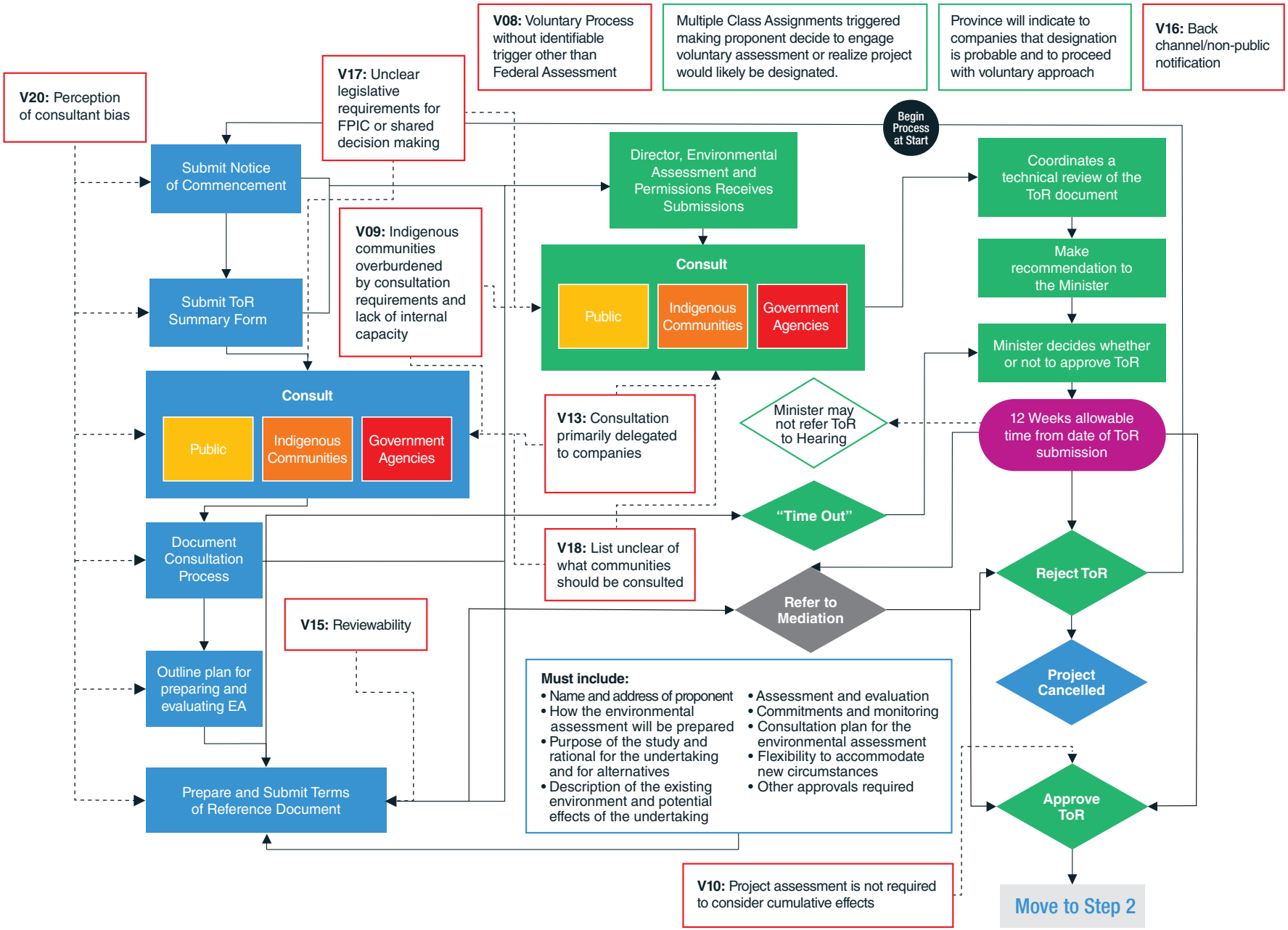
Appendix 3 Environmental Assessment Process Maps for Ontario

Legend

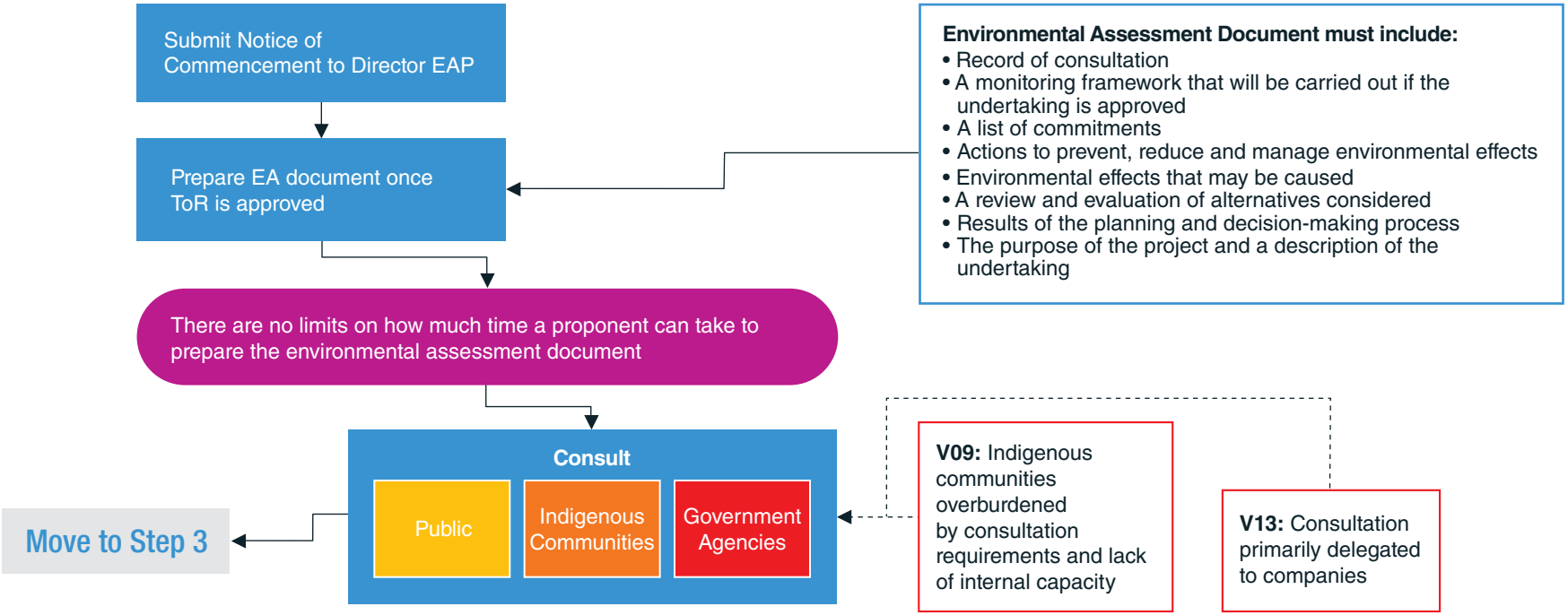
This appendix contains illustrations that describe the process set out in Ontario's exploration phase permits and *Environmental Assessment Act* in 2002 and then updated in the *Environmental Assessment Act* in 2018. The processes described here were in place as at December 2019.

- Actions under the *Environmental Assessment Act*
- Responsibilities, actions of Ministry of Environment, Conservation and Parks
- Responsibilities, actions of proponent
- Indigenous Peoples engagement/consultation opportunities
- Public engagement/consultation opportunities
- Actions of governmental agencies other than Ministry of Environment, Conservation and Parks
- Additional notes for context from guidance documents or other
- Vulnerabilities identified
- Dashed line box with no fill and arrows indicate a step applied in practice or governed by a guidance document but not legislated
- Indication of flow of procedural and practice steps
- Time frame

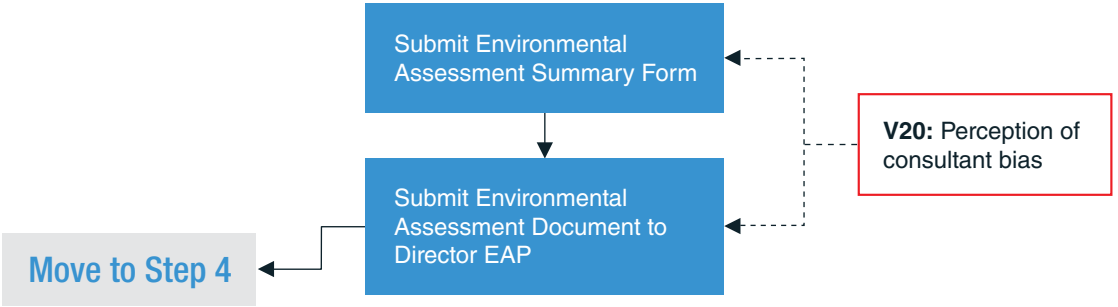
Step1: Develop and Submit a Terms of Reference (ToR)



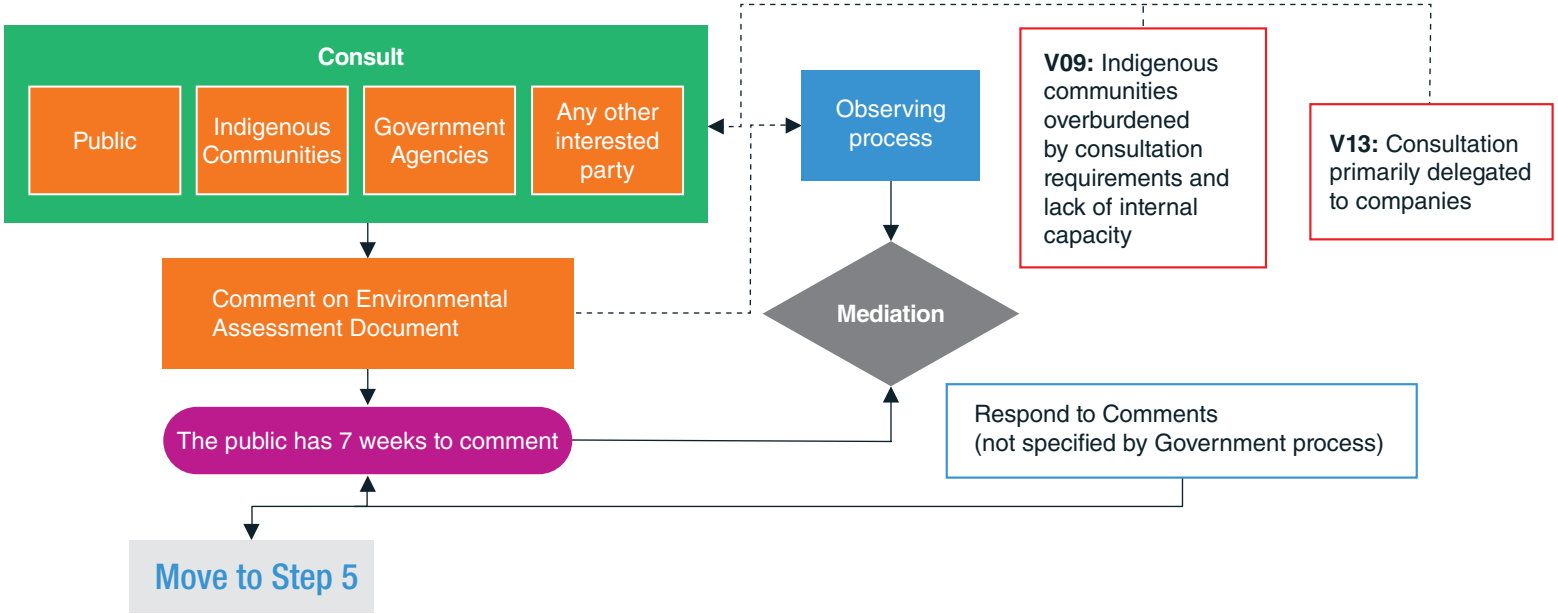
Step 2: Prepare an Environmental Assessment



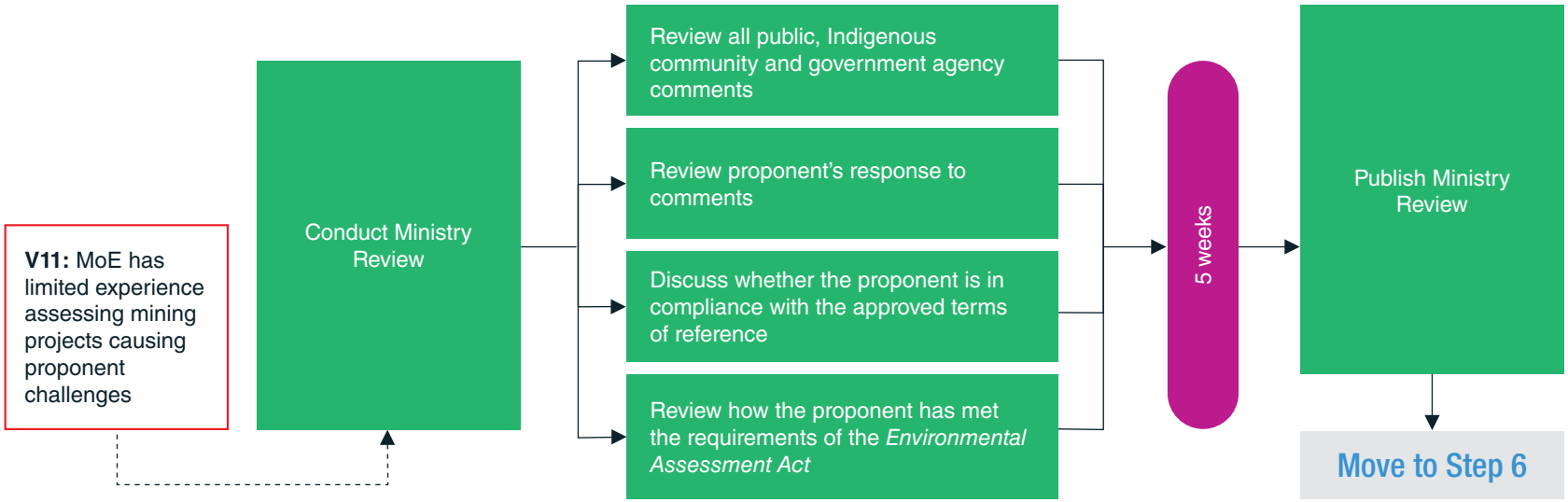
Step 3: Submit an Environmental Assessment



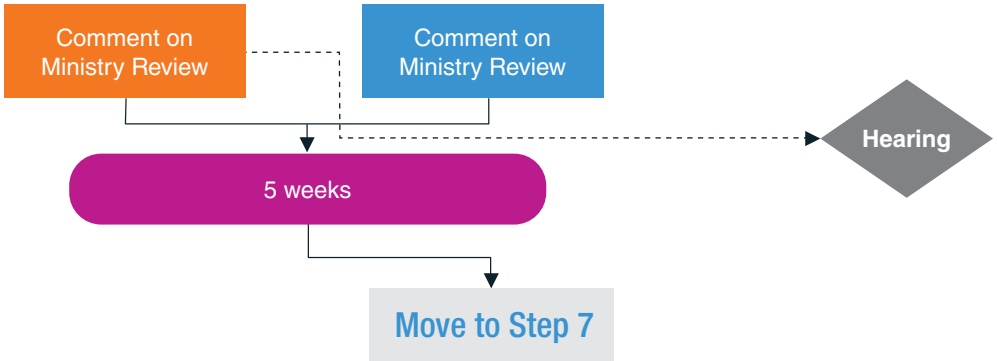
Step 4: Public and Government Review



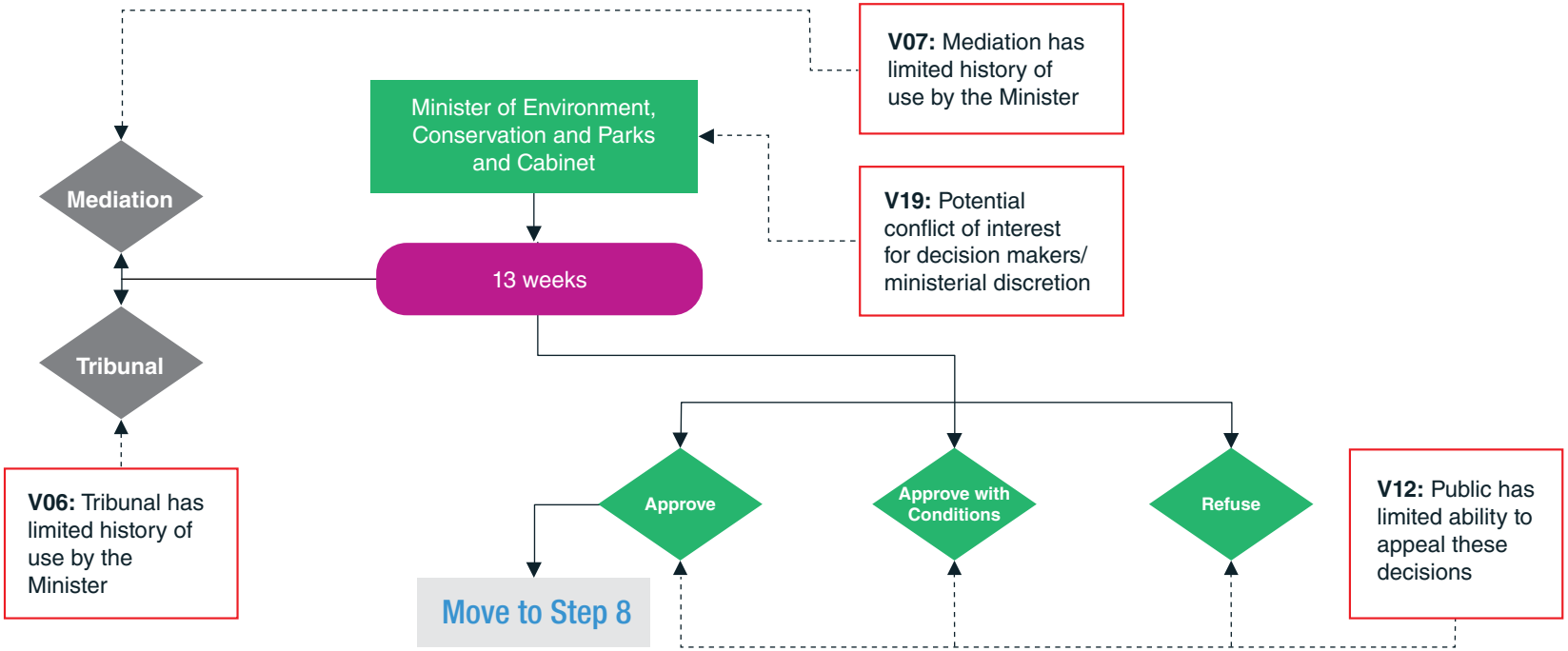
Step 5: Ministry of the Environment Conservation and Parks Review



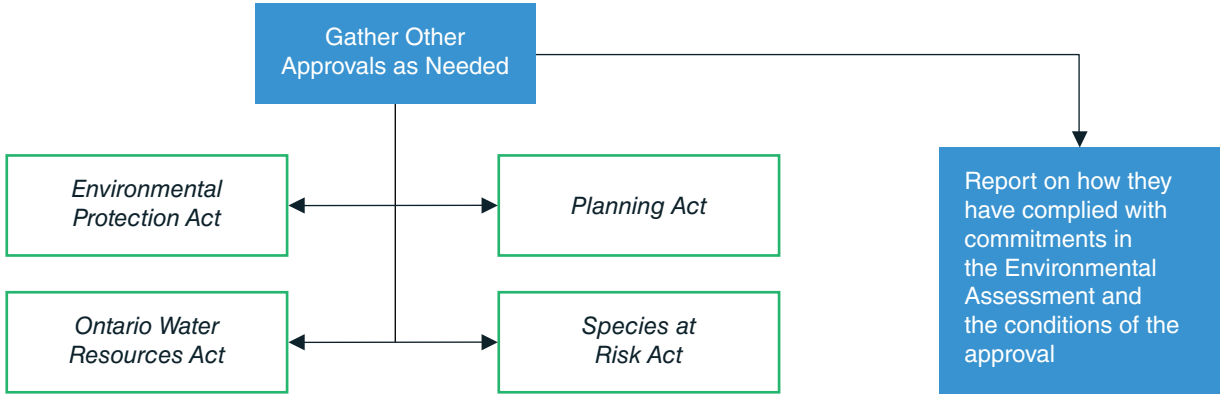
Step 6: Public Consultation on the Ministry Review



Step 7: Minister's Decision



Step 8: Implement the Project and Monitor Compliance



Appendix 4 Environmental Assessment Process Maps for the Yukon Territory

Legend

This appendix contains illustrations that describe the process set out in the *Yukon Environmental and Socio-economic Assessment Act* and *Quartz Mining Act* and were in place as at May 2020.

Responsibilities, actions of *Yukon Environmental and Socio-economic Assessment Act* (YESAB) under the *Yukon Environmental and Socio-Economic Assessment Act* (YESAA)

Responsibilities and actions of proponent

Public engagement and consultation opportunities

Responsibilities and actions of the decision bodies

Indigenous Peoples engagement and consultation opportunities

Vulnerabilities identified

Additional notes for context

Boxes shaped with curved bottom edge indicate an application or document requirement

Dashed box line with no fill indicates a step appliedn in practice or governed by a guidance document but not legislated

Indication of flow of procedural and practice steps

Before EA: Mineral Claims in Yukon

Any person (+18 yrs) or Corporation (registered with the YG Corporate Affairs) can physically stake a **mineral claim**

After staking, proponent must register and apply for a grant of mineral claim with the district mining recorder's office (s. 41). Mineral claims are restricted to 1,500 ft by 1,500 ft (QMA, s. 18). Applications must be filed with the mining recorder's office within 30 days of being staked (s. 41).
Applications consist of:
- a completed and notarized application form signed by the proponent
- the fee of $10.00 per claim and
- a signed and dated sketch of the claim

Mining recorder will issue a certificate of work describing the work that has been completed

Yukon is a free-entry mining system that requires physical staking. No provisions that allow for map staking such as in BC. Exceptions to permitted areas include *(Quartz Mining Act [QMA],s. 14)*:
- On active quartz claims
- First Nation Category A settlement land
- Curtilage (yard) or land immediately adjacent to a dwelling
- Agricultural land currently under active cultivation
- Land valuable for water-power purposes
- Church, cemeteries and burial grounds
- Any land removed from staking by order-in-council or prohibition order

(QMA,s. 15), such as lands withdrawn for settling land claims, special land management areas, parks, airports or historic sites

Proponents that have physically staked and recorded a mineral claim are entitled to hold the claim for one year. After one year (and every year after), the proponents are responsible for:
- completing work on the claim up to a value of $100
- register the work with the mining recorder
- obtain a certificate of work from the mining recorder describing the work that has been completed

If a claim is staked on titled property or reservation under the *Lands Act*, the claim holder might need to provide **financial security** (QMA, s. 16) On lands owned or lawfully occupied by another person, the claim holder shall **compensate** for any loss or damage caused (QMA, s. 17). Any disputes are heard by the **Yukon Surface Rights Board** in accordance with the Yukon Surface Rights Board Act

Under the *Umbrella Final Agreement (UFA)*, financial security is required when there is overlap with First Nation Category B settlement land (UFA, chs. 6, 18)

Before EA: Exploration Activities in Yukon

Claim holder applies for exploration activities depending on the class of exploration. (The criteria for the four exploration classes defined in the QMA represent activities with increasing potential to cause adverse environmental impacts. (s. 131–132)

Criteria include construction structures, number of person-days in camp, total amount of fuel stored, trenching, number of clearings, new access roads and trails, and use of vehicles (*Quartz Mining Land Use Regulation*, s. 131)

Class 1

Notice of work application to Yukon government

Yukon government will consult with First Nations on the notice

Class 2 | **Class 3**

Proponent requires:
- An **environmental and socio-economic assessment**
- A mining land use approval
- A water use notice may be required
- Financial security may be required
- Continual monitoring, reporting and amendments to approvals as necessary

Class 4

Proponent requires:
- An **environmental and socio-economic assessment**
- A water use licence and mining land use approvals
- Financial security may be required
- Continual monitoring, reporting and amendments to approvals as necessary necessary

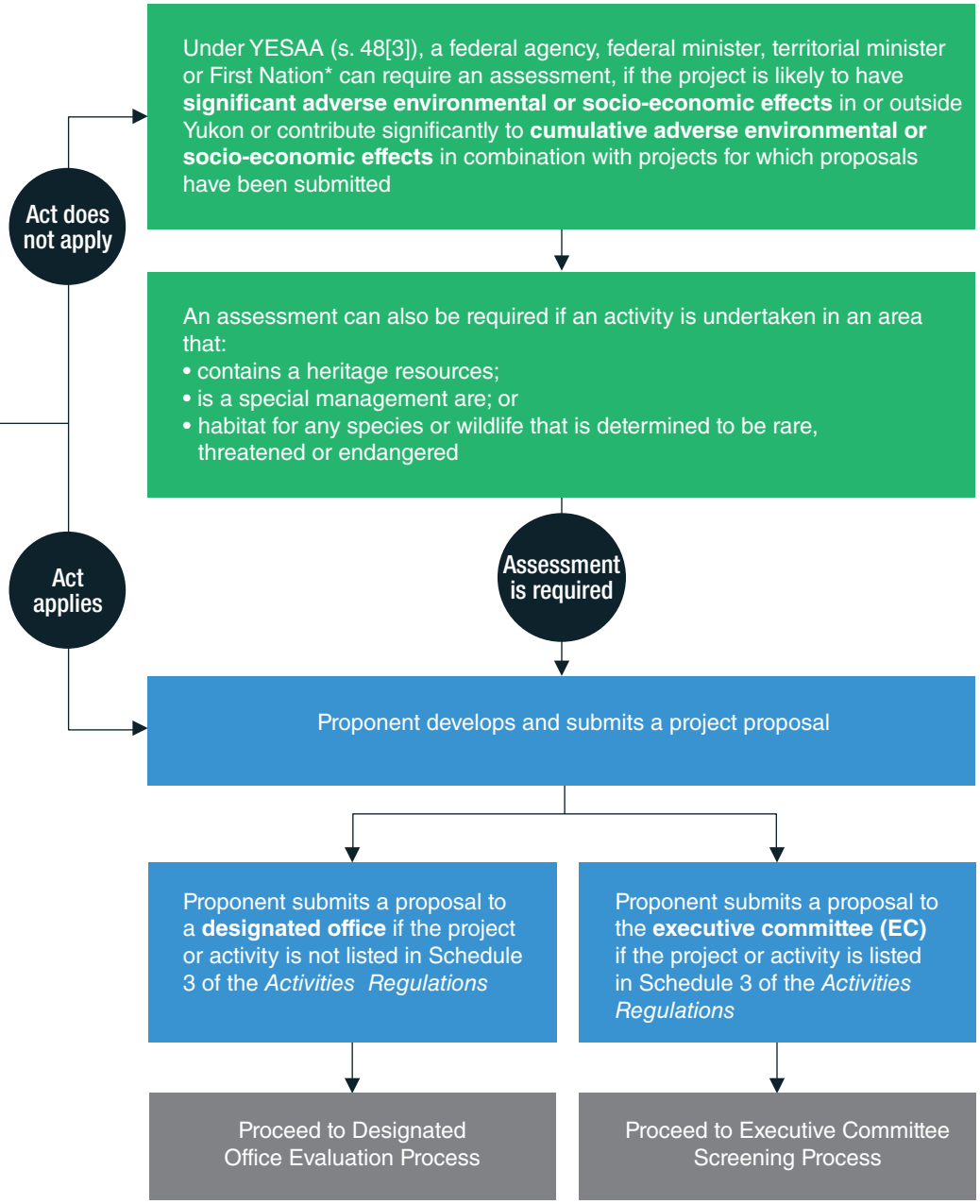
Assessable Activities

A project requires an assessment if the following conditions are met:

1. The project will be located in Yukon
2. *Assessable Activities, Exceptions and Executive Committee Projects Regulations* list the project activity (Schedules 1,2, 3).
3. One or more of the following circumstances are present:
   - a federal agency is the proponent;
   - a territorial agency, municipal government, territorial independent regulatory agency or First Nation* is the proponent;
   - an authorization by a government agency, independent regulatory agency, municipal government or First Nation is required for the activity to be undertaken; or
   - an authorization by the Governor-in-Council is required for the activity to be undertaken

Under YESAA (s. 47), the Governor-in-Council can make regulations that list activities to be subject to assessments and make an exception from activities listed

* First Nation means Yukon First Nation, within the UFA and includes the Gwich'in Tribal Council, in relation to consultation, or the Tetlit Gwich'in, in relation to other matters



Designated Office Evaluation Process

Proponent submits a proposal form to one of six **Designated Offices (DOs)** by using the YESAB Online Registry, email, regular mail or courier, hand delivery or fax

DO completes **adequacy review** (up to 8 days or 21 days with explanation)

Proposals are determined to be adequate if the proponent has accounted for matters in s. 42(1)(b), (c), (e) or (f) of YESAA, contains sufficient information for the DO to prepare a statement of the scope of the project (s. 20) and proposal complies with the applicable rules and directives of YESAB as outlined in Rules for Evaluations Conducted by Designated Offices (s.14)

DO accepts proposal for evaluation

DO must notify in writing the proponent and the decision bodies for the project

DO must also notify in writing any Yukon First Nation in whose territory would be affected by the project

DO must also notify in writing any person on the notification list

Notification describes how to view proposal and scope of project and invites views about the project

DO requests additional Information

Proponent has 180 days to provide information or advise when it will be submitted within 2 years or the proposal is deemed withdrawn

DO reviews response (up to 6 days or 10 days with explanation)

DO prepares a statement describing the **scope of the project**

The scope shall include any activity identified in the proposal and any other activity that the DO considers likely to be undertaken in relation to an activity so identified and sufficiently related to it to be including in the project – YESAA (s. 51) and Rules for Evaluations Conducted by Designated Offices (s. 20)

DO should consider:

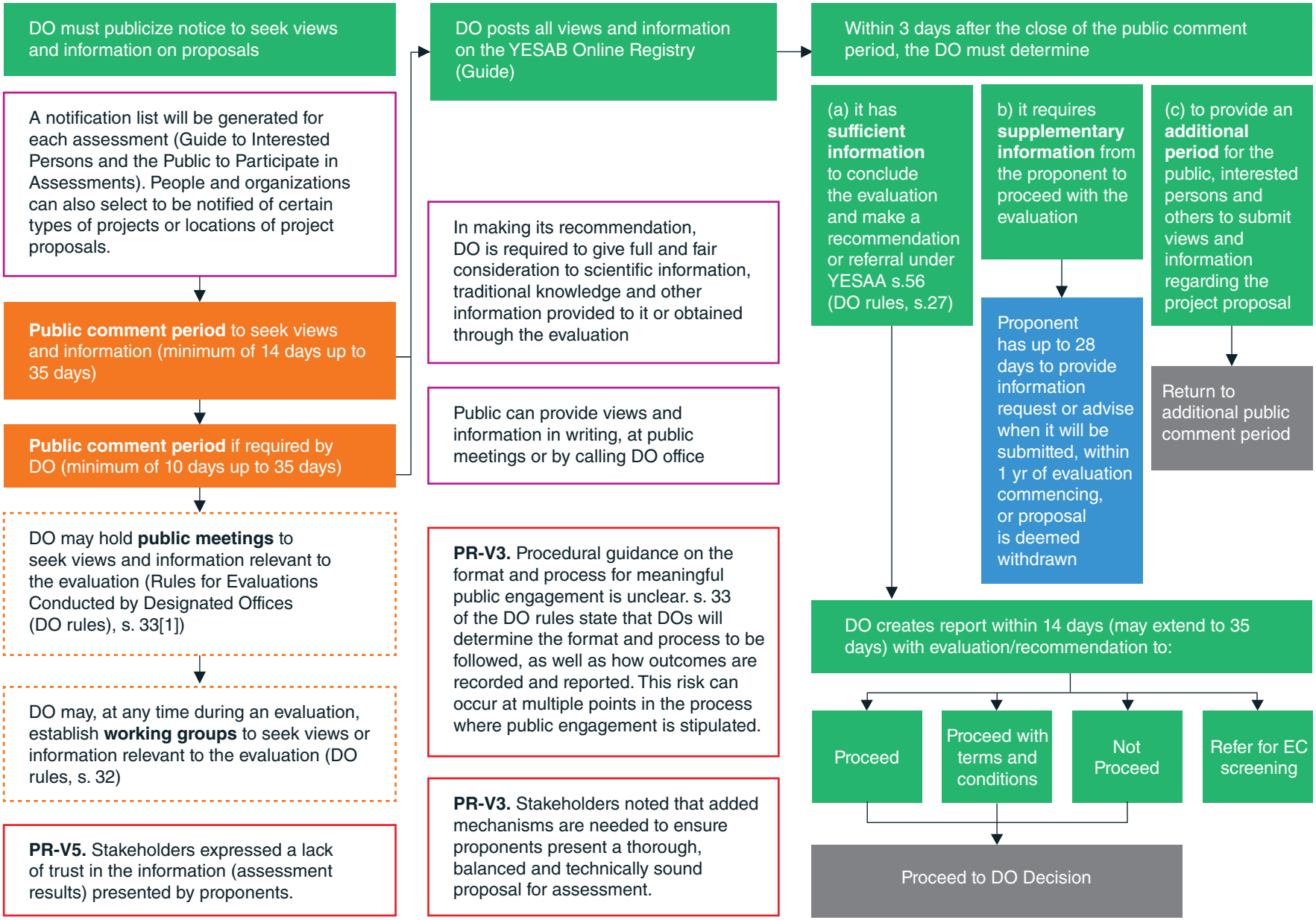
- spatial and temporal proximity of the activity identified in the proposal to the other activity
- the likelihood that the activity identified in the proposal would proceed without the other activity being undertaken and
- the likelihood that the other activity would proceed if the activity identified in the proposal is undertaken

PR-V1. There is a lack of clarity on how relevance is determined when requesting supplementary information from proponents, such that consistency across projects that are similar in scale and scope is maintained. This risk can occur at multiple points in the process where supplementary information is requested.

PR-V2. There is a gap between legislation and rules in terms of the adequacy review. Section 42 of YESAA stipulates that paragraphs (1)(a)–(f) must be considered. However, s. 14 of the DO rules focuses on assessing adequacy based on s. 42(1)(b), (c), (e) and (f) of YESAA. Missing elements from the rules include 1(a) the purpose of the project, (d) the significance of any adverse cumulative environmental or socio-economic effects, (g) the need to protect the rights of Yukon Indian persons under final agreements, and (h) the interests of residents of the Yukon and of Canadian residents outside the Yukon as listed in the legislation.

Proceed to Designated Office Evaluation Evaluation and Recommendation

Designated Office Evaluation Process



Designated Office Evaluation Process

Decision bodies receive recommendation/evaluation report

A decision body shall give full and fair consideration to scientific information, traditional knowledge and other information that is provided with the recommendation

A decision body shall consult with a First Nation for which no final agreement is in effect if the project is to be located wholly or partly, or might have significant adverse environmental or socio-economic effects, in the its territory

Where decision documents must be issued by more than one decision body, the decision bodies shall, before issuing the decision documents, consult one another (s. 78)

A decision body means:

- a First Nation (if the project is to be located on its settlement lands and the First Nation has the power under the *Yukon First Nations Self-Government Act* or under its final agreement to issue the required authorization for the project to be undertaken)
- the territorial minister, if any territorial agency, municipal government or territorial independent regulatory agency has the power to issue to the required authorization is responsible for the administration of mines and minerals in category B or fee simple settlement land or Tetlit Gwich'in Yukon land, where the project involves a right to work those mines and minerals
- any federal agency that has the power to issue the required authorization or is responsible for the administration of mines and minerals in category B or fee simple settlement land or Tetlit Gwich'in Yukon land, where the project involves a right to work those mines and minerals

Decision body must prepare decision document with reasons for:

- Accepting recommendations
- Varying recommendations
- Rejecting recommendations

Proponent may proceed with application for a mining land use approval and water use notice (as required)

PR-V6. There is a lack of clarity among stakeholders as to whether the decision body (in practice) adheres to legislated requirements to make a thorough and fair consideration of public or technical comments noted in the registry, in addition to the recommendation report.

PR-V7. As delegated by the premier, decision bodies have final authority to make decisions on the project. For mining, the designated decision body is the Department of Energy, Mines and Resources (EMR) (and may also involve federal government departments and First Nations depending on the project's location). Stakeholders raised concerns about this vested authority on environmental and socio-economic assessment (ESA) matters due to the EMR's dual mandate to both regulate and promote mining.

Executive Committee (EC) Process

Proponent submits proposal to EC according to Schedule A – Project Proposal Requirements of the *Rules for Screening Conducted by the Executive Committee* (EC rules)

EC determines if the proposal or supplementary information is adequate based on s. 19 of the EC rules (within 60 days or extension for further 30 days)

More information is required (30 days to review; extension for 30 days)

Proponent has 180 days to respond to notice or provide supplementary information

S.19 of the EC rules require the proponent/proposal to:

- have consulted with First Nations and the residents of communities (YESAA, s. 50[3])
- considered matters referred to in YESAA, s. 42(1)(b–c)(e–h)
- contains sufficient information for the EC to prepare a statement of the scope of the project (YESAA, s. 34)
- contain sufficient information for EC to commence with screening
- complies with the applicable rules

EC may establish technical review or advisory committee to seek views or information respecting the adequacy of the proposal (EC rules, s. 25)

Proposal is adequate

Proposal is not adequate

The scope includes any activities identified in the proposal and any related activities identified by the EC to be included in the project (YESAA, s. 51; EC rules, s. 35).

The EC should consider:

- whether it is reasonably likely that the activity identified in the proposal would proceed without the other activity being undertaken
- whether the decision to undertake the activity identified in the proposal makes it inevitable that the other activity will be undertaken
- spatial and temporal proximity of the activity identified in the proposal to the other activity

EC notifies proponent and decision bodies in writing

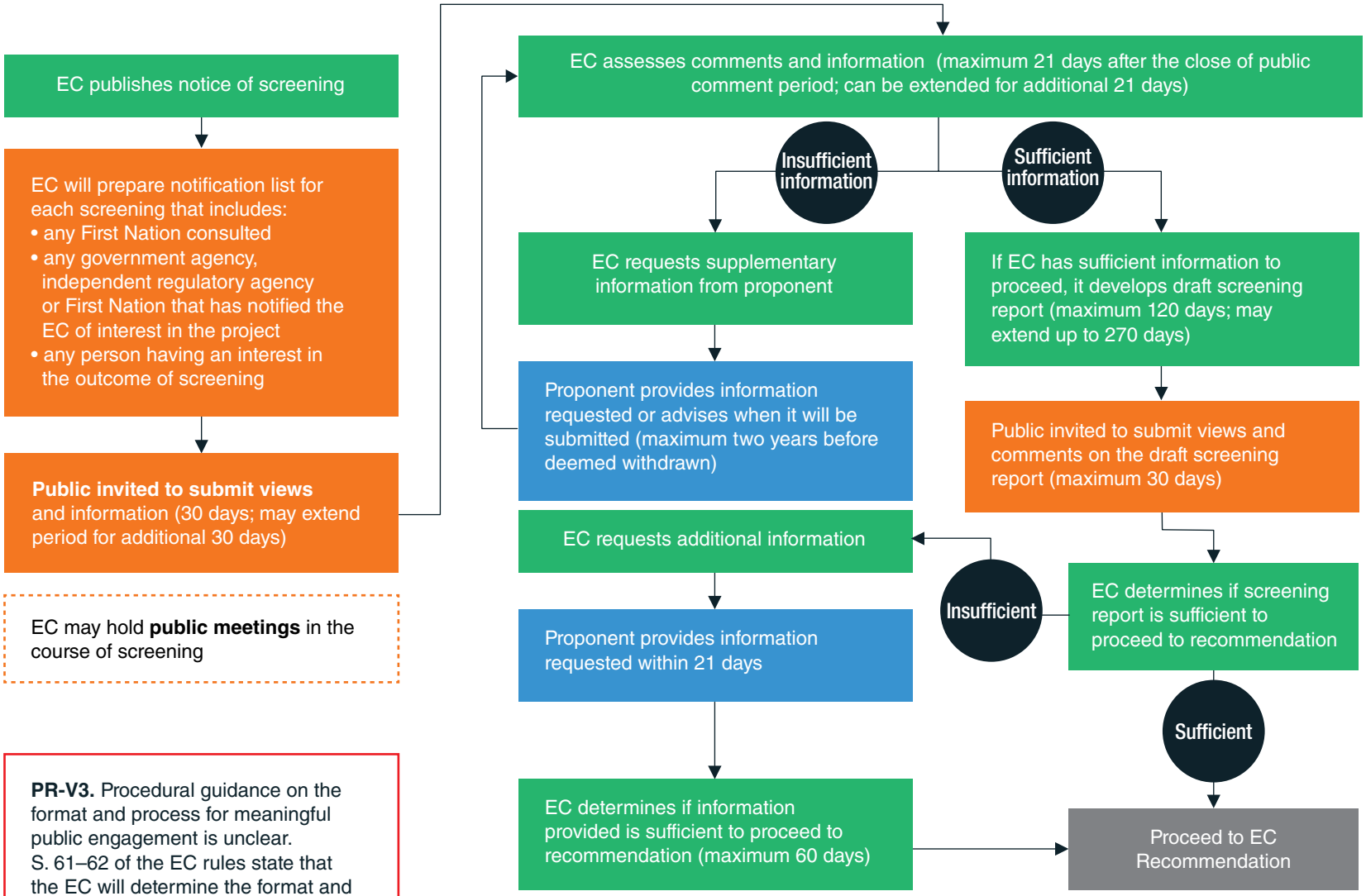
PR-V1. There is a lack of clarity on how relevance is determined when requesting supplementary information from proponents, such that consistency across projects that are similar in scale and scope is maintained. This risk can occur at multiple points in the process where supplementary information is requested.

EC prepares a statement describing the scope of the project

Proceed to EC Screening

PR-V2. There is a gap between legislation and rules in terms of the adequacy review. Section 42 of YESAA stipulates that paragraphs (1)(a)–(f) must be considered. However, s. 14 of the DO rules focuses on assessing adequacy based on s. 42(1)(b), (c), (e) and (f) of YESAA. Missing elements from the rules include 1(a) the purpose of the project, (d) the significance of any adverse cumulative environmental or socio-economic effects, (g) the need to protect the rights of Yukon Indian persons under final agreements, and (h) the interests of residents of the Yukon and of Canadian residents outside the Yukon as listed in the legislation.

Executive Committee (EC) Process

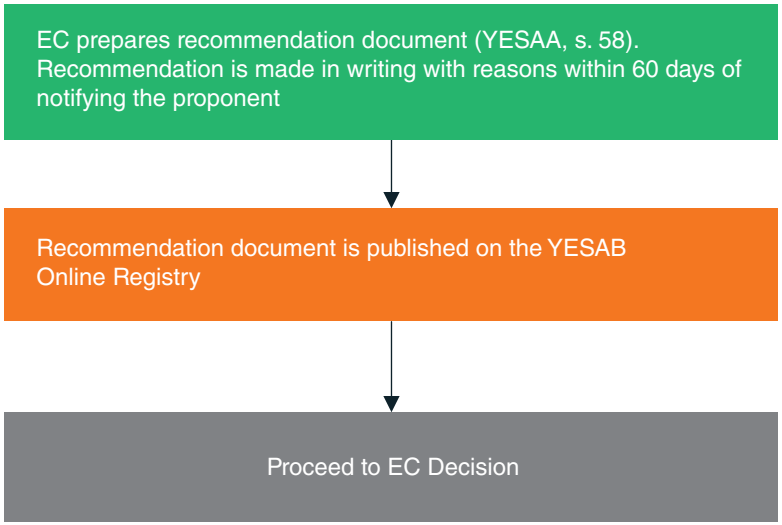


PR-V3. Procedural guidance on the format and process for meaningful public engagement is unclear. S. 61–62 of the EC rules state that the EC will determine the format and process to be followed, as well as how outcomes are recorded and reported. This risk can occur at multiple points in the process where public engagement is stipulated.

PR-V4. Stakeholders noted that added mechanisms are needed to ensure proponents present a thorough, balanced and technically sound proposal for assessment.

PR-V5. Stakeholders expressed a lack of trust in the information (assessment results) presented by proponents.

Executive Committee (EC) Process



A review is required if:

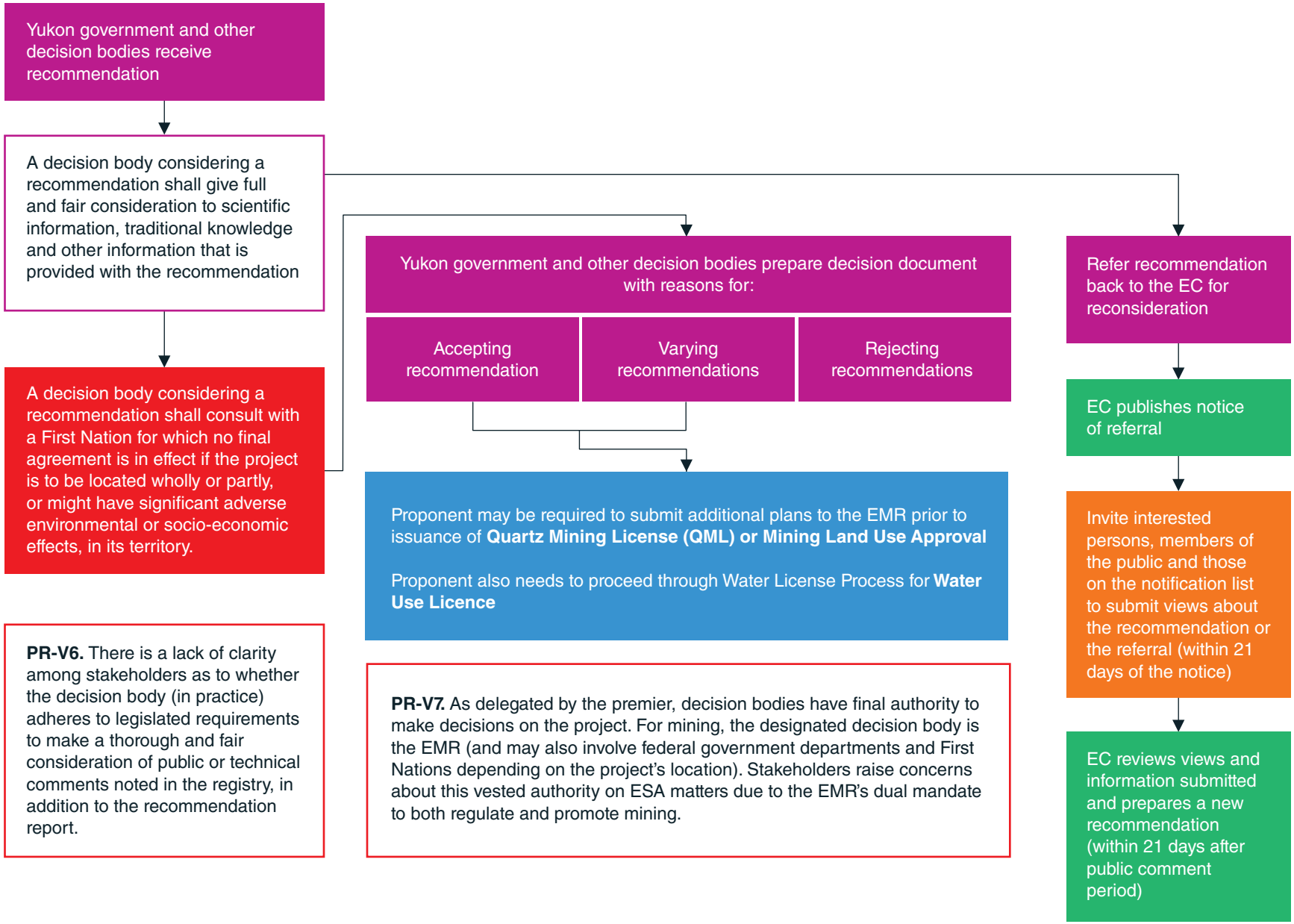
- after taking into account any mitigative measures included in the project proposal, the EC cannot determine whether the project will have, or is likely to have, significant adverse environmental or socio-economic effects
- the EC determines, after taking into account any mitigative measures included in the project proposal, that the project might contribute significantly to cumulative adverse environmental or socio-economic effects in Yukon
- the EC determines that the project involves technology that is controversial in Yukon

Requests for review can be made to the EC by:

- the federal minister
- the territorial minister
- a First Nation with consent from the federal or territorial minister

PR-V8. There is a lack of detailed guidance for criteria listed in YESAA 57 (1)(d) and 58(2) that determine when an EC screening should be referred to YESAB panel

Executive Committee (EC) Process



PR-V6. There is a lack of clarity among stakeholders as to whether the decision body (in practice) adheres to legislated requirements to make a thorough and fair consideration of public or technical comments noted in the registry, in addition to the recommendation report.

PR-V7. As delegated by the premier, decision bodies have final authority to make decisions on the project. For mining, the designated decision body is the EMR (and may also involve federal government departments and First Nations depending on the project's location). Stakeholders raise concerns about this vested authority on ESA matters due to the EMR's dual mandate to both regulate and promote mining.

Appendix 5 Review of Risks in British Columbia, Ontario and Yukon

Transparency and Accountability Risks Related to Community Consultation

Risk code	Risk	Why does it matter?	What is the cause?	Risk level			How can it be mitigated?
				BC	ON	YT	
CC-N2	Delegation of consultation leads to absence of meaningful consultation.	Delegation of procedural aspects of the duty to consult to proponents creates confusion, mistrust and loss of interest loss to engage among the community members.	• The framework for how the legal requirement on duty to consult and accommodate will be met is lacking, or there are inconsistencies across provincial ministries. • The list of who should be consulted in the environmental assessment (EA) process for the mining projects is not consistent across ministries.	Moderate risk	Very High Risk	Low Risk	• Communities should create consultation protocols specific to their environment, technical capacities and needs, so which will help proponents, governments and the communities themselves navigate the process. • Increase the role of the Crown in the consultation process, as consultants and proponents are perceived to have an interest in the approval of their assigned projects while conducting consultations. • Create clear guidelines for consultation in each province and territory.
CC-N1	Limited integration of social and cultural considerations in environmental assessments as they relate to Indigenous communities.	• The accuracy of assessments regarding social and cultural impacts is challenging to establish without complete data. • If information is not fully known or understood, stakeholders and decision makers may be misled about project impacts.	• Federally and provincially, there has been limited guidance on establishing social and cultural criteria for Indigenous communities. • The limited capacity of Indigenous communities is a general limitation related to consultation risks.	Low Risk	Very High Risk	Moderate risk	• Establish guidance for establishing social and cultural criteria for Indigenous communities. • Clarify how and who would protect and eliminate misuse of information and knowledge shared by Indigenous communities. • Acknowledge Indigenous information as equally important as information obtained via scientific methods, which can help build trust and minimize the likelihood of the risk. • Strengthen Indigenous communities' capacities.

Risk code	Risk	Why does it matter?	What is the cause?	Risk level			How can it be mitigated?
				BC	ON	YT	
CC-3	Free, prior and informed consent (FPIC) of affected communities will be ignored.	FPIC is a principle created to ensure Indigenous rights are respected and Indigenous communities are heard. In terms of transparency, this principle helps to ensure Indigenous communities have the necessary information to participate in EA discussions and make an informed decision about their position on a certain project.	• The federal government recognizes that meaningful engagement with Indigenous communities is important and aims to secure FPIC and has committed to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[92] Provincially, only British Columbia uses FPIC language in legislation to recognize the principle as part of EA consultations. • Without clear government guidelines for what constitutes a meaningful consultation in the EA process, consultations become a check-box exercise. It is also hard for Indigenous communities to hold proponents, consultants and the government accountable.	Moderate risk	Very High Risk		• Create clear guidelines for implementing FPIC. • Involve Indigenous peoples meaningfully in the decisions of the EA process using an FPIC-based approach. • Provide financial support to assist Indigenous communities in developing community consultation protocols. • Seek consensus among federal, provincial and Indigenous governments on who should be consulted for undertakings in any given region. • Increase the role of the Crown in the consultation process. • Clarify the proponent's role in meeting the duty-to-consult requirements when the Crown discharges its responsibilities for consultation in full or in part to proponent-led participation processes. • Ensure early opportunities for Indigenous engagement in land use planning and priority setting for regions, before mining projects are proposed and EA commences (i.e., as per the spirit of article 32 of UNDRIP).
CC-1b	The legal framework for consultation with communities is not clear.	• Public consultation can be reduced to a "check box" exercise and cause consultation fatigue within the members of potentially affected communities. • The lack of clarity can increase public distrust in the system and in the ability for comments or concerns to effect any change.	• Legislated requirements for public engagement are limited. • Information is inaccessible; there is a lack of clarity on how comments and information submissions are considered or rejected; funding to facilitate meaningful participation is limited; and the timelines for consultation are inadequate.	Moderate risk		Low Risk	• Improve the legal framework for public consultation, including clarifying how and what information should be presented and how comments and concerns should be addressed. • Introduce procedural guidelines and minimum requirements for what constitutes meaningful consultation. • Make guidelines general enough to allow for flexibility based on context because different communities, proponents, jurisdictions have different characteristics and contexts.

Risk code	Risk	Why does it matter?	What is the cause?	Risk level			How can it be mitigated?
				BC	ON	YT	
CC-2	Agreements with landholders, Indigenous Nations or community agreements are finalized behind closed doors.	• The effectiveness of consultation is reduced. • It influences negotiations on job creation and transfer payments in undesirable ways, particularly if these arrangements privilege individuals over communities. • Negotiations for these agreements may lead to any type of private gain. • It may eliminate the participation of disadvantaged or specific groups, such as women.	• Landowners are required to sign non-disclosure agreements, which also prevent them from speaking out against the project or engaging fully in the EA process. • There is limited or no engagement within the community; the community may not be aware of the details of negotiations and may lack procedures to allow it to have its voice heard. • It is unclear how and who would protect and eliminate misuse of Indigenous information.	Moderate risk			• Support Indigenous communities in creating consultation protocols, which can help ensure community-level interests are heard. • Disclose agreements such as impact benefit agreements (IBAs) and make them transparent agreements. • IBAs should be timed so they can be finalized after a proponent's completed impact statement to benefit of the information available, but before project approval so that communities retain leverage.

Transparency and Accountability Risks Related to Process Design

Risk code	Risk	Why does it matter?	What is the cause?	Risk level			How can it be mitigated?
				BC	ON	YT	
PD-N2	Gaps in regulatory coverage exist in the environmental assessment (EA) to integrate cumulative effects.	• Gaps in regulatory requirements to integrate project-level cumulative effects in EAs for mine permits limit EAs' completeness for those reviewing and considering the project. • The final decision for approval is sometimes given without assessing the total impacts of a proposed project.	• A project expansion does not trigger an EA. • A project is split to avoid triggering an EA. • Even in the absence of project splitting, not all disturbances that contribute to cumulative effects are subject to EA.	High Risk	Very High Risk	Moderate risk	• Establish clear guidance on constitute splitting a project and phasing a project. • Establish clear guidance on the terms and conditions for expanding a project without triggering or renewing an EA. • Consider establishing thresholds other than ore production capacity, e.g., land degradation, to trigger an EA. • Establish clear guidance on how much and how many times a project may be expanded without triggering or renewing an EA.

Risk code	Risk	Why does it matter?	What is the cause?	Risk level			How can it be mitigated?
				BC	ON	YT	
PD-N2 Cont'd		• Cumulative effects can be skewed if not all projects go through an EA, meaning that communities do not know cumulatively how they are being affected. • It is hard to hold proponents and decision authorities accountable about negative impacts and consequences.	• In Ontario, private sector EAs are excluded from the *Environmental Assessment Act* (EAA) and the class/streamline EA structure.	High Risk	Very High Risk	Moderate risk	• Conduct regional cumulative impact assessments and create impact thresholds for regions. **For Ontario:** • Eliminate the voluntary agreement-based individual EA process. • Define clear thresholds for triggering an EA to assess a project as a whole.
PD-N8	Low compliance, enforcement and monitoring of EA commitments.	• EAs are avoided by splitting or under-scoping a project and expanding it over time without conducting an EA or addressing the additional impacts. • Those responsible do not deliver on the commitments made in the impact statement. • Standards and commitments might change each time a project is taken over by another company. • The public does not benefit fully from the project and exploitation of the mineral resources yet pays the cost of environmental, social and economic impacts due to lack of accountability.	• Compliance checks are limited or non-existent. • The dissolution of companies (sometimes caused by market conditions or initiated as a compliance avoidance tactic by a parent company) poses serious challenges. • Staff turnover and consistency of technical capacity at the Yukon Environmental and Socio-economic Assessment Board raise concerns about the consistency of assessments across projects. • Legislative provisions for verifying the accuracy of predicted impacts are non-existent or weak and affect the effectiveness of mitigation measures.	Moderate risk		High Risk	• Implement ongoing compliance oversight to monitor the performance of commitments to prevent potential adverse effects by ensuring that projects are designed, built, operated, and decommissioned or reclaimed. • Introduce a tip line or a whistleblower or reporting mechanism. • Introduce mechanisms for regular checks to evaluate and report on the effectiveness of mitigation measures specified in the EA.

Risk code	Risk	Why does it matter?	What is the cause?	Risk level			How can it be mitigated?
				BC	ON	YT	
PD-N1	Proponents will scope project descriptions so they are under the thresholds requiring an EA.	• Under-scoping projects undermines meaningful public participation and the government's ability to assess projects. • Under-scoping leads to accountability problems and reduced public confidence in EA processes and decisions. • Under-scoping conflicts with the purpose of Ontario's EAA, namely "the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment."	• In British Columbia, there is a lack of due diligence on the project descriptions and self-assessments used for reviewability. • Expansion activities are split to avoid EA amendments.	Moderate risk	Very High Risk		• This is a potentially significant issue and risk that needs detailed further assessment in all three jurisdictions. • Set thresholds for expansion frequency, production capacity, disturbed area, and changes in process and operational method, and consider both the initial project and the expansion cumulatively to trigger an EA.
PD-14	External interference on ministerial decision making.	• The ministerial discretion to exempt a project from undergoing an assessment and having final authority to make decisions on an assessment. • Decision bodies may have dual roles to promote mining and grant the final decision about the EA. • Ministerial discretion can create perceptions that EA decisions are politicized, which affects public trust and confidence in decisions and approvals negatively. • There is uncertainty when governments or ministers change.	• Decision makers have close relationships with proponents. • Decision makers have "behind closed door" conversations with proponents, but do not participate in community-level discussions to the same degree. • Proponents are large contributors to political campaigns.	Moderate risk	Low Risk	Moderate risk	• Require authorities to publish detailed reasons for their decisions that is supported by evidence. • Terms such as public interest and benefit should be defined and measured quantitatively or based on clear qualitative criteria. • Enforce lobbying rules and disclosure, including a cool-off period for moving between the public and private sectors in related fields and for avoiding "behind closed door" conversations while more actively participating in community-level discussions.

Risk code	Risk	Why does it matter?	What is the cause?	Risk level			How can it be mitigated?
				BC	ON	YT	
PD-N4	The criteria and framework that may trigger a private sector EA are not publicly known.	• The legislation is opaque for proponents, the public and Indigenous communities. • The transparency of the process and the public's ability to hold the government accountable are both hindered. • There are no clear criteria of what public interests trigger a review or the designation of a project for an individual EA.	• Impact assessments on private projects, including mining, are not mandatory as private enterprise is exempt under the EAA. • There is a lack of clear guidance on when a project should or will have an individual EA to assess the project as a whole.		Very High Risk		• Establish a mandatory agreement-based individual EA process. • Define clear screening steps with publicly accessible and defined thresholds to strengthen the transparency and accountability of the process and minimize business risks associated with project delays and social conflict due to the opaqueness of the process. • Define public interest and how it may trigger or bump up an assessment from class EA to individual EA in order to improve the transparency of the process in the short term.
PD-N7	Limited triggers and thresholds for projects to require an EA.	• EA should consider area disturbance, total waste rock movement, and possible geochemical characteristics of waste rock and tailings yet but these are not recognized as triggers • Publicly assemble information of operations without an EA is limited or not possible to monitor	• Only the ore production capacity of a project is considered a trigger threshold for an EA.		Low Risk		• Consider the characteristics of non-valuable material as well as social, cultural and heritage aspects of the host region and community as triggers for initiating an EA. • Extend trigger criteria to include expansions (size, area, frequency, process change, etc.) and designation of a project by the minister. • Information about projects initiated without an EA because they fall under the threshold should be accessible online by the public. • Create a public database with details of projects that do not require EAs to help monitor regular expansion and project splitting to avoid EA loopholes.
PD-N9	Minimal restrictions for mineral staking/ tenure.	• Conflicting responsibilities of decision-making authorities negatively affect the public trust in the EA process.	• The ministries have dual roles and conflicting responsibilities in attracting and promoting mining while being responsible for approving or rejecting a proposed project.	Moderate risk		Low Risk	• Separate the responsibilities and roles of the ministries responsible for promoting mining and evaluating the impacts of proposed mining projects.

Risk code	Risk	Why does it matter?	What is the cause?	Risk level			How can it be mitigated?
				BC	ON	YT	
PD-N11	Regulatory overlap between the Yukon Water Board, YESAB and the Yukon government.	• Transparency and accountability risks may increase if confusions arise due to interagency disputes. • Stakeholders are not clear of the differences in roles, processes and authority among these agencies.	• The assessment and regulatory system is composed of two co-management boards and potentially three levels of government as well as multiple territorial government departments. • Cross-agency coordination is inefficient.			Low Risk	• Provide information that clarifies the roles of the YESAB and Yukon Water Board in water and mining projects. • Conduct further research into mine licensing systems as a whole, including placer mining, to improve understanding the root cause of the problem and provide evidence-based recommendations.
PD-N3	Criteria or scope for EAs across similar project categories are not defined.	• The lack of criteria creates opportunities for proponents to manipulate what gets assessed. • The lack of criteria may limit or even eliminate meaningful participation in the EA process. • The lack of criteria could lead to discrepancies in the rigour of assessments across projects and result in distrust in the process.	• There is uncertainty about what needs to be included in the assessment.	Moderate risk		Low Risk	• Make sure standards for scoping EAs are well defined and publicly accessible. • Engage early to increase awareness of valued components and integrate them into the assessment. • Produce guidance that provides a consistent methodology and set of principles for selecting valued components.
PD-N5	Insufficient verification of EA reports to ensure an accurate portrayal of impacts.	• The verification of EA studies is important in establishing public trust as there are concerns about consultant bias related data quality and relevance of analysis to address all impacts properly. • Accuracy should be reviewed in order to prevent integrating misleading assessment results into decision making.	• There is a perception of consultants being biased toward the concerns of their clients. • Indigenous communities and civil society lack expertise, resources and capacity to review the impact statements in a timely manner. • The expertise of authorities in Ontario is limited and important concerns, particularly related to Indigenous communities, are not always identified.	Low Risk	Low Risk	Low Risk	• Determine the extent of proponent bias in reviews and ministerial capacity to assess reports credibly, because this risk was indicated in interviews but not supported as strong in the verification workshops. • Fund community advisors and avoid funding gaps to prevent human resource turnover in the communities that cause capacity gaps at the community level. • Strengthen the capacities of authorities by hiring permanent assessment professionals.

Transparency and Accountability Risks Related to Process Practice

Risk code	Risk	Why does it matter?	What is the cause?	Risk level			How can it be mitigated?
				BC	ON	YT	
PP-14	EA decisions being based on imprecise data.	• Having imprecise data undermines meaningful public participation and the government's ability to assess projects. • Imprecise data leads to accountability problems and loss of public confidence in EA processes and decisions.	• Consultants may be biased toward the concerns of their clients and pressured to get EA approval. • There is inconsistency and variable quality of the data collected by consultants, and quality problems in analysis and conclusions. • There are no long-term baseline data.	Moderate risk		Low Risk	• Standardize what is assessed, which will limit the ability to skew assessments. • Incorporate community and academic data to avoid relying solely on data collected by consultants. • Strengthen professional reliance and hold consultants accountable for future damage. • Limit opportunities for bias and conflict of interest to improve the integrity of the EA process. • Increase government investment in long-term, regional environmental monitoring programs to support the science and data needs of project EAs and cumulative effects assessments.
PP-12	There is inadequate due diligence on applicants' claims regarding their technical capacity and financial resources.	• There is a risk that companies with a history of non-compliance or corruption, including in their operations in other countries, will be awarded approvals. • The government might end up being accountable for damage caused to the environment and society.	• EAs do not require due diligence or a demonstration of the proponent's or applicant's financial capacity, environmental record or beneficial ownership.			Moderate risk	• Integrate due diligence into the EA process as a decision criterion, through a provision in legislation, to enhance the positive impacts of the project. • Integrate due diligence into the very early stages of mine permitting and licensing, such as the mine claim and mining rights stages.

Transparency and Accountability Risks Related to Contextual Factors

Risk code	Risk	Why does it matter?	What is the cause?	Risk level			How can it be mitigated?
				BC	ON	YT	
CF-3	Ministry staff and managers are unable to cope with the workload of the agency.	• Inability to cope with the workload negatively impacts accuracy of the environmental assessment. • Monitoring and enforcement of EA approval terms may be affected. • The ability to hold companies accountable and mitigate negative environmental and socio-economic impacts becomes limited.	• Both of these risks are highly interrelated. • Funding cuts, contract employment, limited opportunities for training and skill improvement, and hiring inexperienced staff also appear to contribute. • The high rate of turnover results in low levels of institutional knowledge and limited experience in assessing mining developments. • Confidence is eroded by the engagement of contract employees, particularly if those individuals might ask about future openings in consulting firms during phone calls on ongoing assessments.		Very High Risk		• Invest in training and education and create a productive workplace culture to improve support the talented, competent people already working at the Ministry of Environment, Conservation and Parks (MECP), which will pay long-term dividends. • Complement the expertise and local knowledge of the Ministry of Energy, Northern Development and Mines (MENDM) by establishing working groups.
CF-N1	The ministry does not have enough technical capacity to manage EAs with high accuracy and precision.						
CF-2	Decentralization of government decision making will create uncertainty in the EA approval process.	• Uncertainty in the EA approval process may lead to conflicts among stakeholders and rights holders, actions that hinder with transparency and accountability compliance, and increased risks for businesses that may reduce the investment attractiveness.	• Ontario's class EA and voluntary individual EA structure distributes responsibilities across ministries and does not have a centralized repository. • Regulatory overlap between the Yukon Water Board, YESAB and the Yukon government may create uncertainty about the lines of accountability and authority.		Moderate risk	Very Low Risk	• Introduce a mandatory EA process in Ontario under the EAA and collaborate with the ministries, especially MENDM for mining projects to overcome technical expertise limitation of in-house staff of MECP. • Clarify the roles for the general public in a simplified chart to build on steps already taken since the 2018 agreement between the Yukon Water Board and the government to clarify their roles regarding water.

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