PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA | ASSOCIATION CANADIENNE DES PROSPECTEURS ET ENTREPRENEURS

February 5th, 2024

To: **Hon. Steven Guilbeault**
House of Commons
Ottawa, Ontario,
Canada
K1A 0A6

Re: Amendments to the *Impact Assessment Act* in Response to October Supreme Court Ruling

BY ELECTRONIC MAIL

Dear Minister Guilbeault,

The Prospectors and Developers Association of Canada ("PDAC"), on behalf of our 7,000+ individual and corporate members, is the voice of Canada's mineral exploration and development sector. Following the Supreme Court of Canada's ruling on October 13th, 2023, we value the opportunity to offer our perspectives for consideration during amendment to the *Impact Assessment Act* (IAA or the "*Act*").

The *Act*, which replaced the *Canadian Environmental Assessment Act* (CEAA 2012) in August 2019, was intended to support an objective of "one project, one assessment", avoiding duplication between governing bodies and facilitating more timely and efficient project assessments. Introduction of the new *Act* was also anticipated to improve the balance of projects moving through the assessment process, reducing the disproportionate volume of mining projects relative to all other major industries. PDAC vocally supported these objectives under the premise of streamlining, stakeholder certainty, and balance, as regulatory efficiencies play a significant role in enabling the discovery of new deposits and influencing investment decisions in Canada. Despite these intentions, mining projects now make up 44% of those going through the assessment process with an estimated completion time of 4.6 years versus 38% and an average of 4.1 years respectively under CEAA 2012. A glaring sign that the current *Act* has failed to meet expectations is that no mining projects have completed the process to date.

Notably, the engineering, environmental and economic assessment stages of mineral project development made up nearly 1/5 of all mineral exploration spending in 2023. This is in a year where financing and investment into mineral exploration is tracking towards the lowest levels in a decade. The reality is that there is less overall money being invested into the sector at a time when assessment and scoping work represents the second largest area of spending for mineral exploration companies and there is no certainty on how mineral projects reach the end of the IAA process. On top of this, one of the primary sources of funding for mineral exploration in Canada, flow-through share funds, cannot be applied to most activities that occur during these work stages. Waning capital investment combined with the lack of certainty with respect to the IAA means there are viable mineral projects in Canada that remain undeveloped, in part, due to regulatory uncertainty.

Alongside adjustments to the Project Designation process, revising the *Act* presents an opportunity to address other shortcomings that have been identified over the last few years of its application. After speaking with our members, PDAC is aware that redundancies and contradicting information between

the Impact Assessment Agency of Canada (IAAC), other federal ministries, and provincial/territorial regulatory bodies have resulted in additional submissions, studies, consultations, and overall efforts from mining proponents and stakeholders. This clear lack of coordination places further strain on the limited resources of junior exploration companies, regulatory staff, project stakeholders, and Indigenous communities, and increases risk for investors.

Furthermore, the uncertainty arising from the Court's decision and the interim guidelines has left all projects – whether already in the process or at the stage of determining if an assessment is required – in a difficult position regarding major project decisions and acquiring financing, potentially increasing permitting timelines and required funds. PDAC appreciates the Ministry's efforts to address recommendations from the Supreme Court of Canada quickly and efficiently to reduce this uncertainty but recommends taking advantage of this opportunity to amend the IAA to ensure more effective collaboration between regulatory bodies moving forward.

PDAC cautions that focusing on limited amendments within the *Act* that do not fully address the Court's recommendation regarding constitutional shortcomings in the Designated Projects List will further alienate project proponents and provincial/territorial governments that have expressed concerns with the IAA process. Such an approach will likely result in further impediments in the permitting of major projects, and delay progress of Canada's critical minerals strategy and net-zero emissions targets.

PDAC is eager to share the exploration and development industry's perspectives on the *Impact Assessment Act* in the following pages, and welcome you to contact Jeff Killeen, PDAC's Director of Policy and Programs, at jkilleen@pdac.ca to meet and discuss this issue more thoroughly.

Sincerely,

Lisa McDonald
PDAC Executive Director

CC Hon. Jonathan Wilkinson
House of Commons
Ottawa, Ontario,
Canada
K1A 0A6

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PDAC RECOMMENDATIONS

Address the Supreme Court's Recommendations on Designated Projects within the *Act*

- Limit Federal information requirements to those necessary in determining impacts on areas of federal jurisdiction
- Limit conditions imposed upon the proponent during the Decision-making phase of the process to those within federal jurisdiction
- Redefine "effects within federal jurisdiction" to align with federal legislative jurisdiction, while identifying redundancies between federal and provincial/territorial jurisdiction

General Amendments to the *Act*

- Seek greater efficiencies in cross-government cooperation to reduce permitting redundancies, limit the risk of over-consultation, and relieve capacity burdens on regulators, proponents, and Indigenous communities.
    - Identify one Project Manager within each involved ministry or regulatory body that will be involved at all stages of Project permitting to ensure all parties are aware of key project elements throughout the process, reducing the need for repetitive inter-governmental information sessions
    - Seek opportunities to combine consultation efforts, while clarifying with stakeholders and rightsholders who, between the various levels of government, the proponent, and the public, is responsible for what aspects of project design and approval
    - Ensure consistency of reporting requirements and timelines – align federal ministries to allow for a one-window approach, where submissions for one regulatory approval process can be used to supply information for all other approvals, where there is overlap.

- Review Physical Activities Regulations: SOR/2019-285 for Mines and Metal Mills to ensure the Project List is focused on projects with reasonable potential for adverse effects on areas of federal jurisdiction, with the intent to reduce administrative burdens and support the original goal of more balanced industry representation.
    - This can be achieved by: raising the threshold for production capacity for new mines; raising the threshold for production capacity for expanding existing operations, with the understanding that extensive baseline studies and environmental reviews have already been completed; and specifying that a federal impact assessment not be required for new projects on sites of orphaned or abandoned mines, where new development should be incentivized as it presents an economically and technically viable opportunity for future site reclamation.

- Work with provincial/territorial authorities to establish a documented and consistent approach for identifying communities of interest during development of the Indigenous Engagement and Partnership Plan and the Public Participation Plan
    - Currently, federal and provincial/territorial processes to determine Indigenous communities of interest for designated projects are highly ambiguous, with opaque defining factors and flexible, inconsistent determination of rights and traditional territory boundaries. This results in vastly different lists being developed by both parties, with proponents left in the impossible position of justifying their level of engagement, agreements, etc. to communities that may disagree with these determinations.
    - It is not a proponent's duty to assign rights, nor can they be tasked with explaining these determinations when given no clear justification. The government must take ownership of their determination of rights and align federal and provincial processes to limit instances of conflict between communities that have been identified on one list and not another.
        - A common scenario (example): In many provinces, such as Ontario, potentially impacted communities are identified and engaged with very early during exploration (issuance of exploration permits) at the provincial level. Years later, when the federal IA process is initiated, this list expands dramatically, leaving proponents at significantly different stages of relationship development across the various communities. A proponent may have been engaging with one community for 5+ years, have built a solid relationship and begun agreement negotiations, yet with another community may be starting this multi-year process from scratch. This leaves communities in inequitable positions compared to one another and places the proponent in the difficult position of having to rebalance agreements already in development to "make room" for "new" communities, significantly stalling negotiation and consultation processes.
    - By having one "list" between both provincial/territorial and federal authorities, proponents can confidentially initiate relationship building, engagement, and negotiations, and will have a documented and consistent approach to point to when questioned about the designation of communities of interest and how consensus was achieved.