

Local Content Policies In Minerals-Exporting Countries: The Case of Canada

Introduction

Similarly to Australia, the mining sector is of key importance to the Canadian economy. Canada is one of the largest mining countries in the world, producing more than 60 minerals including 26 metals, 22 non-metals and 5 industrial mineral commodities from about 250 mines and 3 000 stone, sand and gravel operations.

Like Australia, Canada's key interests in the mining sector stretch from the exploitation of its vast mineral endowments, to the development of its suppliers' network, which lie at the cutting edge of technological innovation. Internationally, Canada is a major leading mining country, which is home to a large number of global giants and hosts numerous other mining firms that are headquartered in its financial hub.

Overview of the Mining Sector

The mining industry is a major player in Canada's economy and contributes nearly 5% of the country's GDP. The industry employed about 380 000 workers in various parts of the value chain, from extraction down to manufacturing, often in remote communities, including 10 000 Indigenous peoples (MAC, 2014).

In 2013, the mining sector accounted for close to 20% of the country's total exports. In 2013, Canada ranked among the top five global producers of 11 major minerals and metals. It ranks first in potash, second in uranium and cobalt, third in aluminium and tungsten, fourth in platinum group metals, sulphur and titanium and fifth in nickel and diamonds. It is also a major producer of gold, silver, zinc, copper, molybdenum and cadmium (MAC, 2014).

The contribution of the mining sector is essential in many territories and in particular for local communities. It is estimated that proportionally, the industry is the largest private sector employer of Indigenous peoples (MAC, 2014). Besides, the sector is of key importance to the economies of large cities: for instance, Toronto is the global hub for mining finance. In 2013, the Toronto Stock Exchange (TSX) and TSX Venture Exchange accounted for 57% of the world's publicly-listed mining firms and together, the two exchanges handled 48% of global mining equity transactions and 46% of global mining equity capital (MAC, 2014). Similarly, Vancouver is home to the world's leading cluster of exploration firms, while Montreal hosts major aluminium and iron ore firms.

Mining and its related industries are significant contributors to the budgets of federal, provincial and territorial territories, due to significant taxes and royalties revenues and to the salaries paid to mining workers that largely exceed those of other sectors.

The overall regulatory framework in Canada

Canada is a Federal state with 10 Provinces and three Territories, each with its own government. As per the Canadian Constitution, the regulation of mining activities on publicly owned mineral leases falls under provincial/territorial government jurisdiction. Thus, there is separate mining rights legislation for each of the 13 Canadian jurisdictions except Nunavut where the federal department of Aboriginal Affairs and Northern Development currently retains authority.

The federal government of Canada has exclusive jurisdiction over some matters that indirectly affect mining, such as foreign investment and export controls. Otherwise, except for uranium, each province has exclusive power over mineral exploration, development, conservation and

management. However, the governments of Canada and the provinces share jurisdiction over a number of areas, including the environment and taxation.

The Constitution Act 1982 recognises and affirms the existing Aboriginal and Treaty rights of the Indigenous peoples of Canada, which include the First Nations (Indian), Inuit and Metis people of Canada. In this regard, federal and provincial governments have a general duty to consult any Indigenous group whose asserted or established Aboriginal and Treaty rights may be affected by a governmental decision, including the grant of permits or licences relating to mining activity.

Overview of regulations relevant to the mining sector in Canada

The Constitution Act, 1867: In the Canadian Constitution, the regulation of mining activities on publicly owned mineral leases falls under provincial/territorial government jurisdiction.

The Atomic Energy Control Act, 1946: The production, refinement and treatment of uranium and related substances are subject to the regulatory authority of the federal Canadian Nuclear Safety Commission (CNSC).

Fisheries Act (1985) and Canada Water Act (1985): Where mining impact on fish habitat is unavoidable, a Fisheries Act Authorization is required.

Canadian Environmental Assessment Act (1992): Mining projects are screened from an environmental standpoint by the Federal Environmental Assessment Index before production begins. Amendments to the Canadian Environmental Assessment Act, 2003 led to the creation of the Canadian Environmental Assessment Registry to inform and monitor environmental assessments.

The Minerals and Metals Policy of the Government of Canada – Partnership for sustainable development, 1996: It describes, within areas of federal jurisdiction, the government's role, objectives and strategies for the sustainable development of mineral and metal resources. The document also covers international trade and investment, science and technology, environmental protection, and Indigenous affairs.

Income Tax Act, Investment Tax Credit for Exploration, 2001: Meant to assist junior mining firms in raising new equity finance through the issuance of flow-through shares to help exploration firms maintain, or increase, their level of exploration activities with a view to stimulating investment in mineral exploration throughout Canada.

National Instrument 43-101: This is the national instrument for the Standards of Disclosure for Mineral Projects within Canada. The Instrument is a codified set of rules and guidelines for reporting and displaying information related to mineral properties owned or explored by firms which report these results on stock exchanges within Canada.

Provincial Laws:

There is separate mining rights legislation for each of the thirteen Canadian jurisdictions (except for Nunavut). In each province, the legislature may exclusively make laws in relation to the exploration for non-renewable natural resources in the province; the development, conservation and management of non-renewable natural resources in the province, including laws in relation to the rate of primary production there from and environmental, workplace safety, and labour purposes that has an impact on mining activities. Provincial laws usually contain a:

- a. Mines Act
- b. Mineral Tax Act
- c. Mineral Land Tax Act
- d. Mineral Tenure Act; and
- e. Workplace Safety and Health Act

Source: The Mining Law Review (2014).

Local Content Requirements and Initiatives

The Canadian approach to support the creation of opportunities has evolved over the 150 years that the country has been involved in mineral exploitation. Canada's mining industry assets are comprised of international exploration firms, large multinational mining firms involved in various parts of the value chain and a large number of world class suppliers of goods and services that are highly integrated globally. Today, the main policy objectives are threefold:

- First, to continue to remain competitive and at the forefront of the mining business (exploration, development, supply of goods and services, etc). In this regard, the priority focus is on incentives to foster science, technology and innovation.
- Second, to maximize benefits from its own mineral resources. The Canadian sub-soil is very rich and mining activities are generally conducted in remote areas. Canada aims to ensure that the local, often Indigenous, populations that live close to the mines derive the maximum economic benefits and minimize the potential negative impacts. For this reason, some provinces have put in place specific policies that fit the socio-economic realities of their regions.
- Third, to support its mining firms and service providers in extending their global footprint and accessing markets abroad.

Regulatory Frameworks

In general, Canada maintains few formal, specific requirements within its federal legislation aimed at encouraging greater local content in mining. More specific requirements are found in provincial legislations and specific mining agreements signed with Indigenous communities (such as the Impact and Benefits Agreements (IBAs).

At the Federal level, Canada's overall policy stance towards the mining sector is laid out in a detailed Minerals and Metals (MMR) Policy. The policy highlights the contribution that mining makes to the Federal government's agenda in three areas:

- Promoting economic growth and job creation
- Furthering an efficient and effective federal union';
- Meeting the challenge of sustainable development.

The policy lays out the broad regulatory framework – notably with respect to defining the roles and responsibilities of Federal and provincial governments – and defines the role of the state in attracting investment and creating a conducive business environment, as well as the role and limits of regulation. In addition the policy emphasises three particular overarching issues where policy has a role to play:

- Environmental management of mining activities;
- Promoting the involvement of Indigenous communities in mining;
- Providing international leadership for sustainable development in mining.

While the policy does not explicitly mention local content, Section V concerning Indigenous communities, specifically encourages First Nations' involvement in mining projects, in particular through their participation in economic opportunities.

Federal-level legislation does place some general requirements on overseas mining firms investing in Canada, most notably within the Investment Canada Act, under which large foreign investments or acquisitions must undergo a review and approval process to determine if they create a "net benefit" to Canada, based on factors including:

- The effect of the investment on the level and nature of economic activity in Canada including employment; resource processing; utilisation of parts, components and services produced in Canada; and exports from Canada.

- The degree and significance of participation by Canadians in the existing and proposed businesses.
- The compatibility of the proposed acquisition with national and provincial industrial, economic and cultural policies.

It is observed that factors such as continued employment and the infusion of capital by the investor are particularly important to meet the "net benefit" test. Conversely, plans to downsize following a merger can be impediments to achieving approval for the investment (Baldwin and Fipke, 2010).

In addition, in order to obtain the Minister's approval for a transaction, the investor often needs to negotiate a set of commitments in the form of undertakings, which may even be valid for three years after the closing of the transaction (Deyholos and Cuschieri, 2013). Such commitments may, among other things:

- Oblige the investor to keep the head office of the Canadian business in Canada;
- Ensure that a majority of senior management of the Canadian business is composed of Canadians;
- Maintain certain employment levels;
- Make specified capital expenditures and conduct research and development activities based on specified budgets; and
- Make a certain level of charitable contributions.

Beyond the Investment Canada Act, some federal legislations require firms to hire locally. The Business Corporations Act stipulates that at least 25% of the directors must be Canadian residents. The Immigration Act states that employment opportunities in Canada belong first to Canadian citizens and to permanent residents of Canada; general restrictions or work permit requirements exist for a number of professions.

Incentives

Federal and provincial governments offer numerous incentives to firms designed to promote broader policy goals, such as boosting research and development or promoting regional economies. These incentives are not specific to the mining sector but apply to all sectors of the economy. Funds are available to any qualified Canadian or foreign investor provided they meet certain conditions. Firms can access funds through Export Development Canada on the condition that the product is produced regionally.

The MMR Policy emphasises private-sector innovation through the federal Scientific Research and Experimental Development (SR&ED) programme. This is implemented through specific provincial tax incentives and various support programmes for innovation in SMEs. Individual provinces also provide incentives for firms to relocate their R&D efforts. The Canadian Centre for Clean Coal/Carbon and Mineral Processing Technologies in Alberta is a research and education centre that supports sustainable and responsible energy and mineral development. Quebec is home to a fast-growing aluminium-processing sector.

At the Provincial level, there is a range of incentive programmes and services to attract foreign investment. For instance, the Province of Quebec officially launched its Plan Nord (Northern Plan) in April 2015, which is a 20-year sustainable development investment initiative that is intended to harness the economic, mineral, energy, and tourism potential of the Province. A company has been created (Société du Plan Nord) to attract investors and work with local communities to implement the plan and incentives will be given subject to meeting the objectives of the Plan.

Most provincial incentives are investor-specific. For example, Ontario's Jobs and Prosperity Fund provides USD 2.5 billion over 10 years to enhance productivity, strengthen innovation and increase exports from the Province. Similarly, Alberta offers firms a 10% refundable provincial tax credit worth up to USD 400 000 annually for scientific research and experimental development encouraging research and development in Alberta as well as Alberta Innovation Vouchers worth USD 15 000 to USD 50 000 to help small early-stage technology and knowledge-driven businesses in

Alberta get their ideas and products to market faster (US Department of State, 2015). However, those incentives may also be restricted to firms established in the province or that agree to establish a facility in the province.

Obligation to Consult Indigenous Communities and Initiatives to Support Indigenous Community Participation

A key focus of Canada's Mining Policy is to ensure the participation of local Indigenous communities in any mining venture. The focus derives from a Constitutional requirement that the Crown consult with Indigenous communities when Crown conduct may impact asserted or established Aboriginal or Treaty rights. Public Policy Forum (2012) has pointed out the tenuous nature of this legal driver for the policy:

"the Supreme Court of Canada has established the Crown's Duty to Consult with Indigenous communities over development that would impact traditional lands [...] exactly what this duty entails is not always clear. This has led to superficial interpretations, which limits the formation of genuine partnerships. Aboriginal communities are concerned that this duty is not being respected, or that it is merely being implemented as part of a 'check-the-box' approach."

Indigenous considerations are therefore given a high priority and are the most prominent local content-type requirements in Canada, even if they clearly affect only a designated tranche of the population, thus reflecting a context-specific definition of "local". The Mining and Mineral Policy also "recognizes the desire of Indigenous peoples to be involved in decision-making, and to participate in the economic benefits derived from exploration and development activities" and states that "[t]he federal government provides funding to Indigenous communities to negotiate economic benefit agreements with developers."

In terms of the agreements themselves, there appears to be a significant amount of variety with no set model or guidelines for provisions to be included. This is largely because circumstances – such as the land in question – tend to vary from case to case, and "development opportunities are usually tailored to the specific circumstances of the community". Agreements signed in the early stages tend to be referred to as Exploration Agreements or Memoranda of Understanding, while more developed agreements include Socio-Economic Agreements or Cooperation Agreements.

Local content in specific agreements: The case of Impact and Benefit Agreements

Those most closely associated with local content-type provisions are often known as Impact and Benefit Agreements (IBAs). IBAs are private contracts, so they are, for the most part, confidential. They are dynamic arrangements and the nature of the benefits included in these contracts has significantly evolved over time. Prior to 2005, IBAs focused primarily on benefits relating to jobs, training and procurement opportunities. Since 2005, IBAs have increasingly emphasized economic benefits and financial issues such as royalties and direct payments. According to Fraser Institute (2012) these typically contain:

- **Labour provisions:** Indigenous peoples may be preferentially hired, fulfilling an agreed upon number of Indigenous employees; training for these jobs could also be provided through local classes and apprenticeships or with scholarships and bursaries.
- **Economic development provisions:** Recognition and support of relevant local Indigenous businesses through preferential contracting, as long as said business is cost competitive, efficient and timely; possible partnerships with Indigenous businesses to structure joint initiatives; the creation of a registry of Indigenous businesses to update the firm and monitor Indigenous content to meet preference requirements.
- **Community provisions:** Support and affirmation of Indigenous rights and historic/cultural connection to land; funding for youth, social programmes, community projects and physical infrastructure; facilitation of on-going communication between parties through establishment of committee meetings.
- **Environmental provisions:** Establishment of environmental planning and monitoring committees; reclamation commitments; efforts to minimize activity in culturally sacred

areas; recognition that the firm will not apply for more permits after IBA negotiation has finished.

- **Financial provisions:** Monetary compensation arrangements; fixed or variable cash payouts; funding agreements with an established monitoring committee.
- **Commercial provisions:** project certainty through acknowledgement of adequate consultation; dispute resolution and enforcement clauses if either party were to break the contract; and confidentiality.

The federal government agency Natural Resources Canada maintains a register of agreements and lists more than 200 projects with some type of agreement in provinces across the country: Alberta (1), British Columbia (44), Manitoba (3), New Brunswick (2), Newfoundland and Labrador (4), Northwest Territories (11), Nova Scotia (1), Nunavut (16), Ontario (73), Quebec (19), Saskatchewan (29), and Yukon (18). In some cases a project will have more than one agreement, for example with separate communities, or agreements covering different activities. In some cases agreements have been updated and superseded over time. An analysis done in 2012 showed that approximately one-third of agreements signed up to that point were either IBAs or IBA-like in nature (MIHRC).

Examples of provisions relating to local content in IBAs

The Raglan Agreement,¹ signed in 1995, has been used as a benchmark for First Nations agreements in the mining industry. Located in the Nunavik Territory, the mining firm (now owned by Xstrata Nickel) has signed an agreement with the two closest communities to the mine (Salluit and Kangiqsujaq), the Makivik Corporation (an Inuit owned firm which oversees the political, social, and economic development of Nunavik). The agreement is meant to facilitate the "equitable and meaningful participation" of the Inuit population and ensure that the latter derive "direct and indirect social and economic benefits" during the life cycle of the mine. Two sections of the agreement contain specific requirements regarding employment and support to local enterprises.

Regarding employment and training, the firm commits to support training of Inuit population so that the "maximum number of jobs can be filled by Inuits". There are no numerical targets regarding labour participation nor a percentage of spending for training but the firm has set up a very elaborate human resource strategy which comprises the following elements:

- a) Training, both on-site and off-site, of Inuit population, notably through cooperation with established regional training programmes, in various categories of jobs relevant for the project;
- b) The establishment of an initial recruitment programme, including the identification and selection of potential employees. High priority is given to employees from the certain specific villages (notably those closest to the mine – signatory of the Agreement);
- c) Implementation of an information/orientation programme to advertise job opportunities;
- d) The commitment to give permanent employment to those who successfully complete the training programmes;
- e) The firm also committed to require its contractors and sub-contractors to give preferences in hiring employees from the Inuit community as well as those who have successfully completed the training programmes;

Key elements regarding the utilization of Inuit enterprises in performing work or supplying goods and services to the mining operations include:

- a) The identification of certain specific categories of services² whereby the firm "shall enter into direct contract negotiations solely with an Inuit enterprise", provided that a suitably qualified firm has been identified.
- b) For other services, Inuit firms will be invited to tender. The firm will identify to potential bidders Inuit firms that could be potential sub-contractors. The firm will enter in the tender document, a requirement that potential bidders should state the "number of Inuit individuals/firms that the bidder intends to use directly or as sub-contractors", in the execution of the bid; and that the bidder commits to assist in the "training of such individuals or firms to supply the goods or perform the services".

- c) Contracts will be awarded on the basis of cost competitiveness, continuity of supply, quality of work and timeliness.
- d) A data base will be maintained by one of the communities regarding the list of potential suppliers.
- e) A monitoring mechanism has been set up, including for the firm's contractors that need to submit regular reports regarding the number of job offered and firms engaged from the Inuit community, including by contractors and sub-contractors.

The **ULU Inuit Impact and Benefits Agreement** (1996) between the Echo Bay Mines Ltd. and the Kitikmeot Inuit Association (KIA). Some of the highlights of the Agreement are:

- a) The creation of Inuit business and industry.
- b) The development of an Inuit "content formula" to help decide how contracts are to be awarded. Furthermore, the firm undertakes "when practicable", to break down all multi-component contracts into discrete tendering packages, which can be bid as a group or individually. The firm also promises to provide letters of intent to facilitate financing of Inuit business opportunities.
- c) A target of 60% Inuit employment is set in the project, whether employed directly by Echo Bay, or by its contractors or subcontractors. The goal was to be met within 24 months from the date of execution of the IIBA, subject to labour market supply capacity.
- d) Financial assistance from Echo Bay for small businesses, including a 5% advance payment to assist the business in startup for contracts less than CAD 50 000.
- e) Advance payments provided by Echo Bay for small businesses.
- f) Training and raising awareness about employment and business opportunities.

Notes:

1. See full agreement: <http://www.sdsg.org/wp-content/uploads/2011/06/Raglan-Agreement-CDA.pdf>.
2. These are: air transportation; catering and hostelry; road maintenance; diamond drilling; ground transport of supplies; trucking of concentrates; fuel storage, and/or handling and/or distribution; environmental research, monitoring and baseline studies; on-site preparation of explosives.

Source: Raglan Agreement, 1995; Keeping, 1998; O'Reilly and Eacott, 1998.

A main feature of the Canadian approach appears therefore to be encouraging a "partnership approach" to mining in Indigenous communities. Beyond the focus on agreements, the government also conducts activities centred on promoting community readiness for economic participation, including for example producing information products, including guides to mining industry and human resource opportunities, newsletters and factsheets. Natural Resources Canada has also undertaken activities to monitor and share best practices around "community engagement and readiness", as part of its commitment under the MMR policy to monitoring progress.

Suppliers' development: mining equipment suppliers

With the presence of well-established mining activities, Canada has historically relied on domestic firms to develop the mining industry. As a result, geographically focused clusters of associated industries have tended to develop naturally. Today, there are approximately 600 domestic suppliers of mining equipment and services, which appear to have significant depth in products related to activities such as underground mining, environmental management, exploration (e.g. airborne geophysical equipment and related software developers), mineral processing and mine automation. Many firms have expanded globally and are among world-class suppliers.

The federal and provincial governments have facilitated the development of suppliers' capacity, clusters and professional skills, primarily through the provision of financial resources to finance public R&D and by providing public goods, such as information and infrastructure to encourage industrial services. At the provincial and territorial level, almost every jurisdiction has a strategy to encourage the development of mining and supporting industries. Of the major mining regions, Ontario, British Columbia, and Quebec currently have "stand-alone" innovation strategies. For example, the Ontario government has set up the Ontario Mineral Industry Cluster Council, consisting

of representatives from the mining industry, academia and government. This Council meets regularly to collaborate, exchange ideas, and promote competition and economic development.

The internationalization of Canadian mining firms has stimulated the development of services industries in particular in upstream activities. Although their mining operations are located abroad, many firms remain headquartered in Canada, providing significant professional and financial opportunities for Canadian firms. Many suppliers of goods in Canada's mining clusters have actually never supplied mining firms operating domestically, focusing instead on supplying operations abroad. Furthermore, in addition to large mining firms, an increasing number of Canadian "junior" firms have internationalized their activities, focusing mainly in exploration activities. These firms rely on Canadian suppliers of specialized exploration equipment, as well as Canadian equity markets and professional service firms.

Assessing the impacts of local content provisions

The variety of Indigenous participation agreements (particularly IBAs) and a general lack of meta-studies means that any assessment tends to be based on accounts of individual projects, which in turn suffer from a number of potential problems: they largely rely on anecdotal information and sometimes suffer from independence issues (for example if conducted by mining firms themselves). They are often carried out with the aim of elevating and propagating best practice rather than providing critical evaluation of an unbiased representative sample. Assessing particular objectives within IBAs – such as those more closely related to local content policies such as provisions for local procurement or hiring – is even harder.

At the level of individual projects, available studies nevertheless indicate that there are a number of examples of IBAs successfully involving local Indigenous communities. In 2014 the Intergovernmental Working Group on the Mining Industry produced a Compendium of Case Studies of Good Practices in Community Engagement and Readiness that highlighted 22 examples of good practices in areas ranging from "first contact" to post-mine reclamation. Amongst these case studies are a few examples of how local content requirements or initiatives have worked in practice across Canada. In Northern Saskatchewan, mining firms signing a mining surface lease agreement are obliged to negotiate a separate sub-agreement on Human Resources Development with the Ministry of Economy which:

"Establishes a collaborative approach designed to maximise recruitment, training, and advancement opportunities for residents of Saskatchewan's North, which also contributes to capacity development so that communities can be 'ready' for future development. Mine operators report their progress each year [...] which assists government in labour force planning and other economic development initiatives. [...] This has led to the mining industry in Northern Saskatchewan being industry leaders in Aboriginal employment and business procurement. On average, 47% of all mine-site workers are recruited from northern Saskatchewan and 42% of all workers are of Indigenous heritage. In 2012, mining in northern Saskatchewan contributed CAD 1.78 billion to the provincial economy in wages and goods and services purchased. Northern businesses and joint ventures earned CAD 624 million, or 40% of total goods and services expenditures." (IWGMI, 2014)

In the Northwest Territories (NWT), the territory government asks firms to put in place follow-up programmes in the form of socio-economic agreement (SEAs) which include inter alia employment and business opportunities. According to IWGMI (2014) the NWT government "oversees the implementation of these agreements and coordinated government efforts under each agreement while monitoring how well each firm carries out its respective functions". In addition to substantive commitments around maximising opportunities, there is also an emphasis on monitoring outcomes and continually improving implementation, with firms typically reporting annually or bi-annually, on issues including employment by priority group and recruitment issues, and spending by group. The report concludes that since 1996 the SEAs have created "significant and unprecedented benefits for Northern Canada", including 18 000 man-years of employment and CAD 10 billion in goods and services from northern firms.

At Halfmile Mine in New Brunswick, project approval was preceded by consultation with Mi'kmaq communities that resulted in a memorandum of understanding (MOU) that includes "employment opportunities with a target of at least 20% of the work force (including any contracting), financial benefits, hiring of a Mi'kmaq Benefits Administrator to identify and promote First Nations opportunities, a student summer employment program, and educational scholarships" (IWGMI, 2014, 51).

In a separate example of a government supply-side support project, the government of Quebec created two local Indigenous mining funds – the Cree Mineral Exploration Board (CREB) and Nunavik Mineral Exploration Fund (NMEF) – which invested along the supply chain in:

- Advocacy and creating awareness encouraging communities to become more involved in mining development.
- Training activities to enable individuals to reach the level of prospector.
- Support for exploration activities by local prospectors.
- Business creation through the two funds was credited with helping create a total of seven exploration firms, five prospecting firms and 19 service firms between 2001 and 2014 (IWGMI, 2014, 31).

Of the few studies to look at specific components within IBAs, MIHR (2012) looks at lessons learned from human resources provisions in the agreements and makes a number of recommendations about the negotiation, implementation and typical employment-related provisions included in IBAs. Most notably with respect to the latter the report found that the use of employment targets has become within IBAs more pragmatic over time:

"In the first IBA-type agreement, the Strathcona Agreement, the parties aimed to have 60 per cent of the workforce represented by local Indigenous peoples. This was an arbitrary number chosen by the company and the federal government without any apparent analysis; as such, it was bound to fail. Since then, some IBAs have included targets [...] some have included a percentage of all employees; and others have stated that the company will utilize 'best effort'. Both communities and companies believed that establishing a numeric target [...] was far more successful than aiming for 'best effort'. [...] A definite number can be tracked and that alone means the company can be held accountable. However, this study showed that although the company's performance can be tracked and reported, it is rarely done. As a result, some communities stated that they were not sure how well – or even if – the HR section of the IBA was succeeding."

The report also highlighted the importance of supporting measures to be included in IBAs, including scholarships and training programmes as "extremely important for all". Interestingly, the report found that from the perspective of communities that clauses related to business development were often included in IBAs, but "varied in strength" between agreements and were less familiar to Indigenous community respondents than to mining firms themselves (MIHR, 2012, 14-15).

A few more critical studies have been produced. For example PDAC (2011) highlights a number of areas in which current efforts could be strengthened, including: clarifying consultation protocols and permitting requirements, resolving outstanding land claims, implementing government resource revenue sharing, and building on existing training programmes for Indigenous communities to enhance their skill levels and enable them to participate directly in the mineral industry.

Drawing on earlier work by Public Policy Forum (2012), Fraser Institute (2012) also highlights several limitations, drawbacks, and areas for further research with respect to IBAs, including:

- Lack of transparency: confidentiality clauses normally built into IBAs "limit their transparency [and] the ability of Indigenous groups to share information and learn from the experience of others. It also makes it more difficult to independently evaluate IBAs and their outcomes for communities".
- Distributional issues: In some cases, benefits "may be distributed unequally across the community, with the majority remaining "in the hands of those in charge", as a "result of community governance structures or local class divisions".

- Implementation and "whether components of agreements are realistic". For example "employment targets mean little if the community does not have the ability to provide appropriate training".

Linkages with Promoting CSR Abroad

Beyond the domestic industry, Canada sees itself as a global leader on encouraging CSR approaches in its firms operating abroad. The government adopted its first CSR strategy for the Canadian extractive sector abroad in 2009 and updated it in November 2014, building on experiences and best practices gained in the intervening period. According to Natural Resources Canada, the new strategy:

"...clearly demonstrates the Government of Canada's expectation that Canadian companies will promote Canadian values and operate abroad with the highest ethical standards. It also outlines the Government's initiatives to help Canadian companies strengthen their CSR practices and maximize the benefits their investments can provide to those in host countries."

The existence of such a strategy also underlines the need to ensure that Canadian firms conduct themselves abroad according to the highest of ethical standards.

In addition, Canada has recently passed the Extractive Sector Transparency Measures Act, which builds on commitments made at the G8-level to establish new reporting standards for extractive sector firms, and:

"to foster better transparency to ensure that the resource extractive industries support proper development in the countries where they operate, while at the same time making it harder to conceal illicit payments. [...] the Act will require affected entities to report any payments made in relation to the commercial development of oil, gas or minerals during a financial year [...]"

Further, Natural Resources Canada has published a "CSR Checklist" for mining firms working abroad, and also maintains a register of responses on its website to questionnaires sent to firms on how they integrate CSR objectives into their work.

A study by EWB (2015) looking at Canadian firms' commitments in local procurement globally found that increasing numbers of firms were mentioning local procurement in their reporting. The focus however was on overseas mining activity, rather than procurement policies in Canada.

Table 1. Summary of LCPs applicable in Canada

Type of Requirements	Details of requirements	Applicability in Canada	Relevant legal frameworks
Foreign Investment Test	Large foreign investments or acquisitions in mining must undergo a review and approval process to determine if they create a 'net benefit' to Canada	"Net benefit" to Canada is assessed based on factors including: <ul style="list-style-type: none"> • the effect of the investment on the level and nature of economic activity in Canada (including employment; resource processing; utilisation of parts, components and services produced in Canada; and exports from Canada) • the degree and significance of participation by Canadians in the existing and proposed businesses • the compatibility of the proposed acquisition with national and provincial industrial, economic and cultural policies 	Investment Canada Act
Consultation with Indigenous communities	Prior consultations with Indigenous communities before development of activities	Canada's constitution obliges the Crown to consult with Indigenous communities when it contemplates conduct that might adversely impact potential or established Aboriginal or Treat rights. When this duty arises, the Crown is required to carry out a fair and reasonable consultation process and demonstrate efforts to respond and accommodate, if appropriate.	Canadian Constitutional rulings
Preferential treatment	Firms to hire local labour or source inputs from domestic suppliers only if available on a competitive basis	Impact and benefit sharing agreements negotiated on a project-by-project basis may contain provisions on preferential treatment of Indigenous community employment or sourcing	Socio-economic Agreements, Impact and Benefit Sharing Agreements, etc.

Type of Requirements	Details of requirements	Applicability in Canada	Relevant legal frameworks
Capability and knowledge development	Requirement for the training of local labour or certification of local suppliers	Impact and benefit sharing agreements negotiated on a project-by-project basis may contain provisions on the training of local labour or certification of local suppliers	Socio-economic Agreements, Impact and Benefit Sharing Agreements, etc.
R&D contribution and transfer of technology	Fostering innovation through increased local spending on R&D	Tax incentives or support programmes for innovation in SMEs. Incentives, tax or otherwise, by provinces are available to firms that establish or relocate R&D facilities in some provinces.	Scientific Research and Experimental Development (SR&ED) Examples include: Plan Nord (Quebec), Jobs and Prosperity Fund (Ontario), Innovation Vouchers (Alberta).
	Firms required to transfer technology to local firms	Impact and benefit sharing agreements negotiated on a project-by-project basis may contain provisions requiring firms to transfer technology to local firms	Socio-economic Agreements, Impact and Benefit Sharing Agreements, etc.
Information sharing	Requirement to advertise job vacancies or publish tenders and procurement requirements	Impact and benefit sharing agreements negotiated on a project-by-project basis may contain provisions requiring firms to advertise job vacancies or publish tenders and procurement requirements	Socio-economic Agreements, Impact and Benefit Sharing Agreements, etc.
Reporting and justification	Mining firms to report on levels of hiring local labour or sourcing inputs locally	Impact and benefit sharing agreements negotiated on a project-by-project basis may contain provisions requiring firms to report on levels of hiring local labour or sourcing inputs locally	Socio-economic Agreements, Impact and Benefit Sharing Agreements, etc.

Main properties

Canada's approach to local content in mining is heavily focused on supporting Indigenous peoples as a key target group. It offers insights both on the overall approach to promoting local content, and in terms of how to target and benefit distinct or specific groups that might otherwise become marginalised or disenfranchised by mining activity. It should be noted however that the government of Canada does not consider these policies to be local content policies per se. They have been included in this survey as they aim to increase the participation of a subset of the population that are locally based.

In keeping with Canada's broad approach to the regulation of mining, in most cases, local content policies appear to be focused less on prescribed and formal tools embedded in legislation and mandatory instruments, and more on incentives and a "partnership approach" to foster involvement of interested stakeholders. The approach derives from the legal context in Canada around the "constitutional duty to consult" in which mining firms are motivated by the desire to avoid challenge by local populations.

It is difficult to ascertain the impacts of such consultation agreements since they often largely rely on anecdotal information and sometimes suffer from independence issues, for example if they are conducted by mining firms themselves. On the one hand, the resulting practical and ad hoc approach to negotiated agreements with Indigenous communities has certain advantages. Most notably it is flexible to cater for different circumstances, allows for real negotiations rather than a prescribed set of outcomes, and allows for revision and improvement over time. Such an ad hoc approach is necessarily strongly influenced by the negotiating strategy and strength of local communities. In some cases, the preferential access of local communities to procurement contracts is substantial. For instance, in one agreement, all air transport contracts, catering and hostelry; road maintenance; on-site preparation of explosives and many other services contracts are awarded solely to Inuit firms if a suitable provider can be identified--note the absence of any criteria of competitiveness. In other cases, it establishes hiring priority, giving preference to individuals from specific villages, for example those that are closest to the mine and are signatories to the Agreement. In some cases, such preferences could be viewed as being distributed unequally across the targeted community.

On the other hand, few enforcement mechanisms appear to exist. There are identified challenges in implementation, such as meeting employment targets, and in monitoring the agreements. Hence the Canadian approach might be contrasted with those that automatically contain more formal or standardised reporting requirements, or legal recourse to sanctions for any failures or shortcomings in implementation.

Canada's approach to overseas firms that invest in Canada is legislated at the federal level by the Investment Canada Act. Large foreign investments or acquisitions must undergo a review and approval process to determine if they create a 'net benefit' to Canada. This is based on factors such as:

- The effect of the investment on the level and nature of economic activity in Canada including employment; resource processing; utilisation of parts, components and services produced in Canada; and exports from Canada.
- The degree and significance of participation by Canadians in the existing and proposed businesses.
- The compatibility of the proposed acquisition with national and provincial industrial, economic and cultural policies.

Investors must often negotiate a set of commitments which may ensure that a majority of senior management of the Canadian business is Canadian; maintain certain levels of employment; or undertake a specified level of R&D expenditure.

Policies at the federal and provincial levels aim to increase spending on R&D and support local innovation. These include tax incentives and support programmes to increase spending in specific areas, such as Clean Coal, or to target, for example, SMEs. These incentives are not specific to the mining sector.

Finally, the Canadian government has placed a new emphasis on promoting CSR among Canadian extractive firms operating overseas, although it is as yet unclear how such standards will be monitored and enforced.

More Information

Korinek, J. and I. Ramdoo (2017), "Local content policies in mineral-exporting countries", *OECD Trade Policy Papers*, No. 209, OECD Publishing, Paris. <http://dx.doi.org/10.1787/4b9b2617-en>

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