



THE CANADIAN MINING INDUSTRY
AND
CONSTITUTIONAL CHANGE

A
SUBMISSION TO
THE PROVINCIAL MINISTERS OF MINES
ON THE OCCASION OF
THEIR 37TH ANNUAL CONFERENCE

HALIFAX, NOVA SCOTIA
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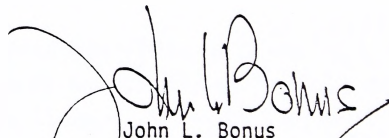
To: The Provincial Ministers of Mines

Honourable Sirs:

We appreciate the opportunity of submitting the attached presentation to you on the occasion of your 37th Annual Conference.

The prospect of Constitutional Change is a matter of great significance to Canada's mining industry and it is our hope that the views we express will be of assistance to you and your respective governments in the current debate on this vital issue.

For and On Behalf Of
The Board of Directors
of
The Mining Association of Canada


John L. Bonus
Managing Director and
Chief Executive Officer

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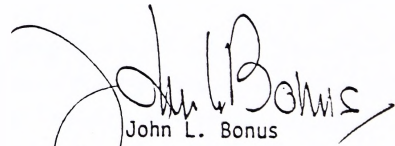
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INTRODUCTION

"The outcome of the continuing federal/provincial discussion on constitutional change may indeed have a profound impact on various sectors of our society. Yet since their beginnings, these discussions have been essentially carried out by governments, and for governments. The constitution has been discussed in terms of the vitally important questions of the relations between regional and national communities and between different language groups. The participants in the debate have primarily been the leaders of federal and provincial governments, and they have naturally brought to the table their own particular institutional and regional interests. There are good reasons why this is so, but it does raise some important questions. This process has neglected detailed discussion of constitutional issues in terms of functional interests--of the interests of citizens, classes, industries and the like which cut across regions.

"Thus, another perspective needs to be brought to bear on the constitutional debate: the need to consider the consequences of change for effective policy making, and for the diverse economic and social interests found in Canada. . . ." *

As noted in the above excerpt, most, if not all, Canadians are likely to be affected by the changes in Canada's constitution currently being discussed. Consequently, as many of their voices as possible should be heard prior to decisions being made to determine the future constitutional framework of this country.

In this presentation, The Mining Association of Canada will set forth its views on the process of constitutional change in Canada and the implications foreseen for the mining industry. ** We feel it is important to do so because the outcome of the present discussions will impact on the mining industry for decades to come.

* Constitutional Change and the Mineral Industry in Canada. Centre for Resource Studies, Queen's University. January, 1980

** The commodities customarily associated with the mining industry are metallic and non-metallic minerals as distinct from oil and gas.

The Business Council on National Issues (BCNI) and the Canadian Manufacturers Association (CMA) have, among others, already made their views widely known and at the outset of this presentation, we wish to express our support for their views, especially those dealing with preservation of the Canadian economic fabric.

There is no doubt that Canadian unity is being seriously eroded, not only by the continuing dispute between governments over the distribution of powers, but also by the economic barriers that the provinces are setting up against each other. This contributes to the fragmentation of the Canadian common market, and impedes the movement of capital, labour and products. Further, the climate of uncertainty thus created has affected business decisions. The result is to raise the cost of doing business in Canada, making it less attractive to new investments, both domestic and foreign, at the very time when massive amounts of capital are required to finance the many major projects which this country needs if it is to fulfill its destiny.

We urge all governments to give earnest consideration to these concerns which are shared by all productive sectors of the country.

IMPLICATIONS OF THE CURRENT CONSTITUTIONAL FRAMEWORK

Under the current constitutional framework governing resources, the Canadian mining industry has been able to advance from very small beginnings to the first rank of world mineral producers and suppliers.

Therefore, it would seem that the framework "per se", while a complex intermix of federal/provincial powers, has not materially inhibited growth and development, and that the real problems experienced by the industry have been caused essentially by the manner in which governments have chosen to interpret and apply the constitutional framework in line with their respective expectations for resource development and control of that sector. This has been particularly relevant during the decade of the seventies, which witnessed a significant expansion of governmental activity affecting the mineral industry.

Canada's mineral resources, while impressive in aggregate, are not exceptionally large or rich, and the fact of their considerable development indicates that a favourable "climate" can very well be generated within the existing constitutional framework.

The key word is "climate". For a considerable number of years up to the middle sixties, policies were in place which encouraged resource development. However, in the late 1960s and the 1970s, government and public attitudes to the resource industries shifted from a supportive and positive atmosphere to one of suspicion and confrontation. The factors responsible for this change include the limits-to-growth movement, increasing environmental awareness, a concern about industrial health and safety, the commodity price boom in 1973-74 that produced short-lived high profits, a general anti-corporate feeling, and growing economic nationalism. Among the results were higher taxation, increased government interference and regulation, a rise in the number of public hearings, and less apparent concern for the welfare of the wealth-generating private sector. Mining was not alone in facing these problems--they affected many industries, but the impact on resource companies was especially strong.

Fortunately, these attitudes have changed to a significant degree. Nevertheless, we believe that there is still a need for greater support of mining by the two senior levels of government, particularly by promoting among Canadians more awareness of the importance of the industry and the benefits which flow from its activities across the country.

At the present time, both levels of government are deeply involved in generating and administering policies which affect the mining industry. Indeed, few, if any, industry goals can be realized without securing the cooperation of both the federal and provincial governments.

Consequently, in order to pursue its objectives, industry has to display a pragmatic approach in its relations with government. There is no doubt, however, that conflict among governments, and the overlapping and duplication of their activities, does create a complex and uncertain political climate in which industry must work. Furthermore, the tendency for both levels of government to expand gradually the scope of their powers has undermined the coherence and predictability of the policy environment.

More particularly, the intergovernmental conflict over resource revenues has been extremely harmful to the industry. The decision by the First Ministers in February, 1978 to initiate a Federal/Provincial Resource Taxation Review was seen by industry as a very important step towards the resolution of that conflict, at least insofar as the mineral sector is concerned.

In commissioning that Review, all governments recognized that the depressed state of the industry at that time was caused not only by the prolonged and severe slump in international mineral markets, but also the uncoordinated and unrealistic tax/royalty measures. Moreover,

recognition was given to two of the most important factors affecting the mining industry; i.e. the need for stability and certainty in the tax system, and the unavoidable cyclical nature of the mining sector.

The Review's comment on the cyclical behaviour of the mining industry bears repeating:

"The prediction of cycles and distinguishing temporary price appreciation from a long-term trend is difficult. This means that tax royalty and tax systems should be flexible enough to give a reasonable return to mining firms over a cycle, allowing years of low prices to be recognized as well as periods of high prices. Potential responses to this include the modification of averaging provisions, progressive rate structures, loss carry-forward, and loss carry-back provisions."

Several factors underly the proliferation of regulations which has occurred, particularly over the past ten years. In the first place, there has been a tendency for officials to exercise their powers arbitrarily. There has also been some "empire-building" at all levels; intra-agency, intra-governmental, and intergovernmental. Both levels of government have been eager to extend their control over the industry through increased regulation, but neither level has been perceived as being willing to take on the responsibility to assure the industry's health and growth.

The desire for further processing of minerals within the province of origin is another example of changing perceptions by the provinces. While it is understandable that provinces want to maximize the level of mineral upgrading within their own borders, it would appear that there is not always consideration of the effect their policies may have on other policies. Opinion is widespread in the industry that an irrational (in economic terms) and potentially destructive desire for in-province processing could lead to overcapacity and damaged export markets, and in turn reduce both profitability and international competitiveness of the Canadian mineral industry.

Of course, it has to be recognized that increased intervention by governments has also arisen from the political mobilization of interest groups who challenge the social and environmental costs of the mineral industry. Neither is this phenomenon singular to Canada or, indeed, to the mining industry.

Thus, in the light of the revenue-sharing disputes, the increase in regulations, expanded provincial aspirations, and the unprecedented militancy of interest groups over the past decade, a new element has entered the mining scene in Canada--"political risk". A survey conducted among MAC member companies in 1977 indicated that a combination of economic and political factors was the major reason why so many projects had been deferred or delayed at that time. Despite an improvement in the Canadian political-economic environment, this type of analysis is now established as a factor in corporate decision-making on projects within Canada.

It should not be construed from the preceding comments that we necessarily call for the maintenance of the status quo in terms of the constitution as it affects mineral resources.

While not in favour of change just for change's sake, we do recognize that the preservation of the status quo is impossible in a shifting contemporary society and that attempts to institutionalize a momentary stability can only lead to frustration.

Besides, the mining industry itself is subject to change and, of course, so are the domestic and international markets it serves. However, it is clear that the industry has a strong interest in a sharp, uncluttered division of responsibility between governments and that such conditions do not exist at the present time. Indeed, there is considerable overlapping of responsibility. In general terms, it may be said that the provinces have greater control over activities that tend to influence the industry directly (i.e. the granting of mineral rights, the establishment of industry development strategies, regulatory controls and the provision

of infra-structure). In contrast, the federal government exercises a strong influence on the overall investment climate, pricing policies, the provision of mineral-related services, manpower policies, and the important field of international negotiation. Authority in the critical area of taxation is divided, with each level of government having its respective levies.

Thus, while the provinces have more scope for directly controlling the industry within their boundaries, there is a marked interdependence of responsibility for creating the overall conditions within which the industry operates and for determining the level and nature of benefits Canada derives from minerals. In the absence of effective coordination, policy initiatives pursued by one province can undermine the investment climate in the others; similarly, federal proposals can disrupt provincial planning. Conversely, to the extent that corporate activities span provincial and national boundaries and the benefits of their operations flow to both the provinces and the nation as a whole, decisions they make can have provincial and national ramifications.

DIRECTION FOR CHANGE

At the moment, the industry must orient itself on an "ad hoc" basis to the level of government which has the power to make decisions in particular areas of interest. However, it cannot be denied that several of its characteristics indicate some centralist direction. The industry has a strong orientation to export markets, which is an area of prime federal responsibility. Many of its companies operate nationally and are dependent on cross-country transportation networks. It would clearly be easier for them to deal with one set of labour codes, pollution regulations, construction standards and the like. Moreover, they are certainly in favour of the free movement of capital, labour and products.

On the other hand, the provinces are perceived as being more closely involved in the practical aspects of the day-to-day administration of policy. There is also the pragmatic factor that individual projects mean more to them.

It seems that there are two options open to solve the problems of proliferating policies and regulations--disentanglement or cooperation.

To achieve "disentanglement", a complete review and assessment of the responsibilities presently shared by the two senior levels of government would have to be undertaken with the ultimate objective of reducing the areas of overlap to a minimum. The success of such an exercise would be entirely dependent on the extent of "give and take" between the federal and provincial governments. There would also have to be more than passing recognition by all concerned that the role and importance of minerals in today's world just cannot be compared with what they were when the BNA Act was drawn up.

The other option, one of "cooperation", appears to be more realistic. Governments have before them the constructive example of the Federal/Provincial Resource Taxation Review, and while cooperation is a

fragile method and progress is often extremely slow, a major advantage over disentanglement would be that broad national goals and guidelines could be formulated within the context of both federal/provincial and interprovincial policies. In short, with cooperation, control and responsibility would be shared; with disentanglement, the problem of control might be solved but the problem of assigning responsibility would worsen.

Policies affecting the mineral industry will inevitably continue to be greatly influenced by the federal/provincial relationship. To the extent that national policies in the mineral field emerge, they will require intergovernmental collaboration. We believe that industry should be more involved than it has been in the past in intergovernmental cooperation and consultative process. Not only should its views be useful to the governments concerned, but industry participation would also minimize the likelihood of it being caught in the grindstone of intergovernmental conflict as was experienced in the 70s. It is our view that effective policy making in Canada requires two kinds of consultation and partnership: between levels of government, and between all governments and the private sector.

FUNDAMENTAL NEEDS OF THE CANADIAN MINING INDUSTRY

Mining has always played a leading role in Canadian economic development. It has served to open up many of Canada's frontier areas, has stimulated the establishment and growth of many secondary, tertiary, and service industries and has contributed in a major way to the viability of Canada's balance of trade and payments.

Even though the Canadian economy has matured to a point where many other productive sectors will play an increasing role, Canada will always continue to rely heavily on the products of its mining industry to pay its way in an increasingly competitive world.

It is, therefore, a measure of both regional and national interest for governments and industry to coordinate their efforts so that policies and conditions can be put in place which will encourage the growth and future prosperity of the industry.

In Canada, we possess two of the three essential requirements which can ensure success: ample mineral endowment, and the technology to develop it.

The third requirement is a favourable "domestic climate". This can be attained provided our two senior levels of government and industry approach the matter in a spirit of true understanding and with conciliatory attitudes.

The mining industry recognizes that no constitution will be oriented to the particular needs of one sector or another. What it must do, however, is provide the necessary framework so that a clear division of responsibility and powers can be established, and the respective level of government concerned can proceed, unimpeded, to take the necessary actions. Moreover, any new arrangement must anticipate that federal and provincial aspirations will continue to evolve and change.

There must be mechanisms to accommodate that process, if Canada is to avoid a repeat of the intergovernmental conflict of the past decade.

In designing a governing framework and more particularly an appropriate "economic climate", several of the industry's characteristics should be specially noted:

1. Consistency and Stability

Mining normally requires long-range planning and large-scale capital investment. On average, lead times are of the order of six to ten years between the discovery of a mineable deposit and the coming on-stream of the new mine. An investment of up to \$300 million is not untypical of what may be required to develop a large base metal mine.

In light of these characteristics, the overriding need to encourage exploration and new mine development is consistency and stability in the overall regulatory and taxation regime.

2. Free Movement of Capital, Labour, Products and Services

Mining is a truly national industry. It carries on its activities from coast to coast and from the southern border to the high Arctic. Many of the leading mining companies operate mines and/or mills and smelters in several provinces and in the Territories. A number of companies also depend on each other either for smelter concentrate feed or for smelter/refining facilities. The free movement of capital, labour, products, and services across the country is, therefore, an essential requirement.

3. Competitiveness

Mining is export-oriented. Canadian minerals are currently exported to some 90 different markets and mineral exports of all kinds represent approximately one-third of the country's total exports. These

sales are made against increasingly strong international competition, which will inevitably grow as additional mineral-rich countries develop their resources. Further, the industry is a price "taker"--we cannot always pass on cost increases to our customers. To maintain its share of mineral world demand, and hopefully expand it, the Canadian mining industry must have access to the best procurable technology and must keep a tight rein on its costs.

4. Taxation

Implicit to international competitiveness is a realistic tax regime which takes account of the cyclical nature of mineral markets and recognizes the need for the mining industry to retain a sufficient share of its earnings in buoyant times to offset the depressed periods which inevitably follow.

This cyclicity is indeed one of a wide number of differences that are evident between the mining industry and the oil and gas industries. Others occur in such areas as pricing, marketing, the relative impact on regional development, the contribution to the balance of payments, and patterns of ownership and control. These different characteristics should be given recognition in determining taxation measures applicable to the mining industry.

Moreover, it is important to recognize that conditions under which Canada's mining industry will be called upon to operate in future years will be very different from what they are today. If Canada is to retain its position as a leading world mineral supplier, it may well be that governments will have little other option than to demonstrate increased flexibility and realism in their resource taxation measures. In the final analysis, taxation must be restricted to an aggregate level that the mining industry can afford to sustain and still remain competitive for both markets and capital.

5. The Environment

A further requirement is a set of environmental policies and regulations which do not strive for "a perfection not natural to the natural environment". Recognition must be given to the unescapable fact that if minerals are to be made available, and they are certainly essential to our human society, some disturbance of the natural environment is bound to occur as ores are extracted and processed. A balance is required which will lie appropriately between unrestricted exploitation and untouchable preservation. This applies particularly to northern areas of Canada, where much of the new mining projects will develop in the future.

6. Harmonization of Policies and Their Administration

Where provinces have jurisdiction, or where jurisdiction is shared, policies and their administration, to the extent possible, should be increasingly standardized and made compatible to decrease industry costs of compliance without detracting from policy intent.

7. Human Resources

Mining occurs where the ore is, and this frequently means that operations are located in remote areas. To attract and retain employees in such areas constitutes a real problem for the industry. It cannot be denied that living conditions in these remote locations are considerably different than those experienced by a majority of other Canadians.

Mining also suffers from a serious shortage of skilled and professional workers. Because of the general remoteness of its operations, the industry is particularly vulnerable to such shortages. Moreover, the problem is aggravated by inter-sector competition for similar skills, at a time when so many major projects are being developed elsewhere.

The mining industry has identified the "manpower" problem as one of the most critical issues it will have to face in the years ahead. For our part, we are assembling the data to identify the specific problem areas and possible remedial measures. These will deal with training programmes, support of technical schools, employment of women and native people. From governments, the industry will be looking to unimpeded movement of labour across provincial boundaries, incentives for training, and special consideration for employees in remote and isolated locations.

SUMMARY

In the process of constitutional change, The Mining Association of Canada urges governments to guard against the erosion of Canadian unity. Such an erosion and the economic fragmentation it entails would be extremely detrimental to business and the investment climate.

It is the manner in which governments have interpreted and applied the constitutional framework, rather than the framework itself, which has affected growth and development in the mining industry. Perhaps the most serious effect of Canadian federalism in the past decade is the way the gradual expansion of federal and provincial responsibilities have undermined the coherence and predictability of the policy environment. More particularly, the intergovernmental conflict over resource revenues has been extremely harmful to the industry.

There is considerable overlapping of responsibility in the range of policy instruments, activities and programmes through which the two senior levels of government can influence corporate behaviour in the minerals sector. Without effective coordination, this can lead to the undermining of provincial initiatives with respect to one another, as well as with regard to federal policies.

Two options are open to solve the proliferation of policies and regulations: disentanglement or cooperation. The latter offers the advantage of shared control and responsibilities.

Effective policy making in Canada requires two kinds of consultation and partnership; between levels of government, and between governments and the private sector.

The fundamental needs of the Canadian mining industry are:

1. Consistency and stability in the domestic climate;
2. The free movement of capital, labour, products and services;
3. The ability to remain internationally competitive;
4. A realistic level of aggregate taxation;
5. A balance of economic and environmental interest and requirements;
6. The harmonization of governmental policies and of their implementation;
7. The ability to attract and retain a skilled work force.

THE MINING ASSOCIATION OF CANADA

The Mining Association of Canada is the national organization of the mining industry and is composed of companies engaged in mineral exploration, mining, smelting, refining and semi-fabrication. Its membership includes producers of base metals, gold, silver, other precious metals, uranium, iron ore, molybdenum, and some industrial minerals such as asbestos and potash.

Member companies account for more than 95 percent of Canada's output of metals and major industrial materials.

The Association's main role is to project the views of the industry on a national scale and coordinate its efforts with those of government departments in regard to policies affecting exploration, mining and processing, and the development of exports. It also coordinates research within the industry, with emphasis on such matters as rock mechanics, metallurgy and other technical developments, and the disposal of industrial wastes.

The MAC works in close cooperation with the Canadian Institute of Mining and Metallurgy, the industry's professional and technical body, the provincial mining associations, the chambers of mines and other similar groups across Canada.

LIST OF MEMBER COMPANIES

Advocate Mines Limited
Algoma Steel Corporation, Limited The - Algoma Ore Division
Allan Potash Mines
ASARCO Incorporated - Buchans Unit
Asbestos Corporation Limited
Bethlehem Copper Corporation
Brenda Mines Ltd.
British Newfoundland Exploration Limited
Brunswick Mining and Smelting Corporation Limited
Caland Ore Company Limited
Camflo Mines Limited
Campbell Chibougamau Mines Ltd.
Campbell Red Lake Mines Limited
Canada Tungsten Mining Corporation Limited
Carey Canada Inc.
Cassiar Resources Limited
Central Canada Potash
Cliffs of Canada Limited
Coast Copper Company, Limited
Cominco Ltd.
Consolidated Canadian Faraday Limited
Conwest Exploration Company Limited
Craigmont Mines Limited
Cyprus Anvil Mining Corporation
Denison Mines Limited
Dickenson Mines Limited
Discovery Mines Limited
Dome Mines Limited
Du Pont of Canada Exploration Limited
Eldorado Nuclear Limited
Esso Minerals Canada
Falconbridge Copper Limited
Falconbridge Nickel Mines Limited
Giant Yellowknife Mines Limited
Gibraltar Mines Limited
Gulf Minerals Canada Limited
Heath Steele Mines Limited
Hollinger Argus Limited
Hudbay Mining Ltd.
Hudson Bay Mining and Smelting Co., Limited
Inco Limited
Indusmin Limited
International Minerals & Chemical Corporation (Canada) Limited
Iron Ore Company of Canada

Johns-Manville Canada Inc.
Kerr Addison Mines Limited
Labrador Mining and Exploration Company Limited
Lac d'Amiante du Quebec, Ltée
Lamaque Mining Company (1964) Limited
Lolor Mines Limited
Madsen Red Lake Gold Mines, Limited
Mattabi Mines Limited
McIntyre Mines Limited
Metallgesellschaft Canada Limited
Mines Gaspé
Newmont Mines Limited
Noranda Mines Limited
Onakawana Development Limited
Pamour Porcupine Mines, Limited
Pan Ocean Oil Ltd.
Patino Mines (Quebec) Limited
Pine Point Mines Limited
Placer Development Limited
Potash Company of America
QIT - Fer et Titane Inc.
Quebec Cartier Mining Company
Rayrock Resources Limited
Rio Algom Limited
Rycon Mines Limited
Selco Mining Corporation Limited
Shell Canada Resources Limited
Sherritt Gordon Mines Limited
Sigma Mines (Quebec) Limited
Steep Rock Iron Mines Limited
Sunro Mines Limited
Supercrest Mines Limited
Teck Corporation Limited
Texasgulf Metals Company
Union Minière Explorations and Mining Corporation Limited
United Keno Hill Mines Limited
United Siscoe Mines Limited
Uranerz Exploration and Mining Limited
Uranengesellschaft Canada Limited
Western Mines Limited
Willroy Mines Limited