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Mineral resources governance: The case of Canadian First Nations' mining policies

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1. Introduction

To remedy a locally defined gap in the mineral resources governance system, Canadian First Nations are developing their own governance instruments. Scholars note that governance actors, particularly First Nations peoples and mining proponents, find a lack of clarity within the existing system. Papillon & Rodon (2017), for example, contend that legal uncertainty has prompted proponents to identify alternative governance instruments, such as IBAs, to secure First Nations' development consent. For proponents, IBAs provide a mechanism to gain access to traditional territories and their mineral resources. For First Nations, IBAs can represent an opportunity to establish formal relationships with proponents and to negotiate opportunities for reducing mining risks and securing socio-economic benefits for affected communities. History has shown, however, that IBAs tend to favour the proponent. In his study of 41 agreements between Australian Indigenous peoples and mining proponents, O'Faircheallaigh (2008) found that IBAs did not always deliver the anticipated benefits nor expected high levels of environmental and social protection.

This study examines mineral resources governance in the context of Canadian First Nations' mining policies. These policies articulate guiding principles for development, such as meaningful consultation, consistency with First Nations' land use plans, protection of cultural activities and heritage, environmental stewardship, socio-economic benefits, intergenerational equity and sustainability; and they clarify First Nations' goals, values and decision-making processes for proponents and regulators (Stano & Lehrer, 2013).

Mineral resources governance is the system of authoritative norms, rules, institutions and practices by which actors, from the global to the local, manage the mining lifecycle. Key objectives of mineral resources governance are the enhancement of positive outcomes from mining and the mitigation of adverse impacts. Gaps in the governance system, however, are fostering a proliferation of new governance instruments.

This research adopts Pedro et al.'s (2017, p. 158) extractive sector governance system as depicted in Figure 1 below. The governance system operates as a holistic, multi-level network of formal and informal arrangements, incorporating myriad actors, governance institutions and instruments that act at the international, regional, national, local and project levels (Pedro et al., 2017).

Figure 1: Key components of extractive sector governance
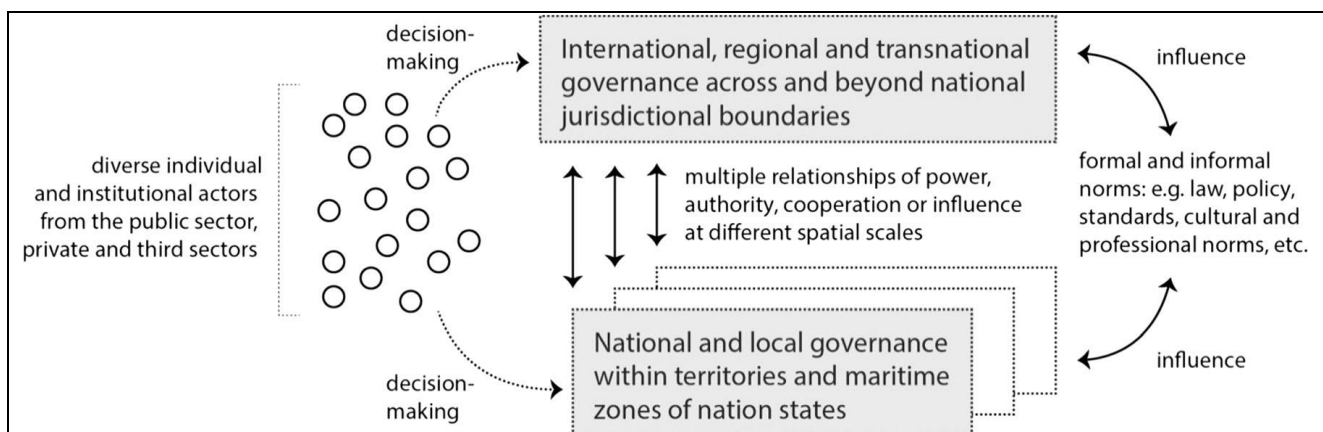
Governance instruments can be categorised into three tiers: international agreements; national laws, policy and regulations; and voluntary and private standards (UNEP, 2020). International agreements of relevance to this study include the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Canada is a signatory to both instruments. ICESCR is a multilateral, legally binding treaty that came into force in 1976. Article 1 of the treaty states that: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (UN, 1976, p. 1). For First Nations peoples, self-determination cannot occur without access to, and control over, their

land; land which also provides for their economic, cultural and spiritual health (Harvard Law School, 2010; Muehlebach, 2003). UNDRIP, a non-binding instrument, came into force in 2007. It is considered the standard against which State practices and interactions with indigenous peoples are measured (Papillon & Rodon, 2017). Of particular interest to this research is Article 32, which requires that the State obtains free, prior and informed consent (FPIC) from indigenous peoples for "any project affecting their lands or territories and other resources". Article 32 also requires that adverse impacts be mitigated and mechanisms provided for "just and fair redress" (UN, 2007, p. 12).

At a national level, key governance instruments include the Constitution of Canada, case law and jurisprudence, and treaty law, which encompasses historic treaties and modern land claims agreements. There are approximately 1200 indigenous communities in Canada (Stano & Lehrer, 2013) and, as of 2016, 27 indigenous groups had signed comprehensive land claims agreements with the Crown (Alcantara, 2017). Indigenous rights in Canada are legally defined as *sui generis*; that is, communal rights stemming from a person's ancestrally based membership of an existing community. To establish indigenous rights in non-treaty areas, First Nations must satisfy a complex legal test that proves connection with the land prior to European contact and that the cultural activities undertaken on that land are essentially still the same (Stano & Lehrer, 2013).

Canada's *Constitution Act, 1982* provides indigenous peoples with what Papillon & Rodon (2017, p. 218) describe as "significant institutional levers to influence (without controlling) decision-making in land and resource development". The principal lever, they assert, is "the constitutional doctrine" of the duty to consult, which mandates that indigenous peoples are to be consulted as part of the regulatory approval process for mineral resources development projects. The consultation must represent "good faith efforts to understand each other's concerns and move to address them" (*Haida Nation v British Columbia*, 2004 3 S.C. R. 511 (Can) in Harvard Law School, 2010, p. 2). Duty to consult may be met by a range of actions, from simply providing notice of a proposed activity to "deep consultation", depending on the strength of the claim (Supreme Court of Canada, *Haida*, paras. 43–44, in Panagos & Grant, 2013). Procedural aspects of the duty may be delegated to third parties, including project proponents (*Haida* para. 53, in Papillon & Rodon, 2017, p. 219). The Supreme Court of Canada's jurisprudence on the duty to consult has not extended to a veto on government decision-making (Papillon & Rodon, 2017).

The primary regulatory mandate for mining in Canada rests with the provinces and territories, and the Crown claims ownership of most mineral rights. Provincial mining policies are based on two fundamental principles: 'significant governmental discretion' and 'free entry'. Under Canadian law, federal and provincial governments and their officials have been given significant discretionary powers in interpreting statutory goals and legal criteria. Pangagos & Grant (2013) argue that this discretion enables governments to prioritise miners' rights over the rights of First Nations using the auspice of 'the public interest'. The principle of free entry allows miners to enter Crown lands, including non-treaty First Nations' lands, to locate and stake mineral claims, and for the transfer of rights to discovered minerals from the Crown to the claimholder. Miners do not need to seek permission prior to engaging in mining-related activities on public lands (Panagos & Grant, 2013). Shifting this practice to an online system has expedited the claim-staking process. Miners must submit a Notice of Work (NOW) which is forwarded to the affected First Nations, who then have 30 days to respond. In its study of the Takla Lake First Nations' experience with mining in remote northern British Columbia (BC), the Harvard Law School found that free entry impacted the Crown's duty to consult, in that: "The tight deadline and the shortage of information to which First Nations have access have made it unrealistic to prepare an adequate response. In addition, the NOW process provides only limited environmental protection and takes place after some harm has occurred" (Harvard Law School, 2010, p. 3).

In Canada, legislative change is under way. Over the past three years, the Government of British Columbia and the Government of Canada have introduced legislation aimed at aligning their laws with UNDRIP. In November 2019, the provincial government passed the *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) which allows for the government to enter into agreements with a broader range of First Nations governments. It requires development of an action plan to achieve this alignment over time,

providing transparency and accountability. First Nations, however, have been critical of the speed (or lack thereof) at which the legislation is being implemented (FNLC, 2021). At the national level, Canada's Senate voted in June 2021 to pass Bill C-15, the *United Nations Declaration on the Rights of Indigenous Peoples Act* (the UNDRIP Act), into law. The government must prepare an action plan to achieve the objectives of UNDRIP within three years.

This overview of mineral resources governance in Canada raises a critical question: in practice, which actors are controlling the governance system? According to the UNEP (2020), mineral resources governance traditionally has been driven by mining companies and the State, who share the revenue derived from mining. This position is supported by GIZ (2003), which contends that mining companies and the State are joint co-producers of governance, are the objects of governance instruments and they tend to advocate for (self-serving) governance outcomes. This point is exemplified by the tendency of mining companies and the State to greatly exaggerate the economic benefits of mining and downplay its adverse environmental and social risks (Pedro et al., 2017). By controlling governance decision-making, these powerful actors have reaped the benefits from mining while local communities have borne the costs.

2. Methodology

2.1 Research design

The overarching aim of this research is to investigate how Canadian First Nations' mining policies are addressing a locally defined gap in the mineral resources governance system. The study explores three questions:

1. What are the objectives of Canadian First Nations' mining policies?

2. What are the key components of these policies?

3. How does their content differ across First Nations' contexts?

A multi-method, qualitative research design was adopted for the study.[1] Qualitative methods were selected because they align with the research questions and enable more detailed exploration of a limited number of cases (mining policies). While quantitative data were collected, they were not analysed using traditional quantitative methods. These data provided context for the cases and the First Nations that have developed mining policies. The research is, therefore, considered to be qualitative in nature. Table 1 summarises the research design.

Table 1: Components of the research design

Data type	Data source	Analysis
Publicly available Canadian First Nations' mining policy documents	• First Nations' websites • Tribal council websites • Canadian Government's First Nation Profiles and Interactive Map	• Thematic analysis • Comparative analysis
Census data (2016) and general information	• Canadian Government's web pages: Indigenous peoples and communities	• Descriptive statistics
Publicly available quantitative datasets → Maps	• Canadian Government's First Nation Profiles and Interactive Map • Aboriginal Lands of Canada Legislative Boundaries • Cumulative Global Human Modification dataset • Aqueduct Water Risk Atlas • S&P Capital IQ Pro	• Visual analysis of the data presented in 2 maps

A boundary for the research sample was established to guide the data generation process. For this study, 'mining policies' includes resources development policies, resources decision-making policies, best practices codes for the minerals sector, exploration guidelines for the mining industry, and consultation protocols for mining activities. From an industry sector perspective, oil and gas policies were excluded from the study.

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[1] Originally, the research was planned around a case study of the Northern Secwepemc te Qelmucw's mining policy using infield observation, surveys and semi-structured in-depth interviews. Fieldwork was not possible due to COVID travel restrictions, so the research was redesigned as a desktop study. The author thanks the Northern Shuswap Tribal Council for its generosity of time and its willingness to explore the potential for codesigning a research project around the NStQ's mining policy.

First Nations policies were considered within the sample boundary while mining policies developed by Inuit and Metis peoples were considered outside it. Decisions around identity were based on Aboriginal peoples' self-identification.

A rigorous three-stage online search protocol was used to identify publicly available mining policies and to determine the extent that this governance Instrument is being used by First Nations in Canada. The protocol is presented in Figure 2.

A. Online search
1. Province First Nations list
2. First Nation name (FN) alone to find FN's website
3. FN + "policy"
4. FN + "mining"
5. FN + "resources"
6. FN + "agreement"
7. FN + "treaty"

Step 1 always run. Next steps run if previous steps did not show positive results.

B. First Nations websites
1. Departments
   - Land, resources, economic development, community development
2. Administration
   - Policies, laws, bylaws, agreements, treaty
3. Documents
   - Policies, laws, bylaws, agreements, treaty

Steps 1, 2 & 3 run based on the information found on each FN's website.

C. Tribal council websites
1. Departments
   - Land, resources, economic development, community development
2. Administration
   - Policies, laws, bylaws, agreements, treaty
3. Documents
   - Policies, laws, bylaws, agreements, treaty
4. Communities/FN groups

Steps 1, 2, 3 & 4 run based on the information found on each tribal council's website.

Figure 2: A three-step online search protocol was used to identify publicly available mining policies. The Canadian Government's First Nation Profiles and Interactive Map was also used to identify the names of First Nations.

Table 2: An overview of the research sample

#	First Nation (broad group)	First Nations	Tribal council	Province/ territory	Mining policy name	Date of issue	Pages
1	N/A	**Atkameksheng Anishnawbe (Whitefish Lake)**	Mamaweswen, The North Shore Tribal Council	Ontario	Atikameksheng Anishnawbek Mineral and Aggregate Resources Development Policy	2020	12
2	**Champagne & Aishihik**	Champagne	N/A	Yukon, British Columbia	Mineral Industry Code for Quartz and Coal Activities	2013	26
		Aishihik					
3	**Cree Nation** (Eeyou)	Chisasibi	N/A	Québec	Cree Nation Mining Policy	2010	10
		Eastmain					
		Mistissini					
		Nemaska					
		Oujé-Bougoumou					
		Waskaganish					
		Waswanipi					
		Wemindji					
		Whapmagoostui					
4	**Innu Nation**	Mushuau Innu	N/A	Labrador	Mineral Exploration in Nitassinan: A Matter of Respect (Innu Nation Guidelines for the Mining Industry) *No longer on website*	1995	10
		Sheshatshiu					
5	N/A	**Na-cho Nyak Dun**	N/A	Yukon, Northwest Territories	Guiding Principles Towards Best Practices Codes for Mineral Interests within First Nation of Na-Cho Nyak Dun Traditional Territory	2008	8

6	**Northern Secwepemc te Qelmucw**	Tsq'escen' (Canim Lake)	Northern Shuswap Tribal Council	British Columbia	Northern Secwepemc te Qelmucw Mining Policy	2014	54
		Stswecem'c Xgat'tem (Canoe Creek)					
		T'exelc (Williams Lake)					
		Xats'ull (Soda Creek)					
7	N/A	**shishálh (Sechelt)**	N/A	British Columbia	shishálh Nation Lands and Resources Decision-Making Policy	2013	58
8	N/A	**Taku River Tlingit**	N/A	Yukon, British Columbia, Alaska	Taku River Tlingit First Nation Mining Policy	2019 (updated from 2007)	22
9	N/A	**Temagami**	N/A	Ontario	Temagami First Nation & Teme Augama Anishnabai Consultation Protocol for Mining Activities in N'Daki Menan	2013	12
10	N/A	**Teslin Tlingit Council**	N/A	Yukon & British Columbia	Teslin Tlingit Council Mining Policy	2008	22
11	**Tŝilhqot'in Nation**	?Esdilagh	Tŝilhqot'in National Government	British Columbia	Tŝilhqot'in National Government Mining Policy (draft for distribution) *No longer on website*	2014	20
		Tl'etinqox					
		Tl'esqox					
		Tŝideldel					
		Xeni Gwet'in					
		Yunesit'in					

2.2 Research sample

Fourteen mining policies were collected from the online search. Two documents were identified as Inuit policies and were discarded in accordance with the sample criteria. A third document, *Below the Surface: Anishinabek Mining Strategy*, was also discarded. On review, it was identified as a report providing feedback on modernising the Ontario Mining Act rather than a mining policy. The final research sample comprised 11 policies, representing 28 First Nations within 11 broader First Nations groups, and spanning six provinces/territories (and Alaska, USA). Three of the mining policies relate to First Nations' territories in both the Yukon and British Columbia, one in the Yukon and Northwest Territories, three in British Columbia, two in Ontario, and one each in Québec and Labrador. Two of the policies – the Innu Nation's guidelines and the Tŝilhqot'in Nation's mining policy – are no longer hosted on these First Nations' websites. The documents were sourced while they were available to download. The Innu Nation's guidelines are still available from MiningWatch Canada's [website](#). The Tŝilhqot'in Nation's mining policy is a draft document for distribution. Table 2 (above) provides an overview of the research sample.

2.3 Analysis

Once the mining policies were collected, NVivo 12 was used to help organise and categorise the data. A codebook was developed within the NVivo database to guide the coding process. A preliminary thematic framework was developed by the author and a research assistant during a coding workshop. The researchers coded the Northern Secwepemc te Qelmucw (NStQ) mining policy together, discussing the merits of each suggested theme and undertaking a series of iterations until agreement was reached on the theme, its definition and application. The NStQ policy was selected due to the author's familiarity with it and because it is one of the most comprehensive of the policies collected. The author then coded the 10 other policies according to the themes in the codebook. Further themes were developed inductively from the data. The themes were consolidated where appropriate to form a hierarchy of themes and subthemes (see the summary in Table 3). The codebook was progressively updated. A comparative analysis was then conducted of the mining policies and the themes and subthemes identified.

Table 3: Coding themes and an example of subthemes

Themes	Subthemes of the PRINCIPLES theme
Administration	Benefit sharing
Agreements (general)	Collaboration
Approvals process (non-FN)	Community agreement
Consultation	Demonstrate respect
FN terms and conditions	Early, meaningful and ongoing engagement
FPIC	Employment, training and capacity building
Governance	Enhance reconciliation
Policy objectives	Intergenerational equity
PRINCIPLES	Land, water and resources stewardship
Title and rights	Open, transparent and full disclosure
Traditions	Polluter pays
	Precautionary principle
	Proponent funds FN participation
	Protect FN rights

Protect heritage
Restore impacted land, water and resources
Shared decision-making
Traditional activities
Traditional knowledge and other expertise

The geographic location of First Nations with mining policies was mapped and overlaid with publicly available social and environmental data by a GIS specialist. The specialist used the Aboriginal Lands of Canada Legislative Boundaries dataset to map Indian reserves, land claim settlement lands and Indian lands; the Cumulative Global Human Modification dataset to map areas that have been modified by human activity; the Aqueduct Water Risk Atlas to map areas of water risks (quality, quantity and regulation); and S&P Capital IQ Pro to locate active mining operations. To avoid overcrowding, the data were presented on two maps:

1. Location of the 28 First Nations (within 11 broader First Nations groups) with mining policies; Indian reserves, land claim settlement lands and Indian lands; active mines; and *cumulative human modification* (see Figure 3)

2. Location of the 28 First Nations (within 11 broader First Nations groups) with mining policies; Indian reserves, land claim settlement lands and Indian lands; active mines; and *water risks* (seep Figure 4).

The author then conducted visual analysis of the maps seeking to identify any patterns in the geographic location of First Nations' territories covered by the mining policies, but none were identified.

Figure 3: First Nations with mining policies, active mines, Aboriginal lands and cumulative global human modification.
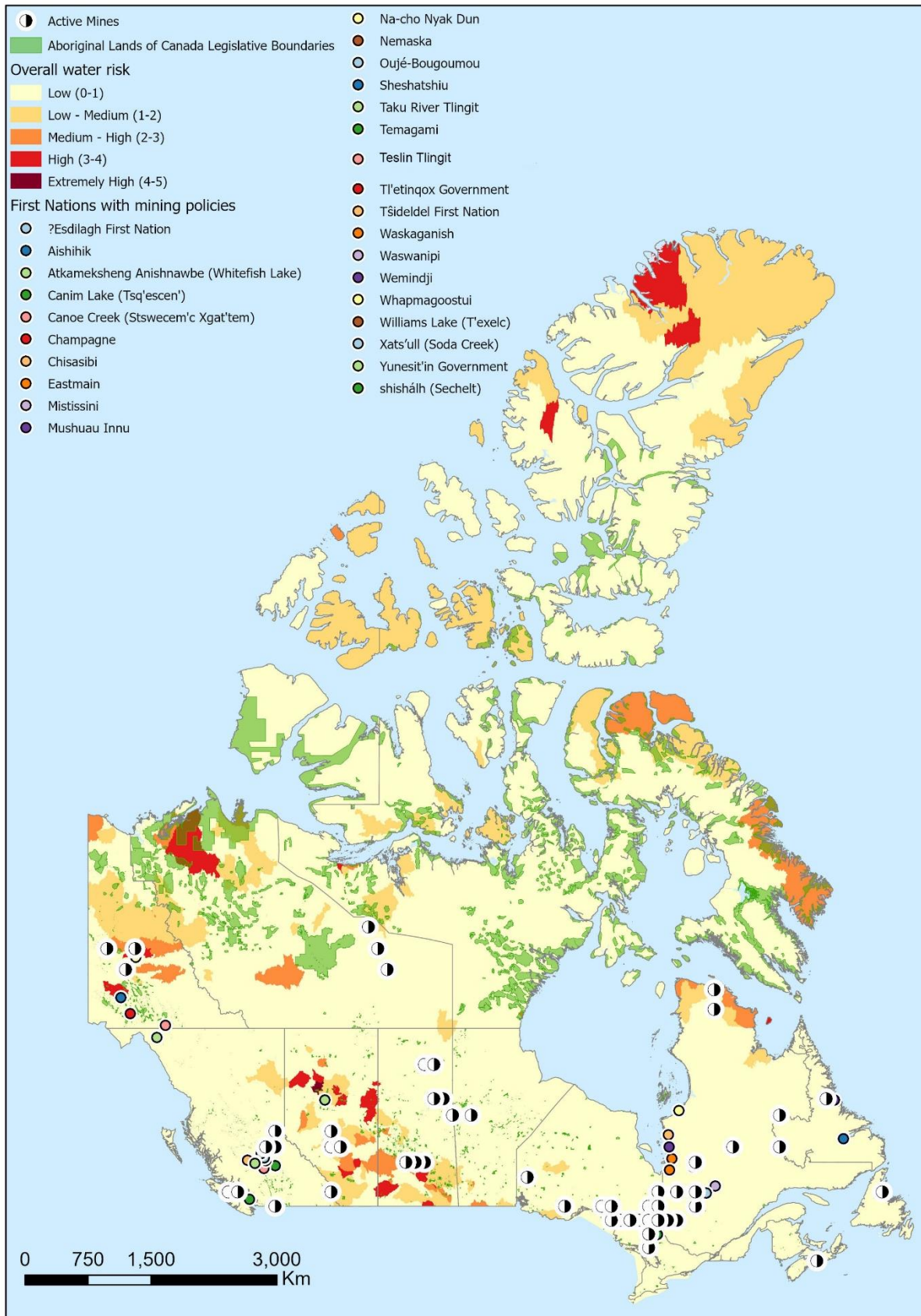
Figure 4: First Nations with mining policies, active mines, Aboriginal lands and overall water risk.

3. Overview of 11 First Nations

To provide some context for the research, this section presents an overview of the 11 broader First Nations groups that have published mining policies.

3.1 Atikameksheng Anishnawbek

Atikameksheng Anishnawbek forms part of the Ojibway Nation of north-central Ontario and its people are descended from the Ojibway, Algonquin and Odawa nations. It has a registered population of 1390. The Atikameksheng Anishnawbek territory, located west of the Greater City of Sudbury, covers 19,750ha of predominantly deciduous and coniferous forests, and there are 18 lakes within its boundaries. This First Nation is a signatory to the Robinson-Huron Treaty of 1850 which grants the Province of Canada access to the north shores of Lake Huron for settlement and mineral extraction in exchange for hunting and fishing rights, an annuity and reservation from the surrender of specific lands. Atikameksheng Anishnawbek has a custom electoral system and nation administration is managed by the Mamaweswen, The Shorth Shore Tribal Council (Atikameksheng Anishnawbek, 2021; Government of Canada, 2021).

3.2 Champagne and Aishihik First Nations

The Champagne and Aishihik First Nations (CAFN), or *Shadhäla Äshèyi yè Kwädän* in its own language, has a population of more than 2100 and is one of the largest of the 14 Yukon First Nations. It is named after the historic settlements of *Shadhäla* (Champagne), located on the Dezadeash River, and *Äshèyi* (Aishihik), at the headwaters of the Alsek River drainage. The CAFN's traditional territory spans 41,000km^2, including 29,000km^2 in the Yukon and 12,000km^2 in northwest British Columbia. The eastern edge of CAFN's territory lies in the Yukon River watershed, while the larger, westerly portion lies in the Alsek River watershed which flows into the Gulf of Alaska. The territory includes much of Kluane National Park and Reserve and all the Tatshenshini-Alsek Park. The area includes forests, mountains, rivers, lakes, glaciers and diverse resources. The CAFN is a self-governing First Nation under the Yukon First Nations Self-Government Act, having signed a final agreement and self-government agreement in 1995 (Champagne and Aishihik First Nations, 2021; Government of Canada, 2021).

3.3 Cree Nation

The Cree (Eeyou) Nation is a collective of nine First Nations – the Chisasibi, Eastmain, Mistissini, Nemaska, Ouié-Bougoumou, Waskaganish, Waswanipi, Wemindji and Whapmagoostui – which are united through their common interests, traditional values and shared culture. Combined, the Cree Nation has a population of more than 18,000. Its traditional territory (Eeyou Istchee), covering 400,000km^2, is primarily located in northern Québec and includes the lands on the eastern shore of James Bay and south-eastern Hudson Bay, as well as the lakes and rivers that drain into them. Eeyou Istchee includes 300 'traplines', which are traditional family hunting and trapping grounds. In addition, traditional Cree territory includes lands which the Cree have historically occupied in Ontario (Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government, 2021; Government of Canada, 2021).

Each Cree Nation is administered independently through its local government. Each elected Chief sits on the Board of Directors of the Grand Council of the Crees and the Council of the Cree Nation Government to address common Cree Nation issues. All nine nations are incorporated into the treaty – the James Bay and Northern Quebec Agreement. The Cree Nation is in the process of signing a self-government agreement with the Canadian Government (Grand Council of the Crees (Eeyou Istchee) / Cree Nation Government, 2021; Government of Canada, 2021).

3.4 Innu Nation

The Innu inhabit an extensive territory on the Labrador Peninsula known as Nitassinan. They are distinct from but closely related to Eastern Cree groups that inhabit the western side of the peninsula. The Innu were traditionally a nomadic people and hunting and fishing remain important activities. There are around 3200 people within the Innu Nation, most of whom live in the communities of Sheshatshiu (Sheshatsiu Innu) and Natuashish (Mushuau Innu). In 1976, the Innu people established the Naskapi Montagnais Innu Association (NMIA) to protect their interests, their land and their rights. In 1990, the NMIA changed its name to the Innu Nation. Its mandate is "to speak as one voice to protect the interests of the Innu people and to oversee all its political and business affairs" (Innu Nation, 2021). Residents of Sheshatshiu and Natuashish elect their own band council and the chiefs of both councils are members of the Executive Council of the Innu Nation. In 2006, the Innu of Labrador were formally recognised under the Indian Act. The Innu Nation is involved in ongoing land claim and self-governance negotiations with the federal and provincial governments. It has signed two incremental treaty agreements with Fisheries and Oceans Canada and Parks Canada. These are legally binding pre-treaty agreements to address Section 35 of the *Constitution Act, 1982* (Innu Nation, 2021; Government of Canada, 2021).

3.5 Na-cho Nyak Dun

The First Nation of Na-Cho Nyak Dun (Big River People) is the northern-most community of the Northern Tutchone language and culture group, and it has a population of 600. The Na-Cho Nyak Dun's traditional territory covers 162,456km^2; 131,599km^2 of which is in the Yukon and 30,857km^2 in the Northwest Territories. The territory has abundant natural resources. Historically, the Na-Cho Nyak Dun lived in the area surrounding Mayo and travelled across its territory at various times of the year for hunting, fishing and gathering. The land has been mined for sliver. The First Nation of Na-Cho Nyak Dun has been very active in land claims negotiations and was instrumental in guiding the Council of Yukon First Nations through the 1984 breakdown in negotiations and the signing of the 1993 agreements, which paved the way for self-government and the retention of indigenous rights on settlement lands. The final agreement and self-government agreement were signed in 1995. Under the land claims agreement, the First Nation now owns 4,739.68km^2 of settlement lands and has received compensation of $14,554,654, which has been placed in a trust (First Nation of Na-Cho Nyak Dun, 2021; Government of Canada, 2021).

3.6 Northern Secwepemc te Qelmucw

The Northern Secwepemc te Qelmucw (NStQ), meaning Shuswap people of the north, are an Interior Salish people who share a common ethnic origin, culture, historical tradition, language and governments. Traditionally a semi-nomadic society, the NStQ used a network of temporary camps and permanent winter villages across its traditional territory, Secwepemcúl'ecw. Secwepemcúl'ecw spans more than five million hectares north to Barkerville, encompassing the town of 100 Mile in the south, east to the Rocky Mountains and west to the Fraser River. The NStQ has a population of more than 2500 and has a mixture of electoral systems. Stswecem'c Xgat'tem uses the electoral process under the First Nations Electoral Act while the other three nations have custom electoral systems. Nation administration is managed by the Northern Shuswap Tribal Council. The NStQ is at Stage 5 of treaty negotiations with the Canadian Government. As part of these negotiations, it signed an agreement-in-principle in July 2018 (Northern Shuswap Tribal Council, 2021; Government of Canada, 2021).

3.7 shíshálh

The shíshálh Nation's traditional territory (swiya) lies between Queens Reach in Jervis Inlet and Howe Sound on the south coast of British Columbia. It encompasses 1031.7ha of reserve land. Historically, there were four main settlements at kalpilin (Pender Harbour), ts'unay (Deserted Bay), xenichen (Jervis Inlet) and tewankw near Porpoise Bay. This First Nation has declared Aboriginal Title and Aboriginal Rights to its territory, including the lands, waters, and resources. It aims to achieve greater independence, wellness and

self-sufficiency through the protection, promotion and practice of shíshálh culture, language and laws within its swiya. The shíshálh Nation has a registered population of 1482 and operates under the Sechelt Indian Band Self-Government. It has been self-governing since 1986 (shíshálh Nation, 2021; Government of Canada, 2021).

3.8   Taku River Tlingit

The Taku River Tlingit First Nation (TRTFN) is located in Atlin, British Columbia, a small remote community with a registered population of 439. It has a custom electoral system. Its traditional territory covers more than 40,000km^2 of high mountains, forests and rivers across British Columbia, the Yukon and Alaska. The TRTFN has reached Stage 4 of its treaty negotiations with the Canadian Government and is negotiating an agreement-in-principle. "As responsible decision makers we are embarking on a course necessary to ensure the preservation of our wildlife and fisheries. This will assist us in ensuring the preservation of what is Tlingit," the TRTFN states on its website (TRTFN, 2021; Government of Canada, 2021).

3.9   Temagami First Nation and Teme-Augama Anishnabai

The Temagami First Nation and Teme-Augama Anishnabai (Deep Water by the Shore People) are part of the Anishinaabe and are located on Bear Island in north-eastern Ontario. The Temagami First Nation has a registered population of 1000 but only 200 of them live on Bear Island. The island (293.4ha of First Nation land) represents only a small part of the Anishinaabe's traditional territory or Nindakiiminan (n'daki menan), which covers 10,000km^2. The Temagami First Nation has an operational framework agreement, which is a government-to-government agreement to opt out of the land management sections of the Indian Act and take over management control of their land and natural resources. The Temagami is considered part of the Robinson-Huron Treaty and has a custom electoral system (Temagami First Nation and Teme-Augama Anishnabai, 2013; Government of Canada, 2021).

3.10   Teslin Tlingit Council

The Teslin Tlingit has a shared ancestry with the coastal Tlingit people of southeast Alaska and Inland Tinglit people of Taku River and Carcross/Tagish. The name Teslin is derived from the Inland Tlingit word 'tás ten', meaning long sewing sinew, which refers to the narrow, 148km-long Teslin Lake flowing from British Columbia into southeast Yukon. The Teslin Tlingit First Nation has a registered population of 606, half of whom live in the village of Teslin and half in the city of Whitehorse, both in southern Yukon. Until the formation of permanent settlements with the construction of the Alaska Highway in 1942, the Teslin Tlingit people practiced a semi-nomadic life and subsisted on hunting, fishing and gathering. Teslin Tlingit is a self-governing nation under the Yukon First Nations Self-Government Act, having signed a final agreement and self-government agreement in 1996 (Teslin Tlingit Council, 2021; Government of Canada, 2021).

3.11   Tŝilhqot'in

The Tŝilhqot'in First Nation, located in central British Columbia, comprises six autonomous nations: ?Esdilagh (Alexandria), Tl'etinqox (Anaham), Tŝideldel (Redstone), Yunesit'in (Stone), Xeni Gwet'in (Nemiah) and Tl'esqox (Toosey). The Tŝilhqot'in has a registered population of 4034. On 26 June 2014, for the first time in Canadian history, the Supreme Court of Canada declared the Tŝilhqot'in Nation aboriginal title to a small portion of the territory within the area of Xeni Gwet'in (or Nemiah Valley). The Supreme Court further declared that British Columbia had breached its duty to consult with the Tŝilhqot'in in its planning and forestry authorisations. The Tŝilhqot'in Decision allows for full ownership, benefit and control of the Aboriginal title area by the Tŝilhqot'in people. In 2006, the Tŝilhqot'in and the Government of British Columbia signed the Nenqay Deni Accord. This jointly developed accord is the first of its kind, based directly on the input from the Tŝilhqot'in communities about their priorities and aspirations. The accord led to the Gwets'en Nilt'l Pathway Agreement (pathway to self-determination), signed by the Tŝilhqot'in, the Government of British Columbia and the Canadian Government in 2018. The aim of the agreement is to set

out a shared vision, mutual commitment and steps towards lasting reconciliation and it is grounded in recognition and respect for the rights of the Tŝilhqot'in for self-determination and self-governance. The Xeni Gwet'in Nation's government is negotiating a framework agreement with the Canadian Government (Tŝilhqot'in, 2021; Government of Canada, 2021).

4.   Results

This section presents the research results in three subsections that explore: the objectives of the First Nations' mining policies (function), the policy content (content) and policy structure (form).

4.1   Why do First Nations develop their own mining policies?

The 11 mining policy documents present nine key objectives for First Nations in developing their own mining policies. These objectives are presented in Figure 5.

Figure 5: Objectives of First Nations' mining policies

Nine of the First Nations clearly articulate the objectives of their mining policies in their policy documents. Of the remaining two, the Champagne and Aishihik Nations broadly discuss the intent of their policy and the Innu Nation refers to the expectation of respect from mining proponents but does not provide further information about its guideline objectives. The most common objective outlined is to establish the terms and conditions that need to be met before the First Nation is willing to consent to mining activities on its traditional territory. This objective includes providing a clear, consistent and effective decision-making process, presenting decision-making criteria and providing greater certainty for proponents. Nine of the First Nations include this objective in their policy documents. Some First Nations (e.g. shishálh, Champagne and Aishihik and Teslin Tlingit) provide flow charts of their decision-making processes.

An equally common objective is to clarify the extent of the First Nation's traditional territory. The primary mechanism used to do this is to provide a map outlining the territory boundary. Nine First Nations use this

mechanism. The Tŝilhqot'in Nation and the Atikameksheng Anishnawbek do not provide a map of their territories. Some First Nations provide a description of their territories in addition to maps (e.g. shishálh and Champagne and Aishihik). Seven First Nations include details of the person (or role) who proponents should contact to initiate engagement with the nation. Table 4 provides examples of statements from the mining policies that support each of the nine objectives identified.

Table 4: Mining policy objectives and supporting statements taken from the policy documents

Objective	Supporting statements
Agreements – parties work towards an agreement	• "To work towards an Agreement that can be executed as a standalone Agreement or as a schedule to a broader Agreement" (Atikameksheng Anishnawbek, 2020). • "All parties recognize that in order to implement these objectives, there must be a commitment to work together to reduce possible barriers that often prevent all parties from reaping the full benefits that industry has to offer. This may include the development of cooperative agreements to a specific party to modify, amend or strengthen existing policies where necessary" (Na-cho Nyak Dun, 2008).
Benefits – maximise benefits to First Nation (FN) communities	• "Maximize benefits to Tŝilhqot'in communities to the greatest extent possible" (Tŝilhqot'in Nation, 2014). • "The parties are committed to ensure that all NND citizens continue to receive the benefits derived from its mineral endowment. The parties are committed to work together to create opportunities that provide greater control and self-reliance for First Nation individuals, families and community. Through improved communication, the parties can build a better relationship that will ensure greater community participation in the development of employment, business, and land management opportunities" (Na-cho Nyak Dun, 2008).
Contact person – contact details of the person proponents should contact to initiate engagement on mining related issues	• "**Contacts** Please send Notices required by this Protocol by email. Temagami First Nation Bear Island Lake Temagami, ON P0H 1C0 Attention: Robin Koistinen, Lands and Resource Manager Tel: 705-237-8600 Fax: 705-237-8959 Email: robin.koistinen@temagamifirstnation.ca Attention: David Laronde, Resource Development Advisor Tel: 705-237-8600 Fax: 705-237-8959 Email david.laronde@temagamifirstnation.ca" (Temagami First Nation and Teme Augama Anishnabai, 2013). • "**Contacts information:** NND Lands & Resources Department P.O. Box 220 Mayo, Yukon YOB 1MO Phone: (867) 996-2265, ext 144 Fax: (867) 996-2267 Lands & Resources Manager Email: landsmanager@nndfn.com Na-Cho Nyak Dun Government Box 220 Mayo, Yukon YOB 1MO Ph: (867) 996-2265. Ext 209 Fax: (867) 996-2267 Executive Director Email: execdirector@nndfn.com Na-Cho Nyak Dun Development Corporation Box 338 Mayo, Yukon YOB 1MO Ph: (867) 996-2265 Fax: (867) 996-2267 Economic Development Officer Email: nnddc@nndfn.com Website: www.nnddc.ca First Nation of Na-Cho Nyak Dun website: www.nndfn.com" (Na-cho Nyak Dun, 2008).

Engagement – clear engagement process, consultation and accommodation	• "A key feature of the CAFN Mineral Industry Code is Pre-season and Post-season meetings that aim to foster understanding and agreement between CAFN and proponents with minimal bureaucracy. [….] The process is designed to create meaningful communication between CAFN and proponents and a common-sense approach to agreements, permit development, and monitoring" (Champagne and Aishihik, 2013). • "The parties recognize that access to and sharing of information is a key to the environmentally sound development and management of Yukon mineral resources. The parties will ensure effective decision-making through the impartial sharing of accessible and accurate information in a timely manner. It is recognized that some information may be subject to confidentiality and intellectual property considerations under the First Nation of Na-Cho Nyak Dun Traditional Knowledge Policy" (Na-cho Nyak Dun, 2008). "The parties will work together to establish appropriate cooperative agreements, which encourage and provide the opportunity for consultation and meaningful participation in the decision-making process. The parties will endeavor to ensure due process, notification and appropriate and timely participation in the matters of government and corporate policy and program development and decision-making" (Na-cho Nyak Dun, 2008).
Environment – protect the environment, outline FN environmental values, management system	• "Minimize negative impacts of mining and exploration to protect the environment and the continuity of the Tŝilhqot'in way of life" (Tŝilhqot'in Nation, 2014). • "The parties are committed to protect and maintain environmental integrity and minimize impacts on the environment. This initiative acknowledges that traditional culture is linked to nature and its strength is drawn from that relationship. It is further acknowledged that stewardship of the land and its resources is an integral part of culture and community well being" (Na-cho Nyak Dun, 2008).
Rights – protect interests and rights (including use of land for cultural purposes)	• "On the remainder of TTC Traditional Territory, TTC and its citizens have aboriginal rights and interests in the Yukon and aboriginal title, rights and interests in BC. [….] Part II addresses rights and interests in British Columbia where the TTC Traditional Territory is still subject to unsettled aboriginal rights, title and interests" (Teslin Tlingit, 2008). • "To protect Atikameksheng Anishnawbek interests and rights, including the right to harvest, gather, hunt, fish, among other enjoyment and use of our Asserted territory lands" (Atikameksheng Anishnawbek, 2020). • "Members of NStQ continue to use and rely on the Environment and Resources for food, medicine, and their physical, cultural and spiritual well-being, and require that decisions are made with a long-term view, in consideration of the needs and well-being of future generations" (Northern Secwepemc te Qelmucw, 2014).
Staff – guide FN staff in administration of mineral rights	• "This policy is intended to serve both to introduce mineral exploration and mining companies to the rights, title and interests of (TTC) and to guide TTC Lands & Resources staff in the administration of mineral rights and protection of the TTC Traditional Territory" (Teslin Tlingit, 2008).

| **Terms**
– Establish terms and conditions for consent to mining activities

▪ Clarify decision-making process
▪ Present consistent and effective process
▪ Provide greater certainty
▪ Specify criteria
▪ Articulate values/principles | • "The purpose of the policy is to develop a standardized, consistent and effective approach for Cree involvement in all mining related activities occurring on the Territory, including but not limited to, exploration, extraction and the closure of mining projects" (Cree Nation, 2010).

• "This Mining Policy has the following purposes: to ensure that all Mining Activities are carried out in accordance with the guiding principles of shared decision-making; environmental stewardship; socio-cultural considerations; economic benefits, intergenerational equity and accountability, as set out in this Mining Policy" (Northern Secwepemc te Qelmucw, 2014).

• "1. Whereas activities of third parties and conduct by the Crown within n'Daki Menan have caused, and continue to cause adverse impact on the TFN/TAA rights, and trigger a duty to consult and accommodate for the impacts.

2. Therefore TFN/TAA developed this Consultation Protocol ("Protocol") to set out TFN/TAA's expectations for consultation and accommodation regarding proposed mining activities within n'Daki Menan" (Temagami First Nation and Teme Augama Anishnabai, 2013). |
| **Territory**
– specify the territory to which the policy applies | • "shíshálh Territory extends from xwésém in the southeast to the height of land located north of xénichen, kwékwenis to the west and spílksen to the south. shíshálh has never ceded or surrendered any part of our Territory and our Title and Rights are unextinguished" (shíshálh Nation, 2013).

• "The CAFN Traditional Territory is approximately 41,000km^2 in area, of which 29,000km^2 are in southwestern Yukon and 12,000km^2 are in northwestern BC. Within the Yukon portion, CAFN owns the surface and sub-surface rights to 1,230km^2 of Category A Settlement Land and surface rights to 1,165km^2 of Category B Settlement Land and a small amount of Fee Simple Settlement Land. The portion of the CAFN land base that is outside the Traditional Territory contains three parcels of Category B Settlement Land, totaling about 18km^2. The CAFN Settlement Lands occur as discrete parcels distributed throughout the CAFN land base (Champagne and Aishihik, 2013). |

4.2　Content: What topics do the mining policies discuss?
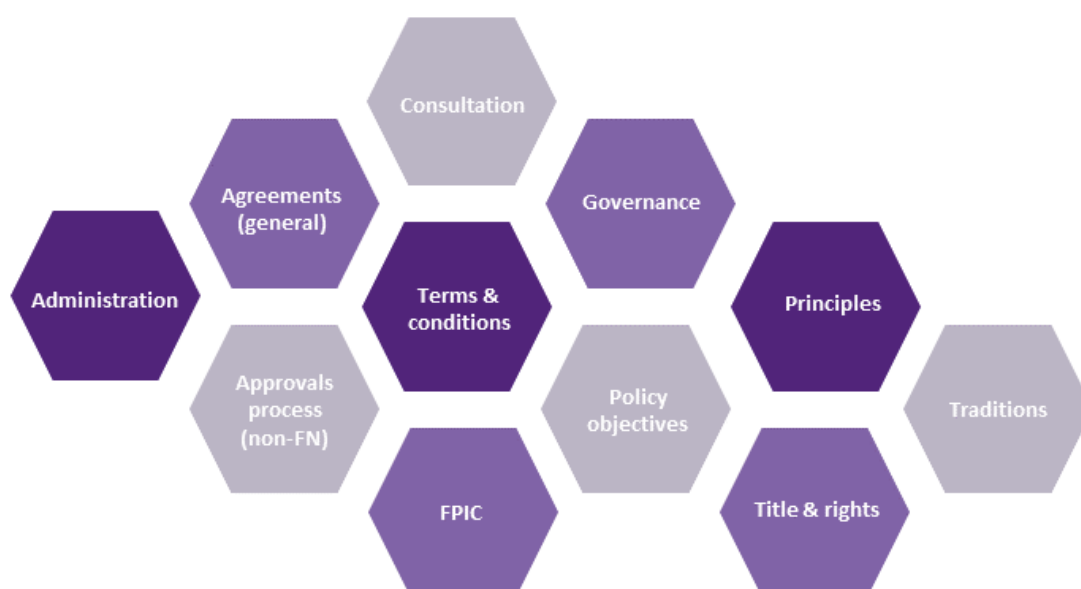

Figure 6: Topics identified in the content of the mining policies.

This study categorises mining policy content into 11 topics areas (see Figure 6), three of which have been categorised further (see Table 5).

Table 5: Further topics identified in the content of the mining policies, categorised according to three broader topics – terms and conditions, principles and non-First Nations approvals processes. Bold topics in shaded boxes indicate the most commonly discussed topics.

Terms and conditions	Principles	Approvals process (non-FN)
Aboriginal interest and use study	**Benefit sharing**	Assurance, bonds and compensation
Accommodation agreement	Collaboration	**Environmental assessment**
Agreement to proceed	Community agreement	Mine closure
Archaeological impact assessment, heritage	Demonstrate respect	Mine operation
Community information sessions	**Early, meaningful and ongoing engagement**	Permit applications
Consultation agreement	Employment, training and capacity building	
Cooperation agreement	Enhance reconciliation	
Costs	Intergenerational equity	
Crisis management plan	**Land, water and resources stewardship**	
Dispute resolution	Open, transparent and full disclosure	
Environmental assessment agreement	Polluter pays	
Environmental management plan	Precautionary principle	
Exploration agreement	Proponent funds participation	
Exploration information	**Protect FN rights**	
Fees	Protect heritage	
Impact benefit agreements	Restore impacted land, water and resources	
Land activity permit	Shared decision-making	
Letter of consultation	Traditional activities	
Letter of introduction	Traditional knowledge and other expertise	
Meetings		
Monitoring		
Penalties		
Pre-engagement		
Preliminary assessment		
Request for consideration		
Socio-economic benefits plan		

Table 6 provides examples of statements from the mining policies that support the highlighted terms and conditions, principles and non-First Nations' approval process.

Table 6: Mining policy content and supporting statements taken from the policy documents

Terms and conditions	Supporting statements
Archaeological impact assessment, heritage – conditions around heritage management, including studies	• "Furthermore, heritage resources are distinct from other resources in that they are not renewable. If a heritage resource is inadvertently impacted, it cannot be restored or replaced. Since NNDFN is known as a traditionally oral culture, much is gained by experiencing these old sites. The information and knowledge inherent to the site is lost to the NNDFN people forever once it has been disturbed. For this reason, NNDFN needs all available opportunities to assess areas of planned activity for potential heritage impact" (Na-cho Nyak Dun, 2008). • "The central principle of the shíshálh Heritage Policy is that heritage properties (i.e. artifacts, spiritual sites, stories, names and traditions) belong to those who made them regardless of the world within which they live. It is the original owners of these properties, as well as their descendants who are best able to determine how these properties should be treated in the present and future" (shíshálh Nation, 2013).
Cooperation agreement – formal commitment required	• "A Co-operation Agreement recognizes the Traditional Territory and Settlement Land of CAFN and the value of supporting the community. It may support the local economy of CAFN in several ways including: facilitating CAFN Citizen and business participation through means such as those outlined in Appendix 2; supporting training and employment for Citizens; promoting the community through scholarships and career counseling; supporting traditional culture and lifestyle in employment terms and conditions; compensating trappers; and implementing systems for effective communication" (Champagne and Aishihik, 2013). • "After concluding the steps agreed to in cooperative working agreements, TTC will consider giving consent and support for mining-related projects in the Traditional Territory. Such consent and support will be based on TTC's decision that the TTC Objectives will be fulfilled by the proposal, measures agreed to in the Environmental Assessment and the terms and conditions in an applicable Accommodation Agreement, Cooperation Agreement or an Impacts and Benefits Agreement" (Teslin Tlingit, 2008).
Impact benefit agreements – formal commitment required	• "An Impact and Benefit Agreement is a contractual arrangement between the proponent and the Atikameksheng Anishnawbek First Nation, which is intended to manage any negative or positive impacts to the land and people as development takes place. The benefits to the community refer to the land being protected and sustained, while also realizing compensation and a form of sharing of revenues or royalties. The contents and the negotiations of these Agreements will be guided by the community" (Atikameksheng Anishnawbek, 2020). • "If any Proponent wishes to pursue commercial production or development of a mine, NStQ may request a Proponent to enter into a written Impact Benefit Agreement in accordance with this Policy and upon such request the Proponent shall negotiate and enter into an Impact Benefit Agreement with NStQ" (Northern Secwepemc te Qelmucw, 2014).

Meetings
– type and frequency of meetings and other communication methods
	• "The Pre-season Meeting is an integral part of the Land Activity Permitting system and is intended to take place during the planning stages of a project. Proponents are asked to schedule an appointment for a Pre-season Meeting through the Natural Resource Officer. A request for an appointment should be submitted two weeks in advance to allow for internal consultations and attendance by any interested CAFN departments. The Pre-season Meeting may take place in person or by video conference call" (Champagne and Aishihik, 2013).
	
	• "There are a range of mechanisms through which the shíshálh People are engaged for their guidance. Depending on the type of decision at issue, one or many of these mechanisms may be employed:
	  – Updates provided through written reports;
	  – Community meetings and consultations;
	  – Holding of community open houses;
	  – Establishment of community committees for specific decisions or issues;
	  – A formal referendum or vote, consistent with the shíshálh Nation Constitution" (shíshálh Nation, 2013).

Monitoring
– of impacts of mining activities, including exploration, operations, closure and post-closure
	• "Monitoring All agreements will grant the TRTFN the right to monitor Mining Activities to ensure their compliance with applicable agreement requirements and the TRTFN Consent terms and conditions, which will include rights allocated to TRTFN representatives to conduct periodic site visits where and when the TRTFN deems it applicable, support for an on-site TRTFN monitor" (Taku River Tlingit, 2019).
	
	• "Monitoring: What environmental monitoring programs will be in place? It is expected that the application documents shall include a description of any required impact or compliance monitoring programs that will implemented during the work, or as a follow-up program. Monitoring plans should include the following information:
	  – objectives of the monitoring program (hypotheses about what changes will occur that need to be monitored)
	  – identification of what environmental indicators will be used
	  – description of baseline data required; an evaluation of adequacy of existing baseline data and whether more are needed; plan to complete baseline data collection where necessary
	  – description of methods by which sampling or monitoring will be done; including maps at appropriate scale showing sample locations and monitoring stations
	  – description of analytic or statistical methods to be used in processing the data, identification of any thresholds/triggers to initiate a management response, identity of person or position responsible for implementing the monitoring program, evaluating monitoring data, and communicating to managers when response is necessary, description of what actions will be taken by managers if thresholds exceeded" (Northern Secwepemc te Qelmucw, 2014).

Principles	**Supporting statements**
Benefit sharing – that FN must share in the benefits of mining	• "The Cree Government will support and promote the development of mineral resources within the territory of Eeyou Istchee that provides long term social and economic benefits for the Cree and that addresses sustainable development in compliance with the environmental and social protection regime of the JBNQA and that is compatible with the Cree way of life and protection of Cree rights in the Cree Territory" (Cree Nation, 2010).

	• "That the Innu people have the right to determine the social and economic future of their communities. There must be a commitment from companies to respect the aspirations of the Innu people, including their choices of employment and vocation, and the uses of their land. If requested by the Innu Nation, companies must be prepared to offer preferential training, employment and business opportunities to Innu people in a manner acceptable to the Innu Nation" (Innu Nation, 1995).

Engagement
– early, meaningful and ongoing
	• "That the Innu people continue to depend on land for foods, well-being, and spiritual and cultural values. The Innu Nation requires accurate, complete and timely information at all stages of exploration activities to determine if their rights are being affected and how they can be protected. Companies must commit to full disclosure of information about their activities and must be willing to provide assistance to ensure that Innu can undertake independent assessments of these activities" (Innu Nation, 1995).
	
	• "Meaningful Consultation" means providing NStQ, in good faith, with:
	  – advance, detailed notice of applications or decisions on or affecting the Statement of Intent Area;
	  – full disclosure of all information relating to potential social, economic, cultural and environmental impacts and benefits of the Mining Activities, including all financial and technical information that would otherwise be confidential;
	  – adequate time and financial resources to allow NStQ to retain its own expertise, to review the disclosed information, and to prepare its views on all matters relating to Mining Activities on or affecting the Statement of Intent Area;
	  – the opportunity to present its views to other parties;
	  – full and fair consideration of its views;
	  – demonstrable integration of NStQ's views into all decisions relating to Mining Activities on or affecting the Statement of Intent Area; and
	  – desisting from any Mining Activity to which NStQ does not consent" (Northern Secwepemc te Qelmucw, 2014).
	
	• "Engagement with shíshálh should begin long before a formal request for a decision is made. Those contemplating a potential use of shíshálh lands and resources should be in contact with, and working with, shíshálh from the initial contemplation of an idea" (shíshálh Nation, 2013).

Land, water and resources stewardship – FN values and responsibilities → conditions for proponents	• "That because the potential impacts of exploration activities may have negative effects on the Innu people and the land, water, wildlife, and plants that they depend on, companies must adopt strict environmental protection practices acceptable to the Innu Nation to avoid or prevent such impacts. In cases where there is insufficient data regarding potential impacts, exploration activities will not be initiated until there is adequate data to ascertain the nature and severity of the impact" (Innu Nation, 1995). • "The parties are committed to protect and maintain environmental integrity and minimize impacts on the environment. This initiative acknowledges that traditional culture is linked to nature and its strength is drawn from that relationship. It is further acknowledged that stewardship of the land and its resources is an integral part of culture and community well being" (Na-cho Nyak Dun, 2008). • "NStQ may withhold its consent to any Mining Activity which: – would occur on lands which NStQ deems to be of significant ecological importance, such as critical habitat for fish or wildlife;

	– would likely cause Irreparable Harm to the Environment, such as acid mine drainage or metal leaching that could be either financially or physically unfeasible to contain or treat; – could adversely impact Water quality, quantity, function or flow on or affecting the Statement of Intent Area; or – could have some other significant adverse environmental impact" (Northern Secwepemc te Qelmucw, 2014).
Protect FN rights – all FN rights must be protected	• "Ensure that the Resource Development activities will not jeopardize, prejudice or otherwise compromise Atikameksheng Anishnawbek's Aboriginal, Treaty or Constitutional rights and the jurisdiction of the First Nation including any impact on traditional lifestyle activities" (Atikameksheng Anishnawbek, 2020). • "The Cree Government will protect the rights, interests and benefits of all Crees collectively over their lands and resources to be impacted by proposed mining projects. The Cree Government acknowledges and endorses the principles of allocation and acquisition of mineral rights and the corollary right to develop the mineral resources, while prioritizing Cree rights and addressing Cree environmental and social concerns" (Cree Nation, 2010). • "shíshálh has never ceded or surrendered any part of our Territory and our Title and Rights are unextinguished. Our Title and Rights reflect our fundamental relationship to the lands and resources of our Territory. All generations of our People have been sustained through this relationship, which is expressed through our laws, culture, economy, society, governance, and spirituality" (shíshálh Nation, 2013).
Approvals process (non-FN)	**Supporting statements**
Environmental assessment – FN conditions in relation to this regulatory requirement	• "NStQ does not consider the Crown's consultation with NStQ during the EA Review to: in itself, fulfill the Crown's constitutional duty to consult and accommodate NStQ on matters concerning Title and Rights; or enable the EAO to assess the Project's potential impacts to Title and Rights. NStQ's participation in the EA Review process shall not prejudice its right to refuse to give consent or support for any Mine Development Activity" (Northern Secwepemc te Qelmucw, 2014). • "For any Mining Activity that is subject to an assessment in accordance with the BC Environmental Assessment Act or other Mining Laws, the TRTFN may participate in the environmental assessment process, subject to the following: – the purpose, scope, and timing of the environmental assessment process, including procedures for involving the TRTFN, are acceptable to the TRTFN; – adequate resources are provided upfront by the Crown or the Proponent to enable the TRTFN to participate effectively in the environmental assessment process, and; – the provisions identified in Appendix E are allowed for in the Environmental Assessment process. – Unless otherwise agreed by the TRTFN and the Crown, the scope of the environmental assessment process shall include the topic areas as set out in Appendix E. – Participation by the TRTFN in an environmental assessment process shall not prejudice its right to withhold consent or support for any Mining Activity" (Taku River Tlingit, 2019).

4.3   Structure: What are the components of mining policies?

There is significant diversity in the structure of Canadian First Nations mining policies. They each contain a distinct combination of components and vary in length from eight pages (Na-Cho Nyak Dun) to 58 pages (shíshálh). All components identified in this study are presented in Figure 7.

Figure 7: Components of First Nations' mining policies.

Cover / title page	Date of publishing	Executive summary
Letter from FN government representatives	Signatures	Table of contents
Legal preamble	Definitions	Main content
Content in English and own language	Photos, artwork, graphics, logos	Quotes from elders and other leaders
Maps	Flowcharts (e.g. decision-making process)	Copies of other documents
	Contact details	Appendices • List of information required • Items to include in agreements • Information to obtain for EA review • EA monitoring plan conditions • IBA conditions • Accommodation agreement conditions • Permit conditions and monitoring requirement • Environmental management plan content and conditions • Closure plan content and conditions • Other policies (e.g. heritage, forestry) • Forms (e.g. permit applications) • Agreement templates

Table 7 (over page) identifies the components present in each of the First Nations' mining policies. The most common components are cover/title page, date of publishing, table of contents, graphics/photography, maps, contact details and appendices. In the signature row, 'not signed' indicates that there is space for a signature but that the document has not been formally signed. In contact details, 'role' indicates that the contact person's name is not included, only the role (e.g. Natural Resources Manager).

Table 7: Components of First Nations' mining policies by First Nation

Component	AA	C&A	Cree	Innu	Na-cho Nyak Dun	NStQ	shishálh	TRTFN	TFN/TAA	Teslin Tlingit	Tŝilhqot'in
Cover/title page	●	●	●	●	●	●	●	●	●	●	●
Date of publishing	●	●	●		●	●	●		●	●	●
Executive summary		●									
Letter from FN government representatives			●				●				
Signatures	●		●				●			Not signed	Not signed
Table of contents	●	●	●			●	●	●		●	
Legal preamble						●				●	
Definitions	●					●			●	●	
Content in English and own language											●
Photos, artwork, graphics, logos	Cover	●	●	●	Cover	Cover	●	Cover	Cover	●	Cover
Quotes from elders and other leaders				●							
Maps		●	●	●	●	●	●	●	●	●	
Decision-making flowcharts		●					●		●		
Copies of other documents							●				
Contact details		●		●	●	Role	●	●	●	●	
Appendices	●	●			●	●	●	●	●	●	

5. First Nations mining policies and the mineral resources governance system

This study has examined the function, form and content of 11 Canadian First Nations' mining policies, which represent 28 First Nations within 11 broader First Nation groups, and span six Canadian provinces and territories.

The study found consistency in the function and content of the policies and diversity within their form. The primary driver for producing a mining policy is asserting jurisdiction over traditional territories. The mining policies establish the terms and conditions required for First Nations to consent to mining activities on their land. They clarify the decision-making process, specify criteria, articulate values and principles, present a consistent process, and provide greater certainty for proponents. They also specify the extent of the First Nation's territory and most of the policies provide maps for that purpose. Other key objectives identified include protection of the natural environment within traditional territories, including an explanation of the nation's environmental values; maximising the benefits of mining to communities; specifying a clear engagement process; and encouraging progress towards formal agreements with proponents.

The mining policies cover 11 key themes: administration, agreements, approvals, consultation, FPIC, governance, policy objectives, principles, terms and conditions, title and rights, and traditions. The policies are underpinned by 19 principles, including benefit sharing; early, meaningful and ongoing engagement; land, water and resources stewardship; and the protection of First Nations' rights.

The form of the policies differs across the sample to meet individual First Nations' needs and the local context. They vary in length from eight to 58 pages. Cultural aspects are incorporated into the policies via photography, artwork, graphics, logos while and quotes from elders and other leaders. The Tŝilhqot'in First Nation's policy is bilingual. The Cree policy includes a message from the Grand Chief and the shíshálh policy has a letter from the Chief and councillors. The longer policies contain substantial appendices.

Given the nature of the data collection method (desktop research), it was not always possible to understand what contextual factors had influenced the function, form and content of the mining policies. The NStQ's policy is an exception as the Northern Secwepemc te Qelmucw Leadership Council issued a news release in in December 2014 as part of its policy launch (see details in the following paragraph). The NStQ's policy addresses the whole mining lifecycle, provides detailed lists of requirements, including monitoring, and requires crisis management planning. The comprehensive nature of the policy (it is 54 pages long) and its focus on risk management processes indicate a response to Imperial Metal's Mount Polley tailings dam breach. In August 2014, eight million cubic metres of tailings were discharged into Polley Lake, Hazeltine Creek and Quesnel Lake when the dam embankment failed. The discharge of tailings affected fish habitat, food security and wellbeing of the T'exelc and Xats'ull First Nations, two of the NStQ's four communities.

In the news release, Chief Ann Louie of the T'exelc (Williams Lake Indian Band), said: "The Mount Polley tailings pond disaster that has affected our communities has reinforced our decision to proceed with this very carefully developed policy, but the impetus for it was the cumulative effect of more than 150 years of bad mining practices and devastating impacts on First Nations in BC. For years we warned that the Mount Polley dam was a disaster waiting to happen and we were ignored. This NStQ Mining Policy is designed to make sure that this does not happen again, and provide us with the tools to monitor and ensure compliance with safety and all other regulation and conditions imposed on any mines that are allowed," said Chief Louie. Tsq'escen' (Canim Lake) Chief Mike Archie said: "This is not a draft document; it is a carefully researched and clearly written policy which states what will be required for any mine work at any level to proceed. And we have developed the tools to ensure our people have the knowledge of First Nations Title and Rights, and mining laws and regulations, to enforce it and ensure compliance with any agreements."

5.1 How are the policies addressing a gap in the governance system?

The gap in the governance system that the mining policies are seeking to address is the lack of acknowledgement of First Nations' rights to govern mineral resources development on their traditional territories, including consideration of their values, principles and ways of life, and the limited focus on mitigating impacts from mining. This section uses Pierre and Peters' (2005) four governance activities as the basis for analysis. These activities are: articulating a common set of priorities for society, coherence, steering and accountability.

The first governance activity is to articulate a set of priorities and goals for society that can be agreed upon by that society. In this context, the society in question is the First Nations' communities which have developed the policies. The mining policies establish the terms and conditions that proponents need to follow when considering mineral resources development on First Nations' traditional territories. The policies clarify the decision-making process and specify criteria. An assumption is made that the policies were developed by a team with the endorsement of the First Nation's governing authority since the policies are official documents. Each First Nation has a mechanism for establishing that authority and its supporting governance institution, including via custom electoral system, self-government agreement, band council, executive council or board of directors.

The second activity is coherence. The mining policies are developed according to the First Nation's values and principles and these are presented in most of the policies. The content of the policies are, therefore, considered to have coherence with those values and principles.

The third activity, steering, refers to the capacity of the governance institution to steer the society to achieve the priorities. In the context of nation states, steering is achieved through regulation, direct provision and subsidies. In the context of First Nations' mining policies, society can be considered to be other governance actors, such as mining companies and the State. First Nations use the constitutional doctrine of duty to consult, FPIC, and agreements to steer change.

The final activity is accountability, or the means of holding governance actors accountable for their actions. The First Nations' governing authorities are accountable to community members for ensuring that the terms of the mining policies are adhered to. Pierre and Peters (2005) recognise the challenge of implementing accountability. Established relationships, formal agreements and the legal system can be used to direct proponents to follow the terms of the mining policies, but it is not evident from this desktop study how successful the First Nations have been in this regard.

5.2   Revisiting Pedro et al.'s depiction of the governance system

The graphical representation of key components of extractive sector governance presented by Pedro et al. (2017), and outlined in the introduction of this report, provides a useful depiction of the governance system. First Nations' mining policies seamlessly fit into the formal and informal norms, along with other types of policies, law, standards, cultural and professional norms. One deficiency in the graphical representation is that it does not explicitly acknowledge the sovereignty of First Nations. Figure 8 addresses this shortcoming.

Figure 8: Adaptation to Pedro et al.'s (2017) key components of extractive sector governance
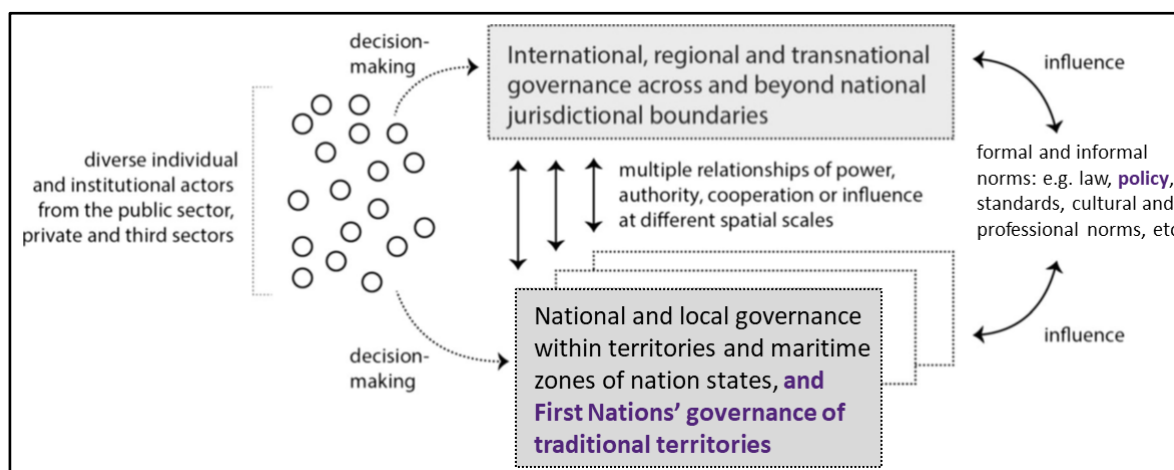
5.3   Concluding comments

While this desktop study has provided a baseline of data on Canadian First Nations' mining policies, field research is required to delve more deeply into the mining policy context. Key questions remain unanswered. These questions include: What was the impetus for the development of each mining policy at the time it was developed? What processes were used to develop the policies? How extensive was input from community members? Have the policies achieved their stated objectives? Why or why not? How do these mining policies engage with other First Nations' mineral resources governance instruments? How do these mining policies engage with the broader governance system?

Future research should examine how these policies have helped to steer change in the way proponents and the State engage with First Nations on mining development and determine whether the terms and conditions stipulated in the policies are being met. Assessing whether the policies have remedied a locally defined gap in the mineral resources governance system will make an important contribution to the governance literature. First Nations mining policies have received little scholarly attention to date.

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