

## Ontario's Modernized Mining Act Aboriginal Consultation

### *Timing of The Changes*

#### **In effect at royal assent:**

*A revised purpose clause that encourages prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment.*

*Automatic withdrawal of Crown mineral rights under privately held surface rights in Southern Ontario.*

*Updated provisions for offences under the Mining Act.*

*Updated provisions for administering diamond royalties.*

#### **In effect after regulations are developed:**

##### **Within 1 Year**

*Introduction of paper staking in Southern Ontario*

*Criteria for application to withdraw Crown mineral rights under privately held surface rights in Northern Ontario*

*(Continued on page 2)*

The changes to the Mining Act will help ensure First Nation and Métis communities are treated respectfully by expressly recognizing Aboriginal and treaty rights. This recognition is embedded in the act's purpose clause, and Aboriginal consultation requirements will appear at various places throughout the legislation and in regulations.

The rights and interests of First Nations and Métis communities will be further respected through provisions for the withdrawal of sites of Aboriginal cultural significance from claim staking. In addition, Ontario will become the first Canadian jurisdiction to require prospectors to take an awareness program which will include information on Aboriginal and treaty rights before they obtain or renew their licences.

The amended act will be Canada's first mining legislation to introduce a dispute resolution process for Aboriginal-related consultation issues.

The legislation passed third reading on October 21, 2009 after extensive review through hearings held by the Standing Committee on General Government. The resulting Mining Amendment Act, 2009 received royal assent on October 28, 2009.

The legislation introduces a graduated approach to Aboriginal consultation. This approach outlines consultation requirements, requires environmental rehabilitation and introduces plans or permits for exploration activities.

First Nation and Métis communities will be notified of newly recorded mining claims within their traditional use areas. Then, before any work begins, prospectors and mining companies wanting to undertake lower impact activities will have to submit plans. For moderate impact activities, they will have to apply for exploration permits.

### **NOTIFICATION AND CONSULTATION**

Notification and consultation requirements will be graduated and scoped according to the type of exploration activity and potential impact. This approach builds on Supreme Court of Canada decisions and incorporates elements of best practices established elsewhere across the country.

Notice will be provided to holders of new claims, advising them of potentially impacted Aboriginal communities and encouraging early engagement. We recognize that a key to this will be understanding which Aboriginal communities should be notified and how to address areas of overlapping interest.

As part of its new regulatory regime for early exploration, the government will ensure that information regarding exploration plans and permits are shared with potentially affected Aboriginal communities prior to work proceeding. Aboriginal communities will have an opportunity to provide input as to how these activities impact their Aboriginal and treaty rights.

Exploration permits may have specific terms and conditions attached so that the

proposed work can take into account site specific circumstances, including identifiable impacts on Aboriginal and treaty rights, potential impacts on the environment and considerations for work on privately owned surface rights.

Several other provisions, such as the phased introduction of map staking, will foster conditions for enhanced relationships. Starting with paper staking process in the south, then moving to an online system that includes Northern Ontario, map staking will eliminate the need for prospectors to enter onto the land to stake mining claims. With map staking in place, most activity on the land would take place after a claim is recorded, and be subject to notification and consultation requirements.

## **SUPPORTING ONTARIO'S NEW RELATIONSHIP**

To support implementation, the government has committed \$40 million over three years for new technology, introduction of permitting and other needs to modernizing the Mining Act. In that context, Ontario understands that the capacity issue is a critical one.

The government also recognizes the importance of economic development. First Nation and Métis communities want to see meaningful employment and business development for Aboriginal people in mining, forestry and other natural resource-based industries.

Many have already formed productive partnerships with exploration and mining companies. In fact, there are more than 50 agreements currently in place between First Nation communities and industry. Ontario encourages and supports these relationships. It is committed to improving the quality of life in Aboriginal communities and to the development of proposals that will enable First Nations and Métis peoples to share fairly in the benefits of natural resource development.

In conjunction with other government initiatives, such as the \$30-million Resource Benefits Sharing commitment, the new Mining Act legislation will help create a foundation for strong partnerships, economic opportunity and prosperity for Ontario's First Nation and Métis communities.

## **CONTINUING THE DIALOGUE**

In developing a modernized Mining Act, we listened. We respected the input from stakeholders, and reflected that input in our amendments.

Our consultation process has not ended. As we develop regulations, the ministry will continue to provide opportunity for further input from stakeholder groups, Aboriginal organizations and the public to ensure that the balance achieved in the legislation is reflected in the regulatory framework for the minerals industry in Ontario. Different sections of the amended act will be proclaimed in force as relevant details are developed.

The modernized Ontario Mining Act offers a balanced approach to mineral development that considers a range of interests, while supporting a competitive economic climate for the minerals industry. It will help ensure Ontario remains one of the best places in the world for mineral exploration and mining investment.

*(Continued from page 1)*

*A revised list of lands not open to claim staking and exploration.*

*Updated provisions to allow surface rights on claims to be used for other purposes such as renewable energy projects and protecting sites of Aboriginal cultural significance.*

### **Within 2 to 3 Years**

*Exploration plans and permits that regulate earlier stages of exploration to ensure that exploration activities will be carried out with the appropriate considerations for Aboriginal consultation, private landowners' interests and remediation of disturbances to the land. Aboriginal consultation will be introduced throughout the mining sequence.*

*An awareness program for holders of prospectors' licences, to inform prospectors of their obligations and best practices under the new Mining Act. This will include information on requirements regarding aboriginal engagement and consultation, reclamation of exploration sites, and rules for staking claims and exploring for minerals on private lands.*

### **Within 3 to 5 Years**

*Online map staking regime that maintains a competitive system for acquiring mining claims in Ontario.*

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