

Ontario's New Mining Act

Workbook on Development of Regulations



Ministry of Northern Development, Mines and Forestry

December 2009

Introduction

The new Ontario Mining Act received royal assent on October 28, 2009. It is the product of an extensive consultation process by which we invited public, stakeholder and Aboriginal community input into the drafting of Bill 173.

Some of the Bill's provisions came into effect with royal assent, but most will be proclaimed once the regulations are developed. New provisions that are now in effect include:

- Automatic withdrawal of Crown mineral rights under privately held surface rights in Southern Ontario;
- A clause in all leases and lease renewals highlighting Section 35 of the Constitution Act regarding Aboriginal and treaty rights;
- The ability to replace a lost or stolen prospector's licence without requiring an affidavit; a significant benefit in areas such as First Nations and remote communities where no Commissioner is available; and,
- Provisions for the streamlining of some administrative processes.

It is important to note that different sections of the Act will be proclaimed once the relevant details are developed. For example, paper staking in Southern Ontario and the withdrawal of Crown-held mineral rights under privately held surface rights in Northern Ontario should be in place within the first year. Sections related to exploration plans and permitting and the awareness program for prospectors require further consultation, to develop the appropriate regulations and allow for a change in ministry business processes, which may take two to three years. Map staking, which requires an integrated information technology solution, will be introduced over three to five years.

Royal assent also signals the start of the next round of consultations on the "ground rules," which are the regulations and policies within the enabling framework of the new Ontario Mining Act. These include the requirements for exploration plans and permits, Aboriginal consultation, a dispute resolution process for Aboriginal concerns, map staking, criteria for withdrawal of sites of Aboriginal cultural significance, details of the awareness program for prospectors and provisions for the withdrawal of Crown-held mineral rights on private land. The goal is to provide clarity and certainty to the industry while considering and respecting Aboriginal and treaty rights, as well as the rights of individual property owners.

This workbook is a guide for those who may wish to provide input on the identified issues. Information and questions are designed to help focus thinking on key issues as we move forward with implementation on regulation development in the new year.

Until the consultation period ends in May 2010, interested members of the general public, industry and Aboriginal communities will be asked to provide their input through upcoming workshops and focus groups, as well as in written submissions. This workbook is intended to help guide these discussions and materials are available both online and in hard copy. We will also be seeking input through Ontario's Environmental (Environmental Bill of Rights/EBR) Registry.

If you have questions about the workbook, would like a hard copy sent to you, or prefer to submit a written response to the questions, please contact:

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Please submit your comments by April 30, 2010.

For updates on the new Ontario Mining Act, including dates and locations of upcoming workshops, please visit our website at: <http://www.mndm.gov.on.ca/miningact>

Table of Contents

| | |
|---|-----------|
| Introduction | 1 |
| Section I: About the New Ontario Mining Act | 4 |
| Section II: Issues and Options for Discussion | 8 |
| 1. Awareness Program for Prospectors | 8 |
| 2. Online Map Staking | 9 |
| 3. Exploration Plans and Permits | 11 |
| 4. Assessment Work | 14 |
| 5. Aboriginal Consultation | 15 |
| 6. Dispute Resolution | 17 |
| 7. Protection for Sites of Aboriginal Cultural Significance | 18 |
| 8. Private Surface Rights | 19 |
| Section III: We Would Like To Hear From You | 20 |
| APPENDIX A: List of Exploration Activities | 21 |

Section I: About the New Ontario Mining Act

Key Changes

Ontario's new Mining Act establishes a number of changes to the provincial legislative framework for mining, relating to areas such as: prospecting, staking mining claims, dispute resolution, assessment work, surface rights ownership, exploration work and consultation with Aboriginal communities. Key changes include:

LAND TENURE:

New provisions allow for the introduction of map staking, a non-intrusive method of acquiring mining claims. Map staking will eliminate the need to enter the land to physically mark out the boundary of a mining claim.

The types of lands not open to staking or exploration are updated.

The new Mining Act withdraws Crown-held mining rights in Southern Ontario where the surface rights are privately held and where there are no existing claims and leases. In Northern Ontario, private land owners may apply to have Crown-held mining rights withdrawn from staking.

A withdrawal order or automatically deemed withdrawal would not affect pre-existing mining projects. Where existing exploration or mining activity is allowed to continue on privately owned surface rights, the new graduated regulatory scheme for exploration will be followed.

The Act updates the requirements for filing and eligibility of assessment work, and introduces a "payments-in-lieu" option.

The Act allows certain private property owners to apply for an exemption from mining land tax, where the property was originally patented by the Crown for mining purposes, but is not now being used for mining purposes.

It also allows for the withdrawal of sites of Aboriginal cultural significance from prospecting and staking.

EXPLORATION PLANS AND PERMITS:

The new graduated regulatory scheme for early exploration will require proponents to submit exploration plans for lower impact activities and apply for exploration permits for activities with moderate impact.

Details of the regime (including the classification of activities, exploration plan requirements) and associated terms and conditions (including rehabilitation requirements and Aboriginal consultation) will be set out in the regulations.

ABORIGINAL CONSULTATION:

Aboriginal consultation is required for exploration plans and permits for early exploration activity, proportionate to the potential impact of the proposed activities.

For later-stage activities related to advanced exploration and mine development, the Act makes express reference to Aboriginal consultation requirements before closure plans are filed.

The Act also signals that consideration will be given to any arrangements made between project proponents and potentially affected Aboriginal communities.

DISPUTE RESOLUTION:

New dispute resolution processes are enabled in legislation to respond to disputes on matters under the Mining Act that relate to consultation with Aboriginal communities, or about Aboriginal or treaty rights or assertions of such rights.

The Minister may designate a body or individual to hear and consider these types of disputes and to provide the Minister with a report setting out recommendations. The Minister may act on those recommendations and provide the parties to the dispute with reasons for the decisions made.

FAR NORTH OF ONTARIO:

(NOTE: These Far North provisions are based on Bill 191, the Far North Act, 2009, which is still proceeding through the legislative process.)

The Act allows Ontario to implement the Premier's announcement that there will be no new mine openings in Ontario's Far North until there is an approved community-based land use plan.

In cases where a community land use plan is not in place, an exemption may be available from Cabinet if, taking into account the prescribed land-use planning objectives, the mining project is in the social and economic interests of Ontario.

The Act clarifies that mineral tenure will be respected and mineral claim staking, exploration and development in the Far North can continue during the land use planning process.

OTHER CHANGES:

Changes to oil, gas and salt solution mining in Part IV of the Act, which is administered by the Ministry of Natural Resources, include the removal of a geographical restriction, so that Part IV would apply province-wide.

The Act includes provisions that take into account the potential for multiple uses of the surface rights associated with mining claims in a way that would streamline processes to minimize restrictions on renewable energy projects.

The Act modernizes the functions and powers of inspectors to provide for monitoring of various activities throughout the mining sequence.

Regulatory compliance will be encouraged through adjustments to penalties and offences under the Act.

A number of administrative amendments have been made, including items relating to diamond royalties.

A set of amendments deals with general housekeeping matters including the repeal of obsolete provisions, and changes to be consistent with other legislation referenced in the Mining Act.

Consultation to Date

Since launching the Mining Act Modernization initiative on August 11, 2008, the Ministry has held extensive public consultations and stakeholder sessions. More than 1,000 people attended sessions in Timmins, Sudbury, Thunder Bay, Kingston and Toronto. Approximately 20 targeted sessions also took place with industry, municipal, environmental and other stakeholder groups, and 156 responses were submitted through the Environmental Registry. In addition to discussions involving Aboriginal organizations and leaders, approximately 100 First Nations communities participated in some manner, including 15 formal submissions. Feedback from our First Nation and Métis communities represented a broad cross-section of Aboriginal input and was an important part of the initial consultation process.

Throughout this process, the government heard from First Nations and Métis communities wanting to see meaningful employment and business development for Aboriginal people in mining, forestry and other natural resource-based industries. The government recognizes the importance of Aboriginal communities benefiting from economic development.

Many have already formed productive partnerships with exploration and mining companies. In fact, there are more than 60 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.

The ministry also reached out to Ontario's mining industry through the Ontario Mining Association, the Ontario Prospectors Association and regional prospecting and exploration organizations. As well, we sought advice from the Minister's Mining Act Advisory Committee, with its broad representation from industry, environmental organizations and groups representing private property owners.

After proposed legislation was introduced, a comprehensive review was undertaken by the Standing Committee on General Government, which held public hearings in Toronto, Sioux Lookout, Thunder Bay, Chapleau and Timmins in August, 2009. Written comments and submissions were also received from stakeholder groups, the mining industry and First Nation communities. As a result, a number of amendments were brought forward to the standing committee. On October 7, 2009 the committee concluded its review of the Bill and amendments.

Continuing the Dialogue

Throughout the initial consultation process, the Minister reconfirmed his commitment to continue to engage in consultations, in order to ensure that Ontario's mining legislation is up-to-date and provides greater certainty to the mining sector, Aboriginal communities and private property owners about their respective responsibilities and rights.

The regulations to be drafted will provide clarity about prescribed requirements, criteria, timelines and processes that reflect the best practices currently used by the mining industry and, where possible, streamline administrative requirements that reflect the impact of activities on the ground. The challenge ahead is how best to develop regulations that offer a balanced approach to mineral development. This approach must consider a range of interests while, at the same time, supporting a competitive economic climate for the minerals sector. In other words, what rules and procedures should govern Ontario's mining regime?

This workbook is intended to give interested parties an opportunity to provide input on how best to modernize these regulations over the coming months with the goal of concluding the consultation process by May 2010. This input will be part of an ongoing dialogue in the development and implementation of the regulations, programs, policies, procedures and information technology solutions over the next three to five years.

Section II: Issues and Options for Discussion

While the new Act introduces a variety of amendments, there are eight key areas in which substantive changes require focused input in support of regulatory development. These include:

1. Awareness Program for Prospectors
2. Online Map Staking
3. Exploration Plans and Permits
4. Assessment Work
5. Aboriginal Consultation
6. Dispute Resolution for Aboriginal issues
7. Protection for Sites of Aboriginal Cultural Significance
8. Private Surface Rights

Each area summarizes the changes made to the Act and presents additional information for your consideration. There are also questions throughout that readers are asked to consider.

1. Awareness Program for Prospectors (Section 19 (1)):

To ensure that rules are understood by new and existing holders of a prospector's licence, the Ministry is introducing an awareness program for prospectors. It will provide information about the various requirements to conduct mineral exploration activities in Ontario, as a result of changes to the Mining Act. The completion of this program will be necessary to obtain or renew a prospector's licence.

The awareness program is an educational tool. There is no certification requirement for a prospector's licence and it is not intended to test a prospector on how to stake a mining claim.

The intent of the program is to make licence holders aware of new provisions in the Act, such as Aboriginal consultation requirements, exploration planning and permitting requirements for activities on Crown and private land, and minimizing the impact on the environment. Access to the awareness program will also be of benefit to a wide spectrum of people engaged in the mining sequence who wish to learn about Ontario's Mining Act. We have heard comments that the awareness program could

also be used as a tool to promote broader awareness and education about the Mining Act.

Some topics under consideration as components of this program are:

- Mining claims – notification and engagement
- Aboriginal consultation and engagement
- Exploration plans and permits
- Dispute resolution
- Environmental best practices
- Assessment work – new provisions

Questions to Consider:

Q 1.1: Are there other topics that should be included in the program?

Q 1.2: How could the program be delivered/administered? Who should deliver/administer the program?

Q 1.3: Do you prefer to take the awareness program for prospectors online? If you do not have online access, what alternative delivery methods do you suggest?

Q 1.4: What is a reasonable amount of time to start/complete the program?

Q 1.5: In addition to prospectors, who else might benefit from this program? How could we encourage their participation?

Q 1.6: What else about the awareness program should we consider?

Q 1.7: What conditions should the Minister consider before waiving the requirement to complete the program?

Q 1.8: Should a name for the awareness program reflect the intent for broader access and awareness about the Mining Act?

2. Online Map Staking (Section 38(2)):

The modernized Mining Act includes the introduction of online staking, anticipated over the next three to five years. This will allow claims to be acquired without entering physically onto or disturbing the surface of the land. It will also allow equal access to land across the province for both prospectors and companies.

Ontario's new map staking system will gradually eliminate physical staking in the province. Map staking will be phased in, starting with paper staking in Southern Ontario and evolving to online staking across the province within three to five years.

This is a system that has been implemented and is being considered in a number of other leading Canadian and international mining jurisdictions. Keeping pace with these progressive jurisdictions will help Ontario successfully compete for investment and retain its position as one of the premier destinations for exploration investment in the world. The government believes that online staking, together with Ontario's superior mineral resources, will further solidify our position among global mining jurisdictions.

As Ontario moves toward the introduction of online staking, a "made in Ontario" approach will be guided by lessons learned in jurisdictions such as British Columbia, Québec and Newfoundland and Labrador, to ensure that the claim-staking "playing field" remains level.

There are currently no restrictions anywhere in Canada on how many claims one company or individual can hold concurrently. However, to address the challenges of a staking rush and ensure fair access in that event, other Canadian jurisdictions have placed restrictions on the number of claims that can be acquired at one time.

In British Columbia one "claim" can be as large as 25 claim units. A Free Miner's Licence may acquire only one claim in one sitting, and must register and pay the fee before acquiring another claim. This significantly slows down the process of acquiring claims, as the proponent must exit and re-enter the system each time he/she wishes to acquire further claims.

In Newfoundland and Labrador, an individual is required to provide a cash security deposit of \$50 per claim in addition to a \$10 recording fee. The security deposit is forfeited if the required assessment work is not completed within the first year.

Another effective strategy for mitigating the acquisition of large tracts of land by a single company is through the fee structure. For example, Québec has a progressive fee structure in which a company pays a higher fee per claim as it acquires more claims (ranging from \$25 to \$115 per claim).

These are examples of ways in which other provinces have structured their online staking systems to ensure a fair and competitive mineral tenure system. These are a few methods that the Ministry is considering, but we need to hear your thoughts on how Ontario can develop its regulation to make online staking work effectively for everyone in the province.

Questions to Consider:

Q 2.1: What conditions need to be included in a map staking system to ensure that large areas of land cannot easily be tied up by a single claim holder?

(a) limit the number and size of claims that can be acquired by one claim holder

(b) limit the number of claims that can be acquired within a set timeline

(c) set a progressive fee structure for acquiring claims (e.g. the more you stake, the more it costs).

(d) other?

Q 2.2: What steps need to be taken to ensure online staking is phased in effectively over the next five years?

Q 2.3: What needs to be considered in the transition to online staking?

(a) How can we most effectively ensure the existing claim fabric is appropriately geo-referenced?

(b) Are there specific programs or incentives that could be developed to facilitate the transition to online staking within a prescribed timeframe?

(c) What is a reasonable transition period?

3. Exploration Plans and Permits (Section 78.2, 78.3):

Ontario's new Mining Act requires an exploration plan or an exploration permit prior to carrying out prescribed exploration activities. Exploration plans will be required for low impact activities, while moderate impact activities will require an exploration permit. Regulations will be developed to classify exploration activities as low or moderate, according to their impact on the land (see Appendix A). Activities not listed in the regulation will not require a plan or a permit.

This graduated regulatory system for exploration activities will be designed to take into account impacts on Aboriginal and treaty rights, environmental concerns and the interests of private surface rights owners.

Before exploration work begins, prospectors and mining companies wanting to undertake lower impact activities will submit exploration plans and abide by related rules set out in regulations. For moderate impact activities, an exploration permit will be required.

The government will ensure that information regarding proposed exploration activities will be shared with potentially impacted Aboriginal communities and private surface rights owners before activities subject to a permit or plan begin.

Aboriginal communities will have an opportunity to provide input as to how these activities may impact their Aboriginal and treaty rights. Property owners will also have an opportunity to provide input as to how these activities may impact their interests. Exploration permits may include specific terms and conditions so that the proposed work takes into account particular circumstances, including impacts on Aboriginal and treaty rights, environmental concerns and the interests of private surface right owners.

Most other Canadian jurisdictions use some form of exploration plan or permit to regulate exploration activities. Exploration permits are used more often to regulate activities that have a greater impact on the environment.

Saskatchewan, Newfoundland and Labrador, Manitoba, Alberta, Nova Scotia and the Yukon require some form of plan or permit for low impact (non-mechanized) exploration activities.

British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, Newfoundland and Labrador, the Yukon, the Northwest Territories and Nunavut require exploration permits for moderate impact (mechanized) exploration activities.

In 2008, there were over 1,000 active exploration projects in Ontario. Depending on how the new regulatory system is developed the Ministry estimates that it may need to process in the order of 1,300 to 1,800 exploration plans and/or permits annually.

A well-designed application, review, approval and dispute resolution system for exploration plans and permits is needed to provide Aboriginal communities, property owners, prospectors and exploration companies with a regulatory framework that is both effective and timely.

Considerations for classifying exploration activities may include a number of criteria such as the following:

Table 1:

| Considerations for Classifying Mineral Exploration Activities | | |
|--|--|---|
| No requirement under the Act | Exploration Plans | Exploration Permits |
| Nil or extremely low potential for environmental impact | Low potential for environmental impact | Moderate potential for environmental impact |
| No or minimal intrusion on the land base | Minimal intrusion on the land base | Greater intrusion on the land base |
| Not within jurisdiction to regulate | Ability to react positively to mitigation measures | May require additional site-specific conditions or controls |
| | Hand-held, non-mechanized equipment | Requires the use of mechanized heavy equipment |
| | Does not require the use of explosives | Requires the use of explosives |

| | | |
|--|---------------------------------|---|
| | Minimal need for rehabilitation | Greater need for specific rehabilitation requirements |
|--|---------------------------------|---|

Questions to Consider:

Q 3.1: Based on the above criteria shown in Table 1 for classification of exploration activities:

- (a) Do you agree with the criteria? Why? Why not?*
- (b) What other considerations should be included? Why?*

Q 3.2: Based upon the list of exploration activities described in Appendix A:

- (a) Should other activities be included? Why?*
- (b) Should some activities be excluded? Why?*
- (c) What exploration activities belong in each column of Table 1?*

Q 3.3: How can the terms of a plan and permit best be structured to realistically address the following:

- (a) Timing and seasonality of exploration projects*
- (b) Duration of exploration activities and projects*
- (c) Adjustments to planned exploration activities*
- (d) Timelines for approving plans and permits*

Q 3.4: What conditions should apply for all exploration plans? Exploration permits?

- (a) Are there specific rules or conditions that should apply to all exploration activities?*
- (b) Are there any specific activities that require particular rules in an exploration plan or permit?*
- (c) What values might require special terms and conditions in an exploration plan or permit?*
- (d) Are there practices in other jurisdictions that are working? Or are not working? Please give examples.*

Q 3.5: *How long should a plan or a permit be in effect? Why?*

Q 3.6: *What would be the advantages and disadvantages to an online system?*

Q 3.7: *Any suggestions about approaches to facilitate monitoring and compliance?*

4. Exploration Assessment Work (Sections 66, 67):

The ministry will review its assessment work requirements to modernize allowable activities for assessment credit and find a more balanced and streamlined approach to the maintenance of mining claims within the province.

Ministry of Northern Development, Mines and Forestry (MNDMF) will also consider revising eligible expenses that qualify for assessment credits to reflect today's costs of doing business. For example, the Canada Revenue Agency permits certain Aboriginal community consultation expenses that are incurred by mining companies at the exploration stage to qualify as Canadian exploration expenses for tax purposes.

The Act introduces a "payment-in-lieu" option that would allow a claim holder to make a payment rather than perform assessment work for a specified period. This instrument is used in a number of Canadian jurisdictions to provide claim holders with greater flexibility to manage exploration projects on mining claims and avoid any unintentional loss of mineral tenure. The intent is not to do away with actual assessment work, but to consider the use of these payments selectively.

The payment-in-lieu provision provides companies with another tool, in addition to applying for "extensions" or "exclusions" of time to complete assessment work credits, as is currently allowed under the Mining Act. (About three per cent of mining claims in Ontario currently use the extension of time provision.)

Most Canadian jurisdictions, including British Columbia, Manitoba, Saskatchewan and Newfoundland and Labrador, currently use some form of payment-in-lieu for assessment work. Payments-in-lieu account for around five to 10 per cent of the assessment work credits filed in those jurisdictions. Jurisdictions have also developed limitations on the use of payments-in-lieu to suit their own policy objectives.

Questions to Consider:

Q 4.1: *What kinds of expenses for Aboriginal consultation should qualify for assessment work credits? Should there be a limit? What information should be provided to support the expenses?*

Q 4.2: *What conditions should be in place to guide the use of "payments in lieu" of assessment work?*

- a) *Frequency?*
- b) *Circumstances?*

c) *Should there be a cash limit?*

Q 4.3: Should the allocation of assessment credits to contiguous mining claims be revised? If so, how?

5. Aboriginal Consultation (Sections 78, 139(2), 140(1), 141(1)):

The changes to the Mining Act include recognition of 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 its regulations. The amended Act will also be Canada's first mining legislation to introduce a dispute resolution process for disputes on matters under the Mining Act that relate to consultation with Aboriginal communities, Aboriginal and treaty rights or assertions of those rights. These changes are intended to support the Crown's duty to consult as set out in the Supreme Court of Canada's decisions as well as provide a framework for meaningful engagement that fosters improved relations and opportunities for mineral development.

The legislation introduces a graduated approach to Aboriginal consultation throughout the mining sequence. This approach includes notification which starts immediately after a claim is staked and recorded, and before the filing or issuance of an exploration plan or permit.

Aboriginal communities will be notified of new mineral activities in their traditional use areas as soon as claims are recorded. Before any work begins, prospectors and mining companies wanting to undertake exploration activities will be required to file exploration plans or a permit application. Both plans and permits will require some scope of Aboriginal consultation, as prescribed by the regulations to be developed.

The government will ensure that information related to exploration plans and permits is shared with potentially impacted Aboriginal communities before exploration activity begins, and Aboriginal communities will have an opportunity to provide input as to how these activities might potentially impact their Aboriginal and treaty rights.

Exploration permits will have terms and conditions attached so that the proposed work takes into account the particular circumstances, including issues raised during Aboriginal consultation, potential impacts on the environment and considerations for work on privately owned surface rights.

The ministry recognizes the challenges that are inherent in the desire to implement Aboriginal consultation procedures within a time-sensitive process such as that involved in a typical mineral exploration and development setting. We need assistance in determining how this will be implemented.

Questions to Consider:

Process:

Q 5.1: How can we bring greater certainty to decisions about traditional use areas and overlapping areas to ensure the appropriate communities are consulted about proposed exploration activities? Are there regional approaches that would assist? Is there a role for tribal councils or other Aboriginal administrative bodies?

Q 5.2: For consultation on exploration plans, where anticipated impacts of activities are low;

- (a) How should notification be provided (form, content, etc.)?*
- (b) Who should provide notification?*
- (c) What amount of time should be afforded communities to respond?*
- (d) At a minimum, what steps should be required in the process?*
- (e) What is the appropriate role of proponents in the process? What steps should be delegated to proponents?*

Q 5.3: For consultation on applications for exploration permits, where anticipated impacts of activities are moderate;

- (a) How should notification be provided (form, content, etc.)?*
- (b) Who should provide the notification?*
- (c) What amount of time should be afforded communities to respond?*
- (d) At a minimum, what steps should be required in the process?*
- (e) What is the appropriate role of proponents in the process? What steps should be delegated to proponents?*

Q 5.4: Prior to submitting exploration plans or applications for permits, what level of engagement is appropriate for Aboriginal communities and proponents? Is there information or other tools that MNDMF should or could be providing to support these efforts?

Q 5.5: Would dispute resolution mechanisms be helpful at an earlier stage (e.g. prior to submitting an exploration plan or permit application?)

Capacity:

Q 5.6: Are there capacity issues that Aboriginal communities will face in participating in the consultation processes associated with the new regulatory regime? What types or forms of support might Aboriginal communities require?

Q 5.7: Aboriginal communities and mineral industry proponents will be establishing ongoing working relationships through the new regulatory regime. What types or forms of support will Aboriginal communities and/or Industry require for these relationships?

Q 5.8: What kind of information might Aboriginal communities need from MNDMF to participate in mineral activity occurring in their traditional use areas?

Q 5.9: Is there a role for tribal councils or other organizations to provide capacity support such as technical expertise or technical services for Aboriginal communities to participate in the new regulatory regime?

Q 5.10: What is the best mechanism to provide technical expertise for Aboriginal communities?

6. Dispute Resolution (Section 170.1):

Amendments to the Act enable the creation of a dispute resolution process specifically for disputes related to Aboriginal and treaty rights and consultation with Aboriginal communities. A specialized process devoted to these issues will provide for greater familiarity with and sensitivity to the unique issues, questions and concerns that can arise in this context. By providing such a process, it is hoped that both decision making and relationship building will be enhanced.

Section 170.1 provides that the Minister may designate a body or individual to listen to and consider these types of disputes. The process that the designated body or individual will follow will be set out in regulations and the result of the process will be to provide the Minister with a report setting out recommendations. The Minister may then act on those recommendations and provide the parties to the dispute with reasons for the decisions made or actions taken.

Questions to Consider:

Q 6.1: How should the designated body or individual be chosen and what qualifications should they have?

Q 6.2: What process model will ensure the greatest efficiency, efficacy and meaningful participation from the parties to such disputes (e.g. region-specific approaches, use of existing tribunal models)?

Q 6.3: How can timeframes be built fairly into the process, ensuring greater certainty and clarity for the parties to the process?

Q 6.4: How should the costs for this process be borne?

Q 6.5: What is a reasonable scope for the report and recommendations that might be made as a result of the process (ie. What recommendations should be beyond the scope of the body/individual to make)?

7. Protection for Sites of Aboriginal Cultural Significance (Sections 35, 51):

Under the new Mining Act, there is an ability to provide for the withdrawal of sites of Aboriginal cultural significance from claim staking on Crown lands. Provisions may also be used to restrict surface access on existing claims where sites of Aboriginal cultural significance have been identified. These cultural sites are envisioned to be well-defined areas that can be identified for protection from mineral activities.

There are two sections in the revised Mining Act that enable this approach:

Under Section 35, the Minister by order may withdraw from prospecting and staking any land, mining rights or surface rights that are the property of the Crown. In making this decision, the Minister will consider whether the lands meet the prescribed criteria as a site of Aboriginal cultural significance.

Under Section 51, the Minister may by order impose restrictions on a mining claim holder's right to the use of portions of the surface rights of a mining claim if they are on lands that meet the prescribed criteria as sites of Aboriginal cultural significance.

Questions to Consider:

Q 7.1: What types or categories of culturally significant sites should be considered and how can they be "defined" in order to provide greater clarity and certainty in the criteria to be prescribed?

Q 7.2: What should be the process to consider a site for protection – i.e.; application based? What should be the process for verification? Other considerations?

Q 7.3: What support or tools are available or might be needed to enable Aboriginal communities to bring sites forward for consideration?

Q 7.4: In the past, many Aboriginal communities have been reluctant to share information on Aboriginal cultural significance. What is needed to reduce or eliminate existing barriers to information sharing so that these important sites can be identified and protected from mineral sector activities?

8. Private Surface Rights (Section 35.1):

One objective of modernizing the Mining Act was to mitigate the conflicts that have arisen between the mineral industry and private landowners who do not own the mineral rights on their properties.

Lands with private surface rights and Crown mining rights that may be open for claim staking represent about 1.4 per cent of land in Southern Ontario and less than one per cent of land in Northern Ontario.

The new Mining Act withdraws Crown-held mining rights:

- in Southern Ontario where surface rights are privately held, while respecting existing claims and leases; and
- upon application from private land owners in Northern Ontario.

The province will consider criteria such as mineral potential of the lands and any other criteria that may be prescribed in regulations before deciding whether to grant a withdrawal in the North. Again, existing claims and leases will be respected. Private surface rights owners in both Northern and Southern Ontario may apply to the Minister to have the withdrawn mineral rights re-opened for exploration and staking.

Private surface rights owners will also be notified if a claim is staked on their property. Prior to any exploration activity on the land, these owners will receive information about the exploration plan or permit.

Questions to Consider:

(Note the following questions pertain mainly to Northern Ontario as lands in Southern Ontario are automatically withdrawn. However, this would apply if those lands are re-opened for staking.)

Q 8.1: In addition to mineral potential, what other criteria could the Minister consider in a decision to withdraw Crown mining rights from private lands in Northern Ontario?

Q 8.2: What provisions should be included in a regulation to re-open Crown mining rights on private lands?

APPENDIX A: List of Exploration Activities

“Exploration Activities” include:

- Remote sensing/multi-spectral surveys
- Airborne geophysical surveys
- Line cutting
- All ground geophysical surveys (electromagnetic, VLF-EM, IP, self potential, resistivity, radiometric, gradiometric, gravity, seismic)
- Regional and grid geochemical surveys
- Sampling: rock, soil, water, humus
- Bulk sampling
- Trenching
- Test pitting
- Stripping
- Power stripping
- Restoration
- Geological mapping
- Environmental studies
- Prospecting
- Packsack/portable drill
- Diamond drilling
- Overburden drilling (sonic, RC ,auger)
- Drill core submission
- Re-establish claim boundaries
- Re-cut grids

RELATED ACTIVITY

- Site clearing (including heli-pads and camps)
- Camp construction
- Trail construction
- Dewatering pits