

CHAPTER 21

An Act to amend the Mining Act*Assented to October 28, 2009*

Note: This Act amends the *Mining Act*. For the legislative history of the Act, see the Table of Consolidated Public Statutes – Detailed Legislative History on www.e-Laws.gov.on.ca.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. (1) The definition of “anniversary date” in subsection 1 (1) of the *Mining Act* is amended by striking out “subsection 67 (4)” and substituting “subsection 67 (2)”.

(2) Subsection 1 (1) of the Act is amended by adding the following definitions:

“community based land use plan” has the meaning prescribed by the regulations; (“plan communautaire d’aménagement du territoire”)

“Far North” has the meaning prescribed by the regulations; (“Grand Nord”)

“ground staking” means the delineation of the area of a mining claim on the ground using posts, tags, flags, blazes or any combination of them, in the manner provided by this Act and the regulations; (“jalonnement au sol”)

(3) The definition of “holder” in subsection 1 (1) of the Act is repealed and the following substituted:

“holder”, when referring to the holder of an unpatented mining claim or a licence of occupation issued under this Act, means the holder of record; (“titulaire”)

(4) The definition of “inspector” in subsection 1 (1) of the Act is repealed.

(5) Subsection 1 (1) of the Act is amended by adding the following definition:

“map staking” means the delineation of the area of a mining claim on a map reference system using a method set out in the regulations; (“jalonnement sur carte”)

(6) The definition of “minerals” in subsection 1 (1) of the Act is repealed and the following substituted:

“minerals” means all naturally occurring metallic and non-metallic minerals, including

coal, salt, quarry and pit material, gold, silver and all rare and precious minerals and metals, but does not include sand, gravel, peat, gas or oil; (“minéraux”)

(7) Subsection 1 (1) of the Act is amended by adding the following definition:

“surface rights owner” means, in respect of an area of land, an owner in fee simple of the land, as shown in the appropriate land registry office, who does not own the mining rights for the land; (“propriétaire de droits de surface”)

2. Section 2 of the Act is repealed and the following substituted:

Purpose

2. The purpose of this Act is to encourage 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.

3. Sections 7 and 8 of the Act are repealed and the following substituted:

Records

7. (1) Records of all mining claims and applications and an abstract for each mining claim that includes all applications, work reports, orders, notes and other entries relating to the claim shall be maintained at the Provincial Recording Office.

Maps

(2) Maps on which all mining claims shall be marked as they are recorded shall be maintained for inspection at the Provincial Recording Office.

Same

(3) The records, abstracts and maps shall be maintained in the form or forms directed by the Minister, including in electronic form.

Public availability

- (4) The records, abstracts and maps shall be available for public inspection,
- (a) in person at the Provincial Recording Office, during normal business hours; and
 - (b) if the Minister directs, on the Internet.

Personal information

(5) Any personal information maintained under this section is maintained for the purpose of creating a record that is accessible to the general public, as described in section 37 of the *Freedom of Information and Protection of Privacy Act*.

4. Section 11 of the Act is repealed.

5. The Act is amended by adding the following section:

When documents received

17. (1) Subject to subsection (2), any application, document or other instrument required or permitted to be filed or recorded under this Act that is received at the Provincial Recording Office or at an office specified in a notice under subsection 15 (2) after 4:30 p.m. local time shall be deemed to have been received on the next day that the office is open for business.

Same, electronic transmission

(2) Any application, document or other instrument required or permitted to be filed or

recorded under this Act that is transmitted by electronic means shall be deemed to have been received at the prescribed time.

6. Subsection 18 (1) of the Act is repealed and the following substituted:

Licence required

(1) No person shall, without a prospector's licence, do any of the following with respect to land that has not been recorded as part of a mining claim and for which the mining rights are held by the Crown:

1. Prospect on the land.
2. Stake a mining claim.
3. Make an application to record the staking of a mining claim.

7. (1) Subsection 19 (1) of the Act is repealed and the following substituted:

Prospector's licences

(1) Any person who is 18 years or older is entitled to obtain a prospector's licence upon providing evidence that he or she successfully completed the prescribed prospector's awareness program within 60 days before the date of the application for the licence.

(2) Subsection 19 (6) of the Act is amended by striking out "prepaid first class mail" and substituting "mail".

(3) Subsection 19 (7) of the Act is amended by striking out "prepaid first class mail" and substituting "mail".

8. (1) Subsection 21 (1) of the Act is repealed and the following substituted:

Renewal of licence

(1) A licensee is entitled to a renewal of his or her licence if, within 60 days before the expiry of the licence, the licensee applies for the renewal and provides evidence that he or she successfully completed the prescribed prospector's awareness program within 60 days before the expiry of the licence.

(2) Subsections 21 (6) and (7) of the Act are repealed the following substituted:

Lifetime renewal by Minister

(6) The Minister shall renew without fee the licence of a person who has held a licence for 25 years provided that the person successfully completes the prescribed prospector's awareness program within 60 days before the renewal, and the licence shall remain in good standing during the lifetime of the licensee.

Same

(7) The Minister may, at his or her discretion, renew the licence of a person without fee and order that the licence remain in good standing during the lifetime of the licensee, provided that the person successfully completes the prescribed prospector's awareness program within 60 days before the renewal.

Notice

(8) The Minister shall notify a prospector whose licence is being renewed under subsection (6) or (7) not later than 60 days before the renewal of the requirement to successfully complete the prescribed prospector's awareness program.

Transition

(9) Every licensee, including a prospector whose licence was renewed under

subsection (6) or (7) before the day this subsection came into force, shall successfully complete the prescribed prospector's awareness program within two years after the day this subsection comes into force.

Exception

(10) The Minister in his or her sole discretion may waive the requirement in subsection (6), (7) or (9) for a prospector to complete the prospector's awareness program.

9. Subsection 22 (1) of the Act is repealed and the following substituted:

Accidental destruction or loss of licence

(1) If a prospector's licence is accidentally destroyed or lost, the holder may obtain a duplicate of the licence from a recorder by applying to the Minister for the duplicate.

10. (1) Subsection 23 (1) of the Act is amended by adding "at a time" at the end.

(2) Subsection 23 (2) of the Act is repealed.

11. Section 25 of the Act is repealed.

12. The heading before section 29 and sections 29 and 30 of the Act are repealed and the following substituted:

RESTRICTED LANDS

Land not open for staking without consent of Minister

29. (1) No mining claim shall be staked or recorded except with the consent of the Minister,

- (a) on any land that is a lot within a registered plan of subdivision;
- (b) on any land for which the surface rights have been subdivided, surveyed or sold or otherwise disposed of by the Ministry of Natural Resources for summer resort purposes;
- (c) on any land that is a residential or cottage lot smaller than one hectare in area;
- (d) where a residential or cottage lot is one hectare in area or larger, on any land that is,
 - (i) within 100 metres of a residential or cottage dwelling on the lot, and
 - (ii) within the property boundary line;
- (e) on any land that is railway land, including the station grounds, switching grounds, yard or right-of-way of a railway;
- (f) on any land that is being used for a natural gas, oil or water pipeline corridor;
- (g) on any land that is part of an airport;
- (h) on any land that is improved municipal land used for public purposes, including public buildings, sports fields, arenas, libraries, parks and skating rinks; or
- (i) on any land that contains an artificial reservoir, dam, or any building, structure or lands being used in conjunction with the operation of such artificial reservoir or dam.

Where claim staked without consent

(2) If a staked claim includes a small area of land described in subsection (1) and the consent of the Minister was not obtained prior to the staking in respect of the area, the

Minister, if he or she is satisfied that the failure to obtain prior consent was inadvertent, may subsequently provide his or her consent and the claim as recorded shall be deemed to include those lands.

Land not open for staking without consent of Commission

(3) No mining claim shall be staked or recorded upon any land transferred to or vested in the Ontario Northland Transportation Commission without the consent of the Commission.

Lands upon which claim may not be staked

30. No mining claim shall be staked or recorded on any land,

- (a) for which the mining rights have been sold, located, leased or included in a licence of occupation;
- (b) for which an application brought in good faith is pending in the Ministry of Natural Resources under the *Public Lands Act* or any other Act, and in which the applicant may acquire the minerals that are included in the application;
- (c) where the Minister or the Minister of Transportation certifies that the land is required for the development of water power or for a highway or for some other purpose in the public interest;
- (d) in an Indian reserve, except as provided by *The Indian Lands Act, 1924*;
- (e) within 45 metres of a church, cemetery, or burial ground;
- (f) in respect of which a note of pending proceedings has been issued under subsection 64 (2), (2.1) or (2.2), and the note has not been cancelled; or
- (g) that is located in the Far North, if a community based land use plan has designated the lands for a use inconsistent with mineral exploration and development.

13. Section 32 of the Act is repealed.

14. (1) Subsections 35 (1), (2), (3) and (4) of the Act are repealed and the following substituted:

Withdrawal of lands

(1) The Minister may, by order signed by him or her, withdraw from prospecting, staking, sale and lease any lands, mining rights or surface rights that are the property of the Crown, and the lands, mining rights or surface rights shall remain withdrawn until reopened by the Minister.

Factors to consider

(2) In making an order under subsection (1), the Minister may consider any factors that he or she considers appropriate, including,

- (a) whether the lands, mining rights or surface rights are required for developing or operating public highways, renewable energy projects or power transmission lines or for another use that would benefit the public, whether the order would be consistent with any prescribed land use designation that may be made with respect to the Far North and whether the lands meet the prescribed criteria as a site of Aboriginal cultural significance; and
- (b) any other factors that may be prescribed.

Pre-existing rights and tenure

(3) A withdrawal order issued under subsection (1) does not affect pre-existing mining rights and tenure such as mining claims, mining leases or licences of occupation.

Reopening of lands

(4) The Minister may, by order signed by him or her, revoke all or part of a withdrawal order made under subsection (1) and reopen for prospecting, staking, sale and lease any of the lands, mining rights or surface rights or parts of them withdrawn under this section.

Copy of order sent to recorder

(4.1) Where the Minister makes an order under subsection (1) or (4), the Minister shall promptly provide a copy of the order to the recorder's office.

Posting and filing copy

(4.2) On receiving a copy of the order, the recorder shall promptly make the order available for public inspection in the recorder's office and may post it on the Internet.

(2) Subsection 35 (5) of the Act is repealed.

(3) Subsection 35 (6) of the Act is amended by adding "or (4)" after "subsection (1)".

15. (1) The Act is amended by adding the following section:

Southern Ontario and Northern Ontario

35.1 (1) In this section,

"Northern Ontario" means that part of the province of Ontario lying north of the south shores of the French River, Lake Nipissing and Mattawa River; ("Nord de l'Ontario")

"Southern Ontario" means that part of the province that is not in Northern Ontario. ("Sud de l'Ontario")

Southern Ontario

(2) In Southern Ontario, for lands where there is a surface rights owner and the mining rights are held by the Crown, the mining rights shall be deemed to be withdrawn from prospecting, staking, sale and lease as of the day this subsection comes into force.

Exception

(3) Despite subsection (2), any mining claims, mining leases or licences of occupation for mining rights existing on the day this section comes into force shall not be affected by the deemed withdrawal under that subsection and shall remain open for prospecting, sale or lease.

Reversion to Crown

(4) If a mining claim, lease or licence of occupation described in subsection (3) reverts to the Crown by forfeiture, expiry, termination or otherwise, those mining rights shall, upon the reversion to the Crown, be deemed to be withdrawn from prospecting, staking, sale or lease.

Application to open lands

(5) If mining rights have been deemed withdrawn under subsection (2), a surface rights owner may apply to the Minister for an order opening the mining rights for the lands or any part of them for prospecting, staking, sale and lease and the Minister may issue the order.

Relief from forfeiture

(6) Subsection (4) does not affect any powers of the recorder or Commissioner to

grant relief from forfeiture or to make related orders under section 49, or any powers of the Minister to revoke, cancel or annul a forfeiture or termination under subsection 185 (1).

Same

(7) Where a recorder or Commissioner grants relief from forfeiture under section 49 or where the Minister revokes, cancels or annuls a forfeiture or termination under subsection 185 (1), the mining rights are no longer deemed withdrawn under subsection (4).

(2) Section 35.1 of the Act, as enacted by subsection (1), is amended by adding the following subsections:

Northern Ontario

(8) In Northern Ontario, for lands where there is a surface rights owner and the mining rights are held by the Crown, the Minister may issue an order withdrawing the mining rights from prospecting, staking, sale or lease upon the surface rights owner applying for the order.

Factors to consider

(9) In deciding whether to issue an order under subsection (8), the Minister shall consider the mineral potential of the lands as assessed by the Minister and any other criteria that may be prescribed.

Exception

(10) Despite subsection (8), any mining claims, mining leases or licences of occupation for mining rights existing on the day the Minister issues an order under that subsection shall not be affected by the order and shall remain open for prospecting, sale and lease.

Application to open lands

(11) If mining rights have been withdrawn by an order under subsection (8), a surface rights owner may apply to the Minister for an order opening the mining rights for the lands or any part of them for prospecting, staking, sale and lease and the Minister may issue the order.

Manner of opening

(12) Where mining rights have been opened under subsection (11), the opening shall occur in accordance with the regulations.

Not a regulation

(13) An order under subsection (8) or (11) is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*.

16. Section 36 of the Act is repealed.

17. Section 37 of the Act is repealed.

18. Section 38 of the Act is amended by adding the following subsection:

Map staking

(2) A mining claim may be staked by the method or methods of map staking set out in the regulations.

19. The Act is amended by adding the following section before the heading to section 42:

Revocation of licence if not used for mining purposes

41.1 (1) The lands, surface rights or mining rights held under a licence of occupation issued under this Act shall be used solely for mining purposes and, if they are used for other

purposes, the Minister may, subject to the approval of the Lieutenant Governor in Council, revoke the licence of occupation.

Same

(2) Subsection (1) applies in respect of all licences of occupation, including those issued before the day this section came into force.

Notice of revocation

(3) Notice of the revocation of a licence of occupation shall be given to the holder of the licence at least 30 days before the revocation takes effect and shall be sent to the last known address for the licence holder in the Ministry's records.

Authority to revoke is not a limitation

(4) The authority to revoke a licence of occupation under subsection (1) does not limit the application of any provision in this Act or in a licence of occupation that also authorizes the termination, cancellation or revocation of a licence of occupation.

20. (1) The English version of the heading before section 42 of the Act is repealed and the following substituted:

STAKING CLAIMS

(2) Section 42 of the Act is repealed and the following substituted:

Claims staked in areas during severe fire situations

42. If the Minister of Natural Resources declares an area to be a restricted travel zone under clause 37 (1) (b) of the *Forest Fires Prevention Act* or if access to an area is prohibited pursuant to an order made under section 23 of that Act, a mining claim obtained by ground staking in the restricted travel zone or prohibited area, as the case may be, is invalid and of no effect unless the person who staked the claim, on applying to have it recorded, satisfies a recorder that the person entered the area before the declaration was made or the prohibition ordered.

21. (1) Subsection 43 (1) of the Act is repealed and the following substituted:

Substantial compliance with Act and regulations sufficient

(1) Where claims are staked by ground staking, substantial compliance as nearly as circumstances will reasonably permit with the requirements of this Act and the regulations as to the ground staking of mining claims is sufficient.

(2) Subsection 43 (2) of the Act is amended by,

- (a) striking out “staking out” in the portion before clause (a) and substituting “ground staking”; and**
- (b) striking out “staking requirements” in the portion before clause (a) and substituting “ground staking requirements”.**

22. Subsections 44 (1) and (1.1) of the Act are repealed and the following substituted:

Application to record mining claim

(1) A licensee who has staked a mining claim shall make an application to record the claim to a recorder,

- (a) for a claim that was delineated by map staking, within the period prescribed by the regulations; and**

- (b) for a claim that was delineated by ground staking, not later than 30 days after the day on which the staking was completed.

Application requirements

(1.1) The application shall be accompanied by proof of payment of the required fee to any recorder.

23. (1) Subsection 46 (1) of the Act is amended by striking out “along with the sketch or plan and certificate” at the end.

(2) Subsections 46 (3), (4), (5) and (6) of the Act are repealed and the following substituted:

Filing application

(3) If a recorder does not record a claim for the reason described in subsection (2), the applicant may require the recorder to file the application instead.

Determination of filed application

(4) Any question respecting a filed application may be resolved in accordance with section 48 or 112, or by providing additional information to satisfy the recorder that the application to record the claim complies with all the requirements for staking and recording a claim.

Filing of application not a dispute

(5) The filing of an application is not equivalent to the filing of a dispute under section 48 unless the applicant complies with the requirements for filing a dispute set out in that section.

Invalid application

- (6) A filed application becomes invalid 60 days after it is filed unless, within that time,
- (a) the applicant provides additional information to the recorder relating to the application and the recorder is satisfied that the application complies with all the requirements for staking and recording a claim;
 - (b) a dispute is filed under section 48 or an appeal is taken under section 112; or
 - (c) the Commissioner or recorder orders otherwise.

Cancellation of application

(7) The recorder shall cancel an application that becomes invalid under subsection (6) or as a result of the determination of a dispute under section 48 or an appeal under section 112.

24. The Act is amended by adding the following section:

Mining claim where surface rights owner

46.1 (1) If a mining claim is staked on land for which there is a surface rights owner, the licensee shall, within 60 days after making the application to record the mining claim,

- (a) give confirmation of staking the mining claim to the surface rights owner in the prescribed manner and file proof at the recorder’s office that confirmation of staking the mining claim has been given; or
- (b) apply to a recorder for an order waiving confirmation.

Order to waive confirmation

(2) A recorder may issue an order waiving confirmation if he or she determines that it

is not feasible to provide confirmation of staking to the surface rights owner.

Claim invalid if no confirmation

(3) If the licensee does not comply with subsection (1) or if the recorder decides not to issue an order waiving confirmation, then the mining claim becomes invalid 60 days after the date the application to record is made, even if the claim was recorded.

Cancellation of application

(4) The recorder shall cancel a claim that becomes invalid under subsection (3), make a note of the cancellation on the mining claim abstract and notify the licensee in writing of the cancellation.

25. Subsection 47 (1) of the Act is amended by striking out “on payment of the required fee”.

26. (1) Subsection 48 (1) of the Act is amended by striking out “A dispute in the prescribed form” at the beginning and substituting “A dispute”, and by striking out “upon payment of the required fee”.

(2) Subsection 48 (5) of the Act is amended by striking out “A dispute” at the beginning and substituting “A dispute that may be filed under this section”.

(3) Subsection 48 (7) of the Act is repealed.

(4) Subsection 48 (8) of the Act is repealed and the following substituted:

Restaking claim

(8) Despite clause 27 (c) and subsection 71 (1), if a mining claim was ground staked and no dispute has been filed against the mining claim, any claim holder who has acquired the claim in good faith may at any time restake the claim or have it restaked by ground staking.

(5) Subsection 48 (8.1) of the Act is amended by striking out “in the prescribed form”.

27. (1) Subsection 49 (2) of the Act is repealed and the following substituted:

Previous staking

(2) If any part of a claim referred to in subsection (1) has been staked by another licensee, a recorder may make an order with respect to relief from forfeiture, subject to such terms and conditions as the recorder considers appropriate, including an order under subsection 110 (6), or may at any time prior to making an order, refer the matter to the Commissioner.

(2) Subsection 49 (4) of the Act is amended by striking out “subsection (1) or (3)” and substituting “subsection (1), (2) or (3)”.

28. (1) Subsection 50 (2) of the Act is amended by adding “subject to the requirements of this Act” after “other than the right”.

(2) Section 50 of the Act is amended by adding the following subsection:

Exploration work

(2.1) Despite subsection (2), the holder of a mining claim shall not enter upon, use or occupy any part of a mining claim for any exploration work on the claim unless the requirements in sections 78.2 and 78.3 and in the regulations have been met.

29. (1) Subsection 51 (1) of the Act is amended by adding “except the right to sand,

peat and gravel” after “surface rights”.

(2) Subsections 51 (2), (3), (4), (5) and (6) of the Act are repealed and the following substituted:

Surface rights required under *Public Lands Act* or for public benefit

(2) Despite subsection (1), where an application has been made under the *Public Lands Act* for the use of surface rights or for their disposition in whole or in part, or where the surface rights or portions of them are required for developing and operating a public highway, a renewable energy project, a power transmission line or a pipeline for oil, gas or water, or for another use that would benefit the public, the recorder may, if the claim holder does not consent to the proposed use or disposition,

- (a) refer the matter to the Commissioner; or
- (b) upon giving all interested persons at least 90 days' notice of a hearing and after hearing any interested persons that appear, make an order on such terms and conditions as the recorder considers appropriate with respect to the surface rights.

Where application referred to Commissioner

(3) Where a matter is referred to the Commissioner under clause (2) (a), the Commissioner shall, upon giving all interested persons at least 90 days' notice of a hearing and after hearing any interested persons that appear, make an order on such terms and conditions as the Commissioner considers appropriate with respect to the surface rights.

Minister's order to restrict part of surface rights

(4) Despite subsection (1), 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,

- (a) the portions of the surface rights are on lands that meet the prescribed criteria as sites of Aboriginal cultural significance; or
- (b) any of the prescribed circumstances apply.

Same

- (5) Before making an order under subsection (4), the Minister shall,
 - (a) give the claim holder written notice of the Minister's intention to make an order under subsection (4), setting out the proposed restrictions and the reasons for making the order; and
 - (b) give the claim holder an opportunity to make representations to the Minister, within 30 days of the date of the notice given under clause (a).

Minister's order

(6) A Minister's order under subsection (5) is not appealable and is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*.

Related changes

(7) A recorder shall make any changes to the applicable mining claim abstracts that are necessary to reflect any order made under this section, or any agreement made with the claim holder with respect to the use of surface rights for the purposes of this section.

Survey of surface rights

(8) Where an order is made under this section, or any agreement is made with the claim holder with respect to the use of surface rights for the purposes of this section, the Minister may require a survey of the surface rights or of the portion of them that is affected

by the order or agreement, and the survey shall be provided at the expense of the person who has acquired the surface rights or the use of them.

30. Subsections 52 (1) and (2) of the Act are repealed and the following substituted:

Permission to test mineral content

(1) No person shall mine, mill or refine more than the prescribed quantity of mineral bearing substance from an unpatented mining claim for the purpose of testing mineral content without first obtaining the Minister's written permission.

Conditions

(2) Permission granted under subsection (1) shall be for a specified time, shall cover a specified quantity of mineral bearing substance and shall be subject to such conditions as are prescribed.

Requirements under ss. 78.2 and 78.3

(2.1) A person who obtains permission under subsection (1) is not exempt from complying with the requirements set out in sections 78.2 and 78.3 and, if applicable, the requirements in section 140 for a certified closure plan.

31. Sections 59 and 59.1 of the Act are repealed and the following substituted:

Transfer

59. A mining claim is transferable, except,

- (a) if the claim is on land for which there is a surface rights owner, unless,
 - (i) the requirements in clause 46.1 (1) (a) have been met, or
 - (ii) an order waiving confirmation has been issued under subsection 46.1 (2); or
- (b) if an application for lease has been made with respect to the mining claim, unless the Minister gives written consent for the transfer.

32. (1) Subsections 64 (1), (2), (3), (4) and (5) of the Act are repealed and the following substituted:

Recording orders, judgments, certificates, writs

(1) A recorder shall enter upon the mining claim abstract of any unpatented mining claim or other recorded right or interest a note of any order or decision made by him or her affecting the same, giving its date and effect and the date of the entry, and he or she shall, upon receiving an order or decision of the Commissioner, or an order, judgment or certificate in an appeal from the Commissioner, or a certified or sworn copy thereof, file the same and enter a note thereof upon the mining claim abstract of the claim or right or interest affected.

Proceeding pending before recorder

(2) Where any proceeding or dispute that may be brought before a recorder is pending before a recorder, he or she may make a note of the pending proceeding on the applicable mining claim abstracts.

Proceeding pending before Commissioner

(2.1) Where any proceeding that may be brought before the Commissioner or any appeal from a decision of a recorder is pending before the Commissioner, the Commissioner may make an order requiring a recorder to make a note of the pending proceeding on the applicable mining claim abstracts.

Proceeding pending before court

(2.2) Where a proceeding relating to a mining claim or other recorded right, or any interest relating to such a claim or right is pending before a court, the Commissioner may, upon the request of any party to the proceeding, make an order confirming that the proceeding is pending and requiring a recorder to make a note of the pending proceeding on the applicable mining claim abstracts.

Order provided to recorder's office

(2.3) If the Commissioner makes an order under subsection (2.1) or (2.2), the Commissioner shall provide the order to the recorder's office.

No notice until note is recorded

(3) A note of pending proceedings or an order of the Commissioner made under subsection (2.1) or (2.2) does not constitute notice to any person of the pending proceeding until a note of the pending proceeding is made on the applicable mining claim abstracts.

Mining claim deemed not to be forfeited

(3.1) Where a note of pending proceedings is made on a mining claim abstract, the mining claim shall be deemed not to be forfeited to the Crown under clause 72 (1) (b) until the note of pending proceedings is cancelled.

Cancellation of note of pending proceedings

(4) A recorder shall cancel a note of pending proceedings made under subsection (2) on any or all applicable mining claim abstracts if the recorder is satisfied that the note is no longer required.

Same

(4.1) A recorder shall cancel a note of pending proceedings made under subsection (2.1) or (2.2) on any or all applicable mining claim abstracts if a party to the proceedings, or a recorder, requests a cancellation from the Commissioner and the Commissioner issues an order to cancel the note and provides the order to the recorder's office.

Notice of cancellation

(4.2) Upon the cancellation of a note of pending proceedings, the recorder's office shall notify all interested persons of the cancellation in writing at their last known address.

Exclusion of time

(5) When a note of pending proceedings is cancelled, the Commissioner or a recorder, as the case may be, may exclude from the time period within which work on the affected mining claim must be performed or reported, or both, or within which application and payment for lease may be made, the period of time, or a part of the period, during which the note of pending proceedings was in effect, and may set a new anniversary date for the claim.

Same

(5.1) When excluding time under subsection (5), the Commissioner or a recorder may take into account whether the claim holder contributed to any unreasonable delay in settling the proceedings for which the note of pending proceedings was made.

(2) Subsection 64 (13) of the Act is repealed.

33. Section 65 of the Act is repealed and the following substituted:

Assessment work or payments

65. (1) After a mining claim is recorded, the claim holder shall perform or cause to be performed such annual units of assessment work as are prescribed, or shall make payments in place of assessment work in accordance with the regulations.

Report

(2) Every mining claim holder shall submit a report of the assessment work done and of any payments made for the purpose of complying with subsection (1), together with such other information as may be prescribed.

When report must be received

(3) The report must be received at the recorder's office or at such other location as the Minister directs, not later than 4:30 p.m. local time on the anniversary date of the mining claim.

Same

(4) If a date earlier than the anniversary date is prescribed for the submission of a report regarding a specific type of assessment work, the report must be received at the recorder's office, or such other location as the Minister directs, not later than 4:30 p.m. local time on the earlier prescribed date.

Credits measured in dollars spent

(5) For the purpose of subsection (1), assessment work credits shall be measured in terms of dollars spent.

No dispute

(6) A recorder shall not receive and file, or record against a mining claim, any dispute relating to assessment work or to payments made in place of assessment work.

34. (1) Subsection 66 (1) of the Act is repealed and the following substituted:**Types of work eligible for credits, etc.**

(1) The types of work that are eligible for assessment work credits, the method of calculating and approving the credits for work performed or payments made in place of assessment work, and the distribution of assessment work credits to mining claims shall be determined in such manner as is prescribed.

(2) The French version of subsection 66 (2) of the Act is amended by striking out "de jours".

(3) Subsection 66 (3) of the Act is repealed and the following substituted:**Work on mining lands**

(3) Assessment work performed on mining lands or payments made in place of assessment work may be allocated to contiguous unpatented mining claims in the prescribed manner.

(4) The French version of subsection 66 (4) of the Act is amended by striking out "de jours".

35. Section 67 of the Act is repealed and the following substituted:**Exclusion of time and work**

67. (1) A holder may, in accordance with this section, obtain an order,

(a) excluding a period of time in computing the time within which work on a mining claim must be performed or reported, or both, or within which application and payment for a lease may be made;

(b) fixing the date or dates by which the next or any prescribed unit of assessment work must be performed or reported, or both, or by which a payment in place of assessment work must be made, or by which an application and payment for lease

may be made; and

- (c) relieving the holder of a requirement to perform units of assessment work or to make payments for any period excluded.

Anniversary date changed

(2) Where a period of time for doing something under this Act is excluded, the next anniversary date after the exclusion in respect of the mining claim involved may be a date that falls after the anniversary date that would have occurred, except for this provision, by up to the number of days that equals the number of days of the exclusion, and all subsequent anniversary dates shall be adjusted accordingly.

Order by recorder or Commissioner

(3) The recorder or the Commissioner may make an order described in subsection (1) if the holder provides the recorder or Commissioner with satisfactory evidence of a refusal, prohibition, deferral or delay referred to in this section, but the order may exclude only the following periods of time:

1. The time during which a permit under the *Forest Fires Prevention Act* or the *Public Lands Act* that is necessary for the beginning or carrying on of work under this Act is refused.
2. The time during which the performance of work under this Act is prohibited under the Acts referred to in paragraph 1 or any other Act.
3. The time during which the holder defers the start of work under this Act or is delayed in performing it at the Crown's request or by the Crown's actions.

Minister's order

(4) The Minister may make an order described in subsection (1) if the holder applies to the Minister within 30 days before an anniversary date and the Minister is satisfied that special circumstances exist.

When order may be made

(5) The Minister may make an order under subsection (4) before or after the anniversary date.

Claim holder's interest continues

(6) If a holder applies for an order under subsection (4) within the required time, then the holder's interest in the mining claim shall not cease under section 72 unless and until the Minister decides not to make the order.

Notice

(7) If the Minister decides not to make an order under subsection (4), the Minister shall notify the claim holder in writing, and the claim holder's interest in the mining claim shall be deemed to have been forfeited as of the anniversary date of the mining claim.

36. (1) Subsection 70 (1) of the Act is amended by striking out "in the prescribed form".

(2) Subsection 70 (2) of the Act is amended by striking out "in the prescribed form".

37. Clause 72 (1) (b) of the Act is repealed and the following substituted:

- (b) if neither the prescribed assessment work is performed nor payment in place of such assessment work is made as required by section 65, or if the work or

payment is not reported, unless an application and payment for a lease of the mining claim is made under section 81.

38. Subsection 75 (1) of the Act is amended by striking out “and an inspector or other officer appointed by the Minister” and substituting “and the person conducting the inspection”.

39. Section 77 of the Act is amended by striking out “on payment of the required fee”.

40. The heading to section 78 and section 78 of the Act are repealed and the following substituted:

EXPLORATION PLANS AND PERMITS

Directors of Exploration Plans and Permits

78. The Minister may appoint one or more officers or employees in the Ministry as Directors of Exploration.

Application

78.1 Sections 78.2, 78.3, 78.5 and 78.6 apply in accordance with the regulations.

Exploration plan

78.2 (1) No person shall carry out an activity prescribed for the purposes of this section on a mining claim, mining lease or licence of occupation for mining purposes unless the person has submitted an exploration plan, in accordance with any prescribed requirements, including any Aboriginal consultation that may be prescribed.

Activities to comply with requirements

(2) All activities described in an exploration plan that are carried out shall be carried out in accordance with any prescribed requirements.

Transfer to exploration permit

(3) If an exploration plan includes an exploration activity prescribed for the purposes of section 78.3, or if the prescribed circumstances apply, the person shall not carry out any such activity unless the person has obtained an exploration permit.

When exploration permit required

78.3 (1) No person shall carry out an activity prescribed for the purposes of this section on a mining claim, mining lease or licence of occupation for mining purposes unless the person has applied for and been issued an exploration permit.

Application for exploration permit

(2) An application for an exploration permit shall be made to a Director of Exploration, and in deciding whether to issue a permit and what terms and conditions should apply to the permit, the Director shall consider,

- (a) the purpose of this Act;
- (b) whether Aboriginal consultation has occurred in accordance with any prescribed requirements, which may include consideration of any arrangements that have been made with Aboriginal communities that may be affected by the exploration;
- (c) any arrangements that may have been made with surface rights owners; and
- (d) any other prescribed circumstances.

Conditions

(3) An exploration permit is subject to the prescribed standard terms and conditions and to any additional terms and conditions that the Director determines are appropriate.

Activities to comply with requirements

(4) All activities described in an exploration permit that are carried out shall be carried out in accordance with the terms and conditions of the permit and the regulations.

Amendment or renewal of permit

(5) The Director may, after considering the factors listed in subsection (2), amend or renew an exploration permit.

Reconsideration

(6) If a decision of the Director under this section is disputed in accordance with this Act or the regulations and a recommendation is made that the Director reconsider his or her decision, the Director shall reconsider his or her decision and, where appropriate, may make a new decision based on any recommendations or determinations made.

No activities during dispute

(7) If a decision of the Director under this section is disputed in accordance with this Act or the regulations, no person shall carry out any activity that is a subject of the decision until a final determination under this Act or the regulations has been made.

Transferees, assignees and successors of exploration plan

78.4 (1) Any transferee, assignee or successor of a person who submitted an exploration plan under subsection 78.2 (1) shall comply with subsections 78.2 (2) and (3) in respect of that exploration plan.

Transferees, assignees and successors of exploration permit

(2) Any permit that is issued under section 78.3 is binding upon and enforceable against any transferee, assignee or successor of the person to whom the permit was issued.

Contravention

78.5 (1) Where it is found that a prescribed activity is being carried out in contravention of this Act or the regulations relating to exploration plans or exploration permits, an inspector or a Director may by order,

- (a) require that the exploration activities cease until the contraventions are addressed to the satisfaction of a Director and the order to cease activity has been revoked; or
- (b) where the contravention is with respect to an exploration permit, cancel the permit.

Other permits

(2) A person who submits an exploration plan or obtains an exploration permit under this section is not exempt from complying with any other requirements that are set out under this Act or any other Act.

Offence continues

(3) A person who continues an activity or causes an activity to be continued in contravention of an order made under clause (1) (a) is guilty of an offence and, in addition to any other penalty imposed under this Act, is liable on conviction to a fine of not more than \$2,500 for each day the activity is continued in contravention of the order.

Liability for rehabilitation

78.6 If a mining claim, mining lease or licence of occupation for mining purposes is

transferred or assigned, the transferee or assignee is liable for any rehabilitation obligations imposed under this Part or under an exploration plan or exploration permit with respect to the claim, lease or licence regardless of when or by whom those obligations were created.

41. (1) The Act is amended by adding the following heading before section 79:

SURFACE RIGHTS COMPENSATION

(2) Subsection 79 (1) of the Act is repealed and the following substituted:

Definition

(1) In this section,

“surface rights holder” means a person to whom the surface rights of land have been granted, sold, leased or located.

(3) Subsection 79 (2) of the Act is amended by striking out “an owner of surface rights” in the portion before clause (a) and substituting “a surface rights holder”, and by striking out “the owner of the surface rights” in the portion after clause (d) and substituting “the surface rights holder”.

(4) Subsection 79 (4) of the Act is amended by striking out “in the prescribed form”.

(5) Subsection 79 (9) of the Act is amended by striking out “upon payment of the required fee” at the end.

42. (1) Subsection 81 (2) of the Act is repealed and the following substituted:

Application for lease

(2) The application and payment for a lease may not be made to a recorder until the applicant,

- (a) has performed the fifth prescribed unit of assessment work on a mining claim or, if a regulation provides that payment may be made in place of performing some or all assessment work, has made the payment and performed the work as required by the regulation; and
- (b) has reported any assessment work performed and, if necessary, has received approval for the work.

Same

(2.0.1) The application shall be accompanied by,

- (a) if a survey is required under section 95 or 96, a plan of survey approved by the Surveyor General; and
- (b) an agreement or an order of the Commissioner indicating that surface rights compensation, if any, has been paid, secured or settled.

(2) Subsection 81 (2.1) of the Act is repealed and the following substituted:

Resolution of disputes over encumbrances on mining claim

(2.1) For the purpose of expediting the issuing of a lease under this section, the Commissioner may, upon notice to all interested parties, determine any issues relating to encumbrances or any other right or interest recorded on the abstract of an unpatented mining claim that appears to affect the claim.

(3) Section 81 of the Act is amended by adding the following subsection:

Late renewal

(6.3) If an application for renewal is approved after the day the lease expires,

(a) until the day before the renewal is approved, the expired lease continues to apply; and

(b) on and after the day the renewal is approved, the new lease is deemed to have applied as of the day after the expiry of the previous lease, despite clause (a).

(4) Subsection 81 (14) of the Act is repealed and the following substituted:

Restriction on transfer, etc.

(14) A lease, a renewal of a lease or the term or terms that a lease creates shall not be transferred, mortgaged, charged, sublet or made subject to a debenture, unless the lessee applies to the Minister, and the Minister gives his or her written consent to the transaction.

(5) Subsection 81 (16) of the Act is repealed and the following substituted:

Additional work where area of claim exceeds prescribed size

(16) Where the area of the mining claim exceeds by more than 15 per cent the prescribed size for a mining claim and the claim is not reduced in size under section 97, additional assessment work shall be performed or additional payments shall be made in place of assessment work as prescribed for the excess area.

(6) Subsection 81 (18) of the Act is repealed and the following substituted:

Where additional work required

(18) The Minister may direct a time for compliance with any requirements under subsection (16).

43. The definition of “lease” in subsection 82 (1) of the Act is repealed and the following substituted:

“lease” means a lease, or the renewal of a lease, of mining rights or of surface rights, or of both mining rights and surface rights, issued under section 47, 52 or 100 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor of that Act.

44. Section 83 of the Act is repealed and the following substituted:

Exchange of lease

83. (1) The holder of a lease issued under this Act, upon application to the Minister, and upon the surrender of the lease, may be issued one or more replacement leases in exchange for that lease, on such terms and conditions as the Minister considers appropriate.

No expansion of rights

(2) A replacement lease issued under subsection (1) shall not include surface rights or mining rights that were not included in the surrendered lease.

Separate surface rights and mining rights

(3) A holder, upon so requesting in the application under subsection (1), may be issued separate replacement leases for the surface rights and for the mining rights for the land, provided that the surrendered lease is for both mining rights and surface rights, but land held under a replacement lease for surface rights shall be used solely for mining purposes.

Terms of replacement leases

(4) Replacement leases issued under subsection (1) or (2) may be for a different

tenure than that of the original lease, but they shall,

- (a) in the case of one replacement lease, cover the same area of land as the surrendered lease covered or a smaller area;
- (b) in the case of two or more replacement leases, cover together the same area of land as the surrendered lease covered or a smaller area;
- (c) be for a term equal to the balance of the surrendered lease; and
- (d) be at the applicable rental rate per hectare, as prescribed.

Application of s. 81

(5) Subsections 81 (6), (6.1), (6.2), (6.3), (8), (9), (9.1), (10), (11), (12), (13) and (14) apply with necessary modifications to leases issued under this section.

Consolidation of leases

(6) The holder of two or more leases of the same tenure may apply to the Minister to have the leases consolidated into a single lease.

Interest

(7) Where payment of the rental under a lease is not paid within the required time, interest at the prescribed rate, compounded annually, shall be added to the amount owing in each year that the amount remains unpaid.

45. (1) Subsection 84 (2) of the Act is amended by striking out the portion before clause (a) and substituting the following:

Application for lease of surface rights

(2) An application for a lease of surface rights shall provide such details as the Minister requires, including,

.....

(2) Subsection 84 (6) of the Act is repealed and the following substituted:

Application of s. 81

(6) Subsections 81 (6), (6.1), (6.2), (6.3), (8), (9), (9.1), (10), (11), (12), (13) and (14) apply with necessary modifications to leases issued under this section, but, where the mining lands or mining rights that are the basis of the application are held under a mining lease, the renewal term shall be conterminous with the mining lease.

46. The Act is amended by adding the following section:

Provision re Aboriginal or treaty rights

86.1 Every lease issued under this Act, including leases issued or renewed before the enactment of this section, shall include or be deemed to include the following provision:

The Lessee's rights under this lease are subject to the protection provided for existing Aboriginal or treaty rights in section 35 of the *Constitution Act, 1982* and the Lessee shall conduct itself on the demised premises in a manner consistent with the protection provided to any such rights.

47. Subsections 95 (5) and (6) of the Act are repealed and the following substituted:

Additional work where area exceeds prescribed size

(5) Where a perimeter survey is made under subsection (3), the rental shall be computed on the total area of the claims within the perimeter survey and, where the average area of the claims within the perimeter survey exceeds by more than 15 per cent the

prescribed size for a mining claim, additional assessment work shall be performed or additional payments shall be made in place of assessment work as prescribed for the excess area.

Where additional work required

(6) The Minister may set out in an order the time for compliance with any requirements under subsection (5).

48. The heading to Part IV of the Act is repealed and the following substituted:

PART IV OIL, GAS, UNDERGROUND STORAGE AND SALT SOLUTION MINING

49. Section 99 of the Act is repealed.

50. Section 101 of the Act is repealed and the following substituted:

Production leases

101. The Minister may issue the following types of production leases:

1. Leases for the drilling for and production of oil and gas on Crown land.
2. Leases for the drilling for and production of salt by solution mining on Crown land.

51. Section 105 of the Act is repealed and the following substituted:

Jurisdiction

105. (1) No action lies and no other proceeding shall be taken in any court as to any matter or thing concerning any right, privilege or interest conferred by or under the authority of this Act, but every claim, question and dispute in respect of the matter or thing shall be determined by the Commissioner except as otherwise provided in section 171 or elsewhere in this Act and except for matters relating to consultation with Aboriginal communities, Aboriginal or treaty rights or to the assertion of Aboriginal or treaty rights.

Same

(2) In the exercise of the power conferred by this section, the Commissioner may make such order or give such directions as he or she considers necessary to make effective and enforce compliance with his or her decision.

52. (1) Subsection 112 (1) of the Act is amended by adding at the end “except where the appeal is with respect to consultation with Aboriginal communities, Aboriginal or treaty rights or to the assertion of Aboriginal or treaty rights”.

(2) Subsection 112 (3) of the Act is amended by striking out “in the prescribed form”.

53. Subsection 114 (1) of the Act is amended by striking out “and shall be accompanied by the required fee for recording any order made by the Commissioner in the matter” at the end.

54. Section 131 of the Act is amended by striking out “on payment of the required fee”.

55. Subsection 134 (1) of the Act is amended by striking out “the *Arbitrations Act*” and substituting “the *Arbitration Act, 1991*”.

56. Section 139.2 of the Act is amended by adding the following subsection:

Aboriginal consultation

(4.1) In determining whether to grant approval for the rehabilitation of the mine hazard, the Director shall consider whether Aboriginal community consultation has occurred in accordance with any prescribed requirements.

57. Sections 140 and 141 of the Act are repealed and the following substituted:

Advanced exploration

140. (1) No proponent other than a proponent who is subject to a closure plan shall commence or recommence advanced exploration unless,

- (a) the proponent has given a Notice of Project Status to the Director in the prescribed manner;
- (b) the proponent has given public notice if required under subsection (3);
- (c) Aboriginal consultation has been conducted in accordance with the regulations, which may provide that the Director, in considering whether he or she is satisfied that appropriate consultation has been carried out, may take into account any arrangements that have been made with Aboriginal communities potentially affected by the advanced exploration;
- (d) the proponent has filed a certified closure plan with the Director as required under subsection (4); and
- (e) the proponent has received a written acknowledgment of receipt of the certified closure plan from the Director.

Amendments

(2) If a proponent files an amendment to a certified closure plan under subsection 143 (2), the proponent shall not commence any of the advanced exploration mentioned in the amendment until it has received the Director's written notice that the amendment has been filed pursuant to subsection 143 (8).

Public notice

(3) Within 45 days after receiving the notice under clause (1) (a), the Director may require the proponent to give public notice of the advanced exploration project at the prescribed time and in the prescribed manner.

Closure plan

(4) The proponent of an advanced exploration project shall file with the Director a closure plan certified in the prescribed manner certifying that the plan complies with the prescribed requirements and, if the proponent has been required to give public notice, the proponent shall file the closure plan after giving the public notice.

Acknowledgment of receipt

- (5) Within 45 days after the filing of the certified closure plan, the Director shall,
- (a) give the proponent written acknowledgment that he or she has received the closure plan; or
 - (b) return the closure plan for refile if it does not sufficiently address all of the prescribed requirements for a certified closure plan.

Effect of acknowledgment

(6) The certified closure plan of a proponent who receives a written acknowledgment of receipt under clause (5) (a) is considered filed as of the date indicated on the written acknowledgment of receipt.

Mine production

- 141.** (1) No proponent other than a proponent who is subject to a closure plan shall commence or recommence mine production unless,
- (a) the proponent has given a Notice of Project Status to the Director in the prescribed manner;
 - (b) the proponent has given public notice at the prescribed time and in the prescribed manner;
 - (c) Aboriginal consultation has been conducted in accordance with the regulations, which may provide that the Director, in considering whether he or she is satisfied that appropriate consultation has been carried out, may take into account any arrangements that have been made with Aboriginal communities potentially affected by the mine production;
 - (d) the proponent has filed a certified closure plan with the Director as required under subsection (3); and
 - (e) the proponent has received a written acknowledgment of receipt of the certified closure plan from the Director.

Amendments

(2) If a proponent files an amendment to a certified closure plan under subsection 143 (2), the proponent shall not commence any of the mine production mentioned in the amendment until it has received the Director's written notice that the amendment has been filed pursuant to subsection 143 (8).

Closure plan

(3) After public notice has been given under clause (1) (b), the proponent shall file with the Director a closure plan certified in the prescribed manner certifying that the plan complies with the prescribed requirements.

Acknowledgment of receipt

- (4) Within 45 days after the filing of the certified closure plan, the Director shall,
- (a) give the proponent written acknowledgment that he or she has received the closure plan; or
 - (b) return the closure plan for refileing if it does not sufficiently address all of the prescribed requirements for a certified closure plan.

Effect of acknowledgment

(5) The certified closure plan of a proponent who receives a written acknowledgment of receipt under clause (4) (a) is considered filed as of the date indicated on the written acknowledgment of receipt.

58. Section 142 of the Act is repealed and the following substituted:

Approval of closure plan

142. The provisions of this Part that apply with respect to closure plans filed under section 140, 141 or 147 apply with respect to closure plans approved under this section, as it read before the day section 58 of the *Mining Amendment Act, 2009* came into force.

59. Section 146 of the Act is repealed.

60. Section 150 of the Act is repealed.

61. (1) Subsection 151 (4) of the Act is amended by striking out “in the prescribed form”.

(2) Subsection 151 (5) of the Act is amended by striking out “in the prescribed form”.

62. Subsection 152 (1) of the Act is amended by adding “or” at the end of clause (b), by striking out “or” at the end of clause (c) and by repealing clause (d).

63. The Act is amended by adding the following section:

Notice for amending and revoking orders

153.5 If a Director or the Minister amends or revokes any order, he or she shall give written notice to the person to whom the order is directed.

64. (1) Subsection 154 (1) of the Act is amended by adding “and in section 167.1” after “In this Part” in the portion before the first definition.

(2) The definition of “operator” in subsection 154 (1) of the Act is repealed and the following substituted:

“operator”, in respect of a diamond mine, includes,

- (a) a person who has the right to work a diamond mine and produce diamonds from it, personally or through agents or employees or together with one or more other persons, and
- (b) a person who has the right to receive a share of the proceeds, the profits or the net value of the output of a diamond mine or who has an interest in a diamond mine, whether as a member of a joint venture, as a member of a partnership, or as a beneficiary of a trust that has the right to work the diamond mine and produce diamonds from it, but does not include any person whose only right or interest is the right to receive royalties; (“exploitant”)

(3) Subsection 154 (1) of the Act is amended by adding the following definition:

“representative of an operator” includes the president, manager, secretary and any other officer, director, agent or representative of an operator. (“représentant d’un exploitant”)

65. (1) Section 154.2 of the Act is amended by adding “Subject to subsection (2)” at the beginning.

(2) Section 154.2 of the Act is amended by adding the following subsection:

Short years

(2) Where a mine is in production for less than 12 months in a fiscal year or a fiscal year of an operator is less than 12 months, each dollar amount in Column 1 of the Table to this section shall be multiplied by one-twelfth times the number of months in the fiscal year that the mine was in production or the number of months in the shortened fiscal year, as the case may be.

66. Section 154.3 of the Act is repealed and the following substituted:

Notice of royalty

154.3 (1) The Minister shall examine a return delivered by an operator of a diamond mine under subsection 154.5 (1) and shall, as soon as reasonably possible, send a notice of royalty to the operator setting out the amount of the royalty, interest and penalties, if any,

payable in respect of the mine for the fiscal year.

Revised notice of royalty

(2) The Minister may send one or more revised notices of royalty to an operator of a diamond mine setting out the amount of the royalty, interest and penalties, if any, payable for a fiscal year in respect of the mine,

- (a) at any time within the four-year period after sending the notice under subsection (1); and
- (b) at any time, if the operator made a fraudulent or negligent misrepresentation in supplying to the Minister information upon which the calculation of the amount of the royalty was based.

Amount payable

(3) The amount of the royalty set out in a notice of royalty or in the most recent revised notice of royalty for the fiscal year shall be considered to be the amount payable on the date prescribed for the purposes of subsection 154.1 (3), and any interest or penalties payable under section 154.4 shall be calculated on that amount and in respect of that date.

Review of amount of royalty, interest or penalties

(4) The amount of the royalty, interest or penalties set out in a notice of royalty or revised notice of royalty may be reviewed in accordance with the procedures set out in the regulations.

67. Section 154.4 of the Act is amended by striking out “of royalties” at the end and substituting “of the royalty for a fiscal year”.

68. Subsection 154.5 (2) of the Act is repealed and the following substituted:

When return demanded

(2) An operator, whether or not liable to pay a royalty under this Part for a fiscal year and whether or not a return has been filed under subsection (1), shall, on demand from the Minister, served personally or by registered mail, file with the Minister a royalty return containing the information required by the regulations for the fiscal year indicated in the demand.

Form and time

(3) Notices, returns and information required under subsection (1) or (2) shall be delivered to the Minister at the prescribed times and in the manner specified by the Minister.

Time extension for filing returns, etc.

(4) The Minister may extend the time for delivering notices, returns and other information required under subsection (1) or (2) before or after the date by which such notice, return or other information is required to be delivered under this Act or the regulations.

69. (1) Clause 154.6 (1) (a) of the Act is repealed and the following substituted:

- (a) all books, records and other documents relating to the determination of the royalty payable under this Part; and

(2) Subsection 154.6 (2) of the Act is repealed and the following substituted:

Audit and inspection

(2) Any person authorized by the Minister may at all reasonable times, for any purpose related to the administration or enforcement of this Part, enter into any premises or

place where an operator's business is carried on or any property is kept or anything is done in connection with that business or any books, records or other documents are or should be kept pursuant to this Part, and,

- (a) audit or examine the books, records and other documents that relate or may relate to the amount of the royalty payable under this Part;
- (b) examine property described in an inventory or any property, process or matter, an examination of which may, in the person's opinion, assist him or her in determining the amount of any royalty payable under this Part; and
- (c) require any representative of an operator that is liable to pay or considered possibly liable to pay a royalty under this Part and any other person on the premises of such operator to give all reasonable assistance with the audit or examination and to answer all questions relating to the audit or examination either orally or, if he or she so requires, in writing, on oath or affirmation or by statutory declaration and, for that purpose, require such person to attend at the premises or place with him or her.

Same

(3) The Minister may, for any purpose relating to the administration or enforcement of this Part, by registered letter or by a demand served personally or delivered by a courier service, require from an operator or from a representative of an operator,

- (a) any information or additional information or a return as required by section 154.5; or
- (b) production, or production on oath or affirmation, of any books, records or other documents, within such reasonable time as is stipulated therein.

Same

(4) The Minister may, by registered letter or by a demand served personally or delivered by a courier service, require the production, under oath or affirmation or otherwise, by any person, partnership, syndicate, trust or corporation, or by his, her or its agent or officer, of any books, records or other documents in the possession or in the control of such person, partnership, syndicate, trust or corporation or of his, her or its agent or officer, for the purpose of determining the amount of royalty, if any, payable under this Part by an operator and production thereof shall be made within such reasonable time as is stipulated in such registered letter or demand.

Same

(5) The Minister may, for any purpose related to the administration or enforcement of this Part, authorize any person to make such inquiry as he or she deems necessary with reference to anything relating to the administration or enforcement of this Part.

Copies

(6) Where a book, record or other document has been examined or produced under this section, the person by whom it is examined or to whom it is produced or any employee or officer authorized for the purpose may make, or cause to be made, one or more copies thereof and a document purporting to be certified by the Minister, or a person authorized by the Minister, to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

Print-out admissible in evidence

(7) The Minister or a person authorized by the Minister may, for any purpose related to the administration or enforcement of this Part, reproduce from original data stored electronically any document previously issued by the Minister under this Part, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Same

(8) If the data contained on a return or other document received by the Minister from an operator has been stored electronically by the Minister on computer disk or other electronic medium and the return or other document has been destroyed by a person so authorized by the Minister, a document, accompanied by the certificate of the Minister or of a person authorized by the Minister, stating that the document is a print-out of the data contained on the return or other document received and stored electronically by the Minister and certifying that the information contained in the document is a true and accurate representation of the data contained on the return or document delivered by the operator is admissible in evidence and shall have the same probative force as the original return or document would have had if it had been proved in the ordinary way.

Compliance

(9) No person shall prevent or attempt to prevent any person from doing anything that he or she is authorized by this section to do and, despite any other law to the contrary, every person shall, unless unable to do so, do everything the person is required by this section to do.

Administration of oaths and affirmations

(10) Declarations or affidavits in connection with returns delivered under this Part or statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or affirmation, or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefore.

Powers of inquiry

(11) For the purpose of an inquiry authorized under subsection (5), the person authorized to make the inquiry has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act.

70. Section 154.7 of the Act is repealed and the following substituted:

Confidential information

154.7 (1) Every person employed or formerly employed in the administration or enforcement of this Part and every person who acts or has acted on behalf of the Minister in the administration or enforcement of this Part shall preserve secrecy with respect to all information that comes or came to his or her knowledge in the course of his or her duties and shall not knowingly communicate any of those matters to any other person, except,

- (a) as may be required in connection with the administration and enforcement of this Part or for use in the development and evaluation of fiscal policy for the Crown;
- (b) to counsel for the person required by this section to preserve secrecy;
- (c) with the consent of the person to whom the information or material relates; or
- (d) to an inspector or investigator designated under the *Export and Import of Rough Diamonds Act* (Canada) for any purpose relating to the administration or

enforcement of that Act, including the confirmation of information contained in an application submitted by an operator of a diamond mine for a Canadian certificate for the export of rough diamonds.

FIPPA

(2) Subsection (1) prevails over the *Freedom of Information and Protection of Privacy Act*.

71. The Act is amended by adding the following Part:

PART X INSPECTIONS

Inspectors

156. The Minister may appoint any person or class of persons as an inspector, including a geologist employed in the Ministry, and may limit the functions and powers of an inspector in the document making the appointment.

Duties of an inspector

157. The functions of an inspector may include any or all of the following:

1. Gathering information, including geoscience information respecting minerals or other materials or substances occurring on or beneath the surface of the ground, by any means, including by performing technical surveys, taking measurements and taking representative samples for the purpose of testing and analysis.
2. Preparing any reports, maps or data sets as may be required by the Minister or any other employee in the Ministry in the performance of that person's duties under the Act.
3. Determining the nature and extent of any existing or potential mine hazards on mining lands.
4. Determining if the terms and conditions of licences, leases, exploration plans, permits, closure plans, and any other approvals issued under this Act are being complied with.
5. Determining if any orders issued under this Act are being complied with.
6. Determining if this Act and the regulations are being complied with.
7. Any other functions that may be imposed or required for the administration of this Act.

Powers of an inspector

158. (1) For the purpose of carrying out his or her functions under this Act, an inspector may, without warrant, at any reasonable time, gather information and make inspections and inquiries and, in the exercise of that authority, may,

- (a) enter into or onto any place, mining lands or other lands or premises connected or associated with any staking, exploration activity, mine, advanced exploration project, abandoned mine or mine hazard, other than a room or place actually used as a dwelling;
- (b) make such inspections, examinations, inquiries, tests or photographic or other record considered necessary in carrying out his or functions;
- (c) be accompanied or assisted by any person authorized by the inspector;

- (d) request the production of any documents relevant to the inspection, including but not limited to drawings, specifications, plans, licences, leases, permits, records, receipts or reports;
- (e) on giving a receipt therefor, remove any documents, including drawings, specifications, plans, licences, leases, permits, records, receipts or reports for the purposes of making copies of them and shall promptly return them to the person from whom they were taken;
- (f) use or cause to be used any computer or other device for the purpose of examining information contained in or available to the computer or other device, and may produce or cause to be produced a printout or other output from the computer system or other device;
- (g) inspect any work related to rehabilitation required or performed under this Act;
- (h) make reasonable inquiries of any person, orally or in writing; and
- (i) perform technical surveys and take measurements and representative samples, as may be considered necessary in carrying out his or her functions.

Inspection to be permitted

(2) A person shall, on request of an inspector, permit an inspector to gather information and otherwise carry out any inspection or inquiry pursuant to this Act and shall facilitate the work of the inspector.

Obstruction prohibited

(3) No person shall hinder or obstruct an inspector in the lawful performance of his or her functions or provide the inspector with false information or refuse to furnish information required for the purposes of an inspection under this Act.

Inspection warrant

(4) A provincial judge or justice of the peace may issue or renew a warrant authorizing the inspector to do anything set out in subsection (1) and as may be further specified in the warrant and for the period set out in the warrant, if the judge or justice is satisfied on the evidence under oath of an inspector that there are reasonable grounds for believing that it is appropriate for the administration of this Act for the inspector to do anything set out in subsection (1), and that the inspector may be unable to effectively carry out his or her functions without a warrant because,

- (a) a person has prevented the inspector from doing anything set out in subsection (1);
- (b) there are reasonable grounds for believing a person may prevent an inspector from doing anything set out in subsection (1); or
- (c) it is impractical due to the remoteness of the place to be inspected, or for any other reason, for the inspector to obtain a warrant under this section without delay if access is denied.

Assistance

(5) A warrant issued under subsection (4) may authorize any person specified in the warrant to accompany and assist the inspector in the execution of the warrant.

Execution of warrants

(6) A warrant issued under subsection (4) shall be executed at a time that is reasonable

in view of any activity that is conducted on the land or at the place or at such time as the warrant may specify.

Duration of warrants

(7) A warrant issued under subsection (4) shall be valid for 30 days or for such shorter period as may be specified in it.

Admissibility of copies

(8) Copies of, or extracts from, documents or things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Identification

(9) An inspector who is acting under this Act shall, on request, produce identification and evidence of his or her appointment as an inspector.

Assistance of police

(10) An inspector may require a member of a police force to assist him or her for the purpose of carrying out his or her functions and powers under this Act.

72. (1) Clause 164 (1) (a) of the Act is amended by adding “explores” after “prospects”.

(2) Clause 164 (1) (b) of the Act is repealed and the following substituted:

- (b) performs or causes to be performed on any Crown lands, or on any lands where the mining rights belong to the Crown, any drilling for the purpose of,
 - (i) locating minerals, except where such Crown lands or mining rights have been staked and recorded as a mining claim in accordance with this Act, or
 - (ii) locating oil and gas, except where authorized by an exploration licence or production lease issued in accordance with Part IV of this Act;

(3) Clause 164 (1) (e) of the Act is amended by adding “or inspector” after “any officer”.

(4) Clause 164 (1) (f) of the Act is amended by adding “or inspector” after “any officer” and by striking out “other than Part VII”.

(5) Clause 164 (1) (h) of the Act is repealed and the following substituted:

- (h) acts in contravention of this Act in any particular not otherwise mentioned;

(6) Clause 164 (1) (k) of the Act is repealed and the following substituted:

- (k) attempts to do any of the acts mentioned in clauses (a) to (j) or anything else that is an offence under this Act,

(7) Subsection 164 (1) of the Act is amended by striking out “\$10,000” in the portion after clause (k) and substituting “\$100,000 or to imprisonment for a term of not more than one year, or both”.

(8) Subsection 164 (2) of the Act is amended by striking out “\$10,000” at the end and substituting “\$25,000”.

(9) Section 164 of the Act is amended by adding the following subsections:

Destruction, etc., of rehabilitation works

(3) Every person who alters, destroys, removes or impairs any rehabilitation work made in accordance with this Act or a filed closure plan, or made by the Crown, without the written consent of the Minister, is guilty of an offence and on conviction is liable to a fine of not more than \$500,000 or to imprisonment for a term of not more than one year, or both.

Corporations

(4) If a corporation commits an offence under this Act or the regulations, an officer, director, employee or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted for the offence.

Employers and principals

(5) In a prosecution for an offence under this Act or the regulations, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the defendant acting in the course of employment or agency, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the defendant establishes that the offence was committed without the knowledge or consent of the defendant.

Same

(6) In a prosecution for an offence under this Act or the regulations, it is sufficient proof of the offence to establish that it was committed by a person in the course of performing any activity related to an exploration plan, exploration permit or other authorization issued to the defendant, whether or not the person is identified or has been prosecuted for the offence, unless the defendant establishes that the offence was committed without the knowledge or consent of the defendant.

Additional penalties

(7) The court that convicts a person of an offence under this Act, in addition to any other penalty imposed by the court, may, on its own initiative or on the motion of the prosecutor make one or more of the following orders:

1. An order to increase a fine imposed upon the person by an amount equal to the amount of monetary benefit acquired by, or that accrued to, the person as a result of the commission of the offence, despite the imposition of the maximum fine provided for that offence.
2. An order that the person take such action as the court directs within the time specified in the order to prevent, eliminate or ameliorate damage that results from or is directly or indirectly connected to the commission of the offence and may include in such order the requirement to file an exploration plan, closure plan, or to apply for an exploration permit, as may be appropriate in the circumstances.
3. An order that the person comply with any order, notice, direction, requirement or report made under this Act that results from or is directly or indirectly connected to the commission of the offence.

Other conditions

(8) An order under subsection (7) may contain such other conditions relating to the circumstances of the offence and of the person who committed or contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to rehabilitation of the person.

Variation of order

(9) The court that made an order under subsection (7) may make any changes in or additions to the conditions set out in the order that in the opinion of the court are rendered desirable by a change in circumstances,

- (a) on its own initiative at any time; or
- (b) on application by the prosecutor, by the person convicted or by a person authorized under the *Law Society Act* to represent the person convicted, with notice to the other party, after a hearing or, with the consent of the parties, without a hearing.

Failure to comply with an order

(10) If a person fails to comply with an order made or varied under subsection (7) or (9), the Minister may take such action as he or she considers appropriate to rehabilitate the mining lands, and any cost or expense incurred in the rehabilitation is a debt to the Crown and may be recovered by the Minister in a court of competent jurisdiction in an action against the person.

73. Subsection 165 (2) of the Act is amended by adding at the end “or to imprisonment for a term of not more than one year, or both”.

74. Section 166 of the Act is amended by striking out “\$10,000” at the end and substituting “\$100,000 or to imprisonment for a term of not more than one year, or both”.

75. (1) Subsection 167 (1) of the Act is amended by adding at the end “or to imprisonment for a term of not more than two years, or both”.

(2) Subsection 167 (2) of the Act is amended by adding at the end “or to imprisonment for a term of not more than two years, or both”.

(3) Subsections 167 (4), (5), (6), (7) and (8) of the Act are repealed.

76. The Act is amended by adding the following section:

Offences under Part VIII

Failure to deliver return

167.1 (1) Every operator that fails to deliver a return as and when required by section 154.5 is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a penalty equal to the total of,

- (a) an amount equal to 5 per cent of the operator’s royalty payable under Part VIII for the fiscal year that was unpaid when the return was required to be filed; and
- (b) the product obtained when 1 per cent of the royalty payable under Part VIII for the fiscal year that was unpaid when the return was required to be filed is multiplied by the number of complete months, not exceeding 12, from the date on which the return was required to be filed to the date on which the return was filed.

Penalty for hindrance, etc.

(2) Every person who fails to comply with or contravenes subsection 154.6 (9) is guilty of an offence and, in addition to any penalty otherwise provided, on conviction is liable to a fine of \$200 for each day during which the default or contravention continues.

Penalty for disclosure of confidential information

(3) Every person who contravenes subsection 154.7 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

Officers of corporations

(4) Where an operator is guilty of an offence under Part VIII, any officer, director or agent of the operator who directed, authorized, assented to, acquiesced in, or participated in the offence is a party to and guilty of the offence and, on conviction, is liable to the penalty for the offence whether or not the operator has been prosecuted or convicted.

Time for laying information

(5) Despite section 169, an information in respect of an offence against Part VIII shall be laid within six years of the time when the matter of the information arose.

False statements

(6) Every person who has,

- (a) made, or participated in, assented to or acquiesced in the making of false or deceptive statements in a return, certificate, statement or answer delivered or made as required by or under Part VIII;
- (b) destroyed, altered, mutilated, secreted or otherwise disposed of the books, records or other documents of an operator in order to evade payment of the royalty imposed by Part VIII;
- (c) made, or assented to or acquiesced in the making of, false or deceptive entries, or omitted, or assented to or acquiesced in the omission, to enter a material particular, in books, records or other documents of an operator;
- (d) wilfully in any manner evaded or attempted to evade compliance with Part VIII or payment of a royalty imposed by Part VIII; or
- (e) conspired with any person to commit an offence described by clauses (a) to (d),

is guilty of an offence and, in addition to any penalty otherwise provided, is liable on conviction to a fine of not less than the greater of \$500 or 50 per cent of the amount of the royalty that should have been shown to be payable or that was sought to be evaded and not more than double the amount of the royalty that should have been shown to be payable or that was sought to be evaded, or to imprisonment for a term of not more than two years or to both fine and imprisonment.

77. Section 168 of the Act is amended by striking out “\$5,000” and substituting “\$25,000”.

78. Section 169 of the Act is repealed and the following substituted:

Limitation

169. A prosecution for an offence under this Act shall not be commenced more than two years after the later of,

- (a) the day on which the offence was committed; and
- (b) the day on which evidence of the offence first came to the attention of an inspector appointed under this Act.

79. Part XII of the Act is amended by adding the following section immediately before the heading “Lien for Wages”:

ABORIGINAL CONSULTATION – DISPUTE RESOLUTION

Dispute resolution

170.1 (1) The Minister may designate one or more individuals, or a body, to hear and

consider disputes arising under this Act relating to consultation with Aboriginal communities, Aboriginal or treaty rights or to the assertion of Aboriginal or treaty rights, including disputes that may occur,

- (a) in relation to decisions on the issue, amendment, renewal or cancellation of, or the terms and conditions imposed on, an exploration permit issued under section 78.3;
- (b) under clause 140 (1) (c) or 141 (1) (c); and
- (c) in any other prescribed circumstance.

Same

(2) The individuals or body designated under subsection (1) shall hear and consider the dispute, in accordance with any requirements set out in the regulations, and shall make a report to the Minister setting out recommendations.

Minister's powers

- (3) After considering the report and recommendations made, the Minister may,
 - (a) confirm, vary or rescind a Director's decision in respect of an exploration permit issued under section 78.3;
 - (b) provide such further direction or support as he or she considers appropriate respecting any consultation undertaken for the purpose of clause 140 (1) (c) or 141 (1) (c); or
 - (c) take any actions that he or she considers appropriate in the circumstances.

Notice of decision

(4) The Minister shall provide written notice, with reasons, to the parties to the dispute resolution process of anything done or decided by the Minister under subsection (3).

80. (1) Subsection 175 (1) of the Act is amended by striking out "ore or quarry" in the portion before clause (a) and substituting "ore, quarry or oil or gas well".

(2) Clause 175 (1) (e) of the Act is amended by striking out "mine or quarry" and substituting "mine, quarry or oil or gas well".

(3) Clause 175 (1) (h) of the Act is amended by striking out "mine or quarry" and substituting "mine, quarry or oil or gas well".

(4) Subsection 175 (1) of the Act is amended by adding the following clause:

- (j) rights of way or passage through or over any land or water, and the right to construct, improve, maintain and use works to transport oil, gas or salt in solution from his, her or its own wells.

81. (1) Paragraph 2 of subsection 176 (1) of the Act is repealed and the following substituted:

- 2. prescribing the form of any application, notice, report, log, record, dispute, certificate, permit, statement or other document required, permitted or provided for, by or under this Act and requiring its use;
- 2.1 prescribing additional restrictions or requirements respecting the lands on which mining claims shall not be staked or recorded for the purposes of subsection 29 (1) and section 30;

- 2.2 prescribing the size and form of mining claims, the manner of ground staking and the time and manner of affixing tags in respect thereto and the methods that may be used to delineate a mining claim by map staking;
- 2.3 governing the requirements for obtaining a prospector's licence or renewal of a licence, including prescribing the prospector's licence awareness program and the evidence required to prove successful completion of the program;
- 2.4 prescribing factors to be considered by the Minister in making an order to withdraw lands under subsection 35 (1);

(2) Subsection 176 (1) of the Act is amended by adding the following paragraphs:

3. governing the assessment of the mineral potential of lands and prescribing additional criteria for the purposes of subsection 35.1 (9);
- 3.1 governing the manner in which mining rights that have been withdrawn under section 35.1 are opened;

(3) Paragraph 4 of subsection 176 (1) of the Act is repealed and the following substituted:

4. governing the manner in which confirmation of staking must be given to a surface rights owner for the purpose of section 46.1;

(4) Subsection 176 (1) of the Act is amended by adding the following paragraph:

- 6.1 prescribing additional circumstances in which the Minister may make an order under subsection 51 (4);

(5) Paragraphs 7, 8 and 9 subsection 176 (1) of the Act are repealed and the following substituted:

7. prescribing the quantity of mineral bearing substances that require permission to be obtained, and prescribing any terms and conditions upon which permission may be granted to mine, mill and refine mineral bearing substance from an unpatented mining claim, for purposes of section 52;
8. governing the annual units of assessment work to be performed by the holder of a mining claim, the circumstances in which a claim holder may make payments instead of performing annual units of assessment work, limitations on the substitution of payments for units of assessment work, the amount of such payments and the allocation of such payments as assessment work credits;
9. prescribing, for the purposes of subsection 65 (4), the date reports in respect of specified types of assessment work shall be filed;

(6) The French version of paragraph 10 of subsection 176 (1) of the Act is amended by striking out "de jours".

(7) The French version of paragraph 11 of subsection 176 (1) of the Act is amended by striking out "de jours".

(8) Paragraph 12 of subsection 176 (1) of the Act is repealed and the following substituted:

12. prescribing the manner in which assessment work performed on mining lands, or payments made instead of assessment work, may be allocated to contiguous unpatented mining claims;

(9) Subsection 176 (1) of the Act is amended by adding the following paragraphs:

- 17.1 prescribing exploration activities or classes of exploration activities for which the prescribed requirements must be met or for which an exploration plan or an exploration permit is required, and prescribing circumstances in which an activity must be dealt with under an exploration permit;
- 17.2 governing the application for and issue, refusal, renewal, amendment and cancellation of exploration permits and prescribing their standard terms and conditions and governing the resolution of disputes relating to a refusal to issue or renew an exploration permit, a cancellation or amendment of an exploration permit, or relating to terms and conditions imposed on an exploration permit;
- 17.3 governing how the activities described in an exploration plan or exploration permit are carried out and requiring the prescribed rehabilitation activities to be performed;
- 17.4 governing how objections regarding exploration plans are to be made and the process for addressing the objections;
- 17.5 providing that sections 78.2, 78.3, 78.5 and 78.6 apply to a region of Ontario on and after the date specified for the region;

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- 24.1 governing whether land is used for mining purposes for the purpose of subsection 189 (1.1);
- 24.2 governing whether land is a site of Aboriginal cultural significance;
- 24.3 requiring consultation with Aboriginal communities in the prescribed circumstances and governing all aspects of Aboriginal consultation under this Act, including the manner in which any consultation that may occur under this Act is to be conducted and providing for the delegation of certain procedural aspects of the consultation;
- 24.4 setting out requirements respecting the dispute resolution process referred to in section 170.1 and otherwise governing the process, and prescribing the circumstances in which the process shall or may be used;
- 24.5 providing for transitional matters that the Lieutenant Governor in Council considers advisable to facilitate implementation of this Act or to deal with problems or issues arising as a result of the repeal or re-enactment of any provision of this Act;

(10) Section 176 of the Act is amended by adding the following subsection:**Transition**

(1.1) A regulation under paragraph 24.5 of subsection (1) may provide that it applies despite anything in this Act.

(11) Paragraph 8 of subsection 176 (2) of the Act is repealed.**(12) Section 176 of the Act is amended by adding the following subsections:****Incorporation by reference**

(2.4) If a regulation made under this section incorporates a document by reference, in whole or in part, the document may be incorporated,

- (a) with such changes as the Lieutenant Governor in Council considers necessary; or
- (b) as amended from time to time, whether the amendment to the document was made before or after the regulation was made.

Same

(2.5) Subsection (2.4) applies to a regulation made under this Act even if the regulation was made before subsection (2.4) came into force.

Access to incorporated document and earlier versions

(2.6) When a document is incorporated by reference as described in subsection (2.4), the Minister responsible for the administration of the Part of this Act under which the regulation is made shall take steps to ensure that,

- (a) the incorporated document is readily available to the public, on and after the day the provision containing the reference comes into force;
- (b) the incorporated document and any earlier versions of it that were previously incorporated into the regulation or into a predecessor of the regulation remain readily available to the public; and
- (c) where a document is incorporated as amended from time to time, the version of the document that exists on the day the regulation comes into force and all versions of the document that are made after that day and until the regulation is revoked, remain readily available to the public.

82. The heading before section 177.1 and section 177.1 of the Act are repealed and the following substituted:

FEES AND COSTS

Fees

177.1 (1) The Minister may establish and charge fees in respect of anything that any person or entity is authorized or required to do under this Act.

Public notice

(2) The Minister shall take such steps as are advisable to make the amount of any fee charged publicly available.

Exempt

(3) The power to establish and charge a fee includes the power to exempt a person from paying the fee.

83. The Act is amended by adding the following section:

Costs

178.1 Where a rent or fee required under this Act is not paid as required by this Act or an order issued under this Act, the cost of recovering the rent or fee may be added to the debt owed to the Crown.

84. The Act is amended by adding the following section:

FORMS

Forms

178.2 (1) The Minister may approve forms for any purpose of this Act, specify the procedure for the use of the forms, and require their use for any purpose of this Act, and the forms may provide for such information to be furnished as the Minister may require.

Prescribed form

(2) Despite subsection (1), if a form is prescribed for a purpose, the Minister shall not approve a form for the same purpose.

85. Subsection 181 (8) of the Act is repealed.

86. Section 182 of the Act is amended by adding the following subsection:

Definition

(9) In this section,

“minerals” includes oil and gas.

87. Subsection 183 (2) of the Act is amended by striking out “in the prescribed form”.

88. Subsection 185 (5) of the Act is repealed.

89. Section 187 of the Act is repealed and the following substituted:

Amount of tax

187. There shall be paid to the Crown in each year a tax calculated in the prescribed manner for any lands or mining rights to which this Part applies.

90. (1) Subsection 189 (1) of the Act is amended by striking out “or lessee” in the portion after clause (e).

(2) Section 189 of the Act is amended by adding the following subsections:

Same

(1.1) Where lands or mining rights described in clause (1) (a) or (c) are not used for mining purposes, and there are no existing mining claims, leases or licences of occupation for the lands, the registered owner of the lands or mining rights may apply to the Minister for an exemption from the tax under this Part and the Minister may grant an exemption taking into account the following criteria:

1. Whether there is evidence satisfactory to the Minister that the lands and mining rights currently are not being used for mining purposes, and that the applicant does not intend to permit their use in future for mining purposes.
2. Whether the lands have provincially significant mineral potential.
3. Whether there are mine hazards or other rehabilitation concerns relating to the lands.
4. The area of the lands.
5. Any other prescribed criteria.

Change in use

(1.2) If an owner of land that has been exempted from tax under subsection (1.1) intends to use the land for mining purposes, the owner shall notify the Minister of the intended change in use of the lands in the prescribed manner and at least the prescribed number of days before the date the lands are first used for mining purposes, and the exemption from tax is revoked on that date.

Decision of Minister final

(1.3) The decision of the Minister under subsection (1.1) or (1.2) is final.

91. Section 192 of the Act is repealed and the following substituted:

Tax records

192. The Deputy Minister shall maintain a current tax record of the lands and mining rights and persons liable to the tax.

92. Section 193 of the Act is amended by striking out “in the prescribed form”.

93. Section 194 of the Act is amended by striking out “in the tax roll” and substituting “on the current tax record”.

94. (1) Subsection 195 (1) of the Act is amended by striking out “tax roll” wherever it appears and substituting in each case “current tax record”.

(2) Subsection 195 (3) of the Act is repealed and the following substituted:

Omissions from current tax record

(3) The Minister may refer to the Commissioner for hearing and adjudication any question or dispute as to whether any mining rights or lands have or any person has been wrongfully omitted from the current tax record.

95. Subsection 196 (2) of the Act is repealed.

96. (1) Subsection 197 (1) of the Act is amended by,

(a) striking out “between the 1st day of January and the 31st day of March”;

(b) striking out “not later than the 30th day of June next following”;

(c) striking out “on or before the 31st day of December next following, the property will” and substituting “within six months after the date of notice, the property may”;

(d) striking out “on the 1st day of January next following”; and

(e) striking out “the sum of \$10” and substituting “the fee required by the Minister”.

(2) Subsection 197 (2) of the Act is repealed and the following substituted:

Publication of list and notice

(2) Not later than 30 days after the date a notice for a property was sent under subsection (1), the Deputy Minister shall cause a second notice to be published in the prescribed manner listing the property and stating that, unless the total amount of tax, penalties and costs indicated on the notice sent under subsection (1) are paid by the date shown on that notice, the property may be forfeited to and vested in the Crown.

(3) Subsection 197 (3) of the Act is amended by striking out “in the prescribed form”.

97. Subsection 199 (3) of the Act is repealed and the following substituted:

Reduction or waiver of tax or interest

(3) The Minister may reduce or waive the amount of any tax owing or interest added to taxes under subsection (1).

98. Section 200 of the Act is amended striking out “All taxes, penalties and costs payable” at the beginning and substituting “All taxes, penalties, costs and fees payable”.

99. Section 201 of the Act is amended striking out “together with penalties and costs” at the end and substituting “together with penalties, costs and fees”.

100. The Act is amended by adding the following Part:

PART XIV FAR NORTH

New mines

Definitions

204. (1) In this section,

“closure” has the same meaning as in subsection 139 (1); (“fermeture”)

“new mine” means a project for which a certified closure plan is required under clause 141 (1) (a) to commence or recommence mine production, but for which no certified closure plan has been filed in accordance with subsection 141 (2); (“nouvelle mine”)

“project” has the same meaning as in subsection 139 (1). (“projet”)

No new mines

(2) No new mine opening shall occur in the Far North if,

(a) there is no community based land use plan for the area where the project is located; or

(b) there is a community based land use plan but the land use designated for the area where the project is located is inconsistent with the opening of a new mine.

Exception

(3) Despite subsection (2), the Lieutenant Governor in Council may, taking into account any prescribed land use planning objectives, permit a new mine opening for a project described in that subsection if the project is in the social and economic interests of Ontario.

New mine opening

(4) For the purposes of this section, a new mine opening occurs when any activity for which a certified closure plan for mine production is required under clause 141 (1) (a) is undertaken with respect to a new mine.

Mineral tenure protection

205. The validity of any mining claims, mining leases, patents, and licences of occupation for mining purposes located in the Far North and any related approvals for mineral exploration and development activities shall not be affected by a community based land use plan or any amendment to such a plan that designates a land use that is inconsistent with mining purposes, if the inconsistent designation was made after the mining claims, mining leases, patents, and licences of occupation for mining purposes or the related approvals for mineral exploration and development activities were issued.

101. (1) The English version of the following provisions of the Act is amended by striking out “stake out” wherever it appears and substituting in each case “stake”:

- 1. Subsections 26 (5) and (9).**
- 2. Section 27, in the portion before clause (a).**
- 3. Subsections 28 (1) and (2).**
- 4. Section 74.**
- 5. Section 104.**
- 6. Subsection 183 (3).**

(2) The English version of the following provisions of the Act is amended by striking out “staked out” wherever it appears and substituting in each case “staked”:

- 1. Clause (b) of the definition of “mining lands” in subsection 1 (1).**
- 2. Subsection 54 (1).**
- 3. Subsection 71 (2), in the portion after clause (b).**
- 4. Section 74.**
- 5. Subsection 75 (1).**
- 6. Clause 79 (2) (a).**
- 7. Subsections 80 (1) and (2).**
- 8. Subsection 90 (2).**
- 9. Subsection 92 (3).**
- 10. Subsection 97 (2).**
- 11. Subsections 183 (3) and (4).**

(3) The English version of the following provisions of the Act is amended by striking out “stakes out” wherever it appears and substituting in each case “stakes”:

- 1. Clause 79 (2) (a).**
- 2. Clause 164 (1) (g).**

(4) The English version of the following provisions of the Act is amended by striking out “staking out” wherever it appears and substituting in each case “staking”:

- 1. Clause 27 (d).**
- 2. Section 31.**
- 3. Subsection 41 (3).**
- 4. Subsection 47 (1).**
- 5. Subsection 50 (1), in the portion before clause (a).**
- 6. Subsections 58 (1) and (2).**
- 7. Subsection 71 (1).**
- 8. Subsection 72 (1), in the portion before clause (a), and clause 72 (1) (a).**
- 9. Subsection 79 (2), in the portion after clause (d), and subsections 79 (5) and (6).**
- 10. Subsection 81 (13).**
- 11. Subsection 82 (8).**
- 12. Subsection 97 (2).**
- 13. Paragraph 22 of subsection 176 (1).**
- 14. Subsections 179 (1) and (4).**
- 15. Subsections 183 (4) and (5).**
- 16. Subsection 184 (2).**
- 17. Subsection 185 (4).**

18. Subsections 197 (4) and (7).

Commencement

102. (1) Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

Same

(2) Subsections 1 (1) and (2), sections 5 and 6, subsection 7 (1), sections 8, 12, 13 and 14, subsection 15 (2), sections 17, 22, 23 and 24, subsections 26 (3), 28 (2) and 29 (2), sections 30, 31 and 33, subsections 34 (1) and (3), sections 35, 37 and 40, subsections 41 (1), (2) and (3), subsections 42 (1), (5) and (6), section 44, subsection 45 (1), sections 47, 56, 57 and 79, subsections 81 (1), (3), (5) and (8), sections 83, 85 and 88, subsection 90 (2), section 95, subsections 96 (1) and (2) and sections 97 and 100 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

103. The short title of this Act is the *Mining Amendment Act, 2009*.

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[Explanatory Note](#)

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