

COURT OF APPEAL FOR ONTARIO

BETWEEN:

2274659 ONTARIO INC.

Respondent
(Applicant)

- and -

CANADA CHROME CORPORATION

Appellant
(Respondent)

- and -

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Respondent
(Intervener)

FACTUM OF THE RESPONDENT (APPLICANT)

June 29, 2015

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PART I - OVERVIEW

1. The Respondent, 2274659 Inc. (“227”), wishes to build an all-season, publicly accessible road from the CN Railway at Cavell, Ontario to its mining developments 340 kilometers to the north in Ontario’s “Ring of Fire”. However, the Appellant, Canada Chrome Corporation (“CCC”), has staked over 200 unpatented mining claims in a linear fashion on Crown land along much of 227’s proposed route, based on a desire to control a transportation route to the Ring of Fire, and possibly to build a railway to mineral deposits it does not control and has no ability to develop. It also claims to wish to develop minerals such as consolidated aggregate (for the railway) and possibly diamonds – despite the evidence that none exist on the claims. On this basis, CCC has refused to consent to 227’s application for an easement crossing certain of the claims. Following a hearing held pursuant to s. 51 of the *Mining Act*, R.S.O. 1990, c. M.14 (the “*Act*”), the Mining and Lands Commissioner (the “MLC”) refused to grant an order dispensing with CCC’s consent, which was needed for 227 to proceed with the easement application to the Minister of Natural Resources (“MNR”) to consider (in consultation with other stakeholders, including CCC) the merits of the proposed road. The MLC’s decision effectively stopped, at the most preliminary stage, the road project and the construction of transportation infrastructure to the Ring of Fire.

2. The Divisional Court overturned the MLC’s decision, finding that the MLC had made fundamental legal errors in its interpretation and application of the *Mining Act*, and made numerous findings that were unreasonable. The Court then dispensed with CCC’s consent, allowing 227 to pursue its application for an easement to the MNR. CCC now appeals to this Court.

3. The appeal should be dismissed. The purpose of the *Mining Act* is to encourage prospecting, staking and exploration for the development of mineral resources. At the same time, the *Act* guards against prospectors improperly alienating Crown lands (from other uses) without

developing mineral resources on those lands, recognizing the clear public interest in allowing multiple other uses of Crown land. To prevent another use, therefore, the *Act* requires the mining claim holder to show that the proposed other use of the land would interfere with its exploration or extraction of minerals on the mining claims such that the multiple use principle should not be applied.

4. Contrary to this purpose, and the wording of the *Act* itself, the MLC unreasonably found that mining claims on land where surface rights are privately owned are subject to the express limits on surface rights contained in s. 50 of the *Mining Act*, but that holders of unpatented mining claims on land where the surface rights are owned by the Crown are not. In addition to granting this group of claim holders broader surface rights, the MLC held that their priority to use those surface rights extends to “all activities” associated with mining, anywhere in the province. This interpretation effectively nullifies the multiple use principle. It leads to an absurd result whereby the holder of an unpatented mining claim on Crown land can effectively veto any other use of that land, should it propose to use it in relation to mining anywhere in Ontario. Precisely such absurd results arose in this case: the MLC’s interpretation effectively put an end to 227’s road before its potential merits could even be considered, based on CCC’s assertion of priority for (a) a proposed, speculative railway to service a potential mine far outside its mining claims, and (b) the unsupported contention that it might engage in mining the claims themselves. This is unreasonable.

5. The Divisional Court correctly recognized that the restrictions on surface rights set out in s. 50(2) apply to all mining claims, and that s. 51(1) restricts a claim holder’s limited priority in these surface rights to exploring and prospecting within the claims themselves over other uses that interfere with those activities. CCC’s proposed speculative railway, which is not a mining activity

within its claims, is not a use for which CCC has priority. Additionally, the evidence indicated that there were no minerals within the claims for CCC to develop, and, in any event, there was no evidence that the proposed road would interfere with such uses. Accordingly, the MLC's decision that CCC's consent should not be dispensed with on the basis that the proposed road would interfere with CCC's development of the mining claims was unreasonable. Finally, the Divisional Court's decision to dispense with CCC's consent rather than remitting the matter back to the MLC was appropriate in the "exceptional" circumstances of this case – a finding that must be accorded deference.

PART II - SUMMARY OF FACTS

A. 227 and the Proposed Road Corridor Easement

6. 227, previously a subsidiary of Cliffs Natural Resources ("Cliffs"), is now a subsidiary of Noront Resources Ltd. ("Noront"). Noront acquired Cliffs' assets in the Ring of Fire in April 2015, including 100% ownership of a chromite¹ deposit known as "Black Thor" and a 70% interest in a deposit known as "Big Daddy". Noront also owns a 13.74% interest in KWG Resources Inc. ("KWG"), the parent company of CCC.²

7. Black Thor and Big Daddy are located approximately 540 kilometres north of Thunder Bay, Ontario and approximately 240 kilometres west of James Bay.³ A transportation link is needed from the deposits to the CN rail line at Cavell, Ontario, approximately 340 kilometers to the south.⁴

¹ Chromite ore can be smelted to produce ferrochrome, which is a critical ingredient in the production of stainless steel: MLC Exhibit 12A, Excerpt, May 2011 Project Description ("Project Description"), pp. 1-2 [Exhibit Book ("EB") Vol. 6, Tab 17, p. 1358-1359, Respondent's Compendium ("RC") Tab 9, p. 90-91]

² At the time of the hearings before the MLC and the Divisional Court, Cliffs had a 19.9% interest in KWG: 2274659 *Ontario Inc. v. Canada Chrome Corporation*, 2014 ONSC 4446 (Div. Ct.), para 6 [Divisional Court Reasons] [Appellant's Appeal Book and Compendium ("AB"), Tab 2B, p. 12]. Affidavit of F. Smeenk, sworn May 30, 2012 ("Smeenk Affidavit #1"), para 14 [EB, Vol. 2, Tab 6, p. 285, RC Tab 20, p. 364]

³ Project Description, *supra* note 1, pp. 1-2 [EB Vol. 6, tab 17, p. 1358-1359, RC Tab 9, p. 90-91]

⁴ Affidavit of W. Boor, sworn April 27, 2012 ("Boor Affidavit #1"), paras 3-4, 7 [EB Vol. 1, Tab 3, p. 13, RC Tab 11, p. 103]; and see Project Description, p. 2 [EB Vol. 6, tab 17, p. 1359, RC Tab 9, p. 91]

8. In 2012, Cliffs - through 227 Inc. - made an application to the MNR under section 21 of the *Public Lands Act*,⁵ for surface rights to a 100 metre-wide easement over Crown lands as a first step in being permitted to build a road from Cavell to the Ring of Fire (the “Road”).⁶ The width would accommodate a 10 metre-wide road, with an allowance of 50 metres on each side of the proposed Road centreline, for shoulder, drainage, snow removal,⁷ and to provide flexibility to move the Road centreline within it, as may be determined desirable after completion of the environmental assessment process, and input from Aboriginal communities, mining claim holders (such as CCC), and other stakeholders.⁸ Although the Road will be built and operated by Noront, others will be permitted to use it, including other mines.⁹

B. KWG and the CCC mining claims

9. KWG, holds a 30% interest in Big Daddy, which is adjacent to and to the south of the Black Thor deposit.¹⁰ Accordingly, KWG would prefer to see Big Daddy developed. However, Cliffs (now Noront) prefers to develop Black Thor because it is larger and wider than Big Daddy, contains a superior grade of ore, and is easier to access.¹¹

10. In 2009, CCC staked over 200 non-contiguous¹² mining claims along a series of linear sand

⁵ R.S.O. 1990, c. P.43, s. 21 (the “*Public Lands Act*”)

⁶ MLC Exhibit 10, Agreed Statement of Facts (“*Agreed Facts*”) at paras 3-4, 6-7 [EB Vol. 8, Tab 34, pp. 1704-1705, RC Tab 7, p. 61-62]; Second Affidavit of G. Johnson, sworn April 27, 2012 (“*Johnson Affidavit #2*”) Ex. “E”, January 12, 2012 letter from MNR to Cliffs [EB Vol. 1, Tab 4E, p. 64, RC Tab 15E, p. 189]; Third Affidavit of G. Johnson, sworn September 21, 2012 (“*Johnson Affidavit #3*”) Ex. “A”, September 21, 2012 letter from J. Aagenes to J. Sills [EB Vol. 5, Tab 12A, p. 1074, RC Tab 16A, p. 196]; MLC Hearing Exhibit 11, December 21, 2012 letter from MNR to Cliffs [EB Vol. 7, Tab 31, p. 1699, RC Tab 8, p. 66].

⁷ *Agreed Facts*, para 8 [EB Vol. 8, Tab 34, p. 1705, RC Tab 7, p. 62]. The current road surface is planned to be 10 metres: cross-exam. of G. Johnson, Transcript (February 5, 2013), p. 29, 1.25-p. 30, 1.6 [RC Tab 2, p. 9-10].

⁸ Boor Affidavit #1, para 5 [EB Vol. 1, Tab 3, p. 13, RC Tab 11, p. 103]; cross-exam. of W. Boor, Transcript (February 4, 2013), p. 160, 1.4 – 13 [RC Tab 1B, p. 6].

⁹ The Road would be a private forest road within the meaning of Part II of the *Public Lands Act*. Fourth Affidavit of W. Boor, sworn September 21, 2012 (“*Boor Affidavit #4*”), paras 16-18 and Ex. “D”, Noront press release dated Sept. 4, 2012, p. 1 [EB Vol. 4, Tab 11, pp. 1008-1009; Tab 11D, p. 1066, RC Tab 12, p. 117-118 and Tab 12D, p. 119]; direct exam. of W. Boor, Transcript (February 4, 2013), p. 103, 1.4 – 13 [RC Tab 1A, p. 2]; cross-exam. of F. Smeenk, Transcript (February 6, 2013), p. 168, 1.1 – p. 170, 1.4 [RC Tab 3B, p. 28-30].

¹⁰ Boor Affidavit #1 at para 7 [EB Vol. 1, Tab 3, p. 13, RC Tab 11, p. 103]; Second Affidavit of R. Kruse sworn September 20, 2012 (“*Kruse Affidavit #2*”), Ex. “E” [EB Vol. 4, Tab 8E, p. 988, RC Tab 18E, p. 333].

¹¹ Boor Affidavit #4, at para 12 [EB Vol. 4, Tab 11, p. 1007, RC Tab 12, p. 116]

¹² There are several gaps in the claims, including a gap to Big Daddy, and several areas along the route are claimed by others. Kruse Affidavit #2, Ex. “E” [EB Vol. 4, Tab 8E, p. 988, RC Tab 18E, p. 333]; cross-exam. of F. Smeenk, Transcript (February 6, 2013), pp.

ridges from Exton, Ontario running approximately 340 kilometres north to close to (but not adjacent to) the Big Daddy deposit.¹³ (See maps attached as Schedules “C” and “D” to this Factum.) Despite assertions to the contrary before the MLC, CCC staked the mining claims so that it could attempt to assert control over this transportation route to the Ring of Fire,¹⁴ or, as KWG put it, to have a “check-mate asset”, “without which no substantial mineral deposit in the Ring of Fire can be benefited and made economic, for all practical purposes.”¹⁵ Cliffs was aware that KWG was staking the mining claims for this purpose, but was also aware that doing so did not give exclusivity over the surface of Crown land.¹⁶ The requested easement passes, partially, over 108 of the mining claims staked by CCC (the “Mining Claims”).¹⁷ The proposed easement affects only a small percentage of the area of each mining claim crossed.¹⁸

11. In late 2009 and early 2010, CCC retained consultants to determine the best transportation

136, l.10-139, l.6; pp. 141, l.24-143 l.1 [RC Tab 3B, p. 16-19, 20-22]; cross-exam. of M. Lavigne, Transcript (February 7, 2013), p. 98, l. 7 – p. 100, l. 22 [RC Tab 4B, p. 39-41; Agreed Facts at paras 16, 24-25 [EB Vol. 8, Tab 34, pp. 1706, 1708; RC Tab 7, p. 63, 65]. And see Divisional Court reasons para 7. [AB Tab 2B, p. 12].

¹³ The sand ridges, or eskers, are a feature of higher ground running through low-lying muskeg, or swamp (Agreed Facts paras 18-19 [EB Vol. 8, Tab 34, p. 1707, RC Tab 7, p. 64] and Affidavit of M. Lavigne, sworn May 30, 2012 (“Lavigne Affidavit #1”), para 44 [EB Vol. 3, Tab 7, p. 431, RC Tab 19].) Agreed Facts at paras 3, 14-16, 25 [EB Vol. 8, Tab 34, pp. 1704, 1706, 1708; RC Tab 7, p. 61, 63, 65]; cross-exam. of F. Smeenk, Transcript (February 6, 2013), p. 134, l. 3 – p. 135, l. 22; pp. 136, l.10-137, l. 3 [RC Tab 3B, p. 14-15]. And see Divisional Court Reasons, para. 7 [AB Tab 2B, p. 12].

¹⁴ Agreed Facts at paras 14-15 [EB Vol. 8, Tab 34, p. 1706, RC Tab 7, p. 63]; Lavigne Affidavit #1 at paras 40-44 [EB Vol. 3, Tab 7, pp. 430-431, RC Tab 19, p. 346-347]; Boor Affidavit #1, Ex. “B”, letter from F. Smeenk to J. Aagenes, Sept. 23, 2011 [EB Vol. 1, Tab 3B, p. 22, RC Tab 11B, p. 112]; cross-exam. of F. Smeenk, Transcript (February 6, 2013), p. 134, l. 3 – p. 135, l. 22 [RC Tab 3B, p. 14-15]; Smeenk Affidavit #1, para 49 [EB, Vol. 2, Tab 6, p. 295, RC Tab 20, p. 374]

¹⁵ Order and Reasons of The Mining and Lands Commissioner, September 10, 2013 (“MLC Reasons”), p. 20 [AB Tab 3B, p. 54]

¹⁶ Cross-exam. of W. Boor, Transcript (February 4, 2013), p. 115, l. 11-20 and p. 121, l. 21 – p. 122, l. 1 [RC Tab 1B, p. 3, 4-5].

¹⁷ Kruse Affidavit #2, paras 13-16, and Ex. “A” claims crossed by road corridor, “B” maps of easement location, “D”, list of CCC mining claims, “E”, claims in green and grey [EB Vol. 4, Tab 8, p. 752-753; Tabs 8A-8B pp. 754-757, 759-867; Tabs 8D-8E, pp. 978-988; RC Tab 18, pp. 207-208, Tabs 18A-18B, pp. 209-212, 214-322; Tabs 18D-18E, pp. 323-333]. And see Divisional Court Reasons, para 16 [AB Tab 2B, p. 14]; Agreed Facts at para 3 [EB Vol. 8, Tab 34, p. 1704, RC Tab 7, p. 61]. References to the “Transferred Mining Claims” are to mining claims crossed by the easement that were transferred from INV Metals Inc. to KWG Resources Inc. after the application had been referred to the MLC, and added to the application. See First Affidavit of G. Johnson, sworn March 30, 2012, at paras 2-5 and Ex. A [EB Vol. 1, Tab 1, pp. 2-3; Tab 1A, pp. 4; RC Tab 14, p. 156-157 and 14A, p. 158]; Ex. “B” to Kruse Affidavit #2 for the location of the requested easement relative to each Mining Claim, shown on an overview map of the entire route followed by individual maps of each claim; and Ex. “E” for a map of all the CCC mining claims, including those not crossed by the easement. [EB Vol. 4, Tab 8B and 8E, pp. 759-867, 988; RC Tabs 18B, 18E, pp. 214-322, 333]

¹⁸ Kruse Affidavit #2, paras 13-16, and Ex. “A” claims crossed by road corridor, Ex. “B” maps of easement location, Ex. “D” list of CCC mining claims, Ex. “E” claims in green and grey [EB Vol. 4, Tab 8, p. 752-753; Tab 8A, p. 754-757; Tab 8B, 759-867; Tab 8D, 978-986; Tab 8E, p. 988; RC Tab 18, p. 207-208; Tabs 18A-18B, pp. 209-322; Tabs 18D-18E, p. 323-333]. Agreed Facts at para 3 [EB Vol. 8, Tab 34, p. 1704, RC Tab 7, p. 61].

route and the feasibility of a railroad corridor on its Mining Claims.¹⁹ This included drilling boreholes along the proposed route to obtain data and information about the feasibility of the railway and to identify and characterize potential material site prospects.²⁰

12. Construction of a railway to the Ring of Fire would cost billions of dollars.²¹ KWG CEO Frank Smeenck's evidence was that, "CCC doesn't have a snowball's chance in hell of raising \$2 billion to build a railroad."²² Neither CCC nor KWG have secured any financing for a railroad, nor has CCC filed a project description for an environmental assessment for a railroad.²³

13. In addition, it was not until late 2012 and, tellingly, after Cliffs' application to the MLC, that CCC retained an engineering firm, Tetra Tech, to identify potential aggregate materials in the Mining Claims that could be used to construct a railway bed.²⁴ Tetra Tech's "Material Availability Assessment Report" shows that none of the Mining Claims crossed by the proposed Road have rock that could be used for CCC's proposed railway.²⁵ In other words, the Road will have no impact on access to materials to support a railway.

¹⁹ CCC retained a railway engineering company, Krech Ojard & Associates, to determine the route for its claims and retained Golder Associates to undertake geotechnical field investigation, together with Krech Ojard & Associates, to determine the feasibility of a railroad corridor within the Mining Claims: Agreed Facts, para 23 [EB Vol. 8, Tab 34, p. 1708, RC Tab 7, p. 5]; cross-exam of F. Smeenck, Transcript (February 6, 2013), p. 135, l. 2-22 [RC Tab 3B, p. 15]; Lavigne Affidavit #1 at paras 49, 52-56 [EB Vol. 3, Tab 7, p. 433-436, RC Tab 19, p. 349-352], Smeenck Affidavit #1 at para 27 [EB Vol. 9, Tab 41, p. 1833, RC Tab 20, p. 368]

²⁰ Lavigne Affidavit #1, paras 53-54 [EB Vol. 3, Tab 7, p. 434-435, RC Tab 19, p. 350-351]. CCC filed a Golder report as proof of assessment work, but only \$8 million out of \$15 million in work was actually filed and accepted by the Ministry of Northern and Development and Mines, since railway engineering did not qualify as assessment work: cross-exam. of M. Lavigne, Transcript (February 7, 2013), p. 117, l. 3-20 [RC Tab 4B, p. 42]; MLC Reasons, p. 16 [AB Tab 3B, p. 50].

²¹ Agreed Facts, para 26 [EB Vol. 8, Tab 34, p. 1708, RC Tab 7, p. 65]; cross-exam. of F. Smeenck, Transcript (February 6, 2013), p. 143, l. 16 - p. 144, l. 10 [RC Tab 3B, p. 22-23; Divisional Court Reasons, para. 12 [AB Tab 2B, p. 13]

²² Cross-exam. of F. Smeenck, Transcript (February 6, 2013), p. 144, l. 14 - p. 148, l. 19 [RC Tab 3B, p. 23-27]

²³ Cross-exam. of F. Smeenck, Transcript (February 6, 2013) p. 148, l. 9-12 [RC Tab 3B, p. 27]; Q. from Commissioner Orr to F. Smeenck, Transcript (February 7, 2013), p. 34, l. 8-18 [RC Tab 3C, p. 31]

²⁴ Affidavit of P. Hartmann, December 17, 2012 ("Hartmann Affidavit") para 4 and Ex. "B" [EB Vol. 5, Tab 15, pp. 1280; Tab 15B, pp. 1290-1314, RC Tab 13, p. 127; Tab 13B, p. 129-153]. The body of the report itself is undated and does not specify when Tetra Tech was retained, however Appendix 4 of the report contains a memo from Tetra Tech to KWG dated November 1, 2012 setting out the basis of design for the study. [EB Vol. 5, p. 1315, RC Tab 13B, p. 154]

²⁵ "Tetra Tech's report showed that none of the claims affected by the proposed easement had bedrock that could be used as subgrade material for the proposed railway." See Hartmann Affidavit, Ex. "B" [EB Vol. 5, Tab 15B, pp. 1290-1314, 1315, RC Tab 13B, p. 129-153]; Divisional Court Reasons, para 14 [AB Tab 2B, p. 13]. And DVD of Appendices to Tetra Tech Report, Appendix 12, pp. 26-61, printed pages reproduced in MLC Exhibit 20 [EB Vol. 7, Tab 28B, pp. 1648-1683, RC Tab 13B, p. 392-427]. MLC Hearing Exhibit 13, map, Kruse Affidavit #2, Ex. "E" with additional markings [EB Vol. 8, Tab 36, p. 1711, RC Tab 10, p. 100].

14. Similarly, CCC's assertion that it might develop other minerals, such as diamonds, is not supported by the evidence, which actually shows that, despite exploration efforts, no mineral deposits have been discovered on the claims.²⁶ The most the evidence shows is that analyzing material from the boreholes - which have already been drilled and sampled - may show the possibility of mineral deposits "up ice" (i.e., outside the Mining Claims in the lower James Bay lowlands).²⁷ In the unlikely event that CCC actually undertook such exploration and development efforts, the Road could actually assist – rather than interfere – with those efforts.²⁸

C. CCC's refusal to consent to an easement

15. Since the requested easement crosses portions of some of the mining claims staked by CCC, Cliffs sought CCC's consent to the easement, as required under s. 51 of the *Mining Act*.²⁹ In negotiations with CCC, Cliffs consistently indicated its willingness to discuss the location of the Road to accommodate CCC's concerns. However, CCC was unwilling to discuss the matter - refusing to even identify specific issues with the Road - and refused to provide its consent.³⁰ Smeenk testified: "There is virtually no middle ground."³¹ Smeenk confirmed that CCC had acquired the corridor of Mining Claims "to obtain leases for the corridor lands, for the purposes of constructing a railway to exploit the Big Daddy claims."³² He asserted that the Road would impede or delay construction of a railway, and that "KWG has not provided its consent to Cliffs for an easement because the easement over the Mining Claims is contrary to KWG's business

²⁶ The Mining Claims are not known to contain a commercially proven deposit of ore or diamonds: Agreed Facts, para 27 [EB Vol. 8, Tab 34, p. 1708, RC Tab 7, p. 65]

²⁷ Divisional Court Reasons, paras 88, 90, 107 [AB Tab 2B, p. 26, 27, 29].

²⁸ Divisional Court Reasons, paras 80, 89, 108 [AB Tab 2B, pp. 15, 16, 19]; MLC Reasons, p. 39 [AB Tab 3B, p. 73].

²⁹ Agreed Facts at para 22 [EB Vol. 8, Tab 34, p. 1707, RC Tab 7, p. 64]

³⁰ Boor Affidavit #1, paras 8-30, 37, Ex. "A" and "B" [EB Vol. 1, Tab 3, pp. 14-17, 19; Tabs 3A, 3B, pp. 20-22, RC Tab 11, p. 104-107, 109, Tabs 11A-11B, p. 110-112]; direct exam. and re-exam. of W. Boor, Transcript (February 4, 2013), p. 100, l.2-18, and p. 170, l. 22 – p. 171, l. 9 [RC Tabs 1A, p. 1 and 1C, p. 7; direct exam. of F. Smeenk, Transcript (February 6, 2013), p. 123, l.16-125 l.18 [Tab 3A, p. 11-13], Agreed Facts, para 22 [EB Vol. 8, Tab 34, p. 1707, RC Tab 7, p. 64].

³¹ Direct exam. of F. Smeenk, Transcript (February 6, 2013), p. 125, l. 5-18 [RC Tab 3A, p. 13].

³² Boor Affidavit #1, paras 10, 17 and Ex. "B" [emphasis added], letter from F. Smeenk to J. Aagenes, Sept. 23, 2011 [EB Vol. 1, Tab 3, pp. 14, 15; Tab 3B, p. 22, RC Tab 11, pp. 104, 105; Tab 11B, p. 112]

interests.”³³ In other words, the Road would defeat KWG’s hoped-for monopoly on transportation, which could be used as leverage to force development of Big Daddy rather than Black Thor.

D. The MLC Decision

16. The question before the MLC was not whether the easement ought to be granted – that is for the MNR to determine – but simply whether CCC’s consent to the easement application should be dispensed with pursuant to s. 51 of the *Act*. Specifically, the MLC had to decide whether CCC demonstrated that the Road would interfere with its exploration or extraction of minerals on the claims. Instead, the MLC, based on flawed legal analysis, irrelevant considerations, and unreasonable and unsupported findings of fact, determined that the proposed road would interfere with CCC’s proposed speculative railway.

17. Among its unreasonable conclusions in law, the MLC held that s. 50(2) of the *Act*,³⁴ which limits the surface rights of claim holders to exploration and development of the claims themselves, did not apply to unpatented claims on Crown land, and that s. 51(1)³⁵ granted broader surface rights with “respect to all activities covered by the Act”,³⁶ extending even to keeping the surface of a claim undeveloped because someday it might be needed to build a railway to develop a mine somewhere else. The MLC also concluded that Cliffs was required to show a public interest in the Road beyond the public interest inherent in the multiple use of Crown land, and that it was sufficient for CCC to show that its proposed uses would be “affected” by the Road.³⁷

³³ Smeenk Affidavit #1, para 49 [EB Vol. 2, Tab 6, p. 295, RC Tab 20, p. 374].

³⁴ **Rights in claim** [...] 50(2) The holder of a mining claim does not have any right, title or claim to the surface rights of the claim other than the right, subject to the requirements of this Act, to enter upon, use and occupy such part or parts thereof as are necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights therein. (*Mining Act*, s. 50(2))

³⁵ **Surface rights on unpatented mining claim** 51. (1) Except as in this Act is otherwise provided, the holder of an unpatented mining claim has the right prior to any subsequent right to the user of the surface rights, except the right to sand, peat and gravel, for prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights. (*Mining Act*, s. 51(1))

³⁶ MLC Decision p. 32.

³⁷ MLC Reasons, e.g., pp. 40-42 (public interest) and pp. 36, 37, 39, 42 (“affected”) [AB Tab 3B, p. 70, 71, 73, 74-75]; Divisional Court Reasons, paras. 93, 94 [AB Tab 2B, p. 27]

18. Based on this unreasonable interpretation and application of the law, the MLC dismissed 227's application, preventing the MNR from even considering the easement.³⁸ The result was that the Respondent's ability to develop mineral deposits in the Ring of Fire was blocked in order to give priority to an unpatented mining claim holder without any mining projects underway in the Ring of Fire – let alone on the Mining Claims themselves – on the basis of financially unsupported aspirations of building a railway, and assertions, unsupported by any evidence, that it might explore for other minerals within the Mining Claims.³⁹

E. The Divisional Court Judgment

19. The Divisional Court found that “[t]he MLC’s interpretation of ss. 50 and 51 is not consistent with the words of the Act, the scheme of the legislation or the intention of the Legislature, and, indeed it seriously undermines the multiple use principle.”⁴⁰ The Divisional Court held that s. 50(2) is not limited to private land, but applies to all mining claims,⁴¹ and that s. 51 only grants “a limited priority to the unpatented mining claim holder to use the surface [of the claim] (except the right to sand, peat and gravel) over other subsequent rights of others to use the surface” for purposes of mining that claim.⁴² As CCC’s proposed railway was “not to be used in connection with extracting any minerals from the claims themselves”, and given the absence of evidence supporting CCC’s claims of plans to develop other minerals, the Divisional Court concluded that the only reasonable decision, based on the evidence and applicable law, was to dispense with CCC’s consent under s. 51(5) of the *Mining Act*.⁴³

³⁸ MLC Reasons, pp. 42-43 [AB Tab 3B, pp. 76-77]

³⁹ Divisional Court Reasons, paras 80, 88-90, 108. [AB Tab 2B, pp. 25, 26-27, 29-30]. See also, e.g., MLC decision p. 39 [AB Tab 3B, p. 74].

⁴⁰ Divisional Court Reasons, para 54 [AB Tab 2B, p. 20].

⁴¹ Divisional Court Reasons, para 38-42 [AB Tab 2B, p. 18].

⁴² Divisional Court Reasons, para 43-45, 55 [emphasis added]. [AB Tab 2B, p. 18-19, 20]. The *Mining Act* (s. 1) defines “minerals” to include “quarry and pit material”, but not sand, gravel, peat, gas or oil. Therefore, unconsolidated aggregate (such as sand and gravel) are not “minerals” under the *Act*, but consolidated aggregate (i.e., bedrock) could be considered a “mineral”. Section 51 of the *Act* does not give a claim holder priority over “sand, peat and gravel”.

⁴³ Divisional Court Reasons, paras 67, 91-97, 104-11 [AB Tab 2B, p. 23, 27-28, 29-30]

PART III - ISSUES AND ARGUMENT

A. Issues

20. The issues raised by the Appellant fall into two categories:
- (a) the correct interpretation of ss. 1, 50 and 51 of the *Mining Act*; in particular, whether the Divisional Court was correct in finding that the surface rights of the holder of an unpatented mining claim in s. 51(1) is subject to the limits on surface rights for all mining claims as set out in s. 50(2); and
 - (b) whether, having regard to the absence of evidence that the Road would interfere with CCC's exploration, development and operation of the mines, minerals and mining rights on the Mining Claims, the Divisional Court's decision to substitute its decision for that of the MLC and dispense with CCC's consent under s. 51(5) was reasonable.

B. The Standard of Review

21. The standard of review on the first issue is correctness, as it raises questions of law and statutory interpretation. The second issue, the Divisional Court's finding that this was an "exceptional" case in which it was justified in substituting its own decision, involved applying a legal standard to a set of facts.⁴⁴ Therefore, its "choice of remedy is a question of mixed fact and law, reviewable on the palpable and overriding error standard of review."⁴⁵

22. The Divisional Court afforded the MLC an appropriate level of deference. It correctly applied a standard of reasonableness in reviewing the MLC's decision, specifically recognizing that the MLC was a "specialized body" interpreting a statute "with which it has particular familiarity".⁴⁶ The Divisional Court also correctly acknowledged what applying a reasonableness standard entails:

The reasonableness standard requires the reviewing court to consider the reasons of the tribunal for the purpose of determining whether there has been justification, transparency and intelligibility in the decision-making process and whether the decision falls within a range of possible, acceptable outcomes

⁴⁴ The application of a legal standard to a set of facts is a question of mixed fact and law: *Housen v Nikolaisen*, 2002 SCC 33 at paras 26, 36-37, [2002] SCJ No 31 [*Housen*] [Respondent's Book of Authorities ("BOA") Tab 9].

⁴⁵ *Telus Communications Inc. v Telecommunications Workers Union*, 2014 ABCA 199 at para 34, [2014] AJ No 630 [*Telus Communications*] [BOA Tab 16].

⁴⁶ Divisional Court Reasons, para 19 [AB Tab 2B, p. 15].

which are defensible, given the facts and applicable law...⁴⁷

23. The application of the standard of reasonableness permeates the Divisional Court's decision. The Divisional Court concluded that the MLC "gave the pertinent sections of the *Mining Act* an unreasonable interpretation and reached an unreasonable decision in refusing to dispense with CCC's consent in the present case, given the governing law and the evidence before it."⁴⁸ More specifically, the Divisional Court held that the MLC "adopted an unreasonable interpretation of s. 50(2)" and "[c]onsequently, its interpretation of s. 51(1)...was also unreasonable and unjustified by the language of the Act".⁴⁹ This, the Court said, led the MLC to consider whether the proposed easement would interfere with CCC's plan to build a railway, which was also "unreasonable".⁵⁰ The Divisional Court concluded that "[g]iven, the unreasonable interpretations of the legislative provisions and the failure to engage with the evidence - or lack of evidence - of interference with actual or proposed mining activity to exploit the minerals in the claims, the MLC decision is not reasonable."⁵¹

C. Proper interpretation of sections 50 and 51 of the Mining Act

24. Ignoring the absurd implications of doing so, the MLC created a distinction between "surface rights" in sections 50 and 51, holding that s. 50 addressed surface rights in respect of mining claims on land where the surface rights are privately owned, and that s. 51 addresses the issue of surface rights of unpatented mining claims where the surface rights are owned by the Crown.⁵² Consequently, it concluded that section 50(2) did not apply to the Mining Claims since they are unpatented claims on lands where the surface rights are held by the Crown, but that s. 51

⁴⁷ Divisional Court Reasons, para 20 [emphasis added] citing *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] S.C.J. No. 9 at para 47, where the Supreme Court held that a reasonableness review is mainly concerned with "the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." [AB Tab 2B, p. 15].

⁴⁸ Divisional Court Reasons, para 3 [emphasis added] [AB Tab 2B, p. 12].

⁴⁹ Divisional Court Reasons, para 56 [emphasis added] [AB Tab 2B, p. 21].

⁵⁰ Divisional Court Reasons, paras 66, 82 [emphasis added] [AB Tab 2B, p. 22-23, 25-26].

⁵¹ Divisional Court Reasons, para 97 [emphasis added]; and see Divisional Court Reasons, paras. 92-94 [AB Tab 2B, p. 27-28].

⁵² MLC Reasons, pp. 30-32, 34 [AB Tab 3B, p. 64-66, 68].

did.⁵³ The MLC further reasoned that because s. 51(1) does not include the limiting word “therein” found in s. 50(2), it gives claim holders broader rights to use the surface “with respect to all activities covered by the Act...”, seemingly wherever those activities may be.⁵⁴

25. The Appellant concedes that s. 50(2) does in fact apply to unpatented claims, which are a subset of mining claims, but relies on the untenable interpretation of the MLC that it does not apply to unpatented claims on Crown land, attempting to support the MLC’s unfounded public-private land distinction.⁵⁵ The Divisional Court properly rejected this public-private distinction, which, as submitted below is (i) inconsistent with the limited surface rights of a mining claim holder and contrary to the legislative purpose of encouraging multiple use of Crown lands, (ii) has no support in the language of the statute, (iii) is inconsistent with the MLC’s prior decisions, and (iv) is inconsistent with other parts of the *Act*. The interpretation of the *Act* by the Divisional Court is undoubtedly correct, as it had regard to “the ordinary grammatical meaning of the words of the statute, the sense of the words in the context of the entire Act, the object of the Act and the intention of the Legislature...”.⁵⁶ Indeed, the Court noted that the MLC “did not adopt the conventional approach to statutory interpretation” – which was the Court’s starting point in assessing the “overall [un]reasonableness of the MLC’s decision.”⁵⁷

(i) **Limited surface rights and encouraging multiple uses of Crown land**

26. Ontario operates under the “free-entry system” whereby licenced prospectors may obtain

⁵³ MLC Reasons, pp. 30, 31-32 [AB Tab 3B, p. 64, 65-66]

⁵⁴ MLC Reasons, p. 32 [emphasis added] [AB Tab 3B, p. 66]

⁵⁵ Factum of the Respondent, Canada Chrome Corporation, dated April 30, 2015 (“CCC Factum”) at para 23; Divisional Court Reasons, para 38 [AB Tab 2B, p. 18].

⁵⁶ Divisional Court Reasons, para 36 [AB Tab 2B, p.17]: This is consistent with Cliffs’ submissions before the Divisional Court that the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature. It is presumed that the provisions of legislation are meant to work together as parts of a functioning whole, and that the legislature does not intend its legislation to have absurd consequences: see Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis Canada, 2014) at 7, 308, 337 [BOA Tab 22]. And see *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21, [1998] SCJ No 2 [BOA Tab 14].

⁵⁷ Divisional Court Reasons, para 36 [AB Tab 2B, p. 17].

mineral rights on a first-come basis by staking claims.⁵⁸ The *Act* defines “mining claim” as “a parcel of land, including land under water, that has been staked and recorded in accordance with this Act and the regulations and provides a right to do assessment work and obtain a lease from the Crown”. A claim is generally square or rectangular, and 256 hectares in area. “Unpatented” is defined in the negative, “when referring to land or mining rights, means land or mining rights for which a patent, lease, licence of occupation or any other form of Crown grant is not in effect.”⁵⁹ Therefore, as the Divisional Court properly held, a “mining claim” must include an unpatented mining claim.⁶⁰

27. In the early days of the *Mining Act*, a mining claim holder obtained both the mining and surface rights upon obtaining a Crown grant; as a result, much of the land that was alienated under the *Mining Act* was kept from other uses “without itself producing mineral of value.”⁶¹ In 1957, the *Act* was amended to allow for the reservation, in a patent or lease, of all surface rights considered necessary for any purpose other than the mineral industry, which were not essential to the development of the mines, minerals and mining rights.⁶² Industry criticized this amendment, asserting that the surface rights required for mining purposes could not be known prior to sufficient exploration and development. A Committee was struck to “devise some means of granting mining lands which will not hinder the industry and at the same time prevent large areas of the Province from being alienated with no development or exploration other than the performance of sufficient

⁵⁸ *Mining Act*, s. 27. *Claim Staking and Recording*, O. Reg. 43/11, Part I, Ground Staking of Mining Claims, and Part II, Map Staking of Mining Claims and s. 15(1)(b); *Mining Act*, s. 38; see also maps at Ex. “B” to Kruse Affidavit #2, illustrating that the majority of the Mining Claims are 1600 m x 1600 m [EB Vol. 4, Tab 8B, pp. 760-867, RC Tab 10, pp. 215-322].

⁵⁹ *Mining Act*, s. 1(1). [Emphasis added.]

⁶⁰ The *Mining Act* distinguishes between “mining claims”, “mining rights” and “surface rights”. As noted, a “mining claim” is merely a parcel of land that has been staked and recorded in accordance with the *Act* and provides a right to do assessment work and obtain a lease from the Crown. “Mining rights” are “the right to minerals on, in or under any land”; “surface rights” means “every right in land other than the mining rights”: *Mining Act*, s. 1, 50(1).

⁶¹ *Report of the Public Lands Investigation Committee, 1959*, October 1961 (the “1959 Report”), pp. 1-2, 4 [BOA Tab 24].

⁶² *1959 Report*, pp. 1-2 [BOA Tab 24].

work to enable the claim holder to obtain patent.”⁶³ Section 51 was added to the *Act* as a result of the Committee’s *Report of the Public Lands Investigation Committee, 1959*.⁶⁴

28. However, by failing to limit surface rights of unpatented claim holders to activities for mining purposes within those claims, as required by s. 50(2), the MLC’s decision allows CCC to effectively alienate huge areas of Crown land, and sterilize development or use of it and other land, based on an assertion that it might one day use the land to build a railroad to service a mine somewhere in the province. This runs directly contrary to the history of the *Mining Act* and the *Report of the Public Lands Investigation Committee, 1959*, which clawed back the surface rights of claim holders in order to encourage the multiple use principle, and “was also unreasonable and unjustified by the language of the Act.”⁶⁵ As the Divisional Court noted, “the effect of the MLC’s interpretation of ss. 50 and 51 is to grant surface rights to unpatented mining claim holders on Crown land that can be exercised for any purpose that can be tied to mines, minerals or mining rights anywhere” and “need not be restricted to the exploration or development of the particular claim at issue.”⁶⁶

29. The “Rights of Licensee” section of the *Mining Act* (under Part II – “Mining Claims”) begins with sections 50 and 51, which are properly read together.⁶⁷ Section 50(2) gives the mining claim holder a defined and limited set of “surface rights”, namely those “necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and

⁶³ *1959 Report*, pp. 4-7 [BOA Tab 24].

⁶⁴ *1959 Report*, pp. 6-7 [BOA Tab 24]; *Kamiskotia Ski Resorts Limited v Lost Treasure Resources Ltd.* (1984), 6 MCC 460 (Mining and Lands Comm) at 462 [*Kamiskotia*] [BOA Tab 11]; *Gerry Roy v Berry, Ken McCombe & the Minister of Natural Resources and Forestry*, File No MA 014-00, Order of the Mining and Lands Commissioner, dated November 8, 2000 at 18-20 [*Roy*] [BOA Tab 7]; *The Improvement District of Gauthier v Egg* (1987), 7 MCC 281 (Mining and Lands Comm) at 286 [*“Egg”*] [BOA Tab 10].

⁶⁵ Divisional Court Reasons, paras 49-54, 56 [AB Tab 2B, p. 19-20, 21].

⁶⁶ Divisional Court Reasons, para 53 [AB Tab 2B, p. 20]. The Appellant claims that the MLC did not necessarily hold that uses of the surface “need not be restricted to the exploration or development of the particular claim in issue” (CCC Factum, paras 34-35), but (as recognized by the Divisional Court) this is clearly the result of the MLC’s decision.

⁶⁷ Divisional Court Reasons, para 54 [AB Tab 2B, p. 20].

mining rights therein.”⁶⁸ Section 50(1) specifies that the staking of a claim gives the claim holder the right to perform assessment work (prescribed under the *Act*) in order to subsequently apply for a lease - or patent - from the Crown, which will delineate the rights to mine the land, thus clearly applying to unpatented claims. Mere staking and registering the claim does not give a prospector the right to mine the claim.⁶⁹

30. Section 51(1) then specifies that the surface rights of an “unpatented mining claim holder” (i.e., involving a mining claim on which no patent, including leasehold, is in effect) for “prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights” is “prior to [that is, takes priority over] any subsequent right to the user of the surface rights” (other than sand, peat and gravel).⁷⁰ However, in order to accommodate the multiple use principle, section 51 provides a mechanism for disposition of surface rights - either with the claim holder's consent, or by order of the MLC when other uses of the land are sought, as in this case.⁷¹

31. The multiple use principle underlies both sections 50(2) and 51(1).⁷² They work together to preclude a party from alienating Crown land from other uses, simply by staking it. Put another way, and as acknowledged by the Divisional Court, s. 50(2) promotes the multiple use of land by limiting a claim holder's surface rights, while s. 51(1) (which also encourages the multiple use of surface rights) protects claim holders by recognizing their priority to use the surface of a claim for

⁶⁸ *Mining Act*, s. 50(2).

⁶⁹ *Mining Act*, s. 50(1)(a) and 50(1)(b).

⁷⁰ *Mining Act*, ss. 1, 51(1).

⁷¹ *Mining Act*, s. 51. This application was referred to the MLC on February 23, 2012 under section 51 as it existed prior to the coming into force of the amendments. Following amendment by S.O. 2009, c. 21, s. 29, the equivalent provisions to the previous s. 51(4) and 51(5) are ss. 51(2) and 51(3). The current s. 51(3) provides that the MLC is required to “make an order on such terms and conditions as the Commissioner considers appropriate with respect to the surface rights.” While the provisions of the *Mining Act* were amended, the mandate of the MLC in connection with the referral of this matter to it did not change. (*Mining Act*, R.S.O. 1990, c. M.14, prior to amendment by S.O. 2009, c. 21, s. 29 in force November 1, 2012.)

⁷² Divisional Court Reasons, paras 49, 53 [AB Tab 2B, p. 19, 20]; *1959 Report*, p. 4 [BOA Tab 24].

mining purposes.⁷³ Yet, as the Divisional Court properly noted after reviewing the legislative history, the MLC's interpretation of ss. 50 and 51 "seriously undermines the multiple use principle."⁷⁴

(ii) The public-private distinction is untenable

32. CCC's assertion that section 50(2) applies only to mining claims where the surface rights are privately owned and s. 51(1) applies only to unpatented mining claims where the surface rights are owned by the Crown is unsupported by any language in the *Act*. As the Divisional Court stated:

The words of s. 50(2) do not limit the application of the subsection to privately owned surface rights...Had the Legislature meant to limit s. 50(2) to mining claims where surface rights are privately held, one would have expected express words to that effect.⁷⁵

33. Nowhere in either sections 50(2) or 51(1), or anywhere else in the *Act*, is such a distinction drawn. Had section 50(2) been intended to apply only to private land, where there is a surface rights owner, or section 51 to apply only where there is not a surface rights owner, the provisions would have included terms specifically defined in the *Act* to make this distinction. After all, the Legislature anticipated circumstances where land is privately owned, by defining the term "surface rights owner" to mean "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."⁷⁶ Similarly, "Crown land" is defined under the *Act* to exclude, *inter alia*, "land, the surface rights, mining rights or the mining and surface rights of which are under lease or licence of occupation

⁷³ Divisional Court Reasons, paras 49, 53 [AB Tab 2B, p. 20].

⁷⁴ Divisional Court Reasons, para 54 (and paras. 49-53) [AB Tab 2B, p. 20 (and 19-20)].

⁷⁵ Divisional Court Reasons, para 39 [AB Tab 2B, p. 18].

⁷⁶ See, for example, section 46.1 of the *Act*, which expressly states that, "If a mining claim is staked on land for which there is a surface rights owner," confirmation of the staking of the mining claim must be given to the surface rights owner. [emphasis added]

from the Crown”.⁷⁷ Had the legislature intended section 50 not to apply to Crown land that also would have been expressly stated.⁷⁸

34. The asserted distinctions between private and Crown land, and between all of the claim or just the “part or parts thereof that are necessary” (language the MLC relied on to support its conclusion that s 50(2) only applied to private land)⁷⁹ - are also inconsistent with the specific language in ss. 50 and 51:

- (a) First, s. 50(1) addresses the right to “perform the prescribed assessment work or to obtain a lease from the Crown” on a mining claim, and the claim holder’s status until a lease is obtained, thus clearly dealing with unpatented claims.⁸⁰
- (b) Second, s. 51(1) is expressly subject to other provisions in the *Act*. This, as the Divisional Court held, must include “...the limitations on the surface rights of a mining claim holder, including an unpatented mining claim holder, found in s. 50(2) of the Act.”⁸¹
- (c) Third, s. 51(1) provides the claim holder with priority of surface rights for prospecting, exploring, developing and operating “the mines, minerals and mining rights”. Employing the definite article “the” to introduce “mines, minerals and mining rights” indicates it is referring to “something previously mentioned or understood from the context”,⁸² namely, the mines, minerals and mining rights in the mining claim in the immediately preceding section 50(2).
- (d) Fourth, CCC ignores the word “thereof” in s. 50(2), which clearly modifies the term “part or parts”, whereas the word “therein” relates to the mining claims.⁸³
- (e) Fifth, the use of the term “therein” in s. 50(2) and not s. 51(1) also makes sense because, as the Divisional Court noted, while “the source of the mining claim holder’s rights to use the surface is found in s. 50(2)” and places limits on the surface rights in a mining claim (“therein”), “subsection 51(1) is dealing with priorities” – it simply “gives priority... to use

⁷⁷ *Mining Act*, s. 1

⁷⁸ The MLC has essentially read the terms “privately owned” and “Crown owned” surface rights into the legislation. This is completely improper. While “reading in” may occasionally be justified as a constitutional remedy, “it is not ordinarily considered a legitimate interpretative technique” (Sullivan, *supra*, at 195-196, 198) [BOA Tab 22].

⁷⁹ MLC Reasons pp. 31-32: the decision contains the following circular reasoning: “...s. 50(2) contemplates those situations where ‘the holder of a mining claim’ has to assert a right to access materials in the ground and has to cross a privately owned surface to do so. It makes sense that in such a situation, the right to surface use are limited to a certain ‘part or parts’ of the surface. The word ‘therein’ has a limiting effect.” [AB Tab 3B, p. 64-67] See also CCC Factum, paras 31-33.

⁸⁰ *Mining Act*, s. 50(1). See also s. 50(3) which deals with unpatented mining claims.

⁸¹ Divisional Court Reasons, para 54 [AB Tab 2B, p. 20].

⁸² Daphne A Dukelow, 4th ed, *The Dictionary of Canadian Law* (Toronto: Thomson Reuters Canada, 2011) at 1291 [emphasis added] [BOA Tab 21].

⁸³ Divisional Court Reasons, para 55 (re: “therein”) [AB Tab 2B, p. 20].

the surface rights recognized in s. 50(2) in relation to subsequent users”⁸⁴ and does not modify, let alone eradicate, the limits in s. 50(2).

35. Therefore, the MLC’s interpretation is inconsistent with the language of s. 50(2), which the Divisional Court held, “suggests that the section applies to all mining claims”, and “particularly when read in context with other provisions in the Act dealing with mining claims.”⁸⁵ Properly read, section 50(2) limits a claim holder’s surface rights to the right “to enter upon, use and occupy such part or parts” of the surface of the claim “as are necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights” within the claim. This creates the potential for other uses of the surface, which is addressed further in section 51(1) which provides a mechanism for approving circumstances in which the surface of unpatented mining claims can and cannot be put to other uses. Specifically, it protects the unpatented claim holder’s right to use the surface of the claim for mining purposes, by giving it priority over other users of the surface.⁸⁶

(iii) The MLC’s interpretation is inconsistent with its own decisions

36. The MLC’s interpretation of ss. 50(2) and 51(1) is also inconsistent with its own jurisprudence. In *Roy v. McCombe*, which dealt with an application for the disposition of surface rights on an unpatented mining claim on Crown land, the MLC stated:

In the case of Crown lands, it does not necessarily follow that surface rights uses cannot co-exist with mining rights; the holder has no right title or claim to the surface of the claim other than those enumerated in subsection 50(2).⁸⁷

⁸⁴ Divisional Court Reasons, paras 55 and 43: section 51 “grants a limited priority to the unpatented mining claim holder to use the surface...over other subsequent rights of others to use the surface...”[emphasis added] [AB Tab 2B, p. 20, 18].

⁸⁵ Divisional Court Reasons, paras 41 and 38 [AB Tab 2B, p. 18]. Even the MLC see-sawed back and forth on the application of section 50, stating, for example, that section 50(1)(a) “is useful” and that it provides “guidance”. It also stated that “s. 50(1) works to establish a right (and a relationship only between the claim holder and the Crown) under the Act”, but that (for reasons not articulated) “the nature of this relationship has no bearing on this case”. See MLC Reasons, pp. 31-32 [emphasis added] [AB Tab 3B, p. 65-66].

⁸⁶ Except the right to sand, peat and gravel: *supra* note 42; Divisional Court Reasons, paras 43, 55 [AB Tab 2B, p. 18, 20].

⁸⁷ *Roy, supra* note 64 at 22 [emphasis added] [BOA Tab 7]. And see *Roy* at 18, where the MLC states: “The sections of the Mining Act which govern the rights of a mining claim holder are set out in subsections 50(1), (2) and 51(1).” [emphasis added]

37. As noted by the Divisional Court, the MLC's statement in *Roy* is totally inconsistent with its statement in this case that "s. 50(2) contemplates those situations where 'the holder of a mining claim' has to assert a right to access materials in the ground and has to cross a privately owned surface in order to do so".⁸⁸ Similarly, in *Yozipovic v. Watson*, where the surface rights were under private ownership, the MLC held that "...the holder of the unpatented mining claim...has entitlements to use the surface of the land stemming from subsections 50(2) and 51(1) of the Mining Act...".⁸⁹ The MLC's statement in this case that s. 51(1) would not apply to privately owned land is clearly at odds with its statement in *Yozipovic*.⁹⁰

(iv) The MLC's interpretation is inconsistent with other sections of the Act

38. The Divisional Court properly observed that "[a]n examination of the broader context of the Mining Act confirms that when the term 'mining claim' is used elsewhere in the Act, unpatented claims are a subset of mining claims." Otherwise, the Court noted, "other provisions would not make sense".⁹¹

D. The easement will not interfere with CCC's mining claims

39. The Appellant acknowledges that "[t]he animating principle behind s. 51 is the 'multiple use principle'", and accepts that CCC's consent should be dispensed with where the Road would not interfere with CCC's prior right to use the surface of the claims.⁹² What the Appellant ignores,

⁸⁸ Divisional Court Reasons, paras 47-48 [AB Tab 2B, p. 19], referring to pp. 31-32 of the MLC Reasons [AB Tab 3B, pp. 65-66].

⁸⁹ *Tony Robert Yozipovic v Lawrence Timothy Watson*, File No MA 016-07, Order of the Mining and Lands Commissioner dated May 11, 2012 at 12 [emphasis added] [BOA Tab 18].

⁹⁰ The MLC's interpretation of s. 50(2) is also inconsistent with the MNR's *Free Use Policy*, which expressly acknowledges the application of section 50(2) to Crown land. For example, it permits buildings placed "on an unpatented mining claim used by the holder of the claim (as allowed under the *Mining Act*, subsection 50(2))" and "Camping on Crown land while undertaking mineral exploration activities as allowed under subsection 50(2) of the *Mining Act*...". See PL 3.03.01, issued September 20, 2004, see Table A – Free Uses of Public Lands, Column B, Permitted Uses/Limitations, at p. 4 [BOA Tab 23].

⁹¹ Examples include s. 18 stating that a licensee is required to stake out and record "mining claims", ss. 27 and 28 setting out where a prospector may stake a "mining claim", and s. 38 setting out the manner in which a "mining claim" is to be staked: Divisional Court Reasons, paras 38, 42 [AB Tab 2B, p. 18]. For other examples, see the *Mining Act*, ss. 7, 26(6)-(10), 44-46.1, 54, 58, 60-67, 70-72, 79, 81, 92(4), 95-97, 104, 164, and 176. And see s. 175, which sets out the rights over land that may be granted to a leaseholder for the proper working of a mine. This would not need to exist if an unpatented mining claim holder already had those rights.

⁹² CCC Factum, para 37.

however, is that, in order to justify its refusal to consent under s. 51 of the *Act*, its proposed uses must be uses for which it has priority under the *Act*, i.e., “efforts to explore and develop the minerals and mineral rights *on* the mining claims”,⁹³ there must be actual “interference” with those uses at least beyond a *de minimis* impact (not merely showing that they are “affected” in some way), and that accommodation of the two (or more uses) must not be possible.⁹⁴ As noted by the MLC in another case, “section 51 was not drafted to provide for a ransom”.⁹⁵ The claim holder must convince the tribunal “that the programs or the nature of the holdings by the respondent are such that the multiple use principle should not be applied in this case.”⁹⁶ Indeed, the MLC’s own ruling in this proceeding in a preliminary order regarding intervener status, made clear that section 51 requires the claim holder to justify its refusal of consent in the face of the multiple use principle:

... This is all that section 51 is about – a mining claim holder has either refused consent or failed to provide it (as in the *Kamiskotia* case) and the Commissioner is being asked to assess that refusal or failure in light of an application for disposition. A hearing is needed to give the mining claim holder the opportunity to explain the reasons for his or her position in the face of the principle of multiple use of public lands... The role of the Mining and Lands Commissioner in a section 51 hearing is to “weigh the interests of the parties in accordance with the principle of multiple use of public lands.” This is really “it” in a nutshell.⁹⁷

40. Although the Divisional Court found “no legal error” by the MLC in holding that each party has an evidentiary onus, the Court observed that “it is unclear what test the MLC applied and what evidence it relied on to find an interference with CCC’s surface rights that could not be accommodated.”⁹⁸ Indeed, the MLC, in ignoring its prior jurisprudence and the policy behind s.

⁹³ Divisional Court Reasons, paras 62, 64 [AB Tab 2B, p. 22]; *Mining Act*, s 51(4). “To defend an application for release of surface rights, the respondent must show that the granting of the release would interfere with its exploration or extraction of minerals or other activity on the Mining Claims”: *Ontario Hydro v. Nahanni Mines Limited*, Appeal No. MA 026-92, Order of the Mining and Lands Commissioner dated November 17, 1993 at 9 [emphasis added] [BOA Tab 13].

⁹⁴ Divisional Court Reasons, paras 62-64, 94, 109 [AB Tab 2B, p. 22, 27, 30]; and see, e.g., *Kamiskotia*, supra note 64 at p. 462 (“serious interference”) [BOA Tab 11], and *Roy*, supra note 64 at p. 24 [BOA Tab 7].

⁹⁵ *Northland Power v Morris H.J. Labine & Ministry of Natural Resources and Forestry*, File No MA 011-95, Order of the Mining and Lands Commissioner dated June 7, 1996 at 12 [BOA Tab 12].

⁹⁶ *Egg*, supra note 64 at 286 [emphasis added] [BOA Tab 10].

⁹⁷ *2274659 Ontario Inc. v Canada Chrome Corporation and Minister of Natural Resources and Neskantaga First Nation*, File No MA 005-12, Order of the Mining and Lands Commissioner dated August 24, 2012 (“MLC Order on Neskantaga FN Party Status”) at 11 [emphasis added] [BOA Tab 1].

⁹⁸ Divisional Court Reasons, paras 62-63 [AB Tab 2B, p. 22].

51, stated vaguely that “[t]he exercise is not one that involves a shifting of burdens in the classic sense, but one that places an onus on both sides to clearly indicate what their interests in the surface are and how sharing or not sharing surface rights would affect those interests.”⁹⁹ This is not the test. The analysis under s. 51 involves more than simply determining whether the limited surface rights of the claim holder would be affected.¹⁰⁰

41. Applying its incorrect interpretation of the *Act*, the MLC concluded the easement would “negatively affect the development of [CCC’s] mining claims...”.¹⁰¹ This conclusion ignores the absence of evidence of interference with development of mines and minerals on the Claims, and is contrary to the evidence.¹⁰² CCC’s ‘evidence’ of interference consisted of a collection of straw-man assertions that fell into three categories: (1) interference with its speculative railroad; (2) interference with access to speculative consolidated aggregate (bedrock) on the claims, which might be used for developing a railway; and (3) access to the sand ridge in the Mining Claims, for the purpose of testing for indicative samples for minerals which might be found “up ice”.¹⁰³

(i) No Interference with CCC’s Speculative Plans to Build a Railway

42. The Appellant continues to claim priority over the use of surface rights in its mining claims in order to, someday, build its railway. As the Divisional Court noted, “the MLC based its decision, in part, on the proposed road’s interference with the CCC railway project.”¹⁰⁴ However, a mining claim holder must justify its refusal to provide consent in light of the limited surface rights it actually holds under the *Act*. While the Road may be “contrary” to CCC’s “business

⁹⁹ MLC Reasons, p. 36 [AB Tab 3B, p. 70].

¹⁰⁰ Divisional Court Reasons, paras 62-64, 94, 109 [AB Tab 2B, p. 22, 27, 30]; and see, e.g., *Kamiskotia*, *supra* note 64 at 462.

¹⁰¹ MLC Reasons, p. 39 [emphasis added] [AB Tab 3B, p. 73].

¹⁰² See, e.g. Boor Affidavit #1, paras 11-37 [EB Vol. 1, Tab 3, pp. 14-19, RC Tab 11, pp. 104-109]; direct exam. and re-exam. of W. Boor, Transcript (February 4, 2013), p. 100, l.2-18 and p. 170, l. 22 – p. 171, l. 9, RC Tab 1A, p. 1, Tab 1C, p. 7]

¹⁰³ See, e.g., CCC Factum sections C(ii)(b) (“*Interference with CCC’s exploration for consolidated aggregate*”) (p. 15), C(ii)(c) (“*Interference with CCC’s exploration for diamonds and other minerals*”) (p. 16) and C(iii) (“*The Divisional Court erred in holding that a railway is not a ‘mine’*”) (p. 19).

¹⁰⁴ Divisional Court Reasons, para 65 [AB Tab 2B, p. 22].

interests” (CCC will lose some leverage in trying to have Noront develop Big Daddy),¹⁰⁵ CCC cannot withhold consent based on rights it does not have, nor does it have a veto over other proposed uses. As “[t]he proposed railway is not planned in order to develop the subject mining claims, but rather to provide a transportation route to allow possible development of a deposit far to the north and not included in the claims”, the Divisional Court correctly held that “it was unreasonable for the MLC to have considered whether Cliffs’ proposed easement to build a road would interfere with CCC’s plan to build a railway for development in the Ring of Fire.”¹⁰⁶

43. CCC nevertheless now asserts priority for the railway on the basis that “the proposed railway is a ‘way’ or ‘work’ relating to or used in connection with the winning of a mineral at the Big Daddy chromite deposit”,¹⁰⁷ and therefore the railway constitutes a “mine” within the meaning of the *Act*. This argument was not advanced before the MLC¹⁰⁸ and there was only “some suggestion [of it] in argument” before the Divisional Court, which fully answered this by responding that for a “work” or “way” to be a “mine”, it must relate to or be used in connection with an “opening or excavation in, or working of, the ground for the purpose of winning any mineral or mineral bearing substance”.¹⁰⁹ As the proposed railway is “not to be used in connection with extracting any minerals from the claims themselves [it] is not a use for which CCC can claim priority under s. 51(1)”.¹¹⁰

44. Even if CCC had a prior right to use the surface of its mining claims to build a railway, the evidence revealed this project to be “highly speculative” and “unrealistic”. As the Divisional Court noted, CCC has no funds to build it, nor does it have any “present hope” of developing the

¹⁰⁵ See, e.g., Boor Affidavit #1, paras. 10, 17 [EB Vol. 1, Tab 3, pp. 14, 15, RC Tab 11, pp. 104, 105]; Smeenk Affidavit #1, para. 49 [EB Vol. 2, Tab 6, p. 295, RC Tab 20, p. 374].

¹⁰⁶ Divisional Court Reasons, para 66 [AB Tab 2B, p. 22-23].

¹⁰⁷ CCC Factum, para 56.

¹⁰⁸ In CCC’s factum before the MLC (at para. 83), it stated: “The Respondent does not assert that staking the Mining Claims in and of itself gives the Respondent a right to build a railway. Nor does it assert that a railway is a “mine” under the *Mining Act*.”

¹⁰⁹ *Mining Act*, s. 1(1). Divisional Court Reasons, para 67 [AB Tab 2B, p. 23].

¹¹⁰ Divisional Court Reasons, paras 66-67, 82 [AB Tab 2B, p. 22-23, 25-26].

Big Daddy deposit. For the principle of multiple use to have meaning, plans which are unlikely to ever materialize cannot serve as complete bars to other uses of the surface.¹¹¹ CCC concedes that its plans for a railway are speculative, but only in the sense that they “have not yet come to fruition”, and not in the sense of being “disingenuous”, whatever that means.¹¹²

45. It is, however, a further indication of the unreasonableness of the MLC’s decision that it “based its decision, in part, on the proposed road’s interference with the CCC railway project”, finding that “CCC’s ability to access the feature [the esker] would be negatively affected”,¹¹³ even though, as the Divisional Court noted, CCC itself did not rest its case on this issue, instead asserting interference with mining of consolidated aggregate and exploration for other minerals.¹¹⁴ Whether or not CCC’s proposed access to the esker is to build a railway or for exploration and development of other minerals in the Mining Claims (and ignoring the fact that the need for such access is speculative), there is no evidence that the Road would interfere with such access. Rather, the boreholes have already been drilled and sampled, and the Road could assist with the movement of equipment and people to assist in CCC’s exploration/development efforts. Furthermore, there was no evidence that a railway could not also be built,¹¹⁵ and, in fact, the MLC’s finding that “there was very little useful evidence” on this issue ignored Cliffs’ expert evidence that construction of both a road and railway could easily be accommodated on the esker.¹¹⁶

¹¹¹ Divisional Court Reasons, paras 86, 106; 109-110 [AB Tab 2B, p. 26, 29-30].

¹¹² CCC Factum, para 46.

¹¹³ Divisional Court Reasons, para 65 [AB Tab 2B, p. 22]; MLC Reasons, p. 42. [AB Tab 3B, p. 76].

¹¹⁴ Divisional Court Reasons, para 82 [AB Tab 2B, p. 25-26]; MLC Reasons, pp. 24-25. And see, e.g., Submissions of Mr. Smitheman, Transcript (February 14, 2013), p. 27, l. 11-17 (see also pp. 20, l.22-p. 21, l.4; 26, l. 9-27, l.10), RC Tab 6, p. 59A-60B.

¹¹⁵ Divisional Court Reasons, paras 88-90; 107-108 [AB Tab 2B, p. 26-27, 29-30].

¹¹⁶ A photograph of the Yellowhead Highway with adjacent railway was introduced through expert, C. Tattersall, which demonstrates this vividly. Affidavit of C. Tattersall, sworn September 20, 2012 (“Tattersall Affidavit”), Ex. “C” [EB Vol. 4, Tab 9C, p. 1000, RC Tab 21C, p. 391]. Cliffs also adduced evidence of two representative cross-sections of the Road and a typical heavy haul railway bed as contemplated by the “Canada Chrome Railway Feasibility Study” prepared by CCC’s consultants. Tattersall Affidavit, paras 7-11, 15 and Ex. “B” [EB Vol. 4, Tab 9, pp. 991-993; Tab 9B, pp. 999, RC Tab 21, p. 386-388 and Tab 21B, p. 390].

(ii) No interference with CCC's exploration for consolidated aggregate

46. CCC did not adduce any evidence of interference with plans to extract consolidated aggregate, because it does not exist. As the Divisional Court correctly noted, "CCC's own evidence shows that there is no available bedrock in the CCC claims that the road would cross."¹¹⁷ Further, there was no evidence that Cliffs would seek to use consolidated aggregate, if any exists, from the Mining Claims to build the road,¹¹⁸ nor is it entitled to do so.¹¹⁹ All CCC had was Mr. Smeenk's belief that interference with CCC's speculative mining activities was "likely".¹²⁰ The MLC "never addressed the evidence with respect to consolidated aggregate on the claims",¹²¹ simply making bald assertions, adverse to Cliffs, that "it is enough to say that any attempts by CCC to work its claims along the higher ground or esker will undoubtedly be hampered or curtailed by the existence of a road."¹²² However, as the Divisional Court observed, "the MLC does not explain why it concluded that the road, if built, would hamper, rather than assist in access to the mining claims. One would expect the presence of a road to facilitate access to these claims for the purpose of moving equipment and people."¹²³

47. The fact that the railway project is speculative is also relevant to the Appellant's claim that it needs priority over use of the surface to explore for consolidated aggregate (or bedrock). The

¹¹⁷ Divisional Court Reasons, paras 87, 14 [AB Tab 2B, pp. 26, 13-14]. And see Hartmann Affidavit Ex. "B", DVD of Appendices to Tetra Tech Report, Appendix 12, pp. 26-61 [EB Vol. 5, Tab 15, p. 1315, and printed pages reproduced in MLC Exhibit 20 at EB Vol. 7, Tab 28B, pp. 1648-1683, RC p. 392-427]; cross-exam. of P. Hartmann, Transcript (February 11, 2013), p. 126, l. 20 – p. 127, l. 18 and p. 129, l. 1 – p. 142, l. 11 [RC Tab 5, p. 43-44, 45-58] and Hartman Affidavit Ex. "B", report p. 16 [EB Vol. 5, Tab 15B, p. 1305, RC Tab 13B, p. 144]; MLC Hearing Exhibit 13, map at Kruse Affidavit #2, Ex. "E" with additional markings [EB Vol. 8, Tab 36, p. 1711, RC Tab 10, p. 100]. Hartmann Affidavit Ex. "B", Tetra Tech Report Appendices, App. 12, pp. 26-61 [EB Vol. 5, Tab 15, p. 1315, and printed pages reproduced in MLC Exhibit 20 at EB, Vol. 7, Tab 28B, pp. 1648-1683, RC p. 392-427]

¹¹⁸ The evidence was that "Cliffs will not be sourcing any of those materials from the Mining Claims": Fourth Affidavit of Gabriel Johnson, sworn September 21, 2012, at para 6 [EB Vol. 5, Tab 13, p. 1081, RC Tab 17, p. 203]; Divisional Court Reasons, para. 85 [AB Tab 2B, p. 26].

¹¹⁹ Sand, peat and gravel are the subject of permits under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8 and Cliffs had sought permits to extract gravel under that *Act*: Divisional Court Reasons, paras 84- 85, 105 [AB Tab 2B, p. 26, 29] and *Supra* note 42.

¹²⁰ MLC Reasons, p. 13 [AB Tab 3B, p. 47].

¹²¹ Divisional Court Reasons, para 87 [AB Tab 2B, p. 26].

¹²² MLC Reasons, p. 40 [AB Tab 3B, p. 74]. In contrast, see Cliffs' evidence that a road would benefit other mining claim holders and would make the Big Daddy deposit itself more economically viable: Boor Affidavit #4, paras 14, 16-17 [EB Vol. 4, Tab 11, p. 1007-1008, RC Tab 12, p. 116-117].

¹²³ Divisional Court Reasons, para 89 [AB Tab 2B, p. 26-27].

Appellant's assertion that the purpose of such exploration (which relates to the building of the railway) is irrelevant to determining whether or not there is interference is unfounded.¹²⁴ If the purpose for which such exploration would take place is to build a railway, and the railway is unlikely to be built, it follows that the exploration for and mining of consolidated aggregate is also speculative – which is what the Divisional Court concluded.¹²⁵ In any event, as noted, there is no consolidated aggregate on the Mining Claims for the Road to interfere with.

(iii) No interference with CCC's "exploration" for diamonds and other minerals

48. CCC has also asserted its wish to use the Claims for exploration for diamonds and other minerals. Yet there is no evidence of ore or diamonds on the Mining Claims.¹²⁶ Instead, as the Divisional Court noted, assessments show only the possibility that analyzing material from the sand ridge in the claims "may show the likelihood of mineral deposits" in areas outside the Mining Claims, or "up ice".¹²⁷ Further, there was no evidence of future work planned, nor was there any evidence of a plan for follow-up exploration, which, in any event, was dependent on receiving additional financial support.¹²⁸ The Divisional Court properly held that it is not enough for CCC to show that the easements would "affect" or have some "minimal" impact on its proposed activities.¹²⁹ To give meaning to the multiple use principle, CCC had to show that the actual or

¹²⁴ CCC Factum, para 42.

¹²⁵ Divisional Court Reasons, paras 86, 106 [AB Tab 2B, pp.26, 29].

¹²⁶ Agreed Facts, para 27 [EB Vol. 8, Tab 34, p. 1708, RC Tab 7, p. 65]; CCC also relied on evidence relating to the prospective diamond exploration activities of a company called Debut Diamonds which was completely irrelevant and is not evidence of work or activities being carried out by CCC – Debut Diamonds is a public company, and its assets are not assets of KWG or CCC. See cross-exam. of M. Lavigne, Transcript (February 7, 2013), p. 87, l. 8-p. 89, l. 23 [RC Tab 4B, p. 36-38].

¹²⁷ Divisional Court Reasons, paras 90, 107 [emphasis added] [AB Tab 2B, p. 27, 29]. CCC's evidence was that the sand ridge running through the Mining Claims acts as a "net" capturing samples of what might exist elsewhere (i.e., "up ice"): Direct exam. of M. Lavigne, Transcript (February 7, 2013), p. 54, l. 8-16 [RC Tab 4A, p. 32]. CCC's proposed future sampling was not to develop minerals in the Claims themselves: Direct exam. of M. Lavigne, Transcript (February 7, 2013), p. 57, l. 11-14 [RC Tab 4A, p. 35].

¹²⁸ *Ibid* and Direct exam. of M. Lavigne, Transcript (February 7, 2013), p. 55, l. 17-57, l. 14 [RC Tab 4A, p. 33-35]. Despite this, the MLC held that it was left with the "impression" that CCC would carry out future mineral sampling work: MLC Reasons, p. 39 [AB Tab 3B, p. 73].

¹²⁹ Divisional Court Reasons, para 94 [AB Tab 2B, p. 27].

probable impact on its proposed use would be material (beyond *de minimis*) and that the proposed easements could not be reasonably accommodated.¹³⁰

49. There is also an obvious contradiction between CCC's proposed railway activities on the Mining Claims and its belated assertion of exploring for minerals.¹³¹ Tellingly, CCC argued that an easement for a road would 'sterilize' the development of those claims, but remained silent on whether or not a rail corridor on the surface of the Mining Claims would do the same. CCC is disingenuous. It is not concerned with 'sterilizing' the development of minerals on the claims – it is only concerned with losing its "check-mate asset" over a transportation route.¹³²

E. Public Interest Requirement

50. At the hearing before the Divisional Court, CCC conceded that there is an inherent public interest in the multiple use of Crown lands.¹³³ As long as there is another proposed use of the surface, whatever that use may be, the public interest in multiple use of Crown lands is engaged. Whether or not the public interest is served by the easement is for the MNR to decide in determining whether or not to grant it.¹³⁴ Accordingly, there is no need to show any public interest beyond multiple use in order to dispense with CCC's consent to the easement.¹³⁵

51. Nevertheless, the Appellant contends that the Divisional Court erred in finding that the MLC placed a burden on Cliffs to demonstrate that the Road was in the public interest, saying that the MLC was simply responding to an argument advanced by Cliffs at the hearing.¹³⁶ However, it

¹³⁰ Divisional Court Reasons, para 62-64, 94, 96, 109 [AB Tab 2B, pp.22, 27, 28, 30]; and see, e.g., *Kamiskotia*, supra note 64 at p. 462 [BOA Tab 11].

¹³¹ Even the MLC acknowledged that "CCC did not offer any evidence as to how it proposed to coordinate activities between its proposed railway and the geological information gleaned from its boreholes for purposes of a prospective exploration program in years to come." MLC Reasons, p. 39 [AB Tab 3B, p. 73].

¹³² MLC Reasons, p. 20 [AB Tab 3B, p. 54]. See *supra* note 15.

¹³³ See, e.g., Divisional Court Reasons, paras 70 [AB Tab 2B, pp. 23].

¹³⁴ See *Grant of Easements* PL 4.11.04, April 7, 2006, and *Application Review and Land Disposition Process*, PL 4.02.01, July 24, 2008 at Ex. "A" and "B" to Johnson Affidavit #2 [EB Vol. 1, Tab 4A, pp. 31-34; Tab 4B, pp. 35-54, RC Tab 15A, pp. 165-168, Tab 15B, pp. 169-188]. And see Divisional Court Reasons, para. 110 [AB Tab 2B, p. 30].

¹³⁵ Divisional Court Reasons, para 76 [AB Tab 2B, p. 24].

¹³⁶ CCC Factum, para 52.

is clear that the MLC did, in fact, impose such a burden on Cliffs, as it held that “to its detriment, Cliffs has failed to convince the tribunal that there is an interest of the public that has to be accommodated on these Crown lands,” asserting, “[t]his is not a case where there is a public interest element for the tribunal to consider. What is before this tribunal is no more than a simple corporate fight and, as between those two corporations, the law is clear; the application must fail.”¹³⁷ The Divisional Court was therefore correct in holding that the MLC “unreasonably concluded that there had to be a public interest in the proposed use beyond the public interest in multiple uses of the Crown land”, and this influenced the MLC’s unreasonable decision not to dispense with CCC’s consent.¹³⁸

F. Decision not to Remit the Matter to the MLC

52. The Divisional Court’s decision to dispense with consent and not remit the matter back to the MLC is a question of mixed fact and law, and entitled to deference.¹³⁹ In any event, this decision is not only reasonable, it is correct. Leaving aside the numerous legal errors, unreasonable findings, deficiencies and other flaws in the MLC decision, the Divisional Court reasonably found that exceptional circumstances justified substituting its own decision.¹⁴⁰ In this case, the three factors recognized by this Court for doing so - where remitting the case would be pointless, where only one interpretation or solution is possible, and where the tribunal is no longer “fit to act”¹⁴¹ – were relevant and addressed by the Divisional Court.¹⁴²

¹³⁷ MLC Reasons, pp. 41- 42, 43 [emphasis added] [AB Tab 3B, p. 75-76, 77].

¹³⁸ Divisional Court Reasons, paras 76, 93 [AB Tab 2B, p. 24].

¹³⁹ *Telus Communications (C.A.)*, *supra* note 45 at para 34 [BOA Tab 16]; *Housen*, *supra* note 44 at para 37 [BOA, Tab 9].

¹⁴⁰ See, e.g., *Stetler v Ontario (Flue-Cured Tobacco Growers’ Marketing Board)*, 2009 ONCA 234 at para 42, [2009] OJ No 1050 [Stetler] [BOA Tab 15] and *Giguère c Chambre des notaires du Québec*, 2004 SCC 1 at para 66, [2004] SCJ No 5 [Giguère] [BOA Tab 8]. The *Courts of Justice Act*, R.S.O. 1990, c. C.43, ss. 134(1)(a) and 134(4)(a), permit a Court to which an appeal is taken to “make any order or decision that ought to or could have been made by the court or tribunal appealed from”, and “in a proper case”, to “draw inferences of fact from the evidence...”.

¹⁴¹ *Ibid.* (Stetler at para 42 and Giguère at para 66). And see Divisional Court Reasons, at para 99 [AB Tab 2B, p. 28].

¹⁴² Divisional Court Reasons, para 101-103, 111 [AB Tab 2B, p. 29, 30].

53. It is not the case, as suggested by the Appellant, that the Divisional Court could simply have remitted the matter to the MLC to have them “better consider...” whether the Road could be accommodated.¹⁴³ The MLC made serious errors in its interpretation of the *Act*, which in turn caused it to make errors in how it approached and applied the evidence.¹⁴⁴ There was more than enough evidence before the Divisional Court to find that, upon correcting the legal errors and unreasonable findings of fact, the only reasonable outcome was clear.¹⁴⁵ The Court explained why the proposed railway should not have been considered and, unlike the MLC, reviewed the evidence - much of it from CCC itself - that showed that the easement would not interfere with permitted uses of the surface by CCC for which it might be able to claim priority.¹⁴⁶

54. The Court’s decision on this issue clearly turned on its ability to examine the evidence in detail and come to the only reasonable outcome possible.¹⁴⁷ Applying the *Act* correctly to the evidence demonstrated CCC had no basis to withhold consent, because the possible railway was not a valid surface right under s. 50 over which CCC can claim priority under s. 51, and there is no evidence of any consolidated aggregate or other minerals on the claims, or legitimate plans to explore for such minerals, let alone any evidence that the Road would interfere with exploration on the claims such that the Road cannot be accommodated.

55. The MLC’s Reasons contain many negative comments about Cliffs and its relationship with CCC¹⁴⁸ which raise concerns, such that the Court could reasonably find that fairness required “the matter to proceed before a differently constituted tribunal”, leaving only one Commissioner

¹⁴³ CCC Factum, at para 67.

¹⁴⁴ Divisional Court Reasons, para 97 [AB Tab 2B, p. 28].

¹⁴⁵ Divisional Court Reasons, 101-104, 111 [AB Tab 2B, p. 29, 30].

¹⁴⁶ Divisional Court Reasons, paras 105-110 [AB Tab 2B, p. 29-30]. And see paras 12-14 above, dealing with consolidated aggregate and supposed exploration for diamonds.

¹⁴⁷ Divisional Court Reasons, paras 98-111 [AB Tab 2B, p. 28-30].

¹⁴⁸ See, e.g., comments in MLC Reasons at pp. 27, 28, 29, 37, 38, including references to “the disingenuousness of Cliffs behaviour” and, “The situation brings to mind the idiom of ‘the pot calling the kettle black’. There is no doubt in the mind of the tribunal that Cliffs was quite happy to go along with the scheme until it felt ready to move in and take over.” [AB Tab 3B, p. 61-63, 71-72].

who could hear the matter.¹⁴⁹ The Appellant's submission that a finding of a reasonable apprehension of bias must be made before a tribunal is not "fit to act" is not supported in the jurisprudence.¹⁵⁰ In any event, this was just one factor in the Court's decision, as it stated:

...I accept Cliffs' submission that a more narrow focus on the relevant evidence allows us to undertake this approach, particularly given the other difficulties in remitting the matter to the MLC already noted.¹⁵¹

56. The principles and law enunciated by this Court in *Stetler* are applicable here.¹⁵² The Divisional Court's decision also makes good sense in furthering the interests of justice and judicial efficiency,¹⁵³ particularly because it is not a final determination of these issues. This application, made in February 2012, is only the first hurdle faced by Noront in obtaining an easement to build the Road – let alone actually building the Road itself. As the Divisional Court properly noted: "the issue being decided under s. 51(4) of the *Mining Act* does not deprive CCC of its ability at the next

¹⁴⁹ Divisional Court Reasons, para 100 [AB Tab 2B, p. 28]. Contrary to the Appellant's assertion at para 71 of its factum, Cliffs did raise the issue of fairness before the Divisional Court. In its factum before the Divisional Court, dated December 16, 2013, at para. 69, Cliffs stated that the "...numerous comments in the reasons of the MLC regarding Cliffs and its relationship with CCC, destroy the appearance of fairness and impartiality in any future hearing of these same issues before the Commissioners."

¹⁵⁰ See, e.g., *Dayco (Canada) Ltd. v National Automobile, Aerospace & Agricultural Workers Union of Canada* (1990), 74 OR (2d) 648, [1990] OJ No 1650 at paras 47-50 (ONCA), aff'd [1993] 2 SCR 230, [1993] SCJ No 53 (SCC) [BOA Tab 5]. See also *Fitzpatrick v Newfoundland (Workplace Health, Safety and Compensation Commission)* (2001), 110 ACWS (3d) 229, [2001] NJ No 329 (NLSCTD) at para 72 [BOA Tab 6].

¹⁵¹ Divisional Court Reasons, para 103 [emphasis added] [AB Tab 2B, p. 29].

¹⁵² *Stetler*, supra note 140 at para. 42 [BOA Tab 15]. In fact, the principles set out in *Stetler* have been applied in a number of cases dealing with different facts: See, e.g., *Telus Communications Inc v Telecommunications Workers' Union*, 2013 ABQB 355 at paras 64-68, [2013] AJ No 681 [BOA Tab 17], aff'd *Telus Communications*, supra note 45 [BOA Tab 16], where the Court of Queen's Bench of Alberta overturned an arbitrator's decision to reinstate an employee, confirming the employer's termination of the employee because "[r]emitting this matter to a different arbitrator to arrive at the only reasonable conclusion serves no useful purpose." And see *United States of America v Leonard*, 2012 ONCA 622 at paras 92-93, [2012] OJ No 4366 [BOA Tab 19], which involved the decision of the Minister of Justice to surrender a Canadian citizen to the United States. The Minister did not consider the man's Aboriginal status or Gladue factors in determining whether the surrender was a violation of his s. 6(1) *Charter* right to stay in Canada. The Ontario Court of Appeal quashed the Minister's decision and held it would be "pointless" to remit the matter back as there was no possibility "the Minister could marshal reasons to support surrender on the basis that political considerations outweigh the devastating impact of the drastically different treatment to which [the accused] would be subjected if surrendered." See also *Canada (Attorney General) v Cruden*, 2013 FC 520 at para 85, [2013] FCJ No 533, aff'd 2014 FCA 131, [2014] FCJ No 518 [BOA Tab 2].

¹⁵³ See, e.g., *Canada (Attorney General) v Jewett*, 2013 FCA 243 at para 18, [2013] FCJ No 1140 [BOA Tab 3] and *Chipman Wood Products (1973) Ltd. v Thompson* (1996), 138 DLR (4th) 761, [1996] NBJ No 395 (NBCA) [BOA Tab 4] at paras 13-14. And see Donald JM Brown & John M Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Canvasback Publishing, 2013) (loose-leaf revision) at 5-35 to 5-46: "...where it would otherwise be unfair to recommence the administrative proceedings, or where to do so would be of no practical value, as, for example, where the outcome turns on a matter of law which the court has decided, or the outcome is otherwise obvious, it may be appropriate to simply quash a decision." [citations omitted] [BOA Tab 20].

stage to oppose [the] easement application or to ask for conditions that would protect its legitimate interests in its mining claims.”¹⁵⁴

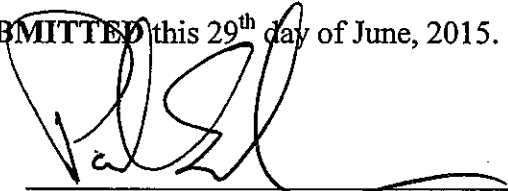
PART IV - ADDITIONAL ISSUES

57. The Respondent does not raise any additional issues.

PART V - ORDER REQUESTED

58. The Respondent requests that the appeal be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of June, 2015.



Paul Schabas
Counsel for the Respondent

¹⁵⁴ Divisional Court Reasons, para 103 [AB Tab 2B, p. 29].

COURT OF APPEAL FOR ONTARIO

BETWEEN:

2274659 ONTARIO INC.

Respondent
(Applicant)

- and -

CANADA CHROME CORPORATION

Appellant
(Respondent)

- and -

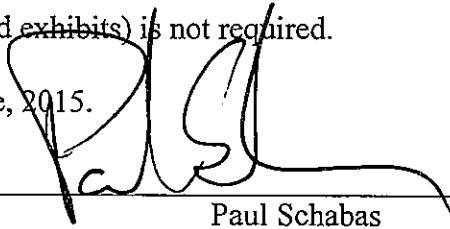
MINISTER OF NORTHERN DEVELOPMENT AND MINES

Intervener

CERTIFICATE

I estimate that 70 minutes will be needed for my oral argument of the appeal, not including reply. An order under 61.09(2) (original record and exhibits) is not required.

DATED AT Toronto, Ontario this 29th day of June, 2015.



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Tab A

SCHEDULE "A"

LIST OF AUTHORITIES

Case Law

1. *2274659 Ontario Inc. v Canada Chrome Corporation and Minister of Natural Resources and Neskantaga First Nation*, File No MA 005-12, Order of the Mining and Lands Commissioner dated August 24, 2012.
2. *Canada (Attorney General) v Cruden*, 2013 FC 520, [2013] FCJ No 533.
3. *Canada (Attorney General) v Jewett*, 2013 FCA 243, [2013] FCJ No 1140.
4. *Chipman Wood Products (1973) Ltd. v Thompson* (1996), 138 DLR (4th) 761, [1996] NBJ No 395 (NBCA).
5. *Dayco (Canada) Ltd. v National Automobile, Aerospace & Agricultural Workers Union of Canada* (1990), 74 OR (2d) 648, [1990] OJ No 1650 (ONCA), aff'd [1993] 2 SCR 230, [1993] SCJ No 53 (SCC).
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10. *The Improvement District of Gauthier v Egg* (1987), 7 MCC 281 (Mining and Lands Comm).
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17. *Telus Communications Inc v Telecommunications Workers' Union*, 2013 ABQB 355, [2013] AJ No 681.
18. *Tony Robert Yozipovic v Lawrence Timothy Watson*, File No MA 016-07, Order of the Mining and Lands Commissioner dated May 11, 2012.
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23. Ministry of Natural Resource's *Free Use Policy*, PL 3.03.01, issued September 20, 2004.
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Tab B

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Mining Act*, R.S.O. 1990, c. M.14, historical version for the period April 4, 2011 to October 31, 2012
2. Current *Mining Act*, R.S.O. 1990, c. M.14 (April 1, 2013 to present)
3. *Claim Staking and Recording*, O. Reg. 43/11, Part I, Ground Staking of Mining Claims, and Part II, Map Staking of Mining Claims
4. *Public Lands Act*, R.S.O. 1990, c. P.43, s. 21
5. *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 134

TAB 1

Mining Act, R.S.O. 1990, c. M.14
Historical version for the period April 4, 2011 to October 31, 2012

Interpretation

1. (1) In this Act,

“anniversary date”, when referring to a mining claim, means the date that occurs at annual intervals after the recording of a mining claim, or such other date as results from the application of subsection 67 (4); (“date anniversaire”)

“Commissioner” means the Mining and Lands Commissioner appointed under the *Ministry of Natural Resources Act*, (“commissaire”)

“Crown” means Crown in right of Ontario; (“Couronne”)

“Crown land” does not include,

- (a) land, the surface rights, mining rights or the mining and surface rights of which are under lease or licence of occupation from the Crown,
- (b) land in the actual use or occupation of the Crown, the Crown in right of Canada, or of a department of the Government of Canada or a ministry of the Government of Ontario,
- (c) land the use of which is withdrawn or set apart or appropriated for a public purpose, or
- (d) land held by a ministry of the Government of Ontario; (“terre de la Couronne”)

“Deputy Minister” means the Deputy Minister of Northern Development, Mines and Forestry; (“sous-ministre”)

“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”)

“in place”, when used in reference to mineral, means in the place or position where originally formed in the solid rock, as distinguished from being in loose, fragmentary or broken rock, boulders, float, beds or deposits of gold or platinum-bearing sand, earth, clay, or gravel, or placer; (“en place”)

“lease” means a leasehold patent; (“bail”)

“lessee” means a person who holds a lease of mining rights, surface rights, or both, issued under this Act or any predecessor of this Act; (“preneur à bail”)

“licensee” means a person holding a prospector’s licence issued under this Act or a renewal thereof; (“titulaire de permis”)

“machinery” includes steam and other engines, boilers, compressors, furnaces, milling and crushing apparatus, hoisting and pumping equipment, chains, trucks, tramways, tackle, blocks, ropes and tools, and all appliances used in or about or in connection with a mine or plant; (“machines”)

“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”)

“metal tag” means the metal tag supplied by the mining recorder or a substitute therefor supplied by the Ministry; (“étiquette métallique”)

“mine”, when used as a noun, includes,

- (a) any opening or excavation in, or working of, the ground for the purpose of winning any mineral or mineral bearing substance,
- (b) all ways, works, machinery, plant, buildings and premises below or above the ground relating to or used in connection with the activity referred to in clause (a),
- (c) any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining or treating any mineral or mineral bearing substance, or conducting research on them,
- (d) tailings, wasterock, stockpiles of ore or other material, or any other prescribed substances, or the lands related to any of them, and
- (e) mines that have been temporarily suspended, rendered inactive, closed out or abandoned,

but does not include any prescribed classes of plant, premises or works; ("mine")

"mine", when used as a verb, means the performance of any work in or about a mine, as defined in its noun sense, except preliminary exploration; ("exploiter")

"mine hazard" means any feature of a mine, or any disturbance of the ground, that has not been rehabilitated to the prescribed standard; ("risque minier")

"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")

"mining claim" means a parcel of land, including land under water, that has been staked and recorded in accordance with this Act and the regulations; ("claim")

"mining lands" includes,

- (a) the lands and mining rights patented or leased under or by authority of a statute, regulation or order in council, respecting mines, minerals or mining,
- (b) lands or mining rights located, staked, used or intended to be used for mining purposes, and
- (c) surface rights granted solely for mining purposes; ("terrains miniers")

"mining rights" means the right to minerals on, in or under any land; ("droits miniers")

"Minister" means the Minister of Northern Development, Mines and Forestry, except in Part IV where "Minister" means the Minister of Natural Resources; ("ministre")

"Ministry" means the Ministry of the Minister; ("ministère")

"owner", when used in Parts VII, IX and XI, includes,

- (a) every current owner, lessee or occupier of all or part of a mine, mine hazard or mining lands,
- (b) an agent of the current owner, lessee or occupier, or a person designated by the owner, lessee, occupier or agent as being responsible for the control, management and direction of all or part of a mine, mine hazard or mining lands, and
- (c) subject to subsections (4) to (13), a secured lender who enters into possession of all or part of a mine, mine hazard or mining lands pursuant to the security it holds with respect to the mine, mine hazard or mining lands; ("propriétaire")

“patent” means a grant from the Crown in fee simple or for a less estate made under the Great Seal, and includes leasehold patents and freehold patents, but in sections 4, 27, 84, 87 to 95, 176, 179, 182 and 189 the meaning is limited to freehold patents; (“lettres patentes”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“prospecting” means the investigating of, or searching for, minerals; (“prospection”)

“recorder” means a provincial mining recorder appointed under section 6; (“registrateur”)

“regulations” means the regulations made under this Act; (“règlements”)

“surface rights” means every right in land other than the mining rights; (“droits de surface”)

“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”)

“unpatented”, when referring to land or mining rights, means land or mining rights for which a patent, lease, licence of occupation or any other form of Crown grant is not in effect; (“non concédé par lettres patentes”)

“valuable mineral in place” means a vein, lode or deposit of mineral in place appearing at the time of discovery to be of such a nature and containing in the part thereof then exposed such kind and quantity of mineral or minerals in place, other than limestone, marble, clay, marl, peat or building stone, as to make it probable that the vein, lode or deposit is capable of being developed into a producing mine likely to be workable at a profit. (“minéral de valeur en place”) R.S.O. 1990, c. M.14, s. 1; 1996, c. 1, Sched. O, s. 1; 1997, c. 40, s. 1; 1999, c. 12, Sched. O, s. 1 (1, 2); 2001, c. 9, Sched. L, s. 1 (1); 2009, c. 21, ss. 1 (3-7), 101 (2); 2009, c. 33, Sched. 23, s. 1.

Deemed reference to Provincial Recording Office

(2) In this Act, a reference to “recorder’s office” or “office of the recorder” shall be deemed to be a reference to the Provincial Recording Office. 1999, c. 12, Sched. O, s. 1 (3).

Interpretation of “owner”

(3) A person who receives only a royalty from all or part of a mine, mine hazard or mining lands is not an owner within the meaning of the definition of “owner” in subsection (1). 2001, c. 9, Sched. L, s. 1 (2).

Where secured lender not an “owner”

(4) A secured lender described in clause (c) of the definition of “owner” in subsection (1) is not an owner if the lender satisfies the Director of Mine Rehabilitation that the lender is in a family or other non-arm’s length relationship with the current owner, lessee or occupier. 2001, c. 9, Sched. L, s. 1 (2).

Same

(5) A secured lender described in clause (c) of the definition of “owner” in subsection (1) is not an owner if the lender has entered into possession for the purpose of,

(a) conducting, completing or confirming an investigation of the environmental condition of all or part of the mine, mine hazard or mining lands or of the rehabilitative measures that would be required upon their closure;

(b) preserving or protecting the value of all or part of the mine, mine hazard or mining lands on an ongoing basis, including taking steps for,

- (i) maintaining public utility services, heat, maintenance services, security and insurance,
 - (ii) paying taxes or collecting rents,
 - (iii) dealing with an immediate danger to public health or safety from a contaminant, pollutant or other hazardous substance or with a threat of such danger, or
 - (iv) preventing flooding; or
- (c) repossessing or realizing upon any machinery or personal property with respect to which the lender is a lessor or over which the lender holds security if the Director of Mine Rehabilitation has given prior written approval and subject to any terms and conditions of such approval. 2001, c. 9, Sched. L, s. 1 (2).

Exception

(6) A secured lender who enters into possession under clause (5) (a) or (b) is nonetheless an owner if the lender creates, materially disturbs or adversely affects a mine hazard. 2001, c. 9, Sched. L, s. 1 (2).

Same, failure to carry out purpose properly

(7) A secured lender who enters into possession under clause (5) (b) is an owner despite that clause if, in the opinion of the Director of Mine Rehabilitation, the lender fails to properly preserve and protect the value of the mine, mine hazard or mining lands on an ongoing basis, unless, at the request of the lender made with at least six months notice, the Director relieves the lender of that responsibility in writing. 2001, c. 9, Sched. L, s. 1 (2).

Liability of secured lender

(8) A secured lender who has not been relieved of the responsibility referred to in subsection (7) is liable for damages caused by a failure to properly preserve and protect the value of the mine, mine hazard or mining lands on an ongoing basis. 2001, c. 9, Sched. L, s. 1 (2).

Notice

(9) Before giving an approval under clause (5) (c), the Director shall give at least 15 days notice to the current owner, lessee, occupier or other person known to have an interest in all or part of the mine, mine hazard or mining lands. 2001, c. 9, Sched. L, s. 1 (2).

Condition of approval

(10) The Director of Mine Rehabilitation may, as a condition of an approval under clause (5) (c), require that any machinery or personal property repossessed or realized upon be sold or otherwise disposed of by the lender and that all or part of the proceeds be directed to the preservation or protection of the values of all or part of the mine, mine hazard or mining lands. 2001, c. 9, Sched. L, s. 1 (2).

Refusal by Director

(11) The Director of Mine Rehabilitation may refuse to give an approval under clause (5) (c) if not satisfied that repossessing or realizing upon the machinery or personal property will not adversely affect the proper preservation and protection of the value of all or part of the mine, mine hazard or mining lands. 2001, c. 9, Sched. L, s. 1 (2).

Appeal to the Commissioner

(12) The secured lender or other interested party may appeal to the Commissioner,

- (a) an approval given by the Director under clause (5) (c) or a refusal to give an approval under that clause; or

(b) any terms or conditions that the Director imposes on an approval given under clause (5) (c).
2001, c. 9, Sched. L, s. 1 (2).

Same

(13) Section 152 applies with necessary modifications to an appeal under subsection (12). 2001, c. 9, Sched. L, s. 1 (2).

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. 2009, c. 21, s. 2.

Application to sales, etc., for other purposes

3. Nothing in this Act affects the sale, lease or location, for agricultural or other purposes, of any land opened for sale or free grant under the *Public Lands Act* or otherwise. R.S.O. 1990, c. M.14, s. 3.

**PART I
ADMINISTRATION**

Administrative matters

Public lands and regulations

4. (1) All public lands for mining purposes and for the purposes of the mineral industry and all regulations made with respect to mines or minerals or mining or mining lands or mining rights or the mineral industry shall be administered by the Minister. R.S.O. 1990, c. M.14, s. 4 (1).

Execution of instruments

(2) All patents, leases, licences or other instruments of title and all agreements, contracts or other writings relating to mines or minerals or mining lands or mining rights or the mineral industry shall be signed and executed by the Minister or by the Deputy Minister. R.S.O. 1990, c. M.14, s. 4 (2).

Immunity for acts done in good faith

(3) No action or other proceeding for damages shall be instituted against the Minister, the Deputy Minister or any officer or employee of the Ministry or anyone acting under the authority of the Minister or Deputy Minister for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty. R.S.O. 1990, c. M.14, s. 4 (3).

Crown liability

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted. R.S.O. 1990, c. M.14, s. 4 (4).

Delegation of Minister's powers, etc.

(5) Where under this Act a power or duty is granted to or vested in the Minister, the Minister may in writing delegate that power or duty to the Deputy Minister or to any officer or employee of the Ministry, subject to such limitations, conditions and requirements as the Minister sets out in the delegation. R.S.O. 1990, c. M.14, s. 4 (5).

Delegation of Deputy Minister's powers and duties

(5.1) Where under this Act a power or duty is granted to or vested in the Deputy Minister, the Deputy Minister may in writing delegate that power or duty to any officer or employee of the Ministry, subject to such limitations, conditions and requirements as the Deputy Minister sets out in the delegation. 1999, c. 12, Sched. O, s. 2 (1).

Exception

(5.2) Subsection (5.1) does not apply to the duty set out in subsection (2). 1999, c. 12, Sched. O, s. 2 (1).

Persons authorized to take affidavits

(6) The Minister may authorize officers or employees of the Ministry to administer oaths and to take or receive affidavits, declarations and affirmations authorized by law for the purposes of or incidental to the administration and enforcement of this Act. 1999, c. 12, Sched. O, s. 2 (2).

Powers of authorized persons

(7) An authorized person has all the powers of a commissioner for taking affidavits under the *Commissioners for taking Affidavits Act* in respect of the oaths, affidavits, declarations or affirmations mentioned in subsection (6). 1999, c. 12, Sched. O, s. 2 (2).

Officers and employees

5. The Minister may appoint officers or employees of the Ministry, and other persons, to exercise powers and perform duties under this Act, as specified in the appointment. 1999, c. 12, Sched. O, s. 3.

Provincial mining recorders

6. (1) The Minister may appoint as many provincial mining recorders as he or she considers advisable from among the officers or employees of the Ministry. 1999, c. 12, Sched. O, s. 3.

Jurisdiction of recorder

(2) A recorder has jurisdiction throughout Ontario. 1999, c. 12, Sched. O, s. 3.

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. 2009, c. 21, s. 3.

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. 2009, c. 21, s. 3.

Same

(3) The records, abstracts and maps shall be maintained in the form or forms directed by the Minister, including in electronic form. 2009, c. 21, s. 3.

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. 2009, c. 21, s. 3.

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*, 2009, c. 21, s. 3.

8. Repealed: 2009, c. 21, s. 3.

Evidence of records

9. (1) Every copy of or extract from a recorded entry or any document filed in the Provincial Recording Office, certified by a recorder to be a true copy or extract, shall be received in any court as proof, in the absence of evidence to the contrary, of the matter certified without proof of the recorder's appointment, authority or signature. 1999, c. 12, Sched. O, s. 6.

Computer print-out, etc., admissible evidence

(2) If an entry or document under subsection (1) is recorded or filed electronically or on a magnetic medium, any copy or extract produced from the record or medium that is in readily understandable form is admissible in evidence to the same extent as the original entry or document. 1999, c. 12, Sched. O, s. 6.

Same

(3) If a record in the Provincial Recording Office is recorded electronically or on a magnetic medium and there is no original written record corresponding to it, any writing produced from the record or medium that is in readily understandable form is admissible in evidence to the same extent as the record would be if it were an original written record. 1999, c. 12, Sched. O, s. 6.

Experts, etc.

10. The Minister may retain the services of any professor, instructor, or other person to investigate the mineral resources of Ontario, or for any work in connection with this Act, and may pay that person for such services at such rate as is agreed upon, out of the money that is appropriated by the Legislature for that purpose. R.S.O. 1990, c. M.14, s. 10; 2006, c. 35, Sched. C, s. 67 (1).

11. Repealed: 2009, c. 21, s. 4.

Officers not to be interested in lands or claims

12. (1) No officer appointed under this Act shall directly or indirectly, by himself or herself or by any other person, purchase or become interested in any mining lands, mining rights or mining claims situate in Ontario. R.S.O. 1990, c. M.14, s. 12 (1).

Waiver by Deputy Minister

(2) Where the Deputy Minister is satisfied that an officer has in good faith acquired an interest referred to in subsection (1) for other than mining purposes, the Deputy Minister may in writing waive the application of subsection (1) to the officer. R.S.O. 1990, c. M.14, s. 12 (2).

Penalty

(3) Any officer contravening subsection (1) forfeits his or her office. R.S.O. 1990, c. M.14, s. 12 (3).

Recorders are commissioners

13. Every mining recorder is by virtue of his or her office a commissioner for taking affidavits in Ontario. R.S.O. 1990, c. M.14, s. 13.

14. Repealed: 1999, c. 12, Sched. O, s. 7.

Place for filing or recording instruments

15. (1) Unless this Act or a notice under subsection (2) provides otherwise, all applications, documents and other instruments required or permitted to be filed or recorded under this Act shall be filed or recorded in the Provincial Recording Office. 1999, c. 12, Sched. O, s. 8.

Other offices

(2) The Ministry may issue notices permitting or requiring the delivery of instruments specified in the notice at offices other than the Provincial Recording Office. 1999, c. 12, Sched. O, s. 8.

Deemed filing, recording on receipt

(3) Where an instrument is filed or recorded under subsection (1) or delivered in accordance with a notice under subsection (2), the instrument shall be deemed to have been filed or recorded on receipt. 1999, c. 12, Sched. O, s. 8.

Patented mining claims, application of Acts

(4) The *Land Titles Act* or the *Registry Act*, as the case may be, applies with respect to a mining claim once the mining claim has been patented. 1999, c. 12, Sched. O, s. 8.

Posting

16. A notice, order or document to be posted under this Act shall be posted in the Provincial Recording Office and may be posted in other Ministry offices. 1999, c. 12, Sched. O, s. 8.

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. 2009, c. 21, s. 5.

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. 2009, c. 21, s. 5.

Licence required

18. (1) No person shall prospect on Crown lands or stake out, record or apply to record the staking of a mining claim unless the person is the holder of a prospector's licence issued under this Act. R.S.O. 1990, c. M.14, s. 18 (1).

(2) Repealed: 1999, c. 12, Sched. O, s. 9.

Prospector's licences

19. (1) Any natural person who is of the age of eighteen years or over is entitled to obtain a prospector's licence upon application made in the prescribed form and upon payment of the required fee. R.S.O. 1990, c. M.14, s. 19 (1); 1997, c. 40, s. 7.

Date and term of licence

(2) A licence shall be dated on the day of its issue and expires at midnight on the day of the fifth anniversary of the licensee's birth date that follows the issue of the licence. R.S.O. 1990, c. M.14, s. 19 (2).

(3) Repealed: 2002, c. 18, Sched. M, s. 1.

Licence not transferable

(4) A licence is not transferable. R.S.O. 1990, c. M.14, s. 19 (4).

Who may issue

(5) A licence may be issued by any recorder. R.S.O. 1990, c. M.14, s. 19 (5).

Service

(6) Any notice or document relating to a licensee or holder is sufficiently served upon the licensee or holder if delivered or sent by mail to the address shown on the application for the prospector's licence or to the address given under subsection (8), if applicable. R.S.O. 1990, c. M.14, s. 19 (6); 1996, c. 1, Sched. O, s. 5 (1); 2009, c. 21, s. 7 (2).

Idem

(7) Where service is made by mail under subsection (6) it shall be deemed to have been made on the fifth day after the day of mailing. R.S.O. 1990, c. M.14, s. 19 (7); 2009, c. 21, s. 7 (3).

Notice of change of address

(8) A licensee or holder shall notify the recorder in writing of any change of address. 1999, c. 12, Sched. O, s. 10.

Numbering of licences

20. Every prospector's licence shall be numbered. 1999, c. 12, Sched. O, s. 11.

Renewal of licence

21. (1) A licensee is entitled to a renewal of the licence if the licensee applies for the renewal in the form established by the Minister and pays the required fee within 60 days before the expiry of the licence. 1999, c. 12, Sched. O, s. 12.

Notice of expiration of licence

(2) Notice of the expiration of a licence shall be given by the recorder to the holder of the licence not later than sixty days before the expiry date. R.S.O. 1990, c. M.14, s. 21 (2).

Who may renew

(3) A licence may be renewed by any recorder. R.S.O. 1990, c. M.14, s. 21 (3).

Date and term of renewal

(4) The renewal shall bear date on the day following the expiration of the licence or renewal of licence of which it is the renewal and shall take effect immediately upon the expiration of that licence, or renewal thereof, as the case may be. R.S.O. 1990, c. M.14, s. 21 (4).

Form

(5) The renewal shall bear the same number and letter as the original licence and, after it comes into effect, it shall be deemed to be the licence of the licensee and shall expire at 12 o'clock midnight on the day that is the fifth anniversary of the licensee's birth date following the effective date of the renewal. R.S.O. 1990, c. M.14, s. 21 (5).

Lifetime renewal by Minister

(6) The Minister shall renew without fee the licence of a person who has held a licence for twenty-five years and the licence shall remain in good standing during the lifetime of the licensee. R.S.O. 1990, c. M.14, s. 21 (6); 1996, c. 1, Sched. O, s. 6.

Idem

(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. R.S.O. 1990, c. M.14, s. 21 (7).

Accidental destruction or loss of licence

22. (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. 2009, c. 21, s. 9.

Substituted licence

(2) Every such duplicate shall be marked "substituted licence/permis de remplacement" and shall bear the same date and number as the original licence. R.S.O. 1990, c. M.14, s. 22 (2).

Limitation

23. (1) No person shall apply for or hold more than one prospector's licence at a time. R.S.O. 1990, c. M.14, s. 23 (1); 2009, c. 21, s. 10 (1).

(2) Repealed: 2009, c. 21, s. 10 (2).

Production of licence

24. Every licensee shall upon demand produce and exhibit his or her licence to an inspector or a recorder. R.S.O. 1990, c. M.14, s. 24.

25. Repealed: 2009, c. 21, s. 11.

Revocation, suspension and cancellation of claims, etc. of licence

26. (1) Where the Commissioner finds, after a hearing, that a licensee has been guilty of a wilful contravention of any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the Commissioner, revoke the licence of the licensee and a licence shall not thereafter be issued to such licensee without the authority of the Minister. R.S.O. 1990, c. M.14, s. 26 (1).

Idem

(2) Where a licence is revoked under subsection (1), the Minister shall determine and notify the holder of the licence revoked of the period of time during which a licence shall not be issued to him. R.S.O. 1990, c. M.14, s. 26 (2).

Suspension or revocation of licence

(3) Where a recorder finds, after a hearing, that a licensee has contravened any of the provisions of this Act or the regulations, the Minister may, upon the recommendation of the recorder, suspend or revoke the licence of the licensee. R.S.O. 1990, c. M.14, s. 26 (3); 2000, c. 26, Sched. M, s. 1.

Idem

(4) Where a licence is suspended under subsection (3), the Minister shall determine and notify the holder of the licence suspended of the period of time during which the licence is suspended. R.S.O. 1990, c. M.14, s. 26 (4).

Rights of licensee under suspension

(5) While a licence is suspended under subsection (3), the licensee may renew the licence but the licensee may not stake or apply to record a mining claim. R.S.O. 1990, c. M.14, s. 26 (5); 2009, c. 21, s. 101 (1).

Where holder of mining claim contravenes Act

(6) Where the recorder finds, after a hearing, that a holder of a mining claim has contravened any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the recorder, order that the holder may not acquire an unpatented mining claim or interest therein through transfer or obtain an extension of time in which to perform work or to apply for lease on any unpatented mining claim recorded in the name of the holder. R.S.O. 1990, c. M.14, s. 26 (6).

Cancellation of mining claims

(7) Where the Commissioner finds, after a hearing, that a holder of a mining claim has been guilty of a wilful contravention of any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the Commissioner, declare any mining claims of the holder to be cancelled and upon cancellation all rights of the holder in or to mining claim lands cease. R.S.O. 1990, c. M.14, s. 26 (7).

Order pending hearing

(8) Pending the holding of a hearing on any matter under this section, the Commissioner or the recorder, as the case may be, before whom the hearing will be held, may order that any mining claim of the licensee or holder whose conduct is in question shall not, before the conclusion of the hearing and final disposition of the matter, be transferred to any other person. R.S.O. 1990, c. M.14, s. 26 (8).

Prohibition against staking claims, etc.

(9) Where mining claims are cancelled under subsection (7), the former holder of the mining claims may not stake or apply for a mining claim or acquire an unpatented mining claim or interest therein through transfer for such period of time as the Minister determines, and the Minister shall notify the former holder of the period of time so determined. R.S.O. 1990, c. M.14, s. 26 (9); 2009, c. 21, s. 101 (1).

Appeal

(10) A finding by the Commissioner that a licensee or holder of a mining claim has wilfully contravened this Act or the regulations or by a recorder that a licensee or holder of a mining claim has contravened this Act or the regulations, as the case may be, may be appealed in like manner as any decision of the Commissioner or recorder, respectively, and the Minister shall give effect to the decision on the appeal. R.S.O. 1990, c. M.14, s. 26 (10).

PART II
MINING CLAIMS
LANDS OPEN

Where licensee may prospect for minerals

27. Except where otherwise provided, the holder of a prospector's licence may prospect for minerals and stake a mining claim on any,

- (a) Crown lands, surveyed or unsurveyed;
- (b) lands, the mines, minerals or mining rights whereof have been reserved by the Crown in the location, sale, patent or lease of such lands where they have been located, sold, patented or leased after the 6th day of May, 1913,

not at the time,

- (c) on record as a mining claim that has not lapsed or been abandoned, cancelled or forfeited; or
- (d) withdrawn by any Act, order in council, or other competent authority from prospecting, location or sale, or declared by any such authority to be not open to prospecting, staking or

sale as mining claims. R.S.O. 1990, c. M.14, s. 27; 1996, c. 1, Sched. O, s. 8; 2009, c. 21, s. 101 (1, 4).

Claim may be staked

28. (1) A licensee may stake a mining claim on any land open for prospecting and, subject to the other provisions of this Act, may work such claim and transfer his or her interest therein to another person, but, where the surface rights in the land have been granted, sold, leased or located by the Crown, compensation must be made as provided by section 79. R.S.O. 1990, c. M.14, s. 28; 2009, c. 21, s. 101 (1).

Application under other Act

(2) A licensee may stake a mining claim with respect to any minerals or rights that no applicant is specifically requesting to acquire in an application accepted under the *Public Lands Act* or any other Act. 2000, c. 26, Sched. M, s. 2; 2009, c. 21, s. 101 (1).

Priority of application

(3) If an applicant is specifically requesting to acquire minerals or rights in an application accepted under the *Public Lands Act* or any other Act, the application shall have priority over any mining claim staked during the time that the application is pending. 2000, c. 26, Sched. M, s. 2.

Addition to mining claim

(4) If the application lapses, is withdrawn or is not accepted or approved, a mining claim staked during the time that the application was pending shall be deemed to be amended to include the minerals and rights that were the subject of the application, as if the application had never existed. 2000, c. 26, Sched. M, s. 2.

LANDS NOT OPEN

Land not open for prospecting without consent

29. No mining claim shall be staked out or recorded upon any land transferred to or vested in the Ontario Northland Transportation Commission without the consent of the Commission nor, except with the consent of the Minister,

- (a) upon any land reserved or set apart as a town site by the Crown;
- (b) upon any land laid out into residential lots on a registered plan of subdivision; or
- (c) upon any land forming the station grounds, switching grounds, yard or right of way of a railway. R.S.O. 1990, c. M.14, s. 29; 1996, c. 1, Sched. O, s. 9.

Lands upon which claim may not be staked out

30. (1) No mining claim shall be staked out or recorded on any land,

- (a) that, without reservation of the minerals, has been sold, located, leased or included in a licence of occupation; or
- (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; or
- (c) where the surface rights have been subdivided, surveyed, sold or otherwise disposed of by the Ministry of Natural Resources for summer resort purposes, except where the Minister certifies in writing that in his or her opinion discovery of valuable mineral in place has been made; or

- (d) where the Minister or the Minister of Transportation certifies that land is required for the development of water power or for a highway or for some other purpose in the public interest and the Minister is satisfied that a discovery of mineral in place has not been made thereon; or
- (e) in an Indian reserve, except as provided by *The Indian Lands Act, 1924*; or
- (f) while proceedings in respect thereto are pending before the Commissioner or a recorder or until those proceedings are finally determined; or
- (g) until the proceeding has been finally determined, in the case of a proceeding that the Commissioner certifies is pending in a court in respect of the land. R.S.O. 1990, c. M.14, s. 30; 1994, c. 27, s. 134 (1); 2000, c. 26, Sched. M, s. 3 (1, 2).

Exclusion of time

(2) If a proceeding described in clause (1) (g) is pending in a court, the Commissioner, the recorder or the Minister may make an order for an exclusion of time with respect to the mining claim. 2000, c. 26, Sched. M, s. 3 (3).

Provincial parks

31. On and after the day subsection 16 (1) of the *Provincial Parks and Conservation Reserves Act, 2006* is proclaimed in force, prospecting or the staking of mining claims or the development of mineral interests or the working of mines in provincial parks and conservation reserves is prohibited. 2006, c. 12, s. 63; 2009, c. 21, s. 101 (4).

Lands used or occupied as gardens, etc.

32. (1) Although the mines or minerals therein have been reserved to the Crown, no person shall prospect for minerals or stake out a mining claim upon the part of a lot that is used as a garden, orchard, vineyard, nursery, plantation or pleasure ground, or upon which crops that may be damaged by such prospecting are growing, or on the part of a lot upon which is situated a spring, artificial reservoir, dam or waterworks, or a dwelling house, outhouse, manufactory, public building, church or cemetery, except with the consent of the owner, lessee, purchaser or locatee of the surface rights, or by order of the recorder or the Commissioner, and upon such terms as to the Commissioner seem just. R.S.O. 1990, c. M.14, s. 32 (1).

Disputes as to lands exempt

(2) If a dispute arises between the intending prospector and the owner, lessee, purchaser or locatee as to land that is exempt from prospecting or staking out under subsection (1), the recorder or the Commissioner shall determine the extent of the land that is so exempt. R.S.O. 1990, c. M.14, s. 32 (2).

Valuable water powers not included in claim

33. (1) A water power that lies within the limits of a mining claim and that is capable of producing 150 horsepower or more at low water mark in its natural condition shall not be deemed to be part of the claim for the use of the holder of the claim. 1999, c. 12, Sched. O, s. 13.

Road allowance

(2) A road allowance of 20 metres in width shall be reserved on both sides of the water, together with such additional area of land as a recorder or the Commissioner considers necessary for the development and utilization of the water power. 1999, c. 12, Sched. O, s. 13.

Surface operations near highway

34. Where a mining claim adjoins or is adjacent to a highway or road maintained by the Ministry of Transportation, no surface mining operations shall be carried out within 45 metres of the limits of the highway or road without the written consent of the Minister. 1999, c. 12, Sched. O, s. 13.

Withdrawal and reopening of lands

35. (1) The Minister may, by order signed by him or her,

- (a) withdraw from prospecting, staking out, sale or lease, or any combination of them, any lands, mining rights or surface rights that are the property of the Crown; and
- (b) reopen for prospecting, staking out, sale or lease, or any combination of them, any lands, mining rights or surface rights that have been withdrawn under this Act. 1996, c. 1, Sched. O, s. 10.

Copy of order sent to recorder

(2) Where the Minister makes an order under subsection (1), the Minister shall, within twenty-four hours of the date of the order, mail a copy of the order to the recorder. R.S.O. 1990, c. M.14, s. 35 (2).

Posting and filing copy

(3) On receiving the copy of the order, the recorder shall forthwith post and file it. 1999, c. 12, Sched. O, s. 14.

Lands withdrawn not to be prospected, etc.

(4) Lands, mining rights or surface rights withdrawn under this section, until re-opened by the Minister, shall remain withdrawn and shall not be prospected or staked out. R.S.O. 1990, c. M.14, s. 35 (4).

Working on behalf of Crown

(5) The Lieutenant Governor in Council may direct that the mines and minerals in lands, mining rights or surface rights, or in any part thereof, withdrawn under this section may be worked by or on behalf of the Crown. R.S.O. 1990, c. M.14, s. 35 (5).

Order not a regulation

(6) An order under subsection (1) shall be deemed not to be a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. R.S.O. 1990, c. M.14, s. 35 (6); 2006, c. 21, Sched. F, s. 136 (1).

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”) 2009, c. 21, s. 15 (1).

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. 2009, c. 21, s. 15 (1).

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. 2009, c. 21, s. 15 (1).

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. 2009, c. 21, s. 15 (1).

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. 2009, c. 21, s. 15 (1).

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). 2009, c. 21, s. 15 (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). 2009, c. 21, s. 15 (1).

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. 2009, c. 21, s. 15 (2).

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. 2009, c. 21, s. 15 (2).

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. 2009, c. 21, s. 15 (2).

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. 2009, c. 21, s. 15 (2).

Manner of opening

(12) Where mining rights have been opened under subsection (11), the opening shall occur in accordance with the regulations. 2009, c. 21, s. 15 (2).

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*. 2009, c. 21, s. 15 (2).

36. Repealed: 2009, c. 21, s. 16.

Permit required

37. Before beginning or carrying on any prescribed assessment work on a mining claim, the holder thereof, in addition to any other requirement, shall obtain a written permit entitling the holder to do so as provided in the *Forest Fires Prevention Act* or the *Public Lands Act*. R.S.O. 1990, c. M.14, s. 37.

SIZE AND FORM OF MINING CLAIMS

Manner of staking mining claim

38. (1) A mining claim shall be staked in such size, form and manner as is prescribed and may be staked on any day. R.S.O. 1990, c. M.14, s. 38.

Map staking

(2) A mining claim may be staked by the method or methods of map staking set out in the regulations. 2009, c. 21, s. 18.

Mining claims on agricultural lands

39. (1) Where the Minister certifies that land is suitable for disposition for agricultural purposes, a mining claim staked thereon does not give the staker any right, title or interest in or to the surface rights. R.S.O. 1990, c. M.14, s. 39 (1).

Where surface rights necessary for mining operations

(2) Where surface rights on any such land are necessary to the carrying on of mining operations, the Minister may determine the part of the surface rights so required and, if not previously disposed of, may sell or award the surface rights or such part thereof to the claim holder as the Minister considers essential to the efficient carrying on of mining operations, and he or she may require the claim holder to have such surveys made at the expense of the claim holder as he or she considers proper. R.S.O. 1990, c. M.14, s. 39 (2).

Crown reservation

40. (1) Where a mining claim includes land covered with water or bordering on water, the surface rights over a width of no more than 120 metres from the high water mark may be reserved for the Crown. 1999, c. 12, Sched. O, s. 15.

Same

(2) Where a highway or road constructed or maintained by the Ministry of Transportation crosses a mining claim, the surface rights over a width of no more than 90 metres, measured from the outside limits of the right of way of the highway or road along both sides of the highway or road, may be reserved for the Crown. 1999, c. 12, Sched. O, s. 15.

Application of Crown reservation to unpatented mining claims

(3) The reservations of surface rights authorized by subsections (1) and (2) shall be deemed to apply to and to have been made on all unpatented mining claims unless such reservation or reservations are waived by the Minister. R.S.O. 1990, c. M.14, s. 40 (3).

Licences of occupation

Annual rental

41. (1) Despite the provisions of a licence of occupation, there shall be paid, in advance, the prescribed annual rental for the licence of occupation. R.S.O. 1990, c. M.14, s. 41 (1).

When annual rental to be paid

(2) Where a licence of occupation does not specify a date for the payment of the annual rental, the annual rental shall be paid on the anniversary of the effective date of the licence. R.S.O. 1990, c. M.14, s. 41 (2).

Interest

(2.1) Where payment of the rental under any such licence is not paid within the required time, interest at the prescribed rate, compounded annually, shall forthwith be added to the amount owing in each year that the amount remains unpaid. 1999, c. 12, Sched. O, s. 16.

Reduction or waiver of interest owing

(2.2) The Minister may reduce or waive the amount of any interest added to rental payments under subsection (2.1). 2002, c. 18, Sched. M, s. 2.

Termination of licence of occupation

(3) Where payment of the rental under any such licence is in arrears for two years or more, the licence may be terminated by an instrument in writing, and all rights and powers therein contained as well as all rights and claims of the licensee, his or her successors or assigns, in or to the lands covered by the licence, cease, but the lands or mining rights contained therein are not open for prospecting, staking, sale or lease under this Act until a date fixed by the Deputy Minister, at least two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 41 (3); 2009, c. 21, s. 101 (4).

Reinstatement

(4) Where there is no adverse interest, the Minister may, upon such terms as the Minister considers just, reinstate a licence terminated under subsection (3). R.S.O. 1990, c. M.14, s. 41 (4).

Licence challengeable only by Minister

(4.1) With the exception of the Minister, no person may, for any reason, challenge the validity of a licence of occupation. 2002, c. 18, Sched. M, s. 2.

When Minister may challenge

(4.2) The Minister may challenge the validity of a licence of occupation at any time. 2002, c. 18, Sched. M, s. 2.

Restriction on transfer etc.

(5) A licence or the term or terms that it creates shall not be transferred, mortgaged, charged, sublet or made subject to a debenture without the written consent of the Minister or an officer duly authorized by the Minister. 2000, c. 26, Sched. M, s. 4.

Lease may be issued under s. 81

(6) The holder of a licence of occupation, upon application in writing therefor and upon the surrender of the licence of occupation, may be issued a lease under section 81 and the rental for each year of the term thereof shall be that prescribed for the purposes of section 81 for years after the first year of a term. R.S.O. 1990, c. M.14, s. 41 (6).

Application

(7) This section applies only to a licence of occupation issued under section 52 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or any predecessor thereof, and any licence of occupation heretofore issued without a provision for an annual payment. R.S.O. 1990, c. M.14, s. 41 (7).

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. 2009, c. 21, s. 19.

Same

(2) Subsection (1) applies in respect of all licences of occupation, including those issued before the day this section came into force. 2009, c. 21, s. 19.

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. 2009, c. 21, s. 19.

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. 2009, c. 21, s. 19.

STAKING CLAIMS

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. 2009, c. 21, s. 20 (2).

Substantial compliance with Act and regulations sufficient

43. (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. 2009, c. 21, s. 21 (1).

Deemed substantial compliance

(2) The ground staking of a mining claim shall be deemed to be in substantial compliance with the requirements of this Act and the regulations even if there is a failure to comply with a number of specific ground staking requirements if,

- (a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity; and
- (b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations. R.S.O. 1990, c. M.14, s. 43 (2); 2009, c. 21, s. 21 (2).

APPLICATIONS TO RECORD

Application to record mining claim

44. (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. 2009, c. 21, s. 22.

Application requirements

(1.1) The application shall be accompanied by proof of payment of the required fee to any recorder. 2009, c. 21, s. 22.

False statement

(1.2) The recorder or the Commissioner may, after a hearing, cancel the recording of a licensee or holder who knowingly made a false statement in the application to record the claim. 1996, c. 1, Sched. O, s. 12 (1).

Priority of completion prevails

(2) Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands. R.S.O. 1990, c. M.14, s. 44 (2).

Notice to other licensee or licensees

(3) Where one of the applications made by two or more licensees to record the staking of a mining claim is entitled to priority under subsection (2), the recorder shall cancel the other application or applications and shall by mail sent not later than the following day notify the other licensee or licensees of the recorder's action and the reason therefor. R.S.O. 1990, c. M.14, s. 44 (3); 1999, c. 12, Sched. O, s. 18 (2).

Overlapping staking

(4) Despite subsection (3) and section 46, if the other application or applications to record a mining claim cover any land that is not part of the mining claim that is entitled to priority under subsection (2), the recorder may record a mining claim with respect to that part of the land and shall amend the application or applications with respect to the land covered by the previously completed claims. 1996, c. 1, Sched. O, s. 12 (2).

45. Repealed: 1999, c. 12, Sched. O, s. 19.

Recording a mining claim

46. (1) If, in the recorder's opinion, an application to record a mining claim complies with all the requirements for staking and recording the claim, the recorder shall record the claim and file it. 1999, c. 12, Sched. O, s. 20; 2009, c. 21, s. 23 (1).

Not recording a mining claim

(2) If, in the recorder's opinion, an application to record a mining claim does not comply with all the requirements for staking and recording the claim, the recorder shall not record the claim and, in particular, the recorder shall not record a claim relating to land that is not open to staking. 1999, c. 12, Sched. O, s. 20.

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. 2009, c. 21, s. 23 (2).

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. 2009, c. 21, s. 23 (2).

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. 2009, c. 21, s. 23 (2).

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. 2009, c. 21, s. 23 (2).

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. 2009, c. 21, s. 23 (2).

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. 2009, c. 21, s. 24.

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. 2009, c. 21, s. 24.

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. 2009, c. 21, s. 24.

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. 2009, c. 21, s. 24.

Metal tags

47. (1) Metal tags and duplicate tags shall be provided by the Ministry and may be used by any licensee in staking claims in the prescribed manner and within the prescribed time. R.S.O. 1990, c. M.14, s. 47 (1); 1997, c. 40, s. 7; 2009, c. 21, ss. 25, 101 (4).

Transfer of tags

(2) Metal tags and duplicate tags do not expire but may not be re-used. R.S.O. 1990, c. M.14, s. 47 (2).

DISPUTING APPLICATIONS**Dispute of recorded claim**

48. (1) A dispute, verified by a detailed statement of claim and a certificate, may be filed with the recorder by a person alleging that a recorded claim is illegal or invalid in whole or in part and, if the disputant or the person in whose behalf he or she is acting claims to be entitled to be recorded for or to be entitled to any right or interest in the lands or mining rights, or in any part thereof, comprised in the disputed claim, the dispute shall so state, giving particulars, and the recorder shall receive and file such dispute, and shall enter a note thereof upon the record of the disputed claim. R.S.O. 1990, c. M.14, s. 48 (1); 1997, c. 40, s. 7; 1999, c. 12, Sched. O, s. 21 (1); 2009, c. 21, s. 26 (1).

Notice

(2) The recorder shall forthwith send a copy of the dispute, statement of claim and certificate to the recorded holder or holders of the mining claim who are affected by it. 1999, c. 12, Sched. O, s. 21 (2).

Address for service

(3) The dispute shall indicate the disputant's address for service in Ontario. 1999, c. 12, Sched. O, s. 21 (3).

Sufficient service

(3.1) Any notice or document relating to the dispute is sufficiently served on the disputant if it is left with an adult at the disputant's address or sent to the disputant at that address. 1999, c. 12, Sched. O, s. 21 (3).

Same

(4) If no address for service is given as required under subsection (3), any notice or document relating to the dispute may be served on the disputant by posting a copy of it. 1999, c. 12, Sched. O, s. 21 (3).

When not to be received

(5) A dispute that may be filed under this section shall not be received or entered against a claim,

- (a) after one year from the recording of the claim;
- (b) after the first prescribed unit of assessment work has been performed and filed and, where necessary, approved; or
- (c) except by leave of the Commissioner,
 - (i) after the validity of the claim has been adjudicated upon by the recorder or by the Commissioner, or
 - (ii) after a dispute has already been entered against the claim. R.S.O. 1990, c. M.14, s. 48 (5); 2000, c. 26, Sched. M, s. 6; 2009, c. 21, s. 26 (2).

Where assessment work subsequently approved

(6) Where a dispute is entered against a claim after the first prescribed unit of assessment work has been performed and filed but before the assessment work has been approved, where approval is necessary, the dispute shall be deemed to have been resolved in favour of the holder or holders of the claim if the assessment work is subsequently approved and the note of the dispute entered on the record

of the claim shall be struck out by the recorder who shall by mail sent not later than the following day notify the disputant of the recorder's action and the reason therefor. R.S.O. 1990, c. M.14, s. 48 (6); 1999, c. 12, Sched. O, s. 21 (4).

(7) Repealed: 2009, c. 21, s. 26 (3).

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. 2009, c. 21, s. 26 (4).

Recorder's order

(8.1) Upon the filing with the recorder of a notice of the restaking, the recorder shall order that the restaked claim be deemed to have been recorded on the date of the recording of the original claim, after having given notice to all persons having a recorded interest in the original claim. 1996, c. 1, Sched. O, s. 13 (1); 2009, c. 21, s. 26 (5).

Recording of orders against re-staked claims

(9) Where an order is made under subsection (8.1), orders, assessment work reports, instruments or other notations that have been recorded against the original claim shall be recorded in respect of the re-staked claim. 1999, c. 12, Sched. O, s. 21 (5).

ADMINISTRATIVE ERROR

Relief from forfeiture

49. (1) A recorder may by order relieve an unpatented mining claim that is subject to forfeiture as a result of an administrative error on the part of the Crown from the forfeiture. R.S.O. 1990, c. M.14, s. 49 (1).

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. 2009, c. 21, s. 27 (1).

Order by Commissioner

(3) On a reference under subsection (2), the Commissioner may make such order, subject to such conditions, as the Commissioner considers appropriate. R.S.O. 1990, c. M.14, s. 49 (3).

Extension of time

(4) An order under subsection (1), (2) or (3) may grant an extension of time for performing and reporting any work required to be performed or for applying and paying for a lease in respect of the claim or provide for the payment of any fees in respect of the claim. R.S.O. 1990, c. M.14, s. 49 (4); 2009, c. 21, s. 27 (2).

RIGHTS OF LICENSEE

Rights in claim

50. (1) The staking or the filing of an application for or the recording of a mining claim, or the acquisition of any right or interest in a mining claim by any person or all or any of such acts, does not confer upon that person,

- (a) any right, title, interest or claim in or to the mining claim other than the right to proceed as is in this Act provided to perform the prescribed assessment work or to obtain a lease from the

Crown and, prior to the performance, filing and approval of the first prescribed unit of assessment work, the person is merely a licensee of the Crown and after that period and until he or she obtains a lease the person is a tenant at will of the Crown in respect of the mining claim; or

- (b) any right to take, remove or otherwise dispose of any minerals found in, upon or under the mining claim. R.S.O. 1990, c. M.14, s. 50 (1); 2009, c. 21, s. 101 (4).

Surface rights

(2) The holder of a mining claim does not have any right, title or claim to the surface rights of the claim other than the right, subject to the requirements of this Act, to enter upon, use and occupy such part or parts thereof as are necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights therein. R.S.O. 1990, c. M.14, s. 50 (2); 2009, c. 21, s. 28 (1).

Taxation

(3) The holder of an unpatented mining claim is not liable to assessment or taxation for municipal or school purposes in respect of such unpatented mining claim. R.S.O. 1990, c. M.14, s. 50 (3).

Same

(4) The holder of a licence of occupation issued under this Act or any predecessor Act is not liable to assessment or taxation for municipal or school purposes in respect to the licence except with respect to improvements for which the holder would be liable to assessment or taxation if the lands were held under a patent. 1999, c. 12, Sched. O, s. 22.

Surface rights on unpatented mining claim

51. (1) Except as in this Act is otherwise provided, the holder of an unpatented mining claim has the right prior to any subsequent right to the user of the surface rights, except the right to sand, peat and gravel, for prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights. R.S.O. 1990, c. M.14, s. 51 (1); 2009, c. 21, s. 29 (1).

Disposition of surface rights

(2) Where the holder of an unpatented mining claim consents to the disposition of surface rights under the *Public Lands Act*, the recorder shall make an entry on the record of the claim respecting the consent, and thereupon the surface rights may be dealt with as provided in the *Public Lands Act*. R.S.O. 1990, c. M.14, s. 51 (2).

Survey of surface rights

(3) Where the holder of an unpatented mining claim consents to the disposition of surface rights under subsection (2), the Minister may require a survey of such surface rights, and the survey shall be provided at the expense of the person who has acquired the surface rights. R.S.O. 1990, c. M.14, s. 51 (3).

Where holder does not consent to disposition of surface rights

(4) Where an application is made for disposition under the *Public Lands Act* of surface rights on an unpatented mining claim and the holder of the unpatented mining claim does not consent to the disposition and provision for the reservation or exclusion of the surface rights is not otherwise provided for in this Act or any other Act, the Minister may refer the application to the Commissioner. R.S.O. 1990, c. M.14, s. 51 (4).

Where application referred to Commissioner

(5) Where an application under subsection (4) is referred to the Commissioner, he or she shall, upon giving all interested persons at least ninety days' notice and after hearing such interested persons as appear, make an order based on the merits of the application. R.S.O. 1990, c. M.14, s. 51 (5).

Where surface rights required for public use

(6) Where surface rights on an unpatented mining claim are required for the use of the Crown or other public use, this section applies with necessary modifications. R.S.O. 1990, c. M.14, s. 51 (6).

Permission to test mineral content

52. (1) The Minister may give written permission, subject to such conditions as are prescribed, to mine, mill and refine mineral bearing substance from an unpatented mining claim for the purpose of testing mineral content. R.S.O. 1990, c. M.14, s. 52 (1).

Conditions

(2) Permission granted under subsection (1) shall be for a specified time and shall cover a specified quantity of mineral bearing substance. R.S.O. 1990, c. M.14, s. 52 (2).

Sale of end product

(3) The end product of mining, milling and refining permitted under subsection (1), except as provided in subsection (4), shall not be sold or otherwise disposed of until the mining claim from which the minerals were taken is leased under this Act. R.S.O. 1990, c. M.14, s. 52 (3).

Disposition of proceeds

(4) Subsection (3) does not apply where the Minister gives written permission for the sale or disposition and where the Minister does so, the sale or disposition shall be in accordance with such terms as the Minister may impose. R.S.O. 1990, c. M.14, s. 52 (4).

Where claim, lands or rights abandoned, etc.

53. (1) Where the holder, licensee, lessee or owner of a mining claim, mining lands or mining rights abandons or surrenders the claim, lands or rights or where the mining claim, mining lands or mining rights are cancelled, forfeited or terminated under this Act or any other Act or the regulations thereunder, that person may take from the claim, lands or rights any buildings, structures, machinery, chattels, personal property and, except in the case of an unpatented mining claim, any ore or mineral belonging to and extracted from the claim, lands or rights by that person and any slimes or tailings not otherwise owned, within six months after the abandonment, surrender, cancellation, forfeiture or termination or within such further time as is fixed by the Minister, and, in default of doing so, all the buildings, structures, machinery, chattels, personal property, ore, mineral, slimes and tailings belong to the Crown unless the Minister directs otherwise within two years after the abandonment, surrender, cancellation, forfeiture or termination and may be sold or otherwise disposed of by the Minister upon such terms and conditions as he or she considers expedient. R.S.O. 1990, c. M.14, s. 53 (1); 1996, c. 1, Sched. O, s. 14.

Licensee has no rights in buildings, etc., acquired by Crown

(2) Unless ordered otherwise by the Minister, the staking or recording of a mining claim does not confer upon the licensee any right respecting buildings, structures, machinery, chattels, personal property, ore, mineral, slimes and tailings acquired by the Crown under subsection (1). R.S.O. 1990, c. M.14, s. 53 (2).

Improper use of land

54. (1) Where land is staked and applied for as a mining claim and it appears that the land is being used other than as mining land or for a purpose other than that of the mineral industry, the Minister may direct the Commissioner to hold a hearing. R.S.O. 1990, c. M.14, s. 54 (1); 2009, c. 21, s. 101 (2).

Cancellation

(2) If, after a hearing held on notice to all interested persons, the Commissioner is satisfied that the land is being used other than as mining land or for a purpose other than that of the mineral industry, he or she may make an order cancelling the claim. 1999, c. 12, Sched. O, s. 23.

Same

(3) An order cancelling a claim takes effect on being filed with the recorder. 1999, c. 12, Sched. O, s. 23.

Townsites on unpatented claims

55. (1) Where the Minister recommends the establishment or extension of a townsite on an unpatented mining claim, the Lieutenant Governor in Council may reserve the surface rights on any such claim or parts of any such claim as may be necessary for townsite purposes. R.S.O. 1990, c. M.14, s. 55 (1).

Regulations

(2) The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary for the better carrying out of this section. R.S.O. 1990, c. M.14, s. 55 (2).

ADDRESS FOR SERVICE**Address for service to be on application for claim, etc.**

56. (1) Every application for a mining claim and every other application and every transfer or assignment of a mining claim or of a right or interest acquired under this Act shall contain or have endorsed thereon the place of residence and post office address of the applicant, transferee or assignee, and also, when the applicant is not resident in Ontario, the name, residence and post office address of a person resident in Ontario upon whom service may be made. R.S.O. 1990, c. M.14, s. 56 (1).

Irregular documents not to be filed

(2) No such application, transfer or assignment shall be filed or recorded unless it conforms with subsection (1). R.S.O. 1990, c. M.14, s. 56 (2).

Substituting new agent for service

(3) Another person resident in Ontario may be substituted as the person upon whom service may be made by filing, in the office in which such an application, transfer or assignment is filed or recorded, a memorandum setting forth the name, residence and post office address of that other person, and such a substitution may be made from time to time as occasion requires. R.S.O. 1990, c. M.14, s. 56 (3).

Service upon agent to be sufficient

(4) Service upon the person named under subsection (1) or, in the case of a substitution under subsection (3) upon the person substituted, has the same effect as service upon the applicant, transferee or assignee referred to in subsection (1). R.S.O. 1990, c. M.14, s. 56 (4).

Application of subs. (4)

(5) Subsection (4) applies to every notice, demand or proceeding in any way relating to a mining claim or to mining rights or to any other right or interest that may be acquired under this Act. R.S.O. 1990, c. M.14, s. 56 (5).

TRUSTS, AGREEMENTS AND TRANSFERS

Claim "in trust"

57. (1) Notice of a trust, express, implied or constructive, relating to an unpatented mining claim shall not be entered on the record or be received by a recorder. R.S.O. 1990, c. M.14, s. 57 (1).

Describing licensee as trustee, etc., effect of

(2) Describing the holder of the mining claim as a trustee, whether the beneficiary or object of the trust is mentioned or not, does not impose upon any person dealing with the holder the duty of making any inquiry as to the holder's power to deal therewith, but the holder may deal with the claim as if such description had not been inserted. R.S.O. 1990, c. M.14, s. 57 (2).

Saving of rights of others

(3) Nothing in this section relieves the holder of the mining claim who is in fact a trustee thereof or of any part or share thereof or interest therein from liability as between the holder and any person, mining partnership or company for whom the holder is a trustee, but such liability continues as if this section had not been enacted, and nothing in this Act relieves the holder from any personal liability or obligation. R.S.O. 1990, c. M.14, s. 57 (3).

Agreements and transfers, evidence of

58. (1) No person is entitled to enforce any claim, right or interest, contracted for or acquired before the staking, to or in or under any staking or recording of a mining claim or of any mining lands or mining rights done by another person unless the fact that the first-mentioned person is so entitled is made to appear by a writing signed by the holder of the claim or by the licensee by whom the staking or recording was done or the evidence of the first-mentioned person is corroborated by some other material evidence, and, where a right or interest is so made to appear, the *Statute of Frauds* does not apply. R.S.O. 1990, c. M.14, s. 58 (1); 2009, c. 21, s. 101 (4).

Sales or transfers after staking

(2) No person is entitled to enforce any contract, made after the staking, for sale or transfer of a mining claim or any mining lands or mining rights, or any interest in or concerning the same, unless the agreement or some note or memorandum thereof is in writing signed by the person against whom it is sought to enforce the contract or by that person's lawfully authorized agent. R.S.O. 1990, c. M.14, s. 58 (2); 2009, c. 21, s. 101 (4).

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. 2009, c. 21, s. 31.

59.1 Repealed: 2009, c. 21, s. 31.

RECORDING DOCUMENTS

Recording instruments

60. (1) Except as in this Act is otherwise expressly provided, no transfer or assignment of or agreement or other instrument affecting a mining claim or a recorded right or interest acquired under this Act shall be entered on the record or received by a recorder unless it purports to be signed by the recorded

holder of the claim or right or interest affected or by the holder's agent authorized by recorded instrument in writing. R.S.O. 1990, c. M.14, s. 60 (1).

Corporations

(2) An instrument mentioned in subsection (1) that is executed by a corporation shall not be recorded unless an authorized person has signed the instrument and,

(a) the corporation's seal is affixed to the instrument; or

(b) the instrument contains a statement by the person that he or she has authority to bind the corporation. 2001, c. 9, Sched. L, s. 2.

(3) Repealed: 2001, c. 9, Sched. L, s. 2.

Priority

61. After a mining claim or other right or interest acquired under this Act has been recorded, every instrument other than a will affecting the claim or an interest therein is void as against a subsequent purchaser or transferee for valuable consideration without actual notice unless the instrument is recorded before the recording of the instrument under which the subsequent purchaser or transferee claims. R.S.O. 1990, c. M.14, s. 61.

Recording to be notice

62. The recording under this Act of an instrument relating to a mining claim constitutes notice of the instrument to all persons claiming an interest in the claim after the instrument is recorded even if there is a defect in the requirements for recording. 1999, c. 12, Sched. O, s. 24.

Where actual notice prevails

63. (1) Priority of recording prevails unless before the prior recording there has been actual notice of the prior instrument by the party claiming under the prior recording. R.S.O. 1990, c. M.14, s. 63 (1).

Deemed recording

(2) If a transfer or other instrument meets all the requirements for recording, it shall be deemed to have been recorded on receipt in the proper office, even if it was not recorded immediately. 1999, c. 12, Sched. O, s. 25.

Recording orders, judgments, certificates, writs

64. (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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

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. 2009, c. 21, s. 32 (1).

Filing of certified writ with recorder

(6) A copy of a writ of seizure and sale may be filed with the recorder if it has been certified by the sheriff for the area or a bailiff of the division of the Small Claims Court to be a true copy of the writ. 1999, c. 12, Sched. O, s. 26 (2).

Recording of writ

(7) The recorder shall record the writ on each claim held by the judgment debtor or in which the judgment debtor has an interest on being given the number or a description of the claim involved and receiving the required fee. 1999, c. 12, Sched. O, s. 26 (3).

Effect of recording writ

(8) On being recorded on the claim, the writ binds the judgment debtor's interest in the claim and the sheriff or bailiff may treat the interest as if it were goods and chattels subject to a writ of seizure and sale. 1999, c. 12, Sched. O, s. 26 (3).

Recording of transfer

(9) If the judgment debtor's interest in the claim is sold under subsection (8), the transfer to the purchaser may be recorded in the same manner as if the transfer had been made by the judgment debtor and the effect of such transfer is the same. 1999, c. 12, Sched. O, s. 26 (3).

Certified copy, fee

(10) A certified copy of the writ of seizure and sale may be obtained from the sheriff or bailiff on payment of any required fee and the fee, together with the fee paid for recording the writ, shall be added to the judgment debt. 1999, c. 12, Sched. O, s. 26 (4).

Keeping claim in good standing

(11) Once the writ has been recorded on a claim, the sheriff, bailiff or judgment creditor may do anything that the judgment debtor could have done to keep the claim or interest in good standing, and the cost of doing so shall be added to the judgment debt. 1999, c. 12, Sched. O, s. 26 (4).

Discharge of writ

(12) A writ may be discharged,

- (a) by recording a certificate obtained from the sheriff or bailiff indicating that the judgment debt has been satisfied;
- (b) by recording a release obtained from the judgment creditor; or
- (c) by filing an order obtained from the Commissioner directing the removal of the record of the writ from each claim in which the judgment debtor has an interest. 1999, c. 12, Sched. O, s. 26 (4).

(13) Repealed 2009, c. 21, s. 32 (2).

ASSESSMENT WORK**Assessment work**

65. (1) The holder of a mining claim shall, following the recording of the claim, perform or cause to be performed such annual units of assessment work as are prescribed. R.S.O. 1990, c. M.14, s. 65 (1); 1999, c. 12, Sched. O, s. 27.

Report

(2) Subject to subsection (3), every mining claim holder shall, not later than the anniversary date, file in the office of the recorder or such other location as the Minister directs a report in the prescribed form of the assessment work done for the purpose of complying with subsection (1), together with such other information as may be prescribed. R.S.O. 1990, c. M.14, s. 65 (2); 1996, c. 1, Sched. O, s. 16.

Idem

(3) The report mentioned in subsection (2) shall, in respect of any specified type of assessment work, be filed not later than such date earlier than the anniversary date as may be prescribed for that type of assessment work. R.S.O. 1990, c. M.14, s. 65 (3).

Credits measured in dollars spent

(4) For the purpose of subsection (1), assessment work credits shall be measured in terms of dollars spent. R.S.O. 1990, c. M.14, s. 65 (4).

No dispute

(5) The recorder shall not receive and file, or record against a mining claim, any dispute relating to the validity of any assessment work, for which a report has been filed under subsection (2) and that was performed on the claim or on mining lands that are contiguous to the claim or that the dispute alleges are not contiguous to the claim. 2000, c. 26, Sched. M, s. 7.

Types of work eligible for credits, etc.

66. (1) The types of work that are eligible for assessment work credits, the method of calculating and approving the credits for work performed and the distribution of credits for work performed to mining claims shall be determined in such manner as is prescribed. R.S.O. 1990, c. M.14, s. 66 (1).

Prospecting and regional surveys

(2) Prospecting and regional surveys performed on Crown lands before the recording of a mining claim are eligible for assessment work credits in such manner as is prescribed. R.S.O. 1990, c. M.14, s. 66 (2); 1996, c. 1, Sched. O, s. 17; 2009, c. 21, s. 34 (2).

Work on mining lands

(3) Exploration work performed on mining lands may be allocated as assessment work to contiguous unpatented mining claims in the prescribed manner. 1994, c. 27, s. 134 (3).

Decision

(4) The Minister shall determine the amount of assessment work credits. 1999, c. 12, Sched. O, s. 28; 2009, c. 21, s. 34 (4).

No appeal

(5) A decision under subsection (4) is final and is not subject to appeal. 1999, c. 12, Sched. O, s. 28.

Computation of time for performance of assessment work

67. (1) If the holder provides the recorder or the Commissioner with satisfactory evidence of a refusal, prohibition, deferral or delay referred to in this section, the following periods of time may be excluded 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:

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. 1996, c. 1, Sched. O, s. 18.

Same

(2) The time during which a proceeding in respect of a mining claim is pending before the recorder, the Commissioner or the Superior Court of Justice may be excluded in computing the time within which work on a mining claim must be performed or reported, or both, or within which an application and payment for a lease may be made, if the recorder or Commissioner is satisfied that any delay in settling the proceeding is not the holder's fault. 1996, c. 1, Sched. O, s. 18; 2000, c. 26, Sched. M, s. 17.

Order

(3) In computing time under subsection (1) or (2), the recorder or Commissioner may make an order fixing the date or dates by which the next or any prescribed units of work must be performed or reported, or both, or by which an application and payment for lease may be made. 1996, c. 1, Sched. O, s. 18.

Anniversary date changed

(4) Where the 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. 1996, c. 1, Sched. O, s. 18.

Special circumstances

(5) Despite anything in this Act, if the Minister is of the opinion that special circumstances exist, the Minister may, by order,

- (a) exclude the time or extend the time within which work on a mining claim must be performed or reported, or both, or within which application and payment for lease may be made; and
- (b) fix the anniversary date or dates by which the next or any subsequent periods of work must be performed or reported, or both, or by which application and payment for lease may be made. 2000, c. 26, Sched. M, s. 8.

Proportionate contribution by co-owners

68. Where two or more persons are the holders of an unpatented mining claim, they shall contribute proportionately to their respective interests, or as they otherwise agree between themselves, to the work required to be done thereon or to a survey, patent or the first year's rental of a lease, and, in case of default by any holder, the Commissioner, upon the application of any other holder and upon notice to and after hearing all persons interested or such of them as appear, may make an order vesting the interest of the defaulter in the other co-owners or in any of them upon such terms and conditions and in such proportions as he or she considers just. R.S.O. 1990, c. M.14, s. 68.

Charge of person doing work on mining claim

69. Where the holder of an interest in a mining claim has made default in payment for work performed thereon by a person not the holder of an interest in the mining claim, the Commissioner, upon the application of such person and upon notice to and after hearing all persons interested or such of them as appear, may make an order vesting the interest in the mining claim of the holder in default, or any part of such interest, in the applicant. R.S.O. 1990, c. M.14, s. 69.

ABANDONMENT

Abandoning a mining claim**Right to abandon claim**

70. (1) The holder of a mining claim may abandon the claim at any time by filing a notice of abandonment with the recorder. R.S.O. 1990, c. M.14, s. 70 (1); 2009, c. 21, s. 36 (1).

Abandonment of part of claim

(2) The holder of a mining claim may abandon any part of the claim at any time on such conditions as are prescribed, by filing a notice of partial abandonment with the recorder. R.S.O. 1990, c. M.14, s. 70 (2); 2009, c. 21, s. 36 (2).

Notice of abandonment

(3) The recorder shall record the abandonment and the date of receipt of the notice of abandonment, and forthwith post a notice of the abandonment, together with a sketch of the abandoned claim or part to be abandoned. 1999, c. 12, Sched. O, s. 29.

Order by recorder

(4) Where part of a claim has been abandoned under subsection (2), the recorder shall issue an order directing the moving of posts or tags, the erection of new posts and the identification of new boundary lines and stating the time within which the work is to be completed. R.S.O. 1990, c. M.14, s. 70 (4).

Compliance with order

(5) A mining claim holder who is affected by an order issued under subsection (4) shall notify the recorder of that fact in writing within the time set out in the order. 1999, c. 12, Sched. O, s. 29.

Posting of notice

(5.1) The recorder shall post the notice, with the date of its posting. 1999, c. 12, Sched. O, s. 29.

Extension of time or order for abandonment

(6) The recorder may extend the time for completing work that has not been completed within the time set out in an order under subsection (4) or order that the portion of the claim on which the work was to be done be abandoned. 1999, c. 12, Sched. O, s. 29.

Notice of order

(6.1) If the recorder makes an order of abandonment under subsection (6), he or she shall forthwith,

- (a) notify the holder of the order and the reasons for it; and
- (b) post the order. 1999, c. 12, Sched. O, s. 29.

When claim open for staking

(7) Where part of a mining claim is abandoned under subsection (2) and an order of the recorder is made under subsection (6), the mining claim abandoned is open for staking from 8 a.m. standard time on the eleventh day after the posting of the order of the recorder made under subsection (6). R.S.O. 1990, c. M.14, s. 70 (7); 1996, c. 1, Sched. O, s. 19 (1).

Idem, abandonment of whole claim

(8) Every mining claim abandoned under subsection (1) is open for staking from 8 a.m. standard time on the eleventh day after the notice of abandonment is filed. R.S.O. 1990, c. M.14, s. 70 (8); 1996, c. 1, Sched. O, s. 19 (2).

Idem, abandonment of part of claim

(9) Where part of a mining claim is abandoned under subsection (2) and no order is made by the recorder under subsection (5), that part of the claim is open for staking from 8 a.m. standard time on the eleventh day after the posting of the notice under subsection (5.1). R.S.O. 1990, c. M.14, s. 70 (9); 1996, c. 1, Sched. O, s. 19 (3); 2001, c. 9, Sched. L, s. 3.

Deemed abandonment of claim

71. (1) Non-compliance by the licensee or holder of a mining claim with any requirement of this Act or the regulations as to the time or manner of the staking and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefor, shall be deemed to be an abandonment, and the claim shall, without any declaration, entry or act on the part of the Crown or by any officer, unless otherwise ordered by the Commissioner, be forthwith opened to prospecting and staking. R.S.O. 1990, c. M.14, s. 71 (1); 2009, c. 21, s. 101 (4).

Saving

(2) Despite subsection (1), where in respect of a mining claim, no dispute is on file and,

(a) one year has elapsed since the day of the recording of the claim; or

(b) the first prescribed unit of assessment work has been performed and filed and, where necessary, approved,

the mining claim shall be conclusively deemed to have been staked and recorded in compliance with the requirements of this Act and the regulations. R.S.O. 1990, c. M.14, s. 71 (2); 2009, c. 21, s. 101 (2).

FORFEITURE**Forfeiture of mining claim**

72. (1) Except as provided by section 73, all the interest of the holder of a mining claim before a lease has issued ceases without any declaration, entry or act on the part of the Crown or by any officer, and the claim is open for prospecting and staking,

(a) if, without the consent in writing of the recorder or Commissioner, or for any purpose of fraud or deception or other improper purpose the holder removes or causes or procures to be removed any stake or post forming part of the staking of such mining claim, or for any such purpose changes or effaces or causes to be changed or effaced any writing or marking upon any such stake or post;

(b) if the prescribed work is not duly performed and reported as required by section 65 unless an application and payment for a lease of the mining claim is made under section 81. R.S.O. 1990, c. M.14, s. 72 (1); 2009, c. 21, s. 101 (4).

Proceedings as to forfeiture

(2) No person, other than the Minister or an officer of the Ministry or a person interested in the property affected, is entitled to raise any question of forfeiture except by leave of the Commissioner, and proceedings raising questions of forfeiture shall not be deemed to be or be entered as disputes under section 48. R.S.O. 1990, c. M.14, s. 72 (2).

Re-opening after forfeiture**Notice of re-opening**

72.1 (1) The recorder shall forthwith record the words "Cancelled/Annulé" with respect to a mining claim affected by forfeiture or loss of rights and post a notice of re-opening. 2000, c. 26, Sched. M, s. 9.

Re-staking

(2) Unless they have been withdrawn from prospecting or staking, lands, mining rights or mining claims affected by a forfeiture or a loss of rights are open for staking from 8 a.m. standard time on the day after the posting of the notice of re-opening. 2000, c. 26, Sched. M, s. 9.

Extension of time

73. (1) A recorder may order an extension of time for performing assessment work or filing a report on such work if an application for the extension is made within 30 days before the time for filing the report expires and the prescribed conditions for an extension are met. 1999, c. 12, Sched. O, s. 31.

When order takes effect

(2) If an order granting an extension is made, it shall be deemed to have been recorded on receipt of the application and the order takes effect at that time. 1999, c. 12, Sched. O, s. 31.

Death of licensee or holder

74. Where a licensee in whose name a mining claim has been staked dies before the claim is recorded or where the holder of a claim dies before issue of the lease for the claim, no other person is, without leave of the Commissioner, entitled to stake or record a mining claim upon any part of the same lands or to acquire any right, privilege or interest in respect thereof within twelve months after the death of the licensee or holder, and the Commissioner may at any time make such order as the Commissioner considers just for vesting the claim in the representative of such holder and extending the time for performing the work or applying for lease, despite any lapse, abandonment, cancellation, forfeiture or loss of rights under any provision of this Act. R.S.O. 1990, c. M.14, s. 74; 2009, c. 21, s. 101 (1, 2).

INSPECTION OF CLAIMS**Inspection by Commissioner, recorder or inspector**

75. (1) The Commissioner or the recorder may inspect or order an inspection of, and the person conducting the inspection may inspect, a mining claim at any time with or without notice to the holder for the purpose of ascertaining whether this Act has been complied with, but after one year from the recording of the claim, or after the first prescribed unit of assessment work has been performed, filed and approved, no such inspection shall, unless ordered by the Minister under subsection 76 (5), be made for the purpose of ascertaining whether the claim has been staked in the prescribed manner. R.S.O. 1990, c. M.14, s. 75 (1); 2009, c. 21, ss. 38, 101 (2).

Notice

(2) A notice under subsection (1) shall be given personally or sent to the holder at the holder's address in the records of the Provincial Recording Office. 1999, c. 12, Sched. O, s. 32.

Reinspection

(2.1) If no notice, or less than seven clear days notice, is given to the holder before the inspection is carried out, the holder may apply to the recorder or the Commissioner for a reinspection within 15 days of the recording of the decision or within a further period of not more than 15 days as is allowed by the Commissioner. 1999, c. 12, Sched. O, s. 32.

Duty to grant reinspection

(2.2) If it appears that the holder has been prejudiced by the failure to give notice or to give sufficient notice, the application for a reinspection shall be granted. 1999, c. 12, Sched. O, s. 32.

View or inspection in disputes, appeals, etc.

(3) The Commissioner or recorder may in any dispute, appeal or other proceeding before him or her make or order, with or without notice, a view or inspection of any mining claim or of any lands or other property. R.S.O. 1990, c. M.14, s. 75 (3).

Inspection report and subsequent cancellation of claim**Filing and entry of report**

76. (1) A report of each inspection, except when made merely for the purpose of a dispute, appeal or other proceeding, shall be made in writing by the inspecting officer and shall be filed in the office of the recorder, who shall forthwith enter upon the record of the claim a note stating the effect of the report and the date of the entry. R.S.O. 1990, c. M.14, s. 76 (1).

Cancelling claim upon report

(2) If the recorder is of opinion that upon the report the claim should be cancelled, he or she shall mark the record of the claim "Cancelled/Annulé" and affix his or her signature or initials and shall by mail sent not later than the next day notify the holder of the claim and the disputant and other interested parties, if any, of the receipt and effect of the report, and where the claim is cancelled in consequence of the report, the notice shall so state. R.S.O. 1990, c. M.14, s. 76 (2); 1999, c. 12, Sched. O, s. 33 (1).

Appeal from cancellation

(3) An appeal from the cancellation of the claim may be taken to the Commissioner by the holder of the claim or by the disputant or other interested party, within the time and in the manner provided by section 112. R.S.O. 1990, c. M.14, s. 76 (3).

Notice of re-opening

(4) When a claim is cancelled under this section, the recorder shall forthwith post a notice of re-opening and, unless they have been withdrawn from prospecting or staking, the land or mining rights are open for prospecting and staking from 8 a.m. standard time on the day after the posting of the notice. 2000, c. 26, Sched. M, s. 10.

Effect of appeal

(4.1) Any staking carried out on land opened under subsection (4) is subject to the decision on an appeal under subsection (3). 1999, c. 12, Sched. O, s. 33 (2).

Inspection ordered by Minister

(5) Despite subsections 48 (5) and 71 (2), the Minister may challenge the validity of a mining claim at any time during the life of the claim and may direct the recorder or any other person to inspect the claim in accordance with section 75. R.S.O. 1990, c. M.14, s. 76 (5); 1999, c. 12, Sched. O, s. 33 (3).

Right of holder to copy of report

77. The holder of a mining claim or the disputant or other person interested is entitled to receive from the recorder a certified copy of any report of inspection of the claim filed with the recorder. R.S.O. 1990, c. M.14, s. 77; 1997, c. 40, s. 7; 2009, c. 21, s. 39.

SURFACE RIGHTS COMPENSATION**Ground assessment work****Notice of intention to perform assessment work**

78. (1) A holder of a mining claim who first proposes to do ground assessment work on all or part of the land comprising a mining claim shall give notice of that intention in the prescribed form to the owner, if any, of the surface rights of the part of the land to be affected by the work. 1996, c. 1, Sched. O, s. 21.

Entry on land to perform work

(2) A person who has given notice under this section may enter on the land and perform the work at any time immediately following the day the notice is given. R.S.O. 1990, c. M.14, s. 78 (2).

Where work not to be recorded

- (3) The Minister shall not record ground assessment work referred to in subsection (1) unless,
- (a) the holder files with the Minister a certificate in the prescribed form and all further evidence that the Minister may require as evidence that the holder gave the required notice;
 - (b) the Minister determines that it is not feasible in the circumstances to give notice to the owner of the surface rights; or
 - (c) the owner of the surface rights gives written consent to the performance of the work after it has been performed. 2002, c. 18, Sched. M, s. 3.

Surface rights compensation**Definition**

79. (1) In this section and in section 78,

“owner of the surface rights” means a person to whom the surface rights of land have been granted, sold, leased or located. R.S.O. 1990, c. M.14, s. 79 (1).

Right to compensation

(2) Where there is an owner of surface rights of land or where land is occupied by a person who has made improvements thereon that, in the opinion of the Minister, entitles that person to compensation, a person who,

- (a) prospects, stakes or causes to be staked a mining claim or an area of land for a boring permit;
- (b) formerly held a mining claim or an area of land for a boring permit that has been cancelled, abandoned or forfeited;
- (c) is the holder of a mining claim or an area of land for a boring permit and who performs assessment work; or
- (d) is the lessee or owner of mining lands and who carries on mining operations,

on such land, shall compensate the owner of the surface rights or the occupant of the lands, as the case may be, for damages sustained to the surface rights by such prospecting, staking, assessment work or operations. R.S.O. 1990, c. M.14, s. 79 (2); 2009, c. 21, s. 101 (2-4).

Right of holder of mining claim, etc., to compensation

(3) Every person who damages mineral exploration workings or claim posts, line posts, tags or surveyed boundary markers delineating mining lands shall compensate the holder of the mining claim or the owner or lessee of the mining lands, as the case may be, for damages sustained. R.S.O. 1990, c. M.14, s. 79 (3).

Determination of compensation by Commissioner

(4) In default of agreement and upon application made by either party, the amount and the time and manner of payment of compensation under subsection (2) or (3) shall be determined by the Commissioner after a hearing and, subject to appeal to the Divisional Court where the amount claimed exceeds \$1,000, the Commissioner's order is final. R.S.O. 1990, c. M.14, s. 79 (4); 2009, c. 21, s. 41 (4).

Prohibiting work pending settlement

(5) The Commissioner may order the giving of security for payment of the compensation and may prohibit, pending the determination of the proceeding or until the compensation is paid or secured, further prospecting, staking or working by any person. R.S.O. 1990, c. M.14, s. 79 (5); 2009, c. 21, s. 101 (4).

Lien for compensation

(6) The compensation is a special lien upon any mining claim or mining lands, as the case may be, and no further prospecting, staking or performing of work, except by leave of the Commissioner, shall be done by any person after the time fixed for the payment or securing of the compensation, unless the compensation has been paid or secured as directed. R.S.O. 1990, c. M.14, s. 79 (6); 2009, c. 21, s. 101 (4).

Power of Commissioner to vary, etc., order

(7) The Commissioner, on notice to all interested parties and for good cause shown, on such terms as seem just, may by subsequent order or award at any time change, supplement, alter, vary or rescind any order made under this section. R.S.O. 1990, c. M.14, s. 79 (7).

Priorities

(8) In a hearing under subsection (4), the Commissioner shall take into account which of the rights was applied for first and, except where injustice would result, shall give the holder of those rights due priority in the consideration of the dispute between the parties. R.S.O. 1990, c. M.14, s. 79 (8).

Filing of agreement or order in office of recorder

(9) Where unpatented mining claims are affected by an agreement entered into in respect of the compensation referred to in subsection (2), or by an order made under subsection (4), the agreement or a certified copy of the order, as the case may be, may be filed by the person to whom the compensation is payable in the office of the recorder. R.S.O. 1990, c. M.14, s. 79 (9); 1997, c. 40, s. 7; 2009, c. 21, s. 41 (5).

Registration of order or agreement

(10) Where an unpatented mining claim is subsequently leased, the Minister shall cause any agreement or order filed in the recorder's office under subsection (9) that affects the leased lands to be registered against the lands in the proper land registry office and the person to whom the compensation is payable is entitled to enforce the terms of the agreement or order against the lessee and, subject to the *Registry Act* and the *Land Titles Act*, against any subsequent lessee of the land. R.S.O. 1990, c. M.14, s. 79 (10).

Reduction in area of claim

80. (1) The Commissioner or the recorder may reduce the area of a mining claim staked where the surface rights have been granted, sold, leased or located, if in his or her opinion an area less than the prescribed area is sufficient for working the mines and minerals therein. R.S.O. 1990, c. M.14, s. 80 (1); 2009, c. 21, s. 101 (2).

Exclusion of part of surface rights

(2) The Commissioner or the recorder may exclude from any mining claim such part of the surface rights as may be necessary for the occupation and utilization of buildings or improvements erected or made thereon prior to the time the claim was staked. R.S.O. 1990, c. M.14, s. 80 (2); 2009, c. 21, s. 101 (2).

ISSUE OF PATENT OR LEASE FOR MINING CLAIM

Lease of mining claim

Right to lease of claim

81. (1) Upon compliance with this Act and the regulations and upon payment of the rent for the first year, the holder of a mining claim is entitled to a lease of the claim. R.S.O. 1990, c. M.14, s. 81 (1).

Application for lease

(2) The application and payment for a lease may be made to the recorder at any time after the first prescribed unit of assessment work on a mining claim is performed, filed and, if necessary, approved, and the application shall be accompanied by,

- (a) Repealed: 1999, c. 12, Sched. O, s. 35 (1).
- (b) if a survey is required under section 95 or 96, a plan of survey approved by the Surveyor General;
- (c) an agreement or an order of the Commissioner indicating that surface rights compensation, if any, has been paid, secured or settled; and
- (d) the required fee. R.S.O. 1990, c. M.14, s. 81 (2); 1994, c. 27, s. 134 (4); 1997, c. 40, s. 7; 1999, c. 12, Sched. O, s. 35 (1).

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. 2009, c. 21, s. 42 (2).

Term of lease

(3) A lease under this section shall be for a term of twenty-one years at the prescribed rental, payable in advance, for the first year and at the prescribed rate for each subsequent year. R.S.O. 1990, c. M.14, s. 81 (3).

Lease of mining rights

(4) The holder of a mining claim may elect to apply for a lease of the mining rights only. R.S.O. 1990, c. M.14, s. 81 (4).

Rental

(5) Where a lease under this section is for mining rights only, the rental shall be at the prescribed rate for such a lease. R.S.O. 1990, c. M.14, s. 81 (5).

Renewal of lease

(6) Subject to subsections (8), (9) and (10), a lease under this section is renewable for further terms of 21 years. 1999, c. 12, Sched. O, s. 35 (3).

Application

(6.1) Application for a renewal shall be made in the 90-day period before the expiry of the lease or such further period as the Minister considers appropriate. 1999, c. 12, Sched. O, s. 35 (3).

Date of renewal

(6.2) A lease that is renewed shall date from the day after the expiry of the lease. 1999, c. 12, Sched. O, s. 35 (3).

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). 2009, c. 21, s. 42 (3).

Renewal lease rental

(7) The annual rental for a renewal lease is the prescribed amount, payable in advance. R.S.O. 1990, c. M.14, s. 81 (7).

Refusal to renew lease

(8) The Minister shall refuse to renew a lease unless,

- (a) the production of minerals has occurred continuously for more than one year since the issuance or last renewal of the lease; or
- (b) the lessee has demonstrated to the satisfaction of the Minister a reasonable effort to bring the property into production. R.S.O. 1990, c. M.14, s. 81 (8).

Application referred to Commissioner

(9) The Minister may refer an application for renewal of a lease to the Commissioner, who shall, upon notice to all interested persons and after hearing such of them as appear, report to the Minister thereon with his or her recommendations. R.S.O. 1990, c. M.14, s. 81 (9).

Interest

(9.1) Where payment of the rental under a lease is not paid within the required time, interest at the prescribed rate, compounded annually, shall forthwith be added to the amount owing in each year that the amount remains unpaid. 1999, c. 12, Sched. O, s. 35 (4).

Reduction or waiver of interest owing

(9.2) The Minister may reduce or waive the amount of any interest added to rental payments under subsection (9.1). 2002, c. 18, Sched. M, s. 4.

Termination of lease for arrears of rent

(10) Where payment of the rental under any such lease is in arrears for two years or more, the lease may be terminated by an instrument in writing. R.S.O. 1990, c. M.14, s. 81 (10).

Notice of termination of lease

(11) Where application for renewal of a lease is not made within the time set out in subsection (6) or where a renewal of a lease is refused under subsection (8) or where a lease has been terminated under subsection (10), the Minister may cause a notice of termination to be registered in the proper land registry office, and the land registrar shall, upon receipt of the notice, duly register it, and thereupon all the interests of the lessee, the lessee's heirs, executors, administrators and assigns shall be deemed to have ceased and determined, and the lands included in such lease are reverted in the Crown freed and discharged from every claim. R.S.O. 1990, c. M.14, s. 81 (11).

Registration of notice of termination

(12) Upon registration of the notice in the proper land registry office, the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the lands, and the land registrar shall note that fact in the register. R.S.O. 1990, c. M.14, s. 81 (12); 1999, c. 12, Sched. O, s. 35 (5).

Lands vested in Crown on termination of lease

(13) When a lease is terminated under this section, the lease and all rights and powers therein contained, as well as all rights and claims of the lessee, the lessee's heirs, executors, administrators or assigns in or to the lands covered by the lease, cease, and the lands are vested in the Crown, freed and discharged from every claim and are not open for prospecting, staking, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 81 (13); 2009, c. 21, s. 101 (4).

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. 2009, c. 21, s. 42 (4).

Disposition of surface rights

(15) Any surface rights reserved in a lease or renewal thereof may be dealt with under the *Aggregate Resources Act*, or under the *Public Lands Act* or the regulations made under those Acts. R.S.O. 1990, c. M.14, s. 81 (15).

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, there shall be performed additional assessment work or moneys paid in lieu thereof as prescribed for the excess area. R.S.O. 1990, c. M.14, s. 81 (16).

Non-application of subs. (16)

(17) The Minister may direct that subsection (16) does not apply where the average area of each claim in a group of contiguous claims held in the name of one or more claim holders does not exceed the size prescribed for a mining claim by more than 15 per cent. 1999, c. 12, Sched. O, s. 35 (6).

Where additional work required

(18) Where additional work is required under subsection (16), the Minister may direct the time within which the work is to be performed and reported. R.S.O. 1990, c. M.14, s. 81 (18).

Leases issued under particular provisions**Definition**

82. (1) In this section,

"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. 1999, c. 12, Sched. O, s. 36 (1); 2009, c. 21, s. 43.

Amount of rent

(2) Despite any rental that may be provided for in a lease, the annual rental for the lease is as prescribed. 1999, c. 12, Sched. O, s. 36 (1).

Renewal of lease

(3) A lease of mining rights under clause (a) of the definition of "lease" in subsection (1) is renewable for further terms of 10 years. 1999, c. 12, Sched. O, s. 36 (1).

Application

(4) Application for a renewal shall be made in the 90-day period before the expiry of the lease or such further period as the Minister considers appropriate. 1999, c. 12, Sched. O, s. 36 (1).

Date of renewal

(4.1) A lease that is renewed shall date from the day after the expiry of the lease. 1999, c. 12, Sched. O, s. 36 (1).

Interest

(4.2) Where payment of the rental under a lease is not paid within the required time, interest at the prescribed rate, compounded annually, shall forthwith be added to the amount owing in each year that the amount remains unpaid. 1999, c. 12, Sched. O, s. 36 (1).

Reduction or waiver of interest owing

(4.3) The Minister may reduce or waive the amount of any interest added to rental payments under subsection (4.2). 2002, c. 18, Sched. M, s. 5.

Termination of lease for arrears of rent

(5) Where payment of the rental under a lease is in arrears for two years or more, the lease may be terminated by an instrument in writing. R.S.O. 1990, c. M.14, s. 82 (5).

Notice of termination of lease

(6) Where application for renewal of a lease is not made within the time set out in subsection (4) or where a lease has been terminated under subsection (5), the Minister may cause a notice of termination to be registered in the proper land registry office, and the land registrar shall, upon receipt of the notice, duly register it, and thereupon all the interests of the lessee, the lessee's heirs, executors, administrators, successors and assigns shall be deemed to have ceased and determined, and the land included in such lease is revested in the Crown, freed and discharged from every claim. R.S.O. 1990, c. M.14, s. 82 (6); 1996, c. 1, Sched. O, s. 22.

Certain Acts not to apply to forfeited lands

(7) Upon registration of the notice under subsection (5) in the land registry office, the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the lands, and the land registrar shall note that fact in his or her register. R.S.O. 1990, c. M.14, s. 82 (7); 1999, c. 12, Sched. O, s. 36 (2).

Lands vested in Crown on termination of lease

(8) When a lease is terminated under this section, the lease and all rights and powers therein contained, as well as all rights and claims of the lessee, the lessee's heirs, executors, administrators or assigns in or to the lands covered by the lease, cease, and such lands are vested in the Crown, freed and discharged from every claim and are not open for prospecting, staking, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 82 (8); 2009, c. 21, s. 101 (4).

Lease may be issued under s. 81

(9) The holder of a lease, upon application in writing therefor and upon the surrender of the lease and upon meeting the conditions set out in subsection 81 (8), may be issued a lease under section 81 for a term of twenty-one years and the rental for each year of the term thereof shall be that prescribed for the purposes of section 81 for years after the first year of a term. R.S.O. 1990, c. M.14, s. 82 (9).

Restriction on transfer etc.

(10) A lease, a renewal of lease or the term or terms that a lease creates shall not be transferred, mortgaged, charged, sublet or made subject to a debenture without the written consent of the Minister or an officer duly authorized by the Minister. 2000, c. 26, Sched. M, s. 13.

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. 2009, c. 21, s. 44.

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. 2009, c. 21, s. 44.

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. 2009, c. 21, s. 44.

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. 2009, c. 21, s. 44.

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. 2009, c. 21, s. 44.

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. 2009, c. 21, s. 44.

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. 2009, c. 21, s. 44.

Lease of surface rights

84. (1) Upon application by a lessee or owner of mining rights or a holder of a mining licence of occupation, the Minister may lease any available surface rights inside or outside the lands covered by the lease, patent or licence of occupation required by the applicant for any purpose essential to mining or mining exploration, including for constructing a shaft or buildings or disposing of tailings or other waste material. 1999, c. 12, Sched. O, s. 38 (1).

Application for lease of surface rights

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

- (a) the specific purposes for which the surface rights are required;
- (b) an adequate description and plan or sketch of the area where the applied for surface rights are located;
- (c) the first year's rental; and
- (d) proof of ownership of, or of being the holder of the licence of occupation for, the mining lands or mining rights that are the basis of the application. 1999, c. 12, Sched. O, s. 38 (1); 2009, c. 21, s. 45 (1).

Survey

(3) The Minister may require the applicant to furnish a survey prepared by an Ontario land surveyor and approved by the Surveyor General, and the cost of the survey shall be borne by the applicant. R.S.O. 1990, c. M.14, s. 84 (3); 1994, c. 27, s. 134 (5).

Amount of rent

(4) The annual rental of a lease or renewal under this section is the prescribed amount, payable in advance. R.S.O. 1990, c. M.14, s. 84 (4).

Interest

(4.1) Where payment of the rental under a lease is not paid within the required time, interest at the prescribed rate, compounded annually, shall forthwith be added to the amount owing in each year that the amount remains unpaid. 1999, c. 12, Sched. O, s. 38 (2).

Reduction or waiver of interest owing

(4.2) The Minister may reduce or waive the amount of any interest added to rental payments under subsection (4.1). 2002, c. 18, Sched. M, s. 6.

Term of lease

(5) A lease issued under this section shall be for a term of twenty-one years, but, where the mining lands or mining rights that are the basis of the application are held under a mining lease, the term shall be coterminous with the mining lease. R.S.O. 1990, c. M.14, s. 84 (5).

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 coterminous with the mining lease. 2009, c. 21, s. 45 (2).

Termination of lease where lands forfeited

(7) Where the mining lands or mining rights that are the basis for a lease issued under this section are reverted in or are forfeited or revert to the Crown, the lease is forfeited, and subsections 81 (11), (12) and (13) apply. R.S.O. 1990, c. M.14, s. 84 (7).

Holder of lease and holder of land to be same person

(8) Where the holder of a lease issued under this section ceases to be the holder of the lands or mining rights in respect of which the lease was issued, the lease is forfeited, and subsections 81 (11), (12) and (13) apply. R.S.O. 1990, c. M.14, s. 84 (8).

Lease void where lands used other than for mining industry

85. The lands, surface rights or mining rights held under a lease that has been or will be issued under this Act shall be used solely for the purposes of the mining industry, and, in default thereof and on the recommendation of the Commissioner, the Lieutenant Governor in Council may declare the lease void, and subsections 81 (11), (12) and (13) apply. R.S.O. 1990, c. M.14, s. 85.

Reservations, etc., in leases

86. (1) Every lease issued under this Act shall contain the following reservations or provisions:

Reservation for roads

1. Provided that nothing whatsoever herein contained shall prevent or interfere with the free user of any public or travelled road or highway crossing the hereinbefore described premises.

Reservation for power, petroleum, etc.

2. Reserving unto Us, Our Heirs and Successors such use of the land hereby demised for all such works as may be necessary for the development of water power and the development, transmission and distribution of electrical power, natural gas, petroleum and petroleum products, including the construction, maintenance and operation of roads, railroads, transmission lines and stations, flumes, pipelines, dams, power houses and other works and structures without any liability by Us to the Lessee.

Reservation for railways

3. Reserving the right to grant without compensation to any person or corporation the right-of-way necessary for the construction and operation of one or more railways over or across the lands herein leased without let or hindrance from the Lessee where such railway or railways shall not manifestly or materially interfere with the mining operations carried on upon the said premises.

Reservation for navigable waters

4. Saving, Excepting and Reserving unto Us, Our Heirs and Successors the free use, passage and enjoyment of, in, over and upon all navigable waters which shall or may hereafter be found on or under or to be flowing through or upon any part of the said parcel or tract of land hereby demised as aforesaid and reserving also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons, together with the right to use so much of the banks thereof not exceeding one chain in depth from the highwater mark as may be necessary for fishery or public purposes.

Provided that, should the premises herein described or any part thereof be covered by navigable waters, this lease shall be subject to the provisions of the *Navigable Waters Protection Act* (Canada), the *Beds of Navigable Waters Act* and the *Lakes and Rivers Improvement Act*.

Reservation for fishing

5. Provided that nothing herein contained shall in any manner restrict fishing or fishing rights in any navigable waters covering the premises hereby demised and that the Lessee shall not do any act resulting in damage to fishing or the fishing industry in the waters or to nets or other appliances used in fishing in the waters.

Reservation for land under navigable waters

6. Provided that these presents shall not vest in the Lessee any right, claim or title to the land under navigable waters which may be included within the limits of the herein described

premises, but the Lessee shall have the exclusive right to extract the minerals therefrom during the term of these presents. R.S.O. 1990, c. M.14, s. 86 (1).

Where item 2 of subs. (1) does not apply

(2) Item 2 of subsection (1) does not apply to a lease of the mining rights only. R.S.O. 1990, c. M.14, s. 86 (2).

Other reservations

(3) The Minister may direct the inclusion of other reservations or provisions provided for in this Act or not inconsistent with the intent of this Act. R.S.O. 1990, c. M.14, s. 86 (3).

Omission of reservations, etc.

(4) The Minister may omit reservations or provisions contained in subsection (1) from a lease issued under section 84 where such reservations or provisions are contrary to the purpose of the lease. R.S.O. 1990, c. M.14, s. 86 (4).

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.

2009, c. 21, s. 46.

Reservation for roads

87. (1) Every patent or lease issued under this Act shall contain a reservation for road purposes of 10 per cent of the surface rights of the land granted or leased, as the case may be, and the Crown or its officers or agents may lay out and construct roads where considered proper on the lands so granted or leased. R.S.O. 1990, c. M.14, s. 87 (1).

Reservation of surface rights

(2) Every patent or lease issued under this Act shall contain a reservation of the surface rights on and over any public or colonization road or any highway crossing the land granted or leased at the date of issue of the patent or lease. R.S.O. 1990, c. M.14, s. 87 (2).

Exception

(3) Subsections (1) and (2) do not apply to patents or leases of the mining rights only. R.S.O. 1990, c. M.14, s. 87 (3).

Reservation of land to read as reservation of surface rights

(4) Where a patent or lease has been issued under this Act or any predecessor thereof containing a reservation for road purposes of 5 per cent or of 10 per cent of the lands granted, and the Crown or its officers or agents did not occupy lands under such reservation, prior to the 1st day of May, 1963, for laying out and constructing roads, such reservation shall now read as a reservation of 5 per cent of the surface rights or 10 per cent of the surface rights, as the case may be. R.S.O. 1990, c. M.14, s. 87 (4).

Form of patent

88. Every patent of Crown lands or mining rights by which it is intended to vest in the patentee the mines and minerals therein or a part thereof or any rights in connection therewith shall state that it was issued under this Act or the former Act under which it was issued. R.S.O. 1990, c. M.14, s. 88.

Disposal of surface rights

89. (1) In a patent or lease of a mining claim, the Minister shall reserve all surface rights and other rights excluded by or withdrawn under this Act or that have otherwise been alienated by the Crown. R.S.O. 1990, c. M.14, s. 89 (1).

Disposition of surface rights

(2) Any surface rights reserved under this section may be dealt with under the *Aggregate Resources Act* or under the *Public Lands Act* or the regulations made under those Acts. R.S.O. 1990, c. M.14, s. 89 (2).

Patents issued under this Act to vest minerals

90. (1) Every patent of Crown lands that purports to be issued under this Act, unless it is otherwise expressly stated, vests in the patentee of the estate thereby granted all title of the Crown in such lands and all mines and minerals therein. R.S.O. 1990, c. M.14, s. 90 (1).

Application of *Conveyancing and Law of Property Act*

(2) Despite section 19 of the *Conveyancing and Law of Property Act*, where a patent or lease of a mining claim was or is issued under this Act on or after the 1st day of July, 1914, and the patent or lease reserves the surface rights, section 16 of the *Conveyancing and Law of Property Act* applies if the surface rights were the property of the Crown and were not applied for or occupied at the time that the mining claim was staked and recorded. R.S.O. 1990, c. M.14, s. 90 (2); 2009, c. 21, s. 101 (2).

Condition of patent ores to be treated in Canada

91. (1) All lands, claims or mining rights patented, leased or otherwise disposed of under this or any other Act or by any authority whatsoever are subject to the condition that all ores or minerals raised or removed therefrom shall be treated and refined in Canada so as to yield refined metal or other product suitable for direct use in the arts without further treatment, in default whereof the Lieutenant Governor in Council may declare the lease, patent or other form of title of such lands, claims or mining rights to be void, and the order in council so declaring shall be registered in the proper land registry office, or in the case of a licence of occupation, filed in the Minister's office, whereupon such lands, claims or mining rights revert to and become vested in Her Majesty, Her heirs and successors, freed and discharged of any interest or claim of any other person. R.S.O. 1990, c. M.14, s. 91 (1).

Idem

(2) For the purposes of subsection (1), the Minister may determine the stage of refinement at which any mineral substance is refined metal or other product suitable for direct use in the arts without further treatment. R.S.O. 1990, c. M.14, s. 91 (2).

Exemptions

(3) The Lieutenant Governor in Council may exempt any lands, claims or mining rights from the operation of this section for such period of time as seems proper. R.S.O. 1990, c. M.14, s. 91 (3).

Where conflict, section prevails

(4) Where there is any conflict between the provisions of this section and the provisions of any general or special Act, the provisions of this section prevail. R.S.O. 1990, c. M.14, s. 91 (4).

Reservation of trees and right of entry

92. (1) Every patent or lease of Crown lands issued under this Act shall contain a reservation to the Crown of all timber and trees standing, being or hereafter found growing upon the lands thereby granted or leased, and of the right to enter upon such lands to carry on forestry, to cut and remove any timber or trees thereon, and to make necessary roads for such purposes. R.S.O. 1990, c. M.14, s. 92 (1).

Exercise of rights reserved

(2) The rights reserved in subsection (1) may be exercised by any person holding a licence or permit from the Crown when authorized to do so by the Minister. R.S.O. 1990, c. M.14, s. 92 (2).

Ownership of trees remains in Crown

(3) All timber and trees on Crown lands that have been staked and recorded under this Act remain the property of the Crown, and the Crown may enter upon such lands to carry on forestry, to cut and remove any timber or trees thereon, and to make necessary roads for such purpose. R.S.O. 1990, c. M.14, s. 92 (3); 2009, c. 21, s. 101 (2).

Conditions under which holder, owner or lessee may cut trees

(4) Despite subsections (1) and (3) and subject to subsections (5) and (6), the recorded holder of a mining claim staked on Crown lands or the owner or lessee of lands acquired under this Act may cut such trees on the lands so staked or acquired as may be necessary for building, fencing or fuel purposes or for any other purpose necessary for the development or working of the minerals thereon. R.S.O. 1990, c. M.14, s. 92 (4).

Idem

(5) Where a licence or permit from the Crown to cut timber on the land has not been granted, the recorded holder, owner or lessee may, on application to the Minister, be granted permission to cut and use the trees for the purposes mentioned in subsection (4) either without payment or on such terms and conditions as the Minister imposes. R.S.O. 1990, c. M.14, s. 92 (5).

Idem

(6) Where a licence or permit from the Crown to cut timber on the lands has been granted, the recorded holder, owner or lessee shall compensate the timber licensee or permittee for the trees cut or used by the holder, owner or lessee. R.S.O. 1990, c. M.14, s. 92 (6).

Determination of disputes

(7) Where a dispute arises between the recorded holder, owner or lessee and the timber licensee or permittee as to the value or quantity of the trees cut or used under subsection (6), the Minister shall determine the dispute and his or her decision is final. R.S.O. 1990, c. M.14, s. 92 (7).

Holder, etc., of mining rights not to cut trees

(8) This section does not confer upon the recorded holder, owner or lessee of the mining rights any right to cut trees upon the lands on which the holder, owner or lessee has staked or acquired only the mining rights. R.S.O. 1990, c. M.14, s. 92 (8).

Cancellation of erroneous patents

93. Where letters patent, leases, licences or other instruments of title have been issued to or in the name of the wrong person through mistake, or contain any clerical error or misnomer, or a wrong description of the land intended to be granted, the Deputy Minister, if there is no adverse claim and whether or not the land has been registered under the *Land Titles Act* or the *Registry Act*, may direct the defective instrument to be cancelled and a correct one to be issued in its stead and the corrected instrument shall relate back to the date of the one so cancelled and has the same effect as if issued on the date of the cancelled instrument. R.S.O. 1990, c. M.14, s. 93.

Surveys under annulments

94. Where patents, leases, licences or other instruments of title have been issued under this Act for any land or mining rights affected by an annulment under subsection 7 (1) of the *Public Lands Act*, the Deputy Minister, whether or not the land has been registered under the *Land Titles Act* or the *Registry*

Act, may cause such instrument of title to be cancelled and an instrument containing a revised description of the land or mining rights to be issued in its stead, and the corrected instrument shall relate back to the date of the one so cancelled and has the same effect as if issued on the date of the cancelled instrument. R.S.O. 1990, c. M.14, s. 94.

SURVEY OF CLAIM

Surveys

When survey required in unsurveyed territory

95. (1) Before a lease or licence of occupation of a mining claim in unsurveyed territory is applied for, the claim shall be surveyed by an Ontario land surveyor at the expense of the applicant, but no survey of a mining claim, except a perimeter survey consented to by the Minister under subsection (3), shall be made without the written consent of the recorder. R.S.O. 1990, c. M.14, s. 95 (1).

Prescribed methods of surveying

(2) Subject to the *Surveys Act*, the prescribed methods and procedures shall be followed in the surveying of mining claims unless the Minister orders otherwise. R.S.O. 1990, c. M.14, s. 95 (2); 2001, c. 9, Sched. L, s. 4.

Perimeter survey

(3) Where two or more mining claims in unsurveyed territory are contiguous and are recorded in the same name, the Minister may, in special circumstances and upon application therefor, consent to a perimeter survey being made of the circumference of the contiguous claims in lieu of a survey under subsection (1). R.S.O. 1990, c. M.14, s. 95 (3).

Minister to issue written instructions

(4) Where the Minister consents to a perimeter survey being made under subsection (3), he or she shall issue written instructions prescribing its conduct and filing. R.S.O. 1990, c. M.14, s. 95 (4).

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, there shall be performed additional assessment work or money paid in lieu thereof as prescribed for the excess area. R.S.O. 1990, c. M.14, s. 95 (5).

Where additional work required

(6) Where additional work is required under subsection (5), the Minister may set out in an order the time within which such work is to be performed and recorded. R.S.O. 1990, c. M.14, s. 95 (6).

Inspection before perimeter survey made

(7) Before a perimeter survey is made, the Minister may order the inspection of the mining claims proposed to be included in the perimeter survey and an inspector or other officer of the Ministry shall prepare and submit to the Minister a report and plan according to the instructions provided by the Minister and the survey shall not be directed to be made unless the Minister is satisfied that the requirements of this Act have been complied with. R.S.O. 1990, c. M.14, s. 95 (7).

Fee

(8) The fee for an inspection under subsection (7) is the amount set by the Minister, payable in advance, and the Minister may require the applicant to provide the inspector with suitable transportation to the location of the claims. R.S.O. 1990, c. M.14, s. 95 (8); 1997, c. 40, s. 2.

Cancellation of work

(9) Where, after a perimeter survey has been made, one or more of the claims within the perimeter survey is cancelled for any reason or where the holder of a recorded interest ceases to be the holder of an undivided interest in the whole, the survey is void, and thereupon the recorder shall cancel the entry on the record and he or she shall also cancel the work recorded on account of the survey. R.S.O. 1990, c. M.14, s. 95 (9).

Minister may direct survey of claim in surveyed territory

96. Where, upon an application for a lease or licence of occupation of a mining claim in surveyed territory, the Minister is of opinion that a survey is necessary, he or she may direct that a survey thereof be made at the expense of the applicant, and the survey, unless otherwise ordered, shall comply with the same requirements as a survey of a mining claim or the perimeter survey of mining claims in unsurveyed territory. R.S.O. 1990, c. M.14, s. 96.

Reduction of area of claim

97. (1) If it is found upon a survey required or authorized by this Act that the area of a mining claim exceeds the prescribed size, the Minister may reduce the area to the prescribed size or thereabouts in any way he or she sees fit. R.S.O. 1990, c. M.14, s. 97 (1).

Lands accidentally omitted, disposition of gores and fractions

(2) Where two or more mining claims in unsurveyed territory are contiguous and constitute a group recorded in the name of one holder and it was the manifest intention of the applicant or applicants, as shown by the sketch or sketches accompanying the application or applications for the same, to include as part of such mining claims all lands and lands under water within the limits of such group, and a survey shows that certain of the lands or lands under water are not so included, such lands or lands under water shall nevertheless be deemed to be part and parcel of the claim or claims in which it was the manifest intention that they should be included, and where two or more mining claims are contiguous and are recorded in the name or names of more than one holder, any fraction or gore shown or created by a survey is not open for staking until the Minister so directs, and the Minister, on the report of the Surveyor General, may award such fraction or gore, or part thereof, to the recorded holder or holders of either or both of the contiguous claims, or may sell, lease, or otherwise dispose of the same as he or she sees fit without requiring such fraction or gore to be staked as a mining claim. R.S.O. 1990, c. M.14, s. 97 (2); 2009, c. 21, s. 101 (2, 4).

PART III (S. 98) REPEALED: 1997, C. 40, S. 3.**PART IV****OIL, GAS, UNDERGROUND STORAGE AND SALT SOLUTION MINING**

99. Repealed: 2009, c. 21, s. 49.

Exploration licences

100. The Minister may issue exploration licences for the purposes of exploring and drilling for oil and gas on Crown land. 1998, c. 18, Sched. I, s. 40.

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. 2009, c. 21, s. 50.

Storage leases

101.1 (1) The Minister may issue storage leases for the temporary storage of hydrocarbons and other prescribed substances in underground formations on Crown land. 2000, c. 26, Sched. L, s. 6 (2).

Same

(2) A storage lease does not authorize the permanent disposal of any substance. 2000, c. 26, Sched. L, s. 6 (2).

Overlapping licences and leases

101.2 Despite the definition of "Crown land" in section 1, the Minister may issue an exploration licence, production lease or storage lease under this Part in respect of land that is already subject to a licence or lease under this Part. 2000, c. 26, Sched. L, s. 6 (2).

Licence and lease regulations

102. (1) The Minister may make regulations,

- (a) prescribing other substances for the purpose of section 101.1;
- (b) respecting the tendering of exploration licence and storage lease rights;
- (c) respecting the application for and issuance of exploration licences, production leases and storage leases;
- (d) respecting the terms and conditions of exploration licences, production leases and storage leases;
- (e) respecting exploration licence, production lease and storage lease rentals, royalties and other payments;
- (f) respecting minimum exploration licence work requirements;
- (g) respecting the transfer, assignment, surrender and termination of exploration licences, production leases and storage leases;
- (h) respecting the disposition or tendering of exploration licence, production lease and storage lease rights on cancellation or termination of an exploration licence, production lease or storage lease. 2000, c. 26, Sched. L, s. 6 (3).

Previous regulations

(2) The regulations made by the Lieutenant Governor in Council under this section, as it read immediately before this subsection came into force, shall be deemed to have been made by the Minister under subsection (1). 2000, c. 26, Sched. L, s. 6 (3).

PART V**COMMENCEMENT OF SURFACE MINING OF NON-METALLIC MINERALS****Commencement of surface mining**

103. (1) A person who proposes to commence the surface mining on Crown land of non-metallic minerals, excluding natural gas, petroleum and aggregate as defined in the *Aggregate Resources Act*, shall proceed by complying with the requirements of Part II of this Act. 1994, c. 27, s. 134 (6).

Same

(2) A person who proposes to commence the surface mining on Crown land of aggregate as defined in the *Aggregate Resources Act* shall proceed by applying for and obtaining an aggregate permit

or a licence under the *Aggregate Resources Act* and may also obtain a lease from the Crown for the lands affected by complying with the provisions of Part II of this Act. 1994, c. 27, s. 134 (6).

Staking of mining claim

104. Although an aggregate permit or a licence has been obtained under the *Aggregate Resources Act*, any licensee under this Act may stake a mining claim or claims on Crown land affected by the permit or licence, in which case the provisions of this Act apply and any question of property damage shall be determined in the manner set out in section 79. R.S.O. 1990, c. M.14, s. 104; 2009, c. 21, s. 101 (1).

PART VI MINING AND LANDS COMMISSIONER

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. 2009, c. 21, s. 51.

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. 2009, c. 21, s. 51.

Crown patents

106. (1) The Commissioner has no power or authority to declare forfeited or void or to cancel or annul any Crown patent issued for lands, mining land, mining claims or mining rights, but every action and every proceeding to declare forfeited or void or to cancel or annul any such Crown patent may be brought or taken in the Superior Court of Justice. R.S.O. 1990, c. M.14, s. 106 (1); 2000, c. 26, Sched. M, s. 17.

Where cancellations permitted

(2) Subsection (1) does not apply to cancellations or forfeitures provided for in this Act or in the patent. R.S.O. 1990, c. M.14, s. 106 (2).

Transfer of proceeding to Superior Court of Justice

107. A party to a proceeding under this Act brought before the Commissioner and involving any right, privilege or interest or in connection with any patented lands, mining lands, mining claims or mining rights, may, at any stage of the proceeding, apply to the Superior Court of Justice for an order transferring the proceeding to that court. R.S.O. 1990, c. M.14, s. 107; 2000, c. 26, Sched. M, s. 17.

Reference from court to Commissioner

108. Where in the opinion of the court in which an action is brought the proceeding may be more conveniently dealt with or disposed of by the Commissioner, the court may, upon the application of a party or otherwise and at any stage of the proceeding, refer the action or any question therein to the Commissioner as a referee on such terms as to the court seems just and the Commissioner shall thereafter give directions for the continuance of the proceeding before him or her, and, subject to the order of reference, all costs are in his or her discretion. R.S.O. 1990, c. M.14, s. 108.

Transfer from court to Commissioner

109. Where a proceeding that should have been taken before the Commissioner is brought in a court, the court may, upon the application of a party or otherwise and at any stage of the proceeding, transfer it to the Commissioner. R.S.O. 1990, c. M.14, s. 109.

Disputes

110. (1) A recorder may hear and, subject to the right of appeal provided in section 112, determine disputes between persons with respect to unpatented mining claims. 1999, c. 12, Sched. O, s. 39 (1).

Same

(2) If a dispute relates to whether the provisions of this Act regarding mining claims have been complied with, the recorder shall hear and determine the dispute unless,

- (a) the Commissioner orders otherwise; or
- (b) the Commissioner agrees to hear and determine the question pursuant to a request made by the recorder. 1999, c. 12, Sched. O, s. 39 (1).

Note of decision

(3) The recorder shall forthwith,

- (a) record a detailed note of all decisions that he or she makes; and
- (b) notify all persons affected by a decision. 1999, c. 12, Sched. O, s. 39 (1).

(4) Repealed: 1999, c. 12, Sched. O, s. 39 (2).

Finality of decision

(5) The decision of the recorder is final and binding unless appealed from as provided in section 112. R.S.O. 1990, c. M.14, s. 110 (5).

Recorder may order the removal of witness posts, etc.

(6) The recorder may make an order directing a holder,

- (a) to move, remove or alter corner posts, line posts or witness posts and the writing or inscribing thereon;
- (b) to blaze, re-blaze, move or alter existing or missing claim lines;
- (c) to place or replace metal tags that are missing or have been removed or destroyed after having been affixed to any posts; or
- (d) to place or replace missing or defective posts and to affix tags to such posts,

and the recorder shall set out in the order the time within which the work shall be completed and reported to the recorder. R.S.O. 1990, c. M.14, s. 110 (6).

(7) Repealed: 1999, c. 12, Sched. O, s. 39 (3).

Recorder may extend time or cancel claim

(8) Where the work set out in an order under subsection (6) has not been completed within the time set out in the order, the recorder may extend the time for completing the work or may cancel the claim or claims on which the work was to have been done and shall, in the case of cancellation, by mail sent not later than the next day after the cancellation, notify the holder of the recorder's action and the reason therefor. R.S.O. 1990, c. M.14, s. 110 (8); 1999, c. 12, Sched. O, s. 39 (4).

Application

(9) This section applies to the manner in which the metal tags have been affixed to the corner posts although the time prescribed for affixing the tags has not expired. R.S.O. 1990, c. M.14, s. 110 (9).

Application of subs. (6), (8) and (9)

(10) Subsections (6), (8) and (9) apply whether there is a dispute under this section or not. 1999, c. 12, Sched. O, s. 39 (5);

Proceedings before recorder**Directions as to conduct of proceedings**

111. (1) The recorder may give directions for the conduct and carrying on of proceedings before him or her, and in so doing the cheapest and simplest methods of determining the questions arising that afford to all interested parties an adequate opportunity of knowing the issues in the proceedings and of presenting material and making representations on their behalf shall be adopted. R.S.O. 1990, c. M.14, s. 111 (1).

Reasons for decision

(2) The recorder shall give reasons for any decision made in proceedings before him or her. R.S.O. 1990, c. M.14, s. 111 (2).

Enforcement of decision

(3) A copy of the final decision of a recorder may be filed with the Superior Court of Justice under section 19 of the *Statutory Powers Procedure Act*, which applies thereto. R.S.O. 1990, c. M.14, s. 111 (3); 2000, c. 26, Sched. M, s. 17.

Application of *Statutory Powers Procedure Act*

(4) Except as provided in subsection (3), the *Statutory Powers Procedure Act* does not apply to proceedings before the recorder. R.S.O. 1990, c. M.14, s. 111 (4).

Appeal to Commissioner

112. (1) A person affected by a decision of or by any act or thing, whether ministerial, administrative or judicial, done, or refused or neglected to be done by a recorder may appeal to the Commissioner, 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. R.S.O. 1990, c. M.14, s. 112 (1); 2009, c. 21, s. 52 (1).

Where public interest affected

(2) Where, in the opinion of the Minister, the public interest is affected by a decision, act or thing mentioned in subsection (1), an officer or employee of the Ministry designated by the Minister for that purpose may,

- (a) be added as a party to an appeal taken under subsection (1); or
 - (b) take an appeal under subsection (1), in which case no fee in respect of the appeal is payable.
- R.S.O. 1990, c. M.14, s. 112 (2).

Appeal

(3) An appeal to the Commissioner shall be by notice of appeal. 1999, c. 12, Sched. O, s. 40; 2009, c. 21, s. 52 (2).

Service and filing of appeal

(4) The appellant shall file the notice of appeal with the Commissioner and serve it on the recorder and all other affected parties within 30 days after the recording of the decision or the doing of the other act or thing that is the subject of the appeal. 1999, c. 12, Sched. O, s. 40.

Extension of time for service

(5) If an appeal has been properly filed but service has not been effected in accordance with subsection (4) despite reasonable efforts to do so and the Commissioner is otherwise satisfied that the case is a proper one for appeal, the Commissioner may extend the time for service and may make such order for substitutional or other service as he or she considers just. 1999, c. 12, Sched. O, s. 40.

Appeal by affected person

(6) The Commissioner may allow a person other than the appellant to appeal the decision, act or thing if the person,

- (a) is affected by the decision, act or thing;
- (b) has not been notified as provided under section 76 or 110;
- (c) has apparently suffered substantial injustice; and
- (d) has not caused undue delay. 1999, c. 12, Sched. O, s. 40.

Service

(7) The notice of appeal shall indicate an address in Ontario at which the appellant may be served with any notice or document relating to the appeal. 1999, c. 12, Sched. O, s. 40.

Sufficient service

(8) A notice or document is sufficiently served on the appellant if it is left with an adult at that address or if it is sent to the appellant at that address. 1999, c. 12, Sched. O, s. 40.

Same

(9) If no address for service is given as required under subsection (7), any notice or document relating to the appeal may be served on the appellant by posting a copy of it. 1999, c. 12, Sched. O, s. 40.

Hearing

113. The Commissioner shall determine,

- (a) an appeal from a recorder, after a hearing by way of a new hearing; and
- (b) a dispute referred to in section 48 or a claim, question, dispute or other matter within his or her jurisdiction after a hearing,

pursuant to an appointment fixing the time and place for the hearing. R.S.O. 1990, c. M.14, s. 113.

Application for appointment for hearing

114. (1) Application to the Commissioner for an appointment for a hearing may be made in writing by any party to the proceeding upon such notice and to such persons as the Commissioner directs. R.S.O. 1990, c. M.14, s. 114 (1); 1997, c. 40, s. 7; 2009, c. 21, s. 53.

Time for hearing

(2) The Commissioner may fix such time for a hearing as will permit the matter to be disposed of as promptly as possible, allowing adequate time to the parties to prepare their cases but, unless all parties consent thereto, the hearing shall be held not less than ten days after service of the appointment for the hearing on the parties. R.S.O. 1990, c. M.14, s. 114 (2).

Place for a hearing

(3) The Commissioner shall select as the place for a hearing such place as he or she considers most convenient for the parties in the district, upper-tier municipality or local municipality or in one of them in which the lands or mining rights affected are situate unless it appears to the Commissioner desirable that the hearing should be in some other municipality or district. 2002, c. 17, Sched. F, Table.

Leave for hearing

(4) In any matter or proceeding, other than an appeal, in any case where leave to take the proceeding is necessary, the Commissioner may give leave upon such terms as to security for costs or otherwise as the Commissioner considers just. R.S.O. 1990, c. M.14, s. 114 (4).

Service of appointment for hearing

115. (1) The Commissioner shall cause a copy of an appointment for a hearing before him to be served upon all parties, which shall, except in the case of an appeal or a dispute under section 48, state briefly the particulars of the right or question in issue or of the dispute. R.S.O. 1990, c. M.14, s. 115 (1).

Hearing may proceed in absence of party

(2) The appointment shall state that if a person has been served and does not attend the hearing, the Commissioner may proceed in that person's absence and that person is not entitled to notice of any further proceedings. R.S.O. 1990, c. M.14, s. 115 (2).

Statutory Powers Procedure Act

(3) Service of the appointment by mail constitutes reasonable notice for the purpose of subsection 6 (1) of the *Statutory Powers Procedure Act*. 1999, c. 12, Sched. O, s. 41.

Powers of Commissioner re proceedings

116. (1) Sections 114 and 115 apply despite the *Statutory Powers Procedure Act* and, subject to that Act, the Commissioner may,

- (a) give directions for having any matter or proceeding heard and decided without unnecessary formality;
- (b) order the filing or serving of statements, particulars, objections or answers, the production of documents and things, under oath or otherwise, and the making of amendments;
- (c) give such other directions respecting the procedure and hearing as he or she considers proper;
- (d) make any appointment, notice or other proceeding returnable forthwith or at such time as he or she considers proper;
- (e) order or allow such substituted or other service as he or she considers proper;
- (f) upon the application of a party to the proceedings, order the examination of any other party before an official examiner appointed under the *Courts of Justice Act*, and
- (g) order any party to the proceedings who intends to present evidence at the hearing to file with the Commissioner and serve on each of the other parties, prior to the appearance of any witness and within such time as the Commissioner directs, a statement indicating the evidence intended to be relied upon. R.S.O. 1990, c. M.14, s. 116 (1).

Taking of evidence

(2) The Commissioner may take or order the evidence of any witness to be taken at any place in or out of Ontario. R.S.O. 1990, c. M.14, s. 116 (2).

Decision of Commissioner

117. Despite the *Statutory Powers Procedure Act*, the Commissioner may hear and dispose of any application not involving the final determination of the matter or proceeding, either on or without notice, at any place he or she considers convenient, and his or her decision upon any such application is final and is not subject to appeal but, where the Commissioner makes his or her decision without notice, he or she may later reconsider and amend such decision. R.S.O. 1990, c. M.14, s. 117.

Expert assistance

118. The Commissioner may obtain the assistance of engineers, surveyors or other scientific persons who may under his or her order view and examine the property in question, and in giving a decision the Commissioner may give such weight to their opinion or report as he or she considers proper. R.S.O. 1990, c. M.14, s. 118.

Commissioner may call for evidence and view property

119. (1) The Commissioner, in addition to hearing the evidence adduced by the parties, may require and receive such other evidence as he or she considers proper, and may view and examine the property in question and give a decision upon such evidence or view and examination, or may appoint a person to make an inspection of the property, and may receive as evidence and act upon the report of the person so appointed. R.S.O. 1990, c. M.14, s. 119 (1).

Statement of view or special knowledge

(2) Where the Commissioner proceeds partly on a view or on any special knowledge or skill possessed by himself or herself, he or she shall put in writing a statement of the same sufficiently full to enable a judgment to be formed of the weight that should be given thereto. R.S.O. 1990, c. M.14, s. 119 (2).

View only

(3) Where the parties consent in writing, the Commissioner may proceed wholly upon a view, and in such case his or her decision is final and is not subject to appeal. R.S.O. 1990, c. M.14, s. 119 (3).

Disclosure of evidence to parties

120. Where the Commissioner receives any opinion, report or evidence under section 118 or 119 in any proceeding before him or her, the opinion, report or evidence shall be disclosed to the parties to the proceeding who, if they so request, shall be afforded an opportunity of cross-examining the person expressing the opinion, making the report or giving the evidence. R.S.O. 1990, c. M.14, s. 120.

Decision on the merits

121. The Commissioner shall give a decision upon the real merits and substantial justice of the case. R.S.O. 1990, c. M.14, s. 121.

Security for costs

122. Where the Commissioner considers the matter or proceeding vexatious or where it is brought by a person residing out of Ontario, the Commissioner may order that such security for costs as he or she considers proper be given and that in default of such security being given within the time limited or in default of speedy prosecution the matter or proceeding be dismissed. R.S.O. 1990, c. M.14, s. 122.

Use of court rooms, etc.

123. Where the hearing is to be held at a place where a court house is situate, the Commissioner has the right to use the court room, and where the hearing is to take place in a municipality in which there is a hall belonging to the municipality, but no court room, the Commissioner has the right to use the hall. R.S.O. 1990, c. M.14, s. 123.

Sheriffs, etc., to assist

124. Sheriffs, deputy sheriffs, constables and other peace officers shall aid, assist and obey the Commissioner in the exercise of the powers conferred on the Commissioner by this Act whenever required to do so and shall upon the certificate of the Commissioner be paid the same fees as for similar services in carrying out the orders of a judge of the Superior Court of Justice. R.S.O. 1990, c. M.14, s. 124; 2000, c. 26, Sched. M, s. 17.

Recording of evidence

125. The evidence taken before the Commissioner shall be recorded and, if required, copies or a transcript thereof shall be furnished upon the same terms as in the Superior Court of Justice. R.S.O. 1990, c. M.14, s. 125; 2000, c. 26, Sched. M, s. 17.

Costs

126. The Commissioner may in his or her discretion award costs to any party, and may direct that such costs be assessed by an assessment officer or may order that a lump sum be paid in lieu of assessed costs. R.S.O. 1990, c. M.14, s. 126.

Scale of costs

127. (1) The costs and disbursements payable upon proceedings before the Commissioner shall be according to the tariff of the Superior Court of Justice. R.S.O. 1990, c. M.14, s. 127 (1); 2000, c. 26, Sched. M, s. 17.

Counsel fees

(2) The Commissioner has the same powers as an assessment officer of the Superior Court of Justice with respect to counsel fees. R.S.O. 1990, c. M.14, s. 127 (2); 2000, c. 26, Sched. M, s. 17.

Witness fees

128. The fee and attendance money to be paid to a witness before the Commissioner or recorder shall be according to the Superior Court of Justice scale. R.S.O. 1990, c. M.14, s. 128; 2000, c. 26, Sched. M, s. 17.

Decision of Commissioner**Form of decision**

129. (1) Except where inapplicable, the decision of the Commissioner shall be in the form of an order or judgment, but need not show upon its face that any proceeding or notice was had or given or that any circumstance existed necessary to give jurisdiction to make the order or judgment. R.S.O. 1990, c. M.14, s. 129 (1).

When order of Commissioner takes effect

(2) Every order or judgment of the Commissioner shall take effect immediately upon its signing, subject to any express provision therein. R.S.O. 1990, c. M.14, s. 129 (2).

Oral reasons

(3) Despite section 17 of the *Statutory Powers Procedure Act*, the reasons for a decision of the Commissioner may be delivered orally. R.S.O. 1990, c. M.14, s. 129 (3).

Order sent to recorder

(4) The Commissioner shall forward a copy of each order or judgment to the recorder who shall amend the records in the Provincial Recording Office as necessary. 1999, c. 12, Sched. O, s. 42 (1).

Notice of amendment to records

(5) As soon as possible after amending the records in accordance with subsection (4), the recorder shall give notice in writing of the amendment of the records to the parties to the hearing before the Commissioner. 1999, c. 12, Sched. O, s. 42 (2).

(6) Repealed: 1994, c. 27, s. 130.

(7) Repealed: 1999, c. 12, Sched. O, s. 42 (3).

Final order or judgment

130. The Commissioner shall send to the parties an order or judgment of the Commissioner that finally disposes of any matter at issue. 1999, c. 12, Sched. O, s. 43.

Certified copy of order or judgment

131. Any party to a proceeding is entitled to a certified copy of any order or judgment. R.S.O. 1990, c. M.14, s. 131; 1997, c. 40, s. 7; 2009, c. 21, s. 54.

Stay of proceedings

132. Where a certified copy of a final decision of a recorder has been filed with the Superior Court of Justice under section 19 of the *Statutory Powers Procedure Act*, the Commissioner or the court may stay proceedings therein if an appeal from the decision is brought until final disposition of the appeal. R.S.O. 1990, c. M.14, s. 132; 2000, c. 26, Sched. M, s. 17.

Appeal to Divisional Court

133. Where not otherwise provided, an appeal lies to the Divisional Court from any decision of the Commissioner, including an order dismissing a matter or proceeding under section 122. R.S.O. 1990, c. M.14, s. 133.

Appeal procedures**Time for appeal**

134. (1) Except in the case of a reference under section 108 or the *Arbitration Act, 1991*, an order or judgment of the Commissioner is final and conclusive unless, where an appeal may be brought, it is brought within 30 days after notice of the order or judgment is sent under section 130. 1999, c. 12, Sched. O, s. 44 (1); 2009, c. 21, s. 55.

Notice of appeal

(2) The appeal shall be brought by filing a notice of appeal with the Divisional Court and the appellant shall send a copy of the notice of appeal to the Commissioner, the recorder and the parties to the hearing before the Commissioner. 1999, c. 12, Sched. O, s. 44 (2).

Transmission of documents

(3) On receiving a copy of the notice of appeal, the Commissioner shall send the order or judgment appealed from to the Divisional Court, along with the exhibits, papers and other documents filed on the hearing before the Commissioner. 1999, c. 12, Sched. O, s. 44 (2).

(4) Repealed: 1999, c. 12, Sched. O, s. 44 (3).

Practice

(5) The practice and procedure on an appeal including the form of notice of appeal, service of the notice of appeal on the parties, and the disposition of costs on an appeal, shall be governed by the rules of court. R.S.O. 1990, c. M.14, s. 134 (5).

Judicial review

135. (1) No application for judicial review and no other proceeding may be brought to call into question,

- (a) any decision of a recorder more than 30 days after the recording of the decision;
- (b) any order or judgment of the Commissioner more than 30 days after notice of the order or judgment is sent under section 130; or
- (c) the validity of anything done by a recorder or any other officer appointed under this Act more than 30 days after it was done. 1999, c. 12, Sched. O, s. 45.

Other proceedings

(1.1) Despite subsection (1), a proceeding may be brought calling into question any of the matters mentioned in subsection (1) more than 30 days after the recording, notice or other action mentioned in that subsection where this Act specifically permits the proceeding to be brought within a greater period of time. 1999, c. 12, Sched. O, s. 45.

No extension of time

(2) Despite anything in the *Judicial Review Procedure Act*, no court may extend any limitation of time fixed in subsection (1). R.S.O. 1990, c. M.14, s. 135 (2).

Defects in form

136. Where the validity of a proceeding before the Commissioner or a recorder is called into question in any court on the ground of any defect of form or substance or failure to comply with this Act or the regulations, although the defect or failure is established, the court shall not, if no substantial wrong or injustice has been thereby done or occasioned, invalidate the proceeding by reason thereof, but shall confirm the proceeding, and, upon such confirmation, the proceeding shall be and be deemed to have been valid and effective from the time when it would otherwise have been effective but for such defect or failure. R.S.O. 1990, c. M.14, s. 136.

Power to extend time

137. Where power is conferred by this Act to extend the time for doing an act or taking a proceeding, unless otherwise expressly provided, the power may be exercised as well after as before the expiration of the time allowed or prescribed for doing the act or taking the proceeding. R.S.O. 1990, c. M.14, s. 137.

Time expiring on a Saturday, etc.

138. Where the time limited for any proceeding or for the doing of anything in an office of a mining recorder or an office of the Commissioner or an office of the Minister or Deputy Minister expires or falls upon a Saturday, Sunday, holiday or any other day on which the relevant office is closed, the time so limited extends to and the thing may be done on the day next following that is not a Saturday, Sunday, holiday or other day on which the relevant office is closed. R.S.O. 1990, c. M.14, s. 138; 1996, c. 1, Sched. O, s. 25.

PART VII REHABILITATION OF MINING LANDS

Definitions and application of Part**Definitions**

139. (1) In this Part,

“advanced exploration” means the excavation of an exploratory shaft, adit or decline, the extraction of prescribed material in excess of the prescribed quantity, whether the extraction involves the disturbance or movement of prescribed material located above or below the surface of the ground, the installation of a mill for test purposes or any other prescribed work; (“exploration avancée”)

“adverse effect” means,

- (a) injury or damage to property,
- (b) harm or material discomfort to any person,
- (c) a detrimental effect on any person’s health,
- (d) impairment of any person’s safety,
- (e) a severe detrimental effect on the environment; (“conséquence préjudiciable”)

“closed out” means that the final stage of closure has been reached and that all the requirements of a closure plan have been complied with; (“fermé”)

“closure” means the temporary suspension, inactivity or close out of advanced exploration, mining or mine production; (“fermeture”)

“closure plan” means a plan to rehabilitate a site or mine hazard that has been prepared in the prescribed manner and filed in accordance with this Act and that includes provision in the prescribed manner of financial assurance to the Crown for the performance of the closure plan requirements; (“plan de fermeture”)

“Director” means a Director of Mine Rehabilitation appointed under subsection 153 (2); (“directeur”)

“inactivity” means the indefinite suspension of a project in accordance with a filed closure plan where protective measures are in place but the site is not being continuously monitored by the proponent; (“inactivité”)

“mine production” means mining that is producing any mineral or mineral-bearing substance for immediate sale or stockpiling for future sale, and includes the development of a mine for such purposes; (“production minière”)

“progressive rehabilitation” means rehabilitation done continually and sequentially during the entire period that a project or mine hazard exists; (“réhabilitation progressive”)

“project” means a mine or the activity of advanced exploration, mining or mine production; (“projet”)

“proponent” means the holder of an unpatented mining claim or licence of occupation or an owner as defined in section 1; (“promoteur”)

“protective measures” means steps taken in accordance with the prescribed standards to protect public health and safety, property and the environment; (“mesures de protection”)

“rehabilitate” means measures, including protective measures, taken in accordance with the prescribed standards to treat a site or mine hazard so that the use or condition of the site,

- (a) is restored to its former use or condition, or
- (b) is made suitable for a use that the Director sees fit; (“réhabiliter”)

“site” means the land or lands on which a project or mine hazard is located; (“lieu”)

“temporary suspension” means the planned or unplanned suspension of a project in accordance with a filed closure plan where protective measures are in place and the site is being monitored continuously by the proponent (“suspension temporaire”) 1996, c. 1, Sched. O, s. 26.

Application of Part

(2) Without restricting the scope of this Part, this Part applies to projects including

- (a) the underground mining of minerals, excluding natural gas; petroleum and salt by brining method;
- (b) the surface mining of metallic minerals;
- (c) the surface mining of non-metallic minerals, excluding natural gas, petroleum and aggregate as defined in the *Aggregate Resources Act*, on land that is not Crown land;
- (d) advanced exploration on mining lands. 1996, c. 1, Sched. O, s. 26.

PROGRESSIVE REHABILITATION

Progressive rehabilitation

139.1 (1) A proponent shall take all reasonable steps to progressively rehabilitate a site whether or not closure has commenced or a closure plan has been filed. 1996, c. 1, Sched. O, s. 26.

Report required

(2) A proponent who undertakes progressive rehabilitation of a site without being subject to a closure plan shall complete the rehabilitation work to the appropriate prescribed standard and submit to the Director a report prepared in the prescribed form within 60 days of the completion of the work. 1996, c. 1, Sched. O, s. 26.

VOLUNTARY REHABILITATION

Approval to rehabilitate

139.2 (1) Any person may apply to the Director for approval to rehabilitate a mine hazard on Crown land or on any other prescribed land. 2007, c. 7, Sched. 22, s. 1.

Application

- (2) An application under subsection (1) must be made in the prescribed manner and must contain,
- (a) a description of the land on which the mine hazard is located;
 - (b) a rehabilitation plan setting out how the rehabilitation will meet the prescribed standards. 2007, c. 7, Sched. 22, s. 1.

Determination of application

(3) The Director shall review the application and shall determine whether to grant written approval for the rehabilitation of the mine hazard or to reject the application. 2007, c. 7, Sched. 22, s. 1.

Conditions

(4) The Director may grant approval under subsection (3) subject to any conditions, including conditions that require the applicant to modify the rehabilitation plan. 2007, c. 7, Sched. 22, s. 1.

Modifying rehabilitation plan

(5) A person who receives approval under subsection (3) may apply to the Director to modify the rehabilitation plan and if the Director permits the modification, the rehabilitation plan shall be modified accordingly. 2007, c. 7, Sched. 22, s. 1.

Rehabilitation plan

(6) Nothing in subsection (3) requires a person to rehabilitate the mine hazard, but if the person proceeds with the rehabilitation, the person shall rehabilitate the mine hazard in accordance with the rehabilitation plan. 2007, c. 7, Sched. 22, s. 1.

No orders

(7) On and after the day that a person begins rehabilitation of a mine hazard pursuant to an approval granted under subsection (3),

- (a) no order or direction under section 7, 8, 18, 43 or 157.1 of the *Environmental Protection Act* or section 16.1, 16.2, 31, 32 or 61 of the *Ontario Water Resources Act* shall be issued to the person in respect of the land described in the rehabilitation plan; and
- (b) no order shall be issued under section 97 of the *Environmental Protection Act* in respect of a pollutant that spilled on, in or under the lands described in the rehabilitation plan, unless the person conducting the rehabilitation caused or permitted the spill. 2007, c. 7, Sched. 22, s. 1.

Orders before rehabilitation

(8) Nothing in subsection (7) affects the validity of an order made before the person begins rehabilitation. 2007, c. 7, Sched. 22, s. 1.

Acts or omissions unrelated to rehabilitation

(9) Despite subsection (7), the orders and directions mentioned in that subsection may be issued to the person in respect of the land described in the rehabilitation plan if the order or direction is in respect of an act or omission of the person that is unrelated to the rehabilitation. 2007, c. 7, Sched. 22, s. 1.

Definitions

(10) In this section,

“pollutant” has the same meaning as in subsection 91 (1) of *Environmental Protection Act*,
 (“polluant”)

“spill” has the same meaning as in subsection 91 (1) of *Environmental Protection Act*.
 (“déversement”) 2007, c. 7, Sched. 22, s. 1.

Rehabilitation not in accordance with plan

139.3 (1) If the Director has reasonable grounds for determining that a person who has begun rehabilitation pursuant to an approval under subsection 139.2 (3) is not conducting the rehabilitation of the mine hazard in accordance with the rehabilitation plan, the Director shall notify the person of the determination and the reasons for it. 2007, c. 7, Sched. 22, s. 1.

Time for response

(2) The notice referred to in subsection (1) shall specify a day by which a person may respond under subsection (3) or (4). 2007, c. 7, Sched. 22, s. 1.

Request for reconsideration

(3) A person who receives a notice under subsection (1) may request that the Director reconsider the determination and may make written submissions or submit materials in support of the request, and after considering the request the Director,

- (a) shall confirm, modify or revoke the determination; and
- (b) may modify the rehabilitation plan. 2007, c. 7, Sched. 22, s. 1.

Application to modify the plan

(4) In addition to making a request under subsection (3), a person who receives a notice under subsection (1) may apply to the Director to modify the rehabilitation plan, and if the Director permits the modification, the rehabilitation plan shall be modified accordingly. 2007, c. 7, Sched. 22, s. 1.

Order to rehabilitate

(5) If a person who receives a notice under subsection (1) does not respond under subsection (3) or (4) by the day specified in the notice, the Director may issue an order to the person to rehabilitate the mine hazard in accordance with the rehabilitation plan. 2007, c. 7, Sched. 22, s. 1.

Same

(6) An order under subsection (5) shall specify a day by which the rehabilitation must be completed. 2007, c. 7, Sched. 22, s. 1.

No appeal

139.4 Any decision made by the Director under section 139.2 or 139.3 is final and is not subject to appeal. 2007, c. 7, Sched. 22, s. 1.

Immunity

139.5 Despite subsection 4 (4), no action or other proceeding shall be brought against the Crown, the Minister or an employee or agent of the Crown for any act or omission arising out of or in relation to the review or approval of a rehabilitation plan under section 139.2 or any modification to the plan. 2007, c. 7, Sched. 22, s. 1.

ADVANCED EXPLORATION AND MINE PRODUCTION

Advanced exploration

140. (1) No proponent other than a proponent who is subject to a closure plan shall commence or recommence advanced exploration without,

- (a) giving notice to the Director in the prescribed form and manner,
- (b) giving public notice under subsection (2) at the prescribed time and in the prescribed form and manner, if required by the Director,
- (c) filing a certified closure plan with the Director as required under subsection (3); and
- (d) receiving a written acknowledgment of receipt for the certified closure plan from the Director. 1996, c. 1, Sched. O, s. 26.

Public notice

(2) Within 45 days after the receipt of 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 form and manner. 1996, c. 1, Sched. O, s. 26.

Closure plan

(3) The proponent of an advanced exploration project shall file with the Director a closure plan certified in the prescribed form and 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. 1996, c. 1, Sched. O, s. 26.

Acknowledgment of receipt

(4) Within 45 days after the filing of the certified closure plan, the Director shall,

- (a) acknowledge receipt, in writing, of the closure plan to the proponent; or

- (b) return the closure plan for refileing if it does not sufficiently address all of the prescribed reporting requirements for a certified closure plan. 1996, c. 1, Sched. O, s. 26.

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. 1996, c. 1, Sched. O, s. 26.

Mine production

141. (1) No proponent other than a proponent who is subject to a closure plan shall commence or recommence mine production without,

- (a) giving notice to the Director in the prescribed form and manner;
- (b) giving public notice at the prescribed time and in the prescribed form and manner;
- (c) filing a certified closure plan with the Director as required under subsection (2); and
- (d) receiving a written acknowledgment of receipt for the certified closure plan from the Director. 1996, c. 1, Sched. O, s. 26.

Closure plan

(2) After public notice has been given under clause (1) (b), the proponent shall file with the Director a closure plan certified in the prescribed form and manner certifying that the plan complies with the prescribed requirements. 1996, c. 1, Sched. O, s. 26.

Acknowledgment of receipt

(3) Within 45 days after the filing of the certified closure plan, the Director shall,

- (a) acknowledge receipt, in writing, of the closure plan to the proponent; or
- (b) return the closure plan for refileing if it does not sufficiently address all of the prescribed reporting requirements for a certified closure plan. 1996, c. 1, Sched. O, s. 26.

Effect of acknowledgment

(4) The certified closure plan of a proponent who receives a written acknowledgement of receipt under clause (3) (a) is considered filed as of the date indicated on the written acknowledgment of receipt. 1996, c. 1, Sched. O, s. 26.

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. 2009, c. 21, s. 58.

CLOSURE PLANS

Compliance with certified closure plan

143. (1) A proponent who has filed a certified closure plan under this Part shall comply with the closure plan. 1996, c. 1, Sched. O, s. 26.

Amendments

(2) The proponent may file, or the Director may at any time, by order, require that the proponent file, within the time specified in the order, amendments to the certified closure plan that have been certified in the prescribed form and manner, including amendments respecting an increase in the amount of financial assurance. 1996, c. 1, Sched. O, s. 26.

Required changes

(3) The Director may at any time, by order, require changes to a filed closure plan or to amendments to a closure plan filed under subsection (2). 1996, c. 1, Sched. O, s. 26.

Same, mine hazard under subs. 147 (1)

(3.1) If a change ordered under subsection (3) is to a closure plan filed with respect to a mine hazard under subsection 147 (1) or to amendments to such a closure plan and the order requires that a new schedule for completing the rehabilitation of the mine hazard be filed, the person affected by the order shall file the new schedule immediately. 2002, c. 18, Sched. M, s. 7.

Exception

(3.2) An order for a change to a closure plan filed with respect to a mine hazard under subsection 147 (1) or to amendments to such a closure plan that requires that a new schedule for completing the rehabilitation of the mine hazard be filed may not,

- (a) despite subsection (4), be referred to an independent third party under that subsection; or
- (b) despite clause 152 (1) (b), be appealed under that clause. 2002, c. 18, Sched. M, s. 7.

Same

(3.3) If an order under subsection (3.2) requiring the filing of a new schedule for completing the rehabilitation of the mine hazard orders other changes as well, those other changes may be referred to an independent third party under subsection (4) or be appealed under clause 152 (1) (b). 2002, c. 18, Sched. M, s. 7.

Referral to independent third party

(4) If changes are required under subsection (3), in addition to appealing any of them to the Commissioner under clause 152 (1) (b), the proponent may, within 30 days after receiving the order requiring changes, notify the Director of the desire to have any of them that are not appealed to the Commissioner referred for a decision to an independent third party agreed upon by the proponent and the Director. 1996, c. 1, Sched. O, s. 26.

No agreement on third party

(5) If the proponent and the Director are unable to agree on an independent third party within 45 days after the Director receives the notice of referral under subsection (4), the proponent who wishes to dispute the changes may appeal to the Commissioner any of the changes that the proponent desired to have referred, despite the 30 day period provided for appeal in subsection 152 (2), within 75 days after sending the notice of referral, failing which the changes that are not appealed shall be deemed to be accepted by the proponent. 1996, c. 1, Sched. O, s. 26.

Costs

(6) All costs incurred by an independent third party in connection with any work performed pursuant to a referral shall be borne by the proponent. 1996, c. 1, Sched. O, s. 26.

Decision final

(7) The decision of an independent third party is final and binds the proponent and the Director, and the closure plan shall be deemed to have been amended accordingly. 1996, c. 1, Sched. O, s. 26.

Effect of filing of amendments

(8) Upon receipt of the Director's written notice that amendments have been filed, the project shall operate subject to the certified closure plan as amended. 1996, c. 1, Sched. O, s. 26.

Notices required**Notice closure has begun**

144. (1) A proponent shall forthwith notify the Director in the prescribed form and manner of the commencement of closure and of any change in the stage of closure reached. 1996, c. 1, Sched. O, s. 26.

Notice of material changes

(2) A proponent shall forthwith notify the Director in the prescribed form and manner if,

- (a) an expansion or alteration of the project is planned;
- (b) the ownership, occupancy, management or control of the project has changed; or
- (c) any other material change has occurred that could reasonably be expected to have a material effect on the adequacy of the closure plan. 1996, c. 1, Sched. O, s. 26.

FINANCIAL ASSURANCE**Form and amount of financial assurance**

145. (1) The financial assurance required as part of a closure plan shall be in one of the following forms and shall be in the amount specified in the closure plan filed with the Director or any amendment to it:

1. Cash.
2. A letter of credit from a bank named in Schedule I to the *Bank Act* (Canada).
3. A bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance.
4. A mining reclamation trust as defined in the *Income Tax Act* (Canada).
5. Compliance with a corporate financial test in the prescribed manner.
6. Any other form of security or any other guarantee or protection, including a pledge of assets, a sinking fund or royalties per tonne, that is acceptable to the Director. 1996, c. 1, Sched. O, s. 26; 1997, c. 19, s. 36.

Director's order

(2) If the Director has reasonable and probable grounds for believing that a rehabilitation measure required by a filed closure plan in respect of which financial assurance was given has not been or will not be carried out in accordance with the plan, he or she may, by order, provide for the performance of the rehabilitation measure in the manner set out in subsection (5). 1996, c. 1, Sched. O, s. 26.

Notice

(3) The Director shall give the proponent written notice of his or her intention to issue the order referred to in subsection (2) at least 15 days prior to the date the order is to be issued. 1996, c. 1, Sched. O, s. 26.

Parties affected

(4) Both the notice and the order referred to in this section shall be directed,

- (a) to the proponent who filed the closure plan or to their successor; and
- (b) to any person who, to the Director's knowledge, provided the financial assurance for or on behalf of the proponent or to that person's successor or assignee. 1996, c. 1, Sched. O, s. 26.

Realization of security

(5) Upon the issuance of an order by the Director under subsection (2), the Crown may use any cash, realize any letter of credit or bond or enforce any other security, guarantee or protection provided or obtained as financial assurance for the performance of the rehabilitation measures and may carry out those measures, or appoint an agent to do so, as the Director considers necessary. 1996, c. 1, Sched. O, s. 26.

Change of financial assurance

(6) If the financial assurance provided under subsection (1) is in a form other than cash, a letter of credit, a bond or a mining reclamation trust or if the proponent fails to comply in the prescribed manner with a corporate financial test, the Director may require, in the prescribed manner, that the proponent forthwith provide cash, a letter of credit, a bond or other security, guarantee or protection acceptable to the Director or that the proponent make provision for a mining reclamation trust. 1996, c. 1, Sched. O, s. 26.

Application for reduction in financial assurance

(7) A proponent may apply to the Director for a reduction of the required financial assurance to an amount consistent with the financial requirements of the rehabilitation measures left to be completed if,

- (a) rehabilitation work has been performed in accordance with a filed closure plan; or
- (b) a reduction in the required financial assurance is justified in a notice submitted under subsection 144 (2). 1996, c. 1, Sched. O, s. 26.

Special purpose account

(8) The amount of any cash provided as financial assurance under subsection (1) shall be paid into a special purpose account. 1996, c. 1, Sched. O, s. 26.

Payments out of account

(9) The cost of any rehabilitation measures performed by the Crown or an agent of the Crown under this Part with respect to a filed closure plan and the amount of any reduction paid in cash under subsection (7) shall be paid by the Minister of Finance out of the special purpose account. 1996, c. 1, Sched. O, s. 26.

Confidentiality

(10) The Director or any person who works for the Director's office shall preserve confidentiality with respect to all financial and commercial information relating to the establishment of a proponent's financial assurance. 1996, c. 1, Sched. O, s. 26.

F.O.I. Act

(11) Subsection (10) prevails over the *Freedom of Information and Protection of Privacy Act*. 1996, c. 1, Sched. O, s. 26.

146. Repealed: 2009, c. 21, s. 59.

MINE HAZARDS**Mine hazards, closure plan**

147. (1) The Director may, in writing, order any proponent of any lands on which a mine hazard exists or any prior holder of an unpatented mining claim on any such lands, other than a current or prior holder of an unpatented mining claim with respect to a mine hazard that was created by others prior to the staking of the claim and that has not been materially disturbed or affected by the current or prior holder, as the case may be, since the staking of the claim, to file within the time specified in the order a certified

closure plan to rehabilitate the mine hazard, and the proponent or prior holder shall file the certified closure plan within that time or any extension of time granted by the Director. 1996, c. 1, Sched. O, s. 26.

Crown intervention

(2) If the proponent or prior holder of an unpatented mining claim does not comply with an order of the Director under subsection (1), the Director may, after having given notice to the proponent or prior holder in the prescribed time and manner, have the Crown or an agent of the Crown enter the lands to rehabilitate the mine hazard. 1996, c. 1, Sched. O, s. 26.

Recommendation that lease be voided

(3) If the proponent does not comply with the Director's order under subsection (1) and is a lessee of the lands on which the mine hazard exists, the Director may recommend to the Minister that the lease be declared void on condition that the Director indicate in the notice referred to in subsection (2) the intention to make such a recommendation. 1996, c. 1, Sched. O, s. 26.

Declaration that lease void

(4) On the recommendation of the Minister, the Lieutenant Governor in Council may declare the lease void, in which case subsections 81 (11), (12) and (13) apply with necessary modifications. 1996, c. 1, Sched. O, s. 26.

Offence

(5) Failure to comply with an order under subsection (1) constitutes an offence that continues for each day during which the failure continues. 1996, c. 1, Sched. O, s. 26.

EMERGENCY POWERS

Emergencies

Duty to act

148. (1) Subject to subsection (9), the proponent of a mine hazard that causes or is likely to cause an immediate and dangerous adverse effect shall forthwith do everything practicable to prevent, eliminate and ameliorate it. 1996, c. 1, Sched. O, s. 26.

Order to rehabilitate site

(2) If the Minister has reasonable grounds for believing that a mine hazard is causing or is likely to cause an immediate and dangerous adverse effect, the Minister may order the proponent to rehabilitate the mine hazard upon such terms as he or she may specify. 1996, c. 1, Sched. O, s. 26.

Minister's directions

(3) If the Minister has reasonable grounds for believing that a mine hazard is causing or is likely to cause an immediate and dangerous adverse effect, the Minister may, in the circumstances specified in subsection (4), give directions in accordance with subsection (5) to the employees and agents of the Ministry. 1996, c. 1, Sched. O, s. 26.

Where Minister may give directions

(4) The Minister may give directions in accordance with subsection (5) if he or she is of the opinion that it is in the public interest to do so and,

- (a) he or she is of the opinion that the proponent will not carry out promptly the work required to prevent, eliminate and ameliorate the adverse effect;
- (b) he or she is of the opinion that the proponent cannot be readily identified or located and that as a result the duty imposed by subsection (1) will not be carried out promptly; or

- (c) the proponent of the mine hazard requests the Minister's assistance in order to carry out the duty imposed by subsection (1). 1996, c. 1, Sched. O, s. 26.

Contents of directions

(5) Under this section, the Minister may direct the employees and agents of the Ministry to do everything practicable, or to do such work and take such action as may be specified in the directions, in respect of the prevention, elimination and amelioration of the adverse effect. 1996, c. 1, Sched. O, s. 26.

Employees and agents

(6) No Act, regulation, by-law, order, permit, closure plan, approval or licence bars the employees and agents of the Ministry from acting in accordance with the directions given by the Minister under this section. 1996, c. 1, Sched. O, s. 26.

Hearing

(7) The Minister need not hold, or afford to any person an opportunity for, a hearing before giving directions under this section. 1996, c. 1, Sched. O, s. 26.

Continuing offence

(8) Failure to comply with an order under subsection (2) constitutes an offence that continues for each day during which the failure continues. 1996, c. 1, Sched. O, s. 26.

Where section does not apply

(9) Nothing in this section applies to a holder of an unpatented mining claim with respect to a mine hazard that was created by others prior to the staking of the claim and that has not been materially disturbed or affected by the holder of the unpatented mining claim since the staking of the claim. 1996, c. 1, Sched. O, s. 26.

SURRENDER

Refusal of voluntary surrender

149. The Minister may refuse to accept a voluntary surrender of mining lands or mining rights under section 183 if he or she has reasonable grounds for believing that a proponent has failed to rehabilitate the site in accordance with a filed closure plan or, if no closure plan has been filed, in accordance with the prescribed standards for site rehabilitation. 1996, c. 1, Sched. O, s. 26.

Surrender by agreement

149.1 (1) The Minister may accept a surrender of mining lands from a proponent on the conditions specified by the Minister if,

- (a) the project relating to the mining lands is closed out; or
- (b) the project relating to the mining lands is not closed out only because it is subject to long-term maintenance and monitoring by the proponent. 2001, c. 9, Sched. L, s. 5.

Special purpose account

(2) Money received from the proponent of a project as part of an agreement for the surrender of mining lands shall be placed in a special purpose account for use in the rehabilitation of mining lands generally. 1996, c. 1, Sched. O, s. 26.

Payments out of account

(3) The cost of any work performed by the Crown or an agent of the Crown under this section shall be paid by the Minister of Finance out of the special purpose account. 1996, c. 1, Sched. O, s. 26.

No liability

(4) Despite subsections 7 (1) and 8 (1) and sections 17, 18, 43 and 44 of the *Environmental Protection Act*, a proponent who surrenders mining lands under this section is not liable under those provisions. 1996, c. 1, Sched. O, s. 26.

150. Repealed: 2009, c. 21, s. 60.

COST OF WORK COMPLETED**Where cost debt due to Crown**

151. (1) If the Crown or an agent of the Crown carries out rehabilitation measures under subsection 147 (2) or does any work under subsection 148 (5), the resulting cost to the Crown is a debt due to the Crown by the proponent that,

- (a) forms a lien and a charge on the site in favour of the Crown, realizable by action for sale of any part or all of the land or lands subject to it, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and
- (b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected. 1996, c. 1, Sched. O, s. 28.

Same

(2) The cost to the Crown of carrying out the rehabilitation measures under clause 153.2 (4) (b) is a debt due to the Crown by the proponent recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected. 1996, c. 1, Sched. O, s. 28.

Same

(3) If the Crown or an agent of the Crown carries out rehabilitation measures under subsection 145 (5) and the financial assurance held by the Crown is insufficient to cover the total cost incurred by the Crown in completing the rehabilitation measures, the extra cost not covered by the financial assurance is a debt due to the Crown by the proponent that,

- (a) forms a lien and a charge on the site in favour of the Crown realizable by action for sale of any part or all of the land or lands comprising the site subject to the lien, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and
- (b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected. 1996, c. 1, Sched. O, s. 28.

Registration as charge

(4) Notice of the debt described in subsections (1) and (3) may be registered as a charge in the proper land registry office and no transfer of or other dealing with the site shall take place until the debt is paid and the notice is cancelled. 1996, c. 1, Sched. O, s. 28; 2009, c. 21, s. 61 (1).

Cessation of charge

(5) The Director may have a cessation of charge registered in the proper land registry office on such terms as he or she considers acceptable, including payment, and on such a cessation of charge being registered, the lien and charge in subsections (1) and (3) is void and of no effect. 1996, c. 1, Sched. O, s. 28; 2009, c. 21, s. 61 (2).

HEARINGS AND APPEALS

Appeals**Appeal to Commissioner**

152. (1) A proponent may appeal to the Commissioner,

(a) an order requiring the filing of a certified closure plan under subsection 147 (1);

(b) an order requiring changes to a certified closure plan or to amendments to a certified closure plan under subsection 143 (3); or

(c) an order for the performance of rehabilitation measures under subsection 145 (2).

(d) Repealed: 2009, c. 21, s. 62.

1996, c. 1, Sched. O, s. 28; 2009, c. 21, s. 62.

Notice

(2) The proponent may appeal an order or action under subsection (1) if, within 30 days after receiving the Director's order or being informed of the Director's action, the proponent serves the Director with the prescribed notice requiring a hearing before the Commissioner. 1996, c. 1, Sched. O, s. 28.

Hearing

(3) The Director shall refer the matter to the Commissioner for a hearing within 30 days after being served. 1996, c. 1, Sched. O, s. 28.

Automatic stay unless removed

(4) Upon service on the Director of the notice under subsection (2), the Director's order is stayed until the Commissioner disposes of the appeal unless the Director applies, upon notice, for a removal of the stay. 1996, c. 1, Sched. O, s. 28.

Grounds for removal of stay

(5) The Commissioner may remove the stay if the matter being appealed relates to changes to a closure plan or to amendments to a closure plan, or to the performance of rehabilitation measures. 1996, c. 1, Sched. O, s. 28.

Refusal by Commissioner

(6) Despite subsection (4), the Commissioner shall refuse to hear an appeal of an order for changes to a closure plan or to amendments to a closure plan that require an increased amount of financial assurance unless the proponent has provided the Director, along with the notice of appeal, with the increased amount of financial assurance required, which amount shall be held by the Crown pending the outcome of the appeal. 1996, c. 1, Sched. O, s. 28.

Waiver

(7) The Commissioner upon application with notice by the proponent may waive the requirement under subsection (6) if the Commissioner considers it just to do so. 1996, c. 1, Sched. O, s. 28.

Power of Commissioner on appeal

(8) Upon hearing the proponent's appeal, the Commissioner may confirm, alter or revoke the Director's order or action that is the subject-matter of the appeal. 1996, c. 1, Sched. O, s. 28.

Procedure

(9) Sections 114, 115, 116 and 118 to 131 of this Act apply to appeals under this section with necessary modifications. 1996, c. 1, Sched. O, s. 28.

Appeal to Divisional Court

(10) An appeal lies to the Divisional Court on a question of law from any decision of the Commissioner under subsection (8) in accordance with the rules of court. 1996, c. 1, Sched. O, s. 28.

Appeal to Minister

(11) A party to a hearing before the Commissioner may, within 30 days after receipt of the Commissioner's decision or within 30 days after final disposition of an appeal, if any, under subsection (10), appeal in writing to the Minister on any matter other than a question of law, and the Minister shall confirm, alter or revoke the decision of the Commissioner as to the matter in appeal as the Minister considers to be in the public interest. 1996, c. 1, Sched. O, s. 28.

Parties

(12) The person requiring the hearing, the Director and any other person specified by the Commissioner are parties to the hearing. 1996, c. 1, Sched. O, s. 28.

MISCELLANEOUS

Officers and directors**Mineral development officers**

153. (1) The Minister may appoint as mineral development officers such employees of the Ministry as the Minister considers necessary to co-ordinate and expedite communication between the mining industry, the public and affected ministries and agencies of the Government of Ontario. 1996, c. 1, Sched. O, s. 28.

Directors

(2) The Minister may appoint one or more officers or employees of the Ministry as Directors of Mine Rehabilitation. 1996, c. 1, Sched. O, s. 28.

Immunity

153.1 Despite subsection 4 (4), no action or other proceeding shall be brought against the Crown, the Minister or an employee or agent of the Crown for any act or omission arising out of or in relation to the filing, approval, review or acceptance of a closure plan or amendments to a closure plan under this Part or its predecessor. 1996, c. 1, Sched. O, s. 28.

Director's powers regarding transfers, etc.

153.2 (1) If a proponent is subject to a court order or an order of the Director, the Commissioner or the Minister under this Part, the Director may,

- (a) register the order against the land or lands comprising the site in the proper land registry office prohibiting any person with an interest in the land from dealing with it without the Director's consent; and
- (b) may apply to a judge of the Superior Court of Justice for an injunction preventing the sale of the land or lands comprising the site, including any buildings, structures, machinery, chattels or personal property on the site. 1996, c. 1, Sched. O, s. 28; 2000, c. 26, Sched. M, s. 17.

Transfer of lease, licence.

(2) If the proponent who is subject to an order referred to in subsection (1) is a lessee or the holder of a licence of occupation, the Director may recommend that the Minister not consent to the transfer of the lease or licence. 1996, c. 1, Sched. O, s. 28.

No abandonment of mining claim

(3) Despite section 70, if the proponent is the holder of a mining claim on which a mine hazard has been created by the proponent or a mine hazard created by others prior to the staking of the claim has been materially disturbed or affected by the proponent after the staking of the claim, and the Director has reasonable grounds for believing that the proponent has failed to rehabilitate such a mine hazard in accordance with a closure plan or, where no closure plan has been filed, with the prescribed standards for rehabilitation, the Director may order the proponent to comply with the closure plan or to rehabilitate such a mine hazard in accordance with the prescribed standards, as applicable, and the proponent shall not abandon the mining claim. 1996, c. 1, Sched. O, s. 28.

Realization of security

- (4) If a proponent fails to comply with an order referred to in subsection (3), the Director may,
- (a) realize on the financial assurance under section 145 if the proponent is subject to a closure plan;
 - (b) have the Crown or an agent of the Crown carry out rehabilitation measures in accordance with the prescribed standards if the proponent is not subject to a closure plan. 1996, c. 1, Sched. O, s. 28.

Continuing offence

(5) Failure to comply with an order of the Director, Commissioner or Minister constitutes an offence that continues for each day during which the failure continues. 1996, c. 1, Sched. O, s. 28.

No assignment of closure plan

(6) A closure plan filed under this Part is binding on the heirs, assigns and successors of the proponent who filed it and may not be assigned without the Director's consent. 1996, c. 1, Sched. O, s. 28.

Liability of lessee, patentee concerning mine hazards

153.3 (1) A lessee or patentee of mining rights is, unless a contrary intention is shown, liable in respect of the rehabilitation under this Part of all mine hazards on, in or under the lands, regardless of when and by whom the mine hazards were created. 1996, c. 1, Sched. O, s. 28.

When lease expires

- (2) This Part continues to apply with respect to a proponent who is a lessee until the earlier of,
- (a) the day that is two years after the expiry of the lease; and
 - (b) the date of re-opening or other disposition of the land under this Act. 1996, c. 1, Sched. O, s. 28.

Method of service

153.4 (1) If, under this Part, a notice must be given or an order served, they are sufficiently given or served if they are,

- (a) delivered personally;
- (b) sent by mail;
- (c) sent by courier;
- (d) sent by facsimile transmission if the original is sent within 15 days of the date on which the facsimile transmission was sent; or

- (e) given or served in the prescribed manner. 1996, c. 1, Sched. O, s. 28; 1999, c. 12, Sched. O, s. 49 (1).

Deemed service

(2) Delivery or service by mail or courier shall be deemed to be made on the fifth day after the day of mailing unless the intended recipient establishes that, acting in good faith, they did not receive the notice or order until a later date for reasons beyond their control. 1996, c. 1, Sched. O, s. 28; 1999, c. 12, Sched. O, s. 49 (2).

Where delivery or service made by Ministry

(3) A notice to be given or an order to be served by the Ministry shall be addressed to the intended recipient at the recipient's last address for service on the Ministry's records except if facsimile transmission is chosen, in which case the notice or order must be successfully sent to the recipient's last known facsimile telephone number on the Ministry's records. 1996, c. 1, Sched. O, s. 28.

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. 2009, c. 21, s. 63.

Note: The following transitional provisions, enacted as section 39 of Schedule O to the *Savings and Restructuring Act, 1996*, were proclaimed into force on June 30, 2000.

Transition, existing projects

39. (1) A closure plan accepted by the Director before June 30, 2000 under Part VII of the Act, as it read immediately before that day, shall be deemed to have been filed as a certified closure plan under Part VII of the Act, as amended by Schedule O of the *Savings and Restructuring Act, 1996*. 2000, c. 26, Sched. M, s. 18 (1).

Same

(2) If, before June 30, 2000, a proponent submitted a proposed closure plan to the Director under Part VII of the Act as it read immediately before that day and if, before the later of April 1, 1996 and the day this section comes into force,

- (a) the proponent's proposal with respect to the form and amount of the financial assurance to be provided under the closure plan has been accepted by the Director, the proposed closure plan shall be deemed to have been filed as a certified closure plan under Part VII of the Act, as amended by Schedule O of the *Savings and Restructuring Act, 1996*;
- (b) the proponent's proposal with respect to the form and amount of the financial assurance to be provided under the closure plan has not been accepted by the Director, the proponent shall file a certified closure plan under Part VII of the Act, as amended by Schedule O of the *Savings and Restructuring Act, 1996*. 1996, c. 1, Sched. O, s. 39 (2); 2000, c. 26, Sched. M, s. 18 (2).

Same

(2.1) Despite Part VII of the Act, as it read immediately before June 30, 2000, if, under clause

(2) (a), the Director accepts the proponent's proposal with respect to the form and amount of the financial assurance, the proponent shall, within 90 days of June 30, 2000,

- (a) deliver the financial assurance to the Director; or

- (b) file with the Director a certified amendment of compliance with the corporate financial test mentioned in paragraph 5 of subsection 145 (1) of the Act, as re-enacted by Schedule O of the *Savings and Restructuring Act, 1996*. 2000, c. 26, Sched. M, s. 18 (3).

Same

(3) If, before June 30, 2000, a proponent has been notified of the date by which the proponent must submit a proposed closure plan under subsection 147 (3) of the Act as it read immediately before the day this section comes into force, the proponent shall, on or before the date for submission indicated in the notice, file a certified closure plan with the Director under Part VII of the Act, as amended by Schedule O of the *Savings and Restructuring Act, 1996*. 1996, c. 1, Sched. O, s. 39 (3).

See: 1996, c. 1, Sched. O, ss. 39, 40 (2); 2000, c. 26, Sched. M, s. 18.

**PART VIII
ROYALTY ON DIAMONDS**

Interpretation

154. (1) In this Part and in section 167.1,

“diamond mine” means a mine at which diamonds are produced as part of the output of the mine; (“mine de diamants”)

“fiscal year” means fiscal period as defined in section 249.1 of the *Income Tax Act* (Canada); (“exercice”)

“grant from the Crown” includes a patent, lease, licence of occupation, permit or any other form of grant from the Crown; (“concession de la Couronne”)

“net value of the output” means, in relation to a diamond mine, the amount determined in accordance with the regulations; (“valeur nette de la production”)

“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”)

“representative of an operator” includes the president, manager, secretary and any other officer, director, agent or representative of an operator. (“représentant d’un exploitant”) 2007, c. 7, Sched. 22, s. 2; 2009, c. 21, s. 64.

Output

(2) A diamond is considered to be produced as part of the output of a diamond mine if the conditions set out in the regulations are met. 2007, c. 7, Sched. 22, s. 2.

Royalty payable on diamonds

154.1 (1) Every operator of a diamond mine shall, for each fiscal year of the operator, pay to the Crown the amount of the royalty determined under section 154.2 in respect of the net value of the output

of the diamond mine for the year that is produced by the operator under the authority of a grant from the Crown. 2007, c. 7, Sched. 22, s. 2.

Same

(2) The royalty is payable in respect of all diamonds produced after March 22, 2007. 2007, c. 7, Sched. 22, s. 2.

When payable

(3) An operator shall pay the royalty referred to in subsection (1) by the prescribed date. 2007, c. 7, Sched. 22, s. 2.

Royalty reserved to Crown

(4) Every grant from the Crown issued after March 22, 2007 is subject to a reserve to the Crown of a royalty as contemplated by subsection (1). 2007, c. 7, Sched. 22, s. 2.

No relief

(5) Nothing in subsection (4) relieves an operator from the obligation set out in subsection (1). 2007, c. 7, Sched. 22, s. 2.

Rate of royalty

154.2 (1) Subject to subsection (2), the royalty payable in respect of a diamond mine for a fiscal year of an operator is the lesser of,

- (a) 13 per cent of the net value of the output of the diamond mine for the year, and
- (b) the amount determined in accordance with the Table to this section. 2007, c. 7, Sched. 22, s. 2; 2009, c. 21, s. 65 (1).

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. 2009, c. 21, s. 65 (2).

TABLE

| Item | Column 1 | Column 2 |
|------|---|--|
| | Net value of the output for the year | Royalty payable on that portion of the net value of the output |
| 1. | on the first \$10,000 | 0 |
| 2. | on the next portion of the net value up to but not including \$5 million | 5% |
| 3. | on the next portion of the net value up to but not including \$10 million | 6% |
| 4. | on the next portion of the net value up to but not including \$15 million | 7% |
| 5. | on the next portion of the net value up to but not including \$20 million | 8% |
| 6. | on the next portion of the net value up to but not including \$25 million | 9% |
| 7. | on the next portion of the net value up to but not including \$30 million | 10% |
| 8. | on the next portion of the net value up to but not including \$35 million | 11% |
| 9. | on the next portion of the net value up to but not including \$40 million | 12% |
| 10. | on the next portion of the net value up to but not including \$45 million | 13% |
| 11. | on the next portion of the net value | 14% |

2007, c. 7, Sched. 22, s. 2.

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. 2009, c. 21, s. 66.

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.
- 2009, c. 21, s. 66.

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. 2009, c. 21, s. 66.

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. 2009, c. 21, s. 66.

Interest and penalties

154.4 An operator shall pay such interest and penalties as are prescribed on late payments of the royalty for a fiscal year. 2007, c. 7, Sched. 22, s. 2; 2009, c. 21, s. 67.

Information required by Minister

154.5 (1) An operator shall deliver to the Minister such notices, returns and information as are required by the regulations. 2007, c. 7, Sched. 22, s. 2.

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. 2009, c. 21, s. 68.

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. 2009, c. 21, s. 68.

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. 2009, c. 21, s. 68.

Records

154.6 (1) Every operator shall keep at an office in Ontario,

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

- (b) any other prescribed documents and information. 2007, c. 7, Sched. 22, s. 2; 2009, c. 21, s. 69 (1).

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. 2009, c. 21, s. 69 (2).

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. 2009, c. 21, s. 69 (2).

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. 2009, c. 21, s. 69 (2).

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. 2009, c. 21, s. 69 (2).

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. 2009, c. 21, s. 69 (2).

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. 2009, c. 21, s. 69 (2).

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. 2009, c. 21, s. 69 (2).

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. 2009, c. 21, s. 69 (2).

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. 2009, c. 21, s. 69 (2).

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. 2009, c. 21, s. 69 (2).

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. 2009, c. 21, s. 70.

FIPPA

- (2) Subsection (1) prevails over the *Freedom of Information and Protection of Privacy Act*. 2009, c. 21, s. 70.

Removal of diamonds

154.8 An operator of a diamond mine shall ensure that the conditions set out in the regulations are met before any diamonds produced at the mine are removed from the mine or sold. 2007, c. 7, Sched. 22, s. 2.

Administration

154.9 (1) The Minister, on behalf of the Crown, may enter into agreements with the Minister of Finance or the Minister of Revenue respecting the administration and enforcement of this Part. 2007, c. 7, Sched. 22, s. 2.

Regulations re agreement

(2) An agreement entered into under subsection (1) shall be in accordance with any regulations governing the terms of the agreement. 2007, c. 7, Sched. 22, s. 2.

PART IX STATISTICAL RETURNS

Reports

Annual report

155. (1) For the purposes of tabulation, every owner of a mine shall, on or before the 31st day of March in each year, send to the Minister on the forms provided a report of activities for the preceding year ending on the 31st day of December showing,

- (a) the nature of the work performed and the sums spent on mining and exploration;
- (b) the sums allocated for capital expenditures and repairs;
- (c) the current state of ore reserves;
- (d) the quantity and value of mineral production;
- (e) the number of employees; and
- (f) the revenues and expenses entailed in mining and exploration activities,

and the report shall be accompanied by such other information, plans and documents as the Minister requires, including, without limiting the scope of the requirement, information, plans and documents respecting,

- (g) inventory;
- (h) fuel and electricity consumed;
- (i) mining supplies and materials used;
- (j) non-mining supplies and materials used;

- (k) mining products, shipments and destinations;
- (l) non-mining products;
- (m) production details; and
- (n) wastes produced. R.S.O. 1990, c. M.14, s. 155 (1).

Monthly or quarterly report

(2) The Minister may require an owner to send monthly or quarterly reports within such times as the Minister specifies. R.S.O. 1990, c. M.14, s. 155 (2).

Bankruptcy, etc.

(3) In the event of the bankruptcy or winding-up of an owner, the trustee or liquidator shall, at the request of the Minister, send the report to the Minister. R.S.O. 1990, c. M.14, s. 155 (3).

Pit or quarry operations

(4) The Minister may require a licensee or permittee operating a pit or quarry under the *Aggregate Resources Act* to send information to the Minister in accordance with this section, and, where the Minister does so, subsections (1), (2) and (3) apply with necessary modifications. R.S.O. 1990, c. M.14, s. 155 (4).

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

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. 2009, c. 21, s. 71.

159.-163. Repealed: 1997, c. 38, s. 1 (1).

PART XI OFFENCES, PENALTIES AND PROSECUTIONS

Offences

164. (1) Every person who,

- (a) prospects, explores, occupies or works any Crown lands or mining rights for minerals otherwise than in accordance with this Act;
- (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;
- (c) defaces, alters, removes or disturbs any post, stake, picket, boundary line, figure, writing or other mark lawfully placed, standing or made under this Act;
- (d) pulls down, injures or defaces any rules or notices posted up by the owner or manager of a mine or plant;
- (e) obstructs the Commissioner or any officer or inspector appointed under this Act in the execution of his or her duty;

- (f) being the owner of a mine, refuses or neglects to furnish to the Commissioner or to any person appointed by him or her or to any officer or inspector appointed under this Act the means necessary for making an entry, inspection, examination or inquiry in relation to a mine under this Act;
- (g) unlawfully marks or stakes in whole or in part a mining claim or an area for a boring permit;
- (h) acts in contravention of this Act in any particular not otherwise mentioned;
- (i) contravenes any provision of this Act or any regulation for the contravention of which no other penalty is provided;
- (j) makes any material change in the wording or numbering of a prospector's licence after its issue; or
- (k) attempts to do any of the acts mentioned in clauses (a) to (j) or anything else that is an offence under this Act,

is guilty of an offence against this Act and on conviction is liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or both. R.S.O. 1990, c. M.14, s. 164 (1); 1996, c. 1, Sched. O, s. 29; 1997, c. 38, s. 1 (2); 1997, c. 40, s. 4; 2009, c. 21, ss. 72 (1-7), 101 (3).

False statements

(2) Every person who knowingly makes a false statement in an application, certificate, report, statement or other document filed or made as required by or under this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. R.S.O. 1990, c. M.14, s. 164 (2); 2009, c. 21, s. 72 (8).

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. 2009, c. 21, s. 72 (9).

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. 2009, c. 21, s. 72 (9).

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. 2009, c. 21, s. 72 (9).

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. 2009, c. 21, s. 72 (9).

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. 2009, c. 21, s. 72 (9).

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. 2009, c. 21, s. 72 (9).

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. 2009, c. 21, s. 72 (9).

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. 2009, c. 21, s. 72 (9).

Smelters

165. (1) No person shall construct or cause to be constructed a plant for the smelting, roasting, refining or other treatment of ores or minerals that may result in the escape or release into the open air of sulphur, arsenic or other fumes in quantities that may injure trees or other vegetation unless and until the site of the plant has been approved by the Lieutenant Governor in Council. R.S.O. 1990, c. M.14, s. 165 (1).

Offence

(2) Every person who constructs or causes to be constructed a plant for the smelting, roasting, refining or other treatment of ores or minerals without the approval of the Lieutenant Governor in Council and sulphur, arsenic or other fumes escape or are released therefrom into the open air and injure trees or other vegetation is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for every day upon which such fumes escape or are released therefrom into the open air or to imprisonment for a term of not more than one year, or both. R.S.O. 1990, c. M.14, s. 165 (2); 2009, c. 21, s. 73.

Disobeying order or award of Commissioner

166. Every person who wilfully neglects or refuses to obey any order or award of the Commissioner, except for the payment of money, is, in addition to any other liability, liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or both. R.S.O. 1990, c. M.14, s. 166; 2009, c. 21, s. 74.

Penalty for offence against Part VII

167. (1) Every person who contravenes any provision of Part VII or the regulations made in respect thereto is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for each day on which the offence occurs or continues, or to imprisonment for a term of not more than two years, or both. R.S.O. 1990, c. M.14, s. 167 (1); 2009, c. 21, s. 75 (1).

Failure to comply with order of Director, Commissioner or Minister

(2) Every person who is subject to a Director's, Commissioner's or Minister's order under Part VII and who fails to take all reasonable steps to obey the conditions of the order is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for each day on which the offence occurs or continues, or to imprisonment for a term of not more than two years, or both. R.S.O. 1990, c. M.14, s. 167 (2); 1996, c. 1, Sched. O, s. 30 (1); 2009, c. 21, s. 75 (2).

Application for restraining order

(3) The Director may apply at any time to a judge of the Superior Court of Justice for an order prohibiting advanced exploration, mining or mine production on a site if any person fails to,

- (a) comply with section 140 or 141 before commencing or recommencing a project;
- (b) comply with a filed closure plan as required under subsection 143 (1); or
- (c) submit a material change notice required under subsection 144 (2). 1996, c. 1, Sched. O, s. 30 (2); 2000, c. 26, Sched. M, s. 17.

(4)-(8) Repealed: 2009, c. 21, s. 75 (3).

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. 2009, c. 21, s. 76.

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. 2009, c. 21, s. 76.

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. 2009, c. 21, s. 76.

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. 2009, c. 21, s. 76.

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. 2009, c. 21, s. 76.

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. 2009, c. 21, s. 76.

Offence

168. Every owner of a mine and every licensee or permittee operating a pit or quarry under the *Aggregate Resources Act*, who contravenes section 155, or who makes a report under that section that is, to the owner's, licensee's or permittee's knowledge, false in any particular, is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for each day on which the offence occurs or is continued. R.S.O. 1990, c. M.14, s. 168; 2009, c. 21, s. 77.

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. 2009, c. 21, s. 78.

Procedure on prosecutions

170. Except as to offences against section 12, every prosecution for an offence against or for the recovery of a penalty imposed by or under the authority of this Act shall take place before the Ontario Court of Justice or before the Commissioner, and, save as is herein otherwise provided, the *Provincial Offences Act* applies to every such prosecution. R.S.O. 1990, c. M.14, s. 170; 2000, c. 26, Sched. M, s. 14.

PART XII
GENERAL PROVISIONS
LIEN FOR WAGES

Application of *Construction Lien Act*

171. (1) Except as provided in this Act, the *Construction Lien Act* applies to mines, mining claims, mining lands and works connected therewith. R.S.O. 1990, c. M.14, s. 171 (1).

Registration of lien

(2) Where the lands and mining rights have not been patented, the registration provided for in the *Construction Lien Act* shall be in the office of the recorder. R.S.O. 1990, c. M.14, s. 171 (2).

Lien where claim for wages

(3) When the claim is for wages in connection with a mine, mining claim, mining lands or works connected therewith, in addition to the rights and remedies afforded by the *Construction Lien Act*, the claimant has a lien upon any other property of the owner in or on such mine, mining claim, mining land or works for a sum not exceeding thirty days wages, and this claim may be enforced under that Act. R.S.O. 1990, c. M.14, s. 171 (3).

Cancellation of claim

(4) When the Commissioner is satisfied that a claim for lien recorded as provided in this section is not made in good faith or is made for some improper purpose or where the owner is unduly embarrassed thereby, the Commissioner may make an order cancelling the lien upon such terms as to security or otherwise as he or she deems proper. R.S.O. 1990, c. M.14, s. 171 (4).

Lien on unpatented lands

(5) A lien upon unpatented land does not affect the rights of the Crown. R.S.O. 1990, c. M.14, s. 171 (5).

172. Repealed: 1999, c. 12, Sched. O, s. 50.

EXPLORATORY DRILLING

173. Repealed: 1999, c. 12, Sched. O, s. 50.

Assaying and testing laboratories

174. The Minister, out of the money that is appropriated by the Legislature for the purpose, may establish, maintain and operate assaying and testing laboratories for sampling, assaying, testing, analysing or determining rocks, ores, minerals and other substances. R.S.O. 1990, c. M.14, s. 174.

RIGHTS AND EASEMENTS

Rights over other lands that may be conferred by Commissioner

175. (1) Where required for or in connection with the proper working of a mine, mill for treating ore, quarry or oil or gas well, the owner, lessee or holder of it or the person entitled to work it may, subject as hereinafter provided, obtain and have vested in him, her or it by order of the Commissioner, made after hearing such parties interested as appear or on appeal from the Commissioner,

- (a) the right to open, construct, put in, maintain and use ditches, tunnels, adits, pipes, conduits, flumes and other works through, over or upon any land for the drainage, conveyance or passage of water;
- (b) the right to discharge water upon any land or by, through or into any existing means of drainage whether natural or artificial;
- (c) the right to drain off, lower or divert the water of any lake, pond, river, stream or watercourse, or any other water, although the water or part thereof may be on the land of or owned by any other person or that any other person may have rights or interests in or to such water or the use thereof;
- (d) the right to collect and dam back water, although it may overflow other land;
- (e) the right to take or divert and use for or in connection with the working of his, her or its own mine, quarry or oil or gas well and bring thereto for such use any specified water, and to construct and maintain dams and other works and do all other things necessary or convenient therefor;
- (f) rights of way or passage through or over any land or water, and the right to construct, improve, maintain and use suitable roads, tramways, aerial tramways, channels, waterways, passages and other means of transit and transportation upon, through or over any land or water, together with such other rights of entry upon and use of land and water as may be necessary or convenient therefor;
- (g) the right to transmit electricity or any other kind of power, or have it transmitted, through or over any land or water in any form or manner and to do everything necessary or convenient therefor;
- (h) the right to enter upon and use for or in connection with the working of his own mine, quarry or oil or gas well a specified area of other land;
- (i) the right to deposit tailings, slimes or other waste products upon any land, or to discharge the same into any water, the effects of such deposit or discharge not being injurious to life or health;
- (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.

R.S.O. 1990, c. M.14, s. 175 (1); 2009, c. 21, s. 80.

Compensation

(2) No such right shall be granted unless any injury or damage caused to any other person thereby can be adequately compensated for and unless in all the circumstances it seems reasonable and fitting to grant the right, and it shall not be granted until, in the case where injury or damage has already been suffered, compensation has been determined by the Commissioner, and the amount thereof paid, and in the exercise of any right so granted no unnecessary injury or damage shall be done to the land, property,

rights or interests of other persons, and all injury and damage that may be caused to any person by the granting and exercise of any right obtained under this section shall be fully compensated for. R.S.O. 1990, c. M.14, s. 175 (2).

How fixed

(3) The order granting the right shall fix such compensation, or shall provide for the ascertainment thereof, and shall contain any provisions that are considered proper for securing the same and for protecting the rights and interests of any person whose land, property, rights or interests are affected or endangered, and, if considered proper, may require the applicant to make grants or concessions to or construct works or do any other thing for, or for the benefit of, that person or that person's land or property, and such order may in all cases be upon such terms, and may grant the right upon such conditions and for such time as are considered proper. R.S.O. 1990, c. M.14, s. 175 (3).

Material to be filed on application

(4) In every application for such an order, the applicant, in addition to anything else required or directed, shall file in duplicate with the Commissioner a clear and precise statement of the right or rights being applied for, of the land or property affected and the owner or owners thereof so far as they can be ascertained, a map or plan of the locality showing the land and water involved, and definite and detailed plans and specifications of the works or things proposed to be constructed or done and, for the purpose of preparing the same, the Commissioner may authorize the applicant, and the applicant's engineers and assistants to enter upon the land of any other person and make such examinations and measurements as may be necessary, and such statement, map or plan and plans and specifications may, by order, be amended or altered or modified at any stage of the proceedings and the Commissioner may give directions as to the notice to be given to the parties interested, the time and manner of service and the particulars to be furnished to such parties respectively. R.S.O. 1990, c. M.14, s. 175 (4).

Definition

(5) This section applies to and against all patented and unpatented lands and the word "lands" in this section includes any right or interest in lands. R.S.O. 1990, c. M.14, s. 175 (5).

Idem

(6) Subject to any change therein or rescission thereof by subsequent order of the Commissioner, all rights and benefits created by any order of the Commissioner heretofore or hereafter made under this section run with and are appurtenant and incident to the lands thereby benefited and all burdens and obligations created or imposed by any such order run with and are binding on all lands in respect of which they were created or imposed and such order continues valid and binding in respect of all lands thereby affected despite forfeiture thereof by the Crown or sale thereof because of unpaid taxes, it being expressly declared that the Crown or any municipality or any person acquiring such land is bound by such order in the same manner and to the same extent as the owner thereof at the time such order was made. R.S.O. 1990, c. M.14, s. 175 (6).

Idem

(7) Every such order shall contain proper descriptions of the lands thereby benefited and of all other lands thereby affected sufficient for purposes of registration, and there shall be attached thereto a plan or plans showing clearly the lands thereby benefited and all other lands thereby affected. R.S.O. 1990, c. M.14, s. 175 (7).

Notice

(8) Notice of hearing of all applications under this section shall be given to the Minister in the same manner as notice to any other interested person. R.S.O. 1990, c. M.14, s. 175 (8).

Copy to be filed

(9) A copy of every order made under this section, certified to be a true copy under the hand and seal of the Commissioner, shall be immediately filed by the applicant in the Provincial Recording Office, and, if any patented lands are thereby affected, a copy of such order so certified shall be filed in the land registry office for the district in which the lands are situate. R.S.O. 1990, c. M.14, s. 175 (9); 1999, c. 12, Sched. O, s. 51.

Particulars to be entered

(10) The recorder or land registrar, as the case may be, shall enter particulars of such order against the titles of the lands thereby affected. R.S.O. 1990, c. M.14, s. 175 (10).

Where Ministry to send copy

(11) Where unpatented mining claims affected by any such order are subsequently patented or leased, a copy of such order so certified shall be sent to the proper land registry office by the Ministry with the grant or lease. R.S.O. 1990, c. M.14, s. 175 (11).

Failure to file

(12) Unless such order is so filed in the land registry office for the district in which the lands are situate, a purchaser for value without notice of patented lands affected by any such order is not bound thereby. R.S.O. 1990, c. M.14, s. 175 (12).

Commissioner may change order or award

(13) The Commissioner, for good cause shown and on such terms as seem just, may by subsequent order or award at any time change, supplement, alter, vary or rescind any order made under the authority of this section. R.S.O. 1990, c. M.14, s. 175 (13).

Rights not to be exercised until after expiration of time for appeal

(14) Rights granted under this section shall not be exercised until the time for appealing from the order granting the rights has expired or, where an appeal is entered, until the appeal is disposed of, but from and after such time, subject to any restriction or postponement provided for in the order, the person to whom any such right is granted may enter upon any land or property and exercise the right so granted, and any person who after such time obstructs the exercise of any such right or wilfully neglects or refuses to obey any order made under this section is guilty of an offence against this Act and, in addition to any other liability, is liable on conviction to a fine of not more than \$250 for each day such obstruction, neglect or refusal continues. R.S.O. 1990, c. M.14, s. 175 (14).

REGULATIONS

Regulations

176. (1) The Lieutenant Governor in Council may make regulations generally,

1. governing the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or lands sold or leased as mining lands or recorded as mining claims or locations under this Act or a predecessor thereof, and for the opening, construction or maintenance and use of ditches, aqueducts or raceways through, over or upon such claims, locations or lands for the conveying and passage of water for mining purposes;
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);
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;
4. governing the manner in which confirmation of staking must be given to a surface rights owner for the purpose of section 46.1;
5. prescribing the annual rental for a licence of occupation;
6. prescribing the information to be shown on a sketch or plan accompanying an application to record a mining claim;
 - 6.1 prescribing additional circumstances in which the Minister may make an order under subsection 51 (4);
7. prescribing, for the purposes of subsection 52 (1), the conditions on which permission may be given to mine, mill and refine mineral substance from an unpatented mining claim;
8. prescribing the annual units of assessment work to be performed by the holder of a mining claim;
9. prescribing, for the purposes of subsection 65 (2), locations, other than the office of the recorder, in which may be filed assessment work reports and prescribing the date reports in respect of specified types of assessment work shall be filed;
10. prescribing the types of work eligible for assessment work credits, the method of calculating and approving credits for work performed and the manner of distribution of credits to mining claims;
11. prescribing the manner in which prospecting and regional surveys performed before recording are eligible for assessment work credits;
12. prescribing the manner in which exploration work performed on mining lands may be allocated to contiguous unpatented mining claims;
13. prescribing the conditions on which an extension of time for the performing of and filing a report on assessment work may be allowed by a recorder;
14. prescribing the annual rental for the first year for a lease of a mining claim, the rate for each subsequent year and the annual rental for a renewal lease;
15. prescribing the rental rate for the mining rights only in respect of a mining claim;

16. prescribing the additional assessment work to be performed in respect of any excess area of a mining claim or in respect of excess average area of mining claims within a perimeter survey;
17. prescribing, for the purposes of subsection 70 (2), the conditions on which the holder of a mining claim may abandon part of the claim;
- 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;
18. prescribing the annual rental of a lease referred to in section 82;
19. prescribing the annual rental of a lease or renewal lease of surface rights referred to in section 84;
- 19.1 where a rental is to be prescribed under this Act, prescribing a minimum rent or a method of calculating rent;
20. prescribing the methods and procedures to be followed in the surveying of mining claims;
21. prescribing rates of interest for the purposes of this Act;
22. prescribing, for the purposes of subsection 183 (3), the size, form, manner and time of staking and recording mining claims on land in which an interest is retained after surrender;
23. prescribing, for the purposes of section 187, the amount of tax to be paid for each hectare and prescribing a minimum tax or a method of calculating tax;
24. prescribing classes of instruments and documents that may be filed through transmission by electronic means in such manner as is prescribed;
- 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;
25. defining any word or expression for the purposes of this Act and the regulations that has not already been expressly defined in this Act;
26. prescribing anything that by this Act is to be or may be prescribed. R.S.O. 1990, c. M.14, s. 176 (1); 1994, c. 27, s. 134 (11); 1996, c. 1, Sched. O, s. 32 (1); 1997, c. 40, s. 5 (1); 1999, c. 12, Sched. O, s. 52 (1-3); 2006, c. 33, Sched. R, s. 1; 2007, c. 7, Sched. 22, s. 3 (1); 2009, c. 21, s. 81 (1-4, 6, 7, 9), 101 (4).

Transition

(1.1) A regulation under paragraph 24.5 of subsection (1) may provide that it applies despite anything in this Act. 2009, c. 21, s. 81 (10).

Idem

- (2) The Lieutenant Governor in Council may make regulations relating to Part VII,
1. prescribing the manner of preparing closure plans, their form and content, including their certification and reporting requirements, and the information, particulars, maps and plans to be included therein;
 2. prescribing standards for rehabilitation;
 3. prescribing standards for the protective measures to be taken in respect of the closure of a mine;
 4. prescribing the form and manner and time of giving public notice;
 5. prescribing the form and manner in which notice is to be given to the Director and to the proponent;
 6. prescribing the form of a report under subsection 139.1 (2);
 7. prescribing corporate financial tests for the purposes of section 145;
 - 7.1 prescribing the manner in which the Director may require other forms of financial assurance under subsection 145 (6);
 8. Repealed: 2009, c. 21, s. 81 (11).
 9. Repealed: 1996, c. 1, Sched. O, s. 32 (4).
 10. prescribing material and quantities of material extracted, and other types of work that are to be classified as advanced exploration work;
 11. prescribing time periods within which duties under Part VII shall be complied with;
 12. prescribing anything that by Part VII is to be or may be prescribed;
 13. authorizing a person specified in the regulations to exempt a proponent from complying with any standard, procedure or requirement in a regulation respecting closure plans if the

specified person determines that the closure plan meets or exceeds the objectives of the provision;

14. prescribing other circumstances under which a proponent, or project, or any class thereof, need not comply with a regulation, or a provision thereof, made under this subsection. R.S.O. 1990, c. M.14, s. 176 (2); 1994, c. 27, s. 134 (12); 1996, c. 1, Sched. O, s. 32 (2-5); 1997, c. 40, s. 5 (2); 2009, c. 21, s. 81 (11).

Same

(2.1) A regulation made under paragraph 6, 7 or 7.1 of subsection (2) shall not come into force unless,

- (a) the regulation was published in *The Ontario Gazette* at least four weeks before the regulation comes into force; or
- (b) the Minister states that the regulation must come into force before clause (a) can be complied with and gives reasons for that statement. 1996, c. 1, Sched. O, s. 32 (6).

Regulations re Part VIII

(2.1.1) The Lieutenant Governor in Council may make regulations relating to Part VIII,

- (a) governing the valuation of diamonds;
- (b) prescribing requirements respecting the manner in which diamonds must be handled, prepared and processed before valuation;
- (c) defining "net value of the output" for the purposes of subsection 154 (1);
- (d) prescribing conditions for the purposes of determining if a diamond is part of the output of a diamond mine;
- (e) governing the payment, collection and administration of royalties for the purposes of Part VIII;
- (f) setting out a procedure by which the amount set out in a notice of royalty or revised notice of royalty may be reviewed;
- (g) governing the calculation of interest and penalties on late payments of royalties under Part VIII;
- (h) specifying the notices, returns and information that an operator of a diamond mine is required to deliver to the Minister for the purposes of section 154.5, including,
 - (i) information relating to the output of the mine,
 - (ii) notices requiring the operator to inform the Minister of the gross value or net value of the output of the diamond mine,
 - (iii) descriptions of how diamonds produced at the diamond mine are handled, prepared and processed before they are removed from the mine or sold, and
 - (iv) sufficient information for the Minister to assess the amount of the royalty payable under Part VIII;
- (i) prescribing conditions that must be met before any diamonds produced at a diamond mine are removed or sold;

- (j) governing the terms of an agreement referred to in section 154.9 respecting the administration and enforcement of Part VIII;
- (k) prescribing anything that is to be or may be prescribed by Part VIII;
- (l) respecting any other matter that the Lieutenant Governor in Council considers necessary or desirable in relation to royalties under Part VIII. 2007, c. 7, Sched. 22, s. 3 (2).

Regulations may be general or particular

(2.2) A regulation made under subsection (1), (2) or (2.1.1) may be general or particular in application, may be limited as to time or place or both and may provide that it applies only to the area or areas designated by the Minister. 1997, c. 40, s. 5 (3); 2007, c. 7, Sched. 22, s. 3 (3).

Minister's designations

(2.3) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a Minister's designation that is permitted by subsection (2.2). 1997, c. 40, s. 5 (3); 2006, c. 21, Sched. F, s. 136 (1).

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. 2009, c. 21, s. 81 (12).

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. 2009, c. 21, s. 81 (12).

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. 2009, c. 21, s. 81 (12).

Minister may issue or validate licence, lease or patent

(3) Despite anything in this Act, in special circumstances the Minister may, subject to the approval of the Lieutenant Governor in Council, issue or validate unpatented mining claims, or a licence of occupation, lease or patent of any mining lands or mining rights on such terms and conditions as the Minister considers appropriate. R.S.O. 1990, c. M.14, s. 176 (3); 1996, c. 1, Sched. O, s. 32 (7); 1999, c. 12, Sched. O, s. 52 (4).

Transmission of electricity and entering on lands without consent of owner

177. With the consent of the Lieutenant Governor in Council and on such terms as the Lieutenant Governor in Council sees fit, any company authorized to supply electrical power or energy or compressed air, or both, may from time to time construct, maintain and operate transmission lines, air pipe lines, substations and other conveniences for the transmission of electrical power or energy or compressed air, or both, and for any of such purposes may enter upon, take and use any mining lands or any privilege or easement required by such company for such purposes without the consent of the owner thereof, but subject to the payment of such compensation or annual rent for the privilege or easement required and authorized as is determined by the Lieutenant Governor in Council, and the Lieutenant Governor in Council may from time to time revoke or vary the terms upon which any right conferred under this section may be exercised. R.S.O. 1990, c. M.14, s. 177; 1999, c. 12, Sched. O, s. 53.

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. 2009, c. 21, s. 82.

Public notice

(2) The Minister shall take such steps as are advisable to make the amount of any fee charged publicly available. 2009, c. 21, s. 82.

Exempt

(3) The power to establish and charge a fee includes the power to exempt a person from paying the fee. 2009, c. 21, s. 82.

No fee to record order upon direction of Commissioner

178. Where an order is made by the Commissioner or on appeal from his or her decision, and it is in the public interest that the order be recorded, and the order would not otherwise be recorded, the Commissioner may direct the mining recorder to record the order without fee. R.S.O. 1990, c. M.14, s. 178.

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. 2009, c. 21, s. 84.

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. 2009, c. 21, s. 84.

CANCELLATION OF PATENTS

Lands and mining rights to be withdrawn from exploration on repeal of patent or lease at instance of Crown

179. (1) Where a patent or lease of mining lands or mining rights is by proceedings in the Superior Court of Justice at the instance of the Crown repealed or avoided, the lands and mining rights thereupon become and are withdrawn from exploration, discovery, staking, lease or sale, and every discovery upon and claim to the lands or mining rights and to the mines or minerals on, in or under such lands made or existing at any time before the repeal or avoidance of the patent or lease become and are void, and the

lands, mining rights, mines and minerals are thenceforth vested in the Crown freed and discharged of and from every claim. R.S.O. 1990, c. M.14, s. 179 (1); 2000, c. 26, Sched. M, s. 17; 2009, c. 21, s. 101 (4).

Registration of order

(2) The land registrar of the land titles or registry division in which any lands or rights mentioned in a court order made under subsection (1) are situate shall, upon receipt of the order, register it and the order is absolute and conclusive proof of the vesting in the Crown of the lands or rights affected by the order and the vesting in the Crown is not open to attack in any court by reason of the omission of any act or thing leading up to the order repealing or avoiding the patent or lease. R.S.O. 1990, c. M.14, s. 179 (2).

Non-application of certain Acts

(3) Upon registration of the court order in the land registry office, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the lands or rights affected by the order, and the land registrar shall note that fact in the register. R.S.O. 1990, c. M.14, s. 179 (3); 2002, c. 18, Sched. M, s. 8.

Opening lands for prospecting, etc.

(4) The lands and mining rights vested in the Crown under this section are not open for prospecting, staking or lease under this Act until a date fixed by the Deputy Minister, two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 179 (4); 2009, c. 21, s. 101 (4).

REVERSION OF MINING LANDS TO CROWN

Reversion to Crown

180. Where a freehold or leasehold interest in mining lands or mining rights reverts, other than by transfer to the Crown, the land or rights may be dealt with as unpatented Crown land. R.S.O. 1990, c. M.14, s. 180.

VESTING OF MINING RIGHTS: FORMER CANADA COMPANY LANDS

Vesting of Crown interest in mining rights in owners of the surface rights

180.1 Any interest of the Crown in the mining rights relating to the lands described in the indentures recited in *The Canada Company's Lands Act, 1922* is vested in the registered-owners of the surface rights of those lands, subject to all registered encumbrances against the surface rights. 1997, c. 38, s. 1 (5).

DEFAULT OF CO-OWNERS, ETC.

Co-ownership

Definition

181. (1) In this section,

“co-owner” includes co-lessee and co-licensee, and a corporation with share capital and a shareholder thereof shall be deemed to be co-owners. R.S.O. 1990, c. M.14, s. 181 (1).

Procedure to enforce claim for payment of rents or expenditures by one co-owner against another

(2) Where lands or mining rights that are subject to rents or expenditures for development work are held by two or more co-owners and all such rents or expenditures have been paid by one or more of them and the other or others has or have neglected or refused to pay that other's or those others' proportion of the rents or expenditures for a period of four or more consecutive years, the Commissioner, upon the application of any co-owner or co-owners who has or have paid the rents or met the expenditures for the period of four or more consecutive years immediately prior to the date of the application and upon the receipt of such other information and particulars as he or she requires, may make an order requiring the delinquent co-owner or co-owners to pay, within three months of the date of the order or such further time

as the Commissioner may fix, the delinquent owner's or co-owners' fair proportion of the rents or expenditures to the co-owner or co-owners who has or have paid all the rents or expenditures, together with interest at the prescribed percentage rate per year compounded yearly, and such costs of the application as are allowed by the Commissioner. R.S.O. 1990, c. M.14, s. 181 (2).

Service of order

(3) An order made under this section shall be served in such manner as the Commissioner directs. R.S.O. 1990, c. M.14, s. 181 (3).

Dispute as to liability

(4) If a co-owner upon whom an order made under subsection (2) has been served disputes his, her or its liability to another co-owner or otherwise to make any payment under the order or the amount thereof, the co-owner may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall, after a hearing, determine the dispute and may affirm, amend or rescind the order or make such other order as he or she considers just, and, if the Commissioner orders that a payment be made, he or she may fix the time for payment thereof. R.S.O. 1990, c. M.14, s. 181 (4); 1996, c. 1, Sched. O, s. 33.

Vesting order

(5) Where the time for payment fixed by an order made under subsection (2) has expired and no application for determination of a dispute has been made, or where the time fixed by an order made under subsection (4) has expired, and where such additional time, if any, as has been granted by the Commissioner has expired, if it is proved to the satisfaction of the Commissioner that the payment has not been made, he or she may make an order vesting the interest of the delinquent co-owner or co-owners in the lands or mining rights to which the payment relates in the co-owner or co-owners who has or have paid the rents or made the expenditure. R.S.O. 1990, c. M.14, s. 181 (5); 1996, c. 1, Sched. O, s. 33.

Death of delinquent

(6) Where a delinquent co-owner has died either before or after default in respect of that co-owner's portion and no person has taken out administration of the estate or has obtained probate of the will, any order made under this section may be directed to and served upon his or her heirs. R.S.O. 1990, c. M.14, s. 181 (6).

Order against corporation

(7) An order made under this section against a corporation shall be directed to the corporation only. R.S.O. 1990, c. M.14, s. 181 (7).

(8) Repealed: 2009, c. 21, s. 85.

MINERAL RIGHTS UNDER ROADS

Mineral rights under roads

182. (1) The corporation of any municipality in that part of Ontario lying south of the French River, Lake Nipissing and the Mattawa River, wherever minerals are found, may sell or lease, by public auction or otherwise, the right to take minerals found upon or under any roads over which the municipality has jurisdiction, if considered expedient to do so. 2002, c. 17, Sched. F, Table.

No sale or lease until after notice

(2) No such sale or lease shall take place until after due notice of the intended by-law has been posted up in six of the most public places in the immediate neighbourhood of such road for at least one month previous to the time fixed for considering the by-law. R.S.O. 1990, c. M.14, s. 182 (2).

Sale or lease not to interfere with public travel

(3) The deed conveyance or lease to the purchaser or lessee under the by-law shall contain a proviso protecting the road for public travel and preventing any user of the granted rights that would interfere with public travel. R.S.O. 1990, c. M.14, s. 182 (3).

In northern part of Province

(4) In the remaining parts of Ontario, the mines, minerals, and mining rights in, on or under all common and public highways and road allowances are vested in the Crown, and may be sold, leased or otherwise disposed of under this Act. R.S.O. 1990, c. M.14, s. 182 (4).

Rights of adjoining landowners

(5) Where a mining location or any mining lands adjoin a common and public highway or road allowance and the mineral vein or deposit thereon extends into or under the highway or road allowance, its owner has the right to lease the mines, minerals and mining rights in, on or under the same, subject to this Act, or where there are mining locations or mining lands on both sides of such highway or road allowance, such rights accrue to the owner or owners on both sides thereof as respects the half of such highway or road allowance adjoining the owner's or owners' lands. R.S.O. 1990, c. M.14, s. 182 (5).

Exception

(6) Subsections (4) and (5) do not apply to highways on lands granted before the 1st day of May, 1904 by the Crown under a predecessor of this Act, or in the grant whereof the mines and minerals were not reserved to the Crown. R.S.O. 1990, c. M.14, s. 182 (6).

Patent or lease to protect public travel

(7) The patent or lease of such mines, minerals and mining rights shall contain a proviso protecting the road for public travel and preventing any user of the granted rights that would interfere with public travel unless a road in lieu thereof has been provided and accepted by the municipal corporation having control of the road. R.S.O. 1990, c. M.14, s. 182 (7).

Previously acquired rights preserved

(8) Subsections (4) to (7) do not affect any rights acquired from or any agreement made or entered into with any municipal corporation under this section prior to the 1st day of May, 1904. R.S.O. 1990, c. M.14, s. 182 (8).

Definition

(9) In this section,

“minerals” includes oil and gas. 2009, c. 21, s. 86.

SURRENDER OF LANDS**Voluntary surrender of mining lands**

183. (1) The owner, lessee or holder of any mining lands or mining rights granted under this Act or any other Act may surrender such lands or mining rights to the Crown only upon such terms as are acceptable to the Minister, and thereupon the Minister may cause a notice of determination to be filed in the proper land registry office. R.S.O. 1990, c. M.14, s. 183 (1); 1996, c. 1, Sched. O, s. 34.

Retention as unpatented mining claims

(2) An owner, lessee or holder who surrenders mining lands or mining rights under subsection (1) may file a notice with the recorder indicating that such owner, lessee or holder wishes to retain an interest in the lands or part of the lands thereof, in the form of unpatented mining claims. R.S.O. 1990, c. M.14, s. 183 (2); 1996, c. 1, Sched. O, s. 34; 2009, c. 21, s. 87.

Staking and recording of lands

(3) Where a notice has been filed under subsection (2), the owner, lessee or holder shall stake or cause to be staked and recorded in such size, form, manner and time as is prescribed, the lands in which an interest is to be retained. R.S.O. 1990, c. M.14, s. 183 (3); 1996, c. 1, Sched. O, s. 34; 2009, c. 21, s. 101 (1, 2).

Extension of time by recorder or order of surrender of lands

(4) Where mining claims have not been staked and recorded under subsection (3) within the time prescribed, the recorder may extend the time for staking and recording or may order that the mining lands or mining rights on which the staking and recording is to be performed are surrendered and the recorder shall, in the case where an order of surrender is made, by mail sent not later than the next day after the making of the order, notify the owner, lessee or holder of the recorder's action and the reason therefor. R.S.O. 1990, c. M.14, s. 183 (4); 1996, c. 1, Sched. O, s. 34; 1999, c. 12, Sched. O, s. 55; 2009, c. 21, s. 101 (2, 4).

Prospecting, etc., on surrendered lands

(5) Mining lands or mining rights surrendered to the Crown under subsection (1) and which are not recorded as unpatented mining claims under subsection (3) shall not be open for prospecting, staking, sale or lease under this Act until a date fixed by the Deputy Minister, notice of which shall be published in *The Ontario Gazette* at least two weeks prior thereto. R.S.O. 1990, c. M.14, s. 183 (5); 2009, c. 21, s. 101 (4).

FORFEITED LANDS

Lands forfeited, etc., to Crown

184. (1) Where mining lands or mining rights,

- (a) are forfeited to the Crown under the *Corporations Act* or the *Business Corporations Act*, or any predecessor thereof or are forfeited to the Crown for any other cause; or
- (b) have become the property of the Crown by reason of the person last seized thereof or entitled thereto having died intestate and without lawful heirs,

the Minister may cause to be registered in the proper land registry office a notice stating that forfeiture has been effected as mentioned in clause (a) or that the lands or mining rights have become the property of the Crown as mentioned in clause (b), as the case may be, and that by reason thereof the lands or mining rights and every interest therein are forfeited to and vested in, or have become the property of, the Crown, absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto, whether existing, arising or accruing before or after such forfeiture or becoming the property of the Crown, and, subject to subsection (2), such lands shall be dealt with under this Act. R.S.O. 1990, c. M.14, s. 184 (1).

Opening forfeited, etc., lands for prospecting, etc.

(2) Mining lands or mining rights except unpatented mining claims so forfeited or that have become the property of the Crown are not open for prospecting, staking, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks' notice of which shall be published in *The Ontario Gazette*. R.S.O. 1990, c. M.14, s. 184 (2); 1996, c. 1, Sched. O, s. 35; 2009, c. 21, s. 101 (4).

Mining lands and rights remain forfeited

(3) If a corporation's mining lands or mining rights are forfeited to the Crown under the *Business Corporations Act* or a predecessor of that Act upon the dissolution of the corporation and if a notice of forfeiture is registered under subsection (1),

- (a) the mining lands and mining rights so forfeited are not available, after the third anniversary of the corporation's dissolution, to satisfy a judgment, order or decision against the corporation, despite clause 242 (1) (c) and subsection 244 (2) of the *Business Corporations Act*; and
- (b) despite subsection 241 (5) of the *Business Corporations Act*, a revival of the corporation under that subsection after the third anniversary of its dissolution does not restore to the corporation the mining lands or mining rights that were forfeited to the Crown, and those mining lands and mining rights remain forfeited to the Crown despite the revival. 1994, c. 27, s. 134 (13).

Power of Minister to sell Crown interest

(4) If a co-owner's partial interest in mining lands or mining rights is forfeited to the Crown under subsection (1), any other co-owner of that interest may apply to the Minister for a transfer or conveyance of the forfeited interest to the co-owner, and the Minister may transfer or convey the interest if the co-owner pays the fair market value of the interest or the price per hectare established by the Ministry. 2001, c. 9, Sched. L, s. 6.

Same

(5) In addition to a co-owner, any other party having a partial interest in the mining lands or mining rights may apply to the Minister under subsection (4) if all co-owners have waived their right to apply, and the Minister may transfer or convey the interest if the party pays the fair market value of the interest or the price per hectare established by the Ministry. 2001, c. 9, Sched. L, s. 6.

ANNULMENT OF FORFEITURE OR TERMINATION OF LEASE

Annulment of forfeiture, etc.

185. (1) The Minister may by order revoke, cancel or annul the forfeiture of any mining lands or mining rights under this Act or revoke, cancel or annul the termination of any lease of mining lands under this Act or relieve from forfeiture any unpatented mining claims on such terms and conditions as the Minister considers appropriate. R.S.O. 1990, c. M.14, s. 185 (1); 1996, c. 1, Sched. O, s. 36.

Filing order in recorder's office

(2) Where an order under subsection (1) concerns unpatented mining claims, such order shall be filed in the office of the mining recorder. R.S.O. 1990, c. M.14, s. 185 (2).

Registering order in land registry office

(3) Where an order under subsection (1) concerns leases or freehold patents, the Deputy Minister shall cause the order to be registered in the proper land registry office and thereupon the mining lands or mining rights revert in the owner or lessee of the mining lands or mining rights at the time of forfeiture or termination, the owner's or lessee's heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture or termination and still outstanding. R.S.O. 1990, c. M.14, s. 185 (3).

Withdrawal of lands from prospecting, etc.

(4) Where application is made for an order under subsection (1), the Minister may direct the mining lands or mining rights described in the application to be withdrawn from prospecting, staking, sale or lease until the disposition of the application. R.S.O. 1990, c. M.14, s. 185 (4); 2009, c. 21, s. 101 (4).

(5) Repealed: 2009, c. 21, s. 88.

PART XIII MINING LAND TAX

Definition

186. In this Part,

“tax” means a tax under this Part. R.S.O. 1990, c. M.14, s. 186; 2002, c. 17, Sched. F, Table.

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. 2009, c. 21, s. 89.

Date of payment of tax

188. The tax imposed for each year is payable no later than 60 days from the date of the notice of tax payable. 2000, c. 26, Sched. M, s. 15.

Lands liable for tax

189. (1) Except as provided in this Part,

- (a) all lands and mining rights in territory without municipal organization patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;
- (b) all land in territory without municipal organization being held or used for mining purposes howsoever patented or alienated from the Crown;
- (c) all mining rights in, upon or under lands in a municipality patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;
- (d) all mining rights in, upon or under land in a municipality and being held or used for mining purposes howsoever patented or alienated from the Crown; and
- (e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights,

are liable for, and the owner thereof shall pay, the tax. R.S.O. 1990, c. M.14, s. 189 (1); 2009, c. 21, s. 90 (1).

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. 2009, c. 21, s. 90 (2).

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. 2009, c. 21, s. 90 (2).

Decision of Minister final

(1.3) The decision of the Minister under subsection (1.1) or (1.2) is final. 2009, c. 21, s. 90 (2).

Exemption from tax

(2) No tax is payable in respect of mining lands or mining rights granted by the Crown by lease or renewal of lease. R.S.O. 1990, c. M.14, s. 189 (2).

Exemptions from tax by Minister

190. (1) The Minister may exempt lands or mining rights from the tax under this Part where,

- (a) there is no severance of the surface and mining rights and the land has been subdivided,
 - (i) by a registered plan of subdivision,
 - (ii) by a reference plan into parts for city, town, village or summer resort purposes, or
 - (iii) by a reference plan into parts for local municipality purposes;
- (b) land is being actually used for public park, educational, religious or cemetery purposes and there is no severance of the surface and mining rights;
- (c) land is being used in good faith for farming or other agricultural purposes and there is no severance of the surface and mining rights; or
- (d) the mining rights in, upon or under any land situated south of the French River, Lake Nipissing and the Mattawa River, including the Territorial District of Manitoulin, are being held, used or developed solely for the production of natural gas or petroleum. R.S.O. 1990, c. M.14, s. 190 (1); 2002, c. 17, Sched. F, Table.

Decision of Minister final

(2) The decision of the Minister as to the right of exemption under subsection (1) is final and conclusive. R.S.O. 1990, c. M.14, s. 190 (2).

Cases where mining rights taxable only

191. Where the Minister is satisfied that the surface rights in respect of a mining claim or mining location are being used for purposes other than that of mining or the mineral industry, this Part applies only to the mining rights. R.S.O. 1990, c. M.14, s. 191.

Tax records

192. The Deputy Minister shall maintain a current tax record of the lands and mining rights and persons liable to the tax. 2009, c. 21, s. 91.

Registration of notice of liability and forfeiture

193. The Deputy Minister may register in the proper land registry office a notice of liability to taxation and forfeiture in respect of any lands or mining rights subject to the tax. R.S.O. 1990, c. M.14, s. 193; 2009, c. 21, s. 92.

Liability for tax though not on current tax record

194. Despite sections 192 and 193, every person and property liable to the tax is liable whether entered on the current tax record or not, and the tax is, without any notice or demand, payable at the time and in the manner provided in this Part. R.S.O. 1990, c. M.14, s. 194; 2009, c. 21, s. 93.

Commissioner may settle dispute

195. (1) Any person claiming an interest in any lands or mining rights entered on the current tax record or whose name has been entered on the current tax record, as being liable to the tax or who

disputes the amount of the tax levied on any lands or mining rights in which that person has an interest may apply to the Commissioner to determine whether such lands and mining rights are or whether that person is liable to the tax and to be entered on the current tax record or the amount of the tax payable, and the Commissioner shall hear and determine such matter. R.S.O. 1990, c. M.14, s. 195 (1); 2009, c. 21, s. 94 (1).

Minister to be party

(2) The Minister is a party to any proceedings before the Commissioner under this section. R.S.O. 1990, c. M.14, s. 195 (2).

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. 2009, c. 21, s. 94 (2).

Procedure to enforce claim for payment of taxes by one co-owner against another

196. (1) Where lands or mining rights liable for tax are held by two or more co-owners and all such tax has been paid by one or more of them and the other or others has or have neglected or refused to pay that other's or those others' proportion of the tax for a period of four or more consecutive years, the Commissioner, upon the application of any co-owner or co-owners who has or have paid the tax for the period of four or more consecutive years immediately prior to the date of the application and upon the receipt of such other information and particulars as he or she requires, may make an order requiring the delinquent co-owner or co-owners to pay, within three months of the date of the order or such further time as the Commissioner may fix, the delinquent co-owner's or co-owners' fair proportion of the tax to the co-owner or co-owners who has or have paid all the tax, together with interest at the prescribed rate, compounded annually, and such costs of the application as are allowed by the Commissioner. R.S.O. 1990, c. M.14, s. 196 (1); 2002, c. 18, Sched. M, s. 9.

(2) Repealed: 2009, c. 21, s. 95.

Service of order

(3) An order made under this section shall be served in such manner as the Commissioner may direct. R.S.O. 1990, c. M.14, s. 196 (3).

Disputes as to liability

(4) If a co-owner, upon whom an order made under subsection (1) has been served, disputes his, her or its liability to another co-owner or otherwise to make any payment under the order or the amount thereof, the co-owner may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall hear and determine the dispute and may affirm, amend or rescind the order or make such other order as he or she considers just, and, if the Commissioner orders that a payment be made, he or she may fix the time for payment thereof. R.S.O. 1990, c. M.14, s. 196 (4).

Vesting order

(5) Where the time for payment fixed by an order made under subsection (1) has expired and no application for determination of a dispute has been made, or where the time fixed by an order made under subsection (4) has expired, and where such additional time, if any, as has been granted by the Commissioner has expired, if it is proved to the satisfaction of the Commissioner that the payment has not been made, he or she may make an order vesting the interest of the delinquent co-owner or co-owners in

the lands or mining rights to which the payment relates in the co-owner or co-owners who has or have paid the taxes. R.S.O. 1990, c. M.14, s. 196 (5).

Service of order on company

(6) Any order made against an incorporated company under this section shall be directed to the company only. R.S.O. 1990, c. M.14, s. 196 (6).

Interpretation

(7) For the purpose of this section, two or more co-holders or co-lessees shall be deemed to be co-owners, and an incorporated company and a shareholder therein shall be deemed to be co-owners of the lands of the company. R.S.O. 1990, c. M.14, s. 196 (7).

Defaulters list and notice of forfeitures

197. (1) The Deputy Minister shall cause to be prepared between the 1st day of January and the 31st day of March in each year a list of all lands and mining rights in respect of which any tax is two years or more in arrears, and, not later than the 30th day of June next following, shall cause to be sent by mail or delivered by courier service a notice to the person appearing from search or inquiry at the land registry office to be the owner of the property in default and to every person appearing from that search or inquiry to have an interest therein, at the address or last known address of such person so far as he or she can reasonably ascertain it, stating that, unless the total amount of tax and penalties due and payable under this Part are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following, and to the amount so due and payable there shall in every case be added and paid as costs the sum of \$10 for each property. R.S.O. 1990, c. M.14, s. 197 (1).

Publication of list and notice

(2) Not later than the 15th day of July in each year, the Deputy Minister shall cause the list prepared under subsection (1) to be published in one issue of *The Ontario Gazette* and in one issue of a newspaper published in the district, upper-tier municipality or local municipality in which the property is situate, giving notice that, unless the total amount of tax, penalties and costs shown therein are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following. R.S.O. 1990, c. M.14, s. 197 (2); 2002, c. 17, Sched. F, Table.

Declaration of forfeiture

(3) Where the total amount of tax, penalties and costs remain unpaid after the 31st day of December of the year of publication of the notice mentioned in subsection (2), the Minister by certificate may, on or after the 1st day of January next following, declare the lands or mining rights, and every interest therein, forfeited to and vested in the Crown, and thereupon the lands or mining rights, and every interest therein, vest in the Crown absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto whether existing, arising or accruing before or after such forfeiture is declared. R.S.O. 1990, c. M.14, s. 197 (3); 2009, c. 21, s. 96 (3).

Not open for staking

(4) Except as provided in subsection (7), lands and mining rights so forfeited are not open for prospecting, staking, sale or lease under this Act. R.S.O. 1990, c. M.14, s. 197 (4); 2009, c. 21, s. 101 (4).

Registration of certificate

(5) The land registrar of the land titles or registry division in which any land or right mentioned in a certificate of forfeiture made under subsection (3) is situate shall, upon receipt of the certificate, duly register it and it is absolute and conclusive evidence of the forfeiture to the Crown of the land or mining

rights so certified to be forfeited and is not open to attack in any court by reason of the omission of any act or thing leading up to the forfeiture. R.S.O. 1990, c. M.14, s. 197 (5).

Certain Acts not to apply to forfeited lands

(6) Upon registration of the certificate of forfeiture in the land registry office, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the land forfeited, and the land registrar shall note that fact in the register. R.S.O. 1990, c. M.14, s. 197 (6); 1999, c. 12, Sched. O, s. 56.

Opening forfeited lands, etc., for prospecting

(7) The lands and mining rights forfeited to and vested in the Crown under this Part that are mentioned in a notice published in one issue of *The Ontario Gazette* during May of any year are open for prospecting, staking, sale or lease under this Act at and after 8 a.m. standard time on the 1st day of June next following. R.S.O. 1990, c. M.14, s. 197 (7); 1996, c. 1, Sched. O, s. 37; 2009, c. 21, s. 101 (4).

Right to search land registry office free of charge

198. Any person duly authorized by the Minister in writing may, for the purpose of ascertaining the names and addresses of owners or lessees of land or mining rights liable to taxation under this Part, search and inspect registry books, indexes and documents in land registry offices, and no charge is to be made by and no fee is payable to a land registrar for any such search or inspection. R.S.O. 1990, c. M.14, s. 198.

Interest

199. (1) Where the tax is not paid within the time required under section 188, interest at the prescribed rate, compounded annually, shall be added to the tax forthwith and in each subsequent year that the tax remains unpaid, and the increased amounts are the tax due and payable under this Part. 1999, c. 12, Sched. O, s. 57 (1).

Record of arrears to be kept

(2) The Deputy Minister, or such other person as is directed by the Minister, shall keep a record of all arrears of taxes with the increased amounts from time to time entered thereon. R.S.O. 1990, c. M.14, s. 199 (2).

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). 2009, c. 21, s. 97.

Special lien and priority of the tax

200. All taxes, penalties, costs and fees payable under this Part constitute a special lien on the lands or mining rights against which the tax under this Part is levied in priority to every claim, privilege, lien or encumbrance of any person, whether the right or title of that person has accrued before, or accrues after, the attaching of the special lien, and its priority is not lost or impaired by any neglect, omission or error of any official, officer or person, or by want of registration, and the special lien may be realized by action for sale of any or all property subject to it. R.S.O. 1990, c. M.14, s. 200; 2009, c. 21, s. 98.

Right of action

201. If an owner or lessee of lands or mining rights fails to pay the tax on the lands or mining rights when due, the Minister may bring action in any court of competent jurisdiction for the recovery of the tax together with penalties, costs and fees. R.S.O. 1990, c. M.14, s. 201; 2009, c. 21, s. 99.

Compromise of tax

202. (1) Where a doubt arises as to the liability of a person to pay a tax or any part of a tax, the Minister may,

- (a) compromise the matter by the acceptance of an amount that the Minister considers proper, and
- (b) if the tax imposed has been paid under protest, refund the tax or any part of it or give a tax credit to the person making the payment under protest. 2000, c. 26, Sched. M, s. 16.

Exemption from acreage tax

(2) Where land that was not subject to tax under this Part becomes subject to tax because the surface rights thereof have been severed from the mining rights for a public road, highway or public utility, the Minister may exempt the mining rights so severed from the tax during such term as he or she is satisfied that the mining rights are not being used or held for mining purposes. R.S.O. 1990, c. M.14, s. 202 (2).

Lands and easements revert to Crown

203. Where under this Part or section 91, 183 or 184 a dominant tenement reverts to and becomes vested in the Crown, any easement appurtenant thereto passes to the Crown and, where a servient tenement reverts to and becomes vested in the Crown, any easement to which the servient tenement is subject is not affected. R.S.O. 1990, c. M.14, s. 203.

PART XIV (SS. 204-207) REPEALED: 1999, C. 12, SCHED. O, S. 58.

TAB 2

Current Mining Act, R.S.O. 1990, c. M.14
(April 1, 2013 to present)

RIGHTS OF LICENSEE

Rights in claim

50. (1) The staking or the filing of an application for or the recording of a mining claim, or the acquisition of any right or interest in a mining claim by any person or all or any of such acts, does not confer upon that person,

- (a) any right, title, interest or claim in or to the mining claim other than the right to proceed as is in this Act provided to perform the prescribed assessment work or to obtain a lease from the Crown and, prior to the performance, filing and approval of the first prescribed unit of assessment work, the person is merely a licensee of the Crown and after that period and until he or she obtains a lease the person is a tenant at will of the Crown in respect of the mining claim; or
- (b) any right to take, remove or otherwise dispose of any minerals found in, upon or under the mining claim. R.S.O. 1990, c. M.14, s. 50 (1); 2009, c. 21, s. 101 (4).

Surface rights

(2) The holder of a mining claim does not have any right, title or claim to the surface rights of the claim other than the right, subject to the requirements of this Act, to enter upon, use and occupy such part or parts thereof as are necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights therein. R.S.O. 1990, c. M.14, s. 50 (2); 2009, c. 21, s. 28 (1).

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. 2009, c. 21, s. 28 (2).

Taxation

(3) The holder of an unpatented mining claim is not liable to assessment or taxation for municipal or school purposes in respect of such unpatented mining claim. R.S.O. 1990, c. M.14, s. 50 (3).

Same

(4) The holder of a licence of occupation issued under this Act or any predecessor Act is not liable to assessment or taxation for municipal or school purposes in respect to the licence except with respect to improvements for which the holder would be liable to assessment or taxation if the lands were held under a patent. 1999, c. 12, Sched. O, s. 22.

Surface rights on unpatented mining claim

51. (1) Except as in this Act is otherwise provided, the holder of an unpatented mining claim has the right prior to any subsequent right to the user of the surface rights, except the right to sand, peat and gravel, for prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights. R.S.O. 1990, c. M.14, s. 51 (1); 2009, c. 21, s. 29 (1).

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. 2009, c. 21, s. 29 (2).

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. 2009, c. 21, s. 29 (2).

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. 2009, c. 21, s. 29 (2).

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). 2009, c. 21, s. 29 (2).

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*. 2009, c. 21, s. 29 (2).

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. 2009, c. 21, s. 29 (2).

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. 2009, c. 21, s. 29 (2).

TAB 3

Claim Staking and Recording, O. Reg. 43/11 -
Part I, Ground Staking of Mining Claims, and Part II, Map Staking of Mining Claims

Definitions and interpretation

1. (1) In this Regulation,

“claim unit” means,

- (a) in unsubdivided territory, a 16 hectare square or such smaller size as is permitted for irregular areas under section 16,
- (b) in subdivided territory,
 - (i) the minimum size as set out in section 18 for a ground staked claim or in section 27 for a map staked claim, or
 - (ii) such smaller size as may be permitted under section 19 or 20 for a ground staked claim, or under subsection 23 (2) or section 28, 29 or 30 for a map staked claim; (“unité de claim”)

“contiguous” means an unbroken chain of spatially linked unpatented, patented or leased mining claims or other mining land; (“contigu”)

“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 the Act and this Regulation; (“jalonnement au sol”)

“original survey” has the same meaning as in the *Surveys Act*; (“levé primitif”)

“Southern Ontario” has the same meaning as in section 35.1 of the Act; (“Sud de l’Ontario”)

“territory” means land and land covered by water; (“territoire”)

“unsubdivided territory” means territory,

- (a) for which there is no original survey,
- (b) that is in a geographic township that has not been subdivided into sections, lots, concession or ranges, or
- (c) that is in the annulled portion of a geographic township. (“territoire non subdivisé”) O. Reg. 43/11, s. 1 (1).

(2) In this Regulation, a reference to area shall be read as meaning that area, more or less, and a reference to a distance shall be read as meaning that distance, more or less. O. Reg. 43/11, s. 1 (2).

PART I
GROUND STAKING OF MINING CLAIMS
 GENERAL RULES

Ground staking

2. (1) A mining claim is ground staked by erecting a corner post at each of the four corners of the claim so that,

- (a) the No. 1 corner post is at the northeast corner,
- (b) the No. 2 corner post is at the southeast corner,

(c) the No. 3 corner post is at the southwest corner, and

(d) the No. 4 corner post is at the northwest corner. O. Reg. 43/11, s. 2 (1).

(2) A corner post tag affixed to a corner post must face the next post following the corner post in the order set out in subsection (1). O. Reg. 43/11, s. 2 (2).

(3) If there are standing trees on the perimeter of the area being ground staked, the perimeter of the mining claim must be clearly marked during staking by plainly blazing the trees on two sides only in the direction of travel and by cutting the underbrush along the boundaries of the claim. O. Reg. 43/11, s. 2 (3).

(4) If there are no standing trees on the perimeter of the area being ground staked, the perimeter of the mining claim must be clearly marked during staking by erecting durable pickets or monuments of earth or rock along the boundaries of the claim. O. Reg. 43/11, s. 2 (4).

(5) Subsection (4) does not apply where an irregular claim boundary that is a water-to-land boundary is intended to be coterminous with land, or land under water, that is not open for staking. O. Reg. 43/11, s. 2 (5).

Geo-referencing

2.1 (1) An application to record a mining claim that is ground staked in unsurveyed territory on or after November 1, 2012 must include Global Positioning System geo-referencing data for all corner posts, witness posts and line posts used to indicate a change in direction of a claim boundary and the Global Positioning System geo-referencing data must comply with standards satisfactory to the Minister. O. Reg. 310/12, s. 1.

(2) Applications to which subsection (1) applies shall comply with the requirements in that subsection on and after November 1, 2012. O. Reg. 310/12, s. 1.

Ground staking rules re boundaries

3. The following rules apply to ground staking of mining claims:

1. The boundaries of the claim extend downwards vertically.
2. No boundary of the claim can exceed 3,200 metres in length, nor can any one boundary be more than four times the length of any other boundary of the claim.
3. The measurements of the boundaries of a mining claim are horizontal distances. O. Reg. 43/11, s. 3.

Ground staking, recording licensee

4. (1) A ground staked mining claim must be staked under the direction of a recording licensee. O. Reg. 43/11, s. 4 (1).

(2) In order to direct the ground staking of a mining claim under subsection (1), the recording licensee must be present in each area under staking for a mining claim at the time the area is being staked for the purpose of recording the mining claim. O. Reg. 43/11, s. 4 (2).

(3) The recording licensee must direct other licensees as well as non-licensees in constructing claim posts and marking the perimeter of a mining claim. O. Reg. 43/11, s. 4 (3).

Ground staking rules

5. (1) The following rules apply to the ground staking of a mining claim in areas that have been open for staking for 24 hours or more:

1. The staking may be started at any corner or line post.

2. Only the recording licensee or another licensee may erect, inscribe or affix a tag to a corner post, line post or witness post.
3. The date and time of completion of the ground staking must be inscribed on one of the corner posts after all of the required work of staking the claim has been completed. O. Reg. 43/11, s. 5 (1).

(2) The following rules apply to the ground staking of a mining claim in areas that have been open for staking for less than 24 hours:

1. The staking must start at the northeast corner of the mining claim and proceed in a clockwise direction.
2. Only the recording licensee may erect, inscribe or affix a tag to a corner post, line post or witness post.
3. The date and time of both the start and completion of the staking must be inscribed on the No. 1 corner post by the recording licensee. O. Reg. 43/11, s. 5 (2).

Ground staking, land not open for staking

6. (1) The ground staking of a mining claim is not invalidated for the sole reason that it encompasses land that is not open for staking unless the land encompassed in the claim constitutes an unpatented mining claim recorded prior to the time of the staking. O. Reg. 43/11, s. 6 (1).

(2) Land that is not open for staking that is encompassed in a valid mining claim does not form part of the area of the mining claim. O. Reg. 43/11, s. 6 (2).

(3) Land that is not open for staking that is wholly encompassed in a valid mining claim is not required to be marked out. O. Reg. 43/11, s. 6 (3).

Witness posts

7. (1) One or two witness posts, instead of a corner post, must be erected in accordance with this section for a corner of a ground staked mining claim at which it is impracticable to erect a corner post for one of the following reasons:

1. The nature or conformation of the ground at the true corner makes the erecting of a corner post impracticable.
2. The true corner falls within a body of water.
3. The true corner is inaccessible because of incumbent surface rights. O. Reg. 43/11, s. 7 (1).

(2) Witness posts must be erected on the claim boundary as close to the true corner as practicable. O. Reg. 43/11, s. 7 (2).

(3) Witness posts must bear,

- (a) the same inscription and tag as are required for a corner post at a true corner under subsection 10 (1) or (3);
- (b) the letters "WP"; and
- (c) an indication of the direction and distance of the true corner from the witness post. O. Reg. 43/11, s. 7 (3).

(4) If a second witness post is erected, it must bear,

- (a) the letters "WP";
- (b) the corner post number for the true corner;
- (c) the claim number; and
- (d) an indication of the direction and distance of the true corner from the witness post. O. Reg. 43/11, s. 7 (4).

(5) A second witness post may bear the same inscription as is required for a corner post at a true corner under subsection 10 (1) or (3). O. Reg. 43/11, s. 7 (5).

(6) It is not necessary to erect a second witness post for a corner if it is impracticable to do so. O. Reg. 43/11, s. 7 (6).

Line posts

8. (1) If the nature or conformation of the ground at a particular location, incumbent surface rights or water is an obstacle that makes the erecting of a line post at that location impracticable, a line post must be erected on each side of the obstacle. O. Reg. 43/11, s. 8 (1).

(2) If a ground staked mining claim being staked is coterminous with land not open for staking and the boundary of the land not open for staking changes direction other than at a corner of the claim, a line post must be erected at the point of change of direction. O. Reg. 43/11, s. 8 (2).

(3) A line post tag inscribed with the claim number and the direction and distance from the last corner post erected must be affixed to the line post. O. Reg. 43/11, s. 8 (3).

Claim posts

9. (1) Every claim post used for ground staking a mining claim must,

- (a) stand 1.2 metres above the ground when erected;
- (b) be squared or faced on four sides for 30 centimetres from the top; and
- (c) be squared or faced for 10 centimetres across each side. O. Reg. 43/11, s. 9 (1).

(2) Only a post or a standing stump not previously used for staking a mining claim may be used as a claim post. O. Reg. 43/11, s. 9 (2).

(3) Commercial timber may be used for claim posts in areas where it is impracticable or undesirable to cut down trees. O. Reg. 43/11, s. 9 (3).

Tags and inscriptions

10. (1) A licensee ground staking a claim using metal tags must affix to each corner post the appropriately numbered tag and inscribe on each such post his or her name and licence number and the date and time of erecting the post. O. Reg. 43/11, s. 10 (1).

(2) A licensee ground staking a claim using metal tags must inscribe on the line post tag attached to each line post the claim number, the corner post number, the direction of the corner post from which the licensee is proceeding and the distance from the line post to that corner post. O. Reg. 43/11, s. 10 (2).

(3) A licensee ground staking a claim without using metal tags must inscribe on each corner post the number of the post, his or her name and licence number and the date and time of erecting the post. O. Reg. 43/11, s. 10 (3).

(4) A licensee ground staking a claim without using metal tags must inscribe on each line post his or her licence number, the corner post number, the direction of the corner post from which the licensee is proceeding and the distance from the line post to that corner post. O. Reg. 43/11, s. 10 (4).

(5) Inscriptions and line post tags on line posts must be located,

(a) on the south face of any line post erected between the No. 1 corner post and the No. 2 corner post;

(b) on the west face of any line post erected between the No. 2 corner post and the No. 3 corner post;

(c) on the north face of any line post erected between the No. 3 corner post and the No. 4 corner post; and

(d) on the east face of any line post erected between the No. 4 corner post and the No. 1 corner post. O. Reg. 43/11, s. 10 (5).

(6) Information required to be inscribed on a claim post or metal tag must be inscribed in a legible and durable manner. O. Reg. 43/11, s. 10 (6).

(7) Inscriptions and metal tags must be located on the same side of a claim post. O. Reg. 43/11, s. 10 (7).

Indication of metal tags, post tags

11. (1) If metal tags are affixed to corner posts and line posts at the time of ground staking a mining claim, the licensee who staked the claim must so indicate in the application to record the claim. O. Reg. 43/11, s. 11 (1).

(2) If metal tags are not used at the time of ground staking a mining claim, the holder of the claim must affix, as soon as possible after the recording of the claim but not later than six months after recording,

(a) to each corner post, a corner post tag inscribed with the recorded number of the claim; and

(b) to each line post, a line post tag inscribed with his or her licence number, the claim number, the corner post number, the direction of the corner post last erected and the distance from the line post to that corner post. O. Reg. 43/11, s. 11 (2).

Common staking contiguous claims

12. (1) If a licensee ground stakes two or more contiguous mining claims and the licensee applies to record the claims at the same time, the licensee may erect common corner posts at common corners or, where applicable, common witness posts to witness common corners, and common line and corner posts at common line and corner post locations. O. Reg. 43/11, s. 12 (1).

(2) If a common corner post is erected under subsection (1), the corner post tag, if metal tags are used, and any required inscriptions pertaining to each claim must be placed on the side of the common corner post facing the next corner post for that claim in a clockwise manner. O. Reg. 43/11, s. 12 (2).

(3) If a common witness post is erected under subsection (1), the witness post tag, if metal tags are used, and the inscription pertaining to each claim must be placed on the side of the common witness post facing the next corner post for that claim in a clockwise manner. O. Reg. 43/11, s. 12 (3).

(4) If a common line post is erected under subsection (1), the line post tag, if metal tags are used, and any required inscriptions pertaining to each claim must be placed on the side of the common line post facing the next corner post for that claim in a clockwise manner. O. Reg. 43/11, s. 12 (4).

(5) The sketch or plan included in the application to record the claims referred to in subsection (1) must indicate the location of any common claim posts. O. Reg. 43/11, s. 12 (5).

Failing to record a mining claim

13. A person who ground stakes land open for staking and fails to apply to record the mining claim within the time set out in subsection 44 (1) of the Act is not entitled to have a mining claim recorded on the land or to stake the land again, and a mining recorder may refuse or cancel any such staking. O. Reg. 43/11, s. 13.

Good faith claim not invalidated

14. If it appears that a licensee has attempted, in good faith, to comply with the Act and this Regulation, a ground staked mining claim of the licensee is not invalidated by,

- (a) the inclusion in the area of the claim of an area of more or less than the applicable size; or
- (b) the licensee's failure to describe or set out the actual area or parcel of land ground staked in the application to record the claim or in the sketch or plan accompanying the application. O. Reg. 43/11, s. 14.

SPECIFIC RULES: UNSUBDIVIDED TERRITORY

Claim in unsubdivided territory

15. (1) Subject to subsections (2) and (3), a mining claim in unsubdivided territory must be ground staked so that it,

- (a) consists of one or more claim units;
- (b) has a contiguous area of not less than 16 hectares and not more than 256 hectares;
- (c) has boundaries running only north and south and east and west astronomically; and
- (d) has the form of a square or rectangle. O. Reg. 43/11, s. 15 (1).

(2) A mining claim may have a boundary that is coterminous with the boundary of an area that is not open for staking as long as all other boundaries of the claim are staked so that the claim conforms as closely as possible to the requirements set out in subsection (1). O. Reg. 43/11, s. 15 (2).

(3) A boundary of a mining claim may change direction where it is coterminous with land not open for staking, at an intersection of an existing survey or claim boundary, at a claim post or at a monument of adjacent land or existing township fabric. O. Reg. 43/11, s. 15 (3).

(4) If a mining claim consists of two or more claim units, line posts must be erected along the perimeter of the claim at 400 metre intervals. O. Reg. 43/11, s. 15 (4).

(5) The size of a mining claim must, as nearly as practicable, be a multiple of 16 hectares except if the claim comprises an irregular area of land described in section 16. O. Reg. 43/11, s. 15 (5).

(6) The measurements of the boundaries of a mining claim are horizontal distances. O. Reg. 43/11, s. 15 (6).

Exception, staking irregular area

16. (1) An irregular area of land lying adjacent to land, or to land under water, that is not open for staking may be ground staked with boundaries coterminous to the land, or land under water, that is not

open for staking if the mining claim otherwise conforms, as nearly as practicable, to all the requirements set out in section 3, except paragraph 2, and section 15. O. Reg. 43/11, s. 16 (1).

(2) An irregular area of land under water lying adjacent to land, or to land under water, that is not open for staking may be ground staked with boundaries coterminous to the land, or land under water, that is not open for staking if the mining claim otherwise conforms, as nearly as practicable, to all the requirements set out in section 3, except paragraph 2, and section 15. O. Reg. 43/11, s. 16 (2).

(3) The boundaries of an irregular claim staked under subsection (1) or (2) must be marked by the erection of line posts along them at 400 metre intervals. O. Reg. 43/11, s. 16 (3).

(4) Despite subsection (3), the erection of line posts is not required along an irregular claim boundary that is a water boundary. O. Reg. 43/11, s. 16 (4).

(5) An irregular ground staked claim boundary that is a water boundary need only be marked by the erection of corner posts along the boundary line as close as practicable to where the claim boundary meets the water boundary. O. Reg. 43/11, s. 16 (5).

(6) In subsections (4) and (5),

“water boundary” means the water’s edge, unless otherwise defined in the existing alienation. O. Reg. 43/11, s. 16 (6).

Application to designated subdivided territory

17. In addition to applying to the ground staking of mining claims in unsubdivided territory, sections 15 and 16 apply to the ground staking of mining claims in areas of subdivided territory designated by the Minister if, in the Minister’s opinion, the survey fabric in those areas is so difficult to ascertain that it is not reasonable to expect a person ground staking a claim there to do so in accordance with sections 18, 19 and 20. O. Reg. 43/11, s. 17.

SPECIFIC RULES: SUBDIVIDED TERRITORY

Ground staking in subdivided territory

18. (1) A ground staked mining claim in subdivided territory must have boundaries coincident with or parallel to section, lot, concession or range lines established by the original survey. O. Reg. 43/11, s. 18 (1).

(2) A ground staked mining claim must have an area of not more than 256 hectares and not less than the minimum size set out in this section. O. Reg. 43/11, s. 18 (2).

(3) A ground staked mining claim must have the shape of a square or rectangle. O. Reg. 43/11, s. 18 (3).

(4) A ground staked mining claim may have a boundary that is coterminous with the boundary of an area that is not open for staking as long as all other boundaries of the claim are staked so that the claim conforms as closely as possible to the requirements set out in this section and section 3, except paragraph 2. O. Reg. 43/11, s. 18 (4).

(5) If the ground staked mining claim consists of two or more claim units, line posts must be erected along the perimeter of the claim at all locations where the corner of a lot or of a subdivision of a section lies on the perimeter of the claim. O. Reg. 43/11, s. 18 (5).

(6) Where irregular boundaries exist, the line posts must be erected to mark out the boundaries as nearly as practicable. O. Reg. 43/11, s. 18 (6).

(7) In a township subdivided into lots of 40 hectares, a ground staked mining claim of minimum size must contain 20 hectares and consist of the north, south, east or west half of a lot. O. Reg. 43/11, s. 18 (7).

(8) In a township subdivided into lots of 60 hectares, a ground staked mining claim of minimum size must contain 15 hectares and consist of the northeast, northwest, southeast or southwest quarter of a lot. O. Reg. 43/11, s. 18 (8).

(9) In a township subdivided into lots of 80 hectares, a ground staked mining claim of minimum size must contain 20 hectares and consist of the northeast, northwest, southeast or southwest quarter of a lot. O. Reg. 43/11, s. 18 (9).

(10) In a township subdivided into lots of 130 hectares, a ground staked mining claim of minimum size must consist of the northeast, northwest, southeast or southwest quarter of the north or south half of a lot. O. Reg. 43/11, s. 18 (10).

(11) In a township subdivided into sections of 260 hectares that are subdivided into quarter sections or subdivisions containing 65 hectares, a ground staked mining claim of minimum size must consist of the northeast, northwest, southeast or southwest quarter of a quarter section or subdivision. O. Reg. 43/11, s. 18 (11).

Exception

19. A ground staked mining claim in subdivided territory is not required to comply with section 18 if,

(a) compliance is not possible,

(i) because the lot or subdivision of a section of a township is irregular in form, or

(ii) because of any other irregularity affecting the original survey, the lot or subdivision;
and

(b) the claim is otherwise staked so as to meet the requirements of section 18 as closely as practicable in the circumstances. O. Reg. 43/11, s. 19.

Including otherwise excluded land in mining claim

20. Land that would otherwise be included in the area of a lot or subdivision of a section, but that is excluded from the lot or subdivision because it is covered with water or for some other reason, may be included in a ground staked mining claim as if it were part of the lot or subdivision. O. Reg. 43/11, s. 20.

PART II

MAP STAKING OF MINING CLAIMS

MAP STAKING IN SOUTHERN ONTARIO

Map staking in Southern Ontario

21. (1) In subdivided territory in Southern Ontario, map staking of mining claims shall be done in accordance with this Part, by reference to the existing survey fabric. O. Reg. 43/11, s. 21 (1).

(2) In unsubdivided territory in Southern Ontario, mining claims shall be ground staked in accordance with Part III. O. Reg. 43/11, s. 21 (2).

Prohibition, ground staking, etc.

22. No mining claim in subdivided territory in Southern Ontario shall be ground staked and no application to record a ground staked mining claim in the territory shall be accepted for recording on and

after the effective date when map staking of mining claims is applicable to the territory. O. Reg. 43/11, s. 22.

Territory excluded from map staking

23. (1) A mining claim that is map staked shall not include land that is in territory where map staking is not permitted. O. Reg. 43/11, s. 23 (1).

(2) Where a map staked mining claim is limited in size due to subsection (1), the minimum size requirements for a map staked mining claim do not apply. O. Reg. 43/11, s. 23 (2).

Completion of staking

24. Completion of staking in the case of a map staked mining claim occurs when the application to record a map staked mining claim is made in the manner set out in this Regulation and any required fee is paid. O. Reg. 43/11, s. 24.

Aliquot description of claim

25. (1) The application to record a map staked mining claim must include an aliquot description of the claim with reference to the original survey fabric as well as a sketch of the claim. O. Reg. 43/11, s. 25 (1).

(2) Where there is a discrepancy between the aliquot description and the sketch, the sketch prevails as the correct description of the intended map staked mining claim. O. Reg. 43/11, s. 25 (2).

Application to record map staked claim

26. (1) Subject to section 31, the application to record a map staked mining claim may be made by facsimile, mail or in person to the Provincial Recording Office or to any other office as may be designated by the Minister. O. Reg. 43/11, s. 26 (1).

(2) For purposes of section 44 of the Act, the staking of a map staked mining claim is simultaneous with making the application to record a map staked claim. O. Reg. 43/11, s. 26 (2).

Claim boundaries, size and orientation

27. (1) A map staked mining claim must have boundaries coincident with or parallel to section, lot, concession or range lines established by the original survey. O. Reg. 43/11, s. 27 (1).

(2) A map staked mining claim must be comprised of various aliquot parts of lots, and each aliquot part must have at least one common boundary with another aliquot part within the same claim. O. Reg. 43/11, s. 27 (2).

(3) A map staked mining claim must have an area not greater than 256 hectares and not less than the minimum area set out in this section. O. Reg. 43/11, s. 27 (3).

(4) In a township subdivided into lots of 40 hectares, a map staked mining claim of minimum size must contain 20 hectares and consist of the north, south, east or west half of a lot. O. Reg. 43/11, s. 27 (4).

(5) In a township subdivided into lots of 60 hectares, a map staked mining claim of minimum size must contain 15 hectares and consist of the northeast, northwest, southeast or southwest quarter of a lot. O. Reg. 43/11, s. 27 (5).

(6) In a township subdivided into lots of 80 hectares, a map staked mining claim of minimum size must contain 20 hectares and consist of the northeast, northwest, southeast or southwest quarter of a lot. O. Reg. 43/11, s. 27 (6).

(7) In a township subdivided into lots of 130 hectares, a map staked mining claim of minimum size must consist of the northeast, northwest, southeast or southwest quarter of the north or south half of a lot. O. Reg. 43/11, s. 27 (7).

(8) In a township subdivided into sections of 260 hectares that are subdivided into quarter sections or subdivisions containing 65 hectares, a map staked mining claim of minimum size must consist of the northeast, northwest, southeast or southwest quarter of a quarter section or subdivision. O. Reg. 43/11, s. 27 (8).

Exception

28. A map staked mining claim is not required to comply with section 27, if

- (a) compliance is not possible,
 - (i) because the lot or subdivision of a section of a township is irregular in form, or
 - (ii) because of any other irregularity affecting the original survey, the lot or subdivision; and
- (b) the claim is otherwise staked so as to meet the requirements of section 27 as closely as practicable in the circumstances. O. Reg. 43/11, s. 28.

Boundary coterminous with boundary of area not open for staking

29. A map staked mining claim may have a boundary that is coterminous with the boundary of an area that is not open for staking as long as all other boundaries of the claim are staked so that the claim conforms as closely as possible to the requirements set out in section 27. O. Reg. 43/11, s. 29.

Including otherwise excluded land in mining claim

30. Land that would otherwise be included in the area of a lot or subdivision of a section, but that is excluded from the lot or subdivision because it is covered with water or for some other reason may be included in a map staked mining claim as if it were part of the lot or subdivision. O. Reg. 43/11, s. 30.

Rules re area open for staking for less than one business day

31. The following rules apply to the map staking of a mining claim in areas that have been open for map staking for less than one business day:

1. The application to record a map staked claim can only be made to the Provincial Recording Office by facsimile (fax) at the fax number designated by the Provincial Recording office.
2. Only one application to record a map staked mining claim can be made in a single fax transmission.
3. The time imprinted on the first page of a fax transmission for an application to record a map staked mining claim by the receiving fax machine in the Provincial Recording Office, shall be the time of commencement of staking for a map staked mining claim.
4. The time imprinted on the last page of a fax transmission for an application to record a map staked mining claim by the receiving fax machine in the Provincial Recording Office, shall be the time of making the application to record a map staked mining claim.
5. Map staking of a mining claim is completed when the application to record a map staked mining claim has been made and payment of any required fee for the application has been made.

6. Map staking of a mining claim must be completed by 4:30 p.m. local time at the Provincial Recording Office on the first business day that the lands are open for staking.
7. If the fax transmission of an application to record a map staked mining claim is completed in the Provincial Recording Office after 4:30 p.m. local time on a day the Provincial Recording Office is open for business, or at any time on a day that the Provincial Recording Office is not open for business, the application to record is deemed to be made at 8:30 on the next day the Provincial Recording Office is open for business.
8. If more than one application to record a map staked mining claim for the same lands is made by fax transmission in the circumstances set out in paragraph 7, the applications to record are deemed to have been made on the next day that the Provincial Recording Office is open for business in the order they were received in the Provincial Recording Office, as evidenced by the time imprinted on the last page of each fax transmission by the receiving fax machine in the Provincial Recording Office. O. Reg. 43/11, s. 31.

TAB 4

Public Lands Act, R.S.O. 1990, c. P.43, s. 21

Easements

21. The Minister may grant easements in or over public lands for any purpose. R.S.O. 1990, c. P.43, s. 21

TAB 5

*Courts of Justice Act, R.S.O. 1990, c. C.43, s. 134***Powers on appeal**

134.(1) Unless otherwise provided, a court to which an appeal is taken may,

- (a) make any order or decision that ought to or could have been made by the court or tribunal appealed from;
- (b) order a new trial;
- (c) make any other order or decision that is considered just. R.S.O. 1990, c. C.43, s. 134 (1).

Interim orders

(2) On motion, a court to which a motion for leave to appeal is made or to which an appeal is taken may make any interim order that is considered just to prevent prejudice to a party pending the appeal. 1999, c. 12, Sched. B, s. 4 (3).

Power to quash

(3) On motion, a court to which an appeal is taken may, in a proper case, quash the appeal.

Determination of fact

(4) Unless otherwise provided, a court to which an appeal is taken may, in a proper case,

- (a) draw inferences of fact from the evidence, except that no inference shall be drawn that is inconsistent with a finding that has not been set aside;
- (b) receive further evidence by affidavit, transcript of oral examination, oral examination before the court or in such other manner as the court directs; and
- (c) direct a reference or the trial of an issue,

to enable the court to determine the appeal.

Scope of decisions

(5) The powers conferred by this section may be exercised even if the appeal is as to part only of an order or decision, and may be exercised in favour of a party even though the party did not appeal. R.S.O. 1990, c. C.43, s. 134 (3-5).

New trial

(6) A court to which an appeal is taken shall not direct a new trial unless some substantial wrong or miscarriage of justice has occurred. R.S.O. 1990, c. C.43, s. 134 (6); 1994, c. 12, s. 46 (1).

Idem

(7) Where some substantial wrong or miscarriage of justice has occurred but it affects only part of an order or decision or some of the parties, a new trial may be ordered in respect of only that part or those parties. R.S.O. 1990, c. C.43, s. 134 (7); 1994, c. 12, s. 46 (2).

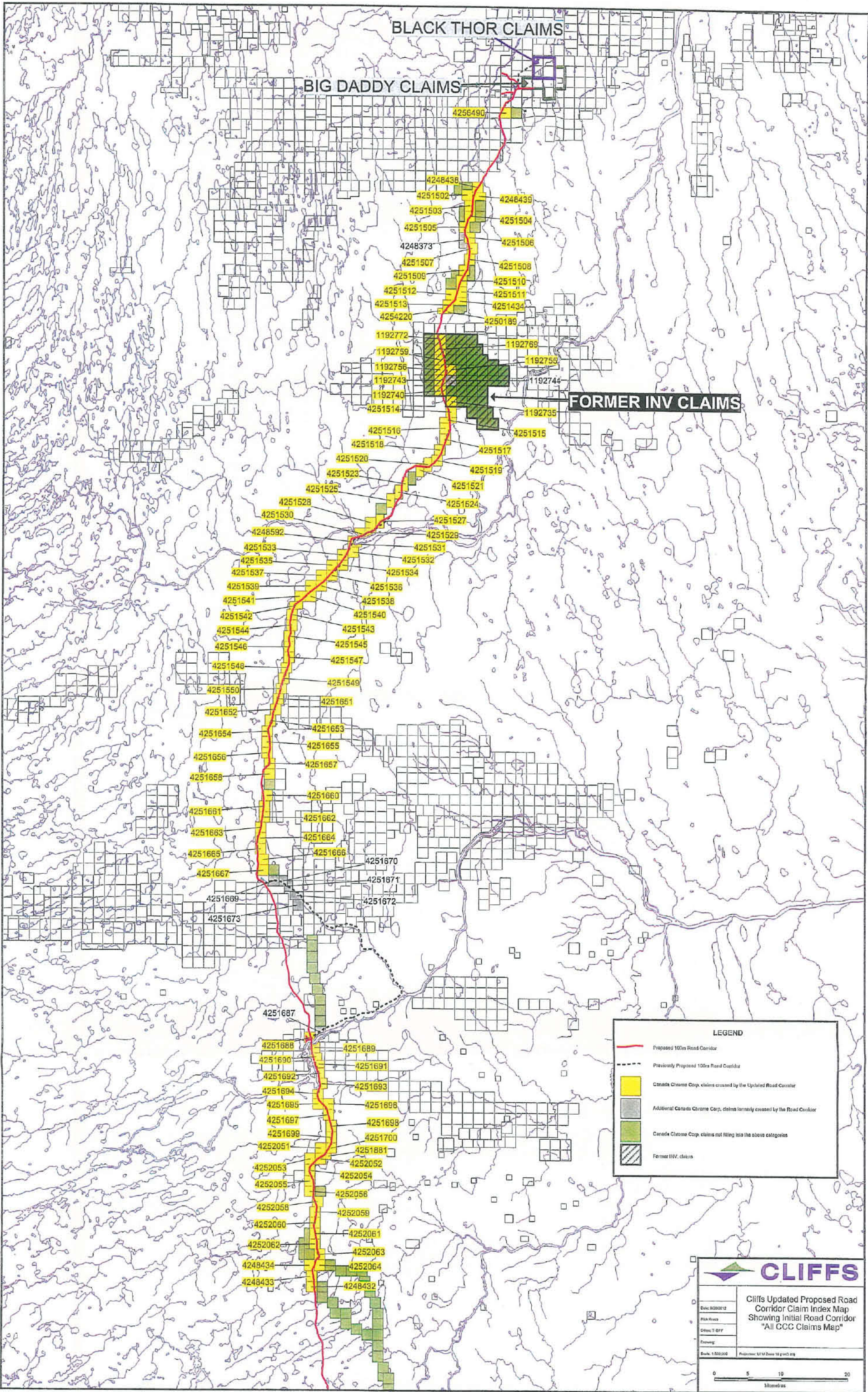
Tab C

SCHEDULE "C"

BLACK THOR CLAIMS

BIG DADDY CLAIMS

FORMER INV CLAIMS



LEGEND

- Proposed 100m Road Corridor
- Previously Proposed 100m Road Corridor
- Canada Chrome Corp. claims crossed by the Updated Road Corridor
- Additional Canada Chrome Corp. claims formerly crossed by the Road Corridor
- Canada Chrome Corp. claims not fitting into the above categories
- Former INV. claims

CLIFFS

Cliffs Updated Proposed Road Corridor Claim Index Map
Showing Initial Road Corridor
"All GCC Claims Map"

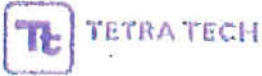
Date: 02/02/12
Risk Area:
Client: T-BAY
Drawing:
Scale: 1:500,000
Projection: UTM Zone 18 GAD 83

0 5 10 20
Kilometres

Tab D

SCHEDULE "D"

TAB 1

| | | |
|---|---|--|
|  | MATERIAL AVAILABILITY ASSESSMENT | Project Number: 705-1298820100 |
| ROAD VS RAIL | | Project Name: Canada Chrome Corp. Rail vs. Road Study in McFauld's Lake ON |

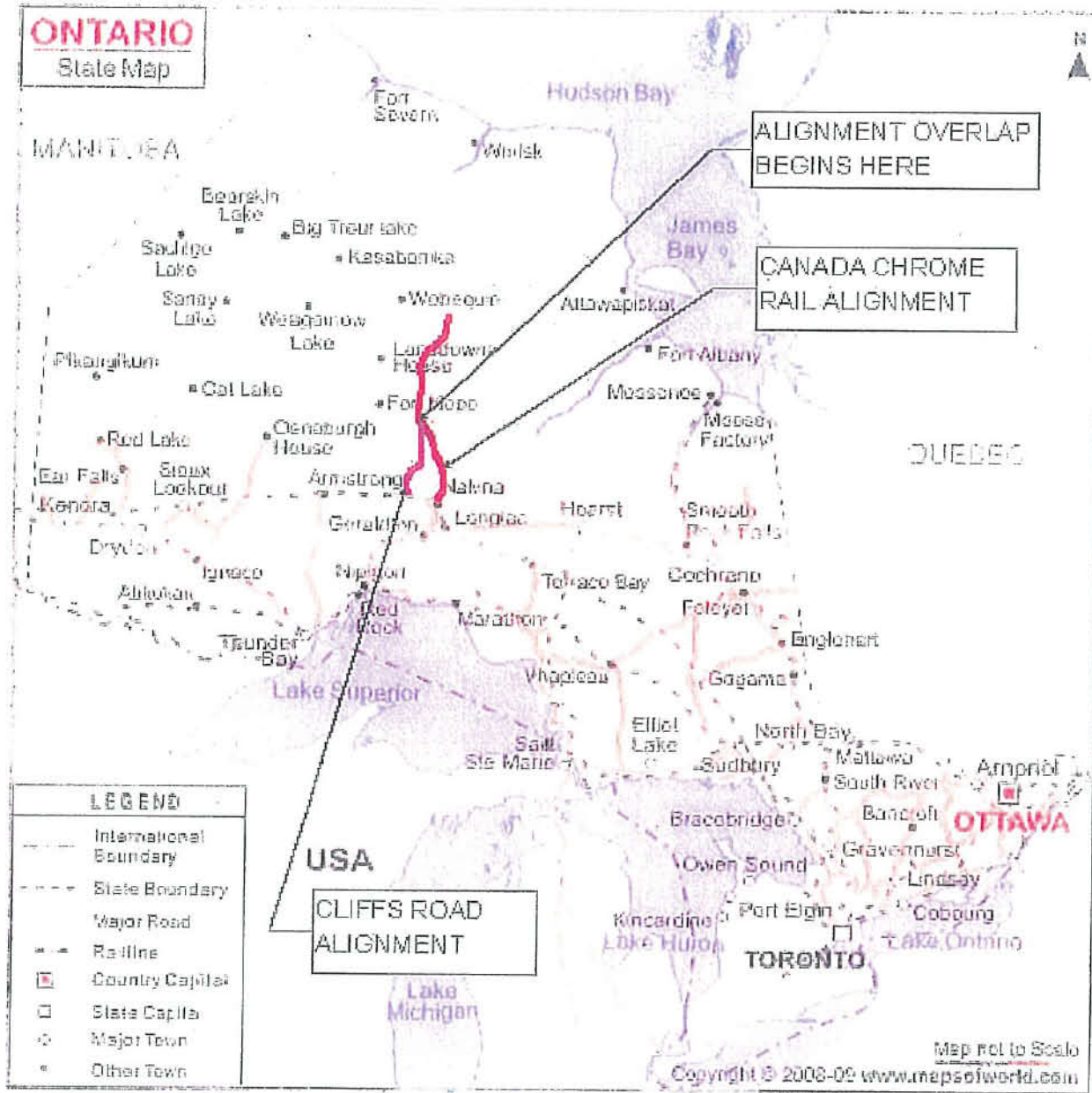



Figure 1-4 Ontario Provincial Map

TAB 2

| | | |
|---|---|--|
| | MATERIAL AVAILABILITY ASSESSMENT | Project Number: 705-1298820100 |
|  TETRA TECH | ROAD VS RAIL | Project Name: Canada Chrome Corp. Rail vs. Road Study in McFauld's Lake ON |

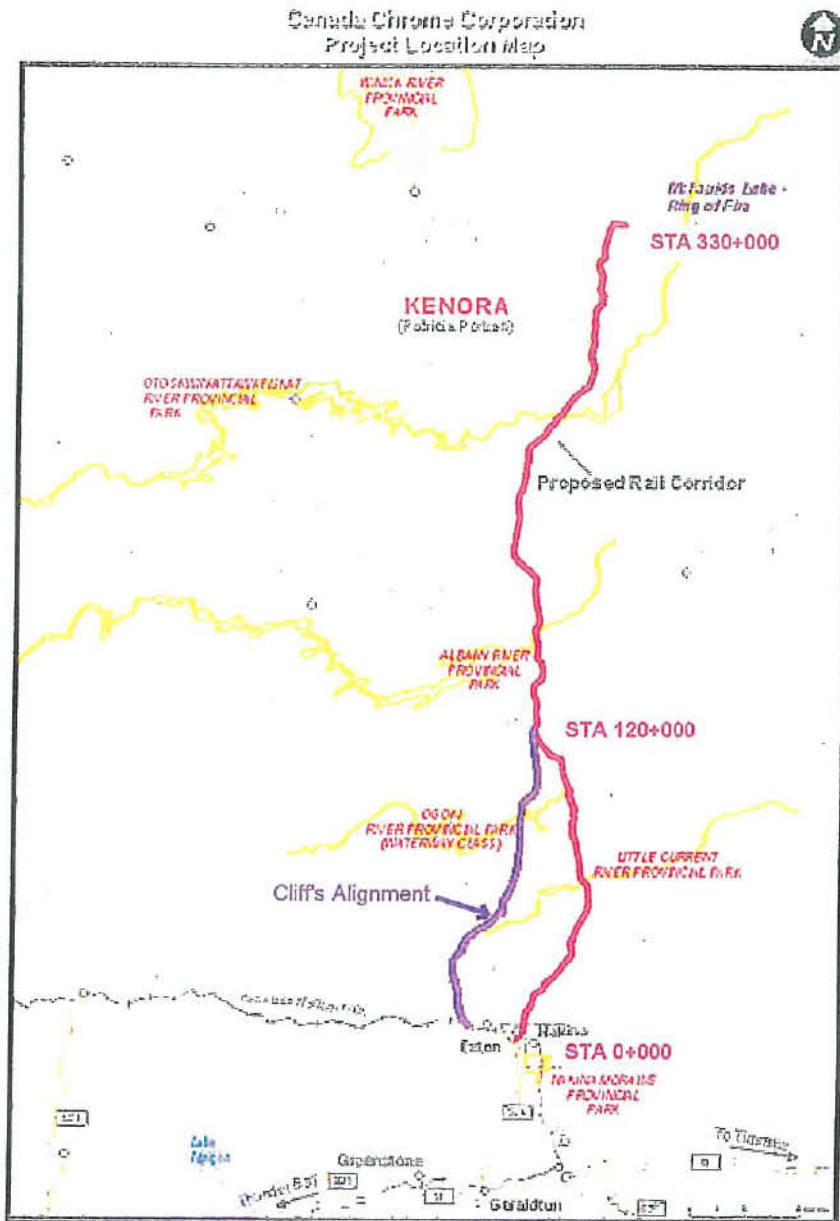
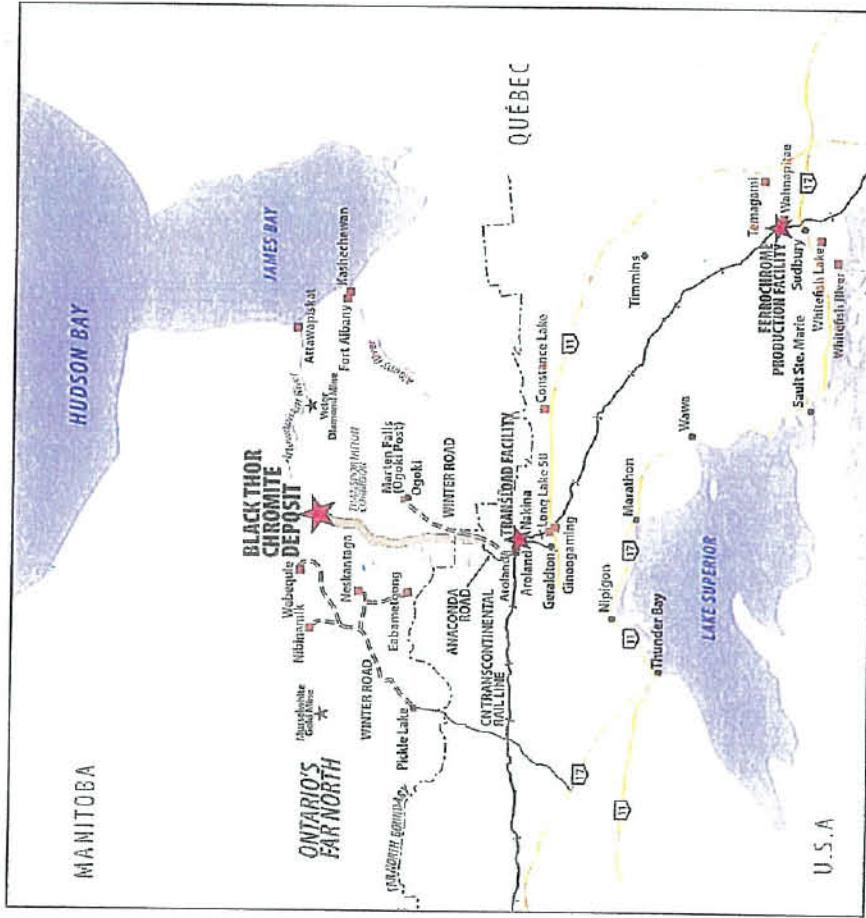


Figure 1-3
Analysis Location Map

The alignment is approximately 330km long, and locations along the alignment will be referenced in the report in the format STA XXX+XXX, the limits therefore being STA 0+000 to STA 330+000 in meters.

TAB 3

Base Case Locations



"...we're excited to move to a more detailed phase of discussions with the communities and stakeholders and by sharing our plans and receiving your feedback."

2274659 ONTARIO INC.

-and-

CANADA CHROME CORPORATION

Respondent
(Applicant)

Appellant
(Respondent)

-and-

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Responde
(Intervene

Court File No. C59945

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

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