

COURT OF APPEAL FOR TORONTO

BETWEEN:

2274659 ONTARIO INC

Respondent (Applicant)

– and –

CANADA CHROME CORPORATION

Appellant (Respondent)

– and –

MINISTER OF NORTHERN DEVELOPMENT AND MINES

Respondent (Intervenor)

**FACTUM OF THE RESPONDENT
MINISTER OF NORTHERN DEVELOPMENT AND MINES**

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MINISTER OF NORTHERN DEVELOPMENT AND MINES

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**FACTUM OF THE RESPONDENT
MINISTER OF NORTHERN DEVELOPMENT AND MINES**

PART I – OVERVIEW

1. This is an appeal from the judgment of the Divisional Court dated July 30, 2014, setting aside a decision of the Mining and Lands Commissioner (the “MLC”). The Divisional Court held that the MLC’s dismissal of the Respondent 2274659 Ontario Inc.’s (the “Respondent” or “Cliffs”) application under section 51(4) of the *Mining Act* (the “Act”) ought to be set aside as the Commissioner made unreasonable statutory interpretations and factual errors. The Divisional Court allowed the appeal and substituted its own decision, granting the *Mining Act* application.

2. The application in question was for an order dispensing with the requirement that the Respondent obtain the Appellant Canada Chrome Corporation's (the "Appellant" or "CCC") consent to an easement application under the *Public Lands Act*, RSO 1990 c P 43. Cliffs had applied to the Ministry of Natural Resources for an easement that would permit the construction of a road over 319 kilometres of Crown land to service Cliffs' "Black Thor" chromite deposit interests in the Ring of Fire region. CCC's consent, or a MLC order dispensing of the need to obtain it, was required by s. 51 of the *Mining Act* since the lands desired for the road crossed mining claims held by CCC. A mining claim is a parcel of land that has been staked and recorded in accordance with the *Mining Act* and its regulations.

3. The Minister of Northern Development and Mines (the "Minister") was granted leave to intervene¹ as a party before the Divisional Court and made submissions on the proper interpretation of sections 50 and 51 of the *Act*, including their relationship to one another in the context of unpatented mining claims, and the test to be applied on a s. 51(4) application² (a "MLC Application") to dispense with the consent requirement.

4. The Divisional Court accepted the Minister's submissions and the Minister responds to the present appeal in support of the Divisional Court's findings on such matters. Specifically, the Minister supports the Divisional Court's findings on the following:

¹Order of Lederer J. (Div. Ct.), April 28, 2014, Appeal Book and Compendium, Tab 20, p. 402.

²At the time Cliffs' application was referred to the MLC for a hearing, ss. 51(4) and (5) of the *Act* provided the framework for applications to resolve surface right disputes between a mining claim holder and an applicant for a *Public Lands Act* disposition. Pursuant to amendments to the *Act* which took force on Nov. 1, 2012, ss. 51(2) and (3) now govern. See both prior and current versions of s.50 and 51 at **Schedule B**, pp. 17-19, 24-25.

- a. The Divisional Court was correct in concluding that the limitations in s. 50(2) of the *Act* on the surface rights of a mining claim holder apply equally to all mining claims, whether on Crown land to which the surface rights have not been alienated, or land where the surface is privately held;
- b. The Divisional Court was also correct in its interpretation of the test to be met on a MLC Application – namely, that the multiple use principle requires an assessment of the degree of actual or probable interference of the applicant's proposed project with the claim holder's exploration and development activity respecting minerals on the claim, and that any interference that may be found must be more than minimal. The test also requires a consideration of the possibility of accommodation of both uses, recognizing a public interest in multiple uses of Crown land;
- c. The Minister agrees with the Divisional Court that the development of a railroad over several hundred kilometres of northern terrain on mining claims and other lands that are non-contiguous with the "Big Daddy" deposit, cannot properly be considered "development and operation" of a "mine", within the meaning of s. 1(1), 50(2), 51(1) of the *Act*.

PART II – FACTS

5. The Minister responds to the appeal on questions of law alone but generally accepts the facts as stated in the Appellant's factum at paragraphs 4 through 10, qualified as follows:

- a. Second sentence of para. 5, the Minister takes no position;
- b. Paragraph 7, the Minister states that CCC's priority surface rights to the Mining Claims are prescribed by the *Act*, including s. 50(2).

PART III – ISSUES AND LAW

A. Issues in the Appeal

6. The Appellant raises four issues on appeal and the Minister responds to the first three: Whether the Divisional Court erred,

- a) in its interpretation of s. 50 of the *Act*, resulting in a mischaracterization of the MLC's findings at first instance;
- b) in its interpretation of s. 51 of the *Mining Act*, resulting in an unduly restrictive interpretation of an unpatented mining claim holder's right on Crown land; and
- c) in finding that the definition of a "mine" in s. 1 of the *Act* does not include a railway (of the sort contemplated by CCC for its mining claims).

Appellant's Factum at p. 4, para 11

7. The Minister takes no position on the Appellant's fourth issue: whether the Divisional Court erred in substituting its own decision for that of the MLC.

B. The Law

Overview of "Mining Claims"

8. The surface rights afforded to the holder of a mining claim are set out in s. 50(2).

Surface rights

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. R.S.O. 1990, c. M.14, s. 50 (2); 2009, c. 21, s. 28 (1)

9. Section 51(1) of the *Act* grants a limited priority to an unpatented mining claim holder to use the surface of the claim over the right of any subsequent users to the surface.

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).

10. Surface rights are defined in section 1 as “every right in land other than the mining rights” and the “mining rights” are the rights to “minerals on, in or under any land”. Once a mining claim is patented, the surface rights will be determined by the patent itself as a patented mining claim may or may not include a grant of the surface rights.

Divisional Court reasons, at paras. 43, 45 **Appeal Book and Compendium, Tab 2B**, pp. 18-19. *Mining Act*, ss. 1(1), 81(4), and 89(1), **Schedule B**, pp. 21, 28.

11. To be clear, an unpatented mining claim refers to any mining claim that has not yet been brought to the patent stage by the claim holder, either by the issuance of a Crown patent in fee simple or a leasehold patent.³ Unpatented mining claims can exist on either private land or public land, including land owned by the Crown in which the surface rights are held by third parties (e.g. by a surface lease or a license of occupation). They can also exist on public lands to which the surface rights have not been alienated.

Divisional Court reasons, at paras. 40, 44-45, **Appeal Book and Compendium, Tab 2B**, pp. 18-19.

³ A patent for most purposes of the *Act* is defined by s. 1(1) as “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.”

Issue 1: Divisional Court correctly interpreted section 50 of the Act

12. The Appellant argues that contrary to the conclusion of the Divisional Court, the MLC was “correct in finding that s. 50(2) of the *Act* applies to mining claims for which the surface is privately owned, and s. 51(1) applies to mining claims for which the surface is owned by the Crown”. Based on this conclusion, the appellant submits that the MLC was correct to find that s. 51(1), not s. 50(2), “governs CCC’s surface rights” on its unpatented mining claims.

Appellant’s Factum at p. 7, para 22.

13. The Appellant makes these submissions notwithstanding its concession that the MLC’s analysis of section 50(2) and 51(1) was flawed. In particular, the Appellant agreed at the Divisional Court that the MLC erred when it suggested that an “unpatented mining claim” is not a subset of “mining claims”.

Appellant’s Factum at p. 7, para 23.

14. Before this Court, the Appellant suggests that while the MLC was wrong to distinguish between patented and unpatented mining claims in the context of s. 50(2), its decision was nevertheless reasonable as a distinction is correctly drawn in s. 50(2) and 51(1) between “mining claims on Crown land, and mining claims for which the surface is privately owned.” The Appellant would read into s. 50(2) qualifications limiting that section’s application to mining claims that are on lands to which the surface rights are privately owned. Similarly, the Appellant would read into s. 51(1), qualifications that strip away the limitations on surface rights set out in s. 50(2) in the case of unpatented mining claims when the surface rights are held by the Crown at the time of staking. The Appellant argues that this implied and broader interpretation of s.

51(1) “makes good sense”, suggesting that the public interest in Crown lands, requires or deserves less protection than the interests of a private land owner.

Appellant’s Factum at p.7, 10, paras. 23, 29

15. The Minister submits that the Appellant’s arguments on the interpretation of s. 50(2) are fatally flawed. They suffer from the same deficiency as the MLC’s interpretation of s. 50(2) and 51(1), in that language must be read into both sections to arrive at the result proposed by the Appellant. This is notwithstanding the fact that the sections are clear on their face and the qualifications implied by the Appellant would run counter to the conventional approach to statutory interpretation. Specifically, they would be at odds with the ordinary grammatical meaning of the words of the statute, read in context with the other provisions in the *Act*. The qualifications to be implied are also contrary to the purpose of both s. 50 and 51, which includes the “multiple use principle”.

Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 SCR 27 at para. 21, **Minister’s Book of Authorities (“MBOA”) Tab 1;**

Divisional Court reasons, at paras. 36, 38 and 49, **Appeal Book and Compendium, Tab 2B**, pp. 17-19.

(a) ordinary grammatical meaning of s. 50(2)

16. Having conceded at paragraph 23 of its factum that an unpatented mining claim is indeed a mining claim within the meaning of s. 50(2), it is simply not open to the Appellant to argue as it has that the restrictions on the surface rights of a mining claim holder set out in that subsection do not apply to the Appellant’s mining claims.

17. The Divisional Court rightly rejected any such interpretation when it found that the plain words of s. 50(2) do not limit the application of the subsection to privately owned surface rights. Read as a whole, the language clearly reveals that the section

applies to all mining claims, including unpatented mining claims on lands where the surface rights have not been disposed of by the Crown, such as CCC's claims.

Divisional Court reasons, at paras. 39, 41-42, **Appeal Book and Compendium, Tab 2B**, pp. 18.

(b) read in context of other provisions

18. When s. 50(2) is read in the context of the *Act* as a whole, it is also clear that the reference to "mining claim" and the limits on a mining claim holder's surface rights apply to all mining claims. The term "mining claim" is defined in s. 1 of the *Act* for the purposes of the *Act* as a whole and is not limited by its definition to claims located on lands where the surface rights are privately held. In addition, the Appellant concedes that the Divisional Court was correct in determining that the term includes unpatented mining claims when it is used in other parts of the statute, including s. 51(1). Otherwise, as the Divisional Court held, the sections "would not make sense".⁴

Divisional Court reasons, at para. 42, **Appeal Book and Compendium, Tab 2B**, pp. 18.

19. The Appellant suggests, however, that the context provided by s. 51(1) reveals that the limits on a mining claim holder's rights in s. 50(2) cannot apply to claims on lands where the surface rights are held by the Crown. The Minister submits that the Divisional Court's analysis at paragraphs 43 through 46, and 55 of its decision as to the meaning of s. 51(1) are a full answer to this proposition. Section 51(1) does not describe the surface rights of a mining claim holder as those rights are outlined in s. 50(2). Section 51(1) merely confers priority to the unpatented mining claim holder over other subsequent users, to use those limited surface rights that were accorded by s.

⁴ See for example *Mining Act* ss. 18, 26(7), 27, 28(1), 31, 38, 39(1), 40, 42, 44, 50(1), 50 (2.1), 71, 72, 75, 78.2—78.3, 81, **Schedule B, pp. 22-24, 26-27**

50(2). The opening words of s. 51(1) “[e]xcept as in this Act is otherwise provided” must be read as including the limitations on the surface rights of a mining claim holder found in s. 50(2) of the *Act*. Section 50 and 51 must be read conjunctively.

Divisional Court reasons, at para. 53, **Appeal Book and Compendium, Tab 2B**, p. 20.

(c) purpose of both s. 50 and 51—multiple use principle

20. In interpreting legislation, a court should also look to the objective of the *Act* and the intention of the Legislature. As the Divisional Court held, an examination of the history of s. 50(2) reveals that its “underlying purpose was to encourage multiple uses of surface rights on mining lands”. The subsection was added to the statute in 1957 in response to the concern that Crown lands were being alienated from the Crown through the claim staking process, and increasingly unavailable for other public uses. The section was not added, as the Appellant’s interpretation would suggest, to set out the surface rights of a mining claim holder on private lands.

Divisional Court reasons, at para. 49, **Appeal Book and Compendium, Tab 2B**, p. 19.

21. Following the *Report of the Public Lands Investigation Committee, 1959*, the predecessor to s. 51 was added to the *Act* to both give a limited priority to mining claim holders to use the surface of a claim for mining purposes specified in s. 50(2), while also protecting the principle of “multiple use” on Crown lands by providing for a dispute resolution mechanism – namely, a MLC Application. Nothing in this historical context suggests in any way that the limited surface rights provided by s. 50(2) are intended to apply only to lands where the surface rights are privately held.

Divisional Court reasons, at paras. 51-53, **Appeal Book and Compendium, Tab 2B**, p. 20.

22. The Appellant’s interpretation of s. 51 would significantly increase the surface rights conferred on a claimholder whose claim is staked on lands with Crown surface

rights by removing the limitations in s. 50(2). This increase would necessarily reduce the prospect that there will or can be multiple uses of the surface of those lands and undercuts the intention of the Legislature in enacting the sections.

Divisional Court reasons, at para. 54, **Appeal Book and Compendium, Tab 2B**, p. 20.

23. If the MLC's interpretation is upheld, the Crown's capacity to meaningfully facilitate multiple uses of the surface of Crown lands subject to mining claims is diminished. Specifically, the Crown's ownership rights in Crown land, and the public interest in the multiple use principle, would be adversely affected through the elimination of the requirement that the unpatented mining claim holder's use and occupation of Crown land be limited to "*such part or parts thereof as are necessary*" for the purpose of prospecting, exploration, development and operation of mines, minerals and mining rights, "*therein*".

(d) CCC's further argument: "Therein" refers to "part or parts" of the surface of mining claim.

24. In relation to Issue 1, the Appellant also argues that the Divisional Court compounded its purported error of interpretation by incorrectly finding that the word "therein" in s.50(2) refers to "the claims themselves" when, according to the Appellant, the word refers to "part or parts" of the "surface of the mining claims". While the relevance and implication of this argument are difficult to follow, the Appellant suggests that it is of considerable significance to the appeal.

Appellant's Factum at p. 11, para. 31

25. The Minister notes, however, that even the MLC accepted that the word “therein” is a reference to the mining claims themselves. Otherwise, the following statement in the MLC’s decision would not make sense:

This wording [in s. 50(2)] suggests that a mining claim holder will be limited insofar as surface rights are concerned. To put it in ordinary terms, entering upon, using and occupying the surface will be limited to doing what is needed *to get at the materials “therein”*. (emphasis added).

MLC Reasons, at p. 30, **Appeal Book and Compendium, Tab 3B**, p.64.

26. The materials “therein” must refer to the minerals in the mining claim, and not materials in part or parts of the surface of the mining claims, as the surface rights provided to a mining claim holder exclude minerals as well as sand, peat and gravel. Any surface rights in relation to the development or operation of mines including ways or works in connection with the winning of minerals, are limited by s. 50(2) to the winning of minerals “therein” or in the claims.

Mining Act, s. 50(2), 51(1), Schedule B. pp. 24-25.

Issue 2: Divisional Court correctly interpreted s. 51 of the Act

27. The Appellant argues that the Divisional Court erred in its interpretation of s. 51, resulting in an unduly restrictive interpretation of an unpatented mining claim holder’s rights on Crown lands. It submits that by the “multiple use principle” an order dispensing with CCC’s consent to the easement application should be granted “if, but only if, multiple use of the surface of the Mining Claims is possible”. That is, the order should be made only if Cliffs’ Road “would not interfere with CCC’s prior right to use the surface of the Mining Claims.”

Appellant’s Factum, p. 4, 13, 14, paras. 11, 37, 41.

28. The Minister respectfully submits that giving effect to the multiple uses objective promoted by the *Act* requires a meaningful preservation of surface rights on Crown lands and therefore a more balanced examination on a MLC Application than the “if, but only if” test suggested by the Appellant.

29. In addition to reading ss. 50(2) and 51 conjunctively, the Minister supports the Divisional Court’s interpretation of the proper test to be applied on a MLC Application. The Divisional Court appropriately reviewed prior MLC decisions relating to MLC Applications to determine that the test requires an assessment of the degree of actual or probable interference of a proposed development with the mining claim holder’s exploration and development activity respecting minerals on the claims. Furthermore, any interference that is found must be more than minimal, and consideration must be given to the possibility of accommodation of both uses.

Divisional Court reasons, at paras. 63-64, 94, 96, 110, **Appeal Book and Compendium, Tab 2B**, pp. 22, 27-28, 30.

30. Applying this balanced approach to MLC Applications is consistent with prior MLC practice, where the tribunal variously described the required level of impact on a respondent’s mining rights in terms of “serious interference”, “materially change”, and “impede his ability to deal with his rights”.

Kamiskotia Ski Resorts Limited v Lost Treasure Resources Ltd, (1984) 6 MCC 460 at p. 462 (“serious interference”), **MBOA Tab 2**

Minister of Natural Resources v Michael Yvon Gagne et al, Unreported, MLC File No MA 005-98, 12 February 1999 at p. 25 (“materially change”), **MBOA Tab 3**

Gerry Roy v Berry, Ken McCombe & the Minister of Natural Resources, Unreported, MLC File No MA 014-00, 8 November 2000 [“Roy”] at p. 24. (“impede his ability”), **MBOA Tab 4**

Issue 3: CCC's proposed railroad is not a "mine" within meaning of Act

31. The Appellant argues that the Divisional Court erred in finding that a railway is not a use for which CCC can claim priority under s. 51(1) of the *Act*. The Appellant further states that s. 51(1) provides it with the prior right to use the surface of its mining claims for the development and operation of a "mine", and that the definition of a mine includes "ways" or "works" and therefore a railroad. Section 1(1)(b) of the *Act* indicates that a mine includes "ways" or "works" relating to or used in connection with the activity referred to in clause (a) of s. 1(1). Clause (a) reads:

"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*.

Appellant's Factum at p. 19-20, paras. 54-57.

32. Contrary to the Appellant's assertion, the Divisional Court did not state that a "railway" could never fall within the definition of a mine. Its conclusion regarding the definition of "mine" was limited to the Appellant's proposed railway. The Minister supports the Divisional Court's finding that the combination of s. 1(1) and s. 51(1) do not give CCC priority to use the mining claims at issue for the development of a railway to "win minerals" that are hundreds of kilometres away, on claims that are not contiguous with the Ring of Fire chromite deposits, and where the claims on which the minerals are located are held by separate corporate entities (including – in part – CCC's parent company).

33. As indicated above, s. 51(1) cannot be read in isolation but must be interpreted in conjunction with s. 50. Pursuant to s. 50(1), staking a mining claim does not confer "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.” Pursuant to 50(2), the claim holder has no surface rights other than the right to use and occupy such part or parts as are necessary for prospecting and the efficient exploration of the mines, minerals and mining rights “therein”.

34. The Divisional Court came to the following conclusion:

The proposed railway here is not to be used in connection with extracting any minerals from the claims themselves and is not a use for which CCC can claim priority under s. 51(1).

Divisional Court reasons, at para. 67, **Appeal Book and Compendium, Tab 2B**, p. 23.

35. Although the MLC erred in holding that s. 50(2) does not apply to unpatented mining claims, its decision is consistent with the Divisional Court in so far as it held:

This wording [in s. 50(2)] suggests that a mining claim holder will be limited insofar as surface rights are concerned. To put it in ordinary terms, entering upon, using and occupying the surface *will be limited to doing what is needed to get at the materials “therein”*. (emphasis added)

MLC Reasons, at p.30, **Appeal Book and Compendium, Tab 3B**, pp.64.

36. The Minister agrees with the Divisional Court’s conclusion and suggests that the very broad interpretation of s. 51(1) surface rights suggested by the Appellant is inconsistent with the Legislature’s intention to promote multiple uses of Crown lands by granting more limited interests to mining claim holders as evidenced by s. 50 of the Act.

PART IV – ADDITIONAL ISSUES

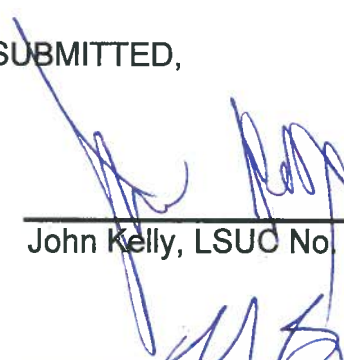
37. The Minister raises no additional issues.

PART V – ORDER REQUESTED BY THE MINISTER

38. The Minister respectfully requests that the above submissions be taken into consideration in the determination of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

June 25, 2015



John Kelly, LSUC No. 13618L



Michael Burke, LSUC No. 49512R

Counsel for the Minister of Northern
Development and Mines

Court of Appeal File No. C59945

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CERTIFICATE

I estimate that twenty (20) minutes will be required by the Minister for oral argument of the appeal, not including reply. An order under subrule 61.09(2) (original record and exhibits) is not required.

DATED AT Toronto, Ontario this 25th day of June, 2015.

A handwritten signature in black ink, appearing to read 'M. Burke', is written over a horizontal line.

Michael E. Burke

TAB A

Schedule "A"

1. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27
2. *Kamiskotia Ski Resorts Limited v Lost Treasure Resources Ltd*, (1984) 6 MCC 460
3. *Minister of Natural Resources v Michael Yvon Gagne et al*, Unreported, MLC File No MA 005-98, 12 February 1999
4. *Gerry Roy v Berry, Ken McCombe & the Minister of Natural Resources*, Unreported, MLC File No MA 014-00, 8 November 2000

TAB B

Schedule "B"

1. *Mining Act*, RSO 1990, c M 14 s. 50, 51 (Historic Version)

Historical version for the period April 4, 2011 to October 31, 2012.

Last amendment: 2010, c. 18, s. 23.

...

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).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 50 is amended by adding the following subsection:

Exploration work

(2.1) Despite subsection (2), the holder of a mining claim shall not enter upon, use or occupy any part of a mining claim for any exploration work on the claim unless the requirements in sections 78.2 and 78.3 and in the regulations have been met. 2009, c. 21, s. 28 (2).

See: 2009, c. 21, ss. 28 (2), 102 (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).

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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

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

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

(a) refer the matter to the Commissioner; or

(b) upon giving all interested persons at least 90 days' notice of a hearing and after hearing any interested persons that appear, make an order on such terms and conditions as the recorder considers appropriate with respect to the surface rights. 2009, c. 21, s. 29 (2).

See: 2009, c. 21, ss. 29 (2), 102 (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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is repealed and the following substituted:

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).

See: 2009, c. 21, ss. 29 (2), 102 (2).

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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed and the following substituted:

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).

See: 2009, c. 21, ss. 29 (2), 102 (2).

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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (5) is repealed and the following substituted:

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).

See: 2009, c. 21, ss. 29 (2), 102 (2).

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).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is repealed and the following substituted:

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).

See: 2009, c. 21, ss. 29 (2), 102 (2).

2. Mining Amendment Act, 1957, SO 1957, c. 71, ss 5, 9.

5. Section 66 of *The Mining Act*, as amended by section 4 of *The Mining Amendment Act, 1954*, is further amended by adding thereto the following subsection:

- (1a) The holder of a mining claim shall not have any right, title, or claim to the surface rights of the claim other than the right 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.

...

9. (1) *The Mining Act* is amended by adding thereto the following section:

100a – (1) In a patent or lease of a mining claim, the Minister,

- (a) Shall reserve all surface rights excluded by or withdrawn under this Act or the regulations, or which have otherwise been alienated by the Crown; and
- (b) Shall reserve all such other surface rights he considers necessary for any purposes other than the mineral industry and not essential for the efficient exploration and development of the mines, minerals and mining rights.

(2) Any surface rights reserved under this section may be dealt with under Part VIA or under *The Public Lands Act* or the regulations made thereunder.

(2) Section 100a of *The Mining Act*, as enacted by subsection 1, applies whether or not the claim was staked before the section came into force, but, in the case of a claim staked before the section came into force, the surface rights shall be included in the patent or lease,

- (a) if application for patent or lease is made and purchase price or rental is paid before the 1st day of September, 1957; or
- (b) if the holder of the claim has been prevented from making application for patent or lease or from paying the purchase price or rental on or before the 1st day of September 1957, because the plans of survey filed with the Surveyor-General have not been approved by that date.

3. *Mining Amendment Act, 1962-63, SO 1962-63, c 84, s 17.*

17. *The Mining Act* is amended by adding thereto the following section:

68a – (1) Except as in this Act otherwise provided, the holder of an unpatented mining claim has the right prior to any subsequent right to the user of the surface rights for prospecting and the efficient exploration, development and operation of the mines, mineral and mining 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*.

(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.

(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 is not otherwise provided for in this Act or any other Act, the Minister may refer the application to the Commissioner.

(5) Where an application under subsection 4 is referred to the Commissioner, he 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.

4. Mining Act, RSO 1990, c M 14 ss. 1, 18, 26, 27, 28, 31, 38, 39, 40, 42, 44, 50, 51, 71, 72, 75, 78.2, 78.3, 81, 89 (Current Version of Act)

Interpretation

1. (1) In this Act,

...

"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")

"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")

...

"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")

...

"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")

...

Licence required

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

1. Prospect on the land.
2. Stake a mining claim.
3. Make an application to record the staking of a mining claim. 2009, c. 21, s. 6.

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

...

Cancellation of mining claims

26. (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).

...

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.

...

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).

...

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).

...

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).

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.

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).

...

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).

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 neither the prescribed assessment work is performed nor payment in place of such assessment work is made as required by section 65, or if the work or payment is not reported, unless an application and payment for a lease of the mining claim is made under section 81. R.S.O. 1990, c. M.14, s. 72 (1); 2009, c. 21, ss. 37, 101 (4).

...

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).

...

Exploration plan

78.2 (1) No person shall carry out an activity prescribed for the purposes of this section on a mining claim, mining lease or licence of occupation for mining purposes unless the person has submitted an exploration plan, in accordance with any prescribed requirements, including any Aboriginal consultation that may be prescribed. 2009, c. 21, s. 40.

Activities to comply with requirements

(2) All activities described in an exploration plan that are carried out shall be carried out in accordance with any prescribed requirements. 2009, c. 21, s. 40.

Transfer to exploration permit

(3) If an exploration plan includes an exploration activity prescribed for the purposes of section 78.3, or if the prescribed circumstances apply, the person shall not carry out any such activity unless the person has obtained an exploration permit. 2009, c. 21, s. 40.

When exploration permit required

78.3 (1) No person shall carry out an activity prescribed for the purposes of this section on a mining claim, mining lease or licence of occupation for mining purposes unless the person has applied for and been issued an exploration permit. 2009, c. 21, s. 40.

Application for exploration permit

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

- (a) the purpose of this Act;
- (b) whether Aboriginal consultation has occurred in accordance with any prescribed requirements, which may include consideration of any arrangements that have been made with Aboriginal communities that may be affected by the exploration;
- (c) any arrangements that may have been made with surface rights owners; and
- (d) any other prescribed circumstances. 2009, c. 21, s. 40.

Conditions

(3) An exploration permit is subject to the prescribed standard terms and conditions and to any additional terms and conditions that the Director determines are appropriate. 2009, c. 21, s. 40.

Activities to comply with requirements

(4) All activities described in an exploration permit that are carried out shall be carried out in accordance with the terms and conditions of the permit and the regulations. 2009, c. 21, s. 40.

Amendment or renewal of permit

(5) The Director may, after considering the factors listed in subsection (2), amend or renew an exploration permit. 2009, c. 21, s. 40.

Reconsideration

(6) If a decision of the Director under this section is disputed in accordance with this Act or the regulations and a recommendation is made that the Director reconsider his or her decision, the Director shall reconsider his or her decision and, where appropriate, may make a new decision based on any recommendations or determinations made. 2009, c. 21, s. 40.

No activities during dispute

(7) If a decision of the Director under this section is disputed in accordance with this Act or the regulations, no person shall carry out any activity that is a subject of the decision until a final determination under this Act or the regulations has been made. 2009, c. 21, s. 40.

...

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 not be made to a recorder until the applicant,

(a) has performed the fifth prescribed unit of assessment work on a mining claim or, if a regulation provides that payment may be made in place of performing some or all assessment work, has made the payment and performed the work as required by the regulation; and

(b) has reported any assessment work performed and, if necessary, has received approval for the work. 2009, c. 21, s. 42 (1).

Same

(2.0.1) The application shall be accompanied by,

(a) if a survey is required under section 95 or 96, a plan of survey approved by the Surveyor General; and

(b) an agreement or an order of the Commissioner indicating that surface rights compensation, if any, has been paid, secured or settled. 2009, c. 21, s. 42 (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).

...

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).

5. *Public Lands Act*, RSO 1990 c P 43, s 21

Historical version for the period June 6, 2011 to June 19, 2012.

Last amendment: 2011, c. 9, Sched. 27, s. 38.

Easements

21. The Minister may grant easements in or over public lands for any purpose. R.S.O. 1990, c. P.43, s. 21.

2274659 ONTARIO INC.

and

CANADA CHROME
CORPORATION

and

MINISTER OF NORTHERN
DEVELOPMENT AND MINES

Respondent
(Applicant)

Appellant
(Respondent)

Respondent
(Intervenor)

COURT OF APPEAL FOR TORONTO

Commenced in Toronto

**FACTUM OF THE RESPONDENT
MINISTER OF NORTHERN DEVELOPMENT
AND MINES**

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