

## News views and opinions on the mineral exploration scene in Ontario

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# THE EXPLORATIONIST

The Newsletter of the Ontario Prospectors Association

*The Explorationist Newsletter is brought to you as a 'member service' of the Ontario Prospectors Association. The purpose is to share news and information amongst its members and also to act as the association's 'Political Voice'.*

*The views and opinions expressed in this newsletter are not necessarily those of the Ontario Prospectors Association, including all of the members and Directors. The writers accept full ownership of their contributions.*

### HERE WE GO! ACT TO AMEND THE MINING ACT

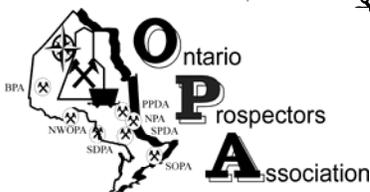
The Act to Amend the Mining Act has received second reading and has been sent to Committee. Hopefully the Committee sees fit to tour the Province and listen to the users of the Act and Crown Land.

The issues we have been hearing from members include:

1. The freezing of Mining Rights where surface rights are held separately. There are lots of questions about how this affects explorers in the south and north. On introduction of the Act to the Legislature the 1.4% of southern Ontario land with surface rights holders and Crown mineral rights were withdrawn from staking. Some members are upset that this was completed without forewarning and wonder what the need was to do this.
2. Map Staking has officially been introduced and will commence in Southern Ontario when the Bill and Regulations are put in place. Map Staking in northern Ontario is coming also but the opinion of the Ministry is it would probably be phased in over a number of years.
3. The weight of how much of the way the Act will function placed in Regula-

tion, has many members concerned. The Act if passed will effectively be purely "enabling" and the operations will mostly be in Regulations. The fear is that Regulations are too easy to change without the public being fully aware of the changes and individual Parties can change when elected.

4. Prospectors Awareness Courses? In discussions with Ministry officials they want this to help make prospectors knowledgeable of First Nations and Surface Rights holders. The comments include: what about permanent license holders?, how hard will the test be?, why do prospectors need this but geologists doing assessment work on claims don't need a course?.
5. Work Plans and Work Permits: Are these going to be more red tape? The function of these will be greatly directed by Regulations. The other concerns are that the new exploration plans or permits will include all Mining Lands (patents, leases, staked claims and vet lots). There is a lot of concern from members on timing and delays caused when modifying plans. Comparison to other jurisdictions have been made and how poorly some of the permitting systems work. The other concern is the potential that the Permits will be provided to other Min-



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istries which would mean potential delays.

6. Director of Exploration?? A new bureaucrat to delay exploration? A new inspecting division that will be assessing the work in the field. Powers to fine people not in compliance to Work Permits? An inspectors role and job isn't known which worries members.
7. Arbitration for First Nation Community disputes? The ideas for "consultation" with First Nations Communities is through out the Proposed Mining Act changes. This to members looks like the Province downloading it's constitutional responsibilities onto the explorers.

The next steps:

- Contact OPA or the Regional Association to provide input for the Standing Committee on General Government meetings being held in your area. These meetings will allow input for potential Amendments to the Act to Amend the Mining Act before the Third Reading in the House.
- Contact your Regional representative on the Ministers' Mining Act Advisory Committee. This group is hopefully the group working on the Regulations.
- I have posted a request for opinions/comments on the OPA website Forum under General Discussions. Please add you comments!

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#### **FASKEN MARTINEAU'S OPINION**

The goal of the amendments is to "modernize" the historic *Mining Act*. In his speech to the Legislature, the Government stated that the amendments will promote mineral exploration and development in Ontario in a way that is more respectful of Aboriginal communities and private land holders. The Government has promised the amendments will provide clarity and certainty to the minerals industry. However, members of Fasken Martineau's Global Mining and Aboriginal Practice Groups have made a preliminary

review of the proposed amendments and are concerned with several aspects of the proposed legislation:

1. The amount of legislative detail left unresolved by Bill 173 and the scope of the proposed regulations may, in fact, create uncertainty. The following are examples of matters to be prescribed and/or defined by future regulations:

The terms "community based land use plan" and "Far North" are used extensively in the Bill but have not yet been defined (No mining claim will allowed to be staked in the Far North if a community based land use plan has designated the lands for a use inconsistent with mineral exploration and development. The Minister will also have broad powers to withdraw lands in the Far North);

Aboriginal consultation requirements and, more particularly, the Crown's role in this legislated consultation;

The extent and nature of exploration activity that requires an exploration permit;

What constitutes a site of "Aboriginal cultural significance", which is a definition of some significance in that it can form the basis of a Ministerial withdrawal of land; and

The requirements and mechanics of the newly proposed dispute resolution process, and the appropriate route of appeal.

2. Mining lands beneath private surface rights will be withdrawn from staking in Southern Ontario. In Northern Ontario a surface rights owner can apply to have mining rights beneath such lands withdrawn. In making that decision the Minister shall consider the mineral potential of the lands and any other criteria that may be prescribed. The Minister's decision appears to be final.

3. The rights of unpatented claim holders will be diminished. They will no longer have the right to enter upon or use the mining claim unless there is compliance with the new Exploration Plans and Permitting provisions.

It should be noted that these new permitting provisions will also apply to leasehold lands. The Minister will also have broad powers to impose restrictions on a claim holder's use of the surface rights on a mining claim for various reasons (some of which are to be prescribed in future). The Minister's order is not appealable.

4. Exploration Plans and Permits. These new provisions appear to be required for mining claims, leases and licences of occupation, whether or not private surface rights or aboriginal communities will be impacted. It adds a new level of bureaucracy which prevents assessment work from being carried out until an exploration permit has been issued by newly appointed officers (Directors of Exploration). There is no apparent right to appeal the decision of a Director of Exploration and there are new offence provisions and penalties for not complying with these provisions.

5. The Bill demonstrates the Government's intention to require that consultation with Aboriginal communities is done before authorizations and permits can be obtained. Aboriginal consultation will become a necessary component of the newly legislated Exploration Plan and a pre-requisite for obtaining an Exploration Permit. It is not clear the manner in which the Crown will discharge its consultation obligation given the apparent delegation to proponents and because certain aspects are left to regulation. The provisions also raise questions about the delays, the potential costs and other implications of discharge of the duty and the mechanics and practical implications of the proposed dispute resolution process.

6. The offence and penalty provisions of the Act will be greatly enhanced. Fasken Martineau is planning an in-house seminar for concerned industry representatives in order to have an open

forum to discuss some of these concerns. Please continue to check this link for updates. A notice will be sent to our distribution list in advance. If you are interested in additional information please send your contact particulars to Christine Rocheleau at [crocheleau@fasken.com](mailto:crocheleau@fasken.com).

#### **SOME OPA BOARD COMMENTS**

What can we do re the revisions to the Mining Act at this stage of it's evolution ?

I believe it is an abomination nevertheless and a mostly unnecessary process mainly for political expediency and to placate a very vocal affluent and influential southern Ontario minority group and as well as abundantly funded influential messianic lobby associations.

I do believe however that our native citizens merit some consideration in landscape activities in the exploration and mining domain.

Frank Tagalimonte

I think there should be more discussion on the withdrawal of mining rights and the possibility of re opening the rights for staking if for say there is an agreement with the surface rights holders. Also the rights should have not been withdrawn until the bill had third reading.

Joe Barr

The former Work Permits were required under the Forest Fire Prevention Act. Abolishing that process has probably increased frustration levels in the communities.

New Work Permits should for information and comment under a specified time period. No problem with arbitration for appropriate amendments to determine an acceptable plan if water and or important sites are potentially impacted. Not a veto.

Free entry must never be compromised!

Best,

Abraham Drost

This is a preliminary discussion of ideas relating to the Mining Act Review and should not be considered a position but rather it is based on a cursory review of the legislation and limited discussions between directors of the Boreal Prospectors Association.

Please add your voice to this discussion by providing comment to [BorealProspectors@hotmail.com](mailto:BorealProspectors@hotmail.com).

This discussion is from a "Northern Prospector's Perspective". The prospector is an individual who may be aboriginal or non-aboriginal. The viewpoint is not intended to be from any specific group or community or political affiliation or from a junior exploration company or a mining company.

Mineral exploration and subsequent mining operations are unique vehicles of economic and infrastructure development in frontier areas. In Ontario's Far North this industry is the single most important opportunity to stimulate future economic and infrastructure development for the benefit of local communities and individuals.

The demographics of Ontario's Far North is dominated by Aboriginal communities and traditional territories. Legislated requirements of aboriginal communities through the Mining Act should effectively foster participation in the minerals industry while avoiding adversarial relationships. Encouraging the participation of local communities in the mineral industry is requisite to responsible function of the industry in Ontario's Far North.

For the benefit of Ontario's Far North the Mining Act should strive to encourage the northern communities to participate directly in the industry while minimizing undue stress on limited community resources and infrastructure. Local prospectors can be the knowledge centre for a community while acting as front line economic generators by making discoveries and attracting industry investment. Development and support of local prospectors from these communities are fun-

**Boreal Prospectors Association  
Discussion of Changes to the  
Mining Act**

damentals to realize the potential benefits of this industry for northern communities and all of Ontario.

### **Specific Questions and Concerns**

#### **Map Staking**

**Map staking will be a detriment to local prospectors and local communities by eliminating the advantages of location and economical land acquisition afforded by ground staking for the benefit of companies who will be advantaged in a system that requires only financial commitment and well timed electronic applications from anywhere in the world without having to ever travel to or hire someone to physically visit and work the land.**

Map staking will result in a loss of income and competitive advantage for both individual prospectors and northern communities trying to participate in the mineral industry. The elimination of ground staking is singly the biggest threat to the individual prospector and will result in an extensive cull and possible extinction of the independent prospector throughout Ontario. Companies and government coffers will be the beneficiaries of map staking.

Alternatives to consider should include ground staking using real-time GPS location registration to replace post and line techniques currently employed.

#### **Withdrawals of Land**

Mining act must recognize the changing uses of minerals in our society and our limitations in predicting mineral potential and as such resist the erosion of the mineral land base through **permanent** withdrawal of areas from mineral development associated with parks and private lands.

It is reasonable to expect that the economics of exploration will be compromised where withdrawals surround or overlap existing mining rights.

#### **Consultation**

Does the Act put undue strain on communities, companies and individuals to engage in consultation?

Will there be a parallel effort to develop capacity in the communities to deal with the burden of effective consultation?

How will the government deliver on its duty to consult other than delegation?

#### **Moratorium**

Will the "no new mines until land use plans accepted" strategy retard economic development by discouraging investment in exploration while pressuring the communities to hastily accept potentially compromised land use plans in order to realize the benefits of the industry?

#### **Aboriginal and Treaty Rights**

Should the Mining Act endeavour to not only recognize and affirm but also protect Aboriginal and Treaty rights from derogation? For an aboriginal prospector will accepting and participating in the requirements of this Act resulting in a waiver of treaty and aboriginal rights? Will this Act supersede Treaty and Aboriginal Rights?

#### **Prospector Certification**

What is the definition of a Prospector?

Will helpers in exploration programs need to be certified?

How will certification programs be delivered to northern communities and on reserve?

#### **Cultural Areas**

Will identifying areas of aboriginal cultural significance attract undesirable and potentially destructive actions and compromise intellectual and cultural property?

#### **Administrative Concerns**

MNDM will appoint Directors of Exploration to control exploration activity by accepting or issuing either an exploration plan or an exploration permit and determining aboriginal consultation component. Will this include an aboriginal consultation component in closure plans? Will Director of Exploration be expected to have access to proprietary agreements between industry and First Nations or have the power to accept or reject company "arrangements" with First Nations as part of the approval process? Will the government "sign-off" on additional obligations of duty to consult if a prospector or company follows the conditions of a permit or plan? Further clarification on the duties and function of this role

needed.

The Minister will appoint a body (person or group) to hear disputes related to aboriginal consultation so that they may report to the Minister (not to settle the matter). Further clarification on the duties and function of this body is required.

**Please participate by providing  
comments to  
BorealProspectors@hotmail.com**

### **Comments from the Northwestern Ontario Prospectors Association**

Welcome to the summer of our discontent. Recent press releases from MNDM have given us time to pause and consider the future of Prospectors. Prospecting is a time honoured tradition among many peoples. Walking the through the bush, over out-crops and staking your first claim is a right of passage for Prospectors both young and old.

The amendments to the Mining Act proposed in Bill 173 are about to get to third and final reading. Regulations are hastily being put together to fulfill what Bill 173 has enabled government to do to appease a bitter crowd of private landholders and native communities. And who shall bear the costs of this peacemaking? Prospectors.

Now is the time to get together and rise up. Let your MPP know how much Exploration & Mining means to you and your community. Write a letter. Send an email. But please do something. Bill 173 is just one of the many bills that Premier McGuinty is sending down the pipe to drown us in parliamentary procedure and legality to secure his legacy.

Karl Bjorkman, NWOPA Director, has presented an excellent paper commenting on the Amendments to the Mining Act Bill 173. Please read it.

Remember that,...

If it can't be grown, it's got to be mined.

And before it's mined it's got to be found.  
Support Prospecting Explore your World  
2009

Thank you for your continued support.

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### **Two Great Prospectors (who loved the business)**

It is with great sadness we report the passing of Dan Calvert and Nolan Cox. They will be missed.

### **Symposia Dates**

#### **Ontario Exploration & Geoscience Symposium**

December 15 & 16, 2009  
Radisson Hotel, Sudbury, Ontario

#### **Northwestern Ontario Mines & Minerals Symposium**

April 6 to 8, 2010  
Valhalla Inn,  
Thunder Bay, Ontario

#### **Northeastern Ontario Mines & Minerals Symposium**

April 13 & 14, 2010  
Waterfront Inn & Conference Centre  
Sault Ste. Marie, Ontario

### **Questionnaire**

The OPA is currently composing a Questionnaire for members on the Mining Act Amendments. The Questionnaire will allow OPA to represent your views more correctly. When you receive it please complete and return as soon as possible.

### **The Explorationist**

If you would like to receive this newsletter via email please forward it on to oegs@ontarioprospectors.com