

A Summary of the Enforcement Provisions

of

the Mining Act,

as proposed to be amended by Bill 173, Mining Amendment Act, 2009

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All references to sections and subsections in this summary are to the Mining Act, RSO 1990, c.M.14, as amended to date, as proposed to be amended by Bill 173, Mining Amendment Act, 2009, which enactment, assuming it is so amended, is herein referred to as the “**Act**”.

1. Licence Required to Prospect, Stake or Make Application to Record
- 1.1 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 (section 18).
- 1.2 In order to obtain a prospector’s licence the person must be 18 years or older and have successfully completed the prescribed prospector’s awareness program. **The completion of an awareness program is new.** *Drafting Comment:* The phrase in the proposed text that the applicant has successfully completed the prescribed program within 60 days before “the date of the application” should be clarified so that it is clear the reference is to 60 days before the date the applicant has applied for the prospector’s licence rather than to a possible reference to 60 days before the applicant has applied to record the staking of a mining claim.
- 1.3 The same rules requiring evidence of completion of the prescribed prospector’s awareness program apply to renewals (section 21(1)) and lifetime renewals (section 21(6)).
- 1.4 Where the Commissioner finds, after a hearing, that a licensee has been guilty of a wilful contravention of any of the provisions of the Act or the regulations, the Minister may, on the recommendation of the Commissioner, revoke the licence of a prospector and a licence shall not thereafter be issued to such person without the authority of the Minister (section 26). This provision is unchanged by the proposed legislation.

2. Revocation, Suspension and Cancellation of Claims

- 2.1 Where the recorder finds, after a hearing, that a holder of a mining claim has contravened any of the provisions of the Act or the regulations, the Minister may, on the recommendation of the recorder, order that the holder may not acquire any unpatented mining claim or interest therein through transfer or obtain an extension of time in which to perform work or apply for lease on any unpatented mining claim recorded in the name of the holder (section 26(6)). These provisions are unchanged by the proposed legislation.
- 2.2 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 the Act or the regulations, the Minister may, on recommendation of the Commissioner declare any mining claims of the holder to be cancelled and upon cancellation all rights of the holder in and to mining claims cease (section 26(7)). These provisions are unchanged by the proposed legislation. Reference is also made to the offences provisions in section 164 described in Part 9 of this summary.
- 2.3 Where claims have been cancelled under the circumstances described on paragraph 2.2 above, 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 (section 26(9)). These provisions are substantially unchanged by the proposed legislation.

3. Termination and Revocation of Licences of Occupation

3.1 Where payment of the rental under any licence of occupation is in arrears for two years or more, the licence may be terminated and all rights of the licensee in and to the lands covered by the licence cease but such lands or mining rights do not come open for staking until a date fixed by the Deputy Minister, at least two weeks' notice of which must be published in The Ontario Gazette (section 41(3)). These provisions are unchanged by the proposed legislation.

3.2 The lands, surface rights or mining rights held under a licence of occupation shall be used solely for mining purposes and, if they are used for any other purpose, the Minister may, subject to the approval of the Lieutenant Governor in Council, revoke the licence. Notice of revocation must be given to the licence holder at least 30 days before the revocation takes effect (section 41.1). **Note that this is a new provision and applies in respect of all licences of occupation, including those issued before the day section 41.1 comes into force.**

4. Invalidation, Deemed Abandonment and Forfeiture of Mining Claims in Connection with the Staking Process and Assessment Work
- 4.1 **Section 46.1 is a proposed new section in the Act** which will required a licensee making an application to record a mining claim to give a confirmation of staking notice to the surface rights owner within 60 days after making the application to record and to file proof at the recorder's office of having given such staking notice. If this procedure is not followed and the recorder has not waived the giving of the staking notice, the mining claim becomes invalid 60 days after the date of the application to record is made, even if the claim was recorded. *Drafting Comment:* Section 46.1 does not address giving confirmation of staking notice to affected Aboriginal peoples.
- 4.2 Non-compliance by the licensee or holder of a mining claim with any requirement of the Act or the regulations as to the time or manner of staking and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefor, (the mining claim can be inspected pursuant to section 75 at any time with without notice to ascertain whether the Act is being complied with and see sections 156 to 158 of Part X of the Act with respect to the extensive duties and powers of an inspector, including the right to apply for a search warrant and enlist the assistance of the police) shall be deemed to be an abandonment and the claim shall, without any declaration, entry or act on the part of the Crown be forthwith opened to prospecting and staking (section 71). Note that if no dispute is on file, one year has elapsed since the day of recording of the Claim and the first prescribed unit of assessment work has been performed and filed and, where necessary, approved, the mining claim is conclusively deemed to have been staked and recorded in compliance with the requirements of the Act and the regulations (subsection 71(2)).
- 4.3 If the holder of a mining claim removes any stake or post or changes any writing or marking on a stake or post on a claim for any improper purpose or fails to perform the prescribed assessment work or make payments in place of such assessment work, all the interest of the holder in the mining claim ceases and the claim is open for prospecting and staking (section 72) and reference is also made to the offences provisions in section 164 described in Part 9 of this summary.

5. Rehabilitation of a Site or Mine Hazard

- 5.1 If a plan to rehabilitate a mine hazard has been filed on a voluntary basis and approved by the Director and the Director has reasonable grounds for determining that a person is not conducting the rehabilitation in accordance with the approved rehabilitation plan, the Director is entitled to notify the person of his determination and the reasons for it. If this person does not respond or has not applied to modify the rehabilitation plan, the Director may issue an order to the person to rehabilitate the mine hazard in accordance with the plan (section 139.3). Reference is made to section 167 which provides that a person who fails to take reasonable steps to obey the conditions of such an 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. **The provision for imprisonment is new.**
- 5.2 No proponent of advanced exploration (other than a proponent who is subject to a closure plan) shall commence or recommence advanced exploration unless (in addition to providing the Director with a Notice of Project Status, giving public notice if required by the Director and consultation with Aboriginal communities potentially affected) the proponent has filed a certified closure plan and obtained a receipt therefor from the Director (section 140). **This provision has been substantially expanded.**
- 5.3 Similarly no proponent (other than a proponent who is subject to a closure plan) shall commence or recommence mine production unless (in addition to providing the Director with a Notice of Project Status, giving public notice and conducting Aboriginal consultations with Aboriginal communities potentially affected), the proponent has filed a certified closure plan and obtained a receipt therefore from the Director (section 141). **This provision has been substantially expanded.**
- 5.4 If a mine hazard exists on any lands, the Director may order any proponent of any lands or any prior holder of an unpatented mining claim on 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 since the staking of the claim) to file a certified closure plan to rehabilitate the mine hazard (section 147).

- 5.5 A person who has filed a certified closure plan as contemplated in paragraphs 5.2, 5.3 or 5.4 above shall comply with the closure plan (section 143). Reference is made to section 167 which provides that a person who fails to take 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.
- 5.6 In connection with closure plans, financial assurances are required (section 145).
- 5.7 The Minister may refuse to accept a voluntary surrender of mining lands or mining rights if a proponent has failed to rehabilitate the site in accordance with a filed closure plan or no closure plan has been filed (section 149).
- 5.8 If the Crown has to carry out rehabilitation measures relating to a mine hazard where (i) a proponent of lands or a prior holder of an unpatented mining claim does not comply with an order of the Director under section 147 or (ii) the proponent of a mine hazard which is likely to cause an immediate and dangerous adverse effect fails to comply with an order of the Director under section 148, then in the case of a mining lease the Director may recommend to the Minister that the lease be declared void, and in all cases the Crown may carry out rehabilitation measures. The resulting cost to the Crown of rehabilitation forms a lien and 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 is recoverable by the Crown in any court in which a debt or money demand of similar amount may be collected (section 151).

6. Enforcement of Part VIII Royalty on Diamonds

6.1 Every operator that fails to deliver a return with respect to prescribed diamond royalties as and when required by section 154.5 is guilty of an offence and, and in addition to any penalty otherwise provided, on conviction is liable to a penalty equal to the total of

- (i) an amount equal to five 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
- (ii) the product obtained when one 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 (section 167.1). **This is a new provision.**

6.2 In addition every person who fails to comply with the recordkeeping obligations of section 154.6 relating to the determination of royalties payable under Part VIII 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 (section 167.1(2)). **This is also a new provision.**

6.3 Further, 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 an offence and, on conviction, is liable to the penalty for the offence whether or not the operator has been prosecuted or convicted (section 167.1(4)). **This too is a new provision.**

7. Penalties for Failure to File Statistical Returns

Part IX of the Act provides for various annual, periodic or event based reports (section 155). Section 168 provides that any contravention of section 155 or knowingly making a false report under that section 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. This fine has been increased from \$5,000 per day.

8. Aboriginal Consultation – Dispute Resolution

The Minister may designate one or more individuals, or a body, to hear and consider disputes arising under the Act relating to consultation with Aboriginal communities, Aboriginal or treaty rights or to the assertion of Aboriginal or treaty rights, including disputes that may occur,

- (i) in relation to decisions on the issue, amendment, renewal or cancellation of, or the terms and conditions imposed on, an exploration permit issued under section 78.2;
- (ii) in relation to advanced exploration under clause 140(1)(c) or in relation to mine production under clause 141(1)(c); and
- (iii) in any other prescribed circumstances (section 170.1(1)). The individuals or body to be designated shall hear and consider the dispute, in accordance with any requirements set out in the regulations, and shall make a report to the Ministry setting out recommendations (section 170.1(2)).

This is a new provision.

9. PART X – Inspections

A new Part has been added to the Mining Act to provide for inspectors and stipulate their duties.

Their duties include:

- gathering of information
- preparing reports, maps and data sets
- determining the nature in extent of any existing or potential mine hazards on mining lands
- determining whether the terms and conditions of licences, leases, exploration plans, permits, closure plans and any other approvals issued under the Act are in fact being complied with
- determining if any orders issued under the Act are being complied with
- determining if the Act and the regulations are being complied with.

For carrying out their duties, the inspectors have been provided with extensive powers, including the right to:

- enter into any place, mining lands or other lands or premises connected or associated with any staking, exploration activity, mine, advance exploration project, abandoned mine or mine hazard (other than a room actually used as a dwelling)
- make inspections, examinations, inquiries, tests or photographic records necessary in carrying out his or her duties
- request production of documents relevant to inspections
- remove documents for purposes of making copies of them
- access computers and data contained in computers and produce printouts or other output from such computers
- inspect any work related to rehabilitation required or performed under the Act
- make reasonable inquiries of any person, orally or in writing.

The Act requires that any person, on receiving a request from a inspector, to assist the inspector in gathering information and carrying out inspections.

Section 158(4) of the Act provides that a provincial judge or justice of the peace may issue or renew a warrant authorizing an inspector to carry out his various duties. Such a warrant is valid for 30 days or such shorter period of time as specified in the warrant. An inspector may require a member of the police force to assist him or her for purposed of carrying out his or her duties under the Act.

10. Offences, Penalties and Prosecution
- 10.1 Part XI of the Act (sections 164 to 170) sets out the prosecution side of enforcement of the Act.
- 10.2 Section 164 provides the penalties for non-compliance with the Act or any regulation and provides for a fine of not more than \$100,000 (increased from \$10,000) or to imprisonment for a term of not more than one year (new), or both.
- 10.3 Section 165 provides the penalties for operating a smelter without the approval of the Lieutenant Governor in Council and provides for fines of not more than \$30,000 per day or imprisonment for a term of one year, or both.
- 10.4 Section 166 provides the penalties for not obeying any order or award of the Commissioner (except for the payment of money) and is liable to a fine of not more than \$100,000 (increased from \$10,000) or to imprisonment for a term of one year, or both.
- 10.5 Section 167 provides the penalties for contravening the provisions of Part VII (Rehabilitation of Mining Lands) which was discussed in Part 5 of this summary.
- 10.6 Section 167.1 provides the penalties for contravening the provisions of Part VIII (Royalties on Diamonds) which was discussed in Part 6 of this summary.
- 10.7 Section 168 provides the penalties for failing to file required annual, periodic or event based reports which was discussed in Part 7 of this summary.
- 10.8 Section 170.1 provides for Dispute Resolution relative to Aboriginal consultation which was discussed in Part 8 of this summary.