



The Legal Framework for Mining in Ontario

November 30, 2020

Division of Powers

- With the exception of uranium mining and mining in the NWT and Nunavut, the management of mineral resources are under provincial or territorial jurisdiction
- Uranium mining, but not exploration, is a federal responsibility
- Many Aboriginal governments assert their sovereignty over the mineral resources on their traditional territories

Federal Regulation

- Uranium
- Fisheries Act
- Navigable Waters
- Canadian Environmental Protection Act (Base Metal Smelter Regulations)
- Explosives
- Federal Environmental Assessment
- Species at Risk
- Migratory Birds
- International trade
- Corruption of Foreign Officials
- Criminal Code
- Taxation



Ontario Mining Act



Originally to keep miners from killing each other

Purpose in 2009 Act:

to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment.

Protecting Workers, the Environment and People- Other Acts and Regulations

https://www.mndm.gov.on.ca/sites/default/files/regulatory_requirements_outside_mndm.pdf



How mining is provincially regulated (or not) outside the Mining Act

Ministry of the Environment:

- There is no provincial Environmental Assessment required for mining in Ontario, unless by separate regulation
- Ontario Water Resources Act: permits to take water. The Permit to Take Water Regulation was passed in 2007, and required large industrial users to pay \$3.71 for every million litres of water they consumed. The regulation was to be introduced in two phases with mining in Phase 2. Phase 2 has never been implemented, and mining companies still get free water.
- Certificates of Approval for discharges to air and water. And for production and storage of hazardous waste (including tailings)
- Reporting through the MEWS system of their industrial discharges to water
- Spills reporting

Permitting for mines and smelters in Ontario

- Permits are required for taking water, waste discharges to water, for power, some transportation corridors, to cut timber, for exploration, mine closure plans, taking aggregates from Crown land, industrial sewage works, drinking water systems.
- Generally reviewed under “Class EA”. Where the permit requires a Environmental Compliance Authorization (ECA) , notice to public through the Environmental Registry.
- Little public consultation, never a hearing. Very limited scope of assessment
- No requirement for Free Prior Informed Consent from First Nations.
- Under Section 165 of the Act, no smelter, roaster or refinery may be constructed without approval of the Minister.

Major changes to Environmental Assessment Act included in the Covid Economic Recovery Act

- Act pushed through as part of omnibus bill with no Indigenous consultation in summer of 2020.
- A number of lawsuits from First Nations challenging this.
- Changes to use of a “project list”
- Class EAs to be changed : still no information on how/why?
- Also provided an extension for claim holders for doing work on claim.

What is a Class Environmental Assessment for mining?

- A very low level of review
- Requires submission of application by proponent
- Notification to surface rights holders and consultation with Aboriginal communities. Posted on EBR for 30 days.
- Required for “discretionary tenure decisions” and “discretionary mine hazard identification by ENDM”.
- Includes permits to exploration plans and permits, to remove bulk samples and to sell the minerals obtained,
- Also for surface rights obtained outside the lease area for a TMF.

The Ontario Mining Act and Regulations

- Claim staking – regulation 66/18
- Exploration Permits –s. 78 of Act and Reg. 308/12
- Aboriginal rights re: leases: Section 86.1 of Act
- Aboriginal sacred sites- Reg 45/11, section 9.10
- Mine Development, Production– Reg. 240/00
- Closure – Part VII of the Act & regulation 240/00 (Schedule 1)
- Emergency Powers- Sec 148 of Act
- Aboriginal mediation of disputes- Sec 170.1 of the Act
- Offences, penalties and prosecutions – Part XI of the Act. Does hold directors and officers liable.

Provision re Aboriginal or treaty rights

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

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

Sites of Aboriginal Cultural Significance (Reg 45/11)

<https://www.mndm.gov.on.ca/en/mines-and-minerals/mining-act/mining-act-modernization/sites-aboriginal-cultural-significance>

- *The withdrawals for this regulation and policy are intended to be smaller sites that can be easily identified on a map-[no more than 25 hectares]. Withdrawals will typically be done in 4, 9, 16 and 25 hectare increments.*
- *The Indigenous Consultation and Partnerships Branch will work with Aboriginal communities to determine the size of withdrawal most appropriate to address the nature of the site.*

Key components of claim staking in Ontario

- Prospector only one allowed to claim (online test, 18 years old) (Sec 18)
- Separation of surface rights and mineral rights
- Free Entry (sec 27-ff)
- Crown land and Aboriginal title
- Fees: \$50/cell claim
- Assessment work : \$400/ cell



Claim Staking (change to digital in 2017)

- Ontario Mining Act Sections 27- 43 and regulation 45/11
- All now digital and map staking. Province divided into 5.2 million predefined cells. Cells are 17.7 hectares in north and 24 hectares in south.
https://www.mndm.gov.on.ca/sites/default/files/claim_holders_guide_to_conversion_en.pdf
- Lands exempt from staking are described in Sec 29- 35 of the Act: cottages, sub-divisions, Indian reserves, public municipal lands, provincial parks etc.
- The Minister has discretion to withdraw lands from staking (Sec 35)
- Sec 35.1 (2) *“In Southern Ontario, for lands where there is a surface rights owner and the mining rights are held by the Crown, the mining rights shall be deemed to be withdrawn from prospecting, staking, sale and lease as of the day this subsection comes into force. “However, existing leases and licences not affected.*
- Minister can refuse and cancel claims where claim holders contravene the Mining Act.(Sec 26)

Exploration Plans and Permits-regulation 308/12

- 30 days prior to beginning exploration, the proponent has to submit a Notice of Intent to submit a plan of exploration to any affected surface rights holders (SROs) and to affected Aboriginal Communities
- The exploration can begin 30 days after this unless OMNDM requires them to hold.
- No right for First Nation to say “no”
- Plan must follow “provincial standards for early exploration”
- Minister may require the proponent to seek an early exploration permit.
- Advanced Exploration needs an Exploration Permit.

Proceeding to a Mine

- In Ontario there is no Permit to Mine per se.
- Most other jurisdictions require a mine permit from the government before proceeding.
- The claim holder has to acquire a mining lease in order to remove minerals. If “Crown land”, right to surface are automatic; if a private owner, needs to have an agreement to compensate.
- In Ontario, under Sec 140- 141 and regulation 240/00, a project proceeds through advanced exploration, development and production with the submission of a Closure Plan and Financial Assurance (certified by the company), and Certificates of Approval (COA) from the Ministry of the Environment for taking water, for discharges to water, air and for waste disposal.

Advanced Exploration, Development and Operating requirements under the Mining Act

- Convert existing mining claims into leases to acquire title and ownership to the land.
- Submit a Notice of Project Status to the Mineral Exploration and Development Section
- Consult with all required Aboriginal communities
- File a closure plan with accompanying financial assurance and certification.
- Acquire all required permits/approvals from other ministries, agencies and government organizations.

Monitoring and Inspection, Part 1V, sec 156-158

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

1. Gathering information, including geoscience information..
2. Preparing any reports, maps or data sets as may be required by the Minister or any other employee in the Ministry in the performance of that person's duties under the Act.
3. Determining the nature and extent of any existing or potential mine hazards on mining lands.
4. Determining if the terms and conditions of licences, leases, exploration plans, permits, closure plans, and any other approvals issued under this Act are being complied with.

Sec 164(k)a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or both.

Closure, Reclamation and Monitoring (Part VII of the Act)

- The Mine Rehabilitation Code of Ontario is Schedule 1 to the Mining Regulation 240/00. Mine owner required to meet or exceed standard.
- This means removal of site facilities, restoration of soil cover materials, vegetation and surface water features to a quality, quantity and appearance that is as close as feasible to pre-development conditions.
- Aboriginal consultation on closure is required in Section 8.1 of reg 240/00
- Financial Assurance set out in sections 13-17 of the regulation
- No additional approvals are required at this stage, however, the proponent must file a completion report that documents how the mine site closure has complied with the requirements of the approved closure plan.

Abandoned mines

- There are over 10,000 abandoned/orphaned mines in Canada.
- In Ontario, there are more than 5000 and the cost to clean them up is known to be more than \$3 billion.
- Ontario may have more than \$7.6 billion in liabilities for mines



