



October 10, 2008

Mining Act Modernization Consultations
Ministry of Northern Development & Mines
99 Wellesley Street West, Room 5630
Toronto, ON M7A 1W3

RE: MODERNIZING THE MINING ACT

The Ontario Prospectors Association's (OPA) members are watching keenly the various events associated with the government's announcement to Modernize Ontario's Mining Act. The OPA has been involved in the changes in the Mining Act over the last 20 years and believes the Mining Act as it stands is a modern piece of legislation but requires continued updating to meet the evolving population and industrial environment of a prosperous Ontario.

The OPA works for the grassroots or first wave explorers in the Ontario. Certainty is one of the key principles of a sustained and competitive exploration environment. Erosion of certainty on any front can affect the attraction of high risk exploration dollars. The investor in exploration is taking a huge risk to reap a potential reward. The odds of 1 in 10,000 prospects being developed into a mine is a statistic understood by the investor. Changing the political regime or policies of the exploration landscape can push the investor from that jurisdiction to a perceived safer jurisdiction. The buoyancy of the exploration companies in Ontario over the last few years has benefited the north greatly, this must be protected.

The OPA believes that the length of time required amending the Act and Regulations needs to be expedited to provide certainty to the investment community. It is felt that the time allotted for Mining Act amendments is aggressive. The OPA believes that the companion Regulations will require adequate time to be developed. Our concern is that the messaging that most people have interpreted is once the Act changes are complete the project is complete. The OPA urges the Ministry to present a better explanation of the timetable and the various components that are going to be completed.

The following are the OPA's comments on the discussion paper, *Modernizing Ontario's Mining Act: Finding a Balance*:

Mineral Tenure System and Security of Tenure:

The present mineral tenure system (known as “free entry” [it's a misunderstood, charged term; we may want to avoid any reference and mention only mineral tenure and land access]) provides a level playing field for all players interested in exploring in the province. Adjustments to the system can be made but the key is to preserve the confidentiality, security and certainty of claims acquisition. On the specific needs to address concerns of the First Nations and Métis communities of knowing who and where people are exploring on their traditional lands, a notification system once claims have been staked could be implemented. The notification could be composed of three components:

1. MNDM would notify of the staking
2. MNDM would notify the staker which communities traditional land has been staked
3. The staker or recorded holder would have to produce a receipt of notification of the FN or Métis communities within a specified time after the staking has occurred or before assessment can be filed.

The Mineral Development Strategy outlined a viable system that would reduce potential conflicts where surface rights are privately owned and minerals rights are Crown owned. The possibility of this system of notification should potentially be reviewed as a solution to the First Nations and Métis community notifications.

Aboriginal Rights and Interests Related to Mining Development:

The present notification to First Nations and Métis communities of exploration and mineral development in their traditional landscape is very chaotic and relies on the explorers best practices. The present system, though poorly directed by legislation or regulation, has numerous success stories where industry and communities are both benefiting. The requirement is to establish a level playing field for industry with government established minimum parameters.

Some key points on engaging, consulting accommodating First Nation and Métis communities include:

- Prior to early exploration would erode the fundamentals of competition that drive the industry and would potentially destroy investment confidence.
- Post claim staking exploration would be feasible if there were timelines for response from the First Nation and Métis communities. Funding for

exploration is time sensitive and could be lost in a long drawn out process. There needs to be fixed timelines and potential arbitration processes.

- Advanced exploration is already covered by Part VII of the existing Mining Act. There needs to be fixed timelines and potential arbitration processes.
- Mine development already has specific agreements across the land on a project by project basis. These Impact and Benefit Agreements are business to community agreements that do not require government input.

To engage, consult with and accommodate First Nation and Métis communities, some necessary elements need to include:

- The building of capacity within the communities to understand what is being presented.
- There needs to be fixed timelines and potential arbitration processes.
- The government needs to make sure that they are meeting their own obligations under the Constitution.

Introducing Regulatory Processes for Exploration Activities on Crown Land:

A regulatory process that includes work plans could work to mitigate impact of the entry on the land after staking. This work plan needs to be a standard format defined within Regulations. Filing the work plan with the Ministry would allow the Ministry to forward the plan to the affected First Nation or Métis Community. Along with the work plan the Ministry could provide capacity to understand the data being provided. The process would include regulation change giving timelines before starting exploration, a method of plan modification and an exit strategy.

Agreement of the time line must come from the affected parties and be placed in regulation.

Land Use Planning in Ontario's Far North:

The OPA believes that good land use planning in the Far North will benefit all of Ontario. The gold and diamond mines and the recent exploration success in the Far North indicate the potential of this vast area to assist in the Ontario economy. Proper land use planning would need to include the collection of more geoscience data to prevent the "Parking" of high mineral potential areas. The concern the OPA has with the statements made by the government is that Aboriginal community support of the land use plan is inferred prior to new mines opening. Mines are not opened; they are developed over time and through extensive exploration. The industry needs to know that there is a potential of opening a mine early in the exploration cycle. Certainty is needed early as the risks and the volumes of dollars escalate quickly. A specific point in regulation needs to be set where land use plans will be initiated to allow the continuous flow of exploration and development.

Private Rights and Interested (Surface Rights/Mining Rights Conflicts):

The Mineral Development Strategy ideas to resolve the Surface Rights/Mining Rights conflicts are well thought out and executable. Adding a work plan that is regulated would provide the final required component.

The OPA members appreciate the opportunity to comment on this very important issue and we are available for any questions or assistance the Ministry would have or require.

Sincerely,

Garry Clark
Executive Director