

July 30, 2009

Re: **Member Action Urgently Required in Response to Ontario Bills 173 and 191 *Mining Amendment Act, 2009* and *Far North Act, 2009***

Purpose of this message

We are sending this communication to all members of the PDAC to provide a status report on important changes that the Ontario government has proposed to the regulation of mineral exploration and mining operations throughout the province, and to alert the membership to certain changes that have specific and wide-ranging implications for mineral sector activities in Ontario's "Far North" region.

While the PDAC continues to take an active role in responding to these legislative proposals, we also believe it is critical for individual members to become involved. **Given that the other provinces could potentially follow Ontario's lead, we urge all members, whether currently active in Ontario or not, to familiarize themselves with these developments and to relay their views, concerns and recommendations to the relevant provincial authorities.**

Further information on how to do so is provided below.

Bill 173, *An Act to Amend the Mining Act*

On July 3, 2009, the PDAC submitted a detailed response to the Ontario Environmental Registry in response to the proposed amendments to the *Mining Act*. This submission can be viewed online at <http://www.pdac.ca/pdac/advocacy/land-use/090703-pdac-submission-bill-173.pdf> on the Lands and Regulations page of our website. The same page provides links to both Bill 173 and Bill 191, as well as links to the other principal background materials.

In its Bill 173 submission, the PDAC advised the Ontario government that the proposed legislation, in its present form, should not be enacted into law.

Bill 191, the *Far North Act*

On June 2, the Ontario legislature gave First Reading to Bill 191, the proposed *Far North Act, 2009*. By a notice posted on the provincial government's Environmental Registry on the same day, the Ministry of Natural Resources announced that written comments on the legislative proposal would be accepted by the registry until **August 4, 2009**.

With the assistance of the Lands and Regulations Committee and the Aboriginal Affairs Committee, **the PDAC is currently preparing its Bill 191 submission to the Environmental Registry. The submission will state that, like Bill 173, the proposed Far North legislation should not be enacted into law in its present form.** The PDAC's submission will be posted on our website once it has been filed in the Environmental Registry.

Standing Committee hearings on both bills – August 2009

On June 2, 2009, Bill 191 was referred to the Standing Committee on General Government of the Ontario legislature. The committee has advised that it will hold an initial public hearing into

both Bill 173 and Bill 191 on August 6, 2009 in Toronto. The PDAC is scheduled to appear before the committee on that day.

While similar hearings of the Standing Committee have also been scheduled for the week of August 10 and will be held in Sioux Lookout, Thunder Bay, Chapleau and Timmins, no hearings have thus far been announced for any Aboriginal communities in the Far North region or elsewhere.

Opportunities for public input

Currently, there are two opportunities to make written submissions in response to these bills:

- **Bill 191 submissions to the Ontario Environmental Registry:** As indicated above, written comments on Bill 191 can be submitted until **Tuesday, August 4, 2009**. Submissions should refer to registry number 010-6624 and can be delivered to the attention of the government official named in the registry notice, or submitted online through the registry website at <http://www.ebr.gov.on.ca/ERS-WEB-External/>.
- **Written submissions on Bills 173 and 191 to the Standing Committee:** While the deadline for making a request to appear in person before the Standing Committee has now expired, interested individuals can still forward written comments **on either Bill 173 or Bill 191** provided that the Clerk of the Standing Committee receives them not later than **12:00 noon (Eastern Daylight Time) on Friday, September 4, 2009**.

These submissions should be addressed to:

Mr. Trevor Day, Clerk
Standing Committee on General Government
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Principal concerns regarding Bill 191 that the PDAC has identified to date

As noted above, the PDAC's submission in response to Bill 191 is currently in preparation.

While the final list of issues, concerns and recommendations is therefore not yet complete, we expect that this brief will emphasize the following points:

- **No mining in 50 per cent of the Far North – A faulty proposition:** As first announced by Premier McGuinty on July 14, 2008, the draft legislation now confirms the government's intention to establish "an interconnected network of protected areas" covering *at least* 225,000 square kilometres that would therefore amount to not less than 50 per cent of the Far North region. **However, individual land use plans can establish protected areas that constitute *more than* 50 per of the specific planning area that they apply to.**

Moreover, the 50 per cent figure is a *minimum* objective. Consequently, land use plans could conceivably designate an aggregate of *more than* 50 per cent of the Far North as protected areas.

- Insufficient consultation on the 50 per cent minimum and inadequate assessment of its potential consequences for Aboriginal and other Far North communities :**
 The protected areas initiative appears to have been announced without adequate prior consultation with First Nations, the mineral industry or with other stakeholders. In addition, there has not been sufficient assessment of its potential to impair the future growth and prosperity of communities in the Far North, particularly First Nations communities, to discourage responsible economic development, or to eliminate the wide range of employment opportunities that mineral exploration and mine development could create in this vast region of the province. Consequently, this initiative has little chance of achieving the equally important goals of building strong communities, sustaining a viable economy and ensuring protection and conservation of the natural environment. The demands that the Nishnawbe Aski Nation continues to make to the Ontario government to withdraw Bill 191 in its entirety demonstrate the deep concerns held Aboriginal communities in this regard.
- A flawed approach to land use planning:** By prematurely imposing the 50 per cent requirement, Bill 191 would establish an unbalanced and distorted regime for land use planning that forecloses other options for achieving conservation goals. In its present form, the proposed legislation lacks an orderly process to determine the potential economic benefits that could be generated by responsible development of renewable and non-renewable resources, including minerals. Moreover, the approach to land use planning outlined in Bill 191 is new, untested and not well defined. It is therefore far from certain that this regime would promote properly informed decision-making supported by an objective assessment of risks and benefits that would ultimately achieve a reasoned, balanced and enduring outcome.
- Good news and bad news: Exploration can continue, but production may never be allowed:** At the present time, Ontario law grants the holder of mineral claims a definitive right to obtain a mineral lease that allows the holder to proceed to production, subject to compliance with the applicable requirements of the *Mining Act*. Bill 191 and Bill 173 would foreclose the entitlement to proceed to production in cases where the mineral interests are situated in an area that is not yet covered by a community based land use plan, or where the plan has established a land use designation that is inconsistent with mining. In the interim, it appears that exploration can continue, at least until prohibited by final approval of a land use plan or foreclosed by the establishment of a protected area. However, companies exploring in the Far North would be required to publicly disclose that their interests are subject to all of these restrictions and potential limitations. The inevitable negative reaction from the capital markets would render it extremely difficult, if not outright impossible, to raise the funds necessary to continue exploration of Far North mineral prospects.
- No recovery for adversely affected interests:** The proposed legislation precludes any legal right of recovery by anyone whose interests are adversely affected by anything

done in good faith under the new regime, including loss or damage attributable to the implementation of a community based land use plan. Bill 191 provides that any legal proceeding of this kind, whether now or in the future, would be prohibited once the new law comes into force. While these provisions would apply to Canadian companies, United States and Mexican claimants could seek damages pursuant to the *North American Free Trade Agreement*. Canadian enterprises would therefore be at a distinct disadvantage under this aspect of the proposed regime which is contrary to the principle that government should not exercise expropriation-like powers without providing adequate compensation or other appropriate relief to adversely affected parties.

- **Ambiguities and uncertainties in the overall scheme:** The draft legislation defers the development of a number of key elements and important criteria to a later date when the government will “prescribe” them by regulations. It also lacks definitions for important terms such as “development” and “exploration”. More significantly, the proposed enactment leaves open the question of who would constitute a “First Nation” for land use planning purposes where the First Nation in question does not have a reserve in the Far North.
- **Insufficient time for proper review:** Considering the sweeping nature of the changes proposed under the two bills, especially those that involve the existing Aboriginal and treaty rights that are recognized and affirmed by section 35 of the federal Constitution Act, the provincial government is proceeding with undue haste. It has therefore failed to allow sufficient time for all potentially affected sectors of society to properly evaluate the proposed legislation and make a productive contribution to its development. Moreover, while certain aspects of Bill 173 are interrelated with those of Bill 191, each proposal is sufficiently complex and far reaching in its implications to warrant separate hearings by an appropriate committee of the provincial legislature.
- **Failure to win support from First Nations:** As outlined above, the Nishnawbe Aski Nation has repeatedly voiced its concerns throughout the history of these initiatives, commencing with its April 3, 2009 letter to Premier Dalton McGuinty and continuing until the present time. These objections make it clear that Bill 191 has little chance of improving the climate of government to First Nations relationships or addressing long-standing grievances and inequalities. In and of itself, the government’s failure to win the endorsement of First Nations in the Far North warrants suspending further action to advance Bill 191 until a thorough review of its implications has been completed.

Given the above, the PDAC’s submission on Bill 191 to the Environmental Registry and the association’s presentation to the Standing Committee will urge the provincial government not to pass the proposed legislation. We intend to emphasize how Bill 191 will act as a strong disincentive to mineral exploration and mining activities in the Far North. We will also point out how Bill 191 presents a serious risk of irreparable damage to Ontario’s enviable reputation as a jurisdiction that has historically recognized the importance of its considerable mineral

endowment to the economic welfare of the province as a whole and that has welcomed environmentally and socially responsible resource development initiatives.

Consistent with the PDAC's October 10, 2008 submission in response to the government's initiative to "modernize" Ontario's mining regime and the brief that we submitted in response to Bill 173, we will also emphasize the unique and potentially irreplaceable role that exploration and mining can play in providing the opportunities for employment, training and business development opportunities that Aboriginal communities so urgently need in order to narrow the gap between their present standard of living and that of other Canadians.

What you can do

Members currently active in Ontario: We urge PDAC members who are currently active in Ontario to give serious consideration to the potential implications of Bill 173 and Bill 191 for their present and future exploration and development activities, and to express their views, concerns and recommendations to local MPPs as well as any other elected or appointed government officials with whom they may be in contact.

Other PDAC members: It is also important that PDAC members who are not currently active in Ontario familiarize themselves with the two legislative initiatives and forward their views to the provincial government. **As outlined above, while the proposed statutes will initially apply only in Ontario, they could potentially catalyze undesirable changes of a similar kind in the corresponding regimes in other Canadian jurisdictions, if not properly counteracted.**

While submissions from industry can be made in a number of different ways, we remind you of the deadline of September 4, 2009 for the receipt of representations made to the Standing Committee on General Government.

Although the deadlines for the PDAC's own submissions are fast approaching, **please give us the benefit of any views that you believe we should consider in responding to these initiatives, as well as copies of any submissions that you make to the government on your own behalf.**

Please forward any materials of this kind, and any other comments or recommendations you may have, to Philip Bousquet, Senior Program Director, by e-mail to pbousquet@pdac.ca or by fax to 416-362-0101.

Thank you for your interest and support.



Jon Baird
President