Blaney McMurtry
BARRISTERS & SOLICITORS LLP

EXPECT THE BEST

Ontario Mining Act Amendments Take Full Effect April 1, 2013

by Catherine MacInnis
Originally published in *Blaneys on Business* (March 2013)

Catherine MacInnis is a member of Blaney McMurtry's Commercial Litigation Group. She has advised and acted for mining companies and directors in class action suits and other litigation. She provides practical business advice to domestic and international clients on a broad range of matters, including shareholder and partnership disputes, class actions, contractual and commercial disputes, and regulatory matters.

Catherine may be reached directly at 416.593.2954 or cmacinnis@blaney.com.

A "new" Ontario *Mining Act*[1] comes into full force April 1, 2013.

The last time the *Mining Act* had a major overhaul, famed American gangster Bugsy Siegel was a newborn and Sir Wilfrid Laurier was Prime Minister of Canada. The year was 1906.

The amendments are being sold by the province as a "modernization." It is too early to know whether that is just a euphemism, but one thing is certain -- the changes are going to demand much more work, planning and spending on the part of mining companies in Ontario.

As indicated above, the Ontario *Mining Act* was largely a static statute for all of the 20th century. During that period, the mining business in the province flourished under the "free entry" system of mineral allocation (under which staking a claim was relatively direct, fast and cheap). For most of those years, that meant that neither the Ontario government nor mining companies adequately consulted with stakeholders (if at all), including the province's First Nations groups.

In 2004, however, the Supreme Court of Canada issued a decision that made it clear that the Ontario government has a duty to consult with, and accommodate, Aboriginal groups in Ontario. Then, in 2009, the present amendments to the *Mining Act* were passed by the Ontario legislature. Those amendments took effect in November, 2012, and will be implemented fully by April 1, 2013.

Some critics believe that "modernization" of the *Mining Act* is nothing more than an attempt by the provincial government to download time- and money-consuming consultation and accommodation responsibilities onto mining companies, prospectors, and First Nations groups.

The critics also contend that this downloading carries with it a risk of destroying the industry in Ontario because new front-end exploration and development costs that the amendments mandate will drive miners to other jurisdictions where it is cheaper to do business.

For its part, the Ontario government has defended the changes as an attempt to 'promote mineral exploration in a manner that recognizes Aboriginal and treaty rights, is more respectful of private landowners and minimizes the impact of mineral exploration and development on the environment.'

[1] R.S.O. 1990, c. M.14.

What Will Modernization Mean for You?

Here are some highlights:

- **Prospectors' Mining Act Awareness Program:** If you wish to apply for, or renew, a prospector's licence, you must first complete the Awareness Program, which includes basic information on staking claims, Aboriginal consultation and the amendments to the *Mining Act*. The program can be accessed online and is intended to "raise awareness of the importance of considering other users of public land".
- **Sites of Aboriginal Cultural Significance:** Sites of cultural significance for Aboriginal communities may be withdrawn (on application), so that mining claims cannot be staked on them.
- **Exploration Plans:** Exploration plans for early exploration activities, valid for two years and mandatory as of April 1, 2013, are to be submitted in advance and any surface-rights owners are to be notified. Additionally, any Aboriginal groups potentially affected by exploration plan activities will be notified by the Ministry of Northern Development and Mines (MNDM) and will have an opportunity to provide feedback. Exploration plans are expected to be expensive because the services of geotechnical experts, accountants, lawyers other specialists will be needed.
- **Exploration Permits:** Mining companies will be required to obtain permits in advance of certain activities (e.g. drilling with equipment heavier than 150 kilograms). The permits, valid for three years, are mandatory as of April 1, 2013. Permit applications will be subject to approval by the MNDM and will require consultation with Aboriginal groups. The target turnaround time for issuing the permits is 50 days, but that can be extended if further consultation is required.
- **Closure Plans:** Aboriginal consultation is now required prior to the submission of a certified closure plan or amendment. ■